WARRANT FOR THE ANNUAL TOWN MEETING
WENHAM, MASSACHUSETTS
Saturday
April 2, 2016

Essex, ss

To either of the Constables of Wenham, in said County,

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify the inhabitants of said Town qualified to vote in the Town Affairs and elections. The Town Meeting will take place in the Perkins Auditorium in the Bessie Buker School located at 1 School Street in said Town on Saturday, the second of April, 2016 at 1:00 PM. The Election of Town officers to be by official ballot from 7:00 AM until 8:00 PM will take place at the Wenham Town Hall, 138 Main Street, on Thursday, April 7, 2016.

ARTICLE 1: Budget Appropriations

To see if the Town will determine what sum of money may be necessary to defray the Town's expenses of the twelve month period (Fiscal Year 2017) beginning July 1, 2016 and ending June 30, 2017 and to make appropriations for the same and to determine the source thereof.
Or take any other action relative thereto.

Commentary: *The FY 2017 budget, as recommended by the Board of Selectmen and Finance & Advisory Committee, totals $17,281,165, $159,000 of which is new municipal capital expenditures. The FY 2017 budget uses $750,000 in FY 2015 free cash (See Article 2) to both balance the budget ($654,423) and mitigate the tax rate ($95,577). See financial exhibits contained within the warrant for further details. If the FY 2017 budget is accepted as recommended, overall local property taxation rises by $900,648. Assuming no changes in the Town's overall property valuation, the tax rate rises to $18.12, an increase of $1.14 or 6.7%. This translates into an increase of $580 to the average single family home, valued at $509,650.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 2: Use of Free Cash to Balance the Budget and Level the Tax Rate

To see what sum of money, if any, the Town will vote from FY 2015 Free Cash to be used to balance the budget and level the tax rate for the period July 1, 2016 to June 30, 2017.
Or take any other action relative thereto.

Commentary: *This article seeks to transfer the sum of $750,000 from the FY 2015 certified free cash amount of $1,061,225 to lower the FY 2017 tax rate. The Department of Revenue certified the Town's free cash at $586,863 for FY 2014 and 2015 Annual Town Meeting appropriated $425,000 or 72.5 %, leaving a balance of $161,863. This article seeks to use 70.6 % of the FY 2015 certified free cash amount, leaving a balance of $311,225.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 3: Cemetery and Other Trust Funds

To accept the Cemetery and other Trust Funds received in FY 2015, as printed in Part I of the Town Report and on file with the Town Clerk.
Or take any other action relative thereto.

Commentary: *This is a standard acceptance article required to enable expenditure of annually accruing funds from trust donations for general or restricted purposes as provided by the terms of gift or trust.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 4: Cemetery Maintenance Fund Transfer

To see if the Town will vote to authorize the Treasurer to withdraw a sum of money, not to exceed $5,000 from the Sale of Cemetery Lots - Receipts Reserved for Appropriation account, after July 1, 2016 and before June 30, 2017, and transfer and deposit said funds into the General Fund. The purpose of the transfer is to subsidize Highway Department expenditures for the care and operation of the three cemeteries in the Town of Wenham.
Or take any action relative thereto.

Commentary: *The Cemetery Sale of Lots Fund is restricted for expenditure for certain purposes, including costs to maintain the Cemetery. For many years, this service has been provided by the DPW staff, rather than a private grounds keeping service. This article seeks to transfer funds to support DPW general fund expenses for cemetery maintenance from the Sale of Lots Fund. The current balance in the cemetery sale of lots fund #23-349-3580-0491 is $21,606.70.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 5: OPEB Fund Appropriation

To see if the Town will vote to raise and appropriate a sum of money for deposit in the Other Post-Employment Benefits Liability Trust Fund to reduce the unfunded liability of health care and other post-employment benefits to which the Town of Wenham is obligated.
Or take any other action relative thereto.

Commentary: *This article seeks to raise and appropriate the sum of $20,000 for the OPEB Trust Fund fund that was established on April 12, 2012. The Town's current OPEB liability is approximately $4,000,000. While the town lacks resources to fully fund its current OPEB liability, rating agencies look favorably on continued local efforts in addressing this obligation.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 6: Road Work – Chapter 90 Funding

To see if the Town will vote from available funds a sum of money for work on Town Roads, subject to conditions detailed by the Massachusetts Department of Transportation Highway Division, pursuant to Chapter 30, Section 39M; Chapter 149, Section 44J; and Chapter 149, Section 26-27F; said work to conform to the requirements of the Massachusetts Department of Transportation Highway Division.
Or take any other action relative thereto.

Commentary: *This annual article allows the Town to expend funds in anticipation of reimbursement through the Chapter 90 program. The actual amount of funding available to the Town will not be confirmed until the state appropriates funding later in the calendar year.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 7: H-W Grounds Maintenance Revolving Fund

To see if the Town will vote to re-authorize a revolving fund pursuant to MGL Chapter 44, Section 53E1/2 for the following department for the specific purposes outlined below for Fiscal Year beginning July 1, 2016 and ending June 30, 2017.
Or take any other action relative thereto.

H-W Grounds Maintenance:
Fees and reimbursements from the Town of Hamilton and the Hamilton Wenham Regional School District for the purpose of paying employees, purchasing supplies, services, equipment, and miscellaneous expenses related to grounds maintenance; to be expended by the Department of Public Works; not to exceed $20,000 during FY2017.

Commentary: *The Wenham DPW performs certain grounds maintenance services for the HWRSD, for which the Town is reimbursed. State law permits the Town to pay for related expenses of these services in advance of receipt of reimbursements, provided the Town annually votes to set a maximum amount of such so called "revolving fund" expenses. This article allows continuation of this revolving fund for grounds maintenance in FY 2017.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 8: Payment of FY 2015 Legal Bill

To see if the Town will vote to appropriate a sum of money, not to exceed $5,000, to pay a bill to the law firm of Blatman, Bobrowski, Mead & Talerman, LLC for legal work in FY 2015 related to consideration of a petition to convert Penguin Hall into an addiction treatment facility.
Or take any other action relative thereto.

Commentary: *Legal bills and consultant costs related to the review and consideration of significant development projects by town boards, committees, and commissions are generally paid by the applicant through the creation of a special account consistent with MGL Chapter 44 Section 53G. In this particular case, the application pending before the Zoning Board of Appeals was withdrawn prior to the reconciliation of the then outstanding balance in this project account. The Town is obligated to pay the remaining amount based on legal services that were provided by this firm at the direction of town officials.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: 4/5ths Majority

ARTICLE 9: Water Department – Capital Expenditure

To see if the Town will vote to transfer a sum of money, not to exceed $35,000, from the Water Surplus Account (29-300-3560) to the Water Capital Account (29-450-5800) for costs associated with the purchase and equipping of a light duty truck or take any other action relative thereto. Current balance in Water Surplus Account is $160,443.29.
Or take any other action relative thereto.

Commentary: *Water Department finances are managed largely through a separate enterprise fund, with the cost of operation funded by water bills paid by property owners. Under state statute and Town accounting requirements, transfers from the Water Surplus Account require Town Meeting approval, even though tax funds are not involved. This article will approve transfer of a sum from the Water Surplus Account to the Department Capital Account for the purchase of a new light duty truck for Department use.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 10: CPA Appropriations

To see if the Town will vote to hear and act on the report of the Community Preservation Committee on the Fiscal Year 2017 Community Preservation budget; to appropriate from the Community Preservation Fund a sum of money to meet the necessary and proper expenses of the Community Preservation Committee for Fiscal Year 2017 and to approve the appropriation to expend or set aside the following amounts as recommended by the Community Preservation Committee: a sum of money for the acquisition, creation and preservation of open space; a sum of money for acquisition, creation, preservation, rehabilitation, and restoration of land for recreational use; a sum of money for the acquisition, preservation, rehabilitation, and restoration of historic resources and a sum of money for the acquisition, creation, preservation and support of community housing.
Or take any other action relative thereto.

1) To see if the Town will vote to approve the following transfers of Community Preservation Act funds:
   a) The sum of $138,000, for the purpose of reserving a minimum of 10% of the total FY 2017 estimated CPA revenue to be transferred as follows:
      i) $46,000 to the "FUND BALANCE RESERVED FOR HISTORIC RESOURCES"
      ii) $46,000 to the "FUND BALANCE RESERVED FOR OPEN SPACE & RECREATION"
      iii) $46,000 to the "FUND BALANCE RESERVED FOR COMMUNITY HOUSING"

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

   b) The sum of $314,500 from FY 2017 estimated CPA revenue to FY 2017 BUDGETED RESERVES

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

2) The following sums to be appropriated from the indicated CPA source for the following purposes:
   a) The sum of $64,100 from CPA FUND BALANCE to the First Church of Wenham for renovation work on the bell and clock tower including $14,100 for the specific purpose of repairing the clock face and hands owned by the Town.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

b) The sum of $131,937.50 from CPA FUND BALANCE and $12,000 from HISTORIC RESOURCES for the purpose of paying the debt service in FY 2017 on the $2,151,421 supplemental borrowing under Massachusetts General Laws, Chapter 44 and 44B for the rehabilitation of the 162 year old Wenham Town Hall Building located at 138 Main Street in accordance with the plans developed and administered by the Wenham Town Hall and Police Station Building Committee.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

c) The sum of $20,000 from CPA FUND BALANCE to the Friends of Winthrop School for renovation to the Winthrop Playground.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

d) The sum of $50,000 from CPA FUND BALANCE to the Town of Wenham to help fund the design and construction of a structure to house ENON-1 – the Town's historic 19th century fire pumper.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

e) The sum of $35,000 from HISTORIC RESOURCES to the Wenham Cemetery Commission for the final phase of restoration of 161 historic gravestones in the Main Street Cemetery.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

f) The sum of $22,592.64 from CPA FUND BALANCE to the Hamilton / Wenham Recreation Committee for Wenham's share of the design and engineering of a conceptual plan for sports fields which is included in the HWRHS Recreation Master Plan. This is contingent upon Hamilton funding their portion of the total costs not to exceed $67,240.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

g) The sum of $10,000 from CPA FUND BALANCE to the Veterans' War Memorial Committee for landscaping the Veterans' Memorial.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

h) The sum of $7,500 from FY 2017 estimated CPA revenue to the CPA Administrative account.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

Commentary: *In 2005, the Town adopted the Community Preservation Act, and began accumulating funds drawn from a 3% surcharge on our Wenham real estate taxes, plus a state match. Money from this CPA fund can be used to pay for projects that qualify. CPA mandates that each year, the town must set aside from its CPA income at least 10% each for open space, community housing, and historic preservation funds. Operation of and initial selection of grants from the CPA funds so collected are made by an appointed Community Preservation Committee. The Committee reviews eligible needs in the town and grant applications, and its recommendation is required for Town Meeting to appropriate CPA funds for specific projects. This article sets forth the CPC recommended grants for FY 2017.*

ARTICLE 11: Acceptance of MGL Chapter 40, Section 57: Collection of Delinquent Local Taxes, Fees, Assessments, and Betterments Due to the Town

To see if the Town will vote to accept the provisions of MGL Chapter 40, Section 57, and to amend the Town Bylaws to add a new Chapter XXVI that enables the Town to deny permits to landowners who are delinquent in local taxes, fees, and assessments, in the form set forth in Appendix A.
Or take any other action relative thereto.

Commentary: *This article seeks to enable the Town to take advantage of a statutory provision intended to assist the Town in collecting delinquent local taxes, fees, and assessments. Under MGL Chapter 40, Section 57, a town may enact a bylaw that allows the town to refuse to issue or renew, or to revoke, certain licenses and permits if applicable local taxes, fees, and/or assessments are not currently paid by the owner. The cost to the Town, in time and expense, to collect unpaid accounts can be considerable; the right to withhold benefits to owners who are 12 or more months delinquent may provide the town with effective leverage to obtain payment. The article calls for the Town to vote to accept Section 57, and to adopt a bylaw effectuating the statutory rights. Appendix A sets forth the full text of the proposed bylaw, and it explains the detailed operation of the program.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

See Appendix A

ARTICLE 12: Bylaw Amendment: Zoning Board of Appeals

To see if the Town will vote to amend the Town Bylaws, Chapter X - Board of Appeals, by deleting Sections 1 and 2 in their entirety, and substituting the following: "Chapter X - Zoning Board of Appeals. Section 1. A Zoning Board of Appeals, established pursuant to Chapter 41 of the General Laws, is as set forth in Section 13.2 of the Protective Zoning Bylaw of the Town".
Or take any other action relative thereto.

Commentary: *As a result of the recent Legal Base Study update, a conflict was discovered between the general bylaws and the zoning bylaws, with respect to the number of associate members that may be appointed to the Zoning Board of Appeals (ZBA). The zoning bylaw allows up to 3 associate members, in accordance with the Massachusetts zoning statutes, whereas the older general bylaw limited associate member appointments to one. Because the newer statutes also call for the ZBA to be part of the zoning bylaw, this Article proposes to cure this conflict by deleting the ZBA section of the general bylaws, Chapter X, and substituting a cross reference to section 13.2 of the zoning bylaw where the authority of the ZBA resides.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

ARTICLE 13: Bylaw Amendment: Community Preservation Committee Terms

To see if the Town will vote to amend Chapter XXII: Community Preservation Act / Community Preservation Committee of the Town Bylaws by amending Chapter 1 as set forth below to establish three-year terms for all members and a maximum service period of two consecutive three-year terms, and further to stagger the terms for at-large members designated by the Board of Selectmen, with the understanding that the change in term length shall occur through attrition by expiration or resignation, and that the term of no current member of the Committee shall be prematurely terminated as a result of the proposed bylaw amendment.
Or take any other action relative thereto.

Amend Chapter 1, Section 2 of Chapter XXII by deleting the first and second sentence and inserting in place thereof the following sentences, and making no other changes to said Section 2:

Beginning with appointments made on or after 2016, upon the expiration of any representative member's term, that member's successor shall be appointed by the applicable commission, authority, or board for a three-year term or such shorter term for which they serve on the commission, authority, or board, which will begin on July 1 of each respective year and, in the case of at-large members appointed by the Selectmen, in order to establish a three year staggered change in at-large members, two members shall be appointed for two-year terms expiring in 2018, and two members shall be appointed for three-year terms expiring in 2019. Thereafter, all appointments shall be for three-year terms. Any member appointed for two full three-year terms shall be ineligible for reappointment until after the next succeeding annual town meeting.

Commentary: *The 2005 bylaw establishing the Community Preservation Committee under Massachusetts's Community Preservation Act calls for simultaneous two-year terms expiring on May 31 for all nine committee members. The committee is comprised of five members who are appointed by separate boards of the Town and four at-large members who are appointed by the Selectmen. For the four at-large members, this article creates staggered terms so that no more than two of those terms expire in the same year, where all four currently expire on the same date. This article shifts the appointment cycle to the same fiscal year model that all other town boards, commissions, and committees follow. This article also supports the view that changing to three-year terms will provide better continuity on the committee given the significant learning curve required for deliberation on CPA project applications. To counterbalance longer terms, limiting members to a maximum of two consecutive terms will enable evolving perspectives to be introduced into the committee's proceedings.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

ARTICLE 14: Acceptance of MGL Chapter 39, Section 23D: Member Attendance at Adjudicatory Hearings

To see if the Town will vote to accept the provisions of MGL Chapter 39, Section 23D for the Planning Board, Zoning Board of Appeals, Conservation Commission, and Board of Selectmen, which statute provides that when a public body holds an adjudicatory hearing any member thereof shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received, provided that before any such vote, the member shall certify in writing that the member has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof.
Or take any other action relative thereto.

Commentary: *Under a provision of Massachusetts law known as the Mullen Rule, all members of town boards, committees or commissions must have attended all hearing sessions to be eligible to vote on a final ruling on an adjudicatory hearing. Since, on occasion, several hearings on separate dates may precede a final vote, travel or other obligations of volunteer members may prevent all members from being available to attend all hearings on a particular matter. In these circumstances, the board, committee, or commission may be precluded from issuing a final ruling if a quorum of eligible voting members cannot be assembled. While this is not a regular occurrence, we have been faced with this issue in the past, especially in cases of long and legally complex matters. Currently, we are required to repeat the process in order to attain the proper voting quorum, to the great waste of time and effort by members, town officials, and parties to the matter. The local acceptance provision of Massachusetts law referred to in this article permits a member who has had to miss one hearing to nonetheless vote on the final decision provided that the missing evidence has been reviewed so that all voting members have the same basis for ruling.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

ARTICLE 15: Bylaw Adoption: Residency Requirement for Members of Appointed Multiple Member Bodies

To see if the Town will vote to amend the Town Bylaws to add a new Chapter XXVII, Residency Requirement for Members of Appointed Multiple Member Bodies that establishes a requirement that any appointee to a member of any multiple member board, committee or commission be a resident of the Town of Wenham, with limited exceptions, in the form set forth in Appendix B.
Or take any other action relative thereto.

Commentary: *MGL Chapter 41, Section 109 provides that a person need not be a resident of a town to accept appointment to an appointed public office. This provision does not apply to elected offices, nor, as a practical matter, to single incumbent offices, such as Treasurer Collector, where professional criteria may require skills not available from town residents. While non-resident service on Wenham boards, committees and commissions has not been in specific issue in the past, to avoid any doubt on this issue, the Selectmen have set forth this article to adopt a general bylaw requiring that multi-member appointees must be Wenham residents. The article also allows some flexibility if that member is actively involved in a particularly complex matter pending before their board, committee, or commission such that the chair can petition the Selectmen to have that member's term extended through the completion of the relevant proceeding.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

See Appendix B

ARTICLE 16: Amend Senior Citizen Property Tax Work-Off Program

To see if the Town will vote to amend the Senior Citizen Property Tax Work-Off Program adopted under Article 7 of the 2003 Annual Town Meeting, by increasing the abatement to $1,000, the maximum currently allowed by law, and by reducing the minimum age from 65 to 60, the minimum allowable by law, for seniors who participate in the program under MGL Chapter 59, Section 5K.
Or take any other action relative thereto.

Commentary: *Since 2003, the Town has operated a program permitted under Massachusetts law that allows seniors to "earn" an exemption credit applicable to their real estate tax bill by performing volunteer work for the Town. A number of Wenham seniors have taken advantage of this program, and provide valuable assistance to the Town. From time to time, the maximum allowable amount of this exemption has been adjusted upward by the state to account for increases in cost of living expenses, most recently from $750 to $1,000 per year. This article raises the Wenham annual maximum to the new $1,000 limit.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 17: Acceptance of MGL Chapter 59, Section 5N: Tax Relief to Veterans

To see if the Town will vote to accept the provisions of MGL Chapter 59, Section 5N to establish a program to allow veterans, as defined in MGL Chapter 4, Section 7, clause 43, or a spouse of a veteran in the case where the veteran is deceased or has a service-connected disability, to volunteer to provide services to that city or town. In exchange for such volunteer services, the Town shall reduce the real property tax obligations of that veteran on the veteran's tax bills and that reduction shall be in addition to any exemption or abatement to which that person is otherwise entitled; provided, however, that person shall not receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for the services provided pursuant to that reduction; and provided further, that the reduction of the real property tax bill shall not exceed $1,000 in a given tax year.
Or take any other action relative thereto.

Commentary: *As with the tax relief for seniors addressed in Article 15, Massachusetts law provides that towns may have a similar program for veterans, or their spouses if deceased or disabled. This article would accept the statutory authority to establish a tax work-off program for veterans that would offer up to a $1,000 annual exemption.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Recommendation of the Finance & Advisory Committee: Favorable Action (4-0-0)
Vote needed: Simple Majority

ARTICLE 18: Zoning Bylaw Amendment: Site Plan Review

To see if the Town will vote to amend the Zoning Bylaw Section 13.5, Site Plan Review, by deleting said section in its entirety, and inserting in place thereof a new Section 13.5 as set forth in Appendix C.
Or take any other action relative thereto.

Commentary: *Under a provision of Massachusetts zoning law commonly referred to as the Dover Amendment, qualifying religious and educational uses are exempt from local zoning restrictions, apart from a narrow permitted site plan review. As a practical matter, this permits such a use to be established in a residential neighborhood, possibly without any required approval by the Town or any legal notice to abutters. In a recent such situation in Town, the presence or absence of notice became a matter of litigation due to this legal vacuum. Moreover, it became clear that Wenham citizens strongly believe that abutters and the public should be entitled to notice before such uses become fait accompli. At the 2015 Annual Town Meeting, the Town voted to adopt an amendment to the protective zoning bylaw that, inter alia, called for a public hearing for the permitted site review of new Dover exempt uses. The form of that amendment has been adopted in a number of other towns, and approved by the Attorney General as required for all bylaw amendments voted by Town Meeting. However, our version was partially disallowed by the Attorney General after legal counsel for a Dover entity operating in Wenham opposed it as discriminatory under the premise that the public hearing was not required for all zoning site reviews, but only Dover uses.*

This article and the following one provide the opportunity to remedy this problem by replacing the 2015 amendment with two new amendments that require the public hearing for all site reviews performed for any new uses, whether by the Planning Board (this Article) or the Zoning Board of Appeals (Article 18).

Recommendation of the Planning Board: Favorable Action (5-0-0)
Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: 2/3 Majority

See Appendix C

ARTICLE 19: Zoning Bylaw Amendment: Site Plan Review for Certain Institutional and Exempt Uses

To see if the Town will vote to amend the Zoning Bylaw to add a new Section 13.7, Site Plan Review for Certain Institutional and Exempt Uses, as set forth in Appendix D.
Or take any other action relative thereto.

Commentary: *This article establishes the same public hearing requirement for new Dover use site reviews to be performed by the Zoning Board of Appeals as was established for the all other site plan reviews to be performed by Planning Board in Article 17.*

Recommendation of the Planning Board: Favorable Action (5-0-0)
Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: 2/3 Majority

See Appendix D

ARTICLE 20: Bylaw Adoption: Demolition Delay for Historic Buildings

To see if the Town will vote to amend the Town Bylaws to add a new Chapter XXVIII, Demolition Delay for Historic Buildings, as set forth in Appendix E.
Or take any other action relative thereto.

Commentary: *First settled in 1636 and then incorporated in 1643, the Town of Wenham is one of the oldest towns in the Commonwealth of Massachusetts. Today, the Town has 69 houses and other structures built before 1860. By establishing the Wenham Historic District in 1972 and the Wenham Historical Commission in 2014, the voters of Wenham have consistently demonstrated a desire to preserve this rich heritage. 22 of the homes built before 1860 are in the Wenham Historic District. The Historic District Commission has the authority to prevent the demolition of any of these historic homes. However, at present, the Wenham Historical Commission does not have the authority to prevent the demolition of any of the 47 homes built before 1860 that are not located in the Historic District.*

State Statute allows the Town to adopt a Demolition Delay Bylaw by a vote at Town Meeting. This proposed Demolition Delay Bylaw gives the Historic Commission the authority to impose a delay of up to one year on the demolition of any house or structure outside of the Historic District that was built prior to

1860. The purpose of the delay is to initiate a conversation between the Historical Commission and the property owner to try to find a mutually acceptable way to preserve the property. If no way is found to preserve the property by the end on the one-year delay period, the owner is then free to demolish it.

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

See Appendix E

ARTICLE 21: Special Legislation: Grassy Roots Liquor License

To see if the Town will vote to authorize the Board of Selectmen to petition the General Court in the form set forth below, authorizing the Board to issue an off-premises alcoholic beverages license to Grassy Roots, LLC; provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to the bill before enactment by the General Court, and to authorize the Board of Selectmen to approve amendments which shall be within the scope of the general objectives of the petition:

AN ACT AUTHORIZING THE TOWN OF WENHAM TO GRANT AN ADDITIONAL LICENSE FOR THE SALE OF ALCOHOLIC BEVERAGES NOT TO BE DRUNK ON THE PREMISES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

Section 1. Notwithstanding section 17 of chapter 138 of the General Laws relative to the number of licenses that may be granted in the town of Wenham, the licensing authority of the town of Wenham may grant 1 license for the sale at retail of wine and malt alcoholic beverages not to be drunk on the premises under section 15 of said chapter 138 to Grassy Roots, LLC, d/b/a Grassy Roots, located at 152 Main Street in said town; provided, however, that the business shall have no more than 200 square feet of retail space. The licensee shall comply with such requirements and conditions as the licensing authority shall deem appropriate. The license shall be subject to all of said chapter 138, except said section 17 relative to the number of licenses that may be granted. The license shall be nontransferable to any other location, but it may be reissued to a new applicant at the same location if the applicant files with the licensing authority a letter from the department of revenue indicating that the license is in good standing with the department and that all applicable taxes have been paid. The license shall be subject to all other provisions of said chapter 138.

If the license granted under this section is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the license to a new applicant at the same location under the same terms and conditions as specified in this section.

Section 2. This act shall take effect upon its passage.

Or take any other action relative thereto.

Commentary: *The Town currently holds two liquor licenses; one for retail sale and one for on-site consumption (pouring). Grassy Roots, located at 152 Main Street, is seeking a retail liquor license to sell beer and wine. In order to create a new third liquor license, the Town is required to submit special legislation to the state. If and when approval is granted by the state legislature, the Board of Selectmen, as the licensing authority, then have to go through a public hearing process. This application and renewal process takes place on an annual, calendar-year basis for each license and is regulated by the state Alcoholic Beverages Control Commission. As written, this legislation is intended to be location and business specific, but it would allow the license to be reissued, at the discretion of the Selectmen, to a new applicant located at the same address on an as needed basis. Passage of this article does not guarantee that the license will be issued to Grassy Roots; rather, it grants the Selectmen the authority to do so after reviewing their application for a license.*

Recommendation of the Board of Selectmen: Favorable Action (3-0-0)
Vote needed: Simple Majority

ARTICLE 22: Election of Town Officers

To choose the following officers and answer the following questions:

Board of Assessors, one position, three year term; Board of Health, one position, three year term; Board of Selectman, one position, three year term; Cemetery Commissioner, one position, three year term; one position for two years-to fill an unexpired term; Hamilton Wenham Regional Library Trustee, one Wenham position, three year term; Hamilton Wenham School Committee, three positions, three year term, and one position for one year – to fill an unexpired term; Moderator, one year term; Planning Board, one position, five year term; Tree Warden, one position, one year term; Water Commissioner, one position, three year term; Wenham Housing Authority, one position, five year term.

1. Shall the Town vote to have its elected Tree Warden become an appointed Tree Warden of the town?
Yes ___ No ___
2. Shall the Town vote to have its Selectmen appoint the Board of Cemetery Commissioners consisting of three members appointed for three years terms?
Yes___ No ___

And you are hereby directed to serve this warrant by posting attested copies thereof at Town Hall, Hamilton-Wenham Regional Library, Senior Center, ~~and on the bulletin board outside the post office~~ seven days at least before the time of the meeting aforesaid.

THEREOF FAIL NOT and make return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of holding the meeting aforesaid.

Given under our hands this 24 of March, 2016.

Catherine Harrison

Catherine Harrison

Jack Wilhelm

Jack Wilhelm

John Clementzi

John Clementzi

"In pursuance of the above written warrant, I have this 24 day of March, 2016, posted the attested copies thereof as directed therein."

ATRUE COPY ATTEST:

Constable of the Town of Wenham
Date: 3/24/16

APPENDIX A (Article 11)

Chapter XXVI: Grant or Renewal of License/Permit for Non-Payment of Taxes/Fees

The Town may, as authorized under the provisions of MGL Chapter 40, Section 57 and this By-Law, deny any application for, or revoke or suspend a building permit, or any local permit including renewals and transfers issued by any board, officer, department for any person, corporation or business enterprise, who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges, including amounts assessed under the provisions of MGL Chapter 40, Section 21D or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges.

(a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission, or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

(b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and to the tax collector, as required by the applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, or other municipal charges, payable to the municipality as of the date of the issuance of said certificate.

(c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license or permit shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or

revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

(d) The Board of Selectmen may waive such denial, suspension or revocation if it finds that there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of their immediate family, as defined in MGL Chapter 268A, Section 1 in the business or activity conducted in or on said property

This By-Law shall not apply to the following licenses: open burning (c.48 s.13); bicycle permits (c.85 s.11A); sales or articles for charitable purposes (c.101 s.33); children's work permits (c.149 s.69); clubs, associations dispensing food or beverage licenses (c.140 s.21E); dog licenses (c.140s.137); fishing, hunting, or trapping (c.131 s.12); marriage licenses (c.207 s.28); and theatrical events, public exhibitions (c.140 s.181).

APPENDIX B (Article 15)

Chapter XXVII: Residency Requirement for Members of Appointed Multiple-Member Bodies

Section 1 – Residency Requirement
Only residents of the Town of Wenham shall be eligible for appointment as voting members of any multiple-member body of the Town of Wenham. In the event an appointee removes from the Town during said term of appointment, their appointing authority shall declare the office vacant, except as provided in Section 2, below.

Section 2 - Exceptions
The provisions of this By-Law shall not apply to:

(a) An ex-officio or non-voting member of a multiple-member body, including any non-resident town officer or employee representing the Town of Wenham in such capacity;

(b) A member of a multiple-member body who removes from the Town of Wenham while that body is conducting an adjudicatory hearing, provided that the appointing authority, at the request of the chair of such multiple-member body, authorizes the member to continue to serve until the hearing is concluded and a decision has been made.

(c) Any non-resident incumbent member of a multiple-member body serving as of the effective date of this by-law for the remainder of their appointed term; provided that they shall thereafter be subject to the requirements of Section 1.

APPENDIX C (Article 18 - *changes in italics*)

13.5 Site Plan Review

Applicability 13.5.1

The following types of activities and uses require site plan review by the Planning Board:

1) Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or residential structure with two or more dwelling units; and

2) Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or residential structure with two or more dwelling units.

3) For the following Institutional and Exempt Uses set forth in the Table of Use Regulations: Educational, Religious, and Child Care Facility, see Section 13.7, Site Plan Review for Institutional and Exempt Uses (collectively, "Dover Amendment Uses"), subject to the limitations on the scope of review as set forth hereunder.

Approval Required 13.5.2

An application for a building permit to perform work as set forth in Section 13.5.1 shall be accompanied by an approved Site Plan. Prior to the commencement of any such activity, the project proponent shall obtain written site plan approval from the Planning Board.

Procedures 13.5.3

1) Applicants for site plan approval shall submit ten (10) copies of the site plan to the Planning Board for review. The Board shall provide a copy of the application to the Fire Department, Building Inspector, Board of Selectmen, Department of Public Works, Conservation Commission, Board of Health, and Police Chief for their advisory review and comments. Failure of such board or official to respond within thirty-five days of submittal shall be deemed a lack of opposition thereto.

2) The Planning Board shall hold a public hearing on each application for site plan approval. The public hearing procedures set forth in G.L. c. 40A, ss. 9 and 11 for special permits shall be followed by the Board. The Planning Board shall review and act upon each Site Plan application and impose appropriate conditions within ninety (90) days of the close of the public hearing, and provide written notice to the Town Clerk and applicant of its decision. The decision of the Board shall be by a majority of the Board and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 90 days lapse from the close of the public hearing without final action as set forth above.

3) The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.

4) No deviation from an approved site plan shall be permitted without such modification being subject to Planning Board approval.

Preparation of Plans 13.5.4

Applicants are invited to submit a pre-application sketch of the proposed project to the Board and to schedule a comment period at a regular meeting of the Board. Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=20'.

Contents of Plan 13.5.5

Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Board. The plans are as follows:

1) Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Board.

2) Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.

3) Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

4) Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

5) Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

6) Dover Amendment Uses shall be required to provide only information that is relevant to the limited

scope of site review of the use as provided for under G.L. c.40A, s. 3.

The site plan shall be accompanied by:

1) A written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

2) A written summary of the contemplated projects indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-Law.

3) Drainage calculations by a registered professional engineer. Storm drainage design must conform to the Town's Subdivision Regulations.

4) If the Board requires, narrative assessments of the on-site and off-site impacts of the proposed use and structures.

5) Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

6) Dover Amendment Uses shall be required to provide only information that is relevant to the limited scope of site review of the use as provided for under G.L. c.40A, s. 3.

Waiver of Technical Compliance 13.5.6

The Board may, upon written request of the applicant, waive any of the technical requirements of this Section where the project involves relatively simple development plans or constitutes a minor site plan.

Approval 13.5.7

Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and storm water drainage consistent with the functional requirements of the Planning Board`s Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1) Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and threat of air and water pollution;

2) Maximize pedestrian and vehicular safety both on the site and egressing from it;

3) Minimize obstruction of scenic views from publicly accessible locations;

4) Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

5) Minimize glare from headlights and lighting intrusion;

6) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;

7) Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and

8) Ensure compliance with the provisions of this Zoning By-Law, including parking and landscaping.

9) Dover Amendment Uses shall be designed to address the requirements set forth under G.L. c.40A, s. 3.

Lapse 13.5.8

Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

Regulations 13.5.9

The Board may adopt additional reasonable regulations for the administration of site plan review.

Fees 13.5.10

The Board may adopt reasonable administrative fees and technical review fees for site plan review.

Appeal 13.5.11

Any decision of the Board pursuant to this Section may be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

APPENDIX D (Article 19)

13.7 Site Plan Review for Certain Institutional and Exempt Uses

13.7.1 Purpose

The purpose of this Section is to provide for site plan review of certain Institutional and Exempt Uses in the Table of Use Regulations, specifically: Educational, Religious, and Child Care Facilities otherwise governed by G.L. c. 40A, s. 3 (collectively, the "Dover Amendment Uses").

13.7.2 Site Plan Review Required. Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of any Dover Amendment Use shall require site plan approval from the Zoning Board of Appeals pursuant to this Section.

13.7.3 Scope of Site Plan Review. Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether it has been determined that the proposed Dover Amendment Use qualifies for protection under G.L. c. 40A, s. 3; and, if so,

2. Whether the proposed Dover Amendment Use satisfies the applicable dimensional requirements for the subject property as set forth in the underlying zoning district where the subject property is located, as to the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to the extent it has been determined that those requirements may be reasonably applied to the proposed Dover Amendment Use.

13.7.4 Procedures.

1) Applicants for site plan approval shall submit ten (10) copies of the site plan and required materials to the Zoning Board of Appeals (ZBA) for review. The ZBA shall provide a copy of the application to the Fire Department, Building Inspector, Planning Board, Board of Selectmen, Department of Public Works, Conservation Commission, Board of Health, and Police Chief for their advisory review and comments. Failure of such board or official to respond within thirty-five days of submittal shall be deemed a lack of opposition thereto.

2) The ZBA shall hold a public hearing on each application for site plan approval. The public hearing procedures set forth in G.L. c. 40A, ss. 9 and 11 for special permits shall be followed by the ZBA. The ZBA shall review and act upon the Site Plan and impose appropriate conditions within ninety (90) days of the close of the public hearing, and provide written notice to the Town Clerk and applicant of its decision. The decision of the ZBA shall be by a majority of the Board and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the ZBA, or unless 90 days lapse from the close of the public hearing without final action as set forth above.

3) The applicant may request, and the ZBA may grant by majority vote, an extension of the time limits set forth herein.

4) No deviation from an approved site plan shall be permitted without such modification being subject to ZBA approval.

13.7.5 Required Information. All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;

2. Name and address of property owner;

3. Description of the proposed use and/or structure and determination that the proposed use is eligible for protection under G.L. c. 40A, s. 3;

4. A Zoning Chart depicting "Required" vs. "Provided" for all applicable zoning Standards concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements that are set forth in the zoning district for the subject property and the determination that such standards are reasonably applicable to the proposed Dover Amendment Use;

5. As reasonably necessary to reach a decision on the application, the Zoning Board of Appeals may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required; provided, however, that it is the intent of this Section to conduct site plan approval for Dover Amendment Uses only to comply with the provisions of G.L. c. 40A, s. 3.

13.7.6 Decision. The ZBA may approve, approve with reasonable conditions, or deny an application for site plan approval. In making its decision, the ZBA shall be guided exclusively by G.L. c. 40A, s. 3 and shall not impose any requirement other than the requirements allowed to be applied under G.L. c.40A, s. 3. The ZBA shall file its written decision with the Town Clerk within 90 days of the close of the public hearing. Failure to take such final action shall constitute approval of the site plan.

13.7.7 Appeal. An appeal of the ZBA's decision may be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

APPENDIX E (Article 20)

Chapter XXVIII: Demolition Delay for Historic Buildings

Section 1. Intent and Purpose
This By-law is adopted for the purpose of protecting the historic and aesthetic qualities of the Town of Wenham by preserving, rehabilitating or restoring, whenever possible, buildings or structures which constitute or reflect distinctive features of the architectural and historic resources of the Town, thereby promoting the public welfare and preserving the cultural heritage of the Town. The intent of the By-law is to provide an opportunity to develop preservation solutions for significant, Preferably Preserved Buildings or Structures as defined herein threatened with demolition. The By-law is intended to encourage owners and townspeople to seek out persons or parties who are willing to preserve, rehabilitate, or restore such buildings following purchase rather than demolish them, or to find other solutions that might limit or eliminate the detrimental effect of demolition on the historical and architectural resources and character of the Town. It is also intended to provide time to document historical resources before they are lost from Wenham's cultural landscape. This By-law applies only to the exteriors of buildings and structures.

Section 2. Definitions
For the purposes of this By-law, the following words and phrases have the following meanings:

2.1 Building: any combination of materials forming a shelter for persons, animals or property.

2.2 Day: calendar day.

2.3 Demolition: any act of pulling down, destroying, removing, burning by arson, dismantling, or razing a building or structure, or any substantial portion thereof, or commencing the work of total destruction or destruction of a substantial portion of a building or structure with the intent of completion of the same. Substantial portion is defined as twenty-five percent (25%) of the volume of the building or structure, or twenty-five percent (25%) of the roof structure. For avoidance of doubt, this section shall apply solely to any act affecting, changing, or altering the exterior of any such building or structure.

2.4 Demolition Permit: a written approval for demolition of a building or structure, issued by the Wenham Building Inspector in response to an application for such a permit.

2.5 Historic District: an historic district established by the Town pursuant to Chapter 40C of the Massachusetts General Laws (MGL) or special law.

2.6 WBI: The Wenham Building Inspector, or other person authorized by state law or local By-law to issue demolition permits in the Town.

2.7 WHC: The Wenham Historical Commission.

2.8 Preferably Preserved Significant Building or Structure: any historically or architecturally significant building or structure which is established, after a public hearing by the WHC, to be worthy of preservation in whole or in part, including Significant Buildings or Structures as defined herein.

2.9 Premises: the entire parcel of land upon which a Significant Building or Structure is or was located.

2.10 Significant Building or Structure: a building and/or structure, or portion thereof, as listed below, included by virtue of not being within the Wenham Historic District and meeting one or more of the following criteria.

a) The building or structure or substantial portion thereof was built or partially built before 1860.

b) The building or structure or substantial portion thereof is listed on the National or State Register of Historic Places, or is the subject of a pending application for listing on said National or State Register of Historic Places;

c) The building or structure or substantial portion thereof is listed in the Inventory of the Historic Assets of the Commonwealth, or designated by the WHC for inclusion in said inventory; or

d) The building or structure or substantial portion thereof is:

(1) determined by majority vote of the WHC to be importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town of Wenham, the Commonwealth of Massachusetts, or the United States of America; or;
(2) determined by majority vote of the WHC to be historically or architecturally important by reason of period, style, method of construction, or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

The buildings or structures meeting the above criteria are listed in the following table.

Address	Name	Year Built	National Register
162 Cherry Street	Newman Fiske –Dodge House	1648	Yes
127 Topsfield Road		1648	
9 Maple Street	Old Farm	1659	Yes
26 Maple Street	Solomon – Kimball House	1696	Yes
114 Cedar Street	James Friend House	1697	Yes
38 Larch Row	Larch Farm	1699	Yes
201 Larch Row		1730	
31 Cherry Street		1735	
96 Dodges Row		1736	
26 Pleasant Street		1750	
56 Cherry Street		1754	
128 Topsfield Road		1769	
137 Cherry Street		1780	
14 Larch Row		1780	

18 Cedar Street		1790	
44 Cherry Street		1790	
349 Grapevine Road		1800	
350 Grapevine Road		1800	
5 Parsons Hill Road		1800	
24 Perkins Street		1800	
77 Topsfield Road		1800	
84 Maple Street		1803	
28 Perkins Street		1810	
31 Topsfield Road		1810	
8 Larch Row		1820	
204 Larch Row		1820	
14 Grapevine Road		1825	
11 Dodges Row		1830	
13 Lake Avenue		1830	
13 Larch Row		1830	
19 Arbor Street		1840	
6 Cedar Street		1840	
14 Cherry Street		1840	
18 Cherry Street		1840	
107 Maple Street		1840	
20 Arbor Street		1850	
21 Arbor Street		1850	
24 Arbor Street		1850	
6 Dodges Row		1850	
14 Dodges Row		1850	
72 Dodges Row		1850	
88 Dodges Row		1850	
173 Larch Row		1850	
29 Pleasant Street		1850	
114 Topsfield Road		1850	
10 Dodges Row		1855	

2.11 Structure: the combination of materials or part thereof other than a building, including but not limited to a bridge, dam, tower, silo, monument, stone wall, fence, path or roadway.

2.12 One-Year Delay: the one-year period, dated from the date of the filing of the original demolition permit application.

Section 3. Procedure

3.1 No owner, tenant or occupant of any premises shall undertake any demolition of a building or structure, or a substantial portion of a building or structure identified in Section 2 of this By-law without first submitting an application for a demolition permit in accordance with this by-law. A permit for the demolition of a building or structure shall be issued only upon compliance with the provisions of this By-law.

3.2 The WBI shall forward a copy of each demolition permit application for a building or structure identified in Section 2 of this By-law to the WHC within seven (7) days after the receipt of such application. Every application for a demolition permit, for a building and/or structure or a substantial portion subject to the provisions of this By-law, as provided in Section 2 of this by-law shall be made or be co-signed by the owner of record, and by the holder of a bona-fide purchase and sale agreement (the "Purchaser") or by the applicant (if different), at the time of the application and be filed with the WBI. Separate applications shall be filed for each building or structure on the property for which a demolition permit is being sought, and each application shall contain or be accompanied by the following information, without which the application shall not be considered complete, requiring a resubmission of the application(s):

a) the address of the building or structure to be demolished, along with the map and lot number for the premises as listed with the Board of Assessors;

b) the owner's name, current address and telephone number, as well as the applicant's name, current address and telephone number if different from the owner;

c) a brief description of the type of building or structure and of the proposed demolition;

d) the date of construction of the building and/or structure as established by the Board of Assessors, deed, or other documentation;

e) photographs of all elevations of the building or structure, as well as photographs showing any other buildings on the premises; and

f) a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures.

3.3 Within thirty (30) days after its receipt of such application, the WHC shall determine whether or not it is a significant building or structure. The applicant shall be informed of the date of a meeting at least fourteen (14) days prior to the meeting, and the WHC shall require the applicant or the applicant's designated representative to make a presentation and/or respond to questions on the proposal at the meeting. Failure to do so shall require the resubmission of the application.

3.4 If the WHC determines that the building or structure is not significant, it shall so notify the WBI and the applicant in writing and the WBI may issue a demolition permit, but the WHC may require that specified visual or other reasonable documentation be completed by the applicant or owner of the building or structure prior to the issuance of the demolition permit. If the WHC determines that the building or structure is significant, it shall notify the WBI and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. A non-transferable decision by the WHC shall remain valid for a period of two (2) years from the date of the decision or until the sale of the property to a party other than the Purchaser or the applicant, whichever comes first. If the WHC fails to notify the WBI

and the applicant of its determination within forty-five (45) days after its receipt of the application, then the building or structure shall be deemed not significant and the WBI may issue a demolition permit subject to same conditions as a non-transferable decision.

3.5 If the applicant decides to proceed, then within sixty (60) days after the applicant is notified that the WHC has determined that a building or structure is significant, the applicant for the permit shall submit to the WHC a copy or an electronic copy of a demolition plan, which shall include all the information provided to the WBI with the original application for the demolition permit.

3.6 Within thirty (30) days of receipt of the materials required under Section 3.5, the WHC shall hold a public hearing with respect to the application for a demolition permit, and shall give public notice in a local newspaper of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, by electronic posting on the Town of Wenham website, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the WHC to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, or the Planning Board, or any person filing written request for notice of hearings, and to such other persons as the WHC shall deem appropriate to receive notice. Within thirty (30) days after the closing of the public hearing, the WHC shall file a written report with the WBI on the demolition plan which shall include the following:

a) a description of the age, architectural style, historical association and importance of the building or structure proposed for demolition; and

b) a determination as to whether or not the building or structure should be preferably preserved and the reasons therefore.

3.7 If, following the demolition plan review, (1) the WHC does not determine that the building or structure should be preferably preserved, or (2) where less than a complete demolition is being proposed, the WHC determines that the work to be done will not materially diminish the historical or architectural significance of the building or structure, or (3) if the WHC fails to file a report with the WBI within the time limit set out in Section 3.6, then the WBI may issue a demolition permit subject to the conditions set forth in Section 3.4.

3.8 If, following the demolition plan review, the WHC determines that the building or structure should be preferably preserved, then the WBI shall not issue a demolition permit for a period of one (1) year from the date of the filing of the original demolition permit application unless the WHC informs the WBI prior to the expiration of such one (1) year period that it is satisfied that the applicant for the demolition permit has made a continuing bona-fide, reasonable and unsuccessful effort to find a way to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specified conditions approved by the WHC. During the one (1) year period, the WHC shall invite the applicant to participate in an investigation of alternatives to demolition. On or before the expiration of the one (1) year period, the applicant or a designated representative must appear before the WHC and document that the applicant has made a continuing, bona-fide and reasonable effort to locate a purchaser to preserve, rehabilitate and restore the building or structure, and that such efforts have been unsuccessful. If the WHC concurs that such an effort has been made and no means can be found, then the WHC shall so inform the WBI in writing within forty-five (45) days, and the WBI may issue a demolition permit for a period of one (1) year from that date, following which time a new application must be submitted. In all such cases, the

WHC may require that specified visual or other reasonable documentation be made of the building or structure prior to the issuance of the demolition permit.

Section 4. Emergency Demolition

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the WBI. As soon as practicable after the receipt of such a request, the WBI shall arrange to have the property inspected by a board consisting of the WBI, the Chairs of the WHC and the Board of Health, and the Chief of the Fire Department, or their respective designees. After the inspection of the building or structure and consultation of this board, the WBI shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect the public health and safety. If the WBI finds that the condition of the building or structure poses a serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition thereof, he or she may issue an emergency demolition permit to the owner of the building or structure. Whenever the WBI issues an emergency demolition permit under the provisions of this Section 4, he or she shall prepare a written report describing the condition of the building or structure and the basis of the decision to issue an emergency demolition permit with the WHC. Nothing in this Section 4 shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by MGL Chapter 143, §§ 6-10. In the event that a Board of Survey is convened under the provisions of said MGL, Chapter 143 § 8 with regard to any building or structure identified in Section 2 of this By-law, the WBI shall request the Chair of the WHC or his or her designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the WHC.

Section 5. Non-compliance

Anyone who begins demolition of a building or structure identified in Section 2 of this By-law without first obtaining, and complying fully with the provisions of, a demolition permit, shall be subject to a fine of three hundred-dollars ($300) for each day, in which such person was not in compliance with the provisions of a demolition permit, and shall be subject to a cease and desist order by the WBI. This fine shall be handled in the manner set forth under By-law Article XIX Non-Criminal Disposition of Violation. Upon a determination by the WHC that a building or structure is a preferably preserved significant building or structure, the owner shall be responsible for properly securing the building or structure, if vacant, to the satisfaction of the WBI. Should the owner fail to properly secure the building or structure, the loss of such building or structure through fire or other cause shall be considered demolition. In addition, unless a demolition permit was obtained for such demolition, and unless such permit was fully complied with, the WBI shall not for a period of three (3) years after the date of demolition issue a building permit for erection of a building and/or structure, paving of driveways or for parking pertaining to any premises on which a building or structure identified in Section 2 of this By-law has been demolished.

Section 6. Building Permits

No permit for the erection of a new structure on the site of an existing significant building or structure may be issued prior to the issuance of a demolition permit for such existing building or structure.

Section 7. Intersection with Wenham By-law
The granting of permission to demolish by the WHC under this By-law shall not be construed as approval by the Town of Wenham for the construction or reconstruction of any building or structure on the property. Once demolition has been approved by the WHC under this By-law, the recipient of that demolition approval must obtain all other approvals required under Wenham By-laws for any such construction or reconstruction before a building permit shall be issued.

Section 8. Appeals to Court
Any person aggrieved by a determination of the Historical Commission under this By-law may seek judicial review of such determination pursuant to the provision of MGL, Chapter 249, § 4.

Section 9. Severability
In case any Section, paragraph or part of this By-law is declared invalid or unconstitutional by any court of competent jurisdiction, every other Section, paragraph and part of this By-law shall continue in full force and effect.

Section 10. Addition of other significant buildings and/or other structures to this By-law's list
Further significant buildings and other structures may be added to the list covered by the By-law when the WHC determines that a building or structure is a significant building as defined in Section 2.10. Such additions will be pursuant to a Town Meeting vote modifying the significant listed buildings or other structures based on a report from the WHC, following the public hearings required for all warrant articles.