



**AGENDA
SELECT BOARD
MONDAY, AUGUST 28, 2023
WAQUOIT MEETING ROOM
MASHPEE TOWN HALL
16 GREAT NECK ROAD NORTH
MASHPEE, MA 02649**

***Broadcast Live on Local Cable Channel 8* Note New Channel Number**
Streamed Live on the Town of Mashpee Website: <https://www.mashpeema.gov/channel-8>

6:30 p.m. – Convene Meeting in Open Session

PLEDGE OF ALLEGIANCE

MOMENT OF SILENCE

MINUTES:

APPOINTMENTS & HEARINGS

- Public Comment

COMMUNICATIONS & CORRESPONDENCE

NEW BUSINESS

OLD BUSINESS

- Discussion and Possible Approval of November 7, 2023 Special Election Hours: *Town Clerk Deborah Kaye*
- Discussion with Regard to Articles Submitted by the Planning Board for the October 16, 2023 Town Meeting Warrant: *Town Planner Evan Lehrer; Planning Board Chair Karen Faulkner*
- Discussion with Regard to Article Submitted by Brian Weeden for the October 16, 2023 Town Meeting Warrant: *Brian Weeden*
- Discussion with Regard to Article Submitted by Talia Landry for the October 16, 2023 Town Meeting Warrant: *Talia Landry*
- Discussion, Approval, and Recommendations of Articles on Draft #4 of the October 16, 2023 Town Meeting Warrant
- Execution of the October 16, 2023 Town Meeting Warrant

ADDITIONAL TOPICS

(This space is reserved for topics that the Chair did not reasonably anticipate would be discussed)

LIAISON REPORTS

WATER QUALITY UPDATES

TOWN MANAGER UPDATES

EXECUTIVE SESSION

ADJOURNMENT

Deborah Kaye
Town Clerk
(508) 539-1418
dkaye@mashpeema.gov



Office of the Town Clerk
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649

August 24, 2023

To: Select Board
Town Manager

From: Deborah F. Dami
Town Clerk

Date: August 24, 2023

Re: November 7, Special Town Election

The Town has scheduled the Special Election for November 7, 2023. Under the circumstances, with only one ballot question on the ballot, I would like to offer the following suggestion for hours of voting. I am happy to attend the Select Board meeting on Monday, August 28, 2023 to discuss the times further.

Early Voting By Mail would be available as soon as the ballots are delivered.

Early Voting In Person: would be available beginning Monday, October 30, 2023 through Friday, November 3, 2023, 8:30 am – 4:30 pm. I would also be amenable to the idea of staying open one night until 6:30.

Election Day: 12 noon – 4 pm

Office of the Town Manager
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649

MEMORANDUM

Date: August 24, 2023

To: Town Manager Rodney C. Collins;
Chair John Cotton and Honorable Members of the Select Board

From: Administrative Assistant Terrie M. Cook

Re: October 16, 2023 Annual Town Meeting Warrant – Actions to be taken by Select Board

The articles are numbered, but the numbers are “subject to change” depending upon the Board’s action on various articles.

The page numbers and a brief description of each article that requires action appears below:

Article #/ Page #	Description	Submitted by:	Action needed
Article 1, Page 1	Wastewater Debt Exclusion	SB	Vote to recommend/not recommend
Article 2, Page 2-3	Floodplain (Fill prohibition)	Planning	Vote to recommend/not recommend
Article 4, Page 4	Accessory Apt. 174.45.4(C)	Planning	Vote to recommend/not recommend
Article 6, Page 5-16	Gen Bylaw Tree Preservation	Planning	Vote to recommend/not recommend
Article 9, Page 17	Road Taking-Godfrey/Barbary Petition		Vote to recommend/not recommend
Article 10, Page 17-18	Property Transfer to Tribe	Petition	Vote to recommend/not recommend
Article 11, Page 18	Special Permits 174-24	Petition	Vote to recommend/not recommend
(Lead Petitioner Arden Russell stated at the meeting on 8/21 that she intends to withdraw/indefinitely postpone Article 11)			
Article 12, Page 19	Property Transfer to Tribe	Petition	Vote to recommend/not recommend

**TOWN OF MASHPEE
MASHPEE HIGH SCHOOL
500 OLD BARNSTABLE ROAD
MASHPEE, MA 02649
ANNUAL TOWN MEETING
MONDAY, OCTOBER 16, 2023**

Barnstable, ss:

Greetings to the Constables of the Town,

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and summon the inhabitants of the Town of Mashpee who are qualified to vote in the elections to meet at the Mashpee High School on Monday, the 16th day of October 2023 at 7:00 p.m. for the following purposes:

To act on the articles contained in the following Warrant:

Article 1

To see if the Town will vote to appropriate the sum of \$7,500,000 for the planning and design of wastewater collection, treatment and effluent recharge initiatives in the Town of Mashpee, and all costs and expenses incidental and related thereto, including costs relating to the acquisition of necessary easements and other interests in real property; and to meet this appropriation, the Treasurer, with the approval of the Select Board, be authorized to borrow said amount under M.G.L. Chapter 44, sections 7 and/or 8 or any other enabling authority and to issue such bonds or notes as may be necessary for such purpose; provided, however, that this appropriation and debt authorization shall be contingent upon passage of a Proposition 2^{1/2}, so-called, debt exclusion ballot question exempting from the provisions of said Proposition 2^{1/2} the amounts required to pay the principal and interest on bonds, notes or certificates of indebtedness issued for this purpose pursuant to General Laws Chapter 59, §21C(k), or take any other action relating thereto.

Submitted by the Select Board and the Sewer Commission

Explanation: This article would appropriate funds and authorize the borrowing thereof, contingent upon the successful passage of a debt exclusion ballot question, for the planning and design of wastewater collection, treatment and effluent recharge initiatives in the Town of Mashpee and costs/ expenses incidental and related thereto, including costs relating to the acquisition of necessary easements and other interests in real property. This project is the next step approved by the Sewer Commission and the Select Board in implementing the Town's Watershed Nitrogen Management Plan/CWMP.

(Note that for this Article to become effective authorization of the debt exclusion by ballot question is also required.)

2/3 Vote Required

The Select Board recommends approval of Article 1 by a vote of
The Finance Committee recommends approval of Article 1 by a vote of

Article 2

To see if the Town will vote to amend the Zoning Bylaws by adding the following new subsections into Article XI: Floodplain Zone Overlay as follows:

§174-67 Prohibitions

The purpose of this section is to encourage use of more resilient, safer, and more environmentally beneficial construction methods in the Floodplain Zone Overlay District. It is not intended to otherwise restrict or prevent construction of a new or redeveloped dwelling or other allowable structure.

No person shall fill, place or dump in any flood hazard area within the Floodplain Zone Overlay District any soil, loam, peat, sand, gravel, rock or other material substance, refuse, trash, rubbish, debris or dredged material for the purposes of raising their first floor elevation to be at or above the base flood elevation. Solid wall foundations with flood vents or pilings are the only acceptable construction methods within the Floodplain Zone Overlay District.

No Letters of Map Revision based on Fill (LOMR-Fs) or Letters of Map Amendment Based on Fill (LOMA-F) will be permitted.

Conventional Title V Septic System technologies shall not be permitted within the Floodplain Zone Overlay District and a Board of Health approved Innovative/Alternative septic system is required pursuant to Board of Health Regulations. For the purposes of this Section any lot which is partially located within the Floodplain Zone Overlay District shall be subject to the fill prohibitions described within §174-67.

§174-67.1 Exceptions to Prohibitions of the Use of Fill in Any Flood Zone

Landscape material up to two feet in depth at the foundation and tapered to meet grade within ten feet (10) of the foundation shall not be calculated towards grade plane and shall not be considered fill as regulated in §174-67 of this Bylaw.

The use of rock for the purposes of reconstructing a revetment or groin shall not be considered fill as regulated by §174-67 of this Bylaw. The reconstruction of such structures shall require all permits and approvals required by applicable local, state, and/or federal laws.

The use of dredged material for beach re-nourishment shall not be considered fill as regulated in §174-67 of this Bylaw but shall require all permits as required by applicable local, state, and/or federal laws.

Any material: soil, loam, peat, sand, gravel, rock or other material substance required for the installation of a Board of Health approved Innovative/Alternative Septic System shall not be considered fill as regulation in §174-67 of this Bylaw.

Submitted by the Planning Board

Explanation: This article would require new construction or redevelopment of homes in the Floodplain Zone Overlay District utilize either a solid-wall foundation with flood vents or pilings for new homes or redeveloped homes. Further it requires that properties touched by the Floodplain install Innovative/Alternative septic systems unless served by a public or private wastewater treatment facility. This Bylaw does not propose to remove the rights of any property owner to build or re-build a new dwelling on lots in the Floodplain Zone Overlay District. If your lot is buildable today, it will remain buildable following the passage of this Article.

2/3 Vote Required

The Select Board recommends approval of Article 2 by a vote of *HOLD*

The Finance Committee recommends approval of Article 2 by a vote of 6-0

Article 3

To see if the Town will vote to amend Section 174.45.4 Subsection A of the Mashpee Zoning Bylaw to read as follows:

- A. In order for an accessory apartment to be permitted, in addition to meeting all of the requirements under subsections B-M, the principal dwelling unit or the proposed accessory apartment must be occupied by the property owner identified on the latest recorded or registered deed. The property owner may reside in either the accessory apartment or in the principal dwelling and rent the other unit to a tenant, but may not under any circumstances rent both the principal dwelling and the accessory apartment to tenants concurrently. For purposes of this Bylaw, the term "property owner" shall include: each person who alone or jointly or severally with others: a) has legal title of record to any building, structure, or property subject to this Bylaw, or; b) has care, charge, or control of any such building, structure, or property in any legal capacity, including but not limited to agent, executor, administrator, member or owner of a limited liability company, trustee or guardian of the estate of the record holder of legal title; or c) is a lessor under written agreement; or d) is the mortgagee in possession; or e) is the recognized agent, trustee or other person claiming rights under the record title holder with care, charge, or control of the property as a matter of law or as appointed by the courts. On an annual basis coinciding with the initial date of issuance of the Building Permit, the property owner shall submit to the Building Inspector sufficient evidence to demonstrate the property owner's occupancy of the principal dwelling unit or the accessory apartment.

Submitted by the Planning Board

Explanation: This Article would allow property owners who construct accessory apartments to live in their accessory apartment and rent their principal dwelling to tenants. Current Bylaw language restricts a property owner from residing in the accessory apartment while renting their principal dwelling.

2/3 Vote Required

The Select Board recommends approval of Article 3 by a vote of 5-0

The Finance Committee recommends approval of Article 3 by a vote of 6-0

Article 4

To see if the Town will vote to amend Section 174.45.4 Subsection C of the Mashpee Zoning Bylaw as follows:

C. Unit Size

The design, installation and use of an accessory apartment shall be secondary and incidental to the principal use of the structure as the owner's home. An accessory apartment may be located within the same structure as said home or constructed within a new or pre-existing detached structure. The gross floor area of the accessory apartment shall be not less than four-hundred and fifty (450') square feet and shall not exceed nine hundred (900') square feet.

Submitted by the Planning Board

Explanation: This Article clarifies the allowed size of an accessory apartment to within a defined range. Currently, the Bylaw allows accessory apartments to be not less than three hundred and fifty (350') square feet and may not exceed 40% of the gross floor area of any principal dwelling. The 40% calculation is confusing and thus this Article is intended on placing a firm minimum and maximum unit size of not less than four-hundred and fifty (450') square feet and not more than nine hundred (900') square feet.

2/3 Vote Required

The Select Board recommends approval of Article 4 by a vote of *HOLD*

The Finance Committee recommends approval of Article 4 by a vote of 6-0

Article 5

To see if the Town will vote to amend Section 174.45.4 Subsection I of the Mashpee Zoning Bylaw as follows:

I. An accessory apartment shall not be used for boarding and lodging, or other commercial use. Either the accessory apartment or the principal dwelling to which it is accessory must be rented for periods of at least 12 consecutive months at a time and are prohibited from any use as rental units on a weekly, daily, or monthly basis. Property owners who fail to comply with this requirement shall be subject to a three hundred dollar (\$300) fine each day that this violation persists.

Submitted by the Planning Board

Explanation: This Article would require that any accessory apartment that is created be rented year-round. Current Bylaw states that accessory apartments MAY be rented. This Article requires that they be rented. Additionally, the current rental restriction prohibits rentals of accessory apartments of less than 30 days. This Article proposes requiring property owners to rent to tenants occupying either the principal dwelling or accessory apartment for a period not less than 12 months to be more consistent with the purpose and intent of this section.

2/3 Vote Required

The Select Board recommends approval of Article 5 by a vote of 5-0

The Finance Committee does not recommend approval of Article 5 by a vote of 5-1

Article 6

To see if the Town will vote to add new Chapter 175: Tree Preservation Bylaw to the Mashpee General Bylaw as follows:

CHAPTER 175: MASHPEE TREE PRESERVATION BYLAW**§175-1 PURPOSE & INTENT**

The Mashpee Tree Preservation Bylaw encourages the preservation and protection of certain trees on residential, commercial and industrial lots during building activities as defined in this Bylaw and monitors for their survival after construction. The preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment and aesthetic character of the Town of Mashpee and its citizens. Trees serve a variety of functions that this Bylaw intends to protect and enhance. These valuable functions include but are not limited to reducing energy consumption, providing shade, improving air quality, providing vital wildlife habitat, erosion control, reducing stormwater runoff, buffering noise pollution, increasing property values, and positively contributing to the visual character of the Town. This Bylaw defines which trees are of preservation value ("Protected Trees") and designates the area(s) of a lot or parcel where those trees should be protected ("Tree Yard").

This Bylaw does not prohibit a landowner's right to remove any protected tree. Removal of protected trees will be authorized so long as the property owner undertakes one of the mitigation options set forth herein. This Bylaw incentivizes the preservation of protected trees by requiring property owners to compensate for any Protected Trees that are removed, either by planting new ones or by contributing to the Tree Bylaw Revenue Account that supports the Town's tree planting and maintenance efforts.

This Bylaw does not discourage the removal of hazardous trees (as defined herein) for reasons of public health and safety nor does this Bylaw discourage the removal of a tree(s) that by size or otherwise is not subject to the protections set forth herein.

§175-2 DEFINITIONS

The following words, terms, and phrases, when used in this Bylaw, shall have the meaning ascribed to them in this section:

AGGREGATE DIAMETER: The combined diameter of a multiple-trunk tree measured at breast height.

BUILDING ACTIVITY: One of the following types of work performed on a lot:

- Work performed pursuant to a special permit (as defined in MGL Ch. 40A Sec. 9 and the Mashpee Zoning Bylaw);
- Work performed pursuant to site plan approval (as defined in the Mashpee Zoning Bylaw);
- Construction of a new dwelling (including after razing an existing dwelling);
- Construction of a subdivision;

- Construction of a structure or addition that increases the gross floor area of a residential, commercial, or industrial structure by 50% or more;
- Demolition of a structure(s) with a footprint of 250 square feet or greater;
- Construction of any accessory structures requiring a building permit including but not limited to sheds greater than 200 square feet, detached garages, pools, retaining walls with a height of four feet or greater; or
- Clearing, grading, or other site preparation work performed prior to undertaking any of the above.

**CERTIFICATE OF
EXEMPTION:**

Formal permission granted to proceed with building activity without the need for a tree permit.

CERTIFIED ARBORIST:

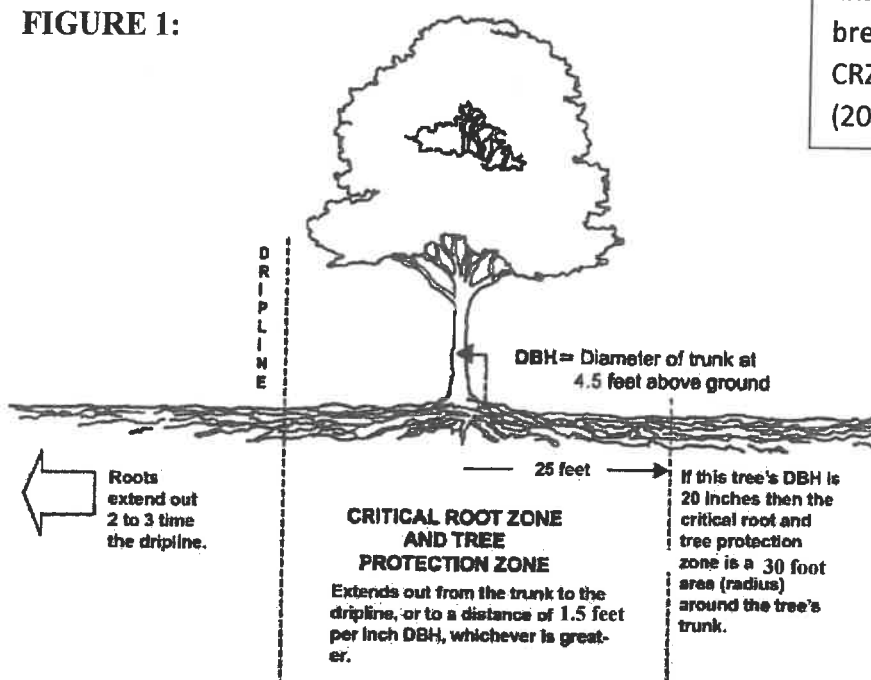
An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

**CRITICAL ROOT ZONE
(CRZ):**

The minimum area beneath the tree canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a circle centering on the tree's trunk and extending outwards towards the tree's dripline. The minimum radius of the CRZ shall be determined by multiplying the tree's diameter at breast height in inches by 18 (1.5 feet per inch DBH). See Figure 1 below.

CRITICAL ROOT ZONE

FIGURE 1:



Calculating the CRZ:

- First you need to calculate the tree's Diameter at Breast Height (DBH). DBH can be measured using a caliper measuring tool, or for trees that are too large, DBH can be measured by dividing the tree's circumference by pi (π).

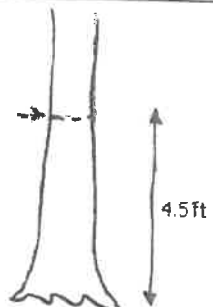
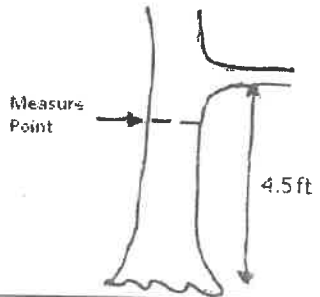
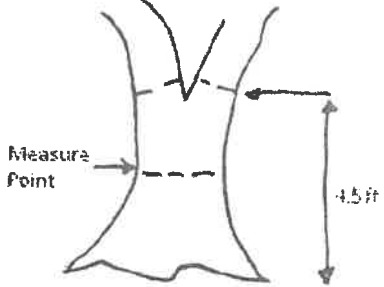
$$\text{Diameter} = \text{circumference} / \pi (3.14)$$

- The Critical Root zone extends from the trunk of the tree to its dripline, or to a distance of 1.5 feet per inch DBH, whichever is greater.

DIAMETER BREAST HEIGHT (DBH):

$$\text{CRZ} = \text{Diameter} * 1.5 \text{ feet (18 inches)}$$

The diameter of the trunk of a tree 4.5 feet above the existing grade at the base of the tree. For trees that have branches or swelling at 4.5' above grade that interferes with measurement or for multi-stemmed trees refer to Table 1 below.

TABLE 1: HOW TO MEASURE DIAMETER AT BREAST HEIGHT (DBH)	
Standard Tree For those trees on a site that are at least 6 inches in diameter at a height of 4.5 feet above the existing grade at the base of the tree. For trees on a slope, measure on the uphill side of the tree.	 <p>The diagram shows a single tree trunk. A horizontal dashed line indicates the measurement point at a height of 4.5 feet from the base. A vertical double-headed arrow on the right side of the trunk indicates this 4.5 ft height.</p>
Tree has branches or swelling at 4.5' Measure DBH below the branch or swelling immediately below where branches cease to affect diameter of the stem. Record the height at which the diameter was measured.	 <p>The diagram shows a tree trunk with a branch. A horizontal dashed line indicates the measurement point at a height of 4.5 feet from the base, positioned below the branch. A vertical double-headed arrow on the right side of the trunk indicates this 4.5 ft height. The label 'Measure Point' is next to the dashed line.</p>
Multi-stemmed Trees If a tree splits into multiple trunks below 4.5' above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.	 <p>The diagram shows a tree with multiple trunks splitting from a single base. A horizontal dashed line indicates the measurement point at a height of 4.5 feet from the base, positioned at the narrowest point below the split. A vertical double-headed arrow on the right side of the trunk indicates this 4.5 ft height. The label 'Measure Point' is next to the dashed line.</p>

- HAZARDOUS TREE:** A tree that is dead, diseased, injured and/or that is dangerously close to existing structures, utilities, streets, sidewalks or other existing improvements or is causing disruption of public utility service, or poses a threat to pedestrian or vehicular safety, or drainage or passage issues upon right-of-way and/or that is harming the health or condition of other trees on the same site.
- INVASIVE SPECIES:** Any tree that is listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.
- OVERSTORY TREE:** A tree that will generally reach a mature height of more than 40 feet.
- PROTECTED TREES:** Any tree with a diameter at breast height (DBH) of six-inches (6") or greater of any one of the species listed in Table 2 below:

Table 2: List of Tree Species that are Protected Trees	
Overstory Species	Understory Species
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Holly (Ilex opaca)</i>
<i>Black tupelo (Nyssa sylvatica)</i>	<i>Sassafras (Sassafras albidum)</i>
<i>Gray Birch (Betula populifolia)</i>	<i>Eastern Red Cedar (Juniperus virginiana)</i>
<i>River Birch (Betula nigra)</i>	<i>Shadbush (Amelanchier Canadensis)</i>
<i>White Ash (Fraxinus Americana)</i>	<i>Flowering Dogwood (Cornus florida)</i>
<i>Green Ash (Fraxinus)</i>	<i>Cockspur Hawthorne (Crataegus crus-galli)</i>
<i>Red Maple (Acer rubrum)</i>	<i>Sweetbay Magnolia (Magnolia virginiana)</i>
<i>Willow, various species (Salix spp.)</i>	<i>Ironwood (Ostrya virginiana)</i>
<i>Atlantic White Cedar (Chamaecyparis thyoides)</i>	<i>American Hornbeam (Carpinus caroliniana)</i>
<i>Pitch Pine (Pinus rigida)</i>	
<i>White Oak (Quercus alba) and other Quercus species</i>	
<i>Hackberry (Celtis occidentalis)</i>	
<i>American Beech (Fagus grandifolia)</i>	
<i>Tulip Poplar (Liriodendron tulipifera)</i>	
<i>White Spruce (Picea glauca)</i>	
<i>Black Spruce (Picea mariana)</i>	
<i>American basswood (Tilia Americana)</i>	
<i>Black Gum/Sourgum (Nyssa sylvatica)</i>	
<i>Black Cherry (Prunus serotina)</i>	

Removal of Protected Trees shall require a permit before being removed, encroached upon, or in some cases, pruned. Invasive or likely invasive species as defined in this Bylaw are not protected trees.

**REMOVE, REMOVED,
REMOVAL or REMOVING:**

The cutting down of any Protected Tree and all other acts that directly or indirectly result in the death of a Protected Tree prior to any building activity or within two years thereafter, as determined by a certified arborist based on arboricultural practices recommended by the International Society of Arboriculture, including, but not limited to, damaging, poisoning, excessive pruning or other direct or indirect actions.

TREE BYLAW

REVENUE ACCOUNT:

An account established by the Town Accountant to deposit mitigation funds collected under this chapter to be appropriated via a town meeting vote and expended for the purposes of maintaining, acquiring and/or installing trees to beautify the Town and preserve and enhance the character of the community.

TREE YARD:

A defined area along the perimeter of a lot which is equal to the minimum setbacks defined in Section 175-31 of the Mashpee Zoning Bylaw.

TREE PERMIT:

Formal permission granted to proceed with any building activity that affects a Protected Tree(s).

§175-3 APPLICABILITY

All lots in the Town of Mashpee are subject to the Tree Preservation Bylaw unless specifically exempted under Section 175-3(A) below and the project involves at least one building activities as defined in this chapter:

No person shall commence building activity on any lot without first obtaining a Tree Preservation Permit or a Certificate of Exemption from the Planning Department via the Town Planner or his/her designee.

A. EXEMPTIONS

- (1) Properties that are pre-disturbed or previously developed may remove protected trees in the Tree Yard of their property without connection to a building activity. Applicability of this bylaw applies only to those Building Activities as defined.
- (2) Any lot or lots located within wetlands jurisdiction whereas any building activity that may impact protected trees will be subject to the review and approval of the Conservation Commission
- (3) Any building activity not within the definition of "building activity" (i.e., demolition of a shed that is less than 250 square feet).
- (4) If a Certificate of Exemption has been issued by the Planning Department, no Tree Preservation Permit shall be required. The granting of exemption shall be at the discretion of the Town Planner or his/her designee and shall be based on whether the building activity could potentially harm a Protected Tree. If the proposed building activity does not have the potential to harm a Protected Tree, the Town Planner or his/her designee shall issue a Certificate of Exemption.

- (5) Dead, Diseased, or otherwise hazardous Trees - If a Protected Tree is deemed to be imminently hazardous because it is dead, or infested with a disease or pest of a permanent nature or is an immediate danger to the public health, safety or welfare or shall cause an immediate disruption of public services, the tree may be removed without delay. An oral authorization from the Town Planner or his/her or designee to remove the tree shall be permitted and followed up with a written report. In the event that the emergency condition does not allow time to seek prior authorization then the emergency removal of the tree shall proceed with notification to the Town Planner sent by email or U.S. mail within 24 hours of said removal.
- (6) Pruning: A tree permit is not required for pruning of Protected Trees. However, excessive pruning may constitute tree removal.
- (7) Any building activity conducted by the Town or on behalf of the Town of Mashpee.

Waiver: During a period of a bona fide emergency declaration resultant of a significant weather event and/or natural disaster by local or other Act of God, state and/or federal authorities, requirements of this Bylaw shall be waived.

§175-4 IDENTIFYING PROTECTED TREES

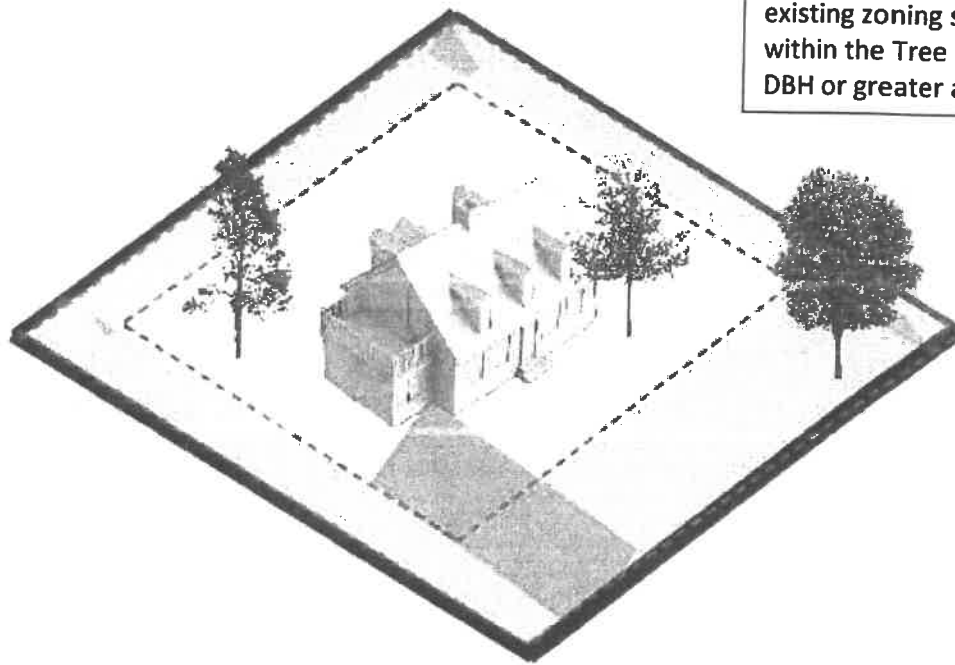
The Bylaw defines the Tree Yard to be equal to the minimum front, side, and rear yard setbacks as specified in Table 1 and §175-31 of the Zoning Bylaws of the Town of Mashpee. Any tree with a Diameter at Breast Height (DBH) of 6" or greater as calculated in accordance with Table 1 and within the Tree Yard is considered to be a Protected Tree. Any Protected Trees located within the Tree Yard are to be adequately protected and any Protected Trees located in the Tree Yard proposed for removal shall require adequate mitigation plantings and/or payment to the Mashpee Tree Bylaw Revenue Account.

Table 3: Tree Yard Locations in Each Zoning District

Zoning District	Minimum Tree Yard (feet)*		
	Front Setback	Side Setback	Rear Setback
R-3	40	15	15
R-5	40	15	15
C-1	40	20	40
C-2	75	20	20
C-3	75	20	20
I-1	75	30	50

***For residential parcels subject to a special permit for a cluster development, the tree yard shall be consistent with the applicable setbacks as defined in the recorded special permit decision.**

Figure 2:



§175-5 SUBMISSION REQUIREMENTS FOR A TREE PROTECTION AND MITIGATION PLAN

An approved Tree Protection and Mitigation Plan is required before commencement of any applicable building activity. The Tree Protection and Mitigation Plan is intended to define the Tree Yard and the location(s) of Protected Trees within it and define how the method with which the property owner intends on mitigating for any Protected Trees that are proposed for removal. This Plan may be part of a landscape plan or a separate plan.

All submitted plans must be drawn to a uniform scale (preferably 1"= 10', 1" =20', or 1"=30') and shall be a minimum size of 11" x 17" (preferred) and a maximum size of 24" x 36", with 3/4" borders. Font sizes on plans should be no smaller than 1/8". All Tree Protection and Mitigation Plans shall be prepared, stamped, dated and signed by a Registered Land Surveyor. If a plan is submitted by a Registered Landscape Architect, the plan must also be stamped by a Registered Land Surveyor.

At a minimum, the Tree Protection and Mitigation Plan shall include the following elements:

- a) Boundaries of the subject property, including all property lines, easements, and right-of-way of public and private ways;
- b) The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
- c) The location of all planned buildings, driveways, retaining walls and other improvements;
- d) The location of the Tree Yard for projects located in the subject zoning district; and
- e) The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within 12 months prior to application with an indication of those Protected Trees to be removed and those to be retained, if applicable.

§175-6 ADDITIONAL REQUIREMENTS TO BE SUBMITTED

- A. If Protected Trees are intended to be preserved, protected, and retained, the following elements must be added to the Plan:**
1. The Critical Root Zone and Drip line shall be shown for all Protected Trees to be retained. **(See Figure 1 above in definitions section).**
 2. Submitted plans shall specify the tree protection measures to be installed around the Critical Root Zone.
 3. Prior to the commencement of construction, written documentation prepared, stamped, dated and signed by a Certified Arborist must be submitted to the Planning Department confirming the protection measures have been installed correctly and in accordance with any approved plans.
 4. Projects that encroach within the CRZ require a maintenance plan which shall be submitted for such trees, prepared, stamped, dated and signed by a Certified Arborist; at a minimum, the maintenance plan shall identify the course of action that will be taken to maintain the tree in good health for a period of no less than 24 months from the date of Final Inspection or issuance of Certificate of Occupancy.
- B. If Protected Trees are intended to be removed and compensated for on-site by replanting new trees, the following additional elements must be added to the Plan:**
1. The location, DBH, species, and planting schedule of trees to be replanted to mitigate the removal of a Protected Tree(s). New trees of one -half (0.5) inch DBH is needed to mitigate for each one-inch at breast height of Protected Trees proposed for removal. Example: The removal of a 20 inch DBH Protected Tree shall require 10, 2 inch DBH replacements.
 2. Each new tree must have a minimum DBH of 2 inches.
 3. Replanting must be complete prior to Final Inspection or the issuance of a Certificate of Occupancy.
 4. Applicants have the ability to plant on land abutting the applicant's land, with the express written approval of the abutting property owner.
 5. Overstory Tree species, if removed, must be replaced with an Overstory Tree species.
 6. Invasive tree species as defined in this Bylaw shall not be replanted to mitigate the removal of a Protected Tree and no invasive species will be accepted as mitigation toward the removal of a Protected Tree.
- C. If Protected Tree removal is permitted but replanting trees as defined above is not the preference of the property owner, then mitigation may be effected through contribution into the Town of Mashpee Tree Bylaw Revenue Account as follows:**
1. The Town Planner or his/her designee shall determine the amount of the contribution based upon the cost to purchase and install trees. An applicant who has been granted a Tree Permit may choose, in lieu of replanting onsite, to make a contribution to the Tree Bylaw Revenue Account in an amount equal to planting replacement tree(s). The applicant shall provide to the Board price quotes/estimates from a garden center/nursery for the purchase of trees to establish the required dollar amount as well as from a qualified landscape professional for installation.

2. All sums deposited into the Tree Bylaw Revenue Account shall be used for the sole purpose of buying, planting and maintaining trees on public property in Mashpee, and for no other purpose whatsoever.
3. At least once a year the Town Accountant shall audit the receipts and expenses of the Tree Bylaw Revenue Account to ensure accuracy and propriety of its transactions.

§175-7 COMBINATION OF OPTIONS

Any combination of Tree Retention, Tree Replanting or Tree Removal with contribution to the Tree Bylaw Revenue Account can be used. Tree mitigation for those trees removed must be clearly identified either on the submitted plan or in a written document accounting for each DBH of Protected Trees removed and the mitigation proposed. This is not required for tree retention of all trees in the Tree Yard.

§175-8 ADMINISTRATION OF BYLAW

The Town Planner or his/her designee shall administer, implement and enforce this Bylaw and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the Town Planner may be delegated to its agents under the Board's direct supervision.

§175-9 AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes.

§175-10 RULES AND REGULATIONS

The Planning Board may promulgate rules and regulations to effectuate the purposes of this Bylaw. Such rules may prescribe the size, form, contents, style and number of copies of plans for determining final compliance with these regulations. The adoption or amendment of rules and regulations shall be after a public hearing to receive comments on the proposed or amended rules and regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

§175-11 NOTICE OF VIOLATION

Any person who violates any of the provisions of this Bylaw shall be notified by the Town Planner or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and the date by which the Protected Tree(s) is to be mitigated, by planting a replacement tree(s) or payment to the Tree Bylaw Revenue Account, for purposes of computing the "per diem" violation rule. Any notice of violation shall also be transmitted to the Mashpee Building Commissioner.

§175-12 STOP WORK ORDER

Upon notice from the Town Planner or his/her designee that work on any lot on which a Protected Tree is located is being performed contrary to the provisions of this Bylaw, a written Stop Work Order shall be given to the owner or agent or the person performing work on the property by the Building Commissioner. The Stop Work Order shall state the conditions under which work will be permitted to resume. Upon receipt of the Stop Work Order all work on the subject property that might affect any Protected Trees must cease while a stop work order is pending.

A person, having been served with a stop work order, may be directed to perform work on the said Protected Tree property to remove a violation or unsafe condition.

§175-13 SUSPENSION OR REVOCATION

The Town Planner or his/her designee may suspend or revoke the applicant's Tree Permit at any time if the permit holder has failed to comply with either the Bylaw or the conditions of the permit. Notice may be made via certified or registered mail, return receipt requested, or hand delivered. The notice must provide the applicant an opportunity to correct the non-compliance. This may include remediation or other requirements identified by the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector. Once the project is returned to compliance or remediation completed, if practicable, the applicant may apply for a renewal of the tree permit.

§175-14 IRREPARABLE DAMAGE

If the Town Planner or his/her designee determines that the applicant damaged a tree approved for Retention and Protection during construction to an extent that may significantly compromise its survival and future health, the Town Planner or his/her designee may require the applicant to provide mitigation per the terms of the Bylaw.

§175-15 NON-CRIMINAL FINES

If the Town Planner or authorized monitoring agent, such as the Code Compliance Inspector, identifies any issues of non-compliance, fines will accrue per the Bylaw if not corrected within 30 days. Each consecutive day the non-compliance continues is considered a separate offense.

§175-16 FINES AND PENALTIES

The following actions shall cause the Planning Department to issue a fine to the applicant:

- A. A Protected Tree has been removed without a Tree Permit: The fine shall be in addition to the required payment for the replacement of the tree(s).
- B. Failure to replace trees or make payment to the Tree Bylaw Revenue Account as required: Each failure to replace a tree or make a payment to the Tree Bylaw Revenue Account constitutes a separate violation of this Bylaw, subject to a fine. Each day such violation continues after the compliance date specified by the Planning Department in its notice of violation shall constitute a separate offense.

- C. Failure to comply with a condition of the Tree Permit: Each instance of failure to comply with a condition in the Tree Permit shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.
- D. Failure to comply with a condition in a Stop Work Order: Each instance of failure to comply with a condition in a Stop Work Order shall constitute a violation of this Bylaw which shall be subject to a fine. Each day such violation continues shall constitute a separate offense.
- E. Fines for the above violations are as follows:
 - First offense = \$100 per day
 - Second Offense = \$200 per day
 - Third Offense = \$300 per day
- F. Fines assessed pursuant to this Section shall be enforced and collected in accordance with applicable provisions of law, including the provisions of G.L. c.40, §21D providing for noncriminal disposition of bylaw violations, as implemented by Article III, §1-3 of these Bylaws

§175-17 SEVERABILITY

The provisions of this Bylaw are severable. If any section, provision or portion of this Bylaw is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this Bylaw shall continue to be valid.

§175-18 CONFLICT OF LAWS

This Bylaw shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87, and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special-permit procedures and to the extent that any provision hereof conflicts with said special-permit procedures, such provision shall not be valid.

§175-19 COMPLIANCE WITH ALL STATE AND LOCAL REGULATIONS

Complying with the terms of this Bylaw shall not relieve the owner of the subject property from complying with any other pertinent regulation, including but not limited to all state and local wetlands-protection regulations.

§175-20 ENFORCEMENT

The Town Planner or his/her designee is hereby authorized to enforce all provisions of the Mashpee Preservation Tree Bylaw and may designate monitoring and enforcement agents to include but not be limited to the Code Compliance Officer, the Town Planner, the Conservation Agent, Building Inspector/Commissioner.

§175-21 APPEALS

Any person who has been aggrieved by refusal, order, or decision of the Town Planner or his/her designee, may appeal to the Planning Board within 20 days from the date of such refusal, order or decision.

Submitted by the Planning Board

Explanation: This Article would establish a program intended to incentivize the protection of certain trees on residential, commercial, and industrial lots in the Town of Mashpee. It would require, prior to any building activities as defined in this article, the submission of an application and plan to the Planning Department that identifies trees that qualify as "Protected Trees" as defined in this Article. This Article does not prohibit any property owner from removing any tree, protected or not, from their property, however if a protected tree is proposed for removal, it will require either a payment into a Town Tree Bylaw Revenue Account to be created or replacement of the protected tree with a suitable species in accordance with this chapter. This would eliminate the ability for property owners to "clear-cut" their lot prior to a building activity and or/without connection to any building activity. The Article is intended to encourage the preservation of existing trees for their environmental benefits and positive impact on the character of the community.

The Select Board recommends approval of Article 6 by a vote of *HOLD*
The Finance Committee recommends approval of Article 6 by a vote of

Article 7

To see if the Town will vote to reserve from the FY 2024 estimated Community Preservation revenues pursuant to the provisions of M.G.L. Chapter 44B, §6 the following amounts:

\$127,946	10% for Open Space/Recreational Purposes
\$127,946	10% for Historic Preservation Purposes
\$127,946	10% for Affordable Housing Purposes
\$855,615	to the FY 2024 Community Preservation Fund Budgeted Reserve

as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: This article is required annually to set aside the 10% Reserves of the estimated Community Preservation Funds for Open Space/Recreation Purposes, Historic Preservation Purposes and Affordable Housing Purposes and to fund the Budget for Appropriation Reserve.

The Community Preservation Committee voted to approve this article to set aside the 10% Reserves and Budget for Appropriation Reserve to be available for use in fiscal year 2024 as certified by the Finance Director and reflected in the FY 2024 CP-1. The total FY24 appropriation to the 10% Reserves and Budget for Appropriation Reserve is \$1,239,453.

The Community Preservation Committee recommends approval of Article 7 by a vote of 6-0.

The Select Board recommends approval of Article 7 by a vote of 5-0
The Finance Committee recommends approval of Article 7 by a vote of 6-0

Article 8

To see if the Town will vote to appropriate and transfer from the Community Preservation Fund 10% Historic Reserve in accordance with the provisions of M.G.L. Chapter 44B, §5, the sum of \$73,640 for the purpose of funding the Ancient Burying Grounds Restoration project as follows; Avant Burial Ground, Main Street; Map 47, Parcels 7 & 7A; Attaquin Burial Ground, Main Street, Map 27, Parcel 41; Pocknett Burial Ground, Meetinghouse Road, Map 45, Parcel 12 including necessary costs and expenses related thereto, as recommended by the Community Preservation Committee, or take any other action relating thereto.

Submitted by the Community Preservation Committee

Explanation: The goal of the Ancient Burying Ground project sponsored by the Mashpee Historical Commission will restore and rehabilitate the historic sites adhering to the citizens of the Town of Mashpee by vote of Town Meeting on January 29, 1975, Article 29 and at the May 2, 2022 Town Meeting, Article 13 to protect and preserve all Ancient Cemeteries and Burial Grounds. As Ancient Cemeteries they would be eligible for placement on the state and national historic register.

The Community Preservation Committee recommends approval of Article 8 by a vote of 8-0.

The Select Board recommends approval of Article 8 by a vote of 5-0

The Finance Committee recommends approval of Article 8 by a vote of 6-0

Article 9

To see if the Town will vote to authorize and empower the Select Board to prepare a plan laying out and defining **GODFREY ROAD and BARBARY CIRCLE** to accomplish said purpose and for expenses related thereto, the Town vote to appropriate and transfer from revenue available for appropriation **\$20,000** to the **GODFREY ROAD and BARBARY CIRCLE** Roadways Account, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Steven J. Votta)

Explanation: This article authorizes the Town to layout and define Godfrey Road and Barbary Circle and to appropriate funding for this purpose.

The Select Board recommends approval of Article 9 by a vote of *HOLD*

The Finance Committee recommends approval of Article 9 by a vote of

Article 10

To see if the Town will vote to; authorize the Select Board to convey, grant and/or release to the Mashpee Wampanoag Tribe of Mashpee, Massachusetts *(the "Tribe" the Town's title, rights, or interest in the following described parcels of real property, to file such petitions with the Massachusetts General Court as may be necessary to effect this conveyance, grant or release, and to execute any and all instruments necessary to convey, grant and/or release the Town's title, interest or rights, upon such terms and conditions as the Select Board shall deem to be in the interest of the Town)* **Map 68: Parcels: 13B, 14 & 16 (1.63 Acres)** for the purpose of expanding the Old Indian Cemetery and support placing this parcel into trust on behalf of the Mashpee Wampanoag Tribe, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Brian Weeden)

Explanation: In 2008 at Town Meeting the “Town” authorized the Selectmen release title to the “Tribe” for “Old Indian Cemetery”. This article will authorize the Select Board release parcel (Map 68 Block 13C) to The Mashpee Wampanoag Tribe for the purpose of expanding the current cemetery.

This Article will help to expand the Old Indian Cemetery located on the Mashpee Wampanoag Tribe’s Reservation located at 410 Meetinghouse Rd and support placing the parcel into trust on behalf of the Mashpee Wampanoag Tribe for future generations of Mashpee Wampanoag Tribal Citizens and families.

The Select Board recommends approval of Article 10 by a vote of *HOLD*

The Finance Committee recommends approval of Article 10 by a vote of 5-1

Article 11

To see if the Town will vote to amend the Zoning Bylaws on Special Permit Use §174-24(C)(9)(g) to strike the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the zoning bylaw applicable to the land at the time of approval of said modification, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the zoning bylaw applicable to the expanded land area at the time of approval of said modification,” and replace with the words “(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the current zoning bylaw applicable to the land at the time of application for said expansion, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the current zoning bylaw applicable to the expanded land area at the time of application for said expansion,” or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Arden Russell)

Explanation: Several large-scale developments were permitted decades ago by special permit. Several important zoning bylaw changes have occurred since then. This article would require that when a development expands its land area via special permit, the expansion must comply with current zoning bylaws.

The Select Board recommends approval of Article 11 by a vote of *HOLD*

The Finance Committee recommends approval of Article 11 by a vote of

Article 12

To see if the Town will vote to convey Parcel No: 28-2-0 (35 Lake Avenue), 36-80-0 (409 Main Street), 28-3-0 (415 Main Street) to the Tribe for historical, educational, and cultural uses to construct a true replica of a Wampanoag Village to accurately depict daily life and complement the adjacent Tribal historic sites within the Town's existing Historical District, or take any other action relating thereto.

Submitted by Petition
(Lead Petitioner – Talia Landry)

Explanation: This article approves transfer of Town Parcels to the Tribe to recreate an accurate Wampanoag home site (circa 1700s) to traditionally educate the Tribal community and general public on Wampanoag history through interactive pre-contact exhibits. Such traditional structures support cultural preservation and conservation efforts encouraged by the Town's planning efforts.

The Select Board recommends approval of Article 12 by a vote of *HOLD*
The Finance Committee makes no recommendation of Article 12 by a vote of 4-2

THIS CONCLUDES THE BUSINESS OF THE ANNUAL TOWN MEETING

And you are hereby directed to serve this Warrant by posting up attested copies thereof, one at the Town Hall, one at the Post Office, and one each on the bulletin boards, thirty days at least before said meeting.

Hereof fail not and make return of this Warrant with your doings thereon to the Town Clerk at the time and place of said meeting.

Given under our hands this 28th day of August in the year two thousand and twenty-three.

Per Order of,
Select Board

John J. Cotton, Chair

Thomas F. O'Hara, Vice-Chair

Carol A. Sherman, Clerk

David W. Weeden

Michaela Wyman-Colombo