

**Commonwealth of Massachusetts  
Annual Town Meeting**

Middlesex, ss:

To: Constable of the Town of Ashby in said County:

Greeting:

In the name of the Commonwealth, you are hereby directed to notify and warn the inhabitants of the Town of Ashby, qualified to vote in elections and town affairs, to meet at the Elementary School Auditorium in said Ashby, Saturday, May 7, 2005 at 9:30 a.m. to act on the following articles:

**ANNUAL TOWN MEETING ARTICLES**

**Article 1.** To see if the Town will vote to elect all other town officers not required to be on the official ballot.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 2.** To see if the Town will vote to hear the reports of the various town officials and committees.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 3.** To see if the Town will vote to authorize the Treasurer to borrow funds as necessary in anticipation of revenue, in accordance with Chapter 44, Sections 23 to 27 of the Massachusetts General Laws, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 4.** To see if the Town will vote to accept the following sums in trust; the income therefrom to be expended for the perpetual care of lots as follows:

*Glenwood Cemetery*

<b>Amount</b>	<b>Name</b>	<b>Ave.</b>	<b>Lot</b>	<b>Section</b>
\$ 50.00	Karen Peredina	BR	23	Lyman

*West Cemetery*

<b>Amount</b>	<b>Name</b>	<b>Ave.</b>	<b>Lot</b>	<b>Section</b>
\$ 50.00	Katherine & Peter Bezanson	BR	191	III
\$ 50.00	Peter Woodcome	BR	190	III
\$100.00	Robert & Lois Goguen	BR	192	III

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 5.** To see if the Town will vote to appropriate from available funds the sum of \$140,183 Chapter 90 bond issues to be used by the Highway Department in accordance with the Massachusetts General Laws, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 6.** To see if the town will vote to increase the employee contribution for health insurance coverage from 10% to 25%, or take any action relative thereto.

By Petition

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 7.**        To see if the Town will vote to raise and appropriate the sums of money necessary to defray charges and expenses of the Town for the ensuing fiscal year, FY2006, beginning July 1, 2005 and ending June 30, 2006, with each item considered to be a separate appropriation as set forth below, and to fix the salaries of all elected officials, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 8.**        To see if the Town will vote to appropriate the following sums of money to be expended by the Solid Waste Department as and for the Budget of the Solid Waste Department in order to defray the operational expenses and other necessary charges of the Recycling Center and Transfer Station for the ensuing fiscal year, FY2006, beginning July 1, 2005 and ending June 30, 2006, with each item considered to be a separate appropriation as set forth below, or take any action thereon.

<b>Description</b>	<b>FY06 Amount</b>
<i>Revenues:</i>	
Loan Balance	\$ 24,262.97
Trash Disposal Fees	\$ 18,225.00
Recyclable Fees	\$ 4,243.75
Recyclable Sales	\$ 2,566.25
Hauler Permit Fees	\$ 2,800.00
<i>Total Revenues:</i>	\$ 52,097.97
<i>Expenses:</i>	
Trucking Services	\$ 6,500.00
Trash Disposal Expenses	\$ 8,100.00
Recycling Expenses	\$ 7,375.75
Salaries and Wages	\$ 4,560.00
General Operating Expenses	\$ 1,408.00
Emergency Reserve	\$ 24,154.22
<i>Total Expenses:</i>	\$ 52,097.97

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 9.**        To see if the Town will vote to appropriate all of funds collected during fiscal year 2006 as rollback and/or conveyance taxes, pursuant to Massachusetts General Laws Chapters 61, 61A and 61B, to a conservation fund established pursuant to Massachusetts General Laws Chapter 40, Section 8C to be used for all purposes stated in said Section, including but not limited to, the purchase of land and capital improvements to conservation land, and expenses directly related to the acquisition of conservation land, i.e., surveying, title searches, legal expenses of document preparation, or to take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 10.**        To see if the Town will vote to name the road known as Kendall Hill Road, Kendall Road, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 11.**        To see if the Town will vote to amend the Town By-Law by adding the following article:

Article XIX WETLANDS PROTECTION

Section 1. Purpose

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the groundwater table and water recharge areas for existing or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation; to protect the community against the costs which may be incurred when unsuitable development occurs in wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resource and amenities for the benefit and welfare of the present and future inhabitants of the Town of Ashby.

Accordingly, this bylaw protects the wetlands, related water resources, and certain adjoining land areas in the Town by providing for prior review and control of activities deemed to have a significant or cumulative adverse effect upon wetlands values. Collectively, the wetlands values protected by this bylaw include but are not limited to the following:

- protection of public or private water supply;
- protection of groundwater supply;
- flood control;
- erosion and sedimentation control;
- storm damage prevention;
- avoidance of water and soil pollution;
- protection of fisheries, wildlife habitat, rare species habitat including rare plant species;
- and protection of agriculture and aquaculture.

This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas for additional values with additional standards and procedures to augment those of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00).

## Section 2. Jurisdiction

In accordance with this purpose, no person shall remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas:

- freshwater wetlands (including marshes, wet meadows, bogs, and swamps); banks; reservoirs; lakes; ponds of any size; rivers; streams; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas;
- isolated lands subject to flooding and lands within 25 feet of isolated lands subject to flooding; or
- vernal pools and lands within 200 feet of a vernal pool; 200-foot riverfront areas;

without a permit from the Conservation Commission or as is provided by this bylaw

## Section 3. Conditional Exceptions

A. The application and permit required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing, or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

B. The application and permit required by this bylaw shall not be required for work performed for routine and repetitive maintenance of land which is lawfully in agricultural use at the time the work takes place.

C. No permit application shall be required for maintenance of legally existing structures or landscapes within the jurisdiction defined above.

D. The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

E. Any project accepted as a complete application (NOI or RFD) under M.G.L. Ch. 131 §40 prior to the approval of the bylaw by the Office of the Attorney General shall be exempted from the requirement of application and permitting under this bylaw.

F. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

#### Section 4. Applications for Permits and Requests for Determination

##### A. Permit application (notice of intent).

- (1) Written application shall be filed with the Commission to perform activities affecting resource areas and buffer zones protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission, as specified in the bylaw regulations, to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.
- (2) Where this bylaw and the Massachusetts Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) have concurrent jurisdiction, the Commission shall accept the Notice of Intent and plans filed under the Wetlands Protection Act as the permit application and plans under this bylaw for those parts of the project where precise overlap exists, provided that all pertinent areas and activities subject to the jurisdiction of this bylaw and all information required by the bylaw regulations are addressed.

##### B. Request for Determination (RFD).

- (1) Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may, in writing, request a determination from the Commission. Such a Request for Determination shall include information and plans in addition to that required under the Wetlands Protection Act as are deemed necessary by the Commission.

##### C. Fees

- (1) Application fee. At the time of a permit application, the applicant shall pay a filing fee according to the schedule in section X. This fee is not refundable. The fee is in addition to that required by the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00). Town, county, State, and federal projects are exempt from the filing fee. The fee shall be deposited in a special revolving account established pursuant to MGL Chapter 44 §53E ½, for use only for wetlands protection activities, from which the Commission may withdraw funds without further appropriations
- (2) Consultant Fee. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a consultant fee account is authorized

by a special act, or if a special account has been set up pursuant to MGL., Ch. 44 B53G, the applicant's fee shall be put into such account, and the Commission may draw upon that account for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

The maximum consultant fee charged to reimburse the Commission for reasonable costs and expense shall be according to the following schedule:

Project Costs	Maximum Fee
Up to \$ 100,000	\$ 500
\$100,001 - \$ 500,000	\$ 2,500
\$500,001 - \$1,000,000	\$ 5,000
\$1,000,001 - \$1,500,000	\$ 7,500
\$1,500,001 - \$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged an additional \$2,500 maximum fee per increment. The project cost means the estimated entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid prorata for that portion of the project cost applicable to those activities within resource areas protected by this bylaw. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

- (3) The Commission may waive the filing fee, consultant fee, and/or costs and expenses for a permit application or RFD filed by a town officer or agency acting in an official capacity.

## Section 5. Notice and Hearings

### A. Notice.

- (1) Abutter Notification. Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters or owners of land within 300 ft. of the property, at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, including owners of land in another municipality or owners of land 300 ft across a body of water. The notice to abutters shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. A copy will also be filed with the Town Clerk. Failure to properly notify shall constitute an incomplete application. Any hearings either scheduled or begun shall be rescheduled or continued to such time as a complete application is received by the Commission. The project receipt date shall be reset to reflect the date of proper notification.
- (2) Notification of Owner. When a person requesting a determination is other than the owner, the request and notice of the hearing shall be sent by the Applicant to the owner as well as to the Commission.
- (3) Advertising. Written notice given at the expense of the applicant, five business days prior to the hearing, shall appear in a newspaper of general circulation in the municipality.

### B. Hearing.

- (1) The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 B40) and Regulations (310 CMR 10.00).

- (2) The Commission shall have authority to continue the hearing to a certain date 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 of the boards and officials listed in BVI.
- (3) In all other respects, hearings shall be as provided in MGL c.131, §40, and regulations hereunder.

#### Section 6. Coordination with Other Boards

As appropriate, the Conservation Commission may choose to solicit the advice and opinions of other Town boards and officials in the course of its deliberations. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearings. The Commission shall take any such comments and recommendations into account, but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission prior to final action.

#### Section 7. Permits and Conditions

A. Permit Issuance. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. 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.

B. Denials. The Commission is empowered to deny a permit for the following reasons: failure to meet the requirements of this bylaw; failure to submit necessary information and plans requested by the Commission; failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; failure to avoid or prevent unacceptable significant or cumulative negative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values.

C. Presumption of Significance. Lands within 200 feet of rivers, ponds, lakes and vernal pools, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately as a consequence of construction, or over time as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and harm to or loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot [or 100-foot] area, unless the applicant provides evidence to the contrary deemed sufficient by the Commission to prove that the area or part of it may be disturbed without harm to the values protected by the bylaw.

D. Alternatives. In the review of areas within 200 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such

activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

E. Avoidance. To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success because of the high likelihood of failure of replication.

F. Expiration and Renewal. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing, by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

G. Combination. The Commission, in an appropriate case, may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

H. Recording on Deed. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded. Such certification shall include the book and page or instrument number and date.

I. Revocation of Permit. For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to §V and §VI, and a public hearing.

## Section 8. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective when voted and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw and procedures governing the amount and filing of fees.

## Section 9. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

A. The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

B. The term "isolated land subject to flooding" shall include an area, depression, or basin that holds a minimum one-eighth acre-foot of water and at least six inches of standing water once a year. Not included are swimming pools, artificially lined ponds or pools, or constructed wastewater lagoons. The buffer zone for isolated land subject to flooding shall be 25 feet.

C. The term “lands subject to flooding or inundation by groundwater or surface water” shall include areas subject to flooding or inundation by groundwater or surface water; areas exhibiting a preponderance of wetland features and located within 25 feet of a resource area, as they are presumed to be connected to the larger resource area, and hence, are considered an extension of the resource area. The presumption of connection may be reversed only when there is sufficient evidence presented to the Commission to prove isolation.

D. The term “beach” shall include gently sloping shores of a body of water covered by sand or pebbles.

E. The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring, and/or summer, which must contain facultative and/or obligate vernal pool species, and which is free of adult fish populations, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

F. The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

G. The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

H. The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- (2) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- (3) Drainage or other disturbance of water level or water table
- (4) Dumping, discharging, or filling with any material which may degrade water quality
- (5) Placing of fill or removal of material which would alter elevation
- (6) Driving of piles (excluding fence posts), erection or expansion of buildings or structures of any kind
- (7) Placing of obstructions or objects in water
- (8) Destruction of plant life including cutting of trees
- (9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- (10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw

I. Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

#### Section 10. Fee Schedule

- Rules: 1) Permit fees are payable at the time of application and are non-refundable.



- 2) Permit fees shall be calculated by this Commission per schedule below.
  - 3) Town, County, State or Federal projects are exempt from fees.
  - 4) No fee is charged for Requests of Determination under the law or for extensions for Orders of Conditions.
  - 5) Failure to comply with the law after official notification shall result in fees twice those normally assessed.
  - 6) The Commission shall have the right to change the fee schedule shown below. Any change of fee schedule must be advertised and posted at the Town Hall at least thirty days prior to the date upon which the changes are to become effective.
- Fees:
- 1) Wetlands Bylaw Hearing for a single-family residential property not involving the subdivision of land or the construction of more than one residential unit thereon...\$25.00
  - 2) Wetlands Bylaw Hearing for subdivision of land to produce two or more residential building lots, or for commercial and for Industrial real estate...\$100.00

### Section 11. 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 thereunder (including conditions requiring mitigation work) be secured wholly or in part by a deposit of money into an escrow account, under the direction of an approved escrow agent. The amount to be deposited will be equal to the original cost of performing the specified work, plus \$500 or 10%, whichever is greater. The money will be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

### Section 12. Enforcement

A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas and buffer zones 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 an enforcement order issued pursuant to this bylaw.

B. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or may have action taken under MGL Chapter 40 §21D.

C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

D. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

E. Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be served with a Notice of Violation enumerating the alleged violations. If after ten business days the Commission has not received what it deems to be either (a) sufficient evidence demonstrating that no violations have occurred, or (b) a filing that will remove the violations along with evidence that sufficient progress is being made to correct the violations, then the violator shall be punished by a fine of \$100 per offense. Beginning ten business days after the date of the Notice of Violation, each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each

provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

### Section 13. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative adverse effect upon the resource area values 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.

### Section 14. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL Ch. 249 B4.

### Section 15. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL Ch. 131 B40) and Regulations (310 CMR 10.00) thereunder.

### Section 16. 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.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 12.**        To see if the Town will vote to appropriate the sum of \$34,250 from free cash to the Municipal Buildings Repairs account for the purpose of paying for police station heating, police station roof, and a Grange Hall bathroom installation, and/or for any other municipal building repairs as needed, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 13.**        To see if the Town will vote to appropriate the sum of \$34,000 from free cash to the Municipal Buildings Repairs account for the purpose of paying for repairs and construction of the Council on Aging office and adjacent area on the 3<sup>rd</sup> floor of Town Hall, and/or for any other municipal buildings repairs as needed, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 14.**        To see if the Town will vote to appropriate the sum of \$1,200 from free cash to the Municipal Buildings Repairs account for the purpose of paying for fire extinguishers for six municipal buildings, and/or for any other municipal buildings repairs as needed, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 15.**        To see if the Town will vote to appropriate the sum of \$91,000 from free cash to a Highway Truck account for the purpose of paying for the purchase of a highway dump truck, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 16.**        To see if the Town will vote to appropriate the sum of \$1,698 from free cash to the Fire Department Expenses account for the purpose of paying for the purchase of a positive pressure fan, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 17.** To see if the Town will vote to appropriate the sum of \$1,910 from free cash to the Fire Department Expenses account for the purpose of paying for the purchase of a forestry truck pump, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 18.** To see if the Town will vote to appropriate the sum of \$3,998 from free cash to the Highway Machinery Expenses account for the purpose of paying for the purchase of a front plow, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 19.** To see if the Town will vote to appropriate the sum of \$28,255 from free cash and \$100,000 from the Stabilization Fund to the Library Renovations Fund for the purpose of paying for a portion of increased construction costs for the Library project, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 20.** To see if the Town will vote to appropriate the sum of \$31,000 from the Sale of Lots account for the purpose of paying for the purchase of cemetery equipment and storage, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 21.** To see if the Town will vote to transfer the sum of \$15,000 from the Fund Balance-Reserved for Extraordinary and Unforeseen (formerly Assessors' Overlay) for the purpose of paying for a personal property audit, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 22.** To see if the Town will vote to raise and appropriate the sum of \$300,000 under and pursuant to Massachusetts General Laws Chapter 40, Section 5F, Subsection 9 or any other enabling authority, which appropriation shall be contingent upon the passage of a Proposition two and one-half override vote for a capital expenditure for one year, and also contingent upon the failure to secure grant funding, for the purpose of paying for the purchase of a new fire truck, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 23.** To see if the Town will vote to raise and appropriate the sum of \$100,000 under and pursuant to Massachusetts General Laws Chapter 40, Section 5F, Subsections 5 and 6 or any other enabling authority, which appropriation shall be contingent upon the passage of a Proposition two and one-half override vote for a capital expenditure for one year, for the purpose of paying for road reconstruction and paving, or take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 24.** To see if the Town will vote to appropriate the sum of \$15,500 from free cash for the services of a Land Use Coordinator and to authorize the Board of Selectmen to enter into a one year agreement with said Land Use Coordinator with such terms as are in the best interest of the Town, or to take any action thereon.

**Finance Committee action:**  **Approved**  **Disapproved**  **No Action**

**Article 25.** To see if the Town will vote to transfer the care, custody, maintenance and control of the three parcels of land described below from the Town Treasurer for tax title purposes to the Conservation Commission for conservation purposes under Massachusetts General Laws Chapter 40 Section 8C, specifically:

- ❖ Watatic Mountain Road, on Assessors' Map 1, Parcel 4, Lot 0 identified in instrument recorded with the Middlesex South District Registry of Deeds in Book 7062, Page 58;
- ❖ Wares Road, on Assessors' Map 15, Parcel 73, Lot 23 identified in instrument recorded with the Middlesex South District Registry of Deeds in Book 25179, Page 228;

❖ Wares Road, on Assessors' Map 15, Parcel 73, Lot 26 identified in instrument recorded with the Middlesex South District Registry of Deeds in Book 18926, Page 496; , or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 26.**    To see if the Town will vote to have its elected Finance Officers, specifically, its Town Collector and its Town Treasurer, become appointed Town Collector and Town Treasurer pursuant to Massachusetts General Laws Chapter 41, Section 1B and said action shall be contingent upon the passage of acceptance ballots of the voters at the next Annual Town Election, for the purpose of hiring qualified finance officers, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 27.**    To see if the Town will vote to allow for the expansion of the role of the Dog Officer to include other domesticated and wild animals and to add to the title "Dog Officer" the title "Animal Enforcement Agent", or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 28.**    To see if the Town will vote to authorize the Board of Assessors to enter into an inter-municipal joint purchasing agreement pursuant to Massachusetts General Laws, Chapter 40 Section 4A for the provision of technology solutions and related consulting and support services with the Community Software Consortium, preserving the rights and privileges established in prior agreement(s). The duration of this agreement, in accordance with said M.G.L. Chapter 40 Section 4A shall be for no more than 25 years, with the ability of the community to withdraw from this agreement at any time in accordance with the provisions of the agreement and the statute. The annual obligation of the municipality under this agreement will be paid from the participating departments' expense appropriations when the annual obligation is determined by membership vote pursuant to the consortium's bylaws, and with such terms as are in the best interest of the Town, or to take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 29.**    To see if the Town will vote to authorize the Board of Selectmen to purchase, gift or otherwise and to accept upon such terms the Board of Selectmen shall determine to be appropriate, and easement for general municipal purposes in and to a certain parcel of land owned by Ashby Free Public Library Fund, Inc. located at 804 Main Street in Ashby, Massachusetts containing 3,181 square feet, more or less, said parcel being a portion of the land described in a deed recorded with Middlesex South District Registry of Deeds in Book 36342, Page 15 and shown as "Easement A" on "Easement Plan of Land"; by Goldsmith, Prest, & Ringwall, Inc.; dated March 23, 2005; a copy of which is on file in the office of the Town Clerk, and is more particularly described as follows:

BEGINNING at an iron rod found at the westerly lot line, located 126.50 feet from the southwesterly sideline of Main Street; thence

S 63° 14' 55" W and 34.22 feet by land now or formerly of the Town of Ashby to an iron rod; thence

N 78° 43' 38" E and 29.22 feet across land of the Ashby Free Public Library Fund to a point; thence

N 32° 51' 22" E and 28.46 feet across land of the Ashby Free Public Library Fund to a point; thence

N 33° 57' 51" W and 59.83 feet across said land of the Ashby Free Public Library Fund to a point on the westerly lot line at land now or formerly of the Town of Ashby; thence

S 32° 51' 22" W and 76.00 feet by land now or formerly of the Town of Ashby to the POINT OF BEGINNING.

, or to take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 30.**    To see if the Town will vote to transfer from the Board of Selectmen for general municipal purposes to the care, custody, maintenance and control of the Board of Selectmen for purposes of conveyance and to authorize the Board of Selectmen to grant an easement in and to a parcel of land owned by the Town located at 812 Main Street in Ashby, Massachusetts containing 1,543 square feet, more or less, said parcel being a portion of the land described in two deeds recorded with Middlesex South District Registry of Deeds in Book 2937, Page 481, and Book 33922, Page 287. Said easement is shown as "Easement B" on "Easement Plan of Land"; by Goldsmith, Prest, & Ringwall, Inc.; dated March 23, 2005; a copy of which is on file in the office of the Town Clerk, and is more particularly described as follows:

Starting from a stone bound with drill hole at the southeasterly corner of land now or formerly of the Ashby Free Public Library Fund, and the southwesterly corner of land now or formerly of John B. Hanley and Tara A. Hanley; thence

N 63° 14' 45" W and 9.77 feet by land now or formerly of the Ashby Free Public Library Fund to the POINT OF BEGINNING of said easement; thence

S 32° 21' 44" W and 31.61 feet across said land of the Town of Ashby to a point; thence

N 61° 42' 42" W and 44.50 feet across said land of the Town of Ashby to a point; thence

N 32° 52' 37" E and 97.76 feet across said land of the Town of Ashby to a point at land now or formerly of the Ashby Free Public Library Fund; thence

S 63° 14' 55" E and 3.00 feet by land now or formerly of the Ashby Free Public Library Fund to an iron rod; thence

S 33° 38' 20" W and 67.42 feet by land now or formerly of the Ashby Free Public Library Fund to an iron rod; thence

S 63° 14' 45" E and 42.23 feet by land now or formerly of the Ashby Free Public Library Fund to the POINT OF BEGINNING.

, or to take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 31.**    To see if the Town will vote to add to the Town By-Laws the following:

#### Article XVIII LITTERING ORDINANCE

Section 1. No person shall throw, deposit, discharge or leave, or cause to be thrown, discharged, deposited, or left, any swill, garbage, rubbish, trash, house offal, dead animals, or offensive refuse of any kind upon any public or private way, yard, vacant lot, public place, or body of water except in a receptacle labeled and designated for such a purpose.

Section 2. The Ashby Police Department and the Board of Health Agent duly authorized by the Board of Health shall have the authority to enforce the Rules and Regulations pertaining to littering in accordance with Massachusetts General Laws, Chapter 40, Section 21D. Any person found by the Ashby Police Department, the Board of Health, or its designees to have violated the littering regulation shall be penalized as follows:

Fines will be assessed at \$100 for the first offense, \$200 for the second offense, and \$300 for the third and any subsequent offense.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 32.**    To see if the Town will vote to establish an Agricultural Commission to represent the Ashby farming community. Said Commission shall serve as facilitators for encouraging the pursuit of agriculture in the town of Ashby, and shall promote agricultural-based economic opportunities in the Town. The Commission will consist of seven members appointed by the Selectmen, four members which are from the active farming community of Ashby and three members with an interest in agriculture. Three members for a term of three years; two members for a term of two years, and three thereafter; and two members for a one-year term, and three years thereafter. Up to five alternates may also be appointed by the Board of Selectmen, each for one-year terms, or take any other action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 33.**    To see if the Town will vote to adopt the following Town bylaw:

Article XVI    RIGHT TO FARM

Section 1. Legislative Purpose and Intent

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. We the citizens of Ashby restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General By-law is intended to encourage the pursuit of agriculture, promote agriculture based economic opportunities, and protect farmlands within the Town of Ashby. This By-law shall apply to all jurisdictional areas within the Town.

Section 2. Definitions

The word "farm" shall include any parcel or contiguous parcels of land or water bodies used for the purpose of commercial agriculture, or accessory thereto.

The term "farming" is defined as producing crops, horticultural items, or animal products for consumption or human use as a commercial enterprise. This shall include, but not be limited to the following when performed as a commercial activity:

- the cultivation and tillage of the soil;
- dairying;
- production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities for commercial purposes;
- growing and harvesting of forest products when performed as part of a written forest management plan, ie., tree farms;
- keeping of horses as a commercial enterprise; and
- keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

"Farming" shall encompass activities including, but not limited to, the following:

- operation and transportation of slow-moving farm equipment over roads within the Town;
- control of pests, including, but not limited to, insects , weeds, predators and disease organism of plants and animals;
- application of manure, fertilizers and pesticides;
- conducting agriculture-related educational and farm-based recreational activities, including

- agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
  - maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
  - on-farm relocation of earth and the clearing of ground for farming operations.

### Section 3. Right To Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Ashby. The above-described agricultural activities may occur on holidays, weekdays, and weekends and shall include the attendant incidental noise, odors, dust, and fumes associated with generally accepted agricultural best practices. It is hereby determined that whatever impact may be caused to others through the reasonable practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities, conducted in accordance with generally accepted agricultural best practices. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

### Section 4. Disclosure Notification

At the time the purchase and sale contract is entered into for the purchase or exchange of real property, or prior to the sale or exchange of real property if no purchase and sale agreement exists, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located in the Town of Ashby, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the buyer or occupant prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property.

### Section 5. Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Board of Selectmen may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

## Section 6. Severability Clause

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of Ashby hereby declares the provisions of this By-law to be severable.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 34.**    To see if the Town will vote to adopt the following Town By-Law:

### Article XVII SCENIC ROADS

Section 1. **PURPOSE** To protect the scenic quality and character of certain Town roads, the following regulations are established to control alterations that can take place within public rights of way.

Section 2. **DEFINITIONS** In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L. Chapter 40, Section 15C, the following terms contained in that statute shall be defined as follows:

- 2.1 Public Right of Way shall mean a strip of land within which is located a public way or a way which the Town Clerk certifies is maintained and used as a public way. The boundary of a public right of way will be determined as accurately as possible by examining plans, descriptions, physical monuments, stone walls, written and oral history, current and past use and any other reasonable means to make such determination. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees and stonewalls shall be presumed to be within the way until the contrary is shown.
- 2.2 Tearing Down or Destruction of Stone Walls shall mean the destruction of more than 20 linear feet of stone wall but shall not be construed to include temporary removal and replacement at the same location with the same materials.
- 2.3 Trees shall include any living tree whose trunk has a diameter of twelve (12) inches or more as measured four feet above the ground.

Section 3. **SCENIC ROADS** The Town may from time-to-time designate appropriate roads within the Town as "scenic roads" by Town Meeting vote.

3.1 **CONTROL** Within the public right of way of designated roads, the tree warden or his designee may approve the cutting or removal of up to three trees per 200 linear feet of right of way. Within the public right of way designated roads, the following activities shall require written approval of the Planning Board in accordance with the provisions of this bylaw:

1. The tearing down, painting or destruction of stone walls;
2. The cutting or removal of trees the scope of which is outside the responsibility of the tree warden, as defined above;
3. Repair, maintenance, reconstruction or paving work, including the construction of new driveways or alteration of existing ones, if such work affects stone walls or trees within the public right of way.

In cases where a threat to public safety does not allow sufficient time to obtain approvals from the tree warden or the Planning Board, the Planning Board must be notified within five business days of any action which, had the threat not existed, would be a violation of this ordinance.



3.2 HEARINGS The Planning Board shall hold a public hearing within thirty (30) days of receipt of an application, and shall approve, conditionally approve or deny an application within sixty (60) days of receipt. In making its decision, the Planning Board shall consider the following criteria and shall not grant approval if the proposed action will be in violation of one or more of them:

1. Public Safety
2. Preservation of road bounds and historic values;
3. Preservation of scenic and aesthetic quality of the area;
4. Protection of natural resource and environmental systems;
5. Compatibility with surrounding neighborhood.

3.3 COMPENSATORY ACTIONS, Since the purpose of these regulations is to protect the scenic quality and character of designated roads, the Planning Board may take into account compensatory actions such as the planting of new trees or the reconstruction of stone walls in making its decision. If the overall effect of the proposed alteration, including compensatory action, is to maintain or improve the scenic quality and character of the road, the Board may grant approval that otherwise would be denied.

3.4 NOTICE The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area, the first notice being at least fourteen days in advance of the hearing and the last notice being at least seven days in advance of the hearing . This notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Town Administrator, the Conservation Commission, the Historical Commission, the Tree Warden, the Highway Department, and the owners of property within 100 feet of the proposed action.

3.5 PUBLIC SHADE TREE ACT Whenever feasible, notice shall be given and Planning Board hearings shall be held in conjunction with those held by the tree warden acting under M.G.L. Chapter 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the tree warden, or visa versa. The Planning Board decision shall contain a condition that no work should be done until all applicable provisions of the Public Shade Tree Law, M.G.L. Chapter 87, have been complied with.

3.6 ENFORCEMENT The building inspector, tree warden, and others designated by the Selectmen may enforce these regulations by issuing a cease and desist order. Failure to respond to properly issued cease and desist order or failure to take responsible compensatory action shall be construed as a violation, subject to a fine as provided by these bylaws. Each day that such violation continues shall constitute a separate offense.

3.7 GENERAL The Planning Board may adopt reasonable regulations for carrying out provisions hereunder.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 35.**        To see if the Town will vote to amend the Zoning Map as shown on a map entitled "Proposed R/C District B Extension" extending the existing Residential/Commercial B district along centerline of Main Street to the easterly line of Map 10 Parcel 26 and then along the easterly line of Parcel 26 and 27 and then along the southerly line of Parcel 26 to the centerline of South Road, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 36.**        To see if the Town will vote to amend the Zoning By-Law by deleting the words "common driveways" following 4.3 and replacing them with the word "Driveways" and

Amend Section 3 Definitions by inserting the following definitions and renumbering all succeeding definition consecutively

15) COMMON DRIVEWAY A private vehicular access from a road to two lots.

17) DRIVEWAY A private vehicular access from a road to no more than one lot.

And adding the following section,

4.3.1 Any driveway or common driveway, shall be constructed only after obtaining approval for such construction and connection with the abutting public way, or other right of way, from the Planning Board, or its agent. Such connection shall provide for adequate drainage, both for the new connection and the existing right-of-way. All such new connections must be approved by the Ashby Highway Department Superintendent or his agent or in the case of the State or Federal right-of-ways, the appropriate official of said Agency. In order to provide for the safety, convenience and welfare of the inhabitants, driveways with a proposed grade of more than 12% must obtain a special permit from the Planning Board prior to construction. A special permit may be granted by the Planning Board if the applicant demonstrates to the satisfaction of the Board that no alternative route is practical, that potential for erosion is minimized, and that emergency vehicles have practical access to the site. No driveway or connection may be constructed in any manner that would hinder access by emergency vehicles.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 37.**        To see if the Town will vote to amend the Zoning By-Law by adding the following Article:

#### 4.10 Inclusionary Housing

4.10.01 Purpose and Intent: The purpose of this bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in tandem with various initiative programs developed by state, county and local government. It is intended that the affordable housing units that result from this bylaw/ordinance be included on the Town's Subsidized Housing Inventory ("SHI") as kept by the Department of Housing and Community Development ("DHCD"). It is intended that this by-law provide a mechanism to compensate for those decreases in the Town's percentage of affordable housing stock that are directly caused by increases in the Town's overall housing stock.

#### 4.10.02 Definitions:

4.10.02.1 Local housing fund. An account established by: (a) the Town for the specific purpose of creating affordable housing, including use by the Town Housing Authority for the purchase of land or units, or the development of new or rehabilitation of existing dwelling units for affordable housing occupants; or (b) a housing trust or community development corporation designated by the Town and created under the laws of the Commonwealth of Massachusetts.

4.10.02.2 Affordable housing unit. A dwelling unit available at a cost of no more than 30% of gross household income of households at or below 70% of the Applicable area median income as reported by the U.S. Department of Housing and Urban Development ("HUD") and/or DHCD

4.10.02.3 Qualified affordable housing unit purchaser or tenant. An individual or family with household income that does not exceed 80% of the median income, with adjustments for household size, as reported by HUD and/or DHCD.

#### 4.10.03 Applicability:

4.10.03.1 Division of Land. The division of land into ten (10) or more lots shall require a special permit from the Planning Board. A special permit shall be required whether said lots are created at one time or are the accumulation of 10 or more lots from land held in single ownership. A special permit shall be required for "conventional" or "grid" divisions allowed by G.L. c.41 sect. 81-L and sect. 81-U, as well as those divisions that do not require subdivision approval per G.L. c. 41, §81P.

4.10.03.2 Multi-family Units. The construction of ten (10) or more multi-family dwelling units, whether on one or more contiguous parcels, held in common ownership on May 7, 2005, shall require a special permit from the Planning Board.

4.10.04 Mandatory Provision of Affordable Units:

4.10.04.1 The Planning Board shall, as a condition of approval of any development referred to in Sections 4.10.03.1 and 4.10.03.2, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this bylaw/ordinance and more fully described in Section 4.10.05. Any special permit granted hereunder shall contain a condition that no construction shall commence on the subject land until the affordable units created thereby are eligible for inclusion on the Town's SHI

4.10.05 Provision of Affordable Units:

4.10.05.1 The Planning Board shall deny any application for a special permit for development under this bylaw if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:

4.10.05.1 At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

1. constructed or rehabilitated on the locus subject to the special permit; or
2. constructed or rehabilitated on a locus different than the one subject to the special permit; or
3. an equivalent fees-in-lieu-of construction may be made; or
4. an applicant may offer, and the Planning Board may accept, donations of land in fee simple, on or off-site, that the Planning Board in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this bylaw/ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

The applicant may offer, and the Planning Board may accept, any combination of the Section 4.10.05.1, (1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

4.10.06 Provisions Applicable to Affordable Housing Units On- and Off-Site:

4.10.06.1 Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

4.10.06.2 Minimum design and construction standards for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall

be compatible in design, appearance, construction and quality of materials with other units. The features of affordable units shall comply in all respects to any minimum design and construction standards set forth in the Guidelines promulgated by DHCD.

4.10.06.3 Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<b>Market-rate Unit %</b>	<b>Affordable Housing Unit %</b>
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

Fractions of units shall not be counted.

4.10.06.4 Local preference. To the extent permitted by law, the Planning Board may require that Ashby residents shall be given preference for 70 (seventy) percent of the affordable housing created under this bylaw. Ashby residents shall include current residents, current residents' child or parent, the spouse or domestic partner of current residents' child or parent and any person employed at least 30 hours per week in Ashby. This preference shall not supersede any law or regulation to prevent discrimination.

4.10.06.5 Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the Planning Board for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. If applicable, this plan shall include a description of the lottery or other process to be used for selecting buyers or tenants. The plan shall be in conformance with DHCD rules and regulations, and shall be subject to the prior review and approval of Town Counsel.

4.10.07 Provision of Affordable Housing Units Off-Site:

4.10.07.1 As an alternative to the requirements of Section 4.10.06, an applicant subject to the bylaw/ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 4.10.05 off-site. All requirements of this bylaw/ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the special permit review and approval process.

4.10.08 Fees-in-Lieu-of Affordable Housing Unit Provision:

4.10.08.1 As an alternative to the requirements of Section 4.10.06 or Section 4.10.07, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

4.10.08.1(a). Calculation of fees-in-lieu-of units. The applicant for development subject to this bylaw may pay fees in lieu of the construction of affordable units. For the purposes of this bylaw/ordinance, and based on 2003 town median price for a new home, the fee in lieu of the construction or provision of affordable units is determined to be \$80,000 per unit. For example, if the applicant is required to construct three affordable income units, they may opt to pay \$240,000 in lieu of constructing or providing the units.

4.10.08.1(b). Schedule of fees in lieu of payments. Fees in lieu of unit payments shall be made according to the schedule set forth in Section 4.10.06.3, above.

4.10.09 Maximum Incomes and Selling Prices: Initial Sale:

4.10.09.1 To ensure that only eligible households purchase affordable housing units, the purchaser of a affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Division of Housing and Community Development, and as may be revised from time to time.

4.10.09.2 The maximum housing cost for affordable units created under this bylaw is as established by the Commonwealth's Division of Housing and Community Development, Local Initiative Program or as revised by the Town.

4.10.10 Preservation of Affordability; Restrictions on Resale:

4.10.10.1 Each affordable unit created in accordance with this bylaw shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The deed restriction must be deemed acceptable to DHCD and Town Counsel prior to the issuance of any building or occupancy permits and shall be recorded at the Middlesex County Registry of Deeds or the Land Court and shall be in force for 40 years, unless the Planning Board determines that a shorter period of affordability will facilitate the development of affordable housing.

4.10.10.2 The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed an amount that is deemed affordable for a household earning no more than 70% of the area median income, as determined by the DHCD.

4.10.10.3 The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the applicant comply with the mandatory set-asides and accompanying deed restrictions on affordability.

4.10.11 Conflict with Other Bylaws/Ordinances: The provisions of this bylaw/ordinance shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw/ordinance and others, the more restrictive bylaw/ordinance, or provisions therein, shall apply.

4.10.12 Severability: If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Ashby's zoning bylaw.

4.10.13 Regulations: The Planning Board may adopt regulations for the orderly administration of this by-law.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 38.**        To see if the Town will vote to amend the Zoning By-Law by adding the following section:

7.2.10 Reduced Frontage Lot. Reduced frontage lots may be created by special permit granted by the Planning Board. Reduced frontage lots shall have a minimum of fifty (50) feet of frontage, twenty (20) acres of area, and fifty (50) foot building setback from all the lot

lines. A minimum of fifty (50) feet between the lot lines shall be maintained to the building line as measured perpendicular to the lot lines. At least ten (10) acres shall not be wetland areas as determined by 310 CMR 10.00 et seq. A covenant running with the land providing for no further division of the lot shall be required.

And adding the words "This section shall not apply to reduced frontage lots in section 7.2.10." to section 4.2.7 after the first sentence.

, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 39.**    To see if the Town will vote to appropriate the sum of \$30,000 from free cash to the Capital Reserve account, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

**Article 40.**    To see if the Town will vote to appropriate a sum of money to the Stabilization Fund, or take any action thereon.

**Finance Committee action:**     **Approved**     **Disapproved**     **No Action**

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And you are hereby directed to serve this warrant by posting an attested copy in at least three (3) public places in said Ashby seven (7) days at least before holding of said meeting. Hereof, fail not, and make due return of this warrant with your doings thereon, to the Town Clerk at the time and place of meeting aforesaid.

Given under our hands this 20th day of April, 2005.

\_\_\_\_\_  
Gerard Houle, Chair

\_\_\_\_\_  
Michael McCallum, Procurement

\_\_\_\_\_  
Peter McMurray, Clerk

ASHBY BOARD OF SELECTMEN

By virtue of this precept, I have posted three (3) attested copies of the foregoing warrant in three (3) public places in said Ashby at least seven days before the time of said Annual Town Meeting.

Date: \_\_\_\_\_

\_\_\_\_\_  
William Davis  
Constable of Ashby