TOWN OF ASHBURNHAM
SPECIAL TOWN MEETING
WARRANT ARTICLES

Saturday, May 7, 2011
10:00 a.m.
Oakmont Regional High School Auditorium
9 Oakmont Drive
Ashburnham, MA 01430

SPECIAL TOWN MEETING WARRANT
TOWN OF ASHBURNHAM
COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

TO THE CONSTABLES OF THE TOWN OF ASHBURNHAM IN WORCESTER COUNTY,

GREETINGS:

IN THE NAME OF THE COMMONWEALTH OF MASSACHUSETTS, YOU ARE HEREBY DIRECTED TO NOTIFY AND WARN THE INHABITANTS OF SAID TOWN QUALIFIED TO VOTE IN ELECTIONS AND TOWN AFFAIRS TO MEET AT OAKMONT REGIONAL HIGH SCHOOL AUDITORIUM, 9 OAKMONT DRIVE, ASHBURNHAM, MASSACHUSETTS ON

SATURDAY, THE SEVENTH OF MAY, 2011
BEGINNING AT 10:00 A.M.

Article 1. To see if the Town will vote to ratify and affirm the vote taken on November 16, 2010 Special Town Meeting under Article 18; "To appropriate the sum of $29,661,597 dollars for the design and construction of a new J.R. Briggs Elementary School located at 96 Williams Road, Ashburnham, Massachusetts, which school facility shall have an anticipated useful life as an educational facility for the instruction of school children for at least 50 years, this sum is in addition to the $400,000 that the Town previously appropriated for this project on November 13, 2008 Special Town Meeting, Article 2, said sum to be expended under the direction of the School Building Committee, and to meet said appropriation the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum under M.G.L., Chapter 44, or any other enabling authority; that the Town of Ashburnham acknowledges that the Massachusetts School Building Authority's ("MSBA") grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any project costs the Town of Ashburnham incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town of Ashburnham; provided further that any grant that the Town of Ashburnham may receive from the MSBA for the Project shall not exceed the lesser of (1) 58.46 percent (58.46%) of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA; and that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town of Ashburnham and the MSBA."; or act in relation thereto. *(Requested by the Board of Selectmen)*.

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**YES**	**N/A**

TOWN OF ASHBURNHAM
ANNUAL TOWN MEETING
WARRANT ARTICLES

Saturday, May 7, 2011
10:00 a.m.
Oakmont Regional High School Auditorium
9 Oakmont Drive
Ashburnham, MA 01430

The following is a list of warrant articles and the recommendations of the Board of Selectmen and the Advisory Board for the May 7, 2011 Annual Town Meeting.

		Selectmen Recomm.	Advisory Recomm.	Capital Recomm	Tax Impact
Art. 1	Accept reports of Town Officers and Committees	YES	YES	N/A	
Art. 2	Vote to adopt local option for assessment to reallocate Ashburnham's required local contributions to AWRSD per regional agreement	NO	TBD	N/A	
Art. 3	FY12 Budget	YES	YES	N/A	
Art. 4	FY12 Water Enterprise Budget	YES	YES	N/A	
Art. 5	FY12 Sewer Enterprise Budget	YES	YES	N/A	
Art. 6	AWRSD Operating Budget Override	NO	NO	N/A	**Up to $1.72**
Art. 7	Light Department PILOT payment	YES	YES	N/A	
Art. 8	Tax Anticipation Note Authority for Treasurer	YES	YES	N/A	
Art. 9	Funds for the collection of delinquent taxes.	YES	YES	N/A	
Art. 10	Authority for Town Administrator to Contract with Mass. Highway	YES	YES	N/A	
Art. 11	Authority to Expend Ch. 90 Road Repair Money	YES	YES	N/A	
Art. 12	Transfer of Cushing Academy Trust Fund Income	YES	YES	N/A	
Art. 13	Transfer Title V receipts to pay principal and interest on septic loans	YES	YES	N/A	
Art. 14	Payment of prior year invoices	YES	YES	N/A	
Art. 15	Money to fund the Quinn Bill for FY10 and FY11	YES	YES	N/A	
Art. 16	Vote for Capital Planning Committee recommended expenditures	YES	YES	YES	
Art 17	Purchase/Lease dump truck for Water and Sewer with authorization to dispose or trade-in two current vehicles.	YES	YES	YES	
Art. 18	Capital items for AWRSD (Grade 8 lockers, turf field fence and backstops, and roof repair (all both towns)	YES	YES	YES	
Art. 19	Development rate limitation bylaw amendment	YES	YES	N/A	
Art. 20	Open Space Residential Development bylaw amendment	YES	YES	N/A	
Art. 21	Offset receipt account for Waterways Improvement Fund	YES	YES	N/A	
Art. 22	Transfer the landfill to the Light Dept	YES	YES	N/A	
Art. 23	Funds for planning of 250th Celebration	YES	YES	N/A	
	Total increase for tax rate if all passes:				**Up to $1.72**

Current Tax Rate for FY11 is $ 17.15

ANNUAL TOWN MEETING WARRANT
TOWN OF ASHBURNHAM
COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

TO THE CONSTABLES OF THE TOWN OF ASHBURNHAM, IN WORCESTER COUNTY,

GREETINGS:

IN THE NAME OF THE COMMONWEALTH OF MASSACHUSETTS, YOU ARE HEREBY DIRECTED TO NOTIFY AND WARN THE INHABITANTS OF SAID TOWN QUALIFIED TO VOTE IN ELECTIONS AND TOWN AFFAIRS TO MEET AT OAKMONT REGIONAL HIGH SCHOOL AUDITORIUM, 9 OAKMONT DRIVE, ASHBURNHAM, MA ON

SATURDAY, THE SEVENTH OF MAY, 2011
BEGINNING AT 10:00 A.M.

THEN AND THERE TO VOTE ON THE FOLLOWING ARTICLES AND RESOLUTIONS:

ARTICLE 1: To accept the reports of several town officers and all outstanding committees, or act in relation thereto. *(Requested by the Board of Selectmen)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 2: To see if the Town will vote to adopt the local option for assessment pursuant to G.L. c. 71, Sec. 16B, paragraph 4, to reallocate the sum of Ashburnham's required local contributions to the Ashburnham-Westminster Regional School District in accordance with the regional agreement; or take any action thereto. *(Requested by the Board of Selectmen)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
NO	**TBD**	**N/A**	**N/A**

ARTICLE 3: To see if the Town will vote to raise and appropriate and/or appropriate by transfer from available funds such sums of money as may be necessary to defray the expenses of the Town for the fiscal year commencing July 1, 2011 and to set the salaries of elected officials; or act in relation thereto. *(Requested by the Board of Selectmen and Advisory Board)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

LINE	DEPARTMENT	FY10 SPENT	FY11 BUDGET	FY12 TOWN ADMINISTRATOR RECOMMEND	FY12 ADVISORY BOARD RECOMMEND
1	Moderator	100	100	100	100
2	Board of Selectmen	3,875	5,765	6,405	6,405
3	Town Administrator	168,394	157,345	179,645	179,645
4	Advisory Board	311	53,421	75,500	75,500
5	Town Accountant	69,624	78,392	78,438	78,438
6	Board of Assessors	87,343	97,966	100,402	100,402
7	Treasurer	81,109	87,918	86,059	86,059
8	Tax Collector	63,595	66,631	66,072	66,072
9	Information Technology		96,749	114.123	114.123
10	Town Clerk	46,602	47,590	49,200	49,200
11	Land Use	19,230	21,614	27,498	27,498

LINE	DEPARTMENT	FY10 SPENT	FY11 BUDGET	FY12 TOWN ADMINISTRATOR RECOMMEND	FY12 ADVISORY BOARD RECOMMEND
12	Town Hall	57,191	38,986	38,786	38,786
13	Town Buildings		163,597	169,641	169,641
14	Non-Departmental	141,249	91,567	85,505	85,505
15	Police	829,176	791,356	859,877	859,877
16	Emergency Dispatch	200,856	223,452	239,045	239,045
17	Public Safety Building	79,561	-	-	-
18	Fire	466,089	490,554	490,627	490,627
19	Inspections	32,778	42,451	42,451	42,451
20	Dog Officer	26,130	28,421	34,503	34,503
21	Monty Tech	327,607	331,566	329,892	329,892
22	Ash-West Regional School District	6,521,291	6,668,639	6,339,404	6,339,404
23	DPW	572,757	561,801	606,707	606,707
24	Snow and Ice	249,560	180,000	180,000	180,000
25	Board of Health	16,680	17,050	17,050	17,050
26	Conservation Commission	16,931	18,765	24,336	24,336
27	Council on Aging	21,186	23,166	22,963	22,963
28	Veterans' Services	13,764	12,687	15,187	15,187
29	Agricultural Commission	-	-	300	300
30	Library	176,540	149,256	149,256	149,256
31	Historical Commission	-	100	100	100
32	Debt Service	964,022	944,993	851,635	851,635
33	Employee Ins. Benefits	976,896	1,064,880	1,066,637	1,066,637
	ARTICLE 3 TOTAL	**$12,227,449**	**$12,556,777**	**$12,347,344**	**$12,347,344**

Setting of Elected Salaries under Article 3:

a. Town Moderator: $100
b. Board of Selectmen: Chairman - $1,300; Clerk - $1,100; Member - $1,100
c. Board of Health: $140 per member
d. Town Clerk: $39,970 includes a $1,000 longevity stipend

ARTICLE 4: To see if the Town will vote to raise and appropriate a sum of money to operate the Water Department for the fiscal year beginning July 1, 2011, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 5: To see if the Town will vote to raise and appropriate a sum of money to operate the Sewer Department for fiscal year beginning July 1, 2011, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 6: To see if the Town will vote to raise and appropriate, or transfer, from available funds, a sum of money for the operating budget of the Ashburnham-Westminster Regional School District, in addition to the sum voted under Article 4 for said operating budget, provided that no funds

shall be expended and no bonds shall be issued unless the Town has first voted at an election to exempt this expenditure from the provisions of Proposition 2½, so called, and further provided that the Town of Westminster also votes to approve and fund its proportional share of such additional appropriations, or act in relation thereto. *(Requested by the Board of Selectmen)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
NO	**NO**	**N/A**	**Up to $1.72**

ARTICLE 7: To see if the Town will vote to authorize the transfer of $40,000 from any excess in the Municipal Light Plant Funds to the town treasury, as authorized by its Light Board in accordance with Chapter 164 of the General Laws of the Commonwealth, or act in relation thereto. *(Requested by the Municipal Light Department)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 8: To see if the Town will vote to authorize the Town Treasurer, with the approval of the Board of Selectmen, to borrow money from time to time in anticipation of the revenue of the financial year beginning July 1, 2011, in accordance with the provisions of the Massachusetts General Laws, Chapter 44, Section 4, and to issue a note or notes as may be given for a period of less than one year in accordance with the Massachusetts General Laws, Chapter 44, Section 17, or act in relation thereto. *(Requested by the Town Treasurer)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 9: To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds a sum of money to pay for legal and other professional services , as well as all other reasonable related expenses, in connection with the collection of certain delinquent taxes owed to the Town, or act in relation thereto. *(Requested by the Town Treasurer)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 10: To see if the Town will vote to authorize the Town Administrator to enter into a contract or contracts with the Massachusetts Highway Department for the construction and maintenance of town roads in conformance with the Massachusetts General Laws, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 11: To see if the Town will vote to appropriate all funds which become available in the Fiscal Year 2012 from the Commonwealth of Massachusetts Department of Highways, Chapter 90 Bond Issue proceeds, to be used by the DPW for the repair and maintenance of town roads in conformance with Massachusetts General Laws, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 12: To see if the Town will vote to authorize the transfer of trust fund income in the amount of $2,500 from the Cushing Academy Trust Fund to pay for the fiscal year 2012 secondary school expenses, or act in relation thereto. *(Requested by Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 13: To see if the Town will vote to transfer a sum of money from special assessments Title V Receipts Account (septic system loan program) to pay principal and interest due on notes payable to the Water Pollution Abatement Trust, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 14: To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds the sum of money for the payment of bills from a prior year, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 15: To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds the sum of money to fund the State's unfunded mandated portion of the Quinn Bill for FY10 and FY11, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 16: To see if the Town will vote to raise and appropriate or appropriate by transfer from available funds the sum of $419,480 to fund the Capital Planning Committee recommendations as follows:

Line	Item	Amount
1	Town Hall Repairs	$ 12,000
2	Library Improvements/Repairs	$ 10,000
3	IMC Software for Fire Department and Vehicle Computers EMS	$ 51,000
4	Police Cruiser	$ 37,000
5	Truck for DPW (2 year lease to purchase))	$ 77,000
6	Loader for DPW (2 year lease to purchase)	$ 57,000
7	Turn-Out Gear for Fire Department	$ 10,350
8	Radio Equipment for Fire Department	$ 4,130
9	Phase I Information Technology infrastructure	$ 36,000
10	Road Improvements	$125,000

To authorize the lease purchases for the DPW truck and loader, and to authorize the Board of Selectmen to sell, trade in, or otherwise dispose of any equipment being replaced, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**YES**	**N/A**

ARTICLE 17: To see if the Town will vote to raise and appropriate or appropriate from available funds a sum of money to purchase a Ford 550 17,950 GVW with Utility Body for the Sewer and Water Department and to authorize the Board of Selectmen to sell, trade in or otherwise dispose of any vehicle being replaced, or act in relation thereto. *(Requested by the Capital Planning Committee)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**YES**	**N/A**

ARTICLE 18: To see if the Town will vote to raise and appropriate or transfer from available funds, the sum of $33,813 to be used to fund the following items in the Ashburnham-Westminster Regional School District Five Year Capital Plan:

1. Grade 8 lockers Overlook (both towns)
2. Turf field fence and backstops Oakmont (both towns)
3. Repair roof on Overlook

Provided that the Town of Westminster also votes to fund its share of these costs, or act in relation thereto. *(Requested by the Capital Planning Committee)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**YES**	**N/A**

ARTICLE 19: To see if the Town will vote to amend the Town's Zoning Bylaws by amending Section 5.11 Development Rate Limitation by extending Section 5.11.3 until May 31, 2016 or act in relation thereto. *(Requested by the Planning Board)*

5.11 Developmental Rate Limitation

Intent: To avoid large year-to-year variations in development rates in Ashburnham while allowing development consistent with history average rates.

5.11.1 - Single-family and two-family conversion limitation.

a. The Building Inspector shall issue no more than thirty-six (36) building permits for the construction of new residential dwelling units per calendar year. All completed applications will be signed and dated upon receipt. For the purpose of this section, an application shall be accepted for review only if it conforms to all applicable building and zoning requirements and has received all necessary approvals from pertinent town boards, including the Board of Health, Planning Board, Zoning Board of Appeals, and Conservation Commission. After thirty-six (36) permits have been issued for that year, applications will no longer be accepted until the start of the following calendar year. No permits shall be carried over from one calendar year to the next. Building permits for no more than six (6) dwelling units shall be issued to any one applicant within a calendar year, unless the development schedule in Section 5.11.1(b) allows a greater number.

b. Development Schedule:
Building permits for new dwelling units in a development shall be authorized in accordance with the following schedule, only if the town wide limit referred to in section 5.11.1(a) has not been reached. Dwelling units shall be considered as part of a single parcel or contiguous parcels of land which have been in the same ownership at any time subsequent to the date of adoption of this section.

Number of New Units	Dwelling Units Allowed In Development Per Year
1 – 4	100%
5 – 12	40%
13 – 20	33%
21+	20%

In computing the number of dwelling units authorized under a schedule, the figure shall be rounded to the nearest whole number. This yearly schedule shall commence on the date of the issuance of the first building permit in a development.

c. Special Development. A Special Permit may be granted by the Zoning Board of Appeals authorizing more rapid development than allowed under paragraph (b), for housing development determined by that Board to have unusually low impact on public services because of its location, occupancy, or design, and to serve an important unmet housing need of Ashburnham residents without over burdening town services.

5.11.2 Zoning Change Protection.

The protection against subsequent zoning changes granted by General Laws Chapter 40A, Section 6 to land in sub-division shall, in case of a development whose completion has been constrained by Section 5.11.1, be extended to the minimum time for completion allowed under Section 5.11.

5.11.3 Review

This section shall be reviewed by the Planning Board ***by May 31, 2016*** ~~five years after its approval~~ and may be amended or deleted in accordance with G.L., c. 40A, Sec. 5.

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 20: To see if the Town will vote to amend the Town's Zoning Bylaws by deleting Section 5.13, Open Space Residential Development in its entirety and replacing with the following new Section 5.13, Open Space Residential Development and delete Section 3.36 and Section 5.15 in their entirety as follows:

"Section 5.13 Open Space Residential Development"

5.13.1 Introduction

"Open Space Residential Development" (OSRD) in accordance with this bylaw shall be allowed by right as a type of subdivision in the RA, RB and GB zones, on one or more parcels of land in common ownership, except for parcels located in the Flood Plain District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. Multifamily structures of not more than four (4) units may also be permitted by the Planning Board if they serve the purpose of the OSRD Bylaw, as stated in § 5.13.2. The land not included in the building lots shall be preserved as Open Space.

5.13.2 Purpose

The purpose of an OSRD is to encourage the preservation of open land by providing an alternative pattern of development through which the following objectives are likely to be met:

A. Greater flexibility and creativity in the design of residential subdivisions provided that the overall density of the development is no greater than that which is normally allowed in the district;

B. The permanent preservation of open space, agricultural lands, forest lands, and other natural resources and to encourage a less sprawling form of development that consumes less open land;

C. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farm land;

D. The construction of street(s), utilities and public services in a more economical and efficient manner;

E. Respect for the natural features of the land, including wetlands, watercourses, forests, prime agricultural land, steep slopes, plants, wildlife, historic sites, scenic areas, and rural character;

F. Promote alternatives to strip residential development lining the roadsides in the town to preserve the unobstructed natural views from roadways;

G. Promote the development of housing affordable to low and moderate-income families;

H. Provide wildlife corridors connecting open spaces, needed by wildlife to ensure their survival;

I. To protect and enhance the value of real property;

J. To provide for a diversified housing stock.

5.13.3 Definitions

Affordable Units - shall mean any combination of dwelling units restricted in perpetuity as affordable to persons or families qualifying as an income eligible household. The affordable restriction shall be approved as to form by the town counsel, and a right of first refusal upon transfer of such restricted units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.

Basic Maximum Number – The number of dwelling units that would be allowed under the Ashburnham Zoning Bylaw.

Common Open Space - shall mean any Open Space set aside, dedicated, designated or reserved for use as passive, recreation, conservation, agriculture, forestry, natural buffers, and active recreation as permitted by this by-law. Common Open Space shall be Contiguous Open Space wherever possible and shall not include roadways, parking areas or private yards.

Income Eligible Household – shall mean a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Massachusetts Department of Housing and Community Development in guidelines.

Open Space - shall mean any parcel or area of land or water essentially unimproved or set aside, dedicated, designated or reserved for public or private use and enjoyment of the owners and occupants of an OSRD as permitted by this by-law.

5.13.4 Authority

The Planning Board shall act as the approving authority for OSRD applications. The Planning Board may adopt, and from time to time amend, Rules and Regulations consistent with the provisions of this bylaw and G.L. c. 40A and other provisions of the General Laws, including Rules and Regulations Governing the Subdivision of Land, and shall file a copy of said Rules and Regulations with the Town Clerk.

5.13.5 Applicability

A. An Open Space Residential Development (OSRD) may be proposed in accordance with this bylaw within the RA, RB, and GB zoning districts.

B. Subsection A above applies only to subdivisions of land as defined in MGL Ch. 41, §81L, and not to construction of homes or businesses on individual lots that existed prior to (Town Meeting Date) or to lots created through the "Approval Not Required" process with frontage on public ways existing as of May 7, 2011 described in the Ashburnham Planning Board

Rules and Regulations Governing the Subdivision of Land. However, if a subdivision approval is not required because a new roadway is not proposed; an applicant may nevertheless apply for an Open Space Residential Development under this Section 5.13. In such a case, the application shall be subject to Site Plan Review as described in Section 5.10.

5.13.6 Design Process

At the time of the application for an OSRD, applicants are required to demonstrate to the Planning Board that the following Design Process was performed by a multidisciplinary team of which one member must be a certified Landscape Architect and considered in determining the layout of proposed streets, house lots, unit placement if treated as a condominium, including designation of all common areas and open space.

A. Identifying Conservation Areas. Identify preservation land by two steps. First, Primary Conservation Areas (such as wetlands, riverfront areas, and floodplains regulated by state or federal law) and Secondary Conservation Areas (including unprotected elements of the natural landscape such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and cultural features such as historic and archaeological sites and scenic views) shall be identified and delineated. Second, the Potentially Developable Area shall consist of land outside identified Primary and Secondary Conservation Areas.

B. Locating House Sites. Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community.

C. Aligning the Streets and Trails. Align streets in order to access the house lots or units. Additionally, new trails should be laid out to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.

D. Lot Lines. Draw in the lot lines using assumed lot lines if the ownership is in condominium, cooperative or other similar form of common ownership.

5.13.7 Design Standards

The following Generic and Site Specific Design Standards shall apply to all OSRD Plans and shall govern the development and design process:

A. Generic Design Standards

1. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, surface water buffers, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

2. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.

3. All open space (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

4. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.

B. Site Specific Design Standards

1. Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation. Calculations for parking spaces in these developments shall be rounded up to the nearest integer where necessary. The Planning Board may choose to modify these requirements during the review process in response to conditions specific to an individual proposal.

2. Drainage. The Planning Board shall encourage the use of Low Impact Development techniques that reduce impervious surface and enable infiltration where appropriate.

3. Screening and Landscaping. All structural surface stormwater management facilities shall be accompanied by a conceptual landscape plan.

4. On-site Pedestrian and Bicycle Circulation. Walkways, trails and bicycle paths shall be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

5. Additional Criteria for Multi-family Development:

(a) The design and location of the structure(s) on the site shall be consistent with the visual scale and character of single-family development.

(b) No more than three (3) bedrooms shall be permitted per multi-family dwelling unit.

5.13.8 Design Criteria

A. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the common open space.

B. Residences shall be grouped so that the greatest number of units can be designed to take advantage of solar heating opportunities; so that scenic views and long views remain unobstructed, particularly those seen from roads; so that habitat areas and species listed as endangered, threatened, or of special concern by the Massachusetts Natural Heritage Program shall be protected; and so that historic and prehistoric sites and their environs shall be protected.

C. In areas greater than twenty (20%) percent slope or upon hilltops and ridgelines, lots shall be laid out, to the greatest extent possible, to achieve the following objectives;

1. Building sites shall be located so that the silhouettes of structures will be below the ridgeline or hilltop or, if the site is heavily wooded, the building silhouettes shall be at least ten (10) feet lower than the average canopy height of the trees on the ridge or hilltop.

2. Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures shall be employed so as to minimize significant degradation of the scenic or aesthetic qualities of the site.

3. The removal of native vegetation shall be minimized.

4. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site.

5. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding.

5.13.9 Roads

The principal roadway(s) serving the site shall be designed to conform to the standards of the Rules and Regulations of the Planning Board. OSRDs shall have access on a public way, a way approved by the Planning Board or a way approved under the Subdivision Control Law.

5.13.10 Open Space Requirements

A. A minimum of fifty percent (50%) of the site shall be open space. The percentage of this open space that can be wetland shall not exceed the percentage of wetland for the entire site under existing conditions as shown on the OSRD Plan. Percentage is calculated by dividing the total wetland acres by the total site acres. A sample calculation is provided below:

<u>Sample Calculation</u>

Existing Conditions:
12-acre site with 3 acres of wetland
3 ÷ 12 = 25% wetland coverage

Open Space Requirements:
50% Open Space = 6 acres

Wetland Allowance:
6 acres * 25% wetland coverage = 1.5 acres

Open Space can be 4.5 acres of upland and 1.5 acres of wetland

B. Description of Restriction on Open Space

Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing. These restrictions shall be granted in a Conservation Restriction in accordance with G.L. c. 184 Sec. 31 and 32 in perpetuity, to a grantee approved by the Planning Board, a copy of which is filed with the Massachusetts Executive Office of Environmental Affairs recorded in the Northern District Worcester County Registry of Deeds, shall be enforceable by the Town of Ashburnham, and shall provide that such land shall be kept in an open or natural state and not built upon for residential use or developed for accessory uses including parking or roadways.

1. At least seventy (70%) percent of the Common Open Space shall be Contiguous Open Space, unless otherwise approved by the Planning Board.

2. The open space shall be used for wildlife habitat and conservation and the following additional purposes: historic preservation, outdoor education, passive recreation, aquifer protection, agriculture, horticulture, forestry, a combination of these uses, and shall be served by suitable access for such purposes. The Planning Board may permit a small portion of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (i.e., pedestrian walks and bike paths) so long as it supports the primary and

secondary purposes of the OSRD and is consistent with state and local level environmental protections.

3. Limited access to common open space may be allowed in the form of a walking or hiking/biking path, the total area of which must be no more than two (2%) percent of the total common open space area.

4. If the OSRD is located in an area currently in agricultural use or containing agricultural soils as determined by the U.S. Soil Conservation Service, the landowner is not required to sell that part of the property, which is to become permanent agricultural open space. Said owner shall, however, convey the development rights of that open space in a Conservation Restriction pursuant to G.L. c. 184, Sec. 31 & 32, et. seq. filed with the Massachusetts Executive Office of Environmental Affairs and enforceable by the Town of Ashburnham, prohibiting future development of the property.

5. Any wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless approved by the Planning Board. Open space serving such systems is required to be under the control/ownership of either the developer or homeowners association to allow for maintenance.

5.13.11 Ownership of the Open Space

The open space shall, at the Planning Board's election, be conveyed to:

A. To the Town of Ashburnham, for a park or open space use if accepted by the Town; or,

B. A nonprofit organization, the principal purpose of which is the conservation of open space; or,

C. A corporation, trust, or association owned by the owners of the lots or residential units within the development; or,

D. Remain under ownership of the original property owner, who has conveyed the development rights to this part of the parcel to the developer who in turn has conveyed an undivided equal interest in these rights to each new homeowner in the development; or,

E. A new owner, subject to the conditions in §5.13.11 (D), above; or any combination of the above, subject to approval of the Planning Board.

F. Where applicable, a nonprofit incorporated homeowner's association shall be established requiring membership of each lot owner in the OSRD. The Homeowner's Association shall be responsible for the permanent maintenance of all commonly owned water and septic systems, open space, recreational and thoroughfare facilities, including but not limited to private ways and common driveways. A Homeowner's Association agreement or covenant shall be submitted with the OSRD application guaranteeing continuing maintenance of such common land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the Town Counsel and the Planning Board.

G. In any case when the Common Open Space is not to be conveyed to the Town, the application for an OSRD shall include a description of how and when the Common Open Space shall be preserved in perpetuity. The applicant shall also provide as part of this description, a proposal agreement authorizing and

empowering the Town to perform any and all maintenance of the Common Open Space, and any other facilities in common ownership in the event of a failure to comply with Common Open Space preservation plan or agreement and/or any other agreement whether a homeowner's agreement or otherwise, to maintain the Common Open Space and/or any facilities in common ownership, and providing that, if the Town is required to perform any maintenance work, the owners of the lots within the OSRD shall pay the costs thereof and that these costs shall constitute a lien upon those lots until such costs have been paid in full.

5.13.12 Common Driveways

A. Common driveways serving no more than five (5) residential units may be allowed in the OSRD, provided that they meet one of the following requirements:

The provision of individual driveways to the lots to be served by the proposed common driveway would require curb cuts which are separated by less than sixty (60) feet along the exterior street line;

The provision of individual driveways to the lots to be served by the proposed common driveway would allow no alternative but to cross a "Wetland Resource Area", as defined by G.L. c. 131 Sec. 40, and/or the Town of Ashburnham Wetlands Protection By-law, or to cross any land in the Flood Plain District as described in § 2 of the Town's Zoning By-laws;

One or more alternate individual driveways which would be necessary in the absence of the proposed common driveway would intersect the roadway at a point of insufficient traffic sight distance, as determined by the Planning Board;

The provision of individual driveways to the lots to be served by the proposed common driveway would adversely affect a significant natural feature or vista.

B. The common driveway shall access the property over the frontage of at least one of the lots being served by the driveway.

C. The common driveway shall not be in excess of five hundred (500) feet in length.

D. The owners of the properties to be served by the common driveway shall provide evidence to the Planning Board that they have a deeded right to the common driveway.

E. The common driveway shall provide adequate access and turnaround for vehicles including moving vans, snowplows, ambulances, fire, and police vehicles. To provide such adequate access, the common driveway shall be built to meet standards as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.

F. All installation of utilities shall meet the requirements as outlined in the Town of Ashburnham Planning Board Rules & Regulations, as amended.

G. Permanent signs indicating the street number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner that will not cause them to be blocked during heavy snow pack and/or snow removal.

H. Approval of a common driveway(s) in an OSRD shall be subject to a covenant by and between the developer and the Planning Board recorded in the chain of title and running with the land, on a form approved by the Planning Board,

acknowledging that the common driveway approval was granted in consideration of the conditions contained within the decision of an OSRD and the grant of covenant, and that the owner, his heirs, executors, successors and assigns, agree that the common driveway shall never be submitted to Town Meeting for a vote to have it become an accepted street. This paragraph authorizes the Planning Board to accept the covenant on behalf of the Town.

I. A lot in an OSRD may be served by a Common Driveway only if it meets the requirements of § 5.13.13 of this by-law, and the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan required under § 5.13.15 shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear restrictions satisfactory to the Planning Board, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Town Counsel and the Planning Board, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) must include, at a minimum the following:

1. Specific standards for the maintenance of all structures designed to be requirements of a common driveway ~~Special Permit~~, including, but not limited to the travel way, drainage system, and signage;
2. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;
3. Text of proposed easement including the metes and bounds description;
4. A procedure for the resolution of disagreements.

5.13.13 Reduction of Dimensional Requirements

Applicant may propose to modify lot size, unit placement, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

A. Frontage. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) will further the goals of this bylaw. The minimum frontage may be reduced from the frontage otherwise required in the zoning district; provided, however, that no lot shall have less than 50 feet of frontage.

B. Setbacks. Every dwelling fronting on the proposed roadways shall be set back a minimum of 20 feet from the roadway right-of-way, and 10 feet from any rear or side lot line. In no event shall structures be closer than 20 feet to each other. Where structures containing three to four dwelling units are being proposed, the side lot lines between units may be 0 feet, however the distance between structures shall be a minimum of 20 feet.

5.13.14 Increases in Permissible Density.

The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number for an OSRD Plan. The density bonus for the OSRD shall not, in the aggregate, exceed thirty percent (30%) of the Basic Maximum Number. Computations shall be

rounded down to the next whole number. A density bonus may be awarded in the following circumstances:

A. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a bonus of one (1) additional dwelling unit beyond the Basic Maximum Number may be awarded.

B. For every two (2) dwelling units restricted in perpetuity to occupancy by persons or families that qualify as income eligible households, one (1) dwelling unit may be added as a density bonus beyond the Basic Maximum Number. Affordable housing units may be used toward density bonuses only if they can be counted toward the Town's affordable housing inventory as determined by the Massachusetts Department of Housing and Community Development. The applicant shall provide documentation demonstrating that the unit(s) shall count toward the community's affordable housing inventory to the satisfaction of the Planning Board.

Additional lots allowed under § 5.13.14.B will become buildable as additional dwelling unit(s) upon completion and sale of said deed-restricted home, or upon donation of, and recording of a deed to, the lot set aside for such deed-restricted home to the Town or to a public or non-profit housing agency or trust. The permanently deed-restricted affordable home or lot shall not be subject to the growth management provisions of § 5.11.

C. For every historic structure preserved and subject to a historic preservation restriction, one (1) dwelling unit may be added to the Basic Maximum Number.

5.13.15 Administration

A. Relation to Subdivision Control Law. To facilitate timely processing, promote better communication and avoid misunderstanding, applicants are encouraged to submit a preliminary subdivision plan. This plan should include alternative OSRD designs and must include how a non-OSRD, or conventional, subdivision design would appear. Such plan shall show the basic maximum number of dwelling units that would be allowed under Ashburnham Zoning Bylaw via conventional residential subdivision.

B. Submission requirements

(1) Each OSRD application and plan shall be prepared in accordance with the requirements of the Ashburnham Planning Board Rules and Regulations Governing the Subdivision of Land as adopted from time to time by the Planning Board.

(2) Each OSRD application and plan shall provide the following additional information:

(a) The location and acreage of areas to be devoted to specific uses.

(b) The proposed location of parks, open spaces, and other public and community uses.

(c) Developments on municipal sewer systems: written approval certifying tie-in to municipal sewage from the Ashburnham Water and Sewer Commission.

(d) On-site septic development: a sanitary survey sewage feasibility report by a Registered Professional Civil Engineer licensed in Massachusetts. The purpose of the report is to evaluate the feasibility of the ground for subsurface disposal of septic tank effluents, based on soil characteristics and test borings, water

table, natural drainage patterns and other observation by the engineer.

[1] The report shall take into consideration the following factors: location of deep holes, to be shown on the appropriate map; topographic and ground level conditions; natural drainage patterns; flood heights of nearby waterways; underlying soil characteristics, absorption qualities, maximum groundwater elevations and distances to bedrock; and location and dimensions of abutting off-site sewage disposal systems if within 100 feet of property lines to be shown on an appropriate map.

[2] The report shall contain a statement by the civil engineer of why the septic system design and location is the most suitable of considered alternatives for on-site sanitary sewage disposal systems as indicated in Title V, the State Environmental Code. The Ashburnham Board of Health has final jurisdiction over all on-site septic systems.

(e) The organization the applicant proposes to own and maintain the open space land, in accordance with Section 5.13.11.

(f) Draft copies of all proposed covenants, agreements, and other restrictions the applicant proposes and is required to provide in accordance with this bylaw.

(g) Proposed gross density of entire development tract, amount of open space required in accordance with Section 5.13.10, and amount of open space retained.

(h) A Yield Plan shall also be provided showing the basic maximum number of dwelling units that could be created for residential purposes via a conventional residential subdivision.

(i) Any and all other information from the definitive subdivision regulations of the Town of Ashburnham that the Planning Board may require to assist in determining whether the proposed OSRD meets the objectives and standards as set forth in this bylaw.

C. Review and approval process

After notice and public hearing in accordance with MGL c. 41, §81T, as amended, the Planning Board may, after due consideration of the reports and recommendations of the Conservation Commission, Board of Health and Town Engineer, and other reviewing offices, may grant OSRD subdivision approval provided that the conditions and standards of this section have been met.

D. Fees

See Planning Board Rules Governing Fees and Fee Schedule

5.13.16 No endorsement of a plan will be made until the Conservation Commission has completed an Order of Conditions and has been registered with the Northern Worcester County Registry of Deeds and made part of the plans. Any further changes required by the Conservation Commission shall meet the approval of the Planning Board's consulting engineer prior to endorsement.

5.13.17 The OSRD Plan shall show compliance with the requirements of this by-law and shall show any other particular features of the OSRD as requested by the Planning Board or required by the applicable Rules and Regulations to enable the Planning Board to determine compliance with this by-law.

5.13.18 Waiver of Compliance

The Planning Board may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

5.13.19 Validity

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof."

Deletion of Section 3.36 in its entirety.

Deletion of Section 5.15 in its entirety.
Or act in relation thereto. *(Submitted by the Planning Board)*

Explanation:
Back at the November 2008 Special Town Meeting, Ashburnham Town Meeting Voters approved a comprehensive re-write to the existing Open Space Residential Development (OSRD) Zoning Bylaw. The Planning Board had submitted this re-write after experiencing some difficulty in administering and implementing the existing Bylaw since its passage back in 2004. The Board had also received comments from a number of developers that the existing Bylaw does not offer flexibility as to the housing unit types and lot pattern layouts.

In March 2009, however, the Mass. Attorney General subsequently disapproved the OSRD Zoning Bylaw re-write based on the Major Residential Development provision within Ashburnham's Zoning Bylaw, which required an OSRD for subdivisions above a certain size and was to be approved by a Planning Board Special Permit. The Attorney General noted that requiring a subdivision with Special Permit approval was found to be "inconsistent with (Massachusetts's) Subdivision Control Law, as articulated in Wall Street Development Corporation v. Planning Board of Westwood, 72 Mass.App.Ct. 844, (2008)." Meanwhile around this same time, a number of Massachusetts communities began to develop and approve zoning bylaws that provide for a by-right OSRD approval process. The Mass. Attorney General has approved this type of zoning provision. Hence the Planning Board is now proposing a re-write to the OSRD Zoning Bylaw, which includes removing the MRD provision and providing for a by-right OSRD approval process.

One of the most important elements of OSRD design is an upfront identification of all the conservation areas on the land proposed for subdivision. Only then are the roads, buildings and lot lines added to the development plan. This process is lacking in the Town's existing OSRD Bylaw, which prevented a greater wooded buffer from being made part of the Lakeside Village OSRD approval, for example. Therefore, a section to add this design process has been proposed to be added to the Bylaw.

Other features of the bylaw that are designed to make it easier to administer and implement, as well as promote its use by developers (over a cookie-cutter, conventional subdivision plan) include: a) easier and more consistent calculations of any density units, b) greater simplicity in the definition of what constitutes an affordable unit, c) allowing multi-family units, but only up to 4 units per building with a max. of 3 bedrooms per unit (to help minimize impacts from school children on the Town's budget), d) greater flexibility in lot sizes.

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 21: To see if the Town will vote to transfer the sum of $3,500 from the Waterways Improvement Fund for the purpose of waterway improvement maintenance and safety, or act in relation thereto. (*Requested by the Ashburnham Lakes Coalition)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 22: To see if the Town will vote to transfer 53.797 acres of land located at 356 Winchendon Road identified on the Assessor's Map 3 Parcel 9 to the Ashburnham Municipal Light Department and to authorize the use of said land on such terms and conditions as are in the best interest of the Town, or act in relation thereto. *(Requested by the Town Administrator)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**

ARTICLE 23: To see if the Town will vote to raise and appropriate or appropriate from available funds a sum of money in the amount of $5,000 to aid in the planning and execution of events in the years leading up to and including the 250th Celebration for Ashburnham. After the Celebration Committee has fulfilled all their duties, any debts incurred are satisfied and paid in full, any unused monies will be returned to the general fund. *(Requested by the 250th Celebration Committee)*

BOS RECOMMEND:	ADV. BD. RECOMMEND:	CAP. PLAN COMM. RECOMMEND	TAX RATE IMPACT:
YES	**YES**	**N/A**	**N/A**