

BERLIN FALL 2021
SPECIAL TOWN MEETING
WARRANT



Monday, November 8, 2021 at 7:00 PM

Berlin Memorial School
34 South Street
Berlin, MA 01503

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

To the Constable of the Town of Berlin in the County of Worcester:

Greetings: In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town, qualified to vote in elections and in Town affairs, to meet at the Berlin Memorial School, 34 South Street, in said Berlin on **MONDAY, the EIGHTH DAY OF NOVEMBER, 2021, next, at 7:00 o'clock in the evening**, then and there to act on the following articles; or in relation thereto:

TOWN BYLAW AMENDMENT – ARTICLE II

Town Meetings, the Warrants and the Town Reports

ARTICLE 1: To see if the Town will vote to amend the Town of Berlin General Bylaws Article II “Town Meetings, the Warrants and the Town Reports”, by deleting the language in ~~strike through~~ and inserting the language in ***bold italics*** in SECTIONS 2, 3 and 12:

SECTION 2. Annual election of town officers shall be held ~~at an adjournment of such meeting~~ on the second Monday of May.

SECTION 3. In accordance with Chapter 39, Section 10 of the General Laws, attested copies of the warrant for each town meeting shall be posted at the Town Hall, at the Town Offices, and at the Post Office in the Town at least seven days before the annual town meeting and at least fourteen days before any special town meeting. ~~The Selectmen shall cause the warrant for the annual town meeting to be printed in the annual town report.~~ At least five days before the day fixed in the warrant for the annual town meeting, the Select Board shall cause to be delivered or mailed to each voting household in the Town, a copy of the warrant for said meeting, the report of the Finance Committee ***and its recommended budget for the ensuing fiscal year***. At least fourteen days before the day fixed in the warrant for each special town meeting, the Select Board shall cause a copy of the articles in the warrant for said meeting to be mailed to each voting household in the town.

The Select Board shall, not less than ten days before the date on which the warrant for the annual town meeting shall be closed for insertion of any additional articles, post a notice of said closing date at the Town Hall, at the Town Offices, and at the Post Office in the Town.

SECTION 12. The Select Board shall cause ~~to be delivered or mailed to each voting household in the town,~~ a **digital** copy of the Annual Town Report ***to be made available on the Town of Berlin website, and hard copies to be made available at the Town Offices, Berlin Public Library and at the annual town meeting.***

So that amended SECTIONS 2, 3 AND 12 read, in their entirety:

SECTION 2. Annual election of town officers shall be held on the second Monday of May.

SECTION 3. In accordance with Chapter 39, Section 10 of the General Laws, attested copies of the warrant for each town meeting shall be posted at the Town Hall, at the Town Offices, and at the Post Office in the Town at least seven days before the annual town meeting and at least fourteen days before any special town meeting. At least five days before the day fixed in the warrant for the annual town meeting, the Select Board shall cause to be delivered or mailed to each voting household in the Town, a copy of the warrant for said meeting, the report of the Finance Committee and its recommended budget for the ensuing fiscal year. At least fourteen days before the day fixed in the warrant for each special town meeting, the Select Board shall cause a copy of the articles in the warrant for said meeting to be mailed to each voting household in the town.

The Select Board shall, not less than ten days before the date on which the warrant for the annual town meeting shall be closed for insertion of any additional articles, post a notice of said closing date at the Town Hall, at the Town Offices, and at the Post Office in the Town.

SECTION 12. The Select Board shall cause a digital copy of the Annual Town Report to be made available on the Town of Berlin website, and hard copies to be made available at the Town Offices, Berlin Public Library and at the annual town meeting.

Or take any action relative thereto. (Select Board/Town Administrator)

Summary: *These proposed amendments reflect a desire to reduce the cost of delivering annual town reports while assuring they remain available to Berlin voters in both digital and hard copy format. Warrants for Annual and Special Town Meetings and the Finance Committee's report and recommended budget for Annual Town Meeting will continue to be delivered by mail to voting households.*

ARTICLE 2: To see if the Town will vote to amend the Town of Berlin General Bylaws Article VIII "Personnel and Procedures", by inserting the language in ***bold italics*** in SECTION 6 – EMPLOYEE BENEFITS (6) Holidays.

(6) Holidays - The following shall be considered holidays:

New Year's Day	Martin Luther King Jr. Day	Labor Day
Presidents' Day	Columbus Day	Patriots' Day
Veterans' Day	Memorial Day	Thanksgiving Day
Independence Day	Christmas Day	<i>Juneteenth (June 19)</i>

Or take any action relative thereto. (Select Board/Town Admin/Personnel Committee)

Summary: *Juneteenth is added to the list of federal and state holidays pursuant to the June 17, 2021 enactment of the federal holiday. "Jr." is added for the Martin Luther King, Jr. holiday.*

ARTICLE 3: Riverbridge - Town of Berlin Development Agreement Modifications

To see if the Town will vote to authorize the Select Board to enter into the following Third Modification of Development Agreement with Riverbridge:

THIRD MODIFICATION OF DEVELOPMENT AGREEMENT

Whereas: The Town of Berlin Massachusetts and Riverbridge North, LLC of 65 River Road West in Berlin (the "Parties", separately "Party") entered into a certain Development Agreement ("Development Agreement") dated December 2, 2009, which agreement is recorded at the Worcester Country Registry of Deeds ("Registry") at Book 45188, Page 343, a First Modification of Development Agreement ("First Modification") dated November 25, 2013, recorded at the Registry at Book 51802, Page 22, and a Second Modification of Development Agreement ("Second Modification") dated December 11, 2017, recorded at the Registry at Book 58297, Page 331; and

Whereas: The Parties have agreed to a series of amendments of the Development Agreement and the First Modification and the Second Modification, and wish to execute and record this Third Modification of Development Agreement (“Third Modification”) setting forth those amendments; and

Whereas: at a Special Town Meeting held on November 8, 2021, Town Meeting approved a warrant article authorizing the Berlin Select Board to enter into this Third Modification.

Now Therefore, the undersigned, for themselves, their heirs, successors and permitted assigns, for good and valuable consideration in the form of the promises, provisos and covenants each Party makes herein to the other, and for no payment of funds, hereby agree as follows:

1. Time Frame for the Completion of Certain Off-site Traffic/Roadway Improvements

The time frames for the completion of Phases 1, 4 and 5 of certain off site road improvements set forth in Exhibit B of the Development Agreement, as previously modified in the First and Second Modifications, are hereby amended as follows:

Phase I

The time frame to complete the installation of the separate pedestrian and bicycle bridge over North Brook, and the sidewalk connections and upgrades, is extended to December 11, 2022.

The time frame to complete the design and engineering of the widening of the existing bridge deck over North Brook is extended to December 11, 2023.

The time frame to complete the widening of the existing bridge deck over North Brook is extended to December 11, 2024.

Phase 4

The time frame to complete the certain improvements to the intersection of Pleasant Street and South Streets is extended to December 11, 2024.

Phase 5

The time frame to complete the certain improvements to the intersection of Pleasant Street and Sawyer Hill is extended to December 11, 2024.

The parties acknowledge an ongoing exploration of allowing compensation to the Town in lieu of the Phase I improvements as authorized in paragraph 3.1 of the First Amendment to the Development Agreement which does not impact the above revised deadlines but might impact the form of compliance (equivalent compensation instead of the actual work being performed), as determined by the Select Board. The Parties agree that this same compensation in lieu provision shall apply to the work covered in Phases 4 and 5.

2. The River Run Property

The time frame for the exercise by the Town of its option to purchase Lot 6B at River Run (Assessors' Map 7 Lot 28) under Section 14.7 for \$1.00, as modified by the First and Second Modifications of the Agreement is extended to four (4) years from November 8, 2021. If the Select Board and Planning Board both agree, the Town may apply this option to any lots or areas of the River Run property that may be offered by Riverbridge, Assessors' Map 7 Lots 28 and 28-7 instead of Lot 6B, so long as the area to be conveyed to the Town consists of at least eight (8) acres, of which no fewer than 5 acres shall be free of wetlands. The Select Board may accept a deed to property at River Run as per the above at any time within the extended option period.

All terms and conditions of the Development Agreement, the First Modification and the Second Modification not altered by this Third Modification remain in full force and effect. In the event of any conflict between this Third Modification and the Development Agreement or the First Modification or Second Modification, the terms and conditions of this Third Modification shall control.

EXECUTED under seal on and effective as of _____ 2021.

RIVERBRIDGE NORTH, LLC

By:_____

Name: Christopher G. Senie

Its: President and Member

Hereunto Duly Authorized

By:_____

Name: W. Matthew Senie

Its: General Manager and Member

Hereunto Duly Authorized

TOWN OF BERLIN

SELECT BOARD

By:_____

Name: Margaret Stone, Chair and Member

Hereunto Duly Authorized

By:_____

Name: R. Scott Hawkins, Vice Chair and Member

Hereunto Duly Authorized

By:_____

Name: Christine Keefe, Clerk and Member

Hereunto Duly Authorized

Or take any action relative thereto. (Select Board)

Summary: *This article would allow an extension of certain December 11, 2021 deadlines for Riverbridge's completion of infrastructure construction, as follows: 1) pedestrian bridge, all sidewalk connections and upgrades by December 11, 2022; 2) design and engineering for bridge reconstruction deck widening over North Brook by December 11, 2023; 3) bridge reconstruction by December 11, 2024; 4) improvements to the Pleasant Street and South Street intersection by December 11, 2024; 5) improvements to the Pleasant Street and Sawyer Hill Road intersection by December 11, 2024. The article would also extend to December 11, 2024 the deadline for the Town to exercise its option to purchase Lot B in the so-called River Run parcel for \$1.00 as prescribed in the existing Riverbridge Development Agreement and modifications.*

ARTICLE 4: To see if the Town will vote to authorize the Select Board to petition the General Court in the form set forth below, authorizing the Board to issue up to two (2) additional off-premises all alcoholic beverages license, provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to the bill before enactment by the General Court, and to authorize the Select Board to approve amendments which shall be within the scope of the general objectives of the petition:

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

SECTION 1. Notwithstanding Section 17 of Chapter 138 of the General Laws relative to the number of licenses that may be granted in the town of Berlin, the licensing authority of the town of Berlin may grant up to two additional licenses for the sale at retail of all alcoholic beverages not to be drunk on the premises under Section 15 of said Chapter 138. The licensees shall comply with such requirements and conditions as the licensing authority shall deem appropriate. The licenses shall be subject to all of said Chapter 138, except said Section 17 relative to the number of licenses that may be granted. Either license may be transferred to a new applicant if the applicant files with the licensing authority a letter from the department of revenue indicating that the license is in good standing with the department and that all applicable taxes have been paid. The licenses shall be subject to all other provisions of said Chapter 138.

If either license granted under this section is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority, which may then grant the license to a new applicant.

SECTION 2. This act shall take effect upon its passage.

Or take any action relative thereto. (Select Board)

Summary: *This article would allow the Select Board to petition the legislature for an increase in the number of Section 15 All-Alcohol retail licenses that could be issued in*

the Town of Berlin. Currently, the Town has issued its quota of (2) of these licenses and is unable to issue additional licenses without legislative approval.

CEMETERY COMMISSION REGULATIONS

ARTICLE 5: To see if the Town will vote to accept and approve, under the provisions of M.G.L. c. 114, §23, the rules and regulations proposed by the Town of Berlin Board of Cemetery Commissioners, as set forth more particularly in a document filed with the Town Clerk, or take any action relative thereto. (Cemetery Commission)

Summary: *The Cemetery Commission seeks town approval of its established rules and regulations as required by MGL c.114, s.23, "...subject to the approval of the town, may make such regulations, consistent with law, as it deems expedient".*

SPECIAL ARTICLE CLOSE-OUT

ARTICLE 6: To see if the Town will vote to close out the remaining balances in the following Special Article accounts to the identified sources from which each of the articles were funded, and/or transfer to another appropriation or the General Fund, and/or to take any action relative thereto. (Select Board/Accountant)

	Funding From:	Article #:	Fiscal Year:	Special Article Purpose:	Remaining balance:
a.	Free Cash	Art 20	2011	Planning Board – By-Law Printing	2,000.00
b.	Free Cash	STM Art 6	2013	Municipal Building – Roof Repairs	5,833.79
c.	Free Cash	Art 27	2019	Library – Well Work	25,000.00

Summary: *The purpose of this article is to close out unspent special article accounts after the completion of a purchase or project.*

FISCAL YEAR 2022 SUPPLEMENTAL CAPITAL BUDGET

ARTICLE 7: To see if the Town will vote to raise and appropriate, transfer from available funds, including Capital Stabilization Account, or otherwise provide the sum of **five hundred three thousand five hundred dollars (\$503,500.00)** for the purpose of funding the Fiscal Year 2022 SUPPLEMENTAL CAPITAL BUDGET as recommended by the Capital Planning Committee, including acquisition, installation and equipping and

other expenses incidental or related thereto, for the fiscal year beginning July 1, 2021 as follows, with all unexpended or unencumbered funds for Items #1, 2 and 3 returned to their original funding source effective June 30, 2023, or take any action relative thereto. (Capital Planning Committee)

Item #	Dept	Project Title	Cost	Funding Source	Notes	Funding Expires
1.	Town Buildings	Town Office Rooftop Air Handler Unit Replacement	\$40,000	Free Cash	Written estimate exceeds the \$60,000 2020 Annual Town Meeting appropriation. This is the additional amount required to complete the project, including contingencies. The new unit will have a lifespan of 20+ years.	6/30/2023
2.	Town Buildings	Old Fire Station Roof Repair or Replacement	\$28,500	Free Cash	The Old Fire Station rubber membrane roof is approx. 50 years old, with one repair having been done in 1994, and is in extremely poor condition. Roof repair or replacement is needed as soon as possible to prevent further damage.	6/30/2023
3.	Fire/EMS	2009 Ambulance Replacement	\$315,000	Ambulance Receipts Reserved for Appropriation	Current operational levels support the need for a second ambulance on a weekly and sometimes daily basis. This unit has mechanically become a potential operational liability. 2009 Ambulance 6A-1 to be sold or traded.	6/30/2023

4.	Highway	Hot Top	\$70,000	Free Cash	Recurring need to improve/ repair roads. Supplements Ch. 90 state funds. This amount was approved under Article 18 of the 2019 Annual Town Meeting but the sunset clause has since expired.	No sunset
5.	Recreation Committee	Recreation Court Upgrades	\$30,000 and \$20,000	Highland Commons Cultural Mitigation Funds and Free Cash	Partial funding required to complete the Town of Berlin recreation courts reconstruction project. Article 11 of this town meeting warrant requests the additional \$100,000 from CPA funds as recommended by the CPA Committee.	6/30/2023

COMMUNITY PRESERVATION ACT PROPOSED PROJECTS

ARTICLE 8: To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, and/or eminent domain and for open space and conservation purposes, on such terms and conditions as the Select Board deems appropriate, three parcels of land near the junction of Linden Street and Lyman Road in the Town of Berlin, which parcels are identified on Assessors Map 9 as Parcel 41 (consisting of 59.54 acres, more or less) and Parcel 42 (containing 38.57 acres, more or less), and on Map 10 as Parcel 6 (containing 7.67 acres, more or less), together with all flowage rights and easements and subject to all well rights and other easements of record, said parcels to be under the care, custody and control of the Berlin Conservation Commission under the provisions of M.G.L. c. 40, §8C, and, to fund said purchase and costs incidental or related thereto, to appropriate the sum of \$490,000.00 from the Undesignated Community Preservation Fund balance; and, further, to authorize the Conservation Commission and the Select Board to apply for, accept, and expend any funds that may be provided by the Commonwealth of Massachusetts and/or other public or private sources to defray all or a portion of the costs of said acquisition, including, but not

limited to, grants and/or reimbursement from the Commonwealth under the Self-Help Act, M.G.L. Chapter 132A § 11 (now, so-called LAND grants), and/or any other state or federal programs including those in aid of conservation land acquisition, and/or any others in any way connected with the scope of this Article; said gifts or grants to be deposited in the Undesignated Community Preservation Fund balance hereunder; and to authorize the Select Board to grant a perpetual conservation restriction on said parcels of land meeting the requirements of M.G.L. Chapter 44B, § 12 and M.G.L. Chapter 184, §§ 31-33, and to enter into all agreements and execute any and all instruments as may be necessary to affect said acquisition; or take any other action relative thereto.

Description of the Project:

The Conservation Commission (CC) is working to acquire 100+- acres at the corner of Linden St and Lyman Road. Sudbury Valley Trustees (SVT) is willing to step in and purchase the property first, if need be, but their board wants assurances that we have Town support to purchase this property from them. We may need SVT to step in because as a land trust they have certain capabilities, such as the ability to divide and sell land to help fund the purchase, which the CC does not. SVT purchasing the land first, will also allow the CC to apply for grants to help fund the purchase. It is our belief that if we have CPA funds dedicated to this purchase before negotiating with the owner, we will stand a much better chance of succeeding in acquiring this land.

Capital Planning Committee recommends \$490,000 from CPA funds

ARTICLE 9: To see if the Town will vote to appropriate the total sum of \$100,000 from the Community Preservation Fund, with \$77,483.73 from the Fund Balance Reserved for Historic Resources and the sum of \$22,516.27 from the CPA Undesignated Fund Balance for the purpose of restoring, preserving, and rehabilitating the foundation, installing drainage, a concrete basement floor and other necessary drainage improvements at the historic Bullard House, located at 4 Woodward Avenue, said funds to be expended by the Historical Commission in consultation with the Community Preservation Act Committee; or take any action relative thereto.

Description of the Project:

- *The exterior of the foundation would be excavated all the way around.*
- *The stonework would then be repaired, mortared and then waterproofed below grade.*
- *Drainage would then be added around the whole of the perimeter. This would consist of gravel, perforated pipe, etc. to drain to an undetermined location.*
- *The addition of a poured concrete floor in the cellar and/or a durable vapor barrier (rubber roll roofing) there and in all crawl spaces.*
- *Add outside access to basement.*

Capital Planning Committee recommends \$100,000 from CPA funds

ARTICLE 10: To see if the Town will vote to appropriate the sum of \$5,000.00 from the CPA Undesignated Fund Balance for the preservation of historic resources, of which \$500.00 would be used for professional imaging of two inventory notebooks and \$4,500.00 would be used for imaging of high priority artifacts belonging to the Town of Berlin and under the care of the Berlin Historical Commission, said funds to be expended by the Historical Commission in consultation with the Community Preservation Act Committee; or take any action relative thereto.

Description of the Project:

Digital imaging of the inventory notebooks as well as of the high priority artifacts listed therein is necessary to preserve the information that our Town Collection bestows on our local history. In addition to its necessary preservation, a digital archive will allow the Town Collection to become accessible for study and a resource for community programming.

These early print inventories are fragile and should not be subject to repeated handling. Should our artifacts be lost or suffer deterioration, we may lose the power that a physical object has when viewed or used appropriately, but digital images will help us reconstruct the information the artifacts conveyed.

ARTICLE 11: To see if the Town will vote to appropriate the sum of \$100,000.00 from the Community Preservation Fund, with \$77,483.73 from the Fund Balance Reserved for Open Space/Recreation, \$11,206.97 from the CPA Undesignated Fund Balance,

and \$11,309.30 from the CPA Balance Reserve from 2022 to fund the reconstruction of the one outdoor basketball court and the two outdoor tennis courts on South Common recreational grounds, and to add four pickle ball courts on the tennis courts, said funds to be expended by the Recreation Committee in consultation with the Community Preservation Act Committee; or take any action relative thereto.

Description of the Project:

The Recreation Committee is seeking CPA funding to be able to reconstruct the one outdoor basketball court and the two outdoor tennis courts on the South Commons recreational grounds, and to add four pickle ball courts on the tennis courts.

It will be a complete overhaul of the existing courts as they are too weathered and damaged to repair. Currently all three courts have 3-4 inch wide cracks throughout the surface areas as well as mounding areas from previously sealed cracks.

This project will be a complete reconstruction of the current two tennis courts and the one basketball court. The fencing will also be replaced.

Capital Planning Committee recommends \$100,000 from CPA funds, \$30,000 from Highland Commons Cultural Mitigation Funds and \$20,000 from Free Cash.

ARTICLE 12: To see if the Town will vote to appropriate the sum of \$20,000.00 from the CPA Balance Reserve from 2022 to fund the construction of an announcement booth in the backstop area of the baseball field as well as the purchase of an electronic scoreboard along with necessary electrical work on South Common recreational grounds said funds to be expended by the Recreation Committee in consultation with the Community Preservation Committee; or take any action relative thereto.

Description of the Project:

CPA funding would be used to build an announcement booth and add an outfield scoreboard. The project consists of a new structure behind home plate, partial removal of the existing fence and some minor electrical work. We will also need to construct a platform in the outfield with a scoreboard attached.

Capital Planning Committee recommends \$20,000 from CPA funds

PUBLIC SAFETY SPECIAL PURPOSE STABILIZATION FUND

ARTICLE 13: To see if the Town will vote pursuant to the provisions of Massachusetts General Law Chapter 40, Section 5B, to create a Public Safety Special Purpose Stabilization Fund for the purpose of funding required police training expenses associated with the Commonwealth's Police Reform Act through fiscal year 2025, Public Safety equipment expenditures that are otherwise eligible for borrowing, in accordance with the provisions of Massachusetts General Law Chapter 44, Sections 7-8, and Public Safety operational expenses, and to transfer from the Public Safety Mitigation receipts **three hundred thirty-six thousand four hundred forty-nine dollars and seventy-two cents (\$336,449.72)** to establish initial funding in said account, and further to accept the last paragraph of G.L. 40, c. 5B and dedicate, without further appropriation, all Development Agreement Public Safety Mitigation receipts received on or after July 1, 2022 to Public Safety Special Purpose Stabilization Fund, or take any action relative thereto.

Summary: *This article seeks to establish and pre-fund a special stabilization fund:*

- 1) for public safety operational expenses approved by town meeting, including but not limited to public safety personnel wages, training, equipment or supply costs,*
- 2) for public safety capital equipment costs approved by town meeting.*

And you are directed to serve this Warrant, by posting up attested copies thereof as per vote of the Town in said Town, fourteen (14) days at least before the time of holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands this **twelfth (12th) day of October** in the year of our Lord **two thousand twenty-one**.

BERLIN SELECT BOARD

Margaret Stone, Chair R. Scott Hawkins, Vice Chair Christine Keefe, Clerk

IMPORTANT DATES/EVENTS/PLACES

<p><i>Thursday, October 28, 2021 6:30 p.m.</i></p>	<p>VIRTUAL ONLY on the Zoom.us platform Coffee Talk with the Select Board – featuring presentations and Q&A regarding the articles for Special Town Meeting</p>	<ul style="list-style-type: none"> • Web: https://us02web.zoom.us/j/84277508033 • One tap mobile: +13126266799,,84277508033# • Telephone: (312) 626-6799 and enter Webinar ID: 842 7750 8033
<p><i>Friday, October 29, 2021 9 a.m. – 8 p.m.</i></p>	<p>Open Voter Registration for Special Town Meeting</p>	<p>Town Clerk's Office, Room 202/2nd floor Town Office Building, 23 Linden Street</p>
<p><i>Monday, November 8, 2021 7:30 p.m.</i></p>	<p>Special Town Meeting</p>	<p>Berlin Memorial School 34 South Street (indoors/gymnasium)</p>

Berlin Select Board
23 Linden Street
Berlin, MA 01503

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