

GREENFIELD TOWN COUNCIL
Regular Meeting Minutes
February 20, 2008

Greenfield Community Television

7:00 p.m.

CALL TO ORDER: Meeting was called to order at 7:11 p.m. by President Maloney.

ROLL CALL OF MEMBERS: Roll Call was taken. Councilor Letourneau were absent.

ALSO PRESENT: Mayor Christine Forgey; Director of Municipal Finance and Administration Marjorie L. Kelly; Assistant Town Clerk Deborah Tuttle; Assistant to the Mayor for Economic Development and Marketing Marlene Marrocco; Superintendent of the Department of Public Works Sandra Shields; Zoning Board of Appeals Chairperson Roxanne Wedegartner; School Committee Chairman Greg Aubin and members Hassan Elzeninzy and Dalton Athey; School Union Representative Chip Bull; Anita Fritz, the *Recorder*; Dave Vallette, the *Republican*; GCTV-15 staff; and members of the public.

ACCEPTANCE OF MINUTES: On a motion by Councilor Allis, second by Councilor McLellan, it was unanimously **VOTED:** TO ACCEPT THE TOWN COUNCIL MINUTES OF JANUARY 16, 2008.

PUBLIC HEARINGS: President Maloney explained tonight's Public Hearing was regarding the appropriation for the ¾ ton pickup truck for the DPW. A first reading for the \$500,000.00 transfer for the School Deficit would also be held. There would be no debate among the Town Council tonight regarding the transfer for the School. He noted if the public chose to comment on the School transfer there would be an opportunity tonight to do so under Public Forum. The Town Council will hold a Public Hearing on Monday, February 25, 2008 at 6:00 pm at a location yet to be determined; this would be the chance for the public to weigh in on the subject.

President Maloney opened the Public Hearing at 7:13 pm. Councilor Joseph read the public hearing notice:

In accordance with the Home Rule Charter the Greenfield Town Council will hold a public hearing on Wednesday, February 20, 2008, beginning at 7:00 p.m. at GCTV-15, 393 Main Street to consider the following:

- APPROPRIATE THE SUM OF \$28,000.00 TO PURCHASE ONE 3/4 TON PICKUP TRUCK FOR THE DEPARTMENT OF PUBLIC WORKS

President Maloney asked if anyone from the public wished to speak. Seeing none, President Maloney closed the Public Hearing at 7:14 pm.

Councilor Joseph held the second reading: APPROPRIATE THE SUM OF \$28,000.00 TO PURCHASE ONE 3/4 TON PICKUP TRUCK FOR THE DEPARTMENT OF PUBLIC WORKS

COMMUNICATIONS:

MAYOR: None.

SCHOOL SUPERINTENDENT: None.

TOWN OFFICERS: None.

MOTIONS, ORDERS, AND RESOLUTIONS

MOTION: On a motion by Councilor Joseph, second by Councilor McLellan, it was

MOVED: THAT THE GREENFIELD TOWN COUNCIL RESCIND AN ORDER VOTED DURING THE BUDGET MEETING HELD ON MAY 23, 2007, AS WRITTEN.

Order no. FY 07 -120

ABM FY 08

Final Order 08-13

THE SUM OF \$28,000 BE APPROPRIATED TO PURCHASE ONE WATER DEPARTMENT ONE TON DUMP TRUCK, AND TO MEET SAID APPROPRIATION, THE TREASURER WITH THE APPROVAL OF THE MAYOR, IS HEREBY AUTHORIZED TO BORROW SAID SUM OF \$28,000, PURSUANT TO MASSACHUSETTS GENERAL

LAWS, CHAPTER 44, SECTION 7 (9) OR ANY OTHER ENABLING STATUTE, AND THE MAYOR IS HEREBY AUTHORIZED TO APPLY FOR, CONTRACT FOR, ACCEPT AND EXPEND ANY FEDERAL AND/OR STATE GRANTS AVAILABLE FOR THIS PROJECT TO BE USED TO REDUCE THE WITHIN APPROPRIATION, AND FURTHER, THE MAYOR IS AUTHORIZED TO TAKE ANY ACTION NECESSARY TO CARRY OUT THE INTENT AND PURPOSE OF THIS PROJECT.

DISCUSSION: Councilor Joseph acknowledged the original order language was incorrect and needed to be corrected for bond council.

It was unanimously

VOTED: THAT IT BE ORDERED, THAT THE GREENFIELD TOWN COUNCIL RESCIND AN ORDER VOTED DURING THE BUDGET MEETING HELD ON MAY 23, 2007, AS WRITTEN.

Order no. FY 07 -120

ABM FY 08

Finical Order 08-13

THE SUM OF \$28,000 BE APPROPRIATED TO PURCHASE ONE WATER DEPARTMENT ONE TON DUMP TRUCK, AND TO MEET SAID APPROPRIATION, THE TREASURER WITH THE APPROVAL OF THE MAYOR, IS HEREBY AUTHORIZED TO BORROW SAID SUM OF \$28,000, PURSUANT TO MASSACHUSETTS GENERAL LAWS, CHAPTER 44, SECTION 7 (9) OR ANY OTHER ENABLING STATUTE, AND THE MAYOR IS HEREBY AUTHORIZED TO APPLY FOR, CONTRACT FOR, ACCEPT AND EXPEND ANY FEDERAL AND/OR STATE GRANTS AVAILABLE FOR THIS PROJECT TO BE USED TO REDUCE THE WITHIN APPROPRIATION, AND FURTHER, THE MAYOR IS AUTHORIZED TO TAKE ANY ACTION NECESSARY TO CARRY OUT THE INTENT AND PURPOSE OF THIS PROJECT.

Councilor Joseph stated the Ways and Means Committee forwarded a unanimous positive recommendation for approval

MOTION: On a motion by Councilor Joseph, second by Councilor Farrell, it was unanimously

VOTED: THAT IT BE ORDERED, THE SUM OF \$28,000 BE APPROPRIATED TO PURCHASE ONE 3/4 TON PICKUP TRUCK FOR THE TRAFFIC DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, AND TO MEET SAID APPROPRIATION, THE TREASURER WITH THE APPROVAL OF THE MAYOR, IS HEREBY AUTHORIZED TO BORROW SAID SUM OF \$28,000, PURSUANT TO MASSACHUSETTS GENERAL LAWS, CHAPTER 44, SECTION 7 (9) OR ANY OTHER ENABLING STATUTE, AND THE MAYOR IS HEREBY AUTHORIZED TO APPLY FOR, CONTRACT FOR, ACCEPT AND EXPEND ANY FEDERAL AND/OR STATE GRANTS AVAILABLE FOR THIS PROJECT TO BE USED TO REDUCE THE APPROPRIATION, AND FURTHER, THE MAYOR IS AUTHORIZED TO TAKE ANY ACTION NECESSARY TO CARRY OUT THE INTENT AND PURPOSE OF THIS PROJECT.

MOTION: On a motion by Councilor Joseph, second by Councilor Farrell, it was

MOVED: THAT IT BE ORDERED, THAT PURSUANT TO M.G.L.c 44 §53A, THE GREENFIELD TOWN COUNCIL ACCEPTS A CASH DISTRIBUTION OF RESIDUAL FUNDS IN CONNECTION WITH THE 2002 SETTLEMENT OF THE ANTITRUST CASE BROUGHT BY THE MASSACHUSETTS ATTORNEY GENERAL'S OFFICE AGAINST CERTAIN MUSIC COMPANIES AND RETAILERS. SAID FUNDS ARE TO BE USED BY THE GREENFIELD PUBLIC LIBRARY FOR MUSIC RELATED PROGRAMS AND PROJECTS, WHICH MAY INCLUDE (BUT ARE NOT LIMITED TO) EXPANDING MUSIC COLLECTIONS.

DISCUSSION: Councilor Joseph stated the Ways and Means Committee forwarded a unanimous positive recommendation for approval. He stated MGLC required a Town Council vote for the town to accept the funds.

It was unanimously (Councilor Guin abstained)

VOTED: THAT IT BE ORDERED, THAT PURSUANT TO M.G.L.c 44 §53A, THE GREENFIELD TOWN COUNCIL ACCEPTS A CASH DISTRIBUTION OF RESIDUAL FUNDS IN CONNECTION WITH THE 2002 SETTLEMENT OF THE ANTITRUST CASE BROUGHT BY THE MASSACHUSETTS ATTORNEY GENERAL'S OFFICE AGAINST CERTAIN MUSIC COMPANIES AND RETAILERS. SAID FUNDS ARE TO BE USED BY THE GREENFIELD PUBLIC LIBRARY FOR MUSIC RELATED PROGRAMS AND PROJECTS, WHICH MAY INCLUDE (BUT ARE NOT LIMITED TO) EXPANDING MUSIC COLLECTIONS.

MOTION: On a motion by Councilor Joseph, second by Councilor McLellan, it was

MOVED: THAT IT BE ORDERED, THE SNOW & ICE REMOVAL BUDGET FOR FISCAL YEAR 2008 MAY MAKE EXPENDITURES IN EXCESS OF APPROPRIATION IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS, CHAPTER 44, SECTION 31D.

DISCUSSION: Councilor Joseph stated the Ways and Means Committee forwarded a unanimous positive recommendation for approval. This vote allowed the Town to deficit spend for Snow and Ice remove.

It was unanimously

VOTED: THAT IT BE ORDERED, THE SNOW & ICE REMOVAL BUDGET FOR FISCAL YEAR 2008 MAY MAKE EXPENDITURES IN EXCESS OF APPROPRIATION IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS, CHAPTER 44, SECTION 31D.

MOTION: On a motion by Councilor Joseph, second by Councilor Farrell, it was

MOVED: THAT IT BE ORDERED, THAT THE GREENFIELD TOWN COUNCIL APPROVES THE ATTACHED RESERVE FUND TRANSFER TO FUND TWO AUDITS OF THE GREENFIELD SCHOOL SYSTEM TO BE TRANSFERED INTO ACCOUNT NUMBER 0100-136-5301 IN THE AMOUNT OF \$27,000.00.

DISCUSSION: Councilor Joseph stated the Ways and Means Committee forwarded a unanimous positive recommendation for approval. These funds would allow two audits to be conducted for the Greenfield School System. One audit would be performed by the Massachusetts Association of Business Officials. They would conduct a review of budget planning and development processes; financial reporting and management processes; procurement processes and procedures; payroll processes; and the overall organizational structure of the School District. The second audit would be performed by Melanson-Heath which would review the FY07 closing procedures and year-end financial practices to ensure the closing was accurate and conformed to best practices. He stated they would also review payroll transactions, payments of accrued sick and vacation time, grant fund stipends, charges to the Circuit Breaker and School Choice revolving Funds, and year-end reclassifications to revolving funds. It was also noted this audit would not close out the Fiscal Year 2007-2008 school year.

It was unanimously

VOTED: THAT IT BE ORDERED, THAT THE GREENFIELD TOWN COUNCIL APPROVES THE ATTACHED RESERVE FUND TRANSFER TO FUND TWO AUDITS OF THE GREENFIELD SCHOOL SYSTEM TO BE TRASFERED INTO ACCOUNT NUMBER 0100-136-5301 IN THE AMOUNT OF \$27,000.00.

MOTION: On a motion by Councilor Guin, second by Councilor Farrell, it was

MOVED: THAT IT BE ORDERED, TO SEE IF THE TOWN WILL ACCEPT THE PROVISIONS OF CHAPTER 43D OF THE MASSACHUSETTS GENERAL LAWS AS AMENDED PURSUANT TO SECTION 11 OF CHAPTER 205 OF THE ACTS OF 2006, AND TO APPROVE THE FILING OF AN APPLICATION WITH THE INTERAGENCY PERMITTING BOARD FOR THE DESIGNATION OF LAND AT THE INTERSECTION OF OLIVE STREET AND BANK ROW TO THE INTERSECTION OF BANK ROW AND MAIN STREET CONSISTING OF THE FOLLOWING ADDRESSES: 361 MAIN STREET (MAP 51, PARCEL 10), 3 BANK ROW (MAP 51, PARCEL 11), 9 BANK ROW (MAP 51, PARCEL 12), 15 BANK ROW (MAP 51, PARCEL 13), 21 BANK ROW (MAP 51, PARCEL 14), 25 BANK ROW (MAP 51, PARCEL 15), THE MUNICIPAL PARKING LOT OFF BANK ROW (MAP 51, PARCEL 16), 39 BANK ROW (MAP 51, PARCEL 17), 45 BANK ROW (MAP 51, PARCEL 18), 11 OLIVE STREET (MAP 51, PARCEL 20), AND THE MUNICIPAL PARKING LOT OFF OLIVE STREET (MAP 51, PARCELS 21, 22, & 23) AS A PRIORITY DEVELOPMENT SITE, OR TAKE ANY OTHER ACTION IN RELATION THERETO.

DISCUSSION: Councilor Guin stated the Economic Development Committee forwarded a positive recommendation to the Town Council for approval. He stated if this was approved the town would receive a \$100,000.00 grant to expedite the permitting process and marketing of the properties listed. Approving this would also make it easier to get grants for these properties.

It was unanimously

VOTED: THAT IT BE ORDERED, TO SEE IF THE TOWN WILL ACCEPT THE PROVISIONS OF CHAPTER 43D OF THE MASSACHUSETTS GENERAL LAWS AS AMENDED PURSUANT TO SECTION 11 OF CHAPTER 205 OF THE ACTS OF 2006, AND TO APPROVE THE FILING OF AN APPLICATION WITH THE INTERAGENCY PERMITTING BOARD FOR THE DESIGNATION OF LAND AT THE INTERSECTION OF OLIVE STREET AND BANK ROW TO THE INTERSECTION OF BANK ROW AND MAIN STREET CONSISTING OF THE FOLLOWING ADDRESSES: 361 MAIN STREET (MAP 51, PARCEL 10), 3 BANK ROW (MAP 51, PARCEL 11), 9 BANK ROW (MAP 51, PARCEL 12), 15 BANK ROW (MAP 51, PARCEL 13), 21 BANK ROW (MAP 51, PARCEL 14), 25 BANK ROW (MAP 51, PARCEL 15), THE MUNICIPAL PARKING LOT OFF BANK ROW (MAP 51, PARCEL 16), 39 BANK ROW (MAP 51, PARCEL

17), 45 BANK ROW (MAP 51, PARCEL 18), 11 OLIVE STREET (MAP 51, PARCEL 20), AND THE MUNICIPAL PARKING LOT OFF OLIVE STREET (MAP 51, PARCELS 21, 22, & 23) AS A PRIORITY DEVELOPMENT SITE, OR TAKE ANY OTHER ACTION IN RELATION THERETO.

MOTION: On a motion by Councilor McLellan, second by Councilor Allis, it was by roll call 8 yes and 3 no,
MOVED: THAT IT BE ORDERED, THAT THE GREENFIELD TOWN COUNCIL AMEND CHAPTER 195 WETLAND ORDINANCE OF THE CODE OF THE TOWN OF GREENFIELD TO INCLUDE THE FOLLOWING SECTIONS AND FURTHER AMENDS THE TABLE AND INDEX OF CONTENTS OF THE CODE.

195-4 H. Waiver

The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

195-4 I. Appeals

A decision of the Commission under this bylaw shall be reviewable in the superior court in accordance with MGL c. 249,s 4.

DISCUSSION: Councilor McLellan reviewed the process to date. He noted the Conservation Commission forwarded a positive recommendation for approval. The Ordinance Committee held a public hearing and subsequently forwarded a majority positive recommendation for approval. He spoke of Massachusetts towns who only use the state regulations. He further stated he spoke with Ken Pruit of the Mass Association of Conservation Commission (see attached). If this order passed this evening it would be a very powerful tool for the Conservation Commission (CC). He suggested the CC use this very judiciously. Councilor Siano stated no one at the Public Hearing spoke in favor of this amendment.

MOTION: On a motion by Councilor Wisnewski, second by Councilor Siano, it was

MOVED: AMENDMENT TO BE ADDED TO THE END: WAIVERS SHALL BE GRANTED ON THE AFFIRMATIVE VOTE OF TWO-THIRDS IF THE MEMBERS OF THE COMMISSION WHO ARE SITTING ON A GIVEN APPLICATION.

DISCUSSION: Councilor Wisnewski stated this was proposed by the CC and as Councilor McLellan stated this was very serious. He thought it would be wise to obtain a two-thirds vote of the committee.

It was by show of hands majority,

DEFEATED: AMENDMENT TO BE ADDED TO THE END: WAIVERS SHALL BE GRANTED ON THE AFFIRMATIVE VOTE OF TWO-THIRDS IF THE MEMBERS OF THE COMMISSION WHO ARE SITTING ON A GIVEN APPLICATION.

DISCUSSION: President Maloney stated discussion would continue regarding the main motion. Councilor Farrell would vote to approve the proposed amendment. Councilor Farrell suggested the Town Council, at the least, approve section 195 4-I Appeals. Councilor Wisnewski would not vote to approve the amendment and stated this amendment was poorly written. He stated in his opinion this was the systematic dismantling of the Greenfield CC.

MOTION: On a motion by Councilor Wisnewski, second by Councilor Siano, it was

MOVED: AMEND THE PROPOSAL BY ADDING THE FOLLOWING LANGUAGE: THE PROVISIONS OF THIS SECTION SHALL TAKE EFFECT ON JULY 1, 2008.

DISCUSSION: Councilor Wisnewski stated if this proposal was not directed for a specific project there should be no problem approving this amendment. Councilor Guin stated if this was solely about wetlands protection why would the date matter. Councilor Odato noted if the amendment was bad for one it was bad for all. Councilor Allis stated he would vote against this proposed amendment. Councilor Wisnewski stated if this amendment were passed it made him believe the proposal was proposed for a different intent.

It was by roll call 9 no and 2 yes,

DEFEATED: AMEND THE PROPOSAL BY ADDING THE FOLLOWING LANGUAGE: THE PROVISIONS OF THIS SECTION SHALL TAKE EFFECT ON JULY 1, 2008.

DISCUSSION: Councilor Martin would vote in favor of the proposed order. Councilor Guin acknowledged this waiver would only allow the CC to waive local regulations not State regulations. The Town Council received two packets of signatures from citizens today, one supporting the proposed amendment and the other was in support of efforts to bring a store into Greenfield. Councilor Guin stated he would vote in favor of this amendment. Councilor McLellan stated the Zoning Board of Appeals has a waiver process which was called a "Special Permit". Councilor Siano stated if this waiver was approved it would weaken the entire process. Councilor Siano would not vote to approve this order. Councilor Lashier acknowledged the people who spoke at the Public Hearing were not in favor of the amendment. He stated he had received several calls from citizens who were in favor of the amendment. Councilor Wisnewski stated the language in this waiver had ridiculously vague language. He stated he was in favor of a waiver, but not one with this language. Councilor Odato would not vote in favor of this amendment.

MOTION: On a motion by Councilor McLellan, second by Councilor Allis, it was by roll call 10 yes and 1 no,
VOTED: TO CALL THE QUESTION.

It was by roll call 8 yes and 3 no,

VOTED: THAT IT BE ORDERED, THAT THE GREENFIELD TOWN COUNCIL AMEND CHAPTER 195 WETLAND ORDINANCE OF THE CODE OF THE TOWN OF GREENFIELD TO INCLUDE THE FOLLOWING SECTIONS AND FURTHER AMENDS THE TABLE AND INDEX OF CONTENTS OF THE CODE.

195-4 H. Waiver

The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

195-4 I. Appeals

A decision of the Commission under this bylaw shall be reviewable in the superior court in accordance with MGL c. 249,s 4.

Chapter 195, WETLANDS PROTECTION

[HISTORY: Adopted by the Town Council of the Town of Greenfield 8-15-2001, approved by AG 11-23-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Conservation Commission regulations -- See Part IX.

§ 195-1. Purpose; applicability of statutes.

A. This bylaw is intended to utilize the home rule authority of the Town of Greenfield to protect wetland resource areas by prior review and control of activities likely to have a significant or cumulative effect upon jurisdictional areas as outlined in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and in this bylaw and provide additional local enforcement measures in conjunction with the Massachusetts Wetlands Protection Act.

B. Unless otherwise stated in this bylaw, the jurisdiction, exceptions, time period and application procedures, definitions and enforcement standards of the Wetlands Protection Act shall apply.

§ 195-2. Jurisdiction.

A. Jurisdiction under this bylaw shall be the same as in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, except as outlined below.

B. In accordance with the Massachusetts Wetlands Protection Act and based upon local historical experience, the Conservation Commission has determined that the following provisions are necessary to address and clarify issues particular to Greenfield and to protect the interests contained in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40. Each provision is followed by a brief explanation of the intended purpose and intent.

(1) For new projects within jurisdiction, a minimum of a 25-foot "No Disturb Zone," to be naturally vegetated, shall be maintained or provided between resource areas and all altered areas. The Commission reserves the authority to create a wider "No Disturb Zone" within the 100-foot buffer zone if deemed necessary to protect the resource area.

This provision serves to ensure protection from negative impacts during construction activities and the long-term viability of a resource area.

(2) The following new uses are prohibited within the 100-year floodplain:

- (a) The outdoor storage of autos, auto parts and associated materials;
- (b) Solid waste landfills, junkyards, salvage yards, dumps;
- (c) The manufacture, storage, or disposal of hazardous, toxic, or radioactive wastes;
- (d) The temporary or permanent storage or disposal of materials used in snow and ice control including sand, salt or other deicing chemicals;
- (e) The outdoor storage or placement of storage tanks, above or below ground for petroleum products or other hazardous material;
- (f) The storage, dumping, filling, disposal, of earth or other material.

These restrictions serve to protect areas within the floodplain from potential sources of contamination from pollutants. Vehicles and their accessories (road salt, sand, oil, gas) stored in the floodplain will pollute surface water during flooding events, as well as themselves becoming dangerous debris.

(3) 100% compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within the 100-year floodplain.

This provision clarifies that the Commission considers all incremental reductions in flood storage capacity to be significant over time, and therefore requires replacement at a 1:1 ratio.

(4) Wetlands crossings to provide access to otherwise unreachable upland areas may be allowed only if:

- (a) The only buildable uplands available on the lot have no reasonable alternative means of access from any road, whether publicly or privately owned; and
- (b) Adjacent property, which would have provided dry access to the uplands, has not been sold off or built on by the current or previous owner; and
- (c) The crossing is designed to minimize to the greatest extent possible any disruption of the wetland; and
- (d) The driveway length and design is the minimum length and width necessary to provide access to the proposed use.

This provision clarifies the criteria for determining the appropriateness of proposed wetlands crossing. The Commission may require the applicant to utilize access over an adjacent parcel of land currently or formerly owned by the applicant, or in which the applicant has, or can, obtain an ownership interest; may impose conditions to protect the wetlands; or the Commission may deny a permit for a wetland crossing if the above criteria have not been satisfactorily met.

(5) The Commission shall not consider replication of wetlands adequate mitigation for the destruction of resource areas. Alteration of wetlands requiring replication shall be permitted only where the landowner will be deprived of substantially all economic use of the property, there are no reasonable alternatives, and the wetland area to be lost is minimized to the greatest extent possible.

The purpose of this provision is to provide clarification that the destruction of natural wetlands shall only be considered as a last resort. In general, the Commission shall not permit replication of wetlands because replication does not in fact substitute for many wetlands values. Proposed wetlands replications are at the discretion of the Commission based upon solid scientific reasoning and shall not be permitted simply based upon a proposed 1:1 replication ratio or the "highest and best use" of a property based upon development potential.

(6) The issuance of new wetland permits to any property owner or applicant who has any outstanding violations within the Town of Greenfield under this bylaw or the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, shall be delayed until such violation(s) is corrected or remediation is begun to the satisfaction of the Commission.

This provision is intended to ensure the satisfactory resolution of wetland violations prior to new work beginning.

(7) A request for determination of applicability shall be required prior to the alteration, cutting or removal of any vegetation within 25 feet of a wetland resource area for all purposes except for preexisting uses such as lawn and pastures already regularly mowed. Utility rights-of-way are exempt from this provision as outlined in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, as are the activities currently exempted from the requirements for the riverfront area under 310 CMR 10:58(6).

This provision is intended to provide clarification that the Commission does not consider existing areas of lawn or pasture to be jurisdictional. However, the enlargement or expansion of lawns or pastures within jurisdictional areas does require a permit from the Commission.

§ 195-3. Application process, notice, hearing and fees.

A. Procedures under this bylaw are the same as the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, in terms of procedures and forms, with the following exceptions:

- (1) At the discretion of the Commission, the issuance of determinations may be deferred during periods of snow cover or during periods of plant dormancy.
- (2) The Commission may combine its hearing under this bylaw with the hearing conducted under the State Act.
- (3) The Commission shall have the authority to continue the hearing to a certain day announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations from outside consultants or other Town boards and officials.
- (4) Upon receipt of a request for determination of applicability or notice of intent application, or at any time during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law. The consultant fee shall be paid by the applicant directly to the hired consultant.

B. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an informed decision. An applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Law.

§ 195-4. Permits, policies and denials.

A. The Wetlands Protection Act forms, as amended in MGL c. 131, § 40, shall be used for all permits issued under this bylaw.

B. Additional conditions issued under this bylaw will be attached to the determination of applicability and order of conditions.

C. When reviewing applications and issuing permits, the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt and foreseeable future activities. The Commission shall impose conditions that are deemed necessary to protect the interests of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and this bylaw.

D. The Commission shall have the authority to attach conditions to a negative determination issued under the Massachusetts Wetlands Protection Act, specifying how the work will be completed.

(1) Work permitted under a negative determination with conditions (WPA Form 2) shall be conducted in compliance with the procedures outlined in the attached Schedule A, "Standard Conditions for Negative Determination with Conditions," EN or as amended by the Commission.

E. Work permitted under an Order of Conditions (WPA Form 5) shall be conducted in compliance with procedures outlined in the attached Schedule B, "Standard Conditions for an Order of Conditions," EN or as amended by the Commission.

F. The Commission shall have the right to deny or delay a permit if a previous permit on the same property or on contiguous properties under the same or affiliated ownership has not been complied with or has not received a certificate of compliance.

G. The Commission is empowered to deny a permit for the following reasons:

- (1) Failure to submit necessary information and plans requested by the Commission;
- (2) Failure to meet the requirements of this bylaw and the Wetlands Protection Act;
- (3) Failure to avoid or prevent significant negative or cumulative effects upon wetland resource areas; or

(4) Where no conditions are adequate to protect the interests of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.

195-4 H. Waiver

The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

195-4 I. Appeals

A decision of the Commission under this bylaw shall be reviewable in the superior court in accordance with MGL c. 249,s 4.

§ 195-5. Definitions.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw are the same as those set forth in the Wetlands Protection Act.

§ 195-6. Security.

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed there under be secured wholly or in part by one or more of the methods described below:

- A. By a commercial bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit; or
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant; or
- C. By recording a determination of applicability or an order of conditions in the Registry of Deeds.

§ 195-7. Violations and penalties; enforcement.

- A. Activities which remove, fill, dredge, build upon or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or enforcement order issued pursuant to this bylaw shall constitute a violation.
- B. The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth of Massachusetts.
- C. The Commission shall have the authority to enforce this bylaw, its regulations, and permits issued there under by violation notices, administrative orders, and civil and criminal court actions. In the alternative to criminal prosecution, the Commission may utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, in accordance with the Town Bylaws. EN The fine for any violation disposed of through this procedure shall be in accordance with Subsection F of the procedures for violations as outlined below. This fine may be in addition to any levied under the Wetlands Protection Act.
- D. When a violation is believed to have occurred, the following procedures for violations shall be followed:
 - (1) Contact the property owner to:
 - (a) Request oral permission from the property owner to conduct a site visit; or
 - (b) If the property owner cannot be contacted or refuses entry onto the property, verify violation from a public way or a cooperative neighboring property; or

- (c) Obtain the necessary court order to allow entry onto the property and send a certified letter to the property owner's mailing address according to the most recent Tax Assessor information notifying property owner of a scheduled site visit.
- (2) Conduct a site visit. Determine if a violation has occurred and the extent of the violation.
- (3) Based upon the severity of the violation, issue a cease and desist order and require any of the following remedies:
- (a) Stoppage of work and soil erosion control measures if necessary;
 - (b) Owner to attend a scheduled Commission meeting to present a "mitigation plan";
 - (c) Filing of a request for determination of applicability;
 - (d) Filing of a notice of intent.
- E. If the property owner does not comply with the cease and desist order or order of conditions in a timely manner the Commission shall issue an enforcement order as per MGL c. 131, § 40.
- F. If the property owner fails to comply with the enforcement order by the specified date, a maximum of a \$100 a day fine shall be levied under the Noncriminal Disposition Act. The property owner shall be notified of the fine by certified mail or served by the enforcing person(s) who shall be the Conservation Commission, any of its designees or any police officer.
- G. If the property owner fails to comply with the enforcement order within 30 days, the Conservation Commission will record the enforcement order and notice of fine in the Registry of Deeds and shall notify the property owner by return receipt, certified mail.

§ 195-8. Burden of proof.

The applicant requesting a permit under this bylaw shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have a significant negative or cumulative effect upon the wetland resource areas protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 195-9. Severability.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

MOTION: On a motion by Councilor Allis, second by Councilor Lashier, it was unanimously

VOTED: THAT THE GREENFIELD TOWN COUNCIL PURSUANT TO CHARTER SECTION 2-10 VOTE NOT TO DISAPPROVE THE FOLLOWING APPOINTMENT BY THE MAYOR OF DAVID A. CONWAY FOR A ONE YEAR TERM (2008), TO THE PLANNING & CONSTRUCTION COMMITTEE.

PRESENTATIONS OF PETITIONS AND SIMILAR PAPERS None.

REPORTS OF COMMITTEES

COMMUNITY RELATIONS COMMITTEE Chairman Lashier stated the next meeting would be held on March 11, 2008 with members of the Greenfield Mercantile.

ORDINANCES COMMITTEE Chairman McLellan stated the committee voted on February 4, 2008 not to forward the Censure Resolution to the Council for action.

EDUCATION TASK FORCE Chairman Joseph stated the next meeting would be held on February 27, 2008, 6:00 pm at the Greenfield Youth Center, 20 Sanderson Street. Agenda items would be a review of existing school contracts.

UNFINISHED BUSINESS: None.

OLD BUSINESS: None.

NEW BUSINESS: President Maloney forwarded the Acceptance of a Public Way, acceptance of Forgeys Way, to the Economic Development Committee and Planning Board for recommendation.

Councilor Joseph held the first reading: \$500,000.00 STABILIZATION FUND TRANSFER FROM MIDDLE SCHOOL STABILIZATION FUND TO THE FISCAL YEAR 08 GREENFIELD SCHOOL BUDGET.

President Maloney noted the Council would hold a second reading, a Public Hearing and a vote on Monday, February 25, 2008 regarding the \$500,000.00 transfer for the School. He noted the Town Council had requested information from the Schools. He reviewed the information the Council had to date and information which had been disseminated by the media.

MOTIONS FOR RECONSIDERATION: None.

PUBLIC FORUM: Kristen Levitt, 4 Fairview Terrace, a Special Education Teacher with the Greenfield School system who had lost her job due to the current financial crisis in the School. As a tax payer, and mother, she urged the Town Council to approve the \$500,000.00 to the School Department.

ADJOURNMENT: On a motion by Councilor Allis, second by Councilor Guin, it was unanimously **VOTED: TO ADJOURN THE MEETING AT 8:57 P.M.**

A true copy,

Attest: _____
 Maureen T. Winseck, Town Clerk

GREENFIELD TOWN COUNCIL MEMBERS

GCTV-15
 Regular Meeting
 February 20, 2008

		Roll Call	Amend- ment #2	Call Question	Order # FY 08-065			
1.	Lashier, Dennis	P	N	Y	Y			
2.	McLellan, Thomas	P	N	Y	Y			
3.	Allis, Brickett	P	N	Y	Y			
4.	Maloney, Mark	P	---	---	---			
5.	Wisnewski, Mark	P	Y	Y	N			
6.	Letourneau, Danielle	A	---	---	---			
7.	Martin, William	P	N	Y	Y			
8.	Joseph, Christopher	P	N	N	Y			
9.	Vieu, Sara	P	N	Y	Y			
10.	Farrell, Timothy	P	N	Y	Y			
11.	Guin, Daniel	P	N	Y	Y			
12.	Siano, Alfred	P	Y	Y	N			
13.	Odato, Marc	P	N	Y	N			

9 no 10 yes 8 yes
 2 yes 1 no 3 no