



# Town of Mashpee

## Planning Board

16 Great Neck Road North  
Mashpee, Massachusetts 02649

Meeting of the Mashpee Planning Board  
Wednesday, November 7, 2018  
Waqoit Meeting Room, 7:00 P.M.

**Call Meeting to Order:** 7:00 p.m. – Waquoit Meeting Room – Mashpee Town Hall

- Pledge of Allegiance

### Approval of Minutes

- Review and approval of meeting minutes from **October 3, 2018** and **October 17, 2018**. *Sp 27*

### Public Hearing

**7:10 PM - Ockway Highlands Subdivision, Discussion and possible action to modify or revoke approval. (Continued from 9/27)**

Pursuant to the Town of Mashpee Subdivision Rules and Regulations and Chapter 41, Section 81W of Massachusetts General Laws the Mashpee Planning Board will hold a public hearing on September 19, 2018 to consider amending the approval of the subdivision known as Ockway Highlands in order for it to remain an approved subdivision. The original Ockway Highlands subdivision approval was granted by the Mashpee Planning Board on May 1, 2014 and was filed in the Barnstable County Registry of Deeds on June 11, 2014 in Plan Book 654, Page 21 by the original applicant, BCDM, LLC.

**7:20 PM – Ockway Highlands Subdivision, Discussion and possible action to modify special permit. (Continued from 9/27)**

Pursuant to Massachusetts General Laws, Chapter 40A, the Mashpee Planning Board will hold a public hearing to consider modification to an approved special permit originally issued to BCDM, LLC, of 66 Charles Street, Suite 215, Boston, MA 02114 for a 16 lot cluster subdivision located on and between Blue Castle Drive and Degross Road, identified on the Mashpee Assessors Maps as Map 104, Blocks 14, 20 and 48.

**7:30 PM – Road Renaming – Shields Road and Santuit Lane to Shields Avenue Extension**

This is the only roadway extending down the peninsula extending into Santuit Pond found on Assessor's Map 30. The Mashpee Fire Department has requested the road have a single name and retain its current one-way direction. This change will also change the address of houses along the renamed road.

### New Business

- Planning Board Policies and Procedures- Correspondence, meeting packets, guest speakers.
- Request for Release of Covenant – 35 Fox Hill Road
- Request for Waiver of Special Permit Modification Application Requirements - Windchime Condominiums
- Discussion regarding shared driveway at 659, 673, and 687 Main St and associated Special Permit decision from 8/6/2010
- Design Guidelines for Light Industrial Overlay District and solutions to conflicting sections of the Zoning Bylaw
- Request Lot Releases- bond for remaining roadway construction on the Evergreen Subdivision roadway
- C. Rowley-October 2018 Services

### Old Business

- Execute Willowbend Special Permit Modification #35 following lapse of appeal period on 11/6/2018, approved 9/1/2018
- Planning Board memorandum to Community Preservation Committee

MASHPEE TOWN CLERK

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**Mashpee Planning Board  
Minutes of Meeting  
November 7, 2018 at 7:00 p.m.  
Waquoit Meeting Room, Mashpee Town Hall**

**Present:** Chairman Mary Waygan, Dennis Balzarini, Joe Cummings, David Weeden, David Kooharian, Robert (Rob) Hansen (Alt.)

**Also:** Evan Lehrer-Town Planner, Charles Rowley-Consulting Engineer

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by the Chair at 7:00 p.m. on Wednesday, November 7, 2018. The Chair stated that the Planning Board encouraged public participation and that the meeting was being videographed and recorded. The Chair welcomed attendees and asked that anyone addressing the Board do so using the microphone, stating their name, address and their comments. All comments should be addressed through the Board to the Chair and a determination would be made whether comments would be heard by the Board, or taken under advisement. The Pledge of Allegiance was recited.

**APPROVAL OF MINUTES—September 27, 2018 and October 17, 2018**

There was clarification that the October 3 minutes were approved at the last meeting and the Chair requested to hold the September 27 minutes for further review, due to their length. There were no comments regarding the October 17 minutes so the Chair asked for a motion.

**MOTION: Mr. Balzarini made a motion to approve the minutes as presented. Mr. Cummings seconded the motion. 4 yes, 1 abstain**

**PUBLIC HEARING**

**7:10 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify or Revoke Approval (Continued from 9/27)**

The appointed time having arrived, the Chair opened the Public Hearing for Ockway Highlands Subdivision and read for the record the Public Hearing Notice. There was discussion regarding the timeline of continuances, noting that the hearing had been noticed beginning September 19 for the original notice and scheduled for September 27, continued to October 3 and 17 and finally to November 7<sup>th</sup>. The Chair stated that the first Public Hearing would be regarding the Subdivision and all comments in the first hearing would be rolled into the second Public Hearing, regarding the Special Permit at 7:20 p.m.

Mr. Rowley reported that there had been substantial improvements to Blue Castle Drive since his last report, and included meetings with Mr. Morin regarding grading between the two paved areas. Mr. Rowley did not witness the grading or rolling, but he would review it tomorrow to inspect the thickness. During last week's inspection, it appeared that the amount of material in the roadway would be adequate. A revision was made to the location of the drainage ditch on the right hand side to create a more gradual transition from a 20 foot width pavement to a 16 foot width of gravel. The stone shoulder remained. Work was being completed on the left hand side of the road. In addition, work was being completed on Carriage Road, where Mr. Rowley witnessed that despite seeding, some erosion problems had occurred. To limit erosion Mr. Rowley recommended lining with jute netting. It was Mr. Rowley's opinion that Mr. Morin was making a good effort to grade Blue Castle between the

two paved areas, adding that he wanted to ensure that there would be a good crown to ensure proper water shedding. Mr. Balzarini inquired about what appeared to be a steep slope and Mr. Rowley responded that it would look steeper since it was typically ¼" but the exaggerated slope was needed to allow the water to shed off and reduce pothole degradation. Mr. Balzarini inquired whether the plow would scrape the crown and Mr. Rowley confirmed that the crown would need to be maintained. Mr. Balzarini inquired about the Blue Castle entrance with a berm on the left hand side only and the resulting runoff. Mr. Rowley stated that the pavement was pitched to the right so that runoff would enter the drainage area in front of Mr. Virgilio's home. Mr. Balzarini referenced Degrasse Road and a cover and Mr. Rowley responded that there had been a settlement of material and he believed it was an electrical manhole, not related to the drainage system.

Chairman Waygan referenced Mr. Rowley's September 25 written report and Mr. Rowley confirmed that Mr. Lehrer had incorporated details into the Special Permit Modification. Mr. Rowley noted that they were just one week away from the previously stated deadline of November 15 and inquired whether the Board wished to discuss removing the deadline or extend it further. Mr. Rowley added that Carriage Drive drainage, to be addressed in May 2019, would be fine. Mr. Rowley confirmed that substantial progress had been made since his last written report. The Board invited public comment.

Mr. Virgilio was recognized and confirmed that there had been a great deal of improvement and non-compliance issues were being corrected. Mr. Virgilio was in agreement that the maintenance of the crown in the road would be very important. Mr. Virgilio stated that the asphalt on the left hand side was not backed up and on the right side, the berm was not backed up. Additionally, Mr. Virgilio expressed concern about heavy equipment that could break up the area. Mr. Virgilio noted that more stone was needed in some areas to back up the washout and loam to back up the berm. Mr. Virgilio appreciated the efforts of Mr. Rowley and the Planning Board to work toward creating a good product that would last. Mr. Virgilio expressed his interest in being involved with discussion and an understanding of an established maintenance program.

The Chair recognized the developer, Mr. Morin, who agreed with Mr. Rowley's assessment of the conditions and work completed. Although Mr. Morin felt that the November 15 deadline was aggressive, he stated that the paving of the entrance and the berms had been completed to deflect water to the drainage area. The drainage area had been completed, but he was in agreement that it needed to be backed up, which he could complete before the weekend. Regarding the December 15 deadline for the graveling of the roadway, Mr. Morin reported that they had added more than 45 tons of material, with regrading, addressing shallow areas. Regarding the May 1 deadline, Mr. Morin confirmed that the Carriage Road drainage areas had been graded, infrastructure completed and seeded, with grass growing. Some areas would need to be touched up due to some erosion issues. It was Mr. Morin's hope that action would be unnecessary due to the fact that issues had been addressed.

The Chair inquired whether Mr. Morin felt that he could meet the deadline for Conditions 1 and 2 and Mr. Morin responded that he believed that they had been met, except for small items. The Chair inquired about the manhole cover and Mr. Morin responded that it needed to be raised or swaled back, but he would review the issue further and make corrections. Mr. Morin was in contact with the DPW regarding entrance fencing and signage at the roadway. Regarding the bonding, he would be talking further with Mr. Rowley about the appropriate amount and attend one of the next two Planning Board meetings. Regarding the maintenance agreement, Mr. Morin stated that it would need to be developed prior to the conveyance of the lots with Association documents recorded. Mr. Morin intended to speak with the neighbors regarding potential paving, but he would need more information about drainage expectations and costs. Mr. Rowley confirmed that the Homeowners Association would need to be in

place prior to negotiating with other homeowners, as required by the Special Permit. Regarding drainage for the area, Mr. Rowley stated that Mr. Morin would need to develop an engineering plan, adding that the pavement should be 20 feet wide so that the whole pavement would be the same width from one end to another.

Mr. Lehrer stated that, in anticipation of the nearing November 15 deadline, the Board could choose to take action on the Modification by removing the deadline or replace with an alternative date, prior to execution. Regarding the maintenance agreement, Mr. Morin suggested that, should there be an agreement amongst the neighbors to pave the road, there would be no need to maintain an asphalt road. Although a 20 foot width would be preferable, there would be a cost factor to consider but it would ultimately depend upon the Planning Board.

Mr. Balzarini stated that he would offer an extension to Mr. Morin since he was making an effort to complete the work. Mr. Rowley stated that there was a December 15 deadline and suggested that the November 15 items (Condition Items 1 and 2) could be given that deadline to ensure the work was completed, much of which has already been completed. Item 3 would remain as a May 1, 2019 deadline. The Chair requested that Mr. Rowley's letter be attached to the Decision.

Mr. Balzarini inquired about the Homeowners Association and the collection of dues for repair work. Mr. Morin responded that he could initially set up a budget or reserve fund for infrastructure, but once the developer was removed from the process, it would be up to the Association to make decisions, who often times preferred to pay lower dues.

**MOTION: Mr. Balzarini made a motion to close the 7:10 Public Hearing for Ockway Highlands Subdivision. Mr. Kooharian seconded the motion.**

**7:20 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify Special Permit (Continued from 9/27)**

The appointed time having arrived, the Chair opened the 7:20 Public Hearing for Ockway Highlands Subdivision Special Permit and read for the record the Public Hearing Notice.

**MOTION: Mr. Balzarini made a motion to roll all public comment and discussion from the 7:10 hearing into this hearing. Mr. Kooharian seconded the motion. All voted unanimously.**

There were no additional comments offered.

**MOTION: Mr. Balzarini made a motion to close the 7:20 Ockway Highlands Subdivision Public Hearing. Mr. Kooharian seconded the motion. All voted unanimously.**

There was discussion regarding Special Permit Modification #1. It was determined that the deadline for Items 1 and 2 would be changed to December 15. The Chair asked Mr. Lehrer to carefully review Section III, Chronology to ensure all correct dates were included.

**MOTION: Mr. Balzarini made a motion to approve Special Permit Modification #1 as amended. Mr. Kooharian seconded the motion.**

It was confirmed that Mr. Rowley's inspection letter of September 25 would be attached to the Modification.

**All voted unanimously.**

Mr. Balzarini will return to Town Hall to be notarized and sign the Modification.

**7:30 p.m. Road Renaming-Shields Road & Santuit Lane to Shields Avenue Extension**

The appointed time having arrived, the Chair read for the record the request from the Mashpee Fire Department and the Public Hearing Notice.

Clay Nicholson, Mashpee's 911 Coordinator, reported that he had been contacted regarding an issue whether Shields Avenue was Shields Way. Mr. Nicholson inspected the area, finding no street signage and identifying Shields Avenue as such, per the Subdivision plan. While in the area, Mr. Nicholson identified a variety of issues, including left sided house numbering that included both odd and even numbers which was a non-standard practice that could cause an issue in emergencies, a two-sided one-way sign that could cause confusion and the lack of a DO NOT ENTER sign for the one-way road. The Fire Department also inspected the area and a plan was developed through the Address Working Group to mitigate the issues.

Mr. Nicholson explained the submitted maps of identifying the existing conditions with problem areas and the new proposed addressing plan. The public was invited to review the maps. Mr. Hansen inquired about the proposed numbering, specifically #91 suggesting an entrance across from #88 and Mr. Nicholson confirmed that the lot numbers were based on the location of the driveways. Mr. Nicholson noted that the purple areas represented a home intended to be razed by the current owner and the lot combined with another. The Chair read a letter stating existing similarities in the names of other roads and the potential for confusion, the issue of numbering and the confusion of the roads, including town owned road versus private road. A request had been received from the DPW Director to rename the entire road.

The Board invited the public to comment.

Mike Campbell, year round resident at Santuit Lane, agreed that there were issues that needed to be addressed. However, Mr. Campbell pointed out concern about the name change, noting, that there were similar street names in existence throughout the Town, suggesting that renaming the road to Shield Road Extension did not make sense for the area, adding that there were already three "Shields" named roadways. Mr. Campbell stated that Santuit Lane was the historical road name and represented a lot of history in the area. Mr. Campbell suggested merging all roadways to Santuit Lane, which would be the only so named, in Mashpee.

Donna Sewell, Santuit Lane, expressed her opposition to changing the name. Ms. Sewell stated that she had been involved with three emergency calls with no problems.

George Schmidt, Santuit Lane, agreed that the lack of signage was an issue, and noted that Santuit Lane existed long before the establishment of Shields Road. Mr. Schmidt suggested that there was

neighborhood consensus for the renaming to Santuit Lane. Historically, Mr. Schmidt stated that the area was the location of the original Wampanoag meeting house and camp area. Mr. Schmidt further noted that the Cotuit Fire Department had no difficulty locating his address for a fire at his home. Mr. Schmidt supported the naming as Santuit Lane, adding that personally, he would incur an expense due to recently ordered stationary. The Chair confirmed that Mr. Schmidt had submitted an email thread amongst the neighbors discussing the issue of renaming to Santuit Lane.

Susan Lindsay, Santuit Lane, supported renaming the entire stretch of roadway to Santuit Lane. Ms. Lindsay shared the history she learned about the area from long time neighbor and member of the Wampanoag Tribe, Bing Hollingsworth, who grew up hunting the area and knew the area as Santuit Pond and Santuit Lane. Ms. Lindsay was in agreement that signage and numbering required improvements in the interest of safety. Ms. Lindsay explained the way in which the existing numbering had occurred. Ms. Lindsay noted that there were no issues with Google Maps or FedEx deliveries or GPS. Ms. Lindsay was in favor of maintaining Santuit Lane.

The Chair inquired whether there was a neighborhood association and Mr. Schmidt responded that he served as Treasurer and Ms. Sewell served as the President. The Chair suggested that signage solutions would need to be paid for by the neighborhood and Mr. Schmidt confirmed that they were aware of that. There was discussion about property ownership of neighbor Mr. Richards, who indicated that he did not want Shields Road Extension.

Mr. Hansen requested clarification from the neighbors about their preferences, suggesting that they were in favor of renumbering but not changing the street name. Mr. Schmidt reiterated the personal expense he would incur from renumbering but that he understood the issues with the existing conditions and hoped that he could maintain #17.

John Phelan, Mashpee Deputy Fire Chief, confirmed that the Department has had difficulties locating homes in emergency situations. Mr. Phelan stated that the lack of sequencing in the numbering of the homes created a significant emergency situation and the street naming was less of an issue for emergency responders compared to the need for sequential numbering. The Chair inquired whether the Fire Department could sponsor a meeting with the Homeowners Association to identify a unified numbering system for each house, which Mr. Phelan responded that they could. Mashpee Fire Chief, Thomas Rullo, stated that his responsibility was to quickly locate the house, to respond to an emergency, and solve the problem.

The Chair referenced an email received from resident Suzanne Greenberg expressing her concern about the changes, but preferring the street name be changed to Santuit Lane.

The Chair invited Board members to comment. Mr. Weeden inquired about property #1/#91 with the Santuit Lane return and the possibility that frontage could be changed. Mr. Phelan confirmed that the driveway was at the back of the house. Further discussion should occur with the owner of the property. Mr. Cummings suggested that the proposed numbering was realistic, referencing the #1/#91 property.

Mr. Balzarini suggested that the house numbering be corrected while maintaining the street name of Santuit Lane. The Chair added the necessity of appropriate signage. Mr. Phelan noted that the 911 Coordinator was the decision maker regarding numbering but was confident that he would work with the neighbors. Mr. Nicholson inquired about the start of Santuit Lane and Mr. Schmidt referenced the town owned land that could remain as Shields Road, starting Santuit Lane at the intersection of the cul-de-sac but it was suggested by the Board that the entire length be Santuit Lane.

The Chair recommended continuing the Public Hearing to allow for the meeting between the homeowners and the 911 Coordinator and Fire Department. Mr. Cummings stated that there seemed to be consensus to change the street name to Santuit Lane, with the new numbering system. Mr. Lehrer suggested that the original noticing was to change the name to Shields Avenue Extension and therefore may require new noticing for the renaming. Mr. Weeden suggested consulting with Ms. Laurent regarding town road ownership and Mr. Lehrer responded that there was a list identifying town road ownership. The Chair asked that the hearing be continued to December.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing to December 5 at 7:10 p.m. on the condition that the Homeowners Association, the 911 Coordinator and the Fire Department meet to come up with a plan and keep the Town Planner in the loop in case there was a need to re-advertise. Mr. Kooharian seconded the motion.**

Mr. Lehrer summarized that if the meeting among residents, 911 and the Fire Department determined that the road name would be changed to Santuit Lane, they would notify him and he would re-notice the Public Hearing and the Chair would cancel the 7:10 Public Hearing.

**All voted unanimously.**

Mr. Lehrer suggested that the Board vote to hold a potential Public Hearing at 7:20 for a potential name change to Santuit Lane and Mr. Balzarini concurred. Mr. Weeden stated that it would need to be posted. Mr. Lehrer confirmed that he would do so tomorrow.

**MOTION: Mr. Balzarini made a motion that Mr. Lehrer schedule the name change of Santuit Lane on December 5 at 7:20 p.m. Mr. Kooharian seconded the motion. All voted unanimously.**

Mr. Hansen suggested that the town-owned lots also be addressed to accommodate the full extension of the road. Mr. Nicholson concurred. Mr. Lehrer will re-notice the neighbors. Mr. Campbell inquired about who would be responsible for plowing the road and Mr. Balzarini responded that the Town would maintain the Town portion of the road. Mr. Lehrer clarified that the Town-owned lots were likely deeded to the Conservation Commission but that rights to the roadway would not be deeded to the Conservation Commission so the roads would likely not be maintained by the Town without negotiation with the Conservation Commission.

## **NEW BUSINESS**

**Charles Rowley, October 2018 Services**-An invoice in the amount of \$990 was received for services provided in October.

**MOTION: Mr. Balzarini made a motion to pay Charles Rowley \$990. Mr. Kooharian seconded the motion. All voted unanimously.**

**Discussion Regarding Shared Driveway at 659, 673 & 687 Main Street & Associated 8/6/10 Special Permit Decision-**The Chair read the request. John Jordan, of 673 Main Street, was present for discussion regarding the requirement to expand the street from 16 feet to 20 feet. Mr. Jordan was in the process of applying for a building permit.

Mr. Lehrer referenced the 2010 Special Permit Decision with conditions, including the need to widen the driveway. Mr. Lehrer also referenced a letter from Mr. Rowley indicating the existing conditions at that time. Mr. Lehrer stated that he had nothing on file indicating that the Special Permit Decision was a fully executed document, which he wanted to discuss with the Board. It was evident that a decision had been made and conditions satisfied, but it was not attested by the Town Clerk following the 20-day appeal period. Mr. Lehrer had consulted the Registry of Deeds, Planning and Building Department records and consulted with Mr. Rowley. The Chair recommended following up with former Town Planner Tom Fudala. Mr. Jordan confirmed that lot 659 had been built so the Chair suggested the possibility that it would appear under 659 at the Registry of Deeds. The Chair suggested that the Town Clerk would have the document but Mr. Lehrer responded that she did not. Pending additional research, Mr. Lehrer suggested that Mr. Rowley be authorized to make an inspection. Mr. Lehrer will follow up with the Town Clerk to see if she would reissue the document.

Planning Board members concurred with authorizing Mr. Rowley to conduct an inspection. Mr. Rowley recommended reviewing items 2 and 3 of the Conditions, particularly in reference to the dwelling being located no further than 150 foot from a paved road and the requirement of a 20 foot wide pavement if there was no variance. Mr. Lehrer recalled that the driveway had been widened to 20 feet and Mr. Jordan agreed. Mr. Rowley stated that the driveway was created as an easement to avoid three driveways off of a very steep grade, with frontage on Route 130. Mr. Rowley referenced his letter at the time. The Chair suggested that an attorney involved may have additional information. Mr. Rowley suggested that there could be additional information in the file for the building permit for the last lot built. The Chair inquired whether the closing attorney had found anything in the title search and recommended looking for the recorded book and page.

Mr. Lehrer suggested the possibility of the Planning Board scheduling a Public Hearing to consider a shared driveway for the addresses, at an upcoming meeting. The Chair responded that there was already a 2010 decision but Mr. Lehrer responded that there were unanswered administrative questions. The Chair suggested seeking the advice of Town Counsel. Mr. Rowley recommended following up with the original owner of the land who would have received the original document.

**MOTION: Mr. Balzarini made a motion to set a Public Hearing for December 5 at 7:30 p.m. Mr. Kooharian seconded the motion. All voted unanimously.**

**Request Lot Releases for Evergreen Subdivision Roadway-**Mr. Lehrer summarized that the roadway at the Evergreen subdivision had been initiated and they were seeking bonding to complete the work. Mr. Rowley reported that the cost estimate included the work to be completed, with the exception of the binder course of paving that would be completed tomorrow and to be inspected by Mr. Rowley. The base estimate total was \$67,200 which at 50% would require a bonding total of \$100,800. The project proponent would notify the Board how they wished to bond the project at the next meeting, five lots were currently under agreement. Mr. Rowley stated that, if Evergreen provided the documentation ahead of time, the Board could approve it and release the lots at the next meeting.

The project proponent stated that they were seeking approval of the suggested amount. Mr. Rowley stated that a time would be established in which they would complete the necessary work to complete the project. Mr. Rowley added that a street sign would be needed. It was determined that Evergreen would attend the next meeting on November 21 as there was consensus that there would be a quorum of members to attend a 7 p.m. meeting. Mr. Rowley informed the project proponent that they would need to provide certified funds in the bank or a performance bond.

**Request for Release of Covenant, 35 Fox Hill Road-**Mr. Lehrer reported that Robert Bevilacqua submitted a certified letter requesting a Release of Covenant and inspection from Mr. Rowley. Mr. Rowley stated that there was already a Release of Covenant, believing that there was not a Covenant for 35 Fox Hill Road. Mr. Lehrer responded that he would follow up with Mr. Bevilacqua to clarify.

**Request for Waiver of Special Permit Modification Application Requirements, Windchime Condominiums-**Mr. Lehrer stated that David Bennett anticipated a potential modification with upgrades discussed previously. At that time, Mr. Bennett had requested modification to the groundwater monitoring program and an escrow fund as determined by the modification. Mr. Lehrer stated that, according to the minutes, it was determined that modification to the groundwater monitoring program should be done at the same time as the request for the release of funds and the upgrade of the wastewater treatment plant. Windchime's letter was requesting a waiver from the entirety of the Special Permit Application requirements, except for B1, B5, B13, B14 and B19. The project proponent has requested a hearing for the first meeting in December. Mr. Lehrer indicated that, under consideration today, was the waiver, in anticipation of the application.

Mr. Lehrer noted that the Planning Board would be waiving a copy of their recorded deed, site plan of existing conditions, plan of site within 300 feet, impact to Town services, property lines and street layouts, phasing of the project, locust plan, sidewalk and walkway plans, landscaping plans, proposed utility plans, building elevations, signage, site lighting, calculations of areas away from wetlands and provisions of open space.

The Chair inquired about Windchime's tree inspections and their current contact. Mr. Cummings noted that trees were marked in red ribbon, adding that Mr. Money was the contact. There was consensus that the waivers were acceptable.

**MOTION: Mr. Balzarini made a motion to have a Public Hearing for December 5 at 7:40 p.m. Mr. Kooharian seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to accept waivers for all provisions under Section IV, Form and Content of Applications, with the exceptions of Sections B1, B5, B13, B14 and B19. Mr. Kooharian seconded the motion. All voted unanimously.**

The Chair requested that Mr. Lehrer request an update from Windchime's Landscape Committee, to be presented at the Public Hearing. The Chair updated Mr. Lehrer with the way in which the Board had conducted tree removals with Windchime.

**Design Guidelines for Light Industrial Overlay District & Solutions to Conflicting Sections of the Zoning Bylaw-**Mr. Lehrer presented his proposal for the Board's consideration, including design guidelines, as a starting point. The Chair noted her preference that the Cape Cod

Commission's Architectural and Site Design Standards be referenced and asked that the item remain on the agenda.

## **OLD BUSINESS**

**Planning Board Memorandum to Community Preservation Committee**-The Chair reported that she provided a summary to the Community Preservation Committee regarding the continuation of CPA funding, representing the ideas previously recommended by Planning Board members, with proposed amounts for the projects. The Chair explained the origin of the CPA funds that were in place until 2020, when Mashpee would be eligible to opt out. Selectmen Gottlieb, as Chair of the CPC, was seeking information regarding needs for CPC funds going forward, as the 3% surcharge could be removed in 2020. It was Mr. Balzarini's opinion that the funds were beneficial to the Town. The Chair agreed that positive impacts from the funding could be seen throughout Mashpee, such as playgrounds, the dog park, the splash pad, open space and Habitat for Humanity homes. Mr. Hansen stated that removal of the funds would limit the opportunities to fund special improvement projects for Mashpee. Mr. Hansen supported the continued funding versus lowering the tax. Mr. Kooharian agreed that it was important to invest in the place where they lived.

Board members discussed the Chair's memorandum and "associated surcharge." The Planning Board voted unanimously to recommend the continuation of the Community Preservation Program and the associated surcharge.

**MOTION: Mr. Balzarini made a motion to authorize the Chair to submit this memo as amended. Mr. Kooharian seconded the motion. All voted unanimously.**

**Execute Willowbend Special Permit Modification #35, Approved 9/1/18-Signed by Planning Board members.**

## **CHAIRMAN'S REPORT**

The Chair reported that she had checked in with Tom Ferronti of Mashpee Commons, letting him know on November 3 that the Planning Board would be meeting tonight, and whether they had any materials to submit for consideration. The Chair read Mr. Ferronti's response indicating that Mashpee Commons had not yet completed their analysis, but stating that they would update the Town Planner with their progress and determine the appropriate time to return to the Planning Board.

The Chair stated that the deadline for submitting Bylaw changes for May, if the Board of Selectmen allowed it, would be February 11. The Chair expressed concern about another potential time crunch. Mr. Balzarini stated that if Mashpee Commons wished to work with the Planning Board, they needed to attend a meeting before January. The Chair would follow up. Mr. Rowley inquired whether they would be continuing to work with their prior FBC document or whether they would return with something new. The Chair responded that she did not know. Mr. Lehrer stated that it was unlikely they would start from scratch and that they would like to find a middle ground. Mr. Balzarini stated his opinion that their draft was likely written before they hosted their charrettes.

Mr. Hansen referenced the recently constructed 3-story building at Mashpee Commons, inquiring whether it met Mashpee's height requirements. It was noted that the project fell within a Chapter 40B project. Concern was expressed regarding the potential of a 5-story building at Mashpee Commons. Mr. Lehrer stated that the Planning Board would have control over whether or not they wished to see a 5-story building at Mashpee Commons. Reference was made to the 5-story building located in the Industrial Park in Hyannis. Mr. Lehrer stated that the Planning Board could dictate the terms of the

Form-Based Code. Mr. Balzarini stated that he had received multiple complaints regarding the height of the 3-story building located at Mashpee Commons.

Chairman Waygan recommended discussion with state legislators regarding the Town's or developer's inability to bear infrastructure costs for this type of development. Mr. Balzarini referenced the funds awarded to the 40B project that constructed the road which the Chair responded was from MassWorks. Mr. Rowley suggested that Jobs Fishing Road toward Route 28 was incomplete and the upgrades not complete. Mr. Hansen expressed concern about dangerous curbing in the area that needed an adjustment to the pavement striping.

The Chair shared the response she received from the Ethics Commission exonerating her from any suggested unethical behavior, which she distributed to all who had been in receipt of the original letter from the Town Clerk. It was confirmed that Board members could speak to their constituents.

The meeting calendar has been requested for 2019 and the Planning Board confirmed that they would continue to meet the 1<sup>st</sup> and 3<sup>rd</sup> Wednesdays at 7 p.m.

## **BOARD MEMBER COMMITTEE UPDATES**

**Cape Cod Commission**-Mr. Weeden confirmed that the last of the technical bulletins had been reviewed by the subcommittee and the public comment period would soon be ending. It was the Chair's opinion that the RPP needed a little more bite and the performance measures should be returned to the Plan. Mr. Lehrer also referenced "Cape Cod Place Types" and the lack of clarity and criteria needed to identify the place types. Mr. Weeden responded that he would look into who would be identifying the place types.

**Community Preservation Committee**-The Chair stated that seven applications had been received to include the acquisition of the Tavares property, a running track reconstruction at the high school, a proposed basketball court at Attaquin Park, Community Garden reconstruction, construction of the Mashpee War Monument, transfer of funds to the Affordable Housing Trust and Armenian Church property acquisition for Affordable Housing.

**Design Review Committee**-Mr. Cummings reported that RCA Electrical Contractors attended regarding the building of two structures at 20 Evergreen Circle, off of Route 130. One structure would total 7,320 square feet and the other 2,400 square feet. The project proponent would be returning to make adjustments to the color and out of scale cupolas. Cape Cod Dog Center was a proposed brick building with parking in the front. Mr. Rowley stated that he had been asked to review both projects. Mr. Lehrer confirmed that the design was attractive for an industrial area but he did not like the site plan, adding that a bylaw was in place that did not allow for parking in the front of the building, adding his opinion that the short side of the building should front the street to allow for more attractive building massing. Despite his recommendations, the project was passed and Mr. Lehrer asked for the Planning Board's opinion on the project. It was noted that the ZBA would grant a variance to the Bylaw, and stated by the project's attorney. Mr. Rowley noted that variances needed to be a result of something unique due to the topography or shape of the lot, otherwise it should be dismissed. Mr. Lehrer would be attending the ZBA meeting.

**Environmental Oversight Committee**-No meeting

**Greenway Project & Quashnet Footbridge**-Ms. Laurent would be assisting with the bridge and the Chair asked Mr. Kooharian to take over the project and schedule the site visit.

**Historic District Commission**-No update

**MMR Military Civilian Community Council**-MMR Joint Land Use Study-No update

**Plan Review**-No update

## **PLANNING STAFF UPDATES**

**Administrative Secretary Update**-An early December start date was expected pending further clearance

**Zoning Amendment Proposals for Consideration at Future Town Meetings**-Mr. Lehrer wished to start discussion on the issue. The Chair noted that she had asked Stephanie Cox to look at Mashpee's existing ADU Bylaw. Mr. Lehrer had drafted a similar Bylaw and the Chair responded that the existing Bylaw had already been approved. Mr. Lehrer inquired how best to share items with the Board and the Chair recommended that he bring concept to the Board, adding that typically Bylaw considerations were accepted in fall. Mr. Lehrer responded that he would develop a list.

**Design Review Committee**-Mr. Lehrer was working to develop a more structured way to review applications with review criteria for Design Review.

## **ADDITIONAL TOPICS**

None at this time

## **ADJOURNMENT**

**MOTION: Mr. Balzarini made a motion to adjourn. Mr. Kooharian seconded the motion. All voted unanimously. The meeting ended at 9:50 p.m.**

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

## **LIST OF DOCUMENTS PROVIDED**

- 11/6/18 Charles Rowley Invoice for Services Rendered October 2018
- 11/6/18 Mary Waygan Email to Andrew Gottlieb Regarding Community Preservation Funds
- Special Permit Modification #1, BCDM, LLC, Ockway Highlands Cluster Subdivision
- Public Hearing Notice Street Renaming of Santuit Lane & Shields Avenue to Shields Road Extension
- 10/27/18 Email from Suzanne Greenberg Regarding Santuit Lane
- Map Santuit Lane, Proposed Addressing
- Map Santuit Lane & Shields Avenue, Existing Conditions & Issues
- Map Shields Road Extension
- 7/20/10 Charles Rowley Letter Regarding 659 Main Street
- Special Permit Decision for 659, 673 & 687 Main Street
- Form D Covenant from Evergreen Energy LLC
- 11/7/18 Pastore Excavation Cost Estimate for Evergreen Circle
- Robert Bevilacqua Request Letter to Release of Covenant for 35 Fox Hill Road
- Robert Bevilacqua Check for Inspection
- 10/24/18 Windchime Condominium Trust Request Regarding Special Permit Modification
- Light Industrial Overlay Proposal
- 11/2/18 Mary Waygan Letter Regarding Ethics Commission Response
- 11/8/18 CPC Agenda

# *Charles L. Rowley, PE, PLS*

*Consulting Engineer and Land Surveyor*

5 Carver Road  
PO Box 9  
West Wareham, MA 02576

Tel: 508-295-1881  
Cell: 508-295-0545  
E-mail: [crsr63@verizon.net](mailto:crsr63@verizon.net)

November 6, 2018

Town of Mashpee Planning Board  
Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

Re: Services for month of October, 2018

Attendance at two regular meetings \$ 390.00

## Inspections

Ockway Highlands and Blue Castle Drive

10/10 Inspection of drainage trench and drainage areas on Carriage Drive.

Met with owner with regard to paving Blue Castle Dr.

1.0 hr. 100.00

10/15 Meeting with Town Planner and Town Counsel regarding wording of the modification of the Special Permit, made an inspection of Blue Castle Drive after meeting.

1.0 hr. 100.00

10/20 Inspection of paving of Blue Castle Drive at Great Neck Road South.

Met with Lawrence Lynch superintendant. Spoke with owner regarding the relocation of the drainage trench at the end of pavement. Noted grass taking hold at drainage area.

1.0 hr. 100.00

10/24 Inspected relocated trench at end of paving on Blue Castle Drive. Noted drainage areas on Carriage Drive being regraded for loam.

0.5 hr. 50.00

10/29 Inspection of Blue Castle Drive after heavy rain showers. No ponding of water but noted minor erosion in center of unpaved portion of road beyond pavement. No final grading done yet.

0.5 hr. 50.00

## Evergreen Circle

10/16 Inspection of subsurface infiltration structures in cul-de-sac at end of road. Ok for backfill.

1.0 hr. 100.00

10/24 Inspection of road base material. Found acceptable. Material at cul-de-sac different look but still acceptable. Utility poles at Route 130 have not been relocated.

0.5 hr. 50.00

10/29 Inspected road base material for depth in two locations. Amount of material in place for fine grading found to be in compliance with plan. Cul-de-sac material wet at base after heavy rain.

0.5 hr. 50.00

Total Amount Due \$ 990.00



**Charles L. Rowley & Associates**  
**Civil Engineers & Surveyors**

Site Evaluation  
Site Design  
Construction Layout

2229 Cranberry Highway  
Post Office Box 9  
West Wareham, MA 02576

Land Surveying  
Environmental  
Title 5 Design

Tel: (508) 295-0545  
Fax: (508) 295-1192  
e-mail: rowleyassoc@verizon.net

July 20, 2010

Town of Mashpee Planning Board  
Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

Re: #659 Main Street

Attention: Mary Waygan, Chairman

Dear Ms. Waygan:

I have inspected the access driveway to #659 Main Street with respect to the current construction and its use as a common driveway under the Mashpee Zoning By-Law, Section 174-25.1(14). This section requires the following:

- Maximum length of common drive for separate lots:  
-200' unless waived by Board,
- Minimum width 14'
- Otherwise conforms to standards established for streets under the Mashpee Subdivision Rules and Regulations.

The conditions in the field are as follows:

- Length of driveway up to the nearest lot line of the last of 3 lots: 401'±
- Width: 13.5' to 14'
- Construction: Compact reclaimed asphalt base at least 6" thick topped with 3/4" to 1-1/2" stone approximately 2' thick. The driveway ends in a "Y" configuration all on the last lot. There is a turnout or backing area approximately half way between Main Street (Route 130) and the last lot.
- There is a grassed shoulder on the northerly side of the road approximately 4' wide.
- There are no storm water facilities although there are no indications of erosion or deterioration of the road resulting from recent rains. No ponding was seen at any point along the road this date after the showers of yesterday.

It is not known at this time if the driveway is located within the 30' wide driveway easement as shown on the plan of three lots dated January 12, 1994 by Christopher Costa & Associates and endorsed by the Mashpee Planning Board on January 19, 1994.

It is my understanding that Mr. Brett Field, owner of the property, has engaged John Doyle, PLS to prepare a sketch plan depicting a paved apron where the driveway crosses the town bike path and the location of the existing driveway with reference to the easement.

Very truly yours,

Charles L. Rowley, PE, RLS  
Engineering Consultant to Mashpee Planning Board

COMMONWEALTH OF MASSACHUSETTS  
TOWN OF MASHPEE

FORM D  
COVENANT

The undersigned Evergreen Energy LLC of 588 Main Street, Route 130, Mashpee, MA, Barnstable County, Massachusetts, hereinafter called the "Covenantor," having submitted to the Mashpee Planning Board a definitive plan of a subdivision, entitled DEFINITIVE SUBDIVISION PLAN EVERGREEN CIRCLE dated August 14, 2017, Revised September 8, 2017, September 13, 2017 and November 20, 2017, made by Holmes and Mcgrath, Inc., does hereby covenant and agree with said Planning Board and the successors in office of said Board, pursuant to G.L. (Ter. Ed.) C. 41, Sec. 81U, as amended, that:

1. The covenantor is the owner of record of the premises shown on said plan;
2. This covenant shall run with the land and be binding upon the executors, administrators, heirs, assigns of the covenantor, and their successors in title to the premises shown on said plan;
3. The construction of ways and the installation of municipal services shall be provided to serve any lot in accordance with the applicable Rules and Regulations of said Board before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject only to that portion of this covenant which provides that no lot so sold shall be built upon until such ways and services have been provided to serve such lot;
4. Nothing herein shall be deemed to prohibit a conveyance subject to this covenant by a single deed of the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board without first providing such ways and services;
5. This covenant shall take effect upon the approval of said plan;
6. Reference to this covenant shall be entered upon such plan and this covenant shall be recorded when said plan is recorded.

The undersigned [Signature] Mark A. Govoni  
wife, husband of the covenantor hereby agree that such interest as I, we, may have in said premises shall be subject to the provisions of this covenant and insofar as is necessary release all rights of tenancy by the courtesy, dower, homestead and other interest therein.

EXECUTED as a sealed instrument this 17 day of February, 2018.

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable

On this 17<sup>th</sup> day of February, 2018, before me, the undersigned notary public, personally appeared MARK GOVONI AND NICHOLAS PASTORE

[Signature] proved to me through satisfactory evidence of identification, which were PERSONALLY KNOWN to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public



ERIN B. FROST  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires July 26, 2024

My Commission expires 20.

JOHN F. MEADE, REGISTER  
BARNSTABLE COUNTY REGISTRY OF DEEDS  
RECEIVED & RECORDED ELECTRONICALLY

PLAN BOOK 674 PAGE 38-40  
EVERGREEN CIRCLE, MASHPEE  
LOTS A, B, 1-9, & OPEN SPACE



November 7, 2018

Charles Rowley  
C/O Town of Mashpee  
16 Great Neck Road  
Mashpee, MA 02649

Re: Evergreen Circle  
Mashpee, Ma.

Dear Charlie:

The following are items that need to be completed at the above reference project;

1- Set corner bounds	\$ 5,200
2- Loam & seed	\$ 7,500
3- Raise drainage covers	\$ 3,500
4- Top course paving	\$47,500
5- Repair area at entrance that is disturbed during utility pole relocation	<u>\$ 3,500</u>
Total:	\$67,200

Please call with any questions.  
Thank you

Pastore Excavation

*Robert Bartholomew*

Robert Bartholomew  
Project Manager

**LRME LLC**  
**P.O. BOX 628**  
**FORESTDALE, MA**

**Office: 508-833-4899    Fax 508-833-6359**

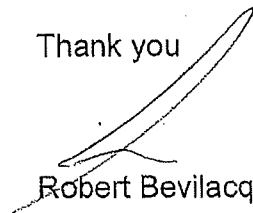
Mashpee Planning Board  
Attn: Mary Waygan  
16 Great Neck Road N  
Mashpee, MA 02649

RE: 35 Fox Hill Rd. Release of Covenant

Dear Mary Waygan:

I am writing to request the release of the covenant for 35 Fox Hill Rd., Book 31622 and Page 333 recorded at the Registry of Deeds on 10/26/18. All the requested construction work and the conditions of the covenant have been met and completed on or around 8/18/17. We are requesting an inspection from the consulting engineer so that the lot can be released.

Thank you



Robert Bevilacqua

R E C E I P T

Printed: October 26, 2018 @ 12:43:30  
BARNSTABLE COUNTY REGISTRY OF DEEDS  
JOHN F. MEADE, REGISTER

Trans#: 279590 Oper:NIKI  
TIM

=====  
Book: 31622 Page: 333 Inst#: 53380  
Ctl#: 705 Rec:10-26-2018 @ 12:42:36p  
MASH 35 FOX HILL RD

DOC	DESCRIPTION	TRANS AMT
---	-----	-----
1	MASHPEE TOWN OF	
2	LRME LLC	
	PARTIAL DISCHARGE	
	County Fee \$ 10.00	10.00
	Surcharge CPA \$20.00	20.00
	State Fee \$40.00	40.00
	Surcharge Tech \$5.00	5.00
		-----
	Total fees:	75.00
	*** Total charges:	75.00
	CHECK PM 2009	75.00

10-26-2018 @ 12:42p

# PLANNING BOARD TOWN OF MASHPEE

## RELEASE OF COVENANT AGREEMENT

The undersigned, being a majority of the Planning Board of the Town of Mashpee, Barnstable County, Massachusetts, hereby releases

Lot(s) 35 Plan Book 256, page 71 shown on a plan  
entitled CONAUMET HIGHLANDS see book page 1644-087  
dated MARCH 1, 1972, from the provisions of a covenant agreement dated

MAY 3, 1972. Record owner as of 2-1-17  
LRME, LLC PO BOX 628 FAIRBANKS, MA 02644  
name of owner date

Executed as a sealed instrument this 1<sup>st</sup> day of February, 20 17.

Chairman

[Signature]  
[Signature]  
[Signature]  
[Signature]

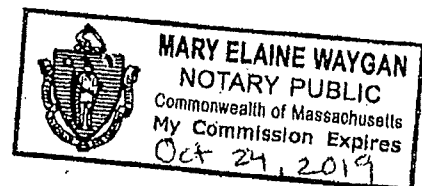
COMMONWEALTH OF MASSACHUSETTS

County of Barnstable

On this 1<sup>st</sup> day of February, 20 17, before me, the undersigned notary public, personally appeared David Koevarian, Joseph Cumming S, Dennis Balzarini, David Wooden, proved to me through satisfactory evidence of identification, which were personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Mary Elaine Waygan  
Notary Public Mary Elaine Waygan  
Commonwealth of Massachusetts

My Commission expires Oct 24, 20 19.



BARNSTABLE REGISTRY OF DEEDS  
John F. Meade, Register

35 Kex Hill Rd Mashpee

BEA08-2252

October 24, 2018

Ms. Mary Waygan, Chairman  
C/o Evan Lehrer, Town Planner  
TOWN OF MASHPEE – PLANNING BOARD  
16 Great Neck Road  
Mashpee, MA 02649

MASHPEE TOWN CLERK  
NOV 01 2018  
RECEIVED BY WCS

RE: Windchime Condominiums Trust  
Request for Special Permit Modification  
Sandcastle Mashpee, Inc. (5/21/87) and  
Windchime Point Development Group, LP (10/30/98)  
90 Great Neck Road South [Parcel ID 75-11-0]  
Mashpee, MA.

Dear Chairman Waygan and Honorable Planning Board Members,

The Windchime Board of Directors and Homeowners Association (herein referred to as "Windchime") would like to thank you for the opportunity to speak to you about wastewater treatment and planned improvements at the facility, in the context of the Special Permit and Modification process. After consultation with the Planning Board in meetings attended, and with the assistance of the Town Planner Evan Lehrer, Windchime has been advised to make application for a Modification of the Special Permit under the provisions of the Town of Mashpee Special Permit Regulations (11/15/2017). As such, Bennett Environmental Associates, Inc. (BEA) on behalf of the Windchime Condominium Trust, hereby requests a public hearing with the Mashpee Planning Board and makes application for Special Permit Modification.

Such application is made for consideration of: 1) the release of the escrow funds held under the Special Permit to make improvements to the on-site wastewater treatment system through the BRP WP 68 "Treatment Works Plan Approval" permitting process; and 2) to seek a reduction in the Wastewater Treatment Monitoring Plan as commensurate to the environmental monitoring requirements specified under the Groundwater Discharge Permit 263-3M1. It is BEA's position that granting such Modifications reduces redundancy of overlapping jurisdictions, does not compromise the underlying environmental interests, and enhances protection of the groundwater and Mashpee River surface water resources through reduction of nutrients and other pollutants by some 85%, as compared to conventional septic systems, the primary source of controllable nitrogen entering the groundwater and eventually discharged to surface waters.

Based on the nature of the Special Permit Modification being sought, and the existence of plans, deeds, reports and other records already part of the Town of Mashpee public record, the applicant seeks waivers for all provisions under Section IV "Form and Content of Applications"

with the exception of Sections B1, B-5, B13, B14 and B19, wherein these documents are attached with the minimum application fee of \$200, and \$30 for advertising, towards a public hearing on November 7, 2018.

Subject to your review and consideration of the application, please contact me directly with any questions or need for additional information in advance of the public hearing to best be prepared to discuss any topic the Mashpee Planning Board anticipates in the consideration of such Special Permit Modification.

Sincerely,  
BENNETT ENVIRONMENTAL ASSOCIATES, INC.

David C. Bennett, LPG., CGWP., RS (WWTO 5C)  
President

Cc. Windchime Condominium Trust c/o Joseph Mooney, Chairman – Board of Directors  
John Schaffer, Esquire - Marcus, Errico, Emmer & Brooks, P.C.  
Ed Goodwin, Property Manager – American Properties team, Inc.  
Glen Harrington, Director – Mashpee Health Department

Encl. Town of Mashpee Planning Board Permit Application for Special Permit Modification  
Check# \$ 230.00  
Copy of Most Recent Recorded Deed/Recorded Special Permit and Modifications/Tax Bill  
Site Locus Plan: MassGIS Priority Resource Overlay  
Plan Set entitled "Windchime Point, Mashpee, MA" Prepared by Eldredge Surveying and Engineering – Chatham, MA., Dated June 1996.  
Report entitled "Water Quality Monitoring Program Annual Report – Windchime Point Condominiums...", Prepared by Bennett Environmental Associates, Inc. – Brewster, MA, Dated May 11, 2018.  
Windchime Condominiums Financial Assurance Mechanism  
Windchime Condominiums Groundwater Discharge Permit

# Mashpee Planning Board Public Hearing and Meeting Procedures

Adopted January 21, 2004

Updated June 15, 2005

## General Procedural Guidelines

Notice of any meeting shall be filed with the Town Clerk and must be publicly posted in the office of the Town Clerk or on the principal official bulletin board of the Town at least 48 hours prior to the meeting in conformance with the Commonwealth of Massachusetts' Open Meeting Law. The Board's agenda should also be posted. *All agendas and public meeting notices must be approved by the Planning Board chair prior to any posting or advertisement.*

If it becomes necessary to adjourn or extend a meeting to another time, these same notice requirements apply to the adjourned or extended meeting.

No meeting or hearing may be opened without a quorum of the Board present (or 4 members for a Special Permit hearing) except for the purpose of continuing the meeting or hearing to a future date due to lack of a quorum.

All meetings, public hearings and executive sessions shall be held in conformance with the Commonwealth of Massachusetts' Open Meeting Law.

It should be remembered that "telephone meetings" (discussion by telephone among members of a governmental body on an issue of public business within the jurisdiction of the body) are a violation of the Open Meeting Law. This is true even if individual telephone conversations occur in serial fashion.

Except when a meeting is held in executive session, any person in attendance may record the meeting with a tape recorder or any other method of sonic reproduction, so long as no active interference with the conduct of the meeting arises as a result of the recording. Except when a meeting is held in executive session, any person attending the meeting may videotape the meeting from one or more fixed locations determined by the Chair, so long as there is no active interference with the meeting.

To be placed on an agenda, any requests and associated materials shall be submitted <sup>in writing</sup> to the Board, through the Mashpee Planning Department, at least 7 working days prior to a Board meeting. Exceptions may be made for filing of "Approval Not Required" plans or for any other items authorized prior to the meeting by the Chair, or at the meeting by a quorum (3 members) of the Board. Public hearings will only be scheduled by vote of the Board at a posted meeting.

Board meetings will not continue past 11 p.m. unless voted by a quorum (3 members) of the Board.

All persons testifying before the Board should address the Board members only. Discussions between persons testifying before the Board and non-Board members should only occur as authorized by and through the Chair. All other persons shall be silent at the request of the Chair. If a person persists in disorderly behavior during a meeting after warning from the Chair, the Chair may order him or her to withdraw from the meeting. If the disorderly person does not withdraw, the Chair may order a constable or another person to remove the offender and confine him or her in some convenient place until the meeting is adjourned.

No signs may be displayed in the meeting room during the Board's meetings.

*All materials submitted to the Planning Board via the Planning Department shall be forwarded to the Planning Board members at least 3 business days prior to the next meeting, along with the meeting agenda.*

## **Public Hearing Guidelines**

Notice of any public hearing must be mailed to all parties in interest as specified in the applicable statute, by-law or Board regulation or to those parties specified by the Board for hearings regarding items not covered by said statutes, by-laws or regulations, be submitted to the Town Clerk for posting on the Town's principal bulletin board and be published in a newspaper in general circulation in the Town of Mashpee as required by the applicable statute.

The Chair should strive for balance in all public hearings, providing the applicant and other proponents, and opponents an equal opportunity to speak. For example, unless otherwise determined by the Board, the Chair may allocate public hearing time as follows: 1/2 hour for the applicant and other proponents, 1/4 hour (or more) to entertain questions from members of the Board; 1/4 hour for staff report; 1/2 hour for those in opposition; and 1/2 hour for final comments. These time allocations will vary depending on the size and complexity of the project.

Continued hearings may be held at the discretion of the Board and should be held when additional information and/or negotiations are necessary. The Chair should allow only new information to be presented at subsequent hearings and provide all interested persons with an opportunity to rebut information presented. Hearings should be continued as needed until all information is presented and issues requiring negotiation are resolved. In certain cases, although not required by law, it may be appropriate to provide additional notice to abutters, as in a case where a hearing is opened only for procedural reasons and substantive testimony is expected to begin at a later date, or when there will be an extensive period of time until the continued public hearing.

During the public hearing it is appropriate to explore areas in which conditions might be needed. During the public hearing Board members should:

- a) Be careful to avoid the appearance of partiality.
- b) Be careful to avoid negotiation of final conditions too early in the process.

Negotiation of specific conditions is likely premature at the beginning of the public hearing process. Conditions should be negotiated after substantial testimony is received and it is clear exactly what the impacts from the proposed development are likely to be. Mitigation must be based upon the actual impacts of a proposed development. If mitigation takes the form of a financial contribution, the financial contribution shall be the estimated full or proportional share of the cost of mitigating such impacts.

Board members should refrain from making statements about their ultimate decision until after the hearing and record are closed.

## **Ex Parte Communications**

Board members should not have direct contact with applicants or their representatives outside of the public meeting or hearing process. If contacted by an applicant or representative, one should explain that such communications may only occur during a public meeting or hearing. Mailings received by Board members directly from applicants or representatives should not be opened or read, but should be forwarded to staff for distribution to the Board at the next public meeting or hearing dealing with the application.

## **Processing Multiple Requests**

When an applicant is seeking more than one determination from the Board (i.e. a Cluster Subdivision Special Permit and a Definitive Subdivision Plan Approval), the Board may hold a "mini hearing" on each request. Before addressing each request, the Chair should state the criteria for making a determination on such a request.

## **Public Hearing Procedure**

1. Open hearing, noting time each individual hearing is begun, and noting what date each hearing was originally opened if applicable.
2. At the opening of the initial session of the public hearing, read the applicable hearing notice out loud. Remind members of the audience to identify themselves before speaking to the Board.
3. Ask the staff to report regarding any procedural or application deficiencies.
4. Reference for the record the receipt of written materials submitted for the record.
5. Invite the Applicant or his or her representative to address the Board and present their case.
6. Invite Board members to question the applicant.
7. Ask the staff for its report on the project.
8. Invite Board members to question the staff.
9. Invite any public officials in the audience to make comments.
10. Invite other interested persons in the audience, beginning with proponents and then opponents, to make comments. Provide an opportunity for rebuttal.
11. The Chair may read or summarize letters and other written materials submitted for the record.
12. Ask the applicant and the staff for final comments.
13. Entertain and act on a motion (incl. continuing the hearing to a later date).

## **Receiving Testimony**

1. Identify speaker - People speaking to the Board should always identify themselves before speaking.
2. Credentials - Anyone intending to testify about a matter of a technical nature may be required by the Board to provide, verbally or in writing, the credentials qualifying them to make such technical statements. (For example, a lawyer is not necessarily qualified to make a technical determination about a traffic impact issue. If the attorney is speaking about a technical issue based upon a report prepared by someone else, then you may inquire as to the qualifications of the preparer.) This is particularly important during the applicant's testimony. Abutters should not be required to state their qualifications for impressions or opinions expressed about a project.

3. Time for presentation - Provide the applicant with enough time to state his or her case. The Board may encourage an applicant to "pick up the pace" of a presentation.
4. Requiring some testimony in written form - So many people may show up to speak about a project that they cannot all be heard within a reasonable amount of time. In this case, the Chair may limit each speaker to a specified amount of time (i.e. 5 or 2 minutes) and require that further testimony from those speakers be submitted in writing. Allow each interested person to speak, even if only briefly. When speakers cannot make all of their comments within the allotted time, provide the address and time frame (final date and time) for submission of further written testimony. Written testimony should be sent to: Mashpee Planning Board, 16 Great Neck Road North, Mashpee, MA 02649.

### **Recessing, Continuing or Closing the Hearing or Record**

1. Recessing the public hearing - At any point in the public hearing, the Chair may recess the public hearing, conduct other Board business, and then re-open the public hearing.
2. Continuations - A continued hearing must always be continued to a date, time and place certain. This may include continuation to a later time during the same meeting when, for example, another posted hearing is due to be opened or a presenter whose testimony, in the opinion of the Chair, is important to the hearing, cannot be in attendance until later in the hearing. Check with staff for future meeting dates and available times. Staff will provide an update on any discussions between the staff and the applicant or others which have taken place since the last public hearing or any relevant materials received.
3. Closing the hearing and/or record - The Board shall provide an opportunity for applicants, public officials and other interested persons to address the Board during the public hearing process. Once the Board is satisfied that all relevant testimony has been received, it may close the hearing and the record, or may close only the hearing and hold the record open for any specific information that it has requested the applicant, the staff or another party to provide for the record. It should be noted that the statutory timeframe for the filing of the Board's decision with the Town Clerk will begin upon closure of the hearing, and not of the record, so it may be appropriate to keep the hearing open, rather than the record only, in order to ensure that all necessary information is received prior to the Board's decision and that sufficient time remains to file the decision in a timely manner.
4. After the close of the Board's hearing and written record, no new evidence should be considered, with the exception of specific information or materials required by the Board prior to its decision on the application, or prior to signature of the plan or special permit or as a condition of the Board's decision on the project. Information which is the basis for discussions with the applicant must be in the public record.

### **Motions**

The Chair may entertain motions made by other Board members sitting on the application. After a second, the Chair should open the floor for discussion by the Board members and, if requested, staff. After discussion, the Chair should call for a vote, with the vote of each member to be identified for the record.

Sample Motion to Continue the Hearing:

"I move to continue this hearing until (date) at (time) at (place) for the purpose of accepting further testimony on this application."

Sample Motion to Close a Hearing:

"I move to close this hearing."

Sample Motion to Close a Hearing but leave the record open:

"I move to close this hearing but to leave the record open until (date) at (time) for the purpose of accepting additional written information on (a particular issue)."

### **Preparing and Adopting Decisions and Certificates of Action**

After the hearing and record are closed or, for applications not involving a public hearing, when the Board begins discussion of its decision, only Board members who are eligible to vote on the application should discuss the Board's decision and any newly received information that was required by the Board to be submitted prior to its decision. (Non-voting members may comment through the close of the public hearing, or prior to the Board's discussion of its decision on an application not involving a public hearing.) If there is disputed factual testimony or conflicting expert opinions, Board members should state which testimony they found to be more credible (case law requires credibility determinations to be made by the decision makers who actually hear the testimony). The Board may solicit technical assistance from the staff in preparing its decision or Certificate of Action.

Whenever possible the Board should vote on a decision or draft decision on the same date that the hearing and record are closed, including any proposed conditions. For Special Permits, the Board should then direct staff to prepare a written decision document for final approval at a subsequent meeting. (The Board may also direct staff earlier in the process to prepare initial drafts of a proposed decision.) For subdivision approvals and other matters, the Board may vote on a final decision and conditions and direct staff to prepare a written decision or Certificate of Action for filing with the Town Clerk. The Board may require that said decision or Certificate be reviewed and signed by the Chair or another Board member before filing, or authorize the Town Planner to file the decision or Certificate on their behalf.

The Board's decision, or its Certificate of Action regarding decisions under the Subdivision Control Law, must be filed with the Town Clerk prior to any deadline established by statute or by-law. As an alternative, the applicant may request, in writing, an extension of the time required for filing of the Board's decision on a Definitive Subdivision Plan, or the applicant and Board may enter into a written agreement extending the time for filing the Board's decision on a Special Permit application. In either case, the extension must be for a specified number of days or to a specified date and must be approved by the Board with the same plurality required for the decision regarding which the filing period is being extended. Notice of any such extension must be filed forthwith with the Town Clerk. No such extension of time is permissible for a Preliminary Subdivision Plan or an "Approval Not Required " (ANR) plan.

Upon filing of the Board's decision or Certificate of Action, notice must then be sent to all parties in interest as specified in the applicable statute, by-law or Board regulation.

**Mashpee Planning Board  
Minutes of Meeting  
September 27, 2018 at 7:00 p.m.  
Waquoit Meeting Room, Mashpee Town Hall**

**Present:** Chairman Mary Waygan, Dennis Balzarini, Joe Cummings, David Weeden, Robert (Rob) Hansen (Alt.)

**Also:** Evan Lehrer-Town Planner, Charles Rowley-Consulting Engineer

**Absent:** David Kooharian

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by the Chair, at 7:00 p.m. on Thursday, September 27, 2018. The Chair thanked attendees for coming and encouraged public participation. The Chair stated that the meeting was being videographed and recorded. The Chair welcomed attendees and asked that anyone addressing the Board do so using the microphone, stating their name and their business. All comments should be addressed through the Chair and the Board and a determination would be made whether comments would be heard by the Board, or taken under advisement. Due to the lengthiness of the agenda, public comment would be taken only during the Public Hearing, limiting speaking time to 3-5 minutes. Mr. Balzarini asked that speakers not repeat themselves. The Chair suggested that speakers state their agreement to a previous point made so that all public commenters could be heard.

The Pledge of Allegiance was recited.

Mr. Lehrer introduced Adam Henschel, Mashpee High School Senior, who spent the day assisting in the Town Planner's office.

**APPROVAL OF MINUTES—July 18, 2018, August 1, 2018 and September 5, 2018**

Minutes were not considered

**PUBLIC HEARING**

**7:10 p.m.      October 15, 2018 Town Meeting Warrant, Proposed Zoning Amendments**

The appointed time having arrived, the Chair opened the Public Hearing and read for the record the Public Hearing Notice.

Before initiating discussion, the Chair reported that the Planning Board had been in receipt of a letter from Melinda Baker supporting a modification to Mashpee's Accessory Dwelling Unit Bylaw. The Chair noted that the item was not currently on the Warrant. The Chair stated that, should the Board reconsider accessory apartments, they would read into the record Ms. Baker's letter.

The Chair announced that Article 14 in the Warrant, Wireless Overlay District would have a Public Hearing on October 3.

The Chair referenced Article 9, a General Bylaw listed on the agenda, which did not fall under the jurisdiction of the Planning Board to hold a Public Hearing or offer a recommendation to Town Meeting. The Board would not be considering the Article.

**Warrant Article 10: Marijuana Establishments**-The Chair read the Public Hearing Notice for Article 10. It was clarified that the Article represented a cap of one establishment, 20% of Mashpee's alcohol licenses. Mr. Lehrer pointed out that, if the Town were to issue additional liquor licenses, it could increase the number of marijuana establishments. Written comments were included in the packet from Tom Fudala, but not Town Counsel or others. The Chair opened to public comment.

Simon Romancey inquired why the limit was one retailer, noting that 3% of sales could be collected from marijuana establishments compared to 0% of sales from liquor stores. It was Mr. Romancey's opinion that one store would create a monopoly. The Chair responded that the Planning Board did not submit the Article and was printed in the Warrant as it now appeared and suggested that the speaker could attend Town Meeting to ask for an amendment on the floor. Mr. Romancey responded that he likely would not, as he was not yet a registered voter, but suggested the success of the new industry could be better determined with more than one establishment.

**Warrant Article 11: Signs**-The Chair read the Public Hearing Notice for Article 11. Mr. Balazrini had no issue with the Article but recommended warning business owners first. Mr. Cummings also did not have issue with it and stated that there was a first warning built into it. The Chair reported that written comment was received from Mr. Fudala but no other written correspondence received. There was no public comment.

**WITHDRAWN-Warrant Article 12: Seasonal Signs**-The Chair read the Public Hearing Notice and announced that the Article had been withdrawn. Mr. Balzarini inquired about the reasons for withdrawal and Mr. Lehrer responded that a number of flaws had been identified in the Article, suggesting that it could be improved to become more beneficial to businesses and the community.

**WITHDRAWN-Warrant Article 13: Mixed-Use Planned Development**-This Article was withdrawn by the Board of Selectmen and, as a result, Mr. Lehrer explained that numbering of the Articles listed in the Public Hearing differed from the numbering of the Articles listed in the current Town Meeting Warrant, dated September 26 in a memo from Town Manager Assistant, Terrie Cook.

**NOTICE Warrant Article 15/Warrant Article 12: Light Industrial Overlay District**-The Chair read the Public Hearing Notice for Article 15/12. Mr. Balzarini expressed his support. The Chair reported that written comment was received from Mr. Fudala but no other written correspondence was received from Town Counsel or others. Board members were in receipt of the April 2018 minutes from the EDIC. The public was invited to comment.

Mr. Fudala stated that the existing version of the Article was better written than the previous Article. However, Mr. Fudala suggested a legal problem due to the advertising since Article 15 Draft 2 had been pulled from the Warrant, and two Articles were added to the Warrant, which could create a serious problem, adding that a brand new Article had been submitted September 11, which did not allow sufficient time to properly advertise.

Mr. Fudala indicated that he and Mr. Lehrer had discussed the Article further, following the last meeting, in order to incorporate his comments in to the new version of the Article. However, Mr. Fudala suggested the need to fix a conflict created by "Eating Places," in conflict with the Zoning Bylaw. Mr. Fudala suggested deleting Café Food Service and Outdoor Use Seating because of the conflict it created and deal with it in a future Zoning Article. Mr. Fudala suggested the likelihood that

the legal issue of removing the original Article may be a bigger concern and suggested the possibility of scheduling a Public Hearing before Town Meeting. There was no additional public comment.

**Warrant Article 16: Raze and Replace-**The Chair read the Public Hearing Notice for Article 16. The Chair reported that the Board was in receipt of a letter from Attorney Kevin Kirrane in support of Article 16, noting a change in the interpretation of the existing Bylaw. The Chair read portions of Mr. Kirrane's letter. Comments were also received from Mr. Fudala and the Chair provided copies of the May 2<sup>nd</sup> Planning Board minutes when Raze and Replace was first discussed with the Planning Board. The Chair also referenced correspondence dated August 27, 2018 between the Planning Board Chair and the ZBA, requesting that they address the concerns discussed about Raze and Replace. Though not included in packets, Mr. Lehrer reported that the ZBA decisions requested by the Chair were available for review at this evening's meeting. There was no additional written correspondence received, including from Town Counsel.

The Chair confirmed that she had asked that ZBA decisions be provided to the Planning Board to better understand what had been approved in the past. The ZBA provided decisions for 118 Waterway, 18 Shorewood Drive and 5 Cantor. Although requested, plans for the decisions were not available. Mr. Balzarini inquired why the Board would consider the plans and the Chair responded that the ZBA stated that they had done them for years and she had requested that they provide examples. Mr. Balzarini stated that he had shown Mr. Lehrer the area. The Chair invited public comment. Comment needed to be placed on hold to open the next Public Hearing.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing for Ockway Highlands Subdivision until 8:00 p.m. Mr. Weeden seconded the motion. All voted unanimously.**

**8:00 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify or Revoke Approval**

The Chair stated that there were two public hearings for Ockway Highlands. The appointed time having arrived, the Chair opened the Public Hearing for Ockway Highlands Subdivision and read for the record the Public Hearing Notice. Another Public Hearing would also be opened to review the Special Permit and the Chair stated that all comments from this Public Hearing would be rolled into the next Public Hearing.

The Chair referenced the Special Permit Decision, as well as an inspection report, drafted by Mr. Rowley, dated September 25, 2018. Mr. Rowley summarized that the project had been going on for some time, with several inspections occurring over the last year regarding clearing along Blue Castle, Great Neck Road South and construction at Carriage Drive, including the need to address run off issues with hay bales. Mr. Rowley stated that a contractor had been hired to complete basic construction on drainage systems at Blue Castle Drive and Carriage Drive but construction ceased. Following the efforts of Mr. Virgilio, resident of Blue Castle Drive, to encourage the completion of the drainage work, additional work occurred at the intersection of Blue Castle Drive and Great Neck Road South. Mr. Rowley submitted photographs of the work, noting that it was still not complete and that the binder was placed on the road, a rolled berm on Great Neck Road South and hydro seed was necessary and there was evidence that there was some transfer of material within the drainage area that could impact the subsurface drainage systems. In addition, on Carriage Drive, Mr. Rowley expressed concern about the condition of that sub surface system. Mr. Rowley stated that activity was necessary in order to correct the situation by finishing the construction at Blue Castle Drive and Great Neck Road South. Regarding Carriage Drive, Mr. Rowley cautioned against loam and seed until the drainage system could be inspected, as with the Blue Castle drainage system.

Mr. Rowley suggested that the issue could be addressed through the Subdivision Approval. Issues needed to be addressed in order for the development to work as it should and appear as planned. The Chair inquired whether it was a change to the plan and Mr. Rowley responded that it would be a way to act on the plan in a more timely fashion, but would not be a change to the plan. Modifications for both documents would need to be recorded in the Registry. There was agreement from Board members and a request of help from Town Counsel in order to implement it. The Chair requested that Mr. Rowley's recommendations be noted in the Subdivision Plan and Special Permit Decision, with a timeline.

Mr. Balzarini stated that the drainage systems at Carriage Lane appeared to have 3-4 inches of silt and Mr. Rowley responded that the construction was good but with no protections, now required cleaning and inspection.

The Chair noted that DPW Director Catherine Laurent had submitted a memo regarding Ockway Highlands, identifying additional issues at the site. The Chair read the memo. The Chair suggested that the timeline identified for the work should occur before plowing season. Mr. Balzarini inquired about piles of dirt and Mr. Rowley confirmed that stockpiles had been placed on the pavement, but it was unclear why. The Chair invited public comment.

Anne Lagrippe, 13 Bob White Crescent, inquired about consideration of traffic controls, noting that there would be increased traffic and access, due to the new development, and inquired who she should contact regarding her concerns. The Chair responded that similar concerns had been expressed initially in 2013/2014 and was in part the reason why some of the road remained unpaved and a portable speed radar requested to be purchased by the developer as a means to slow traffic. Mr. Balzarini noted that it was an addition of just 15 houses.

Mr. Virgilio, Blue Castle Drive, expressed his appreciation to Mr. Rowley and the Board for their understanding of the situation. Mr. Virgilio referenced an initial letter he received March 19, 2014 from Mr. Fudala. In the letter, Mr. Virgilio noted concerns about water flow onto his property. Mr. Virgilio inquired whether the Board was looking to modify or revoke the Subdivision Approval and the Special Permit and the Chair responded that they would modify both, limited to comments from Ms. Laurent and Mr. Rowley and working with Town Counsel to identify the appropriate text but requiring work completion within a specific timeframe. It was Mr. Virgilio's opinion that the developer was non-compliant. Mr. Virgilio pointed out Chapter 150 regarding streets and sidewalks, noting that the Town could require a bond for damage to a Town highway. Mr. Virgilio stated that the required work had not been completed, as identified by Mr. Rowley. Referencing the plans, Mr. Virgilio inquired about stone line drainage along each side of Blue Castle and the possibility of a pipe to run beneath his driveway. Mr. Rowley confirmed that it would be part of the crowning and widening of the road, creating a trench to allow runoff into the ground, but Mr. Rowley would need to follow up regarding a pipe on the plans. There was consensus from the Board to follow up on the pipe. Mr. Virgilio agreed to provide a list of non-compliant issues, which would include whether the construction of the system was correct, the plastic pipe end for the run off swales, insufficient stone and loam, the design and construction of the drainage along Blue Castle Drive. Mr. Virgilio stated that he wanted to see action and it was his opinion that the Subdivision Approval and Special Permit should be revoked.

Timothy Dorsey, 86 Blue Castle Drive, stated it had taken over four years since the Special Permit had been granted and inquired about the difference between a minor modification and a major

modification. The Chair responded that it would be the decision of the Special Permit granting authority to determine the difference between a minor and major modification. Mr. Dorsey stated that the Planning Board modified the drainage system on both sides of the road, to have it removed, without notifying the residents of Blue Castle Drive. Planning Board members did not recall that happening and Mr. Dorsey responded that he had the plans and the work was never completed. The Chair responded that the Special Permit was never modified. Mr. Dorsey stated that he was told it was a minor modification and never completed. Mr. Dorsey noted that Ms. Laurent expressed concern about the end of the road, adding that the developer had paved the road 24 feet wide, not 20 feet as detailed on the plan. Mr. Dorsey further stated that he had cut down trees in front of his house to improve access for emergency vehicles. The Chair asked Mr. Rowley to confirm the width of the road. Mr. Rowley agreed that the drainage had not been installed, but not due to the plan being modified but because the applicant had not installed it according to the plan. Mr. Rowley believed the width could be 22 feet with the berms, but agreed to double check the width.

Chairman Waygan stated that two letters were received from Attorney Jonathan Polloni, in reference to two of his clients, one of whom was in attendance at tonight's meeting. Ellen Brady, 56 SummerSea Road and Blue Castle Drive, requested a waiver. Ms. Brady stated that, at the request of the Board, she had attempted to work with the developer to create a maintenance agreement, but had been unsuccessful. Ms. Brady spoke with a neighbor who also did not want the road paved and agreed that the unpaved road would help to slow traffic. The Chair stated that she would be forwarding the letters to Town Counsel. Mr. Lehrer confirmed that there was a provision in the Special Permit to create an Association. The Chair stated that the Hearing would be continued to October 3. There were no additional public comments.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing for Ockway Highlands Subdivision to October 3<sup>rd</sup> at 7:20 p.m. Mr. Weeden seconded the motion.**

Mr. Rowley inquired about timeline language the Chair wanted for Town Counsel and she referenced Ms. Laurent's memo identifying the road as not plowable. The Chair suggested that there be a conference call between Mr. Rowley and Town Counsel, as soon as possible. The Chair also wished to seek advice from Town Counsel regarding the means of contacting the developer and appropriate penalties should the timeline not be met.

Mr. Fudala stated that a curb cut would be needed from DPW so it was possible that the Town could complete the work and the bill be sent to the developer. Mr. Rowley was unsure of the terms of the curb cut permit.

**All voted unanimously.**

**8:00 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify Special Permit**

The appointed time having arrived, the Chair opened the Public Hearing for Ockway Highlands Subdivision Special Permit and read for the record the Public Hearing Notice.

**MOTION: Mr. Balzarini made a motion to roll all the comments from the Special Hearing on the Ockway Highlands Subdivision discussion and possible action to modify and revoke into this Public Hearing. Mr. Cummings seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to continue this Public Hearing for Ockway Highlands Subdivision to October 3<sup>rd</sup> at 7:30 p.m. Mr. Cummings seconded the motion.**

**CONTINUED            October 15, 2018 Town Meeting Warrant, Proposed Zoning Amendments**

The Chair reopened the Public Hearing for the Town Meeting Warrant, returning to Article 16 and beginning with public comment.

John Lynch, 25 Overlook Knoll, stated that he was opposed to Article 16. Mr. Lynch also expressed appreciation for the work of Mashpee's Boards and Commissions. Regarding Article 16, Mr. Lynch suggested that opponents were being painted as people against development or expanding homes, but stated that they were attempting to reach a balanced conclusion that worked for everyone. It was Mr. Lynch's opinion that Articles 16, 17 and 18 watered down protections for all. Mr. Lynch suggested that the issue came out of a request from a homeowner to sextuple the size of a home that would then need variances for setbacks, triggering a legal review of Raze and Replace. It had been determined that the common practice of the old ways were determined by Town Counsel to be illegal and improper. Mr. Lynch noted the appearance of Raze and Replace in the Spring, and the Planning Board's desire that there be meetings to discuss the issue further. The Article was then withdrawn from the Town Meeting Warrant and there had since been no meetings of interested parties. Mr. Lynch stated that the ZBA then presented three Articles, the new Raze and Replace which substantially weakened the zoning, making it easier to not meet the standards and allowing the Building Inspector to act at the beginning, removing the super majority. Mr. Lynch referenced Massachusetts zoning and nonconformities and the need to limit nonconformities. Mr. Lynch wished to work out issues to accommodate all ahead of time rather than in the courts, and expressed concern about septic and water issues. Mr. Lynch provided an outline of his remarks along with a petition signed by 55 residents and read the text of the petition, in opposition of the three Articles. Mr. Lynch stated that, of the 16 homes on this street, no one supported the Article and he was in possession of eight letters. Mr. Lynch stated that the Town Planner recognized and protected side yards and setbacks, with his Article, which was removed from the Warrant. Mr. Lynch provided the letters and petition to Mr. Lehrer to be scanned and forwarded to Planning Board members.

Donna McDonald, not a permanent resident of Mashpee, but a 16 year homeowner who bought their neighbor's home. Ms. McDonald stated that there were hardly any tear downs remaining. Ms. McDonald stated that they had already moved the home back from the road and done everything to conform, but it was a non-conforming lot. They hoped to become residents of Mashpee and had spent the money, were ready to build, but everything had been held up. Ms. McDonald stated that Mashpee was a beautiful town.

Hans Binks, 23 G Place, distributed information about Raze and Replace. Mr. Binks agreed that a plan was needed and the old regulations needed to change, but expressed concern about adjusting setbacks and preferred the existing checks and balances, stating his opposition to Article 16. Mr. Binks stated that there was a lack of green space, flooding issues, oversized homes, creating a ridiculous looking community with homes of all sizes and poor environmental issues with 3-5 bathroom homes being built in place of parcels with single bathroom homes. Mr. Binks asked that a new plan be developed.

Jill Dunn, full time resident at Greenswoods Circle, noted that she had purchased their home five years ago while seeking a thriving, multi-age, diverse community in which to settle. Ms. Dunn found herself concerned after the last meeting, anticipating homes would increase in value and allowing young families to grow in Mashpee, suggesting that growth should be supported or young families would

move elsewhere. Ms. Dunn stated that, when purchasing a property, the owner was investing their hearts and funds and should be able to improve their home adding that it should be a conversation among zoning, inspectors and the Town, not neighbors. Ms. Dunn expressed her opinion that the Town had done a nice job developing the Mashpee. Finally, Ms. Dunn suggested that residents impacted by the Article, should it not be passed, should be grandfathered because their investment would be harmed.

Christina Thomas, Shore Drive, referenced 132 Shore Drive West, stating its location in New Seabury and noting that the development had their own regulations. Ms. Thomas stated that she had a 70 year old home she wanted to replace because she was constricted by the 50% flood zone regulations.

Scott Goldstein, member of the ZBA, clarified that the intent of the Article was to better clarify the wording in order to continue to approve projects as they had in the past. Mr. Goldstein confirmed that they had never awarded a variance to allow a home closer to the lot line beyond its existing location. The Chair noted that concern had been expressed regarding the addition of a second floor and Mr. Goldstein responded that it would be within regulated height restrictions. Mr. Goldstein further stated that the Article impacted the entire Town, which represented 90% of the homes in Mashpee. The intent was not to increase the size of the home. Mr. Cummings stated that a second floor increased the square footage of the home but Mr. Goldstein pointed out that it did not impact the lot coverage. Mr. Cummings inquired about impacts to the septic and Mr. Goldstein responded that the advantage to tearing down the home would ensure that a new Title V septic system would be installed, an improvement over possible cess pools. Additionally, new construction would require improvements to address runoff issues.

The Chair acknowledged Alexander Joyce, land use planner for Bourne, to speak, who encouraged tabling the Articles to allow greater public debate and the Planning Board and Town Planner to review the Bylaws. Mr. Joyce stated that Zoning was intended to eliminate non-conforming structures and uses, or make it more applicable to zoning. Mr. Joyce stated that he had drafted a memorandum to the Board regarding Article 18 and the Chair stated that he could submit it during discussion of Article 18. It was Mr. Joyce's opinion that the Articles were all interwoven, adding that he had done lengthy research on Raze and Replace Articles, which required certain criteria to be met. Mr. Joyce recommended that Mashpee review other Cape Bylaws.

Lena McCarthy, Shore Drive, stated that she had been a condominium owner since 1984, and a summer resident for 53 years. Ms. McCarthy referenced her long time membership of Milford's Planning Board, and commended the Planning Board for their work and efforts. Ms. McCarthy felt that Raze and Replace would be acceptable provided all regulations were appropriately applied but questioned whether a new Zoning Bylaw was necessary. It was Ms. McCarthy's opinion that a homeowner should be allowed to make improvements as long as they complied with regulations, including not exceeding a 35 foot height restriction. Ms. McCarthy shared pictures of large homes located within the flood zone, noting that she could understand the frustration of abutters when they see such large homes being built. Ms. McCarthy asked that the Planning Board vote unfavorably toward the Article until there could be more conversations with neighborhoods, suggesting the development of a Committee to investigate the matter further. Mr. Balzarini responded that there were homeowners who were waiting to build their homes town wide.

Kevin Dunne, registered voter living at Greenwood Circle, noted that there were a number Mashpee homeowners speaking that were not registered voters. The Chair stated that she had not inquired about speakers' voting status. Mr. Dunne stated that he was interested in the economic impact of decisions

being made by the Planning Board, adding that people do not like others building on land that they owned, but that it was good for Mashpee tax collections and Mashpee Departments needing the tax revenues, such as the schools or emergency responders. As long as homeowners were compliant with Mashpee regulations, it was Mr. Dunne's opinion that the Town should be able to quickly clarify the rules.

Fred Naddaff, Overlook Knoll was recognized to speak and began referring to a prior speaker, but the Chair asked that speakers not name other speakers and to address the topic under discussion. Mr. Naddaff stated that he found it interesting that others were allowed to speak without disclosing their relationship. The Chair again asked that Mr. Naddaff to share his opinion about the Bylaw. Mr. Naddaff stated that the Article was intended to bring clarity to the existing Bylaw, adding that the existing Zoning had been working. The Article would provide discretion that they used all along and better clarified it, and would free up the homes that had been unable to move forward. Mr. Naddaff further stated that new homes over the years added millions of dollars to the tax base. A no vote would reverse the trend and reduce property values, and reduce tax revenue, impacting the Town's infrastructure. Mr. Naddaff further referenced future expense to the Town of Mashpee, such as sewerage. New homes were more energy efficient with a smaller carbon footprint and were safer with better systems. Mr. Naddaff suggested that a no vote would put Mashpee at odds with Massachusetts State law, which would open up the Town to potential and costly lawsuits. Mr. Naddaff emphasized that it was not a Popponesset issue but a town wide issue. Mr. Naddaff pointed out that the ZBA and Board of Selectmen were in support of the Article and asked that the Planning Board also support it. Finally, Mr. Naddaff stated that he found the Mashpee residents' use of the term, McMansion, derogatory and offensive, adding that the issue was about the entire Town and should not be about a small group of homeowners. Mr. Naddaff referenced his own project, stating that the Article was about the Town of Mashpee and not his project.

Norman Gould, ZBA member, confirmed that the regulation needed further clarification and was creating an embarrassment for the ZBA. Mr. Gould stated that he did not want what happened in Truro with the Klein home to happen in Mashpee. Mr. Gould asked that the Planning Board help the ZBA resolve the issue.

Tom O'Neil stated that he had spent 26 years in Mashpee as a resident and a business owner and expressed his pride in the community. Mr. O'Neil emphasized the importance of moving forward and not backward, in this community. It was Mr. O'Neil's opinion that Article 16 continued how the Town operated for many years, suggesting that the Article only clarified language. Mr. O'Neil stated that there were already numerous regulations in place. Mr. O'Neil discussed a similar scenario of neighbors in Lexington who expressed opposition to change. Regarding home size, Mr. O'Neil stated that each of the homes he had built were an improvement for all involved, citing examples of wastewater and energy conservation. Mr. O'Neil was in support of Article 16, noting that it impacted everyone in Mashpee. Mr. O'Neil suggested that people should be proud of others who could build larger homes and should support one another in the community.

The Chair noted that minutes from the May 2 meeting regarding this topic, had been provided to Planning Board members.

The Chair called for a break taken at 9:16 p.m. with the meeting reconvening at 9:25 p.m.

**NOTICE Warrant Article 18/Warrant Article 17: Continuance, Extension or Alteration-**  
The Chair read the proposed Article. Comments were received from Mr. Fudala but no comments

were received from Town Counsel or other parties. A petition with at least 50 signatures was received opposing the Article. The public was invited to comment.

Mr. Fudala stated that the Notice did not reference any replacement, which was problematic for the Article. Mr. Fudala suggested that the biggest problem for the Article was that it would eliminate grandfathering for the majority of homes in Mashpee, due to the deletion of a provision. Mr. Fudala suggested that removal of grandfathering would create even more work for the ZBA through variances. There was discussion about the removal of grandfathering. As a result, it was Mr. Fudala's opinion that Article 16 was a terrible Bylaw.

Mr. Joyce was recognized and returned to speak, disclosing that he had represented Mashpee homeowners John Lynch and Jim Kelly and in opposition to a requested Special Permit/Special Variance Finding at the ZBA. There was further clarification that Kevin Kirranne represented Mr. Naddaff in that hearing. Mr. Joyce drafted a memorandum containing a survey of local towns and their regulations regarding non-conformities. The Chair asked that it be provided to Mr. Lehrer in order to be distributed to Board members. Mr. Joyce suggested that detriment was not sufficiently defined in Mashpee's proposed Article and recommended verbiage used by Falmouth, reading it aloud and recommending it be incorporated. Mr. Fudala stated that Mashpee provided the protections and questioned the relevancy of Mr. Joyce's memorandum to Article 17, suggesting that it was related to Raze and Replace. As a 33 year Mashpee Town Planner, Mr. Fudala added that he knew well the Town and State regulations.

Mr. Lynch noted that Article 17 made it easier to add onto a house that was already not in compliance and reduced the voting threshold and featured internal contradictions. Mr. Lynch was in agreement with Mr. Fudala's comments. Mr. Lynch further recommended that the Planning Board review the May 2 meeting for comments provided by Mr. Rowley and Mr. Gould. Greater clarification was needed for homeowners who wished to buy, sell or reconstruct their homes. There was clarification that Mr. Lynch's document was titled Continuance, Extensions, Alterations.

The Chair announced the intent to close the meeting at 10 p.m. and the likelihood of extending the hearing to October 3. The Chair further noted that the Planning Board had, again, been given insufficient time to address the Articles in a timely fashion.

**NOTICE Warrant Article 19/Warrant Article 18: Setbacks from Water or Wetlands-**The Chair read the Notice. Written comment was received from Mr. Fudala and the Chair noted that the October 2016 Town Meeting Warrant Article 19 dealt with the same issue, with different wording, and was discussed in the October 5 2016 Planning Board minutes. Mr. Lehrer reported that nothing was received from Town Counsel and Mr. Lynch confirmed that it was referenced in the submitted petition. The Chair opened for public comment.

Mr. Fudala stated that the Public Hearing Notice did not provide an explanation about the Article with proper notice. Mr. Fudala suggested that the Article submitted allowed for the setback of the wetlands to be determined by the Conservation Commission, which was illegal due to it not being allowable for setbacks to vary from lot to lot, based on opinion and an agency like the Conservation Commission, could not legally determine a setback. Mr. Fudala had previously provided a version of this Article that would be legally allowable. The Chair recommended that the previous Article from 2016 be reviewed along with the Planning Board minutes. Mr. Fudala added that there was no mention informing the public that the 50 foot setback was being eliminated by this Article.

Mr. Lynch was in agreement with Mr. Fudala and suggested that the 50 foot setback was a prohibition that protected wetlands and water lands and was different from the mandate of the Conservation Commission. Mr. Lynch felt that the Article presented many problems and suggested that it was illegal.

Mr. Naddaff stated that the petition submitted included 55 people from one neighborhood of a population of 15,000 in Mashpee.

There was no further public comment.

**NOTICE Warrant Article 20/ Warrant Article 19: I-1 District Parking-**The Chair read the Public Hearing Notice. There were no communications other than what was received from Mr. Fudala.

Mr. Fudala was recognized to speak, stating that a provision was established in 2003 to prevent ugly development in commercial districts, requiring that parking not be allowed in the front of buildings. It was Mr. Fudala's opinion that the ZBA did not like the provision and had been granting variances in their decisions to every industrial project, with no appropriate justification. Mr. Fudala stated that the Bylaw was adopted to improve the aesthetics of commercial and industrial areas and in conjunction with the Cape Cod Commission's design guidelines. It was Mr. Fudala's opinion that the ZBA was ruining the industrial zones, which would lead to lowering property values and discouraged an ability to create high class developments. The original October 2013 Bylaw had been submitted by the Board of Selectmen, the Planning Board and the ZBA together. Mr. Fudala further emphasized that the commercial areas were not hidden away and were in fact located on well-traveled streets.

Mr. Lehrer asked to be recognized and referenced the removal of the design guidelines as a potential infringement and stated that he would like to continue to work with the Planning Board to establish proper and good requirements regarding the Industrial Overlay. There was agreement from the Planning Board.

Mr. Cummings stated that Premier Auto body was lost due to the requirement of parking behind the building. Mr. Fudala stated that the plan did not meet Zoning requirements, presenting a plan engineered with parking in the front. There was discussion regarding the display of vintage cars in the front of one location which was allowed.

There were no additional comments.

**NOTICE Warrant Article 21/Warrant Article 20: Deletion of Section 174-25 I(9) in its entirety-**The Chair read the Public Hearing Notice. No communications were received other than from Mr. Fudala.

Mr. Fudala was recognized to speak. Mr. Fudala stated that there was no explanation in the Article that the Special Permits applied only to docks that crossed more than 70 feet of wetlands. The original Bylaw was established to provide control over extremely long docks. Mr. Fudala stated that elimination of the table resulted in eliminating the right to anyone in Town to have a pier or dock, making all docks non-conforming. Mr. Fudala had provided the appropriate revised language to fix the Article. The Chair responded that the Board had made the comment to the Board of Selectmen. There was no additional public comment.

**WITHDRAWN-NOTICE Warrant Article 22: Swimming Pool Setbacks-The Board of Selectmen withdrew the Article.**

**NOTICE Warrant Article 23/Warrant Article 21: Mixed Use Planned Development (MPD)**-As the citizen petitioner, Chairman Waygan left the table and chairing the meeting was given to Vice Chair Cummings. Vice Chair Cummings read the Public Hearing Notice. No communications were received, *including comment from Town Counsel. A letter from Mashpee Commons' Tom Ferronti had already been read.*

Mr. Fudala was recognized and stated that he wrote the Article one year ago, providing it to Chairman Waygan. For the record, Mr. Fudala stated that the Article was a result of discussions he heard while attending every meeting and visioning session with Mashpee Commons and incorporating aspects that would be amenable to the Planning Board, such as open space and affordable housing. Mr. Fudala clearly stated that in no way was his proposed Article a response to Mashpee Commons, but was an Article to assist Mashpee Commons with their plans for future development and submitted before Mashpee Commons' proposed FBC. *Mr. Fudala suggested that there were some aspects that he would change but emphasized that it was never an anti-Mashpee Commons Article.*

Ashley Fisher, Mashpee Shellfish Constable, supported the Bylaw as it coincided with the Mashpee Comprehensive Wastewater Management Plan and incorporated water quality measures reducing nitrogen to 3 mg/L, while also encouraging affordable housing and open space. Ms. Fisher added that the Environmental Oversight Committee also supported the Article.

Chairman Waygan returned to the table and announced her hope that Town Counsel would respond to a September 7 request for comments, related to two motions made by Selectman Gottlieb. Chairman Waygan stated that the Citizen Petition Article could not be withdrawn by her, except on the floor during Town Meeting.

Chairman Waygan stated her wish not to close the Public Hearing for vote until October 3 to allow the Planning Board to further consider tonight's comments and review submitted documentation and review additional comments from Town Counsel.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing to October 3 at 7:45 p.m. Mr. Cummings seconded the motion. All voted unanimously.**

## **ROAD TAKING**

**Discussion and vote on Warrant Article 22 to see if the Town will accept the layouts of Pierre Vernier Drive, Katian Way and Gunter's Lane in Pimlico Heights as public ways**-The Chair stated that a vote would need to be taken before Town Meeting, so discussion should occur on October 3. Mr. Rowley confirmed that he had been in discussion with Ms. Laurent regarding the plans, noting that there was no mention of road monuments or bounds to identify the limits of the layout. Ms. Laurent would be following up with the engineer to have the bounds identified on the plan, if they had tied in to the monuments.

## **NEW BUSINESS**

None at this time

## **OLD BUSINESS**

None at this time

## **CHAIRMAN'S REPORT**

The Chair reported that she had been in receipt of a letter from the Town Clerk regarding Massachusetts General Law, Chapter 268A, Section 23(b)(3), known as the Conflict of Interest Law, applied in cases of private financial interests or relationships. The Chair stated that she had neither, in regard to Warrant Article 16, Raze and Replace.

The Chair also reported that, on August 28, Mashpee Commons acknowledged receipt of the Planning Board's list of 25 items requesting additional information regarding the Mashpee Commons by Design expansion located at the rotary. An email was received today from Tom Ferronti of Mashpee Commons, confirming that they were working to coordinate answers that would be available at this time. The Chair read for the record the letter.

The Chair announced that the Town Meeting Warrant could now be found on the Town's website. Town Meeting will be held Monday, October 15 at 7 p.m. at the high school

## **BOARD MEMBER COMMITTEE UPDATES**

**Community Preservation Committee**-A memo from the CPC had been received regarding Community Preservation Act funding in Mashpee. Information was not included in the packet but Mr. Lehrer would forward the information. The Chair noted that the usefulness of the funds and the Committee was being considered and ideas for projects would be considered.

**Cape Cod Commission**-No update

**Design Review Committee**-No update

**Environmental Oversight Committee**-No update

**Historic District Commission**-No update

**MMR Military Civilian Community Council-MMR Joint Land Use Study**-No update

**Plan Review**-No update

**Greenway Project & Quashnet Footbridge**-No update

## **PLANNING STAFF UPDATES**

**Launch of OpenCounter Zoning Portal**-Mr. Lehrer reported that the Zoning Portal was now live and explained that the portal would identify the allowable use for each parcel in Mashpee, along with the appropriate department contacts. The site would assist Mr. Lehrer as applicants would be able to print out their specific needs, while also providing Mr. Lehrer with data identifying who was searching for what on the portal and identifying potential needs for zoning changes.

**Administrative Secretary Vacancy Update**-The posting would close tomorrow and interviews would begin in one week.

**Affordable Housing Working Group Progress**-An RFP draft was being developed for 950 Falmouth Road, with evaluation criteria. It was hoped that the RFP would be issued in January.

## **CORRESPONDENCE**

-January 2018 Discharge Monitoring Report for South Cape Village N=5.60

-February 2018 Discharge Monitoring Report for Southport N=39.75

- March 2018 Discharge Monitoring Report for South Cape Village N=4.50
- April 2018 Discharge Monitoring Report for South Cape Village N=8.90
- May 2018 Discharge Monitoring Report for South Cape Village N=5.20
- June 2018 Discharge Monitoring Report for South Cape Village N=5.80

## **WATERWAYS LICENSES**

None at this time

## **ADDITIONAL TOPICS**

None at this time

## **ADJOURNMENT**

**MOTION: Mr. Balzarini made a motion to adjourn. Mr. Cummings seconded the motion. All voted unanimously. The meeting ended at 1:25 p.m.**

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

## **LIST OF DOCUMENTS PROVIDED**

- 9/15/18 Letter from Town Clerk Deborah Dami Regarding Zoning Bylaw Articles, Received 9/22/18
- 9/27/18 Email Response from Tom Ferronti, Mashpee Commons to Chairman Waygan
- 9/21/18 Email Correspondence from Chairman Waygan to Tom Ferronti, Mashpee Commons
- Regarding Planning Board List of Questions
- 8/1/18 Letter from Melinda Baker, South Sandwich Road, Regarding Accessory Dwelling Bylaw
- Planning Board Public Hearing Notice
- 9/26/18 Terrie Cook Memo Re: 2018 October Town Meeting Zoning and Road Petition/Taking Articles
- Tom Fudala Comments Re: 2018 October Town Meeting Zoning and Road Petition/Taking Articles
- 9/4/18 Kevin Kirrane Letter Regarding Article 16
- May 2, 2018 Planning Board Minutes Regarding Raze and Replace
- Raze and Replace Needs a Real Plan
- Public Hearing Notice for Ockway Highlands Subdivision Approval
- Abutters Notice of Public Hearing for Ockway Highlands Subdivision Special Permit
- Ockway Highlands Cluster Subdivision Special Permit
- 9/25/18 Charlie Rowley Letter Regarding Inspection of Ockway Highlands/Blue Castle Drive/Carriage Drive
- 9/25/18 DPW Director Catherine Laurent Memo Regarding Ockway Heights Subdivision
- 9/25/18 Letter from Attorney Jonathan Polloni Regarding Blue Castle Drive on Behalf of Ellen Brady
- 9/25/18 Letter from Attorney Jonathan Polloni Regarding Blue Castle Drive on Behalf of Duco Associates/Henry Barr
- Road Taking Plans



**Mashpee Planning Board  
Minutes of Meeting  
October 17, 2018 at 7:00 p.m.  
Waquoit Meeting Room, Mashpee Town Hall**

**Present:** Chairman Mary Waygan, Dennis Balzarini, Joe Cummings, David Weeden  
**Also:** Evan Lehrer-Town Planner, Charles Rowley-Consulting Engineer  
**Absent:** David Kooharian, Robert (Rob) Hansen (Alt.)

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by the Chair, at 7:00 p.m. on Wednesday, October 17, 2018. The Pledge of Allegiance was recited.

**APPROVAL OF MINUTES—September 27, 2018 and October 3, 2018**

The September 27 minutes were not complete so the Board considered the minutes of October 3. Mr. Rowley had recommended changes to the minutes of October 3.

**MOTION: Mr. Balzarini made a motion to accept the October 3<sup>rd</sup> minutes as amended. Mr. Cummings seconded the motion. All voted unanimously.**

**PUBLIC HEARING**

**7:10 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify or Revoke Approval (Continued from 9/27)**

The appointed time having arrived, the Chair opened the Public Hearing for Ockway Highlands Subdivision and read for the record the Public Hearing Notice. Referencing communication received from Trustee, Jacques Morin, of Ockway Highlands LLC, the Chair asked that the matter be continued to November 7.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing until November 7 at 7:10 p.m. Mr. Cummings seconded the motion.**

The Chair offered to provide a copy of Mr. Morin's correspondence to a member of the neighborhood who expressed frustration that he was not in attendance at the meeting, adding that the road was a disgrace. Chairman Waygan encouraged the resident to attend the meeting on November 7, or to put her comments in writing and provide them to Mr. Lehrer ahead of the next meeting.

**All voted unanimously.**

The Chair stated that there could be no comment regarding the matter because the Public Hearing had been continued. Mr. Rowley will provide an update to Mr. Lehrer, who would then forward it to the members of the Board.

**7:20 p.m. Ockway Highlands Subdivision, Discussion and Possible Action to Modify Special Permit (Continued from 9/27)**

The appointed time having arrived, the Chair opened the Public Hearing for Ockway Highlands Subdivision Special Permit and read for the record the Public Hearing Notice.

**MOTION: Mr. Balzarini made a motion to continue the Public Hearing until November 7 at 7:20 p.m. Mr. Cummings seconded the motion. All voted unanimously.**

**NEW BUSINESS**

**Review of ANR Plan submitted by applicant property owners Neil A. Barney & Kathleen Garvey. Equal land swap between 4 Ash Street and 25 Devon Street-**The Chair read the request for the record. Mr. Lehrer noted that the applicants were not present and the updated mylar with language changes, per Mr. Rowley's recommendations, had not been submitted. There was consensus to wait for the arrival of the applicants.

Tom Bunker, BSS Design, arrived to represent the project proponent. Mr. Rowley indicated that the request was a simple land swap and his comments involved the way in which statements for Planning Board signatures would be placed on the plan. The land swap did not impact the area of each lot and the frontage was not affected.

Mr. Bunker confirmed the changes requested. Mr. Bunker stated that Parcels X and Y featured an equal area, 416 square feet conveyed one to the other, so that the total land area would not change, but would allow the parcel with the home to have a larger back yard.

**MOTION: Mr. Balzarini made a motion to accept Approval Not Required, as presented. Mr. Cummings seconded the motion. All voted unanimously.**

Planning Board members signed the plans.

**October 15, 2018 Town Meeting Recap-**Chairman Waygan distributed a list of approvals from Town Meeting. Mr. Balzarini commended Mr. Lehrer for his work at his first Town Meeting. The Chair suggested consideration of Mr. Fudala's comments about the Light Industrial Overlay and Mr. Lehrer agreed to consider amending the proposed Bylaw. Mr. Lehrer suggested the addition of the use table under the accessory section in the district's overlay. Mr. Lehrer agreed to create a draft and noted that he would also bring back the design guidelines to be further discussed with the Board.

**OLD BUSINESS**

**Review and Sign Willowbend Special Permit Modification #35, Approved 9/1/18-**Mr. Lehrer noted that the agenda should have read Modification 35, not 34, and confirmed that the Special Permit Modification had been forwarded to Attorney Jack McIlhinney and no comment was received back. Mr. Lehrer confirmed that the Plan Sheets listed had been as approved by the Planning Board. The Chair suggested taking a closer look at the conditions. Mr. Lehrer responded that the conditions were as described in the minutes and from review of the meeting video and based on Mr. Rowley's recommendation and as approved by the Planning Board.

The Chair confirmed that the Planning Board would receive a copy of a set of plans provided to the Building Department and any modifications or changes. The Chair inquired whether Mr. Weeden had received a plan regarding the archeologically sensitive area. Mr. Weeden responded that he had been in contact with Mass Historical Commission who forwarded a study completed in the area. Mr. Weeden was satisfied. There was consensus from Board members regarding the Conditions.

**MOTION: Mr. Balzarini made a motion to approve Modification #35 as presented. Mr. Cummings seconded the motion. All voted unanimously.**

A recess was taken at 7:20 and the meeting reconvened at 7:22 p.m.

### **CHAIRMAN'S REPORT**

The Chair inquired whether the Board would like her to invite speakers Leslie Richardson from the Cape Cod Commission and Dr. Brian Howes of UMass Dartmouth. The Chair suggested starting the meeting at 6 p.m.

### **BOARD MEMBER COMMITTEE UPDATES**

**Cape Cod Commission**-Mr. Weeden confirmed that there was a draft of the Regional Policy Plan available for review on the website. The next Public Hearing would be October 24 in Yarmouth at the Realtor's Association. Public comments were due by mid-November. Mr. Weeden reported that, in addition to the 24<sup>th</sup>, meetings would be held in Sandwich, October 11 and in Truro, October 17.

**Community Preservation Committee**-Board members received copies of the memo from Chairman Gottlieb, regarding CPA funding. Chairman Waygan outlined the funding as 10% to Affordable Housing, 10% to Open Space and 10% to Historic Preservation. The remaining 70% could be used in all areas as well as for Recreation. The Chair suggested that she would draft a memo based on tonight's discussion and vote on it November 7 to submit at the next CPC meeting on November 8. Applications were due November 1.

The Chair stated that Mashpee's goal for year round affordable housing was 10% and the Town was currently at 5.2% and recommended that there was still a need for affordable housing. Board members agreed. Mr. Balzarini referenced affordable housing needs and Mashpee Commons and inquired how to meet the goal if market rate housing continued to be developed. The Chair responded that the rate was set based on census results. Mr. Lehrer stated that Chapter 40B was a tool to develop affordable housing because although 25% was deed restricted affordable, all units were counted toward the Town's affordable housing rate.

The Chair noted that there was a list of land identified to complete the Wildlife Refuge and agreed to locate the list for further consideration to develop Open Space.

Mr. Balzarini suggested a project honoring the Attaquin Hotel, possibly a center, incorporating Tribal members and cooking and gardening lessons. Mr. Lehrer stated that the site of the Attaquin Hotel was an essential historic resource for the Town. Mr. Lehrer expressed a commitment and enthusiasm to advocate for a reconstruction that would honor the hotel. Mr. Weeden referenced the Mary Potter property in the Historic District that may be for sale by the family, and suggested that Mashpee consider purchasing and restoring the property to be registered historically and potentially used for affordable housing. Mr. Weeden added that there was another property, the Walter Mingo house a cranberry bog owner on Great Neck Road North, and a location where Tribal members worked. It was Mr. Weeden's opinion that the two properties would be valuable resources and excellent candidates for CPC and additional funding, such as from the Cape Cod Commission mitigation funds.

The Chair noted that the Land Bank could not end until 2020 on Cape Cod and Selectman Gottlieb was seeking more information about the community's needs for CPA funds.

Mr. Weeden also recommended consideration of restoring the Parsonage, located on Reservation property, but a complement to the Historic District. Mr. Weeden noted that the Parsonage was one of the oldest buildings in Town, and in need of repair. Additionally, the Tribe wished to seek having the structure placed on the National Historic Register. The Chair inquired whether the Tribe could draft an application for the November 1 deadline. Mr. Lehrer stated that he had been in discussion with Mr. Weeden about identifying the appropriate level and scaling of funding for the project, such as the re-creation of building plans, preliminary architectural and historical research, engineering for rehabilitation of the building, study, design and execution. Mr. Lehrer was interested in creating an application but was unclear of the availability of funding and the Chair recommended submitting an application. The Chair suggested that a privately held historic building would be eligible, provided it was open to the public for a specified amount of time.

Regarding Recreation, the Chair noted that Mashpee Pond was in need of a reconstructed basketball court, the playground needed to be completed and picnic tables and grills added. Mr. Lehrer suggested a large project, to develop a bicycle master plan to build out the bike path trails so that, as the DPW built out its streets, bicycle infrastructure could also be incorporated.

Mr. Lehrer also reported that two owners had expressed interest in selling their properties to be used for affordable housing, including 3.1 acres from the Armenian Diocese on Old Barnstable Road and Christine Murano on Fox Hill Road for the green space set aside. Mr. Weeden inquired whether funds could be used to purchase housing for AmeriCorps but the Chair believed that funds could be used to support with pay for food or housing, but not build the housing.

**Greenway Project & Quashnet Footbridge**-Ms. Laurent would be assisting with the bridge and the Chair would be asking Mr. Kooharian to take over the project.

**Design Review Committee**-Mr. Cummings reported that RCA Electrical Contractors attended regarding the building of two structures at 20 Evergreen Circle, off of Route 130. One structure would total 7,320 square feet and the other 2,400 square feet. Minor adjustments and architectural elements were needed. Building signage had not yet been proposed. Mr. Lehrer noted that he was working on a checklist that would ensure consistency in the Committee with signage and design aesthetics.

Mr. Rowley stated that Evergreen had requested a lot release but the road had not yet been built. Mr. Rowley advised that a letter was needed detailing a cost for each item requiring completion for the road, submitting a check for the amount or providing a cash bond, to be reviewed by Counsel. Mr. Lehrer advised the applicant that the lots had not been released. Mr. Rowley was also asked to review the drainage plans. Mr. Lehrer recommended that the project proponent attend the next meeting to request the lot release with the necessary documentation.

**Environmental Oversight Committee**-Mr. Cummings reported that there was discussion about Mashpee Commons, single use bag Bylaw and a straw Bylaw that would be presented to the Town. Mr. Cummings stated that new plans had been developed for the Community Garden. There was discussion about Land Bank funds originally used to purchase the parcel. The Garden would be expanded and cleaned up and they would be seeking CPA funds to complete the work. The herring count was the highest ever and AmeriCorps has been assisting with the shellfish program. The algae at Santuit Pond was high in phosphorus.

**Historic District Commission**-No update

**MMR Military Civilian Community Council**-MMR Joint Land Use Study-No update

**Plan Review-No update**

**PLANNING STAFF UPDATES**

**Administrative Secretary Vacancy Update**-Eight applicants had been interviewed and narrowed down to three candidates.

**ADDITIONAL TOPICS**

None at this time

**ADJOURNMENT**

**MOTION:** Mr. Balzarini made a motion to adjourn. Mr. Cummings seconded the motion. All voted unanimously. The meeting ended at 8:10 p.m.

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

**LIST OF DOCUMENTS PROVIDED**

- October Town Meeting List of Outcomes
- 10/9/18 Memo from Evan Lehrer Regarding Planning Board Recommendations for Town Meeting
- 10/16/18 Email from Jacques Morin Regarding Ockway Highland's Draft Modification
- Blue Castle Drive Photograph
- Public Hearing Notice for Ockway Highlands Subdivision Approval
- Abutters Notice of Public Hearing for Ockway Highlands Subdivision Special Permit
- Draft Ockway Highlands Cluster Subdivision Special Permit Modification #1
- 9/13/18 Memo from Evan Lehrer Regarding Ockway Highlands Public Hearing on 9/27/18
- 10/3/18 Email from Jacques Morin Regarding Ockway Highlands
- 10/2/18 Notes from Ernie Virgilio Regarding Ockway Highlands
- Willowbend Special Permit, Modification No. 35
- BSS Design ANR and Plans
- 9/25/18 Andrew Gottlieb Memo Regarding Community Preservation Fund





# *Town of Mashpee*

## *Planning Board*

16 Great Neck Road North  
Mashpee, Massachusetts 02649

### MEMORANDUM

**TO:** Andrew R. Gottlieb, Chair  
Community Preservation Committee

**FROM:** Mary E. Waygan, Chair  
Planning Board

**DATE:** November 6, 2018

**RE:** Community Preservation Funds

At their regular meeting on November 7, 2018, the Planning Board voted (unanimously) to recommend ~~to not recommend~~ the continuation of the Community Preservation Program and the associated surcharge.

Furthermore the Board members identified the following potential projects. The costs are estimates based on the state's Community Preservation Coalition's database of completed projects, Town Assessor's records, and general industry pricing.

#### **OPEN SPACE:**

The Town's Action Plan for Open Space Conservation (attached here) calls for the preservation of multiples parcels, either through acquisition or transfer. While some of these actions have been completed, there are many which remain to-do. Depending on buildability, a budget of \$35,000-\$100,000 per acre should be set aside.

#### **COMMUNITY HOUSING:**

Per the 2010 Census, Mashpee has 6,473 year-round housing units: 5.2% are deed restricted Affordable. To reach the Town's 10% goal, over 300 additional Affordable units will need to be brought online. Figuring the Town would subsidize half of these units (150 units) with a subsidy of \$50,000 - \$100,000 per unit, the gross estimate to meet this need with Community Preservation Funds is \$7,500,000 to \$15,000,000 over the next ten years.

**PLANNING BOARD**  
**NOVEMBER 7, 2018**  
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**HISTORIC:**

1. Reconstruction of the Aquinnah Hotel to be used as a community and educational center (\$1,500,000 - \$2,500,000)
2. Preservation of the Parsonage House on Route 130 and application to list house on the National Registry of Historic Places (\$400,000 - \$600,000)
3. Acquisition and Preservation of the Potter Homestead (\$300,000 - \$400,000)
4. Acquisition and Preservation of the Walter Mingo Home on Great Neck Road South (\$400,000 - \$500,000)
5. Preservation, restoration and documentation of Town's historic cemeteries, including protective fencing and the development of cemetery regulations, all in cooperation with the Wampanoag Tribe (\$100,000 - \$200,000)

**RECREATION:**

1. Design and construction of a town-wide bicycle pathway system
  - a. Master Plan (\$35,000)
  - b. Engineered construction plans (\$10,000/mile or 10% of construction costs)
  - c. Construction (\$100,000/mile)
2. Installation of the recreation facilities at Mashpee Pond, including playground area, basketball court, tables, benches, grilles (\$70,000 - \$120,000 depending on grade of basketball court)



# *Town of Mashpee*

16 Great Neck Road North  
Mashpee, Massachusetts 02649

**MASHPEE PLANNING BOARD  
Special Permit Modification #1  
BCDM, LLC (Original Applicant)  
Ockway Highland's, LLC (owner)  
"Ockway Highlands" Cluster Subdivision  
Blue Castle Drive / Degress Road**

## **I. Proposal**

This decision concerns an application by BCDM, LLC, 66 Charles Street, Suite 215, Boston, MA 02114 (the Applicant) to allow for the development of a cluster subdivision (hereafter, the "Project") located on an approximately 12.09 acre undeveloped parcel of land situated on Blue Castle Drive (an unpaved private road), with additional frontage on Degress Road (a paved Town road) (hereafter, the "Property"). The Property is shown on Mashpee Assessor's Map 104 as Lots 14, 20 and 28.

As submitted, the Project was depicted on a 10-sheet plan set entitled "Proposed Subdivision of Land, "Ockway Highlands" in Mashpee, Massachusetts" prepared by Costa Associates, Inc., issued on June 1, 2013. The original proposal was for 16 lots, which was later reduced to 15 lots, including one lot to be donated for affordable housing.

## **II. Jurisdiction**

This application was made and this Decision has been issued by the Mashpee Planning Board pursuant to Sections 174-24.C, 174-47, and other provisions of the Mashpee Zoning By-Laws (the "By-Laws") as they existed on May 7, 2014, the date on which this Special Permit decision was approved. Where reference is made to the By-Laws, it shall refer to the provisions thereof as they existed on May 7, 2014. This project is also subject to the applicable provisions of M.G.L. Chapter 40A, Section 9.

This proposal is not subject to review as a mandatory Development of Regional Impact by the Cape Cod Commission.

## **III. Chronology**

Application for this Special Permit was made with the Town Clerk on June 17, 2013. A public hearing was opened by the Planning Board on August 21, 2013 at 7:10 p.m. Notice of this hearing was duly given to abutters, the Planning Boards of adjoining towns and the Cape Cod Commission (mailed on July 19, 2013) in accordance with Massachusetts General Laws Chapter

40A and the Planning Board's Special Permit Regulations. Notice was also given by publication in The Mashpee Enterprise, a newspaper of general circulation in the Town of Mashpee on August 2 and 9, 2013. The hearing was continued on September 18, October 2, November 20, December 4 and December 20, 2013 and February 5 and 19 and March 5 and 19, and April 2 and 16 and May 5, 2014. Planning Board member Waygan was not present for the October 2 meeting, but has filed a Certification pursuant to MGL c. 39, Section 23D that she reviewed all the evidence introduced at that hearing session, including a review of the video recording of the session.

On August 6 and December 13, 2013 the project plans were reviewed by the Design Review Committee and the Plan Review Committee. On December 13 the Committees voted to recommend approval of the proposal with conditions.

On May 7, 2014, the Planning Board closed the public hearing and voted to make the following findings and grant a Special Permit authorizing the project, with the conditions enumerated below. The members of the Planning Board were recorded as follows: Members George W. Petersen Jr., Mary E. Waygan, Dennis H. Balzarini, David Kooharian and Associate Member Joseph P. Cummings were recorded as voting in favor of the decision. No members were recorded as voting against.

On September 27, 2018, the Planning Board opened a public hearing to consider modification to the Special Permit after continuous testimony regarding construction issues and noncompliance, particularly with regard to the construction of the stormwater drainage as designed in the approved subdivision plans and original special permit approval.

The Planning Board continued the public hearing until its meeting of October 3, 2018 to hear further testimony and to obtain a report from Charlie Rowley, Consulting Engineer, and Evan Lehrer Town Planner regarding discussion of the modification with Town Counsel. The public hearing was continued until the Planning Board's October 17<sup>th</sup>, 2018 meeting.

The proposed modification was reviewed at the October 17, 2018 meeting and the Planning Board voted to make the following findings and approve the modification to the Special Permit subject to the conditions enumerated below. The members of the Board were recorded as voting as follows upon a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_: Members Waygan, Balzarini, Cummings, Kooharian, and Weeden were recorded as voting in favor of the modification, no members were recorded as voting against.

#### **IV. Findings**

1. The proposed modification involves less than 10% increase in the area of any use and is therefore, under the provisions of Section 174-24.C.(9)(d) of the Zoning By-law, subject to the dimensional and other relevant provisions of the Zoning By-law as it existed on November 6, 1985, the date on which a preliminary subdivision plan was filed on the property, freezing the zoning in effect at the time that this special permit was originally issued on April 15, 1987. At that time the property was in an R-3M zoning district.

2. The project satisfies the requirements of Massachusetts General Law Chapter 40A, in that it complies with the general purposes and intent of the Mashpee Zoning By-Law on the applicable dates.
3. In conformance with the provisions of Article VI, Section 174-24.C.(2) of the Zoning Bylaw, the Planning Board finds that the proposal will not adversely affect public health or safety, will not cause excessive demand on community facilities, will not significantly decrease surface or ground water quality or air quality, will not have significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties, will not cause excessive levels of noise, vibration, electrical disturbance, radioactivity or glare, will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage program or any known historic or archaeological site, will not produce amounts of trash, refuse or debris in excess of the town's landfill and waste disposal capacities, will properly dispose of stumps, construction debris, hazardous materials and other wastes, will provide adequate off street parking, will not cause excessive erosion or cause increase runoff into neighboring properties or into any natural river, stream, pond or water body and will not otherwise be detrimental to the town or the area.

#### **V. Conditions**

- Dec 15
1. All road construction of Blue Castle Drive beginning at the intersection of Great Neck Road South and extending through the end of the first paving section shall be completed no later than November 15, 2018. This includes the installation of all upgrades within the drainage area, inspection of the existing infiltration system, the berm across the entrance, final wearing surface, and Cape Cod berms, dressing of road shoulders and general overall cleanup within this area.
  2. The gravel surface of Blue Castle Drive shall be upgraded as shown on the approved plans to include the installation of reclaimed asphalt material, shaping of the final surface and the construction of drainage swales and connecting pipe. This work shall be completed no later than December 15, 2018.
  3. Inspection and reconstruction of the two drainage areas along Carriage Drive and the protection of drainage areas from further erosion shall be completed no later than May 1, 2019.
  4. All work noted above shall be in conformance with the recommendations made to the Mashpee Planning Board by letter dated September 25, 2018 from Charles L. Rowley, PE, PLS, which letter is incorporated herein by reference.

#### **Expiration, Extension or Modification**

This Special Permit Modification shall lapse only as part of any lapse of the original Special Permit as previously approved. It may be further modified under the terms of Section 174-24.C(9) of the Mashpee Zoning By-Law.

**Signature and Filing**

This Special Permit decision document, which incorporates by reference herein all attachments and plans, has been approved on this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2018. A copy of same shall be filed with the Town Clerk in accordance with applicable law.

\_\_\_\_\_  
Mashpee Planning Board - Duly Authorized Member

\_\_\_\_\_  
Commonwealth of Massachusetts

Barnstable, ss

On this \_\_\_\_<sup>th</sup> day of October, 2018 before me, the undersigned notary public, personally appeared \_\_\_\_\_, a member of the Mashpee Planning Board, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

A copy of this decision and the accompanying plans endorsed by the Planning Board has been duly filed on \_\_\_\_\_ with the Town Clerk of Mashpee.

\_\_\_\_\_  
Town Clerk

Notice of this decision was mailed on \_\_\_\_\_ to the applicant, to the parties in interest designated in Massachusetts General Law, Chapter 40A, Section 11 and all persons at the hearing who requested such notice. Any appeal should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws 20 days after the date of such filing.

I, Debra Dami, Town Clerk of the Town of Mashpee, hereby certify that a copy of this decision and the accompanying plans endorsed by the Planning Board were filed with the office of the Town Clerk on \_\_\_\_\_ and that no appeal of that decision was filed within 20 days thereafter.

\_\_\_\_\_  
Town Clerk  
Date: \_\_\_\_\_

Upon expiration of the statutory appeal period with no appeal having been filed, this Special Permit decision has been endorsed by the undersigned members of the Mashpee Planning Board on \_\_\_\_\_ and may be recorded.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# *Town of Mashpee*

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*16 Great Neck Road North  
Mashpee, Massachusetts 02649*

## NOTICE OF PUBLIC HEARING TO CONSIDER RENAMING SANTUIT LANE AND SHIELDS AVENUE TO SHIELDS ROAD EXTENSION

October 18, 2018

Dear Mashpee Property Owner,

As the registered owner of a property located with a SANTUIT LANE or SHIELDS AVENUE address, you are being notified that the Mashpee Planning Board is holding a public hearing on Wednesday, November 7, 2018 at 7:30 PM in the Waquoit Meeting Room, Mashpee Town Hall, 1<sup>st</sup> Floor, 16 Great Neck Road North, 02649 to solicit comments regarding the following case:

Under the provisions of M.G.L. Chapter 85, Sections 3A and 3B, the Mashpee Planning Board will hold a public hearing to consider changing the names of SHIELDS AVENUE and SANTUIT LANE to SHIELDS ROAD EXTENSION. This is the only roadway extending down the peninsula that extends into Santuit Pond found on Assessor's Map 30. The Mashpee Fire Department has requested the road have a single name and retain its current one-way direction. This change will also change the address of houses along the renamed road.

If you wish to provide comment but you are unable to appear before the Board you may submit comments to me in writing via the contact information provided below. Your comments will be entered into the public record for the Board's consideration. A map is attached to this letter for your consideration.

If you require any accommodations please submit requests to me via email, snail mail, or telephone prior to the specified date and time of the public hearing indicated herein, in legal advertisements in the Mashpee Enterprise, and posted in Town Hall.

Please do not hesitate to contact me by phone, email, or in person should you have questions about why you are receiving this notification.

Sincerely,

Evan R. Lehrer, Town Planner  
[elehrer@mashpeeema.gov](mailto:elehrer@mashpeeema.gov)  
(508) 539-1400 x. 8521



## **Evan Lehrer**

---

**From:** Greenberg, Suzanne <s.greenberg@northeastern.edu>  
**Sent:** Saturday, October 27, 2018 1:16 PM  
**To:** Evan Lehrer  
**Cc:** mikeatcamp@yahoo.com  
**Subject:** Road Name change

Evan R, Lehrer, Town Planner  
Town of Mashpee, Massachusetts

Dear Mr. Lehrer:

I am writing in response to your letter of October 18, 2018 sent to all property owners with a Santuit Lane and Shields Avenue address regarding the proposed change of name of the streets. I understand that this proposal originates with the Fire Department with the intent to eliminate road names which might be confusing and impede quick responses for fire, police and emergency vehicles, an admirable goal. But since the proposed name would be Shields Road Extension, I am not clear how that will help achieve the goals, since I believe there is also a Shields Court. Somehow, being an extension to a road which did not have any lots or homes on it when the name "Santuit Lane" was assigned to our property seems odd. What is now Shields Road was a dirt path when the homes on Santuit Lane and Shields Avenue were built to which I can personally attest since I attended numerous Planning Board meetings when developers were considering developing not only Shields Road but also the streets abutting it.

Santuit Lane and Shields Avenue are one way. If more signage is indicated, I am sure we could arrange it. Couldn't Shields Avenue become part of Santuit Lane? I believe there are only a couple of homes on it. I agree it would be nice to have the numbers run in a logical direction but my neighbors who have needed services tell me that there has not been any issue in receiving excellent prompt response in emergencies.

As you know from our telephone conversation, I was concerned with what we might have to do legally if there is a road name change. Thanks to your assistance, I now know that nothing has to be done to our deeds since they are listed by lot number. My insurance company says a letter on Town letterhead stating that a road name change has been made should be adequate and there would not be any cost. For those who have specified the name of their property in their wills or other legal documents, that will not only entail formal documentation but, unfortunately, also a cost. For year round residents who receive mail delivered to their mail boxes, I assume there is a routine procedure. I assume all of us will have to notify utility providers and other senders and visitors. Obviously, all of these items can be addressed but it does seem a lot to do when it does not appear that there is any real problem.

Again, I want to thank you for your help and prompt response to my inquiry. It was much appreciated. I will not be able to attend the meeting but look forward to hearing what decisions have been made.

Sincerely,

Suzanne B. Greenberg  
35 Santuit Lane





# Town of Mashpee

Planning Board

16 Great Neck Road North, Mashpee, MA 02649  
Telephone (508) 539-1400 ext. 520 • Fax (508) 539-0954  
Email: [planning@ci.mashpee.ma.us](mailto:planning@ci.mashpee.ma.us)

## Special Permit Decision

**Brett Field and Z&J Realty Trust  
Proposed Common Driveway  
659, 673 and 687 Main Street (Route 130)**

### I. Proposal.

This decision concerns the application Brett Field and Z&J Realty Trust, 108 Echo Road, Mashpee, MA 02649, for a common driveway to serve three lots located at 659, 673 and 687 Main Street (Route 130). The properties are identified on the Mashpee Assessors Maps as Map 13, Blocks 41, 43 and 45 and also as Lots 1A, 2A and 3A on a "Plan of Land for Robert Fratus in Mashpee, Massachusetts" prepared by Christopher Costa & Assoc., dated January 12, 1994, endorsed "Approval Under Subdivision Control Law Not Required" by the Mashpee Planning Board on January 19, 1994 and recorded at the Barnstable County Registry of Deeds in Plan Book 502,-Page 25.

Said plan shows a common driveway easement labeled "30' wide driveway easement for the benefit of lots 1A, 2A and 3A (all lots must access route 130 via this easement)" and notation at the frontage of all lots reading "No Driveway Access Allowed". The 1994 plan was a revision of a previous "Approval-Not-Required" plan entitled "Plan of Land for Rich Realty Trust in Mashpee, -Massachusetts" prepared by All Cape Survey Consultant (Christopher Costa RLS) dated May 7, 1986 and signed by the Board on May 21, 1986, showing 5 lots and a "16' Composition Gravel Surface" common driveway on a 30' wide easement layout, with a turnaround circle on lot 4 having a 33' outside driveway surface radius and a 30' long 2 1/2" asphalt paved apron at the entrance to Route 130. The two Approval-Not-Required plans were signed only on the basis of the use of the common driveway and prohibition of other access to Route 130 due to the steep grades and guardrail at the front of the lots that made practical construction of separate driveway access difficult or impossible.

This Application was made pursuant to the special permit approval procedures specified in Sections 174-24.C.(1) et seq. of the Mashpee Zoning By-law. The proposal is for construction of a common driveway, for which a special permit is required under the provisions of Section 174-25.I.(14) of the Table of Use Regulations.

Section 174-25.I. (14) reads as follows: "Common driveways. The Planning Board may issue a special permit for a driveway to be used by two (2) or more primary structures or lots, including structures in attached residential developments, provided that no more than four (4) lots may be accessed by such common driveway, that no common driveway may be used to, or considered to, satisfy zoning frontage requirements where usable practical access is not available across the approved or proposed street frontage of said lots or is otherwise not permitted, that no common driveway to separate lots may exceed two hundred (200) feet in length or such greater length as may be approved by the Planning Board, that no common

driveway may be less than fourteen (14) feet in width and that it otherwise conforms to all of the standards established for streets in the Subdivision Rules and Regulations adopted by the Planning Board, unless waived by said Board. The length, width and other construction standards specified above shall apply only to that portion of a driveway which is used in common by more than one (1) lot, primary structure or residential unit."

Construction of houses on the lots is also subject to the provisions of Section 174-32 of the Zoning By-law, which reads as follows: "Fire protection. To ensure that all buildings shall be accessible to Fire Department apparatus by way of access roadways capable of supporting firefighting apparatus with an all-weather surface roadway, there shall be an unobstructed, paved access roadway of not less than twenty (20) feet with a vertical clearance of not less than thirteen (13) feet six (6) inches with all corners having a minimum inside radius of not less than twenty-eight (28) feet and a minimum outside radius of not less than forty-six (46) feet. Said access roadway shall be constructed to a point not less than one hundred fifty (150) feet from the furthest point of any building on the lot. Where there is a lot with only a one-family dwelling and/or a residential accessory building, such access, where it lies within the lot, may be by a maintained all-weather surface driveway, constructed by any combination and manipulation of soils, with or without admixtures, which produce a firm mass capable of supporting fire apparatus in all weather conditions and having an improved surface width of twelve (12) feet and a cleared width of sixteen (16) feet." However, enforcement of that Section is by the Building Inspector, and any variances required must be sought from the Zoning Board of Appeals, whereas the current Special Permit application to the Board deals solely with the provisions of Subsection 174-25.I.(14).

The applicant also requested waivers of the provision of Subsection 174-25.I.(14) limiting the length of common driveways to 200 feet, as the shared portion of the proposed driveway is approximately 401 feet in length, and of the Planning Board Subdivision regulations requiring paving, width, drainage etc. which are not reflected on the proposed plan, entitled "Plan of Driveway Easement Prepared for Brett Field Showing the Existing Driveway, Lots 1A, 2A, 3A Main Street, Mashpee, MA." Prepared by John P. Doyle III, PLS and dated July 23, 2010. The plan shows a 16' wide dense grade and crushed stone drive, along with a paved apron at the Route 130 entrance (2 1/2" binder course and 1 1/2" finish course).

The driveway shown on the above plan has already been constructed, along with a house located on Lot 3A, the last of the three lots served by the driveway. Said house does not conform with the requirements of Section 174-32 cited above and will require a variance from the provisions of said Section from the Zoning Board of Appeals.

## **II. Jurisdiction.**

The application was made and this decision is issued by the Mashpee Planning Board pursuant to Article VI, Section 174-24.C. of the Mashpee Zoning Bylaws as they existed on August 4, 2010, the date on which the special permit application was approved by the Mashpee Planning Board. Where reference is made herein to the Mashpee Zoning Bylaw, it shall refer to the provisions thereof as they existed on said date. All lots comprising the project are located in the R-5 Residential zoning district.

The Planning Board has jurisdiction to approve a Special Permit for a common driveway under the provisions of Section 174-25.I.(14). Other than the minimum required width of 14 feet and

the maximum allowed length of 200 feet, the standards applicable to streets contained in the Planning Board's Subdivision Regulations shall apply, unless waived by the Planning Board.

### **III. Chronology.**

The application for this Project was filed with the Town Clerk on July 14, 2010. A hearing was opened before the Mashpee Planning Board at the Mashpee Town Hall, 16 Great Neck Road, North, Mashpee, Massachusetts on August 4, 2010 at 7:10 p.m. Notice was duly given to abutters and all property owners within 300 feet of the property in accordance with Massachusetts General Law Chapter 40A and the Board's Special permit Regulations. Notice was given by publication in the Mashpee Enterprise, a newspaper of general circulation in the town of Mashpee on June 16 and 23, 2010.

### **IV. Decision and Findings.**

On August 4, 2010, the Planning Board closed the public hearing and voted to make the following findings and grant a special permit authorizing the project, with the conditions enumerated below. The members of the Planning Board were recorded as follows: Mary Waygan, Dennis H. Balzarini, Joseph Mullin, George Petersen and David Koocharian were recorded as voting in favor of the decision. No members were recorded as voting against.

1. The Property is located in the R-5 Residential zoning district. Single family homes and accessory structures are allowed by right in the district. A common driveway may be allowed by Special Permit from the Planning Board.
2. The project satisfies the requirements of Massachusetts General Law Chapter 40A, in that it complies with the general purposes and intent of the Mashpee Zoning By-Law.
3. In the R-5 district, single family homes are permitted on lots having 150 feet of frontage and 80,000 sq. ft. of area. All lots meet those requirements.
4. The project does not lie within a Floodplain Zone, the Mashpee and Quashnet River Protective Districts, an Area of Critical Environmental Concern or the Otis A.N.G.B. Accident Prevention Zone.
5. No Water Quality Report is required.
6. The shared portion of the proposed driveway exceeds the 200 foot maximum length limit contained in Section 174-25.I.(14), being approximately 401 feet in length.
7. The applicant provided no description of proposed stormwater management facilities and practices. The submitted plan shows no stormwater facilities. Given the non-paved surface proposed, it appears that stormwater will be by sheet flow from the edges of the driving surfaces. Inspection of the existing driveway by the Board's Consulting Engineer after a severe rainstorm indicated no drainage problems.
8. Due to the nature of the project and the plans presented, the Board has made the findings required by Article VI, Section 174-27.C. that the Project will not have a significant adverse effect on public health or safety, aquatic vegetative resources, any fisheries or shellfish beds or other wildlife due to hazardous or toxic materials, roadway drainage or sedimentation or excessive nutrient levels.

9. The Project plans were reviewed by the Board's Consulting Engineer Charles L. Rowley, who also inspected the site on a number of occasions. Mr. Rowley filed a report to the Board by letter dated July 20, 2010 which indicated that the driveway as constructed has a surface width of 16 feet between the Route 130 apron and a turnout shown on Lot 2A, and a width of 13.5 to 14 feet beyond that point. The driveway was constructed with a surface of  $\frac{3}{4}$ " to 1  $\frac{1}{2}$ " stone approximately 2" thick over a compact reclaimed asphalt base at least 6" thick. There was also a "Y" configuration turnaround at the end of the driveway on Lot 3A and a grassed shoulder on the northerly side of the road approximately 4' wide. At the time of Mr. Rowley's letter, it was not known whether the driveway was located within the 30' wide easement area. The subsequent plan by Doyle, noted above, indicated that it is.
10. An e-mail message was received from Deputy Fire Chief Sheldon Hamblin on July 14, 2010 after a site visit to the property. His comments were as follows: "I have driven down that driveway and believe it meets the intent of the reduced requirement for a single family home.

However, the fact that the intent is to service two additional homes is the trigger that I feel it should be required to be a paved access roadway of not less than 20 feet. The problem comes in where we have these homes deep in the woods and can't get water to them. The nearest hydrant that I can make out is over 1000 feet down main street. We would have to commit an engine to the hydrant and pump that line to the driveway entrance. Then we have the driveway to contend with. That will require an engine at the driveway entrance to pump the line down the driveway to the attack engine. That means in addition to the attack engine, I now have to commit two additional engines for water supply. If I don't, then I start stacking tankers in the driveway, because one can't come out while another is going in. So this is not just a paper requirement without justification. We have experienced fires where we had to stack trucks in the driveway.

In view of that, there are always options. It's not my job to design the solution, but here are my needs.

1. Water supply. This can be achieved by bringing the water line up Main Street to the driveway in question and placing a hydrant there. Once a fire line is in place that road is now closed, but at least we can get water to it.
  2. Prevent the fire from growing to the point where we need 500 gallons per minute. This could have been achieved by a residential sprinkler system.
  3. Prevent future structures from having this as their driveway (this meets the intent of the reduced requirement). What this means is for all intents and purposes this is a driveway to one, single family home. If another structure is proposed to enter off of this easement, then, the first house built would then be required to meet the full requirement of a 20 foot paved roadway to within 150 feet of the furthest point of the structure."
11. The applicant requested waivers of the provision of Subsection 174-25.I.(14) limiting the length of such driveways to 200 feet, as the shared portion of the proposed driveway is approximately 401 feet in length, and of the Planning Board Subdivision regulations requiring paving, width, drainage etc. which are not reflected on the proposed plan, entitled "Plan of Driveway Easement Prepared for Brett Field Showing the Existing

Driveway, Lots 1A, 2A, 3A Main Street, Mashpee, MA." prepared by John P. Doyle III, PLS and dated July 23, 2010 and the driveway as presently constructed on the ground, along with a paved apron at the Route 130 entrance (2 1/2" binder course and 1 1/2" finish course). The Board voted 5-0, with members Waygan, Balzarini, Mullin, Petersen and Kooharian voting to approve each waiver and none voting against.

12. In conformance with the provisions of Article VI, Section 174-24.C.(2) of the Zoning Bylaw, the Planning Board finds that, as conditioned below, the proposal will not adversely affect public health or safety, will not cause excessive demand on community facilities, will not significantly decrease surface or ground water quality or air quality, will not have significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties, will not cause excessive levels of noise, vibration, electrical disturbance, radioactivity or glare, will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage program or any known historic or archaeological site, will not produce amounts of trash, refuse or debris in excess of the town's landfill and waste disposal capacities, will properly dispose of stumps, construction debris, hazardous materials and other wastes, will provide adequate off street parking, will not cause excessive erosion or cause increase runoff into neighboring properties or into any natural river, stream, pond or water body and will not otherwise be detrimental to the town or the area.

#### **V. Conditions.**

1. Approval is for a common driveway serving 659, 673 and 687 Main Street (Route 130) in the location shown on a "Plan of Driveway Easement Prepared for Brett Field Showing the Existing Driveway, Lots 1A, 2A, 3A Main Street, Mashpee, MA." Prepared by John P. Doyle III, PLS and dated July 23, 2010. Except as further conditioned below, construction and maintenance of the shared driveway shall be done generally in conformance with said location plan, but more specifically shall include 16 foot stone surface width to the turnout on lot 2A and at least 14 feet beyond that point, a surface of 3/4" to 1 1/2" stone 2" thick over a compact reclaimed asphalt base at least 6" thick, a paved apron at the Route 130 entrance (2 1/2" binder course and 1 1/2" finish course) extending at least 30 feet from the Route 130 edge of pavement, which is initially pitched toward Route 130 to prevent runoff from that road entering onto and damaging the stone driveway surface, and a grassed shoulder on the northerly side of the road approximately 4' wide.
2. No residential structure may be constructed on Lot 2A, and no residential structure shall be constructed on Lot 1A whose farthest point is located more than 150 feet from both the edge of pavement of Route 130 and that portion of the paved apron from Route 130 which is at least 20 feet wide (i.e. is not in conformance with the provisions of Section 174-32 of the Mashpee Zoning By-law regarding fire protection) unless the entire shared driveway is widened to 20 feet, using the same stone surface and 6" base specified in Condition 1 above, along with a new grassed shoulder on the northerly side of the road approximately 4' wide.
3. The Board has made no determination with regard to conformance with Section 174-32 of the Zoning By-law and this permit does not obviate the need for conformance with the provisions of said Section 174-32 before building or occupancy permits are issued for residences on the lots served by this shared driveway unless any necessary variances are granted by the Zoning Board of Appeals. Should said variances be denied, the standards

required by Section 174-32, including 20 foot wide asphalt pavement, shall be applied to the applicable portions of the common driveway before issuance of such building or occupancy permits.

4. Prior to signature and recording of this decision, the applicant shall submit the required Filing and Review fees specified in the Board's Special Permit Regulations. The required fees total \$530 unless the Board votes to reduce or waive said fees.
5. Prior to signature and recording of this decision, the applicant shall submit the required inspection fee for inspections by the Board's Consulting Engineer. The required fee is \$450.50 unless the Board votes to reduce or waive said fee.
6. All conditions of this special permit shall be binding not only upon the applicant but also on all successors-in-interest and assigns of the applicant.
7. No occupancy or building permits shall be issued while there exists any substantial violation of the conditions of this special permit unless the Board, by a favorable vote of 4 members at a regular meeting, should allow such issuance.
8. Within 60 days of the approval of this decision, the applicant shall provide to the Board a copy of this decision as recorded with the Barnstable County Registry of Deeds, including an indication as to the book and page at which it was recorded.

#### **VI. Expiration, Extension or Modification.**

Pursuant to Massachusetts General Law, Chapter 40A, Section 9 and Article IX, Subsection 174-47.C.(5) of the Mashpee Zoning Bylaw, this special permit shall lapse within 2 years, which shall not include such time required to pursue or wait the determination of any appeal from the grant hereof, if a substantial use hereof is not sooner commenced except for good cause.

The applicant shall require a specific determination of good cause by a favorable vote of four members of the Planning Board if claiming an extension of the 2-year period, except to wait the determination of any appeal from the grant hereof.

Any modifications of this special permit decision and accompanying plans shall require approval by the Board pursuant to the provisions of Section 174-24.C.(9) of the Zoning Bylaw.

**VII. Signature and Filing.**

This special permit decision has been approved by the Mashpee Planning Board on this 4<sup>th</sup> day of August, 2010.

A true copy  
Attest

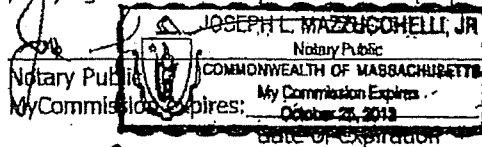
*Mary Elaine Wayne*  
Member, Mashpee Planning Board

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

8/6/2010  
date

On this 6 day of AUGUST 2010, before me, the undersigned notary public, personally appeared M. Wayne, a member of the Mashpee Planning Board, proved to me through satisfactory evidence of identification, which were MASSACHUSETTS to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.



A copy of the decision has been duly filed on 8/6, 2010 with the Town Clerk of Mashpee.

*Raborn*  
Town Clerk

Notice of this decision was mailed on 8/9, 2010 to the applicant, to the parties in interest designated in M.G.L. Chapter 40A, Section 11 and to all persons at the hearing who requested such notice. Any appeal shall be made pursuant to Section 17 of the Chapter 40A of the Massachusetts General Laws within twenty (20) days after the date of said filing.

I, \_\_\_\_\_, Town Clerk of the Town of Mashpee, hereby certify that a copy of this decision was filed with the office of the Town Clerk on \_\_\_\_\_, 2010 and that no appeal of that decision was filed within twenty (20) days thereafter.

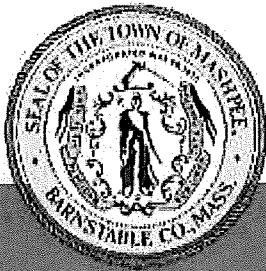
\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Clerk

Upon expiration of the statutory appeal period with no appeal having been filed, this special permit decision has been signed by the Mashpee Planning Board on \_\_\_\_\_, 2010 and may be recorded.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





# Evan R. Lehrer

## Town Planner

(508) 539-1400 x. 8521

elehren@mashpeeema.gov

www.mashpeeema.gov/Planning

*"There is no logic that can be superimposed on the city; people create it, and it is to them, not to leaders, that we must direct plan."*  
Jane Jacobs

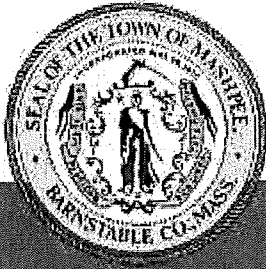
**Amend §174-25 (I) Accessory uses by adding letters "SP" under the columns identified as, C-3 and I-1 to read:**

Type of Use	Residential		Commercial			Industrial
	R-3	R-5	C-1	C-2	C-3	I-1
Outdoor dining shall be allowed in commercial districts as an accessory use to an allowed eating place serving food and beverage, provided that visual screening shall be required in any area abutting a residential zone. Such screening shall consist of a solid fence, wall or mature hedge or other screen type planting of such height as to screen any diners f	--	--	PR	PR	SP	SP

**Amend §174-25 (E): Principle retail business and consumer service establishments by adding the letters "SP" under the column identified as C-3 to read:**

Type of Use	Residential		Commercial			Industrial
	R-3	R-5	C-1	C-2	C-3	I-1
Eating places serving food and beverages to be consumed within the building.	--	--	PR/SP	PR/SP	SP	SP





# Evan R. Lehrer

## *Town Planner*

(508) 539-1400 x. 8521  
elehren@mashpee.ma.gov  
www.mashpee.ma.gov/Planning

*"There is no logic that can be superimposed on the city people make it, and it is to design, not buildings that we must fit our plans."*  
-Jane Jacobs

### Site Design:

- Buildings shall have their narrow side displayed on the street. This requirement may be waived if the permitting authority finds that lot dimensions are prohibitive.
- Where building frontage is elongated, the roof line must vary by a minimum of 10 feet for every 50 lineal feet of building frontage.
- As many mature trees as possible shall be maintained and harmoniously distributed along the roadway.
- Pedestrian-scale amenities: bike shelters, arcades, benches, and garden areas incorporating arbors, pergolas, etc. shall be deployed to bring down the buildings edges and create visual interest.
- Attractive landscaping shall be incorporated and maintained to further define the exterior space.
- Reduce the visibility of parking areas as much as possible from the street.
- Where multiple tenants are proposed in buildings, the buildings massing may be broken down and distributed on the site sharing common/pedestrian space among them.
- Significant buffer between roadway and building area shall be maintained.
- Driveway should be long enough to allow traffic to 'meander' to the site.

### Architectural Design Standards

- Buildings shall be constructed in consistency with the Cape Cod vernacular
- It is preferable to avoid corrugated metal, vinyl, and other materials inconstant with the Cape Cod Vernacular on the façade of a building.
- Ground floor ceiling height will be a minimum of 15 feet. Additional storeis shall have a minimum ceiling height of 10 feet.
- Buildings shall be designed with a series of attached and varied masses to reflect historical development patterns.
- Façade line shall be varied.

Note: If a lot has frontage on Route 130, but the lot's address is not, the section of the building fronting on Route 130 (Main Street) shall be considered the building's façade.

**Section J.)**

**Landscaping Requirements**

- Attractive landscaping shall be deployed around access ways, driveways, entrances and any other area as a directional foundation and to create natural visual interest among the varied uses between parcels.
- Selected trees and shrubs must be listed on the list of recommended plants for low-impact design approved by the Cape Cod Commission on April 5, 2006. The list is posted to the Planning and Building Department webpages, as hardcopy in the Mashpee Planning Department or on the Building or Planning web pages.

Mary Elaine Waygan  
35 Ashumet Rd, Unit 2C  
Mashpee, MA 02649

November 2, 2018

The Board of Selectmen Carol A. Sherman, John Cahalane,  
Andrew Gottlieb, John J. Cotton, and Thomas F. O'Hara

✓ The Planning Board Joseph Cummings, David Kooharian,  
David Weeden, Dennis Balzarini and Robert Hansen

Rodney C. Collins, Town Manager

Evan Lehrer, Town Planner

Town Counsel

Town of Mashpee

16 Great Neck Road, North

Mashpee, MA 02649

Dear Madam and Sirs:

Last month you were copied on a letter from the Town Clerk to me dated September 15, 2018 regarding compliance with the state's Conflict of Interest Law (MGL c. 268A §23(b)(3)), as I had been seen speaking to two members of the public. In an October 19, 2018 letter to me regarding the Town Clerk's letter, the Ethics Commission wrote:

"With regard to Mr. Lynch and Mr. Kelley, you do not have the type of family or close personal relationship, business relationship, or other relationship, affiliation or experience with them that gives rise to concerns under §23(b)(3) (Conflict of Interest Law, added). It appears that the only experience that you have had with them is in your role as a Planning Board member, as a person who attended Selectmen's meetings or as a person who spoke with them about Town Matters. Just having spoken with them before, whether about Town matters or otherwise, does not cause you to have an obligation under §23(b)(3) either to recuse yourself or to file a disclosure before performing official duties as Planning Board member."

Sincerely,



Mary Elaine Waygan

Enclosures:

1. State Ethics Commission Letter to Waygan October 19, 2018
2. Mashpee Town Clerk Letter to Waygan September 15, 2018



Commonwealth of Massachusetts  
**STATE ETHICS COMMISSION**

One Ashburton Place - Room 619  
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)  
Chair

**CONFIDENTIAL**

David A. Wilson  
Executive Director

October 19, 2018

Mary Waygan  
35 Ashumet Road, Unit 2C  
Mashpee, MA 02649

Dear Ms. Waygan:

This letter is a response to your request for advice about the conflict of interest law, G.L. c. 268A.

You are a member of the Planning Board for the Town of Mashpee. You have asked about whether you need to file a disclosure before you perform duties as a Planning Board member with regard to matters regarding "raze and replace" having to do with two individuals, Mr. Lynch and Mr. Kelley. You have explained that you have heard testimony they gave at a Public Hearing of the Planning Board on May 2, 2018 and public comments they made to the Selectmen on August 27, 2018 and September 11, 2018 and to the Planning Board on September 5, 2018. You also explain that you spoke with these individuals about various Town processes and Town concerns and provided certain public information to them before, during and after a Selectmen's meeting on September 11, 2018.

You state that you otherwise have no relationship with these individuals. You also explain that you did not provide any confidential information to them when you spoke with them on September 11.

Please note that our Legal Division gives advice to public employees about complying with the conflict of interest law in the future. We do not give advice about past conduct. My advice below, therefore, relates to your obligations going forward.

**Section 23(b)(3).** When you perform your service as a Planning Board member, you should keep the following obligation under the conflict of interest law in mind.

Under § 23(b)(3), you may not act in a manner that would cause a reasonable person to conclude that anyone may unduly enjoy your favor or improperly influence you in the performance of your official duties, or that you are likely to act or fail to act as a result of someone's kinship, rank, position or undue influence. Examples where § 23(b)(3) will be relevant include situations in which you, as a Planning Board member, are called upon to perform duties relating to a non-immediate family member; a close friend; a past or current colleague at your job; a professional whose services you use or have used; a person or entity with

Mary Waygan  
October 19, 2018  
Page 2

which you have or have had a business relationship; or an organization of which you are a member.

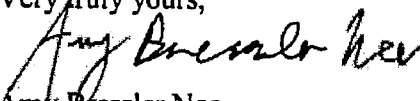
You have two choices when § 23(b)(3) is an issue. First, if you feel that you cannot be fair and objective when you perform your official duties, you should recuse yourself. Otherwise, before you perform your official duties, you should complete a § 23(b)(3) disclosure explaining the task you are expected to perform as a Planning Board member and the relationship, affiliation or experience that could cause a reasonable person to suspect undue favoritism or improper influence. The disclosure calls upon you to confirm that, taking into account the facts you have disclosed, you feel that you can be fair and objective when performing your official duties. You should file the disclosure with the Town Clerk. Once the disclosure is on file, you may perform your official duties.

With regard to Mr. Lynch and Mr. Kelley, you do not have the type of family or close personal relationship, business relationship, or other relationship, affiliation or experience with them that gives rise to concerns under § 23(b)(3). It appears that the only experience that you have had with them is in your role as a Planning Board member, as a person who attended Selectmen's meetings or as a person who spoke with them about Town matters. Just having spoken with them before, whether about Town matters or otherwise, does not cause you to have an obligation under § 23(b)(3) either to recuse yourself or to file a disclosure before performing official duties as a Planning Board member.

**Confidentiality.** Both this letter and your request for advice are confidential by statute. This means that you are free to disclose this advice to anyone you wish, but that the State Ethics Commission may not disclose your request or any other identifying information unless you consent, or unless you misrepresent the contents of this letter.

I hope this advice has been helpful. Please contact us again if you have any further questions about your obligations under the conflict of interest law.

Very truly yours,

  
Amy Bressler Nee  
Staff Counsel

*"Preserving public trust, providing professional services"*



Deborah Dami, MMC, CMMC  
Town Clerk  
508-539-1418  
ddami@mashpeema.gov

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

September 15, 2018

Ms. Mary Waygan, Chairman  
Mashpee Planning Board  
Mashpee, MA 02649

Re: Proposed October 15<sup>th</sup> ATM Zoning Bylaw Articles

Dear Ms. Waygan,

As a member of the Planning Board you are aware that it is a requirement that all proposed bylaw articles are reviewed and a decision to either support or oppose any and all proposed bylaws is made at a public hearing prior to town meeting. The Mashpee Planning Board will be holding such public hearing on September 27, 2018.

It has been brought to my attention that on Tuesday, September 11, 2018, at the Mashpee Board of Selectmen's meeting, you were witnessed having a conversation before and after the Selectmen's meeting with two gentlemen, Mr. Lynch and Mr. Kelley, who have voiced strong public opposition to the proposed "raze and replace" zoning article.

As an elected official, I cannot stress enough the importance of maintaining a posture of neutrality and avoiding even the appearance that you would show favor toward someone or that you can be improperly influenced by others (see, G.L. c. 268A, Section 23(b)(3)), especially in this era of governmental transparency. Because the implication has been raised that you cannot maintain a neutral position as the Chairman of the Planning Board with respect to this matter, I hereby request that you either file with this office a written disclosure to address any perceived impartiality toward these gentlemen or recuse yourself from further action relative to this matter.

Sincerely,

*Deborah Dami*  
Deborah F. Dami, MMC, CMMC  
Mashpee Town Clerk

Cc: Board of Selectmen  
Town Manager  
Planning Board  
Town Planner  
Town Counsel

*Received 9/26/18 MOW*

**COMMUNITY PRESERVATION COMMITTEE**

**THURSDAY, NOVEMBER 8, 2018**

**AGENDA**

**Convene Meeting: 7:00 p.m. – Mashpee Town Hall, Waquoit Meeting Room**

**MINUTES**

Thursday, August 16, 2018 Regular Session

Thursday, September 6, 2018

**PUBLIC COMMENT**

**APPOINTMENTS AND HEARINGS**

**Review of Applications proposed for May 2019 Special Town Meeting;**

- 1. Applicant:** Neome Hollis and Pamela Tavares  
**Proposal Title:** Land in Town's (past) Five-Year Action Plan to Acquire  
9 Quashnet Road - \$161,900
- 2. Applicant:** Catherine Laurent (DPW)  
**Proposal Title:** Mashpee Middle/High School Running Track Reconstruction: TBD
- 3. Applicant:** Catherine Laurent (DPW)  
**Proposal Title:** Attaquin Park Proposed Basketball Court: \$42,000
- 4. Applicant:** Mashpee Community Garden Advisory Committee and Mashpee Historical  
Commission  
**Proposal Title:** Mashpee Community Garden Reconstruction: \$44,996
- 5. Applicant:** Mashpee Historical Commission and Mashpee Historic District Commission  
**Proposal Title:** Mashpee War Monument: \$174,154 (construction phase)
- 6. Applicant:** Affordable Housing Trust  
**Proposal Title:** Transfer of Funds to Affordable Housing Trust: TBD
- 7. Applicant:** Diocese of the Armenian Church  
**Proposal Title:** Property Acquisition for Affordable Housing: \$125,000

## **COMMUNITY PRESERVATION COMMITTEE**

**NOVEMBER 8, 2018**

### **COMMUNICATIONS & CORRESPONDENCE**

- 1) Review of Communication regarding the potential uses and demands for the Community Preservation Fund over the next 3, 5 and 10 years;  
Correspondence from Mashpee Housing Authority dated September 25, 2018  
Correspondence from Mashpee Historical Commission dated November 1, 2018  
Correspondence from Planning Board dated November 1, 2018

### **OLD BUSINESS**

### **NEW BUSINESS**

### **LIASON REPORTS**

- 1) Update on CPA Projects & Expenditures;  
Pickleball Courts Project  
MM/MHS Tennis/Basketball Court Project  
Great River Boat Ramp Improvement Project

### **ADDITIONAL TOPICS**

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

### **NEXT MEETING**

- 1) Discussion of proposed additional meeting to complete project reviews;  
11/15/2018 (tentative meeting 7:00 p.m.)

### **ADJOURNMENT**



# Evan R. Lehrer

## Town Planner

(508) 539-1400 x. 8521  
elehrer@mashpeema.gov  
www.mashpeema.gov/Planning

*"There is no logic that can be superimposed on the city; people make it, and it is to them, not buildings, that we must fit our plans."  
-Jane Jacobs*

### MEMORANDUM

To: Mashpee Planning Board  
From: Evan R. Lehrer, Town Planner  
Date: 11/07/2017  
Re: Draft Procedure to Submit Comments to the Planning Board

The Mashpee Planning Board adopted 'General Procedural Guidelines' regarding public hearing and meeting procedures in January 2004 and amended them in 2005. Chair Waygan has asked that I prepare some draft language to address the following:

- Submitting comment to the Planning Board
- Requesting an item be added to the Planning Board agenda.

The guiding document titled 'Mashpee Planning Board Public Hearing and Meeting Procedures' states the following with regard to adding an item onto the Planning Board's agenda:

"To be placed on an agenda, any requests and associated materials shall be submitted to the Board, through the Mashpee Planning Department, at least 7 working days prior to a Board meeting. Exceptions may be made for filing of "Approval Not Required" plans or for any other items authorized prior to the meeting by the Chair, or at the meeting by a quorum (3 members) of the Board. Public hearings will only be scheduled by vote of the Board at a posted meeting."

For the sake of administrative efficiency I recommend that the Board allow public hearings to be scheduled via administrative review by the Town Planner as has been the practice since I began in February 2018. I see no issue in re-establishing the 7 day threshold regarding meeting materials and requests following the start of my new staff member.

I propose the following for a policy regarding communication to the Planning Board:

"Should any person or persons wish to supply comment regarding an item currently under deliberation by the Board or on any item concerning an issue under the Board's jurisdiction you may do so by snail mail, post-marked at least 7 days prior to the next meeting date and addressed to:

The Mashpee Planning Board c/o the Town Planner  
Planning Department  
16 Great Neck Road N  
Mashpee, MA 02649

Comment may also be submitted via email as either a .pdf attachment or in the email body to the Town Planner through the online form found at [www.mashpeema.gov/Planning-Department](http://www.mashpeema.gov/Planning-Department) at least 7 days prior to the next meeting date."



# Santuit Lane & Shields Avenue - Existing Conditions & Issues



ISSUES:  
- One way sign pointing in opposite direction of one way traffic coming from the right.  
- No SHIELDS AVE sign.



ISSUES:  
- No SHIELDS AVE sign.



ISSUES:  
- No Do Not Enter sign.  
- No SHIELDS AVE sign.



ISSUES:  
- No SHIELDS AVE sign.



ISSUES:  
- No SANTUIT LN sign.



ISSUES:  
- No SANTUIT LN sign.



ISSUES:  
- No SHIELDS AVE sign.

