

SPECIAL TOWN MEETING
NOVEMBER 16, 2006

The Meeting was called to order at 7:28 PM by Moderator, Robert B. McPherson.

The Return of the Warrant was posted in accordance with the law.

The Pledge of Allegiance was led by Gerald E. Perron of 23 Adams St. and George H. Parkin, Jr. of 104 Cranberry Meadow Rd., who served in Iraq.

Holly A. Lamoureux of 57 South Spencer Rd. was introduced by SelectBoard Chairman, Vincent P. Cloutier. The Massachusetts Municipal Association sponsored a statewide essay contest for 6th graders. Holly was chosen by her teachers to read her essay at Town Meeting.

The following articles were acted upon:

Article 1: Voted unanimously that the Town authorize the Office of Development & Inspectional Services (ODIS) to pay late bills, not to exceed a total of \$130.00, for FY 2006.

Article 2: Majority voted that the Town rescind the following authorized and unissued debt:

<i>Purpose</i>	<i>Date Authorized</i>	<i>Unissued Amount</i>
Computer Hardware	05/09/02	\$25,000

Article 3: Majority voted that the Town amend its Personnel By-laws by striking the words “Good Friday” from the list of paid holidays in Section 3 “Benefits and Leaves,” Paragraph D, entitled “Paid Holidays,” subparagraph (a).

This amendment shall take effect on January 1, 2007.

Article 4: Majority voted that the Town appropriate the sum of \$8,250 to fund the agreement reached between the Town of Spencer and Teamster Local 170 for the permanent full-time clerical employees of the so-called “Town Hall Unit” and to meet said appropriation by a transfer of \$6,750 from General Fund account (#11123-56000), \$1,000 from Water Fund account (#15000-56000), and \$500 from Sewer Fund account (#20000-56000) and further to authorize the Town Administrator to transfer said monies within said funds as required to effectuate the purposes of this article.

Article 5: Voted unanimously that the Town authorize the SelectBoard for consideration of less than \$100.00 and upon such terms and conditions as it deems reasonable, appropriate, and in the best interests of the town, to accept as a gift a parcel of land of 8+/- acres from the Spencer Agricultural Association, Inc., located on Smithville Road (and being a portion of land generally identified as Map R-32 Lot 28 on the records of the Board of Assessors), and to further authorize the SelectBoard to negotiate, execute, deliver, and accept such deeds and other documents it deems necessary to carry out the purposes of this article.

Defeated by a majority vote a motion to strike "Eminent Domain" from the wording in Article 6. **Article 6:** Majority voted (declared vote by Moderator) that the Town authorize the SelectBoard for consideration of less than \$1,000.00 per parcel and upon such terms and conditions as it deems reasonable, appropriate, and in the best interests of the town, to purchase, accept as a gift, or take by eminent domain all interests in the land(s) necessary to secure possession of the right of way and temporary easements for the proposed State Aid for a so-called "Footprint Roads Project" reconstruction of Route 31 South (Maple Street generally from its intersection with Main Street to the southern bounds of Bemis Street) and further to raise and appropriate the sum of \$7,500 and to meet said appropriation by a transfer of funds from Chapter 90 Highway Funds and to further authorize the SelectBoard to negotiate, execute, deliver, and accept such deeds and other documents it deems necessary to carry out the purposes of this article.

Moderator declared the vote as 200 Voting in Favor and 30 Voting Opposed.

Article 7: Majority voted (declared vote by Moderator) that the Town authorize the SelectBoard for consideration of less than \$1,000.00 per parcel and upon such terms and conditions as it deems reasonable, appropriate, and in the best interests of the town, to purchase, accept as a gift, or take by eminent domain all interests in the land(s) necessary to secure possession of the right of way and temporary easements for the proposed improvement of Sherman's Grove and further to appropriate the sum of \$7,000 by a transfer of funds from the fund balance of the Betterment Fund (40000-31510) and to further authorize the SelectBoard to negotiate, execute, deliver, and accept such deeds and other documents it deems necessary to carry out the purposes of this article.

Moderator declared the vote as 200 Voting in Favor and 2 Voting Opposed.

Article 8: Voted unanimously that the Town authorize the SelectBoard, upon such terms and conditions as it deems reasonable, appropriate, and in the best interests of the Town, to sell the following parcels of land at public auction:

Map	Parcel	Location
U28	77	Wilson Grove
U28	78	Wilson Grove
U28	82	Wilson Grove
U28	93	Wilson Grove
U28	99	Wilson Grove
U28	104-1	Wilson Grove
U29	6-A	Pine Ave.

and to further authorize the SelectBoard to negotiate, execute, deliver, and accept such deeds and other documents it deems necessary to carry out the purposes of this article.

Article 9: Voted unanimously that the Town accept as public ways certain parcels of land commonly known as:

H. J. Perron Road
Taylor Drive

Article 10: Defeated by a majority vote a motion to amend the Town's General By-laws by deleting Article 1, Section 4 in its entirety and substituting a new section entitled:

Section 4. Quorum

The quorum requirement for any annual or special town meeting shall be fifty (50) registered voters.

This amendment shall take effect on April 1, 2007, subject to approval of the Massachusetts Attorney General and its posting in accordance with M.G.L. Ch. 40 § 32.

Article 11: Defeated by a majority vote a motion to amend the Town's General By-laws by adding a Section 10 to Article 6—Streets & Highways to be entitled, and read as follows:

Section 10—Fences

A. Definition

For the purposes of this by-law, a fence is defined, unless the content indicates or requires a different meaning, any partition, structure, planting or gate erected as a dividing marker or barrier or enclosure.

B. Fences; construction

No fence, as hereinabove described, shall be erected, constructed, or altered without first obtaining a fence permit from the inspector of buildings. Written application for this permit shall be made to the inspector of buildings. The application shall contain, in addition to such other information as may be required by the inspector of buildings, a sketch plan showing the location and type of fence to be constructed or altered upon the property.

C. Height and composition of fences within the required front yard set back

Within the required front yard set back, the fence shall not exceed four feet in height.

D. Height and composition of fences in other than the required front yard set back

Fences within other than the required front yard set back shall not exceed six feet in height in residential zones. Higher fences are permitted in other zones but fences with heights in excess of six feet shall be deemed structures under the Zoning By-law.

E. Construction entirely upon owner's property

a) All fences shall be constructed entirely upon the property of the party constructing the fence.

b) Anything herein to the contrary notwithstanding, property owners may agree to construct a fence upon their mutual property line or may agree to construct a fence, portions of which are upon the property of one owner and portions of which are upon the property of the other. In such case, the respective owners may come to an agreement, not inconsistent with this article with particular reference to the requirements of subsection G(b); provided a document incorporating

their understanding, in duly recordable form, setting forth their respective rights and obligations, the nature of the fence and other relevant information in a form and substance acceptable to the inspector of buildings is executed by the owner of each of the properties upon which the fence will be constructed. In such case, the parties may, among other things, agree upon the facing of the “good side” and other relevant factors. Such document shall be duly recorded at the Registry of Deeds and evidence of recording shall be submitted to the inspector of buildings for filing with the requisite permit application.

F. Condition and repair

All fences shall be maintained in good condition and repair. The inspector of buildings shall make determinations in this respect.

G. General regulations relative to construction of fences

The following regulations for the construction of fences shall apply:

- a) No concertina wire shall be permitted in residential areas.
- b) No barbed wire shall be permitted in residential areas with the exception that properties in agriculture use as exempted in MGL Ch. 40A may use barbed wire fencing in connection with the agricultural use.
- c) The most attractive or good side of the fence (in such case where, for example, structural members exist or where other conditions exist which make one side more aesthetically pleasing than the other), shall face away from the property on which the fence is being constructed.
- d) No fence shall be designed or constructed in such a way as to pose a threat to public health and safety. Sharp edges, spikes, points, rough surfaces and ornamental configurations which pose a danger to persons passing by the fence or to children who may attempt to scale or pass under the fence shall not be permitted. The inspector of buildings shall make determinations as to whether a fence violates this provision.
- e) Fences erected on corner lots shall be constructed at least 50 percent open or of open material in such a way as not to pose a threat to or impair traffic sight distances.
- f) It is the intent hereof that the fence shall be constructed in such a manner as to permit sufficient visibility so as not to endanger the health and safety of persons using the public rights-of-way. The inspector of buildings shall have the authority to require altered design features to accomplish this objective.

H. Pre-existing fences

Fences that exist as of the effective date of this by-law may, provided they are kept in good repair, be maintained in their current height, location, and design. Any fence that is constructed

or substantially repaired or replaced after the effective date of this by-law shall meet the more rigorous standards herein. It shall be the responsibility of the property owner to provide appropriate and sufficient documentation of the date of construction.

I. Violations and Penalties

Any person who shall be found in violation of any part of the provisions of this by-law shall be subject to a non-criminal violation as set forth in Article 11 Section 5 Obstruction of Streets and Sidewalks. Each violation and each day of violation shall be considered a separate and distinct offense.

This amendment shall be effective April 1, 2007, subject to approval of the Massachusetts Attorney General and its posting in accordance with M.G.L. Ch. 40 § 32.

Article 12: Majority voted, as a block, that the Town:

A. Accept Chapter 39 Section 23D of the Massachusetts General Laws, as set forth in Chapter 79 of the Acts of 2006, entitled “An Act Further Regulating Meetings Of Municipal Boards” relative to participation in certain adjudicatory hearings; and

B. Amend its General By-laws by adding a section 14 to Article 2 Town Administration to be entitled, and read as follows:

Section 14: Adjudicatory Hearings

A. Authority: This by-law is adopted under the authority of Town acceptance of MGL Ch. 39 § 23D.

B. Applicability: The provisions contained herein shall apply to any adjudicatory hearing of the following Boards, Committees, or Commissions:

Planning Board
Zoning Board of Appeals
Conservation Commission
SelectBoard

For the purposes of this by-law, an adjudicatory hearing means any proceeding in which the legal rights, duties, or privileges of specifically named persons are required by constitutional right, any provisions of the General Laws or any by-law to be determined after opportunity for a hearing at a “Meeting” as defined in MGL CH. 39 § 23A.

C. Quorum Not Defeated: Nothing in this section shall change, replace, negate, or otherwise supersede applicable quorum requirements.

D. Attendance & Certification Required for Voting: A member of any of the Boards, Committees, or Commissions enumerated herein shall not be disqualified from voting in the

matter which is the subject of an adjudicatory hearing provided that (a) they are absent from no more than a single session of the hearing at which testimony or other evidence is received, or debate and deliberation is conducted, and (b) before any such vote they certify in writing, with the Town Clerk upon a form to be prepared by the Town Clerk, that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof, together with any documents submitted at said missed session relative to the matter being considered. The written certification shall be part of the record of the hearing and the vote shall be void if said certification has not been filed with the Town Clerk prior to said vote.

This by-law shall be effective April 1, 2007, subject to approval of the Massachusetts Attorney General and its posting in accordance with M.G.L. Ch. 40 § 32.

Article 13: Majority voted to Pass Over this Article.

(To see if the Town will vote to designate Northwest Road as a scenic road, in accordance with M.G.L. Ch. 40 § 15C).

Article 14: Majority voted to Pass Over this Article.

(To see if the Town will vote to designate Brooks Pond Road as a scenic road, in accordance with M.G.L. Ch. 40 § 15C).

Article 15: Majority voted that the Town authorize the SelectBoard to petition the Massachusetts Legislature to enact Special Legislation to be entitled "An Act Creating an Office of Finance in the Town of Spencer" and reading substantially as follows:

**SPECIAL LEGISLATION
(Office of Finance)**

AN ACT establishing an Office of Finance in the Town of Spencer.

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

SECTION 1.

A. Notwithstanding the provisions of any general or special law to the contrary, there is hereby established in the Town of Spencer, hereinafter referred to as the "Town," an Office of Finance, which shall be responsible for the overall management and administration of the Town's financial operations and services.

B. The Office of Finance shall be comprised of a Department of the Treasury, a Department of Assessing, and a Department of Accounting. It shall be under the direction of a Director of Finance, who shall be one of the persons charged with the daily direction of a department within the Office of Finance and hereinafter referred to as the "Director," who shall be responsible to the Town Administrator for the duties specified in this act.

C. The Director shall be appointed by, and serve at the pleasure of, the Town Administrator. If removed as Director, such person shall continue to hold the position which he or she had been filling until such time as he or she vacates the position, fails of reelection or reappointment, or is otherwise lawfully terminated or removed. For their additional services as Director, they shall be paid an additional compensation of five percent (5%) of the compensation they otherwise receive for the daily direction of a department within the Office of Finance, not to exceed the annual sum of \$1,000, or such higher annual sum as may be established and paid in accordance with the Town's classification and compensation plan.

D. The Director shall be a person qualified in accordance with applicable by-laws of the Town, if any, and shall be suited especially by education, training, and experience to perform the duties of Director. The Director shall devote full time to the duties of this position, which duties shall also encompass the Director's daily oversight of a department within the Office of Finance. The Director shall not engage in or accept any other employment, the responsibilities of which are inherently incompatible to the duties of this position or to the underlying position to which they were elected or appointed, except with the prior written approval of the Town Administrator. Such approval shall be determined, in the sole discretion of the Town Administrator, on the basis of whether or not the business or occupation would conflict with the Director's ability to discharge his or her duties for the Town with undivided loyalty and fidelity.

E. The responsibilities and duties of the Director shall include, but not be limited to, supervising and directing the Office of Finance and performing such other financial related duties and responsibilities as may be assigned by the Town Administrator or required by statute or by-law.

F. There shall be within the Office of Finance a Department of the Treasury, which shall be under the daily direction and control of a Treasurer/Collector. The Treasurer/Collector shall have all the powers, duties, and responsibilities vested by statute or by-law in the offices of Treasurer and Collector. The Treasurer/Collector shall be elected for a three-year term. This Section shall not take effect until the regular annual town election to be held in 2008. The incumbents in the offices of Treasurer and Collector on the effective date of this Act shall continue to hold said offices and to perform the duties thereof until the expiration of their terms and the qualification of a Treasurer/Collector, provided, however, that in the event there is an earlier vacancy in either of such positions, the two positions shall thereupon be combined and the remaining incumbent shall assume the duties and responsibilities of the combined Treasurer/Collector position.

G. (1) There shall be within the Office of Finance a Department of Assessing which shall be under the daily direction and control of a Principal Assessor. The Principal Assessor shall be appointed by the Town Administrator for a term not to exceed three years; such appointment shall be made after consultation with the Board of Assessment Certification and Appeal. The Principal Assessor shall be a person of demonstrated professional ability, education, training, and experience in municipal assessment and taxation. The Principal Assessor shall be responsible for the day to day operations of the Department of Assessing, shall be responsible for the efficient administration of that department, and shall perform such other duties as may be assigned from time to time. The Principal Assessor shall exercise and perform all the powers, duties, and responsibilities vested in the office of assessor by statute or bylaw, subject, however,

to the certification of value authority and the appellate review of the Board of Assessment Certification and Appeal as hereinafter provided. (2) There shall be a Board of Assessment Certification and Appeal comprised of three persons elected for staggered three-year terms. The Board of Assessment Certification and Appeal shall exercise and perform those powers, duties and responsibilities vested by statute or by-law in the office of assessor with respect to (a) the certification of value of real and personal property for tax assessment purposes, (b) the application of exemptions, and (c) the granting of abatements. (3) This section shall take effect at the regular annual town election to be held in 2008. The incumbent members of the Board of Assessors on the effective date of this act shall complete the terms for which they were elected and shall receive such compensation as fixed by town meeting subject to appropriation. The Principal Assessor and the elected members of the Board of Assessment Certification and Appeal shall be required to take the oath of office as required by Ch. 41 § 29 of the Massachusetts General Laws and to comply with training and certification requirements of the Department of Revenue.

H. There shall be within the Office of Finance a Department of Accounting which shall be under the daily direction and control of a Town Accountant. The Town Accountant shall be appointed by the Town Administrator for a term not to exceed three years. The Town Accountant shall have all the powers, duties, and responsibilities vested by statute or bylaw in the office of Town Accountant.

SECTION 2

A. No person charged with the daily direction of an office within the Office of Finance shall hold any other position within that Office except for Director of Finance. No person elected to the Board of Assessment Certification and Appeal shall hold any other position within the Office of Finance.

B. The Town, by by-law, may establish additional requirements and standards for the Office of Finance and may modify and amend the organization and structure of said department; provided, however, that all such modifications and amendments are not inconsistent with the provisions and purposes of this act. Nothing in this Act shall preclude the Town from making any elected position an appointed position as otherwise permitted by law.

C. The Town Administrator shall appoint the Director and non-elected Department Heads and staff within the office. The appointment and removal of the Director and non-elected Department Heads shall be made in accordance with the provisions of the Spencer Governmental Act except as modified herein.

D. The Town Administrator shall have the authority to assign additional tasks to any department or office established herein as shall be consistent with best management practices or as required by statute, by-law, or policy directives of the SelectBoard.

E. All persons appointed to a position having a specific term hereunder shall continue to serve until their successor is appointed and duly qualified.

F. Upon the effective date of this act, all records, property, equipment, and facilities owned by the Town and under the control of the offices, boards, or commissions which are abolished or superseded by this act shall be transferred to and be under the control of the office or department succeeding thereto.

G. All laws, special legislation, by-laws, votes, rules and regulations, whether enacted by authority of the Town or any other authority, which are in force in the Town on the effective date of this act, or any portion or portions thereof, that are inconsistent with the provisions of this act shall be deemed rescinded or of no further force and effect to the extent of such inconsistency. Nothing contained herein shall impair contractual rights established prior to the effective date of this act.

SECTION 3.

This act shall take effect upon its passage.

Article 16: Majority voted that the Town amend its Fiscal Year 2007 Operating and its Capital/Special Projects Budget(s) by appropriating the sum of \$137,500 to various accounts, as illustrated below, and to transfer, from the fund balances in the following funds, the sum(s) of \$15,000 from the General Fund, \$35,000 from the Sewer Fund, \$30,000 from Water Fund Retained Earnings, \$7,500 from the Wetlands Protection Fund, and \$50,000 from overlay surplus to meet this expenditure.

<u>Department</u>	<u>Account</u>	<u>Amount</u>
ODIS (Borkum Road Enforcement)*	11158-56000	\$ 7,500
Town Hall (Elevator, Boiler & Steam Line Repairs)	11192-52000	\$ 5,000
Highway (Dam Inspections & Maintenance)	11422-52000	\$ 40,000
Highway (Fuel, Tires & Supplies)	11422-57000	\$ 9,500
Board of Health (Needle Disposal)	11510-57000	\$ 750
Parks & Recreation (Staffing)	11640-51000	\$ 5,000
Water (Main Repairs)	15000-56000	\$ 30,000
Sewer (Permit Requirements)	20000-56000	\$ 35,000
Rail Trail (Survey Extension & Culvert Work)	60000-59102	\$ 4,750
	Total	\$137,500

*Transferable by Town Administrator to ODIS and Town Counsel Purchase of Service Accounts.

Article 17: Voted unanimously that the Town transfer the sum of \$1,037 from free cash to the following stabilization funds: Operations Reserve, \$37; Capital Reserve, \$250; Land Acquisitions Reserve, \$750.

Article 18: Majority voted (declared vote by Moderator) that the Town amend the present Zoning By-laws of the Town of Spencer by rescinding the present Zoning By-law in its entirety and adopting in its place the Zoning By-law as outlined below:

Article 1. General Provisions

- Article 2. Definitions
- Article 3. Establishment of Districts (including revising Zoning Map)
- Article 4. Use Regulations
- Article 5. Dimensional Regulations
- Article 6. Design Standards
- Article 7. Administration

Moderator declared the vote as 96 Voting in Favor and 33 Voting Opposed.

Majority voted at 11:10 PM to dissolve this Meeting.
304 Registered Voters attended this Meeting.

Jean M. Mulhall, Town Clerk