

1 suggested by Atty. Urbelis). Bond slope stabilization \$100,000 and \$40K for all as-built.
2 Applicant is present tonight.
3 MW: page #4 item #4 - 27 parking spaces has that been determined? Judy; that is supposed to
4 be number 3 on page #4 number should be 29. MW: page #6 for slope stabilization the bold area
5 correct typo about slope stabilization. MW #7 prior to start of construction; is environmental
6 monitor and construction monitor to be at the meeting? Judy: yes, probably Conservation will be
7 at the meeting too.

8
9 JS: take #8 and put it earlier in that section, look at what 8 is combined with #4 you've said
10 applicant is in process of getting final etc. explain how the original Conservation restriction
11 arose...provide more acres of open space etc. Put specific condition in that we get the CR at
12 some point. JS: in waivers make a further stipulation like benefits etc. JS: They only gave us
13 conceptual design, Judy see it page 11 title connectional renderings, JS: page 9... 10A any
14 screening... and additional landscaping as may be reasonably required. JS: do you have every
15 possible condition in there to manage this issue regarding water? Judy water. See page 7 see the
16 State required plan there.

17
18 RR: finding of fact #4, we are protecting the hill itself most more than the other proposed
19 developments. Page 8 #24 you mean #23 instead.

20
21 **Motion by RR to approve a Site Plan Review SP and CCRC for 1275 Turnpike Street per**
22 **the decision amended this evening, 2nd by TS, vote was unanimous.**

23
24
25 **Chair called for CONTINUED PUBLIC HEARING:**

26 **T-Mobile Northeast, LLC (formerly Omnipoint Communications, LLC) 15 Commerce**
27 **Way, North Andover, MA is requesting renewal of the following Special Permits.**

28 Renewal of Special Permit for First Calvary Baptist

29 Renewal of Special Permit for 723 Osgood Street

30 Renewal of Special Permit for Johnson Street

31
32 Judy: question regarding RF measurements mentioned in RF report. Could there be additional
33 measurements at 20 feet because residents concerned about exposure at that height. Judy: spoke
34 to Mark Hutchings regarding doing measurements at a different height of 20 feet: Judy: read the
35 letter from Mark Hutchings, his measurements were taken at ground level etc. (memo for the
36 record).

37
38 Applicant has provided all coverage maps for all 3 locations. Applicant provided structural
39 analysis in PB packets. Gin Vilante, of Wellman Associates, was present. Atty. Brian Grossman
40 representing T-Mobile was present. Ms Vilante's company (Wellman Associates) stands by the
41 statement submitted by the civil engineer. Some modifications to Stevens Estate which is
42 included in his statement.

43
44 Steve Tryder: 386 Chestnut St., wants each renewal looked at separately. When was the last
45 testing report done at the church for annual report and 90 day reports? Judy: applicant provided
46 report for all 3 applications. Mr. Tryder: what is the date for the testing for the church? She has

1 Dr. Haes' report for Mass Ave. dated 12/29/2009, what they provide in these reports are results
2 of RF measurement it's a chart w/locations, at those 10 locations they measure what the current
3 total percent of maximum permissible exposure (MPE) ranges from highest of a percent down to
4 lowest. Judy: First column includes all RF emissions including their contribution, on last
5 column they subtract out their contributions.

6
7 Mr. Tryder: their permit was issued on 2006 do you have a 90 day report?

8
9 Chair: do you dispute the knowledge of that report? Mr. Tryder: doesn't know.

10 Chair: your argument is procedural? Mr. Tryder: they haven't submitted anything in 3 years.
11 Mr. Tryder: they owe us money, violated bylaw, permit expired in July of 2009 this isn't a
12 renewal. Chair: You're not making a substantive argument? Mr. Tryder: if permit expired they
13 should go for new SP. Mr. Tryder: prove there is gap in coverage, needs to be done in process of
14 a new SP not a renewal. Chair: argument is a procedural thing? Mr. Tryder: the PB didn't
15 follow the law in terms of our Bylaw.

16
17 Pat White, 60 Ridge Way, asking that PB enforce the bylaw as they apply to Johnson Street and
18 other facilities. T Mobile SP expired in 2003 then T Mobile must file for a new SP. 600 foot
19 setback rule must apply to new permits, Johnson St. tower is less than 300 feet from existing
20 home. Fine \$300.00 for each offense, several hundred dollars of fines should be enforced. Want
21 to live in their homes - enforce these bylaws. Chair: appreciated your respectful tone. PB
22 doesn't like to be put in a position that says something opposite to what our neighbors want them
23 to do, it's not that simple, remember that in the case of wireless facilities the jurisdiction of the
24 Town is not absolute, the FCA of 1996 limits what the Town can do. Realize that the most
25 recent court decision where a judge ruled and said it doesn't matter what N.A. bylaw says
26 regarding a 600 foot setback, it says the PB was under obligation to approve that permit. PB has
27 to follow the law. Abutter: not asking the tower to be taken down, just asking that the devices
28 on the tower be taken down. Can't find in any regulations that certain feet are allowed (see
29 judgment regarding Fournier against Elm St. church).

30
31 TS: the bylaw was written in 1999 since then judges have interpreted the law. If you were on the
32 Board and approached these firms and asked for fines to be done what happens next?

33
34 Ms Chicoyne, 40 Ridge Way, abutter, so people can put towers anywhere they want, in your
35 back yard? Chair: no. Chair: emissions are 1,000th of permissible/allowable rate. They are
36 required under FCC law to have emissions under a certain level, every time they do it its well
37 under the legal limits. If you think we can get fines out of them it's not going to happen. We
38 have one free standing tower, additional installations of 3 or 4 existing towers - Johnson St. is a
39 microwave tower. We've had a public hearing on every single one; if they meet the criteria under
40 Federal law then PB is relatively limited as to what they can do. If PB took them to court and
41 tried to get the money how much would you be willing to spend with the likely-hood that we
42 would lose?

43
44
45 MW: when these applications came to us he was outraged - they let a SP expire, he lit into
46 counsel for applicant in these cases, and we've required most of the important data that is

1 required as if they were going for a new SP. We've sent this data out to consultant for review
2 which applicant has to pay for to prove there is a gap in service...we've put them thru the
3 process for a public hearing. MW: we're not operating in secret! Material is available in files at
4 Planning office; we're not trying to hide. Notion of transparency is untrue.

5
6 Abutter asked PB to do something about making court judgments available. If Town doesn't
7 have resources to fight large organizations how does a person try to do that to fight the cell
8 towers? TS: depends on what you are fighting. Abutter: noise and radiation levels - if levels
9 exceed the required State levels? Chair: PB approves all commercial buildings thru a Site Plan
10 SP. We make sure that noise levels etc. is minimized as much as possible. If there is a problem
11 if it's noisy please tell use. If they decide to add additional equipment to antennas to same tower
12 they come back to us to demonstrate a gap in coverage, structural task has to be demonstrated,
13 legal noticing to abutters is done. Abutter: restrictions as to how close to abutters' property? If
14 Johnson St. tower fell it would take out his house. Chair; a structural report would be done to
15 prevent this. Abutter: are there other carriers allowed on a tower? PB yes, rarely is the tower
16 owned by the wireless carrier. Abutter: does Comcast own the land? For Johnson St.? Gin
17 Vilante: assessor's office has the owner of record. Judy: see each application for name of
18 owner and lease agreement. Chair: we can provide the owner/leaser in our PD file. Have we
19 ever sent letters requesting the testing information: Judy: In 2007, 2008, sent these memos at
20 that time. Chair, the Building Inspector is the person who implements the fines; it becomes a
21 criminal matter etc. Abutter: most people who are being fined hundreds of thousands of dollars,
22 they should pay up. Chair: if you think they would pay the fine without a squawk. MC: we do
23 notify these companies.

24
25 Tom Urbelis is Town attorney: we are not a fine issuing authority. Atty. Urbelis: talked about
26 fines in December and January. This is a criminal fine it's not within the purview of the PB to
27 issue a fine. The way it is written it's a criminal fine. Within the State the PB can fine up to
28 \$300.00. Atty. Urbelis: it's not the PB that's the enforcement agent, it's the Building Inspector.
29 Atty. Urbelis: under section 8.9 it has to be instituted as a criminal complaint. Atty. Urbelis: this
30 issue came up 3years ago and Town Manager wrote and said if your attorney has any case
31 anywhere in the country where a fine has been upheld please provide it to him. Atty. Urbelis
32 found a case where issuing a fine is a violation of TelCom Act.

33
34 Thea Fournier, 247 Main St., 40 people are here tonight asking to be heard by the PB. Chair;
35 PB: is here for that. This should not be considered a renewal? Chair: collected all substantive
36 information and will review the information.

37
38 Ms Fournier: her issue is procedural. Chair: What are your substantive questions? Ms Fournier:
39 what happened at the church was unfair, she's fighting it in Superior court, and judge's response
40 didn't have anything to do with her appeal. She's now in Appellate court which is a higher
41 court. RR: it's wrong for Ms Fournier to give impression that in your opinion decisions of
42 Appellate court are wrong because you don't agree with them, that's your opinion only. RR:
43 Decision rendered in Superior court doesn't have merit? MW: If decision rendered in Appellate
44 court would you agree with their rendering? Ms Fournier: no, she wants to take it to Supreme
45 Court.

1 Abutter, 5 Skyview Terrace, why is T Mobile coming now for a SP? Gin Vilante: we would like
2 to renew and got a few notices recently, there have been no changes to the initial installation.
3 Abutter: there seems to be a rubber stamp. Chair: we listen; we have certain limitations on
4 what we can do. We can't say sorry, permit expired, and take down the tower. It's more
5 complex than this and we're bound by law. We ask cell tower applicant to come here, they do
6 give us that information, with emissions analysis, given structural analysis, have existing
7 coverage analysis of why they need it. So far, there has been no testimony given that is a
8 problem. Abutter: have we gone to additional counsel for a second opinion? Chair: We have
9 Town counsel. ZBA spent \$5K to confirm the same view. Abutter: have you ever denied a cell
10 tower permit? Chair: no. - Members of PB have been sued personally to seek our personal assets
11 as well. Abutter: if you deny these renewals are there consequences to the Town? Chair: the
12 next morning the cell tower companies are in court.

13
14 Abutter: 21 Skyview Terrace: in those notices were there requests to pay their fines? No.
15 Abutter, 21 Skyview Terrace: will T Mobile tonight fulfill their obligation and pay these fines
16 due to N.A. as presented tonight?

17
18 Attorney Brian Grossman: there is a process for fines - that process has not been followed;
19 regulations are inappropriate and may violate the TelCom Act and disagrees in regard to the fine,
20 on behalf of T. Mobile, he will not pay the fine. Abutter, the Building Inspector is the only one
21 who can go after that. Can we talk to the Building Inspector to levy these fines. Chair: you're
22 free to talk to BOS, talk to Atty. Urbelis etc. Abutter: we've learned that T Mobile will not
23 fulfill their obligations.

24
25 Mr. Tryder: information isn't always in the file. PB is SP granting authority, Johnson Street
26 people live next to Johnson St. tower. No-one has done their duty. Chair: recent report - have
27 you read this? Mr. Tryder: PB sees no reason to TS: March 2010 Johnson St. tower, stress
28 ratio, information submitted. MW: read report in its entirety and stamped by professional
29 engineer. RR: Mr. Tryder take some structural analysis classes. Chair: we're ending this
30 conversation now. Chair: in 1972 Town didn't have a Site Plan Review process all that was
31 needed was a building permit. MW: Mr. Tryder do you have something - for 3 months you have
32 had an opportunity to find information in terms of substance, gap in coverage, RF reports, is
33 there something there that you're got issue with? Mr. Tryder: they haven't proven that that's the
34 only site they can use...like Boston Hill - why does it have to go in their neighborhood? PB will
35 provide Mr. Tryder the information for him to look at. Mr. Tryder: in 1970 tower went up as
36 Continental Cable. Town should find all documents from time tower went up to now. Plse.
37 note:

38 MW left the room at this time.

39 RR: do a warrant article asking for appropriation of money for a law suit to pursue in court and
40 have the Town pay for it. Abutter: can we ask for funds to test the sites on a regular basis and
41 get funds from the Town to do this? Ms Fournier: you can ask carriers to fund it and test what's
42 happening for RF emissions. Chair: we'll continue this until the next meeting. Chair: Judy to
43 prepare 3 separate decisions. Atty. Urbelis: Atty. Grossman is it ok with this continuance? Mr.
44 Tryder wanted to know why you asked permission. Atty. Urbelis: there are provisions for
45 various time frames for decisions to be rendered. FCC has done time frames to render decisions;
46 time frames can be extended with agreement from applicant. Regulation was passed last

1 November. Mr. Tryder: What is Attorney Urbelis specialty? Atty. Urbelis handled case
2 regarding Ms Fournier vs. Town. Chair: do you have a question or are you just filibustering us?
3 Mr. Tryder: if this is denied as a renewal what is the next step? Chair: it would be up to them.

4
5 Chair: thanked the audience and patience this is difficult for us, we would prefer our decision to
6 be easier, they are tough issues, and we're limited in our flexibility. Thank you for your
7 comments, if questions outside of meetings call Judy at Planning office for documents. Abutter,
8 check to see what has been replaced are there permits done for the Johnson St. tower? Mr.
9 Tryder: wants same information for Boston Hill.

10
11
12 **Chair announced applicant postponed the following PUBLIC HEARING:** Clear Wireless
13 LLC, is requesting a Special Permit for the following premises.
14 **300 Chestnut Street**, Special Permit for installation of a wireless service facility consisting of
15 six antennas and one equipment cabinet. /Applicant submitted a request to be continued until the
16 next PB meeting.

17
18 **203 Turnpike Street**, Special Permit for installation of wireless service facility consisting of
19 four antennas and one equipment cabinet. Applicant will not be heard at this meeting; however,
20 a representative will be present to request to be continued until April 20th.

21
22 Lee Marvin, was present on behalf of his colleague for Clear Wireless. Chair: cautioned to make sure you
23 provide annual renewals. Mr. Dwyer: (his property is located near Burger King, Turnpike Street) there is
24 more than one method to get them approved. Chair: said he misspoke, if you doubt his integrity come
25 out and say it. Mr. Dwyer: would like to be included in the wireless zone overlay district. He'll check
26 w/Judy.

27
28 Approve Minutes of the Meeting for March 16, 2010.
29 Motion by TS to approve the "Minutes", 2nd by RR, vote was unanimous.

30
31
32 **PUBLIC HEARING: WARRANT ARTICLES**

33 **1 Article V. Amend North Andover Zoning Bylaw – Section 4.121 Residence 1, 2**
34 **and 3.** To see if the Town will vote to amend the Town of North Andover Zoning Bylaw,
35 Section 4.121 in order to allow professional offices in an existing structure on municipally
36 owned property within the R-2 District containing a minimum of 50 acres.

37
38 **Amend Section 4.121 by adding the underlined language to read as follows:**

39 **4.121 Residence 1 District**
40 **Residence 2 District**
41 **Residence 3 District**

42
43 21. Professional offices in an existing structure located on municipally owned property
44 within the R-2 District containing a minimum of fifty (50) acres.
45

1 Or to take any other action relative thereto.
2 Curt Bellavance spoke: Town wants to lease out the gate house for a professional office use.
3 Curt drafted language to allow this to happen. This is categorized as pre-existing non-conforming
4 use. There is a 90 day appeal process. **Motion by RR to make favorable recommendation,**
5 **2nd by TS, vote was unanimous.**

6 **Board of Selectmen**

7 **RECOMMENDATION:** **Favorable** **Unfavorable**

8
9 **2 Article Z. Amend North Andover Zoning Bylaw – Section 4.133 Industrial 2**
10 **District.** To see if the Town will vote to amend the Town of North Andover Zoning Bylaw,
11 Section 4.133 in order to allow alternative energy uses as-of-right.

12
13 4.133 Industrial 2 District

14
15 11. Light manufacturing, including manufacturing, fabrication, processing, finishing, assembly,
16 packing or treatment of articles or merchandise provided such uses are conducted solely
17 within a building and further provided that such uses are not offensive, noxious, detrimental,
18 or dangerous to surrounding areas or the town by reason of dust, smoke, fumes, odor, noise,
19 vibration, light or other adverse environmental effect.

20
21 **Amend Section 4.133 by adding the underlined language to read as follows:**

22 4.133 Industrial 2 District

23 11. a. Light manufacturing, including manufacturing, fabrication, processing, finishing,
24 assembly, packing or treatment of articles or merchandise provided such uses are conducted
25 solely within a building and further provided that such uses are not offensive, noxious,
26 detrimental, or dangerous to surrounding areas or the town by reason of dust, smoke, fumes,
27 odor, noise, vibration, light or other adverse environmental effect.

28 b. Renewable or alternative energy research and development facilities, renewable or
29 alternative energy manufacturing such as wind, solar, biomass, and tidal on any lot with a
30 minimum of twenty-five (25) acres; less than twenty-five (25) acres but a minimum of ten
31 (10) acres by Special Permit.

32 Or to take any other action relative thereto.

33
34 Curt Bellavance: the Town applied last year to receive technical assistance funding as consultant
35 hired by the State to assist community, got approval and got ICF International. Five criteria to
36 become a green community. Town met the criteria; specifically R&D - you can do renewable-
37 added that kind of language. **Motion by RR to make favorable recommendation, 2nd by TS,**
38 **vote was unanimous.**

39 **Board of Selectmen**

40 **RECOMMENDATION:** **Favorable** **Unfavorable**

1 **3 Article AA. Amend North Andover Zoning Bylaw – Section 4.137 Floodplain**
2 **District.** To see if the Town will vote to amend the Town of North Andover Zoning Bylaw,
3 Section 4.137 Floodplain District in order to make minor adjustments so that the Bylaw
4 accurately reflects the correct flood maps and Building Code reference.

5
6 **Amend Section 4.137 by adding the underlined language and deleting the**
7 **[bolded/bracketed] language to read as follows:**

8
9 **4.137 Floodplain District**

10
11 **2. FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD EVALUATION**
12 **AND FLOODWAY DATA**

13 The Floodplain District is herein established as an overlay district. The underlying
14 permitted uses are allowed provided that they meet the Massachusetts State Building
15 Code, 780 CMR 120.G [Section 3107] "Flood Resistant Construction" and any other
16 applicable local, state or federal requirements. The District includes all special flood
17 hazard areas designated on the North Andover Flood Insurance Rate Map (FIRM) issued
18 by the Federal Emergency Management Agency (FEMA) for the administration of the
19 NEIP dated June 2, 1993 as Zone A, AE, AH, AO, A99, **[and the FEMA Flood**
20 **Boundary & Floodway Map dated June 2, 1993, both maps]** which indicate the 100
21 year regulatory floodplain. The exact boundaries of the District may be defined by the
22 100-year base flood evaluations shown on the FIRM and further defined by the Flood
23 Insurance study booklet dated June 2, 1993. The FIRM **[, Floodway Maps]** and Flood
24 Insurance Study booklet are incorporated herein by reference and are on file with the
25 Town Clerk, Planning Board, Building
26 and Conservation Commission.

27
28 **5. REFERENCE TO EXISTING REGULATIONS**

29 The Floodplain District is established as an overlay district to all other districts. All
30 development in the district, including structural and non-structural activities, whether
31 permitted by right or by special permit must be in compliance with Chapter 131, Section
32 40 of the Massachusetts General Laws and with the following:

- 33 a. Section of the Massachusetts State Building Code which addresses Floodplain and
34 coastal high hazard areas (currently 780 CMR 120.G [3107.0] "Flood Resistant
35 Construction");

36
37 Or to take any other action relative thereto.

38 Curt Bellavance: we qualify for residents to get flood insurance we're changing to 780cmn
39 120.GR. **Motion by RR to make favorable recommendation, 2nd by TS, vote was**
40 **unanimous.** Henry Fink: are they surveying the land to find out where the flood plans are? In
41 1982 they came up with flood plan maps, used students from college to do it. Curt: that's a
42 function of the State, how the process is he can't answer.

43 **Michael Walsh rejoined the meeting now.**

44 **Board of Selectmen**

RECOMMENDATION: Favorable Unfavorable

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4 **4 Article Y. Amend Zoning Bylaw – Section 8.9 Wireless Service Facilities.**

5 To see if the Town will vote to amend the Town of North Andover Zoning Bylaw, Section 8.9
6 Wireless Service Facilities in order to create a revised wireless service facility ordinance as
7 shown below

8 Or to take any other action relative thereto:
9

10 **Atty. Urbelis: over last 9 months he discussed w/PB and BOS to submit revisions for new**
11 **wireless bylaw warrant article. BOS inserted into warrant an article which deleted the**
12 **current bylaw to create an overlay district. BOS voted to insert a modified warrant article**
13 **last night.** Major provisions changed under current bylaw there is a 600 foot setback from
14 properties that are currently zoned for educational use. Change from this new version is that
15 there is a setback and is 600 feet from facility to residential building. Fed TelCom Act '96 and
16 there is a tier step down from that requirement. If applicant can prove 3 elements gap, FCC
17 regulations, RF emissions, then it steps down to 400 foot setback. If they prove that 3 things
18 then step down is 200 feet. We are putting this in the bylaw relative to the Fed TelCom Act
19 controls. On first page of bylaw it says bylaw is in compliance w/Fed TelCom.....BOS voted to
20 insert this new bylaw into the Warrant.

21 **Motion by MW to make favorable recommendation, 2nd by CL, vote was unanimous.**
22

23 **Abutter:** 4 pieces of property on Rte. 114 and Rte. 133. There is a strip mall there he objected
24 because they should be included in the overlay district. Atty. Urbelis: since August at every
25 meeting we've asked people to let us know if they have any input. The Warrant has been
26 signed for this year - it's too late to put another property in there. If you want a particular
27 parcel identified in there - if this passes at Town Mtg. - if we have another Town Meeting in
28 the fall - you can file an amendment to include your/the parcels description into the overlay
29 district. Send a letter to Judy with a particular description of the parcel and the address well
30 ahead of the 2011 Town Meeting.
31

32 **Board of Selectmen**

33 **RECOMMENDATION: Favorable Unfavorable**
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35
36

37 **5 Article HH. Amend Zoning Bylaw – Section 3.1, Establishment of Districts.**

38 To see if the Town will vote to add to the Zoning Bylaw, Section 3.1, Establishment of Districts,
39 the following:

40 "Wireless Telecommunications Overlay District"

41 Or to take any other action relative thereto.

42 **Motion by MW to make favorable recommendation, 2nd by RR, vote was unanimous.**
43

44 **Board of Selectmen**

45 **RECOMMENDATION: Favorable Unfavorable**

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6 Article JJ. Amend Section 16.2 of the Town of North Andover Zoning Bylaws.

To see if the Town will vote to amend the Zoning Bylaws by inserting the following language:

“Drive –thru restaurants shall be permitted within the CDD1 zone provided they are located more than 250 feet from the R6 zoned district.”

PB Tabled this until PB meeting of April 20th.

Petition of Scott Hajjar and others

RECOMMENDATION: Favorable Unfavorable

7 Article D. Authorization to Accept Grants of Easements. To see if the Town will vote to authorize the Board of Selectmen and the School Committee to accept grants of easements for access, water, drainage, sewer, roadway and utility purposes on terms and conditions the Board and Committee deem in the best interest of the Town;

Or to take any other action relative thereto.

Motion by RR: to make favorable recommendation, 2nd by TS, vote was unanimous.

Board of Selectmen

RECOMMENDATION: Favorable Unfavorable

8 Article L. Amend Capital Improvement Plan Appropriations from Prior Years.

To see if the Town will vote to amend prior Capital Improvement Plan Appropriation for prior Fiscal Years as voted by:

A. Transfer unexpended bond proceeds from the FY2008 Capital Improvement Plan, May 14, 2007 Annual Town Meeting, Article 21, Line 23, "Waverly Road Relief Sewer Main", an amount not to exceed \$495,000 to fund a new project "Sutton Street Sewer Improvements".

B. Transfer unexpended bond proceeds or other funding sources from May 13, 2008 Annual Town Meeting, Article 22, "Preschool Facility" an amount not to exceed \$164,000 to the "Appropriation of funds for Modular School Buildings Project", May 12, 2009 Annual Town Meeting, Article 24.

Or to take any other action relative thereto.

PB tabled this.

Board of Selectmen

RECOMMENDATION: Favorable Unfavorable

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9 Article Q. Capital Improvement Plan Appropriation Fiscal Year 2011.

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow under the provisions of Massachusetts General Laws, Chapter 44, the sums of money necessary to fund the Town Capital Improvement Program for Fiscal Year 2011 as detailed below, provided that, pursuant to Massachusetts General Laws and Chapter 59-5 C of the General Bylaws of the Town of North Andover, for any capital project in excess of \$500,000 or any other appropriation, the Town may, by vote of the Town Meeting, have the following condition added to it: "provided that this appropriation and debt authorization be contingent upon passage of a Proposition 2 1/2 debt exclusion referendum under General Laws Chapter 59, Section 21C(k)":

FY 11 Capital Improvement Plan

Line #	Project Description	Division	Requested Amount
General Fund			
1	Roadway Improvements	Public Works	\$380,000
2	Sidewalk Reconstruction	Public Works	\$50,000
3	Senior Center Roof Replacement	Public Works	\$26,000
4	Facilities Master Plan	Town Manager	\$150,000
5	Police Station Equipment	Police	\$405,000
6	School Information Technology Network Equipment	Information Technology	\$1,148,000
7	Revenue Billing Software	Information Technology	\$90,000
8	Middle School Roof Replacement	School	\$310,000
9	Body Armor Replacement	Police	\$40,000
10	Fire Department Radio Equipment	Fire	\$432,000
11	Dump Truck, 2 Ton with Plow	Public Works	\$55,000
12	Fire Sprinkler System at Kittredge School	School	\$450,000
Water Enterprise Fund			
13	Meter Replacement	Water Enterprise Fund	\$450,000

Or to take any other action relative thereto.

2 **PB tabled this.**

3

Board of Selectmen

RECOMMENDATION: Favorable Unfavorable

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4 **10 Article S. Report of the Community Preservation Committee and Appropriation**
5 **From the Community Preservation Fund.** To receive the report of the Community
6 Preservation Committee and to see if the Town will vote to raise, borrow and/or appropriate from
7 the Community Preservation Fund, in accordance with the provisions of Massachusetts General
8 Laws Chapter 44B, a sum of money to be spent under the direction of the Community
9 Preservation Committee; Or to take any other action relative thereto.

10
11 **Community Preservation Committee**

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13 **PB Table until April 20.**

14 RECOMMENDATION: Favorable Unfavorable
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18 **11 Article U -1. Amend Zoning Bylaw-Section 2.63.1 – Sign, Area of.** To see if the
19 Town will vote to add a new definition in the Zoning Bylaw as follows:

20
21 **2.63.1 Sign, Area of**

22
23 (a). For a sign, either free-standing or attached, the area shall be considered to include all
24 lettering, wording and accompanying designs and symbols, together with the background,
25 whether open or enclosed, on which they are displayed but not including any supporting
26 framework and bracing which are incidental to the display itself.

27 (b). For a sign painted upon or applied to a building, the area shall be considered to include all
28 lettering, wording, and accompanying designs or symbols together with any backing of a
29 different color than the finish material of the building face.

30 (c). Where the sign consists of individual letters or symbols attached to or painted on a surface,
31 building, wall or window, the area shall be considered to be that of the smallest rectangle or
32 other convex shape which encompasses all of the letters and symbols;

33
34 Or to take any other action relative thereto.

35 **PB Table until April 20.**

36 **Board of Selectmen**

37 RECOMMENDATION: Favorable Unfavorable
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39

40 **12 Article U-2. Amend Zoning Bylaw Section 5.1.1-Earth Removal.** To see
41 if the Town will vote to amend Section 5.1.1 of the Zoning Bylaw by deleting the stricken words
42 and adding the underlined words as follows:

43 **5.1 General**

- 1 1. Excavation, removal, stripping, or mining of any earth material ~~except as hereinafter~~
2 ~~permitted~~ on any parcel of land, public or private, in North Andover, is prohibited, except
3 as allowed by Section 5.4 Permits for Earth Removal; Section 5.5 Earth Removal
4 Incidental to Development, Construction or Improvements; and Section 5.6
5 Miscellaneous Removal of Earth.
6

7 Or to take any other action relative thereto.

8 **PB Table until April 20.**

9
10 **Board of Selectmen**

11 **RECOMMENDATION:** Favorable Unfavorable
12

13 **13 Article U -3. Amend Zoning Bylaw-Section 7.3 - Setbacks.** To see if the Town will
14 vote to amend Section 7.3 of the Zoning Bylaw by adding the underlined words in the first
15 paragraph and adding Sections 7.31, 7.32 and 7.33 as follows:
16

17 **7.3 Yards (Setbacks)**

18 Minimum front, side and rear setbacks shall be as set forth in Table 2, except for eaves and
19 uncovered steps, and projections, as noted in sections 7.31, 7.32 and 7.33. Buildings on
20 corner lots shall have the required front setback from both streets, except in Residence 4 (R4)
21 District, where the setback from the side street shall be twenty (20) feet minimum.
22

23 §7.31 – Projections into Front Yards

24 Uncovered porches, Balconies, open fire escapes, chimneys and flues all may project into
25 a required side yard not more than one-third of its width and not more than four feet in
26 any case. Belt courses, fins, columns, leaders, sills, pilasters, lintels and ornamental
27 features may project not more than one foot, and cornices and gutters not more than two
28 feet, over a required front yard.
29

30 §7.32 – Projections into Side Yards

31 Uncovered porches, Balconies, open fire escapes, chimneys and flues all may project into
32 a required side yard not more than one-third of its width and not more than four feet in
33 any case. Belt courses, fins, columns, leaders, sills, pilasters, lintels and ornamental
34 features may project not more than one foot, and cornices and gutters not more than two
35 feet, over a required side yard.
36

37 §7.33 – Projections into Rear Yards

38 Uncovered porches, Balconies, open fire escapes, chimneys and flues all may project into
39 a required side yard not more than one-third of its width and not more than four feet in
40 any case. Belt courses, fins, columns, leaders, sills, pilasters, lintels and ornamental
41 features may project not more than one foot, and cornices and gutters not more than two
42 feet, over a required rear yard.

43 Or to take any other action relative thereto.

44 **PB Table until April 20.**

45 **Board of Selectmen**

46 **RECOMMENDATION:** Favorable Unfavorable

1
2 **14 Article U-4. Amend Zoning Bylaw-Section 9.3- Pre-Existing Non-conforming**
3 **Single Family Residential Structures and Uses in the Residential 1, Residential 2,**
4 **Residential 3, Residential 4 and Residential 6 Districts.** To see if the Town will vote to
5 amend Section 9.3.a of the Zoning Bylaw by adding “and two family” as follows:
6

7 **9.3 Pre-Existing Non-conforming Single Family Residential Structures and Uses**
8 **in the Residential 1, Residential 2, Residential 3, Residential 4 and Residential 6**
9 **Districts:**

- 10 a. **Pre-existing Non-conforming Single Family Structures:** Pre-existing non-conforming
11 single family and two family residential structures in the R1, R2, R3, R4 and R6
12 Districts, may be changed, extended or altered, provided that there is a finding by the
13 Zoning Enforcement Officer (Building Commissioner) that such change, extension, or
14 alteration shall not render the structure more nonconforming than the existing structure.

15
16 Or to take any other action relative thereto.
17 **PB Table until April 20th.**

18
19
20 **Board of Selectmen**
21 **RECOMMENDATION: Favorable Unfavorable**
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23

24 **15** **Article MM. Election of Planning Board Members.** To see if the Town will
25 vote to amend Chapter 6 of the Town Charter, more specifically Section 1 of the General
26 provisions of that chapter, (6-1-1)so as to include the Planning Board to the list of officers and
27 boards to be elected by vote of the town.

28 **Petition of Alan Swahn and others**

29 **Judy: did not hear back from Mr. Swahn.**

30 **Motion by TS to make unfavorable action, 2nd by MW for unfavorable action, vote was**
31 **unanimous.**

32 **RECOMMENDATION: Favorable Unfavorable**
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38 **Chair called for the following DISCUSSION:**
39 **Redgate subdivision – Dean Chongris, developer.**

40
41 **Judy:** Conservation visited Redgate March 15th, letter written to Dean Chongris and Rick
42 Dellaire, sent by Judy and Jennifer Hughes noting erosion on both sides of the hill, stabilization
43 needs to be reinforced, silt fence, no further work until items have been completed. Judy:
44 submitted photos of March 15th event. Developer told to install hay bales. March 30th visited site

1 w/Heidi Gaffney and Judy, problems w/placement of hay bales to divert the water but still
2 causing drainage problems. Subdivision not in compliance with decision of 2001, have not sent
3 monthly reports on a regular basis. Judy: asked if representative came to the PB meeting. Dean
4 Chongris was present earlier tonight but left the meeting. Bonds - PD has a site opening bond
5 for \$10K and slope stabilization bond for \$20K. Judy: pointed out on the plan, swale running
6 behind lot 2, turns corner and runs toward house on lot 1. Water coming directly the stone swale
7 onto his property coming thru swale it was supposed to direct the water in the opposite direction.
8 Judy: there is ongoing construction and have not finished construction of drainage swale and
9 design of detention basin. The last lot has not been built yet. No-one is watching this site or
10 filing reports w/PD.

11
12 Mr. Levis 835 Salem Street, was present: and abutter from 817 Salem St. and abutter from 855
13 Salem Street were present. Voiced concerns in this area since this development was built.
14 Caused damages to Mr. Levis property and the other abutter's property to their landscaping,
15 fencing, and basement. If something isn't done soon then it will escalate the damages. He met
16 w/site engineer and the end result is that the problem is coming from the Redgate development.
17 Asking PB to solve problems to prevent future damage to property. Make changes prior to any
18 bond monies being released. Go to U-tube to see issue.

19
20 RR: asked to tell him earlier in the year - did problem pre-exist the latest flooding? Goran
21 Bringert: in 2006 he sent letters to PD and appeared at PB meeting but issue got diminished at
22 that time. Ducks swimming in his front lawn (he sent pictures in 2006) this last storm was a
23 continuation. He pumps his basement now but only gets puddles, his neighbors got 3 to 4 feet of
24 water. He met w/Gene Willis and Lincoln Daley and was told you have water because of
25 Woodchuck Hill. But when trees were taken down it caused more water damage.

26
27 RR: Ben Osgood Jr. had the development at the time and PB denied the application because they
28 never came up with a drainage system that could work. It was a balancing act - by getting rid of
29 the water too quickly - or waiting too long. RR: system isn't working the way it was designed to
30 work. Judy: drain should be coming toward the road, and there were adjustments made to it. It
31 could be a design problem/issue. Side closer to Mr. Cyr's property was where Judy addressed
32 her letter to. No written plan was presented by developer to Judy for tonight. RR: get applicant
33 to provide this information or PB will pull his bond money. RR: there may be a deep ditch that
34 needs to be cleaned out and take another look at this situation. Judy: should the developer
35 respond in writing in time for the next PB meeting? Chair: absolutely. And give developer only
36 a week, hold a hearing and revoke the bond ASAP. Chair: Judy - get who-ever the engineer was
37 at the time to look and see if it was installed the way it was supposed to be. Did the developer
38 (Dean Chongris) have a permit to take down trees and demolish the stone wall the way he did?
39 RR: have town consultant contact these guys and get historical perspective on it then we need to
40 seize the bond to make this work, or talk w/Dean - are you ready to pick up this tab or we're
41 going to seize the bond? MW: got weekly reports over 6 months ago (put this in a written letter
42 also).

43
44 Courtney: if this site isn't complete yet what if he comes back and says I'm not finished you
45 can't hold me to design until I have to provide as-built. What leverage do we have? RR: we

1 have bond money; we don't have to issue a building permit on the very last lot. Abutter: lost 30
2 feet of his backyard because of this.

3
4 Chair: Judy send letter stating what we want them to do, if Dean says he'll pay out of his pocket
5 then we'll hire outside engineer to fix this problem. Judy: read erosion controls measure from
6 the 2001 decision for Redgate. Chair: There needs to be stabilization of the hill done such as
7 plantings etc.

8
9 Steven Cyr: when talked about a bond it was discussed for \$150,000 now it's down to \$30K so
10 all abutters will be fighting over the \$30K. Is it possible to ask them to file an additional bond?
11 PB gets estimate from town engineer or outside consultant for bond \$ amount. PB still can hold
12 off on releasing the last lot. Surety bond has about \$50K remaining w/PD. RR: PB can establish
13 a new bond requirement if Dean ever wants the last lot released.

14
15 Mr. Cyr: his father handpicked this land, took precautions for drainage etc. He's being flooded
16 out of his own property. He submitted pictures tonight showing Redgate development into
17 Fuller Farm. Gene Willis says Town doesn't have to fix it even if it's on Town property. His
18 lawn has become the detention pond see the pictures. This has become a nightmare. Neighbors
19 across the street from him have issues, beside the three abutters who are present tonight. What
20 happens 10 years down the road if this happens again? RR: issue was make the drainage pipes
21 bigger across the street...there is a ditch where the water runs toward Boxford...as long as we're
22 not going to export the problem to someone-else down the street.

23
24 Courtney; were there upgrades done to the storm drains? Mr. Cyr: doesn't know. Need to
25 control the flow of water so the water coming from the detention pond doesn't create a bigger
26 problem. Chair: give these specific items to Judy so she can give them to the engineer. We'll
27 talk about the progress being made at each PB meeting. Chair: we'll put this on our meetings for
28 discussion until the issue is solved.

29
30
31 **Motion by RR to adjourn, 2nd by TS, vote was unanimous, adjourned at approximately**
32 **11PM.**

33
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35 **By order of the Planning Board**

36
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38
39 _____
40 **Approved**

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44 **Plse. note: the Planning Board reserves the right to take items out of order and to discuss**
45 **and/or vote on items that are not listed on the agenda.**

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