### Planning Board

16 Great Neck Road North Mashpee, Massachusetts 02649

### Joint Meeting of the Mashpee Planning Board and Affordable Housing Committee Wednesday, November 17, 2021

Waquoit Meeting Room
Mashpee Town Hall
16 Great Neck Road North
Mashpee, MA 02649
7:00 PM

\*Broadcast Live on Local Channel 18\*

\*Streamed Live on the Town of Mashpee Website: https://www.mashpeema.gov/channel-18\*

#### **Call Planning Board Meeting to Order**

Pledge of Allegiance

#### **Approval of Minutes**

Review of Meeting Minutes from November 3, 2021

#### **Public Discussion**

#### Public Hearing - 7:10 PM

Applicant:

Southworth Mashpee Properties LLC

Location:

Willow Circle - Lots addressed as 178-186 Quinaquisset Avenue

(Assessors Map 69 Blocks 23, 24, 25 and 26)

Request:

The applicant proposes to modify the WIllowbend Country Club Special Permit by amending an approved cluster subdivision subject to the special permit by adding one (1) additional lot. The total number of lots would increase from 5 to

6.

#### Public Hearing - 7:15 PM

Applicant:

Southworth Mashpee Properties LLC

Location:

178-184 Quinaquisset Avenue (Map 69 Blocks 23-26)

Request:

Applicant proposes to modify an approved definitive plan by adding one

additional lot to the previously approved five lot subdivision known as Willow

Circle.

\*Convene Joint Meeting with the Affordable Housing Committee\*

#### **Presentation**

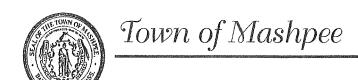
- Affordable Housing Committee Chairman Allan Isbitz will make a presentation regarding affordable and worforce housing needs in Mashpee.
- Discussion relative to housing needs moving forward and strategies to address those needs.

\*Adjourn Joint Meeting with the Affordable Housing Committee\*

MASHPEE TOWN CLERK

NOV 1 5 2021

RECEIVED BY: 5V



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#### **Approval Not Required**

Applicant:

Evergreen Energy, LLC

Location:

751 Main Street

Request:

To create Lots 1 and 2 from former Lot 58 as shown on Mashpee Assessors Map

13.

#### **New Business**

 Vote to set public hearing date for review of a special permit application made by Longfellow Design Build to construct a retail grocery store at 647 Falmouth Road / 9 Shellback Way.

#### **Chairman's Report**

Miscellaneous Updates

#### **Town Planner Report**

- LCP Update Community Engagement Calendar and Request for Information
- Consultant Procurement
- Community Preservation Committee Application for Housing Production Plan Funding

#### **Board Member Committee Reports**

 Cape Cod Commission, Community Preservation Committee, Design Review, Plan Review, Environmental Oversight Committee, Historic District Commission, Military Civilian Advisory Council.

#### Correspondence

- Barry and Jewel Blake, Email Correspondence, dated 11/07/2021
- Mary J. LeClair, written correspondence, undated (received 11/12/2021)
- Town of Falmouth Notices
- September 2021 Discharge Monitoring Report for South Cape Village N=3.3
- August 2021 Discharge Monitoring Report for South Cape Village N= 2.6
- July 2021 Discharge Monitoring Report for South Cape Village N=5.8

#### Additional Topics (not reasonably anticipated by Chair)

#### <u>Adjournment</u>



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Mashpee Planning Board
Minutes of Meeting
Wednesday, November 03, 2021 at 7:00PM
Mashpee Town Hall - Waquoit Meeting Room
16 Great Neck Road North
Mashpee, Ma 02649

Broadcast Live on Local Channel 18
Call-in Conference Number: (508)-539-1400 x 8585
Streamed Live on the Town of Mashpee website <a href="https://www.mashpeema.gov/channel-18">https://www.mashpeema.gov/channel-18</a>

Present: Chairman John Fulone, Jack Phelan, Mary Waygan, Dennis Balzarini, Joseph Callahan,

Robert (Rob) Hansen

Also Present: Evan Lehrer – Town Planner

#### **CALL TO ORDER**

Chairman Fulone called the meeting of the Planning Board to order at 7:00PM. The Pledge of Allegiance was recited.

#### APPROVAL OF MINUTES - October 20, 2021

There were no comments made regarding minutes.

#### **MOTION:**

Mr. Balzarini makes a motion to accept the minutes as written for October 20, 2021. Seconded by Mr. Callahan. All in favor.

#### **PUBLIC DISCUSSION**

**Meredith Kilpatrick-** She thanked the Chair for the opportunity for public dialogue. Ms. Kilpatrick stated she was the citizen who filed the Open Meeting Law complaints in July and September. She specifically was referencing the lack of Public Comment at the Mashpee Planning Board meetings. The purpose of Open Meeting Law is to ensure transparency in the government. Per Open Meeting guidelines section 17, public participation is entirely within the Chairs discretion. However, the Attorney General's office encourages public bodies to allow as much public participation as time permits.

Tonight, she would like to clarify the status of these complaints in her letter to the Board. She has recently been notified that the complaints have been assigned to Assistant Attorney General Elizabeth Carnes Flynn. Ms. Kilpatrick provided their office a full packet outlining and summarizing the actions, especially a historical outline of actions, of the Mashpee Planning Board. Now she awaits a decision as to whether these complains will undergo a complete official review and if it will result in consequence. Ms. Kilpatrick has been advised and encouraged to create opportunities for correction locally, simultaneous to seeking assistance from the Attorney General's office. She has respectfully asked Attorney Costello, the Town's Counsel, to seek and provide a more comprehensive consequential



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resolution. She is before the Board this evening requesting the Board take corrective action as well. Was there an intent to avoid the parameters of Open Meeting Law?

Ms. Kilpatrick goes on to say she had the opportunity to meet directly and constructively with Chairman Fulone, and he made it clear it was not his intent to ever be insulting or dismissive to anyone personally or in reference to the Open Meeting Law complaints. The conversation centered on the core of her complaint: the avoidance and elimination of Public Comment from Planning Board meetings for over what we now know is closer to six years. According to Ms. Kilpatrick, Mr. Fulone was in agreement that previous direction of the Board was unchecked and unquestioned. He could not provide an explanation as to why. At that time he affirmed that he was committed to a consistent Public Comment or Dialogue at Mashpee Planning Board meetings. Mr. Fulone's intent is to follow guidelines of Open Meeting Law and to meet or exceed the spirit of Public Comment as it pertains to Open Meeting Law, by encouraging all in the Community to voice their concerns. Ms. Kilpatrick has confidence he will continue to honor this cautiously and correctively.

Through her own and others research, is has become evident previous Planning Board Chair Mary Waygan is directly responsible for eliminating Public Comment from Planning Board meetings. Ms. Kilpatrick goes on to call this "gross intentional mismanagement of a municipal board with complete ignorance of the obligations of the Open Meeting Law or the needs of the Community requires immediate corrective action". She referenced a statement previously made by Chairman Fulone, prior to June 2, 2021 the Planning Board held 73 meetings where Public Comment was not included. Further research revealed that the number of intentional exclusions of Public Comment began by Mary Waygan and is closer to 110 meetings. These are all potentially fineable offenses to be determined by the Attorney General. Records indicate she began serving as Chair on or around July 2015, and has since repeatedly provided false guidance to subsequent Planning Board members. Additionally, Mary Waygan continues to show an unusual propensity for encouraging a false narrative against one developer. Her creation and management of a small misguided citizen group Envision Mashpee has produced several misinformed individuals, including some who serve on other Mashpee municipal boards, including Sewer and Housing. Their collaboration, deliberation, and public presentations outside of any municipal formal meeting, especially as it relates to matters before the Board and Town, are inappropriate and unacceptable. Ms. Kilpatrick is here to update the Planning Board and Public this evening as to the reporting of these incidents to the MA State Ethics Commission.

Ms. Waygan announced to the Chair that this is going way overboard. It has already been enough time and the letter is in their packet.

Ms. Kilpatrick announced Ms. Waygan is out of order and she would ask Chairman Fulone that Ms. Waygan be censured, this is a warning of being out of order and she would ask that Ms. Waygan be removed from the room.

Mr. Balzarini commented he does not agree with this.

Mr. Fulone is going to allow the comments to continue.



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Ms. Waygan asked if Ms. Kilpatrick could be limited to three minutes, then asked how many minutes will she be allowed to speak.

Chairman Fulone stated he is going to allow the comments until she is done speaking.

Ms. Kilpatrick continued to note while these behaviors are not in the purview of Open Meeting Law complaints, they are relevant to the evaluation of the complaints. Each office has been provided with detailed outlines including dates, names, E-mail addresses, and questionable actions. Item number one submitted to the MA State Ethics Commission outlines the weekly Zoom meetings. As a current Planning Board member, Ms. Waygan hosts and manages a weekly Sunday Zoom meeting with certain members of the Community, calling themselves *Envision Mashpee*. The Zoom account being used, as well as who pays for the Zoom account, is unknown.

Mr. Balzarini does not want to hear this anymore, he doesn't like it and they have an agenda to follow.

Ms. Waygan stated this is going overboard. She directed her comment toward Chairman Fulone, stating he cuts people off so quickly (during Public Comment), and this has been enough time. The letter is in the packets. This is defamation of her character, and to please stop as it is in the packets. If you want to summarize it that's fine, but it isn't even on the agenda, and it is supposed to be Public Comment on something on the agenda.

Mr. Fulone elaborated or on a previous agenda.

Ms. Kilpatrick continued to say item number two submitted were maps, documents, and data that Ms. Waygan has altered and provided such information as fact. Item number three is the online meetings that she's conducted during her work time with local newspapers. Item number four are letters to the Editor that she personally writes and distributes to members in the Community, asking them to submit under their name. In September of 2021, the Editor of the paper refused to publish two of them because they contained the same content from two different individuals. Item number five is a Mashpee Commons public tour conducted by Ms. Waygan. On the tour she presented herself as an expert.

Ms. Waygan asked Mr. Balzarini if he thinks they should leave the room.

Mr. Balzarini said he is leaving the room and this is ridiculous.

Ms. Waygan left the room saying this is ridiculous. She directed a statement to the Chairman saying he has harassed members of this Community by cutting them off at two minutes, but when it is someone ragging on her he lets it go, shame on him.

Ms. Kilpatrick went on, in summary, as exemplified by the behavior this evening, there is overwhelming information as to the intentional and inappropriate behaviors of current Planning Board member Mary Waygan. Her repeated intentional distorting of facts, manipulation of data, and provocative comments are creating a divisive Community. She acts with a complete ignorance and disregard for State Law



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and without a sense of ethical obligation. In Ms. Kilpatrick's letter to Town Counsel she respectfully requests that Town Counsel take action to confirm the training and retraining of the current Planning Board members, and immediately requests the resignation of Mary Waygan. Additionally, she respectfully requests that measures which may be offered in the Town Charter allow the Town Manager to appoint new Planning Board members. She ask that the Select Board, Town Manager, and Town Counsel consider recreating a new Planning Board comprised of appointed qualified individuals with set terms for performance and evaluation.

Tonight, Ms. Kilpatrick is asking the Planning Board to censure Mary Waygan for her many inappropriate actions and elaborate misdeeds, including taking a vote indicating no confidence in her ability to continue as a member of the Planning Board. Simultaneously, she ask Ms. Waygan to resign from the Board immediately and allow the Community to move forward in a more transparent and positive direction.

Mr. Fulone thanked her. He noted it is unclear to him what his legal obligations are.

Mr. Phelan would like to add this item to the agenda, under additional topics not reasonably anticipated by the Chair, to discuss this letter in depth later in the meeting.

#### **MOTION:**

Mr. Phelan makes a motion to add this item to the agenda under Additional Topics to be discussed later in the meeting. Seconded by Mr. Callahan. All in favor. Mr. Balzarini and Ms. Waygan were not in the room during this vote.

Chairman Fulone wants to move on to New Business.

Mr. Lehrer stated there are two administrative matters that will require the signatures of the members that left the room. He is asking if he should retrieve them so they can rejoin the meeting.

Ms. Waygan entered the room stating she would like to do Public Comment. She came here tonight to ask the Chair to start fresh and new. Carol Sherman, the Chair of the Select Board, asked the Planning Board to do that. People get to speak during Public Comment but Chairman has never allowed people to speak in such a way before. That is what she is taking offense to.

- Mr. Fulone states that is not true. He has allowed people to speak.
- Ms. Waygan states but never for that long.
- Mr. Balzarini echoed never for that long.

Chairman thought the comments were serious enough where they should be heard.



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Ms. Waygan does not understand his method for running this Board. She goes on to say he is going to rip this Town apart. She came here having a positive attitude.

Mr. Fulone informed Ms. Waygan they took a vote while she was out of the room to reserve time to talk about the letter under additional topics.

Mr. Balzarini wanted to take a moment to thank the people for showing up at the meetings and participating in Public Comment. He apologizes that it sometimes did not go well, but the only ones to blame are Mashpee Comments. They never supplied the Planning Board with what was asked of them, they gave false figures about housing, and never had true facts. That's what the Planning Board is here for. They are voted in by the people of the Town to look out for the people of the Town, not the developer. The Cape Cod Commission and the developer never kept them in the loop.

**Lynne Barbee** – She was thinking about income levels and Affordable Housing. It's important when figuring out income we think about the benefits. Benefits are really part of their income, not just how much you make an hour. We need to think about what real income is, and think about health insurance and pensions and any of those things. A lot of people work for the benefits, knowing they could possibly make more money elsewhere. When we discuss income, we need to think outside of pay.

Mr. Fulone chimed in total compensation.

Mr. Phelan sees her thinking of this as a positive, but he is thinking of benefits as negative because they have to pay those monthly fees. Net disposable income may change what their affordability is, yet it is reduced to support the union or benefits. Stop and Shop takes full union dues for part time employees.

Mr. Lehrer echoed this is a good point, cost of housing and income level, but also cost of travel to work and time accessing income. This is an issue on the Cape, most of the people who are making a reasonable income who still live here, income is being earned over the bridge.

#### **NEW BUSINESS**

Sign Road Taking Plan – Ash, Cedar, and Devon Streets
Sign South Cape Village Special Permit Modification Permit for Building G

Mr. Fulone, Mr. Phelan, Mr. Callahan, Mr. Balzarini, and Mr. Hanson signed both.

Ms. Waygan is not signing anything this evening. She is too upset.

Ms. Waygan asked the Chair if he has a report of his meeting with Meredith.

Mr. Fulone said no. The letter was not the result of it, we are going to talk about the letter later.

Ms. Waygan just saw the letter. She is very upset, she is sorry.



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#### **TOWN PLANNER REPORT**

#### **LCP Update of Kickoff Meeting with Consultant**

Kickoff on October 28<sup>th</sup> with Weston and Sampson to begin outlining what the Comprehensive Plan will look like. For the next six weeks we will be working on data collection. Included in the RFP were existing plans, studies, and reports. They have asked to make it as voluminous as possible. He is reaching out to department heads to provide any studies, research topics, reports, or publications relevant to the update and elemental chapters of the LCP itself. He is asking to please send anything to his E-mail. Mr. Lehrer will also remind everyone in writing, but he would like to get to this to Weston and Sampson ASAP.

Mr. Fulone asked if they are collecting information and giving it to them in bulk or as it is acquired and made available.

Mr. Lehrer noted it will all go through his office. Questions are to be compiled and he will make a comprehensive list. Every time they respond to a question it hits the budget. Mr. Lehrer needs to get the data to W+S as it comes in.

Mr. Balzarini asked if the Town is doing a survey to update with changes that may have occurred.

Mr. Lehrer discussed Community Engagement and a variety of options, the survey will be included. The specifics are to be defined. As we are pushing up against the holidays, he anticipates the launch will occur after data collection and into the New Year 2022. After data has been compiled, they will come to the Board to discuss and update both the framework of the past and this Boards vision on how to proceed. By next meeting, Mr. Lehrer is hoping to have a conversation with the Chief Planner of the Cape Cod Commission to ensure laid out plans are consistent with regulations. They also need to compile a stakeholder list. The Planning Board can help in compiling a more thorough and comprehensive list and include them on all correspondence. Strategies for marketing and making people aware need to be identified. W+S came in under \$150k budget, so Mr. Lehrer would like to invest in an independent website. Figures will be provided, but this is something his department can handle with the budget. They are delivering an updated more comprehensive schedule of benchmarks to him by November 10<sup>th</sup>. This will be discussed at the November 17<sup>th</sup> meeting.

Ms. Waygan asked if her list of materials provided for the RFP will be provided.

Mr. Lehrer noted he would like any transportation studies or any analysis that would be beneficial or add value.

Ms. Waygan has a concern about going over budget. She doesn't want to give them too much.

Mr. Lehrer said they asked for everything so he will deliver and manage the budget accordingly. His budget is not to exceed a certain amount, as their agreement is already in place. He can look for more practicality, but he is confident the budget will not be exceeded.



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#### Focus areas for Joint Meeting with Affordable Housing Committee

Mr. Lehrer discussed his buildout including his perception, opinion, and recommendations, with the Affordable Housing Committee. He focused on the inadequacy of the current zoning to produce SHI eligible units. He thinks the Town is utilizing all the tools currently at its disposal to address all the affordable housing needs. The 950 Falmouth Road project (Red Brook Village), the workforce housing project at 108 Commercial, and Habitat for Humanity with its ongoing projects. We are lacking in our ability to incentivize private investment with affordable housing. It would be beneficial to discuss how we define the actual need with regard to Affordable Housing on the 17<sup>th</sup>. What types of housing will meet the need? Not just the minimum 10% mandate, he is referring to the actual need based on demographics, income levels, and population characteristics. The LCP will benefit in this Town wide collaborative conversation. We need to assess, define, and think about the future vision, to be in a solid position to update the LCP and be in a position to codify accordingly with amendments that can produce units. Mr. Lehrer would like any comments or questions the Board may have so the AHC Chair can review prior to the meeting. The topical areas as sub bullets are just ideas.

- Goals and Policies in the Housing Production Plan
- Mashpee Commons
- Workforce Housing
- Inclusionary Zoning

Mr. Balzarini said there needs to be better paying jobs. Most of the jobs on Cape Cod are retail. Can that be worked into affordable housing? They kind of go together.

Mr. Lehrer stated the nature of the housing market today is directly linked. We have inadequately provided housing types and the broad workforce and family age groups have left Cape Cod. The nature of the market today is much more accessible to those who have been able to accumulate wealth over the course of their lifetime. That's why we are seeing the shifts we have. We can mitigate, the problem needs to be define before we solve the problem.

Mr. Hansen asked if he can be given a definition of what inclusionary zoning means.

Mr. Lehrer explained inclusionary zoning is supposed to incentivize private development to produce deed restricted affordable units. The purpose is creating a broader cross section of income levels of people living in your town. We see this in Ch. 40B. You can get waivers in the Zoning Bylaw in exchange for 25% of those units being deed restricted or affordable. We can build something like that into our zoning at some point. We have some inclusionary. It is mostly specific to the cluster subdivisions bylaw. We incentivize the inclusion of 10% of the building lots created to be deed restricted affordable. If you provide two, you get an extra building lot. There are little sub dividable lands left across Mashpee and very little parcels that can achieve 10 building lots. The Memo was relative to zoning and what we are able to predict in terms of development. By increasing the number of tools available to us, we can increase and produce more diverse housing that is obtainable at the market level but also deed restricted or affordable for those who need that. Goals are to incentivize private investment for types of housing that would be beneficial to the Community. Mr. Lehrer would like to note he did submit an application to CPC for \$25,000 to procure a consultant to assist with the update



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for HPP, as stated last meeting. However, he was not able to include in that application letters of support. He would ask the Planning Board submit a letter of support of that application.

#### MOTION:

Mr. Phelan makes a motion to recommend the Planning Board write a letter in support of Mr. Lehrer's application for funds from the CPC for the HPP. Mr. Balzarini seconded. All in favor. Ms. Waygan abstained as she is a member of the CPC.

Mr. Lehrer also informed the Board if they have topics between now and the 17<sup>th</sup> they want to discuss with the Affordable Housing Committee, to submit them by E-mail prior to the meeting.

Mr. Balzarini would like to look at hourly wages and try to obtain housing for the average income of people in that wage bracket or specific to occupation.

Mr. Lehrer noted the Chair of the Affordable Housing Committee has done in depth reasonable analysis of data. This is a great starting off point for these conversations. Its relatively old data from the 2010 census, and we can only make assumptions as we don't have the updated figures. It is a great starting point.

Mr. Fulone asked if this will be part of the presentation on November 17th.

Ms. Waygan asked Mr. Lehrer a few questions when he first gave the build out. One of them was what was the mechanism to deed restrict housing for year round for the missing middle.

Mr. Lehrer did not look into this, he did forget and he apologizes. He made note of these questions and will forward along to the Affordable Housing Chair.

Ms. Waygan wants to know how do we make these units year round and is there a way? Is it by deed restriction? She elaborated there is no sense in building housing that is not year round as Mashpee has so little development capacity. Also, Ch. 40B issued in 2007, you were going to find out how many units were permitted and how many units were actually built. She would like to know how many were built. Ms. Waygan mentioned last meeting about the Town of Falmouth having a proposed Affordable Housing Bylaw. They have certain lots identified throughout the Town, they can get up to three stories. It is coming up for approval. She would like a copy of that to look at as well.

Mr. Lehrer noted the figures the Affordable Housing Chair uses are relative to the phase of the development. He will provide them with a copy of the mixed use bylaw for Falmouth.

Mr. Fulone asked about it being mixed use.

Mr. Lehrer said their upcoming Town Meeting is contemplating a Mixed Use Overlay. Mr. Lehrer will respond to that next meeting.



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Ms. Waygan has never seen such a strong affordable housing component, and it gave them height. Rental projects required 25% of units to be affordable. When you have a rental project with 25% affordable, all units go on the SHI inventory. For home ownership, it is requiring 50% affordable, which is the highest she has ever seen. They can't prohibit home ownership under zoning.

Mr. Lehrer said it is reflective of the need. He will provide all those documents to the Board.

#### **BOARD MEMBER COMMITTEE REPORTS**

Cape Cod Commission –
Community Preservation Committee –

Community Preservation Committee –

Design Review -

Plan Review –
Environmental Oversight Committee –
Historic District Commission –
Military Civilian Advisory Council –

No Report

8 applications received

Absent last meeting. Quashnet Valley new

sign.

Meeting Next Tuesday 9th

No Meeting No Meeting

Zoom Meeting November 17<sup>th</sup> 5p.m.

#### **ADDITIONAL TOPICS**

Mr. Phelan wanted to take this time to discuss the letter written by Ms. Kilpatrick. He read this letter intently when he first got it. He read it numerous times. When you get letters like this he first says to himself, where are the supporting documents? There are some disturbing items he is concerned about. If even some of this is true, it puts a damper on this Board. He then goes on to ask Ms. Waygan directly, "Did you conduct tours at Mashpee Commons? Did you conduct tours on or around the 19<sup>th</sup> of September? Did you create letters and have your constituents hand them into the paper?" You would remember if you did it, whether it's recent or previously. Writing form letters, do you think that's allowed?

Ms. Waygan apologizes for leaving the room. She meets with her constituents, she doesn't meet with applicants. She hasn't read the letter as she got it for the first time just at this meeting. She meets with her constituents. She talks to her constituents. In regards to the letters, she doesn't remember. She meets with her constituents. That's allowed. She went on to ask Mr. Phelan if he talks to people outside of this room about Planning Board materials.

Mr. Phelan clarified he talks to people outside of this room about the Town. He does not provide letters for them to project his own opinion to provide to the paper. He implores any resident in Town to go on the website and download this letter to read, if even half of it is true, it raises some serious concerns about this Board's ability to make an impartial decision. This will be vetted out and reviewed and they have assigned someone to review it. He has serious concerns.

Ms. Waygan thanked him and will take it under advisement.

Mr. Callahan has a question about meetings with the Enterprise.



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Ms. Waygan repeated she meets with her constituents. There is no violation of the Open Meeting Law, there was no quorum. She is an elected official and she represents people.

Mr. Balzarini stated she was by herself with her friends, her committee, as a citizen. She wasn't acting as a Planning Board member.

Ms. Waygan has Second Amendment rights herself. It doesn't void her from talking to the Community because she is elected here. She cannot talk outside of this room with three Planning Board members present. She cannot talk to the applicant outside this room. People have seen her talking to people about things in the Town Hall lobby. She went before the Ethics Commission and she got cleared. Her understanding, from the Ethics Commission, yes she can talk to constituents, no she cannot talk to the applicant or two Planning Board members.

Mr. Phelan directed Mr. Balzarini's attention to the back of the page where it says she was conducting a tour with constituents in Mashpee Commons pointing out, as it says here, again unsubstantiated, providing a negative evaluation of quality and grade of construction and property management for the Mashpee Commons. Now they are in front of us as a proponent, how is that not a conflict?

Ms. Waygan asked if he was there, to which he was not. If he would like to take a walk with her through the Mashpee Commons she would be more than happy, but she would have to go with the whole Board.

Mr. Fulone stated the question was to Mr. Balzarini.

Mr. Balzarini doesn't see a conflict because she wasn't meeting with a Board member or developer, she can say anything she wants in the Mashpee Commons. If you're going to say how bad construction looks, it's not swaying other Planning Board members.

Mr. Fulone said to be clear, it's an Ethics complaint not Open Meeting Law, located on page 3 of the MA State Ethics Commission outline.

Ms. Waygan stated because this was sent to Town Counsel, why doesn't she have a meeting with Town Counsel.

Mr. Balzarini noted this is one opinion and there is no proof to this.

Mr. Phelan has concerns. There is some hearsay. It needs to be vetted to the Town Attorney. The Town is in some liability with this.

Ms. Waygan didn't read it before the meeting, she apologizes for leaving the room, she was emotional, she is a human being, and she apologizes.

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### ADJOURNMENT

**MOTION:** 

Mr. Balzarini makes a motion to adjourn the meeting at 7:55p.m. Seconded by Mr. Callahan. All in favor.

The meeting ended at 7:55p.m.

Next Meeting: November 17, 2021 7:00p.m.

Respectfully Submitted,

Christine M. MacDonald Board Secretary



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#### **LIST OF DOCUMENTS**

Additional documents may be available in the Planning Department.

- Town of Falmouth Notices
- Town of Sandwich Notices
- Town of Barnstable Notices
- September 2021 Discharge Monitoring Report for South Cape Village N=3.3
- August 2021 Discharge Monitoring Report for South Cape Village N=2.6
- July 2021 Discharge Monitoring Report for South Cape Village N=5.8

### JACK McELHINNEY Attorney at Law

63 Shore Road, Suite 23 Winchester, MA 01890 jmcelhin@aol.com Office: 781.729.7299 Cell: 617.816.4092

November 16, 2021

By Email

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

Attn: Evan Lehrer, Town Planner

Re: Willowbend Country Club – Willow Circle, Request for Modification of Special Permit

Dear Members of the Planning Board:

The applicant in this matter, Southworth Mashpee Properties LLC, hereby requests that the Board continue the November 17, 2021 public hearing on this matter to December 1, 2021.

Please feel free to contact me should you have any questions.

Sincerely yours,

Jack McElhinney, Attorney for

Southworth Mashpee Properties LLC

cc: Matthew Eddy, P.E.



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### Mashpee Planning Board Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 40A Section 11, the Mashpee Planning Board will hold a public hearing on Wednesday, November 17, 2021 at 7:10PM in the Waquoit Meeting Room at the Mashpee Town Hall, 16 Great Neck Road North, to consider an application from Southworth Mashpee Properties LLC, property owner, to modify the Willowbend Country Club Special Permit. The applicant proposes to add one (1) building lot to an already approved definitive subdivision plan for the cluster subdivision referred to as Willow Circle on lots addressed as 178-186 Quinaquisset Avenue (Assessors Map 69 Blocks 23, 24, 25 and 26). The total number of lots is proposed to increase from 5 lots to 6 lots. The sixth lot under consideration was originally restricted by the State Natural Heritage Program as habitat for the Eastern Box Turtle. This restriction was lifted in early 2021 as the area in question is no longer mapped as potential habitat.

Submitted by:

John Fulone, Chair Mashpee Planning Board

Publication dates: Friday, October 29, 2021

Friday, November 5, 2021

Town of Mash

16 Great Neck Road North Mashpee, Massachusetts 02649

# TOWN OF MASHPEE PLANNING BOARD PUBLIC HEARING NOTICE

Pursuant to the Town of Mashpee Subdivision Rules and Regulations and Chapter 41, Section 81T of Massachusetts General Laws the Mashpee Planning Board will hold a public hearing on Wednesday, November 17, 2021 at 7:15 PM in the Waquoit Meeting Room, Mashpee Town Hall, 1st Floor, 16 Great Neck Road North, Mashpee, MA, 02649 to consider modifying a definitive subdivision of land located at 178-184 Quinaquissett Avenue, Mashpee, MA 02649 (Map 69 Blocks 23-26). The applicant proposes to modify the plan by adding one additional lot to the previously approved five lot subdivision. The additional lot was previously restricted by the State Natural Heritage Program as habitat for the eastern Box Turtle. This restriction was lifted in early 2021 as the area in question is no longer mapped as potential habitat.

Submitted by: John Fulone, *Chair Mashpee Planning Board* 

Publication Dates: Friday, October 29, 2021

Friday, November 5, 2021

# JACK McELHINNEY Attorney at Law

63 Shore Road, Suite 23 Winchester, MA 01890

Phone 781-729-7299
Fax 781-729-3506
E-mail- jmcelhin@aol.com

October 13, 2021

By Email and Hand Delivery

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

Attn: Evan Lehrer, Town Planner

Re: Willowbend Country Club - Request for Modification of Special Permit

Dear Members of the Planning Board:

Enclosed please find an application for: (i) a further Modification of the Willowbend Special Permit made by Southworth Mashpee Properties LLC with respect to the Willow Circle Neighborhood approved by this Board in May 2010 as Modification No. 27 (attached), and (ii) a Modification of the Definitive Subdivision Plan for Willow Circle approved by the Planning Board on May 5, 2010. The present applications seek to modify the previously approved plans for the neighborhood by adding one additional lot to the previously approved five lot subdivision. The additional lot is comprised of land originally restricted by the State Natural Heritage Program as habitat for the Eastern Box Turtle, which restriction was lifted earlier this year as the area in question is no longer mapped as potential habitat for the turtle.

#200

Enclosed please find a check for the application fee in the amount of \$500.00 as well as a check for \$5,000 to cover the engineering peer review fee. We are requesting that this be application be scheduled for the next available hearing date.

Please feel free to contact me should you have any questions.

Sincerely yours,

Jack McElhinney, Attorney for

Southworth Mashpee Properties LLC

cc: Matt Eddy, P.E.

16 Great Neck Road North Mashpee, Massachusetts 02649

# APPLICATION FOR SPECIAL PERMIT MODIFICATION

Date received by Town Clerk: 10-13-21 Town	n Clerk Signature / Seal: Alebotal (19
The undersigned hereby applies for a Modificatio Mashpee Planning Board on April 15, 1987 Willowbend	n of the Special Permit approved by the for a project entitled
The original Special Permit and any Modification County Registry of Deeds at the following Book(s Bk 5707, Pg. 290, Mod.No. 27, Bk. 24685, Page 109	
Name of Applicant Southworth Mashpee Properties	Phone 508-539-5200
Address 130 Willowbend Drive, Mashpee, MA	
Owner, if different	Phone
Address	
Attach copies of (a) most recent recorded deed and Deed of property recorded in Barnstable County or Land Court Certificate of Title No  Location and description of property: Willow Circle (Property)	Registry Book 26395 Page 258
	MASHPEE TOWN CLERK
Mashpee Assessors Map(s) and Block(s): Plan 69, Blocking District(s) in which property is located: Research	-3 UCT 1 3 2021
How long have you owned the property? Nine Years Section(s) of the Zoning Bylaw which require(s) the section of the Zoning Bylaw which require(s) the Zoni	he permit you seek:
Present use of property: Residential/Vacant	
Description of proposed modification (attach plane By-law and Special Permit Regulations):  Applicant is seeking to modify the five lot subdivision approved and anninclude a sixth lot located within the area of the former Natural Heritage August 11, 2021. A modified definitive subdivision plan is being applied	exed into Willowbend via Modification No. 27 to  Restriction Area, such restriction having been released on
Signature of Owner or Authorized Representative	$=$ $\int \mathcal{E}(M) \mathcal{L}_{2}$
Attach written authorizati	ion signed by owner Atty for Owner

16 Great Neck Road North Mashpec, Massachusetts 02649

#### FORM C

MODIFICATION

#### APPLICATION FOR APPROVAL OF DEFINITIVE PLAN

Date October <sub>/ 3</sub> , 2021
To the Planning Board: The undersigned herewith submits the accompanying Definitive Plan of property located in Mashpee, Massachusetts, for approval as a subdivision as allowed under the requirements of the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land of the Planning Board in the Town of Mashpee.
Name of Subdivider Southworth Mashpee Properties LLC Phone 508-539-5200
AddressAddress
Owner, if different Phone
Address
Attach copies of (a) most recent recorded deed and (b) tax bill or Assessors' certification.  Engineer or Surveyor Baxter Nye Engineering & Surveying Phone Phone  78 North Street, Hyannis, MA 02601
Deed of property recorded in Barnstable County Registry Book Page Page
or Land Court Certificate of Title No
Location and description of property
Mashpee Assessors Map(s) and Block(s) Map 69, Parcels 23-26
Signature of Owner or Authorized Representative  John McEthin Mty for Applicar
Attach written authorization signed by owner.

A list of names and addresses of the abutters of this subdivision, as appearing on the most recent tax list, is attached.

16 Great Neck Road North Mashpec, Massachusetts 02649

#### FORM N

#### NOTICE OF APPLICATION FILING WITH THE MASHPEE PLANNING BOARD

To the Mashpee Town Clerk:		
This is to notify you that on October	, 2021	an application for
endorsement of a plan believed not to	require approval	
approval of preliminary plan		
X approval of definitive plan		
was submitted to the Mashpee Planning E	Board at its public n	neeting by
Southworth Mashpee Properties LLC		Prive, Mashpee, MA
Applicant name	Applicant address	•
as <u>69 - Parcels</u> sand is generally described as located	13- <i>H</i>	
This notice must be submitted to the Tow mail, postage prepaid, along with a copy o		
Re	eceived by Planning	Board on, 20
		for Mashpee Planning Board



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

## PLANNING BOARD DECISION WILLOWBEND SPECIAL PERMIT

**MODIFICATION NO. 27** 

#### I. Proposal.

Reference is made to a Special Permit Decision issued by the Mashpee Planning Board, dated April 15, 1987 and recorded with the Barnstable County District Registry of Deeds at Book 5707, Page 290, as amended from time to time (hereinafter the "Special Permit"). By decision dated August 7, 1991, the Special Permit was transferred to Bent Twig Limited Partnership whose interest was subsequently assigned to Willowbend Development Corporation, and more recently to Willowbend Country Club, Inc. Willowbend Country Club, Inc. is hereinafter referred to as the "applicant". The Special Permit authorizes construction of a residential / golf course community known as Willowbend south of Route 28 in east Mashpee ("the project").

The applicant proposes to modify the special permit and site plans to allow expansion of the Special Permit project area onto 4 previously subdivided lots comprising 3.19 acres on the north side of Quinaquisset Avenue west of the original project area (Assessors' Map 69, Blocks 23-26, located on the north side of Quinaquisset Avenue between North Glen Drive and Orchard Road) and to resubdivide that area into 5 single-family lots under the cluster subdivision zoning regulations applicable to the project, including construction of a new subdivision street and turnaround having a gated access from Quinaquisset Avenue, and to increase the currently permitted overall residential units in the project from 255 to 260.

#### II. Jurisdiction.

The application was made and this decision has been issued by the Mashpee Planning Board pursuant to Section 174-24.C. of the Mashpee Zoning By-Law as it existed on May 5, 2010, the date on which this special permit modification was approved by the Mashpee Planning Board. As the proposal does not increase square footage of any use by more than ten percent (10%), the provisions of Section 174-24.C.(9)(d) of said by-law provide that the land involved in this application is 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. Expansion of the project area is permitted under Section 174-24.C.(9)(g) of the Zoning By-law if approved by the Planning Board. With regard to the prohibition contained in Section 174-24.C.(9)(f) on increasing the number of units in a development, the proposed 260 units are less than the 338 units allowed under the original 1987 Special Permit.

The project is also subject to the applicable provisions of M.G.L. Chapter 40A, Section 9.

The Cape Cod Commission, by letter from Kristy Senatori, Chief Regulatory Officer, dated May 4,

2010, indicated that the proposal is not subject to review as a mandatory Development of Regional Impact by the Commission.

#### III. Chronology.

Application for this Special Permit Modification was filed with the Town Clerk and Planning Board on November 18, 2009, along with an accompanying Definitive Subdivision Plan. A hearing was opened before the Mashpee Planning Board at the Mashpee Town Hall, 16 Great Neck Road North, Mashpee, Massachusetts on January 6, 2010 at 7:05 p.m. Notice was duly given to abutters in accordance with Massachusetts General Laws Chapter 40A. Notice was also given by publication in the Mashpee Enterprise, a newspaper of general circulation in the town of Mashpee, on December 18 and 25, 2009. The hearing was continued on February 3, February 17, April 7, April 21 and May 5, 2010. The applicant had submitted letters extending the Board's statutory timeframe for acting on the Definitive Subdivision Plan, along with letters requesting certain continuations of the public hearings on this Special Permit and the Definitive Plan.

The applicant met with the combined Design Review and Plan Review Committees regarding the project on April 8, 2010.

On May 5, 2010, the Planning Board voted to close the hearing, make the following findings and grant the proposed special permit modification, subject to the conditions enumerated below. The members of the Board were recorded voting as follows: Thomas O'Hara, Dennis H. Balzarini, Joseph Mullen, James Leonard and Mary Waygan were recorded as voting in favor of approval of the proposed modification; no members were recorded as voting against. Member Leonard was not present at the April 21, 2010 hearing continuation at which substantive matters were discussed, but was able to familiarize himself with the

#### 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. This subdivision is proposed under the cluster subdivision zoning regulations applicable to the project on that date.
- 2. The proposed modifications lie outside the "Original Project" area (on 3.19 acres consisting of four lots previously owned and subdivided by others). The current proposal constitutes an expansion under the November 6, 1985 zoning applicable to the "Original Project" area per the 10% rule cited in Finding #1, increasing said area to 330.14 acres in Mashpee and 3.39 acres in Barnstable.
- 3. Under the provisions of Sections 9.3 and 9.4 of the applicable 1985 Zoning By-law, a minimum of 92.0 acres of open space was required within the "original project area". Current open space is 237.9 acres, well in excess of the required acreage.
- 4. Under the 1985 special permit, the project would have been allowed 341 residential units and was permitted for 338 units. Modification #19 reduced the allowed units to 217, which was subsequently increased to 255 by Modification #26. The current proposal increases that number

- to 260, which the Board finds to be permissible under Section 174-24.C.(9)(f), as it is less than the originally permitted 338 units, and hereby approves said increase.
- 5. 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.
- 6. The project includes a 0.41 acre area of Lot 3 to be made subject to a conservation restriction pursuant to the regulations and determinations of the Massachusetts Natural Heritage and Endangered Species program, which will be fenced with a post and rail fence, including a gate for emergency access to the restricted area.
- 7. The Board has approved enhanced plantings and a 7½ foot high decorative fence ("Wood Privacy Fence With Lattice" shown on Sheet C-9 of approved plans listed under Conditions below) to maintain a visual buffer between the project and abutting properties on Orchard Road. The fence will be located 10 feet in from the western property line of lots 1 and 2 and the 10 feet will be landscaped as shown on the approved plans.
- 8. The applicant has agreed to an increased setback at the rear of lots 1 and 2, based on a 45 foot setback from the existing residence at 132 Orchard Road.
- 9. The applicant has agreed to donate an existing 1400 sq. ft. duplex building currently located on the property to the Town or another agency for relocation to another site for use as affordable housing, and to assist with such relocation. In the alternate, if such relocation is not feasible within the timetable required for development of the proposed new street and 5 lots, the applicant will provide \$1000 per unit, at the time building permits are issued for each of the 5 houses, towards the construction of affordable housing in Mashpee.
- 10. The project was reviewed by the combined Design Review and Plan Review Committees on April 8, 2010. The Committees voted to endorse the plans with the following recommendations: 1) street name to be changed from "Willowbend Circle" due to public safety concern over similarity to existing "Willowbend Drive"; 2) residential sprinklers are recommended, in exchange for the possibility of an alternate "T" turnaround; 3) a 30 foot rear setback requirement should be considered; 4) a landscape plan for the proposed buffer area should be provided.
- 11. The Board received letters dated December 30, 2009, April 21, 2010 and May 3, 2010 from its Consulting Engineer Charles L. Rowley identifying a number of specific comments and recommendations for changes to the filed plans.
- 12. 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 archaeologic 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. Total residential units allowed within the "Original Project area" shall be 260, including the 5 units proposed under this Modification.
- 2. The project shall be constructed in conformance with the following site plans, which are the same plans approved by the Board for these proposed 5 lots under the Subdivision Control Law:

"Definitive Road Construction Plans, Willow Circle Subdivision, 178, 182, 184 & 186 Quinaquisset Avenue, Mashpee, Massachusetts, Willowbend Country Club, Inc.," by Baxter Nye Engineering & Surveying, Hyannis, MA 02601, revision date April 21, 2010, consisting of 11 sheets as follows:

C-1 Cover Sheet – Definitive Road Construction Plans

C-2 Legend and General Notes

C-3 Existing Conditions Plan

C-4 Layout and Materials Plan

C-4.1 Buffer Landscape Plan

C-5 Road Plan & Profile - Station 0+00 to 5+01.26

C- 5.1 Stormwater Management Plan

C-6 Utility Plan

C-7 Detail Sheet 1 of 3

C-8 Details

- 4

C-9 Detail Sheet 3 of 3

"Willow Circle Definitive Subdivision Plan, 178, 182, 184 & 186 Quinaquisset Avenue, Mashpee, MA", Sheet SV, prepared for Willowbend Country Club, Inc. by Baxter Nye Engineering & Surveying, Hyannis, MA 02601, revision date April 21, 2010 – the Definitive Subdivision Plan signed by the Board members for recording

- 3. Said plans shall conform to the recommendations and comments made by the Board's Consulting Engineer Charles L. Rowley in his letter to the Board dated April 21, 2010.
- 4. The applicant shall maintain a 10 foot landscaped buffer area along the western property line of lots 1 and 2, (as shown on Sheet C-4) within which the Board has approved enhanced plantings (as shown on Sheet C-4.1) and a 7½ foot high wood privacy fence with lattice (per detail shown on Sheet C-9) to maintain a visual buffer between the project and abutting properties on Orchard Road. Where existing wooded areas remain within the project area adjacent to the 10 foot buffer, the applicant shall, where practicable, attempt to retain additional portions of said areas in their natural, or in an enhanced state, to provide additional buffer and maintain the natural habitat and nitrogen reduction functions of said wooded areas.
- 5. Lots 1 and 2 shall be subject to an increased rear setback, based on a 45 foot setback from the existing residence at 132 Orchard Road, as shown on Sheet C-4 of the plans referenced in Condition #2.
- 6. The applicant has agreed to donate an existing 1400 sq. ft. duplex building currently located on the property to the Town or another agency for relocation to another site for use as affordable housing, and to assist with such relocation. In the alternate, if such relocation is not feasible

within the timetable required for development of the proposed new street and 5 lots, the applicant will provide \$1000 per unit, at the time building permits are issued for each of the 5 houses, to the Mashpee Housing Authority to be deposited into a fund for the construction of affordable housing in the Town of Mashpee. Any disbursements from said fund shall require the approval of the Planning Board (simple majority vote).

- 7. Local contractors and suppliers will be given first preference with regard to contracts for construction of the project.
- 8. No lot shall be cleared until a building permit is issued for construction on said lot, except as necessary relative to removal of the existing structures on the property or for connection of the property to utilities or in connection with the project's Stormwater management facilities.
- 9. Except where modified by the provisions of this decision, all previous Special Permit conditions regarding the project shall remain in full force and effect.
- 10. All conditions of this special permit and modification shall be binding not only upon the applicant but also on all successors-in-interest and assigns of the applicant.
- 11. This Special Permit Modification Decision is accompanied by a Definitive Subdivision Plan as described under Condition #2 above. Both this decision and said definitive plan shall be recorded within 60 days of their endorsement by the Board, with a notice provided to the Board of the Book and Page at which each was recorded.

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

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

#### VII. Signature and Filing.

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This special permit modification documer			
has been approved on this 5 <sup>th</sup> day of May,	, 2010. A copy of sam	e shall be filed with	the Town Clerk in
accordance with applicable law.	1		
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$\sim $	- 1 Lours 1.		

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this day of 2010, before me, the undersigned notary public, personally appeared the behavior of the person whose name is signed on the preceding or attached acknowledged to me that (he/she) signed it voluntarily for its stated purpose.

Mashpee Planning Board - Duly Authorized Member

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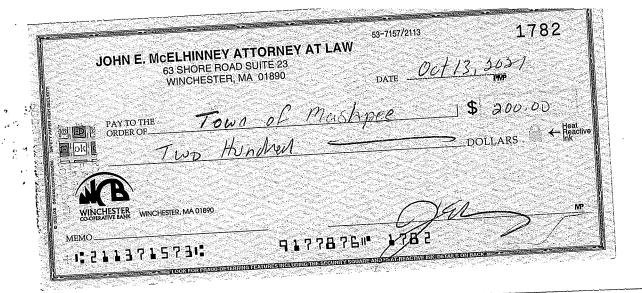
Notary Public My Commission expires: へん

date of ex

BARNSTABLE REGISTRY OF DEEDS

A copy of this decision and the accompanying plans app	roved by the Planning Board have been duly filed on
May le, , 2010 with the Town Clerk of M	o (4)
	Town Clerk
Notice of this decision was mailed on	to the applicant, to any parties in interest eneral Law. Any appeal should be made pursuant to
Section 17 of Chapter 48 of the Massachusetts General La	ws 20 days after the date of such filing.
I, Debra Dami, Town Clerk of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Town of Mashpee, accompanying plans approved by the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and that no appeal of the Planning Board 2010 and the Planning Board 20	were filed with the office of the Town Clerk on nat decision was filed within 20 days thereafter.
	d) Lord & Vaci
-	Town Clerk
·	Fown Clerk David & David David David David 2, 2010
Upon expiration of the statutory appeal period with no appeal endorsed by the undersigned members of the Ma	peal having been filed, this special permit decision has
2010 and may be recorded.	111 30 1A
-	The state of the s
	Lanner H Edgami
	THE FORM
	A Company of the comp
	James Monard
Atm. Randi Regan Willowbend Country Club, Auc.	
130 willowbend Dr.	·
Mashper, MA 12649	





SOUTHWORTH MASHPEE

LLC 130 Willowbend Drive Mashpee, MA 02649 DEDHAM SAVINGS BANK

1077 Great Plain Ave Needham, MA 02492 211371722

Wandel

Oct 12, 2021 004215

DATE CHECK NO.

\$5,000.00

Pay Five Thousand Dollars and 00 Cents

to the Order of:

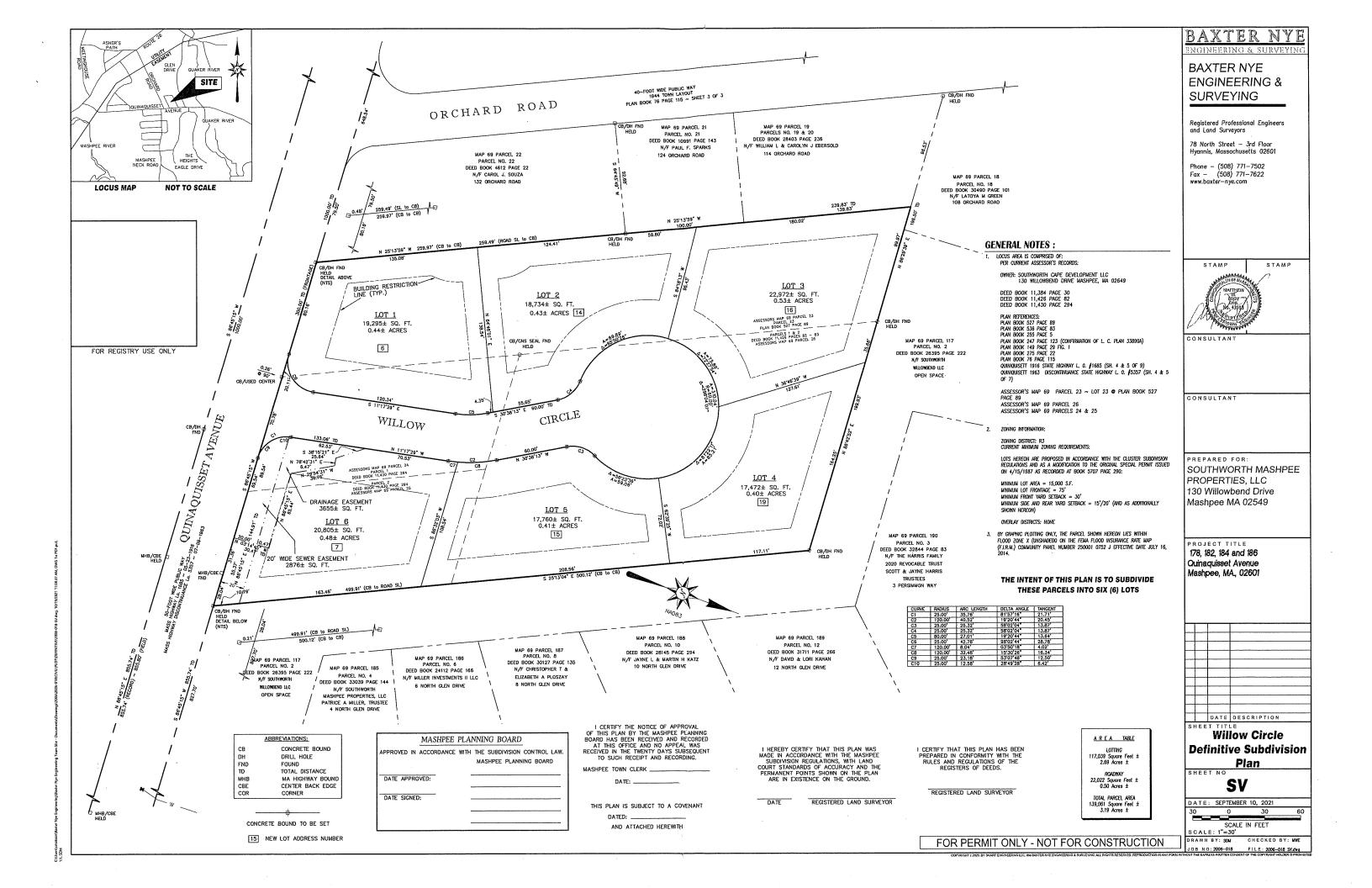
TOWN OF MASHPEE 16 GREAT NECK ROAD NORTH MASHPEE, MA 02649

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547032185

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j



# Definitive Road Construction Plans

T 1.C	- 43 1.1			
Issued for:	Definitive	Plan	Approval/Special	Permit Approvai

Date Issued:	09/09/21		
Job Number:	2006-018		

APPROVE	NI C	ACCC	RDANC
WITH T	HE S	SUBDIN	/ISION
CO	NTRO	) I I A	N.

DATE APPROVED	MASHPEE PLANNING BOARD
DATE SIGNED	

THIS PLAN SUBJECT TO COVENANT DATED: \_\_\_\_\_ AND ATTACHED HERETO.

THIS LAYOUT PLAN WAS FILED WITH THE TOWN CLERK

I, CLERK OF THE TOWN OF MASHPEE, HEREBY CERTIFY THAT THIS PLAN AS APPROVED BY THE PLANNING BOARD, HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO NOTICE OF APPEAL WAS RECEIVED DURING THE TWENTY DAYS AFTER SUCH FILING, IN ACCORDANCE WITH THE MASSACHUSETTS GENERAL LAW, CHAPTER 82, SECTION 23.

DATE:		
	TOWN	CLERK

#### Index No. Drawing Title C1.0 Legend and General Notes C2.0 C3.0 **Existing Conditions** Layout and Materials Plan C4.0 Buffer Landscape Plan Road Plan & Profile- Station 0+00 to 5+01.26 C5.0 Stormwater Management Plan C5.1 Utility Plan C6.0 Utility Notes C6.1 Detail Sheet 1 of 3 Detail Sheet 2 of 3 C8.0 Detail Sheet 3 of 3

# Willow Circle Subdivision

# 178, 182, 184 & 186 Quinaquisset Avenue Mashpee, Massachusetts

Prepared For: Willowbend County Club, Inc.

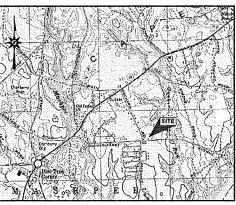
Applicant:

Southworth Mashpee Properties LLC 130 Willowbend Drive Mashpee, MA 02649 Phone - (508) 539-5316 Fax - (508) 539-5252 Attn: Mr. Jack McElhinney Owner:

Southworth Cape Development LLC 130 Willowbend Drive Mashpee, MA 02649 Phone - (508) 539-5316 Fax: - (508) 539-5252 Site Engineer/Surveyor:

#### BAXTER NYE ENGINEERING & SURVEYING

Registered Professional
Engineers and Land Surveyors
78 North Street - 3rd Floor, Hyannis, MA 02601
Phone - (508) 771-7502 Fax - (508) 771-7622
ATTN: Matthew Eddy

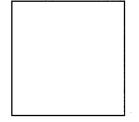




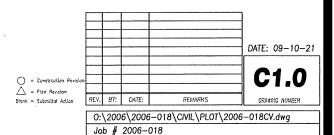
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ENGINEER:
MATTHEW W. EDDY
MASSACHUSETTS REGISTERED
PROFESSIONAL ENGINEER REG# 43183



SURVEYOR: SHANE MALLON MASSACHUSETTS REGISTERED PROFESSIONAL LAND SURVEYOR REG# \_\_\_\_\_



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FB D	EB	FIRE ALARM BOX				
	0	TRANSFORMER PAD		E	BLACK TEXT	REPRESENTS PROPOSED INFORMATION
TR:	TR	TELEPHONE RISER				

**ABBREVIATIONS** 

ADJUST

BOW

сс ссв

APPROXIMATE RITHUNGES REPU

BITUMINOUS CURB

BOTTON OF SLOPE

BOTTOM OF WALL

CAPE COD BERM

COBBLESTONE EDG

EDGE OF GRAVEL

EDGE OF PAVEMENT

DOSTING

FOUNDATION

CRADE BREAK

CRANITE FOODIG HOT MIX ASPHULT

LANDSCAPE AREA

WHE/EP UP WASS HIGHWAY BOUND/ ESCUTCHEON PIN LEAD PLUG NOT IN CONTRACT NOT TO SCALE PRECAST CONCRETE CURB

MANIKAN REMOVE

REMODEL

REMOVE

RETAIN

REMOVE AND STACK

TOP OF CURB TOP OF FOUNDATION

TOP OF WAIT

VILITY

COND

IM ESS OTHERWSE NOTED WEREY IN SERIO BY CONTRACTOR

YERTICAL GRANTE CURB

CORRUGATED ALUMINUM PIPE

OURS STOP FOR WATER LINE

DUCTLE BON PEE

FRAME AND COVER

FRAME AND GRATE

POLYVINYL CHLORIDE PIPE REMEDICED CONCRETE PIPE

ROOF DRAM

SEWER CLEANOU

TAPPING SLEEVE, YALVE &

STORM DRAW

TELEPHONE

YERIFY IN FIELD

WATER

c/0

CAST IRON PAPE

CHANCE IN TYPE

CONDUIT

ASPHALT COATED CORRUGATED WETAL PIPE

HIGH DENSITY POLYETHYLENE CORRUGATED PLASTIC PIPE - SMOOTH INTERIOR

SLOPED GRANITE EDGING THE LINTO EXISTING GRADI GENERAL CONSTRUCTION NOTES

\* (ALL REFERENCES TO "CONTRACTOR" SHALL MEAN THE G THE GENERAL CONTRACTOR OR HIS SUB-CONTRACTORS.)

1. ALL WORK & MATERIALS SHALL BE IN ACCORDANCE WITH MASSDOT, HIGHWAY DIVISION, STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES (MASSDOT-SSHB), AS CURRENTLY AMENDED, UNLESS OTHERWISE NOTED. IF THERE ARE CONFLICTS IN ANY OF THE SPECIFICATIONS OR PROJECT DOCUMENTS, THE HIGHER STANDARD SHALL APPLY.

ALL WORK UNDER THESE DOCUMENTS SHALL ALSO CONFORM TO ALL CODES AND STANDARDS, AS CURRENTLY AMENDED, WHICH ARE APPLICABLE TO THIS PROJECT. ALL WORK SHALL FURTHER CONFORM TO SPECIFIC REQUIREMENTS, SPECIFICATIONS, ORIONANCES AND INTERPRETATIONS OF LOCAL AUTHORITIES HAVING JUNISDICTION OVER THE PROJECT, DETERMINATION OF APPLICABLE CODES AND STANDARDS AND OF THE AUTHORITIES HAVING JURISDICTION, SHALL BE THE RESPONSIBILITY OF EACH CONTRACTOR, AS SHALL BE THE ANALYSIS OF ALL SUCH CODES AND STANDARDS IN REGARD TO THEIR APPLICABILITY TO THE PROJECT FOR SECURING ALL APPROVALS AND PERMITS.

ALL WORK WITHIN THESE PLANS SHALL BE PERFORMED AND PROVIDED BY THE CONTRACTOR IN ACCORDANCE WITH THE CONSTRUCTION DETAILS PROVIDED IN THIS PLAN SET WHETHER OR NOT THE DETAIL NUMBER IS SPECIFICALLY REFERENCED.

EXCEPT WHERE THE PROJECT DOCUMENTS INCLUDE MORE STRINGENT REQUIREMENTS, APPLICABLE CONSTRUCTION INDUSTRY STANDARDS HAVE THE SAME FORCE AND EFFECT AS IF BOUND HERETO. SUCH STANDARDS ARE MADE A PART OF THE PROJECT DOCUMENTS BY REFERENCE.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL QUANTITY ESTIMATES AND VERIFYING, TO HIS OWN SATISFACTION, THAT ALL QUANTITIES ARE ACCURATE FOR ALL CONSTRUCTION MATERIALS, INCLUDING CUT & FILL ESTIMATES WHICH THE CONTRACTOR MAY PREPARE BASED ON INFORMATION CONTAINED WITHIN THESE PLANS,

3. WHERE AN EXISTING UTILITY IS FOUND TO CONFLICT WITH THE PROPOSED WORK, THE LOCATION, ELEVATION AND SIZE OF THE UTILITY SHALL BE ACCURATELY DETERMINED WITHOUT DELAY BY THE CONTRACTOR, AND THE INFORMATION FURNISHED TO THE ENGINEER FOR RESOLUTION OF THE CONFLICT.

4. THE CONTRACTOR SHALL MAKE ALL ARRANGEMENTS WITH THE APPROPRIATE UTILITY COMPANIES FOR OBTAINING CONSTRUCTION PERMITS AND PERFORMING ALL NEW CONSTRUCTION, RELOCATION, ALTERATION AND ADJUSTMENT OF CAS, ELECTRIC (INCLUDING UTILITY POLES), TELEPHONE, CABLE, FIRE, ALARM, WATER, SANITARY SEWER, STORM DRAIN, AND ANY OTHER UTILITIES, BOTH PUBLIC AND

PRIVATE, AS REQUIRED.

5. THE LOCATION OF EXISTING UNDERGROUND SYSTEMS, INFRASTRUCTURE, UTILITIES, CONDUITS, WELLS, AND LINES ARE SHOWN IN AN APPROXIMATE WAY ONLY, MAY NOT BE LIMITED TO THOSE SHOWN HEREIN, AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER, THE ENGINEER, OR THEIR REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION, BOTH HORIZONTALLY AND VERTICALLY, OF ALL EXISTING UTILITIES, CONDUITS, LINES, WELLS, AND OTHER BURIED INFRASTRUCTURE, AND STSTEMS BEFORE THE START OF ANY WORK. THE CONTRACTOR AGREES TO BE TULLY RESPONSIBLE FOR ANY AND ALL DANAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S SAULER TO LOCATE THE INFRASTRUCTURE, UTILITIES, CONDUITS AND LINES EXACTLY. THE CONTRACTOR SHALL PRESERVE ALL UNDERGROUND INFRASTRUCTURE AND UTILITIES AS REQUIRED. THE CONTRACTOR SHALL PRESERVE ALL UNDERGROUND INFRASTRUCTURE AND UTILITIES AS REQUIRED. THE CONTRACTOR SHALL PRESERVE ALL UNDERGROUND INFRASTRUCTURE AND UTILITIES AS BEFORE THE START OF CONSTRUCTION.

7. THE CONTRACTOR SHALL NOTIFY ALL UTILITY COMPANIES, PUBLIC AND PRIVATE, INCLUDING THOSE IN CONTROL OF UTILITIES NOT SHOWN ON THIS PLAN, (SEE CHAPTER 370, ACTS OF 1963, MASSACHUSETTS) PRIOR TO COMMENCING ANY WORK.

8. BAXTER NYE ENGINEERING & SURVEYING ASSUMES NO RESPONSIBILITY FOR DAMAGES INCURRED AS A RESULT OF UTILITIES OMITTED OR INACCURATELY SHOWN.

9. THE TERM "PROPOSEO" (PROP.) MEANS WORK TO BE CONSTRUCTED USING NEW MATERIALS OR, WHERE APPLICABLE, RE-USING EXISTING MATERIALS IDENTIFIED AS "REMOVE AND RESET" (R&R).

10. UPON AWARD OF CONTRACT, CONTRACTOR SHALL MAKE ALL NECESSARY CONSTRUCTION NOTHICATIONS AND APPLY FOR AND OBTAIN ALL NECESSARY PERMITS, PAY ALL FEES AND POST ALL BONDS ASSOCIATED WITH SAME, AND CORDINATE WITH THE ENGINEER AS REQUIRED.

11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THAT THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS DO NOT CONFLICT WITH ANY KNOWN EXISTING INFORMATION OR OTHER PROPOSED IMPROVEMENTS. IF ANY CONFLICTS ARE DISCOVERED, THE CONTRACTOR MUST NOTIFY THE OWNER OR ENGINEER IMMEDIATELY UPON DISCOVERY AND AT LEAST 72 HOURS PRIOR TO INSTALLATION OF ANY PORTION OF THE AFFECTED WORK.

12. THE CONTRACTOR SHALL REFER TO ARCHITECTURAL AND STRUCTURAL DRAWINGS FOR ALL BUILDING DIMENSIONS AND CONSTRUCTION. BUILDING DIMENSIONS SHOWN HEREIN ARE FOR COORDINATION WITH OTHER STRE WORK ONLY AND SHOULD NOT BE USED TO STAKE OUT BUILDINGS. SITE CONTRACTOR SHALL STAKE OUT THE EXTERIOR BUILDING CORNERS FROM THE LATEST ARCHITECTURAL PLANS. THE CONTRACTOR SHALL NOTIFY BAXER NYE ENGREENING & SURVEYING OF ANY DISCREPANCES BETWEEN SITE PLAN DIMENSIONS AND ARCHITECTURAL BUILDING PLANS BEFORE PROCEEDING WITH ANY PORTION OF SITE WORK WHICH MAY BE EFFECTED SO THAT PROPER ADJUSTMENTS TO THE SITE LAYOUT CAN BE MADE IF NECESSARY.

13. PRIOR TO THE START OF CONSTRUCTION THE CONTRACTOR SHALL SUBMIT A SCHEDULE OF OPERATIONS TO THE OWNER AND ITS REPRESENTATIVE. THE CONTRACTOR SHALL NOTIFY AND COORDINATE WITH THE OWNER, ITS ENGINEER OR REPRESENTATIVE.

14. THE CONTRACTOR SHALL CONTACT THE ENGINEER TO SCHEDULE A PRE-CONSTRUCTION MEETING AT LEAST TWO (2) WEEKS PRIOR TO COMMENCING CONSTRUCTION.

15. THE CONTRACTOR SHALL MAKE SUBMITTALS TO THE ENGINEER FOR APPROVAL BEFORE ANY FABRICATION OR DELIVERY OF PRODUCTS OR MATERIALS.

16. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR JOB SITE SAFETY AND ALL CONSTRUCTION MEANS AND METHODS. BAXTER NYE ENGINEERING & SURVEYING, DOES NOT ASSUME ANY RESPONSIBILITY IN JOB SITE SAFETY FOR CONSTRUCTION METHODS USED. ALL FEDERAL, STATE, AND LOCAL OSHA REQUIREMENTS AND REGULATIONS SHALL BE FOLLOWED BY ALL PERSONNEL ON THE JOB STREAT ALL TIMES.

17. THE CONTRACTOR SHALL REMOVE ALL STUMPS, RUBBISH, AND DEBRIS FROM THE PROJECT SITE. STORAGE OF THESE TEMS WILL NOT BE PERMITTED ON THE PROJECT SITE. THE CONTRACTOR SHALL LEAVE THE SITE IN A SAFE, CLEAN, AND LEVEL CONDITION AT THE COMPLETION OF THE SITE CLEARANCE WORK.

18. ALL UNSUITABLE MATERIALS ENCOUNTERED WITHIN THE LIMIT OF WORK SUB GRADES SHALL BE REMOVED, AS DIRECTED BY THE ENGINEER OR OWNERS REPRESENTATIVE, TO NATURAL STABLE GROUND BY THE CONTRACTOR. UNSUITABLE MATERIALS INCLUDE TOPPOIL, LOAM, PEAT, ALL ORGANIC MATERIAL, SNOW, ICE, CONSTRUCTION RUBBLE, TRASH, AND OTHER DELETERIOUS DEBRIS.

19. TREES AND SHRUBS WITHIN THE LIMITS OF GRADING SHALL BE REMOVED AND RESET ONLY UPON APPROVAL OF THE ENGINEER OR OWNERS REPRESENTATIVE.

20. AREAS OUTSIDE THE LIMITS OF PROPOSED WORK DISTURBED BY THE CONTRACTOR'S OPERATIONS, WITHOUT PRIOR APPROVAL BY THE OWNER OR ITS REPRESENTATIVE, STALL BE RESTORED BY THE CONTRACTOR TO THEIR ORIGINAL CONDITION AT THE CONTRACTOR'S EXPENSE.

21. EXISTING SUBSURFACE ROCK IS NOT SHOWN ON THE PLANS. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO MAKE THEIR OWN DETERMINATION AS TO THE LOCATION OF SUBSURFACE ROCK.

22. THE CONTRACTOR SHALL PROTECT ALL UNDERGROUND DRAINAGE, SEWER, AND UTILITY FACILITIES FROM EXCESSIVE VEHICULAR LOBOS DURING CONSTRUCTION. ANY FACILITIES DAMAGED BY CONSTRUCTION LOADS SHALL BE REPARED BY THE CONTRACTOR AT THE CONTRACTOR'S EXPENSE.

23. ALL EXISTING SIGNS WITHIN THE PROJECT LIMITS SHALL BE RETAINED UNLESS NOTED OTHERWISE,

24. JOINTS BETWEEN NEW BITUMINOUS CONCRETE ROADWAY PAVEMENT AND SAWCUT EXISTING PAVEMENT SHALL BE SEALED WITH BITUMEN AND BACKSANDED, ALL JOINTS TO EXISTING PAVEMENT SHALL BE SAWCUT TRUE AND STRAIGHT, ALL CRACKED OR INADEQUATE PAYEMENT AND/OR SUBBASE MATERIAL SHALL BE REMOVED AND REPLACED.

25. ALL PROPOSED WALKWAYS WILL BE HANDICAPPED ACCESSIBLE. ALL PROPOSED SLOPES ON WALKWAYS SHALL BE LESS THAN 5% AND ALL CROSS SLOPES < 2%. THESE ARE MAXIMUM SLOPES WITH NO TOLERANCE. ALL WORK WILL BE IN ACCORDANCE WITH THE MOST CURRENT REQUIREMENTS OF THE U.S. ACCESS BOARD, AMERICANS WITH DISABILITIES ACT & COMMONWEALTH OF MASSACHUSETTS, ARCHITECTURAL ACCESS BOARD. 26. FINAL LAYOUT AND STAKING OF ALL PROPOSED FEATURES AND GRADING SHALL BE REMEMED IN THE FIELD AND APPROVED BY THE OWNERS REPRESENTATIVE PRIOR TO ANY SITE PREPARATION OR CONSTRUCTION. THE CONTRACTOR SHALL NOT ADJUST OR MODIFY THE LAYOUT AND STAKING OF ANY PROPOSED FEATURES WITHOUT FINAL APPROVAL FROM THE OWNERS REPRESENTATIVE AND ANY GOVERNMENTAL AGENCY WHICH MAY HAVE JURISDICTION OVER CONTEMPLATED CHANGE.

27. ALL ELECTRICAL (BOTH PRIMARY AND SECONDARY), TELEPHONE, DATA/COM AND FIRE DEPARTMENT CONDUITS AND APPURTENANT FEATURES REQUIRED BY THE APPLICABLE UTILITY COMPANY ARE TO BE INSTALLED BY THE ELECTRICAL CONTRACTOR. TRENCHING, BACKFILLING, CONCRETE WORK, MANHOLE AND RELATED STRUCTURES AND STREET REPAR SHALL BE PERFORMED BY THE GENERAL CONTRACTOR/SITE CONTRACTOR. ALL ASSOCIATED COSTS FOR COMPLETE EXECUTION OF THIS WORK SHALL BE INCLUDED IN THE CONTRACTORS PRICING.

28, RIM ELEVATIONS OF DRAINAGE AND SANITARY SEWER MANHOLES ARE APPROXIMATE. FINAL ELEVATIONS ARE TO BE SET FLUSH AND CONSISTENT WITH GRADING PLANS. ADJUST ALL OTHER RIM ELEVATIONS OF MANHOLES, GAS GATES, WATER GATES AND OTHER UNITIES TO FINISHED GRADE WITHIN THE LIMITS OF THE SITE WORK.

29. ALL AREAS DISTURBED DURING CONSTRUCTION SHALL BE REPLACED IN KIND. SURFACES NOT OTHERWISE TREATED SHALL BE STABILIZED AS LAWNS. ALL LAWN AREAS SHALL HAVE A MODIFIED LOAM BORROW PLACED. SEEDED, FERTILIZED, LINED AND MULCHED LIMITI. GRASS STAMD IS ESTABILISHED AND SURFACE IS STABILIZED. THE MODIFIED LOAM BORROW SHALL HAVE A MINIMUM DEPTH OF 6° AND SHALL BE PLACED FLUSH WITH THE TOP OF ADJACENT CURB, EDGING, BERM, OR OTHER SURFACE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR AREAS UNITL VEGETATION HAS BEEN PERMANENTLY ESTABLISHED. SLOPES IN EXCESS OF 3:1 SHALL BE FURTHER STABILIZED WITH EROSION CONTROL BLANKETS (ECB) OF CURLEX OR EQUAL.

30. THE CONTRACTOR SHALL WATER, MOW, FERTILIZE OR OTHERWISE MAINTAIN ALL SODDED AND SEEDED OR OTHERWISE STABLIZED AREAS UNTIL GRASS STANDS OR OTHER VEGETATED METHODS ARE ESTABLISHED TO THE SATISFACTION OF THE OWNER OR THEIR REPRESENTATIVE.

31. THE CONTRACTOR SHALL RESET ALL MONUMENTATION DISTURBED DURING CONSTRUCTION AT NO ADDITIONAL COST TO THE OWNER. THE CONTRACTOR SHALL PROVIDE A SURVEY BY A PLS TO ENSURE THAT THE MONUMENTATION IS RESET TO ITS ORIGINAL LOCATION. MONUMENTS INCLUDE, BUT ARE NOT LIMITED TO, TOWN BOUNDS, MASS HIGHWAY BOUNDS, PROPERTY LINE MONUMENTS, IRON RODS, STAKES, CONCRETE BOUNDS, GRANTIE BOUNDS AND STONE WALLS WITH DRILL HOLES.

#### **EXCAVATION SAFETY:**

ALL EXCAVATION MUST FOLLOW OSHA, MASSACHUSETTS AND LOCAL REGULATIONS FOR SAFETY. ALL TRENCH EXCAVATION EXCEEDING 3 FEET OF DEPTH WILL REQUIRE A TRENCH PERMIT FROM THE LOCAL TOWN OR CITY PRIOR TO ANY EXCAVATION.

#### DRAWINGS STATEMENT:

THE CONTRACTOR WILL PREPARE AS-BUILT DRAWINGS, STAMPED BY A MA UCENSED PROFESSIONAL ENGINEER (PE) CERTIFYING THATE: TO THE BEST OF THEIR KNOWLEDGE, JUDGEMENT AND BELIEF, THE CONSTRUCTED WORK IS IN GENERAL CONFORMANCE WITH THE PLANS."

#### INSPECTIONS/TESTING:

1. CONTRACTOR IS RESPONSIBLE TO COORDINATE WITH THE ENGINEER ON ALL NECESSARY INSPECTIONS. THE CONTRACTOR SHALL NOTIFY THE ENGINEER AT LEAST TWO (2) BUSINESS DAYS AHEAD OF REQUIRED INSPECTIONS.

A. INSTALLATION OF SEDIMENT AND FROSION CONTROLS AT LIMIT OF WORK PRIOR TO COMMENCING CONSTRUCTION

B. DRAINAGE AND STORMWATER MANAGEMENT:

• BOTTOM OF EXCAVATION FOR EACH STORMWATER MANAGEMENT (SWM) FACILITY.

• DURING INSTALLATION OF STRUCTURES/CHAMBERS TO SEE A CROSS SECTION WIEW OF INSTALLATION

• AT COMPLETION OF INSTALLATION OF EACH SWM FACILITY PRIOR TO BACKFILL.

• AT FINAL SHAPING OF STORE WEIRS, OUTFALLS AND EARTH BEING.

• DURING INSTALLATION OF THE BIO-RETENTION SECTION FOR THE SWALE AND BASIN.

C. GRAVEL BORROW SUBBASE UNDER ALL PAVED AND CONCRETE SURFACES (UNLESS OTHERWISE WITNESSED

D. BN WILL NEED TO WITNESS REPRESENTATIVE INSTALLATION OF VERTICAL AND SLOPED CURBING

E. BN SHALL BE PROVIDED FOR REVIEW ALL TESTING AGENCY LABORATORY MATERIAL AND ON-SITE TESTING RESULTS AS REQUIRED UNDER THE PROJECT DOCUMENTS FOR COMPLETE REQUIREMENTS, INCLUDING BUT NOT

TO:

BIO-RETENTION SECTION FILTER MEDIA COMPOSITION SIEVE ANALYSIS AND MATERIAL
CHARACTERISTICS PER SPEC.
SANDY TOPSOIL SIEVE ANALYSIS AND MATERIAL CHARACTERISTICS PER SPEC FOR SWM AREAS
ALL COMPACTION TESTING RESULTS FOR BACKFILL.
GRAVEL BORROW MATERIAL UNDER PAYING, SIDEWALK, SITE SLABS, PADS, ETC. AS TO DEPTH OF
MATERIAL PLACEMENT AND COMPACTION TESTING RESULTS.
BITUMINOUS CONCRETE PLACEMENT AND COMPACTION TESTING RESULTS.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING MATERIAL SAMPLES TO AND COORDINATING WITH THE TESTING AGENCY AS REQUIRED.

F. BN WILL NEED TO WITNESS A REPRESENTATIVE UTILITY INSTALLATION BEFORE BACKFILL FOR:

CONTRACTOR SHALL CONTACT BN TO ALLOW BN TO TAKE AS-BUILT SHOTS ON PIPE BENDS, PIPE TOP FOR AS-BUILT REQUIREMENTS
THE WATER SYSTEM SHALL BE INSPECTED BY MASHPEE WATER DEPARTMENT OR A THIRD PARTY APPROVED WATER INSPECTOR PAID FOR BY THE CONTRACTOR. ACCEPTANCE REPORTS AND AS-BUILT TIE CARDS FOR THE WATER SYSTEM (INCLUDING TIES TO ALL BENDS, TEES, ETC.) SHALL BE PREPARED BY THE 3RD PARTY INSPECTOR AND PROVIDED TO THE ENGINEER FOR RECORD.

NISTALLATION OF PIPE AND PIPE BEDDING, SMH PRIOR TO BACKFILLING.
CONTRACTOR SHALL PROVIDE ALL REQUIRED TESTING FOR ACCEPTANCE OF THE SEWER SYSTEM.
UNACCEPTABLE TEST/INSPECTION RESULTS WILL RESULT IN THE CONTRACTOR REPAIRING THE
CONDITION AT NO ADDITIONAL EXPENSE TO THE OWNER.
CONTRACTOR TO PROVIDE BY WITH SEWER DEPT. APPROVED INSPECTION REPORT AND ACCEPTANCE

G. SANITARY SEWER TESTING SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL INCLUDE:

ALL SEWERS AND APPURTENANT WORK, IN ORDER TO BE ELIGIBLE FOR ACCEPTANCE BY THE ENGINEER, SHALL BE SUBJECTED TO TESTS THAT WILL DETERMINE THE DEGREE OF WATER TIGHTNESS AND HORIZONTAL AND VERTICAL ALIGNMENT 5.0 BE TESTED, IN A MANNER AND TO THE EXTENT ACCEPTABLE TO THE ENGINEER, PRIOR TO INITIATING TEST PROCEDURES.

3. TESTING GRAVITY SEWER PIPING:
a. LOW-PRESSURE AIR TEST.
b. INFILTRATION TEST.
4. HYDROSTATIC TESTING PRESSURE PIPING. 5. DEFLECTION TESTING PLASTIC PIPING

5. DEFLECTION TESTING PLASTIC PIPING.

G. DEFLECTION TESTING PER ACCEPTED STANDARDS (RIGID BALL, "GO—NO GO MANDREL). MAX ALLOWABLE DEFLECTION IS 5% OF ORIGINAL PIPE DIAMETER. PIPES HOLDING WATER MAY RESULT IN FAILING INSPECTION.

G. CAMERA VIDEO INSPECTION.

7. SEALING AND TESTING TO BACKFILLING OF WET WELL AND TANKS PER ACCEPTABLE

WATER TIGHT TESTS PRIOR TO BACKFILLING OF WET WELL AND TANKS PER ACCEPTABLE

ALL TESTING SHALL BE PERFORMED PRIOR TO ACCEPTANCE OF THE SEWER SYSTEM.

H. THE CONTRACTOR SHALL NOTIFY AND COORDINATE A SITE MEETING WITH THE ENGINEER PRIOR TO PLACING FINAL PAVING COURSE. LAYOUT AND FINAL REQUIRED DIMENSIONS ARE TO BE REMEMBED AT THIS MEETING PRIOR TO PAVING OPERATION. REQUIREMENTS SHALL BE PER MASSDOT STANDARD SPECIFICATIONS.

I. FINAL STABILIZATION AND PLANTINGS PRIOR TO REMOVING ANY SEDIMENT AND EROSION CONTROL DEVICES.

APPROVED IN ACCORDANCE WITH THE SUBDIVISION CONTROL LAW.
DATE APPROVED MASHPEE PLANNING BOARD
DATE SIGNED

FOR PERMIT ONLY - NOT FOR CONSTRUCTION

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ENGINEERING & SURVEYING

#### BAXTER NYE **ENGINEERING &** SURVEYING

Registered Professional Engineers and Land Surveyors

78 North Street - 3rd Floor

Phone - (508) 771-7502 Fax - (508) 771-7622

	STAMP	STAMP
4.	MATTHEW PHONE	
	O'MAC CO	ia.

CONSULTANT

PREPARED FOR: SOUTHWORTH MASHPEE PROPERTIES, LLC 130 Willowbend Drive Mashpee MA 02549

PROJECT TITLE

178, 182, 184 and 186 Quinaquisset Avenue Mashpee, MA, 02601

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		 DESCRIPTION

Legend & General Notes

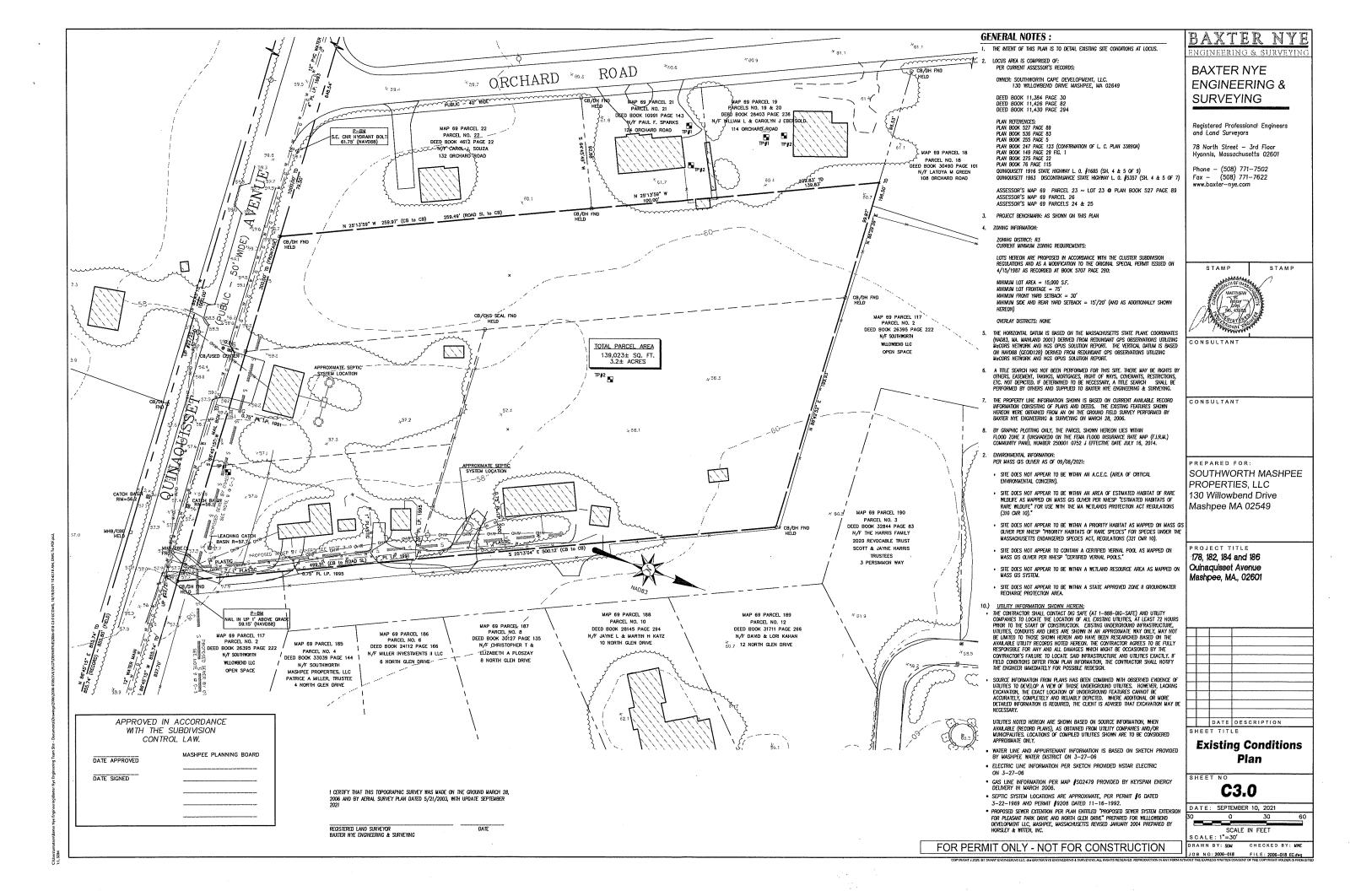
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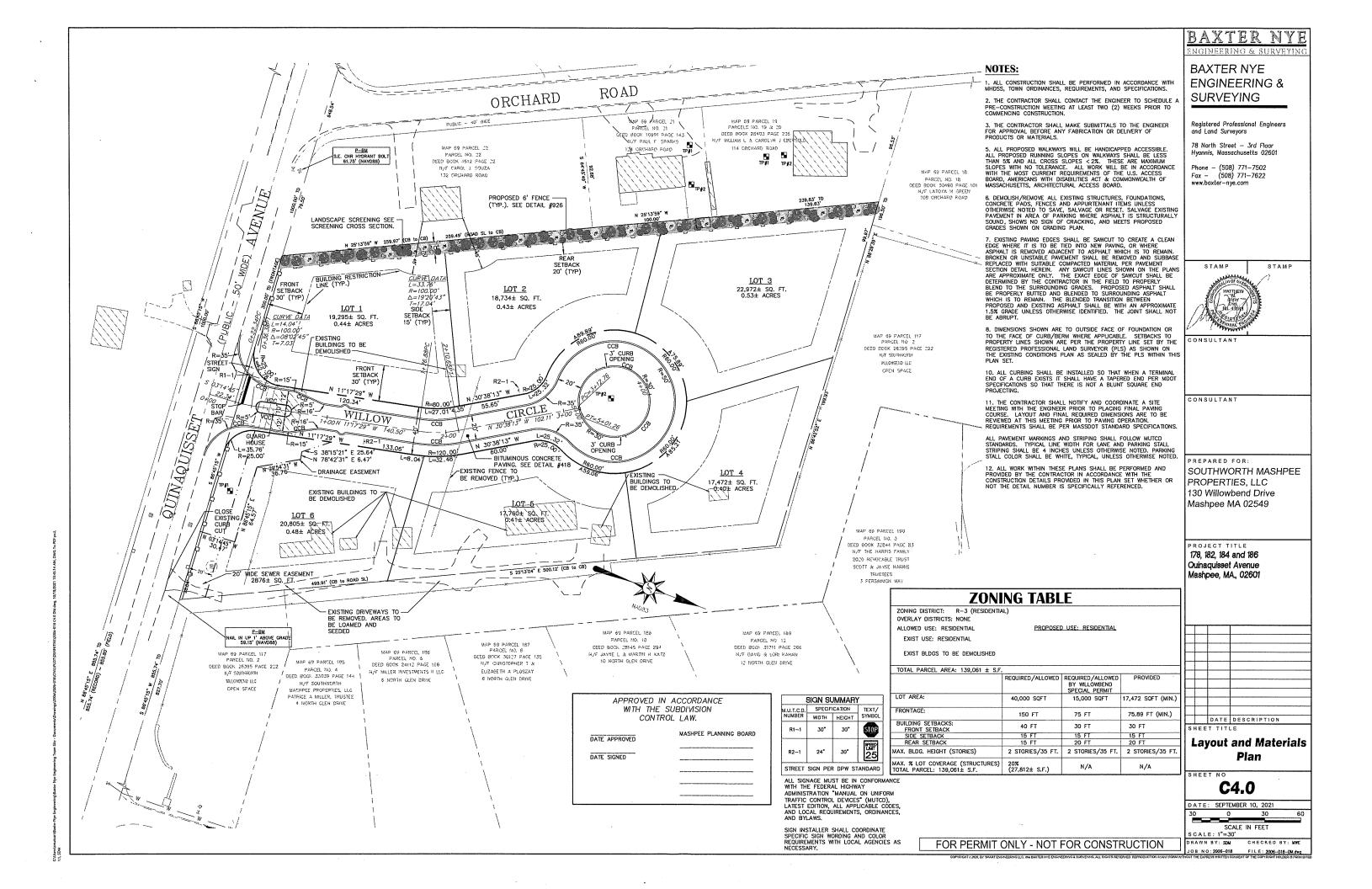
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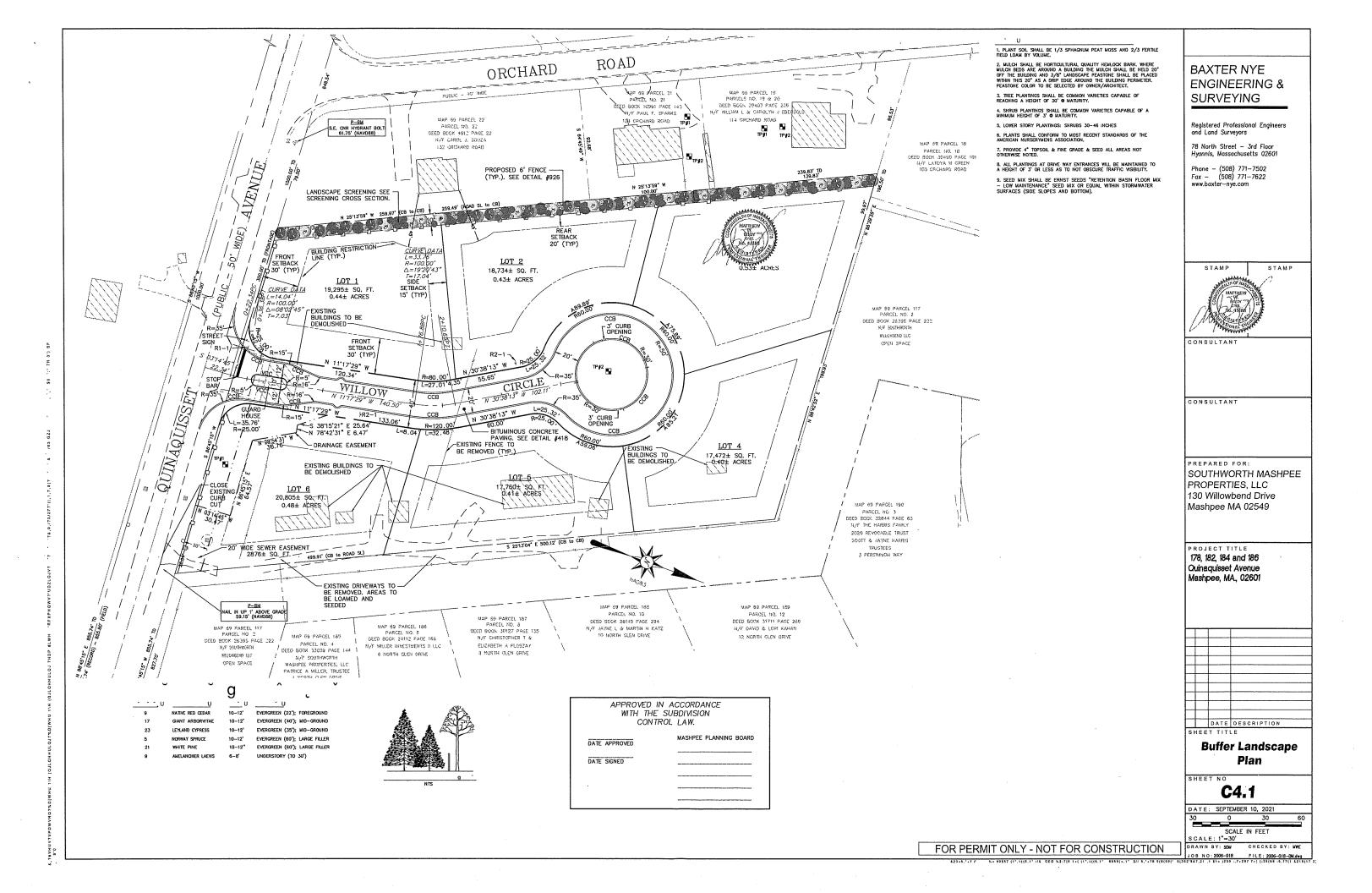
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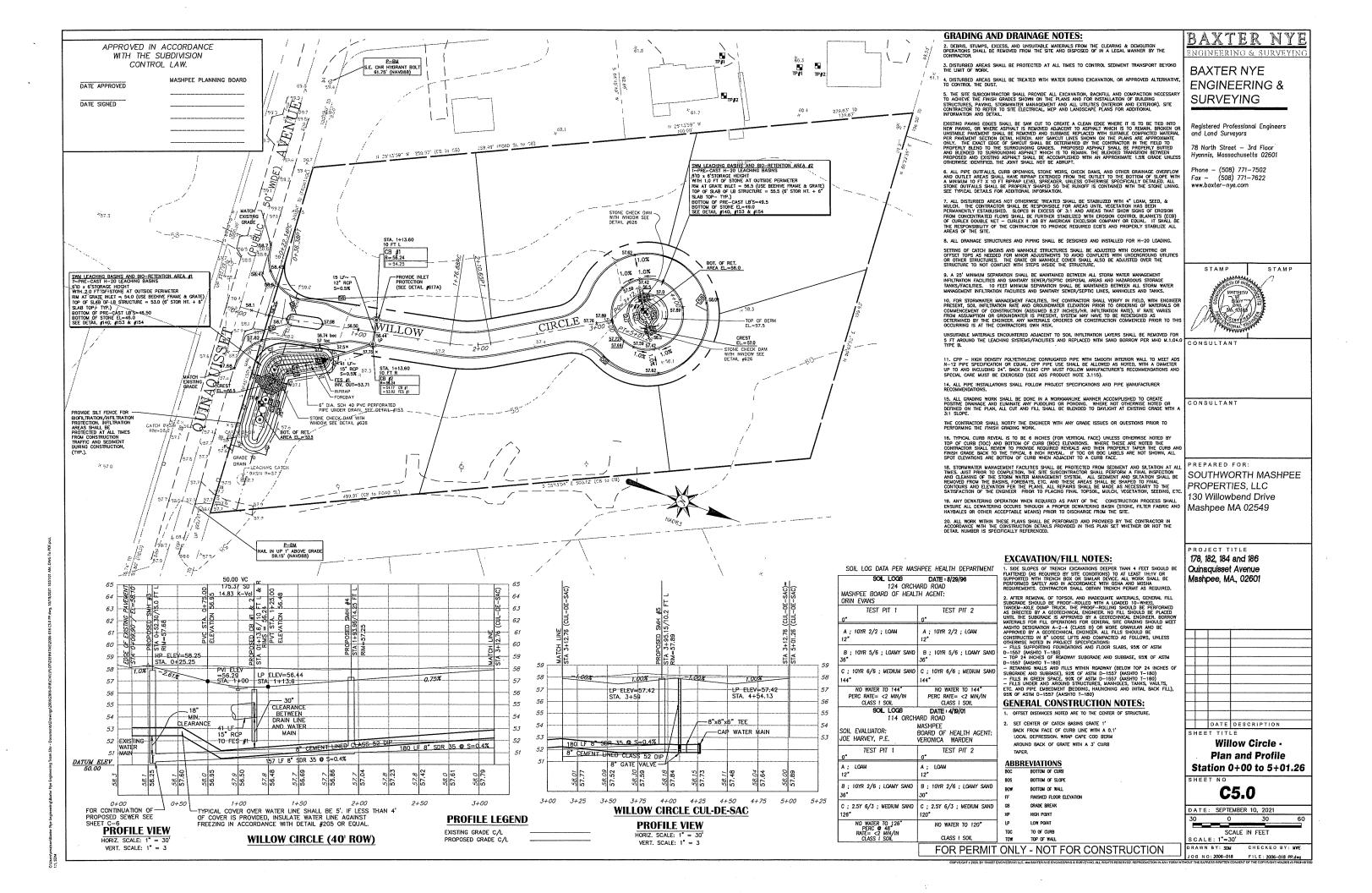
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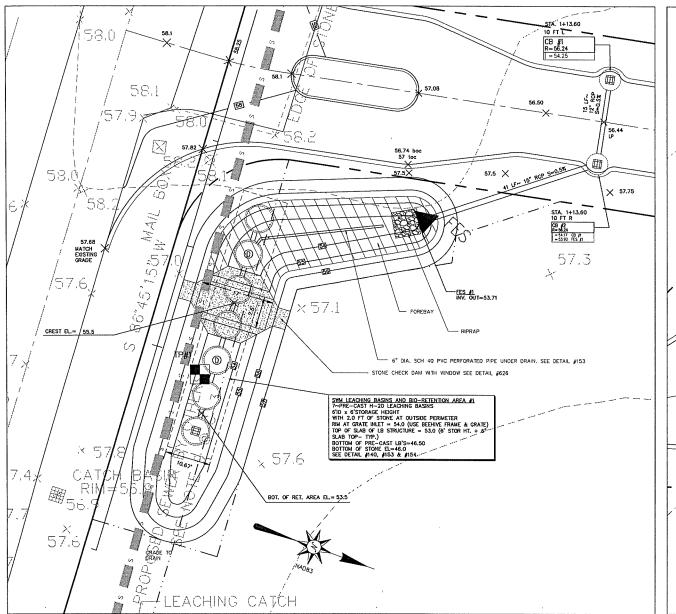
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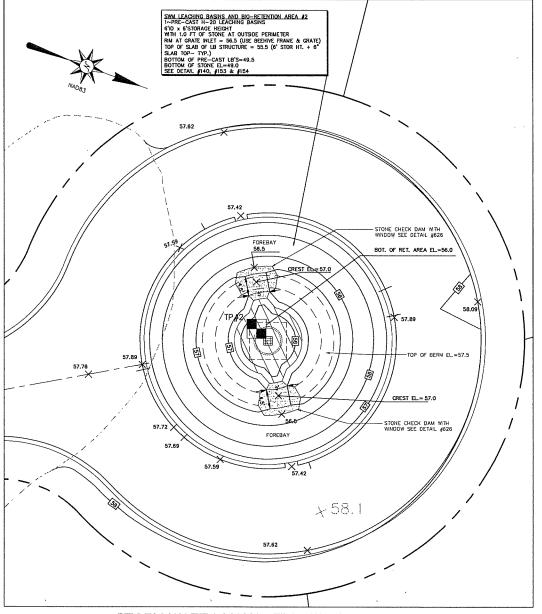












### STORM WATER MANAGEMENT FACILITY #1

SCALE 1'' = 10'

STORM WATER MANAGEMENT FACILITY #2

SCALE 1" = 10'

90L LOGS (	DATE: 04/30/10
SOIL EVALUATOR: STEPHEN MATSON, P.E.	
TEST PIT 1	TEST PIT 2
o* G.S.E. = 57.0	o* G.S.E. = 58.0
A ; 10YR 4/7 ; SANDY LOAM	•
8" (ELEV 56,33)	12" (ELEY 57.00)
B ; 10YR 5/6 ; SANDY LOAM	B; 10YR 5/6; SANDY LOAM
32" (ELEV 54.33)	40" (ELEV 54.66)
C ; 10YR 6/3 ; MED. SAND	C ; 10YR 6/3 ; MED. SAND
156" (ELEY 44.00)	132" (ELEV 47.00)
NO WATER AT 156" (ELEV 44.00)	NO WATER AT 132" (ELEV 47.00)

### **GENERAL NOTES:**

1. IN ORDER TO PRESERVE THE INFILITATION RATE OF THE SOIL IN THE BASINS, ALL AREAS CONTRIBUTING RUNOFF TO THE PROPOSED INFILITATION DEVICES MUST BE STABILIZED PRIOR TO THE DEVICES RECEIMING SURFACE RUNOFF.

2. MAINTENANCE OF THE STORMWATER MANAGEMENT FACILITIES SHALL BE IN ACCORDANCE WITH THE EXECUTED INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE STORMWATER MANAGEMENT FACILITIES AND SHALL BE THE RESPONSIBILITY OF THE OWNER AND THE ASIGNEES.

APPROVED IN ACCORDANCE WITH THE SUBDIVISION CONTROL LAW.

DATE APPROVED

MASHPEE PLANNING BOARD

DATE SIGNED

Stormwater Management Plan

DATE DESCRIPTION

SHEET NO

C5.1

**BAXTER NYE** 

**ENGINEERING &** SURVEYING

Registered Professional Engineers and Land Surveyors

STAMP

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CONSULTANT

PREPARED FOR:

PROJECT TITLE

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Mashpee, MA., 02601

PROPERTIES, LLC 130 Willowbend Drive Mashpee MA 02549

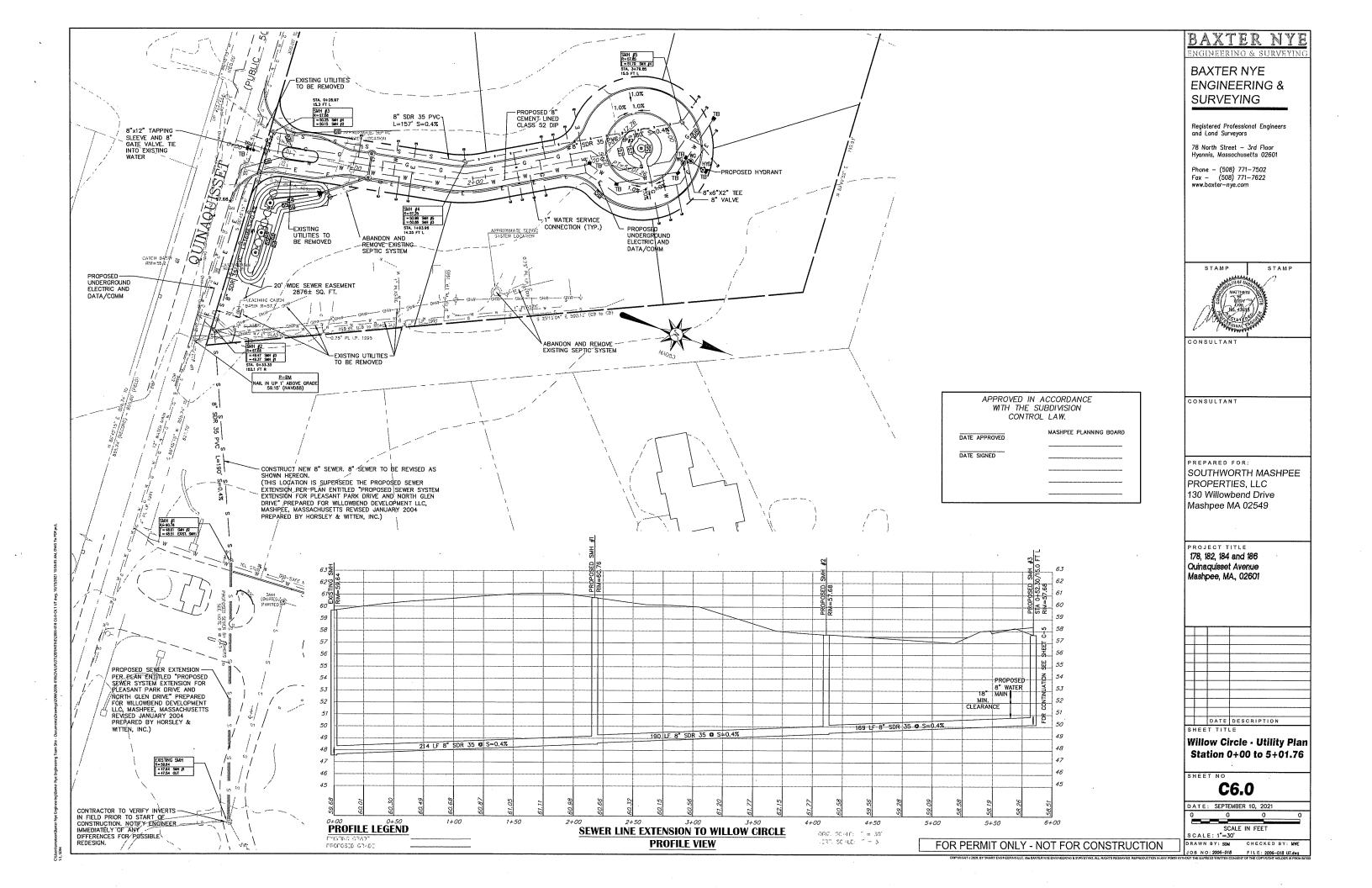
SOUTHWORTH MASHPEE

DATE: SEPTEMBER 10, 2021

SCALE IN FEET SCALE: 1"=10"

DRAWN BY: SON CHECKED BY: MYE JOB NO: 2006-018

FOR PERMIT ONLY - NOT FOR CONSTRUCTION



### **UTILITY NOTES:**

2, 12" MINIMUM VERTICAL CLEARANCE SHALL BE MAINTAINED BETWEEN ALL UTILITY CROSSINGS.

3. A MINIMUM 10' HORIZONTAL SEPARATION SHALL BE MAINTAINED BETWEEN WATER AND SEWER LINES, THE SEWER WATER LINES CROSS SEWER LINES, THE SEWER LINE SHALL BE LOCATED WITH A MINIMUM VERTICAL CLEARANCE OF 18' BELOW THE WATER LINE FOR THE SEWER WATER LINE FOR THE WATER LINE FOR THE WATER LINE FOR THE WATER LINE AND SEWER LINE SPRANTION AS STIPULATED ABOVE, BOTH THE WATER LINE AND SEWER LINE AT THE GROSSING LOCATION SHALL BE CONSTRUCTED OF MECHANICAL JOINT CEMENT—LINE BUTCHE (FIRO PIPE FOR COME FULL 20' PIPE LENGTH OR ANOTHER EQUIVALENT THAT IS WATERTIGHT AND STRUCTURALLY SOUND. THE JOINTS FOR BOTH PIPES STOULD BE ARRANGY FROM THE GROSSING SERVICE AND FOR SEVERE LINE AS TOSSIBLE SHOT PIPES STOULD BE PRESSURE LISTED TO 190 FIS 10 DESIDER THAT THE WATER TICH AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK ANDY FROM THE GROSSING SEVERAL BE LOCATED AS PARK AND FROM THE CHOST OF THE MEDITAL BROWN THE SEVERAL BE LOCATED AS PARK AND FROM THE GROSSING SEVERAL BE LOCATED AS PARK AND FROM THE CHOST OF THE MEDITAL BROWN THE SEVERAL BR

4. SEWER MAINS TO BE 8" MIN. SDR-35 PVC WITH A MIN. SLOPE OF 0.40% UNLESS OTHERWISE NOTED. SEWER MAINS AND SEWER FORCE MAINS TYPICAL UNLESS OTHERWISE ROTED. SEWER MAINS AND SEWER FORCE MAINS TIPIC COVER OVER SEWER LINE SHALL BE 6'. IF LESS THAN 4' OF COVER IS PROVIDED, INSULATE SEWER LINE AGAINST FREEZING IN ACCORDANCE WITH DETAIL \$205 OR EQUAL.

5. RESIDENTIAL SEMEN BUILDING CONNECTIONS SHALL BE 4" MIN. SCHEDULE 40 PVC. U.O.N., AT A MIN. SCHED 1225 U.O.N. INSTALL A CLEANOUT ON EACH SERVICE LINE AT DISTANCE OF 10'-4(L.O.N.) OFF THE FOUNDATION. AT A CHANGE OF HORIZONTAL DIRECTION GREATER THAN 45" OR WERE MORE THAN ONE CHANGE OF HORIZONTAL DIRECTION GREATER THAN 45" OCCURES WITHIN 40 FEET. CLEANOUTS SHOULD BE LOCATED AT INTERVALS OF NOT MORE THAN 100 FEET.

7. WATER MAINS TO BE CEMENT LINED DUCTILE IRON PIPE CLASS 52, U.O.N. ALL CONSTRUCTION METHODS AND MATERIALS SHALL BE AS RECURED BY, AND IN ACCORDANCE MITH THE TOWN OF MASSIPEE MATER DEPARTMENT AND APPLICABLE ANNA SECONDATION OF MASSING SANCE TO BE 200 FB. CTS PLASTIC UNE U.O.M., TO OMISION SPECIFICATIONS SLEEVED WHERE REQUIRED.

8. GATE VALVES SHALL BE MUELLER ONLY, IRON BODY, BRONZE MOUNTED, DOUBLE DISC, WITH TWO INCH OPERATING NUT WITH IECHANICAL JOINT HUBS. GATE VALVES SHALL CONFORM IN EVERY RESPECT TO ALL APPLICABLE AWWA STANDARDS. VALVES SHALL BE DESIGNED FOR 200 PSI WORKING AND 300 PSI TEST PRESSURE AND SHALL OPEN LETT.

9. VALVES SHALL ALSO CONFORM TO THE SPECIFICATIONS OF THE AWWA AS TO SZE STEM, PITCH OF THREAD, GASKET SEATING AREA SHALL BE FULLY MACHINED TO THE FIXED DIMENSIONS AND FOLERANCES AS PER AWWA SPECIFICATIONS. ALL VALVES SHALL BE PROVIDED WITH "O" RINGS. THE DESIGN OF THE VALVE SHALL BE SUICH THAT THE SEAL PLATE CAN BE FITED WITH NEW" "O" RINGS WHILE THE VALVE IS UNDER PRESSURE IN THE FULLY OPEN POSITION.

10, VALVE BOXES AND CURB BOXES SHALL BE BUFFALO OR PIONEER AND SHALL BE FURNISHED AND INSTALLED FOR ALL VALVES. THEY SHALL BE CAST ROW, TAR COATED, SUDING TIPE ADJUSTABLE VALVE BOXES TOGETHER WITH CAST IRON COVERS. SEE WATER DEPARTMENT REGULATIONS.

11. TYPICAL COVER OVER WATER LINE SHALL BE 5'. IF LESS THAN 4' OF COVER IS PROVIDED, INSULATE WATER LINE AGAINST FREEZING IN ACCORDANCE WITH DETAIL \$205 OR EQUAL.

13. GAS, ELECTRIC, DATA/COM IS SHOWN SCHEMATICALLY HEREON. ALL LABOR, WORK, EQUIPMENT AND MATERIALS FOR INSTALLATION OF THESE UTILITIES SHALL BE OWNED AND PETFORMED BY THE CONTINACTOR. UTILITIES SHALL BE INSTALLED WITH A MINIMUM COVER OF 3 FEET U.ON. OR OTHERWISE DIRECTED BY THE CONTINULING UTILITY COMPANY, CONTRACTOR SHALL COORDINATE ALL FINAL LAYOUTS AND DETAILS WITH APPLICABLE UTILITY COMPANY.

14. POWER AND COMMUNICATION DUCT BANKS SHALL BE INSTALLED IN ACCORDANCE WITH DETAIL (C-832). WHERE A DESIGN BY THE UTILITY COMPANY OR MEP ENGINEERS ARE PROVIDED THOSE SHALL SUPERCEDE (C-832).

15. EXTERIOR RESIDENTIAL LIGHTING SHALL BE LOW WATTAGE TYPE AND DIRECTED SO AS TO KEEP ALL UGHTING WITHIN SUBJECT LOT. ANY SITE LIGHTING USED SHALL BE LOW WATTAGE STREET LAWTERNS ON 15' MAXIMUM POLE LOCATED ADJACENT TO SUBJECT LOT DRIVENAY, PARKING OR WALKWAYS. UGHTING FIXTERS TO BE FULL 90' CULTOF ("OANK SAY" COMPLIANT).

16. ALL UTILITY CUTS THROUGH EXISTING CONCRETE OR BITUMINOUS CONCRETE PAYED SURFACES SHALL BE SAW CUT. BACK FILLING OF TRENCH SHALL INCLUDE 12" IN DEPTH FLOWABLE FILL. TO BE THE BASE COURSE OF THE SURFACE TREATMENT. THE SURFACE TREATMENT SHALL THEN BE REPLACED IN KIND.

17. STE CONTRACTOR TO OWN ALL EXCAVATION, TRENCHING, & BACKFILLING FOR ALL UTILITIES AND INSCELLANEOUS WORK INCOCENTAL TO THE SCOPE OF THE PROJECT AND CONTRACT DOCUMENTS. CONTRACTOR SHALL REFER TO LANDSCAPE PLANS FOR ADDITIONAL INFORMATION AS APPLICABLE.

18. ALL WORK WITHIN THESE PLANS SHALL BE PERFORMED AND PROVIDED BY THE CONTRACTOR IN ACCORDANCE WITH THE CONSTRUCTION DETAILS PROVIDED IN THIS PLAN SET WHETHER OR NOT THE DETAIL NUMBER IS SPECIFICALLY REFERENCED.

19. ALL COVERS, CURB BOXES, GRATES, AND OTHER FINISH SURFACES SHALL BE RESET TO THE NEW FINISH GRADE.

20. WHERE UTILITIES CALLED OUT TO BE ABANDONED IN PLACE OR REMOVED AS NEEDED CONTRACTOR SHALL OWN REMOVING PIPE AND APPURTENANCES AS NEEDED WHERE THEY CONFLOCT WITH PROPOSED WORK.

BAXTER NYE

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STAMP STAMP

CONSULTAN

CONSULTANT

PREPARED FOR: SOUTHWORTH MASHPEE PROPERTIES, LLC 130 Willowbend Drive Mashpee MA 02549

PROJECT TITLE

178, 182, 184 and 186 Quinaquisset Avenue Mashpee, MA., 02601

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		DATE	DESCRIPTION				
SHEET TITLE							

Willow Circle -**Utility Notes** 

SHEET NO

C6.1

DATE: SEPTEMBER 10, 2021

SCALE: NTS

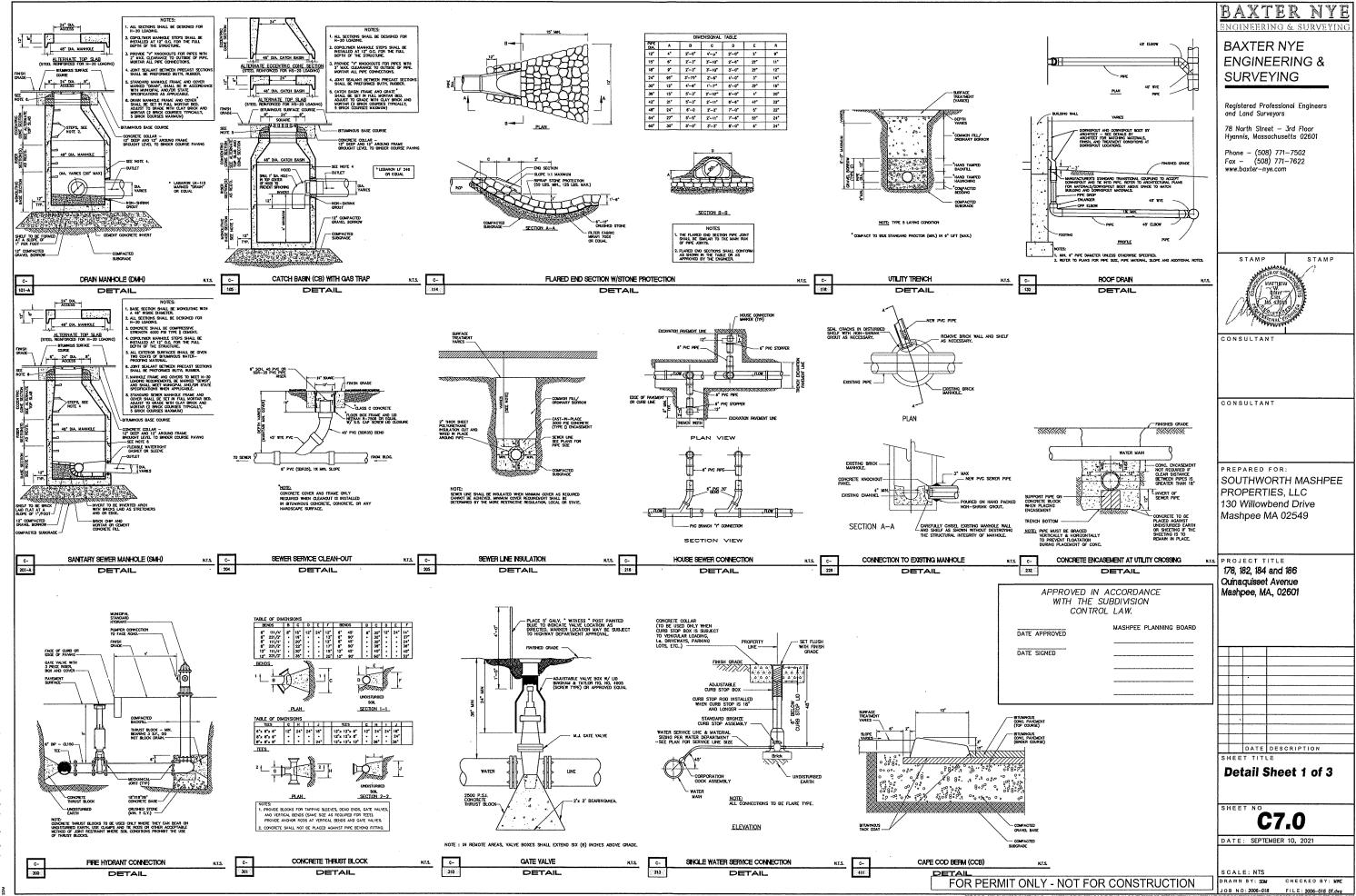
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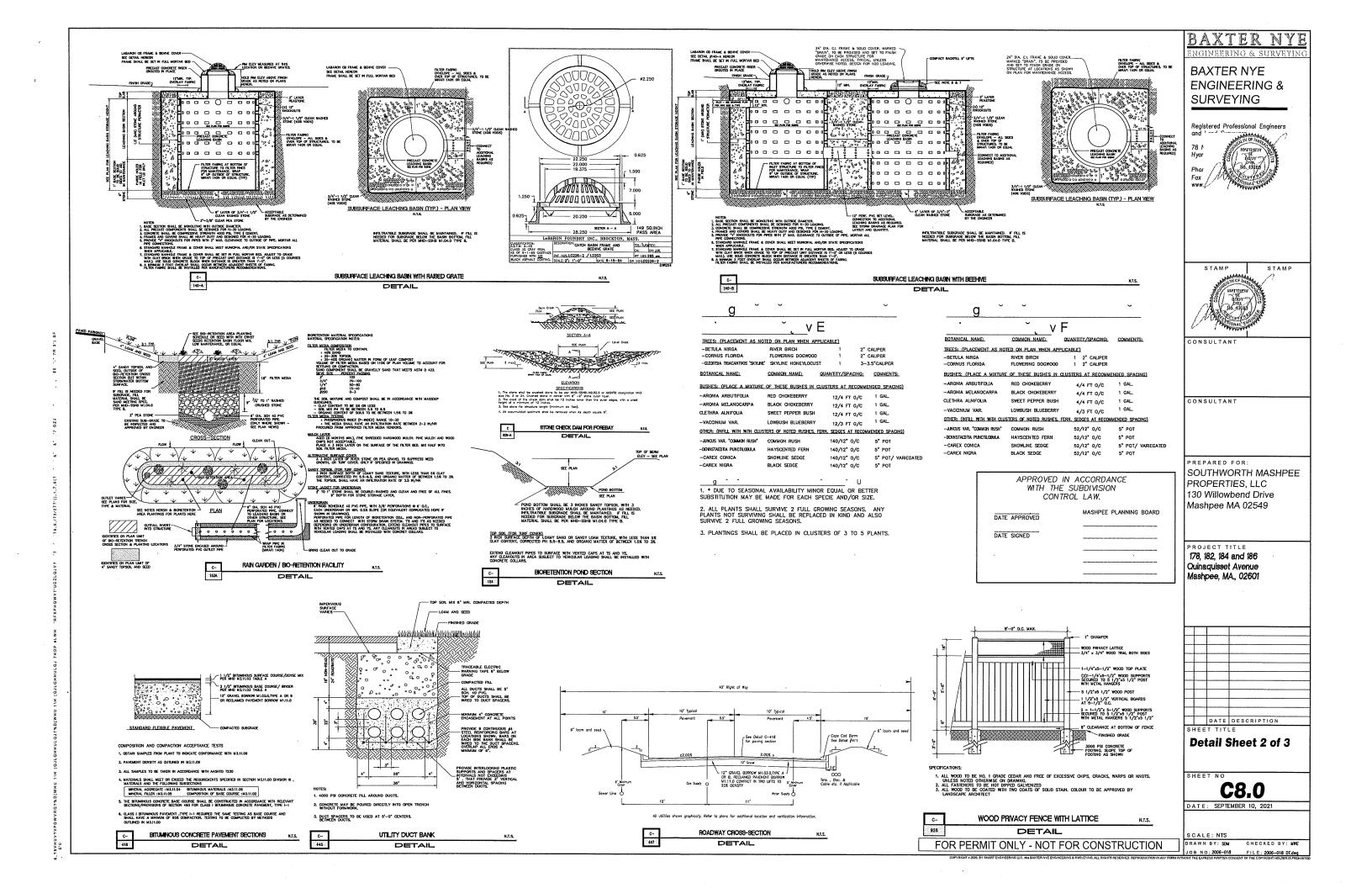
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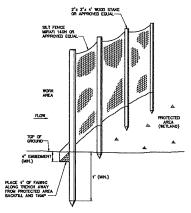
MASHPEE PLANNING BOARD

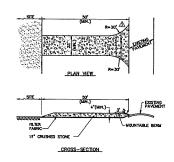
APPROVED IN ACCORDANCE WITH THE SUBDIVISION CONTROL LAW.

DATE APPROVED DATE SIGNED









I. ENTRANCE MOTH SHALL BE A THENTY-FIVE (25) FOOT MINIMUM, BUT NOT LESS THAN THE FULL MOTH AT POINTS WHERE INCRESS OR FORESS COLLEGE

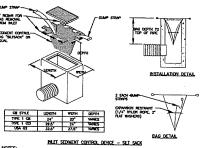
2. THE DITTAMAS SHALL BE MANIFARD IN A CONCIDION WHO I SHALL INSCRIPT WARRONG ON ADDRESS OF SEARCH OF OTHE PRICE OF THE SEARCH WARRANCE PRICES OF THE SEARCH WARRANCE OF THE MANIFACTURE OF THE MANIFACTURE

STABILIZED CONSTRUCTION ENTRANCE

DETAIL

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R.T.S.



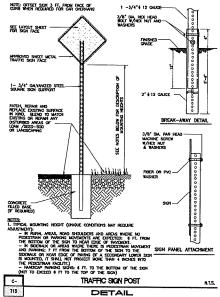
THE DOMENSION CHART ABOVE IS FOR SUMMARD CATCH BASINS AND INLETS ONLY, THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING THE CORRECT SIZE DEVICE FOR EACH MILET.

FOR HON-STANDARD CATCH BASINS AND INLETS, THE CONTRACTOR SHALL MEASURE DIMENSIONS IN THE FIELD AND ORDER THE APPROPRIATE SIZE(S). THE WLET SEDMENT CONTROL DEVICE SHALL BE OF HIGH FLOW DESIGN (200 GAL/MIN/FT), AS PER THE MANUFACTURERS'S SPECS.

THE SEDMENT CONTROL DEVICE SHALL BE INSPECTED ONLY BY THE CONTRACTOR AND MANUARED A LARGAM ONCE FOR MONTH OR WITCH THE 48 HOURS FOLLOWING A STORM EVENT, FLIER SHALL BE CLEAVED IN A MINISCR THICK DEVICES THAT ALL SEDMENT REMAYS ON STEE SUBSTITUTION OF A SHEET OF FILTER FASRIC PLACED OVER THE OPENING OF THE INLET IS NOT

RECESSED CURB INLET CATCH BASINS MUST BE BLOCKED WHEN USING FILTER FABRIC INLET SACKS, SZZE OF FILTER INLET SACK TO BE DETERMINED BY MANUFACTURER. THE FILTER SHALL BE REPLACED OR CLEANED WHEN THE BAG BECOMES HALF TULL.

N.T.S. DETAIL



APPROVED IN ACCORDANCE WITH THE SUBDIVISION CONTROL LAW. MASHPEE PLANNING BOARD DATE APPROVED DATE SIGNED

### CONSTRUCTION SEQUENCE

- 1. INSTALL SILT FENCING TO ESTABLISH THE LIMIT OF WORK AROUND THE PERIMETER OF THE PROJECT.
- 2. FOLLOW TURTLE PROTECTION PLAN REQUIREMENTS AND PROTOCOL

SILT FENCE BARRIER

DETAIL

- 3. CONSTRUCT TEMPORARY CONSTRUCTION ENTRANCE AREAS.
- DISCHARGES FROM DEWATERING OF EXCAVATIONS SHALL NOT BE DIVERTED DIRECTLY INTO ANY WETLANDS OR EXISTING STORM DRAINS WITHOUT PRETREATMENT VIA SETTLING BASINS.
- 5. INSTALL HAY BALE CHECK DAMS ALONG CENTER OF SWALES AT 100' O.C., AS NECESSARY,
- 6. CLEAR AND GRUB SITE WITHIN THE LIMIT OF WORK.
- 7. ESTABLISH ROUGH SUB GRADES FOR ROAD. IN ORDER TO PRESERVE THE INFILTRATION RATE OF THE SOIL IN THE BASINS, ALL AREAS CONTRIBUTING ROUGHT FOR THE PROPOSED INFILTRATION DEFICES MUST BE STABLIZED PROOR TO THE DEFOCES RECEIVING SURFACE RUNGET.
- 8. PERFORM UTILITY AND ROAD CONSTRUCTION.
- 9. INSPECT AND MAINTAIN EROSION CONTROL MEASURES AFTER RAINFALL EVENTS AND A MINIMUM OF ONCE PER WEEK.
- REMOVE SEDIMENT BUILDUP AT EROSION CONTROL DEVICES AS NEEDED, REDISTRIBUTE MATERIAL OVER SITE IN CONFORMANCE WITH EARTHWORK SPECIFICATIONS.
- 11. ONCE ALL DRAINAGE STRUCTURES ARE INSTALLED, INSTALL FILTER FABRIC AND STONE AROUND ALL NEW STRUCTURES AND MAINTAIN THEM UNTIL PAYEMENT IS IN PLACE AND VECETATION IS ESTABLISHED. ALL OUTFALLS SHALL BE STABLIZED WITH STOKE PROTECTION AS REQUIRED.
- 12. ALL CUT AND FILL SLOPES SHALL BE TEMPORARILY STABILIZED WITH TOP SOIL, SEED AND MULCH OR CURIES AS REQUIRED IF CONSTRUCTION ACTIVITY CEASES ON SAID SLOPES FOR A PERIOD OF SEVEN DAYS OR GREATER. ALL SLOPES SHALL BE PERMANENTLY STABILIZED AS REQUIRED IMMEDIATELY UPON COMPLETION OF FINAL GRADING.
- 13. COMPLETE FINISH GRADING AND STABILIZATION OF SITE. PLACE FINAL PAYING COURSE.
- 14. REMOVE SEDIMENT FROM ALL DRAINAGE STRUCTURES, DRAIN MANHOLES AND PIPES AFTER COMPLETION F CONSTRUCTION. REMOVE AND REGRADE TEMPORARY BERMS, SWALES, CHECK DAMS, ETC. STABILIZE OF DISTURBED AREAS.
- 15. CLEAN OUT ALL SEDIMENT FROM SYM BASIN FOREBAYS AND OUTLET STRUCTURES. REGRADE TO CONTOURS PER DESIGN. STABILIZE ALL SLOPES AS REQUIRED. REPLACE AND/OR CLEAN FILTER FABRIC AND STONE AT SYM FOREBAYS.
- REMOVE SILT FENCE AND PERIMETER CONTROL UPON ESTABILISHMENT OF PERMANENT GROUNDCOYER, STABILIZE ALL AREAS WHERE CONTROLS WERE REMOVED.

### OPERATION/MAINTENANCE PLAN

### 1. THIS OPERATION AND MAINTENANCE PLAN SHALL BE PERFORMED BY THE GENERAL CONTRACTOR DURING CONSTRUCTION OPERATIONS AND BY THE OWNER ONCE THE FACULTIES ARE COMPLETED AND PUT INTO, OPERATION.

2. PERSONNEL ASSOCIATED WITH THE CONSTRUCTION OF THIS PROJECT SHALL BE INFORMED THAT THE MAINTENANCE OF ILLIATION CONTINUED AS THE SPECIEDENC OVER NORMAL CONSTRUCTION ACTIVITIES. ADJACENT PROPERTIES AND STREETS SHALL BE PROTECTED FROM EROSON OF SILTANON CONDITIONS.

J. INSPECTION AND MAINTENANCE, AS OUTLINED HEREIN, SHALL BE PERFORMED FOUR TIMES WITHIN THE FIRST YEAR OF OPERATION. THENCE, INSPECTIONS AND MAINTENANCE SHALL BE CONDUCTED ON A SEMIANUAL BASIS (2 TIMES A YR.) AND AFTER ALL LARGE STORMS. AN INSPECTION REPORT SHALL BE MAINTAINED.

4. ACCUMULATED DEBRIS IN CATCH BASINS, WATER QUALITY INLETS, OIL/WATER SEPARATORS AND LEACHING BASINS SHALL BE REMOVED BEFORE IT EXCEDS 12 NICHES IN DEPTH AND DISPOSED OF PROPERLY. BROKEN OR DAMAGED GAS TRAPS/HOODS SHALL BE IMMEDIATELY REPAIRED OR REPLACED TO ENSURE ADEQUATE FUNCTION.

5. A VISUAL INSPECTION SHALL BE MADE AT ALL ACCESS MANHOLES, CATCH BASINS, WATER QUALITY INLETS, OIL/WATER SEPARATORS, LEACHING BASINS, PIPES AND DRAINAGE CHANNELS FOR THE ENRIES STORM DRAINAGE STRIFFEM. THE GENERAL CONDITION OF THESE STRUCTURES SHOLLD BE REVEWED AND A ACCUMULATED DEBNIS SHALL BE REVOYED. THE CONDITION OF ALL OUTLETS SHALL BE NOTED AND A DESCRIPTION OF THE DRAINAGE STRUCTURES SHOLLDED IN THE PEPORT, DELETERIOUS MATERIALS SHALL BE REMOYED FROM THESE STRUCTURES AND THE DRAINAGE CHANNELS IN ORDER FOR THE SYSTEM TO FUNCTION PROPERLY.

6. ALL OUTLETS, DRAINING CHANNELS, AND SLOPES SHALL BE KEPT STABILIZED. ANY EROSION SHALL BE REPAIRED IMMEDIATELY.

7. ACCUMULATED SEDIMENT SHALL BE REMOVED FROM THE SYM BASIN BEFORE IT EXCEEDS 1' IN DEPTH, OR AT LEAST ONCE EVERY 5 YEARS. THE LOW FLOW OUTLET SHALL BE CLEANED AND INSPECTED FOR PROPER FUNCTIONING, ALL DEBRIS OR DELETERIOUS MATERIAL SHALL BE REMOVED FROM OUTLET STRUCTURE MOO OUT FALL PLUNCE POOL. BASIN SLOPES SHALL BE MAINTAINED WITH A GRASS STAND OF AT LEAST 3'. GRASS SHALL BE MOWED AT LEAST THE A YEAR AND LEAST SHALL BE REMOVED. AND THE MOOD Y VEGETATION GROWING IN EMBANKMENTS OR NEAR CONTROL STRUCTURE SHALL BE REMOVED.

8. THE FOLLOWING MINIMUM INFORMATION SHALL BE RECORDED:

• DATE OF INSPECTION
• GREEAL CONDITION OF THE ENTIRE SYSTEM
• CORRECTIVE MAINTENANCE ACTIONS TAKEN TO ENSURE ADEQUATE FUNCTION AND

WHEN

PERFORMED.

A COPY OF THESE INSPECTION REPORTS SHALL BE FURNISHED TO THE PLANNING BOARD UPON REQUEST.

9. MAINTENANCE OF THE STORMWATER MANAGEMENT FACULTY SHALL BE IN ACCORDANCE WITH THE EXECUTED INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE STORMWATER MANAGEMENT FACULTIES AND SHALL BE THE RESPONSIBILITY OF THE ONDER AND THE ASSENCES. ATTEM THE MAINTENANCE OF THE SHALL BE CONTRACTOR MUST NOTIFY THE BUILDING DEPARTMENT AND THE PLANNING BOARD ENGINEER AT LEAST THE CLOT DATE STATE OF CONSTRUCTION.

### **SWM SPECIFICATIONS**

ALL MATERIALS AND WORK SHALL BE IN ACCORDANCE WITH THE MASSDOT/MASS-IIGHWAY STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES (MHDSS), SPECIFIC ON-SITE SOIL SPECIFICATIONS IF A GEOTECHNICAL REPORTS WAS PEFFORMED, AND THE PLANS HERBIN. WHERE CONFLICTS OF INFORMATION EXIST, THE MORE RESTRICTIVE SHALL APPLY, ALL REPERENCES TO ASTM AND AASHTO SPECIFICATIONS APPLY TO THE MOST RECENT VERSION.

(NOTE: THE CONTRACTOR SHALL BE RESPONSIBLE TO FULLY UNDERSTAND THIS INFORMATION AND INTENT OF THE SWM FAQUITIES AND SHALL REVIEW THIS INFORMATION WITH THE ENGINEER AS NEEDED.

### SITE PREPARATION AND GRADING:

AREAS DESIGNATED FOR BORROW AREAS, EMBANKMENT, AND STRUCTURAL WORKS SHALL BE CLEARED, GRUBBED AND STRIPPED OF TOP-SOIL ALL TREES, VEGETATION, ROOTS AND OTHER OBJECTIONABLE MATERIAL SHALL BE REMOVED. CHANICLE BANKS AND SHAPP BREAKS SHALL BE SLOPED TO NO STEEPER THAN 1:1.

AREAS TO BE COVERED BY THE INFILTRATION AREA, BASIN OR RESERVOIR MILL BE CLEARED OF ALL TREES, BRUSH, LOSS, FRICES, RUBBISH AND OTHER OBJECTIONABLE MATERIAL UNILESS OTHERWISE DESIGNATED ON THE PLANS. TREES, BRUSH AND STUMPS SHALL BE CLIT PAPPONDIAMETLY LEVEL MITH THE GROUND SURFACE. FOR DRY STORMMATER MANAGEMENT PONDS, A MINIMUM OF A 50-FOOT RADIUS AROUND THE INLET STRUCTURE SHALL BE CLEARED. ALL CLEARED AND GRUBBED MATERIAL SHALL BE DISPOSED OF OUTSIDE AND BELOW THE UNITS OF THE DAM, BASIN AND RESERVOIR AS DIRECTED BY THE OWNER OF MIS REPRESENTATIVE.

THE CONTRACTOR SHALL RESURE ALL SWA AREAS WHICH ARE DESCREED FOR INFLITRATION SHALL HAVE THEIR EUSTING INFLITRATION STALL HAVE THEIR EUSTING INFLITRATIONS FOR THE STORMWATER INFLITRATIONS FOR THE STORMWATER ANALOGED AT THE HEREIN SPECIFED LEVATIONS FOR THE STORMWATER MANAGEMENT FACILITY. THE INFLITRATIONS LAYER BELOW THE DESIGN LEVATION SHALL NOT BE MINED, ALTERED OR AFFECTED FROM CONSTRUCTION IN ANY WAY. WITHIN BASIN FOOTPRINTS, BOTTOMS, AND NON-EMBANGMENT (NON-DAM) SIDES, DOES, NO UNSUITABLE OF LESS PERFUCIOUS MATERIAL SHALL BE PLACED OVER THESE LAYER SWHICH COULD AFFECT THE INFLITRATION FAIR. UNLESS OTHERMSE SPECIFICALLY IDENTIFIED BY THE ENGINEER. IF SUBGRADE AND AFFECT THE INFLITRATION SHALL NOT BE SUBJECT OF A STAN MATERIAL SHALL BE PLACED SOFT BASES. THE FILL OVERLY COMPACITED. INFLITRATION SHALL NOT BE OVERLY COMPACITED. INFLITRATION SHALL SHALL BE PLACED SHOP EARES. THE FILL OVERLY COMPACITED. INFLITRATION SHALL NOT BE SUBJECT. SHALL BRADE SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED. SHOW THE SHALL BE PLACED SHALL BE PLACED. THE SHALL BE PLACED BY THE ENGINEER SHALL NOT BE SUBJECT. SHALL HAVE AN IMPERVOUS CORE AS NOTED BELOW AND IN THE REMOVED SHALL BE PLACED. SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED. SHALL BE PLACED SHALL BE PLACED. SHALL BE PLACED SHALL BE PLACED SHALL BE PLACED. SHALL BE PLA SECTIONS). THE CONTRACTOR SHALL BE RESPONSIBLE TO FULLY UNDERSTAND THIS INFORMATION AND INTENT OF THE SYM FACILITIES AND SHALL REVIEW THIS INFORMATION WITH THE ENGINEER AS NEEDED.

TOPSOIL OR PLANTING MATERIAL REQUIRED FOR SEEDING, SOO OR YEGETATION GROWTH ON THE BASIN BOTTOM AND NON-CEMBANNEMT SIDESLOPES, SHALL BE PLACED IN ONLY A THREE (3) INCH SURFACE DEPTH OF LOAMY SAND SANDY LOAM TOPSOIL (EXCESSIVE TOPSOIL SHALL NOT BE PLACED WHERE INFILITATION IS USED). THE TOPSOIL SHALL NOT BRIBET THE INFILITATION RATE OF THE FACILITY. THE TOPSOIL SHALL BE LESS THAN 5X CLAY CONTENT (AND ASK MATERIALS PASSING THE 2000 SEVE), CORRECTED PH 5.5-5.5, AND ORGANIC MATTER OF BETWEEN TAX TO 3X.

THREE (3) INCHES OF HARDWOOD MULCH SHALL BE PLACED AROUND REQUIRED SHRUBS AND OTHER SPECIFED LANDSCAPE PLANTINGS, MULCH SHALL BE PLACED ACROSS THE BOTTOM OF BIO-RETENTION AREAS IT SPECIFIED IN THE PLAN DETAILS, "MERE A PLANTING PLAN OF SCHEDULE IS NOT DENTRIED FOR THE SWM FACULTIES, THEN THE BOTTOM AND SDE SLOPES OF SWM BASINS AND BIORETENTION FACULTIES SHALL BE STABILIZED AND SEEDED AS FOLLOWS:

- BOTTOM OF BASINS/FACUTES SHALL BE SEEDED AND STABILIZED WITH "NEW ENGLAND CONSERVATION AND
- MILDLIFE SEED MIX".

   SIDE SLOPES SHALL BE SEEDED AND STABILIZED WITH "NEW ENGLAND EROSION CONTROL/RESTORATION SEED MIX"
- MIX.
  THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIRING EROSON, CLEANOUT OF SEDIMENT FROM EROSION,
  AND RESEEDING AS REEDED UNTIL FULL STABILIZATION IS ACHIEVED. THIS SHALL BE REQUIRED THROUGH TWO
  GROWING SEASONS.

NO OTHER MATERIALS UNLESS SPECIFICALLY IDENTIFIED AND REVIEWED BY THE ENGINEER, SHALL BE PLACED ON THE BASIN BOTTOM.

### EARTH FILL FOR EMBANKMENTS ONLY:

MATERIAL — THE FILL MATERIAL SHALL BE TAKEN FROM APPROVED DESIGNATED BORROW AREAS. IT SHALL BE FREE OF ROOTS, STUMPS, MOOD, RUBBISH, STONES GREATER THAN 6°, FROZEN OR OTHER OBJECTIONABLE MATERIALS. FILL MATERIAL FOR THE CENTER OF THE DAM EMBANGMENT AND CUT OFF TRENCH WHICH ARE TO BE IMPERMEABLE SHALL CONFORM TO UNIFIED SOIL CLASSIFICATION GC, SC, CH OR CL. CONSIDERATION MAY BE GIVEN TO THE OF OTHER MATERIALS IN THE EMBANISMENT IF DESIGN AND CONSTRUCTION ARE SUPERVISED BY A GEOTECHNICAL ENGINEER.

PLACEMENT — AREAS ON WHICH FILL IS TO BE PLACED SHALL BE SCARIFIED PRIOR TO PLACEMENT OF FILL. FILL MATERIALS SHALL BE PLACED IN MAXIMUM 8 INCH THICK (BEFORE COMPACINON) LAYERS AND ARE TO BE CONTINUOUS OVER THE EDITER LEIGHTH OF THE FILL. THE MOST PERMEABLE BORROW MATERIAL SHALL BE PLACED IN THE DOWNSTREAM PORTIONS OF THE DAM EMBANKENT. THE PRINCIPAL SPILLWAY MUST BE INSTALLED CONCURRENTLY WITH FILL PLACEMENT AND NOT EXCAVATED INTO THE EMBANKENT.

COMPACTION — THE MOVEMENT OF THE HAULING AND SPREADING EQUIPMENT OVER THE EMBANKMENT FILL SHALL BE CONTROLLED SO THAT THE ENTIRE SURFACE OF EACH LIFT SHALL BE TRAVERSED BY NOT LESS THAN ONE TREAD TRACK OF THE EQUIPMENT OR COMPACTION SHALL BE ACHIEVED BY A MINIMUM OF FOUR COMPACTE PASSES OF A SIEEPS-SOOT, RUBBERT TRIED OR MBRATORY ROLLER (COMPACTION OF 93S, STANDARD PROFCOR SHALL BE ACHIEVED). FILL MATERIAL SHALL CONTAIN SUFFICIENT MOSTURE SUCH THAT THE REQUIRED DEGREE OF COMPACTION WILL BE OBTAINED WITH THE EQUIPMENT USED. THE FILL MATERIAL SHALL CONTAIN SUFFICIENT MOSTURE SO THAT IF FORMED INTO A BALL IT MILL NOT CROMBLE YET NOT BE SO WET THAT WATER CAN BE SQUEEZED OUT.

A MINIMUM REQUIRED DENSITY SHALL NOT BE LESS THAN 95% OF MAXIMUM DRY DENSITY WITH A MOISTURE CONTENT WITHIN ±2% OF OPTIMUM. EACH LAYER OF FILL SHALL BE COMPACTED AS NECESSARY TO OBTAIN THAT DENSITY, AND IS TO BE TESTED AND CERTIFIED BY A GEOTECHNICAL ENGINEER AT THE TIME OF CONSTRUCTION. ALL COMPACTION IS TO BE DETERMINED BY AASHTO METHOD T-99.

### STRUCTURE BACKFILL

BACKFILL ADJACENT TO PIPES OR STRUCTURES SHALL BE OF THE TYPE AND QUALITY CONFORMING TO THAT SPECIFIED FOR THE ADJOINNO FILL MATERIAL. THE FILL SHALL BE PLACED IN HORIZONTAL LAYERS NOT TO EXCEED FOUR MOHES IN THICKNESS AND COMPACTED BY HAND TAMPERS OR OTHER MANUALLY DIRECTED COMPACTION FOURIENT. THE MATERIAL REDS TO FILL COMPLETELY ALL SPACES UNDER AND ADJACENT TO THE PIPE. AT NO TIME DURING THE MACKFILLING OPERATIONS SHALL DRIVEN EQUIPMENT BE ALLOWED OVER OR WHITH A FEET OF A CONCRETE STRUCTURE OR PIPE, UNLESS THERE IS A COMPACTED FILL OF 24° OR GREATER OVER THE STRUCTURE OR PIPE.

### RIP~RAP

ROCK RIPRAP SHALL MEET THE REQUIREMENTS OF MHDSS.

THE RIPRAP SHALL BE PLACED TO THE REQUIRED THICKNESS IN ONE OPERATION. THE ROCK SHALL BE DELIVERED AND PLACED IN A MANNER THAT MILL INSURE THAT THE RIPRAP IN PLACE SHALL BE. REASONABLY HONDERIFCUS WITH THE LARCER ROCKS UNIFORMLY DISTRIBUTED AND FIRMLY IN CONTACT ONE TO ANOTHER WITH THE SMALLER ROCKS FILLING THE YOUGS BETWEEN THE LARCER ROCKS. FILTER CLOTH SHALL BE PLACED UNDER ALL RIPRAP AND SHALL MEET THE RECURREMENTS OF MIDOSS.

ALL CHAMBERS (PLASTIC AND CONCRETE) SHALL BE HANDLED AND INSTALLED IN STRICT ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS, GUIDELINES, AND REQUIREMENTS.

### EIPE CONDUITS

ALL PIPES SHALL BE CIRCULAR IN CROSS SECTION.

3. LATING PIPE — BELL AND SPIGOT PIPE SHALL BE PLACED WITH THE BELL END UPSTREAM. JOINTS SHALL BE MADE IN ACCORDANCE WITH RECOMMENDATIONS OF THE MANDEAUTHRACTURER OF THE MATERIAL. AFTER THE JOINTS ARE SEALED FOR THE ENTIRE LINE, THE BEDDING SHALL BE PLACED SO THAT ALL SPACES UNDER THE PIPE ARE FILLED. CAME SHALL BE EXERGISED TO PREVENT ANY DEVARION FROM THE ORIGINAL LINE AND GRADE OF THE PIPE. THE FIRST JOINT WUST BE LOCATED MITHIN 2 FEET FROOM THE RISER.

- 4. BACKFILLING SHALL CONFORM TO "STRUCTURE BACKFILL".
- 5. OTHER DETAILS (ANTI-SEEP COLLARS, VALVES, ETC.) SHALL BE AS SHOWN ON THE DRAWINGS. POLYMNYL CHLORIDE (PVC) PIPE-
- ALL OF THE FOLLOWING CRITERIA SHALL APPLY FOR POLYYINYL CHLORIDE (PVC) PIPE:
- 1. MATERIALS PVC PIPE SHALL BE PVC-1120 OR PVC-1220 CONFORMING TO ASTM D-1785 OR ASTM
- 2. JOINTS AND CONNECTIONS TO ANTI-SEEP COLLARS SHALL BE COMPLETELY WATERTIGHT.
- 3. BEDDING THE PIPE SHALL BE FIRMLY AND UNIFORMLY BEDDED THROUGHOUT ITS ENTIRE LENGTH, MEER ROCK OR FOR, SPOKGY OR OTHER UNSTABLE SOL IS ENCOUNTERED, ALL SUCH MATERIAL SHALL BE REMOVED AND REPLACED WITH SUTLABLE SARTH COMPACTED TO PROVING ADECUATE SUPPORT. 4. BACKFILLING SHALL CONFORM TO "STRUCTURE BACKFILL".
- 5. OTHER DETAILS (ANTI-SEEP COLLARS, VALVES, ETC.) SHALL BE AS SHOWN ON THE DRAWINGS. CONCRETE
- CONCRETE SHALL MEET THE REQUIREMENTS OF MHDSS.
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### CARE OF WATER DURING CONSTRUCTION

CASE OF WATER DURING CONSTRUCTION

ALL WORK ON PERMANENT STRUCTURES SHALL BE CARRIED OUT IN AREAS FREE FROM WATER. THE
CONTRACTOR SHALL CONSTRUCT AND MAINTAIN ALL TEMPORARY DIKES, LEVES, COFFER DAMS, DRAINAGE
CHANNELS, AND STREAM DIVERSIONS NECESSARY TO PROTECT THE AREAS TO BE OCCUPIED BY THE
PERMANENT WORKS. THE CONTRACTOR SHALL ALSO PURINSH, INSTALL, OPERATE AND MAINTAIN ALL
NECESSARY PUMPING AND OTHER COUPMENT RECURRED FOR REMOVAL OF WATER FROM THE VARIOUS PARTS
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DRAWNING THE WATER TO SUMPS FROM WHICH THE WATER SHALL BE PUMPED.

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STORMMATER MANAGEMENT FACULTIES SHALL BE PROTECTED FROM SEDIMENT AND SUTATION AT ALL TIMES. 
JUST PRIOR TO COMPLETION, THE SITE SUBCONTRACTOR SHALL PERFORM A FINAL INSPECTION AND CLEANING OF THE STORM WATER MANAGEMENT SYSTEM. ALL SEDIMENT AND SULTATION SHALL BE REMOVED FROM THE BASINS, FOREBAYS, ETC. AND THESE AREAS SHALL BE SHAPED TO FINAL CONTOURS AND LEVATION PER PLANS. ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE MADE AS NECESSARY TO THE SATISFACTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE SHAPPED. SECTION OF THE ENGINEER PRIOR PLANS ALL REPAIRS SHALL BE SHAPPED.

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STAMP

BAXTER

**BAXTER NYE** 

and Land Surveyors

**ENGINEERING &** SURVEYING

Registered Professional Engineers

78 North Street - 3rd Floor

Phone - (508) 771-7502

Fox - (508) 771-7622 www.baxter-nye.com



CONSULTAN

CONSULTANT

PREPARED FOR SOUTHWORTH MASHPEE PROPERTIES, LLC 130 Willowbend Drive Mashpee MA 02549

PROJECT TITLE 178, 182, 184 and 186 Quinaquisset Avenue Mashpee, MA., 02601

	DATE	DESCRIBTION

**Detail Sheet 3 of 3** 

SHEET NO

SHEET TITLE

DATE: SEPTEMBER 10, 2021

SCALE: NTS

DRAWN BY: SOM CHECKED BY: MINE JOB NO:2006-018 FILE: 2006-018 0f.dwg

FOR PERMIT ONLY - NOT FOR CONSTRUCTION

# A Presentation by the Affordable Housing Committee To the Mashpee Planning Board on November 17, 2021

## Affordable Housing in Mashpee

Who Needs It?

Are the Needs Getting Met?

Who are the Developers?

Where Is the Land They Can Build On?

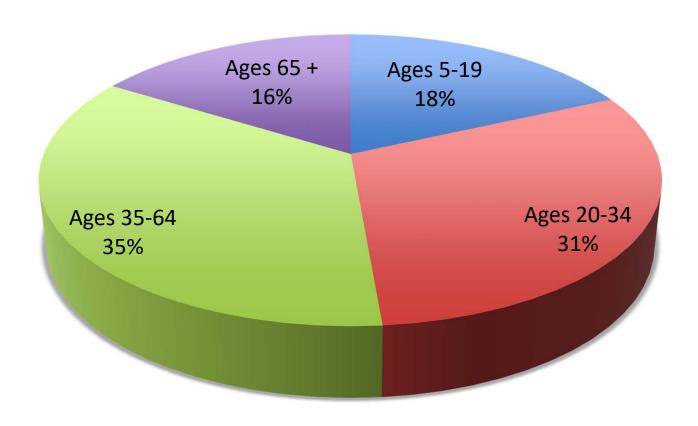
Mashpee Affordable Housing Committee
Allan Isbitz, Chairperson
Bruce Willard, Vice Chairperson
Noelle Pina, Clerk
Melinda Baker, Member

# Total Population Growth in Mashpee 2010 - 2030

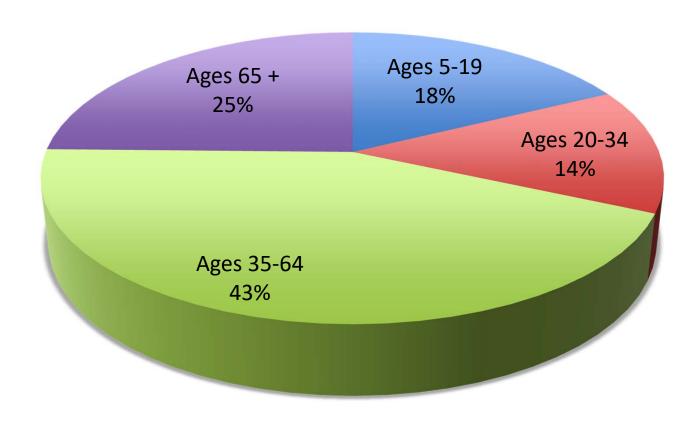
Year	Population	Change (#)	Change (%)
1990 (Actual)	7,884		
2010 (Actual)	14,006	6,122	78%
2030 (Projected)	18,159	4,153	30%

Note: Mashpee's rate of growth from 1990-2010 exceeded the three neighboring towns (Bourne, Falmouth and Sandwich), as well as that of Barnstable County.

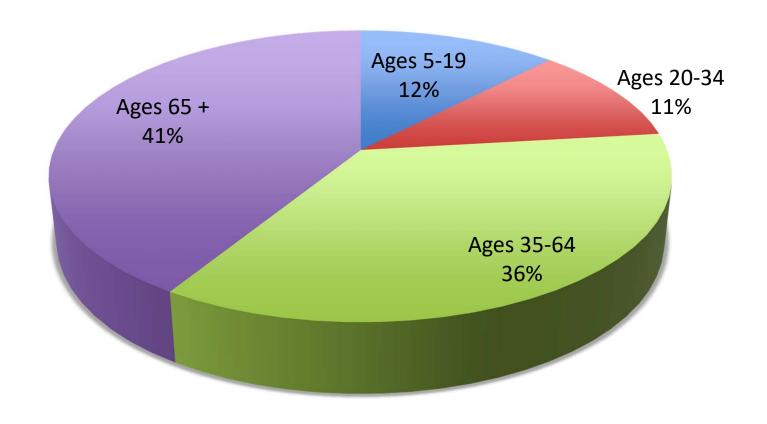
## **Mashpee Population in 1990**



## **Mashpee Population in 2010**



## Mashpee Population Projected to 2030

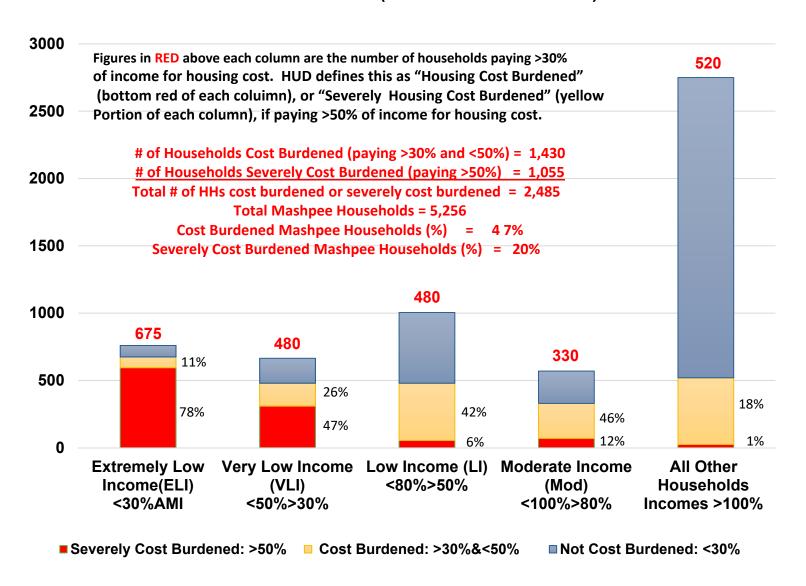


# H.U.D. Income Group Definitions Applied to Barnstable County Incomes for 2021

Income Group	Income Range as a % of Average Median Income (AMI)	Single Person Households in Barnstable County	4-Person Households in Barnstable County
Low Income (LI)	50-80% of AMI	< \$77,750/year	
Very Low Income (VLI)	30-50% of AMI	< \$48,600/year	
Extremely Low Income (ELI)	< 30 % of AMI	< \$29,150/year	
	\$89,300/year		

Note: Chapter 40B of Massachusetts General Laws establishes a goal for all municipalities to dedicate 10% of all year-round housing units for the above income groups. The State Department of Housing and Community Development (DHCD) tracks local performance for all municipalities on its website. It is called the Subsidized Housing Inventory (the "SHI").

## HOUSING COST BURDEN BY INCOME GROUP MASHPEE - 2010 (OWNERS & RENTERS)



# Balance of Income After Housing Cost For A Family of 4 with Incomes Less Than 80% of Average Median Income (AMI)

Example For Renter Occupants: Income Group		2021 Annual Income (4 person family)	Monthly Income	2021 Median Rent in Mashpee	% of Income for Rent	Balance for Food, Car/Bus, Child Care, Medical, etc.	Balance Weekly After Rent
Extremely Low Income	<30% AMI	<\$29,150	<\$2,429	\$1,431	≥59%	≤\$998	\$230
Very Low Income	<50% AMI	\$29,150-\$48,600	\$2,429-\$4,050	\$1,431	59-35%	\$998-\$2,619	\$230-\$604
Low Income	<80% AMI	\$48,600-\$77,750	\$4,050-\$6,479	\$1,431	35-22%	\$2,619-\$5,048	\$604- \$1,165

### Housing Supply Shortfall for Households with Incomes Less Than 80% AMI

Income Group		# of Mashpee Households	# of Homes Affordable	# of Affordable Rental Apts	Total Units Affordable	Housing Shortfall
Extremely Low Income	<30% AMI	760	-	72	72	688
Very Low Income	<50% AMI	665	290	176	466	199
Low Income	<80% AMI	1,005	553	371	924	81
2010 Mashpee Totals		2,430	843	619	1,462	968

## Affordable Housing in Mashpee – 2010 SHI (Subsidized Housing Inventory) Eligible Units By Housing Type: Ownership vs. Rental

Housing Category	Total # of Units in Category	Units Owner Occupied (#)	Units Owner Occupied (%)	Units Renter Occupied (#)	Units Renter Occupied (%)
Total Year-Round Units	6,473				
Occupied Units 6,118		5,030	82.2 %	1,088	17.8 %
Affordable Units	298	36	12.1 %	262	87.9 %
Affordable Units (% of Tenure Group)	4.9 %	0.7 %		24.1 %	
% of Year-Round Units That Are Affordable (SHI)	4.6 %				

Under M.G.L. Chapter 40B Mashpee's 10% affordable housing goal would be 647 units. The chart shows Mashpee 349 units short of this goal in 2010. As of Sept 14, 2017 the town added a net of 39 units for an SHI percentage of 5.2% ranking it 8<sup>th</sup> out of the 15 towns in Barnstable County.

### MASSACHUSETTS SUBSIDIZED HOUSING INVENTORY (SHI) **For Barnstable County Towns** As of December 21, 2020

I. Ranking	by Ch. 40B Percenta	ge of Affo	rdable Units in I	Each Town	11.	. Ranking b	y Number of SHI	Affordable U	Inits in Each T	own
Rank	Town	SHI %	SHI Units	Total Units		Rank	Town	SHI %	SHI Units	Tota
1	Provincetown	9.7%	206	2,122		1	Barnstable	7.2%	1,487	:
2	Orleans	9.0%	296	3,290		2	Falmouth	7.2%	1070	:
3	Barnstable	7.2%	1,487	20,550		3	Yarmouth	5.0%	599	:
4	Falmouth	7.2%	1070	14,870		4	Bourne	6.9%	591	
5	Bourne	6.9%	591	8,584		5	Dennis	5.1%	390	
6	Brewster	5.6%	268	4,803		6	Mashpee	5.3%	343	
7	Harwich	5.4%	333	6,121		7	Harwich	5.4%	333	
8	Mashpee	5.3%	343	6,473		8	Sandwich	3.8%	314	
S	Dennis	5.1%	390	7,653		9	Orleans	9.0%	296	
1	0 Chatham	5.1%	176	3,460		10	Brewster	5.6%	268	
1	1 Yarmouth	5.0%	599	12,037		11	Provincetown	9.7%	206	
1	2 Eastham	4.5%	119	2,632		12	Chatham	5.1%	176	
1	3 Sandwich	3.8%	314	8,183		13	Eastham	4.5%	119	
1	4 Wellfleet	2.5%	38	1,550		14	Wellfleet	2.5%	38	
1	5 Truro	2.3%	25	1,090		15	Truro	2.3%	25	
	Total All Towns	6.0%	6,255	103,418 (2010 Census)			Total All Towns	6.0%	6,255	1

II. Kanking by Number of SHI Affordable Units in Each Town								
	Rank	Town	SHI %	SHI Units	Total Units			
	1	Barnstable	7.2%	1,487	20,550			
	2	Falmouth	7.2%	1070	14,870			
	3	Yarmouth	5.0%	599	12,037			
	4	Bourne	6.9%	591	8,584			
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	11	Provincetown	9.7%	206	2,122			
	12	Chatham	5.1%	176	3,460			
	13	Eastham	4.5%	119	2,632			
	14	Wellfleet	2.5%	38	1,550			
	15	Truro	2.3%	25	1,090			
		Total All Towns	6.0%	6,255	103,418	(2010 Cer		

None of the towns on the Cape have met the 10% goal yet. Provincetown is the closest with 9.7%. Municipalities submitting a Housing Planned Production Plan (HPP plan) for state DHCD approval must commit to an annual production goal that would allow a town to meet its 10% goal over a 10 year period. Mashpee's HPP plan submitted to DHCD in 2015, and approved, committed the town to a production goal of 32 affordable units/year, or 320 units over a decade. This would bring Mashpee's affordable housing percentage to 10% of total units, or 6470 units in 2010. However, Mashpee has not met their annual goal at all over the past 5 years. [Note: Units eligible for inclusion on the state SHI must (1) be affordable to low income households (<80% AMI) who pay <30% of their income for rent, (2) be subject to a deed restriction and a use agreement executed by a state regulatory agency that financed the project, and (3) be subject to nondiscriminatory provisions of the federal fair housing act.

## Who is Building Affordable Housing in Mashpee? The Affordable Housing Production Pipeline in 2021

Name of Development	Type of Developer	Estimated Total # of Units	# of Owner Units	# of Rental Units	Number Affordable (Estimated)	# SHI Eligible	Submitted ZBA Application?	Receiving Public Funding?	Comments
Main Street Village, ph II	Private For- Profit	8	8	0	2	2	Yes	No	6 units at 80-100% AMI (moderate income). Approval in doubt
Wampanoag Village	Wampanoag Governing Entity	42		42	42	42(?)	Not Required	Yes	28 Completed. SHI eligibility needs to be clarified
Habitat for Humanity	Nonprofit Developer	3	3		3	3	yes	Yes	Completed in September 2021
Cotuit Road	Private For-Profit	8		8	2	8	No	TBD	Developer intends to submit for a Ch 40B permit to ZBA. Financial feasibility unclear; project inactive
Red Brook Village (950 Falmouth Rd)T	A Nonprofit Partnership using LIHTC tax credits	39		39	39	39	Yes approved	Yes	Developer is a POAH-HAC partnership. Project is awaiting stating funding decision in 2021
Mashpee Commons 40B Project	Private For-Profit	52		52	13	52	Yes. Project approved by DHCD	Yes	Phase I completed with 32 units, 8 are affordable for LI households. Project received state infrastructure funding
Total Affordat	ole Units in Development	153	11	142	102	147			
	Less units not now in development	20		20	5	20			Mashpee's SHI includes Mashpee Commons' 52 units. If the last 20 are not done, The SHI % falls from 5.2 to 4. 9%
	Subtotal affordable units now in pipeline	133	11	122	97	121			
108 Commercial Street	For Profit or Nonprofit To Be Selected by Bid under Ch. 30B	90		90	30	90	Projected for 2024	Will be needed	Will include Workforce units. Town- owned site TB owned by AHT per 2021 Oct Town Meeting.
Future Sites for Development	Various Developers on Town-owned sites	310	10	300	100	310	TBD	Will be Needed	Various sites under preliminary discussion, excl. Mashpee Commons
	Total Future Affordable units (2021-2030+)	533	21	512	227	521	Schedule to be determined	Assume need	Estimating # of units on SHI will be short of Mashpee's 10%. Private Partners will be required to reach 10% by 2030/40

## Workforce Housing Needs in Mashpee

# Total Affordability Gap by Income Level For Renters

# Total Affordability Gap by Income Level For Owners

	2015	2025
50% MHI	128	130
80% MHI	228	250
100% MHI	210	213
120% MHI	127	222

	2015	2025
50% MHI	950	1,093
80% MHI	1,149	1,809
100% MHI	637	2,201
120% MHI	287	2,395

### What's Affordable?

The affordability gap is an indication of housing stress. It represents the number of existing households spending 30% or more of monthly income on housing, and are therefore expected to be home cost burdened.

From the 2015 baseline year, the study shows the greatest housing stress is felt by those earning 80% or less than Barnstable County's median income. In 10 years, the effect on the lower end of earners increases and deserves continued attention. More striking, however, is how housing stress climbs through higher tiers of income. By 2025, the greatest increase in burdened households are with those earning 100% to 120% of the projected median income.

### 2021 Household Income Limits for Affordable and Workforce Housing

Family Size = 4	Affordable Housing		Workforce Housing	
Income Range	Low Limit	High Limit	Low Limit	High Limit
Extremely Low Income (<30% Average Median Income)	\$ 0	\$ 29,150		
Very Low Income (>30%<50% AMI)	\$ 29,150	\$ 48,600		
Low Income (>50%<80% AMI)	\$ 48,600	\$ 77,750	\$ 58,320	\$ 77,750
Median Income (100% AMI)			\$89	,300
Moderate Income (>80%, <120% AMI)			\$ 77,750	\$ 107,160
IRS Tax Credit Income (>20%<80% AMI, but must average <60% AMI)	\$ 19,440	\$ 77,760	\$ 58,320	\$ 77,760

Note: HUD Income Limits under Sec 8 and IRS Income Limits under the Low Income Tax Credit Program overlap between 60-80% AMI. Parallel to this overlap, the definitions of Affordable Housing and Workforce Housing overlap in the same 60-80% AMI Range.

### Workforce Housing

To assist developers in providing housing to middle-income households and in return for agreeing to long-term affordability restrictions, MassHousing offers subordinate debt to borrowers seeking to create housing with rents affordable to households with incomes generally between 60-120% of Area Median Income (AMI). This debt can be used with any of MassHousing's first mortgage lending products, including construction, permanent and tax-exempt financing.

The following general lending terms and additional requirements apply:

	General Lending Terms
Project Type*	New construction and adaptive reuse
Loan Type	Subordinate Loan
Loan Amount	Up to \$100,000 per workforce housing unit; \$3,000,000 per project limit
Lending Terms	Interest rate between 0-3%, repayment of principal (and interest, if applicable) based on established amortization schedule or through cash flow sharing mechanism
Maturity	15-40 years
First Mortgage Requirements	Financed directly by MassHousing or through a lending platform approved by MassHousing
Rent and Income Limits	Rents affordable to households generally between 60 and 120% AMI, with income limit based on the market in which the development is located.
Affordability Restriction	Minimum of 20% of units at 80% of AMI
Prepayment Lockout	15 years
Third-Party Reports	Phase I ESA, appraisal, market study
Accessibility	Minimum number of accessible units required by code, or at least one accessible unit
Construction Wages	Prevailing wages if loan is used during construction

<sup>\*</sup>Strong preference is for new construction, but projects involving acquisition or rehabilitation of an existing development where previously unrestricted units will be restricted or preservation of affordability is at risk will be considered on a case-by-case basis.

Additional Requirements		
Limited Dividend Requirement	Annual distributions of cash flow are limited to 10% of equity	
Asset Management Requirements	MassHousing-approved Management Agent, Tenant Selection Plan and Affirmative	
	Fair Housing Marketing Plan, along with 3% DMH/ DDS set-aside**	

<sup>\*\*3%</sup> of units must be set aside for residents receiving services from the MA Department of Mental Health or MA Department of Developmental Services

For more information, please visit MassHousing Workforce Housing page or contact a Rental Relationship Manager:

Greg Watson	Jeffrey Geller	Max Glikman
617.854.1880	617.854.1768	617.854.1394
gwatson@masshousing.com	jgeller@masshousing.com	mglikman@masshousing.com
Sarah Hall	Antonio Torres	Kathleen Evans
617.854.1714	617.854.1361	617.854.1280
shall@masshousing.com	atorres@masshousing.com	kevans@masshousing.com



### **AFL-CIO HOUSING INVESTMENT TRUST**



### **WORKFORCE HOUSING**

Financing of workforce housing is a critical issue for workers across the country and one which often does not see sufficient amounts of dedicated resources to address. The HIT works with a number of localities and states around the country which provide resources specifically dedicated to addressing the needs of working families and can provide technical assistance in putting together these complicated executions.

## Mashpee Affordable Housing Goals

The Mashpee Housing & Planned Production Plan (HPP) approved in 2015 by the Town and DHCD called for a balanced production of affordable housing types that target two income groups:

- A. Affordable housing as defined by the U.S. Dept. of Housing & Urban Development target the following income groups:
  - ✓ Very Low Income Renters (<50% AMI)
  - ✓ Extremely Low Income Renters (<30% AMI)

Housing produced for this target income range generally would be rental multifamily apartments.

- B. Workforce Housing commonly referred to as families with members in the workforce who cannot afford homes or rents in the private market that are conveniently located reasonably near their place of work.
  - ✓ For Low and Moderate Income families with incomes from 60% AMI to 120% AM.
  - ✓ Housing for this group could be either homeowner housing, or rental housing.
- C. Households with Incomes between 50-60% AMI could be considered in either of the above two target groups

Under state Chapter 40B provisions, the HPP is a local policy document that is good for 5 years, and then must be updated and resubmitted to DHCD for approval. The legal purpose of an HPP is to establish an annual goal for the production of affordable housing that the town will have an incentive to meet. If a town meets its annual production goal it is immune from a developer's appeal to the State Housing Committee to override the zoning bylaw when denied a permit to build affordable housing. A town must obtain DHCD certification each year that its performance has met its HPP production goal. Mashpee did not achieve its 2015 HPP production goal, and was not certified, in any of the 5 years the HPP was effective.

From 2010 to 2015, the only affordable rental housing produced in Mashpee has been Asher's Path with 56 rental units in 2006 and Great Cove Communities with 10 units in 2014. In the past 3 decades there have been about 30 ownership units: those built by Habitat for Humanity and those at Main Street Village. A few homeowner units have been lost due to bankruptcy, bank foreclosure, or sale to income ineligible families under older deed restricted properties that allowed such sales.

**1** Allan Isbitz, 10/17/2021



### Planning Board

16 Great Neck Read North Mashpec, Massachuseus 02649

### FORM A

### APPLICATION FOR ENDORSEMENT OF PLAN BELIEVED NOT TO REQUIRE APPROVAL

Date: 10-25-21
To the Planning Board: The undersigned, believing that the accompanying plan of his or her property in the Town of Mashpee does not constitute a subdivision within the meaning of the Subdivision Control law, herewith submits said plan for a determination and endorsement that Planning board approval under the Subdivision Control Law is not required.
Name of Applicant Evergreen Energy, LLC Phone
Address 81 Echo Road, Unit #4, Mashpee, MA 02649
Owner, if different Phone
Address
Attach copies of (a) most recent recorded deed and (b) tax bill or Assessors' certification.  Engineer or Surveyor JC Engineering, Inc.  Phone 508-273-0377  Address 2854 Cranberry Highway, E. Wareham, MA 02538
Deed of property recorded in Barnstable County Registry Book 34111 Page 167
Or Land Court Certificate of Title No
Location and description of property 751 Main Street (vacant lot)
Mashpee Assessors map(s) and Block(s) Map 13, Lot 58
Signature of Owner or Quthorized Representative

Attach written authorization signed by owner.

16 Great Neek Road North Mashper, Massachusetts 02649

### FORM N

### NOTICE OF APPLICATION FILING WITH THE MASHPEE PLANNING BOARD

To the Mashpee Town Clerk:			
This is to notify you that on October 2	25	, <sub>20</sub> 21	an application for
X endorsement of a plan believed not t			
approval of preliminary plan			
approval of definitive plan			
was submitted to the Mashpee Planning I	Board at	its public m	neeting by
Evergreen Energy, LLC	81 Ech	o Road, Un	it #4, Mashpee, MA 02649
Applicant name	Applica	nt address	•
and is generally described as located			
751 Main Street			
This notice must be submitted to the Towmail, postage prepaid, along with a copy o	on Clerk of the ap	by delivery o plication an	or by registered or certified d submitted plans.
Re	eceived t	y Planning	Board on, 20
			for Mashpee Planning Board

8754

### J.C. ENGINEERING, INC.

2854 CRANBERRY HIGHWAY EAST WAREHAM, MA 02538

### ROCKLAND TRUST WWW.ROCKLANDTRUST.COM

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10/2/2021

PAY TO THE TOWN of Mashpee ORDER OF

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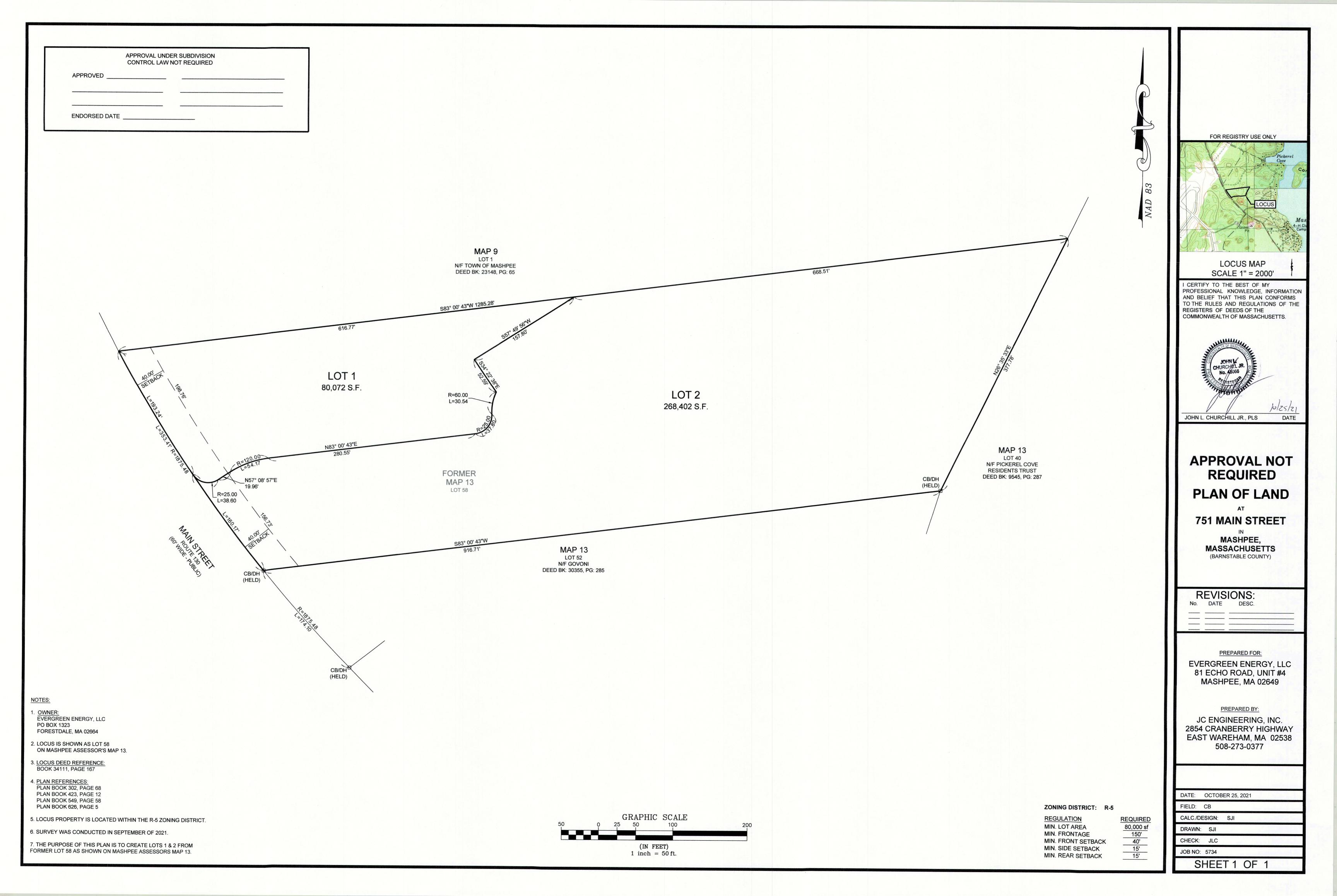
\_DOLLARS

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

**MEMO** 

(5734) ANR Plan Application Fee

"008754" @ "011304478"





16 Great Neck Road North Mashpee, Massachusetts 02649

### Mashpee Planning Board Public Hearing Notice

Pursuant to Massachusetts General Laws, Chapter 40A Section 9, the Mashpee Planning Board will open a public hearing on Wednesday, January 5, 2022 at 7:10 PM in the Waquoit Meeting Room, Mashpee Town Hall, 1st Floor, 16 Great Neck Road North, Mashpee, MA 02649 to consider an application made by Longfellow Design Build to construct a commercial building to be used for retail grocery sales on a 4 acre +/- parcel (Map 81, Lot 132) located at property addressed as 647 Falmouth Road/9 Shellback Way, Mashpee, MA 02649. The 9 Shellback Way address will be abandoned. This application is made pursuant to Sections 174-24C (1) and under Section 174-25 E (1) and 174-25 E (2) of the Mashpee Zoning Bylaw. This proposal triggers a mandatory referral to the Cape Cod Commission for review as a Development of Regional Impact and thus no deliberations will occur at this meeting nor will the Board receive public comment until the Cape Cod Commission refers the project back to the Planning Board for local review.

Submitted by:

John Fulone, Chair Mashpee Planning Board

Publication dates: Friday, December 10, 2021

Friday, December 17, 2021

## **Explanation of the Conflict of Interest Law for Planning Board Members**

Information about how the conflict of interest law (G.L. c. 268A) applies to Planning Board members, including restrictions placed on them while on the job, after hours and after leaving public service.

Planning Board members are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid, must abide by the restrictions of the conflict law. Planning Board members have been designated as "Special Municipal Employees" in Mashpee for purposes of the conflict-of-interest statute.

The purpose of the conflict-of-interest law is to ensure that the private financial interests and relationships of Board members do not conflict with their responsibilities on the Planning Board. The law is written broadly to cover situations which present *even the appearance of a conflict*.

With respect to Planning Board positions designated as a "special" municipal employee positions, such as those in Mashpee, two sections of the conflict law, sections 17 and 20, apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) See the Ethics Commission's Explanation of the Law for Special Municipal Employees for information on eligibility and the designation process.

### **Conflict of Interest Law Restrictions and Examples**

### 1) Accepting Gifts (Section 3 and Section 23(b)(2)(i))

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

<u>Example</u>: A development company has recently received your planning board's approval for a subdivision plan. To foster goodwill and say thank you, the developer offers each of the board members a gift certificate to a fine restaurant. May you accept?

• It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of actions you have taken, or will take, in your Town position or because you hold a Town position, even if the motivation for the gift is to express gratitude for a

- job well done or to foster goodwill. If the gift certificate is worth \$50 or more, you may not accept it.
- If the gift certificate is valued at less than \$50, you may accept it provided it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict law permits local boards to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid any appearance of conflict or favoritism which may be created by accepting gifts.

### 2) Prohibited Actions Affecting Financial Interests (Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

<u>Example</u>: You are a site engineer for a development company presently building condominiums in town. May you, as a planning board member, deliberate and vote on your company's proposed subdivision plan if you have not worked on the plan?

• No. You may not participate in any matter that affects the financial interest of your employer (whether or not you worked on the matter for your company). You also may not act on a matter that affects your own financial interest or those of your "immediate" family or of a business for which you serve as officer, director, partner or trustee. You must abstain on matters affecting your competitors.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a proposed subdivision (whether or not she challenges the subdivision), you must abstain when the issue comes before your board. Your sister, as an abutter, has a financial interest in the matter.

An exemption allows you to act as a planning board member on any determination of "general policy" which affects a substantial segment of your community's population in the same way. For example, your board is drafting zoning changes which would affect a major portion of the

geography of your town. These changes would affect your financial interest because you own a home in the area to be affected, but because they would also affect a large area and a large segment of your town's population, you may participate in drafting the new zoning changes. Not all zoning changes will fall into the category of "general policy." Seek advice from Town Counsel or the Ethics Commission if you have specific questions.

### 3) Appearances of Conflict and Misuse of Official Position (Section 23)

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for the Town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

Municipal employees may not improperly disclose confidential information or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

<u>Example</u>: Your cousin, a lawyer, is representing a client before your board. May you act as a board member in the matter?

- Yes, provided that you publicly disclose your private relationship with your cousin prior to taking any action. If you are an appointed planning board member, your disclosure must be made in writing to your appointing authority (whatever board or person appointed you to your position). If you are elected, your disclosure must be made in writing and filed with the town or city clerk. These disclosures must be kept available for public inspection. We also suggest that you make a verbal disclosure at a public meeting in which the matter arises. Your written disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives (who are outside the definition of "immediate family") or friends.
- In addition, you must act objectively and not attempt to obtain any special favors for your cousin because of your relationship. Using your planning board position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See the Ethics Commission's Advisory 05-01 – The Standards of Conduct for more detailed information.

### 4) Restrictions "After Hours" (Sections 23 (b)(1) and 17)

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

Because towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the Town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the Town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

<u>Example</u>: You are a professional engineer working for a development company. While on the planning board, may you represent the development company before the conservation commission concerning a development located in wetlands?

• If you are a regular municipal employee, no. You may not act as the agent or attorney for any private party, including your own company, before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not. If you are a "special" municipal employee, it depends. You may represent private parties before other Town boards (not your own) unless it is a matter in which you participated as a planning board member, or a matter which is now, or within the past year, was within your official responsibility as a board member. In this example, if the proposed development already was before the planning board or was about to come before the planning board, you could not represent the development company before the conservation commission, whether or not you are a special municipal employee. To emphasize, it is not enough simply to abstain from action on your own board; if the same matter is before other town boards, you must not act as the representative for a private company before those boards.

### 5) Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the Town has with someone else. This provision is intended to prevent municipal employees from having an "inside track" to further financial opportunities.

<u>Example</u>: You want to serve as an elected school committee member. If elected, may you hold positions on both the planning board and school committee?

- It depends. If you are elected in both positions, yes. If both positions are unpaid (whether they are elected or appointed), yes. If the planning board position is appointed and unpaid, and the elected school committee position is paid, you may hold both positions.
- If the planning board position is appointed and paid, and the elected school committee position is unpaid, you will need an exemption. You can use the exemption for uncompensated positions by filing a written disclosure with your appointing authority for the board. See 930 CMR 6.02(3).
- However if the planning board position is appointed and paid and the elected school committee position is paid, you will need an exemption in order to hold both positions.

### 6) Restrictions After You Leave Government Service (Section 18)

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

<u>Example</u>: You have resigned as a member of the planning board and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?

### • It depends:

- You may not represent the developer before a city agency concerning a matter in which you participated as a planning board member.
- For one year after you leave the planning board, you may not appear before city boards on a matter which was under your official responsibility within the two years before you left the board.
- You may represent the developer before city agencies (including your own) with no "cooling off" period on a matter you never dealt with and which was never under your official responsibility while you were a board member.

### **Advisory Opinion**

This summary presents a brief overview of the conflict-of-interest law and suggests activities which you, as a Planning Board member, must avoid. It is not a comprehensive review intended to cover every situation. You should consult with Town Counsel or call the Ethics Commission's Legal Division at (617) 371-9500 for specific advice about how the law applies to your situation.

If you have a question about your own activities, please request advice prior to engaging in the activity in question.

If you have questions about others' activities in the Town, urge them to use the opinion process. In addition, complaints may be filed with the Commission's Enforcement Division online by using the website, by phone (at the same number listed above), by letter or in person. The identity of complainants is kept confidential.

### Pierce v. Mulhern

Superior Court of Massachusetts, At Middlesex

January 27, 2003, Decided; February 3, 2003, Entered on docket

CIVIL ACTION NO. 2001-2825-C

### Reporter

2003 Mass. Super. LEXIS 488 \*

ANNA L. PIERCE, MYRA FOURNIER, FRANCIS SABATINO and MARIAN AHERN v. CHRISTOPHER H. MULHERN, JOHN A. PROKOS, JOSHUA M. ALPER, RICHARD L. SAMPSON, JR., CHRISTOPHER CERUOLO and GEORGE E. OLSEN, As They Are Members of the Winchester Zoning Board of Appeal, WINNING FARM, LLC and TOWN OF WINCHESTER

Judges: [\*1] Peter M. Lauriat, Justice of the Superior Court.

Opinion by: Peter M. Lauriat

### **Opinion**

## FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiffs in this action have appealed, pursuant to G. L. c. 40A, § 17, from a decision of the Winchester Zoning Board of Appeal ("ZBA") granting a special permit to Winning Farm, LLC ("the Developer") for the development of an assisted living facility containing 90 units and an independent living facility containing an additional 55 apartment units on property at Thornberry Road in Winchester, Massachusetts. The plaintiffs have also sought a declaratory judgment from the court, pursuant to G. L. c. 231A, that they were denied due process of law and a fair and impartial hearing by and before the ZBA because the impartiality of two members of the ZBA, Christopher H. Mulhern and Joshua M. Alper, was reasonably open to doubt under Article 29 of the Massachusetts Declaration of Rights.

This action was consolidated for trial with an appeal by the plaintiffs of a decision of the Winchester Planning Board relating to the same property and development on Thornberry Road. Anna L. Pierce, et al. v. Thomas Howley, et al., Middlesex Superior Court, Civil [\*2] Action Docket No. 2001-2614-C. The consolidated actions were set for trial before the court, sitting without a jury, on November 12, 2002.

At the start of the trial, the Court observed, and the parties agreed, that the plaintiffs' declaratory judgment claims in the ZBA action should be tried and determined first, since a declaration favorable to the plaintiffs would require that the decision of the ZBA be deemed null and void, and that the matter be remanded to the ZBA for a new hearing and determination of the developer's application for a special permit. The plaintiffs then withdrew their claim with respect to the alleged partiality of ZBA member Christopher Mulhern. The Court thereupon heard the testimony of Joshua M. Alper, admitted several exhibits into evidence, and considered the memoranda and oral arguments of counsel for the parties on the plaintiffs' declaratory judgment claim that Mr. Alper's impartiality was reasonably open to doubt.

### **FINDINGS OF FACT**

The four plaintiffs in this case are abutters to the Winning Farm property in Winchester. As such, they are "parties in interest" to these proceedings per G. L. c. 40A, § 11.

Joshua M. Alper ("Alper") is a member of the Massachusetts Bar and [\*3] has been engaged in the private practice of law since 1978. He specializes in real estate law and environmental law. Alper has resided in the town of Winchester since 1984, and he has been involved with the town government in Winchester since about 1989.

Alper was appointed as a member of the Winchester Conservation Commission in 1989. He served on the Winchester Conservation Commission until 1993, and was Chairman from 1990 through the end of his term.

In April of 1993, Alper was appointed as a full member of the Winchester Zoning Board of Appeals ("ZBA"). He served as a full member of the ZBA until the end of March of 1997, and from 1994 through the end of his term, Alper was Chairman of the ZBA. The Winchester ZBA is organized under G. L. c. 40A, §§ 12 and 14. It consists of three full members and several alternate members. Full members sit automatically on all applications, while alternate members substitute when a full member cannot sit on a particular case due to "absence,

inability to act, or conflict of interest." Town of Winchester, Board of Appeal, Rules and Regulations, Art. I, §§ 5 and 6. (Exhibit 180). The Rules and Regulations address the board's organization, as well as procedures for applications, [\*4] hearings and dispositions. In two different sections, the rules articulate that "[a]Il communications by an applicant, prospective applicant, or their representatives shall be through the Clerk of the Board, except at public hearings on a petition." Rules and Regulations, Art. II, § 12; see also Art. I, § 11. (Exhibit 180).

In March of 1997, Alper was a candidate for and was elected to the Winchester Board of Selectmen. He served as a member until March of 2000, becoming the Board's Chair in 1998. Alper was also elected to represent his precinct as a Winchester Town Meeting Member in the spring of 1997. Only the elected town meeting members may vote at town meeting in Winchester.

In May of 2000, after waiting the G. L. c. 268A, § 21A thirty-day period, Alper requested and secured an appointment by the Board of Selectmen as an alternate member of the ZBA. A few months later, Alper, again at his request, secured an appointment as a full member of the ZBA. Alper is presently a full member of the ZBA.

Sometime in 1990 or 1991, while serving as Chairman of the Winchester Conservation Commission, Alper became aware of the Winning Farm property, a 110 acre parcel of agricultural real estate located in portions of the towns [\*5] of Winchester, Woburn and Lexington, Massachusetts. It was owned by Winning Home, Inc., a Massachusetts charitable corporation.

Beginning in late 1995, Winning Home, Inc. and the Winchester Board of Selectmen discussed the possibility of the town purchasing the 45 acre portion of the Winning Farm property that was located within the boundaries of Winchester. On April 29, 1996, the Town of Winchester and Winning Home, Inc. entered into an Option Agreement under which the Town of Winchester acquired the right to purchase the 45 acre parcel for \$1,200,000 at any time before August 1, 1996. (Exhibit 102).

Around the same time, in late 1995 or early 1996, Alper was retained informally, on a *pro-bono* basis, by Wade M. Welch, Winchester's Town Counsel, and Chadwick Maurer, Winchester's Town Manager, to assist and advise them on conveyancing and environmental issues relating to the town's proposed purchase of the Winning Farm property. Alper was involved in several meetings and numerous conversations concerning the property and proposed purchase with Welch, Maurer, and O'Leary, the then Chair of the Board of Selectmen. Alper also reviewed and revised drafts of the

Purchase and Sale Agreement [\*6] for the acquisition of the Winning Farm property, and he recommended to Welch, Maurer and O'Leary that Winchester purchase the property.

In the Spring of 1996, the Winchester Board of Selectmen placed an Article on the Warrant for the April 17, 1996 Town Meeting with respect to the town's purchase of the Winning Farm property. At the continued meeting on June 17, 1996, the Winchester Town Meeting approved several items related to Winning Farm. They voted 137-0 to authorize the Board of Selectmen to purchase the approximately 45 acres of land in Winchester owned by Winning Home, Inc. for \$1,200,000 "upon such terms and conditions as [were] set forth in the Option Agreement dated April 29, 1996, as amended, between the Town of Winchester and Winning Home, Inc. and upon such other terms and conditions as the Board of Selectmen deem to be in the best interest of the town . . . ." (Exhibit 101).

The Town Meeting voted unanimously to ratify and confirm the Option Agreement, and the payment of the purchase price in the installments set forth in the Option Agreement, including \$230,000 "from the funds of the Winchester Conservation Commission." (Exhibit 101).

By a majority voice vote on the same [\*7] night, the Town Meeting voted "that the Town designate a portion of Winning Farm, containing not more than 12.5 acres, for development of housing opportunities consistent with the requirements of the Selectmen's Housing Fund or other lawful uses set forth in the Winchester Zoning By-law as it may be amended and approved by the Winchester Town Meeting . . . and that the balance of said acreage will be preserved, protected and maintained for conservation and passive recreational uses only . . . under the management and control of the Conservation Commission of the Town of Winchester." (Exhibit 101).

Finally, on June 17, 1996, the Winchester Town Meeting voted, by majority voice vote, "to establish a committee, consisting of one designee each of the Board of Selectmen, the Planning Board, the Housing Authority, the Conservation Commission, Housing Partnership Board, Finance Committee and the Winchester Seniors Association, and two designees of the Town Moderator . . . to recommend to the Town the most appropriate use of the portion of Winning Farm designated for development . . . . The Committee shall make, an interim report to the Fall 1996 Town meeting and a final report to the Spring [\*8] 1997 Town meeting." (Exhibit 101).

On July 15, 1996, pursuant to the June 17, 1996 vote of the Town Meeting, the Winchester Board of Selectmen voted to exercise the Option granted to them by Winning Home, Inc. to purchase the 45 acre parcel for \$1,200,000, subject to the

Massachusetts Attorney General's Office and the Middlesex County Probate Court. On December 19, 1996, the Court and the Attorney General's Office approved the sale of the 12.5 acre parcel by Winning Home, Inc. to the Town of Winchester. On March 7, 1997, the Town took title to the unregistered portion of the property, and on July 21, 1999, the Town took title to the registered portion of the property.

The Winning Farm Use Committee that was created by the June 17, 1996 Town Meeting vote thereafter began a study of the recommended uses of the 12.5 acre Winning Farm property. In a report dated June 9, 1997, the Use Committee identified two primary, independent, single uses for the property: an assisted living facility containing 80 residential units, or a development of 10 units of single-family housing with a moderate income component. (Exhibit 102).

In 1997, the Board of Selectmen decided to issue a Request for Proposals [\*9] for Development of a Portion of Winning Farm ("RFP"). (Exhibit 102). Alper, who became a member of the Board of Selectmen in April of 1997 and its Chair in 1998, drafted the RFP with the assistance of Welch and various town officials. After the final draft was approved as to form by the Inspector General, it was presented to and voted on by the Board of Selectmen, and on November 20, 1998, it was issued to the public. The RFP sought proposals for an assisted living facility and/or single family housing.

Four proposals were submitted in response to the RFP, none of which proposed single family housing. One or two of the four proposals were withdrawn prior to final consideration, and the Board of Selectmen, including Alper as Chair, considered the remaining proposals in detail, both in executive session and at several public hearings. The Board of Selectmen, including Alper, voted to select the proposal presented by Richard Salter, d/b/a the Salter Group, which included ninety assisted living housing units and fifty-five independent living units. The Board of Selectmen then directed Welch to negotiate a Purchase and Sale Agreement with the Salter Group. The execution of a Purchase and [\*10] Sale Agreement was subject to and contingent upon a favorable vote of the Town Meeting.

Welch, with the assistance of Alper, the Town's professional staff, and the Town Manager, thereupon negotiated and drafted a Purchase and Sale Agreement with the Salter Group. The final Agreement, dated January 3, 2000, was "subject to the approval of the sale of the Winchester Representative Town Meeting at a Special Meeting to be in January or February, 2000," . . . as well as "to Buyer obtaining a Building Permit for the construction of [its proposed development] . . . [which] requires re-zoning under the Independent Elderly Housing District (IEH) to be established

as an overlay district per vote of the Winchester Town Meeting . . . ." (Exhibit 104). The Purchase and Sale Agreement was signed on behalf of the Town of Winchester by Alper and the other members of the Board of Selectmen.

As a member of the Board of Selectmen, Alper knew that if the Salter Group's proposed development and the proposed zoning by-law amendment were approved at the Special Town Meeting, the Salter Group's proposed development would then have to be presented to and approved by the ZBA, in light of the amended zoning by-law. [\*11] The Board of Selectmen asked the Salter Group to make a public presentation of its proposal at the Special Town Meeting. Alper also spoke in favor of and "politicked for" the Salter Group proposal and the required zoning by-law amendment, both before and at the Special Town Meeting called for February 10, 2000.

At the Special Town Meeting, the members voted 128-39 to authorize the Selectmen to sell the 12.5 acre parcel to "[t]he Salter Group or their nominee, in accordance with terms and conditions set forth in the Purchase and Sale Agreement between the Salter Group and the Town dated January 3, 2000 and the RFP dated November 20, 1998 and the Salter Group's responses thereto." The Special Town Meeting also voted 132-36 to amend the Winchester Zoning By-law "by creating on land owned by the Town of Winchester and currently zoned Conservancy Institutional District (SCI-0.50) and Residential District A (RDA-20) an Independent Elderly Housing Overlay District (IEH) said land being located on the northerly side of Thornberry Road, being commonly known as a portion of the Winning Farm . . . containing approximately 19.18 acres . . . . " (Exhibits 106 and 107). The amended zoning by-law was [\*12] approved by the Department of the Attorney General on June 22, 2000.

On December 5, 2000, Winning Farm, LLC, as the holder of a written option to purchase the property, filed an application for a Special Permit with the ZBA for the "[d]evelopment of assisted living facility containing 90 living units and an independent living facility containing an additional 55 apartment units:" (Exhibit 113).

In late November or early December, 2000, Alper, as a member of the ZBA, requested an opinion from Welch, as Town Counsel for Winchester, as to whether Alper's "sitting on the application/petition being presented to the Zoning Board of Appeals by the proponents of the Winning Farm assisted living project may constitute a 'conflict of interest' within the ambit of the applicable statutes, . . . [and] because the Town's pending sale to the current project proponents was negotiated and executed during [Alper's] term as Selectman, [Alper] expects that a question may arise concerning whether

[Alper's] participation is permitted under G.L. c. 268 § A [sic]." (Exhibit 117A). Welch responded by letter dated December 15, 2000, that under "G.L. c.268 § 19 [sic]" and the State Ethics Commission's precedent, it was his opinion that "neither [\*13] [Alper] nor [Alper's] wife, . . . who is a sitting member of the Winchester School Committee, has a financial interest in any matter related to the proposed assisted living facility to be constructed at the Winning Farm and there was no prohibition on [Alper's] participating in any and all decisions relating to its current or future use or development." (Exhibit 117A). Welch's opinion letter of December 15, 2000 was reviewed by the State Ethics Commission. By letter dated January 25, 2001, the State Ethics Commission stated that they "concur with the conclusions contained in Welch's opinion." (Exhibit 117B). The State Ethics Commission's review was limited to the content of Welch's two-page letter, which focused on the lack of financial interest and the location of Alper's home. Welch described Alper's involvement in the Winning Farm project as the "pending sale . . . was negotiated and executed during your term as Selectman." Welch provided no further description of Alper's lengthy and in-depth involvement to the Ethics Commission.

The ZBA, consisting of Alper, John A. Prokos as acting Chairman, and Christopher H. Mulhern, conducted hearings on the Special Permit Application on January [\*14] 9, February 6 and March 7, 2001. (Exhibit 117). Just prior to the February 6, 2001 hearing, four motions were submitted to the board; they were received and reviewed the previous day to varied extent by at least Welch, Alper and Murray. Attorney Robert Keane, as counsel for plaintiff Myra Fournier, an abutter of the Winning Farm property, filed motions with the ZBA to recuse or disqualify Alper and Mulhern from sitting and voting on the Winning Farm, LLC Special Permit proceeding. The motions were based on the ground that "a reasonable person might suspect the existence of bias or reasonably question the impartiality of [Alper]," and that Alper's participation as a member of the ZBA would therefore be a violation of Article 29 of the Massachusetts Declaration of Rights, due process of law, and Supreme Judicial Court Rule 3:09, as applicable to administrative agencies. (Exhibit 117C). Neither Keane's motion nor his supporting memorandum of law challenged Alper's participation as a violation of G. L. c. 268A. Keane also submitted a motion regarding a site plan review. Attorney Hintlian, counsel for plaintiff Anna Pierce, submitted a motion pertaining to the lack of proper statutory notice required to be given by Winchester to the surrounding towns.

At some point on February 6, [\*15] 2001, prior to the meeting, Welch wrote a memorandum to John Prokos as Chairman of the ZBA, in which he advised Prokos that Alper's request for an opinion from Welch, his opinion in

response to that request, and the State Ethic's Commission's affirmance of his opinion were sufficient to address and resolve the issue of the motion to recuse or disqualify Alper from considering and determining the Winning Farm, LLC Special Permit application. (Exhibit 117 at Tab 4).

At the start of the February 6, 2001, public hearing on the Winning Farm, LLC Special Permit application, the ZBA voted to convene in executive session to consider with Welch the motions that had been filed. The ZBA's executive session was tape-recorded, and, by order of the Middlesex County District Attorney in connection with a separate proceeding, the tape has since been transcribed, although with numerous inaccuracies. (Exhibit 116a).

In that executive session, the group, including Welch, Alper, Mulhern, and Prokos, formulated their positions on the four motions, as well as a tentative decision on the application. Ms. Tustin was in attendance, but only participated to acknowledge her mistake relative to notice. Regarding [\*16] the bias motions, Welch once again reiterated his opinion that Alper's participation as a member of the ZBA would not violate G. L. c. 268A, and he advise the members of the ZBA to cite his opinion letter of December 15, 2000 and the State Ethics Commission's affirmance dated January 25, 2001, "and leave them [the moving party] to their remedies . . . and be done with it." (Exhibit 116a). Alper agreed with Welch's advice and added that "I don't think, Wade, that we have to or ought to hear a lengthy argument because reading it into the record may — add grist to their mill, for instance, somebody says something that's intemperate that may say that we have an animus as a result of those intemperate remarks." (Exhibit 116a at p. 4, as revised by the audio tape of the executive session). Later in the executive session, Alper stated: "I don't think we ask [Keane] anything. We hear him out and then we say that it's denied. We move to deny." (Exhibit 116a at p. 7, as revised by the audio tape of the executive session). Welch later stated the recusal motion "border[ed] on bizarre." (Exhibit 116a at p. 17). The group debated whether or not to hear argument on the individual motions. They then agreed [\*17] upon and scripted a plan to hear some argument on the site plan and notice issues, in order to avoid the appearance of engaging in, in Alper's words, "marsupial jurisprudence," (Exhibit 116a at p. 12), though the board had already decided to deny all of the motions.

The group acknowledged they had a problem with having not given notice to the adjacent towns, and discussed the alternative of obtaining waivers. They discussed the fact that

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<sup>&</sup>lt;sup>1</sup>The Middlesex District Attorney's Office, after investigating that matter, concluded that the ZBA's executive session on February 6, 2001 violated the open meeting law, (Exhibit 178).

they could not render an application decision without having waivers. Welch advised, and the group concurred, that they were ready and able to make a favorable decision, based on the Town Meeting votes alone and not on any evidence received in the hearings, but first had to correct the procedural notice problem. (Exhibit 116a at p. 12 and 16). The transcript also includes two references by Welch to Lawrence Murray, Esquire, counsel for Winning Farms, LLC, indicating that "Larry has been briefed on theses and he will be able to address them." (Exhibit 116a at p. 13). Prokos responded "How do we get Larry to respond?" Alper then responded "What you say is you'll hear from the maker of the motion and then you'll hear from the proponents." Later, Welch [\*18] stated "And Larry is well briefed on the issues that I've given you. And he should do a very competent job." (Exhibit 116a at p.17).

While the revised transcript of the audiotape of the executive session is informative, the audiotape itself is more revealing, particularly relative to the position of authority held by Welch, as it includes tones of rudeness and incredulousness. In one of the final executive session exchanges before returning to the public session, Welch asked the group "[h]ave you had enough? Are you ready to go?" In response, Mulhern asks "[a]re you staying around?" Welch's response was "[n]o, I'm not going to stay around. Are you kidding me?" (Exhibit 116a at p. 17).

When Alper and the other members of the ZBA returned to public session on February 6, 2001, they would not allow Keane to present any oral argument on his recusal motions, and they summarily denied them, despite Keane's attempt to clarify that the recusal motions were not based on G. L. c. 268A. (Exhibit 116b at p. 6). All parties were given the opportunity to speak on the site plan and notice issues, as per the approach agreed upon in executive session. When Murray was given the floor, he was, in fact, well prepared. [\*19] He also indicated that in the past day, he had taken "the liberty" and pursued the other towns seeking waivers for the lack of proper notice, despite the fact he represented the developer and not the town. In one day, he had obtained waivers from Arlington, Lexington, and Woburn, and was awaiting waivers from Stoneham and Woburn. (Exhibit 116b at p. 25-28). The board then dismissed all four motions, subject to receipt of all waivers on the issue of notice to the adjoining towns.

On June 15, 2001, the ZBA issued a unanimous decision granting a Special Permit to Winning Farm, LLC, subject to certain conditions not relevant to the present issue. (Exhibit 117). In that decision, the ZBA wrote that "[t]he Board considered the Memorandum filed by Mr. Keane, and heard oral argument from Mr. Keane, and counsel for the applicant. Finding Mr. Keane's arguments unpersuasive, and in reliance

on oral and written advice of Town Counsel, the Motions to Recuse or Disqualify Board members were denied." (Exhibit 117, Decision No. 3216 at ¶1).

Contrary to the statements contained in the ZBA's decision, the ZBA did not hear oral argument from Keane and, in fact, voted to deny Keane's motion while in executive [\*20] session, before Keane had an opportunity to present oral argument on his motion. (Exhibits 116a and 116b).

On July 2, 2001, the plaintiffs filed a Complaint pursuant to G. L. c. 40A, § 17 and G. L. c. 231A, appealing the ZBA's decision to grant a Special Permit to Winning Farm, LLC to this Court. In their complaint the plaintiffs alleged, *inter alia*, that they "were denied due process of law, and a fair and impartial hearing as the impartiality of two members of the ZBA, Christopher H. Mulhern and Joshua M. Alper was open or reasonably open to doubt and the denial of the Plaintiffs' Motion to Recuse and Disqualify these ZBA Members was an error of law and a violation of the open meeting law under G.L. c. 39, sec. 23A and 23B and in violation of due process of law." The plaintiffs' claim against Mulhern was later withdrawn.

#### **RULINGS OF LAW**

#### I.

Declaratory judgment under G. L. c. 231A, § 1 enables a judge to "afford relief from . . . uncertainty and insecurity with respect to the rights of the parties." *Pina v. Liberty Mut. Inc. Co.*, 388 Mass. 1001, 1002, 445 N.E.2d 1057 (1983) (citations omitted). Such a declaration can only be made where there is an actual controversy. *Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 425 Mass. 534, 536-37, 682 N.E.2d 607 (1997). Given the actual controversy in this case, declaratory judgment is appropriate.

#### II.

Article 29 of the Massachusetts Declaration of Rights states that [\*21]

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

Mass. Const. Part 1, Art. 29. Administration of justice in the courts of Massachusetts must be and must appear to be

impartial. *King v. Grace*, 293 Mass. 244, 247, 200 N.E. 346 (1936). These standards are "at least as rigorous in exacting high standards of judicial propriety as are those of the Fourteenth Amendment to the Constitution of the United States." *Id.* They are so basic that they "must be accepted as an elementary truth," worthy of "rigid adherence." *Hall v. Thayer*, 105 Mass. 219, 221 (1870), and *Thomajanian v. Odabashian*, 272 Mass. 19, 23, 172 N.E. 232 (1930).

Due process requires a "fair trial in a fair tribunal." *In the Matters of Lee Roy Murchison and John White*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1954).<sup>2</sup> In seeking to "prevent even the probability of unfairness," we strive to ensure that judges have no interest in the outcome of cases they hear. *Id.* To this end, "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true" between the parties denies due process of law. *Id.* fudges must decide cases only upon the evidence, general knowledge and common experience, and may not "rightly act upon private information." [\*22] *Crockett v. Snow*, 258 Mass. 133, 136, 154 N.E. 549 (1927).<sup>3</sup>

Requirements for a fair trial and a fair tribunal extend beyond the confines of a formal court. *Hall*, 105 Mass. at 222. Originating in early common law, such requirements extend to a wide range of situations and special tribunals, including police court, county commissioners, jurors, land appraisers, and referees. *Id.* at 222-23. These due process constructs are not to be applied rigidly, but should be "broadly applied to all classes of cases where one is appointed to decide the rights of his fellow-citizens." *Id.* at 223; *Beauregard v. Dailey*, 294 Mass. 315, 324-25, 1 N.E.2d 481 (1936). This includes administrative adjudicators in quasi-judicial roles. *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d 488 (1973).

The Supreme Judicial Court (SJC) has applied the rigors of Art. 29 beyond the confines of the courtroom. The Court applied Art. 29 to a Civil Service Commissioner, requiring

that he be a "disinterested person," and vacating the decision of the board. Police Comm'r. of Boston v. Mun. Ct. of W. Roxbury Dist., 368 Mass. 501, 507, 332 N.E.2d 901 (1975). In concluding that the hearing officer was "not disinterested," the fact that the hearing was fair with no showing of bias was irrelevant; the officer should not have presided because of his existing "interested" status. Id. More recently, the SJC applied the rigors of Art. 29 to members of a Board of Registration of Chiropractors. Varga v. Bd. of Registration of Chiropractors, 411 Mass. 302, n.3, 582 N.E.2d 492 (1991) (no foundation found to support the assertions of bias, [\*23] as they were unproven, doubtful, and speculative).

The SJC has yet to apply Art. 29 in the context of a zoning case. The defendants in the present case point to Oregon law to argue that it is inappropriate to hold zoning board members to a judicial standard of conduct. *1000 Friends of Oregon v. Wasco County Court*, 304 Ore. 76, (1987), 742 P.2d 39.8 However, unlike Oregon, the SJC considers zoning boards to

<sup>&</sup>lt;sup>2</sup> This case assessed the bias of a judge who sat as a one-man grand jury and then as the trial judge for the same defendants. The Court found that it would be "difficult if not impossible for a judge to free himself from the influence of what took place in this grand-jury secret session." *Murchison*, 349 U.S. at 138. In finding a violation of due process, the Court indicated the judge "was doubtless more familiar with the facts and circumstances in which the charges were rooted than was any other witness." *Id*.

<sup>&</sup>lt;sup>3</sup> One cannot "guard too sedulously every appearance of impartiality." *Thomajanian*, 272 Mass. at 24.

<sup>&</sup>lt;sup>4</sup> A disinterested, adjudicative person "holds a hearing, takes evidence and makes findings of fact," upon which a decision is made. *Police Comm'r. of Boston*, 368 Mass. at 507. The hearing officer was deemed to be "not disinterested" because of prior representation in a divorce proceeding. *Id*.

<sup>&</sup>lt;sup>5</sup> "The infection of the concurrence of the interested person spreads, so that the action of the whole body is voidable." *So. Brunswick Assoc. v. TP. Council*, 285 N.J. Super. 377, 384, 667 A.2d 1 (1994) (citation omitted).

<sup>&</sup>lt;sup>6</sup> The Court in *Varga* stated that "it would be a rarity that alleged bias and interest which did not violate our strict Conflict of Interest Law could nevertheless violate the constitutional right to a fair hearing." *Varga*, 411 Mass. at 306; G. L. c. 268A. However, G. L. c. 268A focuses on potential financial and relationship conflicts, while Art. 29 addresses bias or prejudice on a broader basis. The present action was brought under Art. 29, and not under G. L. c. 268A.

<sup>&</sup>lt;sup>7</sup> The SJC has briefly considered the possibility of bias in a planning board decision. *Roberts v. Southwestern Bell Mobile Systems, Inc.*, 429 Mass 478, 709 N.E.2d 798 (1999). The Court found that one advance meeting with several town officials and the chairman of the planning board did not violate the abutters' due process rights, and that succeeding public hearings eliminated any possible taint from the earlier meeting. *Id.* at 494-95 and n.29.

<sup>&</sup>lt;sup>8</sup> The Oregon case determined that a county judge hearing a case on the Land Use Board of Appeals was to be held to a standard of actual and not implied conflict or bias. *1000 Friends of Oregon*, 304 Or. at 84. The Oregon Court determined the proper standard based on a sliding scale, with unpaid zoning board members in that case falling at the lower end. *Id.* at 88. In contrast, Massachusetts has previously held that county judges are held to the full standards of due process. *Hall*, 105 Mass. at 222.

be adjudicatory, quasi-judicial bodies. *Mullin v. Planning Bd. of Brewster*, 17 Mass. App. Ct. 139, 142-43, 456 N.E.2d 780 (1983); *Coleman v. Bd. of Appeal of Building Dept. of City of Boston*, 281 Mass. 112, 115, 183 N.E. 166 (1932). This Court thus concludes that Art. 29 must apply to zoning boards, and specifically in this case to the Winchester ZBA.

#### III.

A court must start with the presumption that adjudicators are unbiased. *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S. Ct. 1665, 72 L. Ed. 2d 1 (1982) (assessing the potential bias of federal insurance claim hearing officers). The plaintiff carries the burden of proving facts to the contrary. *Id.* at 196. The presumption can be overcome "by a showing of conflict of interest or some other specific reason for disqualification." *Id.* at 195. Few clear tests exist in this area, necessitating a close examination of the specific facts in each case. *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 26, 498 N.W.2d 842 (1993).9

Numerous other states have considered the impartiality of zoning members in the context of due process. <sup>10</sup> The cases cover a wide range of circumstances where the risk of impartiality is constitutionally intolerable. *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). These cases generally fall into [\*24] categories of conflict of interest (financial and associational), and bias (prejudgment and conflicting roles). <sup>11</sup> Based on the record before it in the

present case, the Court concludes that there is no evidence of financial, familial, or paid business conflict of interest of any type that is attributable to Alper. 12

Case law relevant to the issues at bar do pertain to bias in prejudgement and conflicting roles, though the line between these two categories is often blurred. Because the facts of the present case blend these two issues, the Court [\*25] will review the case law in both areas prior to addressing the facts in the case at bar.

### A. Prejudgment Issue

[Z]oning decisions implicate important private and public interests; they significantly affect individual property ownership rights as well as community interest in the use and enjoyment of land. Furthermore, zoning decisions are especially vulnerable to problems of bias and conflict of interest because of the localized nature of the decisions, the fact that members of zoning boards are drawn from the immediate geographical area, and the adjudicative, legislative and political nature of the zoning process. Since biases may distort judgment, impartial decision-makers are needed to ensure both sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process.

#### 31 Suffolk U. L. Rev. 349 (1997).

<sup>12</sup>While this action has not been brought under G. L. c. 268A, the ZBA did rely on the State Ethics Commission's letter in denying the plaintiffs a hearing on bias. It is thus relevant to note that the ZBA's reliance on the Ethics Commission's affirmation of Welch's two-page decision is misplaced, as his letter presents a picture that is far from a reasonable or complete representation of Alper's role in the Winning Farms project.

Based on prior Ethics Commission Reports, it is questionable whether the Commission would have reached the same decision with a full record. State Ethics Commission Fact Sheet No. 4: "Special" Municipal Employees at 2, § 17 (Issued May 1987, Revised Aug. 1992) (stating that special employees may "represent private parties before municipal boards other than your own, provided that you have not officially participated in the matter and the matter is not now (and was not within the past year) within your official responsibility); Summary of the Conflict of Interest Law - No. 7: Zoning Board of Appeals Members at 1 (Issued Oct. 1987) (stating "[t]he law is broadly written so that situations which even give the appearance of a conflict may be avoided").

 $^{13}$ The "prejudgement" cases focus on evidence of decisions being reached before hearing the merits, while the "conflicting roles" decisions focus on the *per se* nature of conflicting activity.

<sup>&</sup>lt;sup>9</sup> See also *Paruszewski v. Township of Elsinboro*, 154 N.J. 45, 58,
711 A.2d 273 (1998); *Holt-Lock, Inc. v. Zoning & Planning Com.*,
161 Conn. 182, 189, 286 A.2d 299 (1971).

<sup>&</sup>lt;sup>10</sup>The case at bar does not involve a question of spot zoning, one often invoking constitutional issues. *Board of Appeals of Hanover and Concord v. Housing Appeals Comm'n in Dept. of Cmty. Affairs*, 363 Mass. 339, 294 N.E.2d 393 (1973).

<sup>&</sup>lt;sup>11</sup>Several secondary sources provide a thorough examination and assessment of the law in this area. W. E. Shipley, <u>Annotation</u>, <u>Disqualification For Bias or Interest of Administrative Officer Sitting in Zoning Proceeding</u>, 10 A.L.R. 3d 694, 697 (1966); Mark S. Dennison, <u>Zoning: Proof of Bias or Conflict of Interest in Zoning Decision</u>, 32 Am. Jur. Proof of Facts 3d 53, §12 (cumulative update July, 2002); Mark. W. Cordes, <u>Policing Bias and Conflicts of Interest in Zoning Decisionmaking</u>, 65 N. D. L. Rev. 161, 163 (1989); Patricia E. Salkin, <u>Litigating Ethics Issues in Land Use: 2000 Trends and Decisions</u>, 33 Urb. Law 687 (2001); Patricia E. Salkin, <u>1998 Survey of Ethics in Land-Use Planning</u>, 26 Fordham Urb. L. J. 1393 (1999); R. Lisle Baker, <u>Ethical Limits on Attorney Contact with Represented and Unrepresented Officials: The Examples of Municipal Zoning Boards Making Site-Specific Land Use Decisions,</u>

Marris, 176 Wis.2d at 25-6 (citations omitted) (board chairman biased and in error for refusing to recuse himself, based on three comments made in a board meeting indicating a personal bias, predisposition on the legal issue, and prejudgement of the plaintiff's credibility<sup>14</sup>). Board members "may not be swayed in their decisions by preconceived biases and prejudices." Ripley City Bd. of Zoning. v. Rumpke of Ind., 663 N.E.2d 198, 209 (Ind. App. 1996) (board member biased where [\*26] he owned land within one-quarter mile, had previously complained about the specific site, led an effort to enforce a setback against the owner, and made a public comment of a preference to run the plaintiff out of town). Due process is violated when the "risk of bias is impermissibly high." Marris, 176 Wis.2d at 25.15 Decisions must be based on the "evidence presented at the hearing," based on the board's role as a fact-finder and a decision-maker applying the law. Ripley, 663 N.E.2d at 205, and Marris, 176 Wis.2d at 26. "[P]ersonal interest may not conflict with public duty." Furtney v. Zoning Comm'n, 159 Conn. 585, 592, 271 A.2d 319 (1970).

In contrast to judges however, local board members are allowed to be cognizant of community opinion and concerns, provided that this awareness does not outweigh hearing evidence. Valentine v. Rent Control Bd. of Cambridge, 29 Mass. App. Ct. 60, 73, 557 N.E.2d 63 (1990)<sup>16</sup>; Ripley, 663 N.E.2d at 205. They may even "have opinions about local and preferences in zoning issues" land use and development.<sup>17</sup> Marris, 176 Wis.2d "Local at 26.

governments would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official. If this were so, it would not only discourage but might even prevent capable men and women from serving as members of the various zoning authorities." 18 Furtney, 159 Conn. at 593-94. To balance these public and private interests, a court must carefully "scrutinize [\*27] the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism." Id. at 594. The essential question is whether the "circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. Lincoln Hts. Assoc. v. Township of Cranford Planning Bd., 314 N.J. Super. 366, 379, 714 A.2d 995 (1998). 19 Because members of municipal boards are held to a different standard than judges, this Court does not apply the rigors of SJC Rule 3.09 Code of Judicial conduct.

As the SJC stated in *Varga*, it is a rare bias case that rises to a constitutionally intolerable level.<sup>20</sup> The same can be said for the issue of prejudgment in zoning cases. The majority of cases reviewed found the level of possible bias to be

similarly are not considered bias, particularly when the action is more legislative than adjudicative. *City of Farmers Branch v. Hawnco, Inc.*, 435 S.W.2d 288 (Tex. Civ. App.-Dallas 1968); *Wollen v. Fort Lee*, 27 N.J. 408, 142 A.2d 881 (1958).

<sup>&</sup>lt;sup>14</sup>The plaintiff was compared to Leona Helmsley, the hotel heiress. In total, the comments overcame a "presumption of honesty and integrity." *Marris*, 176 Wis.2d at 29-30.

<sup>&</sup>lt;sup>15</sup> "The evil lies not in the influence improperly exercised but rather in the creation of a situation tending to weaken public confidence and to undermine the sense of security of individual right which the Property owner must feel assured will always exist in the exercise of zoning power." *Daly v. Town Plan & Zoning Comm'n*, 150 Conn. 495, 500, 191 A.2d 250 (1963) (finding Commission member biased when Commission amended regulations to overturn the appeal board decision denying a variance. Member had appeared before the appeals board lobbying for the variance, and was president of the cemetery association to benefit from the variance.).

<sup>&</sup>lt;sup>16</sup> "In adjudication, board members are expected to act without self-interest or personal animus, but they are not expected to be free from preconceptions grounded in the policies of the law they administer or from knowledge of conditions in the community to which that law applies." *Valentine*, 29 Mass. App. Ct. at 73 (finding rent-control board member was not biased when she offered a suggestion to resolve the problem at hand).

<sup>&</sup>lt;sup>17</sup> Campaign positions of people elected on a platform who later vote

<sup>&</sup>lt;sup>18</sup> Abrogation of "a municipal action on the basis that some remote and nebulous interest may be present would be to deprive unjustifiably a municipality, in many important instances, of the services of its duly elected or appointed officials." *Furtney*, 159 Conn. at 594 (cite omitted).

<sup>&</sup>lt;sup>19</sup> See also *Furtney*, 159 Conn. at 594 (assessing whether the board member has made a decision prior to hearing the evidence); *Winslow v. Holderness Planning Bd.*, 125 N.H. 262, 480 A.2d 114 (1984) (considering whether the member is predisposed to a certain outcome).

<sup>&</sup>lt;sup>20</sup> Some states have enacted legislation specifically addressing zoning board conflicts, with wide variation. See *Segalla v. Planning Bd.*, 204 A.D.2d 332, 611 N.Y.S.2d 287 (1994), and *Binford v. W. Elec. Co.*, 219 Ga. 404, 133 S.E.2d 361 (1963) (both finding no bias under statutes limited to financial conflicts only). Connecticut has enacted a statute encompassing the limits of due process by requiring proof of actual bias or a high probability of bias which is constitutionally intolerable. *Goyette v. Lebanon Planning and Zoning Comm'n*, No. 112887, 1999 Conn. Super. LEXIS 261, 1999 WL 68545 (Conn. Super. Feb. 3, 1999) (unpublished opinion); *Phillips v. Town of Salem Planning & Zoning Comm'n*, No. 113120, 1998 Conn. Super. LEXIS 1330, 1998 WL 258332 (Conn. Super. May 1998) (no bias where member had reduced a tentative position to writing prior to the hearing).

insufficient to vacate a board's decision. *Furtney*, 159 Conn. at 592-93 (local banker was not biased though the applicant did business at the bank, and knew him but not socially); *Siesta Hills Neighborhood Assoc. v. City of Albuquerque*, 1998- NMCA 028, 124 N.M. 670, 677, 954 P.2d 102 (1998) (board member was not biased and had not prejudged the issues in spite of comments made after the hearing that it was a "cut-and-dried" case for her, and the fact that her child had attended the applicant's day care program twenty-one months earlier); *Kramer v. Bd. of Adjustment, Sea Girt*, 45 N.J. 268, 212 A.2d 153 (1965) (three board members who endorsed a candidate who supported a particular zoning position which [\*28] they later voted to support were not biased).<sup>21</sup>

In contrast, the courts in Marris, Ripley, and Daly found dear cases of prejudgement bias based, respectively, on three strong public statements against the plaintiff, public comment and efforts to work against the plaintiff, and public efforts to support a variance before another board. Other examples of prejudgement bias are found in two Pennsylvania cases. McVay v. Zoning Hearing Bd., 91 Pa. Commw. 287 (1985), 496 A.2d 1328 (three of five members of a newly appointed board biased who had previously signed and filed a petition against a new zoning law for low-cost housing, then three months later when on the board, voted against the specific application); and Prin v. Council of the Municipality of Monroeville, 165 Pa. Commw. 519 (1994), 645 A.2d 450 (finding councilman sitting on the board that denied the application, after ignoring a request to recuse, biased due to his vocal position at Planning Commission hearings and letters on official stationary stating very strong opposition). Certainly, recusal will usually cure the bias problem.<sup>22</sup>

<sup>21</sup> See also Wagner v. Jackson City Bd. of Zoning Adj., 857 S.W.2d 285 (Mo. App. W.D. 1993) (board member was still capable of judging the controversy fairly though in deposition testimony he revealed he favored the permit before the hearing, but decided the issue on the hearing evidence); Lincoln Hts. Assoc. v. Township of Cranford Planning Bd., 314 N.J. Super. 366, 714 A.2d 995 (1998) (board member not biased because his parents resided in a senior citizen complex near the location of the proposed supermarket, which would save his family time and effort, nor was there bias from two other members' campaign statements supporting the opening of a new market). In contrast, some cases come much closer to questionable tolerance. Brooks v. Town of Haddam, 26 Conn. L. Rptr. 397, 2000 Conn. Super. LEXIS 244, 2000 WL 177195 (Conn. Super. Feb. 1, 2000) (participation on committee studying locating ballfields, membership in Little League, and vocal support to be insufficient evidence of bias, as they had nothing personal to gain and were in concert with public opinion).

#### B. Conflicting Roles

As discussed above, zoning board members are allowed to have opinions and an awareness of public sentiment, provided that they are still able to weigh the evidence presented at a hearing in a fair and impartial manner. Sometimes, however, [\*29] the very act of sitting on different boards or functioning in different roles may lead to a presumption of bias.

The seminal Withrow case examined an administrative agency's actions that combined investigative and adjudicative functions. Withrow, 421 U.S. at 47. The Court found that federal and state cases concur that such a combination is not a violation of due process, even if done by the same person.<sup>23</sup> Id. at 52. "The mere exposure to evidence presented in nonadversary investigative procedures is insufficient in itself to impugn the fairness of the Board members at a later adversary hearing."24 Id. at 55. The Court reviewed case law that both found and negated allegations of due process violations. Id. at n. 16. The four cases of violations involved people who first served as either employees of or counsel to one party during the investigation, then later served as adjudicatory board members.<sup>25</sup> *Id*. In contrast, non-violations reflect instances of investigation and adjudication within the mandated responsibilities of the same organization. Id.

Massachusetts has assessed conflicting roles under Art. 29 in several situations, though none involving zoning boards. In concert with past Massachusetts • cases, the SJC most recently [\*30] found that a commissioner could hear a matter "involving an issue similar to one he or she may have previously addressed" as an advocate, because the cases involved "different matters, arising out of different factual

#### Middletown, 10 N.J. 442, 92 A.2d 4 (1952).&

<sup>23</sup> The Court acknowledged that judges can try cases twice without creating bias, yet confirmed, the *Murchison* finding of bias where a judge functioned as both the prosecution and the adjudicator, because when "passing on guilt or innocence, he very likely relied on his own personal knowledge and impression of what had occurred in the grand jury room, an impression that could not be tested by adequate cross-examination." *Withrow*, 421 U.S. at 53 (citations omitted).

<sup>24</sup> "Without a showing to the contrary, state administrators are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." *Withrow*, 421 U.S. at 55 (citing *United States v. Morgan*, 313 U.S. 409, 421, 61 S. Ct. 999, 85 L. Ed. 1429 (1941)).

<sup>25</sup> The Court also acknowledged that later review of one's own earlier decision raises due process problems. *Withrow*, 421 U.S. at n.25.

<sup>&</sup>lt;sup>22</sup>Two cases demonstrate bias resolved in zoning hearings with recusal. See *In re Stagebrush Promotions, Inc.*, 98 Pa. Commw. 634, 512 A.2d 776 (1986); *Cobble Close Farm v. Bd. of Adjustment of* 

circumstances and involving different taxpayers. *The New York Times Co. v. Comm'r of Revenue*, 427 Mass. 399, 408, 409, 693 N.E.2d 682 (1998). On several prior occasions, the Court has considered and endorsed the *Withrow* position of no due process violation in factually similar situations of dual-function agencies. *D'Amour v. Bd. Of Registration in Dentist* 409 Mass. 572, 580, 567 N.E.2d 1226 (1991).<sup>26</sup> In citing *Withrow*, the SJC acknowledged that "special circumstances in a particular case may demonstrate an unacceptable risk of unfairness." *Raymond v. Bd. of Registration in Medicine*, 387 Mass. 708, 717, 443 N.E.2d 391 (1982).

Turning to zoning cases, New Jersey recently assessed and articulated the differences between local governing bodies, such as Board of Selectmen, and adjudicative zoning boards. Paruszewski v. Township of Elsinboro, 154 N.J. 45, 711 A.2d 273 (1998).<sup>27</sup> The Court there focused on the fundamental mandate of maintaining the distinctions between a legislative body establishing land use policy and an adjudicative body hearing and deciding interpretations and variations of that policy. Id. at 52-54. It is essential that governing bodies "not interfere with," "influence," or "infringe on the prerogatives of the zoning board. Id. at 55.28 Bias would arise if an official votes on a matter in which an individual's [\*31] judgment may be affected because of membership in some organization and a desire to help that organization further it policies." *Id.* at 59 (citing Wyzykowski v. Rizas, 132 N.J. 509, 525-26, 626 A.2d 406 (1993) (outlining four types of conflict of interest)).

Several courts have found bias due to a board member's conflicting roles. In a case very similar to the one at bar, Pennsylvania found that a board member was biased who previously was employed by one party to survey the land, then "testified as a witness in support of the appellee's attempt to amend the zoning ordinance applicable to the premise." *Borough of Youngsville, v. Zoning Hearing Bd. of Borough of Youngsville,* 69 Pa. Commw. 282, 289, 450 A.2d 1086 (1982).

While the Court found no evidence of actual bias, it emphasized the need to sit as an impartial tribunal, and to uphold the public's confidence in such proceedings. *Id.* at 290. The Court was particularly taken with the untenable situation of having a board member working for pay on a project, voicing a favorable opinion in a "formal, albeit separate, proceeding," and then later participating and voting on an adjudicatory board addressing the very same matter. *Id.* 

A New Jersey court found bias based on a council president appearing before a zoning board in support of one side, then later participating in an appeal of the decision to the council. [\*32] So. Brunswick Assoc. v. TP Council, 285 N.J. Super 377, 667 A.2d 1 (1994). And, a court in Washington found a voting planning board member to be biased, who was also the paid executive director of the chamber of commerce which had voted to and had actively supported the project, and whose members would generally benefit financially from the project. SAVE v. City of Bothell, 89 Wash.2d 862, 576 P.2d 401 (1978). Though the court found no actual bias, it felt membership in and employment by the chamber could have "substantially influenced her decision." Id. at 872. The court relied on the perception of the uninterested person to determine the question of possible bias. Id. at 873.

In contrast, other courts have found no evidence of bias based on conflicting roles.<sup>31</sup> Oregon held that the whole elected city council's vote to grant a special use permit was not biased because of the same council's earlier approval, essentially a

 <sup>&</sup>lt;sup>26</sup> See also Craven v. State Ethics Comm'n, 390 Mass. 191, 454
 N.E.2d 471 (1983); Raymond v. Bd. Of Registration in Medicine,
 387 Mass. 708, 443 N.E.2d 391 (1982); Dwyer v. Commissioner of Ins., 375 Mass. 227, 376 N.E.2d 826 (1978).

<sup>&</sup>lt;sup>27</sup>Under unique circumstances, the Court decided that there was no conflict and that the town had standing before the zoning board, where the town opposed an application, and town counsel appeared before the board representing that opposition. *Paruszewski* at 50-51, 57

<sup>&</sup>lt;sup>28</sup>The fact that the zoning board members are appointed by the governing body does not typically infringe *per se* on their impartiality, when the governing body comes before the zoning board. *Paruszewski* at 59-60.

<sup>&</sup>lt;sup>29</sup> The Court in *SAVE* also clarified that while the right to be a member of a community organization is generally protected by the First Amendment of the United States Constitution, conflict and bias determinations would not burden that right. 89 Wash.2d at 873-74. The rule of impartial tribunals prohibits membership in both a quasijudicial board and an organization with "an interest which might substantially influence the individual's judgment" while sitting on that board, but does not restrict the right of association. *Id.* at 874.

<sup>&</sup>lt;sup>30</sup> "The question to be asked is this: Would a disinterested person, having been apprised on the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." *SAVE*, 84 Wash. at 873.

<sup>&</sup>lt;sup>31</sup> See also *Holt-Lock, Inc. v. Zoning & Planning Com.*, 161 Conn. 182, 286 A.2d 299 (1971). The Connecticut court did not find sufficient proof of bias though it looked with disfavor on the fact that a zoning board member also sat on the conservation commission which had discussed and then publicly written a letter, presented to the zoning board, against the project. *Id.* at 189-90. The Court was unable to vacate the decision because statements in the plaintiff's brief negated the exact statutory test to be proven. *Id.* 

sponsorship, of an application for a federal grant for the same project. *Beck v. City of Tillamook*, 113 Or. App. 660, 833 P.2d 1327 (1992). The Oregon court focused on the fact that the council was performing two of its separate and distinct lawful responsibilities. *Id.* at 663. A Wisconsin court found that a councilman with an obligation to pursue possible nuisances within his district, who acted as a complainant and a prosecutor, and who clearly voiced his opposition, did not bias the [\*33] decision because he recused himself from any substantive voting. *Kivley v. City of Milwaukee*, 2000 WI App 31, 2001 WI App 31, 241 Wis. 2d 50, 622 N.W.2d 770, 2000 WL 1779258 at \*2-3 (2001 Wis. 2000) (unpublished opinion).

A few Pennsylvania cases have also examined the possible conflicting roles of town counsel. Essentially, an attorney may not function as counsel for a zoning board, and then, in the same matter, function as a representative for one party before the board. In an extreme case, an attorney functioned as a judge at the hearing, ruling on the admissibility of evidence and objections, then also represented the town and presented evidence.<sup>32</sup> Horn v.. Township of Hilltown, 461 Pa. 745, 747, 337 A.2d 858 (1975). The procedure was so "susceptible to prejudice" that the Court vacated the decision. Id. at 748. Towns are free to and should obtain separate outside counsel when conflicting situations arise. Sultanik v. Board of Supervisors, 88 Pa. Commw. 214, 224-25 (1985), 488 A.2d 1197.<sup>33</sup> Biased decisions will not be sustained even though the board shuns recusal requests on advice of town counsel. So. Brunswick Assoc., 285 N.J. Super. at 384.

#### C. The Winchester Case

Over the past ten years, Alper has been involved in more than fifteen distinct events or actions relevant to the Winning Farm project, which resulted in the granting of the special permit by the ZBA that is at issue here. While chairing the Conservation Commission in the early 1990's, Alper became aware of the Winning Farms property, and inferably [\*34] brought the issue forward. While chairing the Zoning Board in the mid-90's, Alper was retained on a *pro-bono* basis to assist with conveyancing and environmental issues, as the town was considering purchasing the property. He was involved in

several meetings and numerous conversations, as well as in editing drafts of the Purchase and Sale Agreement. Up to this point, Alper's role is easily viewed as not only a public supporter and conservationist, but also as an active advocate for the project and as counsel for the town, albeit unpaid. Based on his expertise, Alper had to be aware that agricultural property would likely require either a zoning amendment, a variance or a special permit.

The town took possession of the first segment of the property just as Alper was elected to the Board of Selectmen in March of 1997, and as he became a voting member of town meeting. Shortly after, the Winning Farm Use Committee, of which Alper was not a member, reported back to the Selectmen. Based on the report, the Selectmen, including Alper, decided to issue an RFP. Alper was instrumental in drafting the RFP. In early 1998, Alper became the chair of the Board of Selectmen. The RFP was approved and [\*35] issued by the board in November, 1998. At this stage, Alper may easily be seen as one of, if not the key, proponent of the project in the town of Winchester. His drafting of the RFP and chairmanship of the board, even in isolation, establish him as a salient town representative of the project.

After receiving responses to the RFP, the Selectmen, still including Alper, voted to accept the Salter Group proposal. in negotiating and drafting assisted Salter/Winchester contract, which was signed in January, 2000 by Alper and the other Selectmen. This contract clearly stated that the agreement was contingent upon a revision of the town zoning law, and thus required a special permit. The contract and zoning amendment was approved at a special town meeting, while Alper was still a selectman and a town meeting member. At this February, 2000 meeting, Alper spoke in advance of and in front of the town, "politicking" in favor of the Salter proposal and the zoning amendment. With these actions, Alper clearly established himself as a town spokesman for the project, and the leading point-man in town in the effort to convince its citizens this was the right thing to do. He also continued [\*36] to function as unpaid counsel to the Town. Further, RFP's are issued when one party seeks another to perform a task in their interest. Winchester, with Alper as an elected official and counsel, essentially became co-developers with the Salter Group. The interests of the two parties are unquestionably intertwined, and totally dependent upon the grant of the special zoning permit.

Alper's term as a Selectman ended in March of 2000. After waiting the required thirty days, he requested appointment to again serve on the Zoning Board of Appeals. This request was granted by the Selectmen and he began shortly thereafter, though only as an alternate member. Several months later, when a position became available, Alper requested and

<sup>&</sup>lt;sup>32</sup> See also *Newtown Township Bd. of Supervisors v. Greater Media Radio Co.*, 138 Pa. Commw. 157 (1991), 587 A.2d 841 (attorney inappropriately represented the board and the town as a party).

<sup>&</sup>lt;sup>33</sup> "[M]unicipalities 'should not thus unnecessarily confront the courts with the responsibility of probing for actual prejudice when beclouding conflicts can easily be avoided." *Sultanik*, 88 Pa. Comwlth. at 224.

received advancement to be a full member of the ZBA. As such, he would automatically sit on all applications, unless he recused himself or was disqualified. Alper was a full member of the ZBA in December, 2000 when Winning Farms, LLC submitted its application for a special permit. At roughly the same time, Alper asked Town Counsel Welch for an opinion on possible conflicts under G. L. c. 268A. As discussed earlier, Welch, buttressed by the State Ethics Committee, responded [\*37] that G.L. c. 268A did not present a problem. No one ever asked, answered or considered the issue of due process under Art. 29. At this point, Alper was obviously aware of concerns about his Zoning Board involvement. Even if done for the most honorable of reasons, appointment to a full zoning board position on personal request just as the project on which one has volunteered for ten years and been a prominent town proponent and spokesman raises significant questions.

The Zoning Board held three public hearings on the Winning Farm, LLC application, in early, 2001. At the February meeting, the plaintiffs raised but were denied an opportunity to be heard on the issue of Alper's possible bias. During the executive session that evening, the board and town counsel considered the motion, without reading it or hearing argument, and voted to deny the motion. On returning to the public hearing, the plaintiffs were denied an opportunity to address the motion, or even to point out that it was not based on G.L. c. 268A. When the board issued its decision several months later, it misrepresented that a hearing on the motion had been held and that it was thereafter denied.

In light of the law, the actions and involvement of [\*38] Alper in the Zoning Board decision on the Winning Farm project represent a clear violation of due process. There is no question Alper should have recused himself long before the board convened for this specific application, let alone upon receiving the February, 2001 motion. While there is absolutely no hint of any pecuniary or personal benefit to Alper, and every indication of his unwavering efforts to act in the best interest of the citizens of Winchester, common sense should have dictated his recusal.

The case law on prejudgment speaks to the likelihood that Alper had made a decision regarding the viability of the Winning Farm, LLC application prior to the January, 2001 board meeting. While the Court fully acknowledges that local board members are entitled to bring awareness, opinions and policy preferences to the table, the facts here literally speak to an earlier public commitment. In the Court's view, no person having spent ten years and endless hours of voluntary devotion in local town politics in support of a single project could possibly have put that engagement and experience aside when called upon to adjudicate.

The case law on conflicting roles supports the same result. Beyond [\*39] his public activist roles during the ten years, Alper served as a member of the Conservation Commission, the Board of Selectmen, and the Zoning Board, often as chair. Further, he served as counsel while drafting legal documents related to the first conveyance, the RFP, and the Salter contract. With the signing of the Salter contract, the town and Winning Farm, LLC effectively became co-developers. Alper violated due process by serving in a legislative role and as counsel for the town, and then sitting as a zoning adjudicator on the same matter. The Winning Farm, LLC zoning application pertained to the same matter, arising out of the same facts, and involving the same parties.

Alper's actions over the years in supporting and promoting the Winning Farm project, up to the end of his tenure as a Selectman, appear appropriate. However, when he sat on the Winning Farm, LLC zoning application, his role was conflicted. He became a party to and judge of the same event. The fundamental principle of maintaining a balance of power between legislative and adjudicative bodies was violated. The Court cannot say that Alper was an impartial or disinterested adjudicator, as the balance was not "nice, [\*40] clear and true." Crockett, 258 Mass. at 136. The risk of partiality here is constitutionally intolerable, negating the possibility of rational decision-making, sustained public confidence, and abidance to sworn public duty. This case represents a special circumstance demonstrating "an unacceptable risk of unfairness," requiring the vacating of the ZBA's decision. Raymond, 387 Mass. at 717. The Court concludes that Alper's conduct in sitting on the Winning Farm, LLC Special Permit application constituted a violation of due process under Art.

The Defendants have asserted that the plaintiffs filed their recusal motion too late, and were inappropriately attempting to gain a tactical advantage. See *In Matter of a Care and Protection Summons*, 437 Mass. 224, 239, 770 N.E.2d 456 (2002) (upholding a judge's refusal to recuse himself based on both lack of merit and late filing, which suggested tactical maneuvering). This argument must fail. The motion was filed well before the end of the ZBA hearing, and at a time when the ZBA could have begun the hearing anew with different sitting members. The plaintiffs also filed a timely appeal of the ZBA's decision, and the issue of Alper's participation in the ZBA decision is properly before the court.

#### IV.

Given the Court's determination that Alper should have recused himself from the ZBA [\*41] proceedings in this case, the Court need not reach the issue of the ZBA's conduct in

executive session on February 6, 2001. However, since this matter must be remanded to the ZBA for a new hearing, several observations are appropriate.

"[C]onstitutional [due principles process] require administrative procedures to be reasonable and to comply with the requirements of natural justice and fair play." Langlitz v. Bd. of Registration of Chiropractors, 396 Mass. 374, 377, 486 N.E.2d 48 (1985) (citations omitted). Generally, these principles necessitate notice and a hearing. "[I]n any proceeding to be accorded finality, notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case." LaPointe v. License Bd, of Worcester, 389 Mass. 454, 458, 451 N.E.2d 112 (1983) (citing Konstantopoulos v. Whately, 384 Mass. 123, 134, 424 N.E.2d 210 (1981)).

Massachusetts has long held that parties-in-interest to landrelated applications must be afforded due process rights by the local administrative boards prior to "formulating an adverse recommendation." Vitale v. Planning Bd. of Newburyport, 10 Mass. App. Ct. 483, 486, 409 N.E.2d 237 (1980) (developer entitled to hearing before the board of health; Carson v. Bd. of Appeals of Lexington, 321 Mass. 649, 653, 75 N.E.2d 116 (1947); Cappuccio v. Zoning Bd of Appeals of Spencer, 398 Mass. 304, 307-309, 496 N.E.2d 646 (1986) (interpreting timing of appeals under c. 40A, § 17); Roberts v. Southwestern Bell Mobile Sys., Inc., 429 Mass. 478, 494-95, 709 N.E.2d 798 (1999) (denying the existence of bias in a planning board decision, thus negating a due process violation); Milton Commons Assoc. v. Bd. of Appeals of Milton, 14 Mass. App. Ct. 111, 436 N.E.2d 1236 (1982) (articulating hearing rights for a zoning application).

Notice must be "sufficient to warn [\*42] neighboring landowners of proposed action that may affect them injuriously." *Carson*, 321 Mass. at 653 (details in notice of zoning petition found to be sufficient). And, parties to zoning actions are entitled to at least a public hearing, with the "opportunity for interested persons to appear and express their views pro and con." *Milton*, 14 Mass. App. Ct. at 114-15 (citing *Londoner v. Denver*, 210 U.S. 373, 386, 28 S. Ct. 708, 52 L. Ed. 1103 (1908)); *Tenneco Oil Co. v. City Council of Springfield*, 406 Mass. 658, 659, 549 N.E.2d 1135 (1990) (under G. L. c. 40A, "special permit-granting authorities must hold public hearings after complying with detailed procedures for notifying both the parties and the public").

Massachusetts courts have addressed the validity of zoning hearings on few occasions. *Tenneco*, 406 Mass. at 660 (a zoning appeals board may not gather evidence in an informal meeting after filing its decision, then meet again formally and

change its decision, without again holding a formal public hearing per G. L. c. 40A, § 9); Caruso P. Pastan, 1 Mass. App. Ct. 28, 294 N.E.2d 501 (1973) (private meeting between zoning and planning boards held after the closing of the public hearing but before the zoning board issued its decision, where applicant was not present, was found to have not influenced the decision, thus it was valid and there was no violation of c. 40A, § 9). Pozzi v. Zoning Bd. of Appeals of Town of Belmont, No. 928271, 1993 Mass. Super. LEXIS 80, 1993 WL 818645 (Mass. Super. 1993) (finding that the plaintiff had been denied a fair hearing because the zoning board considered letters from neighbors, ex parte communications, [\*43] without providing the plaintiff with the opportunity to rebut on a public record, in violation of c. 40A and "principles of fundamental fairness", and that plaintiff was "entitled to an opportunity, as part of the hearing process, to explain her responses to the Board and to allay any doubts it may have." 1993 Mass. Super. LEXIS 80, [WL] at \*8.)

A zoning board "must act fairly and reasonably on the evidence presented to it." *MacGibbon v. Bd. of Appeals of Duxbury*, 356 Mass. 635, 638-39, 255 N.E.2d 347. And the board may only act on special permits "after opposing interests have had a fair opportunity to be heard." *Tenneco*, 406 Mass. at 660.

On the most basic level, the plaintiffs were denied the opportunity for a full and fair hearing on the important issue of potential board member bias. Welch and the three zoning board members convened in executive session and discussed the plaintiffs' pending motions. Without a public hearing, the board made decisions on all four motions pending before them. The ZBA then agreed upon a plan for returning to the public session and handling the motions, including hearing token arguments on certain of them, to avoid being perceived as a "kangaroo court." Moreover, Welch advised the ZBA members that he had already briefed Lawrence Murray, the attorney for Winning Farm, LLC, on issues that [\*44] might arise at the public session that followed, notwithstanding the Winchester Zoning By-Law that required all communication with the petitioner be made through the Zoning Board Clerk. Each and all of these events constituted a denial of due process.

#### **ORDER**

Upon consideration of the forgoing findings of fact and rulings of law, it is hereby **ORDERED**, **ADJUDGED** and **DECLARED** that the decision of the Winchester Zoning Board of Appeal granting a Special Permit to Winning Farms, LLC is **VACATED**, and this matter is **REMANDED** to

### 2003 Mass. Super. LEXIS 488, \*44

Winchester Zoning Board of Appeals for a new hearing at which Joshua M. Alper shall not participate as a member of the Zoning Board of Appeal.

/s/ Peter M. Lauriat

Peter M. Lauriat

Justice of the Superior Court

Dated: January 27, 2003

**End of Document** 



# Comprehensive Plan Process for Development for Mashpee

Task	Milestones	Approximate Completion		
Task 0: Public Kick Off Meeting with Staff and Team				
Hold a kickoff meeting to introduce project	Hold meeting	January 2022		
Deliverable: Meeting write-up and summary		February 2022		
Task 1: Gather and Analyze Data		_		
1.1 Data Collection and Analysis	Collected data from existing sources and plans	January 2022		
1.2 Data Request to the Town	List of data needs	December 2021		
1.3 Conduct staff and stakeholder interviews	Conduct interviews	January 2022		
1.4 Prepare draft GIS maps	Draft maps	February 2022		
Deliverable: Summary memo outlining data collection process and results		February 2022		
Task 2: Refine Public Engagement Plan				
2.1 Work with Town staff to refine community engagement approach	Community Engagement Plan	November 2021		
Deliverable: Memo report outlining public engagement plan		December 2021		
Task 3: Launch Public Engagement Activities				
3.1 Public event to launch master plan process	Hold public event	January 2022		
3.2 Establish project website or webpage	Project website or webpage	February 2022		
3.3 Public input on draft elements	Incorporate public comments	April 2022		
3.3 Public review of draft plan	Draft for public review	July 2022		
Deliverable: Draft plan reflecting public engagement feedback and input		July 2022		
Task 4: Prepare Plan				
4.1 Assemble full plan draft	Plan in draft form	June 2022		
4.2 Incorporate public comments	Updated draft plan	August 2022		
Task 5: Implementation Plan				
5.1 Develop draft implementation plan	Draft implementation plan	July 2022		
5.2 Incorporate public comments	Updated implementation plan	August 2022		
Task 6: Finalize Plan				
6.1 Provide final draft to Town	Final draft plan	September 2022		



- 1. 2007 Mashpee Sewer Commission Final Needs Assessment Report
- 2. 2009 Open Space Conservation and Recreation Plan
- 3. 1998 Comprehensive Plan
- 4. 2020 Town of Mashpee 208 Compliance Report
- 5. 2019 Town of Mashpee Road Safety Audit Mashpee Rotary
- 6. 2015 Town of Mashpee Affordable Housing & Planned Production Plan
- 7. 2020 Mashpee Rotary Corridor Study Final Report
- 8. 2015 Final Recommended Plan/Final Environmental Impact Report Town of Mashpee Sewer Commission
- 9. 2018 Route 28 Eastern Mashpee Corridor Study: Route 130 to Orchard Road
- 10. 2017 Hazard Mitigation Plan (Draft)
- 11. April 2021 Draft Cape Cod Commission Climate Action Plan
- 12. 2019 Pavement Management 2018 Status Report
- 13. 2017 Watershed Report: Upper Cape Waquoit Bay
- 14. 2017 Watershed Report: Upper Cape Popponesset Bay

	Community Engagement Web-based Options		
Platform	Features	Comments	
coUrbanize	<ul> <li>Connect project teams with those who live, work, and play near the project.</li> <li>Gather feedback and support</li> <li>Poll questions</li> <li>Project updates</li> <li>Customizable platform</li> <li>Project timeline</li> <li>Curated comment topics Interactive maps</li> </ul>	Starts at \$499/month  Examples  Downtown Nashua Riverfront Development Plan  Town of Bridgewater Comprehensive Master Plan  Detroit Sustainability Action Agenda  Website  https://www.courbanize.com/	
Post materials to the municipal/client website or create a dedicated project webpage. Stakeholders are likely already familiar with accessing information at Webpage this site. Can include video with information about		Requires municipal staff time, coordination, or access permissions from municipal IT department  External example: https://www.ci.xenia.oh.us/DocumentCenter/View/48/Winter-2011-2012-Virtual-Meeting-PDF?bidld=	
Social Pinpoint	Social Pinpoint provides a flexible suite of digital tools to enhance your community and stakeholder engagement. Inform decision-making, encourage diversity and inclusion, and eliminate participation barriers to drive better project outcomes.  • Drag and drop interface • Interactive mapping	about \$3,000+  Example: Currently being used in our Hamilton Master Plan Update  Website <a href="https://www.socialpinpoint.com/">https://www.socialpinpoint.com/</a>	



	Community Engagement W	eb-based Options	
Platform	Features	Comments	
	<ul><li>Idea wall</li><li>Survey feature</li><li>Forums</li><li>Participatory budgeting</li></ul>		
Bang the Table (EngagementHQ)	<ul> <li>EngagementHQ platform is best is known for its ability to create safe, inclusive and secure spaces for dialogue.</li> <li>Offers 23 ways to engage the community - 8 dynamic engagement tools and 15 widgets – to add to a custom website.</li> <li>The engagement tools include a standard survey, integrated email, Participant Relationship Management, and analytic tools - including comment analysis.</li> <li>Project-based, generally based on population and time, emphasis on time (\$5-15K)</li> <li>8 different types of environments- forums, stories, questions, places, surveys</li> <li>Flexible, tools</li> <li>They host and create the website</li> <li>2-hour training</li> <li>If you have the content ready, 4 hours to 12 hours for website, 7-10 days with content development</li> <li>4 templates for the homepage</li> <li>Project pages are all the same</li> <li>24/7 moderation- Spam filter for hate speech and vulgar words</li> </ul>	Pricing for consultants:  \$5,000 for a single project license in communities under 50,000,  \$10,000 under 150,000,  \$15,000 under 250,000.  \$6, 9, 12-month engagement—about \$1,000/month  No content templates  Examples:  https://www.envisionsohonoho.nyc/ https://www.sfseawall.com/ https://www.truckee2040.com/ https://yourlincolnsquare.org/  Website  https://www.bangthetable.com/	

	Community Engagement We	eb-based Options	
Platform Features		Comments	
	<ul> <li>Team that will ready each post in 2 hours</li> <li>Works to download reports and then site becomes decommissioned.</li> <li>Consider 6 month for a 3-month engagement process.</li> <li>They can transfer you the URL after.</li> <li>Data is not retained after partnership. It is owned by the city.</li> <li>24/5 help chat</li> <li>Analytics – downloaded or looked at plans</li> <li>Optional registration requirement</li> </ul>		
Maptionaire	Mapbased tools for designing questionnaires, collecting data, and conveying information.  Helps you analyze, collaborate, report, and communicate about public engagement projects.  Create polls and surveys Gather real-time data Arrange participatory budgeting Report outcomes Communicate and discuss on dedicated webpages Create project pages Foster discussions with citizens	The price range is from \$1,900 for a single short project to \$2,200 per month for unlimited surveys in an ongoing subscription.  The two main cost variables are how many surveys are you likely to be running (one or many) and how long you are wanting to subscribe. They can customize packages for your needs and definitely offer discounts for longer subscriptions paid in advance.  Examples: Fort Worth Active Transportation and Trinity River Strategic Plan: <a href="https://app.maptionnaire.com/en/3194">https://app.maptionnaire.com/en/3194</a> Caltrans District 4 Bicycle Plan:	



	Community Engagement Web-based Options		
Platform	Features	Comments	
		Vision Zero Jersey City (Not MIG): <a href="https://app.maptionnaire.com/en/4628">https://app.maptionnaire.com/en/4628</a> Walkable Helsinki <a href="https://app.maptionnaire.com/en/4500">https://app.maptionnaire.com/en/4500</a> Website <a href="https://maptionnaire.com/">https://maptionnaire.com/</a>	
Mentimeter	Interactive presentation software to collect real time feedback.  • Presentation builder  • Polls  • Anonymous interaction on smart device  • Export data  • Compare data with trends  • Collect feedback through surveys	starts at \$10 a month for a basic subscription, but likely more for an enterprise account depending on the number of users  Website <a href="https://www.mentimeter.com/">https://www.mentimeter.com/</a>	
QMarkets (QOpen)	Multilingual, community engagement tools, automated communication tools, crowd voting tools, gamification tools	Does not appear to offer a map-based function  Website <a href="https://www.qmarkets.net/products/q-open-innovation-software/">https://www.qmarkets.net/products/q-open-innovation-software/</a>	
Zen City	Community survey software and engagement platform  Can be integrated with several of the other platforms including Accela, ESRI, and Civic Plus  Survey function	Pricing per user Does not appear to have a map-based option  Website <a href="https://zencity.io/">https://zencity.io/</a>	



Community Engagement Web-based Options			
Platform	Features	Comments	
Citizenlab	Organize online workshops	Website https://www.citizenlab.co/	

Mashpee Comprehensive Plan	Stakeholder List
• • •	

Group	Name	Title	Organization	Email
	Ashley Fisher	Director of Natural Resources	Department of Natural Resources	
	Jeff Smith	Harbor Master	Department of Natural Resources	
	Scott Carline	Police Chief	Police Department	
	Catherine Laurent	DPW Director	Department of Public Works	
	Mary Bradbury	Recreation Director	Recreation Department	
	Rodney Collins	Town Manager	Town Manager's Office	
Town Staff	Kathlene Mahoney	Library Director	Library	
TOWIT Stall	Lynne Waterman	Council on Aging Director	Council on Aging/Senior Center	
	Evan Lehrer	Town Planner	Planning Department	
	Gail Wilson	Human Services Director	Human Services Department	
	Clayson Nicholson	GIS Coordinator	GIS Department	
	Thomas C. Rullo	Fire Chief	Fire & Rescue Department	
	Glen E. Harrington	Health Agent	Board of Health	
	Craig Mayen	Treasurer/Tax Collector	Treasurer/Tax Collector's Office	
	David Morris	Building Commissioner	Building Department	
	Jason R. Streebel	Director of Assessing	Tax Assessor's Office	
	Patricia Deboer	Superintendent	Public School Department	pdeboer@mpspk12.org
	Andrew R. McManus	Conservation Agent	Conservation Department	
			Cape Cod Commission	
State and Regional				
			Mashpee Wampanoag Tribe	
Organizations and Other	Kathy Acheson	Director	Mashpee Chamber of Commerce	info@mashpeechamber.com
Stakeholders	Kimberly Conn	Executive Director	Mashpee Housing Authority	Office@MashpeeHousing.org
	Ken Klint	President	Seabrook Village Association	seabrookvillageassociation@gmail.com
Community Services Bonnie Alcot Community Services Joseph Pacheco		Director	South Bay Community Services	
		Director	Barnstable County Department of Human Services	ioseph.pacheco@barnstablecounty.org
	John Fulone	Chairman	Planning Board	
	Chad Smith	Chairman	Conservation Board	
	Michael Rapacz	Chairman	Sewer Commission	
	Allan Isbitz	Chairman	Affordable Housing Committee	
Commissions/Boards			Community Preservation Committee	
Commissions/ Boards	Andrea Watson or Nina Cocomazzi	Co-Chairs	Cultural Council	
	Ava Costello	Chairman	Historical Commission	
	Sheldon Gilbert	Member	Recycling Committee	
	J. Marie Stevenson	Chairman	Inclusion and Diversity Committee	MashpeeIDC@gmail.com
	Jonathan Furbush	Chairman	Zoning Board of Appeals	
Business Owners or Land				
Owners or Land				
Owners				



## Planning Board

16 Great Neck Road North Mashpee, Massachusetts 02649

Mr. John Fulone, Chair Mashpee Planning Board 16 Great Neck Road N Mashpee, MA 02649

November 17, 2021

Mr. Andrew Gottlieb, Chair Community Preservation Committee 16 Great Neck Road N Mashpee, MA 02649

Re: Letter in Support of the Planning Department's application for funding

Dear Mr. Gottlieb and the Honorable Members of the Community Preservation Committee,

I am writing to express on behalf of the Mashpee Planning Board, who voted on 11/17/2021 to submit this letter, its support of the Mashpee Planning Department's request for \$25,000 in CPA funding to support an update to the Town's Housing Production Plan (HPP).

The Department of Housing and Community Development requires updating of approved HPP's at 5-year intervals. Mashpee's most recent plan was adopted in 2015 and is due to be updated. With the most recent Census data unavailable, it was not prudent to submit an updated plan based on assumptions, estimates, and in some cases, outdated information in November 2021 when it was due.

The HPP, provides a detailed summation of housing availability and affordability in Mashpee that will build on and update the work of the Town's 2015 Affordable Housing & Planned Production Plan. Further, it will inform future updates of the Housing element of the Town's Local Comprehensive Plan which is being updated now for the first time since its adoption in 1998.

The Housing Production Plan lays out the framework for which the Town will rely on to meet its mandated 10% of housing stock being affordable and eligible for inclusion on the Subsidized Housing Inventory, would seek to encourage policies that promote a socioeconomic environment that encourages diversity and inclusivity and long-term affordability.

The Mashpee Planning Board supports this effort and asks for the CPC's support by voting to submit an article for Town Meeting consideration which would fund this \$25,000 request.

Sincerely,

John Fulone, Chair

From: Jewel Blake <mjewelblake@gmail.com> Sent: Sunday, November 7, 2021 11:00 AM To: Evan Lehrer <ELehrer@mashpeema.gov>

**Subject:** Meetings

**WARNING! EXTERNAL EMAIL:** : This message originated outside the Town of Mashpee mail system and could be **harmful 38.** PLEASE DO NOT CLICK ON LINKS OR ATTACHMENTS unless you are absolutely certain the content is safe.

To the Planning board:

We commend you all for the continued hard work you do on all the current, important issues facing Mashpee.

However, we feel that perhaps the board should publicly reiterate the plea to end the divisiveness as the Select Board did last week.

Mashpee residents were appalled at the petty, unsubstantiated details of the personal attack shared at the meeting of the planning board on November 3, 2021.

While the drama of the back stories are being researched, we urge you to focus on the future and let us continue to be proud that we are Mashpee residents. We do not wish to continue this public soap opera any longer.

Barry and Jewel Blake

Mary J. LeClair
P.O. box1173
Mashpee, Ma 02649
508 477 1344
Mleclair477@gmail.com

Dear John, John

Having worked closely with you and other members of the planning board I believe you are facing a very hard task of renewing the public's trust and dealing with restoring order to a board that is such a huge part of the integrity of the town of Mashpee.

The planning board has a responsibility to town constituents to be a fair, open and impartial board. The allegations that have come before us have tarnished Its reputation and now it is time for us to restore that trust by opening an investigation into allegations that were voiced at the November third meeting.

Sincerely Mary Le Clair

To the Members of the Planning Board:

I am writing in response to the spectacle that unfolded at the last Planning Board meeting, when a resident read her 4-page letter of open meeting/ethics complaints in its entirety as part of "public comment."

It is not my intent to respond to all the issues raised by the complainant. If there are substantive issues about the way the board and its members conduct business, I am confident the appropriate parties are on notice and will review and adjudicate them.

Of greater concern to me is the conduct of the Planning Board. Giving the complainant the floor, without limitation of time or scope, to rehearse her unsubstantiated personal grievances and contrived lists of "offences" was incredibly bad practice and shabby treatment of a fellow board member.

I could understand if you were all caught unawares, as Ms. Waygan was, by the content of the letter, but the chair had met with the complainant, other members had seen the letter in advance, and one member mentioned having read it several times. So the decision to allow "discussion" to proceed was a considered one. Whatever others may do, you, as an elected body, cannot be so careless of reputation, so indifferent to fair dealing.

Whatever the personal dynamics among members of the board, the conversation should have ended with Mr. Phelan's comment that the charges are unsubstantiated, and noting that the appropriate authorities have received the complaint, the board should have moved on.

Sincerely,

Anne Malone

14 Red Cedar Road

Cc: Rodney Collins

Carol Sherman

November 10, 2021

Dear Ms. Sherman, Mr. Fulone, and Chief Collins,

We are writing to you in your capacity as chairs of your respective boards and as Town Manager about recent allegations made against Planning Board member Mary Waygan by Meredith Kilpatrick. The allegations are deeply concerning to us, as many of them relate to our development at Mashpee Commons.

As we believe you already know, during the Mashpee Planning Board meeting on November 3, 2021, town resident Meredith Kilpatrick read into the record a letter she had submitted to Mashpee Town Counsel, which set forth what appear to be some ethics complaints and possible open meeting law violations involving Ms. Waygan. Ms. Kilpatrick's letter included claims that Ms. Waygan conducted a tour of Mashpee Commons with members of the public and called out alleged construction deficiencies. They also included claims that she conducted "11:00 A.M. morning meetings" with editors and reporters from the Mashpee Enterprise (in its November 5, 2021 article, the Enterprise acknowledged one such meeting). According to the Enterprise, Ms. Kilpatrick also asserted that Ms. Waygan "manipulated a developer's documents, including maps and drawings," apparently ones that had been submitted by Mashpee Commons as part of Development Agreement negotiations with the Town. The Enterprise article further reported that Ms. Kilpatrick alleged Ms. Waygan to have redistributed the altered materials to local citizens groups.

We realize that the claims by Ms. Kilpatrick have yet to be vetted. However, if Ms. Kilpatrick's allegations are found to be true, then, in our opinion, it raises questions about whether Ms. Waygan participated in a misinformation campaign about Mashpee Commons and whether that contributed to the recent dissolution of the three-party development agreement between the Town of Mashpee, the Cape Cod Commission, and Mashpee Commons, LP.

We've been informed that Ms. Kilpatrick has already contacted the Attorney General and the State Ethics Commission. But we think that, in response to these allegations, the town should also proceed with its own internal investigation and to report the results either to the affected stakeholders or to the public. Please keep us informed of the process and let us know if we can assist in any way. Thank you.

Best,

Buff Chace

Mashpee Commons LP



NOV 0 1 2021

59 TOWN HALL SQUARE, FALMOUTH, MA 02540 508-495-7460 – FAX 508-495-7463

### BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 085-21 Seacoast Tower Development, LLC, 270 Communication Way, unit 7B, Hyannis. Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-23 E., Article V and Article XLII of the Code of Falmouth to remove the existing guyed tower and replace with a new tower; existing antennas and equipment will be transferred to the replacement tower. The subject property is 50 Highfield Drive, Falmouth, Ma.

Map 38 Section 01 Parcel 015 Lot(s) 000FT

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>November 18, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA</a>\*



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NOV 01 2021

### BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 088-21 Frank S. and Monique T. Mitchell, Trustees, 23 Northgate Road, Wellesley, Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the existing non-conforming single family dwelling on subject property known as 5 Keechipam Way, Teaticket, Ma.

Map 39 Section 04 Parcel 012 Lot(s) 166

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>November 18, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA</a>\*



### **BOARD OF APPEALS**

## **Notice of Decision**

Notice is hereby given that the Board of Appeals of the Town of Falmouth has made a decision on a petition by Leonard Remia, 11 Avenue A, East Falmouth, Ma.

(Map 45 Lot 006) **under 240-69 E.** of the Zoning By-Law, as amended to **grant** the special permit to construct additions to the south and west side of the dwelling exceeding 20% lot coverage by structures.

Appeals, if any, shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after **October 27, 2021** which is the date the Decision was filed in the office of the Town Clerk.

Please contact Noreen Stockman at 508-495-7460 or Noreen.stockman@falmouthma.gov if you have any questions or comments full text of decision available at http://www.falmouthmass.us



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NOV 01 2021

### BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 091-21 Paul F. and Annette C. Alphen, Trustees, 9 Boutwell Hill Road, Westford, Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the existing non-conforming single-family dwelling; increasing lot coverage by structures on subject property known as 119 Childs River Road, East Falmouth, Ma.

Map 32 Section 19 Parcel 008 Lot(s) 161

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>November 18, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA\*</a>



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NOV 1 2 2021

# BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 095-21 John W. Corbett, 139 Allen Avenue, Falmouth, Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to remove the existing detached garage and construct a pool increasing lot coverage by structures on subject property known as 66 Allen Avenue, Falmouth, Ma.

Map 47C Section 03 Parcel 002 Lot(s) 010

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>December 2, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA</a>\*

NOV 1 2 2021



### **BOARD OF APPEALS**

## **Notice of Decision**

Notice is hereby given that the Board of Appeals of the Town of Falmouth has made a decision on a petition by **Doris Frechette**, 79 Jones Road, Falmouth, Ma.

(Map 38 Lot 000) **under 240-3 C.** of the Zoning By-Law, as amended to **grant** the special permit to construct an addition to the accessory structure.

Appeals, if any, shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after **November 8, 2021** which is the date the Decision was filed in the office of the Town Clerk.

Please contact Noreen Stockman at 508-495-7460 or Noreen.stockman@falmouthma.gov if you have any questions or comments full text of decision available at http://www.falmouthmass.us



### **BOARD OF APPEALS**

## **Notice of Decision**

Notice is hereby given that the Board of Appeals of the Town of Falmouth has made a decision on a petition by Thomas and Kara Crowley, 12 Coatuit Road, North Falmouth, Ma.

(Map 13 Lot 038) **under 240-3 C.** of the Zoning By-Law, as amended to **grant** the special permit to elevate the existing house to comply with flood zone requirements.

Appeals, if any, shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after **November 8, 2021** which is the date the Decision was filed in the office of the Town Clerk.

Please contact Noreen Stockman at 508-495-7460 or Noreen.stockman@falmouthma.gov if you have any questions or comments full text of decision available at http://www.falmouthmass.us



NOV 12

59 TOWN HALL SQUARE, FALMOUTH, MA 02540 508-495-7460 – FAX 508-495-7463

## BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 097-21 Timothy J. and Jennifer C. Doonan, 12 Worcester Avenue, Falmouth, Ma,: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to remove the existing garage and construct an attached garage with habitable space above, increasing lot coverage by structures on subject property known as 12 Worcester Avenue, Falmouth, Ma.

Map 46B Section 24 Parcel 005 Lot(s) 010

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>December 2, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA</a>\*



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NOV 1 2 2021

# BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 092-21 Robert L. and Stephanie S. Mastroianni, et al, c/o Victoria Dalmas, Esq., 15
Cape Lane, Brewster, Ma: Filed an appeal with the Falmouth Town Clerk pursuant to M.G.L. c. 40A §
8 & 15 and (240-202 of the Code of Falmouth) appealing the interim Building Commissioner / Zoning Enforcement Officer's determination. The subject property is 113 Lakeview Avenue, Falmouth, MA.

Map 38A Section 04 Parcel 046 Lot(s) 000

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>December 2, 2021 at 6:30PM</u>
You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA</a>\*



NOV 1 2 2021

59 TOWN HALL SQUARE, FALMOUTH, MA 02540 508-495-7460 – FAX 508-495-7463

# BOARD OF APPEALS NOTICE OF PUBLIC HEARING

Being all persons deemed affected by the Board of Appeals under Section 11 of Chapter 40A of the Massachusetts General Laws you are hereby notified that:

Application # 096-21 Donald E. Cross, II and Frances M.Cross, P.O.Box 1090, West Falmouth, Ma.: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-38 I. and 240-68 A(8) of the Code of Falmouth to construct a detached accessory apartment in the front yard, more than 50' from the front property line on subject property known as 428 Blacksmith Shop Road, West Falmouth, Ma.

Map 23 Section 02 Parcel 001 Lot(s) 003

A public hearing will be given on this application, in the Selectmen's Meeting Room, Town Hall, on <u>Thursday</u>, <u>December 2, 2021 at 6:30PM</u>

You are invited to be present.

By Order of the Board of Appeals, Chairman, Terrence Hurrie

Plans are available for review prior to the hearing at the Board of Appeals office, Town Hall during the hours of 8:00 AM to 4:00 PM.\*Plans are available to review at <a href="http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA">http://www.falmouthmass.us/1113/Applications-under-review-by-the-ZBA\*</a>