Milton Selectboard
November 17, 2014 at 6:00 PM
Municipal Building Community Room

Use of cell phones is prohibited during the meeting. Please shut them off or silence them.

AGENDA

I. Call to Order

II. Flag Salute

III. Agenda Review

IV. Public Forum
The Public Forum will be limited to five minutes per person. All participants must sign in and clearly state their name. No action will be taken on items raised until a subsequent meeting (if action is needed by the Selectboard).

V. Appointments and/or Resignations

VI. New Business and Department Items

A) Zoning Ordinance Amendments Public Hearing
(Public Hearing on Amendments, Discussion of Possible Further Changes as Needed)
Brian Palaia, Town Manager and Katherine Sonnick, Planning Director

B) Sidewalks, Pathways, and Upper Main Street Scoping Study Presentation
(Presentaiton of Construction Alternatives)
Patrick Baxter, Toole Design Group and Brian Palaia, Town Manager
Katherine Sonnick, Planning Director

C) Joint Meeting with the Conservation Commission
(Discussion)
Selectboard, Commission, Brian Palaia, Town Manager
Jake Hemmerick, Town Planner

D) Review of Zoning Enforcement Policy
(Review and Discuss Policy)
Brian Palaia, Town Manager, Katherine Sonnick, Planning Director, and Amanda Pitts, Zoning Administrator

E) Winter Operations Plan Briefing and Proposed Amendments
(Discussion and Approval of Plan Amendments)
Brian Palaia, Town Manager and Roger Hunt, Public Works Director

F) Errors and Omissions Adjustments
(Consider Authorizing Adjustment to the Grandlist)
Brian Palaia, Town Manager and Robert Ware, Assistant to the Assessor

G) Amendment#3 to Repayment Schedule for Loan RF1-147-3 for Village Core Sewer Project
(Consider Authorizing Amendment to Repayment Schedule)
Brian Palaia, Town Manager

H) Schedule of Proposed Budget Process for FY2016
(Review Schedule)
Brian Palaia, Town Manager

VII. Old Business

VIII. Reconsideration

IX. Manager's Update

X. Potential and/or Future Agenda Items

XI. Minutes - To Approve With or Without Corrections

1) Selectboard - Regular Meeting - November 3, 2014 6:00 PM

XII. Warrant/Report - To Approve With or Without Corrections

1) Supplemental Warrant - Act 80 TIF

XIII. Possible/Anticipated Executive Session per V.S.A. Title 1 Section 313

XIV. Adjournment

Posted on the official bulletin board in the lobby of the Municipal Building; to the Town website; emailed to the Burlington Free Press, Milton Independent, Lake Champlain Access Television, Fox 44 News, WPTZ, and WCAX; and posted in two other places within the Town of Milton and filed with the Town Clerk.

Signed:_____
Brian Palaia, Town Manager

XV. Communications

TOWN OF MILTON, VERMONT 05468-3205

PLANNING & ECONOMIC DEVELOPMENT OFFICE • 43 BOMBARDIER ROAD •
802-893-1186 • FAX: 893-1005

MEMO

To: Brian Palaia

From: Katherine Sonnick, Planning Director

Date: November 10, 2014

Re: Town of Milton Proposed Zoning Ordinance Amendments

This set of amendments consists of additional detailed regulations, including requirements for adult uses, clarifying sections, and correcting inconsistencies and misconstrued sections. More specifically, the following changes are included in this set of amendments:

1. Sections 140, 1010, 1012, Certificate of Compliance/Occupancy: addition of requirements of the Vermont Energy Code. Also in Section 1012: clarification that a CO will not be issued without compliance with and DRB approvals.
2. Section 357, Conversion of Seasonal Dwellings: changes to reflect state authority to approve water and wastewater systems and only requiring a zoning permit if additions are made. This section has also been moved to Section 130 and 1000, the general zoning permit section, out of the specific R6 District standards section.
3. Section 393, Conditional Uses in the I2 Zoning District: addition of food service as an accessory use and additional uses for historic structures.
4. Section 468, Conditional Uses in the DB1 Zoning District: addition of Precious Metal Dealer and Adult Oriented Business.
5. Section 520.4, Non-Complying Structure: addition of a section clarifying how to reconstruct or repair if damaged.
6. Section 540, Number of Building on Lots: removal of "use" from section dealing with buildings.
7. 580.7, Accessory Uses: clarified to be limited to permitted or conditional uses in a district.
8. Section 801, Administrative Site Plan Review: removal of the requirement for administrative review to changes to the interior of buildings and addition of windows and door without change to the building footprint.
9. Section 803.4, Submission of Site Plans and Supporting Data: eliminating the requirement for survey of the entire property.
10. Section 819, Bicycle Parking Space: requiring commercial and larger residential developments to include bicycle racks as a part of Site Plan Review.

11. Section 893, Elderly Housing Complex Standards: allow, with DRB approval, visitor parking to be located on undeveloped green space with adequate signage and winter maintenance. The requirement for a 20-foot wide buffer zone or specific setback and height requirements has also been removed.
12. Section 1002.1, Complete Zoning Permit Applications: adding that an application must be complete for Zoning Administrator action.
13. Definitions: changes to or the addition of the following: Disabled/Disability, Elderly Housing Complex, Open Space, Precious Metal, Precious Metal Dealer and Structure.
14. Section 853, PUD Bonus Density: addition of a requirement for PUDs in the M1, M2, M4 and DB1 districts to meet the provisions of Section 804.1-804.5 for downtown development (changing "should" to "shall") and bonus densities may be granted for LEED Silver construction or underground/under-building parking.
15. Section 910, Adult Oriented Businesses: addition of this section to regulate the secondary effects of these types of businesses. Included along with this memo are three "secondary effect" studies that were reviewed by the Planning Commission and were instrumental in directing the Planning Commission to proposed and recommend this amendment. An important part of the public hearing process will be for the Selectboard to discuss these secondary effects of adult businesses and determine if the conclusions of these studies provide justification for adopting the ordinance. Please take a moment and look through the attached studies. As you read them, you will see some yellow highlighted text. This highlighted text includes the important conclusion sections. Additionally, at the public hearing any testimony from community members about the negative secondary effects and conclusions of the Selectboard members about negative secondary effects should be discussed. However, it will be important to remember that the discussion should focus on the negative effects of adult businesses on the community (e.g. increased crime, decreased property values) and not about any negative comments on adult businesses themselves. I will be sharing a PowerPoint presentation that will provide some summary points.
16. Section 1002, Issuance of a Zoning Permit: clarification that a zoning permit will not be issued with outstanding violations of DRB approvals. During their public hearing, the Planning Commission was not convinced of the Town Attorney's suggestion to strike this amendment even though she thought it might not be enforceable. However, after further consultation with the Town Attorney and the Zoning Administrator, the Planning Commission has agreed to delete this amendment, as it has become clear that this amendment would be in violation with Section 4452(a) of Chapter 117 of state statute. The Planning Commission has proposed a new amendment instead to the Site Plan application requirements, Section 803 and would state: *"A certification that there are no outstanding violations with respect to the property, or a detailed, written description of any and all outstanding violations."*

This summary does not address every single change in the proposed draft, but it does include all the substantive changes. Every proposed change is identified in the draft; specifically underlined language has been added, and the deleted language has a strike-through.

The Planning Commission held a public hearing on the proposed amendments on October 14, 2014. The PC heard a request from a community member who attended their public hearing to change

Section 804.1-804.5 the "should" to "shall" for the specific requirements of Section 804, which are goals to further a more "downtown" type of development in our Town Core districts. The PC supports this request but determined that making the change would be considered a "change in substance or meaning" which according to state statue would require an additional public hearing. The Selectboard could choose to make this change at their public hearing.

As Per Section 4442, Chapter 117 of state statute, the Selectboard may make minor changes to the proposed amendments, but if the Board makes *"substantial changes in concept or meaning, or extent of the proposed bylaw/amendment, it shall warn a new public hearing."* Changes to Section 1002, the violation section (discussed above in item number 16), or other edits or clarifications would not be considered "substantial" and could be adopted without a second public hearing. Changes made to Section 804, as recommended by the Planning Commission could be considered "substantial" and if changes are made, I would recommend a second public hearing. I have submitted a resolution for use in the adoption process if the Selectboard proposed to accept the amendments on November 17th.

TOWN of MILTON, VERMONT

ZONING REGULATIONS

(Date of Printing: October 28, 2014)

TOWN of MILTON, VERMONT

ZONING REGULATIONS

Adopted April 22, 1972

Amended (effective dates)
October 21, 1974
June 18, 1979
April 30, 1980
January 4, 1982
June 6, 1982
1985
August 21, 1989
October 22, 1990
August 6, 1991
August, 1992
June 28, 1993
October 11, 1993
March 28, 1994
April 10, 1995
December 23, 1996
May 11, 1998
December 28, 1998
July 30, 2001
January 28, 2002
August 26, 2002
October 20, 2003
June 28, 2004
September 5, 2005
October 11, 2005
November 1, 2005
November 28, 2005
February 6, 2006
April 10, 2006
March 26, 2007
June 28, 2010
June 6, 2011
August 25, 2014
DRAFT Selectboard Public Hearing November 17, 2014

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Appendix A Inundation Hazard Area Regulations A-1
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Note: Words which are CAPITALIZED throughout the text (exclusive of those appearing in titles/headings) are defined terms, and can be found in Section 1~~0~~110. Capitalization has been provided for convenience and the lack of capitalization or failure to capitalize a term does not mean that it is not a defined term.

ARTICLE I
INTRODUCTORY PROVISIONS

SECTION 100 *TITLE AND PURPOSE*

These Regulations, which shall be known and cited as the **Milton Zoning Regulations**, are intended to promote the general welfare of the inhabitants of the Town of Milton, to protect the value of property, to prevent overcrowding, to facilitate provision of public requirements, and to provide for the orderly development in Milton of homes, AGRICULTURE, industry, commerce and recreation. These regulations shall not have the effect of excluding low and moderate income housing from the Town.

The Zoning Regulations classify and guide the USES of land, buildings and STRUCTURES in the Town of Milton in accordance with the *Comprehensive Land Use Plan for the Town of Milton* and the *Vermont Municipal and Regional Planning and Development Act* (Chapter 117 of Title 24, Vermont ~~.~~Statues. Annotated~~., Chapter 117~~). The Regulations are designed to implement the purposes and policies set forth in the *Plan* and *Act*.

SECTION 110 *UNAUTHORIZED DEVELOPMENT OR PROHIBITED USES*

No LAND DEVELOPMENT shall be undertaken or effected except in conformance with the applicable provisions of these Regulations. No land, building or other STRUCTURE shall be used for any purpose except as provided in these Regulations. Any USE not specifically permitted or prohibited in this Ordinance may be considered as a Conditional Use by the Development Review Board and reviewed in accordance with Section 500 of these R~~r~~egulations.

SECTION 120 *PERMITTED AND CONDITIONAL USES*

Permitted and CONDITIONAL USES for each district of the Town are specified in these Regulations. Both types of USE require a Zoning Permit (commonly called a "Building Permit") and a Certificate of Compliance from the Zoning Administrator as prescribed in Section ~~9~~1000 and ~~9~~1010 below. A Zoning Permit for a CONDITIONAL USE requires prior approval of the Development Review Board, which can only be issued upon a finding of conformance with the requirements indicated in Section 500, and with any additional criteria cited for a specific CONDITIONAL USE within the Zoning Ordinance.

SECTION 130 *ZONING PERMIT*

In accordance with Section ~~9~~1000 of this Ordinance, no LAND DEVELOPMENT, excavation or construction shall be started on any land parcel or STRUCTURE and no EXPANSION, ALTERATION or change of USE shall be started within any existing STRUCTURE without a Zoning Permit issued by the Zoning Administrator.

No Zoning Permit is required for the following (with the exception of development in the Special Flood Hazard Area which is regulated in Appendix A):

(1) Routine maintenance and repairs, and structural ALTERATIONS to an existing STRUCTURE which will not result in a change or EXPANSION of USE.

(2) Construction or placement of one residential accessory structure with an area of not more than 100 square feet and a HEIGHT of not more than 10 feet, which is not on a permanent foundation, and which complies with the provisions of Section 580 provided there are no other exempt accessory structures on the property already.

(3) Fences.

(4) Roof mounted solar panels not to extend beyond the roof; and roof mounted wind turbines not to exceed the maximum HEIGHT as defined in Articles III and IV.

(5) Any conversion of a SEASONAL DWELLING to a PERMANENT DWELLING shall be done in compliance with the State Water/Wastewater Rules and Section 570, Sewage Disposal. A Zoning Permit shall only be required for such conversion if expansion of the dwelling is proposed.

SECTION 140 *CERTIFICATE OF COMPLIANCE/OCCUPANCY*

In accordance with Section 910 of this Ordinance, all projects for which a Zoning Permit has been issued will require a Certificate of Compliance which documents that all work has been completed in accordance with the Zoning Permit, ~~and~~ all other local ordinances and approvals and 30 V.S.A. § 51 and § 53, related to the Vermont Energy Code. Only those improvements within the jurisdiction of the Milton Zoning Regulations shall be inspected for the Certificate of Compliance.

No new STRUCTURE, or existing STRUCTURE which has been vacated for the purpose of ALTERATIONS and for which a Zoning Permit has been issued, shall be occupied or used in any way until a Certificate of Occupancy has been issued by the Zoning Administrator. For the purposes of this Ordinance, the Certificate of Compliance shall serve as the Certificate of Occupancy where it is required.

SECTION 150 *DIMENSIONAL REQUIREMENTS*

Every USE involving the construction, reconstruction, conversion, structural ALTERATION, relocation or enlargement of a STRUCTURE must comply with the minimum LOT AREA, FRONTAGE, SETBACK areas and all other requirements specified in these Regulations for the district in which the USE occurs. A summary district dimensional table is located immediately following Articles III and IV, District Regulations.

SECTION 160 *GENERAL STANDARDS*

The following standards shall apply:

(a) BUILDING COVERAGE Standards: Building coverage applies to single-family, duplex and three-unit residences. Lot coverage shall not apply to these uses.

(b) LOT COVERAGE Standards: Lot coverage applies to all uses other than single-family, duplex and three-unit residences. The standard for those uses shall vary by district as specified in the Dimensional Standards. Building coverage shall not apply to these uses.

The DRB may waive inclusion of sidewalks and bicycle paths under lot coverage if it determines that such sidewalk/paths will primarily serve as part of a larger transportation network rather than provide on-site circulation.

The DRB may approve higher lot coverage as part of a PLANNED UNIT DEVELOPMENT if an applicant provides equivalent green space and/or landscaped area off-site within the

MIXED USE Zoning Districts.

(c) LIKE KIND QUALITY Standard: "Like kind quality" is a suitable standard in historic areas or other established neighborhoods. In emerging areas and in locations where future plans differ from existing development, quality of a development may be judged in relation to the standards of an approved Town Core Master Plan.

SECTION 170 *ADDITIONAL REQUIREMENTS*

The following requirements and reviews shall be fulfilled by all applicants before a Zoning Permit is granted, unless specifically exempted in this Ordinance:

(1) Sewage Disposal - Section 570
(2) Roads and Drives - Section 590
(3) Site Plan Review - Section 800

SECTION 180 *FLOODPLAIN REGULATIONS*

Appendix A of the Milton Zoning Regulations: *Inundation Hazard Area Regulations* shall take precedence over all sections within the main Articles of the Milton Zoning Regulations for flood hazard areas as described in Section IV of Appendix A.

ARTICLE II
ZONING DISTRICTS

SECTION 200 *DESIGNATION OF DISTRICTS*

The Town of Milton is divided into the following ZONING DISTRICTS as shown on the ZONING MAP:

(1) Downtown Districts:

DB1 Downtown Business District

(2) Residential Districts:

R1 Old Towne Residential
R2 Medium Density Residential
R3 Low Density Residential
R4 Transitional Residential
R5 Agricultural/Rural Residential
R6 Shoreland Residential
R7 Beaverbrook Residential

(3) Commercial Districts:

C1 Interstate Commercial

(4) Industrial Districts:

I1 Light Industrial
I2 General Industrial
I3 Industrial Conservation

(5) MIXED USE Districts:

M1 Milton Crossroads Marketplace Center
M2 Milton Crossroads Marketplace West
M3 Milton Crossroads Marketplace Municipal/Recreation
M4 Checkerberry
M5 Old Towne Residential/Commercial
M6 Main Street

(6) Natural Resource Districts:

FH Flood Hazard
FC Forestry/Conservation/Scenic Ridgeline

SECTION 210 *ZONING MAP*

The location and boundaries of the ZONING DISTRICTS are established on the ZONING MAP, which is on display in the Planning and Zoning Office. The Milton Zoning Map includes the boundaries of the Flood Hazard Zoning District for reference but the boundaries of the District on the Zoning Map shall not take

precedence over Section IV: Lands to Which these Regulations Apply in the *Inundation Hazard Area Regulations* (found in Appendix A of the Milton Zoning Regulations). Reduced copies of the ZONING MAP are attached to copies of these Regulations.

SECTION 220 *INTERPRETATION OF BOUNDARIES*

Where uncertainty exists as to the boundary of any district the following rules shall apply:

220.1 Where a boundary appears to approximately follow the line of a road, river or stream, the boundary follows the center line of such road, river or stream. Where a boundary appears to approximately follow any property, lot line, or Town limit, the boundary follows the line existing when these Regulations were adopted or when official amendments were made to a boundary.

220.2 Boundaries indicated as parallel to or extensions of features indicated in Section 220.1 shall be so construed.

220.3 Any uncertainty as to the boundaries of a ZONING DISTRICT shall be determined in accordance with the above subsections by the Zoning Administrator, and the decision of the Zoning Administrator may be appealed to the Development Review Board pursuant to the *Vermont Municipal and Regional Planning and Development Act*. For lots in two zones refer to Section 670 of these Regulations.

ARTICLES III AND IV
DISTRICT REGULATIONS

SECTION 300 *OLD TOWNE RESIDENTIAL (R1) DISTRICT*

SECTION 301 *Purpose*

Residential USES should continue to characterize this ZONING DISTRICT. Owner-occupied buildings are encouraged and may contain up to three (3) DWELLING UNITS. However, these owner-occupied triplexes are only to be used as an adaptive reuse measure, therefore owner-occupied triplexes are only allowed within a residential buildings existing footprint and square footage that was in existence on or before December 21, 2006. Homeowners may also take advantage of flexible HOME OCCUPATION provisions.

SECTION 302 *Permitted Uses*

(1) SINGLE FAMILY DWELLINGS
(2) DUPLEXES
(3) TRIPLEXES - OWNER OCCUPIED (only within the existing buildings footprint and square footage that was in existence on or before December 21, 2006.)
(4) PLANNED UNIT DEVELOPMENT-Residential (minimum of 5 contiguous acres required.)
(5) ELDERLY HOUSING COMPLEX
(6) BED & BREAKFASTS
(7) PRIVATE/PUBLIC FACILITY
(8) AGRICULTURE
(9) FORESTRY

SECTION 303 *Conditional Uses*

(1) OUTDOOR RECREATION

SECTION 304 *Dimensional Requirements*

(1)	Minimum LOT AREA	10,000 sq. ft.
(2)	Minimum Road FRONTAGE	80 ft.
(3)	Minimum FRONT SETBACK	20 ft.
(4)	Minimum SIDE SETBACK	10 ft.
(5)	Minimum REAR SETBACK	10 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	50%
(8)	Maximum building stories	3 STORIES

SECTION 310 *MEDIUM DENSITY RESIDENTIAL (R2) DISTRICT*

SECTION 311 *Purpose*

The purpose of this area is to allow for medium density development in an area close to the core and within easy access to community services and facilities which has already experienced significant residential development. Due to the severe environmental limitations in parts of this area all development will be carefully reviewed for compatibility with the specific site's development capability.

SECTION 312 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) AGRICULTURE
(3) FORESTRY
(4) PLANNED UNIT DEVELOPMENTS-Residential

SECTION 313 ***Conditional Uses***

(1) DUPLEXES
(2) PRIVATE/PUBLIC FACILITIES
(3) OUTDOOR RECREATION

SECTION 314 ***Residential Dimensional Requirements***

(1)	Minimum LOT AREA	Single FAMILY	40,000 sq. ft.
		DUPLEX	80,000 sq. ft.
(2)	Minimum Road FRONTAGE	Single FAMILY	200 ft.
		DUPLEX	300 ft.
(3)	Minimum FRONT SETBACK	35 ft.	
(4)	Minimum SIDE SETBACK	15 ft.	
(5)	Minimum REAR SETBACK	15 ft.	
(6)	Maximum BUILDING COVERAGE	40%	
(7)	Maximum LOT COVERAGE	15%	

SECTION 315 ***Non-Residential Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	15 ft.
(5)	Minimum REAR SETBACK	15 ft.
(6)	Maximum LOT COVERAGE	15%

SECTION 320 ***LOW DENSITY RESIDENTIAL (R3) DISTRICT***

SECTION 321 ***Purpose***

The purpose of this area is to allow for low density clustered residential development. Due to severe environmental limitations in parts of this area all development will be carefully reviewed for compatibility with the specific site's development capability.

SECTION 322 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) AGRICULTURE
(3) FORESTRY
(4) PLANNED UNIT DEVELOPMENTS-Residential (Major only)
(5) PUBLIC or PRIVATE WAREHOUSING within agricultural STRUCTURES

(6) OUTDOOR RECREATION

SECTION 323 ***Conditional Uses***

(1) PRIVATE/PUBLIC FACILITIES
(2) EARTH AND MINERAL EXCAVATION
(3) Vacation trailer camps
(4) COMMERCIAL PLANT NURSERIES, GREENHOUSES, AND LANDSCAPING SERVICES

SECTION 324 ***Residential Dimensional Requirements***

(1)	Minimum LOT AREA	120,000 sq. ft.
(2)	Minimum Road FRONTAGE	300 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	15%

SECTION 325 ***Non-Residential Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum LOT COVERAGE	15%

SECTION 330 ***TRANSITIONAL RESIDENTIAL (R4) DISTRICT***

SECTION 331 ***Purpose***

The purpose of this area is to provide strong incentives to encourage the preservation of agricultural lands through the clustering of LAND DEVELOPMENT.

SECTION 332 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) AGRICULTURE
(3) FORESTRY
(4) PLANNED UNIT DEVELOPMENTS-Residential (Minor only)
(5) PUBLIC or PRIVATE WAREHOUSING within agricultural STRUCTURES
(6) OUTDOOR RECREATION

SECTION 333 ***Conditional Uses***

(1) PRIVATE/PUBLIC FACILITIES
(2) EARTH AND MINERAL EXCAVATION
(3) Vacation trailer camps
(4) COMMERCIAL PLANT NURSERIES, GREENHOUSES, AND LANDSCAPING SERVICES

(5) BED AND BREAKFAST
(6) PLANNED UNIT DEVELOPMENTS-Residential (Major only)

SECTION 334 ***Residential Dimensional Requirements***

(1)	Minimum LOT AREA	400,000 sq. ft.
(2)	Minimum Road FRONTAGE	400 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	50 ft.
(5)	Minimum REAR SETBACK	50 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	15%

SECTION 335 ***Non-Residential Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum LOT COVERAGE	15%

SECTION 336 ***Planned Unit Developments-Residential***

If a PLANNED UNIT DEVELOPMENT-Residential (major) is proposed within this district, the Development Review Board may authorize a maximum number of DWELLING UNITS not to exceed an overall density of three (3) units per ten (10) developable ACRES.

SECTION 340 ***AGRICULTURAL/RURAL RESIDENTIAL (R5) DISTRICT***

SECTION 341 ***Purpose***

The purpose of this area is to provide for continued AGRICULTURE, FORESTRY and open space USES together with compatible low density residential development. Large portions of the Town have been included in this area because of a combination of circumstances, including: high agricultural potential, distance from community facilities, often severe limitations to development, and natural patterns of dispersed development.

SECTION 342 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) AGRICULTURE
(3) FORESTRY
(4) PLANNED UNIT DEVELOPMENTS-Residential
(5) PUBLIC or PRIVATE WAREHOUSING within agricultural STRUCTURES
(6) OUTDOOR RECREATION

SECTION 343 ***Conditional Uses***

(1) NEIGHBORHOOD CONVENIENCE STORES
(2) EARTH AND MINERAL EXCAVATION

(3) BED AND BREAKFAST
(4) PRIVATE/PUBLIC FACILITIES
(5) KENNELS
(6) Vacation trailer camps
(7) COMMERCIAL PLANT NURSERIES, GREENHOUSES, AND LANDSCAPING SERVICES
(8) SLAUGHTER HOUSE

SECTION 344 ***Residential Dimensional Requirements***

(1)	Minimum LOT AREA	400,000 sq. ft.
(2)	Minimum Road FRONTAGE	400 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	50 ft.
(5)	Minimum REAR SETBACK	50 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	15%

SECTION 345 ***Non-Residential Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum LOT COVERAGE	15%

SECTION 350 ***SHORELAND RESIDENTIAL (R6) DISTRICT***

SECTION 351 ***Purpose***

The purpose of this area is to protect and preserve sensitive shoreland areas and water resources from unsuitable development, to maintain a high standard of quality for all permitted development and to encourage open space along the SHORELINE.

SECTION 352 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) AGRICULTURE
(3) PLANNED UNIT DEVELOPMENTS-Residential

SECTION 353 ***Conditional Uses***

(1) BED AND BREAKFAST
(2) FORESTRY
(3) OUTDOOR RECREATION
(4) Vacation trailer camps
(5) MARINAS
(6) NEIGHBORHOOD CONVENIENCE STORES
(7) Docks, Stairs and Shoreland Restoration projects provided that the Development Review Board finds that the conditions of Section 500 are met and that the proposed STRUCTURE

is necessary for the operation of the PRINCIPAL USE.

SECTION 354 ***Residential Development Requirements***

(1)	Minimum LOT AREA	100,000 sq. ft.
(2)	Minimum Road or SHORELINE FRONTAGE	200 ft.
(3)	Minimum Front Road SETBACK	35 ft.
(4)	Minimum SHORELINE SETBACK	50 ft.
(5)	Minimum SIDE SETBACK	35 ft.
(6)	Minimum REAR SETBACK	35 ft.
(7)	Maximum BUILDING COVERAGE	40%
(8)	Maximum LOT COVERAGE	10%

SECTION 355 ***Non-Residential Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road or SHORELINE FRONTAGE	200 ft.
(3)	Minimum Front Road SETBACK	35 ft.
(4)	Minimum SHORELINE SETBACK	50 ft.
(5)	Minimum SIDE SETBACK	35 ft.
(6)	Minimum REAR SETBACK	35 ft.
(7)	Maximum LOT COVERAGE	25%

SECTION 356 ***Shoreland Ground Cover***

356.1 No more than 25% of existing trees and/or ground cover shall be removed along the SHORELINE for a distance of 25 feet from the SHORELINE within a 5 year period.

356.2 No more than 35% of existing trees and/or ground cover shall be removed for an additional distance of 125 feet (beyond the no-cut area in 357.1) without Site Plan approval from the Development Review Board within a 5 year period. Erosion and stormwater best management practices must be employed during and after site work and tree clearing.

~~***SECTION 357*** ***Conversion of Seasonal Dwellings***~~

~~Any conversion of a SEASONAL DWELLING to a PERMANENT DWELLING shall be done in compliance with the State Water/Wastewater Rules and Section 570, Sewage Disposal,~~ ~~**and Section 900 and Section 901 of the Zoning Regulations.**~~

SECTION 360 ***BEAVERBROOK RESIDENTIAL (R7) DISTRICT***

SECTION 361 ***Purpose***

The purpose of this district is to allow for moderately high density residential development in an area that is linked closely to downtown.

SECTION 362 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) PLANNED UNIT DEVELOPMENTS-Residential (Major only)

(3) DUPLEXES
(4) BED & BREAKFASTS
(5) FORESTRY

SECTION 363 ***Conditional Uses***

(1) AGRICULTURE
(2) PRIVATE/PUBLIC FACILITIES
(3) OUTDOOR RECREATION
(4) TRIPLEXES – OWNER OCCUPIED
(5) ELDERLY HOUSING COMPLEX

SECTION 364 ***Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	125 ft.
(3)	Minimum FRONT SETBACK	20 ft.
(4)	Minimum SIDE SETBACK	15 ft.
(5)	Minimum REAR SETBACK	15 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	25%

SECTION 370 ***INTERSTATE COMMERCIAL (C1) DISTRICT***

SECTION 371 ***Purpose***

The purpose of this area is to reserve space for the provision of services to users of the proposed Milton Interstate Access.

SECTION 372 ***Permitted Uses***

(1) AGRICULTURE
(2) FORESTRY

SECTION 373 ***Conditional Uses***

(1) MOTELS with or without a RESTAURANT
(2) TRAVELER SERVICES

SECTION 374 ***Dimensional Requirements***

(1)	Minimum LOT AREA	40,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	50 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum LOT COVERAGE	15%

SECTION 380 ***LIGHT INDUSTRIAL (I1) DISTRICT***

SECTION 381 ***Purpose***

The purpose of this area is to provide adequate space for light industrial and wholesaling USES. PRINCIPAL USES include: research and development, WHOLESALE distribution, ASSEMBLY, and other USES which will not require excessive space, and will not create noise, odors, dust, or other local disturbances.

SECTION 382 ***Permitted Uses***

(1) ENCLOSED LIGHT MANUFACTURING and ASSEMBLY
(2) RESEARCH AND DEVELOPMENT LABORATORIES
(3) ENCLOSED WHOLESALE
(4) PUBLIC WAREHOUSING
(5) PRIVATE WAREHOUSING
(6) DISTRIBUTING
(7) PLANNED UNIT DEVELOPMENTS-Industrial
(8) TRANSPORTATION FACILITIES

SECTION 383 ***Conditional Uses***

(1) PRIVATE/PUBLIC FACILITIES
(2) PERSONAL SERVICES
(3) GENERAL/MEDICAL OFFICE

SECTION 384 ***Dimensional Requirements***

(1)	Minimum LOT AREA	20,000 sq. ft.
(2)	Minimum Road FRONTAGE	100 ft.
(3)	Minimum FRONT SETBACK	25 ft.
(4)	Minimum SIDE SETBACK	25 ft.
(5)	Minimum REAR SETBACK	25 ft.
(6)	Maximum LOT COVERAGE	50%

SECTION 390 ***GENERAL INDUSTRIAL (I2) DISTRICT***

SECTION 391 ***Purpose***

The purpose of this area is to provide adequate space for industrial uses, specified large scale retail uses which require room for EXPANSION, and space for OUTDOOR STORAGE. These areas are not intended for businesses that will create a high level of retail traffic. **PLANNED UNIT DEVELOPMENTS will be encouraged to CLUSTER development in order to preserve and maintain agriculture, open space, natural areas, and FORESTRY lands, and maintain separation from residential neighborhoods.**

SECTION 392 ***Permitted Uses***

(1) MANUFACTURING and associated RETAIL SALES with a significant component of goods sold being produced on the premises
(2) RESEARCH AND DEVELOPMENT LABORATORIES
(3) ENCLOSED PUBLIC WAREHOUSING

(4) ENCLOSED PRIVATE WAREHOUSING
(5) ENCLOSED OUTDOOR STORAGE
(6) TRUCKING and WHOLESALE DISTRIBUTION
(7) CONSTRUCTION AND AGRICULTURAL EQUIPMENT SALES with associated service and repair
(8) RETAIL SALES of automobiles, trucks, busses, boats/marina, and large equipment with associated service and repair
(9) RETAIL SALES and WHOLESALE of Building Home Supply
(10) LUMBERYARDS
(11) MOBILE/MANUFACTURED HOME RETAIL SALES & Rental
(12) COMMERCIAL PLANT NURSERIES, GREENHOUSES & LANDSCAPING SERVICES
(13) DRY CLEANING PLANT without walk-in business
(14) ANIMAL SHELTER
(15) PRINTING FACILITY
(16) Transit Station including Train and Bus stations. Also automobile parking garages or lots not located on a lot on which there is another principle use to which the parking is related
(17) TRUCK STOP
(18) AGRICULTURE
(19) FORESTRY
(20) PLANNED UNIT DEVELOPMENTS-Industrial
(21) PLANNED UNIT DEVELOPMENTS-Commercial (limited to the uses listed under Section 392 and 393).
(22) CHILD DAY CARE FACILITY

The USES noted below in Sections 392 (23) and (24) and the CONDITIONAL USES as noted in Section 393 (1) - (7)"CONDITIONAL USES" may only be included in PLANNED UNIT DEVELOPMENTS-Industrial;
(23) INDOOR RECREATION
(24) OUTDOOR RECREATION
(25) DISTRIBUTING

SECTION 393 ***Conditional Uses***

(1) PERSONAL SERVICES directly serving industries therein
(2) GENERAL/MEDICAL OFFICE directly serving industries therein
(3) Public and private UTILITIES AND UTILITY OFFICES
(4) STATE FACILITIES
(5) PRIVATE/PUBLIC FACILITIES directly serving industries therein
(6) EARTH AND MINERAL EXCAVATION
(7) RECYCLING YARD (see Section ~~890~~900 for specific review criteria)
(8) RESTAURANT, as an ACCESSORY USE
(9) BAKERY/DELICATESSEN, as an ACCESSORY USE
(10) RETAIL SALES, if property appears on the State Register of Historic Places
(11) PERSONAL SERVICES, if property appears on the State Register of Historic Places
(12) GENERAL/MEDICAL OFFICE, if property appears on the State Register of Historic Places
(13) RESTAURANT, if property appears on the State Register of Historic Places
(14) BAKERY/DELICATESSEN, if property appears on the State Register of Historic Places
(15) PRIVATE/PUBLIC FACILITY not listed above, if property appears on the State Register of Historic Places

SECTION 394 ***Dimensional Requirements***

(1)	Minimum LOT AREA	100,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	50 ft.
(4)	Minimum SIDE SETBACK	35 ft.
(5)	Minimum REAR SETBACK	35 ft.
(6)	Maximum LOT COVERAGE	75%

SECTION 400 ***INDUSTRIAL CONSERVATION (I3) DISTRICT***

SECTION 401 ***Purpose***

The purpose of this area is to allow for an environmentally-sensitive planned industrial park, which would permit the clustering of industries and ACCESSORY USES on large lots, while providing adequate space for EXPANSION. Therefore, the key to the development of this area will be the addition of PLANNED UNIT DEVELOPMENTS in this ZONING DISTRICT. USES will be encouraged to CLUSTER their development in order to preserve and maintain agricultural, open space, natural areas and FORESTRY lands, maintain separation from residential neighborhoods in order to minimize impacts, facilitate the adequate and economical provisions of STREETS and utilities, encourage efficient construction, minimize access points to State and local highways, and preserve scenic views and viewsheds wherever possible.

SECTION 402 ***Permitted Uses***

(1) PLANNED UNIT DEVELOPMENT-Industrial to include the following USES:
- (a) ENCLOSED MANUFACTURING and ASSEMBLY
- (b) RESEARCH AND DEVELOPMENT LABORATORIES serviced by Town sewer
- (c) ENCLOSED WHOLESALE
- (d) PRIVATE WAREHOUSING
- (e) ENCLOSED OUTDOOR STORAGE
- (f) TRUCKING
- (g) DISTRIBUTING
- (h) PERSONAL SERVICES
- (I) GENERAL/MEDICAL OFFICE
- (j) EMPLOYEE TRAINING FACILITY
- (k) ~~ACCESSORY USEs to a PRINCIPAL USE to include:~~ CHILD DEVELOPMENT CENTER, as an ASSESSORY USE
- (l) RESTAURANT, as an ASSESSORY USE
- (m) MOTEL~~/Guest Facilities~~, as an ASSESSORY USE
- (n) CLINIC, as an ASSESSORY USE
- (o) TRANSPORTATION FACILITIES, as an ASSESSORY USE

The permitted USES noted below in Sections 402(2) through (5), and the CONDITIONAL USES as noted in Section 403 "CONDITIONAL USES" may also be included in PLANNED UNIT DEVELOPMENT-Industrial:

(2) OUTDOOR RECREATION
(3) INDOOR RECREATION
(4) AGRICULTURE
(5) FORESTRY

SECTION 403 ***Conditional Uses***

(1) Public and private UTILITIES AND UTILITY OFFICES
(2) STATE FACILITIES
(3) PRIVATE/PUBLIC FACILITIES
(4) Limited retail, as an ACCESSORY USE, of items manufactured or assembled on the premises, provided that the retail sales area (e.g., showroom) does not exceed 10% or 2,000 sq. ft., whichever is the lessor, of the total GROSS FLOOR AREA of the premises in which the items are manufactured or assembled. The retail sales area shall be indicated on the Site Plan submitted in accordance with Section 800 "Site Plan Review".
(5) RENEWABLE ENERGY RESOURCES

SECTION 404 ***Dimensional Requirements***

(1)	Minimum LOT AREA	200,000 sq. ft.
(2)	Minimum Road FRONTAGE	200 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	20 ft.
(5)	Minimum SIDE SETBACK for shared DRIVEWAYS and/or parking areas only	0 ft.
(6)	Minimum REAR SETBACK	20 ft.
(7)	Minimum SHORELINE SETBACK	50 ft.
(8)	Maximum LOT COVERAGE	40%
(9)	Maximum building HEIGHT	70 ft.

For any building above four (4) stories – additional review standards, including increased setbacks, may apply to ensure LIKE KIND QUALITY.

SECTION 405 ***Shoreland Ground Cover***

406.1 No more than 25% of existing trees and/or ground cover shall be removed along the SHORELINE for a distance of 25 feet from the SHORELINE within a 5 year period.

406.2 No more than 35% of existing trees and/or ground cover shall be removed for an additional distance of 125 feet beyond the no-cut area noted in Section 406.1 (beyond the no-cut area in 406.1) without Site Plan approval from the Development Review Board within a 5-year period. Erosion and stormwater best management practices must be employed during and after site work and tree clearing.

SECTION 410 ***MILTON CROSSROADS MARKETPLACE CENTER (M1) DISTRICT***

SECTION 411 ***Purpose***

Reflecting its central location within the downtown, the purpose of this district is to allow for the tallest buildings, the highest density, and the greatest extent of MIXED USE including residential, commercial, and some industrial uses. Buildings should be placed close to the sidewalks. Street trees and green belts along sidewalks should be constructed to provide a pedestrian friendly environment.

SECTION 412 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS

(2) DUPLEXES
(3) MULTIFAMILY DWELLINGS
(4) PLANNED UNIT DEVELOPMENTS-Residential
(5) PLANNED UNIT DEVELOPMENTS-Commercial
(6) PLANNED UNIT DEVELOPMENTS-MIXED USE
(7) ELDERLY HOUSING COMPLEX
(8) RETAIL SALES
(9) PERSONAL SERVICES
(10) GENERAL/MEDICAL OFFICE
(11) RESTAURANTS
(12) RESTAURANTS, FAST FOOD
(13) BAKERY/DELICATESSEN
(14) MOTELS
(15) BED & BREAKFASTS
(16) INDOOR RECREATION
(17) PRIVATE/PUBLIC FACILITIES
(18) AGRICULTURE
(19) FORESTRY
(20) Parking Structures
(21) CHILD DAY CARE FACILITY

SECTION 413 ***Conditional Uses***

(1) ENCLOSED LIGHT MANUFACTURING AND ASSEMBLY
(2) RESEARCH AND DEVELOPMENT LABORATORIES
(3) ENCLOSED WHOLESALE
(4) PRIVATE WAREHOUSING
(5) DISTRIBUTING
(6) OUTDOOR RECREATION
(7) CONSTRUCTION AND AGRICULTURAL EQUIPMENT SALES AND SERVICE

SECTION 414 ***Dimensional Requirements***

(1)	Minimum LOT AREA	5,000 sq. ft.
(2)	Minimum Road FRONTAGE	0 ft.
(3)	Minimum FRONT SETBACK	0 to 20 ft.
(4)	Minimum SIDE SETBACK	0 ft.
(5)	Minimum REAR SETBACK	0 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	80%
(8)	Maximum building stories	5 stories
	For any building above four (4) stories – additional review standards, including increased setbacks, may apply to ensure LIKE KIND QUALITY.	
(9)	Maximum building HEIGHT	70 ft.

SECTION 420 ***MILTON CROSSROADS MARKETPLACE WEST (M2) DISTRICT***

SECTION 421 ***Purpose***

The purpose of this district is to allow a mix of residential and commercial uses, including larger retail

buildings. Haydenberry Drive should serve as the primary access to this area. Sidewalks along Route 7 should extend up Haydenberry Drive and throughout all development areas.

SECTION 422 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) DUPLEXES
(3) MULTIFAMILY DWELLINGS
(4) PLANNED UNIT DEVELOPMENTS-Residential
(5) PLANNED UNIT DEVELOPMENTS-Commercial
(6) PLANNED UNIT DEVELOPMENTS-MIXED USE
(7) ELDERLY HOUSING COMPLEX
(8) RETAIL SALES in a PLANNED UNIT DEVELOPMENT-MIXED USE
(9) PERSONAL SERVICES in a PLANNED UNIT DEVELOPMENT-MIXED USE
(10) GENERAL/MEDICAL OFFICE
(11) RESTAURANTS
(12) BAKERY/DELICATESSEN
(13) BED & BREAKFASTS
(14) ~~PUBLIC/~~PRIVATE/PUBLIC FACILITES in a PLANNED UNIT DEVELOPMENT-MIXED USE
(15) AGRICULTURE
(16) FORESTRY
(17) CHILD DAY CARE FACILITY

SECTION 423 ***Conditional Uses***

(1) COMMERCIAL PLANT NURSURIES, GREENHOUSES, AND LANDSCAPING SERVICES
(2) OUTDOOR RECREATION
(3) PERSONAL SERVICES
(4) PRIVATE/PUBLIC FACILITIES
(5) Parking Structures
(6) RESTAURANTS, FAST FOOD
(7) RETAIL SALES

SECTION 424 ***Dimensional Requirements***

(1)	Minimum LOT AREA	7,500 sq. ft.
(2)	Minimum Road FRONTAGE	0 ft.
(3)	Minimum FRONT SETBACK	0 to 20 ft.
(4)	Minimum SIDE SETBACK	0 ft.
(5)	Minimum REAR SETBACK	0 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	70%
(8)	Maximum building stories	4 STORIES

For any building above three (3) stories – additional review standards, including increased setbacks, may apply to ensure LIKE KIND QUALITY.

SECTION 430 ***MILTON CROSSROADS MARKETPLACE MUNICIPAL/RECREATION (M3) DISTRICT***

SECTION 431 ***Purpose***

The purpose of this district is to allow for public and recreational facilities.

SECTION 432 ***Permitted Uses***

(1) PUBLIC FACILITIES
(2) INDOOR RECREATION
(3) OUTDOOR RECREATION
(4) AGRICULTURE
(5) FORESTRY
(6) PLANNED UNIT DEVELOPMENTS-MIXED USE

SECTION 433 ***Dimensional Requirements***

(1)	Minimum LOT AREA	5,000 sq. ft.
(2)	Minimum Road FRONTAGE	0 ft.
(3)	Minimum FRONT SETBACK	0 to 20 ft.
(4)	Minimum SIDE SETBACK	0 ft.
(5)	Minimum REAR SETBACK	0 ft.
(6)	Maximum LOT COVERAGE	80%
(7)	Maximum building stories	5 STORIES
	For any building above four (4) stories – additional review standards, including increased setbacks, may apply to ensure LIKE KIND QUALITY.	
(8)	Maximum building HEIGHT	70 ft.

SECTION 440 ***CHECKERBERRY (M4) DISTRICT***

SECTION 441 ***Purpose***

The purpose of this district is to allow for a mix of residential, commercial, and limited industrial uses.

SECTION 442 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) DUPLEXES
(3) MULTIFAMILY DWELLINGS
(4) PLANNED UNIT DEVELOPMENTS-Residential
(5) PLANNED UNIT DEVELOPMENTS-Commercial
(6) PLANNED UNIT DEVELOPMENTS-MIXED USE
(7) ELDERLY HOUSING COMPLEX
(8) RETAIL SALES
(9) PERSONAL SERVICES
(10) GENERAL/MEDICAL OFFICE
(11) RESTAURANTS
(12) RESTAURANTS, FAST FOOD
(13) BAKERY/DELICATESSEN
(14) MOTELS

(15) BED & BREAKFASTS
(16) AUTOMOTIVE SALES with associated service and repair
(17) PUBLIC WAREHOUSING
(18) PRIVATE WAREHOUSING
(19) DISTRIBUTING of non-HAZARDOUS MATERIALS
(20) PRIVATE/PUBLIC FACILITIES
(21) COMMERCIAL PLANT NURSURIES, GREENHOUSES, AND LANDSCAPING SERVICES
(22) AGRICULTURE
(23) INDOOR RECREATION
(24) FORESTRY
(25) MOBILE HOME PARKS
(26) CHILD DAY CARE FACILITY

SECTION 443 ***Conditional Uses***

(1) ENCLOSED LIGHT MANUFACTURING AND ASSEMBLY
(2) RESEARCH AND DEVELOPMENT LABORATORIES
(3) ENCLOSED WHOLESALE
(4) ENCLOSED OUTDOOR STORAGE
(5) CONSTRUCTION AND AGRICULTURAL EQUIPMENT SALES AND SERVICE
(6) OUTDOOR RECREATION
(7) DISTRIBUTING of HAZARDOUS MATERIALS

SECTION 444 ***Dimensional Requirements***

(1)	Minimum LOT AREA	20,000 sq. ft.
(2)	Minimum Road FRONTAGE along Route 7	200 ft.
(3)	Minimum Road FRONTAGE along other roads	100 ft.
(4)	Minimum FRONT SETBACK	20 ft.
(5)	Minimum SIDE SETBACK	10 ft.
(6)	Minimum REAR SETBACK	10 ft.
	Maximum BUILDING COVERAGE	40%
(8)	Maximum LOT COVERAGE	60%
(9)	Maximum building stories	4 STORIES
(10)	Maximum DENSITY	7 units per 40,000 sq. ft. (Multifamily Dwellings, PUD-Residential or PUD-MIXED USE)

SECTION 450 ***OLD TOWNE RESIDENTIAL/COMMERCIAL (M5) DISTRICT***

SECTION 451 ***Purpose***

The purpose of this district is to allow mainly residential uses, and some limited commercial uses.

SECTION 452 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) DUPLEXES
(3) PLANNED UNIT DEVELOPMENTS-Residential (minimum of 5 contiguous acres required.)
(4) ELDERLY HOUSING COMPLEX

(5) PLANNED UNIT DEVELOPMENTS-Commercial
(6) PLANNED UNIT DEVELOPMENTS-MIXED USE
(7) PERSONAL SERVICES
(8) GENERAL/MEDICAL OFFICE
(9) RESTAURANTS
(10) BAKERY/DELICATESSEN
(11) BED & BREAKFASTS
(12) PRIVATE/PUBLIC FACILITIES
(13) AGRICULTURE
(14) FORESTRY
(15) CHILD DAY CARE FACILITY

SECTION 453 ***Conditional Uses***

(1) INDOOR RECREATION
(2) OUTDOOR RECREATION

SECTION 454 ***Dimensional Requirements***

(1)	Minimum LOT AREA	10,000 sq. ft.
(2)	Minimum Road FRONTAGE	80 ft.
(3)	Minimum FRONT SETBACK	20 ft.
(4)	Minimum SIDE SETBACK	10 ft.
(5)	Minimum REAR SETBACK	10 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	50%
(8)	Maximum building stories	3 STORIES
(9)	Maximum DENSITY	4 units per 40,000 sq. ft. (PUD-Residential and/or PUD-MIXED USE)

SECTION 460 ***MAIN STREET (M6) DISTRICT***

SECTION 461 ***Purpose***

The purpose of this district is to allow continued use and reuse of existing historic buildings, including new buildings that are sensitive to the existing character of the area. Owner-occupied buildings are encouraged and may contain up to three (3) DWELLING UNITS. However, these owner-occupied triplexes are only to be used as an adaptive reuse measure, therefore multifamily dwellings are only allowed within a residential buildings existing footprint and square footage that was in existence on or before December 21, 2006.

SECTION 462 ***Permitted Uses***

(1) SINGLE FAMILY DWELLINGS
(2) DUPLEXES
(3) TRIPLEXES - OWNER OCCUPIED (only within the existing buildings footprint and square footage that was in existence on or before December 21, 2006.)
(4) PLANNED UNIT DEVELOPMENTS-Residential (minimum of 5 contiguous acres required.)
(5) PLANNED UNIT DEVELOPMENTS-MIXED USE
(6) PLANNED UNIT DEVELOPMENTS-Commercial

(7) ELDERLY HOUSING COMPLEX
(8) PERSONAL SERVICES
(9) GENERAL/MEDICAL OFFICE
(10) RESTAURANTS
(11) BAKERY/DELICATESSEN
(12) BED & BREAKFASTS
(13) PRIVATE/PUBLIC FACILITIES
(14) CHILD DAY CARE FACILITY

SECTION 463 ***Dimensional Requirements***

(1)	Minimum LOT AREA	10,000 sq. ft.
(2)	Minimum Road FRONTAGE	80 ft.
(3)	Minimum FRONT SETBACK	20 ft.
(4)	Minimum SIDE SETBACK	10 ft.
(5)	Minimum REAR SETBACK	10 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	50%
(8)	Maximum building stories	3 STORIES

SECTION 465 ***DOWNTOWN BUSINESS (DB1) DISTRICT***

SECTION 466 ***Purpose***

The purpose of the DB1 District is to encourage and enhance the development of Town Core areas with the tallest buildings, highest density, and greatest diversity of commercial and light industrial uses. Residential uses ~~would~~ will not be allowed except where incorporated into a Planned Unit Development-MIXED USE or where created as an Elderly Housing Complex~~elderly housing complex~~. Buildings should be placed close to the sidewalks. A pedestrian friendly environment should be encouraged through the planting of street trees and green belts along sidewalks and the placement of safe street crossings.

SECTION 467 ***Permitted Uses***

(1) SINGLE FAMILY RESIDENCES in existence prior to the effective date of this section. (NOTE: this section became effective on October 11, 2005)
(2) SINGLE FAMILY, DUPLEX, AND MULTIFAMILY DWELLING USES provided that they are incorporated into a PLANNED UNIT DEVELOPMENT-MIXED USE.
(3) PLANNED UNIT DEVELOPMENTS (PUD)-MIXED USE provided that:

(a) at least 20% of the gross floor area of all the buildings in a PUD is constructed as commercial space either as 20% of each building, or with the gross floor area total distributed among several buildings, or with the gross floor area total constructed all in a single building; or

(b) the entire first floor of each PUD building is constructed as commercial space; and

(c) the commercial space in a PUD shall be either constructed first or concurrently with the non-commercial space in a PUD.

(4) PLANNED UNIT DEVELOPMENTS-Commercial

(5) ELDERLY HOUSING COMPLEX
(6) RETAIL SALES of fuel, food, goods, & merchandise.
(7) PERSONAL SERVICES
(8) GENERAL/MEDICAL OFFICE
(9) LAUNDROMATS
(10) RESTAURANTS
(11) RESTAURANTS, FAST FOOD
(12) BAKERY/DELICATESSEN
(13) MOTELS
(14) PRIVATE/PUBLIC FACILITIES
(15) INDOOR RECREATION
(16) INDOOR THEATERS
(17) FINANCIAL ESTABLISHMENTS
(18) FUNERAL ESTABLISHMENTS
(19) Transit Stations including Train and Bus stations. Also automobile parking garages or lots.
(20) DRIVE-UP FACILITIES
(21) CONVENTION CENTER
(22) CHILD DAY CARE FACILITY

SECTION 468 ***Conditional Uses***

(1) ENCLOSED LIGHT MANUFACTURING AND ASSEMBLY
(2) RESEARCH AND DEVELOPMENT LABORATORIES
(3) DISTRIBUTING
(4) OUTDOOR RECREATION
(5) COMMERCIAL PLANT NURSERIES, GREENHOUSES, AND LANDSCAPING SERVICES
(6) DRYCLEANING FACILITIES
(7) PUBLIC OR PRIVATE WAREHOUSE
(8) PRECIOUS METAL DEALER
(9) Adult Oriented Business (defined in and subject to review under in Section 910)

SECTION 469 ***Dimensional Requirements***

(1)	Minimum LOT AREA	5,000 sq. ft.
(2)	Minimum Road FRONTAGE	0 ft.
(3)	Minimum FRONT SETBACK	0 ft.
(4)	Minimum SIDE SETBACK	0 ft.
(5)	Minimum REAR SETBACK	0 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	80%
(8)	Maximum building HEIGHT	5 STORIES up to 70 ft.

For any building above four (4) stories – additional review standards, including increased setbacks, may apply to ensure LIKE KIND QUALITY.

SECTION 470 ***FLOOD HAZARD (FH) DISTRICT***

Refer to Appendix A of the Milton Zoning Regulations: *Inundation Hazard Area Regulations* for the regulations for the flood hazard areas as described in Section IV of Appendix A.

SECTION 480 ***FORESTRY/CONSERVATION/SCENIC RIDGELINE (FC) DISTRICT***

SECTION 481 ***Purpose***

The purpose of this district is to preserve open space; to protect soils, water, and other natural resources; to protect scenic ridgeline viewsheds and vistas important to the character of the Town of Milton; to preserve forests and encourage forest-related USES; to promote AGRICULTURE and recreational USES that can benefit from the unique topography of the area; and to enable, to a limited extent, residential USES. Such residential USES are to be enabled only for land parcels necessarily located near the district boundary that are accessible without extreme land disruption; that do not contain steep slopes, unstable soils, and other natural limitations; and only for sites that have the capacity to provide safe ingress and egress. Where possible, said residential USES shall be clustered.

The undeveloped ridges and hillsides of Milton are one of Milton's principal scenic qualities and contribute significantly to the enjoyment of the rural and pastoral character of the town. The Scenic ridgelines have been identified as Georgia Mountain, Milton Pond and surrounding ridgeline, Bald Hill, Cobble Hill, Eagle Mountain and Arrowhead Mountain. In order to protect these ridgelines, no STRUCTURE or BUILDING shall be visible above the existing tree line.

SECTION 482 ***Permitted Uses***

(1) AGRICULTURE
(2) FORESTRY
(3) PLANNED UNIT DEVELOPMENT-Residential (Minor only) - the maximum density for PLANNED UNIT DEVELOPMENT-Residential (Minor only) shall be based upon the conventional layout requirements for permitted USES outlined in Section 484, and as applied to Section 856.1 of these Regulations.

SECTION 483 ***Conditional Uses***

(1) OUTDOOR RECREATION
(2) ACCESSORY STRUCTURES provided that the Development Review Board finds that the conditions of Section 500 are met and that the proposed STRUCTURE is necessary for the operation of the PRINCIPAL USE.
(3) SINGLE FAMILY DWELLINGS and ACCESSORY STRUCTURES thereto, provided that the proposed dwelling satisfies the requirements of Section 500 of these by-laws, and provided further that the Development Review Board makes an affirmative finding that the proposed USE complies with the following criteria:
    (a) the location of the BUILDABLE ENVELOPE will not occur on land that is clearly undevelopable due to environmental limitations, such as designated WETLANDS, navigable streams or navigable water courses, rock formations visible from outside the site, UNDEVELOPABLE SOILS, flood and earth hazard areas;
    (b) the location of the BUILDABLE ENVELOPE will not occur on land containing slopes in excess of 15%, defined as the change in elevation divided by distance in feet as determined by a topographic survey with contour intervals of five feet;
    (c) the parcel of land containing the site has the capacity to provide safe access to the BUILDABLE ENVELOPE via roadway with a grade of 10% or less;
    (d) no flood or earth movement hazard area, designated wetland, navigable stream, navigable watercourse, or rock formation visible from outside the site shall be disrupted in order to gain access to the BUILDABLE ENVELOPE;
    (e) the USE has the capacity to provide a septic design that conforms with Town of Milton and State standards within the BUILDABLE ENVELOPE.
(4) BED AND BREAKFAST, provided that the proposed USE satisfies the requirements of

Section 500 of these ~~by-laws~~Regulations, and that one of the following conditions are satisfied:

(a) The Development Review Board makes an affirmative finding that the proposed USE complies with the criteria outlined in Section 483(3)(a)(b)(c)(d) and (e) above are satisfied through the procedures outlined in Section 486 of this Ordinance;

(b) The proposed BED AND BREAKFAST occurs within an approved PLANNED RESIDENTIAL DEVELOPMENT;

(c) The proposed BED AND BREAKFAST occurs within a previously approved BUILDABLE ENVELOPE.

(5) PLANNED UNIT DEVELOPMENT-Residential (Major only) - the maximum density for PLANNED UNIT DEVELOPMENT-Residential (Major only) shall be based upon the conventional layout requirements for permitted USES outlined in Section 484, and as applied to Section 856.1 of these Regulations.

SECTION 484 ***Dimensional Requirements for Permitted Uses***

(1)	Minimum LOT AREA	600,000 sq. ft.
(2)	Minimum Road FRONTAGE	100 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	50 ft.
(5)	Minimum REAR SETBACK	50 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	15%

SECTION 485 ***Dimensional Requirements for Conditional Uses***

(1)	Minimum LOT AREA	600,000 sq. ft.
(2)	Minimum Road FRONTAGE	100 ft.
(3)	Minimum FRONT SETBACK	35 ft.
(4)	Minimum SIDE SETBACK	50 ft.
(5)	Minimum REAR SETBACK	50 ft.
(6)	Maximum BUILDING COVERAGE	40%
(7)	Maximum LOT COVERAGE	15% of the developable portions of the lot, as determined by Section 483(3)(a)(b)(c)(d) of this Ordinance.
(8)	Minimum SETBACK from designated WETLANDS, navigable streams and watercourses, or natural features determined by the Development Review Board to be of ecological or aesthetic significance.	200 ft.

SECTION 486 ***Procedures and Materials for All Uses***

Applications for all USES within this district must first be directed to the Planning Staff who shall determine the completeness of the application. The following materials shall be required by the Development Review Board in order to make findings based on the following criteria:

(a) a topographic survey showing contour intervals of five feet for the portion of the site that is to contain the proposed use showing the relationship of the proposed use to the surrounding

terrain and existing vegetation. All slopes greater than 15% as determined by the change in elevation divided by distance in feet shall be clearly delineated on the survey and shall be excluded from the BUILDABLE ENVELOPE;

(b) a survey delineating all designated WETLANDS, navigable streams, navigable watercourses, wooded and open areas, flood hazard areas and earth movement hazard areas occurring within 200 feet of any proposed use or means of access.

(c) a roadway profile with grading limits clearly defined and existing and proposed cross-sections at critical locations that shows the proposed means of access to the BUILDABLE ENVELOPE or use; the profile must demonstrate that a roadway with a grade of 10% or less can be constructed in the location of any proposed means of access to the BUILDABLE ENVELOPE or use;

(d) sections and elevations clearly showing the relationship of the existing site and the proposed use and access roadway or driveway to the existing surroundings, specifically the existing vegetation and topography;

(e) a letter from a certified engineer, indicating that all of the elements required for submission as indicated above are complete and accurate;

(f) a septic design conforming to State standards for the proposed use.

Summary Dimensional Table

	ZONING DISTRICTS																			
[1]Dimensional Requirements	R1	R2	R3	R4	R5	R6	R7	C1	I1	I2	I3	M1	M2	M3	M4	M5	M6	DB1	FC	FH
Minimum Lot Area																				
Residential	10,000 sf	40,000 sf (single family) 80,000 sf (duplex)	120,000 sf	400,000 sf	400,000 sf	100,000 sf	40,000 sf	NA	NA	NA	NA	5,000 sf	7,500 sf	5,000 sf	[6]20,000 sf	[6]10,000 sf	10,000 sf	5,000 sf	600,000 sf	
Non-Residential	10,000 sf	40,000 sf	40,000 sf	40,000 sf	40,000 sf	40,000 sf	40,000 sf	40,000 sf	20,000 sf	100,000 sf	200,000 sf	5,000 sf	7,500 sf	5,000 sf	20,000 sf	10,000 sf	10,000 sf	5,000 sf	600,000 sf	
Minimum Road FRONTAGE																				
Residential	80 ft	200 ft (single family) 300 ft (duplex)	300 ft	400 ft	400 ft	200 ft	125 ft	NA	NA	NA	NA	0 ft	0 ft	0 ft	[6]100 or 200 ft	80 ft	80 ft	0 ft	100 ft	SEE
Non-Residential	80 ft	200 ft	200 sf	200 ft	200 ft	200 ft	125 ft	200 ft	100 ft	200 ft	200 ft	0 ft	0 ft	0 ft	[6]100 or 200 ft	80 ft	80 ft	0 ft	100 ft	
Minimum FRONT SETBACK	20 ft	35 ft	35 ft	35 ft	35 ft	35 ft	20 ft	50 ft	25 ft	50 ft	35 ft	0 to 20 ft	0 to 20 ft	0 to 20 ft	20 ft	20 ft	20 ft	0 ft	35 ft	Appendix
Minimum SIDE SETBACK																			35 ft	
Residential	10 ft	15 ft	35 ft	50 ft	50 ft	35 ft	15 ft	NA	NA	NA	NA	0 ft	0 ft	0 ft	10 ft	10 ft	10 ft	0ft	50 ft	
Non-Residential	10 ft	15 ft	35 ft	35 ft	35 ft	35 ft	15 ft	35 ft	25 ft	35 ft	[6]20 ft	0 ft	0 ft	0 ft	10 ft	10 ft	10 ft	0 ft	50 ft	
Minimum REAR SETBACK																				
Residential	10 ft	15 ft	35 ft	50 ft	50 ft	35 ft	15 ft	NA	NA	NA	NA	0 ft	0 ft	0 ft	10 ft	10 ft	10 ft	0 ft	50 ft	
Non-Residential	10 ft	15 ft	35 ft	35 ft	35 ft	35 ft	15 ft	35 ft	25 ft	35 ft	20 ft	0 ft	0 ft	0 ft	10 ft	10 ft	10 ft	0 ft	50 ft	
Minimum SHORELINE SETBACK	NA	NA	NA	NA	NA	50 ft	NA	NA	NA	NA	50 ft	NA	NA	NA	NA	NA	NA	NA	[6]200 ft	
MAXIMUM BUILDING COVERAGE																				
[2]Residential	40%	40%	40%	40%	40%	40%	40%	NA	NA	NA	NA	40%	40%	NA	40%	40%	40%	40%	40%	A
[3]Non-Residential	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
Maximum LOT COVERAGE																				
[4]Residential	50%	15%	15%	15%	15%	10%	25%	NA	NA	NA	NA	80%	70%	80%	60%	50%	50%	80%	15%	
[3]Non-Residential	50%	15%	15%	15%	15%	25%	25%	15%	50%	75%	40%	80%	70%	80%	60%	50%	50%	80%	[6]15%	
[5]Maximum Building Stories or HEIGHT	3 Stories	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft	70 ft	5 stories or 70 ft	4 stories	5 stories or 70 ft	4 stories	3 stories	3 stories	5 stories or 70 ft	35 ft	

[1] See individual Zoning Districts for Permitted and Conditional uses

[2] Applies to single family, duplex, and 3-unit residential only

[3] Applies All uses other than single family, duplex, and 3-unit residential.

[4] Applies to all residential uses other than single family, duplex, and 3-unit residential

[5] See individual Zoning Districts for specifics on height

[6] See individual Zoning District for additional requirements

ARTICLES V, VI AND VII
GENERAL REGULATIONS

SECTION 500 *CONDITIONAL USES*

No Zoning Permit shall be issued by the Zoning Administrator for any USE or STRUCTURE which requires CONDITIONAL USE approval until the Development Review Board grants such approval, after PUBLIC NOTICE and public hearing. The authorization by the Development Review Board shall be granted only upon a finding by it that the proposed USE complies with the specific dimensional and other applicable standards as set forth in these Regulations and that the proposed CONDITIONAL USE does not have an undue adverse effect:

500.1 The capacity of existing or planned community facilities or services including water, waste disposal, roads, police, fire services and schools.

500.2 The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.

500.3 Environmental limitations of the site or area, and significant natural resource areas or sites.

500.4 The *Comprehensive Plan* and all bylaws, ordinances and/or regulations of the Town of Milton.

500.5 Traffic on roads and highways in the vicinity.

500.6 Utilization of renewable energy resources.

SECTION 501 *Conditions*

In granting such CONDITIONAL USE, the Development Review Board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the provisions and intentions of these Regulations and the Milton *Comprehensive Plan*.

SECTION 502 *Time Limit*

The Development Review Board shall act to approve or disapprove any such requested CONDITIONAL USE within forty-five (45) days after the date of the final public hearing held under this Section, provided the applicant has met all the requirements of these Regulations. Failure to so act within such period shall be deemed approval.

SECTION 503 *Appeal*

Decisions by the Development Review Board may be appealed in accordance with the *Vermont Administrative Procedure Act* (Title 3, V.S.A., Chapter 25). All decisions shall include information on appeal procedures (Section 960).

SECTION 510 *NON-CONFORMING USES*

The following provisions shall apply to all ~~buildings containing USES existing on the effective date of these~~

~~Regulations which do not conform to the land USE requirements of the district in which they are located and to all buildings and USES that in the future do not conform by reason of any subsequent amendment to these Regulations.~~NON-CONFORMING USES.

SECTION 511 ***Change of Use***

A NON-CONFORMING USE may not be changed to another NON-CONFORMING USE, except as follows:

(1) The change is approved by the Development Review Board under the requirements of Section 500 for CONDITIONAL USE approval; and

(2) The proposed USE is a permitted USE within at least one ZONING DISTRICT within the Town of Milton, except as limited under Section 894(1) of this Ordinance; and

(3) The proposed USE is one which is less in degree of non-conformity than the previous USE. In making such a determination, the Development Review Board must find that the proposed USE will more closely resemble the permitted USES within the district, and will reduce the impact of the previous USE on such factors as parking, traffic, open storage, visual impact and noise.

SECTION 512 ***Expansion or Enlargement***

A NON-CONFORMING USE or STRUCTURE containing a NON-CONFORMING USE may not be expanded or enlarged, except as follows:

(1) The EXPANSION or enlargement is approved by the Development Review Board under the requirements of Section 500 for CONDITIONAL USE approval; and

(2) The proposed EXPANSION is a permitted USE in at least one ZONING DISTRICT within the Town of Milton, except as limited under Section 894(1) of this Ordinance; and

(3) The proposed EXPANSION does not exceed that which is permitted for the most extensive USE permitted within the ZONING DISTRICT in which it is located; and

(4) The proposed EXPANSION or enlargement of USE results in an increase in only the volume, intensity, frequency or area of the previous USE, and does not involve the creation of a new NON-CONFORMING USE, the displacement of a conforming USE, nor the creation of a non-conformity in relation to SETBACKS or LOT COVERAGE.

(5) In situations where residential uses or structures were made NON-CONFORMING as the result of a zoning amendment, such NON-CONFORMING residential uses or structures may be expanded or enlarged or used for a home occupation as a matter of right without CONDITIONAL USE approval by the Development Review Board provided that the current setback distances and building coverage requirements are met.

SECTION 513 ***Restoration***

A STRUCTURE housing a NON-CONFORMING USE, if destroyed or damaged by fire, collapse, explosion or similar cause may be reconstructed or repaired for the NON-CONFORMING USE, provided that the NON-CONFORMING USE is not extended, expanded or enlarged in any way, and provided that such reconstruction or repair is completed within one year of the damage or destruction.

SECTION 514 ***Abandonment***

No NON-CONFORMING USE may be resumed if such USE has been abandoned for a period of eighteen months. Death of an owner of a property containing a NON-CONFORMING USE shall not be considered abandonment. However, a non-conforming individual mobile home lot that is vacated

shall not be considered an abandonment of nonconformity.

A NON-CONFORMING USE shall be considered abandoned when any of the following conditions exist:

(1) When the characteristic equipment and furnishings have been removed from the premises and have not been replaced by similar equipment and furnishings within eighteen months; or
(2) When it has been replaced by another USE.

SECTION 515 ***Repairs and Alterations***

Nothing in this Section shall be deemed to prevent ordinary repairs to or prohibit ALTERATIONS of any STRUCTURE containing a NON-CONFORMING USE provided that the floor area devoted to the NON-CONFORMING USE shall not be increased.

SECTION 516 ***Unlawful Uses Not Authorized***

Nothing in this Section shall be interpreted as authorization for or approval of a STRUCTURE or premises which was in violation of the Zoning Regulations in effect at the time of enactment of these Regulations.

SECTION 520 ***NON-COMPLYING STRUCTURES***

The following provisions shall apply to ~~any STRUCTURE or part of a STRUCTURE existing on the effective date of these Regulations which does not conform to the dimensional requirements of the district in which it is located; and to all STRUCTURES that in the future do not conform by reason of any subsequent amendment to the Regulations. The dimensional requirements shall include, but not be limited to, SETBACKS, HEIGHT, LOT COVERAGE, density and off-STREET parking and loading~~all NON-COMPLYING STRUCTURES.

520.1 Any ALTERATION, EXPANSION or change to a NON-COMPLYING STRUCTURE which does not result in any increase in the non-complying nature of the STRUCTURE (e.g., further encroachment into a SETBACK or a further increase in LOT COVERAGE) may be permitted by the Zoning Administrator provided that the proposed change does not result in an increase in floor area of the structure and that the proposed changes complies with all other provisions of these Regulations.

520.2 Any ALTERATION, EXPANSION or change to a NON-COMPLYING STRUCTURE which does result in an increase in the non-complying nature of a STRUCTURE and/or any increase in floor space may be permitted by the Development Review Board as a variance in accordance with the provisions of Section 970 of these Regulations.

520.3 Non-complying mobile home parks shall be treated as non-complying, however individual lots within these mobile home parks shall not be considered non-complying.

520.4 A NON-COMPLYING STRUCTURE, may be permitted by the Zoning Administrator, if destroyed or damaged by fire, collapse, explosion or similar cause may be reconstructed or repaired, provided that the NON-COMPLYING STRUCTURE is not extended, expanded, enlarged or relocated in any way, and provided that such reconstruction or repair is completed within two years of the damage or destruction, A one-year extension may be granted by the DRB upon finding that physical hardships, unforeseeable delays or other circumstances justify the extension.

SECTION 530 ***REQUIRED FRONTAGE AND APPROVED ACCESS***

Land development shall only be permitted on lots having frontage on public waters, lots having access on a PUBLIC ROAD meeting Class 1, 2, or 3 state standards, or, with the approval of the Development Review Board, lots having access to a PUBLIC ROAD meeting Class 1, 2, or 3 state standards over a permanent, private easement or private right-of-way at least 60-feet wide, or 40-feet wide as permitted within these regulations.

No Zoning Permit shall be issued for construction or development of any kind on a lot without FRONTAGE on a PUBLIC ROAD or waters until a permanent easement or right-of-way has been approved by the Development Review Board, in accordance with their right-of-way policy.

SECTION 531 ***Class 4 Roads***

Nothing in this section shall be construed to require the Town to maintain a Class 4 road or to upgrade a road from Class 4 to Class 3. This section shall not prohibit future accessory structures or expansions of existing primary structures, on Class 4 roads, that were developed prior to September 5, 2005; however, additional uses shall be prohibited.

For the purpose of site plan development or subdivision of new lots or for creating frontage or access for buildable lots, a petition to upgrade a Class 4 road to a Class 3 road shall be submitted to the Select Board in accordance with the provisions of 19 V.S.A. ~~Sections~~ § 708 through § 717. In considering whether to reclassify a Class 4 road as a Class 3 road, the Select Board may request an advisory opinion from the Planning Commission as to whether the increased traffic and development potential likely to result from the reclassification is desirable or in accordance with the Comprehensive Plan.

19 V.S.A. §~~Section~~ 302 (a)(3)(B) states that "the minimum standards for Class 3 highways are a highway negotiable under normal conditions all seasons of the year by a standard manufactured pleasure car. This would include but not be limited to sufficient surface and base, adequate drainage, and sufficient width capable to provide winter maintenance…." In order to accomplish this state standard, the upgraded road shall be constructed in accordance with the 'Town of Milton Public Works Specifications Ordinance' for construction of a PUBLIC ROAD. All expenses incurred in accomplishing the upgrading of a Class 4 road to Class 3 standards shall be borne by the individual petitioning permission to do the upgrade. An adequate monetary surety and warranty for the road improvements shall be provided to the Town.

After the Town Engineer confirms that the road upgrading has been done in accordance with the 'Town of Milton Public Works Specifications Ordinance' and the Select Board has reclassified the road to a Class 3 road in accordance with the provisions of 19 V.S.A. ~~Sections~~§ 708 through § 717, applications for ~~s~~Site ~~p~~Plan R~~r~~eview or subdivision of new lots, abutting or accessing the newly classified Class 3 road may be submitted to the Town for review and possible approval under the planning and zoning regulations.

SECTION 532 ***Residential Frontage Requirement Waivers***

The Development Review Board may, in accordance with ~~Title~~ 24~~,~~ V.S.A.~~, Chapter 117, Section~~§ ~~4407(3)~~4414(8) authorize a waiver from the minimum FRONTAGE requirements for any two-lot subdivision located within a district that permits single FAMILY residential USES provided that the subdivision is in compliance with the Town of Milton Public Works Specifications for Private Right-of-Way construction. *This section applies to all zoning districts except the OLD TOWNE RESIDENTIAL, OLD TOWNE RESIDENTIAL/COMMERCIAL, AND MAIN STREET Districts.*

532.1 The subdivision must result FRONTAGE on a PUBLIC ROAD appropriate to enable a curb

cut. As a general standard, the Development Review Board shall encourage at least sixty (60) feet of FRONTAGE on a PUBLIC ROAD for each lot, but may waive this requirement only if pre-existing lot characteristics render this requirement infeasible.

532.2 The Development Review Board may limit the number of curb cuts allowed through such action by requiring shared DRIVEWAYS to be maintained by both lots.

532.3 The Development Review Board may deny such a request if the creation of a new lot would alter community character or result in the disruption of the continuity of a streetscape, or if the proposal contradicts any element of the *Comprehensive Plan of the Town of Milton*.

SECTION 540 NUMBER OF ~~BUILDINGS~~ STRUCTURES ON LOTS

There shall be only one PRINCIPAL STRUCTURE ~~or USE~~ and its approved ACCESSORY STRUCTURES on a LOT. The following are exceptions: ACCESSORY farm DWELLINGS in accordance with Section 872 "ACCESSORY Dwelling"; DUPLEXES, TRIPLEXES and MULTIFAMILY DWELLINGS in accordance with the provisions of the District Regulations (Articles III and IV), and PLANNED UNIT DEVELOPMENTS in accordance with Section 850 "PLANNED UNIT DEVELOPMENTS".

SECTION 550 USE OF SETBACK AREAS

No STRUCTURE or portion of a STRUCTURE shall project into any minimum front, side, or REAR SETBACK area, except as provided by Sections 551 and 580. This regulation shall apply whether the STRUCTURE is ATTACHED to the principal structure or not and whether the STRUCTURE is open or ENCLOSED.

SECTION 551 Exemptions

The requirements of Section 550 shall be subject to the following exemptions:

551.1 Fences shall be considered exemptions.

551.2 SIGNS, canopies, and awnings may be located in the FRONT SETBACK area provided that they comply with all other requirements of these Regulations.

551.3 Public monuments and statues shall be exempt from Section 550.

SECTION 560 HEIGHT

No STRUCTURE shall exceed thirty-five (35) feet in HEIGHT above ground level except as noted in Articles III and IV for specific zoning districts and as noted below.

560.1 There are no HEIGHT restrictions on non-commercial antennas, residential chimneys, and on agricultural STRUCTURES such as barns and silos.

560.2 The Development Review Board may authorize, as a CONDITIONAL USE, any unoccupied, uninhabitable STRUCTURE or portions thereof, such as church spires, belfries, monuments, tanks, water and fire towers, ornamental towers, smokestacks, flag poles, renewable energy structures and

wind turbines, to exceed the HEIGHT limitation. Mechanical equipment on a commercial structure may only be granted CONDITIONAL USE to exceed the HEIGHT limitation by up to 10 (ten) vertical feet. Such mechanical equipment shall not cover more one third of the roof area. *This section applies to all zoning districts except the FORESTRY/CONSERVATION/SCENIC RIDGELINE District.*

560.3 The maximum HEIGHT of WIRELESS COMMUNICATION FACILITIES will be determined by the Development Review Board through the review and approval process described in Appendix B of these regulations, entitled *Wireless Communication Facilities Regulations*.

SECTION 570 *SEWAGE DISPOSAL*

No building or STRUCTURE shall be erected or altered unless an appropriate sewage disposal system is provided in compliance with all applicable regulations of the State of Vermont, or other governmental authorities.

SECTION 580 *ACCESSORY USES AND STRUCTURES*

~~Normal~~ ACCESSORY USES and STRUCTURES, as defined in Section 1010 of this Ordinance, shall be allowed in all districts, subject to the following provisions:

580.1 They do not conflict with any other provision of this Ordinance.

580.2 They do not constitute a threat or nuisance to the health, safety, and welfare of neighboring property owners.

580.3 ACCESSORY STRUCTURES shall comply with FRONT SETBACK requirements for the district in which they are located.

580.4 Required SIDE and REAR SETBACKS for ACCESSORY STRUCTURES with an area of not more than 100 square feet and a HEIGHT of not more than 10 feet shall be five (5) feet, or the minimum required SIDE and REAR SETBACKS for the district in which they are located, whichever is less.

580.5 Required SIDE and REAR SETBACKS for ACCESSORY STRUCTURES with an area exceeding 100 square feet or a HEIGHT exceeding 10 feet shall be fifteen (15) feet, or the minimum required SIDE and REAR SETBACKS for the district in which they are located, whichever is less.

580.6 ACCESSORY STRUCTURES shall be located at least five (5) feet from any other STRUCTURE if not ATTACHED to such STRUCTURE.

580.7 ACCESSORY USES shall not exceed 10% or 2,000 sq. ft., whichever is the lessor, of the total GROSS FLOOR AREA of the PRINCIPAL STRUCTURE. ~~This section shall not pertain to ACCESSORY APARTMENTS and HOME OCCUPATIONS (as they are addressed in Section 880 and Section 600 respectively). These uses shall be subject to "Site Plan Review" in accordance with Section 800.~~

580.8 Only a permitted or CONDITIONAL USES allowed in a district can be an ACCESSORY USE in that district. ~~The purpose is to provide a small level of diversification to non-residential uses.~~

580.9 ACCESSORY USES shall comply with all other requirements of these Regulations.

580.10 This section shall not pertain to ACCESSORY APARTMENTS and HOME OCCUPATIONS (as they are addressed in Section 880 and Section 600 respectively).

SECTION 581 ***Swimming Pools***

Swimming pools shall be considered as an ACCESSORY USE. The following safety precautions must be in place for the duration of the swimming pool. No swimming pool with a maximum potential depth of two feet or more shall be used or located within any district without conformance to the following standards:

581.1 All pools shall be completely enclosed by a wall, fence, or other STRUCTURE not less than four (4) feet in HEIGHT with a self-closing and self-latching gate. These precautions must be in place prior to issuance of a Certificate of Compliance and prior to any use of the pool.

581.2 Above-ground pools with essentially smooth, vertical exterior walls at least four (4) feet in HEIGHT above grade for the entire perimeter need not meet the fencing requirement of Section 581.1, provided that:

(a) The ladder access area is enclosed by a wall, fence, or other structure not less than four (4) feet in HEIGHT with a self-closing and self-latching gate, or
(b) Entrance to the pool is possible only through the use of steps or stairs which are portable, and removed when the pool is not in use.
(c) These precautions must be in place prior to issuance of a Certificate of Compliance and prior to any use of the pool.

SECTION 590 ***ROADS AND DRIVES***

All roads and drives shall conform to the requirements of this Section.

SECTION 591 ***Public Roads***

New roads shall only be considered for acceptance as a PUBLIC ROAD if all of the following conditions are met:

1. The road will provide improved traffic circulation to the local PUBLIC ROAD network, or have easements or rights-of-way secured to improve traffic circulation to the local PUBLIC ROAD network in the future; and
2. The road will create a pattern of interconnecting roads and blocks, that encourages multiple routes from origins to destinations. The road, or network of roads, must have a looped road (roads having more than one separate connection to an existing PUBLIC RIGHT-OF-WAY). This shall not render developments in existence prior to January 15, 2009 as non-conforming; and
3. The road will be constructed in accordance with the Town of Milton's Public Works Specifications; and
4. The road will intersect an existing Town or State highway; and
5. Acceptance of the road is in accordance with the goals of the Milton Comprehensive Plan.

The Selectboard has the ultimate authority on acceptance of PUBLIC ROADs in accordance with Title 19

V.S.A. Chapter 7, Laying Out, Discontinuing and Reclassifying Highways. Meeting the requirements of this Section will not automatically guarantee acceptance of the road as public, however compliance with these conditions must be demonstrated to the Development Review Board through the subdivision review process if the intention is to establish a new PUBLIC ROAD.

SECTION 592 ***Private Roads***

A PRIVATE ROAD is any road that is not offered to and accepted by the Town as a PUBLIC ROAD. Responsibility for construction, maintenance and improvements shall fall entirely upon the owners and operators of each PRIVATE ROAD. The right-of-way is to remain in private ownership and is not intended for dedication as a Town road. PRIVATE ROADs must be certified by a Professional Engineer for conformance with the approved plans.

Standards

592.1 PRIVATE ROADs must be built to the PRIVATE ROAD specifications as defined in the Public Works Specifications.

592.2 Proper drainage facilities shall be constructed to ensure that PUBLIC ROADS are not subject to flooding or other damage from a PRIVATE ROADS.

592.3 Intersections of PRIVATE ROADS and PUBLIC ROADS shall be designed to ensure adequate visibility and safety.

592.4 PRIVATE ROADS shall be constructed so as to permit the safe access of emergency vehicles to all STRUCTURES.

592.5 Units accessed through a PRIVATE RIGHT-OF-WAY must have FRONTAGE on that PRIVATE RIGHT-OF-WAY;

592.6 The width of a PRIVATE RIGHT-OF-WAY shall be at least forty (40) feet, if the subdivision is a PLANNED UNIT DEVELOPMENT. The Development Review Board must approve this reduced width.

592.7 The maximum length of the PRIVATE RIGHT-OF-WAY for any residential subdivision shall be one thousand linear (1000) feet in its entirety; this requirement may be waived by the Development Review Board if it is determined that the roadway proposed can provide safe access for emergency vehicles. This length shall be measured from the intersection with a PUBLIC RIGHT-OF-WAY;

592.8 All PRIVATE RIGHTS-OF-WAY in excess of five hundred (500) feet shall provide at least one pullout area every five hundred (500) feet, the exact location of which shall be determined through the subdivision review process;

592.9 A PRIVATE RIGHT-OF-WAY shall be paved when the grade of the roadbed exceeds 7%;

592.10 No roadway within a PRIVATE RIGHT-OF-WAY shall be constructed with a grade greater than 10%;

592.11 A PRIVATE RIGHT-OF-WAY serving more than 30 lots or 50 dwelling units must have a LOOPED ROAD (roads having more than one separate connection to an existing PUBLIC

RIGHT-OF-WAY). This requirement may be waived by the Development Review Board if it is determined that the roadway proposed can provide safe access for emergency vehicles and efficient layout of utilities. This waiver may not be allowed for PRIVATE RIGHTS-OF-WAY serving more than 60 lots or 100 dwelling units. This shall not render developments in existence prior to January 15, 2009 as non-conforming;

592.12 A dead-end PRIVATE RIGHT-OF-WAY shall have a suitable cul-de-sac or hammerhead at the terminus;

592.13 Deeds or declarations creating PRIVATE RIGHTS-OF-WAY approved by the Development Review Board shall contain legally binding covenants, running with the land, absolving the Town from taking over said right-of-way as a Town highway; such covenants shall be included in the recorded deeds for each parcel created through the subdivision, and this condition shall be clearly indicated on the final subdivision plat for the development; such agreements shall inform all current and future land owners that the Town shall not be asked to maintain or take over the right of way in the future; such agreement shall involve all units that utilize the right-of-way regardless of whether said lot was created through the subdivision;

592.14 The USE of a PRIVATE RIGHT-OF-WAY shall require a legally executed agreement for the perpetual maintenance of the right-of-way by future owners of lots within the subdivision or for any lot utilizing the right-of-way for access regardless of whether said lot was created through the subdivision. A Homeowners Association must be established in order to ensure proper maintenance of the right-of-way in the future;

592.15 When a PRIVATE RIGHT-OF-WAY is proposed, the applicant shall provide a roadway profile by a certified engineer guaranteeing compliance with the terms of this Section; no PRIVATE RIGHT-OF-WAY shall be approved by the Development Review Board without the receipt of a letter of approval from the Town's Fire Chief, Police Chief or Rescue Squad stating that the right-of-way will provide safe access to each DWELLING UNIT that it serves; such profile shall be submitted prior to the final public hearing for the subdivision.

SECTION 593 *Driveways*

All drives on private property shall be considered private. Responsibility for construction, maintenance and improvements shall fall entirely upon the owners and operators of each private drive.

Standards

593.1 DRIVEWAYs shall be used to serve a maximum of three lots and no more than three DWELLING UNITS. Any excess in number of DWELLING UNITS must be served by a road and shall meet the requirements of either Section 591 or Section 592.

593.2 DRIVEWAYs must be built to the DRIVEWAY specifications as defined in the Public Works Specifications.

5943.3 Proper drainage facilities shall be constructed to ensure that PUBLIC ROADS are not subject to flooding or other damage from a private DRIVEWAY.

593.4 Intersections of DRIVEWAYs and PUBLIC ROADS shall be designed to ensure adequate visibility and safety.

593.5 DRIVEWAYs shall be constructed so as to permit the safe access of emergency vehicles to all dwelling units. DRIVEWAYs shall be constructed with a minimum width of 12' with 2' shoulders; a minimum turning radius of 42'; and a maximum DRIVEWAY grade of 15%, unless otherwise expressly stated in these Regulations.

593.6 The USE of a SHARED DRIVEWAY shall require a legally executed agreement for the perpetual maintenance of the DRIVEWAY by future owners of lots within the subdivision or for any lot utilizing the right-of-way for access regardless of whether said lot was created through the subdivision; a Homeowners Association must be established in order to ensure proper maintenance of the right-of-way in the future.

593.7 The private DRIVEWAY shall reach a point near the subject building where fire equipment and personnel can be positioned to effectively fight a fire without inordinate risk to their personnel and equipment. In general the horizontal distance from the fire equipment parking spot to the house shall be no farther than 100 feet and shall include an open corridor suitable in the Rescue Department's judgment to lay out equipment, to approach the subject building, to enter the building, and to fight a fire. In some cases the approved location and accessibility of the residence may not be optimal to effectively fight a fire. However, in no case shall a residence have insufficient accessibility to allow rescue and police to protect human life.

593.8 A private DRIVEWAY shall have a minimum of 15 foot height clearance. This clearance includes the height of tree branches and overhead wiring carrying a normal amount of snow and ice.

593.9 SEASONAL CAMPS may be exempt from complying with Sections 593.5, 593.7, and 593.8 if the SEASONAL CAMP is inhabited on a part-time basis for less than 30 consecutive days at a time; and no more than 120 days in a calendar year.

SECTION 594 *Highway Access Permit*

No Zoning Permit shall be issued for the construction of a PRIVATE ROAD or DRIVEWAY which intersects a Town or State highway without a valid Highway Access Permit in accordance with Title 19, V.S.A., Chapter 1, Section 43 and these Regulations and the Milton Public Works Specifications. A Zoning Permit may be issued by the Zoning Administrator only after completion of a Highway Access Permit application and approval by the Town Engineer or Highway Superintendent.

SECTION 595 *Inspection for Certificate of Compliance*

Before a Certificate of Compliance is granted by the Zoning Administrator under Section 910, all new curb cuts or amended curb cuts to an existing PUBLIC ROAD, or DRIVEWAYS on a future PUBLIC ROAD shall be inspected by the **Town Engineer or Highway Superintendent** to ensure compliance with the requirements of this Section.

SECTION 600 *HOME OCCUPATIONS*

Pursuant to 24 V.S.A. ~~Section~~§ 4412(4), HOME OCCUPATIONS are ~~permitted~~ allowed in all districts in which ~~residences~~ residential USEs are permitted, provided that they are in conformance with the provisions of this Section. No Zoning Permit is required for HOME OCCUPATIONS, except as noted below.

600.1 The HOME OCCUPATION shall be carried on only by full time residents of the dwelling and no more than two employees who are not full-time residents of the dwelling.

600.2 The HOME OCCUPATION shall be clearly incidental and secondary to the residential USE of the dwelling. The area utilized for the HOME OCCUPATION can be up to fifty percent (50%) of the dwelling square footage plus any accessory buildings not to exceed 1,000 square feet. For HOME OCCUPATIONs utilizing greater than 50% of the dwelling square footage plus any accessory buildings or 1,000 square feet, CONDITIONAL USE approval is required.

600.3 The HOME OCCUPATION can be carried on entirely indoors, however, there can be OUTDOOR STORAGE of materials or equipment provided it is covered or screened from view from outside the property boundaries.

600.4 Parking shall be provided off-STREET and shall not be located in FRONT SETBACK areas. Not more than one business-related vehicle not exceeding 15,000 pounds gross vehicle weight as designated by the manufacturer may be kept on a lot as part of a HOME OCCUPATION. No heavy equipment shall be kept on a lot as part of a HOME OCCUPATION.

600.5 A SIGN, as provided for under Section 830, may be displayed in the FRONT SETBACK area.

600.6 HOME OCCUPATIONS which produce objectionable noise, smoke, vibration, dust or odors discernable on any adjoining property or dwelling unit shall not be permitted.

600.7 HOME OCCUPATIONS which create an undue adverse effect upon the character of the neighborhood, substantially or permanently impair the USE of adjacent property or dwelling, or are detrimental to the public welfare shall not be permitted. Hours of operation, outdoor lighting, etc., shall be compatible with the character of the residential neighborhood. Hours of any activities that are discernible beyond the property boundaries (traffic, noise, etc.) shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday.

600.8 RETAIL SALES are permitted, provided they are limited to those items produced as part of the HOME OCCUPATION. Sales of products directly related to the delivery of a PERSONAL SERVICE are also permitted.

600.9 HOME OCCUPATIONS shall not produce traffic that alters the essential character of the neighborhood.

600.10 If the above conditions are not met, a HOME OCCUPATION shall require CONDITIONAL USE approval from the Development Review Board. A Zoning Permit is required for any HOME OCCUPATION that receives CONDITIONAL USE approval. Any CONDITIONAL USE approval for a HOME OCCUPATION is granted to the applicant for the length of time that the applicant occupies the dwelling. Approval shall terminate upon relocation by the applicant and shall neither remain with subsequent occupants of the dwelling nor transfer to a new location with the original applicant.

SECTION 610 ***CHILD DAY CARE HOME AND FACILITY/GROUP HOMES***

610.1 Pursuant to Vermont State Statutes, ~~Title~~ 24 ~~,~~ V.S.A. ~~Section~~§ 4412(5), the following shall be considered by right to constitute a single family residential use of property and are allowed in all zoning districts where single family residences are permitted:

a. A state registered or licensed CHILD DAY CARE HOME serving six or fewer children or a state registered or licensed CHILD DAY CARE HOME serving up to six full time and four part time children.

b. A state licensed or registered RESIDENTIAL CARE HOME or GROUP HOME, serving not more than eight persons who ~~are developmentally disabled or physically handicapped~~have a DISABILITY.

610.2 A state registered or licensed CHILD DAY CARE FACILITY serving more than ten children is a permitted use in any M1, M2, M4, M5, M6, DB1 and I2 zoning district. These facilities are required to meet all applicable state licensing and code requirements and shall obtain Site Plan approval from the Development Review Board.

SECTION 620 ***REDUCTION OF LOT SIZE***

No lot shall be so reduced in area so that the total area, SETBACK areas, lot width, FRONTAGE, coverage, or other requirements of these Regulations shall be other than herein prescribed for the district in which the lot is located.

SECTION 621 ***Exception***

Notwithstanding the provisions of Section 620, the Development Review Board may approve a boundary line adjustment between two adjoining existing non-conforming lots, provided that there be no potential for the further subdivision of either lot, subject to the following restrictions:

(1) Neither lot may enjoy additional building or development rights that did not exist prior to the lot line adjustment; for the lot receiving additional land, any STRUCTURE which was permitted prior to the lot line adjustment may be situated any place within the newly formed lot in accordance with the LOT AREA and dimensional requirements of its particular district; and
(2) Neither lot may be further subdivided; and
(3) The boundary line adjustment may not result in a non-conformity that did not previously exist for either lot; and
(4) No land containing a primary STRUCTURE or waste water disposal system may be transferred through this exception; and
(5) A statement must be submitted to the Development Review Board by a certified site technician or engineer verifying that the lot to be diminished in size will have an adequate septic replacement area after the reduction in lot size authorized herein.

SECTION 630 ***EXISTING SMALL LOTS***

Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of the first legal Zoning Regulations of the Town of Milton may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than 1/8 ACRE in area with a minimum width or depth dimension of forty (40) feet.

SECTION 631 ***Residential Side and Rear Set-Back Requirements for Existing Small Lots***

Single FAMILY residential USES within legally existing lots that are non-conforming with regard to minimum LOT AREA requirements and that are located within a district that permits single FAMILY residential USES shall be subject to 15 foot minimum side and REAR SETBACKS.

SECTION 640 *LOT WIDTH*

The width of any new lot shall not be less than one-third (1/3) of the depth of the lot. This requirement may be waived by the Development Review Board for any lot occurring within the Forestry/Conservation/Scenic Ridgeline District.

SECTION 650 *TEMPORARY STRUCTURES AND CONSTRUCTION OFFICES OR TRAILERS*

During the period of construction, temporary STRUCTURES, construction offices, and construction trailers used in conjunction with construction work are permitted. Such STRUCTURES as are permitted under this Section shall not be used as dwellings. Zoning Permits for such STRUCTURES shall be issued for a maximum six month period and may be renewed for an additional six months upon request.

SECTION 660 *TEMPORARY DWELLINGS*

During the construction of a PERMANENT DWELLING on a lot, a temporary dwelling is permitted. Such STRUCTURES as are permitted under this Section shall be removed prior to the issuance of a Certificate of Occupancy for the PERMANENT DWELLING.

SECTION 670 *LOTS IN TWO ZONES*

The Development Review Board, under the conditions described herein, is authorized to permit, as a CONDITIONAL USE, the relocation of the Shoreland Residential (R6) district boundary not more than one hundred (100) feet from its location as shown on the OFFICIAL ZONING MAP into an adjoining district. The Board is so authorized only where the district boundary divides a parcel which was in single ownership when these Regulations were adopted. This Section shall not apply where the district boundary is a highway. The applicant for such a change shall be required to submit a survey of the new location of the ZONING DISTRICT boundary.

SECTION 671 *Lots in Forestry/Conservation/Scenic Ridgeline District and Agricultural/Rural Residential District*

When a parcel of land occurs in both the Forestry/Conservation/Scenic Ridgeline District and the Agricultural/Rural Residential District, the portion of the lot occurring in the Forestry/Conservation/Scenic Ridgeline District can be used to satisfy LOT AREA requirements of the Agricultural/Rural Residential District. The minimum area of that lot must satisfy the area requirements of the Agricultural/Rural Residential District. At least two ACRES of land must occur within the Agricultural/Rural Residential District. BUILDABLE ENVELOPES for any permitted or CONDITIONAL USE occurring in the portion of the lot contained within the Agricultural/Rural Residential District must occur entirely within the Agricultural/Rural Residential District, and must conform to the lot dimension requirements of that district, except where permitted as a CONDITIONAL USE under Section 483.

SECTION 680 ***EXCAVATION AND FILL***

In any district, dumping of refuse and waste (rubbish) material for FILL is prohibited, except in a State approved sanitary landfill.

Routine maintenance and landscaping of existing property that does not cause changes in runoff onto an adjacent property is exempt from this regulation.

Excavation and fill are exempt from Site Plan ~~A~~approval and Zoning Permit requirements providing the grading action still satisfies all of the following criteria:

(1) Grading action of less than 100 cubic yards.
(2) Cut, fill or excavation less than 5' in vertical dimension that will maintain a 2' horizontal dimension to 1' vertical dimension slope ratio.
(3) The existing ground slope does not exceed a 2' horizontal to a 1' vertical slope ratio.
(4) The grading action is not within Shoreline, Floodplain, Wetland and Streams.
(5) Complies with zoning setbacks for structure.
(6) Is the only exempt grading action to occur within a 5 year period on an individual lot or series of lots in contiguous ownership.

SECTION 690 ***DISTANCE FROM SURFACE WATERS***

SECTION 691 ***Buildings***

Unless otherwise provided by the Development Review Board in a PLANNED UNIT DEVELOPMENT, no building shall be closer than fifty (50) feet from the ordinary high water mark of any stream, river or brook.

SECTION 692 ***Shoreline***

Existing trees and ground cover along any SHORELINE, body of water or fully carrying spring flood waters shall be maintained for a distance of 25 feet from the SHORELINE or body of water to protect against erosion.

SECTION 700 ***PUBLIC FACILITIES***

The following uses may be regulated only with respect to location, size, HEIGHT, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

(1) State- or community-owned and operated institutions and facilities;
(2) Public and private schools and other educational institutions certified by the state department of education.
(3) Churches and other places of worship, convents, and parish houses.
(4) Public and private hospitals.
(5) Regional solid waste management facilities certified under 10 V.S.A. chapter 159.
(6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

SECTION 710 ***PROHIBITED USES***

710.1 The OUTDOOR STORAGE of more than one (1) vehicle on the same property without a valid Vermont State Inspection Sticker and a valid Registration is specifically prohibited in all districts. All such pre-existing USES shall be required to conform to these Regulations and all applicable State and local regulations.

710.2 No USES shall be permitted which are noxious or offensive by reason of emission of odor, dust, noise, smoke, gas, fumes, or which present a hazard to public health and safety. This Section shall not be interpreted to prohibit agricultural USES in ZONING DISTRICTS in which AGRICULTURE is a permitted USE.

SECTION 720 ***WATERCOURSE AND DRAINAGE AREAS***

No natural water course, drainage area or wetland shall be piped, dammed, filled, dredged, or altered in any way without the written approval of the Milton Development Review Board and, where applicable, the State Department of Water Resources and U.S. Army Corps of Engineers. The Development Review Board may require review of all proposals by a professional engineer at the expense of the applicant. The flood carrying capacity within any altered or relocated portion of a water course shall be maintained.

SECTION 730 ***VACATION TRAILER AND TENT CAMPS***

Any lot on which three or more vacation trailers or tents are occupied for a period greater than one week per year shall be considered a VACATION TRAILER OR TENT CAMP. All such camps shall be required to conform to Vermont Health Regulations and to all applicable provisions of this Ordinance including Site Plan ~~r~~Review. In any ZONING DISTRICT, no portable DWELLING UNIT outside of a VACATION TRAILER OR TENT CAMP shall be occupied in excess of 21 days per year without a valid Zoning Permit.

SECTION 740 ***TEMPORARY SPECIAL SALES***

TEMPORARY SPECIAL SALES (for example, auctions, garage sales, and lawn sales) shall be permitted in all districts with the following restriction: no auction shall last for more than five (5) cumulative days at the same location per year and no garage sale shall last for more than fourteen (14) cumulative days per year. Special sales exceeding these limits shall be considered to be a commercial USE and shall be regulated as such. No lot shall be used for VENDOR SALES for more than one (1) day per year. No activity related to such sales shall be located within any right-of-way. VENDOR SALES in excess of one (1) day shall be considered to be a commercial USE and shall be regulated as such, requiring Development Review Board approval under Site Plan ~~r~~Review.

SECTION 750 ***UTILITY FACILITIES***

Utility facilities shall be permitted USES in all districts, with the exception of WIRELESS COMMUNICATION FACILITIES which shall be conditional USES in all districts and subject to Development Review Board review and approval as described in Appendix B of these regulations, entitled *Wireless Communication Facilities Regulations*. In the FORESTRY/ CONSERVATION/SCENIC RIDGELINE District, utility facilities must comply with the HEIGHT limitation as per Section 560 and Section 481. All utility facilities shall be required to be reviewed under Section 800 of these Regulations. All district SETBACK requirements must be met and

all such USES must be suitably screened against light, fumes, noise, or unsightliness and protected against becoming "attractive nuisances."

Exemptions to Section 750:

- Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board under 30 V.S.A. Section 248 are exempt from these regulations.
- Residential renewable energy structures and/or facilities on the same or an adjacent lot with, and of a nature customarily and clearly incidental and subordinate to, the PRINCIPAL USE or STRUCTURE, shall be considered an ACCESSORY STRUCTURE and shall be subject to Section 580 of these regulations (unless addressed in Section 160 and ~~9~~1000 of these regulations).

SECTION 760 PUBLIC MONUMENTS AND STATUES

The placement of public monuments and statues accessible to the general public, regardless of property ownership, shall be allowed in all zoning districts with approval by the Select Board. Public monuments shall be exempt from the dimensional requirements of all zoning districts, however shall conform to Section 815.

SECTION 770 ETHICAL CONSIDERATIONS

Members of the Planning Commission and Development Review Board shall comply with the provisions of Section 701 – Conflict of Interest and Section 703 – Code of Ethics of the Town Charter.

SECTION 780 COMMERCIAL RETAIL OCCUPANCY LIMIT

The maximum space that may be occupied by a single ~~commercial retail business~~COMMERICIAL RETAIL BUSINESS in a single building of any size shall not exceed 65,000 square feet.

ARTICLES VIII AND IX
DETAILED REGULATIONS

SECTION 800 ***SITE PLAN REVIEW***

Site Plan approval, granted in accordance with this Section by the Milton Development Review Board, shall be required before a Zoning Permit is issued for any USE in any district with the exception of SINGLE FAMILY DWELLINGS, DUPLEXES, and TRIPLEX – OWNER OCCUPIED on single lots, ACCESSORY residential STRUCTURES, and all agricultural USES.

SECTION 801 ***Administrative Review***

801.1 Minor amendments to Site Plans may be approved by the Zoning Administrator/Acting Zoning Administrator.

801.2 Minor amendments are defined as follows:

(a) A modification of an approved Site Plan, which does not involve changes to curb cuts or traffic circulation patterns. Such modifications shall not result in an increase of more than 10% or 5,000 square feet in a building's GROSS FLOOR AREA or total LOT COVERAGE, whichever is less.

(b) A change of USE, which involves no exterior changes to the property including modifications to building or lot coverage, parking and circulation, landscaping and grading.

(c) Minor exterior changes to a building's façade, such as a vestibule, awning, door or window change.

(d) A PLANNED UNIT DEVELOPMENT which involves the division of an existing STRUCTURE into two or more units but does not involve an increase in the square footage of the building, new curb cut to a public highway, new access to any other lot, additional paved parking areas, or new patterns of circulation.

(e) Exterior ~~and interior~~ changes to a building ~~(e.g., addition of new windows and doors)~~ which do not involve an increase in the TOTAL GROSS FLOOR AREA of the building.

801.3 The Zoning Administrator/Acting Zoning Administrator may decide to forego administrative review of any Site Plan, in which case, the Town Planner shall submit the Site Plan to the Development Review Board for review.

801.4 The Zoning Administrator/Acting Zoning Administrator's decision to approve, deny or send a minor amendment to the Development Review Board shall be made within 60 days after the date upon which a complete Site Plan application is submitted. Failure to act within said period shall be deemed approval. Copies of the Zoning Administrator/Acting Zoning Administrator's decision, along with findings of fact, shall be sent to the applicant. A report summarizing all Site Plan ~~r~~Review decisions by the Zoning Administrator/Acting Zoning Administrator shall be presented to the Development Review Board following such decision.

801.5 A public notice shall be sent to all abutters upon determination that the minor amendment application is complete. The public notice shall describe the proposed minor amendment and inform the abutter that a public hearing can be requested within 15 days of the date the notice was sent out.

801.6 Any interested party may appeal a minor amendment decision of the Zoning Administrator/Acting Zoning Administrator to the Development Review Board within 15 days of the date of the decision. Notice of an appeal shall comply with the provisions of 24 V.S.A. ~~Title 24, Section~~ § 4465. The Development Review Board shall review an appeal in accordance with Section 960 of these Regulations.

801.6 All minor Site Plan amendments for Administrative Review shall be required to submit all information required in Section 803 to the extent that it is applicable.

SECTION 802 ***Site Plan Review Standards and Procedures***

802.1 In reviewing Site Plans, the Development Review Board may impose appropriate conditions and safeguards to meet the standards of this section.

802.2 Once the Planning and Zoning Department Staff determines that a Site Plan application contains all information required in Section 803, the Development Review Board shall act to approve or disapprove any Site Plan within forty-five (45) days after the closing of the final public hearing. Failure to act within this time period shall be deemed approval and shall be effective on the 46th day.

(a) The Development Review Board may consider the following in its review of a Site Plan application:

(b) Maximum safety of vehicular and pedestrian circulation on site, between the site and adjacent roads and sidewalks, and between the site and adjacent land uses.

(c) Adequacy of traffic circulation, parking, and loading facilities.

(d) Impacts on capacity of roadways and other transportation facilities in the vicinity.

(e) Adequacy of landscaping, screening, and outdoor lighting.

(f) Impacts on the Town's ability to provide adequate sewer, water, fire, police, or other municipal services and facilities.

(g) Suitability of the site for the proposed scope of development, including due regard for the preservation of existing natural and historical resources.

(h) Consistency with the Comprehensive Plan.

SECTION 803 ***Submission of Site Plans and Supporting Data***

The Applicant must submit four (4) sets of plans drawn to scale with fifteen (15) reductions of the plans and supporting written materials. The Site Plan application shall include the following information:

803.1 Project title and site address. Name and address of the Applicant, the property owner of record, and adjoining landowners. Name and address of the PERSON or firm preparing the map. Scale of the map, north point and date.

803.2 Deed reference(s), Lister's tax map and parcel number, and copies of any deed restrictions or covenants.

803.3 All existing features, including but not limited to, boundaries, total area of the lot, contours, drainage patterns and storm drainage systems, STRUCTURES and land USES, trees, shrubs and other vegetation, wetlands, floodplains, rock outcroppings, STREETS (public and private) and the associated rights of way, driveways, outdoor lighting, signage, sidewalks, alternate transportation paths, easements and rights-of-way.

~~803.4 A survey of the entire property is required.~~

803.5 All proposed improvements, including but not limited to, STRUCTURES, DRIVEWAYS, contours depicting site grading, off-street parking and loading spaces, circulation, sidewalks, alternative transportation paths, and SIGNS.

803.6 A landscaping plan showing locations of all existing and proposed plantings, a plant list with species, size and quantity. A written cost estimate of all landscaping prepared by a professional landscape architect or landscape contractor.

803.7 Building elevations indicating location and HEIGHT of all existing and proposed structures.

803.8 An outdoor lighting plan showing locations and designs of existing and proposed outdoor lighting. This shall include all flood and/or security lights, building mounted lights, and parking and street lights. At a minimum, outdoor lighting specifications shall be provided showing photometric data, types of fixtures and lamps, and mounting height of fixtures.

803.9 A utility plan showing existing and proposed public water and sewer, private sewage disposal systems, wells, storm drainage facilities, fire protection details, electric, gas, telephone, cable and all other utility lines.

803.10 Estimate of daily and peak hour traffic generation and a report on traffic impacts at project access points, major intersections nearby and other locations.

803.11 Any other data or information that the Development Review Board shall view as necessary in applying the Site Plan ~~r~~Review standards.

803.12 The Development Review Board may waive any of the above requirements of Site Plan Review.

SECTION 804 ***Special Provisions Applicable to the M1, M2, M4 and DB1 Zoning Districts***

As required by Section 853.2, the special provisions of Sections 804.1-804.5 shall be met in order be eligible for a PUD bonus density.

804.1 Uses may mix as long as they are sited and designed of LIKE KIND QUALITY with neighboring properties. Houses, offices and stores may be above, next to, or in the

general vicinity of each other; but consideration should be given to elements of common concern - hours of operation, lighting, shared parking, etc.

804.2 Buildings should be placed close to the sidewalks. Street trees and green belts along sidewalks should be constructed to provide a pedestrian-friendly environment.

804.3 Site design should accommodate pedestrian movements. Sidewalks/bike paths will be encouraged along all public streets in the district. Buildings, parking lots and internal walkways should be located to encourage connections to those public sidewalks and bike paths.

804.4 Street trees should be encouraged along major connecting roads and pedestrian spaces to be placed within a green belt of at least 6 feet in width and spaced no more than 50' apart. Tree grates may be used in places with limited width.

804.5 Parking should not be allowed to dominate the site. Parking spaces should be limited to the needs of the use. Some front yard parking may be allowed at the discretion of the DRB, but parking lots should be behind or on the side of buildings. Where parking lots are visible from the public street, appropriate landscaping should be included. On-street parking may be possible along some roadways.

804.6 OPEN SPACE Requirements for developments with ten (10) or more multi-family residential units. The proposal shall provide for the preservation and maintenance of OPEN SPACE which is designed to be an integral part of the whole development. The size, shape and locations of OPEN SPACE shall be approved by the Development Review Board. The OPEN SPACE shall be protected by appropriate legal devices to ensure the continued USE of such lands for the purpose of AGRICULTURE, FORESTRY, recreation or conservation. Such mechanisms include dedication of development rights, conservation easements, homeowners associations, restrictive covenants, conveyance to land trusts, or other appropriate grants or restrictions approved by the Development Review Board. Permitted future USES and maintenance of the OPEN SPACE shall be specifically identified as part of the approval of development with ten (10) or more multi-family units. An improved or unimproved right-of-way to the OPEN SPACE must be provided so that all residents of the development shall have access to the OPEN SPACE.

(1) Minimum OPEN SPACE Requirements:

(a) In the M1, M2, M4, DB1 Zoning Districts, a minimum of 20 percent of the land shall be required as OPEN SPACE for all developments with ten (10) or more residential units.

(b) In the M1, M2, M4 Zoning Districts, a minimum of 50% of the OPEN SPACE shall be considered community recreation space, where the intent is to encourage the creation of places for recreation and civic activities that foster neighborliness and the space shall be contiguous. This space shall not consist of BUFFER STRIPS, parking lots, areas between buildings, or undevelopable land as listed in Section 856.1(b). This area shall be maintained by the development, unless accepted by the town as public property. Appropriate legal devices to ensure the continued USE of such lands for continued neighborhood use shall protect it. The DRB shall approve the location and use of this community recreation space.

SECTION 805 ***Special Provisions Applicable to the M3 Zoning District***

805.1 All of the special provisions noted in Section 804 shall apply to the M3 Zoning District.

805.2 Where possible, access drives and parking areas should be placed under existing VELCO transmission lines to avoid using open land areas for such uses. Access to this area should also support pedestrian circulation and drop-off areas for use of recreational facilities. Handicapped accessibility and connections to existing trails should be carefully considered for all projects within this district.

805.3 Additional access points to this area should be considered. Proposed access roads should be encouraged to align with existing roads.

SECTION 806 ***Landscape Plan Requirements***

806.1 A landscaping plan, as required by Section 803.6, shall be required to accompany all Site Plans. The Development Review Board shall determine the appropriateness of the proposed landscaping and screening. In considering a Site Plan application, the Development Review Board may require modifications to the proposed landscaping plans in order to more fully implement the purpose of this Section.

806.2 All landscaping plans shall include the following information: all existing plantings, woodlands, etc. on the site, the location of all proposed landscaping, and planting specifications for all proposed landscaping to include the common name, botanical name, size, and quantity.

806.3 All landscaping plans shall be accompanied by a written cost estimate prepared by a professional landscape architect or landscape contractor. The applicant shall provide a performance bond or other form of security to the Town to guarantee the completion of all required landscaping. The bond, or other form of security, shall also guarantee all plantings for a period of three years from installation.

806.4 The Development Review Board may require landscaping in accordance with the following schedule. The minimum planting cost shall not include the cost of seeding, mulching, sodding, etc. for lawns or grassed areas.

Total Land Development Cost	**Minimum Planting Cost (% of Development Cost)**
0 - $250,000	3%
$250,001 to $500,000	2%
> $ 500,000	1%

806.5 In evaluating landscaping requirements, some credit may be granted for existing trees or for site improvements other than tree plantings as long as the objectives of this section are not reduced.

806.6 The FRONT SETBACK area shall be landscaped in accordance with the approved Site

Plans and maintained in good appearance.

806.7 In all districts other than the MIXED USE Zoning Districts, where non-residential USES are located adjacent to residential buildings, there shall be plantings or attractive solid fencing to screen all outdoor lighting and parking from the view of the ground floor of adjacent residential buildings. In residential districts, non-residential USES shall be screened from adjacent properties. This provision shall apply even though the adjoining property is not developed. In all districts where permitted, auto service stations shall be screened in the same manner from all abutting properties.

806.8 Landscaping and/or fencing shall be provided to screen trash/garbage containers/dumpsters from view of adjoining properties and roads. Screening shall surround the trash/garbage containers/ dumpsters on three sides.

SECTION 810 ***PARKING AND LOADING REQUIREMENTS***

The number and location of parking and loading spaces associated with any lot or USE shall comply with the following requirements.

SECTION 811 ***Parking Plans***

A dimensioned plan showing the intended location and amount of area allocated to each parking space, the required access, the type of drainage facilities, and the location of barriers shall be submitted for Development Review Board approval with each Site Plan.

SECTION 812 ***Parking Specifications***

812.1 The size of parking spaces shall have minimum dimensions of 9 feet in width and 18 feet in length.

812.2 The following number of parking spaces shall be provided for each USE listed below unless waived by the Development Review Board. Where the number of parking spaces is based on GROSS FLOOR AREA, the GROSS FLOOR AREA of the entire STRUCTURE shall be the basis for the calculation of parking requirements. If a USE is not listed below, the required parking spaces will be as required by the Development Review Board.

Use	Parking Spaces Required
ASSISTED LIVING FACILITIES	1 per 3 occupants plus 1 for each 2 employees
AUCTION	1 for each 200 sq. ft. devoted to the auction
AUTOMOBILE REPAIR AND FILLING STATIONS	3 for each working space plus 1 for each employee
AUTOMOTIVE SALES	2 for every 1,000 square feet of GROSS FLOOR AREA
BAKERY/DELICATESSEN	1 for each employee plus 3 for each 1,000 sq~~f~~ ft of gross floor area
BED AND BREAKFAST	1 per room
CHILD DAY CARE CENTERS	1 for each employee plus 1 per 5 children

CHURCH	1 per 4 seats
CLINIC	3 for every 1,000 sq ft of GROSS FLOOR AREA
COMMERCIAL PLANT NURSERIES, GREEN HOUSES LANDSCAPING SERVICE	1 for each employee plus 3 for each 1,000 square feet of GROSS FLOOR AREA
CONSTRUCTION AND AGRICULTURAL EQUIPMENT SALES AND SERVICE	1 for each working space plus 1 for each employee
DISTRIBUTING	2 for each 3 employees
DRY CLEANING FACILITIES	3 for every 1,000 square feet of GROSS FLOOR AREA
DRY CLEANING PLANT	1 for every employee
ELDERLY HOUSING COMPLEX	Section 881.3 for requirement
HOSPITALS	1 per 3 beds
INDOOR RECREATION	1 space for every 200 square feet of GROSS FLOOR AREA
KENNEL	2 plus 1 per employee
LAUNDROMAT	3 for every 1,000 square feet of GROSS FLOOR AREA
MANUFACTURING	1 for each 3 employees
MOTEL	1 per room plus 1 per employee
NEIGHBORHOOD CONVENIENCE STORES	1 space for every 150 square feet of GROSS FLOOR AREA
OFFICE, GENERAL	3 for every 1,000 square feet of GROSS FLOOR AREA
OFFICE, MEDICAL	3 for every 1,000 square feet of GROSS FLOOR AREA
OUTDOOR RECREATION	1 space for each 3 persons accommodated by outside facilities
PERSONAL SERVICES	3 for every 1,000 square feet of GROSS FLOOR AREA
PRINTING FACILITY	3 for every 1,000 000 square feet of GROSS FLOOR AREA
PRIVATE FACILTY	1 for every 400 000 square feet of GROSS FLOOR AREA
PUBLIC FACILITY	1 per 4 seats, 1 per each teacher and staff for elementary and junior high, 1 per 4 students for high school and colleges
RESEARCH AND DEVELOPMENT LABORATORIES	1 for each employee

RESIDENTIAL USES	These spaces shall be unobstructed. A parking space within a garage that is blocked by another space in the driveway will not qualify for a required parking space. (a) 2 spaces per dwelling unit for single family and multifamily units; (b) 1 space per STUDIO; and visitor parking as follows: (c) 1 visitor parking space for every 4 residential units (d) 1 visitor parking space for every 3 units for developments with 10 or more units. (e) Visitor parking is not required for developments containing exclusively single-family homes.
RESTAURANT RESTAURANT, FAST FOOD	1 per 4 seats plus 1 per employee
RETAIL ~~STORES~~SALES	1 for each employee plus 3 for each 1,000 square feet. of GROSS FLOOR AREA
SCHOOL	1 per each teacher and staff for elementary and junior high; 1 per 4 students for high school and colleges
SLAUGHTER HOUSE	.5 per 1,000 square feet of GROSS FLOOR AREA
UTILITIES AND UTLITY OFFICES - PUBLIC AND PRIVATE	1 per employee, minimum of 2 spaces
VACATION TRAILER CAMPS	2 per trailer site
WAREHOUSING, PUBLIC or PRIVATE	2 for each 3 employees

812.3 Parking lots for other than single FAMILY, DUPLEX, TRIPLEX – OWNER OCCUPIED, and multifamily residential dwellings shall include parking for ~~handicapped~~DISABLED PERSONS according to the following specifications and shall comply with the latest standards of the Americans with Disabilities Act. Parking spaces for the ~~handicapped~~ DISABLED shall be set aside in close proximity to entrances and identified with SIGNS for USE by individuals with physical disabilities. Building entrances shall be designed for access by individuals with ~~physical disabilities~~physical DISABILITIES. Handicapped parking spaces shall have minimum dimensions of 14 feet in width and 18 feet in length. The parking spaces for the ~~handicapped~~ DISABLED shall be included in the total number of spaces required.

812.4 Parking spaces shall be arranged and physical barriers provided so that no part of any vehicle will encroach into any public right-of-way.

812.5 All open parking lots shall be surfaced with at least eight (8) inches of compacted gravel or an equivalent material. In addition, the Development Review Board may require paving.

812.6 All parking lots shall be properly drained. The parking plan shall also indicate the location and type of stormwater drainage facilities. There shall be no increase in stormwater run-off as a result of any development approval. To the greatest extent possible, on site stormwater drainage facilities are encouraged.

SECTION 813 ***Driveways***

813.1 As part of the Site Plan ~~r~~Review, the location and design of DRIVEWAYS and their intersections with STREETS or highways shall require review by the Town Engineer. Where applicable, a letter of intent shall be submitted to the Development Review Board from the Vermont Agency of Transportation.

813.2 Number of DRIVEWAYS - Unless specifically approved by the Development Review Board, there shall be not more than one DRIVEWAY for each lot.

SECTION 814 ***Parking Lot Design Standards***

All parking lots shall comply with the following minimum design standards. The Development Review Board may require higher standards.

814.1 Minimum DRIVEWAY Spacing Requirements:

(1) Common DRIVEWAYS - Joint access and common/shared DRIVEWAYS are encouraged to minimize the number of DRIVEWAYS and curb cuts.

(2) Minimum spacing between DRIVEWAYS on the same side of the STREET - For ARTERIAL STREETS, the minimum distance between DRIVEWAYS shall be 150 feet for two-way DRIVEWAYS, where practical. Distances between one-way DRIVEWAYS shall be 75 feet. If DRIVEWAYS are signalized, a minimum spacing of 500 feet shall be required.

(3) Minimum distance between DRIVEWAYS and opposite sides of the STREET - DRIVEWAYS should be in direct alignment. If direct alignment cannot be provided, a minimum separation of 150 feet between DRIVEWAYS is required.

814.2 DRIVEWAY Intersection Clearance - The minimum distance between an intersection and a DRIVEWAY shall be:

ARTERIAL STREET - 200 feet
COLLECTOR STREET - 75 feet
LOCAL STREET - 50 feet

Where corner clearances cannot be maintained due to narrow property FRONTAGE, a minimum corner clearance of 50 feet is required, with a prohibition against left turns from the DRIVEWAY by providing DRIVEWAY or median channelization.

814.3 Minimum Internal Road, DRIVEWAY and Aisle Widths:

(1) For parking lots with fewer than five spaces, the minimum width for DRIVEWAYS and aisle shall be twelve feet.

(2) For parking lots with five or more spaces, the minimum width for DRIVEWAYS, which do not directly access parking spaces, shall be twelve feet for one-way traffic and 24 feet for two-way traffic.

(3) For parking lots with five or more spaces, the minimum aisle width between parking spaces shall be:

90 degree parking -	24 feet
60 degree parking - one-way -	15 feet
two-way -	24 feet
45 degree parking - one-way -	12 feet
two-way -	24 feet

(4) For parking lots with fifty or more spaces, an internal circulation road, which meets the minimum design and construction standards of a PUBLIC ROAD, shall be provided. Parking will not be permitted on an internal circulation road.

814.4 Width of Access DRIVEWAYS - For parking lots with five or more spaces, the minimum width of DRIVEWAYS at their intersection with public STREETS shall be:

One lane - 15 feet (one-way)
Two lanes - 24 feet
Three or more lanes - 12 feet per lane

814.5 Minimum Curb Return Radius - For parking lots with five or more spaces a minimum curb return radius of 20 feet is required.

814.6 Landscaping for Parking Lots - For parking lots with thirty or more spaces, landscaped islands at least five (5) feet in width shall be installed at intervals not exceeding every 100 feet. A minimum of 10 percent of the total parking lot area, excluding perimeter areas, shall be landscaped.

814.7 Minimum DRIVEWAY QUEUE STORAGE LENGTH - For parking lots with thirty or more spaces, the following minimum QUEUE STORAGE LENGTHS shall be provided.

(1) Residential Development
Fewer than 25 units - 40 feet
25 or more units - 60 feet

(2) Commercial Development
Under 20,000 sq. ft. of GROSS FLOOR AREA - 40 feet
20,000 to 200,000 sq. ft. of GROSS FLOOR AREA - 60 feet
Over 200,000 sq. ft. of GROSS FLOOR AREA - 100 feet

(3) Industrial Development - 50 feet

SECTION 815 ***Visibility Triangles***

815.1 In all districts on a CORNER LOT, there shall be no obstruction to vision within the triangular area formed by the intersection of the edge of the two (2) STREETS and a third line joining them at points twenty-five (25) feet away from their intersection.

815.2 For all developments requiring Site Plan ~~r~~Review, a visibility triangle shall be maintained at the intersection of all DRIVEWAYS and public STREETS. The visibility triangle is the triangular area formed by the edge of the STREET, the edge of the DRIVEWAY, and a third line joining them at points twenty-five (25) feet from their intersection. No parking shall be permitted within this visibility triangle.

SECTION 816 ***Access Management***

816.1 In order to minimize the amount of congestion and turning movements on state and principal highways by future commercial, industrial, residential, and MIXED USE development, the

following shall apply:

(a) The Development Review Board shall require common access roads to serve multiple properties and/or lots located along state highways.

(b) In the event that the Development Review Board finds that meeting the above requirement is impracticable, the Board may allow curb cuts onto such highways. Wherever possible, such curb cuts shall be not less than 300 feet from the intersection of a road or highway. Wherever possible, common access points and additional connections to adjacent properties, roads and/or highways are encouraged.

(c) If a proposed development is anticipated to generate an amount of vehicles per day which may and/or will involve improvements to existing roadways, the Development Review Board may require the proposed development to include a right-of-way easement for a future access road. At such time as the developer is required to install the traffic improvements, the common access road will be constructed to the Town of Milton Public Works Specifications. Costs of such construction shall be borne by the owners of the developments affected and shall be distributed according to the share of total traffic generated as estimated by traffic counts or the most recent trip generation rates published by the institute of Transportation Engineers.

(d) The Development Review Board may require fewer access points be provided and access be combined by common parking areas and/or common access roads internal to the lots. Such access roads and parking areas shall be placed on the side and rear of developments.

SECTION 817 ***Pedestrian Circulation***

817.1 In the M1, M2, M3, M4, M5, M6, DB1, and R1 zoning districts, sidewalks or multi-use paths shall be required along public streets and roads and may be required along private streets and roads. Sidewalks shall be constructed to the Town of Milton Public Works Specifications.

817.2 In other zoning districts, the DRB may require pedestrian walkways to facilitate pedestrian movements to shopping, schools and recreation areas.

SECTION 818 ***Off-Street Loading and Unloading Space***

Every STRUCTURE constructed or used for business, trade or industry shall provide adequate space on the premises for the unloading and loading of vehicles in addition to the required parking. A minimum of one space (10 feet by 60 feet) shall be required for each 10,000 square feet of GROSS FLOOR AREA.

SECTION 819 ***Bicycle Parking Space***

At least one bicycle parking or storage facility shall be provided for all uses subject to Site Plan Review. Additional such facilities may be required as deemed necessary by the Development Review Board.~~The Development Review Board, as part of Site Plan review, shall require the applicant to provide facilities for bicycle parking. USES which may require bicycle racks include, but~~

~~are not limited to, shopping centers, RESTAURANTS, grocery stores, recreation facilities, MOTELS, government offices, schools, hospitals, industries, and mass transit terminals.~~

SECTION 820 ***OUTDOOR LIGHTING***

820.1 Outdoor lighting should be designed, installed and maintained to provide the minimum lighting necessary to ensure adequate vision and comfort in parking areas, along streets and sidewalks, and not cause glare or direct illumination onto adjacent properties or streets.

820.2 All lighting fixtures should be cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA), whenever possible. The design for an area may suggest the use of outdoor lighting fixtures of a particular "period" or architectural style, or there may be existing fixtures to be retained. In such cases, the non cut-off fixtures may be used either as alternates or supplements.

820.3 The maximum HEIGHT for parking and streetlights should not exceed 20 feet from the ground to top of fixture.

820.4 All lamps shall be metal halide, color corrected high pressure sodium, LED, fluorescent or compact fluorescents. Wherever practicable, lighting installations shall include timers, dimmers, and/or sensors to reduce overall energy consumption and eliminate unneeded lighting.

820.5 Electrical service to outdoor lighting fixtures should be underground. Outdoor lighting fixtures should not be mounted on utility poles.

SECTION 830 ***SIGNS***

It is the purpose of this Section to permit the USE of SIGNS for both identification and limited advertisement. No SIGN, billboard or exterior graphic display shall be permitted except as provided in this Section.

SECTION 831 ***Permitted Signs***

The following SIGNS are authorized:

831.1 Business Identification SIGNS:

(1) Business identification SIGNS are permitted for the purpose of identifying public or community facilities, commercial, MANUFACTURING or recreational businesses, and subdivisions. The following table shows the permitted number and size of SIGNS based on the FRONT SETBACK of the primary STRUCTURE.

Front Setback of Primary Structure	Signs Permitted (See Section 834 for Restrictions)
< 100 feet	One building-mounted SIGN not exceeding twenty-four (24) square feet in area and one free-standing SIGN not exceeding twenty-four (24) square feet in area.
> 100 feet	One free-standing SIGN not exceeding twenty-four (24) square feet in area and one building-mounted SIGN which may not exceed the greater of twenty-four square feet or one (1) square foot of area for each two (2) linear

	feet of the width of the building face to which it is ATTACHED, provided however that no such SIGN shall exceed sixty (60) square feet in area

(2) A business identification SIGN may contain a product name but no pricing or other advertising information.

831.2 Advertising SIGNS:

(1) One free-standing on-premise advertising SIGN not exceeding six (6) square feet in area per side is permitted.

(2) At any business selling gasoline, there shall be permitted one additional on-premise SIGN not exceeding sixteen (16) square feet in area per side for the purposes of advertising the brand of gasoline sold at such service station. Additional gasoline pricing SIGNS are also permitted provided that the total area of these SIGNS does not exceed sixteen (16) square feet per side.

831.3 Other Business SIGNS:

(1) One on-premise TEMPORARY SIGN is permitted, not to exceed twenty-four (24) square feet in area per side, in conjunction with the opening or closing of a business, a special sale, promotional event, or change of ownership or management, not to exceed sixty-five (65) cumulative days in any 12-month period. Grand opening banners are permitted for forty-five (45) days in addition to the 65 cumulative calendar days limit. Grand opening banners must comply with all other requirements of this section.

(2) One sandwich board sign is permitted per business, not to exceed nine (9) square feet in area per sign face and shall be placed no closer than ten (10) feet from a front property line and must be removed daily.

(3) For CORNER LOTS or through lots (i.e., lots having FRONTAGE on two public STREETS), the Development Review Board may permit three SIGNS, provided that at least one of the SIGNS is a building-mounted SIGN.

(4) For SIGNS requiring its approval, the Development Review Board shall consider the aesthetic impact of proposed SIGNS, including the size and shape of the SIGN, the compatibility of the SIGN with the other SIGNS on the same building or within the same complex, the harmony of the color and design of the proposed SIGN with neighboring SIGNS and buildings, and the compatibility of the SIGN with natural aesthetic features.

831.4 Business Signs for Commercial or Industrial Subdivisions and Planned Unit Developments:

(1) Business directory signs may be permitted by the Development Review Board for each commercial or industrial subdivision and PLANNED UNIT DEVELOPMENT. Said business directory signs may consist of an identifying SIGN plus a SIGN for each business located in the commercial or industrial subdivision or PLANNED UNIT DEVELOPMENT.

(2) Business directory signs for commercial or industrial subdivisions and planned unit developments shall not have an undue adverse impact on the character of the area. When reviewing a sign proposal, the Development Review Board shall review the following in relation to the site and the surrounding area:

(a) Compatibility with the overall master plan for the proposed property;

(b) Visual impacts;

(c) Lighting;

(d) Landscaping; and

(e) Location and size.

(3) For commercial or industrial subdivisions and PLANNED UNIT DEVELOPMENTS, each business may install one building-mounted SIGN not exceeding the dimensions specified in Section 831.1.

(4) Such business directory and building-mounted SIGNS for commercial or industrial subdivision and PLANNED UNIT DEVELOPMENT shall be required to conform to a set of design criteria, submitted by the owner or developer of the development and approved by the Development Review Board. Such criteria shall limit SIGNS to specified typescript, minimum and maximum letter height, SIGN type, SIGN placement by specifying SIGN panel location or elevations, and SIGN colors.

(5) Each business within the commercial or industrial subdivision or PLANNED UNIT DEVELOPMENT is allowed a TEMPORARY SIGN, not to exceed sixteen (16) square feet in area, and a sandwich board sign, not to exceed nine (9) square feet in area per sign face. See also Section 831.3.

831.5 Other SIGNS:

(1) One on-premise SIGN not exceeding four (4) square feet per side identifying a private residence or a permitted HOME OCCUPATION.

(2) SIGNS to be maintained for not more than two weeks erected by fairs or expositions or SIGNS announcing an event of a civic, political, philanthropic, educational, cultural or religious nature.

SECTION 832 ***Permits not Required***

A Sign Permit is not required for the following types of SIGNS:

(1) Traffic, directional, warning, or information SIGNS erected by any public agency.

(2) Official notices issued by any court, public agency, or officer.

(3) One non-illuminated "For Sale," "For Rent," or "For Lease" SIGN not exceeding six (6) square feet in area.

(4) Small on-premise SIGNS, not exceeding four (4) square feet in area per side for the direction, instruction or convenience of the public (e.g., SIGNS identifying rest rooms, freight entrances, posted areas, danger areas, methods of payment).

(5) One non-illuminated SIGN for TEMPORARY SPECIAL SALES (refer to Section 740) not exceeding six (6) square feet in area.

(6) Building-mounted business entrance identification SIGNS not exceeding two (2) square feet in area.

(7) Sandwich board signs (refer to sections 831.3(2) and 831.4(5).

SECTION 833 ***Prohibited Signs***

(1) No SIGN shall prevent a clear and unobstructed view of official highway SIGNS or approaching or merging traffic.

(2) No SIGN shall be permitted within the sight area defined by Section 815.

(3) No SIGN shall obstruct or present a danger to pedestrian or vehicular traffic.

(4) No SIGN or display shall contain string lighting, pennants, moving parts or similar attention gathering devices nor may they contain or support any device capable of emitting noise. No SIGN or display shall be illuminated by flashing, moving, or intermittent light.

(5) No SIGN displaying intermittent lights resembling the flashing lights customarily used in traffic signals or in police, fire, ambulance, or rescue vehicles shall be permitted, nor shall any SIGN use the words "STOP," "DANGER," or any other word, phrase, symbol, or character in a manner that might mislead or confuse a vehicular driver.

(6) No SIGN shall be erected, ATTACHED, or maintained upon any tree or drawn or painted on a rock or any other natural feature or upon any utility pole or Town or State SIGN post.

(7) No SIGN shall be permitted which identifies or advertises a business, product, or service no longer available in the Town. Any such SIGN shall be removed within fifteen (15) days of the date of termination of the business, product, or service.

(8) No SIGN shall be erected which is not on the premises of the activity served by the SIGN. The only exceptions to this provision are directional SIGNS permitted under stated statute.

SECTION 834 ***Restrictions***

All SIGNS shall conform to the requirements listed in this Section.

(1) Sign Area: The sign area is the area of smallest geometric figure, which encompasses the facing of the sign including the copy, insignia, logo, symbol, photograph, background, and borders. (See Figures 834a, 834b, and 834c.)

(a) In the case of signs mounted back-to-back, only one side of the sign is to be used for computation of the area. Back-to-back signs shall be defined as double-faced signs. Otherwise, the surface area of each sign is to be separately computed. In the case of cylindrical signs, signs in the shape of cubes, or other sign substantially three-dimensional with respect to their display surfaces, the entire display surface or surfaces is included in the computations of area.

(b) If a sign is attached to a ground mounted sign serving as an entrance wall, only the portion of the wall onto which either the sign faces or letters are placed shall be calculated in the sign area. Entrance wall area outside of the sign area height and width shall not be considered a part of the sign.

(2) Sign Height: The height of a sign shall be the vertical distance from the average grade level taken at the fronting street to the highest point of the sign or its supporting equipment, whichever is highest, not including the sign's ornamentation.

(a) Ornamentation, such as caps, spires, and finials, shall not extend more than one (1) foot from the top of the sign.

(b) The use of berms or raised landscape areas is only permitted to raise the base of the sign to the mean elevation of the fronting street.

(c) The maximum sign height for a freestanding sign for a single business shall be fifteen (15) feet.

(d) The maximum sign height for a ground mounted multi-tenant sign shall be ten (10) feet. (See Figure 834c.)

(3) Lighting of SIGNS shall be so placed and so shielded that rays there from will not be directly cast into the eyes of any driver.

(4) No SIGN which is ATTACHED to a building shall extend above its roof line.

(5) No freestanding SIGN shall be erected closer than ten (10) feet from a front property line.

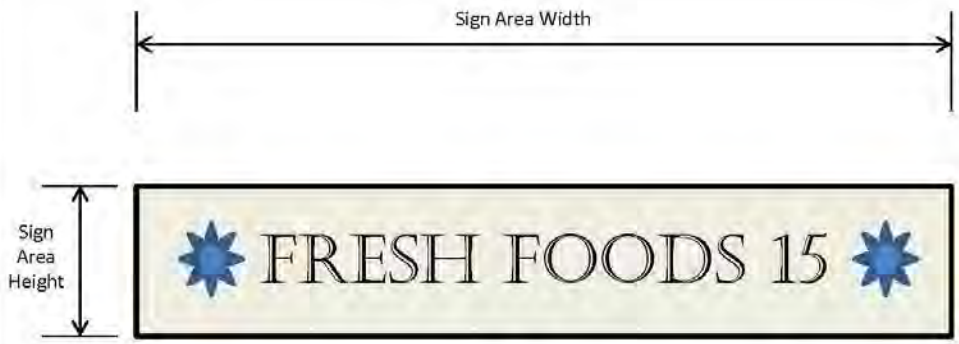

Figure 834a: Sign Panel with Letters, Numbers, and Symbols

Note: Logos and symbols are considered the same for sign area measurement.

Figure 834b: Sign Characters mounted on wall with no panel

Note: Sign Characters include letters, numbers, symbols, logos, lines, and other graphics. The sign area height and width are determined by the extent of all elements of the sign. The height and width of multi-line signs consider all lines to be included in the sign area.

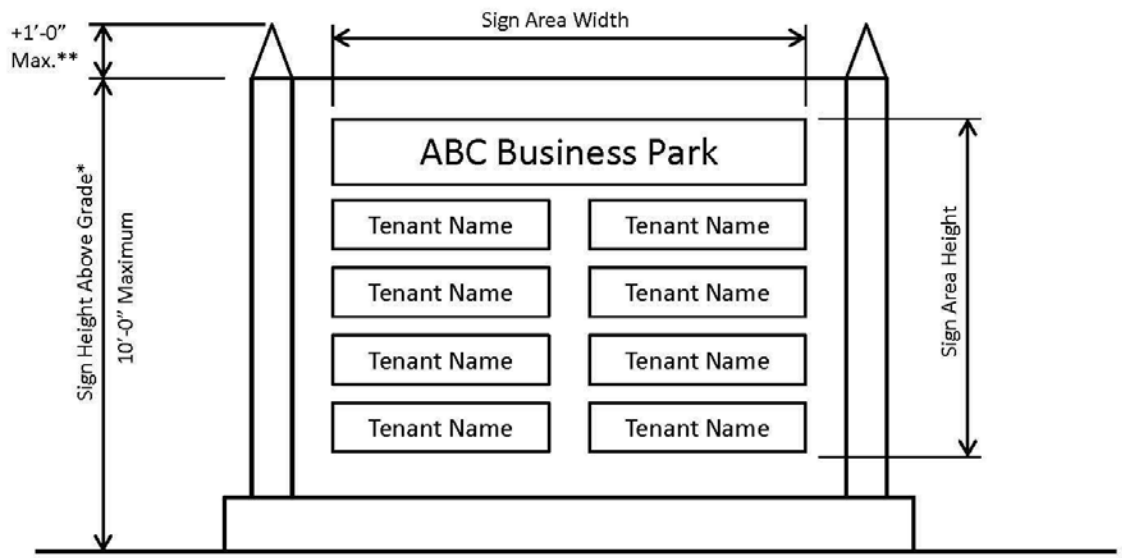

Figure 834c: Ground Mounted Multi-Tenant Sign

* Sign Height Above Grade is the height from mean grade to the top of the sign structure.

**1'-0" Maximum Height of Ornamentation Allowed above Sign Height.

SECTION 835 ***Other Displays***

For the purposes of these Regulations, the following types of displays shall not be considered SIGNS:

(1) displays located wholly within the interior of a building;

(2) displays for the convenience of drive-up or walk-up customers, such as menus at a RESTAURANT, provided that such display is not used to inform or attract the attention of PERSONS off-site;

(3) bulletin boards or similar displays for announcing community affairs, political activities, and the like, provided that such display is not used to inform or attract the attention of PERSONS off-site;

(4) building-mounted barber poles no greater than 36 inches in height and 9 inches in width;

(5) devices such as clocks displaying the time, temperature, and/or date.

SECTION 836 ***Maintenance***

All SIGNS shall be well-maintained as provided in this Section. Any SIGN which is deemed to be structurally unsafe by the Zoning Administrator shall be removed or repaired by its owner or permittee. Removal or repair shall be completed within thirty (30) days of notification by the Zoning Administrator. If the owner or permittee fails to remove or repair the SIGN within the specified period, the Zoning Administrator may cause the SIGN to be removed at the owner's or permittee's expense.

SECTION 837 ***Non-conforming Signs***

A non-conforming SIGN which is altered, extended, enlarged, or moved must be brought into full compliance with these Regulations. Non-conforming SIGNS may be removed for repair provided they are replaced within thirty (30) days of removal. Only the following SIGNS are considered non-conforming SIGNS:

(a) SIGNS which were erected prior to Milton's first set of SIGN regulations (1972);

(b) SIGNS which were erected in full compliance with Milton's SIGN regulations since the effective date of SIGN regulations; and,

(c) SIGNS which were erected in full compliance with a permit from the Zoning Administrator, a waiver from the Development Review Board, or a variance from the Development Review Board.

SIGNS which were installed prior to December 31, 1987, shall be considered "grandfathered," that is, permitted to continue as if they were a non-conforming SIGN, subject to the same restrictions and privileges of legally-installed non-conforming SIGNS.

SECTION 838 ***Administration***

838.1 Sign Permits: All SIGNS shall require a Sign Permit, except as provided in Section 832. All applications for Sign Permits shall be made in writing on forms supplied by the Town. The fee for a Sign Permit shall be five dollars ($5.00). A Sign Permit shall take effect immediately; upon issuance by the Zoning Administrator. The Zoning Administrator shall, within thirty (30) days of the submission of an application, issue either an approval, a denial, or a request for additional supporting information. If additional information is required, the Zoning Administrator shall, within thirty (30) days of the final submission, issue either an approval or denial. Failure to act within these time limits shall constitute automatic approval.

838.2 Removal of SIGNS: SIGNS illegally placed upon Town property or within a Town or State right-of-way may be removed by the Zoning Administrator or other representative of the Town of Milton. Such SIGNS shall be retained by the Zoning Administrator for a period of at least thirty (30) days during which time the owner may reclaim the SIGN. The removal of such SIGNS shall not preclude further enforcement proceedings by the Town.

SECTION 850 ***PLANNED UNIT DEVELOPMENTS (PUD)***

In accordance with the provisions of ~~Title 24, V.S.A., Chapter 117, Section~~24 V.S.A. § 4407(12), PLANNED UNIT DEVELOPMENTS may be permitted in all ZONING DISTRICTS in which such development is identified as a permitted USE. No PLANNED UNIT DEVELOPMENT will be approved by the Development Review Board until the applicant has demonstrated complete compliance with the intentions and requirements of this Section and the Town of Milton's Comprehensive Plan.

The purpose of PLANNED UNIT DEVELOPMENTS is to provide for flexibility in site and lot layout, placement and clustering of buildings, use of open areas, provision of circulation facilities, including pedestrian facilities and parking, and related site and design considerations that will best achieve the goals for the area as articulated in the Comprehensive Plan and bylaws; conservation of OPEN SPACE; efficient use of public facilities and services; to encourage energy efficient development and to meet the purposes, goals and objectives of the Milton Comprehensive Plan.

PLANNED UNIT DEVELOPMENTS may involve single or multiple properties, one owner or multiple owners, and may be limited to project sites that have a minimum area as set forth in these Regulations.

The following categories of PUDs may be permitted in all ZONING DISTRICTS in which such development is identified as a permitted USE, as authorized in Articles II and III. Each category may have unique purposes and requirements, as set forth below in this article. The categories are:

Planned Unit Development – Industrial (PUD-I)
Planned Unit Development – Commercial (PUD-C)
Planned Unit Development – MIXED USE (PUD-MU)
Planned Unit Development – Residential (PUD-R)

SECTION 851 ***Application Requirements***

851.1 An application for a PLANNED UNIT DEVELOPMENT shall include all elements required for a subdivision under the Milton Subdivision Regulations~~ of the Town of Milton~~ and all elements required under Section 800 ~~"~~Site Plan Review~~"~~ of the Milton Zoning Regulations~~ of the Town of Milton~~, except as noted.

851.2 The Development Review Board may waive the requirement for a metes and bounds survey, prepared by a certified land surveyor, if the Planned Unit Development does not involve the subdivision of land. However, if a metes and bounds survey is necessary for an accurate location and description of the BUILDABLE ENVELOPE and/or easements then the survey shall be required.

851.3 The Subdivision Plan, as prepared by a licensed professional civil engineer, certified land surveyor or landscape architect, must identify those lands that are clearly undevelopable due to environmental limitations, such as but not limited to, designated WETLANDS and wetland buffers as defined in the Vermont Wetland Rules, slopes in excess of 15%, streams and watercourses, rock formations, UNDEVELOPABLE SOILS, and flood and earth movement hazard areas. All BUILDABLE ENVELOPES must occur outside of these features.

851.4 The Subdivision Plan must also identify open fields, wooded areas, prime and Statewide agricultural lands.

851.5 The Subdivision Plan shall include all proposed lot lines, BUILDABLE ENVELOPES, the location, HEIGHT and space of all existing and proposed buildings, OPEN SPACE, landscaping, streets, driveways and off-street parking spaces and all other physical features. Elevations prepared by an architect or landscape architect shall depict the relationship of buildings, landscaping and parking areas.

851.6 In addition to the plan requirements noted above, the application submission shall also include the following narrative:

(a) A description of how the design provides for the purposes of the PLANNED UNIT DEVELOPMENT, as identified in Section 850 and in the applicable ZONING DISTRICT in which the development is proposed;

(b) A description of the proposed number of units and how the design preserves the natural features of the land and site characteristics as identified above;

(c) An identification of benefits to the Town of the PLANNED UNIT DEVELOPMENT over a conventional development; and

(d) The proposed USE of the OPEN SPACE lands and possible mechanisms for its protection.

851.7 Requests for waivers and their justification shall be submitted in writing by the applicant for consideration by the Development Review Board in its final approval decision.

851.8 After submission of an application for a PLANNED UNIT DEVELOPMENT, and before sketch plan approval, the applicant shall have temporary markers placed on the lands in order to enable the Development Review Board to locate readily and appraise the basic layout of the proposed PLANNED UNIT DEVELOPMENT in the field during their site visit.

851.9 The applicant shall schedule a site visit with the Development Review Board. The purpose of this site visit shall be to confirm the locations of natural features identified above, and to assist the applicant with the identification of BUILDABLE ENVELOPES.

SECTION 852 ***General Standards***

852.1 All PLANNED UNIT DEVELOPMENTS shall be subject to review and approval by the Development Review Board under the ~~Town~~ Milton Subdivision Regulations. The proposed PLANNED UNIT DEVELOPMENT shall be considered a minor subdivision when the proposed total number of units is six or less; the proposal shall be considered a major subdivision when the total number of units is seven or more. Applications for PLANNED UNIT DEVELOPMENTS, which are considered major subdivisions, shall only be required to hold one statutory public hearing at the preliminary stage. The Development Review Board, at its discretion, may require that a second public hearing be held at the final stage. The Development Review Board reserves the right, however to require additional supporting information from applicants as would typically be required if the application was being reviewed in accordance with the Milton Subdivision Regulations (e.g., traffic studies, drainage plans).

852.2 All PUDs shall be required to undergo Sketch Plan Review and obtain a special conceptual approval from the Development Review Board prior to pursuing subdivision approval in accordance with the Milton Subdivision Regulations. PUDs, regardless of their type, shall be granted only when the Development Review Board finds that the project conforms with the purposes of this provision, as identified in Section 850 herein.

852.3 All PLANNED UNIT DEVELOPMENTS shall be subject to Site Plan ~~r~~Review in accordance with Section 800 of these regulations.

852.4 PLANNED UNIT DEVELOPMENTS may contain any combination of permitted and CONDITIONAL USEs, and uses that do not differ substantially from the permitted and CONDITIONAL USEs within the ZONING DISTRICT in which it is located. If the proposed PLANNED UNIT DEVELOPMENT contains CONDITIONAL USEs, CONDITIONAL USE approval will be required by the Development Review Board. PLANNED UNIT DEVELOPMENTS may be within one or more STRUCTURES on a singular lot, except as noted in this section. To allow for consolidated appeals and to expedite the permitting process site plan and conditional use review may be conducted concurrently with the process for final subdivision approval, as long as the notice, hearing and decision requirements are issued simultaneously.

852.5 A PLANNED UNIT DEVELOPMENT may be developed in anticipation of a general range of

USES. Individual USES occupying a planned commercial and/or industrial park shall be subject to the receipt of a Zoning Permit for USES occupying an individual unit for the first time. Changes of USE shall be subject to all applicable provisions of these Regulations. CONDITIONAL USES for which approvals are sought after a preliminary subdivision or final subdivision approval has been granted by the Development Review Board shall be subject to CONDITIONAL USE review by the Development Review Board.

852.6 The Development Review Board may waive any requirements noted in the "Dimensional Requirements" section of the applicable ZONING DISTRICT and the requirements of Section 640 "Lot Width", if, in its opinion, the proposal clearly fulfills the intentions and requirements of this Section, with the following exceptions:

852.6.1 The minimum SHORELINE SETBACK requirements of applicable ZONING DISTRICTS shall not be waived.

852.6.2 OPEN SPACE and BUFFER STRIP requirements shall not be waived.

852.6.3 The maximum allowable number of residential units, as determined by Section 856.1, shall not be waived (unless a bonus density is awarded in accordance with Section 853).

852.7 PUDs within existing buildings may be reviewed under Section 801 if they meet the requirements of that section; otherwise PUDs within existing buildings must be reviewed under Section 850.

852.8 The Development Review Board may allow greater concentration or density of land USE within some sections of the development than in others, if they determine that it is necessary to enable innovation in design and layout and more efficient USE of land. In granting approval of a greater concentration or density of land USE, the Development Review Board may require that it be offset by a lesser concentration in another section, or sections, of the PLANNED UNIT DEVELOPMENT.

852.9 Ownership within a PLANNED UNIT DEVELOPMENT can be conveyed or leased along building lines. In addition, PLANNED UNIT DEVELOPMENTS may be configured as FOOTPRINT LOTS. Such transfers will not violate lot coverage, minimum lot area, frontage or setback requirements. For the purposes of a PLANNED UNIT DEVELOPMENT, lot is defined as a parcel of land dedicated to the entire PLANNED UNIT DEVELOPMENT, and not any subdivision or leasing of land and/or building within the PLANNED UNIT DEVELOPMENT.

852.10 Connection to municipal sewer or the development of a community sewage disposal system may be required by the Development Review Board.

852.11 Connection to municipal water or the development of a community water supply system may be required by the Development Review Board.

852.12 ACCESS – PUDs may be approved with either a PUBLIC ROAD, PRIVATE ROAD, or DRIVEWAY in accordance with Section 590 of these Regulations, and Section 800 when applicable.

852.13 DRIVEWAYS and accesses to individual lots shall be planned to minimize direct access to Town highways and STREETS. To this extent, the USE of frontage roads for PLANNED UNIT DEVELOPMENTS shall be encouraged by the Development Review Board.

852.14 The Development Review Board may require that a PLANNED UNIT DEVELOPMENT be

phased.

852.15 OPEN SPACE Requirements for PLANNED UNIT DEVELOPMENTS-Residential and MIXED USE. The proposal shall provide for the preservation and maintenance of OPEN SPACE which is designed to be an integral part of the whole development. The size, shape and locations of OPEN SPACE shall be approved by the Development Review Board. The OPEN SPACE shall be protected by appropriate legal devices to ensure the continued USE of such lands for the purpose of AGRICULTURE, FORESTRY, recreation or conservation. Such mechanisms include dedication of development rights, conservation easements, homeowners associations, restrictive covenants, conveyance to land trusts, or other appropriate grants or restrictions approved by the Development Review Board. Permitted future USES and maintenance of the OPEN SPACE shall be specifically identified as part of the approval of any PLANNED UNIT DEVELOPMENT-Residential and MIXED USE. An improved or unimproved right-of-way to the OPEN SPACE must be provided so that all residents of the PLANNED UNIT DEVELOPMENT-Residential or MIXED USE have access to the open space.

Minimum OPEN SPACE Requirements:

The following minimum OPEN SPACE requirements shall be met for all PLANNED UNIT DEVELOPMENTS-Residential and MIXED USE:

Zoning District	Percent of Land in Open Space
R1, M1, M2, M3, M5, M6, DB1	20%
R2, M4, R7	25%
R6	35%
R3, R4, R5, FC	50%

(a) For PLANNED UNIT DEVELOPMENTS-Residential and MIXED USE that occur in two ZONING DISTRICTS, the figures noted in the table above shall be used for the purposes of calculating the total OPEN SPACE necessary for the subdivision, which shall be calculated based on these specifications for the portions of land occurring in each district; any portion of the OPEN SPACE or the development site may occur within either ZONING DISTRICT with the approval of the Development Review Board.

The following shall be required for PLANNED UNIT DEVELOPMENTS-Residential and MIXED USE located in the M1, M2, M4, M5, and M6 districts:

(b) A minimum of 50% of the OPEN SPACE shall be considered community recreation space, where the intent is to encourage the creation of places for recreation and civic activities that foster neighborliness and the space shall be contiguous. This space shall not consist of BUFFER STRIPS, parking lots, areas between buildings, or undevelopable land as listed in Section 856.1(b). This area shall be maintained by the development, unless accepted by the town as public property. Appropriate legal devices to ensure the continued USE of such lands for continued neighborhood use shall protect it. The DRB shall approve the location and use of this community recreation space.

SECTION 853 ***Bonus Density***

853.1 An applicant seeking PUD approval may request a bonus density from t~~T~~he Development

Review Board along with their Preliminary Plat Application for a Major Subdivision or their application for a Minor Subdivision. Requests for bonus densities will not b accepted in the first instance in a Final Plan Application for a Major Subdivision. Applicants intending to seek bonus densities shall notify the Development Review Board of such intent within their Sketch Plan Application. ~~, at its discretion, may provide for bonus densities not to exceed a total of 25% more units than can be provided in Sections 856.1(c)[1], 856.1(c)[2], 856.1(c)[3], and 856.1(c)[4]. The number of bonus units to be granted shall be rounded up to the nearest whole number. For commercial or industrial uses the Development Review Board, at its discretion, may waive the lot coverage or provide a greater percentage lot coverage than can be provided based on the underlying zoning district.~~

853.2 The Development Review Board shall only grant a bonus density ~~The granting of bonus density shall not be guaranteed, but shall be limited to the certain proposals that the Development Review Board finds would facilitate~~be in conformance with the goals of the *Comprehensive Plan of the Town of Milton* ~~. The Development Review Board shall consider impacts~~and will not have an adverse impact on the capacities of community facilities ~~and~~or services and the character of the area affected. The Development Review Board also shall consider the following in reviewing a proposed density and may grant a bonus density subjects to conditions affixed to its approval of a subdivision application: ~~in making its determination regarding the granting of a bonus density; such determination must be made in the form of a finding by resolution during the sketch plan review (also known as conceptual review of a PLANNED UNIT DEVELOPMENT, and subject to conditions to be affixed to the final plan approval for the subdivision. In addition, the finding must include an evaluation of the following:~~

(1) Preservation of Agricultural USE - A bonus not greater than twenty-five percent (25%), as limited in Section 853.1 herein, may be awarded to a PLANNED UNIT DEVELOPMENT that results in the preservation of an active farm or agricultural USE.

[a] The project must be designed in order to diminish its visual impact from outside the site and to allow an active agricultural USE to continue.

[b] PLANNED UNIT DEVELOPMENTS eligible for consideration for this bonus density must incorporate the following factors:

[1] The proposed project must not include development in the middle of open fields; BUILDABLE ENVELOPES shall be located on the edges of fields and within wooded areas; and

[2] The proposed project must utilize existing stands of trees in order to screen the project from existing roadways where applicable; and

[3] The proposed project must be designed in such a manner that agricultural USES may be continued after the development of the project. Appropriate legal restrictions applied to deed of the OPEN SPACE must be provided, as well as provisions for the perpetual maintenance of the agricultural area.

(2) Provision of Public Access or Dedication - A bonus not greater than twenty five percent (25%) bonus, as limited in Section 853.1 herein, may be granted toward proposals that will result in the following:

[a] The proposal provides for the dedication of the OPEN SPACE of the project or future municipal utility and facility improvements, such as road or recreational path rights-of-way, parkland, utility rights-of-way, and other

public improvements to the Town; in granting the bonus density a legally binding agreement between the developer and the Town must be made contingent upon the finalization of the subdivision in the form of an offer of dedication. Such offers, in draft form, must be submitted with the preliminary application. Such offers of dedication must include provisions for improvements to the site made by the developer which will enhance public USE of the property if in the opinion of the Development Review Board the nature of the dedication would warrant such improvements; such improvements include but are not limited to the following: parking areas, playgrounds, and nature trails; or

[b] The applicant must provide public access easements and infrastructure necessary to facilitate public enjoyment of the OPEN SPACE for the project if such OPEN SPACE is to remain in private ownership; such improvements include but not limited to the following: parking areas, playgrounds, and nature trails; or

[c] The proposal must include the conveyance of land or a conservation easement over the OPEN SPACE of the project to a land trust or the State for the perpetual preservation and care of the land; such conveyance must provide provisions that will guarantee no further residential, commercial, or industrial development on the land.

[d] These bonuses shall be available to the subject property for up to five (5) years from the date of the Development Review Board approval.

(3) Provision of a Green Building - A bonus density of no greater than 25%, as limited in Section 853.1, may be granted for a PUD Residential or MIXED USE in exchange for a commitment to construct at a LEED Silver certification or higher.

(4) Provision of Under Building Parking – A bonus density of no greater than 25%, as limited in Section 853.1, may be granted for a development with underground or under-building parking associated with a PUD Residential or MIXED USE.

853.3 In the M1, M2, M4 and DB1 Zoning Districts, the proposed density also shall meet the special provisions of Sections 804.1-804.5.

853.4 No bonus density shall exceed a total of 25% more units than can be provided in Sections 856.1(c)[1], 856.1(c)[2], 856.1(c)[3], and 856.1(c)[4] for a proposed PUD. The number of bonus units to be granted shall be rounded up to the nearest whole number. For commercial or industrial uses the Development Review Board may waive the lot coverage or provide a greater percentage lot coverage than can be provided based on the underlying zoning district.

Section 854 ***PUD-Industrial and PUD-Commercial***

854.1 PLANNED UNIT DEVELOPMENTS- Industrial and Commercial shall select appropriate BUILDABLE ENVELOPES and building HEIGHTs which will minimize the visual impact of proposed developments from existing STREETS and adjacent residential developments, and where applicable, retain rural community characteristics. The use of landscaping is a key element of the design of PLANNED UNIT DEVELOPMENTS-Industrial and Commercial, and shall assist with preserving and enhancing site aesthetics, buffering

developments from adjacent residential developments, and for noise and lighting attenuation. In all cases, PLANNED UNIT DEVELOPMENTS-Industrial and Commercial shall result in the creation of BUILDABLE ENVELOPES which are situated in the best possible location after an evaluation of the unique characteristics and natural features of the site in which it is to be located.

854.2 The PLANNED UNIT DEVELOPMENT-Industrial and Commercial shall provide for the preservation of OPEN SPACE which is designed to be an integral part of the development. The size, shape and locations of OPEN SPACE shall be approved by the Development Review Board. Landscaped areas required for parking areas in accordance with Section 814.6 "Landscaping for Parking Lots" shall not be included in the calculation for required OPEN SPACE.

854.3 The OPEN SPACE shall be protected by appropriate legal devices to ensure the continued USE of such lands for the purpose of AGRICULTURE, FORESTRY, recreation or conservation. Such mechanisms include dedication of development rights, conservation easements, property owners' associations, restrictive covenants, conveyance to land trusts, or other appropriate grants or restrictions approved by the Development Review Board. Permitted future USES of the OPEN SPACE shall be specifically identified as part of the final approval decision of any PLANNED UNIT DEVELOPMENT-Industrial and Commercial.

854.4 A BUFFER STRIP shall be maintained along the lot line(s) of all PLANNED UNIT DEVELOPMENTS-Industrial where they abut residential properties. The Development Review Board, at its discretion, may require an increase in the size of the BUFFER STRIP. The required BUFFER STRIP shall be kept free of buildings or STRUCTURES and the Development Review Board shall require that this area be landscaped, screened or protected by natural features such that buffering exists during all seasons of the year. The BUFFER STRIP may be included in the calculation for required OPEN SPACE.

Zoning District	Required BUFFER STRIP
I1	15 feet
I2	25 feet
I3	100 feet

854.5 The granting of waivers shall result in a design, which is sensitive to the preservation of natural features identified in this Section.

854.6 BUILDABLE ENVELOPES in the Industrial Zoning Districts shall be designed in order to minimize visual impacts associated with the development. To the greatest extent practicable, BUILDABLE ENVELOPES shall be situated on the edges of fields, within wooded areas, and away from tops of ridgelines.

SECTION 855 ***PUD-MIXED USE***

In addition, to the purposes stated in Section 850, the purpose of PLANNED UNIT DEVELOPMENTS-MIXED USE is to promote a mix of residential uses and nonresidential uses, and to provide for compact, pedestrian-oriented MIXED USE development.

855.1 PLANNED UNIT DEVELOPMENTS-MIXED USE in MIXED USE Zoning Districts may incorporate a mix of all permitted or CONDITIONAL USES as defined in Articles III and IV.

855.2 The density analysis established in Section 856.1 shall be used to determine the allowable number of residential units within a PLANNED UNIT DEVELOPMENT-MIXED USE.

855.3 PLANNED UNIT DEVELOPMENTS-MIXED USE in the MIXED USE Zoning Districts shall select appropriate BUILDABLE ENVELOPES and building HEIGHTS, which will enhance the downtown as outlined in Sections 804 and 805 of these regulations.

855.4 The use of landscaping is a key element of the design of PLANNED UNIT DEVELOPMENTS-MIXED USE, and shall assist with preserving and enhancing site aesthetics, and for noise and lighting attenuation. In all cases, PLANNED UNIT DEVELOPMENTS-MIXED USE shall result in the creation of BUILDABLE ENVELOPES which are situated in the best possible location after an evaluation of the unique characteristics and natural features of the site in which it is to be located.

855.5 PLANNED UNIT DEVELOPMENTS-MIXED USE shall provide for the preservation of OPEN SPACE, which is designed to be an integral part of the development. This may take the form of more urban OPEN SPACEs such as outdoor public parks, indoor public atriums, enhanced streetscape incorporating outdoor seating areas. The size, shape and locations of OPEN SPACE shall be approved by the Development Review Board. See also Section 852.15.

SECTION 856 ***PUD-Residential***

In addition, to the purposes stated in Section 850, the purpose of PLANNED UNIT DEVELOPMENTS-Residential is to promote compact, pedestrian-oriented residential developments; and to encourage any development in the countryside to be compatible with the use and character of surrounding rural lands. In all cases, PLANNED RESIDENTIAL DEVELOPMENTS result in the creation of BUILDABLE ENVELOPES that are situated in the best possible location after an evaluation of the unique characteristics and natural features of the site in which it is to be located.

For PLANNED UNIT DEVELOPMENTS-Residential that occur outside of the Town's core, in areas zoned Agricultural/Rural Residential, Shoreland Residential and *Forestry/Conservation/Scenic Ridgeline*, a key goal for PLANNED UNIT DEVELOPMENTS-Residential shall be to retain rural community characteristics through the selection of appropriate BUILDABLE ENVELOPES that will minimize the visual impact of proposed developments from existing roadways. Included within the realm of rural community character is the preservation of existing farms and prime agricultural soils.

In addition, major PLANNED Unit DEVELOPMENTS-Residential are intended to provide for more intensive development. Major PLANNED UNIT DEVELOPMENTS-Residential must contain at least seven DWELLING UNITS. Major PLANNED UNIT DEVELOPMENTS-Residential are intended to result in subdivision designs that complement site specific characteristics, while providing for a more efficient USE of public services. OPEN SPACE is another key element to this type of subdivision, and provisions must be made in order to provide for access to the OPEN SPACE by all residents of the development. Bonus densities may be provided as incentives for planning that will facilitate the goals of this Section and of the *Comprehensive Plan of the Town of Milton*.

In addition, minor PLANNED UNIT DEVELOPMENTS-Residential are intended to result in site planning that will enable the developer and the Development Review Board to identify suitable BUILDABLE ENVELOPES for STRUCTURES that more closely conform with site characteristics. Of particular concern for these subdivisions is the preservation of rural characteristics in the Town's rural development area, and the retention of community character in all ZONING DISTRICTS. Minor PLANNED UNIT DEVELOPMENTS-

Residential may be approved only if such development will result in diminished visual impacts from a Town highway when compared with a conventional subdivision layout. Therefore, it is the intention of this type of subdivision to enable the Development Review Board to make waivers from conventional zoning criteria, where such waivers will result in a development that will facilitate the goals of the Comprehensive *Plan of the Town of Milton*.

856.1 Density Analysis/Allowable Number of Units

This density analysis shall be deemed to be the maximum number of units that could be sustained within the PLANNED UNIT DEVELOPMENT - Residential. The Development Review Board, at its discretion, may require that the number of units permitted be less than the maximum number if it finds that fewer units than the maximum will be necessary to fulfill the purposes of such developments, as indicated in Section 850, Section 855 and the *Comprehensive Plan of the Town of Milton*, or if the Development Review Board finds that development constraints on the land prevent the number of units generated through the density analysis. The Development Review Board may grant a bonus density above the maximum number of units deemed by the density analysis in accordance with Section 853.

Density Analysis - The number of residential units permitted within PLANNED UNIT DEVELOPMENTS - Residential shall be computed in the following manner:

(a) The area of the entire tract of land affected by the PLANNED UNIT DEVELOPMENTS- Residential shall be calculated in square feet.

(b) The area in square feet of undevelopable land shall be calculated by a certified engineer. Such lands are those that contain the following characteristics: those lands that are clearly undevelopable due to environmental limitations, such as but not limited to designated WETLANDS and wetland buffers as defined in the Vermont Wetland Rules, slopes in excess of 15%, navigable streams, rock formations, UNDEVELOPABLE SOILS, easements or rights-of-way that restrict development, and flood and earth movement hazard areas.

(c) The maximum number of permitted DWELLING UNITS shall be calculated in the following manner:

[1] The area in square feet of undevelopable land, as identified in 856.1(b) above shall be subtracted from the total square footage of the tract affected by the proposed PLANNED UNIT DEVELOPMENT - Residential, as identified in 856.1(a) above; and

[2] For PLANNED UNIT DEVELOPMENTS - Residential the difference established in 856.1(c)[1] above shall be multiplied by ten percent (10%), in order to account for the area of land necessary for roads, sidewalks or other infrastructure;

[3] For PLANNED UNIT DEVELOPMENTS - Residential the sum identified in 856.1(c)[2] above shall be subtracted from the area identified in 856.1(c)[1] above;

[4] For PLANNED UNIT DEVELOPMENTS – Residential:

[a] For SINGLE FAMILY DWELLINGS and DUPLEXES the sum identified in 856.1 (c)[3] above shall be divided by the minimum LOT AREA in the ZONING DISTRICT in which the PLANNED UNIT DEVELOPMENT - Residential is located. This figure, rounded up to the nearest whole number, shall reflect the maximum number of DWELLING UNITS permitted within the PLANNED UNIT DEVELOPMENT – Residential;

[b] For MULTIFAMILY DWELLINGS the sum identified in 856.1 (c)[3] above shall be divided by 40,000 sq.ft. and then multiplied by the maximum DENSITY if maximum DENSITY is established in the ZONING DISTRICT in which the PLANNED UNIT DEVELOPMENT - Residential is located. If no maximum DENSITY is established in the ZONING DISTRICT in which the PLANNED UNIT DEVELOPMENT - Residential is located, the sum identified in 856.1 (c)[3] above shall be divided by the minimum LOT AREA. This figure, rounded up to the nearest whole number, shall reflect the maximum number of DWELLING UNITS permitted within the PLANNED UNIT DEVELOPMENT – Residential.

[5] In the case of a PLANNED UNIT DEVELOPMENT - Residential that occurs within two ZONING DISTRICTS, the procedure outlined in 856.1(c)[1], 856.1(c)[2], 856.1(c)[3], and 856.1(c)[4] above shall be conducted separately for the portions of land that occur within each ZONING DISTRICT. The total density shall be the sum of the density analysis for the portion of land occurring within each ZONING DISTRICT, rounded up to the nearest whole number.

856.2 Design and Preservation:

The proposal shall present an effective and unified treatment of the development possibilities on the project site, and the proposed development plan shall make appropriate provision for the preservation of streams and stream banks, steep slopes, wet areas, soils unsuitable for development, forested areas, and unique natural and man-made features. No BUILDABLE ENVELOPES shall occur in areas deemed undevelopable as defined in 856.1(b) above. The proposal shall integrate OPEN SPACE and developed areas to create a balance between natural and man-made environments. See also Section 852.15. The proposal shall be compatible with existing and future patterns of development in the area.

856.3 Other Requirements:

(a) Buffer - A BUFFER STRIP shall be maintained around the perimeter of all major PLANNED UNIT DEVELOPMENTS-Residential, except along the front property lines of lots with FRONTAGE on a public or private STREET or right-of-way. The width of the BUFFER STRIP shall be at least twice the required SIDE SETBACK for the district in which the major PLANNED UNIT DEVELOPMENT-Residential is located. The required BUFFER STRIP shall be kept free of buildings or STRUCTURES and the Development Review Board may require that it be landscaped, screened or protected by natural features.

(b) Future Subdivision - No land included within a PLANNED UNIT DEVELOPMENT-Residential may be included in any future subdivision of land. Covenants and deed restrictions to this effect shall be provided.

(c) USES Permitted - Only those USES specifically listed as permitted USES in the ZONING DISTRICT in which a PLANNED UNIT DEVELOPMENT-Residential is located shall be permitted, except where indicated in this Ordinance.

(d) BUILDABLE ENVELOPES - All DWELLING UNITS must occur within BUILDABLE ENVELOPES. BUILDABLE ENVELOPES must be identified in all plans submitted, and on the final plat mylar that is filed with the Town Clerk.

SECTION 860 ***EXTRACTION OF NATURAL RESOURCES***

The removal of sod, soil, sand, gravel or stone for commercial purposes shall be prohibited except by approval of the Development Review Board. Before the approval is granted the applicant must:

860.1 Submit an acceptable plan showing the location and magnitude of the proposed operation, the location and composition of access roads, the existing grades and contours in the area from which the material is to be taken and finished grades at the conclusion of the operation.

860.2 Submit an acceptable plan which provides for adequate fencing of excavation areas, landscape buffer zones, and measures to control dust, noise or other effects which may be harmful to the surrounding area.

860.3 Submit an acceptable plan with measures to protect soil fertility, drainage and lateral support of abutting land; and provisions to cover the finished grades with at least four inches of topsoil and seed with a suitable crop cover.

860.4 Post surety with the Town of Milton sufficient to guarantee conformity with the approved plans. The amount of the surety shall be determined by the Development Review Board.

SECTION 861 ***Limitations***

No removal of soil, sod, loam, sand, gravel or stone shall be permitted:

861.1 Within any Flood hazard or *Forestry/Conservation/Scenic Ridgeline* District (unless expressly permitted in Appendix A of the Milton Zoning Regulations: *Inundation Hazard Area Regulations*).

861.2 Within seventy-five (75) feet of any property line.

861.3 Within fifty (50) feet of the mean high water level of any stream, river or lake.

861.4 Within any SETBACK or buffer zone required by these Regulations.

SECTION 862 ***Exceptions***

This Section shall not apply to normal agricultural or FORESTRY operations, road construction by a public agency, or the operation of a cemetery, to the extent reasonably necessary for such purposes.

SECTION 870 ***AGRICULTURE***

AGRICULTURE is the preferred USE in the Low Density Residential (R3), Transitional Residential (R4), and Agricultural/Rural Residential (R5) Districts. All agricultural operations in these districts shall be permitted at any time as long as they comply with all the requirements of this Ordinance and all applicable State laws. No agricultural USE in these districts shall be subject to restrictions because it creates a nuisance or because it interferes with the other USES permitted in the districts.

SECTION 871 ***Agricultural Roadside Stands***

Roadside stands for the sale of agricultural products shall be permitted in all zoning districts in accordance with the following requirements:

871.1 They shall meet the front setback requirements of the zoning district.

871.2 They shall be used principally for the sale of agricultural products produced on local farms.

871.3 Parking spaces shall be provided outside of the road right-of-way.

871.4 SIGNS shall conform to the provisions set forth in Section 830.

SECTION 872 ***Accessory Dwelling***

In the case of an operating farm, an ACCESSORY dwelling may be permitted provided that the farmhouse and ACCESSORY dwellings are used for full-time laborers or for tenants who operate the farm on a full-time basis.

Such ACCESSORY dwellings shall be required to meet the dimensional requirements of the district in which they are located as though they were a PRINCIPAL STRUCTURE. Such ACCESSORY dwellings may be, but are not limited to, a detached SINGLE FAMILY DWELLING, ATTACHED to the principal dwelling to create a DUPLEX, or an apartment in the principal dwelling.

SECTION 880 ***ACCESSORY APARTMENTS***

Accessory apartments shall be allowed as permitted uses in detached, single family dwellings wherever detached, single family dwellings are allowed or exist subject to the following criteria:

1. The detached, single family dwelling shall be owner-occupied.
2. The accessory apartment shall not contain more than one bedroom.
3. The HABITABLE FLOOR AREA of the accessory apartment shall not exceed 40 (forty) percent of the HABITABLE FLOOR AREA of the detached, single family home as it existed at the time of creation of the accessory apartment.
4. The accessory apartment shall have an adequate potable water supply, an adequate wastewater disposal system, and adequate facilities for living, cooking, dining, sleeping, and bathing.
5. The accessory apartment shall be constructed in accordance with the applicable setback, coverage, and parking requirements of its zoning district.
6. The accessory apartment shall be clearly accessory and subordinate to the detached, single-family dwelling.
7. The Zoning Administrator/Acting Zoning Administrator shall be responsible for verifying that all of the above conditions have been met.

SECTION ~~881~~890 ***ELDERLY HOUSING COMPLEX***

~~881.1~~SECTION 891 ***Purpose***

~~A.~~891.1 The need for elderly housing has grown substantially since the 1990's. In recognition of this need and in furtherance of the public interest and general welfare of the Town of Milton, these regulations have been established to encourage the construction of dwelling units suitable for occupancy by ~~elderly~~ persons 55 years old and older. An ~~elderly housing complex~~ELDERLY HOUSING COMPLEX may be constructed so as to provide for assisted living and continuing care components for the elderly. Where the regulations of this section differ from other sections of the zoning, subdivision, and site plan regulations, the provisions of this section shall take precedence. An elderly housing complex shall also comply with the provisions of the Fair Housing Act, as amended, 42 U.S.C. Sec. 3601 et seq. Applicable elderly housing regulations, as amended, of the U.S. Department of Housing and Urban Development shall also be complied with.

~~B.~~ 891.2 The purpose of an ELDERLY HOUSING COMPLEX~~elderly housing complex~~ shall be to provide safe, affordable, comfortable, and efficient housing for elderly residents in an easily accessible, centrally located, pedestrian friendly environment in proximity to necessary support services such as food stores, pharmacies, medical facilities, public transportation, voting places, post offices, libraries, senior centers, and places of worship.

~~**881.2 *Definitions***~~

~~A. Elderly Housing Complex – a development of one or more dwelling units in detached or multi-unit buildings on the same lot under common ownership that is dedicated as a housing complex for elderly persons and includes legal covenants or restrictions designed to ensure the occupancy of such buildings principally by persons 55 years of age or older or disabled persons of any age. All buildings, dwelling units and sites shall comply with all applicable state and federal handicapped accessibility requirements. Handicapped individuals of any age shall be eligible to live in an elderly housing complex.~~

~~B. Elderly Person – a person at least 55 years old or older at the time of initial occupancy.~~

~~C. Handicapped Person – a person of any age who has:~~

~~1. a physical or mental impairment which substantially limits one or more of such person's major life activities,~~

~~2. a record of having such an impairment, or~~

~~3. been regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. Section 802.~~

~~D. Senior Center – a community facility intended to service the needs and activities of elderly persons.~~

SECTION 892~~881.3~~ Standards

~~1.~~892.1 Each ELDERLY HOUSING COMPLEX~~Elderly Housing Complex~~ shall comply with the following standards:

~~A.~~(1) The site, all buildings and dwelling units shall comply with all applicable state and federal handicapped accessibility requirements.

(2) Density

(a) Minimum Buildable Lot Size Per ~~Elderly Housing Complex~~ELDERLY HOUSING COMPLEX

Town Water & Sewer	Town Water Or Sewer	On-Site Water & Sewer
20,000 square feet	30,000 square feet	40,000 square feet

(b) Minimum Buildable Land Area Per Dwelling Unit

Town Water & Sewer	Town Water Or Sewer	On-Site Water & Sewer
2,500 S.F./Efficiency Unit	5,000 S.F./Efficiency Unit	8,000 S.F./Efficiency Unit
2,500 S.F./1-Bedroom Unit	5,000 S.F./1-Bedroom Unit	8,000 S.F./1-Bedroom Unit
3,000 S.F./2-Bedroom Unit	6,000 S.F./2-Bedroom Unit	9,000 S.F./2-Bedroom Unit

(c) Minimum and Maximum Gross Floor Area Per Dwelling Unit

Dwelling Unit Type	**Minimum Gross Area**	**Maximum Gross Area**
Efficiency Unit	400 gross square feet	800 gross square feet
1-Bedroom Unit	450 gross square feet	1,000 gross square feet
2-Bedroom Unit	600 gross square feet	1,200 gross square feet

(d) Occupancy Limits

Dwelling Unit Type	
Efficiency Unit:	No More Than 1 (One) Occupant
1-Bedroom Unit	No More Than 2 (Two) Occupants
2-Bedroom Unit	No More Than 2 (Two) Occupants

~~(3) All Elderly Housing Complexes and dwelling units shall comply with federal and state handicapped accessibility requirements.~~

~~(4)~~

~~(5)~~(3) All buildings in an ELDERLY HOUSING COMPLEX ~~Elderly Housing Complex~~ shall be located on the same lot. The lot shall be under common ownership.

~~**B.**~~(4) Parking Requirements

~~1~~(a)~~.~~ Resident Parking Requirements:

~~1~~ One parking space is required per unit.

~~2.~~(b) Visitor Parking Requirements:

~~i. 1~~One parking space shall be required per every ~~4~~four dwelling units of any type. The DRB, as a condition of Site Plan approval, may permit that designated areas be reserved and maintained as undeveloped green space to accommodate visitor parking. Adequate signage shall be provided for the visitor parking areas and it shall be properly maintained in the winter. Maintenance shall be through appropriate legal mechanisms.

~~3.~~(c) Location

~~i.~~ All parking spaces shall be located on site in places that provide convenient access to the dwelling units.

(5)~~C.~~ Site Plan Review

~~1.~~(a) Site Plan approval shall be required for ~~Elderly Housing Complexes~~ELDERLY HOUSING COMPLEXes ~~shall be reviewed under the Site Plan Review regulations of this ordinance with~~and particular attention shall be~~being~~ given to adequate lighting, sufficient sidewalks, and safe ingress/egress for vehicular traffic.

~~2.~~(b) A canopied drop-off area may be permitted within the required setback area or front yard of the complex for the convenience of the elderly residents.

~~3.~~(c) The architectural design and arrangement of buildings shall be residential in character and consistent with the appearance of the community in general and the neighborhood in particular.

~~4. The perimeter of each Elderly Housing Complex shall be reserved as a 20-foot wide landscape buffer zone with new plantings or existing natural vegetation.~~

(d)~~5.~~ The Development Review Board may require that all roads within the Complex be built in accordance with the "Public Works Road Specification Standards."

~~D. Setback & Height Requirements~~

~~1. All buildings within an Elderly Housing Complex shall be located at a minimum distance of 20 feet from all property lines and other buildings on the same lot.~~

~~2. All buildings within an Elderly Housing Complex shall comply with the HEIGHT requirements of the zoning district in which they are located.~~

~~E.~~(6) Open Space Requirements

The following OPEN SPACE requirements shall be met for an ~~Elderly Housing Complex~~ ELDERLY HOUSING COMPLEX with ten (10) or more units within the following Zoning Districts.

Zoning District	Percent of Land in OPEN SPACE
R1, M1, M2, M3, M5, M6, DB1	20%
R2, M4, R7	25%
R6	35%
R3, R4, R5, FC	50%

~~1.~~(a) For an ELDERLY HOUSING COMPLEX~~Elderly Housing Complex~~ that occurs in two ZONING DISTRICTS, the figures noted in the table above shall be used for the purposes of calculating the total OPEN SPACE necessary for the subdivision, which shall be calculated based on these specifications for the portions of land occurring in each district; any portion of the OPEN SPACE or the development site may occur within either ZONING DISTRICT with the approval of the Development Review Board.

~~2~~(b)~~.~~ The following shall be required for an ELDERLY HOUSING COMPLEX~~Elderly Housing Complex~~ located in the M1, M2, M4, M5, and M6 districts:

~~i.~~ A minimum of 50 percent of the OPEN SPACE shall be considered community recreation space, where the intent is to encourage the creation of places for recreation and civic activities that foster neighborliness and the space shall be contiguous. This space shall not consist of BUFFER STRIPS, parking lots, areas between buildings, or undevelopable land as listed in Section 856.1(b). This area shall be maintained by the development, unless accepted by the town as public property. Appropriate legal devices to ensure the continued USE of such lands for continued

neighborhood use shall protect it. The DRB shall approve the location and use of this community recreation space.

~~E~~(7)~~.~~ Legal Documentation

~~1.~~(a) Homeowners' Association

~~a.~~ The developer of each ~~Elderly Housing Complex~~ ELDERLY HOUSING COMPLEX shall be responsible for establishing a homeowners' association and bylaws under applicable state law. The document shall give special attention to the unique needs of elderly people and shall ensure that the elderly residents of the complex will receive adequate and appropriate services. If the development is approved with unimproved visitor parking as permitted by Section 892(3)(b), the maintenance of such space, including winter maintenance, shall be included in the document. The document shall be submitted during S~~s~~ite ~~p~~Plan ~~r~~Review to the Development Review Board and the Town Attorney for their review and approval. The developer shall bear the sole expense of creating the document and for its review by the Town Attorney. The Homeowners' Association document shall at all times comply with relevant local, state, and federal regulations.

~~2.~~(b) Federal Compliance

~~a.~~ As part of the ~~s~~Site ~~p~~Plan ~~r~~Review process, the developer of each Elderly Housing Complex shall be responsible for filing a report with the Development Review Board describing how the project complies with the provisions of all applicable federal regulations that affect the project.

SECTION ~~890~~900 ***RECYCLING YARDS***

This Section shall pertain to any RECYCLING YARD that is **not** registered with the Town of Milton and the State of Vermont that was in existence on January 1, 1994, for a period of twelve (12) months or longer. Such RECYCLING YARDS may apply within twelve (12) months of the effective date of this Ordinance for a CONDITIONAL USE from the Development Review Board; if the CONDITIONAL USE is granted, that RECYCLING YARD shall be considered to comply with local Zoning Regulations and shall be eligible to apply for a "Certificate of Approval for Location of a Junkyard" from the Select Board and other subsequent procedures, including Site Plan approval.

Any RECYCLING YARD created after January 1, 1993, and prior to the effective date of this amendment shall not be eligible for a CONDITIONAL USE by the Development Review Board, and its operation must cease. A RECYCLING YARD commencing operations after the effective date of this amendment shall be located within a ZONING DISTRICT permitting the USE and shall require CONDITIONAL USE approval and Site Plan approval by the Town in accordance with Sections 500 and 800 through 830, as well as an approved "Certificate of Approval for Location of a Junkyard" from the Select Board.

Notwithstanding the above, RECYCLING YARDS which have been granted a CONDITIONAL USE approval for a RECYCLING YARD or have been issued a "Certificate of Compliance" pertaining to a junkyard from the Development Review Board prior to the effective date of this amendment are exempt from the provisions of this Section, and are eligible to apply for a "Certificate of Approval for Location of a Junkyard" from the Select Board. Non-conforming, licensed RECYCLING YARDS shall still be subject to the provisions of Sections 510

through 514, "Non-conforming Uses". Changes in ownership of licensed RECYCLING YARDS shall still be subject to obtaining a "Certificate of Approval for Location of a Junkyard" for the new owner from the Select Board.

SECTION ~~891~~901 Required Findings for Conditional Use

In addition to those findings required under Section 500 of the Zoning Regulations, the Development Review Board must find in the affirmative that the subject RECYCLING YARD complies with the following standards and criteria:

(1) The application must qualify as a RECYCLING YARD as defined in Article X of this Ordinance.

(2) The RECYCLING YARD must be found to have been created prior to January 1, 1994, and must further be found to have been in existence for a period of twelve (12) months or longer, as determined by evidence provided by the applicant; such as, but not limited to, purchase and sales tax receipts or other income tax documentation, dated videotapes, dated photographs.

(3) The RECYCLING YARD must be found not to contribute to water or air pollution, to the extent that it presents a hazard to public health and safety, as determined by a Level I Site Assessment and site inspection by a certified engineer who is qualified to conduct hazardous waste surveys. A Level II Site Assessment will be required if recommended by the Level I Site Assessment submitted as part of Section ~~892~~902(4) and the results of the site inspection.

(4) The RECYCLING YARD will not adversely affect the scenic character or quality of the area in the immediate vicinity, as viewed from any PUBLIC ROAD, highway, PRIVATE RIGHT-OF-WAY or adjacent property, nor will it adversely affect the health or safety of the community.

SECTION ~~892~~902 Application Submission Requirements for Conditional Use

The following information is required to be submitted by the applicant in order to assist the Development Review Board in making its findings that the USE satisfies the criteria indicated in Section ~~891~~901:

(1) Number of vehicle trips per day based on peak seasons;

(2) A survey of the lot by a licensed land surveyor containing the RECYCLING YARD, with detailed information showing:

- (a) lot dimensions and acreage,
- (b) all STRUCTURES and storage areas,
- (c) SETBACKS and LOT COVERAGE of all STRUCTURES and storage areas, including BUILDABLE ENVELOPE,
- (d) existing and proposed landscaping and fencing,
- (e) DRIVEWAYS and traffic circulation,
- (f) parking and loading spaces,
- (g) names of owners of record of adjacent properties,
- (h) location of water and wastewater,
- (i) location of "control area" for waste disposal (such as, but not limited to, disposal of radiators, batteries, petroleum), and location and construction specifications of existing and proposed waste storage containers;

(3) Information from a certified engineer indicating the capacity of the existing wastewater system, and its capability to handle the present and/or future USE of the RECYCLING YARD;

(4) A copy of the Level I and/or Level II Site Assessment as required in Section ~~891~~901(3), as

prepared by the Town's consulting engineer, retained by the Town and paid for by the applicant. The applicant shall establish an escrow account of a minimum of $2,500.00 prior to the engineer commencing the Level I Site Assessment and site inspection. In the event that the Level I Site Assessment and site inspection amount to less than $2,500.00, the applicant shall be reimbursed the amount remaining in escrow. In the event that the applicant does not wish to use the services of the Town's consulting engineer, the Town and applicant shall mutually agree to using a different consulting engineer. In this case, the applicant shall pay the engineer directly. The applicant shall forward copies of the Site Assessment(s) to the State Health Department, Agency of Natural Resources--Environmental Conservation Department, Regional District Environmental Board Office, Agency of Transportation--Department of Motor Vehicles, and Emergency Management--Hazardous Materials Division, only in the event that the Site Assessment(s) identified groundwater contamination; and

(5) Photographs and/or videotapes of the currently existing RECYCLING YARD operation.

SECTION ~~893~~903 Other Application Requirements

In addition to all required procedures for CONDITIONAL USE review, the applicant shall send the official legal warning for the CONDITIONAL USE review via certified mail, return receipt requested, to the owner of each lot that is within a three hundred (300) foot radius of the boundary of the lot containing the RECYCLING YARD; this mailing must occur not less than fifteen (15) days prior to the public hearing.

The applicant shall provide a list of all property owners within the required radius to the Zoning Administrator who shall ensure satisfactory compliance with this Section prior to the mailing of the certified letters. Prior to the public hearing for the CONDITIONAL USE approval, the applicant shall provide the acting Chair of the Development Review Board with all certified mailing receipts and any returned envelopes. The Zoning Board shall check to ensure that all property owners have either received a copy of the meeting warning via certified mail, or have attempted to have been reached by certified mail.

SECTION ~~894~~904 Requirements for All Recycling Yards Granted Conditional Use Approval by the Development Review Board

In addition to the conditions and safeguards attached to the granting of the CONDITIONAL USE by the Development Review Board as indicated in Section 501 of the Zoning Regulations, any RECYCLING YARD qualifying under Sections ~~8~~900 through ~~895~~905 that is granted CONDITIONAL USE approval by the Development Review Board shall be subject to the following conditions which may not be waived:

(1) The RECYCLING YARD shall not be expanded in terms of square feet of operable space, number of vehicle trips generated or volume of service, unless otherwise specified in the approval of the Development Review Board as to maximum permissible EXPANSION.

(2) RECYCLING YARDS shall be screened from view from any PUBLIC ROAD, PRIVATE RIGHT-OF-WAY and adjacent property during all seasons of the year. Screening may be in the form of a natural barrier (such as, vegetation or topography), or an artificial barrier (such as, an earthen berm, fence, or other method approved by the Development Review Board). The Development Review Board may recommend a combination of both.

Screening shall be a minimum ten (10) feet in height and of a material satisfactory to the Development Review Board in order to screen all of the JUNK contained within the RECYCLING YARD from view. The Development Review Board may require the

RECYCLING YARD be entirely ENCLOSED by fencing if, in its opinion, the existing or proposed screening does not shield the RECYCLING YARD from view. All existing vegetation outside and proximate to a fence or other artificial barrier shall be retained to aid in maintaining a natural appearance. If no natural vegetation is present, or is inadequate to buffer the artificial barrier, the Development Review Board may require the planting of vegetation in order to achieve a natural appearance of the barrier.

A performance bond or other form of security shall be required to guarantee the completion of the screening in accordance with Section 806.3, during the Site Plan process.

(3) The crushing of automobiles shall be done only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.

(4) No open fire for the burning of rubbish, trash, automobile parts, or other waste matter shall be permitted at any time without the prior written approval of the Chief of the Town of Milton Fire Department.

(5) Noise in excess of ninety (90) decibels shall be prohibited during the hours of operation of the RECYCLING YARD.

(6) The applicant shall be required to obtain a "Certificate of Approval for Location of a Junkyard" from the Select Board in accordance with Section 895, and Site Plan approval from the Development Review Board in accordance with Sections 800 through 830, upon CONDITIONAL USE approval by the Development Review Board.

SECTION ~~895~~905 ***Licensing Requirements***

RECYCLING YARDS granted CONDITIONAL USE approval from the Development Review Board in accordance with Sections ~~8~~900 through ~~8~~904 shall obtain a "Certificate of Approval for Location of a Junkyard" from the Select Board. RECYCLING YARDS are also required to renew their "Certificate of Approval for Location of a Junkyard" with the Select Board within the timeframe indicated in the "Certificate of Approval for Location of a Junkyard". In the event that the applicant does not renew the "Certificate of Approval for Location of a Junkyard" within the specified timeframe, the applicant shall be required to obtain CONDITIONAL USE approval from the Development Review Board in accordance with Sections ~~8~~900 through ~~8~~904, prior to the reissuance of the "Certificate of Approval for Location of a Junkyard" by the Select Board.

SECTION ~~896~~906 ***Violation and Penalties***

Nothing in Sections ~~8~~900 through ~~8~~905 shall be deemed to exclude any applicant from all requirements of subsequent or previous articles of the Milton Zoning Regulations. Any PERSON violating Sections 890 through 895 shall be subject to fines and penalties as provided in Section ~~9~~1050 of the Zoning Regulations. Any PERSON violating any of the provisions of the Zoning Regulations shall become liable to the Town for any expense, loss or damage occasioned in Town by reason of such violation. Any fines imposed under Sections ~~8~~900 through ~~8~~905 above may be recovered in a civil action brought to enforce the terms of the Zoning Regulations, which may also include an application for injunctive relief and the recovery of all costs and legal fees incurred by the Town in any such enforcement proceeding.

SECTION 910 ***ADULT ORIENTED BUSINESSES***

The purpose of the bylaw is to promote the public health, safety, welfare, and convenience of the residents of the Town of Milton, while accommodating the reasonable provision of locations for Adult Oriented Businesses. The intent of this bylaw is to establish reasonable and uniform regulations for Adult Oriented

Businesses, which, unless closely regulated, cause adverse secondary impacts on the community, including increases crime, blighting of neighborhoods, decreased property values, depressed real estate markets, and an overall decline in the quality and character of surrounding neighborhoods. The provisions of this bylaw have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult entertainment materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult entertainment materials protected by the First Amendment, or to deny access by the distributers and exhibitors of sexually oriented entertainment to their intended market.

SECTION 911 Adult Oriented Business

Adult oriented businesses are defined as any use falling within one of the following three definitions:

911.1 Adult Retail, defined as an establishment that rents and/or sells media or other goods and meets any of the following:

(1) 10% or more of the public floor area is devoted to Adult Media and/or the display of instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities or

(2) 10% or more of the stock-in-trade consists of Adult Media and/or instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities; or

(3) It advertises itself out in any forum as: “XXX,” “adult,” “sex,” or otherwise as a sexually oriented adult business other than an Adult Cabaret or Adult Theater.

911.2 Adult Cabaret, defined as an establishment which features dancing or other live entertainment which constitutes the primary live entertainment and is distinguished or characterized by an emphasis on the exhibition of Specified Sexual Activities and/or Specified Anatomical Areas for observation by patrons.

911.3 Adult Theater, defined as an establishment showing sexually oriented movies, which are distinguished or characterized by an emphasis on the exhibition of Specified Sexual Activities and/or Specified Anatomical Areas for observation by patrons.

SECTION 912 Definitions

The following additional definitions shall apply to this Section, Section 910.

914.1 Specified Anatomical Areas mean any of the following:

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola; or

(2) The human male genitals in a discernibly turgid state, even if completely and opaquely covered.

914.2 Specified Sexual Activities means any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or

(2) Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

914.3 Adult Media means books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, laser or digital video discs, or video reproductions,

slides, or other visual representations which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities.

SECTION 913 Standards

In addition to all other applicable standards set forth in these regulations, including district SETBACK requirements, Adult Oriented Businesses shall meet the following additional standards:

913.1 An Adult Oriented Business shall be located a minimum of 500 feet from any zoning district within which Adult Oriented Business is not an allowed use. Such 500 feet distance shall be measured from the district boundary to the nearest portion of the parcel upon which the Adult Oriented Business is located.

913.2 An Adult Oriented Business shall be located a minimum of 1,000 feet from any other Adult Oriented Business already in existence. Such 1,000 feet distance shall be measured from parcel boundary to parcel boundary.

913.3 An Adult Oriented Business shall be setback a minimum of 150 feet from a PUBLIC ROAD right-of-way.

913.4 An Adult Oriented Business shall be located a minimum of 1,000 feet from any existing residential use, CHURCHES, public or private school, CHILD DEVELOPMENT CENTER, CHILD DAY CARE FACILITY, CHILD DAY CARE HOME, and/or public OUTDOOR RECREATION facility. Such 1,000 feet distance shall be measured from parcel boundary to parcel boundary.

913.5 Sexually oriented toys or novelties, Adult Media, or live performances shall not be displayed or be visible from the exterior of the establishment. Exterior windows shall not, however, be made opaque through the use of paint, newspaper or other paper covering, or exterior wood surface (e.g., plywood); rather, interior curtains, blinds or similar conventional window treatment shall be used to prevent visual access into the premises.

913.6 Retail establishments which offer Adult Media for sale but are not Adult Oriented Businesses are allowed in any district in which RETAIL SALES is an allowed use but are subject to the following additional requirements:

(1) Adult Media shall be kept in a separate, specified portion of the establishment which:

(a) Is physically or visually separated from the rest of the store by an opaque wall of durable material; and
(b) Is located as far from the entrance(s), and from media or goods likely to be of interest to persons less than 18 years of age, as is reasonably practical; and
(c) Is clearly identified as not being open to persons under the age of 18.

913.7 No lascivious sounds associated with sexual conduct shall be audible outside the building or portion of the building in which Adult Oriented Business is conducted.

SECTION 914 Signs

All signs associated with Adult Oriented Businesses shall meet the standards set forth in Section 830 and the following additional standards:

913.1 No image or depiction of, or linguistic reference to, nudity, Specified Anatomical Areas, Specified Sexual Activity, or any devise or paraphernalia designated for use in connection with Specified Sexual Activity shall be displayed;

913.2 No internal illumination is permitted;

913.3 The sign shall not be visible outside of the DB1 District;

913.4 The building entrance shall be clearly and legibly posted with a notice indicating that minors are precluded from entering the premises; and

913.5 Each Adult Oriented Business shall be limited to no more than one building mounted sign, which shall not exceed a maximum of 12 square feet and one freestanding sign as specified in Section 831.1.

ARTICLE ~~I~~X
ADMINISTRATION AND ENFORCEMENT

SECTION ~~900~~1000 ***ZONING PERMITS***

No LAND DEVELOPMENT, excavation or construction shall be started on any land or building; and no EXPANSION, ALTERATION or change of USE shall be started within any existing STRUCTURE without a Zoning Permit issued by the Zoning Administrator.

No Zoning Permit is required for the following (with the exception of development in the Special Flood Hazard Area which is regulated in Appendix A):

(1) Routine maintenance and repairs, and structural ALTERATIONS to an existing STRUCTURE which will not result in a change or EXPANSION of USE.

(2) Construction or placement of one residential accessory structure with an area of not more than 100 square feet and a HEIGHT of not more than 10 feet, which is not on a permanent foundation, and which complies with the provisions of Section 580, provided there are no other exempt accessory structures on the property already.

(3) Fences.

(4) Roof mounted solar panels not to extend beyond the roof; and roof mounted wind turbines not to exceed the maximum HEIGHT as defined in Articles III and IV.

(5) Conversion of a SEASONAL DWELLING to a PERMANENT DWELLING, provided such conversion is done in compliance with the State Water/Wastewater Rules and Section 570, Sewage Disposal. Any expansion of the STRUCTURE proposed in association with such conversion shall require a Zoning Permit unless the expansion is otherwise exempted by these Regulations.

SECTION ~~901~~1001 ***Application of Zoning Permit***

All applications for Zoning Permits shall be made in writing on forms supplied by the Town and shall be accompanied by the following information if applicable:

~~9~~1001.1 A map showing the actual shape, property lines and dimensions of the land on which the development is planned.

~~9~~1001.2 The shape, size and location of all building or other STRUCTURES either existing or proposed on the property.

~~9~~1001.3 The existing and intended USES and areas of USE of the land and all buildings.

~~9~~1001.4 The depth of all SETBACK areas and such other features of information concerning the parcel as may be essential for determining whether the plans comply with the provisions of this Ordinance.

~~9~~1001.5 All other municipal permits and approvals required for the proposed development, including but not limited to: Road Agreement and Waiver, Site Plan approval, Driveway Permit, *Development Review Board* approval, and conditions of subdivision approval as established

by the *Development Review Board*.

SECTION ~~910~~02 ***Issuance of a Zoning Permit***

The Zoning Administrator shall not issue a Zoning Permit unless an application, fee, plot plan and any other approvals required by these or other regulations have been properly submitted. The Zoning Administrator shall not issue a Zoning Permit for development on a parcel on which there is an outstanding violation of previous DRB approvals ~~except~~ and shall be in conformance with these Zoning Regulations.

~~9~~1002.1 The Zoning Administrator shall within thirty (30) days of the submission of a~~n~~ complete application, act to ~~request for additional supporting information to complete the application,~~ make referral (to State agencies or the Development Review Board)~~,~~ or issue an approval or denial. Failure to act within these time limits will constitute automatic approval.

~~9~~1002.2 No Zoning Permit shall take effect until fifteen (15) days after the date of issuance.

~~9~~1002.3 No Zoning Permit shall be issued with respect to any lands or USES specified in ~~Title~~ 24~~,~~ V.S.A., §~~Section~~ 4409(c), as listed below, until the Zoning Administrator has notified the appropriate agency and allowed thirty (30) days for a response as required by State law.

(1) Forest, Parks and Recreation Department - An USE in or within 1000 feet of any State-owned or leased property. This provision does not apply within any incorporated village or city.

(2) Department of Environmental Conservation - Any of the following USES or activities affecting ground or surface water resources:

(a) any area designated as a floodplain or wetland,

(b) the damming of streams so as to form an impounding area of five ACRES or more for reservoir or recreational purposes, and

(c) the drilling of wells deeper than fifty feet or with a potential yield greater than twenty-five thousand gallons per day, except this shall not apply to a well drilled by the owner of a farm or residence for his own USE, or the USE of the farm.

(3) Fish and Wildlife Department - Game lands and stream bank area owned or leased by the State.

(4) Vermont Agency of Transportation - Airports.

(5) Forests, Parks and Recreation Department - The following recreational areas:

(a) ski areas with lifts or other equipment other than tows, with total capacity of more than five hundred PERSONS per hour,

(b) camps with accommodations for more than fifty PERSONS,

(c) MARINAS with accommodations for twenty or more boats with lengths in excess of twenty feet,

(d) public beaches, or lands within one thousand feet thereof, and

(e) natural areas as defined in Section 2010 of Title 10.

(6) Agency of Transportation - Any USE within five hundred feet of the intersection of any entrance or exit ramp providing access to any limited access highway.

~~9~~1002.4 If a permit is granted the Zoning Administrator shall provide three (3) written copies as follows:

(1) One copy shall be retained in a permanent file by the Zoning Administrator.

(2) One copy shall be delivered to the applicant citing all restrictions and special agreements, and describing the mandatory appeal period.

(3) One copy shall be delivered to the listers of the municipality within three (3) days of the date of issuance.

~~9~~1002.5 If a permit is denied, the Zoning Administrator shall provide in writing the findings on which such a decision is based and shall provide instruction to the applicant on the appropriate process for appeal (Section 960).

SECTION ~~9~~1003 Transfer of Zoning Permits

No Zoning Permit shall be transferred from one party to another unless the party acquiring the permit certifies with the Zoning Administrator that all development will be made in accordance with the approved permit.

SECTION ~~9~~1010 CERTIFICATE OF COMPLIANCE/OCCUPANCY

All projects for which a Zoning Permit is required shall be required to receive a Certificate of Compliance which documents that all work has been completed in accordance with the Zoning Permit, ~~and~~ all other local ordinances and 30 V.S.A § 51 and § 53, related to the Vermont Energy Code~~.~~.

No new STRUCTURE, or existing STRUCTURE which has been vacated for the purpose of ALTERATIONS, and for which a Zoning Permit was required, shall be occupied or used in any way until a Certificate of Occupancy has been issued by the Zoning Administrator. For the purposes of this Ordinance with Certificate of Compliance shall serve as the Certificate of Occupancy where it is required.

SECTION ~~9~~1011 Application for Certificate of Compliance

Upon completion of any work requiring a Zoning Permit, the owner or permittee shall apply in writing to the Zoning Administrator for a Certificate of Compliance.

SECTION ~~9~~1012 Issuance of Certificate of Compliance

Within fourteen (14) days of receipt of such application, the Zoning Administrator shall inspect the premises and issue a written "Statement of Condition" as to compliance with the Zoning Permit, ~~and~~ other applicable local permits and approvals and 30 V.S.A. § 51 and § 53, related to the Vermont Energy Code.

~~9~~1012.1 If the Statement of Condition shows compliance with the Zoning Permit, any DRB approvals and other applicable local permits and approvals, the Zoning Administrator shall issue a Certificate of Compliance.

~~9~~1012.2 If the Statement of Condition shows non-compliance with the Zoning Permit, or DRB approvals or other applicable local permits or approvals, the Certificate of Compliance shall be denied. The owner shall make such changes as the "Statement of Condition" indicates to be necessary and shall reapply for the Certificate of Compliance.

SECTION ~~9~~1013 Partial Issuance of Certificate of Compliance

For mulit-unit buildings in which one Zoning Permit is granted for the building; the Zoning Administrator may issue a partial Certificate of Compliance for individual units if they meet Section 912.1.

SECTION ~~9~~10~~20~~ EXPIRATION OF PERMITS AND APPROVALS

A Zoning Permit, variance or CONDITIONAL USE approval shall expire one year from the date of issue. If the work has not been completed, the applicant shall apply to the Zoning Administrator for an extension. The Zoning Administrator may grant a single one-year extension for the identical project only.

SECTION ~~9~~10~~30~~ REVOCATION OF APPROVALS AND PERMITS

In addition to any other remedies provided for by law, a Zoning Permit, Sign Permit, variance, CONDITIONAL USE approval, or Site Plan approval may be revoked by the Zoning Administrator or Development Review Board, whichever granted the permit or approval, for violation of these Regulations or the terms and conditions of the permit or approval.

Omission or misstatement of any material fact by the applicant or agent on the application or at any hearing which would have warranted refusing the permit or approval shall be grounds for revoking the permit or approval at any time.

SECTION ~~9~~10~~40~~ FEES

The Legislative Body of the Town shall prescribe and may revise by resolution reasonable fees to be charged with respect to the administration of these Regulations.

SECTION ~~9~~10~~50~~ VIOLATION AND PENALTIES

~~9~~1050.1 In accordance with ~~Title~~ 24~~,~~ V.S.A.~~, Sections~~ ~~4444~~ § 4451 and ~~4445~~§ 4452, any PERSON who violates the provisions or intentions of this Bylaw shall be fined not more than $~~100~~200.00 for each offense. Each day that a violation is continued shall constitute a separate offense. All fines collected for violations of this Bylaw shall be paid over to the Municipality.

~~9~~1050.2 No action may be brought under this Section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months.

SECTION ~~9~~10~~60~~ APPEALS

Any interested PERSON may appeal any action or denial of action under these Regulations as provided in ~~Title~~ 24~~,~~ V.S.A.~~,~~ §~~Sections~~ 4464 through~~to~~ § 4467. The Development Review Board shall act to approve or disapprove any appeal within forty-five (45) days after the close of the final public hearing. Failure to act within this time period shall be deemed approval and shall be effective on the 46th day.

SECTION ~~9~~10~~70~~ VARIANCES

A variance from provisions of these Zoning Regulations may be granted only after appeal to the Development Review Board in accordance with the following provisions. The Development Review Board

shall act to approve or disapprove any appeal within forty-five (45) days after the close of the final public hearing. Failure to act within this time period shall be deemed approval and shall be effective on the 46th day.

SECTION ~~91~~071 ***Required Findings***

The Development Review Board may grant variances, and render a decision in favor of the appellant, if all the following facts are found and the finding is specified in its decision.

~~9~~1071.1 That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located;

~~9~~1071.2 That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Regulation and that the authorization of a variance is therefore necessary to enable the reasonable USE of the property;

~~9~~1071.3 That such unnecessary hardship has not been created by the appellant;

~~9~~1071.4 That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate USE or development of adjacent property, reduce access to RENEWABLE ENERGY RESOURCES, nor be detrimental to the public welfare; and

~~9~~1071.5 That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Zoning Regulations and from the *Plan*.

SECTION ~~91~~072 ***Renewable Energy Resource Structures***

The Development Review Board may grant variances from the provisions of these Zoning Regulations for a STRUCTURE that is primarily a renewable energy resource STRUCTURE, and render a decision in favor of the appellant, if all the following facts are found and the finding is specified in its decision.

~~9~~1072.1 It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource STRUCTURE in conformance with the Regulations; and

~~9~~1072.2 That the hardship was not created by the appellant; and

~~9~~1072.3 That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate USE or development of adjacent property, reduce access to RENEWABLE ENERGY RESOURCES, nor be detrimental to the public welfare; and

~~9~~1072.4 That the variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the Zoning Regulation and from the *Plan*.

SECTION ~~9~~1080 ***TITLE 24, V.S.A., CHAPTER 117***

SECTION ~~9~~1081 ***Applicability***

The provisions of Chapter 117 of Title 24, Vermont Statutes Annotated, as now provided or as hereafter amended shall govern all matters related to these Regulations, including but not limited to the following:

(1) Administration and enforcement of these Regulations;
(2) Effect of the adoption of these Regulations;
(3) Powers of the Zoning Administrator acting as the Administrative officer;
(4) Requirements for Zoning Permits;
(5) Penalties and remedies;
(6) Administration and finance;
(7) PUBLIC NOTICE; and
(8) Appeals and the granting of variances.

SECTION ~~9~~1082 ***Relationship***

These Regulations shall be read in the context of Chapter 117 of Title 24, Vermont Statutes Annotated, as the same may be amended from time to time. Any provision of these Regulations which is found to be in conflict with that Chapter shall be read in conformance with it.

SECTION ~~9~~1090 ***MISCELLANEOUS PROVISIONS***

SECTION ~~9~~1091 ***Severability***

The validity of any section or provision of these Regulations will not be held to invalidate any other section or provision.

SECTION ~~9~~1092 ***Development Review Board***

The Development Review Board shall consist of the members who are appointed by the Legislative Body of the Town. Individual terms shall commence July 1 for a period of three (3) years and shall continue until June 30 or until a successor has been duly appointed. All appointments shall be made by the Legislative Body of the Town so that, as nearly as may be, no more than one-third of the terms shall expire in any one year. The powers and duties of the Development Review Board and the internal organization and procedures of the Board shall be as prescribed in Chapter 117 of Title 24, ~~, V.S.A., Chapter 117~~Vermont Statutes Annotated.

SECTION ~~9~~1093 ***Implementation***

All Zoning Regulations or interim Zoning Regulations heretofore-in effect in the Town of Milton shall be deemed repealed upon the effective date of the adoption of these Regulations.

SECTION ~~9~~1094 ***FLOODPLAIN REGULATIONS***

Appendix A of the Milton Zoning Regulations: *Inundation Hazard Area Regulations* shall take precedence over all sections within the main Articles of the Milton Zoning Regulations for flood hazard areas as described in Section IV of Appendix A.

ARTICLE XI
DEFINITIONS

SECTION 10100 *APPLICABILITY AND GENERAL RULES*

The following definitions apply to terms used in these Regulations and in any application forms, permits, certificates, approvals, variances, denials or other documents issued or used in connection with these Regulations unless otherwise specified.

(1) Definitions contained in ~~Title 24, V.S.A.,~~ Chapter 117 of Title 24, Vermont State Statutes Annotated are applicable throughout these Regulations.
(2) Words used in the present tense include the future, words in the plural number include the singular number and words in the singular, the plural.
(3) The words "shall" and "must" are always mandatory.
(4) The word "lot" includes the word "parcel."
(5) The words "used" or "occupied" include the words "intended," "designed," or "arranged to be used or occupied."
(6) Ownership of property means fee simple ownership or a leasehold interest of at least ninety-nine (99) years.

SECTION 10110 *DEFINITIONS*

ABANDONED VEHICLE A motor vehicle that has remained on public or private property or on or along a highway without the consent of the owner or person in control of the property for more than 48 hours, and has a valid registration plate or public vehicle identification number which has not been removed, destroyed, or altered; or a motor vehicle that has remained on public or private property or on or along a highway without the consent of the owner or person in control of the property for any period of time if the vehicle does not have a valid registration plate or the public vehicle identification number has been removed, destroyed or altered.

ABANDONMENT The cessation of maintenance, practice, or USE, whether with the intention to resume or not.

ACCESSORY A USE or STRUCTURE on the same lot with, and of a nature customarily and clearly incidental and subordinate to, the PRINCIPAL USE or STRUCTURE. See the definition for PRINCIPAL STRUCTURE and PRINCIPAL USE.

ACCESSORY APARTMENT A one-bedroom, independent dwelling unit that is located within or appurtenant to an owner-occupied, detached, single-family dwelling and that is clearly subordinate to the single-family dwelling. The gross floor area of the accessory apartment shall not exceed 40 (forty) percent of the HABITABLE FLOOR AREA of the detached, single family home as it existed at the time of creation of the accessory apartment. The accessory apartment shall have an adequate potable water supply, an adequate wastewater disposal system, and adequate facilities for living, cooking, dining, sleeping, and bathing. The accessory apartment shall be constructed in accordance with the applicable setback, coverage, and parking requirements of the zoning district in which it is located.

ADULT DAY CARE FACILITY An establishment operated as a business or service on a regular basis, whether for compensation or not, to provide meals, personal care, and supervision of medication, protections, supervision and/or education for elderly and/or DISABLED adults who require assistance and supervision or those who need restorative or rehabilitative services. They may provide other services, such as recreational activities, financial services, and transportation. For the purposes of these regulations, the following are not adult day care facilities: group homes, fraternities, sororities, convents, communes, boarding and rooming homes, prison or correctional facilities.

AGRICULTURE The production of farm products, including, but not limited to, dairy farming, animal husbandry, horticulture, tree farming, maple sugaring, the USE of farm STRUCTURES, the storage of agricultural products raised or acquired for USE on the premises, and direct sales of products so raised.

ALTERATION Structural changes, rearrangement, change of location, or addition to a STRUCTURE other than repairs and modification in building equipment.

ANIMAL SHELTER A facility used to house or contain stray, homeless, abandoned, or unwanted animals and that is owned, operated or maintained by a public body or nonprofit organization devoted to the welfare, protection and humane treatment of animals.

ASSEMBLY The fitting together of manufactured parts into a complete machine, STRUCTURE, item, or unit of a machine, STRUCTURE, or unit.

ASSISTED LIVING FACILITY Residences for the elderly and/or DISABLED adults that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide services, such as recreational activities, financial services and transportation.

ATTACHED As applied to STRUCTURES, means to share a common wall or walls for a distance of at least five (5) feet.

BAKERY/DELICATESSEN A building or STRUCTURE, or part thereof, whose principal business is the sale of sandwiches, baked goods or beverages for consumption primarily off the premises, and whose peak hours of operation typically coincide with the morning rush and lunch time hours.

BASE FLOOD The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood.

BED AND BREAKFAST A single-family residential structure, with up to ten guest rooms, for short-term lodging rooms by the day or by the week. The single-family residential structure must be the primary residence of the owner or operator of the bed and breakfast facility. Meals may be provided to the guests only.

BUFFER STRIP An area of land designated as green space along a property line used to lessen the impact of LAND DEVELOPMENT upon adjacent property. No

STRUCTURES, other than fences, shall be located within a BUFFER STRIP.

BUILDING Any STRUCTURE having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.

BUILDING COVERAGE That part or percent of a lot occupied by buildings, accessory buildings, porches, decks, and in-ground and above ground swimming pools. Building coverage applies to single-family, duplex and three-unit residences.

BUILDABLE ENVELOPE The area of an approved lot within which all permitted STRUCTURES, ACCESSORY STRUCTURES, taking into account the applicable maximum LOT COVERAGE, exclusive of SETBACKS, areas on an excessive grade and natural features that may not be disturbed.

BUILDING FOOTPRINT That portion of a lot circumscribed by the foundation walls and roof drip line of all primary and ACCESSORY STRUCTURES.

CHILD DAY CARE FACILITY A state licensed or registered facility for the care of more than ten children. This operation is a permitted use in zoning districts where it is allowed and requires ~~s~~Site ~~p~~Plan ~~r~~Review before the Development Review Board.

CHILD DAY CARE HOME A state licensed or registered operation for the care of either six or fewer children or not more than six full-time children and four part-time children. These operations are permitted uses that do not require ~~s~~Site ~~p~~Plan ~~r~~Review.

CHILD DEVELOPMENT CENTER A building, or part thereof, which provides educational training and developmental guidance to one or more children on a continuous basis not exceeding 24 hours, whether for compensation or not. This USE may also include a CHILD DAY CARE CENTER.

CHURCH A place of worship that is established and maintained by a religious organization for the purpose of practicing its faith. It includes accessory structures and uses customarily associated with its religious practices. Types of buildings used as a place of worship include but are not limited to cathedrals, chapels, convents, parish houses, synagogues, temples, mosques, and other such places designed to house religious activities.

CIVIC OR FRATERNAL CLUB An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, or like activities, operated for the benefit of its members and not open to the general public.

CLASS 4 ROAD Any publicly controlled or owned road, street, or highway not meeting any of the State definitions for Class 1, 2, and 3 highways. In Milton, the Select Board has determined Class 4 roads to be:

TOWN OF MILTON, VERMONT
OFFICIAL CLASS 4 ROAD LIST

T.H.#	T.H. NAME	GRID# ON 911 MAP	LENGTH
11	Swamp Road	K08	1.20 MI.
17	Timber Lane	J 11	0.20 MI.
24	Dixon Road	J 09	0.47 MI.
25	Bezio Road	I 08	0.14 MI.
26	Marcoux Road	I 08	0.10 MI.
29	Slim Brown Road	I 10	0.06 + 0.10 MI.
35	Kingsbury Road	F 10	0.16 MI.
36	Hardscrabble Road	F 11	0.70 MI.
39	Devino Road	E 12	0.50 MI.
41	Lamphere Road	G 08	0.65 MI.
42	Dugout Road	G 08	0.20 MI.
56	Lady Slipper Lane	E 08	0.25 MI.
58	PreCast Road	F 08	0.10 MI.
60	Petty Brook Road	F 09	0.13 MI.
69	Kienle Road	H 11	0.13 MI.
72	Ritchie Avenue	G 10	0.20 MI.
78	Erling Drive	G 11	0.03 MI.
94	Doris Drive	F 10	0.06 MI.

CLINIC Means a building, or part thereof, used by qualified medical practitioners, dentists, opthamologists, osteopaths, and alternative medicine practitioners, and veterinarians having treatment rooms and facilities for more than two practitioners and used for public or private medical, surgical, physiotherapeutic or other human health purposes, except when included within or ACCESSORY to a hospital.

CLUSTER A development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for natural areas, recreation, OPEN SPACE, and preservation of environmentally sensitive features.

COMMERCIAL An endeavor having profit as its chief aim.

COMMERCIAL PLANT NURSERIES, GREENHOUSES, AND LANDSCAPING SERVICES
The USE of land or STRUCTURES for the purpose of cultivating, raising, harvesting, selling, or maintaining plants.

COMMERCIAL RETAIL BUSINESS A store owned and operated as a single legal entity whose principal purpose is to provide direct retail sales of goods, merchandise, and/or food products to the public and which may include service and storage facilities for any items sold on the premises.

COMMUNITY SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

A residence providing food, shelter, medical care, legal assistance, personal guidance, and other services to persons who have been victims of domestic violence, including children of such victims, who temporarily require shelter and assistance in order to protect their physical

or psychological welfare.

COMPOST Plant debris from yard waste including tree, shrub, flower, vegetable, grass and other herbaceous and woody plant clippings which is arranged in a way that encourages rapid decomposition to produce a safe soil-like substance for beneficial use when applied to the land.

CONDITIONAL USE A USE which may be permitted in a district only by approval of the Development Review Board after PUBLIC NOTICE and public hearing if the Development Review Board determines that the proposed USE conforms to Section 500 of these Regulations.

~~**COMPOST** Plant debris from yard waste including tree, shrub, flower, vegetable, grass and other herbaceous and woody plant clippings which is arranged in a way that encourages rapid decomposition to produce a safe soil-like substance for beneficial use when applied to the land.~~

CONSTRUCTION AND AGRICULTURAL EQUIPMENT SALES AND SERVICE
The USE of land or STRUCTURES for the sale and service of construction, agricultural, or other heavy equipment.

CORNER LOT A lot located at the intersection of two or more STREETS which meet at an angle of less than 120 degrees.

DISABLED or DISABILITY In reference to an individual, an individual who has a physical or mental impairment that substantially limits one or more of the major life activities; or who has~~:~~ a record of such an impairment~~:~~; or who is regarded as having such an impairment. The term DISABLED or DISABILITY does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802. Interpretation of DISABLED or DISABIILITY shall be consistent with the use of the term under the Americans with Disabilities Act and its implementing regulations, particularly 28 C.F.R. Parts 35 and 36. ~~This definition shall refer to the U.S. Department of Justice Code of Federal Regulations, 28 CFR Part 36, Subpart A 36.104 Definitions~~

DISTRIBUTING The storage, receipt, or transportation of goods, products, cargo and/or materials for the purpose of distribution to other locations.

DRIVE-UP FACILITY An accessory structure or addition that may be detached from or attached to a principal business structure for the purpose of providing vehicular access to the purchase of the goods or services of the business.

DRIVEWAY A private roadway providing access to a PUBLIC ROAD or PRIVATE RIGHT-OF-WAY from a maximum of three lots and no more than three DWELLING UNITS. The Town of Milton shall not responsible for the maintenance and repair of DRIVEWAYS.

DRIVEWAY, SHARED A driveway providing two or more DWELLING UNITS access to a PUBLIC ROAD or PRIVATE RIGHT-OF-WAY.

DRY CLEANING PLANT A facility for dry cleaning of fabrics, textiles, wearing apparel, or articles of

any sort by immersion and agitation, or by immersions only, in volatile solvents, and the processes incidental thereto. This is not to include premises where the dry clean articles are to be dropped off or picked up directly by the customer.

DUPLEX A detached residential STRUCTURE containing two SINGLE FAMILY DWELLING UNITS which share one or more walls.

DWELLING UNIT A room or rooms connected together constituting a separate, independent housekeeping unit physically separated from any other rooms or DWELLING UNITS which may be in the same STRUCTURE, and containing independent cooking and sleeping facilities, but excluding lodging facilities such as MOTELS and COUNTRY INNS.

EARTH AND MINERAL EXCAVATION The removal of loam, rock, stone, gravel, sand or soil from a site so as to change the natural contours.

ELDERLY HOUSING COMPLEX A development of one or more dwelling units in detached or multi-unit buildings on the same lot under common ownership that is dedicated as a housing complex for persons 55 years of age or older and includes legal covenants or restrictions designed to ensure the occupancy of such buildings principally by persons 55 years of age or older. DISABLED persons of any age shall be eligible to live in an ELDERLY HOUSING COMPLEX. ~~Multifamily housing designed for elderly and/or DISABLED people.~~

EMPLOYEE TRAINING CENTER The USE of land or STRUCTURES for the education and instruction of employees to perform job-related functions on the same job site as the education and instruction is provided, or within a PLANNED UNIT DEVELOPMENT which contains the job site.

ENCLOSED Located entirely within a STRUCTURE.

ENCLOSED OUTDOOR STORAGE The storage of materials fully or partially enclosed by a STRUCTURE such that the materials are not visible from off-site or from STREETS and provide adequate safeguards.

EXPANSION Any change to a STRUCTURE which results in any increase in the GROSS FLOOR AREA of the STRUCTURE. Any change to a USE which results in an increase in area devoted to a USE or an intensification of the USE.

FAMILY An individual or group of PERSONS related by blood, marriage, or legal adoption; or a group of not more than five unrelated PERSONS living together as a single housekeeping unit.

FILL Any material or substance used to raise the natural contours.

FINANCIAL ESTABLISHMENT A bank, savings and loan, credit union, or other similar establishment that provides financial services to its customers.

FOOTPRINT LOT A parcel of land which consists solely of the area directly under a structure.

FORESTRY The growing, cutting or harvesting of commercial timber or other forest products; the growing, maintenance or preservation of forest cover for watershed protection or wildlife habitat.

FRONTAGE That portion of a lot, required by Section 530, which abuts on a public STREET, public waters, approved private STREET, or approved public right-of-way. The minimum required FRONTAGE for a lot, as prescribed in Articles III and IV, shall be provided along a continuous front property line of a lot and shall be maintained for a depth of at least one hundred (100) feet. CORNER LOTS, which abut STREETS intersecting at an angle of less than 120 degrees, shall provide the required FRONTAGE and FRONT SETBACK along each STREET. SHORELINE FRONTAGE shall be measured from the ordinary high water mark of a lake or pond.

GROSS FLOOR AREA The sum, in square feet, of the total horizontal areas of all floors of a building measured from the interior face of exterior walls. This shall include all storage and utility areas, basements, attics, and mezzanines.

HABITABLE FLOOR AREA: The temperature-controlled, finished floor area within a dwelling unit exclusive of unfinished garages, attics and cellars.

HAZARDOUS MATERIALS Any substance, material or combination of materials by reason of its explosive, flammable, toxic, acidic, corrosive, an etiologic agent, caustic, pathogenic, radioactive, or otherwise injurious properties, may be detrimental or deleterious or be reasonably assumed to constitute a risk to human safety, air quality or water resources. Refer to Title 10 V.S.A., Ch. 159, Section 6602(4) and (16).

HEIGHT (of a structure) The vertical dimension of a STRUCTURE measured from the average preconstruction grade level at the base of the STRUCTURE to the highest point of the structure (if it has no roof), or to the highest point of the roof (if the roof is flat or mansard) or to the average level between the eaves and the highest point of the roof (if the roof is of any other type), unless modified by more specific provisions in this Ordinance.

HOME OCCUPATION An occupation, **personal service,** profession, or trade customarily and commonly carried out by an occupant of a DWELLING UNIT as a secondary USE which is customary in residential areas and which does not have an undue adverse effect upon the character of the residential area in which the DWELLING UNIT is located, and which, for the purposes of this Ordinance, shall in all cases comply with the requirements of Section 600.

INDOOR RECREATION Public or private recreation facilities which take place principally indoors (for example: gymnasiums, laser tag, arcades, pools, bowling alleys).

INDOOR THEATER An enclosed place of mass assembly designed for the viewing of movies, plays, concerts, live performances, or other cultural events.

JUNK Any scrap copper, brass, iron, steel and other scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, plastic, fiberglass, rubber debris, waste, trash or any

dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.

JUNK MOTOR VEHICLE A discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety (90) days from the date of discovery.

KENNEL Any premises on which caring, breeding, or overnight housing of four or more dogs, cats or other domestic animals is done for monetary purposes.

LAND DEVELOPMENT The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural ALTERATION, relocation or enlargement of any building or other STRUCTURE, or of any mining, excavation or landfill, and any change in the USE of any building or other STRUCTURE, or land, or extension of USE of land.

LIGHT INDUSTRY The assembly, manufacture, processing, packaging, or other industrial operations in such manner that all resulting goods and by-products or waste materials are confined to the premises or properly disposed of in a manner that avoids any type of pollution of air, land, or water and which does not create a public or private nuisance from excess noise, odor, or lighting and is otherwise non-detrimental to abutting properties.

LIGHT MANUFACTURING The processing and fabrication of materials or substances into new products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emissions which will disturb or endanger neighboring properties. LIGHT MANUFACTURING USES include, but are not limited to, home occupations, electrical instruments, office machines, printed materials, plastic goods, pharmaceutical goods, food processing, laundry and dry cleaning plants, and similar USES.

LIKE KIND QUALITY Having characteristics that allow a use to be located in harmony with other adjacent uses and to be compatible with the overall character of the neighborhood. Some elements affecting compatibility include HEIGHT, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular traffic, circulation, access and parking impacts. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals in maintaining the character of existing development.

LOT AREA The total area within the property lines of a lot excluding any part thereof lying within the boundary of a public STREET, private STREET, right-of-way or proposed public STREET.

LOT COVERAGE That part or percent of a lot occupied by buildings, STRUCTURES, including accessory buildings, driveways, parking areas, sidewalks, alternative transportation paths, vehicle travel lanes, overhead canopies above unpaved areas, utility facilities, storage tanks for commercial use, and designated storage areas including storage areas for boats, trailers, or other vehicles. For the purposes of these regulations, lot coverage does not include private septic systems or wells.

Additionally, lot coverage does not include aboveground public infrastructure located within easements across private property. Lot coverage applies to all uses other than single-family, duplex and three-unit residences.

LUMBERYARDS A facility where building materials such as lumber, plywood, drywall, paneling, cement blocks and other cement products, and other building products are stored and sold. Lumberyards may also process lumber by performing mill work, planing, cutting, and other customizing processes. Lumberyards may provide for the sale of associated products including tools and fasteners.

MANUFACTURING The processing and fabrication of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors. Restaurants and Restaurants, Fast Food are not included within this use.

MARINA A harbor or boat basin providing dockage, supplies, and services for small marine pleasure craft.

MIXED USE The development of a structure or one or more tracts of land with a variety of complementary and integrated USES. USES may be comprised of any combination of permitted or CONDITIONAL USES allowed under the designated zoning district, as defined by Articles III and IV of these regulations.

MOBILE/MANUFACTURED HOME A structural dwelling unit designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis, to a building site in one or more sections, and limited to those units constructed after June 15, 1976, commonly called "newer mobile homes," which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, and are 750 or more gross square feet in area, are built on a permanent chassis, and designed to be used as year-round dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

MOBILE HOME PARK A tract of land with a minimum size of two acres under unified ownership which has been planned for the placement of four or more mobile homes for non-transient use and which has been approved by the Development Review Board as a subdivision.

MODULAR HOME A dwelling unit constructed of wood in multiple sections in a factory in accordance with national building codes and shipped to its home site on an independent trailer(s) where it is secured to a permanent foundation and assembled in modules.

MOTEL Any building in which rooms or living accommodations are rented to transients whose stay does not exceed six days. The term MOTEL shall include hotels and rooming houses.

MULTIFAMILY DWELLINGS A residential structure designed and constructed to house three or more individual dwelling units each with its own cooking, dining, living, sleeping, and bathing facilities.

NEIGHBORHOOD CONVENIENCE STORE A general store of not greater than 7,500 square feet

providing for the sale of standard convenience goods for day-to-day living needs, including the sale of gasoline.

NON-COMPLYING STRUCTURE A STRUCTURE or part thereof not in conformance with the Zoning Regulations covering building bulk, dimensions, HEIGHT, area, yards, SETBACKS, density, or off-STREET parking or loading requirements for the district in which it is located, where such STRUCTURE conformed to all applicable laws, ordinances and regulations prior to the enactment of these Regulations.

NON-CONFORMING USE USE of land or STRUCTURE which does not comply with all USE regulations for the district in which it is located, where such USE conformed to all applicable laws, ordinances and regulations prior to the enactment of these Regulations; provided, however, that RECYCLING YARDS, as that term is defined in these Regulations, shall comply with Section 870 of these Regulations.

OFFICE, GENERAL Facilities occupied by consulting firms, clerical services, real estate or insurance agencies, doctors, dentists, lawyers, architects, engineers, accountants, government offices, travel agencies, FINANCIAL INSTITUTIONS (including banks), veterinarians, and establishments providing similar services, but not including manufacturing, repairing, processing, or fabrication of any article, substance or commodity, or the retail sale of goods.

OFFICE, MEDICAL An establishment where patients are examined and treated by doctors, dentists or other medical professionals but not hospitalized overnight. A medical office may include as an ancillary use the assembly, fitting, testing and sale of products directly related to the medical service provided in the same establishment.

OPEN SPACE: Any parcel ~~or~~, area of land, water body over 10 acres, or access to a water body over 10 acres, which is essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners, occupants, and their guests of land adjoining or neighboring such open space. It may include, but not limited to, active recreational facilities such as play equipment, ball fields, court games, and picnic tables.

OUTDOOR RECREATION Private or public outdoor recreation activities, ranging from activities of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites or fields, to less energetic activities such as hiking, picnicking, and table games. For the purposes of these regulations, outdoor recreation includes but is not limited to playgrounds, parks with or without sports fields, tennis courts, swimming pools, boating access, skate or bike parks, skating rinks, golf courses, bike paths, cross country ski trails, nature areas, picnic areas, and equestrian trails.

OUTDOOR STORAGE The storage of materials, screened from view in other than a completely ENCLOSED STRUCTURE.

PERMANENT DWELLING A DWELLING UNIT designed, arranged, or intended for USE for at least six months in any one calendar year.

PERSON An individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.

PERSONAL SERVICES Establishments primarily engaged in providing services involving the care of a person and/or his/her personal goods or apparel. Sales of products must be clearly incidental to the services provided. Personal services include but are not limited to tailor, photographic processing, travel agent, laundry service, linen supply, diaper service, beauty and barbershops, massage therapy, shoe repair, funeral services, repair services and clothing rental.

PLANNED UNIT DEVELOPMENT The development of one or more lots, involving one or multiple owners, with multiple USES in one or more BUILDINGS on the lot or lots; the plan of which may not correspond to the area, density or dimensional requirements or allowable number of STRUCTURES and USES per lot as established in any one or more ZONING DISTRICTS. The specific requirements of a PLANNED UNIT DEVELOPMENT and the area, density and dimensional requirements which may be modified are defined in each ZONING DISTRICT in which PLANNED UNIT DEVELOPMENTS are allowed.

PRECIOUS METAL Gold, silver, platinum, palladium, coins sold for more than face value, jewelry, or similar items, but does not include an antique.

PRECIOUS METAL DEALER Any premises on which a person with a physical presence in the state, whether temporary or permanent, is engaged in the business of purchasing or selling PRECIOUS METAL and purchases or sells $2,500.00 or more of PRECIOUS METAL in a consecutive 12-month period and in order to conduct such business has obtained Certification from the Department of Public Safety. Refer to 9 V.S.A. Chapter 97A.

PRIMARY UNIT The unit other than an ACCESSORY APARTMENT located within a single FAMILY STRUCTURE containing an ACCESSORY APARTMENT approved by the Development Review Board.

PRINCIPAL STRUCTURE A STRUCTURE having significant or primary USE and justifying its own utilization (such as a dwelling or office building) as contrasted to ACCESSORY STRUCTURES which are incidental or subordinate to primary STRUCTURES and do not alone justify their utilization (such as a tool shed or auto garage used in conjunction with a dwelling). Certain STRUCTURES may be either principal or ACCESSORY depending upon utilization, such as a parking garage as an ACCESSORY STRUCTURE to a high-rise apartment or as a PRINCIPAL STRUCTURE when operated commercially in a business area.

PRINCIPAL USE The significant or primary activities carried out within a STRUCTURE or upon land (such as RETAIL SALES within a store or occupancy of a

DWELLING UNIT as residence) as contrasted to ACCESSORY USES which are incidental or subordinate to primary USES (such as sale of soft drinks at an automobile service station). Certain USES may be either principal or ACCESSORY depending upon their relationship with other USES, as for example, a newsstand as an ACCESSORY USE within a hotel lobby or as a PRINCIPAL USE within a separate STRUCTURE.

PRINTING FACILITY An establishment in which the principal business consists of duplicating and printing services, including publishing, binding and engraving.

PRIVATE FACILITY A building and related facilities owned and/or operated by a corporation association or group of individuals established for the fraternal, social, educational, recreational or cultural enrichment of its members.

PRIVATE RIGHT-OF-WAY Any RIGHT-OF-WAY that is not a public right-of-way. The Town of Milton shall not be responsible for the maintenance and repair of PRIVATE RIGHTS-OF-WAY. PRIVATE RIGHTS-OF-WAY are developed with the understanding that they shall never be offered for dedication to the Town of Milton.

PRIVATE ROAD Any road that is not offered to and accepted by the Town as a PUBLIC ROAD.

PUBLIC FACILITY State or community owned and operated institutions and facilities; public and private schools and other educational institutions certified by the Vermont Department of education; churches and other places of worship, covenants and parish houses; public and private hospitals; regional solid waste management facilities certified under 10 V.S.A. Chapter 159; and hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. §6606a.

PUBLIC NOTICE The form of notice prescribed by ~~Title~~ 24, V.S.A.~~, Chapter 117, Section~~ § 4447, as the same now provides or may hereafter be amended.

PUBLIC ROAD A road, street, or highway legally controlled or owned and regularly maintained by either the Town of Milton or the State of Vermont and which meets a Class 1, 2, or 3 road classification under State law.

QUEUE STORAGE LENGTH The length of an exiting DRIVEWAY, measured from its intersection with a STREET, along which there is no access for vehicles to enter or cross the DRIVEWAY.

RECYCLING YARD Any place of OUTDOOR STORAGE or deposit which is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling JUNK or as a scrap metal processing facility. "RECYCLING YARD" also means any place of OUTDOOR STORAGE or deposit, not in connection with a business, which is maintained or used for storing or keeping four (4) or more JUNK MOTOR VEHICLES which are visible from any portion of a public highway or adjacent property. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than ninety (90) days for inspection or repairs. It further does not

mean a bottle redemption center or bottle deposit center.

REFUSE All solid wastes including garbage, rubbish, ashes, street clearings, dead animals, abandoned automobiles and parts thereof, household appliances, and solid market and Industrial wastes.

REINCORPORATION The reintegration of an ACCESSORY APARTMENT into the PRIMARY UNIT, resulting in the removal of its kitchen.

RENEWABLE ENERGY RESOURCES Energy available for collection or conversion from direct sunlight, wind, running water, organically-derived fuels including wood, agricultural sources, waste materials, waste heat, and geothermal sources.

RESEARCH AND DEVELOPMENT LABORATORIES The USE of land or STRUCTURES for the research and development of new or improved goods, products, materials, or processes.

RESTAURANTS A building or STRUCTURE, or part thereof, whose principal business is the preparation and serving of food and refreshments to the public for consumption within the building or STRUCTURE, but does not include a drive-in restaurant or take-out restaurant or fast food restaurant.

RESTAURANTS, FAST FOOD A building or STRUCTURE, or part thereof, whose principal business is the sale of foods or beverages, for consumption either on or off the premises, and whose operation is characterized by (1) service of food or beverage in containers or in paper, plastic or other disposable containers, (2) time, and/or (3) insufficient seating facilities within the restaurant building for the volume of food sold. They may include inside seating, drive through and take-out/carry out services, perhaps all at the same time. This definition shall not include delicatessen or bakeries.

RETAIL SALES A store or shop providing direct retail sale to the ultimate consumer or persons without a resale license, which may include service facilities for merchandise sold on the premises.

SATELLITE DISH ANTENNA A directional antenna having a concave reflector.

SCENIC VIEWS An area visible from a highway, waterway, railway, major hiking, biking or equestrian trail that provides views over water, and across expanses of land such as farmlands, woodlands, coastal wetlands, mountaintops or ridges.

SEASONAL DWELLING A DWELLING UNIT designed, arranged, or intended for USE for period of time of less than six (6) months in any calendar year.

SETBACK A required open area which shall be unoccupied and unobstructed in accordance with Section 550. The SETBACK shall be of a depth prescribed in Articles III and IV and shall run the entire perimeter of a lot.

SETBACK, FRONT An area extending the full width of a lot and measured for the prescribed

depth from the front property line of a lot.

SETBACK, REAR An area extending the full width of a lot and measured for the prescribed depth from the rear lot line of a lot.

SETBACK, SIDE An area extending between the front and REAR SETBACK areas of a lot measured for the prescribed depth from the side lot lines on each side of a lot.

SHORELINE The ordinary high water mark of a lake or pond.

SIGN Any device designed to inform or attract the attention of PERSONS not on the premises which the device is located. For the purposes of these Regulations, such devices located entirely within a PRINCIPAL STRUCTURE shall not be considered SIGNS.

SINGLE FAMILY DWELLING A residential STRUCTURE designed and constructed to house one or more PERSONS living as single housekeeping it. A State licensed or registered residential care home or group home, serving not more than eight PERSONS who ~~are~~have a ~~developmentally disabled or physically handicapped~~DISABILITY, shall be considered by right to constitute a SINGLE FAMILY DWELLING, except that no such home shall be so considered if it locates within 1,000 feet of another such home. A State registered or licensed day care facility serving six or fewer children shall be considered by right to constitute a SINGLE FAMILY DWELLING. MOBILE OR MANUFACTURED HOMES and MODULAR HOMES shall each constitute a single family dwelling.

SLAUGHTER HOUSE A facility for the slaughtering and processing of animals and the refining of their byproducts.

STATE FACILITIES The USE of land or STRUCTURES, not otherwise classified by these Regulations, by the State of Vermont, including, but not limited to, correctional institutions, laboratories, and landfills.

STREET A public or properly approved private thoroughfare for vehicular traffic which serves as the principal means of access to more than three DWELLING UNITS.

STREET, ARTERIAL Those STREETS defined as State highways in the *Comprehensive Land Use Plan*.

STREET, COLLECTOR Those STREETS defined as Class II Town Highways or State Aid Roads in the *Comprehensive Land Use Plan*.

STREET, LOCAL Any STREET not classified as an arterial or COLLECTOR STREET.

STRUCTURE Anything constructed or erected, the use of which requires location on or within the ground or attachment to something having location on or within the ground. For the purposes of these regulations, MOBILE/MANUFACTURED HOMES shall be considered STRUCTURES.

For the purposes of these regulations, a driveway, parking area, sidewalk or bicycle path, sign, bicycle rack, recreational vehicle, trailer or other vehicle on wheels not regularly used for the manufactured purpose, private septic system or well is not considered a structure. For the definition of STRUCTURE in the Special Flood Hazard Area, see Appendix A, Section X1.

STUDIO A single residential unit in which the bedroom, living room and kitchen are all located in the same room.

TEMPORARY SIGN A SIGN used to announce the opening or closing of a business, a change of ownership or management of a business, or a special sale or promotional event. These include but are not limited to banners, building mounted signs and freestanding signs.

TEMPORARY SPECIAL SALES The USE of land or STRUCTURES of the sale of goods or materials for a limited period of time. TEMPORARY SPECIAL SALES include, but shall not be limited to, auctions, garage sales and lawn sales.

TRANSPORTATION FACILITIES Establishments primarily engaged in furnishing transportation services, including but not limited to passenger charter service, bus terminals, heliopads for transporting of personnel only, and train depots.

TRAVELER SERVICES The provision of goods and services primarily to PERSONS traveling through the area, including RETAIL SALES of gasoline, and food, RESTAURANTS, and lodging facilities.

TRIPLEX – OWNER OCCUPIED A building containing three dwelling units; one of which is occupied by the owner of the property.

TRUCKING The USE of land or STRUCTURES for the storage, transportation, and distribution of goods and materials.

TRUCK STOP Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. A truck stop also may include overnight accommodations and restaurant facilities primarily for the use of truck crews. This use is not intended to include MOTELS.

UNDEVELOPABLE SOIL Soils classified by the *Soil Survey of Chittenden County, Vermont* as having severe limitations for development as proposed.

USE The specific purpose for which land or a building, or unit thereof, is designed, arranged, or intended; or for which it is or may be occupied or intended. The term "permitted USE" or its equivalent shall not be deemed to include any NON-CONFORMING USE.

UTILITIES AND UTILITY OFFICES The USE of land or STRUCTURES for the provision of public

utilities, such as electricity, telephone service, and water. Utility facilities include transformer stations, water tanks and towers, pump stations, telephone exchanges, and the like.

VACATION TRAILER OR TENT CAMP Any lot on which three or more vacation trailers or tents are occupied for a period of greater than one week per year.

VENDOR SALES The sale of goods or materials along a public STREET, whether in a roadside stand or not and whether located on private property or not.

WAREHOUSING, PRIVATE A building used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial or economic field.

WAREHOUSING, PUBLIC A building used primarily for the storage of goods and materials and available to the general public for a fee.

WASTE (RUBBISH) All solid wastes consisting of both combustible and non-combustible wastes such as paper, wrappings, plastics, paint or any other petroleum based products, ashes, cigarettes, cardboards, ferrous and non-ferrous metals, yard clippings, leaves, wood, trees, stumps, branches, glass, bedding, crockery, and similar materials. Yard clippings, leaves, wood, trees, stumps and branches that are used to create compost or buried under clean fill on the site on which they originated shall not be considered waste (rubbish) provided that burial locations are not located within a wetland or within 75 feet of surface water or a well.

WETLANDS Those areas that are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include, but are not limited to, marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs and ponds, but excluding such areas as grow food or crops in connection with farming activities.

WHOLESALE The USE of land or STRUCTURES for the sale of goods or materials in quantity usually for resale, but not to the general public.

WIRELESS COMMUNICATION FACILITY Any tower or other support structure, including but not limited to antennas intended for use in connection with transmission or receipt of radio or television signals or any other electromagnetic-spectrum-based transmissions/reception regulated by the FCC; the construction or improvement of a road, trail, building, or structure incidental to a communication facility. This definition does not include amateur radio facilities.

ZONING DISTRICT A geographic area defined by the ZONING MAP within which the provisions and regulations of this Ordinance apply uniformly to each class or kind of situation, USE, and STRUCTURE.

ZONING MAP A map delineating the ZONING DISTRICTS of the Town of Milton, maintained in the Planning and Zoning office.

ARTICLE XI~~I~~I
AMENDMENTS

SECTION 1~~1~~200 ***INITIATION OF AMENDMENTS***

An amendment to these Regulations or to the ZONING MAP may be proposed by the Planning Commission, the Select Board, any department or agency of the Town, or any other individual, corporation, or agency.

A proposed amendment prepared by a PERSON or body other than the Planning Commission shall be submitted in writing to the Planning Commission along with any supporting documents. The Planning Commission may then proceed under this Article as if the amendment had been prepared by the Planning Commission.

SECTION 1~~1~~210 ***PLANNING COMMISSION ACTION***

SECTION 1~~1~~211 ***Planning Commission Review***

1~~1~~211.1 All proposed amendments shall be submitted to the Planning Commission for study and recommendation.

1~~1~~211.2 The Planning Commission shall study proposed amendments to determine the need and justification for the change and the relationship of the proposed amendment to the purposes of the general planning program, with appropriate consideration as to whether the proposed change will further the purposes of these Regulations, the *Comprehensive Plan*, and any other duly adopted plans and policies. When considering an amendment, the Planning Commission may prepare a written report on the proposal.

1~~1~~211.3 Based on its study, as described in Section 1111.2 and Section 1112, the Planning Commission may decide not to take any further action with regard to any application for amendment.

SECTION 1~~1~~212 ***Report on Zoning Map Amendments***

If a proposed amendment would alter the zoning designation of any land area, a report may be prepared by the Planning Commission which covers the following points:

(1) the probable impact on the surrounding area, including the effect of any resulting increase in traffic, and the probable impact on the overall pattern of land USE.

(2) the long-term cost or benefit to the Town, based upon consideration of the probable impact on: (a) the Town's tax base and (b) the need for public facilities.

(3) the amount of vacant land which is: (a) already subject to the proposed new designation and (b) actually available for that purpose, and (c) the need for additional land for that purpose.

(4) the suitability of the area in question for the proposed purpose, after consideration of: (a) appropriate alternative locations, (b) alternative USES for the area under consideration, and (c) the probable impact of the proposed change on other areas similarly designated.

(5) the appropriateness of the size and boundaries of the area proposed for change, with respect to the area required for the proposed USE, land capability, and existing development in the area.

(6) the consistency of the proposed change with any duly adopted plans for the Town, including the *Comprehensive Plan* and the Capital Improvement Program.

SECTION 1~~12~~13 ***Public Hearing Required***

The Planning Commission shall hold at least one public hearing within the Town after PUBLIC NOTICE on the proposed amendment. Such public hearing shall be warned in accordance with the requirements of ~~Title~~ 24~~,~~ V.S.A.~~, Section~~ § 4447.

At least fifteen days prior to the first hearing, a copy of the proposed amendment and any written report shall be distributed in accordance with ~~Title~~ 24~~,~~ V.S.A.~~, Section~~§ 4403(e).

SECTION 1~~12~~14 ***Planning Commission Submittal***

After the public hearing, the Planning Commission may make revisions to the proposed amendment and to any written report, and shall thereafter submit the proposed amendment and any written report to the Milton Select Board. Simultaneously with the submittal to the Select Board, the Planning Commission shall file a copy of the proposed amendment and any written report with the Town Clerk for public review.

SECTION 1~~12~~20 ***SELECT BOARD ACTION***

SECTION 1~~12~~21 ***Public Hearing Required***

The Select Board shall hold the first of one or more public hearings, after PUBLIC NOTICE in accordance with ~~Title~~ 24~~,~~ V.S.A.~~, Section~~ § 4447, on a proposed amendment not less than thirty nor more than 120 days after the amendment is submitted by the Planning Commission. Copies of the amendment and any written report of the Planning Commission shall be made available to the public upon request.

SECTION 1~~12~~22 ***Changes by the Select Board***

The Select Board may change the proposed amendment, but shall not do so less than 15 days prior to the final public hearing. If the Select Board at any time makes substantial changes in the concept, meaning or extent of the proposed amendment, it shall warn a new public hearing or hearings. If any part of the proposal is changed, the Select Board, at least 15 days prior to the hearing, shall file a copy of the changed proposal with the Town Clerk and with the Planning Commission. The Planning Commission may submit a report on the changed amendment to the Select Board at or prior to the public hearing.

SECTION 1~~12~~30 ***ADOPTION OF AMENDMENTS***

Any amendment to these Regulations shall be adopted only by a majority of the members of the Select Board after the final public hearing. The amendment shall become effective 21 days after adoption.

SECTION 1~~12~~40 ***FAILURE TO ACT***

If a proposed amendment is not approved or rejected within one year of the date of the final public hearing of the Planning Commission, it shall be considered disapproved. However, if a petition is filed within 60 days of the end of that year, which petition shall be signed by five percent of the voters of Milton, and which petitions

a meeting of the Town to consider the amendment, then a Town meeting shall be duly warned for the purpose of acting on the proposed amendment by Australian ballot.

SECTION 1~~1~~250 PROTESTS AGAINST AMENDMENTS

A written protest against a proposed amendment may be filed at least 15 days before the vote on the adoption of the amendment by: (1) five percent of the voters, (2) the owners of forty percent of the lots or area included in the proposed amendment, or (3) the owners of forty percent of the lots or area located outside the proposed amendment but within two hundred feet from the outer limits of lots included in the proposed amendment. If such a protest is filed, a proposed amendment shall become effective only when adopted by a two-thirds vote of all members of the Select Board.

SECTION 1~~1~~260 AMENDMENT BY PETITION

Notwithstanding the provisions of Section 1111.3, if a proposed amendment is supported by a petition signed by not less than five percent of the voters of Milton, the Planning Commission shall correct any technical deficiency and shall, without otherwise changing the amendment, promptly proceed in accordance with Section 1111 as if the amendment had been prepared by the Planning Commission. The Planning Commission shall also, after its final public hearing, promptly submit the amendment, with changes only to correct technical deficiencies, to the Select Board, together with any recommendation or opinion it considers appropriate.

SECTION 1~~1~~270 RECONSIDERATION OF PROPOSED AMENDMENTS

The Select Board shall not reconsider a proposed amendment to the OFFICIAL ZONING MAP if such amendment requests a change to the same zoning classification for the same lot, parcel, or portion thereof, for a period of one year from the date for final action of the prior request unless the Planning Commission recommends to the Select Board that such reconsideration be given, after the Planning Commission has found that either: (a) there has been a substantial change in the character of the area, or (b) evidence of factors or conditions exist which were not considered by the Planning Commission or the Select Board in previous deliberations which might substantially alter the basis upon which the previous determination us reached.

SECTION 1~~1~~280 RELATIONSHIP TO TITLE 24

Notwithstanding the provisions of this Article, all amendments to these Regulations shall be completed in accordance with the requirements of Title 24.

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Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses

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Abstract

Scholarly debate about whether the presence of sexually oriented businesses in a community is related to increased levels of crime has been present for several decades. This argument about the "secondary effects" of such businesses shows support for the link to increased crime as well as evidence of a lack of relationship. This article addresses this debate, presenting findings from three spatial analyses using varying-sized buffer zones of rates of violent, property, and public order offenses in the vicinity of sexually oriented businesses in Louisville, Kentucky. Results show that sexually oriented businesses are associated with much higher rates of all types of offenses in the immediate vicinity of the business and continue to have significant effects on crime levels as one moves further from the business. At the site of the sexually oriented business, community, social and economic characteristics are outweighed by the effect of the business; in farther-reaching buffer zones, community characteristics become more important, although the effects of the business remain significant.

Keywords

spatial analysis, sexually oriented businesses, crime rates, secondary effects

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Central to controlling crime in communities are understandings of not only who commits and is victimized by crime but also where crime occurs; social and structural conditions of communities, which may be associated with crime; and how patterns of land use may facilitate or inhibit criminal activity. If we can better understand community conditions, including what structures are present in a community, locations and movements of people in physical environments, temporal aspects of activities and movements of people, and the locations and uses of physical aspects of communities, it may be possible to design environments to prevent criminal activities or facilitate the detection and effective responses to crime.

Among the issues that criminologists focus attention on is whether and how instances of social deviance may or may not be related, and how non-criminal deviance may or may not be related to the presence of the more serious forms of behavior that are criminal. As a part of this, there are concerns in many communities about whether the presence (especially a highly visible, public presence) of sexual deviance may be related to instances of sexual offending. Relatedly, when individuals are aware of highly visible sexual aspects in their communities, especially locations and entities that are likely to be associated with deviance, they are also likely to have heightened concerns about negative consequences arising from the presence of such entities. One type of community presence that is likely to raise awareness and concerns is the sexually oriented business (SOB).

The presence of SOBs in a community spawns concerns and debates regarding whether such entities are socially harmful. Primary concerns about SOBs center on the issue of crime, as SOBs are presumed to be patronized by socially marginal, and perhaps criminal, individuals. Examinations of whether and how the presence of SOBs in a community is related to negative consequences have been conducted for several decades, with results both supporting and refuting the association of SOBs with crime.

Debate Over Criminogenic Effects of SOBs

Public policy concern regarding whether SOBs are associated with increased rates of crime is referred to as a concern over "secondary effects." One perspective is that the presence of a SOB is related to, and very likely to be a facilitator or attractor of, crime and deviance. On the other side of the debate are those who argue that although there may be apparent face validity to the argument that SOBs attract or facilitate crime and deviance, there is little or no evidence to support such an argument.

SOBs Promote Crime and Deviance

There is a small body of academic literature that supports the contention that SOBs are associated with numerous negative, secondary effects on communities. In addition, studies completed by community planning agencies (done for purposes of assessing the need for and impact of zoning and legislative initiatives) regarding the effects of SOBs also suggest that the presence of such are associated with crime, deviance, and negative economic consequences. In summarizing the state of knowledge concerning secondary effects of SOBs, the American Center for Law and Justice in 1996 (cited in National Law Center for Children and Families, 2005) concluded that "SOBs support detrimental activities (i.e., personal and property crimes, prostitution, drugs, etc.) within the vicinity that are incompatible with activities occurring within residential area" (National Law Center for Children and Families, 2005, p. 1).

Contemporary examinations of whether SOBs are associated with negative secondary effects on communities—including crime in residential and commercial neighborhoods, reductions in business traffic for other commercial establishments, dampening effects on residential property values, and increased presence of criminal and noncriminal forms of deviance—consistently show numerous secondary effects associated with the presence of a SOB. These results have most frequently been found in numerous small and unpublished studies completed in communities of all sizes (National Law Center for Children and Families, 2005).

In the scholarly community, there are also significant negative secondary effects—especially criminal activities—shown to be associated with the presence of SOBs. McCleary (2007) analyzed crime reports in the vicinity of 20 SOBs in Los Angeles and concluded that "SOBs are ambient crime risk point-sources. As a hypothetical pedestrian walks toward the site, victimization risk rises; walking away from the site, victimization risk falls" (p. 13). In most instances the increase in criminal activities decreases or disappears once beyond 1,500 feet from an SOB (National Law Center for Children and Families, 2005).

Secondary effects are not limited to urban SOBs (National Law Center for Children and Families, 2005). McCleary (2008) demonstrated that when an SOB opens off of a rural interstate exit ramp, crime in the area increased 60%. And, when the SOB closed 2 years later, the crime rate decreased 60%, essentially returning to the pre-SOB-presence level.

Other Negative, Secondary Effects Associated With SOBs

In addition to increased crime rates, so too are SOBs associated with negative economic consequences for communities. One consequence of the presence of an SOB in a community is a decrease in both commercial and residential property values (Cooper & Kelly, 2008; Department of Planning and Development, 2006; Duncan Associates, 2000). SOBs are also associated with high rates of turnover among commercial establishments in close proximity to the SOB (National Law Center for Children and Families, 2005). The rapid turnover of businesses also may contribute to the increased negative secondary effect of increased crime by in turn contributing to social disorganization in the immediate neighborhood. Such a situation may be exacerbated when coupled with the findings of Ford and Beveridge (2004) who show that crime—specifically illicit drug sales—is increased by the presence of "undesirable" businesses (including SOBs) and even more strongly influenced by a lack of "desirable" businesses. Such a situation is an indication of an economically disadvantaged and socially disorganized community.[1]

SOBs Do Not Promote Crime and Deviance

Not all research supports the contention that SOBs are associated with negative secondary effects. Some researchers have concluded that the presence of adult businesses is not associated with increased rates of crime. Linz, Land, Williams, Paul, and Ezell (2004) examined the rate of all criminal offenses reported within 500- and 1,000-foot radii of erotic dance clubs in Charlotte, North Carolina, for 1998-2000. In examining 20 SOB locations and comparing each of these with one of three control locations, they report that there are actually fewer criminal incidents reported in the immediate vicinity of the SOBs. Linz et al. (2004) also reported that the greatest difference in reported level of crimes is for erotic dance clubs located in high-crime communities. Similarly, Linz and Paul (2002) studied police calls for service over a 4-year period within a 1,000-foot radius of eight strip clubs (serving alcohol) and demographically matched control areas in Fort Wayne, Indiana, and show few differences in calls for service between strip clubs and control areas. More recently, Linz, Paul, and Yao (2006) examined calls for police service to 1,000- and 2,000-foot radii around 19 SOBs offering peepshows in San Diego. Their results suggest no "reliable evidence of differences in crime levels" (Linz et al., 2006, p. 182). However, McCleary and Meeker (2006) reexamined the data and point out that for the 19 peepshow locations and corresponding control areas, there were 15.7% more calls for police

service in the 1,000-foot radius of the SOBs. As they argue, "any urban police department would judge a 15.7% difference in CFSs to be *substantively* significant, Linz et al. argued that the difference was not *statistically* significant" (McCleary & Meeker, 2006, p. 194, italics in original).

SOBs, Routine Activities, and Facilitation of Crime

SOBs and the patterns of patron traffic in them reflect the characteristics of routine activity theory (RAT), which serves to promote the opportunities for criminal activities at such locations. At the core of RAT is the idea that when motivated offenders, suitable targets, and a lack of effective guardianship converge in time and space, criminal activities are likely to occur (Cohen & Felson, 1979). SOBs provide a setting where these three characteristics are present.

Perhaps the most obvious and strongest presence of the three RAT concepts at SOBs is that of suitable targets. Patrons of SOBs are typically men, alone and often under the influence of alcohol and/or drugs (DeMichele & Tewksbury, 2004; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000; Tewksbury, 1990). Consequently, the typical patrons of SOBs can easily be seen as highly suitable for victimization. These are not individuals who are scanning their environment or attending to copresent others; hence, they are focused on one set of activities and largely unmindful and unaware to other actions in their midst.

In addition, patrons of SOBs typically desire to remain anonymous and to not have their presence or patronage recognized or acknowledged (Donnelly, 1981; Ryder, 2004; Tewksbury, 1990). In his discussion of the character of adult entertainment districts, Ryder (2004) emphasized that "Anonymity is an important feature of many districts. The unsavory reputation deters the casual visitor or those not interested, ensuring that customers will remain relatively unobserved" (p. 1665). The desire for anonymity is seen in the fact that fully 75% of male patrons of adult bookstores enter such establishments alone (McCleary & Tewksbury, 2010).

In sum, the suitability of SOB patrons as potential crime victims is due to the fact that SOB patrons "are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender's perspective, they are 'perfect' victims" (McCleary, 2008, p. 156).

Crime can be expected at and in the vicinity of SOBs due to the presence of motivated offenders as well. Motivated offenders may be drawn to the

SOB because of the presence of suitable victims, and they too are often under the influence of alcohol and/or drugs as also are SOB employees and other patrons (who could serve as capable guardians; DeMichele & Tewksbury, 2004; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000; Tewksbury, 1990).

Guardianship is also lacking at SOBs as such rarely have on-site security. Even when bouncers are present and responsible for social control and rule enforcement, there are strong disincentives for aggressively patrolling and intervening in activities that may be leading to criminal events—Strict control is bad for business (Forsyth & Deshotels, 1997). In addition, SOB patrons typically arrive and leave alone (Donnelly, 1981; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000), leaving them without guardians in their presence. Both property and violent offenses may be facilitated as well (via the absence of capable guardians) because some customers park away from the business to avoid having their vehicle identified causing them to have to walk alone to their vehicles late at night (Donnelly, 1981).

The Present Study

The importance of assessing the impact of the presence of SOBs on rates of crime in a community using sophisticated methodology has been well established. Governments are permitted to regulate SOBs so long as any regulations are focused on attempting to control any adverse secondary effects of such businesses (Andrew, 2002). To defend any regulatory attempt, a government must produce evidence to show that the businesses are associated with secondary effects such as ambient noise, litter, and, in particular, crime. As the secondary effects debate has serious implications for legal attempts to regulate and remove SOBs from communities, there is a clearly established need for sound research on the topic. In fact, in the 2002 Supreme Court ruling in *City of Los Angeles v. Alameda Books, Inc., et al.* Justice Souter (in a dissenting opinion) "asked the city to demonstrate, not merely by appeal to common sense but also with empirical data, that adult businesses are associated with crime and that its ordinance will successfully lower crime" (Linz et al., 2004, p. 73).

The present study seeks to contribute to this call, and to examine whether and to what degree the presence of SOBs are associated with increased rates of crime. Although a number of local government planning agencies have argued that SOBs do contribute to an increase in crime (as well as other negative effects), there is a limited body of scholarly literature on this topic. In addition, the present study adds to the existing literature by advancing the

study of secondary effects through a series of three different analysis techniques, each one more statistically conservative and precise than the prior leading to more robust and defendable results concerning the impact of SOBs on their surroundings.

Method

Analysis Strategy

This study uses three different analysis techniques in its approach to answering the question; do SOBs increase crime in their surrounding communities? In the first set of analyses, we examine the density of crime found in 500- and 1,000-foot buffers (circles) surrounding the 30 SOBs in the study area of Jefferson County (Kentucky). SOB crime densities are compared with that of the overall study area as well as those found surrounding 400 randomly selected intersections. In making the additional comparison with intersections, we mitigate the criticism that the overall study area presents a diffused rate because it includes many places at which crime is unlikely to occur (e.g., airport runways, tracts of undeveloped land, rivers, etc.; McCord & Ratcliffe, 2009). Street intersections, by definition, are located in areas of higher density, and this analysis results in a more conservative appraisal of the crime impact of SOB on communities. Location quotients (LQs), a method frequently used in regional studies (see explanation below), is utilized in all crime density comparisons.

In the second analysis technique, we examine crime density in a set of 6 concentric 250-foot buffers that extend out from the SOBs to a distance of 1,500 feet. This analysis provides preliminary results as to how far away from the SOBs crime impacts may be observed.

In the final set of analyses, we use regression models that statistically control for important sociodemographic factors associated with social disorganization and low socioeconomic status to determine whether the SOBs contribute to increased crime levels in their immediate surrounds, net the impact of neighborhood social structure. SOBs, as "undesirable" land uses, are often located in neighborhoods of social disorganization and social economic status where the community lacks the political power to resist their placement (Nolan & Salkin, 2006; Pacione, 2005). Social disorganization and low social economic status is also associated with higher crime levels in much crime research (Bursik & Grasmick, 1993). By including socioeconomic variables in the regression models, we hope to produce more robust findings concerning the impact of SOBs on neighborhoods.

Data

The study area is Jefferson County, Kentucky. Thirty SOBs were identified via telephone books as being located within the county. Site visits, telephone calls, and online websites confirmed the SOB addresses and their operation during the study period (October 2009 through September 2010). Of the 30 SOBs, 21 are strip clubs with live entertainment (all of which sell alcoholic beverages). The remaining 9 SOBs are adult book/toy stores with all but 2 having private video viewing booths or an adult theater.

In 2003, Jefferson County and its largest city, Louisville, merged and formed a single governmental agency, Louisville Metro (2010 population = 740,000). Several small communities within the county opted out of the agreement and continue to provide their own local governmental services, including police services. The Louisville Metro Police Department (LMPD) was formed at the time of the merger and polices approximately 90% of the county. Crime data for the 1-year period were provided by the Louisville Metropolitan Police Department for the area under its jurisdiction. Twenty-four of the 30 SOBs are located within the LMPD policing area. The remaining 6 SOBs are all located on a 1.5-mile stretch of road in a small opted-out municipality, but directly across the street from the LMPD area of responsibility. The area is largely small industry on the opted-out municipality side of the street and small commercial establishments with residential areas behind on the Louisville Metro side of the street. Four SOBs are also located on the LMPD side of this 1.5-mile stretch of roadway. The small city that opted out from the merger and contained the above-mentioned 6 SOBs was uncooperative with our repeated attempts to obtain crime data. Because of the proximity of these 6 SOBs and their likely impact on crime in the LMPD area directly across the street (a distance of 30 feet), they remain in the analysis, but their impact is only measured in truncated buffers that overlay the LMPD area, as described below. Crime incidents were separated into the categories of violent crime (homicides, assaults, and robbery), property crime (burglaries, thefts, and vehicle theft), and disorder crime (sales/possession of illicit drugs, prostitution, alcohol violations, criminal mischief, and littering).

Computerized street files, census block groups, and maps of Jefferson County and the LMPD jurisdiction were provided by the Louisville/Jefferson County Information Consortium (LOJIC). Census data at the block group level were obtained from the U.S. Census Bureau and consist of 5-year estimates (2005-2009); the most recent data available at the time this study was being completed.

Analysis

Using Geographic Information System (GIS) mapping software, the SOBs and crime incidents were geocoded (electronically applied) to the computerized street map. All SOBs were successfully geocoded and 96% of all crime incidents were geocoded. The 4% non-geocoded crime incidents were due to either missing or incorrect addresses in the database supplied by the LMPD. The resulting 96% geocoding "hit rate" exceeds the conventionally accepted hit rate of 90% for accurate mapping suggested by Bichler and Balchak (2007) and the empirically derived minimum of 85% recommended by Ratcliffe (2004). For the first set of analyses, two sets of buffers were drawn around the SOBs. The first set extended out from the SOBs for a distance of 0 to 500 feet, and the second from 0 to 1,000 feet. Buffers of these sizes were selected because they are the standard used by planning agencies, discussed in court cases concerning SOB secondary effects, and reported on in prior research. Overlapping buffers (due to the presence of other SOBs close-by) were dissolved into larger buffers to avoid counting the same crime incidents occurring in them more than once. Using the GIS software, the total area and count of crime incidents falling into the buffers were determined, and the density for each crime category was calculated. Buffers extending outside of the LMPD area were truncated at jurisdictional lines.

For the second set of analyses, a concentric series of six 250-foot wide buffers were drawn around each of the 30 SOBs. Each inner buffer extended from 0 to 250 feet, surrounded by one at 250 to 500 feet, on through to the last one at 1,250 to 1,500 feet out from the SOBs. The width of these buffers is approximately equal to one-half the average city street length in the study area. Again, buffers extending out of the LMPD area were truncated at jurisdictional lines.

We then used the random selection procedure in SPSS to draw a sample of 400 intersections from the 18,058 intersecting streets in the LMPD area.[2] Buffers of 500 and 1,000 feet wide were drawn around each of the street intersections, and the density for each crime category was determined as above.[3]

SOB and intersection buffers were then assigned the appropriate value of the sociodemographic factors of the census block groups in which their center point was located. These factors consisted of median income and the percentage single parents with children younger than 18 years, rental households, and Blacks in the population. The data were combined into two separate data files such that one contained the 500-foot buffers of both SOBs and intersections along with their sociodemographic factor values, and the other contained the

same for the 1,000-foot buffers. A dichotomous 0-1 indicator variable for the SOB buffers was developed (1 = *SOB buffer*) and included in each data set.

The combined SOB and intersection buffer data sets were examined for spatial autocorrelation. Spatial autocorrelation, the clustering of like dependent variable values among neighboring units of analysis, has been shown to inflate error terms in regression models resulting in biased parameter estimates, false indications of significance, and misleading suggestions of model fit (Chainey & Ratcliffe, 2005). Moran's I tests showed low but significant levels of positive spatial autocorrelation in the 500-foot buffer data for all three dependent variables (violent crime = 0.1245, $p < .01$, property crime = 0.1336, $p < .01$, disorder crime = 0.1336, $p < .01$). Spatial lags were developed using Geoda software and included in the 500-foot buffer models to control for spatial autocorrelation. Significant spatial autocorrelation was not present in the 1,000-foot buffer data; thus, a spatial lag was not included.

Results

As mentioned previously, three separate sets of analyses are performed to evaluate the impact, if any, of SOBs on their surrounds. Crime density results for the first two analyses are reported as LQs, a ratio value used extensively in the regional sciences (Miller, Gibson, & Wright, 1991). As crime is relatively rare and working with extremely small crime density numbers can be burdensome, LQs help make comparisons clearer when used to compare characteristics of smaller subareas to the larger, surrounding area. LQs were computed by dividing the density of crime around the SOBs (total number of crimes in SOB buffers/total area of all SOB buffers) by the crime density of the entire study area (total crimes LMPD jurisdiction/total area of LMPD jurisdiction). An LQ value of 2 would indicate that the density of crime in a set of SOB buffers (subareas) is twice that of Jefferson County, while a value of 0.75 would indicate the density in the SOB buffers is 25% less than the county rate.

Table 1 presents the LQ values for each category of crime (violent, property, disorder) and each set of buffers at 500 and 1,000 feet. As shown by the LQ values in the top portion of the table, the density of all three crime categories in the buffers surrounding the SOBs are many times higher than that of the larger study area (Jefferson County). For example, violent crime is 12.3 times higher in the 500-foot buffers surrounding the SOBs and 8.3 times higher in the 1,000-foot buffer than the overall county density. This pattern of higher density in the 500-foot buffers, over the still substantially high densities in the 1,000-foot buffers, holds true for both property and disorder crimes.

Table 1. LQ Values of Crime Density by Category in Selected Buffers Around 30 SOBs.

	Violent crime	Property crime	Disorder crime
LQ values vs. Jefferson County			
500-foot buffers	12.3	10.1	10.7
1,000-foot buffers	8.3	7.1	7.1
LQ values vs. 400 random intersections			
500-foot buffers	4.8	4.2	4.2
1,000-foot buffers	3.3	3.1	2.9

Note: SOBs = sexually oriented businesses; LQ = location quotient.

The lower portion of Table 1 shows the LQ values in comparing the crime density around the SOBs to the 400 random intersections. Although this portion of the analysis is far more conservative in that the SOB density is compared only with the more built up areas of the county, the SOB LQ values remain high. As shown, crime densities in the SOB 500-foot buffers are all at least 4 times higher than the random intersections for all crime categories, while the densities in the 1,000-foot buffers are about 3 times higher for all crime categories.

Table 2 presents the results of the concentric 250-foot buffer analysis. As shown for all crime categories, the highest LQ values are the buffers immediately surrounding the SOBs, which then steadily decrease in the next two buffers out to a distance of 750 feet. Beginning with the 1,000-foot buffers and on out to the last buffers at 1,500 feet, there is no discernable pattern in the analysis. The results of these models suggest that the criminogenic impact of the SOBs is observable out to a distance of at least 750 feet. The monotonic decrease in the first three sets of buffers further supports the idea that it is the SOBs that are promoting high crime levels and not some other unmeasured neighborhood characteristic (Rengert, Ratcliffe, & Chakravorty, 2005).

The final set of analyses utilizes ordinary regression models to evaluate the impact of the SOBs on crime in the 500- and 1,000-foot buffers while controlling for important socioeconomic indicators. Recall that in these analyses, the SOB and 400 random intersections buffers are combined into a single model with a 0-1 dichotomous variable identifying the SOB buffers (1 = *SOBs*). Dependent variables for these models are the crime densities (crime incidents per 10,000 square feet) naturally logged to reduce skewness. Tests for multicollinearity were performed with all tolerance and variance

Table 2. Location Quotient Values of Crime Density by Category in Concentric 250-Foot Buffers Around 30 SOBs.

	Violent crime	Property crime	Disorder crime
0-250 feet	23.7	18.3	24.4
250-500 feet	8.1	7.1	5.6
500-750 feet	5.2	5.6	4.8
750-1,000 feet	7.8	6.2	6.2
1,000-1,250 feet	5.8	4.4	4.9
1,250-1,500 feet	7.5	5.8	4.8

Note: SOBs = sexually oriented businesses.

Table 3. Standard Multiple Regression Evaluating Crime Density by Category in 500-Foot Buffers Surrounding 30 SOBs and 400 Random Intersections.

	Violent crime		Property crime		Disorder crime	
	B	β	*B*	β	*B*	β
SOB indicator	.043***	.227	.087***	.215	.075***	.217
Median income	−1.381E-8	−.011	−2.631E-7	−.093	6.693E-8	.028
% renters	.000**	.176	.001**	.173	.000**	.164
% single parents	.000	.091	.000	−.025	.000*	.109
% Black	1.609E-5	.011	−3.482E-5	−.011	.000	.063
Spatial lag	.564**	.256	.609***	.325	.637***	.358
n	416		416		416	
Adjusted R^2	.277		.312		.382	

Note: SOBs = sexually oriented businesses. Dependent variables are crime densities (incidents per 10,000 square feet) for each crime category, naturally logged. Overlapping buffers due to spatial clustering of SOBs were dissolved into larger buffers resulting in 416, rather than 430 buffers.
*$p < .05$. **$p < .01$. ***$p < .001$.

inflation factor (VIF) values found to be within acceptable ranges; no tolerance value was below .410 and no VIF above 2.5.

Table 3 shows the results of the 500-foot buffer regression analyses. As shown, the SOB indicator variable is positive and significant for each of the three categories of crime. This finding indicates that the presence of the SOBs are related to higher densities of all three categories of crime in the 500-foot buffers that surround them, net the impact of median income and the percentage of renters, single parents, and Blacks in the neighborhood (census block groups). Note also that the beta values for all three SOB indicator variables are higher than any of the socioeconomic predictor variables.

Table 4 presents the results of the 1,000-foot buffer regression analyses. Once again the SOB indicator valuables are positive and significant for all

Table 4. Standard Multiple Regression Evaluating Crime Density by Category in 1,000-Foot Buffers Surrounding 30 SOBs and 400 Random Intersections.

	Violent crime		Property crime		Disorder crime	
	B	β	*B*	β	*B*	β
SOB indicator	.020***	.119	.056***	.137	.025*	.070
Median income	–3.718E-9	–.003	–2.055E-7	–.076	1.208E-7	.053
% renters	.000***	.280	.001***	.312	.001***	.275
% single parents	.000	.055	.000**	–.119	.000*	.109
% Black	7.939E-5	.066	.000	.065	.000	.071
Spatial lag	.679***	.399	.694***	.419	.748***	.454
n	414		414		414	
Adjusted R^2	.474		.489		.516	

Note: SOBs = sexually oriented businesses. Dependent variables are crime densities (incidents per 10,000 square feet) for each crime category, naturally logged. Overlapping buffers due to spatial clustering of SOBs were dissolved into larger buffers resulting in 414, rather than 430 buffers.
*$p < .05$. **$p < .01$. ***$p < .001$.

crime categories, indicating the presence of SOBs in these buffers is related to higher crime levels, net the impact of the sociodemographic factors. The beta values for the SOB indicator variables in these models are no longer higher than each of the individual sociodemographic factors as we found in the earlier models, suggesting a still significant but decreasing importance in explaining crime in these larger buffers.

Discussion

This study presents evidence that the presence of SOBs is clearly related to crime in urban communities. The analysis shows crime, including violent, property, and public order offenses, is related to SOBs and in an outwardly decreasing manner. As one moves further away from the physical structure of a SOB, crime rates decrease but continue to be significantly influenced by the SOB. In the buffer of 500 feet, no other variable is more influential on crime rates than the presence of the SOB. In the 1,000-foot buffer, the SOB still has a statistically significant influence on crime but less so than some of the existing neighborhood sociodemographic factors.

The decreasing rate of crime in the areas more removed from the physical structure should be expected, if the SOB is in fact patronized by suitable targets. As one moves away from the structure, fewer suitable targets are present—These individuals are most likely to quickly and perhaps surreptitiously enter and exit the business, interacting with few others and not

venturing beyond the necessary distance to leave the location in their vehicles. Victimization of such individuals is most likely to occur at or very close to the actual building of the SOB.

This study presents clear implications for social policy. At the foundation, both zoning regulators and law enforcement officials need to be aware of the criminogenic impact of SOBs, and adjust their activities and decisions accordingly. SOBs located in or near residential neighborhoods are likely to draw crime (as well as criminally motivated offenders) to the neighborhood, perhaps facilitating criminal offenses by such offenders as they travel to the SOB. Crimes of opportunity, including theft property vandalism and a range of violent offenses, may be perpetrated as motivated offenders travel to and from the SOB location. Although perhaps primarily seeking suitable targets in the immediate vicinity of the SOB, varying paths of travel to the target location may bring such offenders into contact with other opportunities for crimes. As such traveling offenders converge on the SOB, more of them will travel through the areas closest to the SOB, with dispersion through differing outlying areas as such offenders come from and return to differing outlying points of origin. Consequently, law enforcement needs to devote increased resources (patrols, surveillance, and assistance in designing the environment in ways to prevent/reduce crime) to both the immediate vicinity of such businesses and locations near to, and along paths of travel to/from such locations. Although an increased level of visible law enforcement at and near SOBs may have a dampening effect on some patrons' likelihood of visiting such establishments, it is also likely to discourage motivated offenders from being present and acting on their motivations. With both situations, reductions in motivated offenders and possible reductions in numbers of suitable targets, crime would be decreased. Neighborhoods hosting SOBs are clearly attractive to the criminally inclined. Providing a visible law enforcement presence in the immediate vicinity of such establishments is an obvious means for counteracting the effects of such businesses, and should be done.

As with all research, the present study has its limitations. There are two limitations that need to be considered when assessing the present study. The first is in its cross-sectional design, thus causality cannot be confirmed. There is no evidence in our data of temporal ordering of whether the SOBs arrive and subsequently crime follows, or whether SOBs locate in areas that have already high rates of crime. However, it is reasonable to assume that SOBs promote crime due to the opportunities they provide, but it is also possible, even likely in view of economic and social considerations, that the presence of these land uses are only tolerated in neighborhoods of social disorganization and lower social economic status that are already prone to higher crime

levels. The inclusion of sociodemographic variables in the regression models helped control for the impact of existing neighborhood social and crime problems, thus adding to the overall strength of the findings.

A second limitation concerns the fact that it was not possible to separate the impact on ambient crime levels by the two different types of SOBs in the study sample: strip clubs and adult book/novelty stores (most of which had video booths). The spatial clustering of these businesses, common in the study area as well as many other jurisdictions, made it impossible for their impact to be evaluated separately due to overlapping buffers. RAT however suggests all SOB types should promote crime due to their commonality in attracting suitable targets ("perfect victims") and motivated offenders in areas of reduced guardianship. At least one study shows this to be the case. In their study, McCleary and Weinstein (2009) found that crime rates nearly doubled over a multiyear period within 500 feet of an adult book store (no video booths) compared with only a 25% increase in crime around a nearby motel.

This research has shown that SOBs produce increased crime levels in their surrounding communities up to a distance of at least 1,000 feet. In doing so, this study adds important empirical evidence to the debate concerning the harmful effects of such businesses and the value of local zoning requirements and other regulations trying to control these negative secondary effects. Clearly, SOBs are associated with increased rates of crime. All types of crime—violent, property and public order—are more common at and close to the location of SOBs. As one moves away from the physical structure of such businesses, crime rates decrease but remain influenced by the SOB for significant distances. In short, SOBs attract criminally motivated offenders, suitable targets, and when coupled with a lack of capable guardians, result in increased rates of crime.

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Notes

1. Notably, several researchers (Alwitt & Donley, 1997; Bingham & Zhang, 1997) have shown that socially economically disadvantaged urban communities typically

have significantly fewer grocery stores, drug stores, banks, and general merchandise stores, but more liquor stores.

2. An online sample size calculator (www.surveysystem.com/sscale.htm) determined a sample size of 376 intersections were necessary for a confidence level of 95% at a confidence interval of 5%. The sample size was rounded to 400 cases.
3. Buffers that extended outside of the LMPD area were moved to the closest intersection that would allow their entire area to fall within the study area. The number of buffers moved differed for each set of intersection buffers.

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Richard Tewksbury is a professor of justice administration at the University of Louisville. His research centers on the intersection of sexuality and crime, identity construction, and criminal victimization risks.

A DIGEST OF RESEARCH:

The Evidence of Relationships Between Adult-Oriented Businesses and Community Crime and Disorder

Respectfully Prepared for:
The Mayor and Council of The City of St. Marys

Col. Ed Wassman, MPA, CPE
Chief of Police
and
Detective Lieutenant Dar Hendrickson

July 1996

RESEARCH DOCUMENT

To:	**Mayor and Council, via: City Manager**
From:	Chief Ed Wassman and Det. Lt. Dar Hendrickson
Date:	July 9, 1996
CC:	City Attorney, Planning Director, Cmd. Stf., CID, District Attorney
Subject:	**Digest of Research Regarding: The Relationship Between Crime/Disorder and Adult-Oriented Businesses**

PRELIMINARIES, FOR THE RECORD:

My name is Ed Wassman, I have been your chief of police for nearly ten years. I have over thirty years of law enforcement experience, I hold both a bachelor's and master's degree in public administration, specializing in law enforcement administration. I am certified by the State of Georgia as both a police officer and a police executive. Furthermore, I am certified by the Southeast Association of Colleges and Schools (SACS) as a full adjunct professor of criminal justice with Georgia Military College and as an instructor of criminal justice with Troy State University.

And, also offered for the record:

I have been ably assisted in this research project by Detective Lieutenant Dar Hendrickson, a tenured criminal investigator with the St. Marys Police Department. Det. Lt. Hendrickson has over forty years of law enforcement experience, including a founding role with the Georgia Organized Crime Council. He holds a bachelor's degree in criminal justice, and he is also SACS certified as an adjunct instructor of criminal justice with Georgia Military College.

OUR ASSIGNMENT:

We, at the police department, have been requested to gather research relating to **evidence of the relationship between crime (including disorder) and adult-oriented businesses, if any.** This phenomenon is also sometimes known as a pernicious secondary effect of adult-oriented businesses.

Also, concurrent with our research, we found additional information addressing other related issues, non-criminal in nature. They are included in the exhibits and relate to:

- Planning and Development
- Municipal Ordinances (including food and beverage handling and nudity)
- Governing Body Minutes
- License Applications
- Articles from the Los Angeles Times
- North Caroline Supreme Court Case involving victim dancer and offender
- Survey Instruments
- Other Municipal Government Documents

Respectfully presented herewith is our body of research, a summary or digest of that body of data, a professional evaluation, and a number of exhibits (in master copies).

METHODOLOGIES NOTED IN STUDIES:

This extensive collection of social science research utilizes many different methodologies currently recognized by authorities who are well-versed in the elements of rational social scientific investigations. The imprecated structures include:

- community sampling and survey instruments,
- longitudinal and time population data analyses of empirical records,
- multivariate correlation analysis with controls,
- covert and overt observational studies, and;
- anecdotal and testimonial evidence.

These were all found to be relative to quantitative and/or qualitative queries into the negative or pernicious secondary effects of adult businesses on a community, if any.

Ostensibly, for the purpose of this digest, we will not delve into the realm of social science research, design, instruments, or methodologies except to state that these studies—taken as a whole—provide the reader with three basic standards essential to make informed inferences and reasonable judgments of fact:

1. Where possible, identifiable and measurable quantitative variables are used;
2. the significance and chances that data about variables are meaningful is tested; and,
3. the relationships between variables (association and correlation) with control-variable testing is noted.

ABSTRACTS OF SPECIFIC STUDIES INCLUDED:

[NOTE: These abstracts have been prepared with the least amount of paraphrasing applied.]

1. ***State of Minnesota, Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses,*** Office of the Attorney General (June 6, 1989): This is a seminal work which investigates the secondary effects of adult businesses from a number of different research perspectives. Not only is the effect on crime included, so is the effect on neighborhood disorganization and disorder, as are the effects on property values addressed. The New York study also concluded that business locations with adult-oriented businesses had a significant loss of sales tax collections (42%) as compared to control areas. Studies of Minneapolis, St. Paul, Indianapolis, Phoenix, and Los Angeles are cited. RICO and organized criminal elements of the industry are also discussed. It was found that dramatic increases in crime rates were directly associated with the introduction of adult-oriented businesses into any community studied. Evidence is articulated indicating that property crimes were forty to fifty percent higher, and sex-related crimes were found to be seventy to as much as 500 percent higher—depending upon the municipality. Other non-crime community issues are also discussed.

2. ***Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard,*** City of Garden Grove, California, (October 23, 1991): This study included such crime related questions as, "Does crime increase in the vicinity of an adult business? If so, is the increase statistically significant and does it constitute a public safety hazard?" Extensive statistical analysis is applied to ten years of reported crime data (1981-90).The analysis shows that crime rises

whenever an adult business opens or expands its operations and, the change is statistically significant. This is found when comparing three address-specific sites with control sites. A consistent pattern is found demonstrating that the adult businesses are indeed a public safety hazard. Notably, when adult businesses open within 1000 feet of a tavern (or vice versa), the impact of the adult business on crime is further aggravated substantially and significantly. Results of survey data show that residents who live near adult businesses, as well as those who live farther away, associate adult businesses with increased crime and other negative impacts on the quality of the neighborhood. Many women respondents expressed an overwhelming fear for their safety and the safety of their children. More than one in five respondents reported a specific negative or criminal incident related to the operation of adult businesses. Although the opinion surveys may represent subjective option, their results are consistent with objective analysis of crime data. Other non-crime community issues are also discussed.

3. ***Relationship of Criminal Activity and Adult Businesses,*** Planning Department, City of Phoenix Arizona, (May 1979): This report expounded on two basic hypotheses. First, that there are direct impacts which uniquely relate to this class of land use; and second, that there are indirect, but equally potent, attitudinal concerns which result from proximity to adult businesses. This study specifically shows that there is a higher amount of sex offenses committed in neighborhoods containing adult businesses as opposed to those without them. Control areas were utilized in the design. The study postulates that there appears to be a significantly greater difference between the study area (those with adult-businesses) and the control areas (those without) for sex crimes than for either property or violent crimes. They report an increase of about forty percent in property crimes, about four percent in violent crimes, and 606 percent in sex-related crimes. Other non-crime community issues are also discussed.

4. ***A Study of Crime and Adult Entertainment***, Police Department Memorandum, City of Tucson, Arizona, (May 11, 1990): **[A Caveat: If you are not accustomed to criminal justice studies of explicit alternative and criminal sexual behavior, please approach the parent study document with caution.]** In sum, a covert observational study. Investigating officers found that many of employees of the adult-oriented businesses were prostitutes who were offering private shows where customers could, for a price, observe them performing live sex acts. For "the right price" customers would be allowed to "touch the dancers." Undercover operatives also learned that customers could hire the dancers to engage in acts of prostitution, and in some instances, these acts actually occurred on the premises with the knowledge of the management. Underage females were also being hired to dance nude. The report also confirmed many health-related perspectives: Adult entertainment establishments provide an environment and atmosphere that is conducive to high risk sexual behaviors and practices with respect to sexually transmitted diseases (HIV and hepatitis B included).

5. ***Report to the Rome City Commission—Adult Entertainment,*** Police Department, City of Rome, Georgia, (March 6, 1995): This report includes crime data from the city of La Grange, Georgia. La Grange is more like St. Marys than different. Located in that small suburb of Atlanta, is a three-year-old "adult nightclub." In just one year (1994) that single adult-oriented nightclub generated 141 calls-for-service, with thirty-five of those calls being criminal in nature. Those crimes included such violent crimes as: eight criminal batteries and eight aggravated assaults (knives, baseball bats, and firearms with shots fired). The report also includes many of the other municipal studies articulated elsewhere in this digest.

6. ***Report of the Troup County Planning Commission,*** Troup County Planning Commission, Troup County, Georgia, (an undated report by

Mr. Rick Morris, MPA): Among other topics, this report cites the Austin, Texas study. The Austin study revealed that crime rates were higher than the city average, and that sex related crimes were two to five times higher than the city-wide averages. Other non-crime community issues are also discussed.

7. **Report by the Chatham County-Savannah Metropolitan Planning Commission, Chatham County Board of Commissioners,** Mr. Howard Bellinger, Executive Director, Savannah, Georgia, (September 24, 1993). The County Commissioners requested an evaluation of the need to better regulate adult entertainment uses and determine and recommend what type of zoning standards would be desirable to regulate these uses in order to protect adjacent or area properties from the secondary effects created by such uses. Within their summary of materials researched they concluded that—from their staff's review of the studies—their staff need not repeat the detailed study efforts in order to determine the secondary effects of adult entertainment business on a community. Both crime and property values are negatively effected. They cite a Manatee County, Florida, Planning and Development Department study, "Adult Entertainment Business Study for Manatee County" completed in June of 1987.

8. ***Report of the Chief of Police and Covert Investigation to City Attorney, Mayor and Council of the City of College Park****, College Park, Georgia, (March 14 and 25, 1996):* **[A Caveat: If you are not accustomed to criminal justice studies of explicit alternative or criminal sexual behavior, please approach the parent document with caution. Furthermore, this report is supported by a covert police operation that is CONFIDENTIAL in nature.]** Chief G.J. Bencale stated that his police department's undercover officers completed a covert investigation as part of their fact finding effort. Lingerie modeling is basically masturbation for hire (a criminal offense). Officer Bedford said they went to lingerie modeling businesses in the

Atlanta and Columbus area. Chief Bencale said they had an overall increase in sex crimes including incidents where dancers were raped, as well as an increase in drugs, theft, and etc. These businesses attract criminal activity. Chief Bencale also stated that some cases involved organized crime. Detective Sergeant Tom Kunzniacki stated that–from a law enforcement standpoint—it would be difficult to enforce criminal violations without the undercover officer committing illegal and unethical acts, and undercover operations to check for compliance with the law and codes would be expensive. Observations were also made about organized crime, money laundering, and drugs. Arrest reports from the City of Columbus, Georgia, Police Department were entered as evidence of criminal activity in such a business--criminal charges included: Masturbation for Hire, Disorderly Conduct, Sexual Exploitation of Children, Solicitation for Sodomy, and Prostitution.

9. **Ordinance, City of Smyrna, Georgia** (September 1990): Several follow-up contacts were made to include their "evidence," however, we only received their ordinance and a copy of a license application. The preamble of the ordinance does state that the City of Smyrna finds that adult entertainment establishments, if unregulated, will likely lead to an increase in prostitution, venereal disease, drug and alcohol offenses and other criminal activity…adult entertainment establishments sometimes are fronts for or operated by persons associated with organized criminal activities and the need to scrutinize such dance establishments…the law enforcement resources available for responding to problems associated with or created by adult entertainment establishments are limited and are best conserved by regulating and licensing adult entertainment establishments and those associated with them.

10. **Ordinance and Support Documents, City of Jacksonville, Florida** (March 1995): The City of Jacksonville, Florida (Duval County) has provided a compete text of their very comprehensive adult-entertainment ordinance. Included,

of significant interest, is a support document from the City of Seattle (Department of Construction and Land Use, March 24, 1989). Testimony taken in Seattle included concerns and fears about these businesses in their neighborhoods. Problems with parking and traffic, attraction of transients, increases in crime, (and) hazards for children and personal safety. This document also included studies from New York, Cleveland, Indianapolis, Los Angeles, Austin, Phoenix, and Boston. They observed that, while not every adult business is predisposed to be involved with criminal activity there is enough documentation, as evidenced in the studies, to demonstrate a direct link between the potential for increased criminal activity and adult cabarets. **INTERESTINGLY**, they note the "consumer trade characteristics" studies in Bothell, Washington, and Austin, Texas, confirm that at least one half of all customers frequenting adult businesses resided outside the city limits. They further stated that, people who patronize these establishments may have no sense of identity with or regard for the neighborhood in which these businesses may be located and, therefore, are less inhibited in their personal behavior than if they were in their own community. Additional secondary effects of police calls to a business are also cited: Noise from sirens and flashing lights, and traffic hazards from police and emergency vehicles are disturbances not conducive to healthy business or residential environments. The increased potential for crime, together with these additional secondary effects, result in increased impacts which are more substantial than those of other neighborhood commercial uses which are intended to serve the needs of surrounding residents. Also included in the City of Jacksonville documents are excerpts from letters to Don Wildmon (Editor) at the American Family Association. One letter from an inmate—convicted in the murder of four people—said, in part, "I began frequenting topless discos, X-rated movie houses and massage parlors. I had many sexual encounters with prostitutes during this time, and on several occasions, I engaged in sexual acts which I'm too ashamed to talk about….In 1975 I went on a crime spree during which I had a major part in brutally murdering four innocent people. I'm now serving life in prison……While I am personally responsible for the crimes I committed, pornography helped bring me to

the point where I didn't care any more and thus enabled me to slip to the point where I was actually a participant in four bloody murders." Also included is a City of Oklahoma City, Community Development Department, Planning Division 1986 Survey of Real Estate Appraisers. This survey summarized opinions, to include: a threat to residents feeling of safety and security; problems with parking, trash, and debris; increased vandalism; and the fear that children in the area would be in danger of adverse influences or actual molestation by people drawn to such establishments.

11. ***Included in this exhibit are other related miscellaneous documents.***

THE EVIDENCE, RELATIONSHIPS, AND OUR COMMUNITY:

There are many inferences associated with adult-oriented businesses and crime, disorder, or public safety "hot spots," the dangers of drugs, money laundering and, indeed, organized crime. While one might not suspect that drugs, money laundering, and organized crime may become a major problem in St. Marys and, while we can not discuss on-going covert investigations, we do respectfully suggest the following general comments for consideration.

The term "organized crime" conjures up visions of "the Mafia," "la Cosa Nostra," "bootleg booze," "prostitution," "gambling," and a host of other criminal activities associated with the past involvement of truly "organized crime families."

The break-up of many of the more prominent "families" i.e., Bonnano, Accardo, Genovesse, etc., may give rise to the false supposition that organized crime is no longer a threat to be dealt with. The faces and the names may change; but, in a market economy, organized criminal activity will remain. Only their game plan changes.

The massive and unrelenting influx of illicit drugs and the tremendous amount of money involved in the traffic of these drugs has dictated the need to find a new, legitimate-on-its-face, means of converting and concealing the illicit profits derived from the drug trade. As street-level transactions continue to funnel funds into the coffers of the major players, it becomes necessary for them to find or create false business fronts through which to launder the illicit funds and divert them back into the legitimate economy in such a manner that they cannot be traced to the drug trade.

Among the “cash-friendly,” service-type businesses are the adult-oriented businesses. This type of business is a ready avenue to be utilized in converting illegal cash into legitimate cash.

Although much of the money laundering will take place through outlets in the larger metro areas, it stands to reason that a diversification (or franchised) of these adult-oriented outlets into the suburban and the smaller rural towns areas will make the paper trail even more difficult to follow and also more difficult for law enforcement agencies to prosecute.

These types of public safety and criminal justice issues are coming; the only question is where and when. Local governments and criminal justice agencies need to be ever more vigilant in the identification and prosecution of this type of covert, organized, criminal activity.

The Evidence in Sum:

Currently, and as strictly defined, there are no adult-oriented businesses in the City of St. Marys—some “lingerie shows” and “male reviews” at area alcohol vendors have reportedly nudged the commonly used definitions. We can not, therefore, measure a local relationship between disorder or crime and adult-oriented businesses.

If, however, we logically assume that these studies can be rationally transported across artificial municipal boundaries, we may be able to draw certain inferences in attempting to predict or rationally model, in relative terms, the consequences or, indeed, the collateral effects of adult-oriented businesses on our local crime data.

Ostensibly, we may posit a reasonable model based upon this body of empirical data, records and experiences of other municipalities, and their substantive observations. This can be accomplished, in proportion, and in the perspective of our community (an

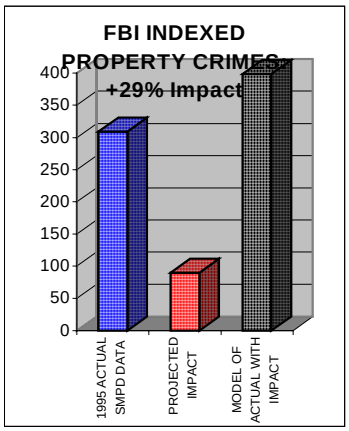
industrial and residential suburb of a major US city). Our major city is Jacksonville, Florida. Our major industry is national defense/military, private-industrial, and service.

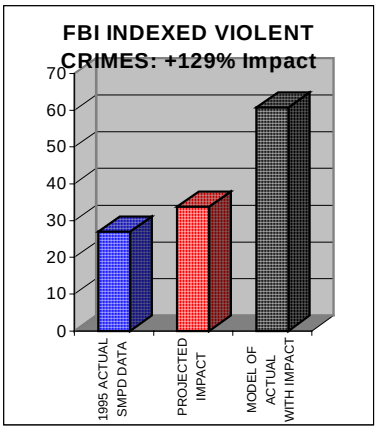
A MODEL:

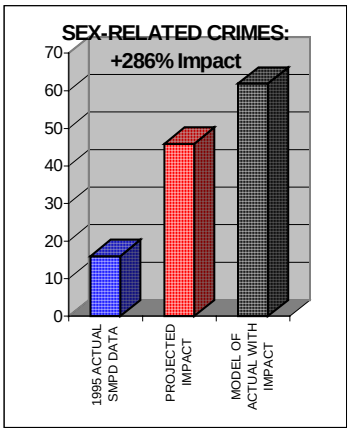
It can be reasonably understood that these studies, taken altogether, provide abundant and compelling sources of evidence that adult-oriented or sexually-oriented businesses are associated with high crime rates and, with disproportionate increases in rape and other sexual offenses. Both the amount of crime and the type of crime (especially sex-related crimes) increase and, they increase at statistically significant levels. One might ask, "What could all that mean to the fact finders and the support staff of our City of St. Marys?"

When you apply an appropriate arithmetic mean or median of the data cited, and then apply that proportional increase to our local crime data (1995 crimes and offenses reported to police); then, the amount of the crime increases and disproportional increase in certain types of crimes might become evident. In the following graphic models, this is what we might need to be prepared to realistically expect and to reactively address.

[Data Sources Include: The Studies Cited and SMPD Documents.]







[NOTE: Part I Property Crimes Include: Burglary, Larceny/Theft, and Motor Vehicle Theft. Part I Violent Crimes Include: Murder, Rape, Robbery, Aggravated Assault and Aggravated Battery. Sex-Related Crimes Include: Rape, Sexual Battery, Child Molestation, Sodomy, Prostitution, Masturbation for Hire, and Indecent Exposure**.]**

IN CONCLUSION:

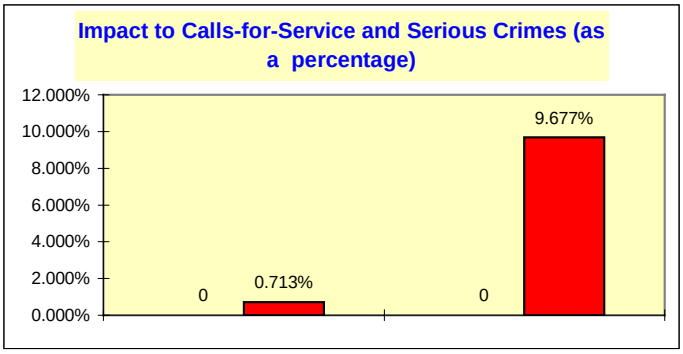
It is our professional opinion, after reviewing all the studies cited and, taken as a whole, that there is a very substantial and highly credible body of evidence of increased criminal activity with relation to adult-oriented businesses and, especially with respect to sex-related crimes and, a bounty of opportunities for the organized criminal element.

Moreover, one study specifically addresses an observed and measured aspect, inclusive of these negative relationships: a more profound impact on crime rates when the serving of alcohol is introduced into the variables and the analysis.

Impact Model Using 1994 LaGrange Data

One Adult Club Added: 141 Calls-for-Service
36 Serious Crimes

1994	SMPD	IMPACT	MODEL	%
Calls-for-Service	19,648	141	19,789	0.713%
Serious Crimes	336	36	372	9.677%



As stated earlier, these types of businesses, with all their associated negative impacts to public safety and criminal justice are coming; the only question is where and when. Maybe one more model could be proposed. Let's take the 1994 data from La Grange, Georgia—a town more like St. Marys than different—and add the impact of just that one adult-oriented club to our 1994 data. The graph, above, communicates the possible and very significant impact to our crime data. Lastly, lets not forget that "these data" represent people: they are not just numbers, nor are they just statistics! Lawful, proactive **REGULATION** is our community's only line of defense in maintaining law and order, and, indeed, the continued quality-of-life and welfare of the community-as-a-whole.

St. Marys Police Department
Report to Mayor and Council Regarding:
Relationships Between Crime
and
Adult-Oriented Businesses

Exhibits Number 1 through 11 Located in Original Document

SURVEY OF TEXAS APPRAISERS

SECONDARY EFFECTS OF SEXUALLY-ORIENTED BUSINESSES ON MARKET VALUES

CONNIE B. COOPER, FAICP
ERIC DAMIAN KELLY, PH.D., FAICP

IN ASSOCIATION WITH

DAVID C. KEUHL, PH.D.
SHAWN WILSON, MAI

CRIME-RELATED SECONDARY EFFECTS

SECONDARY EFFECTS OF "OFF-SITE" SEXUALLY-ORIENTED BUSINESSES

RICHARD MCCLEARY, PH.D.

IN ASSOCIATION WITH

ALEXI ALEXANDER, J.D.
LARRY BUSH, M.A.
MARK VASQUEZ, B.A.

TEXAS CITY ATTORNEYS ASSOCIATION

JUNE 2008

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FOREWORD

The Texas City Attorneys Association (TCAA) Board of Directors commissioned this study to address the problem created by *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003), a court case involving the regulation of retail-only sexually oriented businesses. This study was funded by TCAA and a host of TCAA member cities (see Acknowledgements).

The goal of the study is to determine the extent to which retail-only sexually oriented businesses with no on-premises entertainment cause harmful secondary effects on surrounding property values and ambient crime rates. The TCAA Adult Business Study Steering Committee, charged with coordinating the study, contracted with three nationally recognized experts to conduct the necessary research, Connie B. Cooper, FAICP, Eric Damian Kelly, Ph.D., FAICP and Richard McCleary, Ph.D.

THE CHALLENGE

Regulation of sexually oriented businesses has become a challenging task facing Texas communities today. At the heart of the challenge is the balancing of legitimate community concerns about sex businesses with the First Amendment protection afforded certain media, presentations and performances. The problem long faced by local officials and their advisors is that it is almost impossible to define a sexually oriented business without referring to the content of the presentation, performance or media; yet, regulations based on the content of messages are subject to increased scrutiny in the courts and can be difficult to defend.

The Supreme Court has provided a partial solution, but it is one that comes with its own challenges. In *United States v. O'Brien,* 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968), the Court set out a four-part test that does not demand absolute content neutrality for such regulations. There it held that a regulation will be considered a (generally content neutral) time, place and manner regulation even if it includes some reference to content of a message if it meets all parts of the test:

(1) the regulation is within the power of the government;

(2) it furthers an important government interest;

(3) the government interest is unrelated to the suppression of speech; and

(4) the incidental restrictions on free speech are no greater than are essential to further the interest.

391 U.S. 367, 377, 88 S. Ct. 1673, 1679, 20 L. Ed 672, 680.

The Court has subsequently followed that rule in a number of cases dealing with sex businesses, including, among others, *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986); *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 2d 265 (2000); and *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002).

The generally accepted method of meeting parts 2 and 3 of the *O'Brien* test is to show that the businesses subject to the regulation or proposed regulation have negative secondary effects on the community. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 49, 89 L. Ed. 2d 29, 106 S. Ct. 925 (1986). Local officials and their advisors may cite a variety of such secondary effects. In the Detroit ordinance this became the subject of a major Supreme Court decision upholding local zoning regulations specific to sex businesses. The Detroit City Council set out this statement of purpose:

> In the development and execution of this Ordinance, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area (i.e. not more than two such uses within one thousand feet of each other which would create such adverse effects).
>
> *Young v. American Mini-Theatres, Inc*., 427 U.S. 50, 55, 96 S. Ct. 2440, 2455, 49 L. Ed. 2d 310, 317 (1976), n. 6, quoting Section 66.000 of the 1972 Detroit Zoning Ordinance.

The problem with citing such general concepts as "blighting" or "downgrading" of neighborhoods is that they are difficult to document and can be impossible to prove. Although the Supreme Court upheld the Detroit ordinance, based in part on that statement of purpose, under continuing challenges from the industry the courts have set a higher standard for establishing such secondary effects. In a 2002 decision, the Supreme Court restated, reemphasized and somewhat expanded upon a test that it had first adopted in 1986:

> In *Renton*… we held that a municipality may rely on any evidence that is "reasonably believed to be relevant" for demonstrating a connection between speech and a substantial, independent government interest… . This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in Renton. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.
>
> *City of Los Angeles v. Alameda Books,* 152 L. Ed. 2d at 683, 122 S.Ct. at 1736 (2002).

Although it is certainly possible to provide expert and other evidence of such concepts as "blight" and "downgrading," it is much safer for a local government to use evidence that is easily measurable. The two types of secondary effects that are most often associated with sexually oriented businesses and that are also measurable are effects on crime rates and effects on property values at and near such a business. This study takes place in that context.

Thus, before 2003, local governments seemingly had relatively broad discretion in determining what evidence was "reasonably relevant" to the effects of sexually oriented businesses on a community. Texas communities, as well as jurisdictions across the country, relied on these studies to demonstrate that sexually-oriented businesses, both retail-only and onsite entertainment, produce harmful secondary effects on surrounding neighborhoods.

In a 2003 decision, however, the Fifth Circuit accepted industry arguments that studies dealing with sexually oriented businesses generally were not necessarily relevant to the secondary effects of retail-only businesses that offered no on-site entertainment. *Encore Videos v. City of San Antonio*, 310 F.3d 812 (5th Cir., 2002), cert. denied, 124 S. Ct. 466, 157 L. Ed. 2d 372 (2003). In fact, as the industry pointed out and the court acknowledged, a number of the widely cited studies either involved only businesses with some form of on-site entertainment (often including peep shows or viewing booths in bookstores) or made no distinctions among the various types of businesses. Because the City of San Antonio did not rely on studies specifically addressing the category of retail-only with no on-premises entertainment, the court held that the city's regulations could not constitutionally be applied to an adult video store. Although there are later studies documenting clearly that retail-only sex businesses also have secondary effects on communities, the Texas City Attorneys Association, in the face of *Encore Videos* and its progeny, asked the authors of this study to make a specific assessment of this issue in

Texas. This study thus focuses on retail-only businesses, although one part of it also provides useful data about the effects of other types of sex businesses and other land uses on market values of nearby properties.

Establishing an "important governmental interest…unrelated to the suppression of speech" is essential to the adoption, implementation or defense of regulations of sexually oriented businesses. Documenting measurable, negative secondary effects is the most practical and most widely accepted method of establishing such a purpose Courts once appeared to accept a mere recitation of negative secondary effects and later were willing to allow a community to rely on studies of such effects from other communities; today, in the context of often-effective legal challenges by the sex industry, courts have raised their expectations. Today they expect more. In this study, city attorneys and other officials in Texas will find substantial evidence of measurable negative secondary effects of retail-only sex businesses on both crime rates and property values, and additional evidence of the negative effects of other sex businesses on property values.

THE STUDY

The study commissioned by TCAA is divided into two parts: Part 1: "A Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values", authored by Connie B. Cooper, FAICP and Eric Damian Kelly, Ph.D., FAICP; and Part II: "Crime-Related Secondary Effects – Secondary Effects of "Off-site" Sexually-Oriented Businesses", authored by Richard McCleary, Ph.D.

Part I, the Survey of Texas Appraisers", includes the results of an internet-assisted survey sent to Texas MAI and SRA appraisers who are Members of the Appraisal Institute. Of those sent surveys, 195 responded for a response rate of 25.5 percent and an overall margin of error of 6.06 percent. In the opinion of appraisers, the survey clearly documented that retail-only sexually oriented businesses had an impact on the market value of single family homes and community shopping centers. The survey also measured the opinions of appraisers as to the separation distances required before such retail-only businesses had no measurable impact on the market value of single family homes and community shopping centers. In each case, a large percentage of surveyed appraisers responded that a separation distance of more than a half mile (72 percent for single family homes and 45 percent for a community shopping centers) was required before there was no measurable impact on market values created by retail-only sexually-oriented businesses. Appraisers also responded that a concentration (two or more) of such sexually-oriented businesses also increased their negative impact as do late hours, and obtrusive signage and lighting.

The second section of Part I includes an examination of the sexually-oriented businesses and the courts; basic constitutional principles regulating First Amendment activity; the law of "secondary effects"; regulating signage and lighting; a review of Texas Statutes; and a concluding discussion of the treatment of other uses with negative secondary effects.

Part II: "Crime-Related Secondary Effects", includes a documented description of the criminological theory of secondary effects; its application of this theory to the retail-only sexually-oriented business model; a synthesis of the evidence bearing on this theory; and a case study subjecting crime data from a Texas jurisdiction to null hypothesis tests.

This section of the study supports the finding that it is a *scientific fact* sexually-oriented businesses pose large, statistically significant ambient public safety hazards in terms of prostitution, drugs, assault, robbery, and vandalism. Strategies for mitigating the crime-related secondary effects are suggested such as increasing police presence, distancing sexually oriented businesses from sensitive land uses, limiting the hours of operation, and requiring such businesses to "harden" themselves against criminal activity by installing outdoor lighting, parking lot surveillance cameras, and anti-"cruising"

structures. This study dispelled the myth that a large proportion of the patrons of retail-only businesses are female (it found only 20 – 25 percent were female), and that unlike male patrons, women tended to arrive in the company of others and visited the businesses at much early hours of the day. It also provides documentation that visits to retail-only sexually oriented businesses is not a run-in and run-out type visit. The report includes a review of three case studies of the criminological impact of "off-site" sexually-oriented businesses (Sioux City Iowa; Montrose, Illinois; and Los Angeles, CA).

Part II concluded with a discussion of the biases and weaknesses of 2006 secondary effects study conducted by Roger Enriquez, Jeffery Cancino and Sean Varano which was based on San Antonio data. McCleary found that compared to randomly selected control sites, off-site SOB sites pose large, statistically significant ambient crime victimization risks. The fact that ambient risk diminishes exponentially with distance from the site of a sexually-oriented business demonstrates the sites are neighborhood point-sources of crime victimization risk.

THE AUTHORS

Connie B. Cooper, FAICP, is president of Cooper Consulting Company, Inc., a planning firm based in Dallas. She is a former national president of the American Planning Association, with 30 years of experience in planning and community development at the state, county, and local levels. This has included extensive experience throughout the US in the areas of urban redevelopment, strategic planning; community goal setting and visioning, comprehensive planning, economic development, zoning and subdivision, and intergovernmental cooperation. Working with Eric Kelly, she has completed studies of sexually oriented businesses and prepared regulatory controls for Kansas City, MO; Biloxi, MS; Detroit, MI; Memphis-Shelby County, TN, Palm Beach County, FL; and Toledo, OH; Fort Worth, TX; and Kenton-Campbell Counties, KY. She is the author or co-author for a number of publications by the American Planning Association's Planning Advisory Service, including *Everything You Always Wanted to Know about Regulating Sex Businesses,* which she co-authored with Eric Kelly.

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Eric Damian Kelly, Ph.D., FAICP, is a planner and a lawyer and for more than 30 years, has consulted with local government, primarily on plan implementation. He is a vice president of Duncan Associates, a planning consulting firm based in Austin, Texas. He also continues to serve as a faculty member in the Department of Urban Planning at Ball State University, where he is a former Dean and Department Chair. He is a member and past president of the American Planning Association, a member of the American Institute of Certified Planners and of the American Bar Association and a Fellow of the American Institute of Certified Planners. His license to practice law is on voluntary inactive status in Colorado. Since 1995, Kelly has served as General Editor of Matthew Bender's 10-volume treatise, *Zoning and Land Use Controls.* He is the author or co-author of six reports in the American Planning Association's Planning Advisory Service, including *Everything You Always Wanted to Know about Regulating Sex Businesses,* which he co-authored with Connie Cooper. He has worked with local governments in more than 30 states.

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Richard McCleary, Ph.D., is a professor of criminology with extensive experience researching the crime-related effects of sexually oriented businesses. He is a professor at the University of California – Irvine with appointments in three departments: Criminology, Planning, and Environmental Health

Sciences. He has studied the crime-related secondary effects of sexually oriented businesses for thirty years. His 1991 study of Garden Grove, CA, written with Professor James W. Meeker, is one of the most widely cited studies in the secondary effects literature. Dr. McCleary is a nationally-recognized expert in the crime-related effects of sex businesses and has testified extensively on behalf of governmental defendants in state and federal courts. His testimony has included his own analyses of crime-related secondary effects as well as critiques of analyses prepared by plaintiffs' experts. He is the author of five books and over 60 peer-reviewed articles. He is the recipient of awards and recognition by the National Institute of Justice, Criminal Justice Statistics Association, American Futurist Society and the Native American Rights Fund.

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PART I: SURVEY OF TEXAS APPRAISERS

SECONDARY EFFECTS OF SEXUALLY-ORIENTED BUSINESSES ON MARKET VALUES

CONNIE B. COOPER, FAICP AND ERIC DAMIAN KELLY, PH.D., FAICP

IN ASSOCIATION WITH DAVID C. KEUHL, PH.D. & SHAWN WILSON, MAI

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INTRODUCTION

OVERVIEW

The Texas City Attorneys Association retained the consultant team described below to conduct a survey of real estate appraisers to determine their opinions of the effects certain land uses had on residential and commercial market values. The specific intent of the survey was to determine what impact, if any, sexually oriented businesses had on market values of residential and other commercial properties, particularly as it relates to retail-only operations. The internet-assisted survey was sent to 764 Texas appraisers who are Members of the Appraisal Institute[1] (MAIs - commercial/general appraisers) and Senior Residential Appraisers (SRAs - residential appraisers). Of those sent surveys, 195 responded for a response rate of 25.5 percent and an overall margin of error of 6.06 percent.

CONSULTANT TEAM

The Texas City Attorneys Association retained Cooper Consulting Company, in association with Duncan Associates, to undertake a study of certain secondary effects of sexually oriented businesses. Project manager for the study was Connie B. Cooper, FAICP, president of Cooper Consulting Company, Inc., in Dallas, Texas. Working with Cooper Consulting, were Eric Damian Kelly, Ph.D., FAICP, of Duncan Associates, Austin, Texas, and Shawn Wilson, MAI, of Compass Real Estate Consulting, Inc., Lakeland, Florida. Assisting the team in survey design and data analysis was David C. Keuhl, Ph.D., a faculty member at the University of Wisconsin, River Falls.

Cooper and Kelly are co-authors of the American Planning Association's Planning Advisory Service Report *Everything You Always Wanted to Know About Regulating Sex Businesses.* They are frequent collaborators in working with communities on the regulation of sexually oriented businesses to minimize their secondary effects.

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[1] http://www.appraisalinstitute.org

REGULATING SEXUALLY ORIENTED BUSINESSES

Most regulations of sexually oriented businesses are directed at nude or topless bars, XXX video stores and other establishments devoted almost entirely to sexually oriented activities. However, many well-regarded mainstream retail businesses include in their stock a measurable proportion of arguably sexually oriented material; such businesses include the video rental stores with "adults only" backrooms, news dealers with isolated racks of adult magazines and a variety of specialty stores that may include certain sexually oriented items.

Although those who take the most negative view of sexually oriented activities and materials would lump all such businesses together, this creates an impossible situation, legally and politically. First, any broad limitation on any business with any "sexually oriented" materials or activities would ultimately apply to every bookstore, every movie rental store, every news dealer and, arguably, a variety of other merchants, such as Victoria's Secret, which trades on the fringes of this market in some of the nation's most upscale malls. Although those who would like to see such materials and activities eliminated completely from a community, the fact remains that there are technically x-rated scenes in major works of literature, and brief nudity and sexual activity in Academy award-winning motion pictures.

SECONDARY IMPACT STUDIES

Researchers have conducted studies of real estate appraisers and professionals regarding the secondary impacts of sexually oriented businesses, including those incorporated in studies for Indianapolis, Indiana,[2] Austin, Texas;[3] Garden Grove, California;[4] and Rochester, New York.[5] Experts for the industry have challenged the methodology used in those surveys on two primary grounds – first, that the form of the surveys and the cover letters suggested to respondents what result the researchers wanted; and second, that the questions on the surveys did not distinguish among types of sexually oriented businesses.

Cooper and Kelly, the lead consultants on this project, carefully considered those criticisms in conducting a survey of appraisers in the Fort Worth-Dallas Metroplex in 2004.[6] In that survey, three different types of sexually oriented business were included: adult arcade/peep booths; adult novelty/media store (retail only); and gentleman's club/cabaret. Those uses were included in an alphabetical list that included neutral land uses such as bookstores and religious institutions but also included other uses that are often considered LULUs ("Locally Unwanted Land Uses"). Potential

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[2] Indianapolis: "Adult Entertainment Businesses in Indianapolis, An Analysis," 1984.

[3] Austin, Texas: "Report on Adult Oriented Businesses in Austin," prepared by Office of Land Development Services, May 19, 1986.

[4] Garden Grove, California: "Final Report to the City of Garden Grove: the Relationship between Crime and Adult Business Operations on Garden Grove Boulevard," Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.

[5] Rochester, New York: "Survey of Appraisers in Monroe County, New York," Summer 2000, results published in Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses,* Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000*;* pages 51-57.

[6] The formal report is "Survey of Appraisers, Fort Worth and Dallas: Effects of Land Uses on Surrounding Property Values," prepared for the City of Fort Worth; Duncan Associates, September 2004.

LULUs on the list included homeless shelters, bars/lounges, pawn shops, and convenience stores with beer and wine.

More than 95 percent of appraisers responding to the Fort Worth-Dallas Metroplex survey said that all three types of sexually oriented business would have a negative effect on the value of a single-family residence; only homeless shelters were viewed as negatively by the appraisers as sexually oriented businesses. In addition, 87.5 percent said that a bar/lounge and pawn shop would also have a negative effect and some 80 percent said that a convenience store with beer and wine would have a negative effect.

Asked about the effect of the same land uses on the value of a community shopping center, 92.5 percent said that an adult store with peep show would have a negative effect and 89.2 percent (not a statistically significant difference) said a gentleman's club or cabaret would have such an effect. The survey also indicated that retail-only sex businesses were a negative influence by 82.1 percent, ranking them with homeless shelters. The next closest use on the list of negative effects on the value of a community shopping center was a pawn shop, identified by 53.8 percent as having a negative effect.

The most commonly cited secondary effects of sexually oriented businesses on communities relate to incidence of crime and effects on surrounding property values. The incidence of crime was well documented in the Garden Grove study,[7] a study that would be difficult and expensive to replicate. Efforts to model the effects of particular uses on property values have proven to be very difficult to carry out effectively. The typical method, followed in sections of both the Indianapolis and Austin reports, is to compare trends in property values in an area with a sexually oriented business to trends in property values over the same period of time in a similar area without a sexually oriented business. There are multiple levels of comparison in such a study. One major challenge is trying to find "similar" areas. There will always be differences between the paired areas other than the sexually oriented business, and, without a large enough sample size to allow testing for other variables, it is difficult to determine how those other variables may be increasing or offsetting the apparent secondary effects of sexually oriented businesses. One area may have a park, while the other does not. One may have three small religious institutions while another has only two such institutions, but one of them turns out to be very large, with activities seven days a week. The area with the sexually oriented business may also have a pawn shop or a salvage yard or another use that may also have a negative effect on property values.

Even if researchers are able to identify truly comparable areas for the study, there is a further problem in tracking trends in property values. A study may use values assessed for tax purposes, a methodology that is itself fraught with problems and that often includes a number of factors other than market value. Tracking the values of properties that actually sell may make sense, but there is no guarantee that similar properties will sell in the two similar areas over any reasonable study period. The sale of one deteriorated home in one area or of a couple of upscale homes in another can distort the results of studies based on the values of properties that are actually sold. Understanding those problems is not particularly difficult. Solving them in the context of a specific study in a specific community is very difficult indeed.

[7] McCleary and Meeker, op. cit.

In contrast to the complexities of paired area studies, we believe that the opinions of appraisers provide an excellent and reliable measure of the effects of any kind of use or activity on market values. First, certified appraisers are experts in their fields, people who follow professional standards in making judgments about market values. Second, appraisers familiar with a local market look at the values of many properties every year and thus have a substantial data set not only in their files but also in their heads. Third, and perhaps most important, the opinions of appraisers are essentially self-fulfilling prophecies. Most real estate transactions that take place in this country involve mortgage loans. The amount available for a mortgage loan on a particular property depends on the market value of the property, as determined by an appraiser. Thus, to take an overly simple example, if most appraisers in a community believe that pink and green houses are worth, in general, 10 percent less than similar houses painted beige, the practical effect of that opinion will be to reduce the market value of pink and green houses.

RESULTS OF SURVEY OF TEXAS APPRAISERS

SCOPE AND DESIGN OF TEXAS SURVEY

This study consisted of a survey of MAI and SRA designated appraisers in Texas. E-mail addresses were available on the Appraisal Institute's website. Using this information, the survey consultant sent a link to an electronic survey form to 764 Texas MAI and SRA appraisers who had viable email addresses; we then sent follow-up e-mails as reminders. At the completion of the survey, we had 195 valid responses. The results were compiled electronically and then provided to us for analysis. The survey had a response rate of 25.5 percent and a margin of error of 6.06 percent. The survey instrument is included at the end of the report.

Through consultation with Florida appraiser, Shawn Wilson, MAI, with additional assistance from David Keuhl, Ph.D., this survey further refined earlier surveys of appraisers we had conducted. For this survey, Wilson suggested the addition of some uses that appraisers often find to be of concern in determining market values – most notably high tension power lines and landfills. We added an additional sexually oriented business – a lingerie and adult novelties store. We also split the bar/lounge category into two parts, asking separately about the effects of a lounge with live entertainment and of a bar without live entertainment.

EFFECT PROXIMITY HAS ON MARKET VALUE OF SINGLE-FAMILY RESIDENCE

Effect on Single-family home If Use Within 500 Feet

Question: If located within 500 feet, how would the listed land use potentially affect the market value of a Single-Family Home?

Land Use	Negative	Positive	No Impact	No Opinion
Adult Media & Video Store (retail sales only)	97.3	.5	.5	1.6
Gentleman's Club/Strip Club	96.2	0.0	1.6	2.2
Video Peep Booth Business	95.7	1.1	1.1	2.2
Landfill	95.7	1.1	1.6	1.6
Homeless Shelter	95.1	1.6	1.1	2.2
Lounge (with live entertainment)	92.4	.5	3.2	3.8
Lingerie & Adult Novelties Store	91.8	1.1	4.9	2.2
Bar (no live entertainment)	87.6	0.0	10.8	1.6
Pawn Shop	81.4	1.1	14.2	3.3
Package Liquor Store	79.2	1.6	15.8	3.3
High Voltage Power Lines	69.2	0.5	27.0	3.2
Convenience Store (beer/wine)	53.6	10.9	32.8	2.7
Grocery Store	38.0	31.0	27.7	3.3
Coffee Shop	26.9	18.7	50.0	4.4
Elementary School	20.7	56.0	21.7	1.6
Religious Institution	12.6	27.7	56.3	5.5
Neighborhood Playground	8.2	68.5	20.1	3.3

Uses are ranked by the percentage of respondents indicating that a particular use would have a "negative" effect on market values; in the original survey, the uses were alphabetized.

Totals do not always add to 100% due effects of rounding.

Examining the table above, it is evident that that an overwhelming percent (92 percent) of the appraisers responding believe that an Adult Media Video Store, a Gentleman's Club/Strip Club, a Video Peep Booth Business and a Lingerie & Adult Novelties Store have a negative effect on the market value of a single-family home if located within 500 feet.

Interestingly, respondents believe that a Landfill (96 percent) and a Homeless Shelter (95 percent) have almost identical impacts on the market value of a single-family home as do many sexually oriented businesses.

In summary, 88 percent or more of respondents believe that the following uses have the greatest negative impact on the market value of a single-family home if located within 500 feet:

- Adult Media & Video Store - retail sales only (97%)
- Gentleman's Club/Strip Club (96%)
- Video Peep Booth Business (96%)
- Landfill (96%)
- Homeless Shelter (95%)
- Lingerie & Adult Novelties Store (92%)
- Lounge - with live entertainment (92%)
- Bar - no live entertainment (88%)

In addition, 69 - 81 percent of respondents believe that the following uses are very likely to have a negative impact on the market value of a single-family home if located within 500 feet:

- Pawn Shop (81%)
- Package Liquor Store (79%)
- High Voltage Power Lines (69%)

In contrast, uses that are seen as having positive impacts on the market value of a single-family home if located within 500 feet are:

- Elementary School
- Neighborhood Playground

Uses that are seen as not much of an impact on the market value of a single-family home if located within 500 feet are:

- Coffee Shop
- Religious Institution

One use respondents seem the most divided as to the negative impact versus no impact on the market value of a single-family home if located within 500 feet is:

- Convenience Store that sold beer/wine - 54 percent negative impact versus 33 percent no impact

Effect on Single-Family Home by Increasing Separation Distances

Question: At what distance would there be No Measurable Impact on the Single-Family Home's market value?

Land Use	500 ft to ¼ mile	¼ mile to ½ mile	More than ½ mile	No Opinion
Landfill	2.2	4.4	83.5	9.9
Video Peep Booth Business	**2.2**	**6.6**	**81.8**	**9.4**
Gentleman's Club/Strip Club	**3.3**	**7.7**	**78.7**	**10.4**
Homeless Shelter	3.8	9.9	77.5	8.8
Lingerie & Adult Novelties Store	**3.3**	**9.8**	**76.1**	**10.9**
Adult Media & Video Store (retail sales only)	**3.3**	**14.7**	**71.7**	**10.3**
Lounge (with live entertainment)	4.4	15.4	70.9	9.3
Pawn Shop	6.7	21.1	60.0	12.2
Package Liquor Store	7.8	20.0	57.8	14.4
Bar (no live entertainment)	8.7	24.5	56.0	10.9
Grocery Store	19.1	32.9	31.8	16.2
Convenience Store (beer/wine)	18.0	33.1	31.5	17.4
High Voltage Power Lines	28.2	26.4	30.5	14.9
Elementary School	34.1	21.4	27.2	17.3
Neighborhood Playground	32.3	21.6	24.0	22.2
Religious Institution	31.6	24.6	21.1	22.8
Coffee Shop	31.4	28.4	17.8	22.5

Uses are ranked by the percentage of respondents indicating that a particular use would require "more than ½ mile" separation; in the original survey, the uses were alphabetized.

Totals do not always add to 100% due effects of rounding.

In response to the question "at what distance would there be no measurable impact," 77 percent or more of the respondents believe that the negative impact of the following land uses do not disappear until at least a distance separation of quarter-mile or more (1320 feet +) from a single-family home (calculations based on adding columns three and four):

- Video Peep Booth Business (88%)
- Landfill (88%)
- Homeless Shelter (87%)
- Adult Media & Video Store - retail sales only (86%)
- Gentleman's Club/Strip Club (86%)
- Lounge - with live entertainment (86%)
- Lingerie & Adult Novelties Store (86%)
- Pawn Shop (81%)
- Bar - no live entertainment (80%)
- Package Liquor Store (78%)

Looking at seven of the ten uses bulleted above, 71 percent or more of the respondents believe that the negative impact on market value do not disappear for the following uses until a separation distance of more than a half mile (2640 feet +) from a single-family home:

- Landfill (84%),
- Video Peep Booth Business (82%)
- Gentleman's Club/Strip Club (79%)
- Homeless Shelter (78%)
- Lingerie & Adult Novelties Store (76%)
- Adult Media & Video Store - retail sales only (72%)
- Lounge - with live entertainment (71%)

In most jurisdictions, zoning ordinances regulating sexually oriented businesses traditionally require separation distances from 500 – 1000 feet. Greater separation distances are less common, likely due in part to a concern over eliminating all viable sites for sexually oriented businesses within the jurisdiction – a practice that the courts have strictly prohibited.

Although this study is primarily concerned with the impacts of sexually oriented businesses, it is interesting to note that the distance effects of homeless shelters and landfills on market values are essentially similar to those for sexually oriented businesses, as they were in the previous question. Not surprisingly, a large percentage of appraisers believe that the negative effects of landfills and homeless shelters on market value diminish only after more than a half mile separation. In addition, a large percentage of those responding believe that the secondary effects on a single-family home's market value due to the proximity of a bar, lounge with live entertainment, pawn shop, and liquor store share many of the same impacts as sexually oriented business impacts.

EFFECT PROXIMITY HAS ON MARKET VALUE OF COMMUNITY SHOPPING CENTER

Effect on Community Shopping Center If Use Within 500 Feet

Question: If located within 500 feet, how would the listed land use potentially affect the market value of a Community Shopping Center?

Land Use	Negative	Positive	No Impact	No Opinion
Landfill	84.7	1.1	9.8	4.4
Video Peep Booth Business	**82.8**	**0.0**	**13.4**	**3.8**
Homeless Shelter	80.1	1.1	16.1	2.7
Gentleman's Club/Strip Club	**79.6**	**0.0**	**16.7**	**3.8**
Adult Media & Video Store (retail sales only)	**76.6**	**0.5**	**19.7**	**3.2**
Lingerie & Adult Novelties Store	**64.5**	**1.1**	**30.6**	**3.8**
Lounge (with live entertainment)	41.9	4.8	48.4	4.8
Package Liquor Store	35.7	2.7	56.2	5.4
Bar (no live entertainment)	30.3	4.8	60.6	4.3
High Voltage Power Lines	26.9	0.5	69.4	3.2
Pawn Shop	21.1	7.6	65.9	5.4
Elementary School	7.5	17.1	71.7	3.7
Religious Institution	5.1	9.6	85.3	0.0
Neighborhood Playground	4.8	16.7	74.2	4.3

Uses are ranked by the percentage of respondents indicating that a particular use would have a "negative" effect on market values; in the original survey, the uses were alphabetized. Totals do not add to 100% due effects of rounding.

As to the impact on the market value of a community shopping center, clearly many appraisers believe that there is less of a negative impact by sexually-oriented uses and other high-impact uses on a shopping center than on a single-family home. It is important to note, however, that, even after allowing for the margin of error, a significant majority of appraisers believe that all types of sexually oriented businesses identified in the survey have a negative effect on the market value of a community shopping center.

Interestingly, respondents believe that a Homeless Shelter (80 percent) and a Landfill (85 percent) have very similar impacts on the market value of a community shopping center if located within 500 feet of the center.

In summary, 64 percent or more of respondents believe that the following uses have a negative impact on the market value of a community shopping center if located within 500 feet:

- Landfill (85%)
- Video Peep Booth Business (83%)
- Homeless Shelter (80%)
- Gentleman's Club/Strip Club (80%)
- Adult Media & Video Store - retail sales only (77%)
- Lingerie & Adult Novelties Store (64%)

In stark contrast to the impact on single-family homes, 48 percent or more of respondents believe that the following uses have no impact on the market value of a community shopping center if located within 500 feet:

- Lounge - with live entertainment (48%)
- Package Liquor Store (56%)
- Bar - no live entertainment (61%)
- Pawn Shop (66%)
- High Voltage Power Lines (69%)
- Elementary School (72%)
- Neighborhood Playground (74%)
- Religious Institution (85%)

Effect on Community Shopping Center by Increasing Separation Distances

Question: At what distance would there be No Measurable Impact on the Community Shopping Center's market value?

Land Use	500 ft to ¼ mile	¼ mile to ½ mile	More than ½ mile	No Opinion
Video Peep Booth Business	**9.6**	**12.4**	**63.3**	**14.7**
Landfill	4.0	15.3	62.7	18.1
Homeless Shelter	8.0	20.0	56.0	16.0
Gentleman's Club/Strip Club	**8.4**	**25.7**	**49.7**	**16.2**
Adult Media & Video Store (retail sales only)	**10.4**	**23.6**	**48.4**	**17.6**
Lingerie & Adult Novelties Store	**14.3**	**18.3**	**44.6**	**22.9**
Lounge (with live entertainment)	15.9	21.8	34.7	27.6
Bar (no live entertainment)	24.9	17.2	28.4	29.6
Package Liquor Store	20.6	21.2	24.2	33.9
Pawn Shop	22.7	19.0	22.1	36.2
High Voltage Power Lines	28.5	12.7	21.8	37.0
Elementary School	28.5	13.9	18.8	38.8
Neighborhood Playground	27.4	15.2	14.6	42.7
Religious Institution	30.7	9.2	13.5	46.6

Uses are ranked by the percentage of respondents indicating that a particular use would require "more than ½ mile" separation; in the original survey, the uses were alphabetized.

Totals do not always add to 100% due effects of rounding.

In response to the question "at what distance would there be no measurable impact," 63 percent or more of the respondents believe that the negative impact of the following land uses do not disappear until at least a distance separation of quarter-mile or more (1320 feet +) from a community shopping center:

- Landfill (78%)
- Homeless Shelter (76%)
- Video Peep Booth Business (76%)
- Gentleman's Club/Strip Club (75%)
- Adult Media & Video Store - retail sales only (72%)
- Lingerie & Adult Novelties Store (63%)

Video Peep Booth Businesses, Landfills and Homeless Shelters were viewed as needing a separation distance of more than a half mile (2640 feet +) from a community shopping center before the negative impact on market value disappeared.

Overall response rates to this question were lower than to other questions. The significant number of respondents who expressed "no opinion" indicates that clear findings regarding impacts on shopping centers are more difficult to make. The percentages of respondents who believe that the negative effects extend a half mile or more are far lower than those shown for single-family homes.

As with the issue of separation distances from single-family homes, we would caution against increasing separation distances from commercial uses without checking to confirm you are not eliminating all viable sites for sexually oriented businesses within your jurisdiction – a practice that the courts have strictly prohibited.

EFFECT CONCENTRATION HAS ON SINGLE FAMILY HOMES AND SHOPPING CENTERS

Concentration of Uses Effect on Single-family home

Question: Would a concentration (2 or more uses within a couple of blocks) have additional impact on the Single-Family Home's market value?

Land Use	Yes Added Impact	No Added Impact	No Opinion
Gentleman's Club/Strip Club	**89.3**	**3.9**	**6.7**
Adult Media & Video Store (retail sales only)	**88.3**	**6.1**	**5.6**
Video Peep Booth Business	**87.2**	**6.1**	**6.7**
Landfill	85.4	6.7	7.9
Homeless Shelter	84.4	7.8	7.8
Lounge (with live entertainment)	**81.6**	**10.6**	**7.8**
Lingerie & Adult Novelties Store	**80.8**	**9.6**	**9.6**
Bar (no live entertainment)	78.1	14.0	7.9
Pawn Shop	70.5	19.3	10.2
Package Liquor Store	64.8	25.1	10.1
High Voltage Power Lines	59.4	27.4	13.1
Convenience Store (beer/wine)	42.3	44.0	13.7
Grocery Store	38.2	50.3	11.6
Neighborhood Playground	30.7	55.1	14.2
Elementary School	25.6	60.2	14.2
Religious Institution	25.4	59.0	15.6
Coffee Shop	25.4	59.9	14.7

Concentration of Uses Effect on Community Shopping Center

Question: Would a concentration (2 or more uses within a couple of blocks) have additional impact on the Community Shopping Center's market value?

Land Use	Yes Added Impact	No Added Impact	No Opinion
Video Peep Booth Business	75.6	17.2	7.2
Adult Media & Video Store (retail sales only)	74.0	19.2	6.8
Landfill	73.6	17.4	9.0
Gentleman's Club/Strip Club	73.4	18.1	8.5
Homeless Shelter	72.3	20.9	6.8
Lingerie & Adult Novelties Store	61.0	28.8	10.2
Lounge (with live entertainment)	43.9	45.1	11.0
Package Liquor Store	37.6	47.6	14.7
High Voltage Power Lines	35.8	49.7	14.5
Bar (no live entertainment)	34.3	53.1	12.6
Pawn Shop	28.7	55.6	15.8
Neighborhood Playground	16.9	65.7	17.4
Religious Institution	14.0	65.1	20.9
Elementary School	13.4	68.0	18.6

Uses are ranked by the percentage of respondents indicating that a particular use would have added impact due to a concentration of uses; in the original survey, the uses were alphabetized.

Totals do not always add to 100% due effects of rounding.

The question regarding the additional impact to a Single-Family Home or Community Shopping Center due to a concentration of certain uses was somewhat imperfect as it related to Landfills, Elementary Schools or Neighborhood Playgrounds. It is highly unlikely that there would be a concentration of these land uses. However, to maintain the integrity of the survey, we did not wish to delete a use from the alphabetized list of uses for purposes of a particular question.

As to the question of how a concentration of uses relates to such land uses as a Gentleman's Club/Strip Club, Adult Novelties Store, Video Peep Booth Business, Lounge, Bar, Adult Media Store, Pawn Shop, Package Liquor Store and Homeless Shelter, there is a high probability of them occurring in proximity to each other. Furthermore, other studies suggest that the concentration of sexually oriented uses and certain other types of uses increases disproportionately the effects on crime rates in the surrounding areas. Few studies have attempted to analyze the extent to which a concentration increases the negative effects on market values.

In the opinions of Texas appraisers, a concentration of sexually oriented businesses and similar adult-oriented uses (bars and lounges) clearly increases the negative effects on the market values of single-family homes. A concentration of sexually oriented businesses (and/or of homeless shelters) stands out as having the most potential negative effect on the market value of a community shopping center; a concentration of bars or lounges is considered by significantly less than a majority of appraisers to have a potentially negative effect on the market value of such a center.

The table below compares the impact respondents believe concentrations of certain uses have as they relate to proximity to a Single-Family Home or Community Shopping Center:

Concentration of Land Uses	Added Impact on Single-Family	Added Impact on Shopping Center
Gentleman's Club/Strip Club	**89.3**	**73.4**
Adult Media & Video Store (retail sales only)	**88.3**	**74.0**
Video Peep Booth Business	**87.2**	**75.6**
Homeless Shelter	84.4	72.3
Lounge (with live entertainment)	81.6	43.9
Lingerie & Adult Novelties Store	**80.8**	**61.0**
Bar (no live entertainment)	78.1	34.3
Pawn Shop	70.5	28.7
Package Liquor Store	64.8	37.6
High Voltage Power Lines	59.4	35.8

OTHER QUESTIONS

Effect of Operating Hours

Question: Would a retail business open AFTER 11 PM have a negative impact on the market value of Single-Family Homes located within a 5-minute walk (1500 feet)?

	Always	Sometimes	Never	No Opinion
Respondents	18	149	10	12
Percentage	9.5	78.8	5.3	6.3

Results reported here in percentage of respondents giving each answer. Some chose not to respond to question.

The survey asked if there would be negative impact created by a retail business open after 11 pm on the market value of Single-Family Homes located within a 5-minute walk. This was asked because a number of communities have included limitations on the operating hours of sexually oriented businesses as part of their local regulatory schemes. The responses clearly support some limitations on operating hours of businesses within 1500 feet of Single-Family Homes. Since a large majority (79 percent) responded "sometimes", the difficulty is determining which businesses should be required to have limitations on operating hours. Some guidance is found in the responses given to earlier questions regarding proximity and impacts on Single-Family Homes. For example, appraisers believe that retail operations such as Adult Media & Video Stores, Lingerie & Adult Novelties Stores, Pawn Shops and Package Liquor Stores have more of a negative impact on Single-Family Homes than Convenience Stores, Grocery Stores and Coffee Shops.

Thus, these responses should not be interpreted as supporting a limitation on operating hours of all businesses, but only on particular businesses that were identified as having greater negative impacts such as sexually oriented businesses, pawn shops, and liquor stores. A local government may, of course, have other data that suggests that the operating hours of sexually oriented retail businesses might legitimately need to be more limited than other businesses.

Effect of Garish Lighting or Signage

Question: If you indicated certain land uses had negative impacts on the market value of a Single-Family Home, would bright, animated, or garish lighting or graphics increase the negative impact?

	Always	Sometimes	Never	No Opinion
Respondents	84	92	2	9
Percentage	44.9	49.2	1.1	4.8

Results reported here in percentage of respondents giving each answer. Some chose not to respond to question.

The survey asked if bright, animated, or garish lighting or graphics increased the negative impact of certain land uses that had negative impacts on the market value of a Single-Family Homes. Although these findings are statistically significant, they are difficult to translate into ordinance provisions. We had great confidence in using the adjective "garish" and believe that appraisers would know what we meant; but attempting to limit "garish" lighting and graphics is far more difficult. "Garish" is simply not a regulatory term. Any attempt to regulate specific content of signs or graphics – beyond prohibiting obscene messages and nude images on signs – raises significant First Amendment issues. We have studied sex businesses in many communities, and we have never seen a sign on such a business that came close to our definition of "obscene." Some communities have tried to limit lighting and signage at

sexually oriented businesses, and the responses to this question would support such limitations at sex businesses and other high-impact uses (including pawn shops, which often have signs that we would consider garish).

WHO RESPONDED

Examining who responded to the survey, the consultant team was pleased to see that respondents were reasonably dispersed throughout Texas. However, it was not surprising to see the majority of the appraisers responding practiced in the Austin, Dallas, Fort Worth, Houston and San Antonio metropolitan areas.

Question: What are your general areas of practice? (You may choose up to two)

County of General Practice	Responses	Percent
Abilene- Midland-Odessa-San Angelo (Taylor, Midland, Ector and Tom Green Counties)	14	3%
Amarillo-Lubbock (Potter, Randall and Lubbock Counties)	9	2%
Austin (Hays, Travis and Williamson Counties)	46	10%
Brownsville-McAllen (Cameron and Hidalgo Counties)	8	2%
Bryan (Brazos County)	8	2%
Corpus Christi-Victoria-Laredo (Nueces, Victoria and Webb Counties)	12	3%
Dallas (Collin, Dallas and Ellis Counties)	106	23%
El Paso (El Paso County)	4	1%
Fort Worth (Denton, Johnson, Parker and Tarrant Counties)	50	11%
Houston -Galveston (Brazoria, Fort Bend Galveston, Harris, and Montgomery Counties)	124	26%
Longview-Tyler -Texarkana (Gregg, Smith and Bowie Counties)	15	3%
Port Arthur (Jefferson County)	3	1%
San Antonio (Bexar, Comal and Guadalupe Counties)	30	1%
Sherman-Wichita Falls (Grayson and Wichita Counties)	8	2%
Waco-Temple (McLennan and Bell Counties)	13	3%
Other Counties	21	4%

Responses total more than number of respondents due to some choosing more than one location of practice.

We found it interesting to find that over 92 percent of those responding to the survey had 20 or more years of real estate appraisal experience. Clearly we heard from the seasoned professionals.

Question: How many years of real estate appraisal experience do you have?

	1 – 9 years	10 – 19 years	20 – 29 years	30+ years
Respondents	1	14	96	81
Percentage	0.5	7.3	50.0	42.2

Results reported here in percentage of respondents giving each answer.

We have always found it worthwhile to ask if "personal, moral or ethical beliefs" affected responses. Having over 70 percent indicate "NO" strengthens the view that the responses are not influenced by individual biases.

Question: Do you believe that your personal, moral or ethical beliefs have affected your responses to any of the questions in this survey?

	Yes	No
Respondents	55	134
Percentage	29.1	70.9

Results reported here in percentage of respondents giving each answer.

RESPONSE RATE AND MARGIN OF ERROR

Links to the electronic survey were sent to the email addresses of 764 appraisers holding the SRA or MAI designation in Texas. Of those contacted, 195 completed the survey. This resulted in a response rate of 25.5 percent which yielded an overall margin of error of 6.06 percent.

We are comfortable and confident in the results of the survey given that the major findings regarding the effects of sex businesses on the market value of single-family homes were supported by 91 to 97 percent of the respondents. Even if the entire margin of error were applied negatively and the resulting responses were thus directly reduced (which is a worst-case example of possible error and not a statistically valid technique), the results would drop to a range of 85 to 91 percent of the respective respondents, a very strong and firm finding. The percentage of appraisers reporting that they believe that there would be a negative effect on the market value of a community shopping center was somewhat smaller (ranging from 64 – 83 percent), but, here, also, even applying the margin of error as an entirely negative factor would leave well over half the respondents reporting that most sex businesses will have a negative effect on the market value of a community shopping center.

Although we are pleased with the response rate, we acknowledge that other surveys of appraisers have garnered a higher response rate primarily because they were sponsored by an appraisal member association such as the Appraisal Institute or were surveys concerning issues about professional practices, not hypothetical questions about market values.

As experts and consultants, we certainly understand the reluctance of experts to respond to hypothetical questions in their area of expertise for a non-client, without compensation and with no full understanding of how the material will be used. When all of those factors are considered, we believe that the response rate is very satisfactory. Further, as noted above, the findings are so clear that a lower response rate has no effect on the substantive findings of the study.

SUMMARY OF APPRAISER SURVEY FINDINGS – SEXUALLY ORIENTED BUSINESSES

The following findings and conclusions can clearly be drawn from this survey:

- More than 91 percent of Texas appraisers surveyed believe that gentleman's clubs/strip clubs, adult media/video stores (retail only), video peep booth businesses and lingerie & adult novelties stores have a negative effect on the market value of a single-family home located within 500 feet of such a use;
- More than 71 percent believe that the negative effect on the market value of a single-family home due to the proximity of a sexually oriented business do not disappear until at least a half mile or more (2,640+ feet);
- More than 80 percent believe that the concentration of two or more sexually oriented businesses increases the negative effect on market values of a single-family home;
- A majority (64 percent) of Texas appraisers surveyed believe that a video peep booth business, a gentleman's club/strip club, adult media/video store (retail only) or a lingerie & adult novelties store will have a negative effect on the market value of a community shopping center located within 500 feet;
- More than 63 percent believe that the negative effect on the market value of a community shopping center due to the proximity of a video peep booth business, gentleman's club/strip club, adult media & video store (retail only) or a lingerie & adult novelties store do not disappear until at least a quarter of a mile or more (1,320+ feet);
- More than 63 percent believe that the negative effect on the market value of a community shopping center due to the proximity of a video peep booth business do not disappear until at least a half mile or more (2,640+ feet);
- Nearly 73 percent believe that the concentration of two or more gentleman's club/strip clubs, adult media & video stores (retail only) or video peep booth businesses increases the negative effect on the market value of a community shopping center;
- About 61 percent believe that the concentration of two or more, lingerie & adult novelty stores increases the negative effect on market value of a community shopping center;
- More than 89 percent of Texas appraisers surveyed believe that having a retail business that is open after 11 p.m. may have a negative effect on the market value of a single-family home located within 500 feet (10 percent responded "always" and 79 percent responded "sometimes");
- About 94 percent of Texas appraisers believe that "bright, animated, or garish lighting or graphics" may increase the negative impact on the market value of a single-family home (45 percent responded "always" and another 49 percent responded "sometimes");
- It should be noted that the findings related to lighting, signage and operating hours are not limited to sexually oriented businesses.

SEXUALLY-ORIENTED BUSINESSES AND THE COURTS

Regulation of sex businesses is one of the most litigated areas of land-use law today. Communities that have tried to bar most or all sex businesses have generally lost court challenges to their regulatory schemes. In that context, a community must make reasonable provision for the existence of some sexually oriented businesses; on the other hand, it is also clear that a community need not necessarily allow every such establishment to offer the full range of sexually oriented products or activities that its proprietors might like to offer. Courts have also recognized that a sexually oriented business (such as a bookstore handling adult media) is different from other businesses offering similar products that are not sexually oriented (such as a Barnes and Noble type bookstore). Likewise, courts have recognized that sexually oriented retail businesses have different impacts than those businesses with sexually oriented onsite entertainment. Texas cities and counties can adopt and implement different zoning regulations for such businesses, provided that the effect is not a complete ban on all such businesses.

Regulations that attempt to censor specific messages or that otherwise target the message itself are subject to "strict scrutiny" in the courts, a standard which places a heavy burden on a government to show a "compelling state interest" that justifies the regulations. See, for example, *Boos v. Barry*, 85 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988). But where the regulations are aimed at the secondary effects of sexually oriented businesses, they will be treated as "content neutral" and subject only to "intermediate scrutiny," a far less burdensome standard for local governments to meet. See *City of Los Angeles v. Alameda Books, Inc*., 152 L. Ed. 2d 670, 122 S. Ct. 1728 (U.S. 2002).

FIRST AMENDMENT EFFECT ON LOCAL REGULATION OF SEX BUSINESSES – GENERALLY

The First Amendment provides in pertinent part, "Congress shall make no law … abridging the freedom of speech or of the press. . . ." The effect of that language has been construed by the Supreme Court to limit but not eliminate the authority of local governments to regulate land-use aspects of activities that are protected by the First Amendment, including those aspects of sexually oriented businesses that fall under the scope of that protection.

The Supreme Court has squarely upheld the authority of local governments to regulate the location of sexually oriented businesses through zoning. *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976). There are significant Constitutional boundaries for the manner and scope of local regulations that affect First Amendment rights. *Playtime Theatres, Inc. v. City of Renton, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986)*, involving zoning for a sexually oriented motion picture theater; *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988), successfully challenging a permitting system for placement of newspaper vending boxes on city sidewalks; and *City of Cincinnati v. Discovery Network*, 507 U.S. 410, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993), holding unconstitutional an attempt by the city to define "newspaper" in a way that limited the types of publications that could be placed in sidewalk vending boxes. Although two of those cases involve newsracks they are important cases in considering the interaction of local government with the First Amendment

Basic Constitutional Principles Regulating First Amendment-Protected Activity

The basic constitutional principles used in evaluating the constitutionality of regulations affecting First Amendment-protected activity were set forth by the Supreme Court as a four-part test in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed.

2d 341 (1980), restated by the plurality in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800 (1981), as follows:

> (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective.
>
> 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800 (1981).

If an ordinance is not in violation of First Amendment doctrine under one of the bases discussed above, then it is analyzed as a time, place, and manner restriction. The classic formulation of the four-part "time, place, and manner" test was presented by the Supreme Court in *United States v. O'Brien,* 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968):

> (1) the regulation is within the power of the government;
>
> (2) it furthers an important government interest;
>
> (3) the government interest is unrelated to the suppression of speech; and
>
> (4) the incidental restrictions on free speech are no greater than are essential to further the interest.
>
> 391 U.S. 367, 377, 88 S. Ct. 1673, 1679, 20 L. Ed. 2d 672, 680 (1968).

The first modern decision in which the U.S. Supreme Court upheld local regulation of sexually oriented businesses was *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976), in which the Court upheld a Detroit zoning ordinance effectively requiring "dispersion" of adult motion picture theaters by requiring a 1,000-foot separation between any such theater established in the future and any existing such theater. Much of the analysis in that decision dealt with the extent to which the First Amendment protects sexually oriented communication. Moving on to issues more relevant here, the Court offered this summary of its position on that issue:

> Moreover, even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate that inspired Voltaire's immortal comment. Whether political oratory or philosophical discussion moves us to applaud or to despise what is said, every schoolchild can understand why our duty to defend the right to speak remains the same. But few of us would march our sons and daughters off to war to preserve the citizen's right to see "Specified Sexual Activities" exhibited in the theaters of our choice. Even though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content of these materials as the basis for placing them in a different classification from other motion pictures.
>
> 427 U.S. at 70-71, 96 S. Ct. at 2452, 49 L. Ed. 2d at 326.

The Court then continued with this discussion, applying the four-part *O'Brien* test:

> The remaining question is whether the line drawn by these ordinances is justified by the city's interest in preserving the character of its neighborhoods. On this question we agree with the views expressed by District Judges Kennedy and Gubow. The record discloses a factual basis for the Common Council's conclusion that this kind of restriction will have the desired effect. [footnote in original here; quoted below] It is not our function to appraise the wisdom of its decision to require adult theaters to be separated rather than concentrated in the same areas. In either event, the city's interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.

> Since what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited, even though the determination of whether a particular film fits that characterization turns on the nature of its content, we conclude that the city's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures. [second footnote in last paragraph, omitted]
>
> 427 U.S. at 71-72, 96 S. Ct. at 2452-53, 49 L. Ed. 2d at 326-27.

The footnote in the extract above was material to the discussion here. It read in full:

> The Common Council's determination was that a concentration of "adult" movie theaters causes the area to deteriorate and become a focus of crime, effects which are not attributable to theaters showing other types of films. It is this **secondary effect** which these zoning ordinances attempt to avoid, not the dissemination of "offensive" speech. In contrast, in *Erznoznik v. City of Jacksonville*, 422 U.S. 205, the justifications offered by the city rested primarily on the city's interest in protecting its citizens from exposure to unwanted, "offensive" speech. The only secondary effect relied on to support that ordinance was the impact on traffic - an effect which might be caused by a distracting open-air movie even if it did not exhibit nudity. [emphasis added]
>
> 427 U.S. at 71, fn. 34, 96 S. Ct. at 2452, 49 L. Ed. 2d at 326.

Relying on Studies from Other Jurisdictions

Eight years after it upheld the Detroit zoning ordinance, the Court again dealt with zoning regulations affecting sexually oriented businesses. *Playtime Theatres, Inc. v. City of Renton*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986). This time, the question of whether the First Amendment protected sexually oriented movies was essentially resolved, and most of the discussion focused on the effect of the First Amendment on local efforts to regulate where they could be shown. In this decision, the Court discussed *O'Brien* extensively but used an abbreviated form of the *O'Brien* test – "whether the Renton ordinance is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication." 475 U.S. at 49, 106 S. Ct. at 930, 89 L. Ed 2d at 39 (1986). The second part of the abbreviated test, dealing with "reasonable alternative avenues" is not relevant to this report or this discussion, but it is worth reviewing the Court's discussion of the first part of its abbreviated test:

> It is clear that the ordinance meets such a standard. As a majority of this Court recognized in *American Mini Theatres*, a city's "interest in attempting to preserve the quality of urban life is one that must be accorded high respect." 427 U.S., at 71 (plurality opinion); see *id*., at 80 (POWELL, J., concurring) ("Nor is there doubt that the interests furthered by this ordinance are both important and substantial"). Exactly the same vital governmental interests are at stake here.
>
> The Court of Appeals ruled, however, that because the Renton ordinance was enacted without the benefit of studies specifically relating to "the particular problems or needs of Renton," the city's justifications for the ordinance were "conclusory and speculative." 748 F.2d, at 537. We think the Court of Appeals imposed on the city an unnecessarily rigid burden of proof. The record in this case reveals that Renton relied heavily on the experience of, and studies produced by, the city of Seattle. In Seattle, as in Renton, the adult theater zoning ordinance was aimed at preventing the secondary effects caused by the presence of even one such theater in a given neighborhood. See *Northend Cinema, Inc*. v. *Seattle*, 90 Wash. 2d 709, 585 P. 2d 1153 (1978). The opinion of the Supreme Court of Washington in *Northend Cinema*, which was before the Renton City Council when it enacted the ordinance in question here, described Seattle's experience as follows:
>
>> "The amendments to the City's zoning code which are at issue here are the culmination of a long period of study and discussion of the problems of adult movie theaters in residential areas of the City. . . . [The] City's Department of Community Development made a study of the need for zoning controls of adult theaters . . . . The study analyzed the City's zoning scheme,

> comprehensive plan, and land uses around existing adult motion picture theaters. . . ." *Id*., at 711, 585 P. 2d, at 1155.
>
> "[The] [trial] court heard extensive testimony regarding the history and purpose of these ordinances. It heard expert testimony on the adverse effects of the presence of adult motion picture theaters on neighborhood children and community improvement efforts. The court's detailed findings, which include a finding that the location of adult theaters has a harmful effect on the area and contribute to neighborhood blight, are supported by substantial evidence in the record." *Id*., at 713, 585 P. 2d, at 1156.
>
> "The record is replete with testimony regarding the effects of adult movie theater locations on residential neighborhoods." *Id*., at 719, 585 P. 2d, at 1159.
>
> We hold that Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the "detailed findings" summarized in the Washington Supreme Court's *Northend Cinema* opinion, in enacting its adult theater zoning ordinance. The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses. That was the case here. Nor is our holding affected by the fact that Seattle ultimately chose a different method of adult theater zoning than that chosen by Renton, since Seattle's choice of a different remedy to combat the secondary effects of adult theaters does not call into question either Seattle's identification of those secondary effects or the relevance of Seattle's experience to Renton.
>
> 475 U.S. at 49-52, 106 S. Ct. at 930-31, 89 L. Ed 2d at 39-41.

Although the Court appeared to restate only the second part of the *O'Brien* test ("it furthers an important government interest") in its abbreviated test in *Renton,* the third part of the *O'Brien* test ("the government interest is unrelated to the suppression of speech") was implicit in that shorthand holding. Earlier in the decision, the Court said:

> The District Court's finding as to "predominate" intent, left undisturbed by the Court of Appeals, is more than adequate to establish that the city's pursuit of its zoning interests here was unrelated to the suppression of free expression. The ordinance by its terms is designed to prevent crime, protect the city's retail trade, maintain property values, and generally "[protect] and [preserve] the quality of [the city's] neighborhoods, commercial districts, and the quality of urban life," not to suppress the expression of unpopular views. See App. to Juris. Statement 90a. As JUSTICE POWELL observed in *American Mini Theatres*, "[if] [the city] had been concerned with restricting the message purveyed by adult theaters, it would have tried to close them or restrict their number rather than circumscribe their choice as to location." 427 U.S., at 82, n. 4.
>
> 475 U.S. at 48, 106 S. Ct. at 929, 89 L. Ed 2d at 38.

Regulation Narrowly Tailored

The Fifth Circuit has recently (2007) applied what it called a "hybrid" test (described in the extract immediately below), adopted by the district court and apparently accepted by both parties. Under that test, in *Illusions - Dallas Private Club, Inc. v. Steen*, 482 F.3d 299 (5th Cir. 2007), the Fifth Circuit held that a regulation affecting sexually oriented businesses is Constitutional if:

> (1) the State regulated pursuant to a legitimate governmental power; (2) the regulation does not completely prohibit adult entertainment; (3) the regulation is aimed not at the suppression of expression, but rather at combating negative secondary effects; and (4) the regulation is designed to serve a substantial governmental interest, is narrowly tailored, and reasonable alternative avenues of communication remain available, or, alternatively, the regulation furthers an important or substantial governmental interest and the restriction on expressive conduct is no greater than is essential in furtherance of that interest.

> 482 F.3d at 311, citing *Ben's Bar v. Village of Somerset*, 316 F.3d 702, 707 (7th Cir. 2003).

The second part of the *O'Brien* test of the validity of a local regulation of sex businesses ("it furthers an important government interest") and its third part ("the government interest is unrelated to the suppression of speech") have become inextricably intertwined, because it is clear that the only defensible governmental interest that will support regulation of such businesses is one that is "unrelated to the suppression of speech." If the state's purpose relates to the suppression of speech, the ordinance will be subject to "strict scrutiny," (see *Illusions - Dallas Private Club, Inc. v. Steen*, 482 F.3d 299, 308 (5th Cir. 2007)), a standard of review that reverses the presumption of validity, leaving the government with an almost insurmountable burden (see, for example, *Lorillard Tobacco Co. v. Reilly*, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (U.S. 2001), striking down a Massachusetts ban on advertising tobacco products within a prescribed radius of schools, parks and other facilities; there the Court acknowledged the government's legitimate interest in curtailing youthful smoking but found the advertising ban unconstitutional)). Another issue which is closely related to the second and third parts of the *O'Brien* test is the issue of "narrow tailoring." See *Illusions - Dallas Private Club, Inc. v. Steen*, 482 F.3d 299 (5th Cir. 2007), where the court merged these issues into one, framing it:

> the regulation is designed to serve a substantial governmental interest, is narrowly tailored, and reasonable alternative avenues of communication remain available, or, alternatively, the regulation furthers an important or substantial governmental interest and the restriction on expressive conduct is no greater than is essential in furtherance of that interest.
>
> 482 F.3d at 311.

The "narrow tailoring" issue looks at the relationship between the secondary effects that the ordinance or law is designed to address and the apparent effect of the law. To give a simple example, if a city has a study that shows that nude dancing produces negative secondary effects and, as a result, decides to ban all dancing, it has a "narrow tailoring" problem. The issue has been presented and discussed in *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003) and *H & A Land Corp v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007), both dealing with the question of whether studies showing negative secondary effects of various sex businesses were adequate to support ordinances related to retail-only book and video stores. See, also, *Schad v. Borough of Mt. Ephraim,* 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981), where a small town in New Jersey was concerned about the potential of nude dancing at a local establishment and thus banned all live entertainment in the town.

The authors view the "narrow tailoring" issue more as a drafting issue than as a pure "secondary effects" issue and, for that reason, it is not further discussed as a separate issue in this analysis. It is important to remember, however, and to remind elected officials that, the fact that a local government has evidence showing that a variety of sexually oriented businesses cause negative secondary effects may not support every type of ordinance that elected officials might like to adopt.

THE LAW OF SECONDARY EFFECTS

Context for "Secondary Effects" Studies

Given the above introduction, the focus of the remainder of this analysis is on the critical step of documenting and analyzing "negative secondary effects" as the basis for developing, adopting or defending[8] Constitutionally-valid regulations of sexually oriented businesses. It is critical to understand that the real issue is demonstrating a substantial governmental interest other than censorship as the basis for adopting regulations that infringe on First Amendment rights, thus, documenting the negative secondary effects of sexually oriented businesses is paramount. Although lawyers representing the sex industry often argue in court that local governments should be required to provide essentially scientific evidence regarding the relationship of sex businesses to the issues addressed by local zoning and licensing ordinances, the Supreme Court in upholding a Los Angeles zoning ordinance affecting sex businesses in *City of Los Angeles v. Alameda Books, Inc.*, a 2002 decision, set a much more reasonable test:

> We held that a municipality may rely on any evidence that is "reasonably believed to be relevant" for demonstrating a connection between speech and a substantial, independent government interest.
>
> *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (U.S. 2002), at 122 S. Ct. 1735, 152 L.Ed. 2d 683, remanded for further proceedings at 295 F.3d 1024 (9th Cir. 2002), citing and quoting briefly from *Playtime Theatres, Inc. v. City of Renton*, 475 U.S. 41, at 51-52 (1986).

Later in the opinion, the Court provided this discussion of its decision to reject the Ninth Circuit's analysis of the data provided by the city and to accept the city's analysis instead:

> Both theories are consistent with the data in the 1977 study. The Court of Appeals' analysis, however, implicitly requires the city to prove that its theory is the only one that can plausibly explain the data because only in this manner can the city refute the Court of Appeals' logic.
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> 152 L. Ed. 2d at 681, 122 S. Ct. at 1735.

To a similar effect, the Fifth Circuit has held in *N.W. Enters. v. City of Houston*:

> Because the constitutional standard of review depends only upon the City's predominate legislative concern, not its pre-enactment proof that the ordinance would work, there is no reason to parse each provision of the ordinance separately to determine the standard of review. The purpose and scope of the entire Ordinance are reflected in the preamble, which summarizes City Council's concern about multiple effects of SOBs. That all of such effects are targeted by the Ordinance's various provisions is clear, as it is also clear that none of the provisions directly censors adult speech. Thus, the Preamble, together with the

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[8] Although ideally a local government will develop a record documenting its governmental interest in adopting such regulations before adopting them and include appropriate evidence in the legislative record, that is not an absolute requirement today; a local government can certainly supplement its legislative record in the process of defending its ordinance (City of Los Angeles v. Alameda Books, Inc., 122 S. Ct. 1728, 152 L. Ed. 2d 670 (U.S. 2002)) and it may be allowed to provide its entire analysis of the secondary effects addressed by the ordinance for the first time in litigation. See, for example, Illusions - Dallas Private Club, Inc. v. Steen, 482 F.3d 299, 310 (5th Cir. 2007, where the court held in part that "the plurality [in Alameda books] did not specify that a purpose unrelated to suppressing speech can only be demonstrated with a specific type of indicator such as legislative findings or a statutory preamble." But see extract from N.W. Enters. v. City of Houston, 27 F. Supp. 2d 754 (S.D. Tex. 1998), set out in text almost immediately below, where the court noted that it was relying on the legislative record and the preamble to the ordinance in finding for the city.

> legislative record, provides sufficient evidence to justify an intermediate scrutiny standard of review to the entirety of 97-75, as a content-neutral enactment.
>
> *N.W. Enters. v. City of Houston*, 27 F. Supp. 2d 754 (S.D. Tex. 1998), vac. in part, rev. in part, aff'd in part 352 F.3d. 162, (5th Cir. 2003); *rev. and vac. in part, reh. den*., 372 F.3d 333 (5th Cir. 2004) (vacation was minor and based on a technicality with no substantive effect on the material cited); *cert. den*. 543 U.S. 958, 125 S. Ct. 416, 160 L. Ed. 2d 321 (2004); cited discussion from trial court opinion at 27 F.Supp.2d at 76465.

It is in this context that the Texas City Attorneys Association retained Cooper Consulting Company and Duncan Associates to provide this analysis of one category of potentially negative secondary effects of sex businesses on communities – and that is the potential effect of the locations of these businesses on the market values of nearby properties, particularly the effects of retail only businesses.

It is important to remember that the legislative records in *Young* and *Renton* referred in more general terms, respectively, to the prevention of "neighborhood deterioration" and "blight." There was also a brief reference in *Young* to the concept that "crime" might follow the deterioration. Thus, in these leading cases, the elected officials adopting the ordinances were dealing more with trends and concepts than with easily documentable facts. Because some courts, particularly in the Fifth Circuit (of which Texas is a part), have become somewhat less willing to accept general assertions by local governments of their good intentions and have sought at least some evidence regarding the problems that the challenged ordinances are supposed to address, local governments have increasingly focused on secondary effects that can be measured and/or documented.

The two secondary effects that are sometimes[9] associated with sexually oriented businesses and that are most susceptible to measurement and documentation[10] are increases in crime rates and decreases (or slowed rates of increase) in property values in areas around such businesses. Prof. Richard McCleary, of the University of California – Irvine, has conducted a related study of the effects of sex businesses on crime rates in Texas communities. This report focuses on secondary effects on property values.

Secondary Effects in the Fifth Circuit

In what appears to be its earliest post-*Renton* decision dealing with the Constitutionality of a local ordinance regulating sex businesses, in *SDJ, Inc. v. Houston,* the Fifth Circuit reversed a finding by the district court that Houston had not established a substantial governmental interest to support its adoption of the ordinance. *SDJ, Inc. v. Houston,* 837 F.2d 1268, (5th Cir. 1988), *reh'g en banc den*. 841 F.2d 107 (5th Cir. 1988), *cert. den. sub. nom. M. E. F. Enterprises, Inc. v. Houston*, 489 U.S. 1052, 109 S. Ct. 1310, 103 L. Ed. 2d 579 (1989).

The court set out its summary and analysis of the *Renton* test on this issue:

> Thus, as the Court explained in City of Renton, a city may establish its "substantial interest" in the regulation by compiling a record with evidence that it may be "reasonably believed to be relevant to the

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[9] We used the word "sometimes" to maintain an objective discussion in this report; in our experience, it would be fair to say "often" rather than sometimes, but without statistics to back up the use of the word "often," we chose the more conservative one.

[10] Again, there was a conscious choice of words here. In casual conversation, one might say "most easily measured," but that would not be accurate. As sex industry experts regularly remind us in their reports to various courts and their private comments to us, there is nothing "easy" about these measurements. Crime rates and property values are, however, at least susceptible to measurement – a characteristic that a general concept like "blight" or "deterioration" lacks.

> problem that the city addresses." We do not ask whether the regulator subjectively believed or was motivated by other concerns, but rather whether an objective lawmaker could have so concluded, supported by an actual basis for the conclusion. Legitimate purpose may be shown by reasonable inferences from specific testimony of individuals, local studies, or the experiences of other cities. This level of scrutiny best accommodates the need to ensure proper purposes with the limited competence of courts to discern ephemeral legislative motivations.
>
> 837 F.2d at 1274, citing and quoting *Renton,* 475 U.S. at 51-52; 106 S. Ct. at 931; 89 L. Ed. 2d at 40.

The court then applied this analysis to the Houston ordinance and adoption process, citing the material facts on which it relied in holding that the ordinance and its adoption passed Constitutional muster:

> The record reflects that the City Council carefully considered the relationship between sexually oriented businesses and neighborhood effects. The City formed a special Committee on Sexually Oriented Businesses, which heard public testimony from both supporters and opponents of the Ordinance, as well as experts. The committee also considered studies conducted by other cities such as Detroit, Boston, Dallas, and Los Angeles. While it may not be enough simply to tailor one ordinance to another that has survived judicial review, we are persuaded that the City Council considered those studies themselves and not merely the ordinances for which the studies provided support. Although the 1986 supplemental report relates no empirical evidence of the effects of topless bars, that report incorporates the 1982 report, which does refer to topless bars. We are persuaded that the City met its burden under City of Renton to establish that there was evidence before it from which the Council was entitled to reach its conclusion and was "relevant to the problem that the city addresses." The district court did not err in finding that the City had proved a substantial interest in the regulation of businesses subject to the Ordinance.
>
> 837 F.2d at 1274-75.

In the paragraph following the extract immediately above, the court distinguished this case from its earlier decision in *Basiardanes v. City of Galveston,* 682 F.2d 1203 (5th Cir.1982), in which it had struck down the Galveston ordinance, finding there that “"there is no evidence in the record that the Galveston City Council passed Ordinance 78-1 after careful consideration or study of the effects of adult theaters on urban life,” 837 F.2d at 1275, citing and quoting *Basiardanes,* 682 F.2d at 1215.

Four years after its decision in *SDJ,* the court relied on its opinion in *SDJ* in upholding the Constitutionality of a Jackson, Mississippi, ordinance regulating sexually oriented businesses. *Lakeland Lounge v. Jackson*, 973 F.2d 1255 (5th Cir. 1992), *reh’g en banc den*.979 F.2d 211 (5th Cir. 1992), *cert. den.* 507 U.S. 1030, 113 S. Ct. 1845, 123 L. Ed. 2d 469 (1993). In this case, it provided somewhat more detailed analysis of the reasons that it found that Jackson had met the Constitutional requirements of *Renton* in the adoption of its ordinance. The case came to it in a similar posture to that of the Houston case – the district court had found the Jackson ordinance unconstitutional because, according to the appellate court, “The court held that the city council had an insufficient factual predicate by which to base its ordinance upon secondary effects; therefore, the city had not shown that the ordinance was content-neutral.” 973 F.2d at 1258. The district court’s primary concern was that there was no evidence that the city council, the legislative body which adopted the ordinance, had actually heard evidence regarding negative secondary effects. The appellate court responded with this analysis:

> We believe that the district court clearly erred and that the record shows that the city council had sufficient information before it to enact a permissible ordinance. First, the office of planning, city attorney's office, and the ordinance review committee (a subcommittee of the planning board) drafted the ordinance, and they unquestionably considered, and relied upon, the studies as to the secondary effects of sexually oriented business while they were drafting the amendment. Further, the council could properly place some reliance upon others to do research, as state law requires that the planning board make recommendations to the council regarding zoning amendments. We perceive no constitutional requirement that the council members personally physically review the studies of secondary effects; such a holding would fly in the face of legislative reality.

> Second, although the city council never received a written report or summary of the studies, the city planning board held a public meeting at which the planning director and other city staff members and citizens discussed secondary effects and the work that had gone into the preparation of the proposed ordinance. As testimony and the official minutes of the meeting show, five of the seven members of the city council were present at that meeting; as the ordinance passed by a six-to-one vote, a majority of the council must have both voted for the ordinance and attended the meeting.
>
> Third, the language of the amendment indicates the council's concern with the secondary effects. [footnote omitted]
>
> 973 F.2d at 1258-59.

The court then quoted with approval the relatively brief preamble referring to secondary effects but noted:

> This language might not save a statute that was formulated without specific attention to secondary effects. Nevertheless, in context here, where (1) the drafters of the ordinance did rely upon studies of secondary effects, (2) a majority of the council members did receive some information about the secondary effects during an open hearing of the planning board, and (3) nothing in the record otherwise suggests impermissible motives on the part of the council members, the language of the preamble shows the city council's awareness of the studies upon which the planning staff relied when framing the ordinance and reflects that a reasonable legislature with constitutional motives could have enacted the ordinance.
>
> 973 F.2d at 1259, citing *SDJ* 837 F.2d at 1274.

Although the decision in *Lakeland Lounge* is now more than 15 years old and has been followed by a number of other cases dealing with the same issues, the Fifth Circuit continues to cite and rely on *Lakeland Lounge.* See, for example, *Encore Videos, Inc., v. City of San Diego*, 330 F.3d 288 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); and *J & B Entertainment v. City of Jackson*, 152 F.3d 362 (5th Cir. Miss. 1998), all cited and discussed later in this analysis.

In more recent years, the Fifth Circuit Court of Appeals has been somewhat more skeptical than other courts of the records that local governments have provided to document the secondary effects to which local ordinances are addressed. To put that comment in context, it is useful to review the basic facts of the Los Angeles case decided by the Supreme Court in 2002. In *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (U.S. 2002), the Court reversed decisions by a federal district court and the Ninth Circuit that had held in part that the city could not legitimately rely on a study that was several years old and that addressed a somewhat different problem than the city was now addressing. The study was 25 years old by the time the case reached the Supreme Court, but the Court found that the city's reliance on a study that it had conducted "several years before" was entirely reasonable.

The study itself had provided evidence that "concentrations of adult businesses are associated with higher rates of prostitution, robbery, assaults, and thefts in surrounding communities." 152 L. Ed. 2d at 678, 122 S. Ct. at 1732, citing App. 35-162 (Los Angeles Dept. of City Planning, Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles (City Plan Case No. 26475, City Council File No. 74-4521-S.3, June 1977)). The original ordinance adopted by the City in reliance on the study restricted the establishment, enlargement or transfer of ownership of any [defined] adult enterprise within 1000 feet of another adult enterprise. The City subsequently decided that the adopted ordinance was too narrow, and amended it to preclude the operation of multiple types of adult enterprises within one facility. The Supreme Court decision evolved from an enforcement action brought by the city against the operator.

The controlling language in the plurality opinion in *Alameda Books* said this:

> In *Renton* we held that a municipality may rely on any evidence that is "reasonably believed to be relevant" for demonstrating a connection between speech and a substantial, independent government interest. This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in Renton. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.
>
> 152 L. Ed. 2d at 683, 122 S. Ct. at 1736.

Not surprisingly, the sex industry frequently uses expert witnesses to challenge studies and analyses provided in support of local ordinances and cite the language here saying that a local government cannot "get away with shoddy data or reasoning." See discussion of *H & A Land Corp v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007), below [partial citation here]. The industry seems somewhat less likely to cite the following and apparently clarifying sentence that follows, "The municipality's evidence must fairly support the municipality's rationale for its ordinance."

Relationship of Cited Studies to Adopted Ordinance

In seeming contrast to the Supreme Court's deference to a city's decision to rely on an earlier study that dealt with a related issue but that was not directly on point, the Fifth Circuit has looked much more critically at the relationship between the cited studies and the adopted ordinance. In *Encore Videos v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003), the Fifth Circuit found that the purely retail businesses are a different type of business from those with on-premises entertainment and that local governments need studies related to the impacts of such on-premises businesses as part of the basis for adopting regulations affecting such businesses. In reaching that decision, the appellate court found:

> The studies [cited by the city] either entirely exclude establishments that provide only take-home videos and books (as is the case with the Seattle study) or include them but do not differentiate the data collected from such businesses from evidence collected from enterprises that provide on-site adult entertainment as may have been the case with the Austin and Garden Grove studies. [footnote omitted]
>
> 330 F.3d at 294-95.

As the Fifth Circuit acknowledged in that decision, however, there is a split of authority on this issue. On the same issue, the Eighth Circuit held:

> Under *City of Renton*, Rochester need not prove that Downtown Book and Video would likely have the exact same adverse effects on its surroundings as the adult businesses studied by Indianapolis, St. Paul, and Phoenix. So long as Ordinance No. 2590 affects only categories of businesses reasonably believed to produce at least some of the unwanted secondary effects, Rochester "must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems."
>
> *ILQ Invs., Inc. v. City of Rochester*, 25 F.3d 1413, 1418 (8th Cir. 1994), cert. denied, 513 U.S. 1017, 115 S. Ct. 578, 130 L. Ed. 2d 493 (1994), citing and quoting *Young v. American Mini Theatres, Inc*., 427 U.S. 50, 71, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976) (plurality opinion).

The Tenth Circuit held in response to a similar argument:

> Thus, we are satisfied that differences in the mode of delivery of sexually oriented materials are constitutionally insignificant for purposes of determining an ordinance's content-neutrality.
>
> *Z.J. Gifts, L.L.C. v. City of Aurora*, 136 F.3d 683, 687 (10th Cir. 1998), reversed in part on other grounds, 124 S. Ct. 2219, 159 L. Ed. 2d 84 (U.S. 2004).

The Fifth Circuit has applied critical analysis to the purposes for which governmental entities say they have adopted the ordinances, and to the relationship between the stated purposes and the effect of the ordinance. It was asking tough questions even before the Supreme Court raised questions about "shoddy data and reasoning" in *Alameda Books.* In *J & B Entm't, Inc. v. City of Jackson, Miss*., 152 F.3d 362 (5th Cir. 1998), the court reversed a decision by a lower court granting summary judgment to the city in a challenge to a Jackson ordinance regulating sexually oriented businesses. The appellate court found that the record was "too bare" at this stage to conclude that the ordinance had been adopted to serve a substantial governmental purpose unrelated to the suppression of speech. 152 F.3d at 375. It rejected both factors that the district court cited in support of its conclusion to the contrary:

> The first piece of evidence that the district court relied upon to conclude that the City enacted the Ordinance to combat secondary effects linked to public nudity is the Ordinance's preambulatory clause stating that "the City of Jackson has a legitimate interest in combating secondary effects associated with public places where persons who are physically present appear nude amongst strangers." In *Lakeland Lounge*, we explained that the mere incantation of the words "secondary effects" may not save a statute "formulated without specific attention to specific secondary effects." *Lakeland Lounge*, 973 F.2d at 1259. No explanation of what specific secondary effects motivated Jackson to enact the Ordinance appears in its text, and the City Council failed to make any specific legislative findings prior to enactment.
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> 152 F.3d at 373-74, citing *Lakeland Lounge v. Jackson,* 973 F.2d 1255 (5th Cir. 1992).

The court acknowledged that the city might be able to show a "current governmental interest" to support the ordinance even in the absence of appropriate findings, but it noted that the fact that the case had been decided on a pre-trial motion left the court without evidence to consider regarding that issue. 152 F.3d at 374. It went on to address the next piece of "evidence" cited by the district court:

> The second piece of evidence that the district court relied upon to find that the City enacted the Ordinance to combat secondary effects linked to public nudity was the City's experience in enacting the 1991 zoning ordinance. Prior to enacting the 1991 zoning ordinance, Jackson's City Council received information regarding studies on secondary effects associated with adult entertainment in other cities. See *Lakeland Lounge*, 973 F.2d at 1258-59. Other than the inference that Jackson must have had the same interests because the composition of the City Council that enacted the Ordinance was the same as the City Council that enacted the 1991 zoning ordinance, however, the City has offered no reasoned explanation linking the two ordinances, for how they seek to further similar interests, or for how it could reasonably conclude that banning public nudity might further its interests. Therefore, in light of Barnes, we find this single piece of evidence to be insufficient to justify the Ordinance as fulfilling a substantial governmental interest for the following reasons.
>
> 152 F.3d at 374.

The court provided this summary and conclusion to its analysis:

> In conclusion, as a result of the district court's premature grant of summary judgment, the record now before us is simply too bare to support its conclusion that the City enacted the Ordinance based on a desire to combat secondary effects linked to public nudity, as applied to nude dancing. We are not in a position to review this conclusion or determine whether the City could have a reasonable belief that the Ordinance might further its interests. Because the burden of proof under the intermediate scrutiny standard of review is on the City and insufficient evidence exists to indicate that the City has met its burden under this prong on the record now before us, we vacate the district court's grant of summary judgment in favor of the City.
>
> 152 F.3d at 375.

Although *J & B Entertainment* is a pre-*Alameda Books* decision, it has continued vitality – it was cited extensively and followed in part by the Fifth Circuit in its 2007 decision in *Illusions - Dallas Private Club, Inc. v. Steen*, 482 F.3d 299 (5th Cir. 2007). It was also followed in part by the court in the *Encore*

Video decision that is discussed extensively in this section. Other recent decisions in which the appellate court cited this 1998 case include *BGHA, LLC v. City of Universal City*, 340 F.3d 295, (5th Cir. 2003) and *N.W. Enters. v. City of Houston*, 352 F.3d 162, 175 (5th Cir. 2003).

Although the Fifth Circuit has consistently asked tough questions about the evidence of secondary effects and local governments' conclusions that particular ordinances are necessary to address those, it has often resolved that analysis in favor of the local government. In *Baby Dolls Topless Saloons, Inc. v. City of Dallas,* a decision handed down by the appellate court shortly before the Supreme Court decision in *Alameda Books,* the court noted that:

> *Renton* teaches us that the government must produce some evidence of adverse secondary effects produced by adult entertainment in order to justify a challenged enactment using the secondary effects doctrine. Renton also instructs us that a government must present sufficient evidence to demonstrate "a link between the regulation and the asserted governmental interest," under a "reasonable belief" standard.
>
> *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471, 481 (5th Cir. 2002), *reh'g denied*, 2002 U.S. App. LEXIS 16491 (5th Cir. 2002)[11], *cert. den. sub nom. Case & Point, Inc. v. City of Dallas*, 537 U.S. 1088, 123 S. Ct. 699, 154 L. Ed. 2d 632 (2002);

Here the appellate court was citing and quoting *J&B Entm't, Inc. v. City of Jackson*, 152 F.3d 36 . It went on, however, to uphold the challenged ordinance as Constitutional, finding and holding:

> That standard is satisfied. The Ordinance was enacted, in part, because the City had found that, through Chapter 14, entities that were, in effect, SOBs were avoiding that classification; and that concentrated SOBs "continue to contribute to … an increase in criminal activities in the surrounding community". Dallas, Tex., Ordinance 23137 (preamble). Among other relied-upon data, the 1997 Malin Study supports that increased-criminal-activities finding. From January 1993 through March 1997, there were 396 arrests for sex crimes ("Rape, Prostitution/Commercial Vice[,] and other Sex Offenses") in the study area (which included a concentration of seven SOBs), as compared to 133 such arrests in one control area (containing two SOBs located approximately a half-mile apart) and 77 such arrests in another control area (containing no SOBs).
>
> In short, sex crime arrests were three to five times more frequent in the study area. While the Malin Study is careful not to attribute this disparity entirely to SOBs, it did find a correlation between SOBs -- specifically, their "hours of operation and the type of people which SOBs attract" -- and higher crime rates.
>
> These findings are "reasonably believed to be relevant to the problem that the City addresses". *Renton*, 475 U.S. at 51-52 (emphasis added). The City relied upon specific evidence showing, inter alia, higher crime rates in the vicinity of SOBs. The City's attempts to deal with that reality had been continuously frustrated in the past, most recently by "exploitation of a 'loophole' in the City Code that permitted such businesses to avoid the location restrictions by obtaining dance hall licenses pursuant to Chapter 14, which was not originally designed to regulate such businesses". *Baby Dolls*, 114 F. Supp. 2d at 547 (emphasis added).
>
> 295 F.3d at 481-82, citing in part the lower court decision at 114 F. Supp. 2d 531 (N.D. Tex. 2000).

District courts in the Fifth Circuit have similarly applied critical analysis to the public policy arguments before them, not simply accepting the assertions of local governments that adopted ordinances were necessary to address a variety of identified secondary effects. For example, in *Allstars v. City of San Antonio,* 2003 U.S. Dist. LEXIS 8517 (W.D. Tex. May 19, 2003) (not published in official reporter), the court denied a preliminary injunction against enforcement of several parts of a local ordinance

[11] Official citation for denial of rehearing not available.

establishing requirements to place dancers on a stage and to provide buffers between dancers and patrons. It granted the preliminary injunction against the portion of the ordinance that also established a buffer between performers, holding that "However, at this early stage in the proceedings, it is not clear that evidence was before the city council to support this provision. Until such time as the City meets its evidentiary burden, the preliminary injunction as to touching between entertainers is GRANTED." 2003 U.S. Dist. LEXIS 8517, at 9.

In one of its first post-*Alameda Books* decisions, the Fifth Circuit showed considerable deference to the judgment of local legislators, holding that a local government must simply have a "rational basis" for adopting an ordinance regulating sex businesses. *N.W. Enters. v. City of Houston*, 352 F.3d. 162, (5th Cir. 2003); *rev. and vac. in part, reh. den.*, 372 F.3d 333 (5th Cir. 2004).[12] The court provided this clarifying discussion:

> The point of deference is this: legislators cannot act, and cannot be required to act, only on judicial standards of proof. Legislative zoning decisions are generally upheld on a rational basis standard. Imposing a level of inter mediate scrutiny, in cases like this, requires more conviction of the connection between legislative ends and means than does the rational basis standard, but only in the sense of "evidence [that] is reasonably believed to be relevant" to the secondary effects in question.
>
> 352 F.3d at 180-81.

The Fifth Circuit was also deferential to the legislative conclusions of a local government in a 2002 decision (*LLEH, Inc. v. Wichita County)* where the industry argued that studies of secondary impacts of sex businesses in urban areas did not fairly support a county's adoption of regulations of such businesses.

> The secondary effects that urban areas have experienced (well documented in the relied-upon studies) are precisely what the County is attempting to avoid. This is evinced by the Order's preambulary language. For example, the County sought to "minimize and control adverse effects" and "deter the spread of urban and rural blight".
>
> Accordingly, it is logical that the County would: (1) review the experiences of urban areas, as discussed in the studies; (2) consider what measures those areas have employed to combat secondary effects; and (3) tailor those corrective measures to the County's needs. By so doing, the County may, in its continued growth and development, successfully sidestep many of the problems encountered by urban areas. In this respect, the relied-upon studies are "reasonably believed to be relevant" to the problems the County seeks to address. See *Renton*, 475 U.S. at 51. 167
>
> See *LLEH, Inc. v. Wichita County*, 289 F.3d 358, 366 (5th Cir. 2002), *reh'g denied* 45 Fed. App. 324 (2002), reversing [on this point and others] *LLEH, Inc. v. Wichita County*, 121 F. Supp. 2d 513 (N.D. Tex. 2000). Although this decision pre-dated *Alameda Books,* the Fifth Circuit has recently held that it remains good law. *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546, 562 (5th Cir. 2006).

The court was similarly deferential to local government in a more recent case, *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006). This case involved a challenge to an Arlington ordinance that, among other things, required that dancers in a sexually oriented cabaret must perform on a stage and maintain a five-foot buffer from patrons. In ruling for the city, the court addressed the question of the burden on the city to demonstrate that its ordinance was aimed at secondary effects. In

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[12] Note that some of the reporting and citation on this case are misleading and inaccurate; the same 2004 opinion appears twice in Lexis (once in F.3d, as cited), and is cited three times in Shepard's, with a red stop sign, apparently resulting from the minor modification to the decision that was technically a partial reversal and vacation.

response to the city's citation of a number of studies from other jurisdictions, the clubs challenging the ordinance hired an expert who analyzed police records and found that "there were no arrests, citations, or police calls for prostitution, solicitation, assault, or narcotics." 459 F.3d at 560. In response to the plaintiffs' lawyers' argument that this showed that the reasoning of the city in its findings was "shoddy" under *Alameda Books,* the court responded:

> We find this evidence, even when viewed in a light most favorable to the plaintiff, plainly insufficient to preclude summary judgment. Indeed, "[a]lthough this evidence shows that [the City] might have reached a different and equally reasonable conclusion regarding the relationship between adverse secondary effects and sexually oriented businesses, it is not sufficient to vitiate the result reached in the [City's] legislative process." *G.M. Enters. v. Town of St. Joseph*, 350 F.3d 631, 639 (7th Cir. 2003) (affirming summary judgment in favor of the Town's five-foot buffer and eighteen-inch stage-height requirement despite meaningful countervailing evidence presented by the plaintiffs). At best, Joe Morris's report suggests that no arrests at strip clubs had occurred for prostitution, drugs, or assault, a fact that is likely of little comfort to the City of Arlington, which passed this ordinance at least in part because dancer-patron proximity in a dimly-lit room made such crimes difficult to police. Ultimately, we are not empowered by *Alameda* to second-guess the empirical assessments of a legislative body, nor are we expected to submit such assessments to a jury for re-weighing; instead, the relevant "material fact" that must be placed at issue is whether the ordinance is supported by evidence that can be "reasonably believed to be relevant to the problem." See *Renton*, 106 S. Ct. at 931 (emphasis added); see also N.W. Enterprises, 352 F.3d at 180; Alameda Books, 122 S. Ct. at 1743 (Kennedy, J., concurring) ("[T]he Los Angeles City Council knows the streets of Los Angeles better than we do."). Because no such issue of material fact exists, we hold that Ordinance No. 03-044 satisfies the second prong of O'Brien.
>
> 459 F.3d at 561.

The Fifth Circuit also suggested a somewhat reduced bar for governments in a 2007 decision (*H & A Land Corp v. City of Kennedale)* in which it reversed a decision of a district court that had found a local ordinance unconstitutional under the rationale discussed above in *Encore Videos. H & A Land Corp v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007), *cert. den. Sub nom. Reliable Consultants, Inc. v. City of Kennedale*, 128 S. Ct. 196, 169 L. Ed. 2d 36 (U.S. 2007). The court first restated the public policy (not necessarily legal) premise of its decision in *Encore Videos:*

> On-site businesses (i.e., adult theaters or strip clubs) pose a greater threat of secondary effects than off-site sexually oriented businesses (i.e., adult bookstores). Therefore, a city that enforces an ordinance meant to prevent harmful secondary effects associated with the operation of an off-site business must rely on evidence showing that off-site businesses, rather than the broader category of sexually oriented businesses that includes on-site businesses, cause harmful secondary effects.
>
> 480 F.3d at 339.

In a footnote to the quoted material, the court quoted this language from *Encore Videos:*

> Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects. If consumers of pornography cannot view the materials at the sexually oriented establishment, they are less likely to linger in the area and engage in public alcohol consumption and other undesirable activities."
>
> 480 F.3d at 339, quoting *Encore Videos,* 330 F.3d, 288, 295, n. 3 (5th Cir. 2003).

They noted that the case differed from *Encore Videos* because "because Kennedale, unlike San Antonio, offers evidence that purports to show a connection between purely off-site businesses, or 'bookstores,' and harmful secondary effects." It then set out this test for determining whether the evidence was sufficient:

> To determine whether the ordinance at issue is narrowly tailored, we must determine whether Kennedale could reasonably believe that the evidence is relevant to show the requisite connection to harmful

> secondary effects. *Alameda Books,* 535 U.S. at 438. In other words, we ask whether that evidence "fairly support[s] the [city's] rationale for its ordinance." Id. Applying our holding from *Encore Videos*, Kennedale cannot reasonably believe its evidence is relevant unless it sufficiently segregates data attributable to off-site establishments from the data attributable to on-site establishments. *Encore Videos*, 330 F.3d at 294-95.
>
> 480 F.3d at 339.

In reversing the trial court and finding that the city had established a substantial governmental interest and a clear relationship to the adopted ordinance, the Fifth Circuit stated:

> Kennedale's evidence consisted of studies from nine cities, as well as an opinion survey of land use appraisers conducted by the city's attorney, and citizen commentary from public meetings. Seven of Kennedale's nine studies from other cities fail to differentiate between on-site and off-site businesses. The 1984 Indianapolis and 1986 Oklahoma City studies, however, included surveys of real estate appraisers that focused strictly on "adult bookstores." The overwhelming majority of survey respondents in both studies predicted that the presence of an adult bookstore would negatively affect real estate value in the surrounding area. The Indianapolis survey, conducted by the City of Indianapolis in conjunction with Indiana University School of Business, Division of Research, polled 20% of the national membership of the American Institute of Real Estate Appraisers. Eighty percent of the respondents predicted that an adult bookstore would negatively impact residential property values, and seventy-two percent believed commercial property value would also be negatively effected [sic]. The Oklahoma City study, which surveyed one hundred Oklahoma City real estate appraisers, produced similar results: Seventy-four percent predicted a negative impact on real estate value in the surrounding area.
>
> 480 F.3d at 339-40.

The court also rejected a related argument that the sex industry has raised in other cases:

> Appellee Reliable argues that the term "bookstore," used in both surveys, is a term of art and does not sufficiently specify off-site premises. They argue instead that adult bookstores often include peep shows, arcades, and other forms of on-site entertainment, rendering them on-site establishments. However, the Supreme Court has previously used the term "bookstore" as distinguishable from "adult video arcades." *Alameda Books*, 535 U.S. at 442 (discussing city's prohibition on "combination of adult bookstores and arcades"). This was a survey sent to and completed by real estate appraisers, and so what matters is how those appraisers would have understood the survey's reference to an adult bookstore.
>
> Standing alone, it is reasonable to infer that the survey respondents interpreted "bookstore" as signifying an off-site establishment. Webster's Dictionary defines "bookstore" as "a place of business where books are the chief stock in trade." WEBSTER'S NEW INT'L. DICTIONARY [sic] 253 (3d ed. 1981). There is no reason to expect that simply adding the word "adult" to the term would completely transform the nature of the business activity described.
>
> 480 F.3d at 340.

The court concluded this part of its analysis this way:

> Kennedale's ordinances purport to protect against harmful secondary effects. The Indianapolis and Oklahoma City studies support the belief that off-site sexually oriented businesses cause harmful secondary effects to the surrounding area in the form of decreased property value. So long as they are not relying on shoddy data or reasoning, we afford substantial deference to cities with regards to the ordinances they enact. See *Alameda Books*, 535 U.S. at 451 (Kennedy, J., concurring) (noting that "a city must have latitude to experiment" and "courts should not be in the business of second-guessing fact-bound empirical assessments of city planners"). The Indianapolis survey, in particular, was drafted by experts, pretested, and administered to a large, national pool of respondents. It is not "shoddy." We therefore find that Kennedale has produced evidence that it could have reasonably believed was relevant, and thus could have properly relied upon. The ordinances are narrowly tailored to advance a substantial governmental interest.

480 F.3d at 340-41.

A federal court in the Northern District of Texas appeared to follow a similarly deferential attitude in denying a preliminary injunction to the prospective operator of a store to be called "Condoms & More," finding that studies provided by Dr. Richard McCleary (who is part of the team performing studies for the Texas City Attorneys Association) were adequate to rebut the plaintiffs' argument that they were likely to succeed on the merits under *Encore Videos.*

In *Illusions - Dallas Private Club, Inc. v. Steen, a* 2007 decision involving the regulation of sexually oriented live entertainment, the Fifth Circuit conceded one point to the governmental defendant fairly easily but took a hard line on another issue, resulting in a decision adverse to the government. *Illusions - Dallas Private Club, Inc. v. Steen*, 482 F.3d 299 (5th Cir. 2007), dealt with a Texas state regulation that prohibited the service of alcohol in an establishment with defined adult entertainment if that establishment was located in a "dry" jurisdiction.[13] There was no legislative record. The appellate court was willing, nevertheless, to conclude from the context of the regulation (in the Alcoholic Beverage Code) that the purpose of the law was not the suppression of erotic speech but the regulation of establishments serving alcohol. 482 F.3d at 311. The court, however, held that, "we agree with the Clubs that the State has not justified a substantial governmental interest." 485 F.3d at 312.

The court went on to provide this discussion:

> The State's proffered substantial governmental interest is prohibiting the sale of alcohol in inappropriate locations and, thereby, protecting the "welfare, health, temperance, and safety of the people of the state" that would be harmed by the negative secondary effects flowing from the alcohol service/erotic dancing combination. See Tex. Alco. Bev. Code § 1.03. The State supported its substantial governmental interest at the summary judgment stage by (1) referencing, in a memorandum in support of its motion, information gleaned from judicial opinions and "common sense" and (2) by attaching various studies regarding the secondary effects of the alcohol/erotic dancing combination. The district court excluded all of the various studies as hearsay, and the State has not challenged this order on appeal. The district court nonetheless found that the State satisfied its burden by merely citing in its motion for summary judgment to judicial opinions and the discussions therein regarding the negative secondary effects of the alcohol/erotic dancing combination, when the judicial opinions cited were not in the record and were not relied on by the State prior to enactment.
>
> * * * *
>
> It is of course true, as the State points out, that the evidentiary burden for a State attempting to justify a substantial governmental interest is very light. *Alameda Books* requires only that the State "demonstrate a connection between the speech regulated by the [statute] and the secondary effects that motivated the adoption of the ordinance." 535 U.S. at 441 (plurality opinion); see also id. at 451 (Kennedy, J., concurring in the judgment) ("[V]ery little evidence is required" to show that "speech will be substantially undiminished, and that total secondary effects will be significantly reduced."). And the Court's cases "require only that municipalities rely upon evidence that is 'reasonably believed to be relevant' to the secondary effects that they seek to address." Id. at 442 (plurality opinion) (quoting *Pap's A.M.,* 529 U.S. at 296)). It is also true, as the State suggests, that the notion that the alcohol/erotic dancing combination is a combustible one is supported by common sense.
>
> The State nonetheless "bears the burden of providing evidence that supports a link" between the combination of alcohol service and erotic dancing and negative secondary effects. Id. at 437 (plurality

[13] For the non-Texas reader, Texas allows local "dry" options prohibiting bars and similar establishments, but it allows the service of alcoholic beverages even in those jurisdictions in private "clubs." The sexually oriented businesses involved in this litigation were all operated as "clubs" in a dry jurisdiction.

> opinion); see also *J & B Entertainment*, 152 F.3d at 372-73. Here, the record is completely devoid of any evidence that a secondary effects problem exists or that § 32.03(k) furthers that interest. The only actual evidence the State proffered in support of its substantial governmental interest was in the form of land-use studies by other cities on the negative secondary effects caused by SOBs. But, as noted above, these studies were excluded, and the State has not challenged the exclusion on appeal. As such, there simply is no evidence, and the State has not met the minimal evidentiary burden placed upon it.

"Underinclusiveness" – Regulating/Not Regulating Other Uses with Negative Secondary Effects

The survey of appraisers that provides the substantive context for this report indicates that a significant majority of Texas appraisers believe that all of the sexually oriented businesses identified in the survey are likely to have negative effects on the market value of single-family residences and community shopping centers. These same appraisers also believe that certain other land uses may have similar adverse effects, particularly on the market value of single-family homes. One question that may arise in the drafting, adoption or defense of an ordinance regulating sexually oriented businesses is why the ordinance does not address all of the uses identified by the appraisers as having similar effects on the market value of property. The issue is important but not critical.

Courts in the Fifth Circuit and elsewhere have held that the "underinclusiveness" that results from regulating some but not all uses that may reasonably believed to have negative secondary effects does not make the adopted regulations unconstitutional. See, for example, this discussion from *Renton,* where the Supreme Court rejected an argument that the fact that the city chose to regulate only adult motion picture theaters and not other sexually oriented businesses should cause the ordinance to fall as unconstitutional:

> Respondents contend that the Renton ordinance is "under-inclusive," in that it fails to regulate other kinds of adult businesses that are likely to produce secondary effects similar to those produced by adult theaters. On this record the contention must fail. There is no evidence that, at the time the Renton ordinance was enacted, any other adult business was located in, or was contemplating moving into, Renton. In fact, Resolution No. 2368, enacted in October 1980, states that "the City of Renton does not, at the present time, have any business whose primary purpose is the sale, rental, or showing of sexually explicit materials." App. 42. That Renton chose first to address the potential problems created by one particular kind of adult business in no way suggests that the city has "singled out" adult theaters for discriminatory treatment. We simply have no basis on this record for assuming that Renton will not, in the future, amend its ordinance to include other kinds of adult businesses that have been shown to produce the same kinds of secondary effects as adult theaters.
>
> 475 U.S. 41, 52-53, 106 S. Ct. 925, 931-32, 89 L. Ed 2d 29, 41.

Several years later, in a case raising the same issue but not involving a sex business, the Supreme Court addressed the broader policy implications of this argument and this issue:

> [T]he First Amendment imposes not an "underinclusiveness" limitation but a "content discrimination" limitation upon a State's prohibition of proscribable speech. There is no problem whatever, for example, with a State's prohibiting obscenity (and other forms of proscribable expression) only in certain media or markets, for although that prohibition would be "underinclusive," it would not discriminate on the basis of content. Another valid basis for according differential treatment to even a content-defined subclass of proscribable speech is that the subclass happens to be associated with particular secondary effects of the speech, so that the regulation is justified without reference to the content of the speech.
>
> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387–89, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992), (citations and quotations omitted);

The Ninth Circuit applied this principle in a case involving the regulation of sex businesses. See *Center for Fair Pub. Policy v. Maricopa County,* 336 F.3d 1153 (9th Cir. Ariz. 2003), cert. den. 541 U.S. 973,

124 S. Ct. 1879, 158 L. Ed. 2d 468 (2004). There, the court dealt with an ordinance that established a 1:00 a.m. closing time for sexually oriented businesses but not for any other businesses:

> The State "may choose to treat adult businesses differently from other businesses . . . ." *Isbell v. Grand B Emporia, Inc.*, 258 F.3d 1108 at 1116 (9th Cir. 2001); see also Young, 427 U.S. at 70-71 ("[T]he State may legitimately use the content of these materials as the basis for placing them in a different classification from other motion pictures."). If this is true as a general proposition, then it must also be true as to the specific proposition that a state may single out sexually-oriented businesses to regulate their hours of operation. See *Ben Rich Trading, Inc.*, 126 F.3d at 163 ("[A] municipality may regulate hours of adult businesses differently than other businesses without raising a strong inference of discrimination based on content.").
>
> 336 F.3d at 1171, citing *Isbell* [full citation in extract] and *Ben Rich Trading, Inc. v. City of Vineland*, 126 F.3d 155 (3d Cir. 1997)..

The Fifth Circuit dealt with a different aspect of the underinclusiveness argument in *J & B Entm't, Inc. v. City of Jackson, Miss*., 152 F.3d 362, 377 (5th Cir. 1998), where it rejected an argument that an ordinance limiting public nudity in sex businesses but not in all venues was not unconstitutional as undereinclusive. The public nudity cases are distinguishable from the issue here, because an ordinance banning all public nudity – even in legitimate theater productions, for example – might be held to be over-broad. See discussion at 152 F.3d at 377, citing *Barnes v. Glen Theatre, Inc*., 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991).

In *SDJ, Inc. v. Houston,* discussed extensively above, the Fifth Circuit rejected an underinclusiveness argument that was framed in part as an equal protection claim:

> First, the Ordinance does not deny plaintiffs equal protection because it regulates topless bars but does not regulate adult bookstores and theatres. This argument fails to recognize the fact that adult theatres and bookstores still are specifically exempted from the state enabling act, and thus the City has no authority to regulate these businesses. The argument also ignores that the Ordinance here was enacted as a companion to an earlier ordinance that specifically excluded topless bars due to preemption by state law. Furthermore, the Supreme Court dismissed a similar "under-inclusive" argument in *Renton*, stating, "That Renton chose first to address the potential problems caused by one particular kind of adult business in no way suggests that the city has 'singled out' adult theaters for discriminatory treatment."
>
> *SDJ, Inc. v. Houston*, 837 F.2d 1268, 1279 (5th Cir. 1988), *reh'g en banc den*. 841 F.2d 107 (5th Cir. 1988), *cert. den. sub. nom. M. E. F. Enterprises, Inc. v. Houston*, 489 U.S. 1052, 109 S. Ct. 1310, 103 L. Ed. 2d 579 (1989).

REGULATING SIGNAGE AND LIGHTING

In *SDJ, Inc. v. Houston,* the Houston ordinance "impose[d] restrictions on the exterior decor and signage of those businesses, limiting the number and verbiage of signs and requiring buildings to be painted achromatically." *SDJ, Inc. v. Houston*, 837 F.2d 1268, 1272 (5th Cir. 1988), *reh'g en banc den*. 841 F.2d 107 (5th Cir. 1988), *cert. den. sub. nom. M. E. F. Enterprises, Inc. v. Houston*, 489 U.S. 1052, 109 S. Ct. 1310, 103 L. Ed. 2d 579 (1989). The operators raised underinclusiveness and equal protection ordinance, challenging the signage limitations because they applied only to adult cabarets. The court ruled for the city on that issue, holding succinctly:

> Finally, plaintiffs claim that the Ordinance violates their equal protection rights because the signage restrictions imposed under the Ordinance far exceed the reasonable restrictions placed on other businesses and thus single out topless bars for different treatment. Because topless bars are not a "protected class," the City need only demonstrate that the signage restrictions are reasonably related to a legitimate government interest. The district court did not err in holding that the City had demonstrated that the signage restrictions were rationally related to the legitimate interest in preventing detrimental effects on minors. [footnote omitted]
>
> 837 F.2d at 1280.

There is relatively little law on this subject, so it is worth reviewing briefly some major cases from other jurisdictions. The Eighth Circuit has also upheld what it called "modest" restrictions on signage at adult businesses. In *Excalibur Group v. City of Minneapolis*, 116 F.3d 1216, 1221–22 (8th Cir. Minn. 1997), the ordinance in this case provided in part:

> Window areas may not be covered or made opaque, nor are signs permitted in the windows. Id. A one square-foot sign is allowed on the door, however. Id. Subsection (g)(4) works in conjunction with subsection (g)(1), which provides that all exterior signs must be flat wall signs, and subsection (g)(2), which allows one square foot of sign area per foot of lot frontage on a street.
>
> 116 F.3d at 1221–22, citing Minneapolis, Minn., Code of Ordinances § 540.410(g)(4).

The court held in material part:

> We hold that the restrictions in subsection (g)(4) are narrowly tailored to further the city's significant interest in alleviating the adverse impact of sexually oriented businesses on their neighborhoods. Having before it substantial evidence of the urban blight caused by the mere presence of these businesses, the city could reasonably conclude that controlling their outward appearance would lessen the effect they would have on surrounding commercial and residential neighborhoods. The city could also reasonably conclude that sign and window regulations would be an appropriate means by which to achieve this purpose. The sign and window restrictions do not reach substantially more speech than necessary, for they are directed only at the signs and window coverings that would affect the outward appearance of the businesses and impact the surrounding neighborhoods
>
> 116 F.3d at 1222. Internal citations omitted.

Similarly, an appellate court in New Jersey has found Constitutional a state law that restricted signs on sexually-oriented businesses:

> No sexually oriented business shall display more than two exterior signs, consisting of one identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size.
>
> New Jersey Stat. Ann. §2C:34-7(c).

Reversing the trial court on the issues of Constitutionality, the appellate court held:

> N.J.S.A. 2C:34-7(c) is not substantially broader than necessary. The two sign limitation is justified given the undesirable secondary effects that such signs attract, e.g., higher incidents of crime, child delinquency… .
>
> *Hamilton Amusements v. Poritz,* 298 N.J. Super. 230, 689 A.2d 201 (App. Div. 1997), *aff'd sub nom. Hamilton Amusement Ctr. v. Verniero*, 156 N.J. 254, 716 A.2d 1137 (1998), *cert. den.* 527 U.S. 1021, 119 S. Ct. 2365, 144 L. Ed. 2d 770 (1999).

Later in the opinion, the court added these comments:

> Not only does the statute allow two signs to be posted but it in no way proscribes other modes of advertisement. Additionally, the statute does not inhibit in any way the material that may be displayed within the store nor does it place any significant limitation on what may be advertised upon the business's two signs.
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> 689 A.2d at 206.

Courts have struck down broader restrictions on signage at or for sexually oriented businesses. The Eighth Circuit, which had upheld Minneapolis' "modest" sign regulations in *Excalibur Group v. City of Minneapolis*, discussed above, struck down as unconstitutional a Missouri state law that banned billboard advertising by sexually oriented businesses within one mile of a state highway. Mo. Rev. Stat. §226.531. Using the *Central Hudson* test, the court found that the statute was not narrowly tailored to serve the state's interest:

> It is clear that section 226.531 regulates the affected business's speech; it threatens criminal prosecution for the mere inclusion of the name or address of an affected business on billboards within one mile of a state highway. The Missouri statute ``sacrifices an intolerable amount of truthful speech about lawful conduct." … The prohibition is directed at speech beyond that which would lead to the stated secondary effects, and is not narrowly tailored to achieve Missouri's stated goal.
>
> *Passions Video, Inc. v. Nixon,* 458 F.3d 837, 843 (8th Cir. Mo. 2006), reh. en banc den. 2006 U.S. App. LEXIS 24092 (8th Cir. 2006)[14], reversing *Passions Video, Inc. v. Nixon*, 375 F.Supp.2d 866 (W.D.Mo. 2005).

The same state law allowed limited signage for sexually oriented businesses. It provided that a business located within a mile of a state highway could have signage, subject to these limitations:

> [I]f such business is located within one mile of a state highway then the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that the premises are off limits to minors. The identification sign shall be no more than forty square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.
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> Mo. Rev. Stat. §226.531.2.

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[14] Official reporter citation not available for denial of rehearing.

The Eighth Circuit also found that provision to be overbroad and failed the strict scrutiny test:

> In our view, this provision is not narrowly drawn to meet the state's asserted goals, and thus fails to meet the fourth step of the *Central Hudson* test. *Lorillard Tobacco*, 533 U.S. at 556. Should an affected business owner choose to post a sign with the price of gasoline, or a sign advertising a nationally-known soft drink on the exterior of the business, he or she would be subject to criminal prosecution. Thus, Missouri statute section 226.531, in its entirety, is unconstitutional because it fails to survive scrutiny under the *Central Hudson* test for regulations on commercial speech.
>
> 485 F.3d at 843-44.

In its decision striking down the state law, the Eighth Circuit relied in part on a decision of the Georgia Supreme Court, also striking down a ban on outdoor advertising by sexually oriented businesses. *State v. Cafe Erotica, Inc.*, 270 Ga. 97, 507 S.E.2d 732 (1998). In striking down the law, the court provided this policy discussion and holding:

> Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominately free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end the free flow of commercial information is indispensable.
>
> Because the absolute proscription against any form of off-site advertising impedes the free flow of information and far exceeds the State's legitimate interest, O.C.G.A. § 32-6-75 (b) is an unconstitutional infringement on free speech as guaranteed by the First Amendment and the Georgia Bill of Rights.
>
> 270 Ga. at 100–01, 507 S.E.2d at 735.

The Seventh Circuit considered a local ordinance in Mishawaka, Indiana, upholding part of it and striking down another, appearing to find in one case a balance that the Eighth Circuit essentially adopted in two. In *Pleasureland Museum, Inc., v. Beutter*, 288 F.3d 988 (7th Cir., Ind. 2002), the Seventh Circuit upheld portions of the ordinance that prohibited the use of images and that required the use of only solid-color letters on signs at sex businesses. It went on, however, to hold that a provision allowing only the name of the business on the sign was unconstitutionally overbroad:

> Mishawaka fails to articulate a single reason why it is necessary to limit a sexually-oriented business' signage solely to displaying its name. Under Section 125.16(D)(1), a sexually-oriented business will not be allowed to notify the public about what type of store it operates or what its hours of operation are. Such a drastic restriction on signage cannot be sustained without some sort of evidentiary support.
>
> 288 F.3d at 1002-03.

Although a significant number of appraisers clearly believe that the addition of garish lighting to an already problematic business can increase the negative effect of that business on the market values of nearby property, the issue of adopting special sign regulations for sex businesses should be approached with caution. If local officials have observed particular problems with the types of signs at sex businesses, it is worth considering whether these are problems that might occur in other contexts or at other uses, providing a basis for a more general regulation that does not raise the issues of a potential content basis.

TEXAS STATUTES

Texas Enabling Statute to Permit Regulation of Sexually Oriented Businesses

The Texas Local Government Code includes specific enabling provisions to allow local governments to regulate certain sexually oriented businesses. Tex. Loc. Gov't. Code Ch. 243. The chapter includes this definition:

> In this chapter, "sexually oriented business" means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.
>
> Tex. Loc. Gov't Code §243.002.

The statute expressly allows restrictions on the location of sexually oriented businesses (Tex. Loc. Gov't Code §243.006); this is a traditional zoning tool, readily available to most municipalities. In Texas, however, counties lack zoning authority, and several cities remain unzoned; this portion of the statute thus fills an important gap in authority for some local governments. The statute also expressly allows the creation of a local licensing ordinance for such businesses (Tex. Loc. Gov't Code §243.007).

Sexual Assault Prevention and Crisis Services Act

An odd section of a statute adopted by the legislature in 2007 as part of the Sexual Assault Prevention and Crisis Services Act (Tex. Gov't Code Ch. 420) provides, perhaps redundantly:

> The legislature may appropriate funds for a third-party assessment of the sexually oriented business industry in this state and provide recommendations to the legislature on how to further regulate the growth of the sexually oriented business industry in this state.
>
> Tex. Gov't Code §420.015.

Additional discussions with the Texas City Attorneys Association are needed to determine if this would be a source for funding further study of the impact sexually oriented businesses have on communities.

LESSONS LEARNED – WHEN ADOPTING SEXUALLY ORIENTED REGULATIONS

The purpose of this report is to provide a significant piece of evidence that elected officials and their advisors may "reasonably believe [] to be relevant" for demonstrating a connection between [sexually oriented businesses] and a substantial, independent government interest" – that is, protecting the market values of property. *Alameda Books,* 152 L. Ed. 2d at 683, 122 S. Ct. at 1736.

It is not material that can be adopted or used without thought. As the Supreme Court also reminded affected parties in the same paragraph quoted above, "The municipality's evidence must fairly support the municipality's rationale for its ordinance."

Based on the legal analysis provided here and on experience in assisting a number of communities to draft, adopt and implement regulations for sexually oriented businesses in this legal context, the following specific recommendations are offered to local governments relying on this and related reports:

- Attorneys, planners and other advisors to local officials should become fully familiar with any studies that they intend to use to show a "substantial governmental interest;"
- Copies of relevant studies should be provided to members of advisory bodies and elected officials who consider proposed regulations;
- If full copies of relevant studies are not distributed to all members of these bodies, it is desirable to provide them with a summary of the studies, relating the findings of the studies to local conditions to the maximum extent practicable (here it may be useful to cite testimony from hearings or other anecdotal information that provides local support or documentation for the empirical findings);
- Even when full copies of studies are provided to members of deliberative bodies, it is often useful to provide a written summary like the one recommended for officials who may not have received the full studies;
- It is useful to show that legislators relied on specific studies in deciding to adopt new regulations. Thus, it is useful to have a staff member or consultant provide an oral summary of the major findings of studies on which a deliberative body is expected to rely. If members of the body have been provided with a summary report, the record can be strengthened by having the person offering the summary recommend that members turn to particular pages as the presenter covers particular points;
- The proposed ordinance must be drafted with care, to ensure that it not only conforms with other constraints of Constitutional law and with state enabling legislation, but that it is clearly directed at solving problems identified in the studies placed in the record;
- The links between the various studies and the proposed ordinance should be set forth in detailed findings that accompany the ordinance, either as a preamble or as a separate document to be adopted before voting on the ordinance. Where it is not otherwise obvious, the findings should explain the relationship between the negative secondary effects identified in the studies and specific provisions of the ordinance; and,
- If the ordinance contains any unusual provisions, such as restrictions on signage or operating hours that may not be applied to other businesses, it is desirable to include in the findings specific explanations of the reasons for including those specific restrictions and for applying them only to sex businesses.

TREATMENT OF OTHER USES WITH NEGATIVE SECONDARY EFFECTS

OVERVIEW

The underlying purpose of this study was to determine whether sexually oriented businesses have measurable negative secondary effects that justify increased regulation for such businesses. Clearly the results of this study show substantial, measurable secondary effects which, in our opinion, justify special zoning regulation of such uses, including but not limited to separation distances from single-family residences.

These findings would appear similarly to support special regulation of the other high-impact uses, including bars and lounges, pawn shops, massage parlors, and homeless shelters, and to somewhat lesser extent high voltage power lines and landfills. Although somewhat beyond the scope of the report that we were retained to perform, we believe that it is both appropriate and necessary to offer some specific comments on these land uses.

Because the survey included a broad variety of uses often considered NIMBYs ("Not In My Back Yard") or LULUs ("Locally Unwanted Land Uses"), the results show that certain other uses have similar negative secondary effects on the market value of single-family homes and community shopping centers. In adopting regulations to address the negative secondary effects of sex businesses, it is important that local governments at least consider the extent to which other uses identified by the appraisers should be subject to similar regulations.

The legal and Constitutional considerations are not compelling; as the discussion of the "underinclusiveness" issue, beginning on page 33, indicates, the courts have generally recognized that local governments may identify a number of problems and may legitimately choose to address only some of those issues at any particular time. Nevertheless, interested citizens and potential litigants may pose questions about why a community decided to regulate one group of uses that has potential adverse effects on market values and not another. At a minimum, it is useful for local officials to be able to provide thoughtful responses to such questions. Ideally, the findings and agenda memos in support of new or amended ordinances regulating sex businesses will provide at least brief discussion of the issue of relating other uses with negative secondary effects.

OTHER USES WITH NEGATIVE SECONDARY IMPACTS

Bars and Lounges

Many Texas cities and counties have recognized the potential negative secondary impacts of bars and lounges. Not surprisingly, bars and lounges with live entertainment both turned up on the list of uses that appraisers believe may have an adverse effect on the market value of single-family homes. It is perhaps a little more surprising that over 40 percent of appraisers also believe that these uses may have an adverse effect on the market value of community shopping centers – one of the venues in which they are commonly found.

Bars and lounges can be considered "adult uses," a generic term often applied to sex businesses. Appraisers confirm that, at least as to market values of properties, they can have negative secondary effects that are somewhat similar to those of sex businesses. The state has a rigorous licensing law to address many operational problems of bars and lounges – types of operational issues that, for sex

businesses, are typically regulated through a local ordinance. However, the Texas Alcoholic Beverage Code exclusively governs the regulation of alcoholic beverages and preempts municipal ordinances that are not specifically authorized by that statute.[15] Therefore, although separation requirements between bars and lounges and single-family residences should be similar to that required for sex businesses, local governments lack the same authority to institute such separation requirements.

However, the Texas Alcoholic Beverage Code does contain some specific provisions related to the separation of establishments selling alcoholic beverages from specified other land uses:

> (a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:
>
> (1) 300 feet of a church, public or private school, or public hospital;
>
> (2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code; or
>
> (3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.
>
> Tex. Alco. Bev. Code §109.33.

It is important to note that these provisions are not self-implementing – they must be adopted by a local governing body to be effective in that jurisdiction.

The Alcoholic Beverage Code contains one additional provision that appears to address locational conditions for which an alcohol permit may be denied:

> (a) The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:
>
> * * * *
>
> (8) the **place** or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; [emphasis added]
>
> * * *.
>
> Tex. Alco. Bev. Code §11.46(a)(8).

Recommendations: Because the regulation of alcoholic beverage establishments is a complex topic and one highly controlled by state statute, it is recommended that any ordinance concerning these businesses be separate from one dealing with sex businesses. The ordinance should also include a set of "findings" explaining the reasons for treating bars and lounges separately. Since this survey of appraisers indicates that bars and lounges are believed to have an adverse impact on the market values of single family homes and community shopping centers, the state legislature may want to

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[15] Tex Alco. Bev. Code, Sec. 109.57; Dallas Merchants' and Concessionaire's Ass'n v. City of Dallas, 852 S.W. 2d 489 (Tex 1993).

consider amending the current Alcoholic Beverage Code to include separation distances from residential neighborhoods and, possibly, from certain types of commercial uses.

Pawn Shops

Also among the uses that Texas appraisers believe are likely to have negative secondary effects on the market value of single family homes and shopping centers are pawn shops. From a real estate perspective, pawn shops appear to have essentially the same negative characteristics as retail sex businesses. Like sex businesses, many pawn shops use lively signage, paint schemes and symbols to attract attention. The operations of pawn shops, however, are quite different from those of sex businesses. Pawn shops may attract criminal elements, but they are unlikely to attract people seeking illicit sex.

Pawn shops in Texas are regulated under Tex. Finance Code, Ch. 371. The state law, like other provisions of the Finance Code, focuses primarily on limiting interest and similar charges, protecting pawned property, and ensuring the integrity of the industry. Although pawn shop licenses are issued for a specific location, that appears to be a provision intended to facilitate inspections by giving the state an accurate list of where pawn brokers operate. Specific limitations on the locations of pawn shops are thus subject to control through local zoning. In theory, the state regulation of pawn shops should minimize the extent to which they attract criminal elements, thus distinguishing them to some extent from sex businesses. The state regulatory scheme, however, does not consider the potential impact of these operations on market values of nearby real property.

Recommendations. Under the "underinclusiveness" doctrine discussed within the legal section of this report, a local government is not required to regulate pawn shops at the same time or in the same way as it regulates sexually oriented businesses. It certainly should not attempt to impose a full range of sex business restrictions on pawn shops. Based on the findings of this survey of Texas appraisers, however, there is good reason to consider imposing the same sorts of separation requirements between pawn shops and single-family homes as are imposed between sex businesses and single-family homes. The separation between pawn shops and community shopping centers seems less relevant. Addressing this issue as part of the process of updating local zoning regulations to deal with the secondary effects of sex businesses not only addresses another public policy problem for the community (the secondary effects of pawn shops), but also provides an additional way to demonstrate that an ordinance is focused on secondary effects and not on protected communication.

Massage Parlors

Massage parlors were not included on the list of land uses about which appraisers were asked. The authors have, however, learned that some massage parlors serve as fronts for sexual activity of various types. There is no Constitutional right to a massage. See, for example, *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123, 139 (3d Cir. 1993), where the court included massage parlors in a list of possibly sexually related businesses that have "no Constitutional protection." See, also, *Babin v. City of Lancaster*, 89 Pa. Commw. 527, 493 A.2d 141 (1985)

There is thus no Constitutional protection afforded such businesses beyond general Constitutional rights such as the right to due process. There are, however, legitimate massage therapists who have professional training, abide by professional codes of ethics and offer non-sexual services that are beneficial to many people. Fortunately, the State of Texas has provided an easy means for distinguishing such establishments. It defines and licenses massage therapists. See Tex. Occup. Code, Chapter 455, Massage Therapy.

Recommendations: Through local zoning or other available ordinances, ban massage establishments except those operated by licensed massage therapists or as parts of clinics operated

and supervised by licensed medical professionals. No findings are necessary, but including this ban in a new or updated ordinance dealing with sexually oriented businesses is one way to demonstrate that the ordinance is not adopted with the intent of regulating protected speech.

Homeless Shelters

Many local zoning ordinances already address the issue of homeless shelters, in some cases requiring special or conditional use permits for them, to give local officials the opportunity to review a proposed site carefully and impose appropriate conditions to limit the secondary effects of the shelters. To the extent that a local government may consider new regulations for homeless shelters as a result of this study, it is important to remember that the issues involved with homeless shelters are much different than those involved with sexually oriented businesses. Homeless shelters typically try not to draw attention to themselves, using small signs and subdued paint jobs, in contrast to the sometimes garish lighting and signage used by sex businesses.

If considering updated regulations for homeless shelters and/or soup kitchens, a municipality should consider whether those are or should be accessory uses at churches or other houses of worship. Under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1(a)(1)-(2), some courts have ruled in favor of religious institutions that have argued – in the absence of express provisions in the local ordinance – that feeding or housing the homeless and destitute is an essential part of their religious practices and thus protected by the First Amendment to the Constitution and by RLUIPA. See, for example, *Western Presbyterian Church v. Board of Zoning Adjustment of District of Columbia*, 862 F. Supp. 538 (D.C. 1995), *dism*. 1995 U.S. App. LEXIS 5085 (D.C. Cir. Feb. 3, 1995)[16], (a pre-RLUIPA case that remains relevant); and *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570 (2d Cir. N.Y. 2002), *motion denied*, 2003 U.S. Dist. LEXIS 3898 (S.D.N.Y. 2003)[17]; *perm. inj'n granted*, 2004 U.S. Dist. LEXIS 22185 (S.D.N.Y. Oct. 28, 2004)[18]; *aff'd* 177 Fed. Appx. 198 (2d Cir., 2006) (opinion not published), *cert. den.* 127 S. Ct. 387, 166 L. Ed. 2d 271 (U.S. 2006).

High Voltage Power Lines

The Texas Public Utilities Commission must approve the siting of any electric transmission line with a capacity greater than 60 KV, under the Texas Public Utilities Regulatory Act, Tex. Utilities Code, Title II. Local control over this issue appears to be largely preempted by the state. To the extent that there may be some latitude for local control, that control should be exercised through a separate local ordinance designed to fit within the state regulatory structure for utilities.

Landfills

Siting and operation of new landfills is governed by a complex system of federal and state regulations, implemented in Texas through the Solid Waste Disposal Act, Texas Health & Safety Code, Ch. 361. Although landfills can affect market value of nearby properties for quite obvious reasons, there is no reason to think that they increase crime rates or cause other secondary effects similar to those of sexually oriented businesses. Counties play a role in landfill siting under the Health & Safety Code. The reasons for exercising and implementing those powers, however, include complex environmental, geological, transportation, market and other issues beyond the effects of such uses on the market value

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[16] Official reporter citation not available for dismissal.

[17] Offical reporter citation not available for motion decision.

[18] Official reporter citation not available for order granting permanent injunction.

of other property. It is certainly an issue that should be addressed by any county in which the present or future siting of a landfill may occur, but it is not one that can reasonably be addressed through the same type of ordinance that regulates sex businesses.

PART II: CRIME-RELATED SECONDARY EFFECTS

SECONDARY EFFECTS OF "OFF-SITE" SEXUALLY-ORIENTED BUSINESSES

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* Figures and tables in this report are color-coded and must be reproduced in color.

1. INTRODUCTION

Can a government, through its zoning and licensing codes, regulate sexually-oriented businesses (hereafter, "SOBs") that sell sexually explicit material strictly for off-site use? The answer to this question involves issues of law, social science theory, and empirical evidence. The Texas City Attorneys Association has retained us to collect and analyze data relevant to this question and then, relying on our expertise in criminology, planning, and statistics, to formulate an answer to the question. This report describes the research that we conducted to answer the question.

As a matter of law, expressive activities that occur inside SOBs enjoy a degree of First Amendment protection.[19] Nevertheless, the U.S. Supreme Court and the lower federal courts have ruled that governments may regulate SOBs so long as the regulation is aimed at mitigating potential adverse "secondary effects," such as ambient noise, blight, property values, and crime.[20]

To enact an SOB ordinance, a government must collect evidence to show that the businesses are associated with negative secondary effects. Studies conducted by governments over the last three decades find that SOBs do have significant secondary effects. Most of these studies assume that the distinct SOB subclasses – cabarets, bookstores, arcades, *etc.* – have identical secondary effects, however. Whether warranted or not, this assumption has become legally problematic.

To illustrate the problem, suppose that each distinct SOB subclass has a unique "average" secondary effect. This implies that one of the subclasses would have the lowest secondary effect of any subclass. The secondary effects of this subclass might conceivably be sufficiently *de minimus* as to fall below the Constitutional threshold where a government could regulate its operation. Alternatively, if the effect falls just above the threshold, the business model might be "tweaked" to force its secondary effects below the threshold.

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[19] *See, e.g., City of Erie v. Pap's A.M.*, 529 U.S. 277, 319 (2000), where Justice O'Connor stated, "nude dancing still receives First Amendment protection, even if that protection lies only in the 'outer ambit' of that Amendment."

[20] *See. e.g.*, *City of Renton v. Playtime Theaters, Inc.* 475 U.S. 41 (1986) where zoning to control the location of adult businesses was upheld.

What might this "bullet-proof" SOB subclass look like? Common sense suggests that it would be a store that sells adult merchandise for off-site use. Customers drive to the SOB; park; enter; purchase; exit; and drive away. Except for the merchandise purchased, this commercial activity is indistinguishable from the activities that occur at convenience stores, dry cleaners, and libraries. Common sense argues then, that the secondary effects associated with off-site SOBs are likely to be no larger than the analogous effects associated with convenience stores, dry cleaners, and libraries.

Adult book and video stores have made this common sense argument and some courts have found it persuasive. Like many common sense arguments, this one ignores theoretically relevant differences between SOBs and other businesses. In fact, the relevant criminological theory allows for qualitative differences among the subclasses. Controlling for these differences, however, the same criminological theory predicts that *all SOB subclasses will have large, significant secondary effects*. The empirical evidence corroborates the theoretical prediction.

This report begins with a discussion of the evolution of the secondary effects doctrine. We then describe the criminological theory of secondary effects, demonstrating the applicability of the theory to both on-site and off-site SOBs and, finally, report the growing body of empirical evidence that corroborates the theory. Readers who are familiar with the legal doctrine may skip to Section 2. Other readers will benefit from our introduction to the secondary effects doctrine.

2. EVOLUTION OF THE SECONDARY EFFECTS DOCTRINE[21]

Although the court decisions that motivate this report were published in 2002 and 2003, both rest on an evolving body of law that begins thirty years earlier. In the late 1960s, Boston's city planners proposed to concentrate the city's SOBs in a single small district. This proposal had two theoretical advantages. First, it would keep vice activity out of the city's other districts. Second, it would allow the police to focus resources on a small area, thereby reducing the risk of crimes associated with vice. By the early 1970s, the failure of Boston's "combat zone" experiment was obvious (Skogan, 1992; Garnett, 2005).

2.1 YOUNG V. AMERICAN MINI-THEATRES

At about this time, Detroit consulted with social scientists and real estate experts on the question of whether SOBs should be allowed to locate near other SOBs. The experts agreed that dispersing SOBs would mitigate their secondary effects. Relying on expert opinions, Detroit enacted an ordinance that set minimum distances between SOB sites.[22] Forced to relocate, several existing SOBs challenged the Constitutionality of the Detroit ordinance. Borrowing from the vocabulary of antitrust cases, the U.S. Supreme Court ruled in *Young v. American Mini-Theatres*[23] that governments could enact SOB ordinances so long as the ordinances were aimed at mitigating adverse secondary effects. By this test, the Court upheld the Detroit ordinance.

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[21] This section is based on a paper presented in Atlanta, GA on November, 14th, 2007 at the annual meeting of the American Society for Criminology: "Do 'off-site' adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence." Richard McCleary and Alan C. Weinstein

[22] *American Mini-Theatres, Inc. v. Gribbs*, 518 F.2d 1014 (1975) at 1018.

[23] *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976).

2.2 CITY OF RENTON V. PLAYTIME THEATRES, INC.

Although *Young* required that regulations be based on secondary effects evidence, it said nothing about the quantity or quality of the evidence. These questions were addressed ten years later in *City of Renton v. Playtime Theatres, Inc.*[24]. In the early 1980s, Renton, WA enacted a zoning ordinance that in many respects resembled the ordinance challenged in *Young*. Since Renton had no SOBs, it could not base its ordinance on local studies and so looked to a Washington Supreme Court opinion reviewing studies from nearby Seattle.[25] A year later, two theaters located in a prohibited district began to show X-rated films. In the ensuing challenge, the Supreme Court ruled that the ordinance complied with the *Young* standard in that its sole purpose was the mitigation of secondary effects. On the evidentiary issue raised in the challenge, Justice Rehnquist wrote:

> The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.[26]

Renton legitimized the practice of basing a local ordinance on secondary effects studies from other communities. *Renton* also set a reliability threshold, albeit a low one, for the government's secondary effects evidence. The evidence must be "reasonably believed to be relevant."

2.3 CITY OF LOS ANGELES V. ALAMEDA BOOKS, INC.

The Supreme Court revisited this issue sixteen years later. In 1977, Los Angeles conducted a comprehensive secondary effects study. The study found, among other things, that concentrations of SOBs were associated with high ambient crime rates. Based on this finding, Los Angeles enacted an ordinance requiring SOBs to be separated by a minimum distance. The ordinance was amended in 1983 to prevent SOBs from evading the minimum distance rule by merging into a single entity. Instead of requiring minimum distances between adult *businesses*, the amended ordinance required minimum distances between distinct adult entertainment *activities*. SOBs that combined on-site coin-operated video viewing booths with sales of videos for off-site use were prohibited.[27] These multiple-activity SOBs were forced to segregate their on-site and off-site activities.

In 1995, two multiple-activity SOBs challenged the amended ordinance. Since the 1977 study said nothing about the secondary effects of combining multiple activities under one roof, they argued that Los Angeles had no evidence that multiple-activity SOBs were associated with secondary effects. The federal District Court agreed and the Ninth Circuit Court affirmed.[28] But the U.S. Supreme Court took a different view.

As often happens in First Amendment cases, the Supreme Court's decision in *City of Los Angeles v. Alameda Books, Inc*.[29] did not produce a clear majority holding. Because the 1977 Los

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[24] *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

[25] *See Northend Cinema, Inc. v. Seattle*, 90 Wash.2d 709, 585 P.2d 1153 (1978).

[26] *Id.* at 51-52.

[27] In *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), Justice Souter characterizes this model as "commercially natural, if not universal."

[28] *Alameda Books, Inc. v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000).

[29] *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

Angeles study had not investigated the effects of multiple-activities under one roof, the Ninth Circuit found that the evidence for the amended ordinance did not meet the *Renton* threshold.[30]

While acknowledging the limitations of the 1977 study, Justice O'Connor argued that Los Angeles could infer from its study that concentrations of adult *activities* would also be associated with secondary effects and, thus, that Los Angeles had complied with *Renton*'s evidentiary standard. Justice O'Connor's opinion criticized the Ninth Circuit for imposing too high a bar for cities that seek merely to address the secondary effects of SOBs. The Ninth Circuit found that the 1977 study did not provide reasonable support for the 1983 amendment because the study focused on the secondary effects associated with concentrations of SOBs rather than concentrations of activities within a single SOB. While acknowledging that the city's 1977 study did not assess whether multiple SOBs operating under one roof were associated with an increase in secondary effects, Justice O'Connor argued that the city could infer that a concentration of activities, no less than a concentration of SOBs, would be associated with an increase in negative secondary effects. She then criticized the Ninth Circuit for implicitly requiring that the city must not merely provide reasonable support for a theory that justifies its ordinance, but also prove that its theory is the only plausible one.[31]

Justice O'Connor then stated what evidentiary standard a city would need to meet. After noting that in *Renton* the Court "held that a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial independent government interest," Justice O'Connor wrote:

> This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton.* If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.[32]

Applying this test to the case at hand, Justice O'Connor concluded that, given the early stage of the litigation, the city had complied with the evidentiary requirement of *Renton.*

Justice Kennedy wrote a lengthy concurring opinion to express concern that "the plurality's application of *Renton* might constitute a subtle expansion" of what is permitted under that case.[33] Justice Kennedy contended that this case raised two evidentiary questions for the Court. "First, what proposition does a city need to advance in order to sustain a secondary-effects ordinance? Second, how much evidence is required to support the proposition?"[34] He argued that the plurality answered only the second question, and while he believed that answer was correct, in his view more attention needed to be paid to the first. The critical inquiry that Justice Kennedy believes the plurality "skips" is "how speech will fare under the city's ordinance." In his view, shared by Justice Souter's dissenting opinion, a "city may not assert that it will reduce secondary effects by reducing speech in the same proportion." In short, "[t]he rationale of the

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[30] 222 F. 3rd at 727-728.

[31] 535 U.S. at 436-37.

[32] *Id.* at 438-39.

[33] *Id.* at 445.

[34] *Id.*

ordinance must be that it will suppress secondary effects and not by suppressing speech."[35] Applying this first step to the ordinance in this case, Justice Kennedy argued that it would have one of two effects when applied to an SOB offering two adult activities under one roof: one of the activities must move. Since the latter of these effects cannot lawfully be the rationale for the ordinance – *i.e.*, the city cannot lawfully seek to reduce the amount of secondary effects merely be reducing the number of SOBs – the city's rationale must be that affected businesses will relocate rather than close and that the resulting dispersion of businesses will reduce secondary effects but not substantially diminish the number of businesses.[36]

Having identified the city's "proposition," Justice Kennedy next asked whether the city had presented sufficient evidence to support that proposition. In line with the plurality, Justice Kennedy argued for significant deference to local government fact-finding in making this inquiry. Citing *Renton* and *Young*, he contended that cities "must have latitude to experiment at least at the outset, and that very little evidence is required." He also cautioned that "[a]s a general matter, courts should not be in the business of second-guessing the fact-bound empirical assessments of city planners," noting: "The Los Angeles City Council knows the streets of Los Angeles better than we do. It is entitled to rely on that knowledge; and if its inference appears reasonable, we should not say there is no basis for that conclusion."[37] Here, Justice Kennedy found that, for purposes of surviving a motion for summary judgment, the city's proposition is supported by both its 1977 study and "common experience" and that the 1983 ordinance was reasonably likely to reduce secondary effects substantially while reducing the number of SOBs very little.[38]

In a dissenting opinion, Justice Souter, joined in part by Justice Breyer, argued that imposing stricter evidentiary standards on governments would guard against potential abuses Justice Souter was concerned about what he viewed as the significant risk that courts will approve ordinances that are effectively regulating speech based on government's distaste for the viewpoint being expressed.[39] "Adult speech refers not merely to sexually explicit content, but to speech reflecting a favorable view of being explicit about sex and a favorable view of the practices it depicts; a restriction on adult content is thus also a restriction turning on a particular viewpoint, of which the government may disapprove."[40] For Justice Souter, the risk of viewpoint discrimination may be addressed by imposing on government a requirement that it demonstrate empirically "that the effects exist, that they are caused by the expressive activity subject to the zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them (say, by concentrating them in one area), without suppressing the expressive activity itself."[41]

Justice Souter claimed that his call for empirical evidence did not impose a Herculean task on government; rather, the harms allegedly caused by SOBs "can be shown by police reports, crime statistics, and studies of market value, all of which are within a municipality's capacity or available from the distilled experiences of comparable communities."[42] He also noted that the need for "independent

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[35] *Id*. at 449-50.

[36] *Id*. at 450-51.

[37] *Id*. at 451-52.

[38] *Id*. at 452-53.

[39] *Id*. at 457.

[40] *Id.*

[41] *Id.*

[42] *Id*.

proof" can vary with the proposition that needs to be established and thus "zoning can be supported by common experience when there is no reason to question it."[43] In the final section of his dissent, which Justice Breyer did not join, Justice Souter applied this standard to the case at hand and argued that the city offered neither a rationale nor evidence to support the proposition that an adult bookstore combined with video booths would produce the claimed secondary effects.[44]

Although *Alameda Books* reaffirmed *Renton* in crucial respects, thereby supporting governments, the plurality described exactly how an SOB could challenge government regulations:

> This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton.* If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.[45]

In the wake of *Alameda Books,* SOBs use the approach spelled out by the plurality to challenge ordinances. Most challenges fail. If a regulation has a plausible rationale and if it is supported by at least some evidence, the courts continue to show substantial deference to legislatures.[46]

2.4 POST-ALAMEDA BOOKS CHALLENGES

Following *Alameda Books*, SOBs began to challenge the relevance of the secondary effects evidence relied upon by governments. These challenges fall into two categories. The first alleges that the large body of secondary effect studies relied upon by governments has ignored some idiosyncratic feature of the local environment. In 2004, for example, an off-site SOB in rural Kansas used criminological theory to argue that the sparsely-populated rural environment precluded the possibility of secondary effects. And since the local government had not studied this issue prior to enactment, the ordinance should be struck down.

Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail #30 v. Dickinson County*, the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

> All of the studies relied upon by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examine businesses situated in an entirely rural

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[43] *Id*. at 458-59.

[44] *Id*. at 461-64.

[45] *Id*. at 438-39.

[46] *See, e.g., G.M.Enterprises, Inc. v. Town of St. Joseph, WI*, 350 F.3d 631 (7th Cir. 2003), *cert. denied*, 125 S.Ct. 49 (2004); *Giovani Carandola, Ltd. v. Fox*, 396 F. Supp. 2d 630 (M.D.N.C. 2005); *Abilene Retail #30, Inc. v. Board of Commissioners of Dickinson Cty.*, 402 F.Supp.2d 1285 (D. Kan. 2005); but also see *R.V.S., L.L.C. v. City of Rockford*, 361 F.3d 402 (7th Cir. 2004)(finding it unreasonable for city officials to believe that secondary effects were associated with a business where dancers performed wearing fully opaque clothing over the pubic area, buttocks and breasts when the city had no evidence of secondary effects associated with such businesses and plaintiff's two experts testified no studies demonstrated adverse secondary effects from such businesses; nor did the experts believe such effects could be found).

> area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate our "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting [47]

Because the SOB was located in an isolated rural area, and because the County had no evidence to suggest that rural SOBs would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

The second category of challenges alleges that the secondary effects studies relied upon by the government have ignored salient differences among distinct SOB subclasses. In *Encore Videos, Inc. v. City of San Antonio,*[48] an ordinance classified off-site book and video stores as SOBs if their inventories included 20 percent adult material. Citing *Alameda Books*, an off-site SOB challenged the ordinance's theoretical rationale and supporting evidence. Agreeing, the Fifth Circuit found that San Antonio had relied on studies that either excluded off-site SOBs or, otherwise, had not distinguished between the effects of the on-site and off-site subclasses. In the Court's view, moreover, the city's theoretical rationale for ignoring the differences between on-site and off-site SOBs was weak.

> Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects because of the fact that consumers of pornography are not as likely to linger in the area and engage in public alcohol consumption and other undesirable activities.[49]

Other factors influenced the decision, of course, and the recent Fifth Circuit decision in *H and A Land Corp. vs. City of Kennedale*[50] clarifies *Encore Videos*. For present purposes, however, we end with the Court's foray into criminological theory. Though compelling from a common sense perspective, this theory ignores the relevant criminological theory of secondary effects.

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[47] *Abilene Retail #30, Inc. v. Board of Commissions of Dickinson County, Kansas*, 492 F.3d 1164, 1175 (10th Cir. 2007).

[48] 330 F.3d 288 (5th Cir. 2003), *cert. denied*, 540 U.S. 982 (2003), and opinion clarified, 352 F.3d 938 (5th Cir. 2003).

[49] *Id.* at 294-95.

[50] *H and A Land Corp. v. City of Kennedale*, 480 F. 3d 336 (5th Cir. 2007).

3. THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS

It is a *scientific fact* that SOBs, as a class, pose large, statistically significant ambient public safety hazards. The public safety hazard is realized not only in terms of "victimless" crimes (prostitution, drugs, *etc.*) but, also, in terms of the "serious" crimes (assault, robbery, *etc.*) and "opportunistic" crimes (vandalism, trespass *etc.*) that are associated with vice.

Table 3 - Secondary Effect Studies Relied on by Legislatures

Los Angeles, CA	1977	Times Square, NY	1994
Whittier, CA	1978	Newport News, VA	1996
St. Paul, MN	1978	Dallas, TX	1997
Phoenix, AZ	1979	San Diego, CA	2002
Minneapolis, MN	1980	Greensboro, NC	2003
Indianapolis, IN	1984	Centralia, WA	2003
Austin, TX	1986	Daytona Beach, FL	2004
El Paso, TX	1986	Montrose, IL	2005
Garden Grove, CA	1991	Sioux City, IA	2006
Manhattan, NY	1994	Palm Beach County, FL	2007

We call the SOB-crime relationship a "*scientific fact*" because, first, it is predicted by a strong scientific theory; and second, because the theoretical prediction has been corroborated empirically. On the second point, Table 3 lists 20 empirical studies whose findings corroborate the claim that SOBs pose large, significant ambient public safety hazards. The remarkable range of time-frames, locations, and circumstances represented by these studies suggests that the consensus finding is general and robust.

3.1 THE ROUTINE ACTIVITY THEORY OF "HOTSPOTS"

The consensus finding of this literature becomes *scientific fact* when it is interpreted in the context of a scientific theory. In this instance, the SOB-crime relationship is predicted by the central "organizing theory" of modern scientific criminology. The so-called routine activity theory[51] answers the what-when-where questions of victimization risk. As applied to "hotspots of predatory crime," such as SOB sites, the theory holds that ambient crime risk, generally defined as the number of crimes within 500-1000 feet of a site, with the product of four risk factors. This can be written as:

[51] This theory is due to Cohen and Felson (1979; Felson and Cohen, 1980; Felson, 1998). The routine activity theory is one of the most validated theories in modern social science. In 2005 alone, according to the *Social Science Citation Index*, the 1979 Cohen-Felson article was cited 621 times. The "hotspot" application of the theory is due to Sherman, Gartin, and Buerger (1989) and to Brantingham and Brantingham (1981; 1993).

$$\textit{Ambient Crime Risk} = \frac{\textit{N of Targets} \times \textit{Average Value}}{\textit{Police Presence}} \times \textit{Offenders}$$

An increase (or decrease) in the number of targets at the site or in their average value yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease (or increase) in ambient crime risk.

3.1.1 Targets

SOB sites are crime hotspots because they attract potential victims, or targets, from wide catchment areas. SOB sites are no different in that respect than tourist attractions (Dimanche and Lepetic, 1999; Danner, 2003) and sporting events (Corcoran, Wilson and Ware, 2003; Westcott, 2006). Compared to the targets found at these better known hotspots, however, the targets found at SOBs are exceptionally attractive to offenders. This reflects the presumed characteristics of SOB patrons. The patrons do not ordinarily live in the neighborhood but travel long distances to the site.[52] They are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender's perspective, they are "perfect" victims.

3.1.2 Offenders

The crime-vice connection has been a popular plot device for at least 250 years. John Gay's *Beggar's Opera* (1728), for example, describes the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930; Snodgrass, 1982) describes the life of "Stanley," a delinquent who lives with a prostitute and preys on her clients.

This routine activity theory of hotspots assumes a pool of rational offenders who move freely from site to site, choosing to work the most attractive site available. These offenders lack legitimate means of livelihood and devote substantial time to illegitimate activities; they are "professional thieves" by Sutherland's (1937) definition. Otherwise, they are a heterogeneous group. Some are vice purveyors who dabble in crime. Others are predatory criminals who promise vice to lure and lull their victims. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to SOB sites.

3.1.3 Target value

Criminological thinking has changed little in the 75 years since Shaw's (1930) *Jack-Roller*. To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

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[52] In 1990, as part of an investigation, Garden Grove, CA police officers ran registration checks on motor vehicles parked at SOBs. Virtually all of the vehicles were registered to addresses outside Garden Grove. The 1986 Austin, TX study arrived at the same finding. More recently, the Effingham County, IL Sheriff's Department ran registration checks on motor vehicles parked at an SOB in the Village of Montrose. Except for employees' vehicles, all were from outside the county.

> From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance (p. 69).

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett and Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

3.1.4 Police presence

Controlling for the quantity and value of the targets at a site, rational offenders choose sites with the lowest level of visible police presence. In strictly physical terms, increasing (or decreasing) the number of police physically on or near a site reduces (or increases) ambient risk. However, police presence can also be virtual, through remote camera surveillance and similar processes.

Whether physical or virtual, the *effectiveness* of police presence can be affected – for better or worse – by broadly defined environmental factors. For example, due to the reduced effectiveness of conventional patrolling after dark, crime risk rises at night, peaking around the time that taverns close. Darkness has a lesser effect on other policing strategies, which raises the general principle of *optimizing* the effectiveness of police presence. One theoretical reason why SOB subclasses might have qualitatively different ambient risks is that they have different optimal policing strategies.

3.2 WHAT DOES CRIMINOLOGICAL THEORY SAY ABOUT SUBCLASSES?

In lawsuits, SOB plaintiffs have argued that their narrowly-defined SOB subclass is exempt from criminological theory. But in fact, the relevant criminological theory applies to all subclasses. To the extent that two SOB subclasses draw similar patrons from similarly wide catchment areas, theory predicts similar ambient crime risks. Put simply, similar causes (the presence of many high-value targets and low levels of police presence) have similar effects (*i.e.*, high ambient crime risk). This theoretical expectation is consistent with the data. Although the theory applies identically to all SOB subclasses, at the same time, it allows for qualitative differences among the subclasses.

In some instances, subclass-specific risks arise because the defining property of the subclass implies (or creates) idiosyncratic opportunities (or risks) for particular types of crime. Compared to the complementary subclass, for example, SOBs that serve alcohol present idiosyncratic opportunities for non-instrumental crimes, especially simple assault, disorderly conduct, *etc.* SOBs that provide on-premise entertainment present idiosyncratic opportunities for vice crime, customer-employee assault, *etc.* Criminologists call this etiological crime category "opportunistic." There are many obvious examples and SOB regulations often treat subclasses differently because their ambient opportunity structures are different.

Qualitative differences also arise when the defining property of the subclass compromises the effectiveness of common policing strategies. Policing SOBs that offer on-site entertainment (adult cabarets, peep shows, *etc.*) may require that police officers inspect the interior premises, for example. Because this places officers at risk of injury, policing on-site SOBs requires specially trained and equipped officers, prior intelligence, specialized backup manpower, and other resources. Because potential offenders can wait inside the premises without arousing suspicion, moreover, routine drive-by patrols to "show the flag" are less effective.

The optimal policing strategies for two subclasses are sometimes incompatible or even mutually exclusive. To illustrate, an optimal policing strategy for SOBs that do not offer on-site entertainment, such as adult video and book stores, often involves neighborhood patrols by uniformed officers in marked cars. Visibility is a key element of this strategy. For peep shows and adult cabarets, on the

other hand, the optimal policing strategy often involves boots-on-the-ground deployments of plainclothes officers and unmarked cars. Invisibility is a key element of this strategy. Obviously, neighborhood patrols by plainclothes officers driving unmarked cars would defeat a major purpose of drive-by patrols; likewise, sending uniformed officers into an adult cabaret would be an inefficient method of control and might pose a physical danger to the officers, patrons, and employees. As a general rule, distinct SOB subclasses may require distinct policing strategies to mitigate ambient crime risks.

To some extent, differences among the optimal policing strategies for SOB subclasses amount to differences in cost. In many (but certainly not all) instances, the least expensive policing strategy involves drive-by patrols by uniformed officers in marked cars. Beyond the deterrent value of visible drive-by patrols, patrol officers can keep watch for known offenders and suspicious activity. When potential problems are spotted, the patrol officers can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed.[53] It is important to realize, nevertheless, that the implementation of a policing strategy is determined in large part by local exigencies.

3.3 THE THEORETICAL ROLE OF ALCOHOL

Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB's already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB's patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects. Predatory criminals prefer inebriated victims,[54] *e.g.*, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards.[55] Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor-serving businesses.

3.4 THE CRIMINOLOGICAL THEORY OF MITIGATION STRATEGIES

The routine activity theory points to strategies for mitigating the crime-related secondary effects of SOBs. In principle, the effects of a mitigation strategy can be *direct* or *indirect*. *Direct* effects are typically realized through *direct* manipulation of the risk factors to reduce ambient risk. *Indirect* effects are realized by making the risk factors more efficient. In practice, of course, some of the strategies are expensive or otherwise impractical. We begin with one of the most expensive, least practical mitigation strategies.

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[53] See, e.g., National Research Council (2004).

[54] See, *e.g.*, Wright and Decker (1997, p. 87): "[E]ach of (the armed robbers) expressed a preference for intoxicated victims, who were viewed as good targets because they were in no condition to fight back." (p. 70); "Several [armed robbers] said that they usually chose victims who appeared to be intoxicated because, as one put it, 'Drunks never know what hit them.'"

[55] A 1991 study of Garden Grove, California by McCleary and Meeker found a large, significant increase on ambient crime risk when an alcohol-serving establishment opened within 500 feet (*ca.* one city block) of an SOB. Secondary effect studies in Greensboro (2003) and Daytona Beach (2004) found that alcohol-serving SOBs had larger secondary effects than retail alcohol outlets. These studies are reviewed in Section 2.

3.4.1 Increasing the level of police presence

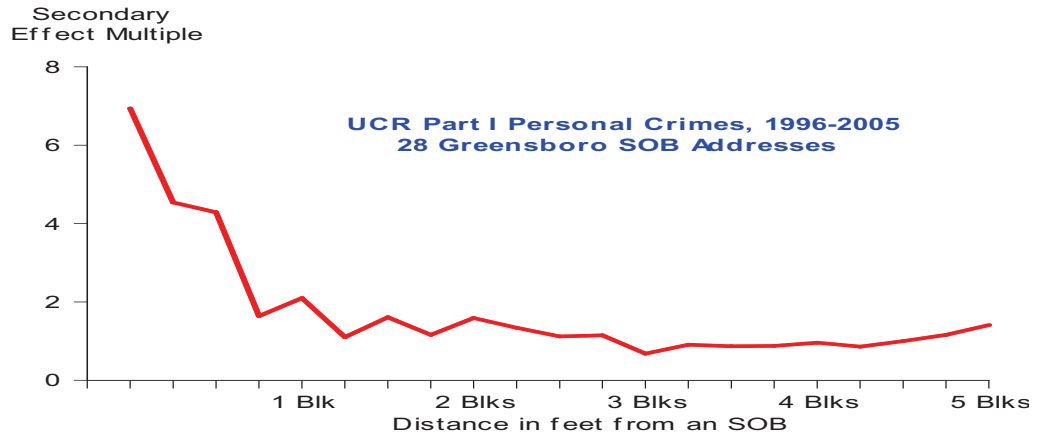
The simplest, surest way to mitigate ambient crime risk is to assign more police to SOB neighborhoods. Although the relationship between police presence and ambient crime risk is complicated and complex, criminologists generally accept the aphorism: "more police, less crime."[56] Unfortunately, this simplest, surest mitigation strategy is expensive and impractical. From the government's perspective, increasing the number of police patrols in a neighborhood is prohibitively expensive. From the perspective of the SOB and its patrons, police presence can be highly intrusive, bordering on "harassment."

In principle, fixed levels of police presence can be made more effective by fine-tuning *status quo* policing strategies. Police patrols can be made more visible, *e.g.*, by using uniformed officers in marked vehicles instead of plain-clothes officers in unmarked vehicles. Most police departments have already optimized their strategies, however. Police effectiveness can also be enhanced by incorporating rational enforcement policies into SOB codes. Several examples are described in subsequent sections.

3.4.2 Distancing SOB sites from sensitive uses

Reducing the density of targets in an SOB neighborhood is a more economical, practical mitigation strategy. As a rule, the most problematic secondary effects are associated with dense concentrations of SOBs (*e.g.*, Boston's "combat zone" model). Accordingly, many governments require minimum distances between SOB sites (*e.g.*, the Detroit model). In addition to reducing per-site target density, thereby reducing aggregate risk, this model minimizes many obstacles to routine policing.

Figure 3.4.2 - Robbery Risk by Distance from an SOB



[56] See, *e.g.*, Levitt (1997, p. 270): "Increases in police are shown to substantially reduce violent crime but have a smaller impact on property crime. The null hypothesis that the marginal social benefit of reduced crime equals the costs of hiring additional police cannot be rejected." Some "victimless" vice crimes are an exception to the rule, of course.

Figure 3.4.2 demonstrates the rationale for a related mitigation strategy.[57] The vertical axis of this "risk-distance function" is calibrated in units of Part I personal crime (homicide, aggravated assault, robbery, and rape) risk, relative to the neighborhood risk, for 28 Greensboro SOBs from 1996-2005. The horizontal axis is calibrated in distance from an SOB. The unit of distance is a city block which, in the Greensboro neighborhoods from which these data are taken, is approximately 400 feet.

Suppose that a person exits a building five city blocks (*i.e.*, 2,000 feet) from an SOB. As this person walks toward the SOB, his or her victimization risk rises. For the first few blocks, the risk increments are modest; thereafter, the risk increments grow large. At two blocks from the SOB, the person's risk is double what it was at start of the five-block walk. At one-half block, the risk is six times higher. If the person walks away from the SOB site, his or her victimization risk falls until, at a distance of three blocks from the site, the risk decrements are imperceptible.

Governments can take advantage of the risk-distance relationship plotted in Figure 3.4.2 by setting minimum distances between SOBs and other sensitive land uses. SOB patrons have no choice but to "run the gauntlet." The victims of some ambient crime incidents are not SOB patrons, however, but rather, are neighborhood residents and by-passers. By setting minimum distances between SOBs and the land uses frequented by these people, the government mitigates the SOB's ambient crime risk secondary effect.[58]

3.4.3 Limiting the hours of operation

Another economical and practical strategy for mitigating the ambient crime risk of SOBs is to limit the hours of operation. Criminological theory reduces to the aphorism, "more targets, more crime." And in the overnight hours when businesses close and people go home, the crime rate drops. While the crime *rate* drops, however, the *per-target* risk rises. When a business stays open around-the-clock, its victimization risk rises steadily after sundown, peaking in the early morning. Darkness softens a target, increasing its appeal to predatory criminals.

Several mechanisms operate here but the most salient is that routine policing is more difficult and less effective in darkness. When bars and taverns close, police resources are stretched thinner yet, making soft targets even softer. Governments typically mitigate this risk by closing high-risk public places (playgrounds, beaches, parks, *etc.*) from dawn to dusk; by imposing curfews on high-risk persons (teen-agers, parolees, *etc.*); and by limiting the operation of high-risk businesses (bars, SOBs, *etc.*) during times of acute risk. Not surprisingly, this theoretical prediction is confirmed by the empirical evidence.

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[57] McPherson and Silloway (1980) used crude risk-distance functions, such as the one plotted in Figure 3.4.2, to demonstrate that Minneapolis SOBs were point sources of ambient crime victimization risk. Statistically adjusted risk-distance functions are used in Sections 4.3 and 5.2 below.

[58] We are often asked to specify a distance sufficient to fully mitigate an SOB's ambient crime risk. The correct answer to this question – "As far as possible" – is not helpful. Although the risk-distance function plotted in Figure 3.4.2 seems to answer this question, remember that it is the *average* of 28 SOB sites. By definition, some sites are "better," some "worse." Planners must assume a worst case scenario but, then, must balance this assumption with practical (and legal) considerations.

3.4.4 "Hardening" SOB sites[59]

In principle, ordinances can mitigate ambient crime risk requiring SOBs to "harden" their properties. Mandating outdoor lighting, parking lot surveillance cameras, and anti-"cruising" structures illustrate strategies for hardening the site's exterior. This list of exterior hardening options is short, unfortunately; and although the effectiveness of exterior hardening strategies depends to some extent on local circumstances and conditions, there is little evidence that any of the typical options can mitigate ambient crime risk.

Regulating the interior configurations of SOBs, in contrast, has a stronger rationale in criminological theory. Interior hardening strategies are often less costly moreover, more practical, and in theory, more effective. Three widely used strategies illustrate the general principle:

- Ordinances that eliminate interior blind spots
- Ordinances that prohibit closed viewing booths
- Ordinances that restrict entertainers to raised stage areas

Each of these strategies reduces the risk of on-premise victimization of patrons and employees.[60] In some respects, the risk reduction mechanism is obvious. Removing blind spots and opening up closed booths obviously reduces the opportunity for lewd behavior, *e.g.* Though less obvious, to the extent that patron-on-patron, patron-on-employee, and employee-on-patron confrontations are precipitated by lewd behavior, these strategies also reduce the risk of assault.

The risk of patron-on-patron, patron-on-employee, and employee-on-patron crime is most acute inside SOBs that feature live entertainment; and of course, alcohol aggravates the risk. The risk can be mitigated by separating patrons and entertainers. Ideally, separation is achieved by mandated structures, such as raised stages. By creating a tangible "wall" between employees and patrons, raised stages reduce unintentional (or intentional) "touching," thereby reducing the risk of patron-on-employee and employee-on-patron crime.

3.4.5 Police officer safety

While assaults on police officers are rare, they are among the most serious crimes that occur inside SOBs. In theory, moreover, they are preventable. The risk of assault begins when officers enter the SOB and continues until they leave. Mitigation strategies aim at minimizing the number of times officers must enter SOBs and, having entered, the amount of time they must spend inside. Strategies that focus on the latter factor are more practical.

Police officers enter SOBs either in response to a reported crime incident or to inspect the premises as part of routine enforcement. By reducing the risk of the on-premise crime incidents, the interior target-hardening strategies described in the preceding section reduce the number of times that officers must enter SOBs to respond to reported incidents. Otherwise, there are few options for reducing the number of times that officers must enter SOBs. Notwithstanding the risk to officers, routine inspection can be an effective mitigation strategy. By focusing attention on SOB sites, routine

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[59] The classic statement on "hardening" is Newman (1973).

[60] The strategies also facilitate routine enforcement while minimizing the risk of injury to police officers. Those topics will be discussed separately in the next section.

inspection reduces ambient risk through a complex set of pathways referred to, collectively, as "broken windows."[61]

Regardless of how officers come to be inside an SOB, any strategy that minimizes the amount of time spent inside reduces the risk of injury. Ordinances aimed at improving interior visibility illustrate these strategies. In many instances, officers can accomplish their purpose with a quick visual inspection. If the interior of the SOB is well lit and obstacle-free, the inspection can be completed by one officer in a minute or two. If the interior is dark and/or labyrinthine, the same inspection may require two (or more) officers for a longer period of time.

In SOBs that feature live entertainment, a raised stage reduces the risk of injury to police officers through the same mechanism. If an ordinance mandates, say, a six-foot distance between patrons and entertainers, absent a raised stage, enforcing (and/or detecting willful violations of) the ordinance may require that several plainclothes officers spend an hour or more inside. With a raised stage, on the other hand, a comparable level enforcement and detection of violations can be accomplished with shorter, more superficial inspections. Raised stages also facilitate self-enforcement. Ensuring that patrons and entertainers comply with a distance rule, absent a raised stage, demands constant attention and keen judgment by the SOB. A raised stage facilitates self-enforcement by the SOB, thereby reducing the risk of patron-patron and employee-patron confrontations.

3.4.6 Tailoring regulations to fit local needs

The ideal SOB ordinance marries low compliance costs for the SOB to low enforcement costs for the government. To some extent, compliance and enforcement costs depend on local circumstances and conditions and these often dictate differences in codes and/or enforcement strategies. A code or strategy that is optimal for one set of circumstances may be less than optimal for another. If a local variation is aimed at rationalizing regulation and optimizing mitigation, it should be encouraged.

By definition, local conditions are too numerous to list. Nevertheless, the principle is straightforward. Legislatures adapt and modify codes to take advantage of local idiosyncrasies. In most instances, modifications are designed to facilitate compliance and minimize enforcement costs. Toward that end, legislatures often consult local enforcement officers and, to the extent possible and appropriate, incorporate the views of experts into the regulations.

3.5 But Does the Theory Apply to the Off-site Subclass?

The consensus finding of the secondary effects literature, represented by the studies listed in Table 3, rests on a strong criminological theory. The theory predicts that a diligent, informed search will find a secondary effect. Absent the theoretical prediction, no one would have thought to look for secondary effects around SOBs. If someone accidentally stumbled upon a secondary effect, moreover, absent the theoretical prediction, the isolated finding would be interpreted as a trivial curiosity. Conversely, given the theoretical prediction, a legitimate *null* finding would reject the theory or, at least, would require a modification of the theory.

When a theory has been corroborated over a sufficiently wide range of times, places, and circumstances, its predictions can be used in lieu of the facts. To illustrate, suppose that City X

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[61]The best known statement of this effect is Wilson and Kelling (1982). Wilson and Kelling argue persuasively that police visibility in a neighborhood can have a greater impact on victimization risk than police activities that target crime *per se*. Modern police methods are based on this theory.

conducts a study and finds that its SOBs pose a significant public safety hazard. City Y would like to conduct its own study but cannot because it has no SOBs. In lieu of conducting its own study, City Y can assume that it *would have found* the same facts that City X *found.* City Y's inductive inference is defensible because SOBs in both City X and City Y – or in any other city, for that matter – generate secondary effects through causal factors outlined in Section 2.1. In short, "similar causes have similar effects."

Continuing this hypothetical exercise, suppose that an entrepreneur invents a *novel* SOB subclass. Since City X conducted its study prior to the invention, the entrepreneur might argue that the study's secondary effects finding is *irrelevant* to the novel subclass. If the causal factors outlined in Section 2.1 do not apply to the novel SOB subclass, the entrepreneur's argument is valid. *If the novel subclass attracts "soft-target" patrons to its site*, on the other hand, no matter how novel the SOB may be in other respects, it will have the same secondary effects that other subclasses have.[62] Since off-site SOBs attract "soft-target" patrons, of course, criminological theory leads us to expect secondary effects for the subclass.

The typical off-site SOB is a store that sells sexually explicit books and/or DVDs, along with miscellaneous adult merchandise, exclusively for off-site use. Off-site SOBs offer no on-site entertainment of any sort, and in particular, have no coin-operated DVD viewing booths. In 2002, Justice Souter speculated that DVD sales and DVD viewing booths were inseparable parts of the "commercially natural, if not universal" SOB model.[63] Five years later, pure off-site SOBs are found in most metropolitan areas and, more recently, along rural stretches of the interstate highway system. Justice Souter would be surprised.

Some off-site SOBs were created by removing booths from on-site SOBs. These SOBs tend to be older and smaller, sometimes with less than 1,000 square feet of floor space. Newer off-site SOBs were designed without booths. Some have over 5,000 square feet of floor space, stocked with every imaginable type of adult merchandise. Some sell non-adult merchandise, such as lingerie and erotic clothing, alongside the standard adult items. None offers on-site entertainment of any sort, of course.

Compared to the older "commercially natural" on-site SOBs, the newer off-site SOBs have a very different "look and feel." This superficial difference might suggest that they are safer places than the older on-site subclass and, indeed, off-site SOBs have claimed exactly this. In light of the contrary predictions of criminological theory, off-site SOBs have challenged the theory. These challenges have made two claims. First, off-site SOBs attract a different sort of patron – women and couples. Second, lacking on-site entertainment, off-site patrons spend very little time in the SOB neighborhood.

3.5.1 Our patrons are *not* "disproportionately male"[64]

SOB plaintiffs have argued that a significant proportion of their patrons are women and, thus, that the criminological theory outlined in this section does not apply to them. The predicate of this argument is implausible for on-site SOBs; data show that women constitute trivially small proportions

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[62] We are often asked whether businesses that sell sexually explicit merchandise over the internet would have secondary effects. Perhaps; but because these businesses would not attract patrons to a physical site, any secondary effects would not be caused by the factors described in the criminological theory described in this section.

[63] *City of Los Angeles v. Alameda Books, Inc*. 535 U.S. 425 (2002).

[64] This section is based on McCleary and Tewksbury (2008).

of the patrons of cabarets, theaters, and peepshows.[65] The predicate is more plausible for off-site SOBs. At present, women appear to constitute 20-25 percent of the patrons at off-site SOB. As gender roles evolve and as more off-site SOBs begin to advertise and sell merchandise nominally intended for women, this proportion may grow.[66] No matter how large the proportion, however, if the off-site SOB also attracts male patrons, the criminological theory of secondary effects will apply to this SOB subclass.

To investigate gender phenomena, researchers recorded 729 patron-entrances at sixteen off-site SOBs in southern California over a two-year period. These sixteen sites were selected from a list of sites in three southern California counties because they shared five properties: (1) each sold sexually-explicit DVDs, aimed primarily at heterosexual audiences; (2) each sold other adult-themed merchandise; (3) each was open 24 hours; (4) each had a relatively high traffic flow, suggesting a profitable business; and (5) none had on-site viewing booths. Sites that lacked any of these properties were excluded from the study sample.

Table 3.5.1 - Sixteen Off-Site SOBs: 729 Patrons in 85 Hours

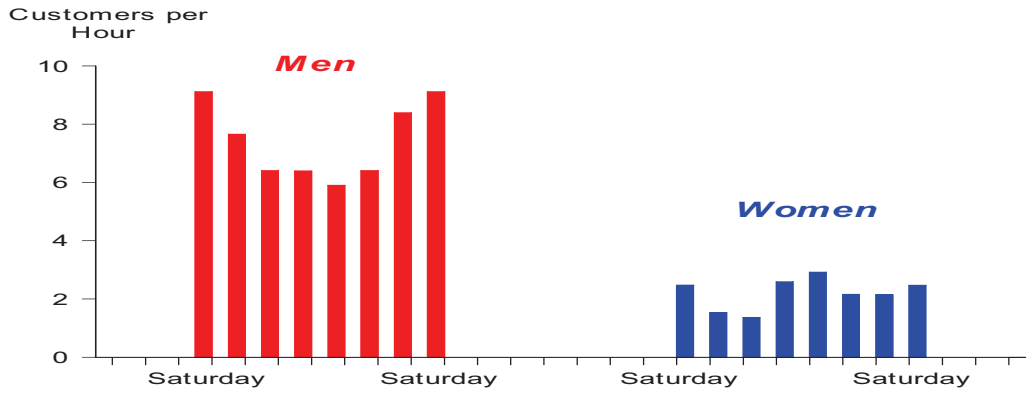
	Men		***Women***		***Proportion Women***
Alone	393	70.6 %	28	16.3 %	6.6 %
Same sex groups	116	20.8 %	86	48.8 %	42.6 %
Mixed sex groups	16	2.9 %	26	15.1 %	38.1 %
Couples	32	5.5 %	32	18.6 %	50.0 %

Table 3.5.1 reports one salient difference between male and female patrons. Of the 729 patrons who entered the SOBs, 172 (23.6 percent) were women. The proportion of women varies significantly by the manner of entry, however. Whereas most of the male patrons entered *alone* (70.6 percent), relatively few female patrons entered alone (16.3 percent). Nearly one-half (48.8 percent) of the women who entered were accompanied by other women. Another one-third entered in the company of a male partner (18.6 percent couples) or as part of a mixed male-female group (15.1 percent). This preferred method of entrance is consistent with the ethnographic literature on social deviance.

[65] Fisher, Hall and Hall (1998) report that less than three percent of the patrons of an adult cabaret are women. Ethnographic studies of adult theatres (Douglas and Tewksbury, 2008) and (Tewksbury, 1993) lead to similar estimates.

[66] See the case study of a "lingerie boutique" in Section 4.1.

Figure 3.5.1a - Entrances by Day of the Week for Men and Women

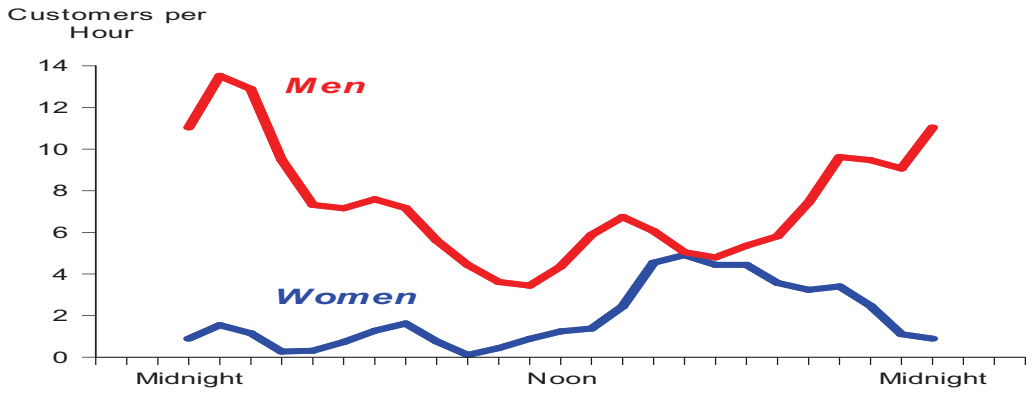


Figures 3.5.1a-b reports another salient difference between male and female patrons. In addition to their aversion to entering the SOB alone, compared to men, women's entrances occur at distinctly different days of the week and hours of the day. The vertical axes in these figures are calibrated in *entrances per hour* for men and women. The horizontal axes are calibrated in *day-of-the-week* (Figure 3.5.1a) and *hour-of-the-day* (Figure 3.5.1b). To facilitate interpretation, the weekly and daily cycles for men (in red) and women (in blue) were "smoothed" by three-day and three-hour moving averages.

The weekly cycle for male patrons exhibits a single dramatic Friday-Saturday-Sunday peak that accounts for roughly one-half (53.3 percent) of the weekly entrances by men. The weekly cycle for female patrons, in contrast, exhibits a weekend peak on Friday and a midweek peak on Tuesday. Neither peak is as dramatic as the single weekend peak for men. Indeed, it might be more accurate to say that the weekly cycle for women is distinguished by a two-day lull on Sundays and Mondays.

The hourly cycles for men and women, plotted in Figure 3.5.1b, reveal analogous gender differences. Whereas entrances by men peak shortly after midnight, entrances by women peak at five in the afternoon. The "night owls," consisting largely of men, are a significant proportion of the total patronage. More than one-fifth (22.8 percent) of the male patrons enter between midnight and three in the morning. Women enter sporadically during this period; women make up only a small proportion of the "night owls." Women prefer the late afternoon and early evening hours. Nearly half (46.7 percent) of the entrances by women occur between four and seven in the evening. Between five and six P.M., women and men enter at the same hourly rate.

Figure 3.5.1b- Entrances by Time of the Day for Men and Women



The gender differences plotted in Figures 3.5.1a-b can be interpreted to mean that men and women are very different sorts of patrons. Another interpretation, however, is that the nature of the off-site SOB changes, with respect to criminological theory, depending on the time of day. During late afternoon and evening hours, off-site SOBs are gender neutral that is; but after dark and continuing into the early morning, they are largely a male-dominated realm.

As a final note, the presence of a significant number of females at an SOB site can be a risk factor. If the SOB advertises the presence of unattached females at the site, *e.g.*, male patrons are attracted to the site. To attract unattached female patrons, SOBs have offered lingerie gifts; and SOBs have claimed in their advertising that their patrons include unattached females, especially exotic or nude entertainers and dancers.

3.5.2 Stigma and anonymity at off-site SOBs

Critics of the prevailing criminological theory argue that the "average" patron of an off-site SOB drives up, runs in, makes a purchase, runs out, and drives off. Although this "average" behavior may have common sense, it is inconsistent with the data. In an ethnographic study of an off-site SOB, Hefley (2007) reports that patrons spend significant periods of time in the immediate vicinity of the site. Some wait outside until the business is empty. Others "case" the business on multiple occasions before deciding to enter. Some patrons park their cars a block or more away and walk to the store. These "average" behaviors attract criminal predators to the site, creating the ambient public safety hazard predicted by the criminological theory of secondary effects.

When visiting SOBs it is common practice for patrons to enter the vicinity of the business and wait (sometimes significant periods of time) before entering the business. Donnelly's (1981) ethnographic study of two "adult cinemas" demonstrated that patrons frequently park near the SOBs and wait to enter until either no others are in the vicinity to see them enter, or enter when several others are entering, in an effort to maintain their anonymity and not be seen/recognized by others in the vicinity. As Donnelly (1981) explains, "With the exception of the large "groups" ... all patrons engage, to a greater or lesser degree, in hiding behavior" (p. 260) as they enter and leave the establishment. Others, including Hefley (2007) who studied an off-site SOB, have shown that some patrons actively modify their appearances (or, use "disguises") so as to manage the stigma they associate with being identified entering a SOB. In summary, Donnelly (1981), drawing on his own research and that of Karp (1973) and Sundholm (1973) concludes that "patrons prefer to main an extremely low-profile, and *do not wish to be seen at all*." (pp. 241-242, emphasis in original).

The desire to remain anonymous and essentially invisible in the vicinity of SOBs is related to both a concern about stigmatization from observers, and concerns for safety. As made clear by Delph (1978, p. 29), for men who seek out sexual stimulation and encounters in any type of public location, their primary "concern is erotic fun without stigmatization." Avoiding notice and identification are key to such men. Concerns about safety, however, also include recognition that SOBs are hotspots for many forms of violent offenses. So too, however, are many SOBs locations of, or located very close to, sites of other forms of vice and criminal activity.

In a study of the pornography industry, Potter (1986) concluded that "Observations of the retail pornography trade make it abundantly clear that an overlap exists between porn and other forms of vice. Retail porn outlets in our sample also provide prostitution and gambling services, and in some cases drugs." Similarly, Stein's (1990, p. 78) 9.5 months working as a clerk in one adult bookstore revealed that "it was not uncommon for the bookstore to be used also as a referral agency" for a wide range of illicit services. As a result, patrons wishing to simply access sexually explicit merchandise or visual experiences may feel threatened by others in the environment who are perceived to be dangerous and purveyors of undesired goods and services.

Once they enter, patrons typically remain inside the SOB for short periods of time, almost always for less than one hour. When purchasing merchandise, patrons enter, browse, make a selection, pay, and then leave in short order. At peepshows, theaters, and other on-site SOBs, patrons stay inside the SOB for slightly longer periods of time, of course, but rarely for periods in excess of an hour.

The "hiding" activities that patrons demonstrate upon arrival and during entry to SOBs are continued once they are in the establishment. Patrons have consistently been shown to avoid eye contact, conversation, or being physically close to other patrons while in such establishments. This has been shown for off-site SOBs (Douglas and Tewksbury, 2008; Stein, 1990; Tewksbury, 1990, 1993), video arcades/peepshows (Douglas and Tewksbury, 2008; Stein, 1990; Sundholm, 1973; Tewksbury, 1990, 1993; Weatherford, 1986) and adult cinemas (Donnelly, 1981; Douglas and Tewksbury, 2008; Stein, 1990). Communications that occur between patrons in such locations are almost always brief, superficial/incidental and frequently nonverbal. Furthermore, for many patrons of SOBs, there is a sense of stigmatization perceived when the individual recognizes that they are being observed or "seen" in the establishment. Berkowitz (2006) documents that as a female patron in a retail SOB her observation of male patrons lead to men apparently feeling uncomfortable and that some "felt the need to escape the embarrassment of being labeled a pervert by exiting the establishment empty-handed" (p. 594).

Hiding and attempts to "manage and negotiate the shame that is associated with being a patron" (Berkowitz, 2006, p. 594) often includes efforts to keep others from knowing what a patron purchases. Berkowitz (2006, p. 595) explains that in her observations of one retail SOB, "many solo male patrons appeared timid and sometimes even uneasy. Many spoke in a low volume so that other patrons would not hear them when they were conversing with the store clerk. Finally, much of the time, the body language and nonverbal communication that these solo male patrons used hinted of awkwardness, in that their backs were hunched over, their eyes were wandering, and their arms were sometimes crossed directly in front of them."

Clearly, many patrons of SOBs demonstrate concerns about being identified and subsequently stigmatized if seen in or near SOBs. A recent anecdote illustrates this behavior, unfortunately in this instance, with dire consequences (Bourgeois, 2007). On the evening of March 1, 2007, a man parked his car in a dark lot several hundred feet away from *Dreamer's*, an off-site SOB in Kennedale, Texas.

Returning to his car, the man was confronted by a robber and was shot. Though seriously injured, the victim survived.

Although a legislature would not want to rely on anecdotal evidence alone, anecdotes of this sort constitute legitimate secondary effects evidence.[67] In addition to its corroborative value, however, this particular anecdote has some legal relevance. The off-site SOB in this incident, *Dreamer's*, was a plaintiff in *H and A Land Corp*.[68] One week prior to the shooting incident, a panel of the Fifth Circuit Court of Appeals clarified its earlier *Encore Videos* decision by concluding that a city's governing body had sufficient evidence to believe that off-site SOBs caused adverse secondary effects.[69]

3.6 CONCLUDING REMARKS: CRIMINOLOGICAL THEORY

The legal debate over crime-related secondary effects ignores the crucial role of criminological theory. *Without exception*, criminological theory predicts that SOBs will generate ambient public safety hazards. Plaintiffs' witnesses produce study after study to show that SOBs have *no* crime-related secondary effects or, sometimes, that SOBs have salutary public safety impacts on their neighborhoods. We will discuss the details of these studies at a later point. For present purposes, the criminological theory described in the preceding section is internally consistent and compelling – it makes sense in other words. As it turns out, the theory also agrees with the data.

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[67] See, *e.g.*, *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F. 3d 1186, 1195-96 (9th Cir. 2004) ("Anecdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects ...").

[68] *H and A Land Corp. v. City of Kennedale, TX*, 480 F.3d 336 No. 05-11474 (5th Cir. 2007).

[69] *Id.*

4. OFF-SITE CASE STUDIES

The popular theories proposed by plaintiffs to explain why off-site SOBs might *not* have secondary effects are superficially plausible. Weighed against the formal criminological theory, however, the popular theories are found wanting. To the extent that off-site SOBs attract high-value, "soft-target" patrons to their neighborhoods, strong criminological theory predicts that off-site SOBs will generate the same crime-related secondary effect expected for on-site SOBs. The theory allows for qualitative differences, of course, but with respect to theoretical causes, there are no differences between the two complementary subclasses.

Nevertheless, until recently, the theoretical prediction was uncorroborated. Although off-site SOBs have been around since the advent of home video-tape players, researchers had not thought to question the relevance of criminological theory. Indeed, because the causes implicated by criminological theory were common to all SOB subclasses, researchers assumed that subclass distinctions were irrelevant. In line with this assumption, most of the secondary effect studies listed in Table 3 did not report separate effect estimates for each subclass. It was enough to report that *all* subclasses had adverse crime-related secondary effects.

The 1991 Garden Grove study is typical in that respect.[70] The SOBs studied in Garden Grove included at least one off-site SOB. Because the study found that *each* of the SOBs posed large ambient public safety hazards, one can infer by syllogism that off-site SOBs had adverse effects. The Fifth Circuit decision in *Encore Videos* noted explicitly, however, that the Garden Grove report did not report subclass-specific effects.

Following *Encore Videos*, government-sponsored studies have tried, where possible, to report specific effects for the off-site subclass. Given the relevant strong theory, the subclass-specific effects hold no surprises. The case studies reviewed in this section are typical in the sense that all corroborate the theoretical expectation. In addition, each illustrates an important aspect of the phenomenon.

- The subject of the first case study is an off-site SOB that characterized itself as a "lingerie boutique," catering primarily to couples and women. The evidence suggests that this self-characterization was, at worst, an exaggeration. Nevertheless, the data demonstrate a large, significant secondary effect following the opening of the SOB.
- The subject of the second case study is an off-site SOB located in a rural village with a population of 250 people. The SOB drew cross-country travelers, including big-rig truckers, off the interstate highway with predictable consequences. The analysis of this case study is complicated by the idiosyncrasies of the terrain. For example, where does one find a "comparable" village for a control?
- The third case study compares risk-distance functions (See Figure 3.4.2) for multiple-activity on-site SOBs – video arcades that sell merchandise – and off-site SOBs in Los Angeles. The risk-distance functions demonstrate that, like SOBs generally, off-site SOBs are point-sources of neighborhood victimization risk.

[70] McCleary and Meeker (1991).

4.1 SIOUX CITY, 2006[71]

SOBs are nothing new to Sioux City, Iowa. Two had operated without incident in the city's older downtown area for decades. Although both sold sexually explicit DVDs, most of their revenue came from coin-operated viewing booths. Strictly speaking, both belonged to the on-site SOB subclass that Justice Souter characterized as the "commercially natural, if not universal" model. In terms of "look and feel," the two businesses were indistinguishable from on-site SOBs in larger cities.

In March, 2004, a third SOB opened in Sioux City. Unlike the two existing on-site SOBs, *Dr. John's* had no viewing booths. It was located in a newer area of the city and lacked the garish appearance associated with SOBs generally and, in particular, with Sioux City's two existing SOBs. During subsequent litigation, the trial judge commented on this fact:

> [T]he first impression of the store is a far cry from the first image that most people would likely have of an "adult book store" or "sex shop." There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no "adult" signs or banners proclaiming "peep shows," "live entertainment booths," "XXX movies," "live models," "adult massage," or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America.[72]

The trial judge's drive-by impression may overstate the point. Few passers-by would mistake *Dr. John's* for anything other than what it was.

Regardless of its look and feel *Dr. John's* was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, *Dr. John's* sued, arguing that off-site SOBs lacked the typical crime-related secondary effects associated with SOBs. To counter this argument, Sioux City produced police reports of incidents occurring within 500 feet of *Dr. John's* during the four years between January 1st, 2002 and December 31st, 2005. For purposes of quasi-experimental control, reports of incidents occurring with 500 feet of a nearby motel were also retrieved.

To control plausible threats to internal and statistical conclusion validity, the City collected analogous police incident reports for an adjacent control area, a 500-foot circle centered on a non-SOB. Because the two circles are tangent to each other and face the same thoroughfare, they have similar traffic flows. And because they have similar mixes of businesses and similar incident rates, their underlying ambient crime risks are similar. Because the underlying risk factors are identical in the two circles, any effect found in one of the circles should be found in the other as well. But that was not the case.

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[71] This case study is based on McCleary and Weinstein (2007).

[72] *Doctor John's, Inc. v. City of Sioux City, IA*., 389 F.Supp.2d 1096, 1103 (N.D. Iowa 2005), quoting from court's ruling on plaintiff's motion for preliminary injunction.

Table 4.1 - Total Crime Before and After the Opening of *Dr. Johns*

	Before		*After*			
Total Incidents	***N***	***Rate***	***N***	***Rate***	***After/Before***	***Ratio***
Dr. John's	17	7.8	41	22.4	2.86	
Control	44	20.3	46	25.1	1.24	2.31
	Before		*After*			
"Victimless" Excluded	***N***	***Rate***	***N***	***Rate***	***After/Before***	***Ratio***
Dr. John's	12	5.5	31	16.9	3.08	
Control	26	12.0	32	17.5	1.46	2.11

The first row of Table 4.1 breaks down total incidents for the 793 days before and 668 days after the SOB opened. In the *Dr. John's* circle, the annual crime rate rose from 7.8 to 22.4 incidents per year, an increase of approximately 190 percent. Crime in the control circle rose as well but the increase was more modest. The rise from 20.3 to 25.1 incidents per year amounts to a 25 percent increase. Based on a crude comparison of these rates, *Dr. John's* appears to pose an ambient victimization risk.

To test whether the effect might be a chance fluctuation, we take advantage of the fact that crime incidents in the two circles are not different than Poisson (Haight, 1967: 94-95). Under a Poisson hypothesis, the after/before odds for the *Dr. John's* and control circles, reported in Table 3, are distributed as unit-mean log-Normal variables. The ratio of the two odds, also distributed as unit-mean log-Normal, is the maximum-likelihood estimate of the secondary effect. Since the value of the odds ratio is 2.31, compared to the control circle, ambient crime rose by 131 percent after *Dr. John's* opened for business. Because an effect estimate of this magnitude or larger occurs by chance with probability smaller than 0.01, the null hypothesis is rejected.

The second set of rows in Table 4.1 reports the analogous breakdown with "victimless" crime incidents excluded. If the opening of *Dr. John's* lead to heightened police surveillance, it is possible that the before-after effect is a simple "instrumentation" artifact. Indeed, in a critique of the 1977 Los Angeles secondary effects study relied upon in *Alameda Books*, Paul, Linz and Shafer cite this possibility:

> Although the findings of this study suggested high levels of criminal activity within these clusters, any implication that this is connected to the presence of adult businesses is invalidated by the fact that the researchers admitted to "stepped up" surveillance within these areas. Put simply, the police most likely found greater amounts of crime in the adult establishment areas because they were trying harder to find it.[73]

[73] P. 379, "Government regulation of 'adult' businesses through zoning and anti-nudity ordinances: de-bunking the legal myth of negative secondary effects." *Communication Law and Policy*, 2001, 6:355-391.

Whereas this explanation might be plausible for prostitution, drugs, and other "victimless" vice crimes, it is implausible for homicide, robbery, and the other "street" crimes reported in the 1977 Los Angeles study. On the contrary, heightened police surveillance will reduce the victimization risk of these crimes. So if the *instrumentation* hypothesis is plausible, the secondary effect should vanish when "victimless" crimes are excluded. As reported in Table 4.1, excluding "victimless" crimes from the estimate leads to the same conclusion.

4.1.1 Is it a "lingerie boutique" or is it a SOB?

The evidence suggests that, at worst, the self-characterization of *Dr. John's* as a "lingerie boutique" is an exaggeration. When this case study began in early 2006, one quadrant of the SOB's total floor space walled off with high display racks to create a separate room. The merchandise displayed in this room consists of DVDs and magazines and toys or devices, all of which was sexually explicit as that term was defined. The walls created a private room for patrons who wanted to browse and, at the same time, hid the sexually explicit merchandise from customers who might be offended. The merchandise displayed outside this room consisted of lingerie, swimwear, and other erotic (but not necessarily sexually explicit) items.

The walled-in room where sexually explicit merchandise was displayed was larger than 1,500 square feet.[74] The area outside this room, where no sexually explicit items were displayed, was about the same size. Although no door separated the two areas, and although patrons could move between the areas at will, the configuration gave the sense of two separated areas, only one of which met the City's SOB definitions. The City defined an SOB either in terms of 40 percent of floor space devoted to sexually explicit merchandise; or 40 percent of the inventory devoted to sexually explicit merchandise.

The fluid nature of the floor space complicates this criterion. In terms of merchandise, on the other hand, *Dr. John's* was clearly an SOB. Table 4.1.1 reports an inventory of *Dr. John's* stock completed in the first week of January, 2006. The retail value of the sexually explicit merchandise displayed in the 1,500 square-feet room $558,302.99, or approximately 50 percent of the total inventory. By the stock criterion, on the other hand, *Dr. John's* is an SOB.

Table 4.1.1 - Stock inventory for Dr. John's

	Count		*Retail Value*	
DVDs / Books	10,630	19.3%	395,809.39	35.0%
Toys / Devices / Novelties	32,469	58.8%	331,605.03	29.4%
Lingerie, Swimwear, etc.	12,109	21.9%	403,469.99	35.4%
Total	55,208		$1,130,884.41	

Even if *Dr. John's* passed the display-space and stock criteria, it would have been judged an SOB by the fact that it promotes itself as an SOB through its signage and website. Both give the same prominent note to DVDs and toys that is given to lingerie, telling more or less the same story as the inventory mix reported in Table 4.1.1. While one can buy the same merchandise at *Dr. John's* that is

[74] To put this in perspective, the combined floor space of Sioux City's two on-site SOBs was less than 1,500 square feet, booths excluded.

found at, say, *Victoria's Secret*; one can also buy the sexually explicit merchandise found at Sioux City's two on-site SOBs.

4.1.2 Dr. John's patrons

To estimate the characteristics of *Dr. John's* clientele, an automatic surveillance camera was set up to take still-shots at three-second intervals of customers entering *Dr. John's*.[75] The cumulative record was reviewed by Irvine graduate students. Entrances by gender were recorded for 14.5 hours. Of the 180 customers who entered *Dr. John's*, 118 (65.6 percent) were males and 62 (34.4 percent) were females.

Table 4.1.2 reports a more instructive breakdown. Some customers entered *Dr. John's* in groups. Customers who entered singly were most likely to be male. Customers who entered in same-sex or different-sex groups, on the other hand, were as likely to be female as male. The male-female ratio was 50:50 for couples by definition. Excluding couples, the 132 customers who entered *Dr. John's* singly or in groups remains disproportionately and, roughly, by the same 2:1 male-female ratio.

Table 4.1.2 - Customers by sex and group

	Singles	Same-Sex Groups	Mixed-Sex Groups	Couples	
Males	**64**	**16**	**9**	**29**	**118**
Females	**11**	**13**	**9**	**29**	**62**
	75	**29**	**18**	**58**	**180**

Except for the smaller numbers, the distribution of entrances reported in Table 4.1.2 is consistent with the distributions plotted in Figures 3.5.1a-b. Although many off-site SOBs have some success at attracting women and couples, the SOBs remain a male-dominated realm.

4.2 MONTROSE, 2003[76]

The relevance of the government's secondary effects evidence can be challenged through either of two arguments. The first is predicated on the fact that the evidence has ignored some *relevant* difference among distinct SOB subclasses. Challenges by off-site SOBs illustrate this argument. The second is predicated on the fact that the evidence has ignored some idiosyncratic (but nevertheless *relevant*) local condition. In 2004, an SOB in rural Kansas used criminological theory to argue that the sparsely-populated rural environment precluded the possibility of secondary effects. And since the local government had not studied this issue prior to enactment, the ordinance should be struck down.

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[75] The camera surveillance was conducted by Richard Matousek, a private investigator retained by the City.

[76] This case study is based on "Rural hotspots: the case of adult businesses." *Criminal Justice Policy Review*, 2008, 19:1-11.

Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail*,[77] the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

> All of the studies relied upon by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examine businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate out "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting.[78]

Because the SOB was located in an isolated rural area, and because the County had no evidence to suggest that rural SOBs would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

Ignoring the question of *relevance*, the argument's predicate is correct. Because most criminological research is conducted in urban areas, criminological theories do not *necessarily* generalize to rural areas. In fact, it is entirely possible that some obscure criminological theory might not generalize to rural areas and populations. But the relevant routine activity theory of hotspots, outlined in Section 2 above, generalizes to any accessible area, urban, suburban, or rural. This is corroborated by a recent case study. When an SOB opens on an interstate highway off-ramp in a sparsely populated rural community, ambient crime risk rises precipitously, turning the community into a rural "hotspot of predatory crime."

An unincorporated village of 250 residents, Montrose, Illinois is located on I-70 midway between St. Louis and Indianapolis. I-70 separates Montrose's residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February, 2003. In that month, the *Lion's Den* opened on a service road within 750 feet of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that X-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the *Lion's Den* was located on the residential side of I-70. Complaining that the store disrupted their idyllic life-style, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The *Lion's Den* offered to build a new, larger access road from I-70 to its site. But fearing an even larger volume of traffic, the villagers declined the offer.

Like all Illinois villages, Montrose had no SOB ordinances. The *Lion's Den* was located within 1,000 feet of a public park, however, in violation of an Illinois statute. When the State moved to enforce its statute, the *Lion's Den* sued, arguing that "off-site" SOBs could not generate the public safety hazards associated with adult cabarets, video arcades and other on-site SOBs. The trial in *State v. The Lion's Den, et al.* lasted four days. The court upheld the statute and, in July, 2005, the Montrose *Lion's Den* closed its doors.

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[77] *Abilene Retail #30, Inc. v. Board of Commissions of Dickinson County, Kansas*, 492 F.3d 1164, 1175 (10th Cir. 2007).

[78] *Id.* at 1175.

Table 4.2 - Crime-Related Secondary Effects of a Rural Off-Site SOB

	Open		*Closed*				
					Log Effect	***β***	***t***
Property Crimes	23	9.54	15	7.20			
Personal Crimes	3	1.24	5	2.40	Constant	-3.267	-17.60
All Other Crimes	28	11.61	9	4.32	Open	0.475	2.06
Total Crimes	54	22.39	29	13.92		$e^{0.475}$. 1.61	

At the trial, the State presented evidence of the *Lion's Den*'s adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. Neither party presented local crime data, however. Table 4.2 reports data bearing on this issue. During the 1,642-day period beginning January 1st, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the Village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. But incidents involving danger or harm to persons (robbery, assault, *etc.*) were rare.

The columns labeled "Open" and "Closed" in Table 4.2 break the incidents down into an 881-day segment in which the *Lion's Den* was open and a 761-day segment in which it was closed. Crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments. From these raw rates, it appears that crime risk in Montrose rose when the *Lion's Den* opened and fell when the *Lion's Den* closed. The magnitude of the effect is proportional to the exponentiated effect estimate reported in Table 4.2 ($e^{0.475} = 1.61$). The crime rate in Montrose was 61 percent higher while the Lion's Den was open.

Could the effect be due to chance? That is unlikely. The effect estimate reported in Table 4.2 is statistically significant at the conventional 95 percent confidence level. Could the effect be due a coincidental increase in the frequency of patrols the Effingham County Sheriff? That too is unlikely. Whereas heightened surveillance can exaggerate "victimless" crime rates, heightened surveillance would *not* produce higher rates of serious crime and, while the *Lion's Den* was open, crime in the Village grew more "serious," including two armed robberies, one committed by a gang of four men wearing ski masks and armed with shotguns. Both armed robberies were committed at site of the *Lion's Den*, moreover, and were the only robberies recorded in the Village's modern history.

The timing of the crime incidents reinforces this point. While the *Lion's Den* was closed, Montrose's modal crime incidents were "drive-off" thefts from the Village's gasoline station and vandalism at the Village's motel. Most of these incidents occurred in daylight and required no immediate response from the Sheriff's Office; and because the businesses were separated from residences by I-70, the modal incidents attracted little attention. While the *Lion's Den* was open, on the other hand, a majority of incidents occurred at night and demanded immediate response; as more incidents began to occur on the residential side of I-70, crime became more noticeable to Village residents.

The Tenth Circuit may not have found the Montrose results relevant to *Abilene Retail*. Every case study is unique in some respect, after all; and although the U.S. Census Bureau considers both Effingham County, Illinois and Dickinson County, Kansas to be "rural," the Tenth Circuit may have focused on idiosyncratic, legally relevant factors. Nevertheless, the case study results demonstrate that, whether urban, suburban, or rural, hotspots are hotspots. Whether the area is urban, suburban, or rural,

SOBs attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence attracts offenders, generating ambient victimization risk – a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas but, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

Solving the problem by allocating more police to rural areas is politically unfeasible. Governments allocate public safety resources across regions on utilitarian grounds. Per capita allocations have the greatest impact on per capita crime rates. This poses an obstacle to rural problem-oriented policing, of course, but it is a rational policy for a government. Because the targets attracted to the rural hotspot live outside the jurisdiction, and because victimizations are under-reported, ignoring the hotspot is a more realistic strategy.

The future is unclear. The relocation of adult businesses to rural areas parallels the post-war "flight" of inner-cities families. From the perspective of adult business proprietors, the urban environment has become hostile. Zoning codes force adult businesses into "ghettos" where their operations are strictly regulated and where competition with other adult businesses is fierce. Rural areas have few regulations, on the other hand, and little competition; access to interstate highway traffic is a bonus. As urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments into policy decisions.

4.3 ALAMEDA BOOKS *REDUX: LOS ANGELES, 2008*

In 1977, the City of Los Angeles conducted a comprehensive secondary effects study[79] that found, among other things, an association between ambient crime and SOB concentrations. Based on this finding, Los Angeles required a minimum distance between SOB sites. When SOBs began to evade the minimum distance rule by merging, the City amended its ordinance to require minimum distances between distinct *activities*. The amendment forced "commercially natural if not universal" SOBs to segregate DVD sales from viewing booths.

In 1995, two affected SOBs challenged the amended ordinance. Because the 1977 study did not address the secondary effects of combining multiple activities under one roof, it was argued that Los Angeles had no evidence that multiple-activity businesses generated secondary effects. The trial court agreed and the Ninth Circuit affirmed. The U.S. Supreme Court reversed, reaffirming *Renton* and allowing that a government could infer, from the findings of the1977 study, that concentrations of distinct *activities* – in particular, DVD sales and viewing booths on the same site – generated secondary effects. In a complicated split decision, the Court remanded the case for trial.

In 2006, the City of Los Angeles retained McCleary to examine the secondary effects rationale for the amended ordinance. Would dividing a multiple-activity SOB into single-activity SOBs, as required by the amended ordinance, yield a reduction in ambient crime risk? Ideally, this question could be addressed by finding a member of the "commercially natural if not universal" SOB subclass that had been divided into discrete units that sold DVDs (but had no booths) and that operated coin-operated viewing booths (but did not sell DVDs). If the amended ordinance had a legitimate rationale, one would expect the ambient risk for the multiple-activity SOB to be greater than the sum of the risks for its constituent single-activity SOBs.

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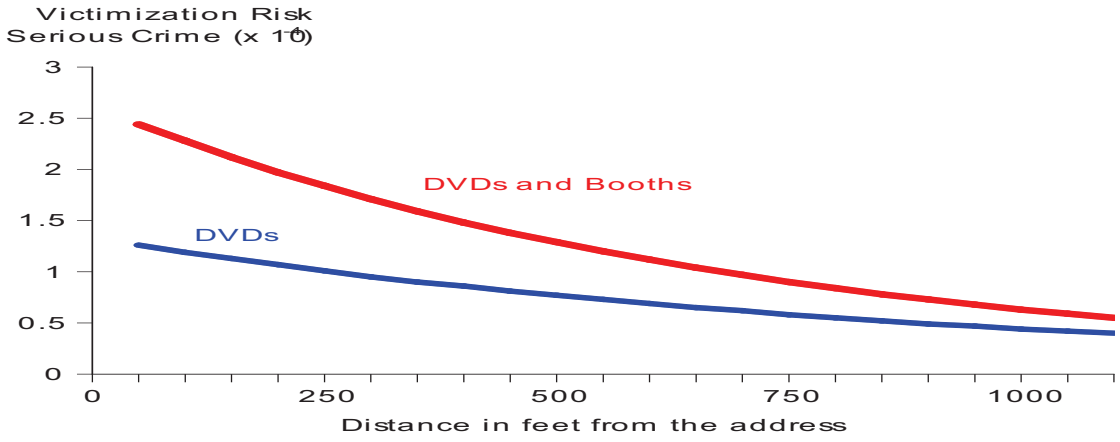
[79] City of Los Angeles Department of City Planning (1977), cited in *Alameda Books* at 429.

Figure 4.3 - Risk by Distance from the Site, UCR "Serious" Crime



Unfortunately, there were no ideal "natural experiments" of this sort to be found in Los Angeles. Alternatively, using the same logical argument, one could compare the ambient crime risks for multiple-activity SOBs – which we will call "bookstore-arcades" – to the ambient risks for single-activity "bookstores" and "arcades." Since there were no *pure* arcades[80] in Los Angeles, however, only part of this alternative design could be implemented. Though less than the ideal – which is almost always true – the partial design tells us much about the phenomenon.

Figure 4.3 plots the risk-distance functions for twelve bookstore-arcades (in red) and seven bookstores (in blue). The vertical axis is calibrated in annual UCR Part I ("serious") crime incidents (homicide, aggravated assault, robbery, rape, burglary, theft, auto theft, and arson) per square mile. The horizontal axis is calibrated in distance from the site. As Figure 4.3 shows, both SOB subclasses are risky places. Since both risk-distance functions are statistically significant at the conventional 95 percent confidence level, both SOB subclasses have secondary effects. Compared to bookstores, however, bookstore-arcades are riskier at all distances and the difference between the two functions is significant.

4.4 CONCLUDING REMARKS

Some subclass specific risks arise because the defining characteristic of the subclass creates idiosyncratic opportunities for particular types of crime. Other subclass-specific risks arise when the defining characteristic of the subclass compromises the effectiveness of common policing strategies. The relatively higher ambient risks of bookstore-arcades accrue from both sources. Nevertheless, the failure of economical policing strategies is the greater problem. The optimal policing strategy for SOBs with viewing booths requires that police inspect the interior, placing officers at risk of injury. Accordingly, policing this subclass requires special training and equipment, prior intelligence, backup manpower, and other resources.

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[80] SOB arcades that sell *no* adult merchandise whatsoever are rare. But there are many that derive very little revenue from the same of adult merchandise.

Absent viewing booths, the optimal policing strategy rests heavily on routine drive-by patrols. Since the ambient risk function for this subclass can cover a several-block area (see Figure 4.3), drive-by patrols is an efficient way to provide a visible police presence to the neighborhood. Visibility is *per se* a deterrent. Routine patrols can keep watch for known offenders and suspicious activity. When problems are spotted, the routine patrol can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed. Needless to say, neighborhood patrols by plainclothes officers in unmarked cars would be inefficient. Whereas visibility is central to policing SOB bookstores, the presence of viewing booths requires invisible (plainclothes) police presence inside the SOB. The optimal policing strategies of the two subclasses are incompatible.

Criminological theory is clear on the threshold question of whether off-site SOBs are exempt. They are not. As it turns out, moreover, the Fifth Circuit had not intended its *Encore Videos* decision to be interpreted as a comment on applicability of criminological theory. Four years later, the Fifth Circuit upheld a Kennedale, Texas ordinance aimed at off-site SOBs.[81] Unlike the San Antonio ordinance under challenge in *Encore Videos*, the Kennedale ordinance relied on studies of off-site SOBs. The Court took the opportunity, furthermore, to clarify the short note in *Encore Videos* that had been misinterpreted as questioning the applicability of criminological theory.[82]

On March 1st, 2007, exactly one week after the Fifth Circuit's *H and A Land Corp*. decision, a man parked his car in a dark lot near an off-site SOB in Kennedale, Texas. Returning to his car, the man was confronted by a robber and shot (Bourgeois, 2007). Though seriously injured, he survived. Governments would not want to rely on anecdotal evidence alone. Nevertheless, anecdotes of this sort constitute legitimate secondary effects evidence.[83] In addition to its corroborative value, this particular anecdote has some legal relevance because the off-site SOB was a plaintiff in *H and A Land Corp*.

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[81] *H and A Land Corp. v. City of Kennedale, TX.*, 480 F. 3d 336 (5th Cir. 2007).

[82] *Id.* at 340

[83] See, *e.g.*, *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186, 1195-96 (9th Cir. 2004) ("Anecdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects ...").

5. SAN ANTONIO

In early 2006, several Texas cities were evaluated as candidates for an intensive case study. Due to its historical role in the off-site/on-site controversy, San Antonio was the leading candidate. As information on the candidate cities accumulated, San Antonio's advantages grew more apparent. It had several off-site and on-site SOBs, for example; and although all of the candidate cities had reasonably reliable machine-readable crime incident data, San Antonio's city attorney was particularly supportive of the case study concept. In the final analysis, San Antonio offered the strongest mix of data, design, and resources.

Another factor arguing for San Antonio was the publication, in early 2006, of a secondary effects study based on San Antonio data. Using a cross-sectional quasi-experimental design that had been used in Greensboro (Linz and Yao, 2003) and Daytona Beach (Linz, Fisher, and Yao, 2004), Enriquez, Cancino and Varano (2006)[84] found that:

> After controlling for socioeconomic and demographic community characteristics associated with social disorganization, ... the empirical evidence tempers the San Antonio City Council's contention that the presence of [SOBs] produces crime. Instead, the results point to weak institutions, namely alcohol outlets and community characteristics associated with social disorganization theory as causes and correlates of crime (p. 34).

Critics of the quasi-experimental design used by Enriquez, Cancino, and Varano note that it is strongly biased in favor of the null finding. This bias might explain why the design has become a favorite of SOB plaintiffs. We will expand on this issue in the following sections.

5.1 THE ENRIQUEZ-CANCINO-VARANO NULL FINDING

To test whether SOBs have any secondary effects whatsoever, Enriquez, Cancino, and Varano regress *per capita* crime rates for San Antonio "neighborhoods" (Census Block Groups) on nine "social disorganization" variables.[85] After statistically adjusting for the effects of these variables, Enriquez, Cancino, and Varano compare the crime rates in neighborhoods with and without "human display establishments" (SOBs). Because the R^2 statistic associated with the difference was not significant at the conventional 95 percent confidence level, Enriquez, Cancino, and Varano concluded that the difference is *null* – that SOBs have no statistically significant crime-related secondary effects. To investigate the validity of this conclusion, we attempted to replicate their analysis. Although we could not reproduce their results exactly, the results of our reanalysis are consistent with their results in one important respect.[86] Nevertheless, our results support a very different conclusion.

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[84] Roger Enriquez is assistant professor of criminal justice, University of Texas, San Antonio; Jeffery M. Cancino is associate professor of criminal justice at Texas State University, San Marcos. Sean P. Varano is assistant professor of criminal justice at Northeastern University.

[85] As proposed by Shaw and McKay (1942), the theory of social disorganization holds that neighborhoods with low residential stability will have high rates of delinquency and *vice versa*. The theory draws heavily from grand sociological theory (*e.g.*, Tönnies, 1963[1887]; Durkheim, 1964[1893]) and from the early Chicago school experience.

[86] At a minimum, replication would require the arithmetic means and variances of all variables as well as the covariances among variables. These "sufficient statistics" are ordinarily published along with results. Although

Table 5.1 - Effect Estimates, *Per Capita* Total Crime

	Effect	*α < p*	*Effect*	*α < p*
Constant	361.5		-447.2	
Renter Occupied Housing	-81.3	.05	-181.9	.54
Latinos	-134.9	.0001	407.4	.05
Blacks	-41.0	.53	232.5	.24
Divorced	-416.0	.002	2778.4	.00
Median Household Income	-2.7	—	-4.0	.15
Vacant Housing	86.5	.37	3446.8	.001
15-29 Year Old Males	-428.1	.01	-678.9	.0001
Female-Headed Households	62.0	.16	1339.3	.14
Alcohol Establishments	**15.2**	**.00001**	**189.7**	**.12**
Adult Display Establishments (SOBs)	**73.5**	**.20**	**1976.2**	**.0001**

Table 5.1 reports a side-by-side comparison of the results reported by Enriquez, Cancino, and Varano (in red; taken from Table 7, pp. 33-4) and the results of our replication (in blue). The columns labeled "Effect" give the unstandardized effect estimates (*per capita* crime rates). The columns labeled "α < p" give the corresponding significance levels. By convention, any effect estimate with a probability smaller than α< 0.05 is statistically significant. The last row of Table 5.1, which reports effect estimates and significance levels for "alcohol establishment" and "adult display establishment (SOB) neighborhoods, tells the story.

- In terms of *per capita* total crime, Enriquez, Cancino, and Varano find that the effect of "adult display establishments" is nearly five times larger than the analogous effects of "alcohol establishments" (73.5/15.2 ≈ 4.8). But since the corresponding probability (α=0.2) is larger than 0.05, the five-fold effect is not statistically significant.
- The replication finds that the effect of "adult display establishments" is more than ten times larger than the analogous effect of "alcohol establishments" (1976.2/189.7 ≈ 10.4). Since the corresponding probability (α=0.0001) is smaller than 0.05, moreover, the ten-fold effect is not statistically significant.

In purely *substantive* terms, the original analysis and our replication produce consistent results. Neighborhoods with "adult display establishments (SOBs)" have higher *per capita* crime rates than "alcohol establishment" neighborhoods. Whether the effect ratio is five-fold or ten-fold, it is *substantively* large.

In purely *statistical* terms, on the other hand, the original analysis and our replication produce *discrepant* results. Whereas in the original analysis, the substantively large difference in *per capita* crime rates is *not* statistically significant (α=0.2), in our reanalysis, the difference is *highly* significant

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Enriquez, Cancino, and Varano (2006) did not publish these data, they offered "Other tables and models are available on request" (fn. 80, p. 20). The authors have ignored two requests for their statistics.

(α=0.0001). Which statistical result is more credible? Leaving this question unanswered for the present, Enriquez, Cancino, and Varano interpret the statistical size of their effect to mean that San Antonio SOBs have no crime-related secondary effects; and this has clear legal implications:

> According to the plurality test in *Alameda*, the present study would certainly cast "direct doubt" on the rationale or evidence used to support the adoption of the San Antonio ordinance. This would then shift the burden back to the municipality. However, it is not clear what evidence a court would require from a municipality to justify the ordinance. (pp. 34-5)

But in fact, the fragile null finding reported by Enriquez, Cancino, and Varano is *not* sufficient to "cast direct" doubt on the factual predicate of San Antonio's ordinance. Indeed, what Enriquez, Cancino, and Varano characterize as a null finding is, by the most widely accepted conventions of statistical hypothesis testing, an *inconclusive* finding. We will return to this point after reporting the results of our San Antonio analysis.

5.2 THE RESULTS OF OUR SAN ANTONIO CASE STUDY

Table 5.2 lists the addresses of fourteen SOBs that were open for business in the City of San Antonio during the five-year period between January, 2002 and December, 2006. All fourteen SOBs sell videos and other adult merchandise for off-site use. The first three sites (in blue) also operate on-site viewing booths, however; they are "on-site" SOBs. The next eleven sites (in red) do not operate on-site viewing booths; they are "off-site" SOBs. The list of SOB sites (Table 5.2) was developed from searches of internet sources and licensing databases, and from consultations with City of San Antonio officials.

Each of the fourteen sites was visited at least once between January, 2006 and May, 2008. Many of the sites were visited on several occasions during that period. Each site visit included inspections of the surrounding neighborhoods, informal interviews with employees and patrons of the SOBs where possible, and sometimes, interviews with neighbors. Although we cannot be certain that the fourteen sites listed in Table 5.2 is exhaustive, the list is as complete as possible and representative of the SOBs in San Antonio.

Table 5.2 - Fourteen San Antonio SOBs

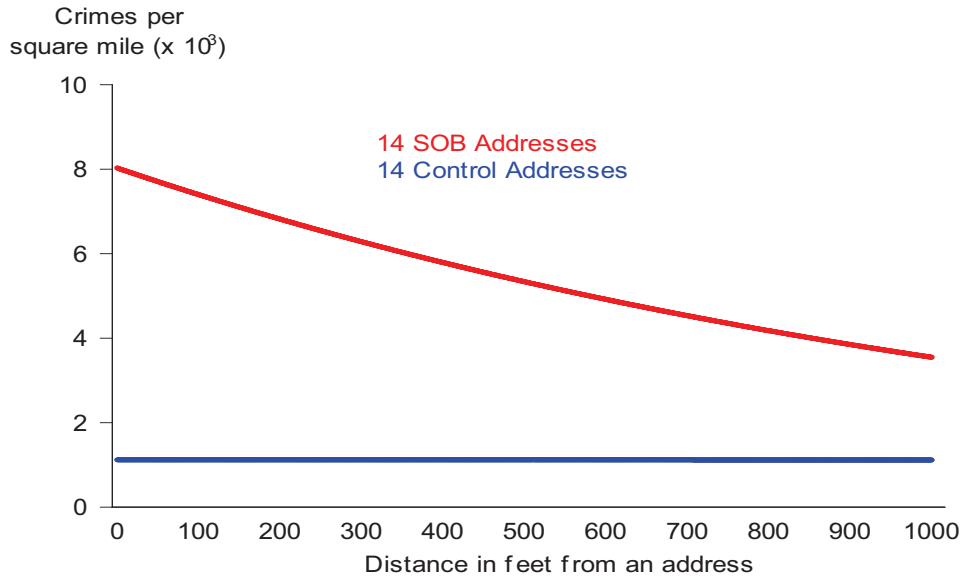
		2000 U.S. Census	
	Address	***Tract***	***Block Group***
Adult Video MegaPlexx	9405 I 35 N	1212032	2
Body Language	8071 Culebra Rd	1719113	3
Adult Video MegaPlexx	11827 San Pedro Ave	1913022	2
Venus	3848 Culebra Rd	1805043	3
Texxxas Nights	6305 Wurzbach Rd	1807024	4
Zebraz	1608 N Main	1108005	5
Broadway News	2202 Broadway St	1110003	3
Apollo News	2376 Austin Hwy	1205025	5
Encore Video - 1031[87]	1031 NE 410	1210001	1
Leather and Lace Video	2525 NE 410	1212043	3
Temptations	8373 Culebra Rd	1719111	1
Shades of Love	300 West Bitters	1917002	2
Pop-in-go Video Superstores	7121 90 W	1616002	2
Pop-in-go Video Superstores	3655 Fredericksburg Rd	1802013	3

To measure the hypothetical crime-related secondary effects of the fourteen SOBs, we collected official crime data from the San Antonio Police Department. The dataset that was released to us included all crime incidents recorded in the City of San Antonio between January, 2002 and December, 2006. During this five-year period, the San Antonio Police Department recorded the locations of 457,603 incidents. All but 2,866 of those were successfully matched to San Antonio addresses, for a match rate of 99.4 percent. A 70 percent match rate is the norm for geocoding. The extraordinarily high match rate in this study is due in part to the geocoding system used by the San Antonio Police Department. Although each crime incident was coded with a modified NIBRS descriptor (U.S. Department of Justice, 2000), for analytic purposes, the incidents were collapsed into three broad categories: personal crime incidents, property crime incidents, and all other crime incidents. We report the results for total crime only.

One shortcoming of the statistical model used by Enriquez, Cancino, and Varano (2006) is that the land area of their "neighborhoods" (*i.e.*, Census Block Groups) is too large to capture the secondary effects of SOBs. Whereas the ambient crime risk emanating from an SOB point-source is optimally detectable in a 500-foot circle around the site (see Figure 3.4.2) – an area of approximately 0.028 square miles – the median San Antonio Census Block Group covers an area of 0.24 square miles. This factor-of-nine disparity generates a profound bias in favor of the null finding. When smaller, more appropriate areal units are analyzed, however, large, significant crime-related secondary effects emerge.

[87] The plaintiff "Encore Videos" in the Fifth Circuit decision is "Zebraz."

Figure 5.2 - Risk-Distance Functions for Fourteen San Antonio SOB Sites



To illustrate, Figure 5.2 plots total crime risk-distance functions for fourteen SOBs (in red) and fourteen randomly selected control sites (in blue). The fourteen control sites were drawn at random from the set of San Antonio addresses in the 2000 U.S. Census tracts where SOBs are located. Although there are (literally) thousands of potential control addresses in the complete set, a random sample of fourteen addresses balances the design, thereby optimizing its interpretability.

The technical details of Figure 5.2, including the calculation and interpretation of the numbers (*i.e.*, "Crimes per square mile x 10^3"), are described separately in Section 6 below. For present purposes, ignoring these technical details, several points emerge from the risk-distance functions.

- In terms of total crime, SOBs are risky places. As one moves toward an average SOB, victimization risk (defined loosely, as the probability of becoming a crime victim) rises. As one moves away, victimization risk diminishes.
- The risk-distance function for control addresses (in black) is relatively flat. No matter how near or far one might be from the average control site, victimization risk remains constant.
- At any distance, ambient victimization risk is significantly lower for control addresses compared to SOB addresses. This relationship holds for distances greater than 1,000 feet, approximately two long city blocks.

Although it is possible in principle to estimate distinct risk-distance functions for off-site and on-site SOBs, the difference between the two risk-distance functions is not statistically significant at the conventional 95 percent confidence level. Our inability to estimate distinct functions is due in part to the relatively small number of on-site SOBs (three *vs.* eleven off-site SOBs) and to the proximity of one off-site SOB to an on-site SOB. Tests of statistical significance are a technical topic that will be covered in Section 6 below.

5.3 THE "DIRECT DOUBT" CONTROVERSY[88]

Finding that the difference in *per capita* crime rates between SOB and non-SOB control neighborhoods is *not* statistically significant, Enriquez, Cancino, and Varano argue that the null finding "casts 'direct doubt' on the rationale or evidence used to support the adoption of the San Antonio ordinance." Of course, any investigator who *wants* to produce a null finding can do so, quite simply, by using the "weakest" possible quasi-experimental design. To guard against the potential abuse, rigidly enforced methodological rules require the investigator to demonstrate that a design is sufficiently "powerful" to support the null finding. Otherwise, the finding is judged to be *inconclusive*.

The "statistical power" of a quasi-experimental design is best illustrated by the distinction between the *substantive* and *statistical* size of a secondary effect. In terms of *per capita* total crime, Enriquez, Cancino, and Varano found that the effect for San Antonio's "human display establishments" was 4.84 times larger than the analogous effect for "alcohol establishments." Most residents of San Antonio – including the City Council and Police Department – would call this effect *substantively* large. Nevertheless, the effect is *statistically* small – not significant at the conventional 95 percent confidence level. Ignoring the effect's substantive size, Enriquez, Cancino, and Varano argue that *statistically* small effect are "not different than zero." And if an effect is "not different than zero," then perhaps it "is zero." And if the effect "is zero," then it casts "direct doubt" on the evidentiary basis of the San Antonio ordinance.

Of course, this argument ignores the methodological rules of statistical hypothesis testing. Figure 5.3a summarizes these rules by analogy to a jury trial. Suppose that an SOB stands accused of posing an ambient crime risk. After hearing the evidence, the jury can convict, acquit, or hang. If the jury convicts, there is a small (but non-zero) probability that the jury convicted an innocent SOB; *i.e.*, a false-positive (or "Type I" or "α-type") error. If the jury acquits, on the other hand, there is a small (but non-zero) probability that the jury acquitted a guilty SOB; *i.e.*, a false negative (or "Type II" or "β-type") error. Finally, if the jury hangs, there was no decision and, hence, no possibility of error.

Figure 5.3a - Jury Trials and Hypothesis Tests

	But in Reality, the Defendant is ...	
	Guilty	**Not Guilty**
The Jury Convicts	**95% Confidence**	**5% False Positives**
The Jury Hangs	**?**	**?**
The Jury Acquits	**20% False Negatives**	**80% Power**

In real-world courtrooms, the probabilities of false-positive and false-negative verdicts are unknown. Courts enforce strict procedural rules to minimize these probabilities but we can only guess

[88] This section is based on McCleary and Meeker (2006).

at their values. In statistical hypothesis testing, on the other hand, rigid convention sets the values at five percent for false-positives and twenty percent for false negatives.[89] Adopting these same values, to convict, the jury must be 95 percent *certain* of the SOB's guilt. To acquit, the jury must be 80 percent *certain* of the SOB's innocence. To ground the 95 and 80 percent certainty levels, we could try each case in front of a large number of independent juries. To convict, 95 percent of the juries would have to return the same guilty verdict; in the case of an acquittal, 80 percent would return the same not guilty verdict.

Correct and incorrect decisions are painted blue and red respectively in Figure 5.3a. Five percent of all convictions are false-positives and 20 percent of all acquittals are false-negatives. When the levels of certainty are too low to support conviction *or* acquittal, of course, the jury hangs. Non-decisions, painted yellow in Figure 5.3, depend on factors such as the strength of evidence, credibility of witnesses, and so forth. So as not waste a jury's time, the prosecutor doesn't bring obviously weak cases to trial. Likewise, faced with strong evidence of guilt, the defense counsel seeks a plea bargain in order to avoid trial.

The analogy to statistical hypothesis testing is nearly perfect. The researcher considers two complementary hypotheses. The SOB either has secondary effects; or alternatively, the SOB does not have secondary effects. Based on the magnitude of the expected and estimated effects, the researcher then accepts one of the two hypotheses.

- If the false-positive rate for the estimated effect is smaller than five percent, the hypothetical secondary effect is accepted with 95 percent *confidence*. The SOB has a large, significant secondary effect.

If the false-positive rate is larger than five percent, researcher does not automatically accept the alternative hypothesis but, rather, conducts a second test.

- If the false-negative rate for the expected effect is smaller than twenty percent, the alternative hypothesis is accepted with 80 percent *power*. The SOB does not have a secondary effect.

But lacking *both* 95 percent confidence *and* 80 percent power, neither hypothesis is accepted; *the results are inconclusive*. Since inconclusive results invariably arise from weak research designs, and since the relative strength of a design is known *a priori*, inconclusive results should be rare. But in fact, many of the secondary effects studies sponsored by SOB plaintiffs – and in particular, the study by Enriquez, Cancino, and Varano – have inconclusive results.

Finding a *substantively* large but *statistically* small effect, Enriquez, Cancino, and Varano argue that no secondary effect exists. A mundane analogy reveals the fallacy in this argument. If I cannot find my car keys, I might conclude that my car keys do not exist. But although this may be true, it may also be true – and it is certainly more likely – that I did not look hard enough for my car keys.[90].

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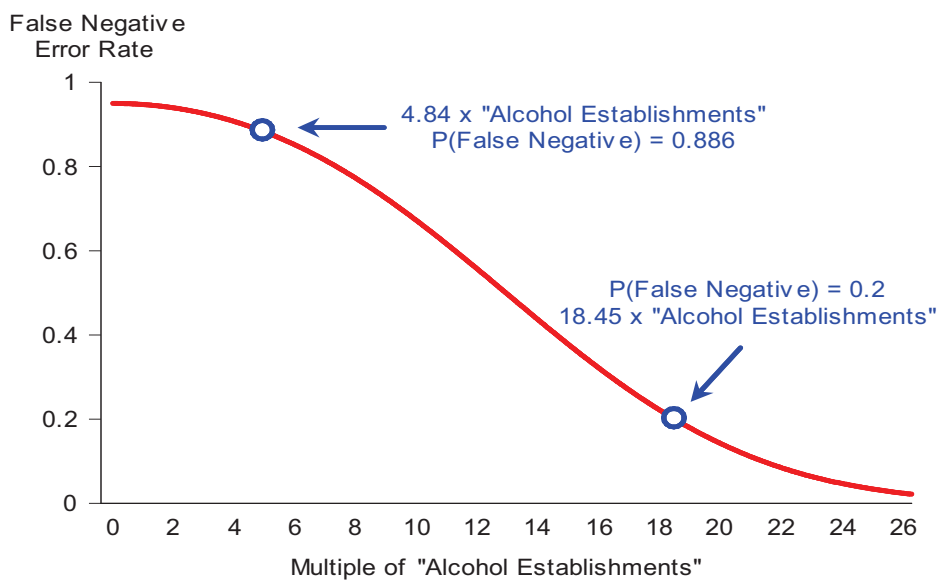
[89] The most comprehensive authority on this issue is Kendall and Stuart (1979, chapter 22). This authority requires a strong background in mathematics, however. Cohen (1988, pp. 3-4) and Lipsey (1990, pp. 38-40) set the conventional false-positive and false-negative rates at α=.05 and β=.2, respectively. These rates can be set lower, of course. The convention also sets the ratio of false-positives to false-negatives at 4:1, implying that false-positives are "four times worse than" false-negatives. The 4:1 convention dates back at least to Neyman and Pearson (1928). It reflects a view that science should be conservative. In this instance, for example, the 4:1 convention works in favor of the SOB. When actual decision error costs are known, the actual ratio is used.

[90] Newton made this point with his aphorism "*Negativa non Probanda*" which translates roughly as "Finding nothing proves nothing."

As it turns out, Enriquez, Cancino, and Varano did not "look hard enough" for a secondary effect in San Antonio. The false-negative error rates plotted in Figure 5.3b were calculated from Table 7 (pp. 33-4) of Enriquez, Cancino, and Varano (2006). The horizontal and vertical axes are calibrated respectively in multiples of the "alcohol establishments" effect and the corresponding false-negative error rate. The false-negative rate for the 4.84 multiple reported by Enriquez, Cancino, and Varano is 0.886. What this means, put simply, is that the null finding is most likely (88.6 percent) an artifact of the study's weak quasi-experimental design. Whereas Enriquez, Cancino, and Varano interpret their null finding as evidence that San Antonio SOBs do *not* have secondary effects, the low complementary probability (11.4 percent) raises grave doubts about the validity of this interpretation.

Figure 5.3b - False-negative Rates for the San Antonio Study



How substantively large would the secondary effect have to be before it could be detected with the conventional statistical power level of 80 percent? As shown, the secondary effect of "human display establishments" would have to be 18.45 times larger than the analogous effect of "alcohol establishments" before it could be detected with conventional statistical power. Given the unacceptably low power of their quasi-experimental design, it is not surprising that Enriquez, Cancino, and Varano were unable to find significant secondary effects. Given the low power of their design, that would have been a miracle.

Figure 5.3b has clear implications for challenging an ordinance under *Alameda Books*. "Quick and dirty" secondary effect studies – which is to say, studies with unacceptably low levels of statistical power – are biased in favor of the null finding. If investigators can circumvent the methodological rules, casting "direct doubt" on an evidentiary record is a simple, sure exercise. Anyone with a modest research background can design a study so as to guarantee a statistically insignificant result. Science guards against such abuses by requiring that investigators publish false-negative rates; or alternatively, as in this case, data sufficient for skeptics to calculate the false-negative rate.

5.4 CONCLUDING REMARKS

The mathematics of statistical hypothesis testing is so demanding that few social scientists understand the concepts or their importance to research.[91] The conventional 80 percent power level was proposed and adopted in the 1920s when statistical hypothesis testing was in its infancy. The convention has survived for eighty years because it serves two useful, crucial functions.

- Anyone with a modest background in research methods can design a study in a way that favors – or even guarantees – a null finding. The convention minimizes abuses by malicious investigators.
- Haphazardly designed "quick and dirty" studies favor the null finding. The convention minimizes the impact of spurious findings generated by naive (but benign) investigators.

Lay audiences, who must rely on common sense, cannot always distinguish between weak and strong designs or between benign and malicious investigators. Scientific conventions guard against both abuses. In this particular instance, the 80 percent power convention allows the lay audience to trust the validity of a null finding.

Recognizing the conventions, crime-related secondary effect studies can be assigned to one of three categories: studies that report secondary effects with 95 percent *confidence*; studies that report null findings with 80 percent *power*; and studies that are *inconclusive*. All of studies listed in Table 3 above either report large, significant secondary effects or else are *inconclusive*. No studies report null findings with the conventional 80 percent power. This reinforces a statement made earlier: It is a *scientific fact* that SOBs pose large, significant ambient crime risks.

[91] *E.g.*, Cohen (1992, p. 155): "I attributed this disregard of power to the inaccessibility of a meager and mathematically difficult literature..."

6. THE STATISTICAL MODEL

The statistical results plotted in Figure 5.2 are derived from statistical analyses based on the Poisson family of models. Our development of the analytic models and results begins with a discussion of *crime risk*. To the individual, the notion of crime risk is associated with vague feelings about the probability of becoming a victim. From vicarious experience then, the individual knows to avoid exceptionally risky times (late night) and places (dark alleys). To translate vague feelings into precise numbers, we can equate crime *risk* with the annual crime *rates* reported in the news media.

Table 6 - UCR Robberies for Two Texas Cities, Year 2000

	Robberies	*Population*	*Rate*	*Area*	*Rate*
San Antonio	***1,699***	***1,144,646***	***0.0015***	***407.6***	***4.2***
Dallas	***7,046***	***1,121,152***	***0.0063***	***342.5***	***20.6***

Table 6 reports robbery rates in 2000 for San Antonio and Dallas. The *per capita* robbery rates (in red) were 0.0015 and 0.0063. For purely aesthetic reasons, the news media report these rates as whole numbers per 1,000 residents. So the San Antonio and Dallas robbery rates could be expressed identically as 1.5 and 6.3 robberies per 1,000 residents per year. Because *per capita* rates have practical advantages, however, that metric is preferred.

In either the *per capita* or per 1,000 metric, compared to San Antonio, Dallas is more than four times *riskier*. The risk ratio statistic makes this point:

$$\text{Risk Ratio} = 0.0063 / 0.0015 \approx 4.2$$

To interpret this ratio, imagine a hypothetical tourist who spends a week in both cities. This tourist is four times likelier to be robbed in Dallas. The risk is exceeding low in either city, of course. This point is made clear by the waiting time statistic. In San Antonio, a hypothetical average tourist will spend more than 667 years waiting to be robbed:

$$\text{Waiting Time} = 1 / 0.0015 \approx 666.7 \text{ years}$$

In Dallas, on the other hand, the wait is "only" 159 years:

$$\text{Waiting Time} = 1 / 0.0063 \approx 158.7 \text{ years}$$

The waiting time statistic illustrates a practical advantage of *per capita* rates; mean (or average) waiting time is the inverse of the *per capita* rate.

This relationship depends on the two simple Poisson assumptions of *homogeneity* and *independence*. The homogeneity assumption requires that the individual's victimization risk be constant from time to time. However, in fact, risk varies by time of day, day of the week, and so forth. Because the hypothetical tourist cannot be in two counties at the same time, comparing risk across cities requires imagination.

Spatial heterogeneity is a more problematic assumption. The right-hand columns of Table 6 (in blue) report *ambient* crime risks for San Antonio and Dallas. These ambient crime rates are calculated as the ratio of robberies per year to land area. At the scale of the two cities – approximately 350-400

square miles – ambient crime risk is meaningless. Indeed, "bad" parts of low-risk cities are more dangerous to the hypothetical tourist than "good" parts of high-risk cities.

Fortunately, at the smaller geographical scales that are relevant to this secondary effect phenomenon, the consequences of heterogeneity vanish. Given a reasonably small area – say, a few city blocks – a simple ambient crime rate captures all of the essential features of crime risk. We will elaborate on this point shortly.

6.1 THE POISSON DENSITY FUNCTION

In the early 19th Century, French mathematician, S.D. Poisson developed an interest in the scattered distribution of crimes across Paris neighborhoods.[92] Poisson proposed the probability density function that bears his name to describe the spatial scatter of crime incidents. Briefly, if x is the number of crimes that occur in a neighborhood (or any other fixed area) during a year (or any other fixed period of time), the probability that exactly k crimes will occur in the neighborhood during the next year is given by the Poisson density function,

$$\text{Prob}(x = k) = \lambda^k e^{-k} / k! \qquad \text{where } \lambda \text{ is the crime rate}$$ [93]

To illustrate how this density function works, in 2000, the robbery rate in Dallas was

$$\lambda = .0063 \textit{ per capita} \text{ robberies}$$

Plugging this mean into the Poisson density function, the probability that a randomly selected Dallas resident will *not* be robbed in the next year is

$$\text{Prob}(x = 0) = (0.0063)^0 e^{-0.0063} / 0! \approx 0.99372$$

Or in other words, 99.372 percent of the resident population will *not* experience a robbery next year. The proportion who will experience k=1 robbery is,

$$\text{Prob}(x = 1) = (0.0063)^1 e^{-0.0063} / 1! \approx 0.0063$$

which, not surprisingly, is the *per capita* robbery rate. A very small (and unfortunate) proportion of these cases will experience a second robbery. For k=2 robberies,

$$\text{Prob}(x = 2) = (0.0041)^2 e^{-0.0041} / 2! \approx 0.00002$$

and so forth. Using the same Poisson density function, one can calculate the proportion of individuals who experience k = 3, 4, ... robberies. The proportions approach zero rapidly.

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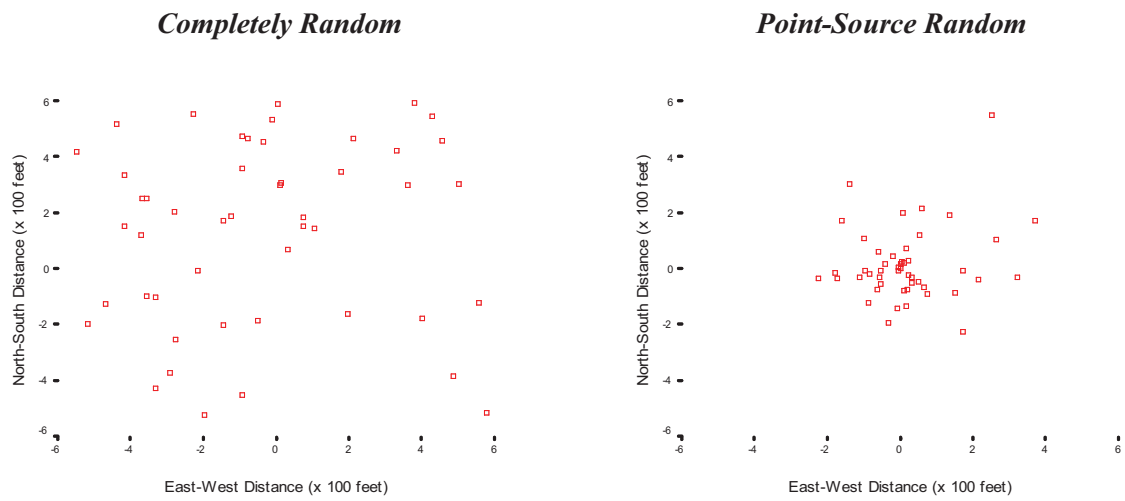
[92] Published in 1837 as *Recherches sur la probabilité des jugements en matière criminelle et matière civile.* Although one probably exists, no English translation is found on Amazon.com. In any event, the history and technical details are given in Haight (1967).

[93] The Poisson mean, λ (lambda), is estimated in the ordinary way. If there are $\sum x$ crime incidents scattered over N city blocks in a given year, then $\lambda = \sum x / N$ incidents per city block per year. To evaluate the Poisson density function for k=0 crimes, remember that λ^0=0!=1.

Figure 6.2 - Simulated Spatial Distributions of 48 Crimes



These probabilities apply to a randomly selected individual who spends a year wandering the streets of Dallas. This is inherently temporal or longitudinal way to think about crime rates. The same Poisson density function can be used to calculate the probabilities of inherently spatial phenomena, however. To illustrate, the simulated Poisson processes in Figure 6.2 have distributed or scattered 48 crime incidents across virtually identical 1,210,000 square-foot neighborhoods.[94] Although both Poisson distributions were generated with the same crime rate (λ=48 crimes/area/year), in terms of their visual appearance, the two distributions are as different as night and day.

The left-hand distribution in Figure 6.2 is *completely random*.[95] Crime risk is distributed evenly across the blocks of this neighborhood. The right-hand distribution has the same crime rate but risk emanates from a point-source, hence the name *point-source random*.[96] As one moves away from the point-source, risk diminishes exponentially. Spatial distributions of this type rarely arise by chance alone: rather, they are typically generated by point-sources such as SOBs.

6.2 RISK VS. DISTANCE FROM THE POINT-SOURCE

Under simple Poisson assumptions, an area can be divided into a sample of parcels (i.e., "parcelated") in any useful manner. If the sample is large, the division algorithm can be arbitrary or haphazard. The parcels can be a mix of trapezoids, squares, circles, or any irregular shape and no two parcels need have the same shape or area. The only requirement is that each parcel's area be *calculable*.

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[94] In this instance, since there are 48 crime incidents scattered over an area of 1,210,000 square feet, λ = 48/1,210,000 ≈ 0.00004 incidents per square foot.

[95] Diggle (2002) uses "complete spatial randomness" as a synonym for "Poisson." The Cartesian (X_i, Y_i) co-ordinates of the ith *completely random* crime were drawn from a uniform distribution of the segment (-6,6).

[96] The polar (θ_i, δ_i) co-ordinates of the ith *point-source random* crime were drawn from a uniform distribution of the segment (0,2π for θ_i) and an exponential distribution of the segment (0,6 for δ_i). The polar co-ordinates (θ_i,δ_i) translate into the Cartesian plane as $X_i = \delta_i \cos(\theta_i)$ and $Y_i = \delta_i \sin(\theta_i)$.

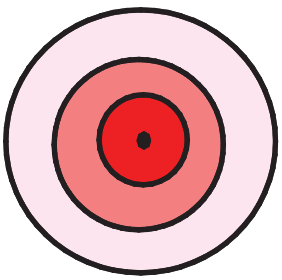
Given the sample of parcels, the ambient rates are calculated in the ordinary way. Wait a fixed period of time – say, one year. Count the number of crimes that occurred in each of the parcels and divide each parcel's count by its area.

Formally, if CRIME_d denotes the number of crimes that occurred in the dth parcel, then the ambient crime rate for the dth parcel is

$$\text{RATE}_d = \text{CRIME}_d / \text{AREA}_d$$

where AREA_d is the surface area of the dth parcel. RATE_d is a property of the dth parcel. Unlike the *per capita* crime rates that we read about in newspapers, this ambient rate has no inevitable consequences for individuals. If RATE_d is particularly high, individuals can avoid the risk by avoiding the dth parcel (and other "bad" neighborhoods).

Figure 6.3 - Concentric Parcels Centered on a Point-Source



d = 1, 2, 3, ... parcels

Radius of the dth parcel = rd feet

Area of the dth parcel = $\pi (rd)^2 - \pi [r(d-1)]^2$ square feet

When ambient risk emanates from a point-source, a sensible division algorithm results in a set of concentric circular parcels as shown in Figure 6.3. Noise is a good model of ambient crime risk in many respects. Noise emanates from its point-source in all directions, for instance, and decays rapidly with distance. So does ambient crime risk when it emanates from a source such as, in this instance, an SOB. Like noise, ambient crime risk emanates in all directions and diminishes with distance from the point-source. In the real world, of course, an orderly emanation process will be distorted by buildings, walls, and other obstacles. If we have a reasonably large sample of point-sources, however, the effects of these obstacles will "average out," revealing the expected ambient risk pattern.

To construct the risk-distance functions that were plotted in Figures 5.2, we first constructed concentric parcels around each of the fourteen SOB addresses and fourteen non-SOB control addresses. Each of the d=22 concentric parcels were separated by radii of r=50 feet. We then counted the number of crime incidents recorded in each the concentric parcels and, from these counts, estimated crude Poisson rates for the parcels. The final step consisted of regressing the rates on a set of explanatory variables. The regression results allow us to test the "best" risk-distance estimates for statistical significance.

6.3 THE POISSON REGRESSION MODEL

Our model is an application of a statistical model developed by Stiger and McCleary (1989) for a similar problem on an isolated site. To adapt the Stiger-McCleary model to the required multi-site case, we incorporated appropriate error terms for each of the sites. The resulting family of models are known, variously, as Poisson hierarchical (Bryk and Raudenbush, 2002), multi-level (Goldstein, 1995), or random co-efficient (Longford, 1993) models.

In its simplest form, the model equates the number of crime incidents in the ith concentric parcel with the *area* of the parcel and the *distance* of the parcel from the SOB. That is, for any of our sites,

$$\lambda_i = \text{function}(\text{Area}_i, \text{Distance}_i) \qquad i = 1,..., 22 \text{ concentric parcels}$$

To take advantage of maximum likelihood theory (McCullagh and Nelder, 1989.), we specify a conventional log-linear ("link") function between λ_i and Distance $_i$. Thus,

$$\text{Log}(\lambda_i \mid \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_i \qquad \text{where } \tau_i \sim N(\mu, \varphi)$$

The stochastic term τ_i accounts for the effects of the many small measurement errors that accrue from various sources. Because there are 28 distinct sites, fourteen SOBs and fourteen non-SOB controls, we add another subscript to the simple model. Thus,

$$\text{Log}(\lambda_{ij} \mid \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_{ij} \qquad j = 1, ..., 28 \text{ sites}$$

Adding a second subscript allows for (i x j = 22 x 28 =) 616 potentially distinct Poisson means. Hypothetically, the distinct Poisson means (λ_{ij}) covary with the type of site (off-site SOB *vs.* on-site SOB *vs.* control), distance from the site, and interaction of distance and site-type. Finally, independent of all other considerations, to account for site-specific variance, each of the sites is allowed its own stochastic term. Conceptually, this can be written as

$$\beta_0 = \zeta_j \qquad \text{where } \zeta_j \sim \Gamma(\beta_0, \psi)$$

The statistical significance of effect estimates is calculated from the ratio of the estimate to the error terms.

6.4 ANALYTIC RESULTS

Parameter estimates from XTPOISSON and XTNEGBIN in Stata Version 10 are reported in Table 6.4 for the rate of total crime per square mile. The column labeled "β" in Table 6.4 reports unstandardized parameter estimates derived from the generalized estimating equation models (Zeger, Liang and Albert, 1988). Because these numbers are calibrated in the natural logarithm metric, they are difficult to interpret substantively. The exponentiated parameter estimates, reported in the column labeled "exp(β)," address this problem. Whereas a β-value is difficult to interpret, exp(β) is interpreted as the multiplicative effect of a variable on ambient crime risk. At any distance, *e.g.*, ambient victimization risk at an SOB site is 7.13 times greater than at a control site.

The column labeled "s(β)" in Table 6.4 reports the standard errors associated with a β-value. The column labeled "t(β)" reports the ratio of a β-value to its s(β). Under the null hypothesis, absolute values of t(β) larger than 2.0 are statistically significant at the conventional 95 percent confidence level. Thus, the parameter estimate for distance (β_1=-0.000003) is not significant (t(β_1) =-0.03); while the parameter estimate for SOB sites (β_2=1.965) is significant (t(β_2)=10.37). Multiple simultaneous hypotheses are tested with Wald statistics derived from the maximum likelihood algorithm.

Table 6.4 - Poisson Regression Parameter Estimates: Total Crime

	β	$s(\beta)$	$t(\beta)$	$\exp(\beta)$
Constant (β_0)	7.0261	0.1351	52.01	1125.63
Distance (β_1)	-0.000003	0.0001	-0.03	.999997
SOB (β_2)	1.9650	0.1894	10.37	7.13487
SOB · Distance (β_3)	-.0008	0.0002	-4.73	.999187
Booths (β_4)	-.9484	0.2992	-3.17	.387369
Booths · Distance (β_5)	.0002	0.0003	0.17	1.00019
Constant (β_0)	7.0224	0.0879	79.88	1121.53
SOB (β_2)	1.8208	0.1514	12.03	6.17712
SOB · Distance (β_3)	-.0008	0.0001	-7.03	.999209

Parameter estimates for distance (β_1), viewing booths (β_4), and the interaction of viewing booths with distance (β_5) were tested for joint significance by assuming random effects. Under the null hypothesis,

$$H_0: \ \beta_1 = \beta_4 = \beta_5 = 0$$

the Wald statistic,

$$X^2 = 2.85$$

is distributed as χ^2 with three degrees of freedom. Since the probability associated with the value of $X^2>2.85$ is 0.585, H_0 cannot be rejected.

Parameter estimates for the more parsimonious model, reported in the bottom rows of Table 6.4, can be interpreted directly from the $\exp(\beta)$ values. The value of $\exp(\beta_0) = 1121.53$ total crimes per square mile is interpreted as the ambient victimization risk at control sites. The value of $\exp(\beta_2) = 6.771$ is interpreted to mean that ambient victimization risk is 6.8 times higher at SOB sites. With each additional foot of distance from an SOB site, however, ambient risk diminishes by a factor of $\exp(\beta_3) = .99921$. Moving away from an SOB site, the magnitude of the secondary effect decays exponentially at the rate of $\exp(\beta_3)$. At a distance of Z feet, *e.g.*, the magnitude of the secondary effect is $\exp(Z\beta_2)$.

6.5 CONCLUDING REMARKS: THE SAN ANTONIO RESULTS

The statistical analyses summarized in this section answer the threshold question of this report: Do off-site SOBs have crime-related secondary effects? Compared to randomly selected control sites, off-site SOB sites pose large, statistically significant ambient crime victimization risks. The fact that ambient risk diminishes exponentially with distance from the site of an SOB demonstrates the sites are neighborhood point-sources of crime victimization risk. Finally, although we reported statistical results for total crime, virtually identical effects are found for the three major crime categories.

As originally designed, our study anticipated contrasting the risk-distance functions of on-site and off-site SOBs. As it turns out, however, San Antonio has relatively few examples of the "commercially natural, if not universal" on-site SOB subclass. Furthermore, because one of the three

examples is located near an off-site SOB, its independent effect is lost. The dearth of on-site SOBs in San Antonio may be an unintended consequence of *Encore Videos*. Whatever the cause, it required a modification of our original design. This modification had no consequences for the threshold question.

7. SUMMARY AND CONCLUSIONS

When work on this study began in January, 2006, the authority of cities and counties to regulate off-site SOBs was under serious attack. Off-site SOBs had challenged the legitimacy of government regulations on two grounds. First, the extensive secondary effects literature that governments had relied upon did not report effects that could be attributed uniquely to the off-site subclass. Second, commonsense criminological theories suggested that off-site SOBs did not generate the same pernicious effects that had been associated with the broader SOB class.

When a Fifth Circuit panel seemed to buy both arguments in *Encore Videos*, some governments stopped enforcing regulations against off-site SOBs. Five years later, however, in *H and A Land Corp*., another Fifth Circuit panel upheld a Kennedale ordinance whose secondary effects evidence included studies of off-site SOBs. At present, the most acute phase of the attack on the authority of governments to regulate off-site SOBs has passed.

Encore Videos had a profound impact on the way criminologists think about secondary effects. The first and most obvious impact is the addition to the literature of studies documenting the adverse secondary effects of off-site SOBs. Three such studies were reviewed in Section 4 of this report:

- When an "adult superstore" opened on an interstate highway off-ramp, total crime in a rural Illinois village rose by 60 percent. When the SOB closed two years later, total crime in the village dropped by 60 percent. A report of this case study has been published in a peer-reviewed journal (McCleary, 2006).
- Following the opening of a "lingerie boutique" in Sioux City, IA, total crime within 500 feet of site doubled. Total crime in a contiguous control circle was unchanged. A report of this case study was read at the national meeting of a scholarly association (McCleary and Weinstein, 2007) and is under review at a peer-reviewed journal.
- An updating of the 1977 Los Angeles secondary effects study found that both on-site and off-site SOBs posed large, significant public safety hazards. Risk-distance functions for both subclasses demonstrate the ambient victimization risk seeps out into the surrounding neighborhood for several blocks.

In addition to these three secondary effects studies

- An intensive case study of San Antonio SOBs, based on the risk-distance method developed for the 2007 Los Angeles study, found that ambient victimization risk extends for at least 1,000 feet in every direction of an off-site SOB.

In addition to extending the empirical secondary effects literature to the off-site SOB subclass, *Encore Videos* forced criminologists to rethink the fundamental mechanisms of their secondary effects theory. Relying on common sense, plaintiffs argued that the routine activity theory of hotspots did not apply to off-site SOBs because:

- The routine activities that occur at off-site SOBs are different than the routine activities that occur at on-site SOBs. Whereas on-site patrons linger inside, off-site patrons drive up; run in; purchase; run out; and drive off.
- Whereas virtually all on-site patrons are lone males, a significant proportion of off-site patrons are females and/or male-female couples.

But in fact, the routine activities at on-site and off-site are indistinguishable. On-site and off-site patrons spend similar amounts of time inside and outside the SOB; and like on-site patrons, off-site patrons engage in the same expected stigma management behaviors. The evidence suggests, furthermore, that there are few differences between on-site and off-site patrons. Although female

patrons are not uncommon at off-site SOBs, most off-site patrons are males. This is particularly true in the overnight hours when ambient victimization risk is at its highest.

Encore Videos challenged criminologists to re-examine the theory of secondary effects. The result of this re-examination is a stronger theory that applies equally to on-site and off-site SOBs; to rural, suburban, and urban settings; and to a range of business models. The theory is corroborated, finally, by empirical studies demonstrating that the typical off-site SOB – a store that sells sexually explicit media and miscellaneous adult merchandise exclusively for off-site use – attracts the same soft-target patrons, causing thereby the same crime-related secondary effects found for on-site SOBs.

Sidewalks, Pathways, and Upper Main Street Scoping Study Presentation

Patrick Baxter, Toole Design Group and

Brian Palaia, Town Manager

Katherine Sonnick, Planning Director

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CONCEPTUAL ALTERNATIVES SUMMARY MEMORANDUM

Date: November 11, 2014

To: Bryan Davis, CCRPC

From: Patrick Baxter, Toole Design Group
John Dempsey, Toole Design Group

CC: Roger Hunt, Public Works Director
Katherine Sonnick, Planning Director
Abby Mattera, VT SRTS
Anne Janda, Management Fellow
Katelin Brewer-Cole, Local Motion

Project: Milton, VT Scoping Study

Toole Design Group (TDG) conducted a working meeting with the Project Steering Committee (PSC) September 26th, 2014 to identify and consider all potential alternatives within the four (4) study areas. The four (4) study areas are included below:

1. 450-ft gap between two existing asphalt pathways on Ellison Street and Hayden Berry Drive;
2. Segment between the existing asphalt pathway on Ellison Street and Milton High School front entrance;
3. A 5-ft wide sidewalk on Brandy Lane, the road connecting Milton HS to Lamoille Terrace; and
4. Upper Main Street between Railroad Street and the intersection of East and North Roads, including safety analysis for pedestrian and vehicular traffic along the Upper Main Street segment.

Provided in this memorandum is a summary description of the alternatives presented in the attached conceptual alternative plans and preliminary cost estimates. The unit cost data applied for this preliminary cost estimate was provided by the 2014 VTrans Bicycle and Pedestrian Program Unit Cost Database.

Haydenberry Drive

A 10-ft wide bituminous concrete shared use path with an 8-ft wide grass buffer is proposed on the eastside of Haydenberry Drive. The proposed shared use path connects an approximate 450-ft gap between two existing asphalt pathways on Ellison Street and Haydenberry Drive. Additional improvements for consideration along this segment include;

- Providing ADA-compliant ramps and crosswalk pavement markings across the two driveways for the proposed development projects;
- Providing ADA-compliant ramps and crosswalk pavement markings for all crossings at the intersection of Haydenberry Drive/Strawberry Lane/Ellison Street; and
- Relocating the stop bar and sign on the north approach for Haydenberry Drive to better align with the existing street intersections and the proposed driveway alignments.

Milton High School

The shared use path alternatives presented provide increased access and connectivity around the school campus. An 8-ft and 10-ft wide bituminous concrete shared use path with a 2-ft wide buffer zone on either side is proposed south of the main school building. Shared use path south Alternative 1 proposes an 8-ft wide bituminous concrete path along the northside of the internal roadway of the proposed Blackberry Commons development parcel. Shared use path south Alternative 2 proposes a 10-ft wide bituminous concrete path alignment on the northside of the existing tree line on the school property. Both south Alternative 1 and Alternative 2 paths provide connections to the existing shared use path on Ellison Street.

A 10-ft wide bituminous concrete shared use path with a 2-ft wide buffer zone on either side is proposed west of the main school building. The west path alignment follows the general right of way of the existing sewer and water lines west of the school property. Transitioning from the existing sewer and water line, the west path alignment may need significant earthwork modifications to meet ADA compliance in order to reach the approximate elevation of the intersection with Brandy Lane and the rear entrance of the school.

A 10-ft wide bituminous concrete shared use path with a 2-ft wide buffer zone on either side is proposed east of the main school building. The east path alignment follows the general alignment of the existing fence line on the school property and loops between the existing track facility and parking lot to connect to the existing internal sidewalk at the front entrance of the school. Two path alternatives are proposed to connect to US Route 7 and utilize an existing public easement. Shared use path east Alternative 1 is a 10’ wide bituminous concrete path using the existing green buffer between the existing surface parking lots. It is anticipated Alternative 1 alignment would require additional utility impacts to existing catch basins, however would not impact the existing parking lot layout. Shared use path east Alignment 2 is a 10’ wide bituminous concrete path using the edge of the existing parking lot area. It is anticipated Alternative 2 alignment would have minimal impacts to existing drainage structures, however would impact the existing parking lot layout. The proposed parking lot layout provides no net loss of parking and would meet the minimum requirements recommended for parking lot layout design.

Brandy Lane

A 5-ft wide concrete sidewalk with a 3-ft wide grass buffer is proposed on the eastside of Brandy Lane. The proposed sidewalk connects an approximate 250-ft gap between two existing sidewalks on Lamoille Terrace and the internal sidewalk on the school property. Additional improvements for consideration along this segment include;

- Providing ADA-compliant ramps connecting the existing crosswalk across Brandy Lane;
- Providing ADA-compliant ramps and crosswalk pavement marking crossing Brandy Lane connecting to the existing internal school sidewalk and the proposed shared use path west alignment; and
- Providing drainage adjustments through repaving modifications.

Upper Main Street

Two sidewalk alignments are proposed for Upper Main Street. Sidewalk Alignment 1 is a proposed 8-ft wide concrete sidewalk with a 3-ft wide grass buffer on the northside of the roadway. The proposed alignment would connect the existing sidewalk segment on Upper Main Street and the existing sidewalk segment on North Road. Sidewalk Alignment 2 is a proposed 8-ft wide concrete sidewalk with a 3-ft wide grass buffer on the southside of the roadway. The proposed alignment would connect the existing sidewalk on Upper Main Street and existing sidewalk on Westford Road.

It is also recommended that the roadway be reconstructed to reduce the elevation at the top of the existing vertical curve east of Railroad Street. This requires a substantial cut below the existing elevation to provide appropriate vertical curvature and provide safe stopping sight distance to reduce conflicts between westbound vehicles on Upper Main Street and northbound left turning vehicles on Railroad Street. As an alternative, the Town may consider restricting left turn movements from Railroad Street. Existing traffic volumes indicate that over 90 percent of drivers on Railroad Street turn right onto Upper Main Street, indicating that a restriction would not be a major impact to traffic.

Additional improvements for consideration along this segment include;

- Providing ADA-compliant ramps and crosswalk pavement markings crossing Upper Main Street east of the North/East Road intersection;
- Providing ADA-compliant ramps and crosswalk pavement markings crossing East Road;
- Providing all way stop controls at the intersection of Upper Main Street/East Road/North Road/Westford Road;
- Providing ADA-compliant ramps and crosswalk pavement markings crossing Upper Main Street west of the Railroad Street intersection;
- Providing ADA-compliant ramps and crosswalk pavement markings crossing Railroad Street at the intersection of Upper Main Street; and
- Balancing the road profile cut and fill grades at the intersection of Upper Main Street/Railroad Street.

DRAFT

Preliminary Cost Estimate
Scoping Study | Milton, Vermont

Haydenberry Drive

Description	Unit	Quantity	Total cost/SF	Amount	
10-ft Bituminous concrete shared use path	LF	450	$197	**$88,650**	
				$90,000	**SAY**

Milton High School

Shared Use Path- South	Unit	Quantity	Total cost/SF	Amount	
8-ft Bituminous concrete path Alternative 1	LF	1200	$170	**$204,000**	
				$210,000	**SAY**
10-ft Bituminous concrete path Alternative 2	LF	2500	$197	**$492,500**	
				$493,000	**SAY**

Shared Use Path- West	Unit	Quantity	Total cost/SF	Amount	
10-ft Bituminous concrete path	LF	1750	$197	**$344,750**	
Earthwork	CY	5000	$50	**$250,000**	
				$595,000	**SAY**

Shared Use Path- East	Unit	Quantity	Total cost/SF	Amount	
10-ft Bituminous concrete path Alternative 1 or 2	LF	250	$197	**$49,250**	
				$50,000	**SAY**

Brandy Lane

Description	Unit	Quantity	Total cost/SF	Amount	
5-ft concrete sidewalk with granite curb	LF	255	$239	**$60,945**	
				$70,000	**SAY**

Upper Main Street

Description	Unit	Quantity	Total cost/SF	Amount	
8-ft concrete sidewalk with granite curb	LF	800	$299	**$239,200**	
				$240,000	**SAY**

Road profile adjustments	Unit	Quantity	Unit Cost	Amount	
Excavation	CY	6000	$50	**$300,000**	
Roadway	LF	800	$2,500	**$2,000,000**	
				$2,300,000	**Say**

Note:
The unit cost data applied to this preliminary cost estimate were provided by 2014 VTrans Bicycle and Pedestrian Program Unit Cost Database. The total cost reflects the combined cost of sidewalk or sidepath construction which includes gravel sub-base, bituminous concrete or concrete and granite curbing, as well as the excavation of the approximate are in which the project will be constructed. Additional items associated with the total costs that are incidental to the construction project include pavement markings, new signs, traffic controls, drainage and landscape improvements. The tables of unit costs associated with developing a sidewalk or shraed use path does not account for engineering, administration, right of way or construction inspection.

The following assumptions for typical sections were used to develop the unit costs for different sidewalk and shared use path unit costs:

All sidewalks - 12" of sub-base material
Concrete sidewalks - 5" thick concrete
Bituminous sidewalks - 2" thick lift
Aggregate sidewalks - 3" compacted material

All shared use paths - 6" of sand or earth and 12" gravel sub-base material
Bituminous paths - 2" thick lift
Aggregate paths - 4" compacted material

Joint Meeting with the Conservation Commission

Selectboard, Commission, Brian Palaia, Town Manager

Jake Hemmerick, Town Planner

TOWN of MILTON
Planning & Economic Development
43 Bombardier Road
Milton, VT 05468-3205

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MEMO

TO: **Selectboard Members**
CC: **Town Manager**
FROM: **Judy Kinner, Conservation Commission Chair**
DATE: **November 12, 2014**

RE: **Update for Joint Selectboard/Conservation Commission Meeting**

Introduction to Conservation Commission

- The Commission is an advisory body created by the Resolution of the Selectboard in 1994.
- The Commission has five members appointed by the Selectboard who serve staggered, four-year terms.
- The Administrative Code, adopted by the Selectboard in 1997, highlights the powers and duties of the Commission in Section 32.
- Generally, the Commission helps protect and enhance Milton's natural resources by undertaking diverse activities, such as:
    - Actively stewarding the Town's Municipal Forest, Eagle Mountain Natural Area, and the LaMoille Riverwalk;
    - Coordinating programs to support: conservation education, natural resource interpretation, outdoor recreation and volunteerism; and
    - Offering advice and recommendations to the Selectboard and Planning Commissions.
- The Commission holds regular meetings the fourth Tuesday of every month at 6:30 PM, with occasional special meetings in-between, and is staffed by the Town Planner.
- The Current Membership includes:

Members	Term Expiration
Judith Kinner, Chair	2018
Bonnie Pease	2016
Laurie DiCesare	2015
Jay Maurice	2018
Dan Gaherty	2017

Why is Conservation Important for Selectboard Members?

- Land is a finite resource, and repairing natural resource damage after a poorly informed decision is always more expensive than getting it right the first time.
- Protecting and enhancing natural resources is a long-view economic development and quality of life strategy.
- Conservationists have found that the best tool to support conservation is to identify a secondary uses for conserved land: such as agriculture, water quality protection, and (especially) outdoor recreation.
- Scenic communities with recreational amenities add to quality of life and overall desirability of real estate.
- Conserved spaces for outdoor recreation can make Milton more appealing to high-wage employers and their employees.

- Open space preservation can also curb local tax expenditures, because alternative residential development tends to cost municipalities more than it pays in taxes.
- Outdoor recreation and open space preservation also translates into tourist dollars. For instance, since installing trail registers at Eagle Mountain, the Commission has learned that 29 visitors signed in between 10/22 and 11/5, 19 of which were from outside Milton. See attachment *Economic Benefits of the Barre Town Forest* for more information.
- Tourists support existing business and often seek the kinds of commercial amenities that the Improvements Committee recently identified retail "gaps", such as: fine dining restaurants, hotels, sporting goods stores, boutiques, book stores, and coffee shops. If tourist spending creates a consumer base that helps make new businesses viable, it will also mean that local businesses can begin to capture local retail dollars that are currently being driven elsewhere.

Recent Conservation Accomplishments

- Recruitment of Two Members
- Webpage Update
- Awarded Association of Vermont Conservation Commissions Grant ($600)
    - This will fund 80% of the Bove Connector Trail design work for ¼-mile of the multi-use path called for by the Management Plan.
- Trail Registers
    - DPW installed trail registers at Eagle Mountain and the Town Forest to enable better visitation tracking and to build volunteer list. These registers were built with volunteer labor by John Gifford.
- Site Visits:
    - Town Forest
    - Hinesburg Town Forest
    - Eagle Mountain
    - Westford Bog in the Town Forest
- Programming & Outreach:
    - Winterfest Guided Snowshoe - February
    - Screening of *Trashed* (a movie on waste management) - March
    - April Stools Day Cleanup at Sandbar State Park – April
    - GreenUp Day Table - May
    - Guided Town Forest Hike by Pease - June
    - Guided Paddle of Arrowhead Lake by DiCesare - June
- Trail Mapping Underway for Eagle Mountain & Town Forest
    - See attached Eagle Mountain Map in draft status.
- Members Attended the Following Professional Development Activities:
    - Association of Vermont Conservation Commissions Summit
    - Town Forest Summit
    - Agency of Natural Resource's Municipal Government Day
- Guest Speakers at Conservation Commission Meetings Included:
    - VT Dept. of Environmental Conservation Regional Watershed Manager
    - VT Dept. of Environmental Conservation Wetlands Specialist
    - Winooski Valley Conservation District Executive Director
    - Lake Champlain Land Trust Executive Director

Challenges

- Working with the Town of Westford on the Bove property portion of the Town Forest.
- Working with Lake Champlain Land Trust to develop a kiosk display, trail signage and maps.
- Bringing two new commission members up to speed and realize the additional contributions they will provide so that we may be a more effective commission.
- Completing tasks that implicate Public Works Resources.

Upcoming Activities

- Application for State of Vermont Recreational Trails Grant Application to fund the Bove Connector Trail Improvements for Selectboard Approval
- Possible Amendments to the Town Forest Management Plan for Selectboard consideration in

the spring or summer.

- Strategic Planning for 2015.
- Possible Volunteer Project(s)

Funding

- The FY14 & FY 15 Planning Department's Budgets included a $600 line for the Conservation Commission.

FY15 Budget Expenses

AVCC Membership	$50
VYCC Bridge Construction	$1439*
*Required budget adjustment	
Total	**$1489**

FY14 Budget Expenses

AVCC Membership	$50
Arbor Day Foundation Membership	$15
AVCC Summit	$20
Timber & Stone LLC Trail Design	$150
Total	**$235**

CIP Programming 2015-2020 (p. 23)

- The next CIP to go before the Selectboard will account for the shifting opportunities and constraints at the Town Forest.
- The current language states the following.

Project #461-013-P
Town Forest Improvements Total Cost: $201,700 FY 2016–FY 2019 (FY16: $10,000; FY17: $45,000; FY18:$10,000; FY19:$136,700) ½ Penny for Parks/Grants

In accordance with the Town Forest & Bove Property Management Plan approved by the Selectboard in 2011, the following improvements are proposed for these properties (each phase's year of construction has been moved back one year from the recommended year of construction due to funding constraints): Phase I -Wooden Bridges (FY15) was completed in FY14, Phase II –Internal Loop Trail, Primitive Camping &Signs ($10,000 each FY15 and FY16 and $35,000 FY17), and Phase III – Boardwalks & Observation Decks, Trails & Signs (FY 19). Construction years for the remaining two phases are FY15, FY17, and FY19; the other years are to set aside funding only. These improvements are described in more detail in the Management Plan and the Bove Property: Natural Resource Assessment & Land Use Planning Report done by Lamoureux & Dickinson in 2009. Improvements of parking and access and the addition of trails and signage at both the Bove Property and the Town Forest are recommendations in the Milton 20-Year Recreation Master Plan (2007-2027). These recommendations are incorporated into the 2013 Comprehensive Plan by reference. This is subject to identification of a grant and/or funding from a recreation tax (½ Penny for Parks).

Photo: Jerry Monkman/EcoPhotography.com

Economic Benefits of the Barre Town Forest Barre Town, Vermont

A former quarry property in Barre Town, Vermont—already a regional destination for mountain biking and cross-country skiing—is now a new, 355-acre town-owned forest. The Trust for Public Land worked with the Town of Barre, the nonprofit Millstone Trails Association (MTA), Vermont Land Trust, and local community members to permanently protect this property as the Barre Town Forest. A town forest for Barre helps connect local citizens to the natural landscape by expanding recreational opportunities, conserving a variety of natural and historical features, and strengthening the local economy in one of Vermont's most economically challenged areas.

An analysis conducted by the Gund Institute at the University of Vermont concluded that the creation of the Barre Town Forest will yield positive economic returns to the town and central Vermont region.

Barre Town Forest Sustains Outdoor Recreation Opportunities

Conserving Barre Town Forest sustains and enhances existing outdoor recreational features.

- The property contains 20 miles of Millstone Trails, a 70-mile trail network, which travels across rolling forested hills. In 2009, the Boston Globe ranked the Millstone Trails as one of the top ten mountain biking destinations in New England.

- In winter, the trails are groomed for cross-country skiing and snowshoeing. The trail network connects to the Cross-Vermont Trail, a multi-use path that will ultimately span the width of Vermont.

- The trail network also connects to the Barre School Forest and adjacent Barre Town Middle & Elementary School, providing recreational opportunities to more than 900 students.

An estimated 7,150 visitors from outside the local community visited the Millstone Trail Network (and

future Barre Town Forest) in 2011. Non-local visitation is conservatively estimated to grow 10 percent annually (compared to nearby Kingdom Trails in East Burke, Vermont with an annual growth rate of 18 percent since 2004), or to increase to 10,500 visitors by 2015.

Barre Town Forest will Grow the Local Economy

Tourists visiting Barre Town Forest and the Millstone Trail Network to bike or ski spend money on local goods and services (e.g., food and lodging). According to a 2012 study by the Gund Institute at University of Vermont, approximately **$481,000** was spent by mountain bike and winter use visitors to the Millstone Trail Network in 2011. With a conservative annual growth rate of 10 percent in the number of visitors and the protection and maintenance of the trail system, visitor spending could reach **$640,000** by 2015.

Barre Town Forest will Create Jobs

Nearly 74 percent of visitor spending could be captured in the local economy, creating local jobs. Visitor spending is projected to bring $269,000 as labor income, and generate **20 jobs** by 2015 through an increase in visitation of 10 percent. The restaurant and lodging sectors alone are expected to gain 13 additional jobs. Within 2 months of the creation of Barre Town Forest, a new bike shop opened up nearby.

Barre Town Forest will Generate Timber Revenue

Barre Town Forest has medium-to-high value timber and sustainable timber management can generate a steady flow of revenues for the Town. The current timber value is $143,000. A full time job can be created as a result of sustainable timber management.

Barre Town Forest helps to Curb Local Tax Expenditures

Protecting open space saves local governments money. Residential development imposes costs on communities in the form of increased demand for schools, roads, and other community services—costs that usually exceed related tax revenue. The national median across 151 communities over 25 years is that for every $1 paid in local taxes, working lands and open space require $0.35 in services compared to $1.16 in services for the average home.[1] In nearby Cambridge, Vermont a 2006 study found that for every $1 in revenues residential development required $1.25 in municipal services, while town-owned land (like a town forest) required $0.92 in municipal services.[2]

Source: Posner, Steve, and Marta Ceroni. Potential Economic Impact of Outdoor Recreation in the Barre Town Forest, Vermont. Gund Institute for Ecological Economics, University of Vermont. Burlington, Vermont. Prepared for The Trust

Every $1 invested by Barre Town

will return $22 by 2015

Barre Town contributed $100,000, and the State invested $310,000 through the Vermont Housing and Conservation Board towards the acquisition cost of $1.3 million to create the Town Forest. The property was going to be sold on the open market, thus threatening the entire trail network, causing a loss of the current 7,000 annual visitors and their spending of $480,000. With the creation of the Barre Town Forest, visitorship is expected to increase to 10,500, and their spending to $640,000, by 2015. From 2012

[1] American Farmland Trust. 2010. *Cost of Community Services Fact Sheet.* Farmland Information Center, Northampton, Massachusetts

[2] Town of Cambridge Planning Commission. *Cost of Community Services Study For Cambridge, Vermont.* Prepared by Lamoille County Planning Commission. March, 2006

For additional information contact Kate Wanner
The Trust for Public Land,
3 Shipman Place
Montpelier, VT 05602
802-223-1373
kate.wanner@tpl.org

Eagle Mountain Permitted Uses

This property is stewarded by the Milton Conservation Commission according to the Town's Management Plan and in conformance with the Lake Champlain Land Trust conservation easement. The two main goals are: preserving the ecological values and enhancing the following low-impact recreational opportunities:

- **Hiking**
- **Bird Watching**
- **Cross Country Skiing**
  The Henry Rd. hayfields provide great unmarked terrain.
- **Snowshoeing**
- **Hunting**
  Licensed, in season, and responsibly

What to Know Before Starting Out

- ✓ **Respect the permitted uses.**
- ✓ **Take out what you bring in.**
- ✓ **Pets must remain fully under control and shall not disturb natural communities or the experience of other users.**
- ✓ **Respect neighbors and private property.**
- ✓ **The cliffs and ledges throughout the area host sensitive habitat, please remain on trails. We all need a little space to grow.**

- ✓ ***Speak up to ensure that future generations may also enjoy this land.***

DRAFT

Eagle Mountain by the Seasons

Download the Eagle Mountain interpretive audio Podcast at www.LCLT.org.

◆ **Spring**
Slopes and ledges burst with spring wildflowers and many migratory birds return; is that your phone . . . or a real tweet?!

◆ **Summer**
Enjoy the long daylight hours hiking through the shade of the forest; do you feel a breeze from the lake?

◆ **Fall**
Leaf peepers can watch the forest burst into color; breathe in . . . does is smell like autumn?

◆ **Winter**
Many of the trails now offer panoramic views of the surrounding terrain; can you identify any animal tracks in the snow?

Directions

Online Mapping: Type "Henry Road, Milton, VT" as your destination and drive to the terminus.

Driving Directions: From US Route 7 in Milton, go west on Lake Road. Turn left (south) onto Everest Road. To remain on Everest, turn right (west) at the next intersection. Turn right (north) onto Bebe Hill Road and left (west) onto Henry Rd.

Your Experience Matters

If you have any questions, ideas for improvement, would like to get involved, or would like to report a concerning incident, please let us know; your experience matters.

Town of Milton Conservation Commission
43 Bombardier Road, Milton, VT, 05468.
802.893.1186. To learn more about the Town of Milton or the CC visit www.miltonvt.org.

Lake Champlain Land Trust
1 Main Street, Suite 205, Burlington VT 05401.
802.362.4150. To learn more about the Lake Champlain Land Trust visit www.LCLT.org.

Eagle Mountain Natural Area

DRAFT

Guide ◆ History ◆ Map

View of Lake Champlain from Hoyt Lookout

Overview

This 226-acre natural area has 2.5 miles of trails and hosts wildlife habitat of statewide significance overlooking Lake Champlain, the sixth largest freshwater lake in the United States. With an elevation of 578 feet, Eagle Mountain is a prominent feature of Milton's shoreline and Hoyt Lookout provides outstanding year-round views of Lake Champlain, the Champlain Islands, and the Adirondacks beyond.

History

Over the last century, the property has been used for farming, recreation, logging, and sugaring. Flat areas on the eastern side were used as orchards, hayfields and pasture, while the cliffs and ledges on the western side were predominantly used for logging and sugaring.

In 1995, the Lake Champlain Land Trust (LCLT) acquired the southern half of Eagle Mountain as a donation from long-time Milton residents John and Peggy Hoyt. LCLT later purchased the northern portion thanks to numerous funding sources and donated both parcels to the Town in 1998. LCLT permanently conserves the land for generations to come by retaining a conservation easement on the land.

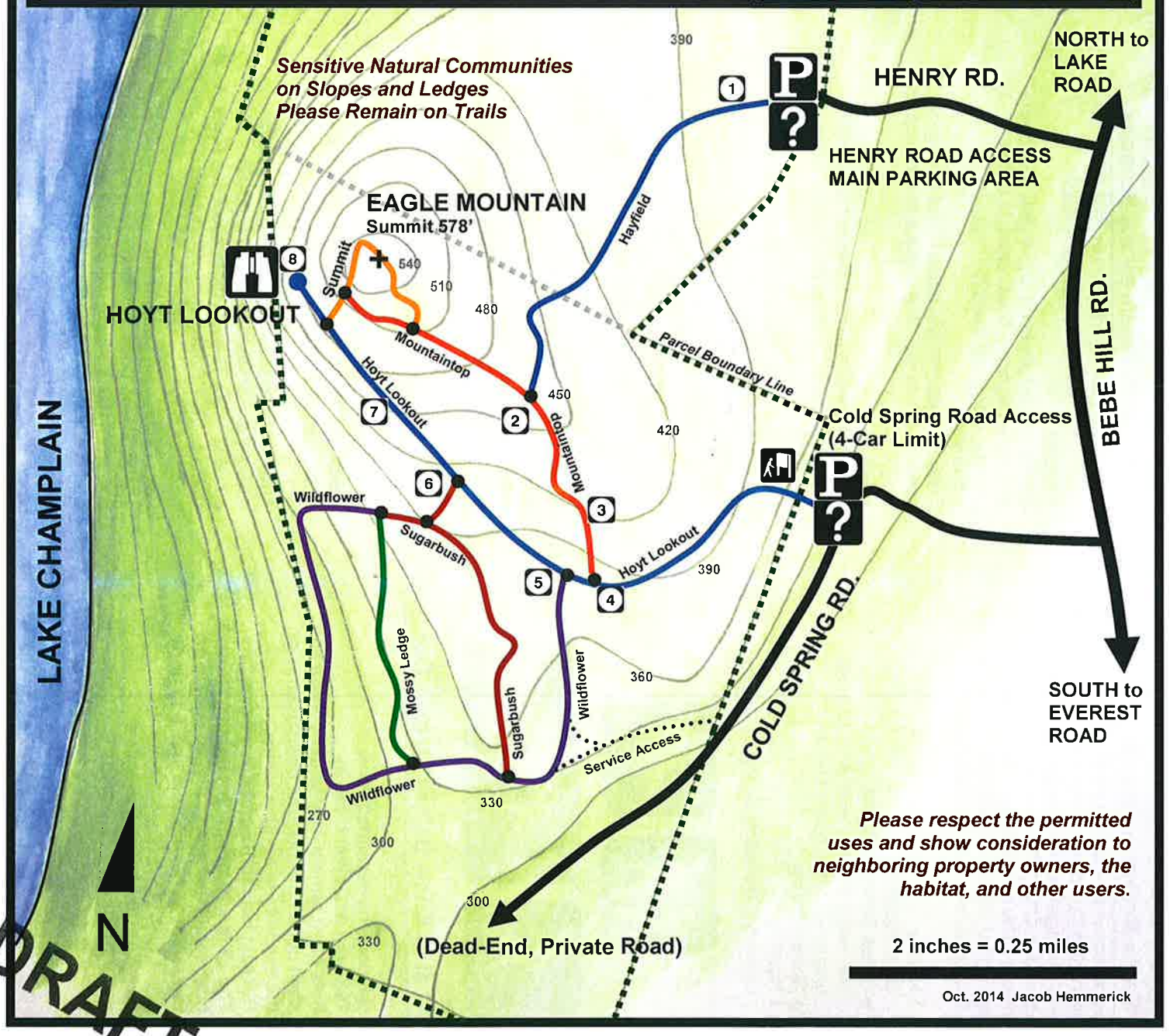
EAGLE MOUNTAIN NATURAL AREA

Town of Milton, Vermont
Recreational Trail Map

DRAFT

Trail Markings	Trail Name	Length
BLUE	Hayfield Trail (Main Parking & Henry Rd. Access)	.34 miles
BLUE	Hoyt Lookout Trail (Cold Springs Rd. Access)	.57 miles
ORANGE	Mountaintop Trail	.24 miles
YELLOW	Summit Trail (winter views only)	.16 miles
PURPLE	Wildflower Way	.61 miles
RED	Sugarbush Trail & Link	.30 miles
GREEN	Mossy Ledge Trail	.21 miles

INTERPRETIVE PODCAST WALK : STOPS 1 to 8 : Download at www.lclt.org



Please respect the permitted uses and show consideration to neighboring property owners, the habitat, and other users.

2 inches = 0.25 miles

Oct. 2014 Jacob Hemmerick

DRAFT

Memorandum

To: Selectboard

From: Brian Palaia

Date: 11/17/2014

Re: **Review of Zoning Enforcement Policy**

The Town has a policy that addresses the procedure for the Zoning Administrator to follow for zoning violations and enforcement procedures. After discussing amendments to the Town's zoning ordinances, staff felt this would be a good time to review the Town's policy regarding zoning violation enforcement.

POLICY 98-11-00revised

TO: Select Board Members

CC: Town Manager, Town Treasurer, Town Engineer, Town Attorney, Zoning Administrator

From: Katherine Sonnick, Planning Director

Re: Policy Memorandum #98-11-00 revised- Zoning Violation Enforcement Policy

Date: August 7, 2012

EFFECTIVE DATE- IMMEDIATELY

PURPOSE: This policy addresses the procedure for the Zoning Administrator to follow for zoning violations and enforcement procedures.

POLICY: The Zoning Administrator is required by state law to enforce all violations of the Town of Milton Zoning and Subdivision Regulations.

PROCEDURE: The following procedure shall be followed by the Zoning Administrator for all zoning enforcement.

1. Discover the Violation

The Zoning Administrator becomes aware of zoning violations usually by one of the following ways:

a.) Direct observation-the Zoning Administrator becomes aware of a violation when he or she notices some building or development that is not permitted.

b.) Complaints from a neighbor or other person either in writing by filling out a complaint form, or by providing information via Request Partner, the Town's online request software. Persons making complaints in person or via telephone will be asked to submit a complaint form.

c.) Site visits to a property where the Zoning Administrator might discover a violation when doing an inspection for an issued Zoning Permit.

d.) Notification by landowner or purchaser of property. This usually occurs when a title search is underway, and it is determined that there are conditions existing on the property that are not covered by a valid zoning permit.

2. Investigation, Confirmation of a Violation and Voluntary Compliance

When the Zoning Administrator discovers a violation, he shall conduct a site visit to verify the alleged zoning violation. When the Zoning Administrator goes into the field, he will keep a record of all violations.

When a property owner is unwilling to cooperate in the investigation of an alleged zoning violation, and when probable cause has been determined that there is a violation, a search warrant may be necessary. If a search warrant becomes necessary, the Zoning Administrator shall inform the Planning Director, the Town Manager and the Town Attorney before proceeding. All violations will be noted in the master list of zoning violations, which shall be kept by date of violation letter.

Within one business day of verification of the alleged violation, the Zoning Administrator shall make reasonable effort to contact the property owner by telephone to inform them of the alleged violation.

Within two business days of verification of an alleged violation, the Zoning Administrator shall issue a letter to the landowner requesting voluntary compliance. The letter shall include:

a.) Description of the alleged violation with a reference to the particular section of the Zoning Regulations or Ordinances that are being violated.
b.) Identification of how to correct the violation.
c.) A request to reinspect the property to ensure that the violation has been corrected.

3. Violation Letter

If volunteer compliance is not achieved, the Zoning Administrator shall proceed with enforcement. The Zoning Administrator shall issue a formal violation letter to the landowner by certified letter (return receipt requested) and by first class mail identifying the alleged violation. This letter shall include the following:

a.) Description of the alleged violation with a reference to the particular section of the Zoning Regulations or Ordinances that are being violated.
b.) Notice to the violator that they have seven days to cure the violation before an action to enforce the violation.
c.) That each day that the violation continues shall constitute a separate violation.
d.) Identify the per day fine amount for the violation.
e.) That enforcement action may be brought by the Zoning Administrator without a seven-day notice when the offender repeats the same offense after the original seven-day notice period and within the succeeding twelve months.
f.) That the alleged violator has fifteen days to appeal a decision of the Zoning Administrator to the Development Review Board and how and with whom the appeal is to be filed.
g.) Identification of how to correct the violation.

4. Resolution of Violation

When a violator discusses and reaches an agreement with the Zoning Administrator to take care of the noted violation which extend beyond the 7 days noted in the violation letter, the Zoning Administrator shall keep a record of where the property is located, what has been agreed upon, and by what date the violation shall be cured.

5. Enforcement Action

If the violation has not been corrected within 7 days of the issuance of a notice of violation, the notice of violation shall be recorded in the land records. A notice of violation shall include:

a.) The date of the violation.
b.) The name(s) of the property owner(s).
c.) Tax map and parcel.
d.) The property address.
e.) The location in which the violation is recorded.
f.) The hours in which the violation can be seen.
g.) The deed reference of the violating property.
h.) A brief description of the violation and its location on the property.
i.) If the violation is being appealed, the date on which the appeal was filed.
j.) The date of recording.

If a zoning violation is later corrected, a notice of discharge shall be recorded in the land records. A notice of discharge shall include:

a.) The date of the violation.
b.) The name(s) of the property owner(s).
c.) Tax map and parcel.
d.) The property address.
e.) The deed reference of the violating property.
f.) A brief description of the former violation and its location on the property.
g.) The date of recording.

A list of violations shall be forwarded to the Select Board once per week. When a zoning violation is of a very serious nature is unresolved through administrative action it may be necessary to seek injunctive relief. Inorder to seek relief, the Zoning Administrator shall review the case with the Planning Director, the Town Manager and the Town Attorney prior to requesting the use of such relief from the Select Board. The Zoning Administrator shall then review the request with the Select Board.

The order to proceed with enforcement shall be based on the severity of the violation. Enforcement remedies are as follows:

a.) Environmental Court-Most zoning enforcement is brought to this court when a Town seeks to enjoin a property owner from continued violation and request that the court accesses a fine.

b.) Judicial Bureau- To use this court system the municipality must classify their ordinances as criminal or civil ordinance violation. The municipality then may issue tickets to the violators who may pay a waiver fee to the Bureau or may contest the ticket and request a hearing. The Bureau's officer will hear contested civil ordinance cases and may issue civil penalties and cease and desist orders.

Dated at Milton, Vermont this 15 day of October, 2012

MILTON SELECTBOARD

Louis H. Mossey III

Louis H. Mossey III, Chairperson

Darren Adams, Vice-Chairperson

John C. Gifford

John Gifford, Clerk

John Bartlett

ABSENT

Todd Shephard

Filed with the Milton Town Clerk's Office this 14th day of August, 2013

Attest:

Milton ~~Assistant~~ Town Clerk

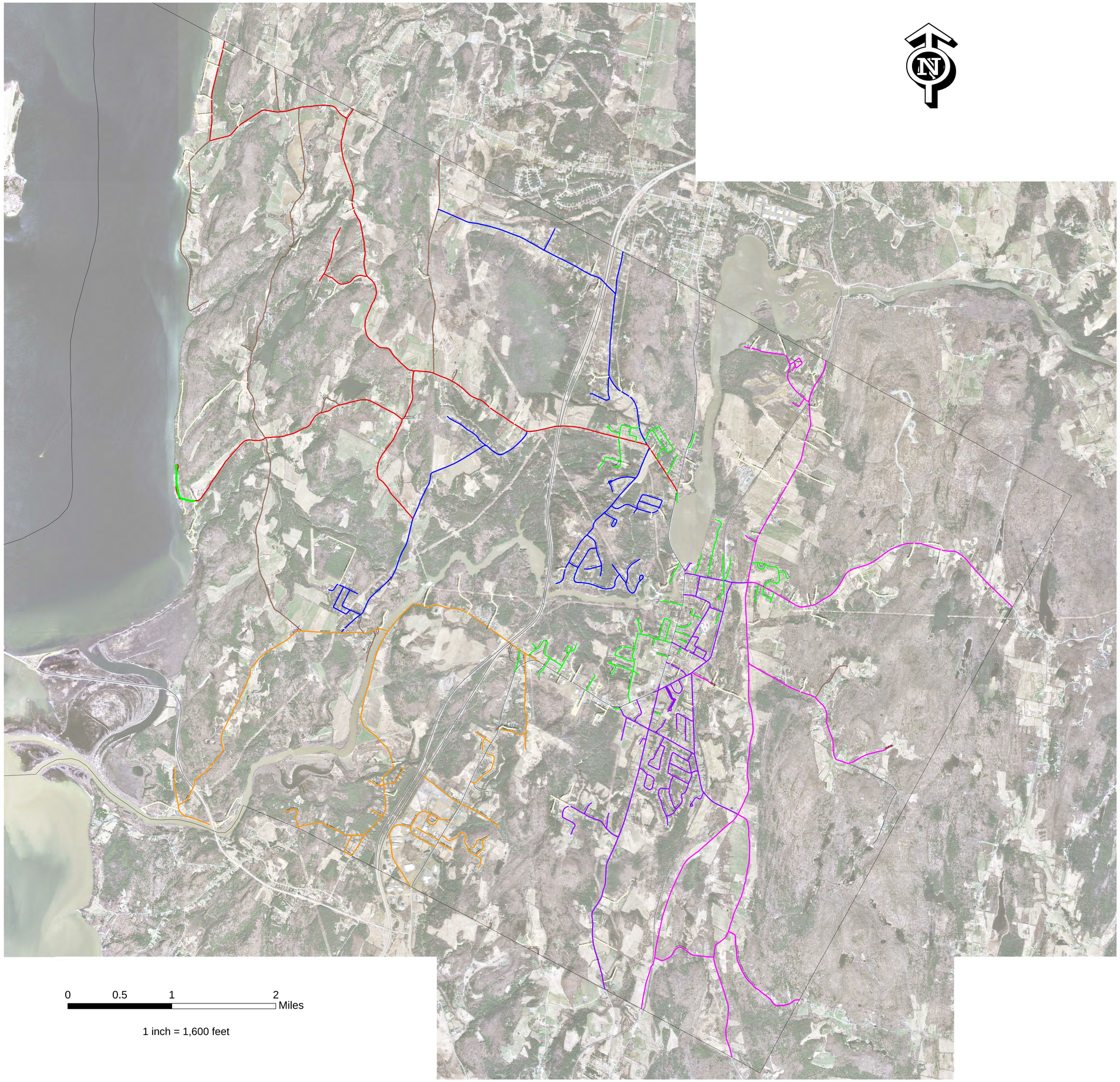
Winter Operations Plan Briefing and Proposed Amendments

Brian Palaia, Town Manager and Roger Hunt, Public Works Director

TOWN OF MILTON
PLOW ROUTES
WINTER 2014-15

PLOW ROUTES

- PRIVATE or CLASS 4
- STATE
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- RAILROAD



PRIMARY PLOW ROUTES

Route #1 - Tandem Axle Dump Truck
Westford Rd., North Rd., East Rd., Hardscrabble Rd., McMullen Rd., Duffy Rd., Rollin Irish Rd., Marr's Hollow Rd.

Route # 2 - Single Axle Dump Truck
Main St., Railroad St., Mackey St., Hobbs Rd., Middle Rd., Bombardier Rd., Centre Drive.

Route # 3 - Tandem Axle Dump Truck
Lake Rd., Everest Rd, Bebee Hill Rd., Cadreact Rd.

Route # 4 - Single Axle Dump Truck
Manley Rd., Murray Ave., Sanderson Rd., Poor Farm Rd., Milton Falls, Overlake

Route # 5 - Tandem Axle Dump Truck
West Milton Road, Bear Trap Road, Lamoille Terrace

Route #6 -
Mid-Sized Dump Truck, side streets, developments and hot spots (hills and high hazard intersections)

Route #7
Pick-up trucks, cul-de-sacs, narrow dead end roads

Route #8
Dirt Roads, Tandem & Single Axle Dump Trucks

CUL-DE-SACS, BUS TURNAROUNDS, DEAD END ROADS, HOT SPOTS

CUL-DE-SACS
Hidden Meadows
Adams Park
Quarry Lane
Hunting Ridge
Winter Lane
Kingsbury Road
Moss End
Emile Drive
Beaver Brook Road
Maplewood Avenue
Riverside Drive
Rebecca Lander Drive
Village Meadow
Timothy Court
Lamoille Terrace
Kim Lane
Leena Court
Edgewater Terrace
Long Pond Drive
Jonzetta Court
Howard Drive
Smith Road
Sawyer Avenue
Streeter Brook
Delma Drive
Sonya Road
Quail Hollow
Thrush Drive
Milton Falls Court
Waterwheel Way
Sheldon Road
Poor Farm Road, (end)
Jackson Lane
Valley View Drive
Raspberry Court
Lacasse Drive
Pine Harbor Road
Country Lane
Chrisemily Lane
Kendra Drive

BUS TURNAROUNDS
Everest Road
Kim Lane
Allen Brook Drive
Racine Road
Rowley Road
Hibbard Road
Manley Road
Ritchie Avenue
Cobble Hill Road
Cooper Road
Bus Turn Around
Westford Road
Irish Road
East Road
Hardscrabble Road
Reynolds Road
Hunting Ridge

DEAD END ROADS
Turner Ave
Woods Court
Moss End
Erling Drive
Sawmill Road
Marque Road
Dixon Road
Bezio Road
Henry Road
End of Everest Road
Costello Road
Howard Street
Kilburn Rd
Clapper Road
Morgan Road

HILLS
Westford Road
Hardscrabble Road
East Road Trestle
Cooper Road
Hunting Ridge
Milton Falls
West Milton Road
Bear Trap Road
Lamoille Terrace
Ellison Street
Edwards Street
Allen Drive

INTERSECTIONS
Main Street & US7
Main St & Railroad
Duffy Hill & Mars Hollow
Poor Farm & Lake
Lake Rd & US7
Main & North Road
Railroad & Middle
Bombardier & Hobbs

DIRT ROADS
Hibbard Road
Dixon Road
Beebe Hill Road
Henry Road
Cadreact Road
Bezio Road
John Rowley Road
Bullock Road
Kingsbury Crossing (end)
Reynolds Road
Hardscrabble Road (end)
Kienle Road (end)
Marcoux Road
Eagle Mountain Harbor Rd
I-89 Emergency Gate Access

0 0.5 1 2 Miles

1 inch = 1,600 feet

TOWN OF MILTON, VERMONT 05468
Department of Public Works:
Admin, Buildings and Grounds, Highway Operations, Water and Wastewater

43 BOMBARDIER ROAD MILTON, VERMONT 05468
TELEPHONE: 802-893-6030 • FAX: 893-1005 • www.miltonvt.org

TOWN OF MILTON

PUBLIC WORKS

WINTER OPERATIONS PLAN

This plan addresses the wintertime Public Works operations for ice and snow control on Town roads and streets. It also identifies essential community services provided by the Public Works Department for winter water and sewer emergencies and discusses wintertime coordination between Town Departments.

Approved by the Selectboard on **November 17, 2014**.

Darren Adams	John Gifford, Vice Chairperson
John Bartlett, Clerk	Stuart King
Brenda Steady	

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I. General

The Town of Milton Public Works Department hereinafter referred to as Public Works has the responsibility of maintaining essential services on approximately 99 miles of accepted Town roadways, 88 miles of paved, 11 miles of gravel, as well as over 40 miles of water line, over 15 miles of sewer line, and maintenance of public buildings, cemeteries, forests and parks. A significant portion of the Department's overall efforts are directed towards maintaining the essential transportation and utility services during the extended period of high precipitation, low temperatures and heavy winds, which together characterize the Vermont Winter.

The Public Works Director has direct responsibility for the management of the Department, acting under the general policy direction of the Town Manager and authority of the Selectboard. The Public Works Director oversees two (2) divisions within Public Works: Public Works Operations and Water/Wastewater. The day-to-day operations of the two divisions are supervised and coordinated by the working supervisors.

II. Resources Available to the Public Works Department to Assist in the Planning and Execution of Winter Operations

In order to provide timely winter street clearing services and to gauge the level of activity required prior to, during and following winter storms, the Town utilizes the following:

A. Weather forecasts are provided by the National Weather Service located at the Burlington International Airport (862-2475). In addition, the weather forecasts are broadcast continually. Receivers monitor this forecast at the Town Garage and the Police Department.

B. Local radio and television stations provide weather forecasts, including the dedicated Weather Channel on cable television.

C. National Weather Service forecasts and current conditions for Burlington International Airport are available via Internet at http:\\www.wunderground.com

D. Road and weather conditions throughout the State are monitored by the State Transportation Agency in Montpelier. This information can be obtained by calling 828-2648. Two State Highway radio frequencies, 159.180 and 159.195, also can be monitored on the scanner for current information.

E. Assistance is available on local road conditions from the Milton Police Department. During off-duty Public Works hours (3:30 PM to 7:00 AM), the Public Works Department utilizes information provided by police officers on duty/patrol. To provide the best possible response in the shortest time, it is important that the following information be provided by the Police Department and conveyed to Public Works at the time contact is made:

1. Is the problem Town-wide, restricted to one area of Town or at a specific location? The problem location needs to be defined as accurately as possible.

2. What is the specific nature of the problem? Snow - How much is on the road(s) and how much is falling? Is the problem on paved or gravel roads or both?

   Ice - How severe are the conditions and is it widespread or site specific? Is the problem on paved or gravel roads or both?

   Miscellaneous - explain what the problem is in as much detail as possible.

   Debris - What is it (i.e., tree in road)? What is its size? Is it blocking all traffic or only one lane, etc.?

   Washouts - How large an area is affected (size) and is the washout in progress or has it subsided?

   Emergency Access – Can Police, Fire or Rescue get to any location (because of specific road conditions or problems)?

3. What is being done by the Police Department pending arrival of Public Works employees?
   a. Will the Officer remain on site?
   b. Will barricades be put up?
   c. Will road(s) be closed?
   d. Will Fire/Rescue be contacted?
   e. Will the media be contacted?

4. A decision on what effort is needed to correct the problem will be made by the Public Works Supervisor and/or Public Works Director. However, any input from the police officer on site may assist Public Works in the timely arrival of help.

5. Once contact is made via telephone or alert notification list, communication will be maintained until Public Works has corrected the problem. Public Works will notify the Police Department when all work is completed.

III. Operations on Town Highways

A. General – During the winter period extending generally from the 15th of November through the 15th of April, the principal efforts of Public Works are directed towards control of snow and ice on Town highways. To accomplish the objectives and policies of the Town of Milton, operating procedures have been implemented. The operating procedures take place over four distinct time periods, including (1) Pre-Winter Preparation, Training and Orientation, (2) Winter Storm Operations, (3) Continuing Winter Operations During Non-Storm Periods and (4) Post-Winter Follow-up.

B. Pre-Winter Preparation, Training and Orientation

1. Update the operation plan as necessary to keep the plan current. Let the media, Police Department, Fire Department, School Department and other officials know about the plan. Conduct coordination meetings with all stakeholders.

2. Know the plowing and spreading routes, the employees of the Public Works Department will complete the following:

   a. Make trial runs before winter to familiarize themselves with the routes, road conditions, obstacles and problem areas. Remember that road conditions change from year to year and obstacles may be present now that were not there before. Plan fall meetings to familiarize the road crew with their winter duties and review with all drivers, all routes in case another crew member must take over the route.

   b. During trial runs, pinpoint drains and waterways that must be opened after every storm. Mark other structures, including fire hydrants, guide rails, drop inlets, catch basins and curbing ends that may be hidden from the driver(s). Mark areas that have been consistent sources of complaints in the past.

   c. Plan plowing routes to bring trucks back to storage facilities when they are almost empty of deicing material. This saves time and fuel.

   d. Review the new development plowing plan with the full crew in late fall. Identify which new road(s) will be accepted during the winter and plowed by the Town.

3. Effective Radio/TV Communication

   a. Review the alert notification roster and radio calls with all employees.

   b. Check all radio equipment and ensure that working spares are stockpiled at the garage.

   c. Review the storm warning system with all affected employees.

4. Equipment - Operation and Maintenance

   a. The Public Works Supervisor is responsible for cross-training of operators in the use of all equipment. Equipment will not be operated by inexperienced personnel without supervision.

   b. Prior to the onset of winter, the mechanic, Public Works Supervisor and all operators will perform a complete inspection of all winter equipment to include at a minimum, the following:

      - Vermont State Inspection

      - A check of all wing and plow hydraulic systems to ensure they are operating properly.

      - A check on the condition of moldboards, cutting edges.

      - Operation of snow plow hoists, towers, sanders and controls to include calibration tests for sand and/or salt spreading and operational checks of the computer-controlled material feed systems.

      - Brake checks, air and hydraulic hose checks.

      - All vehicle lighting, including wiring and sockets on headlights, tail lights, stop lights and turn signals. (Warning lights must be visible from all sides, whether bodies are raised or lowered.)

      - Replacement of side or end-body reflective tape as necessary.

5. The mechanic will order and keep on hand an adequate emergency supply of critical equipment, such as tires, spreader repair parts, hydraulic fluid and fittings, tire chains, plow parts, lights.

6. The Public Works Supervisor and mechanic will insure that operators perform preventive maintenance on a daily basis to include:

   a. Inspection of tires for wear
   b. Checks on brakes and air systems
   c. Checks of hydraulic hoses for leaks
   d. Visible structural checks of frames and the pins holding the bed to the frame
   e. All electrical equipment, especially lights, wiring and sockets
   f. Wipers
   g. Plow blade wear
   h. Safety equipment checks

7. Materials

   a. The Public Works Supervisor is responsible for ensuring an adequate supply of sand is stockpiled or available prior to the start of winter.

   b. The Public Works Supervisor is responsible for maintaining an adequate supply of gravel, peastone, salt, magnesium and calcium chloride throughout the winter.

8. Training will be conducted annually on the following subjects in support of winter operations:

   a. The winter snow plan
   b. How salt works
   c. How magnesium chloride works
   d. How and when to use salt, sand, and chemical de-icers
   e. Application rates/salt reduction
   f. Special storm situations
   g. Special deicing problems
   h. Winter safety considerations
   i. Police/Public Works communications
   j. Parking/towing ordinance
   k. Public relations/complaint procedure
   l. Other subjects as appropriate

C. Winter Storm Operations

1. General Philosophy
   The Town of Milton does not have a bare roads policy. The Town follows a Safe Roads at Safe Speeds policy. This means that during a storm, roads are plowed, sanded and salted to keep them open for travel, though road surfaces may be snow covered at times during the storm. Roads will be

returned to bare pavement only when the storm is over. Depending on the severity of the storm, this may take several days, especially on low volume roads and in developments.

Like towns all over Vermont, Milton has traditionally used a deicing approach to winter road maintenance removing or melting snow and ice as they accumulate or shortly thereafter. Bare roads can be achieved when salt is used at its optimum deicing temperature of 18° Fahrenheit and above. Below 18° a mixture of sand and salt is used and the roads will not be bare. The Town's snow and ice control operations are limited by the resources (budget, personnel, equipment and materials) available for winter maintenance operations. Limited resources do impact the level of service and ability to provide bare roads.

2. Determination of Operations

Using the resources identified under Section II, professional experience and judgment, the Public Works Supervisor or his/her designee will determine the appropriate level and timing of snow and ice control to be performed by the Public Works Department. The Public Works Supervisor may consult with the Public Works Director. The Public Works Supervisor or his designee will contact employees in the Public Works Department using the alert notification list.

Although significant improvements have been made in weather forecasting, accurate predictions of the specific effect of winter conditions on the roads in the Town of Milton are not possible. An overall plan has been developed to provide for clearing of the roads. This plan is generally followed, however, each storm event is unique and deviations from the plan occur. Decisions must be made using individual judgment based upon a current assessment of the situation. Following every major storm event, review of the methods, materials, the equipment used, and the manpower effect, as well as complaints received will be done by the Public Works Supervisor. These reviews will provide the basis for adjustments in managing future winter storm operations.

3. Control Center

Upon notification, employees at the Highway Garage on Ice House Road complete a pre-startup check of equipment and proceed to perform the necessary snow and/or ice clearing operations. The Control Center is the Highway Garage at 893-1851, (primary) or the Public Works Office at 893-6030 or other designated location. Although the Public Works Supervisor or his/her designee may frequently leave the Control Center to evaluate conditions and assist in the operations, he/she can be reached via cell phone at 578-1530.

4. Equipment

To support the operation, the Public Works Department has equipment available as noted in Appendix A.

Supplemental Equipment

In an emergency situation where Town equipment is out of service for repair or the situation is beyond the ability of the Town to handle in house, supplemental equipment and operators may be rented/hired from area contractors. A list of potential contractors is indicated in Appendix D. Also, assistance may be secured from neighboring communities, although help in this area is unlikely if the storm event affects neighboring communities as well as Milton. Major winter disasters may require the assistance of the Vermont National Guard, if an emergency declaration is issued by the Governor.

5. Materials

Ice and snow clearing materials are stockpiled near the Highway Garage yard located on Ice House Road for use during the winter season.

a. The Town procures sand during the fall of each year by getting quotes from suppliers with acceptable sand.

b. A minimum amount of salt is added to prevent the sand from freezing.

c. Approximately 400 tons of salt is maintained on-site in the end bay of the Town Garage. The salt bay is fully stocked prior to winter. The Town generally procures road salt from the following company at the Vermont Agency of Transportation bulk-rate pricing:

1. Cargill Salt Company
   c/o Barrett's Trucking
   16 Austin Drive
   Burlington, VT 05401
   863-13111311 or 1-800-243-7258

An alternative supply of minimal tonnage may be purchased in case the primary company cannot deliver salt in a timely manner during regional shortages. Alternative suppliers:

2. American Rock Salt Company, Inc.
   Dubois Middlesex Building
   Mark Assini
   585-243-9510 ext. 1404

3. Morton Salt (Montreal, Canada)

1-800-361-4767

d. There is a trend in the northeast to rely more on salt and less on sand for a number of environmental and budgetary reasons. Additional salt will work well on paved roads although some storms require a considerable application of sand on all roads (i.e. sleet and/or freezing rain).

6. Snow Plowing and Sanding/Salting Operations

a. Public Works has organized the snow clearing equipment into (88) major routes for routine operations. Magnesium Chloride additives are being tested this winter and will be further defined in a future update to the Winter Operations Plan". The plow routes are depicted on a map located in the Control Center. Each complete route for a single truck is approximately forty (40) lane miles in length and takes six to seven hours to complete, once a major snow event is over. Dirt roads have been assigned their own routes as they require different ice and snow removal treatments. The routes have been established to meet the following criteria:

Provide the highest priority coverage to the roads with the heaviest usage (the major arterial) and a history of the severest conditions and/or accidents. The highest priority roads for each designated route are the following arterial roads:

<u>Route #1 – Tandem Axle Dump Truck</u>

Westford Rd., North Rd., East Rd., Hardscrabble Rd., McMullen Rd., Duffy Rd., Rollin Irish Rd., Marr's Hollow Rd.

<u>Route # 2 – Single Axle Dump Truck</u>
Main St., Railroad St., Mackey St., Hobbs Rd., Middle Rd., Bombardier Rd., Centre Drive.

<u>Route # 3 – Tandem Axle Dump Truck</u>
Lake Rd., Everest Rd, Bebee Hill Rd., Cadreact Rd.

<u>Route # 4 – Single Axle Dump Truck</u>
Manley Rd., Murray Ave., Sanderson Rd., Poor Farm Rd., Milton Falls, Overlake

<u>Route # 5 – Tandem Axle Dump Truck</u>
West Milton Road, Bear Trap Road, Industrial Park

Route #6 (See Appendix B) – Medium Duty & 1-Ton Dump Truck
Lamoille Terrace, Haydenberry, Ellison, Upper Cherry Street; One-ton truck, side streets and hot spots (hills and high hazard intersections)

Route #7
Pick-up trucks, cul-de-sacs, narrow dead end roads

Route #8 – Single and/or Tandem Axle Dump Truck
Dirt Roads (See Appendix B)

In the event of an extreme storm event, equipment failure or operator absence, the Town Highway major arterial routes will be cleared first with the remaining usable equipment and available operators.

b. Maximize the cycle capability of each vehicle to prohibit unnecessary reload trips for materials at the Highway garage.

c. Plow routes are designed for mostly right-hand turns to avoid leaving windrows in intersections.

d. Assign an intermediate priority to collector streets with lesser traffic loads and reduced history of accidents. A collector street is one that is being used or will be used to carry a substantial volume of traffic from a minor street(s) to a major street(s) or community facility. This normally includes the principle entrance street to a large subdivision or group of subdivisions, and the principle circulation street(s) within such subdivisions. Examples are Cherry Street, School Street, Herrick Avenue, Haydenberry Drive, Woodcrest Circle, Barnum Street, and Red Clover Way.

e. Because of their location, adjacent to collector streets, many minor streets (not including dead-end streets and cul-de-sacs) will be cleared concurrently with collector streets or immediately following the collector streets. Examples are Stewart Lane, Hemlock Road, and Quail Hollow.

f. Dead-end streets follow in priority, although many may be cleared earlier in the process to meet the objectives of efficient cycling. Examples are the cul-de-sacs in the Milton Falls Court sub-division.

g. Cleaning cul-de-sacs is extremely time-consuming. Very often these areas will not be cleared until well after all other clearing operations are complete, after the storm event or the next day. Manpower is not available to clean cul-de-sacs during the storm event.

h. The Town will take over the maintenance of roads when they are accepted as Town highways after the warranty period. The Town reserves the right to plow short segments of development highways prior to the acceptance of that segment by the Town, when that segment is in the warranty period, and if this action produces an overall improvement in time management or efficiency of the plow route. (see Section VI for more details)

i. During the evening hours of a storm event between 9 p.m. and 1:00 a.m. typically no manpower, or a modified to reduced manpower schedule will be used, unless there is a continuous heavy snowfall or continuous icing.

7. Operating Flexibility

It is important to note that the approved plan, and the map located in the Control Center, are subject to change with each storm. Also, the time frame for clearing can vary markedly depending upon conditions and continuing effects of a storm. Other factors affecting the plan are:

- time of plowing
- school bus routes
- commuter traffic
- parked cars
- equipment breakdown
- assisting Fire, Rescue or Police Departments
- type, intensity and duration of the storm

a. In order to guide the Public Works Department in utilizing the best available techniques in snow and ice clearing operations, a set of guidelines (not requirements) is provided in Appendix F. Operator judgment and close control of materials are key elements in managing snow/ice clearing operations. Each operator is responsible to make decisions regarding the blend of materials and application rates to keep the roads as safe and passable as possible while concurrently minimizing costs. In order to maximize efficiency each operator shall maintain an application chart in trucks where material management devices are installed.

b. Operator and citizen safety is an important consideration during all snow/ice clearing operations and suggested safety practices are provided in Appendix G.

c. Police Department staff are reminded that Town snow removal operations generally will not start until one (1) hour after the initial call, because of the time factor in getting crews in, equipment checked and materials loaded. Also, with routes requiring 6 ½ to 7 hours to plow completely, notification has to occur before **2:00 a.m**. or it is likely that the major roads will not be open by 7:00 am.

8. Applicable Ordinance/Laws

During snow clearing operations, it is important that motor vehicles are not parked in "...such a manner as to create or constitute an impairment to traffic or to interfere with the removal of snow or ice, or the sanding or salting of public streets and highways or to delay or preclude the delivery of emergency services, police, fire and ambulance constitute a hazard contrary to the public health, safety and welfare...". Because of this, the Board of Selectmen adopted a Motor Vehicle and Traffic Regulation Ordinance in 1984 (see Section 6, f-k.)

Title 19, Section 1111, Vermont Statutes Annotated Permitted Use of the Right of Way makes it unlawful to "...develop, construct, re-grade or resurface any driveway, entrance or approach or build a fence or building, or deposit material of any kind within, or to in any way, affect the grade of a highway right of way, or obstruct a ditch, culvert or drainage course that drains a highway, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right of way, without a written permit from the Board of Selectmen of a Town, as the case may be".

Also, Title 19, Section 1105, states that "...A person other than a municipality acting with respect to highways under its jurisdiction who places or causes to be placed an obstruction or encroachment in a public highway or trail, so as to hinder or prevent public travel, or to injure or impede a person traveling on the highway or trail, shall be fined not more than $1,000.00 plus the actual costs of repairing the damage and a reasonable attorney's fee, to be recovered in a civil action in the name of the town or state. One or more items of logging or other equipment temporarily within the right-of-way of a trail shall not be actionable under this section if located in such a way as not to unreasonably impede passage. If the court finds that an action under this section was brought without substantial basis, the court may award a reasonable attorney's fee against the person bringing the action."

The purpose of these statutes is to protect the public. The practice of plowing snow from driveways across Town roads (perpendicular to the road) without removing the pile by plowing with the road creates a dangerous obstruction. Shoveling snow into the roadway will cause similar problems. Once frozen, the piles can cause vehicles to lose control and can also cause damage to the vehicles.

The Public Works Department will generally warn the responsible residents on the first occurrence. On subsequent violations, Public Works will notify the Police Department for appropriate action against motorists and residents who violate either the towing ordinance or obstruction statute.

Playing and building snow castles along the road edge in snow banks is extremely dangerous during snow removal operations. Public Works will destroy the castles and provide the resident with a notice concerning the action taken, why it was necessary and a warning against future.

9. Snow Removal on State Highways in the Town of Milton
Within the Town of Milton, the State maintained Highways are U.S. Route 2, U.S. Route 7, and Interstate 89.

Snow removal on these roads is the responsibility of the State of Vermont administered by the 5 Highway Garage located in Colchester. Questions or comments on these highways can be directed to the District Transportation Administrator, David Blackmore, at 655-1580 or email to David.Blackmore@state.vt.us .

D. Continuing Operations during Non-Storm Periods

After a storm event or during periods of lessened storm activity, a number of operations need to take place to insure readiness for subsequent winter operations.

1. Equipment needs to be inspected, using preventative maintenance techniques, and repaired if necessary. Special attention must be given to tires, brakes, and snow plows - including wings, shoes, bearings, augers and spinners.

2. Materials, especially salt, must be reordered to ensure an adequate stockpile on-site.

3. Plow routes must be driven to identify problems, especially illegal plowing by driveway contractors, problem mailboxes, and snow castles, etc. It is the responsibility of the route driver to identify these problems and report them to the Public Works Supervisor so that letters can be sent to correct the problem.

4. It is important to wing-back snow on road shoulders following each major snow storm and to clear critical areas to make room for future snow storage, especially at intersections. If the snow bank height becomes excessive, the top of banks will have to be cut down for proper visibility or future snow storage. If the snow is allowed to melt in place and refreeze, the result is a heavily compacted mass, which cannot be moved without considerable effort by snowplows. Therefore, winging-back is an on-going function that needs to be addressed as soon as storm subsides. The amount of stockpiled snow dictates that winging-back is needed.

5. The Town does not haul snow (in general). However, at specific locations, i.e. intersections, cul-de-sacs without storage space, school bus route, problem areas or sites of repeated accidents, the Town may selectively utilize the loader and dump trucks to haul snow from the site. The principle purpose of hauling is safety. The hauled snow shall be dumped at the old landfill site or at some other suitable and acceptable place as determined by the Public Works Supervisor.

6. It is important that roadway drains and catch basins be kept open to allow melting ice and snow to run off. A salt or solid calcium chloride application may be needed to free them of ice and snow.

7. Following a storm, generally within 5 business days, an investigation will be made of all storm related complaints received. The Public Works Supervisor or their designated representatives, Will complete the investigation. Their findings shall be made known to the complainant as soon as practicable. All such complaints will be handled through the Public Works service request tracking system.

E. Post Winter Follow Up

1. Review the winter snow clearing operations as soon as possible in the spring with all in-house personnel and outside groups involved, including but not limited to fire, rescue, police, schools, industry, the public and elected officials, to obtain input for improvement in the coming season.
2. Give all equipment a thorough maintenance check after the last snowstorm of the winter.

   a. Sandblast and paint all plows, blades and spreader assemblies as appropriate.

   b. Order new plow blades and other equipment as necessary.

   c. Oil and grease all moving parts before storing equipment.

3. Schedule summer construction for areas where road defects have resulted in problems during the winter, such as ice patches.

4. Identify new equipment needs for improving operations.

5. Provide the opportunity for employees to attend snow conferences and other events to broaden their understanding of snow clearing operations and to become aware of changes in equipment and technology.

IV. Winter Wastewater and Water Operations

A. Prior to the onset of winter, the Water/Wastewater Division will:

1. Check hydrants and valves to insure their operability
2. Flag all hydrants for winter locations
3. Inventory and order necessary emergency materials
4. Insure that used fire hydrants are drained prior to winter

B. Winter Operations

1. Following storms, the principal responsibility of the Water/Wastewater Division shall be to clear snow and ice from around essential (Schools, Public Buildings, Emergency Services) hydrants and to clear pedestrian access lanes to Water/Wastewater Buildings and pump stations, with help from the Public Works Department.

2. The Water/Wastewater Division provides primary backup to the Highway Division in the event of a prolonged winter storm event or lack of personnel due to illness, etc.

3. The Water/Wastewater Division has responsibility for the repair of broken and frozen water mains, within the overall limit of Town responsibility up to and including the service curb stop. The Town will assist in the thawing of frozen private service lines to the extent possible. However, assistance will be rendered only during normal working hours. Water & Wastewater Rate Schedule A outlines the process, rates and statement of services.

4. In the event of a power failure at the Wastewater Treatment Plant, River Street Pump Station, US7 Pump Station, Middle Road and Catamount Pump Stations the auxiliary generator will start automatically. Fuel tank levels will be maintained above half full.

5. In the event of a power failure at the Water Plant (McGrath Reservoir) the auxiliary generator will automatically start, supplying power to the Hydroneumatic system, and the Town base radio. The Telemetry Control

System will require manual resetting upon restoration of power. When full, the twin water tanks contain approximately three (3) days' worth of storage. The Maplewood Avenue Booster Pump Station has emergency power. In rare cases water conservation measures may be requested of all users per the Milton Water Ordinance, Section 3-B, 5-2.

6. When fire hydrants are used by the Fire Department during the winter, the Fire Department will notify the Police Department immediately following the fire and identify the used hydrants by number. The Police Department will immediately notify Public Works through the alert notification roster, so the hydrants can be drained before they freeze.

V. Coordination/Communication/Public Information

A. All communication from the public concerning conditions and problems should be directed during normal working hours (8:00 a.m. to 5:00 p.m.) to the Public Works Administration Office (893-6030) or Public Works Directors Office (893-6030). Emergency requests during non-working hours should be directed to the Police Department (893-2424) for relay to the Public Works Supervisor, Public Works Director, or staff at the Town Garage. The Town Garage phone system (893-1851) is intended for internal use only and not for direct communication between the public and the Division.

B. During winter storm events, the Town Garage maybe unmanned when the Highway Division personnel are out on the roads, or when the personnel rest requirements dictate that plow drivers go home to sleep and/or eat. During these low/no manning periods, there may be no one available at the Town Garage to answer the telephone. However, Town officials may still have the need to communicate with the Public Works Department regarding road conditions, snow clearing progress or other issues.

Town officials must use the existing Town staff chain of command in the event they need to communicate with the Public Works staff during a storm. This means contacting the Public Works Director (999-2228). If the Public Works Director is not available by telephone or radio, the Public Works Supervisor should be contacted directly at (578-1530).

C. Complaints or requests for service, when received, must be input into the service request database with the required information noted.

The complaints will be reviewed and investigated by the Public Works Department with corrective action taken as deemed appropriate.

D. Because of the volume of complaints specific to objects in the Town right-of-way and damage to property, the following Town policy has been established:

1. Title 19, Section 1111 prohibits encroachment of the Town right-of-way (ROW) without prior approval by the Selectboard. Objects in the ROW are placed there at the owner's risk and the Town assumes no responsibility for any damage to objects placed in violation of the statutes. Common items damaged are, but not limited to fences placed within the Town ROW, flower pots/beds, landscaping, trees, lawns, basketball hoops, etc.

2. To ensure mail delivery to all rural residents, the Town has provided a blanket authorization for mailboxes/posts to be located in the Towns ROW. The Town has information available to the public, upon request, with regard to Federal guidelines that control the specific location of the mailboxes/posts and may require the homeowner to move the box/post to a more suitable location. (See Appendix J)

3. Occasionally mailboxes are damaged by snow plowing operations due to poor visibility, the mailbox being buried in a snow bank or the weight/volume of the snow being plowed. The damage is not deliberate and in most cases unavoidable. While mailboxes have a blanket authorization to be located within the right of way, the responsibility to maintain, repair or replace mailboxes lies with the property owner. The Town will not repair or replace mailboxes/posts damaged by private contractors and homeowners during driveway clearing operations. If a mailbox that is properly installed and is in good repair is physically struck by the Town's plow truck, the Town will provide a generic USPS Post Office approved box at no cost to the property owner.

4. The Town will restore or replace objects located on private property outside the ROW that have been damaged as a result of its snow or ice clearing operations.

5. Recovery of damages will be pursued by the Town if Town equipment is damaged due to objects placed in the Town ROW.

E. When conditions are especially severe, the Public Works Supervisor, working in concert with the Public Works Director, may issue a special snow emergency statement advising the local media, radio station, industries and schools that conditions may adversely affect their operations. One or all of the following parties will be notified when this occurs:

Contact		Phone #
Milton Fire Department	Police Dispatcher	264-5555
Milton Rescue	Police Dispatcher	264-5555
Milton Town School System		893-5400

Milton School Bus Garage		893-1334
Newspapers:	Milton Independent	893-2028
	Burlington Free Press	863-3441
	St. Albans Messenger	524-9771
Radio Stations:	WJOY/WOKO (fax #862-0786)	658-1230
	WEZF (fax #655-0478)	655-0093
	WVMT/WXXX (fax #655-1329)	655-1620
	WIZN (fax #860-1818)	860-2440
Television Stations:	WCAX	652-6300
	WPTZ	655-5588

F. Public Access Sand Pile

The Town will make available a small quantity of winter sand, in a location accessible to Milton property owners/residents. This will normally be placed near the south boundary of the Town Garage property, on the right of Ice House Road. The location may change to meet operational needs, but will remain in a location accessible to the property owners/residents of Milton. In the event that the overall sand supply runs low, the Town may stop providing this material at the Public Works Director's discretion.

This sand is intended exclusively for individual use by private property owners/residents. Private property owners/residents are allowed to take sand from the pile, however they shall limit the amount they take up to one (1) five gallon bucket per storm event. Use by and/or for commercial properties, snow plowing businesses, or property managers is forbidden. These use restrictions will ensure availability to the most residents' possible.

Property owners/residents shall not be allowed direct access to the winter sand storage area behind the Town Garage at any time.

G. It is important that, as part of the communication/public information program, the following issues be communicated each year to the residents, at or near the beginning of the winter storm season:

1. Snow should not be blown/plowed or shoveled into the Town highways.

2. The nightly parking ban needs to be respected and cooperation is needed during other times of the day when storms are occurring and parked cars need to be moved.

3. Castles, forts, tunnels and other similar structures cannot be allowed in roadside snow banks. Appendix J is sample letters to residents regarding objects in the Town's ROW.

4. Mailboxes/posts need to be properly installed and lids closed when not in use. Appendix J contains instructions for placement of mailboxes.

5. Snowplows must be respected, given their width, weight and speed. Drivers often will attempt to crowd snowplows or homeowners will attempt to protect their shoveled drive by placing objects and/or standing at the entrance. Both practices invite disaster because of the lack of maneuverability of these vehicles, the generally icy conditions and often the inability to see under blowing snow conditions.

6. Objects in the Town ROW need to be moved or relocated during the winter. Basketball backboards can be turned away from the street. This will prevent the hoops from damaging plow trucks or causing accidents.

VI. Plowing Non-accepted Public Highways

The Town of Milton Publics Works Department, Highway Division will consider the winter maintenance of a Developer's non-accepted public infrastructure during the warranty period under the following conditions:

A. The Town has the manpower, equipment, and material resources available to complete the work.

B. The proposed segment(s) to be plowed shall have either a completed loop or a temporary or permanent hammerhead located at the end of the segment(s) to be maintained.

C. The segment(s) shall be paved and any storm water and sewer structure set so that it will not damage plowing equipment. The Developer may pave the surface course of pavement to facilitate winter maintenance with the understanding that at final inspection any pavement defects will have to be fixed to the meet the Town Public Works Specifications.

D. Segment(s) to be maintained must be a minimum of one thousand (1000) feet long or a completed highway segment is a loop. The development shall have two separate accesses onto a current public highway where designed.

E. The Developer understands and agrees to the condition that the Town of Milton is not liable for any damage caused to said infrastructure caused by Winter maintenance and the Developer will have to correct any damage at his/her expense prior to acceptance of the infrastructure by the Town of Milton. The Developer shall maintain liability insurance to protect the Town during the period of the warranty.

E. The Developer shall contract for the plowing service by the Town of Milton. The

fee will be paid in advance of the winter plowing season based on an estimate of labor and materials used. Cost to include rate of vehicle plus operator from cost developed by the Town. The Developer shall pay the Town for all estimated material used to maintain highway or highway segment(s). Sand shall be charged at the Town Winter Sand bid price and the application rate shall be three hundred (300) lbs. per lane mile. Salt shall be charged at the Town Winter Salt bid price and the application rate shall be one hundred (100) lbs. per lane mile.

F. The Town of Milton Public Works Department shall not maintain any development highway segment that has not been paved, is under construction, or deemed not plowable by the Public Works Supervisor.

G. The Town may determine to plow a segment of warranted but not accepted highway if the segment to be plowed improves the time management or efficiency of the plow route. The Developer shall be required to pay the Town for this plow service.

VII. Sidewalk Winter Maintenance Program

The Town of Milton maintains access to sidewalks contiguous to the Town Core that meet design requirements as established in the Public Works Specifications, adopted October 6, 1997 and as amended. The following are general guidelines for the program.

A. The sidewalk plow route is attached as Appendix E. Sidewalks contiguous to the Town Core sidewalks shall be plowed (subject to the following paragraphs). Sidewalks in the public ROW constructed as part of a new subdivision may be plowed when the Town has accepted a warranty deed for the ROW.

B. Sidewalks added to the plow route shall be contiguous with the Town Core and a majority of the lot owners or association members in the subdivision shall provide a written petition to the Public Works Director for inclusion in the sidewalk plow route. Extensions of the sidewalk plow route for new or existing sidewalks will be considered provided that sufficient manpower, equipment, and material resources are available to complete the work.

C. The Town of Milton is not responsible for winter maintenance of sidewalks that are not contiguous with the Town Core sidewalks.

D. The Town may decide to assist a subdivision in clearing a school bus stop within the public ROW based on a written petition to the Public Works Director requesting the service.

E. Shared use paths that meet the design requirements as established in the Public Works Specifications, adopted October 6, 1997 as amended shall be plowed if contiguous with the Town Core sidewalks and appropriately petitioned for inclusion in the sidewalk plow

route. Shared use paths shall be plowed at least to the same width and standard of a sidewalk.

The winter maintenance of sidewalks is a secondary priority to maintaining safe and passable roads. The call out time for winter sidewalk maintenance shall be as deemed appropriate by the Public Works Supervisor. Sidewalks shall be plowed in a timely manner as determined by severity of the storm. Sidewalk maintenance may be temporarily deferred to concentrate on making roads passable based on the discretion of the Public Works Supervisor. As a general rule sidewalk plowing will begin after route plowing has concluded to avoid the practice of repeat plowing of the sidewalks.

APPENDIX A

AVAILABLE PERSONNEL AND EQUIPMENT

VEHICLE AND ROUTE ASSIGNMENTS
(DT= dump truck with plow, wing, and spreader)

Route	Vehicle	Completion Time (6 to 8 inch storm)
# 1	Tandem Axle DT	6.5 hrs.
# 2	Single Axle DT	6 to 7 hrs.
# 3	Tandem Axle DT	6.5 hrs.
# 4	Single Axle DT	6.5 hrs.
# 5	Tandem Axle DT	6 to 7 hrs.
#6	2012 Low Pro	
#7	¾ & 1 Ton Pick Up Trucks	
#8	Tandem & Single Axle DT	

OTHER STORM ASSIGNMENTS

Route	Vehicle/	Completion Time
Cul-de-sacs	¾ & 1 ton P-Up	8 hrs.
Hills, curves, dead-end Roads, and assist with Cul-de-sac route.	one-ton dump trk-	7 hrs.
Sidewalks		8 hrs.
Equipment Maintenance		3 hrs per storm
Yard Maintenance (plow yard, mix and screen sand)		3 hrs per storm

STORM SUPERVISION AND FOLLOW-UP (Public Works Supervisor)

Monitor weather, call in crew and report to duty in time provide advice to buses and school on road conditions. Handle all incoming calls, radio dispatches, and continue to monitor weather conditions. Resolve issues related to plowing as they are reported to Public Works. Advise crew as to when to do final scraping and salting. Assist with cul-de-sacs as able and do final check of road conditions before sending crew home. Apply salt to hot spots when doing final check of road conditions. Assure that all storm data has been properly recorded. Provide final update to the Milton Police Department.

APPENDIX B

CUL-DE-SACS, BUS TURNAROUNDS, DEAD END ROADS, HOT SPOTS

CUL-DE-SACS
Hidden Meadows
Adams Park
Quarry Lane
Hunting Ridge
Winter Lane
Kingsbury Road
Moss End
Emile Drive
Beaver Brook Road
Maplewood Avenue
Riverside Drive
Rebecca Lander Drive
Village Meadow
Timothy Court
Lamoille Terrace
Kim Lane
Lena Court
Edgewater Terrace
Long Pond Drive
Jonzetta Court
Howard Drive
Smith Road
Sawyer Avenue
Streeter Brook
Delma Drive
Sonya Road
Quail Hollow
Thrush Drive
Milton Falls Court
Waterwheel Way
Sheldon Road
Poor Farm Road, (end)
Jackson Lane
Valley View Drive
Raspberry Court
Lacasse Drive
Pine Harbor Road
Country Lane
Chrisemily Lane
Kendra Drive

BUS TURNAROUNDS
Everest Road
Kim Lane
Allen Brook Drive
Racine Road
Rowley Road
Hibbard Road
Manley Road
Ritchie Avenue
Cobble Hill Road
Cooper Road
Bus Turn Around
Westford Road
Irish Road
East Road
Hardscrabble Road
Reynolds Road
Hunting Ridge

DEAD END ROADS
Turner Ave
Woods Court
Moss End
Erling Drive
Sawmill Road
Marque Road
Dixon Road
Bezio Road
Henry Road
End of Everest Road
Costello Road
Howard Street
Kilburn Rd
Clapper Road
Morgan Road

HILLS
Westford Road
Hardscrabble Road
East Road Trestle
Cooper Road
Hunting Ridge
Milton Falls
West Milton Road
Bear Trap Road
Lamoille Terrace
Ellison Street
Edwards Street
Allen Drive

INTERSECTIONS
Main Street & US7
Main St & Railroad
Duffy Hill & Mars Hollow
Poor Farm & Lake
Lake Rd & US7
Main & North Road
Railroad & Middle
Bombardier & Hobbs

DIRT ROADS
Hibbard Road
Dixon Road
Beebe Hill Road
Henry Road
Cadreact Road
Bezio Road
John Rowley Road
Bullock Road
Kingsbury Crossing (end)
Reynolds Road
Hardscrabble Road (end)
Kienle Road (end)
Marcoux Road
Eagle Mountain Harbor Rd
I-89 Emergency Gate Access

APPENDIX C

TOWN OF MILTON RADIO CALL LIST

Radio Number	**Staff Member**
54	Dustin Keelty
55	Will Sanderson
57	Jamie Cameron
58	John Devlin
59	Chris Lamphere
60	
61	
62	Josh Bergeron
63	Jared Harrington
64	
65	
66	
67	Rob Deforge
68	Bruce Trombly
69	
70	Larry Blow
71	
72	Mark Bissonnette
73	Danny Sweeney
74	Howard Beaupre
75	Nick Barella
76	Brian Palaia
77	Roger Hunt
78	Nate Lavallee
79	Corey Beaudoin
80	Jim Bushey
81	Art Garrison

APPENDIX D

CONTRACTORS WHO MAY ASSIST THE TOWN IN
SNOW CLEARING OPERATIONS

UNDER SUBCONTRACTED SERVICES

NAME	TYPE OF SERVICE	TELEPHONE #
Karl Mossey Fairfax, VT	Light Plowing	849-9839
Ron Bevins Excavating Brian Bevins (Contact) 141 River St.	Light Plowing & Snow Hauling Milton, VT 05468	Brian Bevins 802/355-4953
Reggie Smith Mark Curtis Hartwood Landscaping 118 Marrs Hollow Road Milton, VT 05468	Hauling Light Plowing	879-4425
Hayes Excavation & Landscaping (John) 288 Hardscrabble Road Milton, VT 05468	Light Plowing	893-1867

APPENDIX E

MAP OF SIDEWALK PLOW ROUTE

APPENDIX F

GUIDELINES AND OPERATING INSTRUCTION
FOR ICE AND SNOW CLEARING TECHNIQUES

A. Techniques

1. Common sense and careful adherence to material application rates are key components of an effective snow removal operation. Also, timing is critical in applying salt, and sand. Deicing should begin as soon as the snow starts to accumulate to keep snow and ice from bonding to the pavement.

2. When a significant amount of snow begins to accumulate, generally plow, and stop the application of deicer. As a rule apply salt before significant accumulation and wait until the last plow cycle to reapply and the wait to scrape.

3. Once the snow has stopped and plowing is finished, return to areas where drifting has occurred. Clear out the excess snow before it has time to harden. It is easier to push the drifts away from the road or cut down drifts when the snow is still fresh.

4. Remove snow (if necessary) from intersections, sharp corners and bends to improve visibility.

5. Remove the windrows on the sides of bridges to prevent drifting. If windrows are allowed to remain, available roadway will be reduced and snow will later melt and form ice.

6. Give salt time to work. Generally salt early to create brine at the snow/road interface and salt late for extended clearing.

7. Increase salt application during the night and on sunless days and when the temperature drops sharply. Without the sun, you lose the effect of pavement radiation and warmth.

8. Wing-back snow banks at the first available opportunity following a storm.

APPENDIX G

WINTER SAFETY GUIDELINES

I. Personal Safety

The potential for personal injury increases significantly during winter operations due to the effects of cold temperatures, inclement weather, long periods of continuous operation, working in traffic areas during storm conditions and the tendency to "rush" to handle emergencies. Each employee needs to take personal responsibility for his/her own safety by exercising common sense and good judgment. To help prevent cold weather injuries, the following guidelines are provided:

A. Wear Proper Clothing

1. Dress in loose-fitting layers for the most adverse conditions expected. Loose clothing allows the blood to circulate freely which helps prevent frostbite. Layers can and should be removed while in a heated cab; however, all appropriate clothing, i.e., wet or cold weather outer-garments needs to be carried in the vehicle each time the vehicle leaves the garage. The gear has to be available in the case of an accident, vehicle breakdown or assistance to other drivers.

2. Protect your feet by wearing warm, dry boots; keep dry socks and wet weather boots readily available for use. When outside vehicles, no insulated boot will keep your feet warm if you remain inactive or motionless for long periods.

3. Keep an extra pair of dry gloves in the vehicle.

4. When outside the cab, wear a cold weather hat that protects the ears from frostbite. Heat loss from the body is more rapid when a hat is not worn.

B. Prevent Dehydration

1. The first evidence of dehydration is signaled by a dark yellow colored urine. Other indicators are slow motion, no appetite, stomach sickness, drowsiness, tingling in the arms and difficulty in walking.

   Carry fluids in the vehicle -- water, tea, coffee, soup. **Any employee using alcohol on the job or driving under the influence of illegal drugs or alcohol will be subject to immediate suspension or termination.**

C. Recognize Symptoms of Common Injuries/Life Threatening Conditions

1. Exposure to cold and wind chill factors

a. Wind, in combination with cold temperatures, creates an equivalent lower temperature. A 0°F actual temperature with a 15-mph wind is equivalent to a -24°F temperature.

b. Initial symptoms of exposure to cold include shivering, numbness, low body temperature, drowsiness and marked muscular weakness.

c. Treatment involves getting to a warm area as quickly as possible, re-warming by adding clothing, wrapping in a blanket, drinking of hot liquids.

2. Frostbite

a. Frostbite results when crystals form in the fluids and underlying soft tissues of the skin. The effects are more severe if the injured area is thawed and then refrozen. Frostbite is the most common injury resulting from exposure to cold elements. Usually, the frozen area is small. The nose, cheeks, ears, fingers and toes are most commonly affected. Just before frostbite occurs, the affected skin may be slightly flushed.

b. Symptoms include: skin becomes white, gray or waxy yellow; skin tingles, becomes numb; pain may occur, let up - pain will be intense during thawing; blisters may form; the area of frostbite swells and feels hard.

c. Treatment includes:
- Protect the frozen area from further injury.
- Gradually warm the frostbitten area as soon as possible.
- Seek medical assistance immediately in the case of severe frostbite.

3. Snow blindness

a. Snow blindness occurs when the ultra-violet rays of the sun are reflected from a snow covered surface.

b. Symptoms include: gritty feeling in your eyes; pain over the eyes; red, watery eyes.

c. Prevention: use sunglasses on bright sunny days.

d. Treatment: wet compresses applied to the eyes, blindfolding the eyes, rest and recovery.

4. Carbon monoxide poisoning

a. Carbon monoxide is a deadly gas and is particularly dangerous because it is odorless and colorless.

b. Symptoms include: headaches, dizziness, yawning, a sick stomach and ringing ears in cases of mild poisoning. Severe cases will cause the heart to throb or flutter.

c. Treatment involves getting ventilation or outside air. Unconscious victims should be given mouth to mouth resuscitation and medical assistance obtained immediately.

II. Equipment Safety

A. Perform all pre-operation checks of vehicles to insure that critical vehicle systems are operational before leaving the garage.

B. Check each vehicle for working safety/emergency equipment onboard to include:

- flashlight
- fire extinguisher
- first aid kit
- safety flares
- warning signs with reflectors
- operational communications equipment
- shovel, hammer, pliers, screwdrivers
- safety vests

C. Do not exceed appropriate speeds for the equipment or operation.

III. Operational Safety

A. The Public Works Supervisor is responsible for routinely checking fatigue levels and switching/relieving drivers as necessary. In general, operators should not exceed shift lengths of sixteen (16) hours, except in extreme emergencies. The Public Works Supervisor also needs to pre-qualify drivers to ensure they have the capability and skill to operate assigned equipment.

B. The mechanic will routinely check vehicles to verify operator preventive maintenance and to check on the operational capability of the equipment.

C. Operators need to be especially cognizant of the following situations:

1. Changes along the route, such as relocated mailboxes, new curb cuts, deep ditches, etc.

2. Pedestrians in the roadway or in a position where thrown snow can knock an individual down.

3. Children playing in snow banks; snow forts.

4. Inability to see immediately behind vehicles, especially when backing up.

5. Crowding the centerline.

6. Excessive speed.

D. Safety briefings will be held as part of the Snow Day session and periodically during the winter on at least a monthly basis.

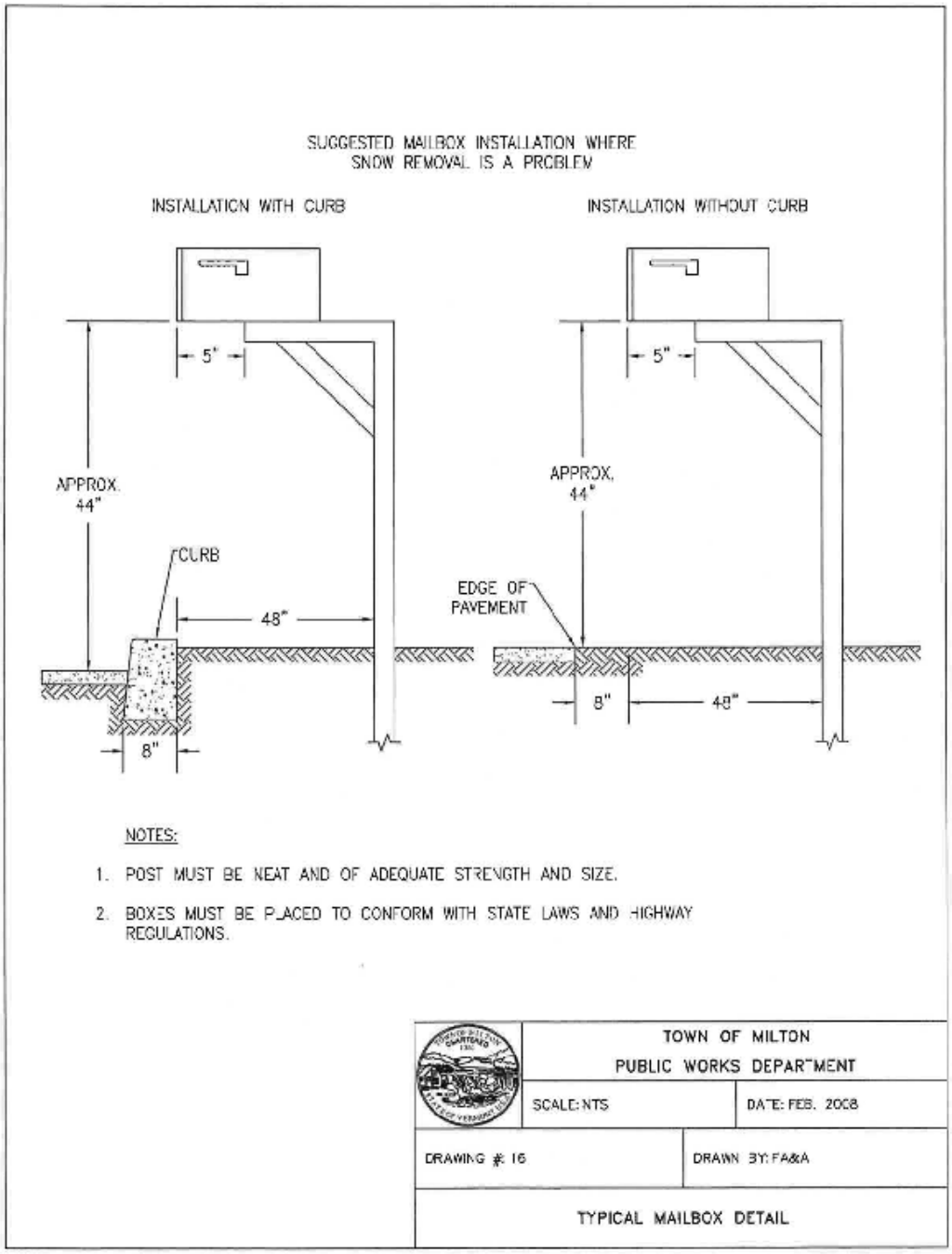
APPENDIX H

ADJACENT TOWNS
CALL LIST

TOWN	CONTACT PERSON	WORK TEL #
Colchester	Bryan Osborn	264-5625
Essex Town	Dennis Lutz	878-1344
Essex Junction	Rick Jones	878-6944 (Office) 878-6942 (Garage)
Jericho	Kenneth Barkyoumb	899-4936 (Office) 899-3180 (Garage)
South Burlington	Justin Rabidoux	658-7961
Underhill	Rodney Fuller	899-9959
Westford	Brent Meacham	318-2794 879-4306 (Garage)
Winooski	Steve Woodworth	655-1957
VTrans District 5	David Blackmore	655-1580
Georgia	Wesley Combs	881-1384

APPENDIX I
INSTRUCTIONS FOR INSTALLATION OF MAILBOX & POST

https://www.usps.com/manage/know-mailbox-guidelines.htm



TOWN OF MILTON, VERMONT 05468

Department of Public Works:
Admin, Buildings and Grounds, Highway Operations, Water and Wastewater

Date

Address

Subject: PLOWING INTO A ROADWAY

As a matter of Public Safety, plowing snow into and across Town highways is prohibited by state law (Title19, Section 1105).

The plowing of snow across any public roadway can create unsafe travel conditions which may result in an accident or damage to a motor vehicle. Shoveling snow or blowing snow into the road is also capable of creating an unsafe condition. Even small amounts of snow, freezing in the roadway, can cause loss of control or damage to a vehicle.

The Public Works Department asks all Milton residents to please refrain from putting snow into the roadway or piling snow on the edge of the road which may protrude into the road.

This notice is being sent as a courtesy to you. We have noticed this situation at your property and wish to avoid a situation wherein we would need to invoke State Statutes.

Thank you, in advance, for your cooperation. If you have questions or feel that your situation may warrant pushing snow across a town road, please contact us at the Public Works Office by calling 893-6030.

TOWN OF MILTON, VERMONT 05468

Department of Public Works:
Admin, Buildings and Grounds, Highway Operations, Water and Wastewater

Date

Address

Subject: PARKING NOTICE

Please be advised that during "Winter Plowing Season" which extends from December 1st to April 1st each year, there is a parking ban in effect from midnight to 8 A.M. each day.

All roadways, including cul-de-sacs and other turn-around areas, must be clear of vehicles during the dates and hours referenced above.

All Town roads will be free of parked vehicles during the posted time or they may be towed at the owner's expense.

Please be aware that the Town of Milton has no desire to tow your or any other vehicle. The large trucks used to plow roadways cannot safely maneuver with vehicles parked on roadsides and in turn-arounds.

This notice is being sent as a courtesy as we have noticed your vehicle parked on Town roadways or we have noticed vehicles in front of your property. We hope to avoid towing any and all vehicles.

We thank you in advance for your cooperation. If you have any questions regarding this notice please call the Public Works Office at 893-6030.

TOWN OF MILTON, VERMONT 05468

Department of Public Works:
Admin, Buildings and Grounds, Highway Operations, Water and Wastewater

Date

Address

Subject: OBSTRUCTION/OBJECT IN THE RIGHT-OF-WAY

This letter is being written to advise you of certain policies and laws with regard to objects being placed into the Town's the right of way and/or roadway.

Title 19, Section 1105 and 1111 of the Vermont State Statutes allows cities and towns to protect the public using right-of-ways and/or roadways. The Town of Milton adopted a Motor Vehicle and Traffic Regulation Ordinance. This Ordinance and the Winter Operations Plan provides another tool by which the Town is able to protect those who use public highways and can efficiently perform their work in a safe manner to the public as well as themselves.

The placement of an object(s) within the right of way prohibits the orderly and effective removal of snow on roadways. The act of placing an object such as, but not limited to, a vehicle(s), landscaping, basketball hoop(s) or playing and/or building of snow castles along the edge of the road is also extremely dangerous to people and the Town plow equipment.

This notice is being sent as a courtesy to you. We have noticed this situation at your property and wish to avoid a situation wherein we would need to invoke State Statutes.

We thank you in advance for your cooperation. If you have any questions regarding this notice please call the Public Works Office at 893-6030.

VERMONT AGENCY OF TRANSPORTATION

SNOW AND ICE CONTROL PLAN

FOR STATE AND INTERSTATE HIGHWAYS

A. PURPOSE AND NEED

The purpose of this plan is to define the operational procedures and best management practices (BMPs) for storing and utilizing snow and ice control materials, and for performing winter maintenance activities. It defines the levels of service that the Vermont Agency of Transportation (VTrans) will strive to provide at our facilities and on our highways. This plan allows for and encourages improvement in operational efficiency in providing the desired levels of service. It also provides guidance to help minimize leaching of salt-laden and other winter maintenance material runoff from state-owned paved surfaces and storage facilities into the ground or into surface waters.

Since storms vary dramatically across the state and occur over a variety of paved surfaces and traffic conditions, this Snow and Ice Control Plan (SIC Plan) is intended to be flexible. It is a guide structured to fit average conditions, but able to accommodate the wide variety of conditions that will be encountered by maintenance crews who are working to maintain safe roads at safe speeds.

B. LEVEL OF SERVICE – GENERAL INFORMATION

VTrans Maintenance District snow and ice control operations are limited by the resources (budget, personnel, equipment and materials) available for winter maintenance. Consequently, VTrans' SIC Plan calls for "safe roads as safe speeds", and not "bare roads". This means that roads during a storm are maintained to allow safe travel at safe speeds, but that drivers should expect to see snow on the roadway during a storm. Most travel takes place during the day, so the majority of VTrans resources are used between 4 a.m. and 10 p.m. During those hours, the average plow routes will be between 2 to 2 ½ hours. However, motorists should anticipate reduced coverage and varying road conditions at night, and should drive accordingly.

C. CORRIDOR PRIORITIES

Four color-coded levels of service have been established and are shown on the attached "Corridor Priority Map". Priorities were established based on winter traffic volumes, roadway classification, and expected truck traffic. Note that critical areas such as intersections, areas of extreme curvature

and problem grades may have to be treated differently to retain proper mobility and safety regardless of the corridor designation assigned to the balance of the route.

1. **CORRIDOR PRIORITY 1 – INTERSTATE AND LIMITED ACCESS HIGHWAYS (ORANGE ROADS)**

   Snow will be removed between 3 am and 10 pm. Equipment such as tow plows and graders will be utilized to facilitate snow removal activities. During off hours, resources will be shifted to prioritize coverage on these routes. Materials noted under Section E will be applied as needed to keep the roads open for traffic and provide a safe surface on which to operate, though road surface may be snow covered at times during the storm. After the storm has subsided, bare travel lanes shall be provided as soon as practical and on these roads before all others. In most cases, this will occur within 4 daylight hours. A bare pavement shoulder to shoulder will be provided as soon as practical. The suggested maximum travel speed during the storm for "Orange Roads" is 50 mph, or 10 mph below the posted speed limit, whichever is less.

2. **CORRIDOR PRIORITY 2 – HIGH TRAFFIC HIGHWAYS & TRUCK ROUTES (BLUE ROADS)**

   Snow will be removed between 4 am and 10 pm. During off hours a skeleton crew will be used as needed. Materials noted under Section E will be applied as needed to keep the roads open for traffic and provide a safe surface on which to operate, though road surface may be snow covered at times during the storm. After the storm has subsided, a bare pavement shoulder to shoulder will be provided as soon as practical. The suggested maximum travel speed for "Blue Roads" is 45 mph, or 10 mph below the posted speed limit, whichever is less.

3. **CORRIDOR PRIORITY 3 - MEDIUM TRAFFIC HIGHWAYS (GREEN ROADS)**

   Snow will be removed between 4 am and 10 pm. During off hours a skeleton crew will be used as needed. Materials noted under Section E will be applied as needed to keep the roads open for traffic and provide a safe surface on which to operate, though road surface may be snow covered at times during the storm. During the next regular working day after the storm has subsided, a bare pavement shoulder to shoulder will be provided as soon as practical. The suggested maximum travel speed for "Green Roads" is 40 mph, or 10 mph below the posted speed limit, whichever is less.

4. **CORRIDOR PRIORITY 4 – LOW TRAFFIC HIGHWAYS (YELLOW ROADS)**

   Snow will be removed between 4 am and 10 pm. During off hours a skeleton crew will be used as needed. Materials noted under Section E will be applied as needed to keep the roads open to traffic and provide a safe surface on which to operate. Road surface may be snow covered during and immediately following the storm. During the next regular working day after the storm has subsided, one third bare pavement, in the middle of the road, will be provided as soon as practical. As soon thereafter as practical, a bare pavement shoulder to shoulder will be provided. The suggested maximum travel speed for "Yellow Roads" is 35 mph, or 10 mph below the posted speed limit, whichever is less.

D. PERFORMANCE MEASUREMENT & PROGRAM EFFECTIVENESS ASSESSMENT

Performance during and immediately following individual storm events will be periodically monitored by the District General Manager and the Area Maintenance Supervisors to ensure VTrans is providing safe roads at safe speeds and performing snow and ice removal in accordance with established Corridor Priorities noted under Section C.

In addition, to monitor performance, the following information will be reviewed by the Director of Operations, the Maintenance Transportation Administrator (MTA) and the District Transportation Administrators ("DTAs") annually to gage program effectiveness:

- Material application rates
- Vehicle speeds during and after storm events
- Condition of travel lanes and shoulders during and after storm events
- Storm data (precipitation, air temperature, road surface temperature, wind speed, etc)
- Plowing frequency

Overall performance during and following the winter season will be measured by monitoring material usage, labor costs, and equipment costs with respect to the number of lane miles maintained and the number of storm events addressed. Assessments will be made based upon consideration of the resources used versus the winter severity encountered, as well as through comparisons between adjacent and nearby geographical areas that have encountered similar winter conditions.

VTrans Operations Division will publish an annual report each spring which summarizes the previous winter, and VTrans' performance according to the above mentioned metrics.

E. MATERIALS AND APPLICATION PROCEDURES

The materials in this section are those that are primarily used by VTrans for snow and ice control on highways throughout Vermont. This section describes the general purpose of each material, the typical use that is expected under normal conditions, and the application procedure. Choice of materials will depend on experienced consideration of the following variables: pavement temperature, nature of the particular snow and ice event, forecast storm conditions, air temperature and wind velocity, traffic volume, time of day/year, and the availability of resources.

Procedures for determining application rates and methods will be the responsibility of District Personnel based on this SIC Plan, available material application technology, and other factors that vary across the state from region to region.

1. Salt (NaCl)

Unless otherwise designated for specific routes, salt is the primary material used on the majority of roads maintained by VTrans. Salt is used to prevent the bonding of snow and ice onto the pavement surface, and to melt snow and ice that cannot be removed by plowing. Unless salt is pre-wetted with a liquid having a lower working temperature than sodium chloride, the lowest effective working temperature is approximately 15 degrees F.

Application Rates shall normally be selected from the attached "Salt Application Quick Reference Guideline" (Appendix A) and shall be based upon the pavement temperature; snow-ice conditions encountered, and anticipated trends. Initial applications should normally be 25% higher than the average rate indicated by the chart. Generally, salt will be used when the pavement temperatures are 15 degrees F or higher. When pavement temperatures are less than 15 degrees F and not rising, winter sand may be used when necessary for temporary traction. During cold storms, when the pavements are dry and the snow is blowing off the travel lanes, the application of salt or winter sand is to be avoided for as long as possible since it will hasten the formation of ice on the pavement. When ice does begin to form under these conditions, considerable judgment will be required on whether to use salt that is pre-wetted with liquid or spot applications of winter sand.

Appendix B (Application Rates vs. Miles You Can Treat) is provided as a quick reference guide for maintenance workers and supervisors.

2. Winter Sand

Winter sand shall consist of coarse, clean, sharp sand or other granular material. Sand is generally used to provide traction at intersections and corners during icy conditions. When conditions warrant, salt may be mixed with sand to break the bond between the ice pack and road surface.

Sand should generally be used in the following situations:

- On hills, curves and intersections where the supervisor determines that temporary traction is needed
- In situations where salt can not work fast enough (i.e. accident scenes involving excessive ice)
- When pavement temperatures are too low for salt to work properly
- When wet pavements exist on lower-volume corridors and falling nighttime temperatures may cause glazing

3. Liquids

A variety of liquids are used to either "pre-wet" solid materials that are applied from the plow trucks or to "anti-ice" the highways in advance of a storm event. Following are descriptions of the types of liquids used by VTrans, and descriptions of the "anti-icing" and "pre-wetting" process.

a) **Salt Brine** - Salt brine is a 23% solution of salt in water. It can be used to either "pre-wet" solid materials that are applied from the plow trucks or to "pre-treat" the highways in advance of a storm event. However, unless salt brine is mixed with additives, the effective working temperature is the same as salt in its solid form – approximately 15 degrees F or greater.

b) **Chemical Additives** – Chemical additives are used to pre-wet the solid materials that are applied by the plow trucks to lower the effective working temperature of salt and to help keep the solid materials on the road during the application process. Examples of such chemicals may include magnesium chloride ($MgCl_2$), calcium chloride (CaCl) and a number of proprietary products.

c) **Liquid Chloride Blends** – Liquid Chloride blends are used to stretch the working range of salt brine without incurring the full cost of a chemical product.

d) **Anti-icing** - For anti-icing with salt brine, the application rates per lane mile may vary when pavement temperatures *during the storm* are anticipated to be 15 degrees F or greater. Application will generally occur on designated routes 6 to 8 hours prior to the projected start of the storm, however, up to 12 hours may be permissible based on timing of the storm. Anti-icing may also be used to spot treat bridge decks and other problem areas located on any priority corridor whenever weather forecasts indicate the possibility of glazing. When anti-icing the roads with a blend, application rates may be cut back.

e) **Pre-wetting** - Pre-wetting is the application of liquids onto solid materials. In general, salt brine shall normally be used when the pavement temperatures are above approximately 15 degrees F and chemical additive or blend shall be used when below.

F. EQUIPMENT

1. Washing Equipment

Snow and ice control equipment are to be thoroughly washed during regular working hours as soon after use as practicable. Particular attention is to be paid to the areas of equipment in contact with sand, salt and liquid chlorides. With heated power washers, truck washing will normally be accomplished outdoors in designated areas.

2. Overnight Loads

In general, trucks should not be left loaded overnight since it subjects the equipment to unnecessary wear. However, in the event that a winter storm is forecast at some point during the approaching night, a crew may load trucks to enable a quicker response to the storm. Such loading shall be in compliance with the following:

a) Load size shall not exceed a level-load.

b) If the storm does not occur, the truck(s) loaded in advance shall be unloaded and washed out the following working day.

3. Spreaders

Each spreading unit shall be calibrated annually, and after any spreader or hydraulic maintenance, to insure that selected rates of application are attained.

G. OPERATIONS

1. Mailboxes And Other Structures Within The Highway Right-Of-Way

Occasionally mailboxes or other devices are damaged by snow plowing operations due to poor visibility, the mailbox being buried in a snow bank or the weight/volume of the snow being plowed. This damage is not deliberate and in most cases is unavoidable. VTrans is not

responsible for damage and does not repair, replace or re-erect boxes that are located within the highway right-of-way unless physically struck by a VTrans plow truck. In these cases, VTrans will replace the mailbox at no cost to the property owner with a generic United States Post Office approved box.

2. Widening or Pushing Back Snow Banks

Following storms with heavy snowfall or when several storms result in substantial snow bankings, VTrans will undertake a roadway widening procedure, which will push back the snow banks. This is generally done during normal working hours, and is a necessary operation because it accomplishes the following:

a) Provides room for future snow storage.
b) Reduces or prevents melted snow from running out onto the roadway pavement and creating icing conditions.
c) Increases safe sight distance at intersections and driveways.
d) Maintains a uniform line by eliminating protrusions at driveways and intersections.

Unfortunately there is no way to prevent depositing snow in previously cleaned driveways or walkways except to leave a hazardous projecting mound of snow. With thousands of driveways of all sizes and descriptions along our highway system it is impossible to clear these individual drives as the cost would be prohibitive.

3. Sidewalks

The maintenance of the sidewalks, including snow removal, is the responsibility of the local community. This is firm and longstanding statewide. In addition, in those communities where on-street parking is permitted, snow removal from the parking areas, including plowing and or hauling away, is a local responsibility.

4. Tow Plows

Tow plows will be used primarily on limited access facilities and interchanges to clear multiple lanes at the same time. An effort will be made to avoid impacts to traffic during morning and evening commute times.

H. STATE AND FEDERAL REGULATORY OVERSIGHT

1. Winter Maintenance Practices located within designated National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) areas, including Watersheds of Sediment Impaired Waterways, and in the Lake Champlain Watershed Basin:

Winter maintenance activities in these areas have and will continue to be regulated and addressed under the VTrans MS4 Stormwater Management Plan. Please refer to the VTrans Operations Environmental Program web site for more information regarding the above referenced designations as they may change from time to time and for information regarding the VTrans MS4 Stormwater Management Plan. Link to this site at: http://www.aot.state.vt.us/ops/TechnicalServices/stormwater/MS4GP3-9014.htm

2. **Winter Maintenance Practices - Statewide Implementation and Jurisdiction:**

   VTrans SIC Plan has and will continue to be implemented across the state and will not be subject to ANR jurisdiction outside the designated MS4 & Lake Champlain Basin areas. The Operations Environmental Program will forward to the State Agency of Natural Resources (ANR) the SIC Plan as often as updates are made.

I. BEST MANAGEMENT PRACTICES, TRACKING AND REPORTING

Best management practices associated with winter maintenance activities in conformance with the provisions of the VTrans SIC Plan include, but are not limited to:

1. Normal winter maintenance will conform to the provisions of the current VTrans winter maintenance standards included in this SIC Plan.

2. VTrans shall disseminate the SIC Plan statewide to employees involved in the application and storage of winter snow and ice control materials and train such employees in the proper performance of these standards. The Operations Environmental Program Manager will ensure that this information is posted on the VTrans Web Site, kept current, and made available to ANR.

3. Low salt and no salt roads (zones) will be signed in the field accordingly.

4. Weekly internal reporting of salt/sand usage will be completed by Operations Division staff commencing on the first week of November and terminating 26 weeks later, typically with the last week of April. VTrans shall make note of any single de-icing salt application in excess of 800 pounds per two-lane mile and report such incidents as part of the weekly reporting. The Director of Operations will make this information available to ANR upon request.

5. VTrans shall fully cover with impervious material all bulk salt storage areas under their control to reduce the amount and concentration of salt to the runoff of stormwater from these storage areas. All bulk salt storage shall be situated on an impervious material so as to minimize leaching of salt-laden runoff into the ground.

6. VTrans shall locate sand piles at District Maintenance Facilities in areas that will not result in sediment-laden runoff into surface waters. If sand piles are located in close proximity to surface waters then VTrans shall install adequate erosion prevention and sediment control practices to ensure sediment-laden runoff will not impact surface waters.

7. When it is desirable to charge sand piles with salt to prevent freezing (resulting in mixes or blends), the percentage of salt in the pile shall not exceed 5%.

8. VTrans will implement these activities on a statewide basis in accordance with the protocols and best management practices established within the MS4 and Lake Champlain Basin areas for seamless operational efficiencies across the state and to support the stated purpose of this SIC Plan. The Operations Environmental Program will report on these tasks as a part of each annual MS4 report to ANR.

9. VTrans will plan, organize and conduct an annual PR campaign associated with safe winter driving, as funding allows.

10. Nothing in this SIC Plan shall preclude the Agency from utilizing experimental and new technologies to achieve higher efficiency in a cost effective and environmentally sensitive manner. VTrans actively supports innovation and promotes the idea of finding new and better ways to reach our goals.

Approved: 11-12-13
Date

By: _____
Brian Searles, Secretary of Transportation

Attachments:

- APPENDIX A – Salt Application Quick Reference Guideline
- APPENDIX B – Application Rates vs. Miles You Can Treat
- Corridor Priority Map

APPENDIX A

Salt Application Quick-Reference Guideline

(Double these rates for centerline applications**)**

Pavement Temp. Range	Application Rate (#/LM)	Pre-wet Material	Comments
Above 32°	**0 to 100**	Salt Brine or Blend	A little salt goes a long way when temperatures are near freezing
25° to 32°	**100 to 200**	Salt Brine or Blend	Salt is very effective here. Pre-wetting with a blend will allow lower application rates.
20° to 25°	**200 to 300**	Salt Brine, Chemical, or Blend	Salt effectiveness is dropping off in this range. A Blend or straight chemical will help.
15° to 20°	**300 to 400**	Chemical or Blend	Pre-wetting is especially important. Your liquids will provide the extra boost needed.
15° or Below	Snow is usually dry and blowing in this range. If no ice or pack exists, plow only - DO NOT APPLY MATERIAL		If necessary, spot treat icy patches with abrasives. If glazing occurs on high-volume, high-speed, sand will not last and higher salt applications, with pre-wetting, will be needed.

General Notes:

(1) Application rates should be on the lower end when temperatures are on the higher side of the range or remaining steady. Falling temperatures, and temperatures on the lower side of the range, will require applications on the higher side, and possibly in the next range if dropping rapidly.

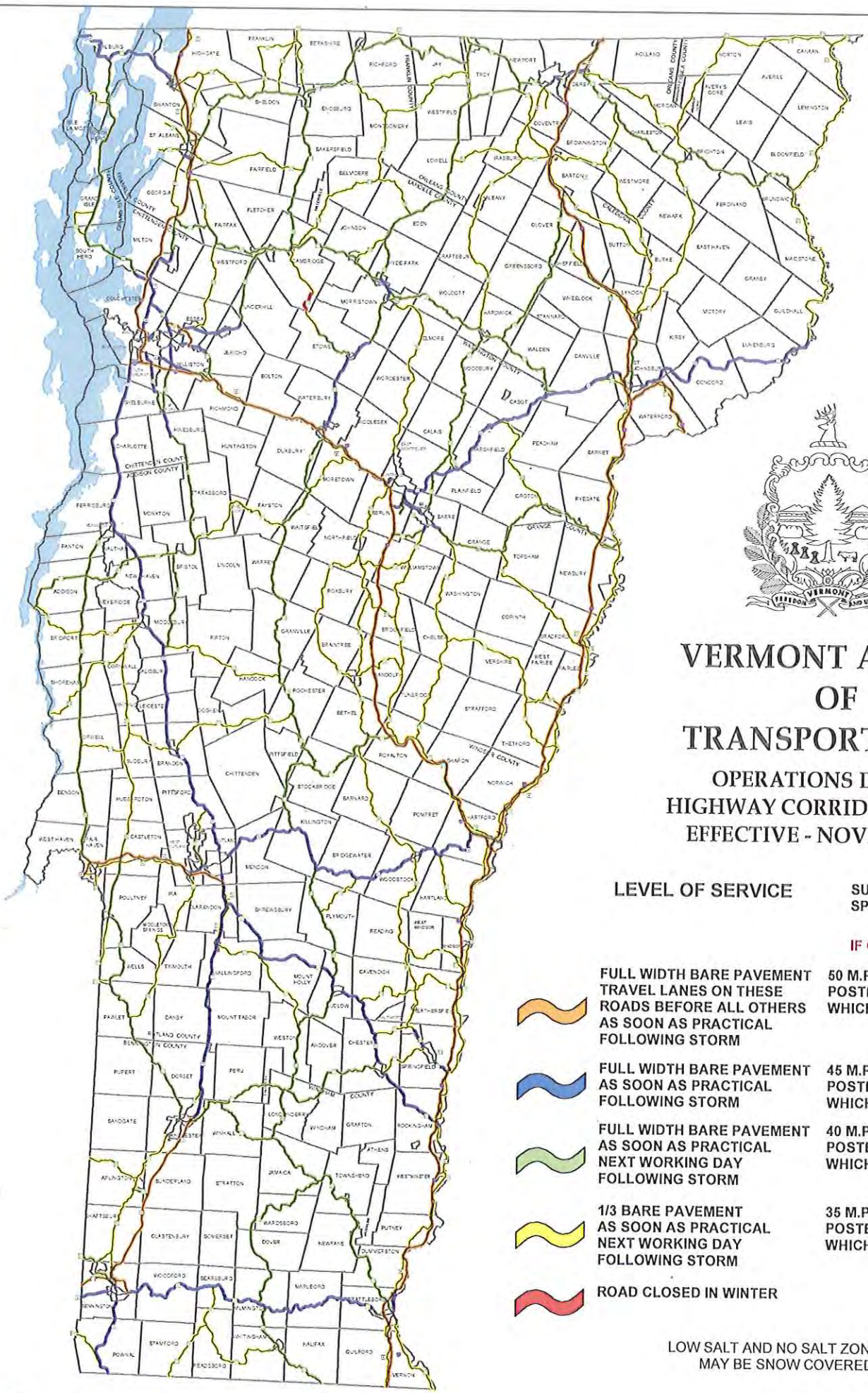
(2) In any of the ranges, if the snow is dry and blowing off of the roadway, do NOT apply material.

(3) Pre-wetting under wet storm conditions is not required. In cases where the only pre-wetting liquid available is a high-performance chemical, it is better to save those products for the drier and colder conditions.

(4) This is a guideline only. Application rates will vary based on climatic conditions experienced in the field, as well as corridor priority.

APPENDIX B

Application Rates vs. Miles You Can Treat							
	Application Rate (Pounds Per Lane Mile)						
# of Tons	100	150	200	250	300	350	400
	Lane Miles You Can Treat						
1	20.0	13.3	10.0	8.0	6.7	5.7	5.0
2	40.0	26.7	20.0	16.0	13.3	11.4	10.0
3	60.0	40.0	30.0	24.0	20.0	17.1	15.0
4	80.0	53.3	40.0	32.0	26.7	22.9	20.0
5	100.0	66.7	50.0	40.0	33.3	28.6	25.0
6	120.0	80.0	60.0	48.0	40.0	34.3	30.0
7	140.0	93.3	70.0	56.0	46.7	40.0	35.0
8	160.0	106.7	80.0	64.0	53.3	45.7	40.0
9	180.0	120.0	90.0	72.0	60.0	51.4	45.0
10	200.0	133.3	100.0	80.0	66.7	57.1	50.0



VERMONT AGENCY OF TRANSPORTATION

OPERATIONS DIVISION
HIGHWAY CORRIDOR PRIORITY
EFFECTIVE - NOVEMBER 2013

LEVEL OF SERVICE	SUGGESTED MAXIMUM SPEED DURING STORM DRIVE SLOWER IF CONDITIONS WARRANT
FULL WIDTH BARE PAVEMENT TRAVEL LANES ON THESE ROADS BEFORE ALL OTHERS AS SOON AS PRACTICAL FOLLOWING STORM	50 M.P.H. OR 10 M.P.H. BELOW POSTED SPEED LIMIT WHICHEVER IS LESS
FULL WIDTH BARE PAVEMENT AS SOON AS PRACTICAL FOLLOWING STORM	45 M.P.H. OR 10 M.P.H. BELOW POSTED SPEED LIMIT WHICHEVER IS LESS
FULL WIDTH BARE PAVEMENT AS SOON AS PRACTICAL NEXT WORKING DAY FOLLOWING STORM	40 M.P.H. OR 10 M.P.H. BELOW POSTED SPEED LIMIT WHICHEVER IS LESS
1/3 BARE PAVEMENT AS SOON AS PRACTICAL NEXT WORKING DAY FOLLOWING STORM	35 M.P.H. OR 10 M.P.H. BELOW POSTED SPEED LIMIT WHICHEVER IS LESS
ROAD CLOSED IN WINTER	

LOW SALT AND NO SALT ZONE ROADWAYS MAY BE SNOW COVERED AND ICY

10 5 0 10 20 30 Miles

1:1,000,000

MAP PRODUCED BY THE
VT AGENCY OF TRANSPORTATION
NOVEMBER 2013

SLOW DOWN, DRIVE SMART

Exercise good driving habits to keep you incident-free.

Speed

Slow down and drive according to the road conditions. Driving too fast is the leading cause of winter crashes.

Distance

Leave more room than usual between vehicles – you'll need the extra time and distance to brake safely. Signal early, merge slowly and carefully.

Brake

Brake early and slowly to prevent skidding. Never slam on the brakes on winter roads.

Control

Do not use cruise control during a storm, don't overestimate the ability of four-wheel or all-wheel drive, and look out for black ice on what appears to be bare pavement.

Focus

Stay off the cell phone and minimize other distractions. You'll need added reaction time to respond to an unforeseen event or situation.

Vision

Look ahead – the actions of other vehicles will alert you to what is happening ahead so that you can react safely and in time.

Know Before You Go

For the latest information on road conditions, weather, construction, accidents or major delays, dial 511 or log on to www.511VT.gov.

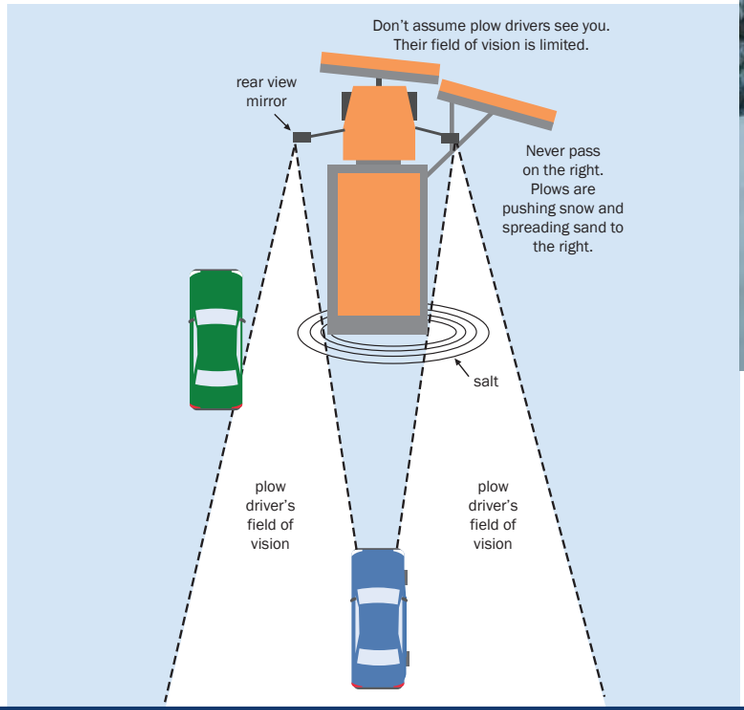
511 Travel Information Benefits:

- Available 24/7 - 365 days a year
- Voice recognition
- Current road conditions
- Road construction, maintenance, incident information
- State, region, city or highway specifics
- Useful for trip planning and en route decisions

511VT.com
Travel info to go.™

Don't Crowd The Plow

To support the work of our skilled operators, do not travel beside a snowplow for long periods. The impact of plowing snow drifts or packed snow can jostle the plow sideways without warning. Snowplows can create a snow cloud that reduces visibility to zero, so avoid driving into a snow cloud. Do not pass a snowplow when visibility is severely reduced. When you do pass, be sure you can see clearly ahead and allow plenty of room. Be aware that a snowplow driver's vision is restricted; you may see the driver but the driver may not necessarily see you.



Safe Winter Driving in Vermont

VERMONT
AGENCY OF TRANSPORTATION

511VT.com

Vermont's winter season is legendary, and for alpine and Nordic skiers, snowboarders, and snowmobilers, snow and cold temperatures are celebrated with fanfare. Not all winter drivers share that enthusiasm, yet keeping Vermont's 2,700 miles of roads safe and passable for all is a priority of the Vermont Agency of Transportation (VTRANS).

SAFE ROADS AT SAFE SPEEDS

During the winter months, Vermont's Snow and Ice Control (SIC) Plan calls for "safe roads at safe speeds", and not "bare roads". That means that during a storm, roads are plowed, sanded and salted to keep them open for traffic and provide a safe surface on which to travel, though road surfaces may be snow covered at times during the storm. Roads will be returned to bare pavement only when the storm is over.

As most travel occurs daily between the hours of 4 a.m. until 10 p.m., a majority of Vermont's resources are deployed during that time frame. Motorists should anticipate reduced coverage and varying road conditions at night and drive accordingly.

KEEPING VERMONT'S ROADS SAFE

Snow and Ice Control

VTRANS uses a time tested approach to maintaining Vermont's roads in winter, which includes using carefully calibrated equipment to spread a measured amount of salt early in a storm, and as necessary throughout, to prevent the snow and ice from bonding to the road. The end result is our ability to achieve bare pavement much sooner after a storm has ended.

Anti-Icing

Just prior to a storm, VTRANS equipment may be seen spraying a liquid onto the road surface. This practice is known as "anti-icing" with salt brine. Salt brine is a 23% mixture of salt and water that will dry within about 45 minutes, leaving a thin, white film of salt that is ready to start working when the first snowflakes fall.

Pre-wetting

Pre-wetting refers to the application of liquids onto salt as it is applied to the road surface. Liquids can include salt brine, calcium chloride, magnesium chloride, or a blend. The benefits of pre-wetting include:

- Keep solid materials on the pavement
- Increase salt activation efficiency
- Melt snow and ice at lower working temperatures
- Melt snow and ice with less salt

The Most Important Tool: The Snowplow

Sand, salt and other materials are important, but the snowplow is 'king of the road' when it comes to keeping our highways safe. In fact, when a storm's temperatures are cold (below 15 degrees F), often the best approach is just plowing. In those cold conditions snow is often very dry and will either blow clear of the road or plows will push it aside. Standing at the ready to battle winter weather are 275 dump trucks with plows and wings, 41 pickups with plows, and 68 loaders and graders.

Vermont's snow-fighting equipment and materials are complemented by a team of 350 skilled, dedicated, and licensed snowplow operators. Not only do these men and women stay current on the latest techniques and equipment but they invest long hours behind the wheel applying their expertise day and night - including weekends and holidays - to deliver safe roads for all.

Resolution

TOWN OF MILTON

Errors and Omissions Adjustments

WHEREAS, in accordance with the laws of the State of Vermont, changes to the Grand List must be reviewed and approved by the Selectboard; and,

WHEREAS, the Errors and Omissions are presented to the Selectboard for approval as follows:

Parcel Id: 203013.001003

Clapper Road LLC

Comments: This is a new parcel that was split from 203013.001002. Property Transfer MI-13 249 needs to be completed and ownership transferred to Santa's Workshop LLC. Value needs to reflect new entity that was not previously assessed separately. Value increase.

Value change: $0 to $281,200

Parcel Id: 203013.001002

Clapper Road LLC

Comments: This parcel was split to form parcel 203013.001003. Value needs to be adjusted to reflect reconfiguration of the property as a separate entity. Value reduction.

Vale change: $750,000 to $523,800

Parcel Id: 203013.001001

Northwest Investors LLC

Comments: Property Transfer MI-13 248 needs to be completed and ownership transferred to Santa's Workshop LLC. Value needs to be adjusted because of reallocation of land value component within commercial condominium. Value reduction.

Value change: $681,200 to $636,400

Parcel Id: 205002.000007

Myers Todd A

Comments: Camp on leased land was removed. Value needs to be adjusted to $0. Value reduction.

Value change: $6,000 to $0

Parcel Id: 210032.000101

Benoit Steven D & Darlene D

Comments: Transfer of ownership by writ of possession needs to be processed. Owner for 2014 as billed needs to be changed to Sonya Sawyer LLC. No value change.

Value change: None

Parcel Id: 213011.104000

Cary Family Revocable Trust

Comments: Property Transfer MI-13 115 consisted of two parcels and needs to be processed completely. Ownership for only one parcel was transferred to Smith Angela J & Aaron T. The second parcel ownership needs to be transferred. No value change.

Value change: None

NOW, THEREFORE BE IT REOLVED, by the Selectboard to approve the changes in the Grand List as presented herein, with the **Impact to the Grand List: an increase of $ 4,200.00**

Dated at Milton, Vermont this _____ day of _____, 2014

MILTON SELECTBOARD

_____	_____
Darren Adams, Chairperson	**John Gifford, Vice-Chairperson**
_____	_____
John Bartlett, Clerk	**Brenda Steady**
_____	
Stuart King	

Filed with the Milton Town Clerk's Office this _____ day of _____, 2014

Attest: _____

Milton Assistant Town Clerk

Memorandum

To: Selectboard

From: Brian Palaia

Date: 11/17/2014

Re: **Amendment#3 to Repayment Schedule for Loan RF1-147-3**

The subject loan amendment is related to the Village Core Sewer Project the Town completed in 2012 to support the Town Core Tax Increment Financing District. The loan was made through the State's Clean Water Revolving Loan Fund which can finance some sewer improvements. This loan amendment decreases the final loan amount by $4,000 to reflect the actual project costs. There is no new financial impact and sufficient tax increment financing revenue is being generated to repay this loan. I request a motion by the Selectboard to approve the loan amendment as presented.

Town of Milton
RF1-147-3

SUPERK: PROJECTS\MUNICIPALITY\MILTON\RF1-147\REPAYMENT SCHEDULES\RF1-147-3 MILTON REPAYMENT SCHEDULE AMENDMENT #3.XLS

Loan Terms

Loan Amount:	$3,422,905.71
CWSRF Subsidy:	**$493,400.29**
Repayment Amount:	$2,929,505.42
Loan Term Years:	20
Interest Rate:	0.0000
Admin Fee:	0.0200

Loan amount eligible for subsidy	**$3,092,500.00**	
Subsidy Percentage	15.00%	FY 2010
Subsidy Amount	**$463,875.00**	
Loan amount eligible for subsidy	**$260,100.00**	
Subsidy Percentage	10.00%	FY 2011
Subsidy Amount	**$26,010.00**	
Loan amount eligible for subsidy	**$70,305.71**	
Subsidy Percentage	5.00%	FY 2012
Subsidy Amount	**$3,515.29**	

Repayment Due Date	Loan Term	Principal Due	Principal Payment	**CWSRF** Subsidy	Interest Payment	Admin Fee	Total Payment	Repayment Received Date
								Subsidy Date
CWSRFA Subsidy		$3,422,905.71	$0.00	$493,400.29	$0.00	$0.00	$493,400.29	
								Repayment Rec'd
October 1, 2014	1	$2,929,505.42	$120,568.83	$0.00	$0.00	$58,590.11	$179,158.94	
October 1, 2015	2	$2,808,936.59	$122,980.21	$0.00	$0.00	$56,178.73	$179,158.94	
October 1, 2016	3	$2,685,956.38	$125,439.81	$0.00	$0.00	$53,719.13	$179,158.94	
October 1, 2017	4	$2,560,516.57	$127,948.61	$0.00	$0.00	$51,210.33	$179,158.94	
October 1, 2018	5	$2,432,567.96	$130,507.58	$0.00	$0.00	$48,651.36	$179,158.94	
October 1, 2019	6	$2,302,060.38	$133,117.73	$0.00	$0.00	$46,041.21	$179,158.94	
October 1, 2020	7	$2,168,942.65	$135,780.08	$0.00	$0.00	$43,378.85	$179,158.93	
October 1, 2021	8	$2,033,162.57	$138,495.69	$0.00	$0.00	$40,663.25	$179,158.94	
October 1, 2022	9	$1,894,666.88	$141,265.59	$0.00	$0.00	$37,893.34	$179,158.93	
October 1, 2023	10	$1,753,401.29	$144,090.91	$0.00	$0.00	$35,068.03	$179,158.94	
October 1, 2024	11	$1,609,310.38	$146,972.73	$0.00	$0.00	$32,186.21	$179,158.94	
October 1, 2025	12	$1,462,337.65	$149,912.18	$0.00	$0.00	$29,246.75	$179,158.93	
October 1, 2026	13	$1,312,425.47	$152,910.43	$0.00	$0.00	$26,248.51	$179,158.94	
October 1, 2027	14	$1,159,515.04	$155,968.64	$0.00	$0.00	$23,190.30	$179,158.94	
October 1, 2028	15	$1,003,546.40	$159,088.01	$0.00	$0.00	$20,070.93	$179,158.94	
October 1, 2029	16	$844,458.39	$162,269.76	$0.00	$0.00	$16,889.17	$179,158.93	
October 1, 2030	17	$682,188.63	$165,515.15	$0.00	$0.00	$13,643.77	$179,158.92	
October 1, 2031	18	$516,673.48	$168,825.47	$0.00	$0.00	$10,333.47	$179,158.94	
October 1, 2032	19	$347,848.01	$172,201.98	$0.00	$0.00	$6,956.96	$179,158.94	
October 1, 2033	20	$175,646.03	$175,646.03	$0.00	$0.00	$3,512.89	$179,158.92	
			$2,929,505.42	$493,400.29	$0.00	$653,673.30	$4,076,579.01	

08/27/14 -JD- Adjusted the loan from $3,426,425.51 to the disbursed amount of $3,422,905.71, which in turn decreased the total subsidy from $493,576.28 to $493,400.29.

IN WITNESS WHEREOF, the parties hereto have executed this Amended Loan Repayment Schedule as of this_____day of_____ YEAR, _____

ATTEST:

GOVERNING BODY

_____
Clerk of the Governing Body

By: _____
Chairperson, GOVERNING BODY

VERMONT MUNICIPAL BOND BANK

By: _____
Executive Director

Memorandum

To: Selectboard

From: Brian Palaia

Date: 11/17/2014

Re: **Schedule of Proposed Budget Process for FY2016**

Department heads have submitted their FY2016 Budget requests, and I am in the process of meeting with them and considering my recommendations. Below is an overview of the FY2016 Budget timeline with schedule.

December 15, 2014 - Town Manager Introduces Proposed FY 16 Budget and Capital Improvement Plan to Selectboard

January 5th, 6th, 13th, and 14th, 2015 Selectboard conducts review of Department Budgets and Capital Improvement Plan - Department Schedule TBD dependent upon time and need

January 24th, 2015 - Saturday Budget Social (possibly to include School Budget Presentation)

January 26th, 2015 Special Selectboard Meeting to Finalize Budget and Town Meeting Warning

February 2015 - Work with LCATV to Air Budget, Media on Budget with Milton Independent and other venues

March 2, 2015 - Pre-Town Meeting

March 3, 2015 - Town Meeting

Town of Milton
Selectboard Meeting Minutes
November 3, 2014 6:00 PM Board Meeting
Fire Station Training Room

Selectboard Members Present: Darren Adams, Chair; John Gifford, Vice Chair; Stuart King, and Brenda Steady

John Bartlett; Clerk arrived at 6:30 p.m.

Selectboard Members Not Present:

Staff Members Present: Brian Palaia, Town Manager; Ann Janda, Management Fellow; and Roger Hunt, Public Works Director

Others Present: Peter Bero, Project Manager, Dubois and King, Inc.; Jay Mitiguy, Planning Commission Applicant; Jon DosSantos, Planning Commission Applicant; Dan Gaherty, Conservation Commission Applicant; Sharon Radtke, Community Champion Awards Committee Applicant.

I. Call to Order – Adams called the meeting to order at 6:05 p.m.

II. Flag Salute – Adams led the attendees in a Salute to the Flag.

III. Agenda Review – Palaia added applicant John DosSantos to item A

IV. Public Forum –

V. Appointments/Resignations/Recognition

A) Planning Commission – 4 Year Term to Expire June 30, 2018

Applicant Jay Mitiguy and John DosSantos both explained their qualifications for the Planning Commission. Palaia stated there are alternate positions available on the Development Review Board and the Chittenden County Regional Planning Commission as well as an additional spot on the Community Champion Awards Committee.

Gifford motioned to appoint Jay Mitiguy to the Planning Commission for the unexpired portion of a 4-year term to expire June 30, 2018, second by King. **Approved Unanimously.**

Gifford motioned to appoint John DosSantos as an alternate to the Chittenden County Regional Planning Commission for the unexpired portion of a 2-year term to expire June 30, 2016, second by King. **Approved Unanimously.**

B) Conservation Commission – 4 Year Term to Expire June 30, 2017

Applicant Dan Gaherty was previously a member of the Conservation Commission, 2000 to 2004. Now he is retired and has more time. He is interested in assisting with land maintenance.

Gifford motioned to appoint Dan Gaherty to the Conservation Commission for the unexpired portion of a 4-year term to expire June 30, 2017, second by Steady. **Approved Unanimously.**

C) Community Champion Award Committee – 1 Year Term to Expire June 30, 2015

Applicant Sharon Radtke explained that she was the events and marketing coordinator in East Lansing, Michigan and worked on the Crystal Awards, which Milton's Community Champion program is based on.

Gifford motioned to appoint Sharon Radtke to the Community Champion Award Committee for the unexpired portion of a 1-year term to expire June 30, 2015, second by Steady. **Approved Unanimously.**

VI. New Business

D) East Road Bridge #6 Engineering Report

Palaia stated that we received grant money from VTrans to fund design of an upgrade to East Road Bridge #6. The engineer identified that it needed to be replaced to be upgraded. Peter Bero, Project Manager at DuBois and King, Inc. explained that a new bridge will cost from $400,000 to $500,000. Public Works Director Roger Hunt said we put the bridge on VTrans' inspection schedule, and the Regional Planning Commission has added the project to the State's project list to be prioritized for funding. This should qualify us for grant money for the project. Bero said the major thing wrong is scour of the footings. King asked if the footings could be rebuilt. Bero replied that the problem with rebuilding the footings is the span is significantly too small, so it would be tough to get a permit to rebuild them. King asked if there were alternate designs being considered like multiple culverts. Bero explained that multiple culverts would incur a similar cost. Adams asked how long the road would be closed for the project. Bero said probably about three months. The bridge is not in imminent danger of collapse.

E) VTrans January 2013 Codes and Standards

Palaia asked the Selectboard to authorize a Resolution to adopt the VTrans January 2013 Codes and Standards. This had already been adopted but VTrans wanted it on a specific template.

Gifford motioned to authorize the resolution to adopt the January 2013 VTrans Road and Bridge Standards, second by Bartlett. **Approved Unanimously.**

F) Private Fire Hydrant Maintenance Agreement with Bove's of Vermont

Palaia stated that Bove's of Vermont is developing a lot in the Catamount Industrial Park and will have two fire hydrants. Bove's and the Town wish to enter into a Fire Hydrant Maintenance Agreement, which is binding and permanent upon the property.

Bartlett motioned to approve the permanent Private Fire Hydrant Maintenance Agreement between Mark and Rick Bove and the Town of Milton as presented, second by Steady. **Approved Unanimously.**

G) Review Topics for Legislative Breakfast

Palaia stated that we are planning another Legislative Breakfast on December 10, 2014. Some topics for this year's legislative session include: state permit reform, education

property tax reform, and alternative economic development programs. Adams said to invite the School Board. Palaia said that was on the list. Palaia said he thinks there is going to be pushback on permit reform in the legislature. Steady would like to talk about how the mandatory pre-K education program will be funded.

H) Amendment to the Capital Plan to Adjust Impact Fee Allocation

Palaia said we are proposing to amend impact fees by category in order to increase the allocation to transportation category because we are working on more sidewalk projects and will need to find more money for grant matches. The increase would be taken from the recreation allocation. The Recreation Department has other dedicated funding that is currently supporting some recreation capital improvements.

Gifford motioned to adopt the Resolution for the amendment to the Capital Plan to adjust impact fee allocations as presented, second by Bartlett. **Approved Unanimously.**

I) Business Card Limit Increase

Palaia said the Town recently hit a bottle neck with its current business card limit of $5,000, and requests that the Selectboard support a limit increase to $10,000. Adams asked how many times the Town has reached the limit. Palaia said a couple. King suggested that $7,500 would be better for now.

Gifford motioned to authorize the Resolution to increase the Town's Business Card limit to $7,500, second by Steady. **Approved Unanimously.**

VII. Old Business

J) Update on US-7 / Middle Road / Railroad Street Intersection

Palaia said there is nothing new to report.

VIII. Reconsideration – Nothing

IX. Manager's Updates

<u>Public Works</u>

- Algonquin Reef Intersection, Omega Construction – The project is 99% complete.
- Everest Road Reconstruction, Ormand Bushey & Sons – The project is 99% Complete. Just line painting remains
- McMullen Road Sidewalk –
  - A+E has provided a revised cost opinion based on the final review plan submittal. The current opinion is $373,000.00.
  - The plans are now at the 85% stage and A+E are submitting them to the State for review.
- Cherry Street Sidewalk – Railroad has added some costs to the project, determining whether these will be eligible under the sidewalk grant, based on guidance provided by the railroad, our engineer is starting conceptual design work. – relocate signal gate and remove abandoned rails
- We have not received the signed contract agreement from Vtrans to move ahead with the Railroad Street Sidewalk Scoping Study. This is unchanged from my last update.
- Meeting w/consultant on facility study next week - PW/Rec/Muni Study team meeting in the

next couple of weeks. Hope to have update for first December meeting

- Gravel Roads continue to be maintained, new gravel mixture appears to be working, we are now working with the Rainville Quarry in Georgia using a custom blend of materials, and this appears to be holding up fairly well. Grading of the roads should start again next week.
- Removing shoulders continues, working in areas that tend to wash out, or have standing water in the roadway, still ongoing. This will continue into the start of the winter season.
- Winter Sand hauling is complete.
- Street sign installations are almost complete.
- Clearing roadside debris will continue as we transition into checking the routes for winter preparedness
- Single axle is being built, delivery is still scheduled for the end of November
- Replacement for unmarked police car has been delivered

Other

- Winter Festival: The dates will be Feb. 13, 14 & 15.
- Mandatory Reporting –DCF: A meeting Doodle has gone out to Milton Library, Fire, Police, Rescue, Buildings & Grounds, Town Clerk's Office, MCYC from Milton Recreation (coordinator). The Mandatory Reporting Presentation will be held on Wed, Nov. 5 at 2pm.
- Cathedral Square has brought some preliminary plans for their development
- We have been told to expect some site work this fall on the housing development behind Rick's Grill but don't expect any structure until spring
- Treasurer's Local Investment Advisory Committee – I asked to give feedback on economic development and municipal infrastructure
- TIF, Vermont Economic Progress Council has been unresponsive to requests to meet on the rules – I may prepare something official to preserve our objections.

X. Potential and/or Future Agenda Items –

XI. Minutes of October 20, 2014

Bartlett moved to approve the October 20, 2014 minutes as presented, second by Steady.
Approved Unanimously.

XII. Warrant/Report #9 and Supplemental Warrants

Bartlett reviewed the FY15 Warrant/Invoice Report #9 for Board orders in the amount of $156,315.29. Bartlett noted some items of interest:

- $ 3,640 for Apple iPad Air2 (5) @ $629 each & AppleCare for Ipad (5) @ 99 each.
- $36,090 to Cargill, Inc for 500 tons of road salt @ $72.18/ton
- $21,966 to Formula Ford for 2015 Ford Interceptor AWD sedan, unmarked cruiser
- $35,410.90 to SD Ireland for Fall Paving ($24,000 Railroad St "shim", $5,252 Main St, $6,150 "milling")

Bartlett moved to approve Warrant #9 for a total of $$156,315.29, second by Gifford.
Approved Unanimously.

- **Supplemental Warrant - Debt Service Revision due to Federal Sequestration**

Bartlett moved to approve the Supplemental Warrant for Debt Service Revision due to the Federal Sequestration in 2014, second by Gifford. **Approved Unanimously.**

XIII. Executive Session per V.S.A. Title 1 Section 313

Gifford motioned that premature public knowledge about a personnel matter would cause the Town or person to suffer a substantial disadvantage, second by Bartlett. **Approved Unanimously.**

Gifford moved to enter into executive session to discuss a personnel matter under the provisions of 1 V.S.A. § 313 (a)(3) of the Vermont Statutes, second by Bartlett. **Approved Unanimously**

Executive Session was entered into at 7:04. There were no actions as a result of the session.

XIV. Adjournment

Bartlett moved to adjourn the meeting at 8:40 p.m., second by Gifford. **Approved Unanimously**

These proceedings were filmed by LCATV and audio-recorded by the Town.

Respectfully Submitted,

_____ Date: _____

John Bartlett, Selectboard Clerk

Filed with Milton Town Clerk's Office on this _____ day of _____, _____

ATTEST: _____ Milton Assistant Town Clerk

Reviewed 11/13/14 jmd

By due date and vendor name for check acct 1(GENERAL FUND) and due dates 11/18/14 thru 11/18/14

Vendor PO Number	Invoice Number	Invoice Description	Account Number	Account Description	PO Amount	Invoice Amount	Check
21526 AMERIGAS - SOUTH BURLINGTON							
	3033842590	Natural Gas and Propane	10-30-432-623.00	PROPANE	0.00	65.10	✓
12877 ASSOCIATION OF VERMONT CONSERVATIO							
00006436	1112014	Conservation Commision	10-60-461-805.00	CONSERVATION COMMISSION	10.00	10.00	✓
19000 BOND AUTO PARTS, INC.							
00001476	17-311870	General Supplies	50-10-410-612.00	GENERAL SUPPLIES	2.25	2.25	
00001476	17-311870	General Supplies	55-20-420-612.00	GENERAL SUPPLIES	2.24	2.24	
00003425	17-312000	Vehicl Maint.	10-30-430-430.10	VEHICLE MAINTENANCE	379.00	399.00	
00003406	310382/4	Vehicle maintenance	10-30-430-430.10	VEHICLE MAINTENANCE	186.36	186.36	
00003427	313280/9	Vehicle Maintenance	10-30-430-430.10	VEHICLE MAINTENANCE	432.42	432.42	
					1,002.27	1,022.27	✓
19190 BOUND TREE MEDICAL							
00011824	2679	General Supplies	10-20-422-612.00	GENERAL SUPPLIES	397.47	191.06	✓
27806 BUSINESS CREDIT CARD SERVICES							
00008425	11032014	Other Professional	10-10-416-330.00	OTHER PROFESSIONAL	30.00	30.00	
00007151	14999	Technical	10-10-417-340.00	TECHNICAL	150.00	149.99	
00008430	4308452252	Contingency	10-10-415-850.00	CONTINGENCY	705.00	705.00	
					885.00	884.99	✓
23262 CERTIFIED AMBULANCE GROUP, INC.							
	MIL-1114	Rescue Contract Service	10-20-422-360.00	CONTRACTED SERVICES	0.00	1,407.89	✓
25190 CHAMPLAIN WATER DISTRICT							
	10312014	Water Purchase CWD	50-10-410-411.10	WATER PURCHASE CWD	0.00	42,849.44	✓
26250 CHITTENDEN SOLID WASTE DISTRICT							
	IVC021129	Technical Service	55-20-420-340.00	TECHNICAL SERVICES	0.00	2,293.57	✓
26422 CHOICE COBRA, LLC							
	11032014	Health Insurance - Choice	10-10-416-210.00	HEALTH INSURANCE - CHOICE	0.00	38.25	✓
26950 CLARK'S TRUCK CENTER							
00003419	347595	Vehicle Maint.	10-30-430-430.10	VEHICLE MAINTENANCE	142.00	141.35	✓
32296 CREATIVE HABITAT							
00008428	719/1	Office Supplies	10-10-416-611.00	OFFICE SUPPLIES	81.00	81.00	✓
27864 CRW CORP							
00003430	S64587	Vehicle Maint.	10-30-430-430.10	VEHICLE MAINTENANCE	166.83	166.23	✓
30237 EASTERN SYSTEMS INC							
00004467	00153943	Printing & Binding	10-10-413-550.00	PRINTING & BINDING	590.00	584.70	✓
31009 ENDYNE, INC							
00001496	159035	Technical Service	55-20-420-340.00	TECHNICAL SERVICES	75.00	75.00	✓

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32843 FIRE SAFETY USA							
00010920	73594	Machinery/Equipment	10-20-421-740.00	MACHINERY/EQUIPMENT	225.00	245.00	✓
32958 FISHER SCIENTIFIC							
00001527	1201464	General Supplies	55-20-420-612.00	GENERAL SUPPLIES	555.81	555.81	✓
34300 GALL'S INC							
00002887	002602870	Uniforms	10-20-420-650.00	UNIFORMS	130.00	143.00	
00002878	2524557	Uniforms	10-20-420-650.00	UNIFORMS	88.00	93.15	
					218.00	236.15	✓
53920 GARDENER'S SUPPLY COMPANY							
00009183	230062	General Supplies	10-30-432-612.00	GENERAL SUPPLIES	119.94	119.94	✓
36907 GORDON BERNARD COMPANY, LLC							
00011837	0097419	Donation Expense	10-20-422-850.00	DONATION EXPENSE	1,081.65	1,081.65	✓
37600 GREEN MOUNTAIN POWER							
	11232014	Electricity	10-30-432-622.00	ELECTRICITY	0.00	331.57	
	11232014	Electricity	10-30-432-622.50	ELECTRICITY - STREET LIGH	0.00	3,187.43	
	11232014	Electricity	50-10-410-622.00	ELECTRICITY	0.00	727.73	
	11232014	Electricity	55-20-420-622.00	ELECTRICITY	0.00	6,565.37	
					0.00	10,812.10	✓
37805 HACH COMPANY CORP							
00001515	9098346	General Supplies	55-20-420-612.00	GENERAL SUPPLIES	663.70	655.37	✓
60407 HAUN WELDING SUPPLY INC							
00003413	3557098	General Supplies	10-30-430-612.00	GENERAL SUPPLIES	99.86	106.08	
00011836	7087	General Supplies	10-20-422-612.00	GENERAL SUPPLIES	49.10	49.10	
					148.96	155.18	✓
49173 HUDSON, JEAN							
	111214	PB for mouse traps	10-30-432-612.00	GENERAL SUPPLIES	0.00	2.39	✓
40700 INGRAM LIBRARY SERVICES							
00051451	66535359/58	Videos	10-50-451-640.50	VIDEOS	108.70	108.70	
00051459	66535476	books/adult	10-50-451-640.10	BOOKS-ADULTS	585.84	585.84	
					694.54	694.54	✓
41074 INTERSTATE AUTO SERVICE, INC							
	1031204	Vehicle Description	10-20-420-430.10	VEHICLE MAINTENANCE	0.00	1,918.23	
00001528	70462	Vehicle Repair	50-10-410-430.10	VEHICLE REPAIR AND MAINTE	20.00	20.00	
00001528	70462	Vehicle Repair	55-20-420-430.10	VEHICLE REPAIR & MAINTENA	20.00	20.00	

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					40.00	1,958.23	✓
42550 J & B INTERNATIONAL TRUCKS INC							
00003353	T329192	Vehicle Maint.	10-30-430-430.10	VEHICLE MAINTENANCE	339.06	339.06	✓
49931 JOHNSON HARDWARE & RENTAL							
00009164	A115040	Other Employee Benefit	10-30-430-290.00	OTHER EMPLOYEE BENEFIT	50.00	50.00	
00009164	A115040	Other Employee Benefit	10-30-432-290.00	OTHER EMPLOYEE BENEFITS	50.00	50.00	
					100.00	100.00	✓
46300 LAROCHE, STEVE							
	10312014	Travel	10-20-420-580.00	TRAVEL	0.00	256.51	✓
46973 LOCKE, PAUL							
	08501	General Supplies	10-20-420-612.00	GENERAL SUPPLIES	0.00	8.50	
	11032014	Uniforms	10-20-420-650.00	UNIFORMS	0.00	39.98	
					0.00	48.48	✓
49500 MCRAE AUTO SERVICE							
00010918	2603/2596/26	Vehicle Maintence	10-20-421-430.10	VEHICLE/EQUIP MAINTENANCE	1,223.40	1,223.40	
00011834	2604	Vehicle/Equipment Maint.	10-20-422-430.10	VEHICLE/EQUIP.MAINTENANCE	210.98	210.98	
00010930	2619	Vehicle/Equipment	10-20-421-430.10	VEHICLE/EQUIP MAINTENANCE	664.07	664.07	
					2,098.45	2,098.45	✓
48467 MILTON ACE HARDWARE LLC							
00009182	10670/4	Repairs Maintenance	10-30-430-430.00	REPAIRS MAINTENANCE	54.11	54.11	
00001475	10689/4	General Supplies	50-10-410-612.00	GENERAL SUPPLIES	6.99	6.99	
00001475	10689/4	General Supplies	55-20-420-612.00	GENERAL SUPPLIES	21.35	21.35	
					82.45	82.45	✓
69870 MILTON BUILDING SUPPLY							
00009193	79977/80351	General Supplies	10-30-432-612.00	GENERAL SUPPLIES	74.25	74.25	✓
52802 MILTON FIREFIGHTERS ASSOCIATION IN							
	101	Training Evaluation	10-20-421-820.00	PROFESSIONAL DEVELOPMENT	0.00	250.00	✓
53400 MILTON INDEPENDENT INC							
00020015	40392	Advertising	10-30-429-540.00	ADVERTISING	25.50	25.50	
00006431	40420	Advertising	10-60-461-540.00	ADVERTISING	75.00	75.00	
00006430	40421	Advertising	10-60-461-540.00	ADVERTISING	125.00	105.00	
					225.50	205.50	✓
53950 MILTON RENTAL & SALES CENTER INC							
00001477	01-329898-01	General Supplies	50-10-410-612.00	GENERAL SUPPLIES	16.48	16.48	

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00001477	01-329898-01	General Supplies	55-20-420-612.00	GENERAL SUPPLIES	16.47	16.47	
00003340	01-330202	Repairs Main.	10-30-430-430.00	REPAIRS MAINTENANCE	33.54	76.97	
00003339	330177	Rental of Equipment/Vehic	10-30-430-442.00	RENTAL OF EQUIPMENT/VEHIC	177.65	177.65	
00003429	330726	Repairs Maintenance	10-30-430-430.00	REPAIRS MAINTENANCE	32.44	32.44	
					276.58	320.01	✓
53668 MUNICIPAL EMERGENCY SERV INC							
00010928	2034		10-20-421-612.00	GENERAL SUPPLIES	417.20	417.20	✓
57610 NEIWPCC							
00001503	006296	Professional Development	55-20-420-820.00	PROFESSIONAL DEVELOPMENT	360.00	360.00	✓
57350 NEW ENGLAND MUNICIPAL RESOURCE							
00014348	33223	Official/Administrative	10-10-414-310.00	OFFICIAL/ADMINISTRATIVE	62.50	62.50	✓
57413 NEW HORIZON COMMUNICATIONS CORP							
	11012014	Phone Service	10-10-410-530.10	COMMUNICATIONS-TELEPHONE	0.00	24.32	
	11012014	Phone Service	10-10-410-530.10	COMMUNICATIONS-TELEPHONE	0.00	32.42	
	11012014	Phone Service	10-10-412-530.10	COMMUNICATIONS-TELEPHONE	0.00	24.32	
	11012014	Phone Service	10-10-413-530.10	COMMUNICATIONS-TELEPHONE	0.00	20.27	
	11012014	Phone Service	10-10-414-530.10	COMMUNICATIONS-TELEPHONE	0.00	20.27	
	11012014	Phone Service	10-10-417-530.20	COMMUNICATIONS-OTHER	0.00	318.84	
	11012014	Phone Service	10-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	143.04	
	11012014	Phone Service	10-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	86.02	
	11012014	Phone Service	10-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	105.41	
	11012014	Phone Service	10-20-421-530.10	COMMUNICATIONS TELEPHONE	0.00	16.21	
	11012014	Phone Service	10-20-421-530.10	COMMUNICATIONS TELEPHONE	0.00	31.70	
	11012014	Phone Service	10-20-422-530.10	COMMUNICATIONS-TELEPHONE	0.00	31.49	
	11012014	Phone Service	10-20-422-530.10	COMMUNICATIONS-TELEPHONE	0.00	12.16	
	11012014	Phone Service	10-30-429-530.10	COMMUNICATIONS-TELEPHONE	0.00	4.05	
	11012014	Phone Service	10-30-429-530.10	COMMUNICATIONS-TELEPHONE	0.00	32.43	
	11012014	Phone Service	10-30-429-530.10	COMMUNICATIONS-TELEPHONE	0.00	8.11	
	11012014	Phone Service	10-30-430-530.10	COMMUNICATIONS-TELEPHONE	0.00	33.27	
	11012014	Phone Service	10-30-430-530.10	COMMUNICATIONS-TELEPHONE	0.00	4.05	
	11012014	Phone Service	10-50-451-530.10	COMMUNICATIONS-TELEPHONE	0.00	4.05	
	11012014	Phone Service	10-50-452-530.10	COMMUNICATIONS-TELEPHONE	0.00	4.05	
	11012014	Phone Service	10-60-461-530.10	COMMUNICATIONS-TELEPHONE	0.00	24.32	
	11012014	Phone Service	50-10-410-530.10	COMMUNICATIONS-TELEPHONE	0.00	31.49	
	11012014	Phone Service	50-10-410-530.10	COMMUNICATIONS-TELEPHONE	0.00	2.03	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	31.49	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	40.46	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	31.97	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	31.71	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	2.03	
	11012014	Phone Service	55-20-420-530.10	COMMUNICATIONS-TELEPHONE	0.00	68.81	
					0.00	1,220.79	✓
57495 NEW YORK CLEANERS							
	10312014	Uniforms	10-20-420-650.00	UNIFORMS	0.00	441.50	✓

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58632 OCCUPATIONAL HEALTH CENTERS							
00001529	1203311329	Other Employee Benefits	50-10-410-290.00	OTHER EMPLOYEE BENEFITS	127.50	127.50	
00001529	1203311329	Other Employee Benefits	55-20-420-290.00	OTHER EMPLOYEE BENEFITS	127.50	127.50	
00011835	78514	Other Professional	10-20-422-330.00	OTHER PROFESSIONAL	237.00	237.00	
					492.00	492.00	✓
58743 OLIVER, LD SEED COMPANY INC							
00003341	111324	Erosion Control	10-30-430-426.00	EROSION CONTROL	36.26	36.26	
00009185	111356	General Supplies	10-30-432-612.00	GENERAL SUPPLIES	36.18	36.18	
					72.44	72.44	✓
61912 PINEBROOK KENNELS, LLC							
00002890	11042014	Canine Unit	10-20-420-890.00	Canine Unit	130.00	130.00	✓
60195 PPG ARCHITECTURAL FINISHES							
00091809	823203011421		38-50-452-342.00	1/2 Penny for Recreation	94.10	77.18	✓
24501 R.R. CHARLEBOIS INC							
	GK2176	2-Tandem Axle	10-70-470-910.23	2-Tandem Axle/1 Single Ax	0.00	187,767.00	✓
65050 REPROGRAPHICS OF NEW ENGLAND INC							
00014347	82444	Office Supplies	10-10-414-611.00	OFFICE SUPPLIES	231.00	231.00	✓
34858 ROGER WILLIAMS UNIVERSITY							
00002867	5236	Professional Development	10-20-420-820.00	PROFESSIONAL DEVELOPMENT	125.00	125.00	✓
61943 SWISH KENCO LTD							
00009190	101414	General Supplies	10-30-432-612.00	GENERAL SUPPLIES	521.16	513.61	✓
48700 SYMQUEST GROUP INC							
	853490/3	Photo Copier Maintenance	10-10-412-430.20	PHOTOCOPIER MAINTENANCE	0.00	117.00	
	853490/3	Photo Copier Maintenance	10-10-416-430.20	PHOTOCOPIER MAINTENANCE	0.00	332.32	
					0.00	449.32	✓
76029 TENCO INDUSTRIES INC							
00003398	4721752-RI	Vehicle Maintanence	10-30-430-430.10	VEHICLE MAINTENANCE	1,721.50	1,721.50	✓
53344 TRIGGS, ELIZABETH D.							
00005590	110414	Revenue Programs	10-50-452-831.00	REVENUE PROGRAMS	890.00	585.00	✓
76960 U.S. BANK EQUIPMENT FINANCE							
	265174003	Photocopier Maintence	10-20-420-430.20	PHOTOCOPIER MAINTENANCE	0.00	145.10	✓
78210 UNIFIRST CORP							
	1642942	Rental Rags/Uniform Rent	10-30-430-612.00	GENERAL SUPPLIES	0.00	29.66	✓

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	1642942	Rental Rags/Uniform Rent	10-30-430-650.00	EMPLOYEE UNIFORMS	0.00	78.27	
	1642942	Rental Rags/Uniform Rent	10-30-432-442.20	BUILDING MAT RENTALS	0.00	41.31	
	1642942	Rental Rags/Uniform Rent	10-30-432-650.00	EMPLOYEE UNIFORMS	0.00	17.05	
	1642942	Rental Rags/Uniform Rent	50-10-410-650.00	EMPLOYEE UNIFORMS	0.00	15.12	
	1642942	Rental Rags/Uniform Rent	55-20-420-650.00	EMPLOYEE UNIFORMS	0.00	15.13	
	1644179	Rental Rags	10-30-430-612.00	GENERAL SUPPLIES	0.00	11.50	
	1644179	Rental Rags	50-10-410-650.00	EMPLOYEE UNIFORMS	0.00	15.12	
	1644179	Rental Rags	55-20-420-650.00	EMPLOYEE UNIFORMS	0.00	15.13	
					0.00	238.29	✓
79800 VAN NOORDT, BRETT							
	11042014	Professional Development	10-20-420-820.00	PROFESSIONAL DEVELOPMENT	0.00	1,894.54	
	11062014	Professional Development	10-20-420-820.00	PROFESSIONAL DEVELOPMENT	0.00	28.00	
					0.00	1,922.54	✓
82984 VCJTC							
00002837	141010618	Professional Development	10-20-420-820.00	PROFESSIONAL DEVELOPMENT	15.50	15.50	
00002837	141110644	Professional Development	10-20-420-820.00	PROFESSIONAL DEVELOPMENT	15.50	15.50	
					31.00	31.00	✓
49013 VERIZON WIRELESS							
	9734206362	Communications-other	10-20-420-530.20	COMMUNICATIONS-OTHER	0.00	200.05	✓
80647 VERMONT AGENCY OF NATURAL RESOURCE							
00006438	111314	Professional Development	10-60-461-820.00	PROFESSIONAL DEVELOPMENT	60.00	60.00	✓
82085 VERMONT DEPARTMENT OF HEALTH LABOR							
00001517	2015-46	Technical Services	50-10-410-340.00	TECHNICAL SERVICES	84.00	84.00	✓
80720 VERMONT GAS SYSTEMS INC							
	10242014	Natural Gas	10-30-432-621.00	NATURAL GAS	0.00	51.96	
	12996	Natural Gas	10-30-432-621.00	NATURAL GAS	0.00	271.27	
	12996	Natural Gas	55-20-420-621.00	NATURAL GAS	0.00	297.38	
					0.00	620.61	✓
81494 VERMONT PLANNERS ASSOCIATION							
00006417	11042014	Professional Development	10-60-461-820.00	PROFESSIONAL DEVELOPMENT	400.00	400.00	
00006437	E9SMPL6UW	Professional Development	10-60-461-820.00	PROFESSIONAL DEVELOPMENT	40.00	40.00	
					440.00	440.00	✓
81123 VERMONT RECREATION PARK							
00005605	110414	Professional Development	10-50-452-820.00	PROFESSIONAL DEVELOPMENT	80.00	80.00	✓
86543 WEX BANK							
	38598725	Wright Express	10-20-420-626.00	GASOLINE	0.00	4,454.25	✓

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	38598725	Wright Express	10-30-429-626.00	GASOLINE	0.00	139.22	
	38598725	Wright Express	10-30-430-626.00	GASOLINE	0.00	4.73	
	38598725	Wright Express	10-30-432-626.00	GASOLINE	0.00	461.35	
	38598725	Wright Express	10-60-461-626.00	GASOLINE	0.00	28.99	
	38598725	Wright Express	50-10-410-626.00	GASOLINE	0.00	297.72	
	38598725	Wright Express	55-20-420-626.00	GASOLINE	0.00	297.73	
					0.00	5,683.99	✓
35050 WOOD, GEORGE INC							
00002884	240244	Vehicle Maintence	10-20-420-430.10	VEHICLE MAINTENANCE	2,140.64	2,140.64	✓
87227 WORKSAFE TRAFFIC CONTROL INDUSTRIE							
00003366	54916	Traffic Signs	10-30-430-616.00	TRAFFIC SIGNS	3,226.20	3,226.20	✓
87365 YIPES AUTO ACCESSORIES							
00004426	715634	Vehicles	38-20-420-742.00	VEHICLES - POLICE	1,180.00	1,180.00	
00004468	715995-01	Vehicles	38-20-420-742.00	VEHICLES - POLICE	474.00	474.00	
					1,654.00	1,654.00	✓
			Report Total			281,294.38	

THESE INVOICES HAVE BEEN APPROVED BY THE TOWN MANAGER ON THE FOLLOWING DATE:

_____ APPROVED ON ____/____/____
Brian M. Palaia, Town Manager

To the Treasurer of the TOWN OF MILTON:

We Hereby certify that there are sufficient vouchers
supporting the amounts owed to the above mentioned vendors.

Let this be your order for the payments of the amounts totaling $ ***281,294.38

SELECTBOARD:

Darren Adams, Chair	John C.Gifford, Vice Chair	John W. Bartlett,Clerk	Brenda Steady	Stuart King

GENERAL FUND

Account	Curr Yr Pd 5 Nov Encumbrances	Curr Yr Pd 5 Nov Actual
ASSET		
10-00-000-101.00 PEOPLE'S UNITED BANK CK	0.00	1,460,465.31
10-00-000-106.00 MILTON EMS RECEIPTS	0.00	333,683.00
10-00-000-110.00 PAYROLL CHECKING ACCOUNT	0.00	650.05
10-00-000-111.00 PETTY CASH-LIBRARY	0.00	25.00
10-00-000-112.00 CASH CHARGED FOR EVENTS	0.00	335.00
10-00-000-113.00 CHOICE CARE CHECKING	0.00	45,014.33
10-00-000-115.00 TOWN TAX CLEARING	0.00	-1,096.53
10-00-000-117.00 UTILITY CONTROL ACCT	0.00	1,722.66
10-00-000-119.00 UTILITY OVER PAYMENT	0.00	-958.03
10-00-000-120.00 Credit Card Checking Acct	0.00	966.60
10-00-000-122.00 PENALTIES REC-DEL TAXES	0.00	19,941.24
10-00-000-123.00 INTEREST REC-DEL TAXES	0.00	18,730.55
10-00-000-124.01 POLICE CONTRACTS RECEIVAB	0.00	29,205.50
10-00-000-124.10 CCTA BUS PASS RECEIVABLE	0.00	1,433.00
10-00-000-129..1 Allowance for Ambul	0.00	-86,000.00
10-00-000-129.10 ACCOUNTS REC - AMBULANCE	0.00	196,815.28
10-00-000-129.30 ACCTS REC-POLICE COPS GRA	0.00	21,941.78
10-00-000-129.40 A/R - SRO Officer Grant	0.00	7,159.43
10-00-000-131.00 TAXES CURRENT	0.00	14,833,657.37
10-00-000-132.00 Inventory	0.00	38,708.35
10-00-000-140.00 PRIOR YR DEL TAXES TOWN	0.00	271,195.78
10-00-000-143.00 DEL TAX PROPERTY SALES	0.00	-400.81
10-00-000-144.00 RESERVE-UNCOLLECTED TAXES	0.00	-19,000.00
10-00-000-146.00 DEFERRED TAX REVENUE	0.00	-350,000.00
10-00-000-170.00 DUE FROM/TO OTHER FUNDS	70,265.41	-1,432,814.68
10-00-000-190.00 PREPAID POSTAGE	0.00	5,234.25
10-00-000-192.00 PREPAID TAXES	0.00	-0.02
Total Asset	70,265.41	15,396,614.41
LIABILITY		
10-00-000-200.00 ACCRUED PAYROLL	0.00	-147,168.02
10-00-000-201.15 FICA PAYABLE	0.00	-9,662.90
10-00-000-201.25 PENSION PAYABLE	0.00	-7,740.92
10-00-000-201.30 MEDI PAYABLE	0.00	-2,259.87
10-00-000-210.00 ACCOUNTS PAYABLE	0.00	-27,711.36
10-00-000-222.15 Def Rev - Ambulance	0.00	-69,000.00
10-00-000-250.02 DUE TO SCHOOL CURRENT TAX	0.00	-10,131,542.74
10-00-000-250.03 DUE TO SCHOOL-LIQUOR LIC	0.00	-150.00
10-00-000-250.09 DUE TO FLAG TRUST	0.00	-1,000.21
10-00-000-250.10 DUE TO CSWD-BINS/TIRES	0.00	-170.12
10-00-000-250.11 DUE TO REC SCHOLARSHIPS	0.00	-655.51
10-00-000-252.01 DUE TO STATE/MARRIAGE LIC	0.00	-140.00
10-00-000-252.02 DUE TO STATE/DOG LICENSE	0.00	190.00
10-00-000-253.01 DUE TO GERMAINE TAX	0.00	-194.63
10-00-000-254.00 DUE TAXPAYER-TAX OVERPMT	0.00	-1,940.76

Account	Curr Yr Pd 5 Nov Encumbrances	Curr Yr Pd 5 Nov Actual
10-00-000-255.00 DUE TO HIGHWAY PERMITS	0.00	-400.00
10-00-000-256.00 DUE TO DEVELOPERS	0.00	-12,910.57
10-00-000-258.00 Due to Highway	0.00	-2,159.00
10-00-000-299.00 ENCUMBRANCE	-312,821.37	0.00
Total Liability	-312,821.37	-10,414,616.61
RESERVES		
10-10-000-321.40 1/2 Penny for Recreation	1,669.92	21,480.84
Total Reserves	1,669.92	21,480.84
BUDGETARY		
Total Budgetary	0.00	0.00
FUND BALANCE		
10-00-199-000.00 FUND BALANCE	0.00	-628,180.10
10-00-199-000.10 EMERGENCE MANAGMENT RESER	0.00	-71,474.34
10-00-199-000.20 RESERVED RESCUE	0.00	-1,184.27
10-00-199-000.30 HEALTH INS STABILIZATION	0.00	-156,721.87
10-00-199-000.40 RESERVED FUND BALANCE	0.00	-330,000.00
10-00-199-000.50 FD Equip-Village	0.00	-5,783.19
10-00-199-000.55 Riley Fund-Village	0.00	-525.99
Total Prior Years Fund Balance	0.00	-1,193,869.76
Fund Balance Current Year	240,886.04	-3,809,608.88
Total Fund Balance	240,886.04	-5,003,478.64
Total Liability,Reserves,Fund Balance	-70,265.41	-15,396,614.41

GENERAL FUND

Account	Adjusted Budget	Actual	Actual % of Budget
10-10-000-311 TAXES			
10-10-000-311.00 PROPERTY TAXES	5,144,076.00	-5,855,608.15	113.83%
10-10-000-311.10 RAILROAD TAXES	1,315.00	0.00	0.00%
10-10-000-311.20 STATE LAND TAXES	16,339.00	-16,726.98	102.37%
10-10-000-311.30 CURRENT USE TAXES	45,597.00	0.00	0.00%
10-10-000-311.40 PENALTY ON LATE HS-122	500.00	0.00	0.00%
10-10-000-311.50 SCHOOL TAX COLLECTION FEE	24,783.00	0.00	0.00%
Total TAXES	5,232,610.00	-5,872,335.13	112.23%
10-10-000-312.00 Sale of Cemetary Plots	0.00	-1,450.00	100.00%
10-10-000-313 FEMA AID			
Total FEMA AID	0.00	0.00	0.00%
10-10-000-314.00 FEMA-4140-DR-VT	0.00	0.45	100.00%
10-10-000-319 INTEREST/PENALTY DEL TAX			
10-10-000-319.10 INTEREST ON DEL TAXES	35,000.00	-14,141.70	40.40%
10-10-000-319.20 PENALTIES ON DEL TAXES	57,000.00	0.00	0.00%
Total INTEREST/PENALTY DEL TAX	92,000.00	-14,141.70	15.37%
10-10-000-321 MISCELLANEOUS REVENUES			
10-10-000-321.00 STATE LAND PILOT	3,200.00	0.00	0.00%
10-10-000-321.20 Allowance for Uncollectib	14,331.00	0.00	0.00%
10-10-000-321.25 Health Care Stabilization	18,500.00	0.00	0.00%
Total MISCELLANEOUS REVENUES	36,031.00	0.00	0.00%
10-10-000-322 LICENSE REVENUE			
10-10-000-322.10 FISH & WILDLIFE LIC FEES	600.00	0.00	0.00%
10-10-000-322.20 MOTOR VEHICLE RENEWAL	3,500.00	-621.00	17.74%
10-10-000-322.60 DOG LICENSES	4,500.00	-362.00	8.04%
Total LICENSE REVENUE	8,600.00	-983.00	11.43%
10-10-000-337 REIMBURSE. REVENUE			
10-10-000-337.00 SCHOOL'S SHARE FINANCE	154,500.00	0.00	0.00%
10-10-000-337.10 WATER/SEWER ADMIN REIMB	317,558.00	-78,792.50	24.81%
10-10-000-337.20 SCHOOL SHARE ELECTIONS	1,500.00	0.00	0.00%
Total REIMBURSE. REVENUE	473,558.00	-78,792.50	16.64%
10-10-000-340 LIBRARY FEES			
10-10-000-340.00 LIBRARY FEES	500.00	-690.95	138.19%
Total LIBRARY FEES	500.00	-690.95	138.19%
10-10-000-341 RECORDING FEES			
10-10-000-341.00 RECORDING FEES	100,000.00	-25,434.08	25.43%

Account	Adjusted Budget	Actual	Actual % of Budget
10-10-000-341.10 Clerk's Fees	10,000.00	-6,320.76	63.21%
10-10-000-341.20 OPER-TRANSFER IN-ACS	22,000.00	-2,400.19	10.91%
10-10-000-341.21 OPER TRANSFER IN REC/REST	10,000.00	0.00	0.00%
Total RECORDING FEES	142,000.00	-34,155.03	24.05%
10-10-000-342 LISTERS FEES			
10-10-000-342.00 LISTERS FEES	100.00	-31.97	31.97%
10-10-000-342.10 APPRAISAL FEES	1,000.00	0.00	0.00%
10-10-000-342.20 LISTER'S EDUCATION	600.00	0.00	0.00%
Total LISTERS FEES	1,700.00	-31.97	1.88%
10-10-000-361 INTEREST			
10-10-000-361.00 INTEREST ON INVESTMENTS	12,000.00	-593.90	4.95%
10-10-000-361.10 INTEREST ON IMPACT FEE	4,000.00	0.00	0.00%
Total INTEREST	16,000.00	-593.90	3.71%
10-10-000-390 MISCELLANEOUS INCOME			
10-10-000-390.00 OTHER FINANCING SOURCES	2,500.00	-1,865.23	74.61%
Total MISCELLANEOUS INCOME	2,500.00	-1,865.23	74.61%
10-10-000-391 OPERATING TRANSFER IN			
10-10-000-391.00 OPERATING TRANSFER IN	30,000.00	0.00	0.00%
10-10-000-391.05 Oping Tfer In(TIF-Main ST	16,453.00	0.00	0.00%
Total OPERATING TRANSFER IN	46,453.00	0.00	0.00%
10-10-000-392 RESTITUTION/SALE OF PROP			
Total RESTITUTION/SALE OF PROP	0.00	0.00	0.00%
10-20-000-342 POLICE FEES			
10-20-000-342.00 POLICE FINES AND COSTS	35,000.00	-6,423.50	18.35%
10-20-000-342.10 POLICE FEES	2,600.00	-909.00	34.96%
10-20-000-342.11 POLICE CONTRACTS	30,000.00	-18,962.64	63.21%
10-20-000-342.30 OTI Seized Assets/Canine	10,000.00	0.00	0.00%
10-20-000-342.54 BALLISTIC VESTS GRANT	1,500.00	0.00	0.00%
10-20-000-342.55 CDIP GRANT	3,000.00	0.00	0.00%
10-20-000-342.56 POLICE DONATIONS	200.00	0.00	0.00%
10-20-000-342.57 COPS GRANT	35,000.00	-21,941.78	62.69%
10-20-000-342.58 SRO GRANT	77,500.00	-7,159.43	9.24%
Total POLICE FEES	194,800.00	-55,396.35	28.44%
10-20-000-343 FIRE RESCUE FEES			
10-20-000-343.00 FIRE DEPT FEES	7,000.00	-2.96	0.04%
10-20-000-343.05 FIRE DEPT INS. REIMB 1937	1,900.00	0.00	0.00%

Account	Adjusted Budget	Actual	Actual % of Budget
10-20-000-343.10 RESCUE FEES	225,000.00	-54,257.92	24.11%
10-20-000-343.12 OTI Fire/Rescue Reserve	59,095.00	0.00	0.00%
10-20-000-343.56 RESCUE DONATIONS	3,100.00	-3,134.96	101.13%
Total FIRE RESCUE FEES	296,095.00	-57,395.84	19.38%
10-20-000-345 ANIMAL CONTROL FEES			
10-20-000-345.00 POUND FEES	6,000.00	-2,788.37	46.47%
Total ANIMAL CONTROL FEES	6,000.00	-2,788.37	46.47%
10-20-490-361.00 INTEREST ON RESCUE DONATI	10.00	-2.28	22.80%
10-30-000-334 INTERGOVERNMANTEL			
10-30-000-334.00 STATE AID TO HIGHWAYS	241,287.00	-120,293.45	49.85%
Total INTERGOVERNMANTEL	241,287.00	-120,293.45	49.85%
10-30-000-336 WINTER ROAD FEES			
Total WINTER ROAD FEES	0.00	0.00	0.00%
10-30-000-344 PUBLIC WORKS FEES			
10-30-000-344.30 PUBLIC WORKS FEES	2,500.00	-195.00	7.80%
10-30-000-344.60 ENGINEER FEES	1,000.00	0.00	0.00%
Total PUBLIC WORKS FEES	3,500.00	-195.00	5.57%
10-30-000-345.00 CONCESSION VENDOR FEES	100.00	0.00	0.00%
10-50-000-347 RECREATION			
10-50-000-347.00 RECREATION FEES	48,000.00	-28,756.00	59.91%
10-50-000-347.05 Recreation Donations	0.00	-624.68	100.00%
10-50-000-347.10 GREAT ESCAPE SALES	13,500.00	-6,825.00	50.56%
10-50-000-347.20 RECREATION FIELD USE	3,500.00	-655.00	18.71%
10-50-000-347.22 AFTER SCHOOL BOWLING	500.00	-2,371.12	474.22%
10-50-000-347.50 SUMMER TRAVELERS	3,500.00	0.00	0.00%
Total RECREATION	69,000.00	-39,231.80	56.86%
10-51-000 LIBRARY			
10-51-000-343.05 INSURANCE REIMB (BOOKMOBI	409.00	0.00	0.00%
Total LIBRARY	409.00	0.00	0.00%
10-60-000-341 PLANNING/ZONING FEES			
10-60-000-341.00 BUILDING PERMIT FEES	30,000.00	-12,074.78	40.25%
10-60-000-341.10 PLANNING FEES	12,000.00	-7,483.56	62.36%
Total PLANNING/ZONING FEES	42,000.00	-19,558.34	46.57%
10-90-000-400.00 REDUCTION IN FUND BALANCE	325,188.00	0.00	0.00%

Account	Adjusted Budget	Actual	Actual % of Budget
10-90-000-900.00 REDUCTION IN DEBT SVC FND	30,000.00	0.00	0.00%
Total Revenues	7,260,341.00	-6,299,900.39	86.77%
Total GENERAL FUND	7,260,341.00	-6,299,900.39	
20-00-000-355.00 IMPACT FEES	0.00	-44,200.00	100.00%
20-00-000-361.00 INTEREST ON INVESTMENTS	0.00	-166.22	100.00%
Total Revenues	0.00	-44,366.22	100.00%
Total IMPACT FEES FUND	0.00	-44,366.22	
21-00-000-361.00 INTEREST ON INVESTMENTS	0.00	-167.80	100.00%
Total Revenues	0.00	-167.80	100.00%
Total REAPPRAISEL FUND	0.00	-167.80	
Total Revenues	0.00	0.00	0.00%
Total BIKE PATH & MULTI MODAL	0.00	0.00	
23-00-000-361.00 INTEREST ON INVESTMENTS	0.00	-108.54	100.00%
23-10-000-341.00 RECORDING FEES	0.00	-2,394.00	100.00%
23-10-000-341.10 RECORDING FEES COMPUTER	0.00	-2,548.00	100.00%
Total Revenues	0.00	-5,050.54	100.00%
Total RESTORATION OF RECORDS	0.00	-5,050.54	
Total Revenues	0.00	0.00	0.00%
Total DEVELOPMENT ESCROW ACCTS	0.00	0.00	
25-00-000-361.00 INTEREST EARNINGS	0.00	-1,098.36	100.00%
Total Revenues	0.00	-1,098.36	100.00%
Total TIF INCREMENTAL FINANCING	0.00	-1,098.36	
26-00-000-361.00 INTEREST	0.00	-18.04	100.00%
Total Revenues	0.00	-18.04	100.00%
Total POLICE EQUITABLE SHARING	0.00	-18.04	
Total Revenues	0.00	0.00	0.00%

Account	Adjusted Budget	Actual	Actual % of Budget
Total ROAD RESTORATION/SW MAINT	0.00	0.00	
30-20-420-391.10 PACIF GRANT - POLICE	0.00	-2,422.45	100.00%
30-20-421-391.20 Radio Grant - Fire	0.00	-35,633.00	100.00%
30-50-451-333.00 Library Resource Sharing	0.00	-797.00	100.00%
Total Revenues	0.00	-38,852.45	100.00%
Total GRANT FUND	0.00	-38,852.45	
Total Revenues	0.00	0.00	0.00%
Total LIBRARY FREEMAN GRANT	0.00	0.00	
38-00-000-302.00 OPERATING TRANSFER IN	0.00	-97,916.68	100.00%
38-00-000-361.00 INTEREST-RECVRY ZONE BOND	0.00	-95.70	100.00%
Total Revenues	0.00	-98,012.38	100.00%
Total CAPITAL RESERVE FUND	0.00	-98,012.38	
50-00-000-300.00 WPL-229 Grant	0.00	-4,594.76	100.00%
50-10-000-310.00 RENTS	787,016.00	-181,020.98	23.00%
50-10-000-319.00 PENALTIES ON RENTS	13,005.00	0.00	0.00%
50-10-000-355.00 HOOK- UPS	85,623.00	-18,234.38	21.30%
50-10-000-390.00 OTHER FINANCING SOURCES	1,700.00	-6,773.35	398.43%
50-10-000-390.10 WATER HAULER RECEIPTS	3,000.00	-1,083.88	36.13%
50-10-000-390.20 MAINT. AGREEMENT RECEIPTS	1,800.00	0.00	0.00%
50-10-000-391.00 OPERATING TRAN IN	23,047.00	0.00	0.00%
Total Revenues	915,191.00	-211,707.35	23.13%
Total WATER FUND	915,191.00	-211,707.35	
55-20-000-310.00 RENTS	548,743.00	-124,759.24	22.74%
55-20-000-319.00 PENALTIES ON RENTS	6,000.00	0.00	0.00%
55-20-000-331.34 ST GRANT RFE-160	0.00	-141,206.30	100.00%
55-20-000-355.00 HOOK-UPS	115,000.00	-17,744.90	15.43%
55-20-000-361.00 INTEREST EARNINGS	0.00	-18.17	100.00%
55-20-000-390.00 MISCELLANEOUS INCOME	1,500.00	-25.00	1.67%
55-20-000-390.10 SEPTAGE RECEIPTS	65,000.00	-12,473.91	19.19%
55-20-000-390.20 MAINT. AGREEMENT REC	400.00	0.00	0.00%
55-20-000-391.00 OPERATING TRANSFER IN	175,000.00	0.00	0.00%
55-20-000-391.15 TRANSFER IN TIF FUND	301,458.00	-43,250.00	14.35%
Total Revenues	1,213,101.00	-339,477.52	27.98%
Total SEWER FUND	1,213,101.00	-339,477.52	

Account	Adjusted Budget	Actual	Actual % of Budget
Total Revenues	0.00	0.00	0.00%
Total WEST MILTON CEMETERY FUND	0.00	0.00	
Total Revenues	0.00	0.00	0.00%
Total HENRY BEEMAN TRUST	0.00	0.00	
Total Revenues	0.00	0.00	0.00%
Total JANE HUNDEL TRUST	0.00	0.00	
Total Revenues	0.00	0.00	0.00%
Total VILLAGE OF MILTON TRUST	0.00	0.00	
Total All FUNDs	9,388,633.00	-7,038,651.05	

TOWN OF MILTON SUPPLEMENTAL WARRANT

Vendor	Account Number	Amount
State of Vermont		
TIF	10-10-415-850.00	$11,000.00

To the Treasurer of the Town of Milton:

We hereby certify that there are sufficient vouchers supporting the amounts owed to the above mentioned vendor. Let this be your order for the payment of the amount totaling $11,000.00. Payment for the above will be wired directly.

Dated this _____ day of November 2014.

_____
Darren Adams, Chair

_____
John Gifford, Vice-Chair

_____
John Bartlett, Clerk

_____
Brenda Steady

_____
Stuart King

Date of Notification:

Name of Municipality/TIF District: Town of Milton

This Payment is in Compliance With the Following Subsection of Section 1, Act 80 (2013):

__(c)(1) _1_(c)(2)(A) __(c)(2)(B) __(c)(2)(C) __(c)(3)(A) __(c)(3)(B)

Date of Transfer/Payment:

Amount Transferred/Paid: $11,000

Destination of Funds: State Education Fund

Source of Funds: Town of Milton General Fund

Certification:

On behalf of the municipality listed above, I hereby declare that, to the best of my knowledge, the source of funds stated above is the true source of these funds and that this source complies with the requirements of Act 80 (2013) for this payment. I further certify that I am duly authorized by the municipality named above to represent and act on behalf of this municipality in this capacity.

Signature:

Printed Name: Joanne Davis

Title: Finance Director