

SPECIAL TOWN MEETING MINUTES

Town of Manchester-by-the-Sea

November 18, 2024, 6:30pm

Manchester Essex Regional High School

36 Lincoln Street, Manchester, MA 01944

The quorum of 100 voters was reached well before 6:30pm, and Moderator Alan Wilson called the Special Town Meeting to order at 6:35pm while voters were continuing to check in. Ann Harrison, Chair of the Select Board, gave a word of welcome to those in attendance. After the Pledge of Allegiance and the Moderator's procedural comments and thanks to volunteers, he reminded the Meeting of Manchester's tradition of civil and respectful debate. Moderator Wilson said, "Disagreement doesn't require being disagreeable... let's engage as neighbors, remembering that we all want the best for Manchester." The Moderator announced he will not stand for re-election in May and stated that at the end of the current term he will have been moderator for thirty years. The Meeting then set itself to the business of the day.

The final tally of attendees was 927 voters plus 26 non-voters. There were 4,467 registered voters in Manchester-by-the-Sea.

ARTICLE 1: To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, and/or eminent domain and on such terms and conditions as the Select Board deems appropriate, a permanent conservation restriction on three parcels, one being an approximately 30-acre portion of the property located on Colburn Road and identified by the Assessors as Parcel 36-0-3 and the others being two abutting parcels, Parcel 36-0-56 and Parcel 34-0-3, together comprising 6.25 acres, which conservation restriction shall be co-held and administered by the Conservation Commission under the provisions of GL c. 40, §8C, and, further, to appropriate the sum of \$250,000 from the Community Preservation Fund for the foregoing purposes; or take any other action relative thereto.

Per petition of the Select Board

The Finance Committee, Select Board, and Planning Board recommended approval.

MOTION

Steve Gang moved and John Round seconded the article as presented in the warrant.

DISCUSSION

Steve Gang, Chair of the Conservation Commission, stated this connects conservation land that is already protected, this will protect a portion of land that otherwise would be very developable, and these funds are already collected and in CPC accounts, so there will be no additional taxation or fees.

Dick Goutal, 17 Desmond Ave., spoke against the article and stated he is on principle against giving Manchester more conservation land because the town is constantly squished for the need of other things including more senior housing and more affordable housing.

VOTE

With 858 voters checked in, the vote was 734 yes, 75 no, and 17 abstained.

The motion under Article 1 prevailed by more than a 2/3 vote.

ARTICLE 2: To see if the Town will vote to amend the Town's General Bylaw by replacing the entirety of Article XXIII Stormwater Management with a new Article XXIII Stormwater Management as follows; or take any other action relative thereto:

ARTICLE XXIII: STORMWATER MANAGEMENT

SECTION 1 PURPOSE AND INTENT

The purpose and intent of this bylaw are to:

- A. Protect water resources;
- B. Require practices that mitigate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;
- C. Promote infiltration and the recharge of groundwater;
- D. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained;
- E. Encourage the use of Low-Impact Development practices such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable;
- F. Comply with state and federal statutes and regulations relating to stormwater discharges;
- G. Establish the Town of Manchester-by-the-Sea as the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

SECTION 2 DEFINITIONS

ADMINISTRATIVE LAND DISTURBANCE APPROVAL: A determination by the Permit Authority that land disturbance activity does not require a Stormwater Management Permit.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a Stormwater Management Permit and/or Administrative Land Disturbance Review for proposed land-disturbance activity.

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material, including tree cutting, grubbing, clearing, grading or excavation.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage

channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by Manchester-by-the-Sea.

PERMIT AUTHORITY: The Department of Public Works.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

STORMWATER MANAGEMENT PERMIT (“SMP” and/or “Permit”): A permit issued by the Permit Authority, after review of an application, plans, calculations, and other supporting documents, which shows that the proposed project is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

SECTION 3 AUTHORITY

A. This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR §22.34

B. Nothing in this bylaw is intended to replace the requirements of any other bylaw that has been made or may be adopted by the Town of Manchester-by-the-Sea.

SECTION 4 APPLICABILITY

A. This bylaw shall apply to all activities that result in land disturbance exceeding the threshold established in the regulations promulgated hereunder.

B. Administrative Land Disturbance Review is required for projects that result in the amount of land disturbance described in the regulations promulgated hereunder.

C. Exempt Activities – the regulations promulgated hereunder shall identify certain exempt land disturbance activities.

SECTION 5 PERMITS AND PROCEDURES

A. The procedures for a Stormwater Management Permit and/or Administrative Land Disturbance Review application shall be described in detail in the regulations promulgated hereunder.

B. Waivers.

1. The Permit Authority may waive strict compliance with any requirement of this bylaw or the regulations adopted hereunder, where:

- a. Such action is allowed by federal, state, and local statutes and/or regulations;
- b. It is in the public interest; and
- c. It is not inconsistent with the purpose and intent of this bylaw.

2. Any Applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the bylaw does not further the purpose or objectives of this bylaw.

C. Appeals. A decision of the Permit Authority shall be final. Further relief of a decision by the Permit Authority made under this bylaw shall be reviewable in the Superior Court in an action filed within 60 days of the final action taken by the

Permit Authority, in accordance with M.G.L. c. 249, §4.

SECTION 6 FINAL REPORT

Upon completion of the work, the Applicant shall submit a report (including certified as-built construction plans) from a Registered Professional Engineer (P.E.), certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

SECTION 7 CERTIFICATE OF COMPLETION

The Permit Authority will issue a letter certifying completion upon receipt and approval of the Final Report and/or upon otherwise determining that all work allowed by the permit has been satisfactorily completed in conformance with the permit and this bylaw.

SECTION 8 EMPLOYMENT OF OUTSIDE CONSULTANTS

The Permit Authority may employ outside consultants, at the Applicant's expense to assist in its permit decision, including but not limited to plan review, drainage, and stormwater analysis; to determine conformance with this bylaw and other requirements; and for construction inspection.

SECTION 9 PERFORMANCE GUARANTEE

A. The Permit Authority may require the Applicant to post, before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security as performance guarantee, to be in an amount deemed sufficient by the Permit Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Permit Authority may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Permit Authority has received the Final Report as required by Section 6 of this bylaw and issued a Certificate of Completion.

B. The regulations promulgated hereunder shall establish reasonable criteria for assessing the Performance Guarantee.

SECTION 10 DURATION OF STORMWATER MANAGEMENT PERMIT

A Stormwater Management Permit is granted for a period of three years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause as shown.

SECTION 11 ENFORCEMENT

A. Land disturbance activities in excess of the thresholds established in the regulations promulgated hereunder conducted without a Stormwater Management Permit or Administrative Land Disturbance Approval shall constitute a violation of this bylaw. The Permit Authority, or an authorized agent of the Permit Authority, shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D and General Bylaw Article 1, Section 4, in which case the Permit Authority or its agent shall be the enforcing person. The penalty for the

1st violation shall be \$100.00. The penalty for the 2nd violation shall be \$200.00. The penalty for the 3rd and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

SECTION 12 REGULATIONS

The Permit Authority shall adopt, and may periodically amend regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures, and administration of this Bylaw by majority vote of the Town of Manchester-by-the-Sea Select Board after conducting a duly noticed public hearing to receive comments pursuant to the Town's public notice requirements. Failure of the Permit Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.

Stormwater Management Regulations (Regulations), rules, or guidance shall identify requirements for stormwater permits or approvals required by this Bylaw and be consistent with or more stringent than the relevant requirements of the most recent MS4 General Permit.

SECTION 13 SEVERABILITY

If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

Per petition of the Select Board

The Finance Committee took no position on the article. The Select Board recommended approval.

MOTION

Brian Sollosy moved and Jeffrey Delaney seconded the article as printed in the warrant.

DISCUSSION

Sollosy stated this allows the town to make the necessary changes to ensure compliance with the EPA and MassDEP in the future.

Thomas Frank, 195 Summer St., asked for clarification.

Chuck Dam, Director of the Department of Public Works, stated this will not take issues of compliance away from the boards and committees. This update was asked for by the DEP and EPA to catch things that otherwise may have slipped through the cracks.

VOTE

With 858 voters checked in, the vote was 698 yes, 76 no, and 51 abstained.

The motion under Article 2 prevailed by a majority.

ARTICLE 3: To see if the Town will vote to raise and appropriate or transfer from available funds \$9,886 for the purpose of paying expenses incurred in the previous Fiscal Year for consulting services related to the defense of the ZBA's denial of the proposed 40B project off Upper School Street or take any other action relative thereto.

Per petition of the Select Board

The Finance Committee and Select Board recommended approval.

MOTION

Sarah Mellish moved and Catherine Bilotta seconded that the Town transfer from Free Cash ~~\$9,886~~ \$14,581 for the purpose of paying expenses incurred in the previous fiscal year for consulting services related to the defense of the ZBA's denial of the proposed 40B project off Upper School Street.

DISCUSSION

There was no discussion on the motion.

VOTE

With 886 voters checked in, the vote was 793 yes, 29 no, and 18 abstained.

The motion under Article 3 prevailed by a 9/10th vote.

ARTICLE 4: To see if the Town will vote to amend the Town of Manchester-by-the-Sea Zoning By-Laws by inserting a new Section 9.4, to create a new Community Housing Overlay District, and to amend Section 2.0 ("Definitions") by inserting the new definitions as presented; and further, to see if the Town will vote to amend the Zoning Map of Manchester-by-the-Sea to accept and incorporate the Community Housing Overlay District Maps, dated October 28, 2024 as part of the Zoning Map of Manchester-by-the-Sea or take any other action relative thereto. The full text of the proposed new Section 9.4, proposed definitions and overlay maps are on file in the Office of the Town Clerk and the Library and are available on the MBTA Zoning page on the Town's website.

Per petition of the Select Board and Planning Board

The Finance Committee, Select Board, and Planning Board recommended approval.

MOTION

Susan Philbrick moved and Ann Harrison seconded that the Town adopt the article as presented in the warrant and amend the Town's zoning bylaws as stated in the handout at Town Meeting.

DISCUSSION

Sue Philbrick of the Planning Board gave an overview of what will be voted on, which includes four overlay districts that will include by right multi-family development. The other part of the

compliance package are design guidelines so that any project will conform to the character of the community. The package also includes affordability. Twenty percent of each project would be required to be affordable.

Sarah Mellish of the Finance Committee spoke to the fiscal impact, stating that with a “Yes” vote, additional tax revenue should cover additional costs of town services. With a “No” vote, there would be a projected 7-14% increase in the tax rate due to litigation costs and loss of state grants.

MOTION TO AMEND

Sarah Mellish moved to amend the main motion by adding in line 101 (page 11 of the packet for the meeting) after the word “district” the following: “and no division of a parcel shall increase the maximum number of dwelling units allowed per lot in existence on November 18, 2024.” Then section 4 of 9.4.2 would read, “4. **Lot Division.** The division of a parcel of land in any CHOD District shall meet the minimum lot size and frontage requirements of the underlying base zoning district and no division of a parcel shall increase the maximum number of dwelling units allowed per lot in existence on November 18, 2024.” Susan Philbrick seconded the motion.

Mellish stated the purpose of this is to protect against the division of properties increasing the total number of allowed units. This is so the per property maximum cannot be circumvented and to avoid unintended consequences.

DISCUSSION

Moderator Wilson limited discussion for now to only the proposed amendment.

Mary Foley, 1 Pulaski Drive, asked for clarification if a lot is split. Foley gave the example of a lot that would be allowed five units being split into two parcels. Foley asked if the owner of one parcel built five units, then could the new owner of the other parcel not build at all.

Mellish stated the new parcel could have a house built on it under the underlying zoning, outside of this multifamily housing zoning.

Foley expressed concern about possible legal issues of controlling what people can do with their lots.

Carolyn Murray of KP Law stated the town’s legal counsel reviewed this proposed amendment and it is consistent with MBTA zoning. The Attorney General might look at this as an issue with the sub-division control law, but if that is the case then the Attorney General can strike any language that is deemed to be inconsistent with state law.

Town Administrator Greg Federspiel noted that currently two town bylaws refer to analogous date impressions in the bylaw, under the ADU bylaw and in D2. This is similar to that, and the Attorney General has not ruled that inconsistent and already approved those provisions, which gives us confidence that this also would be approved.

Christine Delisio, 6 Lincoln Ave., asked for confirmation that the proposed amendment has not been submitted to the state yet.

Moderator Wilson confirmed.

VOTE ON AMENDMENT

With 903 voters checked in, the vote was 757 yes, 98 no, and 24 abstained.

The amendment to the main motion under Article 4 prevailed by a majority vote.

DISCUSSION

The meeting returned to discussion on the main motion as now amended.

Christine Delisio, 6 Lincoln Ave., urged others to vote “no” to postpone this decision. Delisio stated that the SJC has not yet ruled on the Milton case and that similar communities like Hamilton and Wenham are waiting for the Milton decision. Delisio suggested not acting in haste now and delaying this matter until spring by voting “no” tonight.

Susan Wadia-Ells, 0 Elm St., stated she resides in one of the neighborhoods this targets and this will change the patina of Manchester-by-the-Sea. Wadia-Ells spoke against the proposed changes.

Wendy Brady, 10 Lincoln Ave., asked if Finance Committee, Select Board, and Planning Board could comment on why the town is voting tonight and not waiting for Milton decision.

Carolyn Murray of KP Law stated the primary reason this is before the town tonight is that there is a compliance deadline of December 31 of this year. If this is not voted by then, the town will be out of compliance. There is risk of additional loss of grant; even though the statute only lists four pockets of money, other discretionary grants could be denied if the town is not in compliance with state law. The Attorney General has already sued Milton and could start suing other communities for noncompliance.

Town Administrator Greg Federspiel stated the Milton case does not challenge legality of the law. It is a technical challenge where Milton is stating that it is not a rapid transit line and has a different deadline. The SJC would not vacate the law because of that case.

Robert Coyne, 115 Beach St., agreed with a no vote to pause until the court case has been resolved.

Shelia Doherty, 7 Lincoln Ave., asked about the tax increase implications and where those costs are coming from.

Sarah Mellish, chair of the Finance Committee, stated that a \$300,00 increase in expenses or loss of revenue translates into a 1% increase, so estimated legal expenses and loss of grants would bring it to between a 7% and 14% increase in tax rate.

John Feuerbach, 5 Harold St., spoke in favor of a “yes” vote. This would offer diverse housing options and affordable housing. The Affordable Housing Trust voted in favor of this.

Isabella Bates, 2 Masconomo St., stated we live in a commonwealth and are supposed to look after each other. For 20 years the state has asked towns to develop more housing. Bates spoke in favor of a yes vote. Change evokes fear, but we don’t make good decisions out of fear.

Gretchen Wood, 19 Brook St., spoke on behalf of the Housing Authority in favor of a yes vote.

Matt Gibbs, 9 Lincoln Ave., asked if there is an estimate of the projected grants the town would be applying for in the next one to three years.

Sandy Bodmer-Turner, member of MBTA Task Force, stated the Task Force looked at grants in fiscal year 2024 and 2025, and what was planned for fiscal year 2026. There are two broad

categories of grants. Those for which Manchester would automatically be ineligible, would be an average \$2.3 million/year from those three years. The rest of the grants add up to \$3.2 million for all three years; Bodmer-Turner stated it seems they would be very much at risk as well. Grants generally require compliance with state laws.

Gibbs asked if reserve funds would be enough to cover the gap in funds while waiting for court rulings.

Mellish stated the reserve level is at 8% and that has been used. Our reserves are minuscule in comparison.

Tom Kehoe, 20 Lincoln Ave., stated the MBTA zoning act is not a suggestion, it is a state law. Cities and towns do not have the ability to vote to not pay attention to those laws. It is best to have a group of residents, as we have done, who know the town make the decisions rather than the Attorney General. This will keep local control over zoning issues, with the least possible changes to the town. This plan does not require any new units to be built. The town must comply with state law.

Frederick Gibson, 11 Tanglewood Rd., requested to move the question.

Moderator Wilson stated there are still people in the gym waiting to speak and asked Mr. Gibson to defer that for now.

Christopher Gates, 19 Desmond Ave., stated it seems it would be adopting governance through extortion to accept these strange and sweeping changes.

Sandy Rogers, 82 Old Essex Rd., stated we were told that 20% of what is proposed in the zoning would be affordable; that is not necessarily the case because it is every fifth unit. Rogers said she would like that clarified. Rogers also asked about language in the compliance letters for other towns. Rogers asked if design guidelines are enforceable. Once we give up our zoning rights here, then the state can come in and mandate more changes.

Chris Olney of the Planning Board stated that under 3A affordability is not required but has been included as much as possible under the law. Olney confirmed that if a development is four units, there would not be a required affordable unit.

Rogers expressed concern about falling behind on affordability with the small developments.

Caroline Murray, Town Counsel, stated with respect to the compliance letters, the standard language means the vote will still need to be certified for compliance if approved by the town tonight. Murray gave an example of another community where the state asked for an amendment to make the town's vote in compliance with the state statute.

John Carlson, 9 Walker Rd., spoke to a flyer that was sent out and called it fearmonger. The flyer states that a "yes" vote will increase Manchester's population by 20% and Carlson said that is not a fact. Carlson spoke in support of a "yes" vote.

Sarah Creighton, Chair of the Planning Board, 37 Proctor St., circled back to the site plan review and conditions that would still be allowed. Creighton addressed some items in a flyer that was circulated asking residents to vote "no" regarding the chances of development and population changes. This a zoning proposal, not a development plan. Many properties around town have the ability to develop into a two-family and have remained single-family for decades. The districts have been carefully constructed. The Milton case really is not relevant. Creighton spoke in support of a "yes" vote.

Gary Gilbert, 11 Magnolia Ave., stated this has been approaching a year and a half of work, has not been a rush at all, and is set up in a way that very few lots are likely to be developed. Design guidelines were set that will be incorporated and for the first time ever the town will have a design review committee. The state already tells us what to do in a lot of ways. Gilbert stated he does not want to pay that much more in taxes. With sea level rise, we will be confronted with a lot more need for grants. This is well-crafted and we should all support it.

Mary Foley, 1 Pulaski Dr., expressed concerns and stated that data shows a negative impact to Manchester. There will be increases in population, schools, hospitals, highways, residential parking, and cars that the town cannot sustain. Foley asked if the state would fund the impact of these changes. Foley spoke of the current court case and recommended waiting to see what happens. Foley stated a “no” vote will preserve community and is a vote to postpone.

Eden Davies, 20 Blynman Cir., encouraged a “yes” vote. Change is inevitable, and we can only kick the can down the road for so long. We have to be in compliance with state laws. Voting “no” is short-sighted and not in the best interest of the town.

MOTION TO CALL THE QUESTION

Ken Warnock, 5 Running Ridge Row, stated he would like to move the question to a vote. The motion was seconded.

Moderator Wilson stated it would require a 2/3 vote to cut off debate.

VOTE ON MOTION TO CALL THE QUESTION

With 927 voters checked in (and at least 24 left the meeting before the vote), the vote was 778 in favor, 83 no, and 6 abstained.

The motion to move the question prevailed by more than a 2/3 vote.

VOTE

Moderator Wilson called for the vote on the main motion as amended.

There was an issue with the clickers in the overflow room (auditorium) not registering. After three tests of the system, it was determined that part of the wiring in the overflow room had become loose. It was reconnected, and the final vote was taken.

The vote was 636 yes, 214 no, and 7 abstained.

The motion under Article 4 prevailed by a majority vote.

At 8:45pm, Ann Harrison moved to dissolve the Meeting. The motion was seconded.

The Moderator declared it a unanimous vote and declared the meeting dissolved.