



# Town of Mashpee

## Planning Board

16 Great Neck Road North  
Mashpee, Massachusetts 02649

Meeting of the Mashpee Planning Board  
Wednesday, December 5, 2018  
Waquoit Meeting Room, 7:00 P.M.

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

- Pledge of Allegiance

### Approval of Minutes

- Review and approval of meeting minutes from **September 27, 2018, November 7, 2018, and November 21, 2018**

### Public Hearing

**7:10 PM – Road Renaming – Shields Road and Santuit Lane to Shields Avenue Extension (Continued from 11/7/2018)**

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

### New Business

- Discussion and vote on reopening the Blue Sky Towers II, LLC's public hearing on January 2, 2018 at 7:10 PM regarding application to erect a personal wireless service facility at 101 Red Brook Road, Mashpee Fire Station #2.
- Discussion of request to make a minor modification to a special permit for a shared driveway at 659, 673, and 687 Main Street originally issued to Brett Field and Z&J Realty Trust on August 6, 2010 and recorded in Book 24822 Page 220 at the Barnstable County Registry of Deeds and vote to determine if the request qualifies as a minor modification.
- Proposed clarification of process to submit comments and materials to Planning Board for residents and local organizations.
- Proposals from the Town Planner on zoning by-law amendments: Temporary/Seasonal Signs and Donation Bins.
- Signature on October 15, 2018 Town Meeting approved road taking plans
- Vote on public hearing date and time for road naming of Willow Park Townhomes.
- Cape Cod Commission Public Comment Period on Technical Bulletins
- Request for release of funds held in escrow – 33 Trinity Place
- C. Rowley Billing – November 2018 Services

### Old Business

- Sign Ockway Highland's Special Permit Modification #1 following the lapse of the appeal period on November 27, 2018.
- Proposed revisions to the Light Industry Overlay District

### Chairman's Report

- Meeting with Chamber of Commerce
- Selectmen's Discussion of Mashpee Commons
- Guest Speakers

### Board Member Committee Reports

- Cape Cod Commission, Community Preservation Committee, Design Review, Plan Review, Environmental Oversight Committee, Greenways/Quashnet Footbridge, Historic District Commission, MMR Military Civilian Community Council.

### Updates from Town Planner

- Evergreen Subdivision conservation restriction.

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

### Adjournment

MASHPEE TOWN CLERK

DEC - 3 2018

RECEIVED BY *[Signature]*



# *Charles L. Rowley, PE, PLS*

*Consulting Engineer and Land Surveyor*

5 Carver Road  
PO Box 9  
West Wareham, MA 02576

Tel: 508-295-1881  
Cell: 508-295-0545  
E-mail: [csr63@verizon.net](mailto:csr63@verizon.net)

December 4, 2018

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

Re: Services for month of November, 2018.

Attendance at one regular meeting \$ 195.00

## Inspections

### Ockway Estates

11/1	Inspect Blue Castle Drive for grading and placement of material for road upgrade. Made return inspection in afternoon to check on progress.		
	Inspected depth of material	1.0 hr.	100.00
11/8	Inspection of final results of initial grading. Call to owner to express concern with respect to poor grading	0.5 hr.	50.00
11/15	Re-inspection of grading and rolling of Blue Castle Drive with subcontractor and owner. Watched progress and gave instruction as to final grading expectations and approved plan.	1.5 hr.	150.00
11/20	Inspection of finished grading of Blue Castle Drive and review of drainage areas on Carriage Drive that have eroded again	0.5 hr.	50.00
11/21	Meeting with owner to discuss construction items and cost for completion in anticipation of requesting surety and lot releases.	1.0 hr.	100.00

### Evergreen Circle

11/1	Inspection of gravel base material and fine grading of roadway. Some soft material noted at entrance that needs removal and replacement. Informed contractor of review.	0.5 hr.	50.00
11/8	Inspection of paving of binder course, discussion with contractor regarding leaving temporary berm at cul-de-sac for binder only	0.5 hr.	50.00

### 659 Main Street

11/27	Inspection of conditions found on common driveway. Sent e-mail notes to Town Planner regarding conditions and recommendations	0.5 hr.	50.00
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### Country Club Lane

11/20	Drainage inspection near entrance to Old Barnstable Road, discussion with contractor about surface runoff conditions to be corrected.	1.0 hr.	100.00
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Total Amount Due

\$845.00




**RE: Packet 12/5/2018**

Clay Nicholson &lt;CNicholson@mashpeema.gov&gt;

Wed 12/5/2018, 12:04 PM

To: Mary Mary &lt;waygan@hotmail.com&gt;

Cc: Evan Lehrer &lt;ELehrer@mashpeema.gov&gt;

 1 attachments (4 MB)

Sanuit Lane Proposed\_21Nov2018.pdf;

Mary,

I would like to withdraw the request to rename Santuit Lane, Shields Avenue, and portions of Shields Road to Shields Road Extension.

After a meeting on 21 November between myself, the Mashpee Fire Chief, and George Schmidt (duly assigned representative for abutters) an addressing number schema was agreed upon and for the affected roads to be renamed Santuit Lane in their entirety. Please see attached map.

It is my understanding that a new public hearing will be open on 19 December to rename these affected roads to Santuit Lane.

Regards,

Clayson L. Nicholson  
Town of Mashpee  
GIS / NG911 / CRS Coordinator  
508-539-1400 x8499

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**From:** Mary Mary [mailto:waygan@hotmail.com]  
**Sent:** Tuesday, December 4, 2018 22:51  
**To:** Clay Nicholson <CNicholson@mashpeema.gov>  
**Cc:** Evan Lehrer <ELehrer@mashpeema.gov>  
**Subject:** Re: Packet 12/5/2018

Hi Clay,  
I forgot to say: Our meeting is Wed 12/5 - so anything you can do before our meeting is greatly appreciated.  
Thanks!  
Mary

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**From:** Mary Mary <waygan@hotmail.com>  
**Sent:** Tuesday, December 4, 2018 10:39 PM  
**To:** cnicholson@mashpeema.gov  
**Cc:** Evan Lehrer  
**Subject:** Re: Packet 12/5/2018

Hi Clay,  
Would you kindly send the Planning Board an quick memo or email withdrawing the attached proposed name change; that way the Planning Board can close the public hearing taking no other action.  
Thanks!



# Santuit Lane - Proposed Addressing





Conrad Geyser  
3800 Falmouth Road  
Marstons Mills, MA 02648  
508 428-8442

Certified Mail Return Receipt Requested

November 8, 2018

Evan Lehrer  
Mashpee Town Planner  
16 Great Neck Road N  
Mashpee, MA 02649


Dear Mr. Lehrer,

The road construction for Trinity Place has been completed as approved by the Mashpee Planning Board.

Please let this letter serve as a formal request to release all funds held in escrow for the construction of Trinity Place. If you have any questions, please feel free to contact me.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Conrad Geyser', written over the word 'Sincerely,'.

Conrad Geyser



**RESPONSE TO CONCERN**

Rodney C. Collins <rccollins@mashpeema.gov>

Thu 11/29/2018, 3:46 PM

To: Mary Mary <waygan@hotmail.com>

 3 attachments (463 KB)

20181129151806431.pdf; 20181129151813891.pdf; 20181129151829965.pdf;

Mary,

Attached, please find my official response to your e-mail dated 11/23/2018. For reasons cited within my letter, there is no factual basis to conclude that specific information articulating a concern about your alleged interaction with Timothy Dorsey is true and accurate.

Please find the following:

- (1) My official letter addressed to you.
- (2) My letter to Mr. Dorsey dated October 25, 2018
- (3) Previous communication sent to me including: your e-mail dated 11/23/18; the Planner's letter dated 10/30/2018; and Attorney Thompson's letter received 11/16/18.

Please don't hesitate to contact me if you need any further clarity regarding this matter.

**Rodney C. Collins | Town Manager**

Town of Mashpee

16 Great Neck Road North, Mashpee, MA 02649

Office: 508.539.1401 | Fax: 508.539.1142



*"Preserving public trust and providing professional services."*

Notice: This communication is intended for the listed recipient only. If you have received this in error, it may be unlawful and prohibited to retain, reproduce or disseminate this message. Please reply to sender if you have received this message in error and delete it with any attachments.

Warning: The content of this message and any response may be considered a Public Record pursuant to Massachusetts General Law.



*"Preserving public trust, providing professional services"*

Rodney C. Collins  
Town Manager  
508-539-1401  
rccollins@mashpeeema.gov



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

November 29, 2018

Chair Mary Waygan  
Mashpee Planning Board  
16 Great Neck Road North  
Mashpee, MA 02649

Dear Madam Chair:

You wrote to me on November 23, 2018 concerning a letter from the Town Planner dated October 30, 2018. You specifically cited the Planner's letter relative to correspondence from Attorney Elizabeth Thompson, representing Blue Sky. You requested a retraction of the Planner's letter and a legal response to Attorney Thompson's letter.

With regard to the retraction, I believe it makes sense to provide clarity. The Planner was aware of information provided by Timothy Dorsey of 86 Blue Castle Drive. The Planner provided the information at the request of Attorney Thompson and in writing. The Planner stated an opinion regarding his confidence in your ability to impartially review the application for a Special Permit. However, that opinion was formed on the basis that Mr. Dorsey's statements were true and accurate. I cannot affirm that the information referenced is reliable or accurate. In fact, Mr. Dorsey has had issues concerning temperament and judgment. (See attached letter)

You state that your recollection of the event is "very different" than what was described in the Planner's letter, which was based upon information provided by Mr. Dorsey. It cannot be disputed that the facts may be "very different" compared to the account by Mr. Dorsey. In regard to other points raised in Attorney Thompson's letter, I would defer to Town Counsel. I would be agreeable to arranging an appointment for you and/or Planning Board member Dennis Balzarini to meet with Town Counsel regarding the subject matter.

As the late Daniel Patrick Moynihan once said, "People are entitled to their own opinions but they are not entitled to their own facts." The Town Planner's opinion was driven by Mr. Dorsey's account of communication with you. Please allow this correspondence to acknowledge that it may not be factual. I further believe that we must reasonably validate any account prior to impacting the participation of any member of a regulatory board or committee.

Please let me know if you would like me to arrange a meeting with Town Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney C. Collins", is written over the typed name.

RODNEY C. COLLINS  
Town Manager



*"Preserving public trust, providing professional services"*

Rodney C. Collins  
Town Manager  
508-539-1401  
rccollins@mashpeema.gov



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

October 25, 2018

Timothy Dorsey  
86 Blue Castle Drive  
Mashpee, MA 02649

Dear Mr. Dorsey:

It was brought to my attention that you visited the Conservation Department today. This resulted in an exchange that was unsettling and uncomfortable to staff within the office. During the course of this interaction, it is my understanding that you were belligerent, hostile and aggressive in your verbal communication. Staff felt threatened and perceived your actions to be intimidating and inappropriate. It is also my understanding from other employees that you were disruptive and disorderly.

I expect all Town of Mashpee employees to act professional and to provide effective services in a polite and respectful manner. However, civility is paramount to respect. A public servant is not required to be subjected to a barrage of your demeaning and uncivil conduct. I don't expect a public servant to be subjected to such behavior and I will not tolerate it at Town Hall.

You are hereby instructed to cease and desist from similar behavior in the future. You are further instructed that should you desire to visit the Conservation Department in the future, you will report first to my office. You shall be escorted to the Conservation Department in the future. Failure to comply with these instructions will result in further sanctions within the scope of all applicable laws. If you have questions regarding your daughter's property, direct them to appropriate staff in a civil manner. I trust that you will remedy your tomfoolery so that other action is not necessary.

Sincerely,

A handwritten signature in black ink, appearing to be "Rodney C. Collins", written over a horizontal line.

RODNEY C. COLLINS  
Town Manager

Cc: Assistant Town Manager  
Administrative Assistant  
Chief of Police  
Conservation Agent



**Rodney C. Collins**

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**From:** Mary Mary <waygan@hotmail.com>  
**Sent:** Friday, November 23, 2018 9:32 AM  
**To:** Rodney C. Collins  
**Subject:** Request for Retraction  
**Attachments:** 101\_Tower\_Thompson letter.pdf; Town Planner to Atty Thompson\_101 Redbrook.pdf

Rodney,

Thank you for your time on the phone this past Wednesday regarding the attached letter written by Mashpee Town Planner Evan Lehrer dated October 30, 2018. Per your request, I am submitting in writing my request that the letter is retracted.

In the letter Mr. Lehrer relays "anecdotal" information. Mr. Lehrer never contacted me to verify this information. My recollection of the event is very different, to the degree that I find Mr. Lehrer's letter inaccurate.

The issuance of such a letter, from a Town employee against an elected official, containing unverified anecdotal information and a conclusion of "forces me (Lehrer) to lack confidence in Chair Waygan's ability to review the application...impartially" is wrong and unacceptable.

I want to work with you to improve things for the good of the Town. The Planning Board needs a Planner who is a good, dependable technical adviser, not a judge and executioner. It really means a great deal to me you that you said that you will "take care of this".

There are aspects to be addressed for a solution to this matter:

1. The retraction of the letter.
2. Response by Town Counsel to the five-page riposte of the Elizabeth Thompson to the Board of Selectmen, which cites Mr. Lehrer's letter. (Also, it might be good if Dennis Balzarini and I meet with Town Counsel so he can explain to us Ms. Thompson's request that we recuse. )

I appreciate your support and remain,

Sincerely yours,

Mary Waygan





# Evan R. Lehrer

## Town Planner

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

*There is no logic that can be applied to the lives of people  
only a wisdom to the heart. For we must let our plans  
live.* Jane Jacobs

Elizabeth R. Thompson, Esq.  
Duval, Klasnick & Thompson LLC  
210 Broadway, Suite 204  
Lynnfield, MA 01940

October 30, 2018

Dear Ms. Thompson,

I am writing at your request to convey anecdotal information received from a Mashpee community member, Mr. Timothy Dorsey of 87 Blue Castle Drive, Mashpee, MA 02649 that concerns the application for Special Permit of Blue Sky Towers, LLC to erect a Personal Wireless Service Facility consisting of a 150' monopole at 101 Red Brook Road. Mr. Dorsey is an abutter to the project but opted to bring to my attention an interaction with the Chair of the Mashpee Planning Board, Ms. Mary E. Waygan, which occurred outside of public session, that he felt was of concern. As the legal representative of the applicant, I feel you should be made aware of his testimony so you are able to best advise your client. Following our conversation where I relayed this information to you verbally, I feel I am compelled to also place it in writing as you had requested.

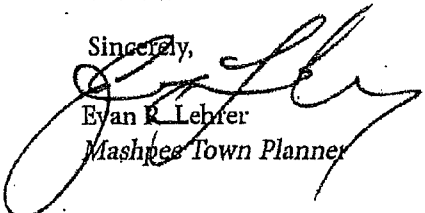
I have repeatedly advised in open meetings of the Planning Board to avoid deliberation on the Blue Sky Towers, LLC proposal given that the Board's deferral to the Cape Cod Commission as a Development of Regional Impact (DRI). The Planning Board had scheduled a public hearing to discuss an article placed on the October 2018 Town Meeting Warrant that sought to clarify language in the Zoning Bylaw with regard to the Wireless Facility Overlay District. It is important to note that deliberation regarding the proposed tower was outside of the scope of the public hearing notice.

Mr. Dorsey informed me by telephone that Ms. Waygan flagged him down for a conversation while he was exiting the Mashpee Stop and Shop parking lot sometime prior to the advertised hearing. He noted that Ms. Waygan informed him of the actions that he and his neighbors could take as abutters to prevent the development of the monopole. Mr. Dorsey raised a valid point with regard to your client's right to due process which forces me to lack confidence in Chair Waygan's ability to review the application for Special Permit impartially. This testimony gives the appearance that the matter has been decided prior to re-opening the public hearing.

At the October 3, 2018 public hearing Ms. Waygan openly inquired about consequences should the Planning Board opt to deliberate and act on the application of your client prior to the Cape Cod Commission's decision regarding the DRI. This statement was made following my continued recommendation to avoid deliberation on the matter until the Planning Board once again has active authority to do so pending the DRI decision.

I believe your client is entitled to the information provided in this letter which is why it is being provided at your request. I will make myself available to field questions and provide responses to you should you or your client wish to discuss the matter prior to your appearance before the Planning Board.

Sincerely,

  
Evan R. Lehrer  
Mashpee Town Planner



# Duval, Klasnick & Thompson LLC

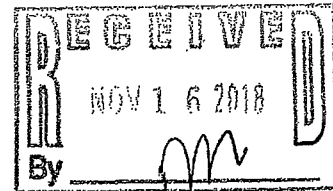
## Counselors at Law

OUR EXPERTISE. YOUR FUTURE. SUCCEEDING TOGETHER.®

Elizabeth R. Thompson  
Licensed in Massachusetts  
ethompson@dkl-legal.com

Mashpee Board of Selectmen  
16 Great Neck Road North  
Mashpee, MA 02649

Patrick Costello, Esq., Town Counsel  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street, Fourth Floor  
Boston, MA 02110



Dear Members of the Select Board and Attorney Costello:

The law firm of Duval, Klasnick & Thompson, LLC represents Blue Sky Towers II, LLC ("Blue Sky"), the applicant for a special permit for a wireless telecommunications facility to be located at 101 Red Brook Road (Mashpee Fire Station #2) in the Town of Mashpee.

In May of 2018, Blue Sky filed their application with the Town of Mashpee. On June 06, 2018, the Mashpee Planning Board opened the public hearing on this application and immediately suspended the proceedings as the project is a mandatory Development of Regional Impact ("DRI") project requiring the review of the Cape Cod Commission ("Commission"). The DRI proceedings were opened by the Commission on August 20, 2018 with subsequent hearings held on September 5, 2018, September 17, 2018 and October 18, 2018. On October 18, 2018, the Commission voted to approve the DRI. Upon the expiration of the appeal period, the Town of Mashpee will resume proceedings on the special permit application.

It has come to our attention that the Chairwoman of the Mashpee Planning Board, Mary E. Waygan, has engaged in unlawful ex parte communications with interested parties concerning the pending application of Blue Sky. Ms. Waygan's actions, as detailed herein, amount to clear violations of Blue Sky's due process rights and violations of the Federal Telecommunications Act of 1996. Further, we have learned of public comments made by Member Dennis Balzarini which clearly impedes his ability to review this matter in an impartial manner. Such blatant bias violates Blue Sky's right to a fair tribunal. We beseech the Mashpee Select Board to act swiftly to remedy the above so as not to unfairly and improperly delay the pending application.

### **Ex Parte Communications and Due Process of Law**

The Fourteenth Amendment demands that no state "shall...deprive any person of life, liberty, or property, without due process of law...." Under Part II, c. 1, Section 1, art. 4, of the

210 Broadway, Suite 204, Lynnfield, MA 01940  
3 North Spring Street, Suite 101, Concord, NH 03301  
Direct: (781) 873-0022 • www.dkt-legal.com • Mobile: (508) 423-5988



Massachusetts Constitution and arts. 1, 10, and 12 of the Declaration of Rights the right to due process is also protected. At a minimum, procedural due process requires notice of all facts in consideration by the Board, the opportunity to present and rebut evidence, and a neutral decision-maker. Chairwoman Waygan, Planning Board Member Dennis H. Balzarini, and the Mashpee Planning Board have violated the due process rights of Blue Sky in three clear ways. First, Chairwoman Waygan engaged in unnoticed, un-rebuttable conversations with noticed abutters in a blatant attempt to aid abutters in defeating the very same proposal which is pending before the Board over which the Chairwoman sits. Second, Planning Board Member Balzarini made numerous derogatory comments about the proposal. Such statements clearly negate his ability to serve as an impartial decision maker. Third, Chairman Waygan and members of the Planning Board allowed and participated in discussions concerning the substance of Blue Sky's application at a public hearing on a related, but distinctly separate matter, without notice to the applicant and denying the applicant's ability to defend mistruths and characterizations. Each violation will be discussed in turn below.

#### **1. Chairwoman Waygan's Ex Parte Communications**

By letter dated October 30, 2018 and attached hereto, Evan R. Lehrer, Mashpee Town Planner, informed me that Chairwoman Mary E. Waygan conducted inappropriate, unlawful ex parte communications with legally noticed abutters to the pending application. Specifically, Ms. Waygan approached Timothy Dorsey of 87 Blue Castle Drive at a grocery store after Blue Sky's application was filed with the Town of Mashpee and prior to the public hearing. Mr. Dorsey's concern with the impropriety of such a conversation led him to call the Town Planner to inform him that he had been approached by Ms. Waygan, in private, specifically to discuss Blue Sky's application. Ms. Waygan advised Mr. Dorsey concerning what actions he and other abutters could take to prevent Blue Sky's development of a wireless communications facility at the proposed location.

An ex parte communication is a communication between a decision-maker and an interested party which takes place outside the record and without public notice. A conversation, such as the one that occurred between Mr. Waygan and Mr. Dorsey, violates any notion of fairness and is a direct attempt by the Chairwoman of the Board, the very woman charged with decision making, to exert undue influence on an interested party. Ms. Waygan cannot be impartial presiding over these proceedings, and it is therefore imperative that she be immediately recused from participation in this matter.

Ex parte communications are legally and ethically prohibited and present serious implications under the United States Constitutional mandate for due process of law. In this case, there can be no argument that the assertions of the Chairwoman on how to defeat the proposed wireless communications facility is an improper use of her position which prevents my client from fair proceedings before the Mashpee Planning Board. The actions of Chairwoman Waygan is more than just an appearance of impropriety, and better characterized as a nefarious misconduct.

#### **2. Consideration and Testimony before the Planning Board without Public Notice or Applicant Representation**



At the October 3, 2018 hearing, the Planning Board agenda included a public hearing to review a proposed zoning amendment to the Wireless Facility Overlay District. During the public comment period, multiple people stood and spoke in great detail concerning Blue Sky's particular pending application rather than the proposed amendment. The Town Planner correctly stated that the "Planning Board was not yet able to discuss the particular project...and discussion about the project would not be appropriate." Chairwoman Waygan inquired as to the legality of allowing the substantive conversation to continue. Member Balzarini replied that it was illegal and the Town Planner agreed. Despite Chairwoman Waygan's own acknowledgement that the nature of the discussion during the public hearing might be improper, and the expressed opinion of a Member of the Board and the Town Planner that such conversations were illegal, the Chairwoman and the Board proceeded to allow public comment on Blue Sky's application and to discuss the details of the application with the public. These discussions violate Blue Sky's due process rights and Massachusetts Open Meeting Law. For all of the above reasons, the applicant demands the recusal of Chairwoman Waygan and Member Balzarini and expressly and vehemently questions the ability of the Mashpee Planning Board in general to conduct an impartial hearing on this matter.

### **3. Inability to Receive an Impartial Tribunal**

Procedural due process requires an impartial tribunal. *See Goldberg v. Kelly*, 397 U.S. 254, 255 (1970) (discussing impartial tribunal requirement in terms of pecuniary interest and prejudgment bias). The private, one-sided conversation of the Chairwoman with a noticed abutter violates the due process rights of Blue Sky to have all of the facts heard equally and openly before a neutral decision-maker. We have evidence, not only that Chairwoman Waygan has prejudged Blue Sky's application in a manner that precludes her ability to act as a neutral decision-maker, but also that Planning Board Member Dennis H. Balzarini is unable to serve as an impartial decision-maker on this application and must also be immediately recused.

At the October 03, 2018 Planning Board meeting at which Blue Sky's application should not even have been the subject of discussion, Member Balzarini stated that the facility should be located in New Seabury, indicating that he believes the proposed location is not acceptable. Mr. Balzarini's comments received applause from the abutters in opposition of the project in attendance. Member Balzarini clearly demonstrated that he had prejudged the application in a manner that will prohibit him from being a neutral decision-maker.

At the Town Meeting on October 15, 2018, Member Balzarini took it one step further stating that the Town's proposal for a tower in the neighborhood "did not sit well with him" and urging the Town again to locate the facility in New Seabury. He stated that he believed that the proposal was being "rammed down the throats of Degross Road residents." Such statements are conclusive evidence that Member Balzarini, who has not yet heard from the applicant or its team of experts, has already concluded how he will vote and is unfairly biased towards the proposal. These statements demand that he is excluded from participation as a decision-maker on Blue Sky's pending application in order to preserve Blue Sky's due process rights.

### **Telecommunications Act of 1996**



Under the Federal Telecommunications Act of 1996 ("TCA"), local authority cannot take any action that prohibits, or has the effect of prohibiting, the provision of personal wireless services.<sup>1</sup> Local authorities must be fair and objective when evaluating an application for a wireless facility. If a court detects that an authority is overtly or covertly hostile to a wireless provider, it will find that further efforts to obtain approval would be fruitless.<sup>2</sup> Courts reason that wireless providers cannot receive a "fair trial" from officials that are predisposed to rule against them. One example of hostility would be the making of derogatory statements by local officials that reveal their biases toward the wireless provider.<sup>3</sup> In this case, we have the Chairwoman and one member of the Board overtly and covertly hostile to the proposal. If the Town of Mashpee allows the proceedings to go forward and does not remove Chairwoman Waygan and Member Balzarini from the proceedings, it would seem more than clear that the applicant is being subjected to fixed hostility in violation of the TCA.

The ex parte communications between Chairman Waygan and abutters to the proposed project demonstrates clear bias and prejudice and calls for the immediate disqualification of Ms. Waygan from all proceedings concerning the proposed wireless telecommunications facility. The engagement with abutters in opposition to this project by the Chairwoman of the Planning Board is an egregious abuse of her authority which denies the applicant of the right to due process. Further, Member Balzarini's derogatory statements concerning Blue Sky's application were improper, resulting in a denial of due process, and are a blatant display of impermissible hostility. The decision-making process is so tainted by the actions of the Board that any judgment by Ms. Waygan or Mr. Balzarini would be unfair to the applicant and contrary to the public interest.

For all of the above reasons, I respectfully request Chairwoman Waygan and Mr. Balzarini recuse themselves from the remainder of the proceedings on Blue Sky's application. If they will not willingly do so, we would beseech the Select Board to take immediate action to effectuate the same so the Mashpee Planning Board can legally hear and decide upon the pending application in a timely manner pursuant to local, state and federal mandates.

Very truly yours,  
Duval, Klasnick & Thompson LLC



By: Elizabeth R. Thompson  
Attorney at Law

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<sup>1</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>2</sup> *Town of Pelham*, 313 F.3d at 630.

<sup>3</sup> *Sprint Spectrum L.P. v. Town of Durham*, No. Civ. 97-305-JD, 1998 WL 1537756 at \*8 (D.N.H. Aug. 27, 1998) (One councilman observed that a moratorium on wireless facilities would be a "roadblock," while another stated that he was in favor of "stopping this mess and starting over."); *Sprint Spectrum, L.P. v. Town of Ogunquit*, 175 F.Supp.2d 77, 87 (D.Me. 2001) (chairman made a statement that "my personal opinion is that there is probably enough evidence to turn [the application] down cold." *Omnipoint Holdings v. Town of Westford*, 206 F.Supp.2d 16, 172-73 (D.Mass. 2002) (One board member stated that she was opposed to the proposed facility because it was "nasty" and that she "did not want to look at it.")



Cc: Rodney Collins, Town Manager  
Wayne Taylor, Assistant Town Manager  
Even Lehrer, Town Planner  
Mary Waygan, Chairman, Mashpee Planning Board  
Dennis Balzarini, Member, Mashpee Planning Board



### Guidance on how to submit written comments to the Planning Board

1. Written comments may be submitted to the Planning Board during an open Public Hearing.
2. Written comments may also be mailed, hand delivered, or emailed to the Mashpee Planning Board c/o Town Planner, Planning Department, 16 Great Neck Road North, Mashpee, MA 02649, email \_\_\_\_\_.
3. If possible, please submit your written comments so they arrive in the Planning Department by the Friday before the next Planning Board meeting. This will allow staff time to distribute your comments to Planning Board members prior to the meeting.

### Guidance on how to submit verbal comments to the Planning Board

1. The Planning Board accepts verbal comments during Public Hearings
2. The Planning Board may accept verbal comments at Public Meetings

### Guidance on how to request an item or presentation is placed on an upcoming Planning Board Agenda:

1. Submit request in writing to the Planning Board Chair, c/o the Town Planner, Planning Department, 16 Great Neck Road N, Mashpee, MA 02649 or by email \_\_\_\_\_ as soon as possible.



### Guidance on how to submit written comments to the Planning Board

1. Written comments may be submitted to the Planning Board during an open Public Hearing.
2. Written comments may also be mailed, hand delivered, or emailed to the Mashpee Planning Board c/o Town Planner, Planning Department, 16 Great Neck Road North, Mashpee, MA 02649, email \_\_\_\_\_.
3. If possible, please submit your written comments so they arrive in the Planning Department by the Friday before the next Planning Board meeting. This will allow staff time to distribute your comments to Planning Board members prior to the meeting.

### Guidance on how to submit verbal comments to the Planning Board

1. The Planning Board accepts verbal comments during Public Hearings
2. The Planning Board may accept verbal comments at Public Meetings

### Guidance on how to request an item or presentation is placed on an upcoming Planning Board Agenda:

1. Submit request in writing to the Planning Board Chair, c/o the Town Planner, Planning Department, 16 Great Neck Road N, Mashpee, MA 02649 or by email \_\_\_\_\_ as soon as possible.



Article \_

To see if the Town will vote add the following sections to the Mashpee Zoning Bylaw:

§174-57

### Temporary/Seasonal Signs

1.) In all districts, no temporary on-premises sign or other temporary on-premises advertising device shall be permitted except as follows:

a.) The design and location of all temporary/seasonal signs attached to or associated with a commercial property or use shall be subject to approval of the Building Commissioner following design guidelines approved by the Planning Board.

b.) Except as provided in §174-57.1, the Building Commissioner may approve temporary signs attached to or associated with a commercial property or use for no more than a four month period in any calendar year.

c.) Temporary signs associated with a non-commercial property, dwelling or use not exceeding 12 square feet may be placed in all districts.

d.) Signs related to a specific event on a specific date or dates shall be removed within 7 days after the event. *1 day hours after*

2.) Sandwich Board/A-Frame Signs shall be permitted only within the C-1 District and the Light Industrial Overlay District

a.) Only one sandwich board/A-frame sign shall be permitted per commercial storefront subject to approval of the Building Commissioner.

b.) Sandwich Board signs will only be displayed during the commercial storefront's displayed hours of operation and shall be brought inside when not open for business.

c.) Sandwich Board signs will not be permitted if they hinder adequate access to the pedestrian right of way or neighboring storefronts.

§174-57.1

### Exceptions to the Above

a.) Upon the expiration of the initial four-month period for a temporary/seasonal sign for a commercial property or use, the Building Commissioner may permit a temporary sign for an additional four month period upon written application, if need is shown.

*Biz Fee*  
*Class Room Fee* *Way Funding* *Shugie*  
*April 1 - Dec 1*





# *Town of Mashpee*

---

*16 Great Neck Road North  
Mashpee, Massachusetts 02649*

## *Conservation Commission*

12/5/18

TO: Mary Waygan  
Mashpee Planning Board Chair  
Town of Mashpee

FROM: Drew McManus  
Conservation Agent  
Town of Mashpee

RE: 588 Main St subdivision/Conservation Restriction

Dear Mary,

This letter is written to inform the Mashpee Planning Board about an issue that was discovered on the parcel at 588 Main St. As you know, the owners of the parcel are currently going through the Cape Cod Commission for releasing subdivision lots. As a condition of the CCC, DRI permit review, the back half of this lot is to be preserved open space by virtue of a Conservation Restriction (CR). The Mashpee Conservation Dept would be the holder of the CR. We were sent a draft of the CR from the legal counsel representing the lot owners. Upon inspection of the CR area as shown on the lot subdivision plan, a significant clearing of land within the CR area was discovered. Approximately +/- 4 acres of the CR land has been completely cleared of all vegetation. The current condition of the affected area is comprised of stripped top soils, stacked tree trunks, large piles of sand, loam and mulch and other debris throughout the cleared area. I personally issued a cease and desist order last week to stop all work activities. When I asked one of the contractors operating in this area who was in charge, he put me in touch with Nick Pastore, who is one of the owners of the lot. I spoke with Nick Pastore and informed him of the situation and why I had issued a cease & desist order. Mr. Pastore has no permits from the town to authorize any commercial activities on this area of the lot. I informed Mr. Pastore and his legal representatives that the currently worded CR is insufficient considering the activities that have taken place. In order for this situation to be brought into compliance under a CR, the area must be restored in a satisfactory manner to both the CCC and the Mashpee Conservation Dept. Compliance restoration will require a formal restoration plan from a qualified professional. I don't know what steps the CCC will require, but I just wanted to provide the Planning Board with this information.

Sincerely,  
Drew McManus  
Mashpee Conservation Agent

Sincerely,

Drew McManus  
Mashpee Conservation Agent  
508-539-1400 X8539  
[amcmanus@mashpeema.gov](mailto:amcmanus@mashpeema.gov)

**GRANTOR:** Evergreen Energy LLC

**GRANTEE:** Town of Mashpee Conservation Commission

**ADDRESS OF PREMISES:** Evergreen Circle, Mashpee, MA

**FOR GRANTOR'S TITLE SEE:** Barnstable Registry of Deeds, Book 29541 Page 136

### **CONSERVATION RESTRICTION**

**EVERGREEN ENERGY LLC**, Massachusetts limited liability company, with an office at 81 Echo Road, Mashpee, Massachusetts 02649, its successors and assigns (the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants **WITH QUITCLAIM COVENANTS** to the **TOWN OF MASHPEE** a Massachusetts municipal corporation, with an address of 16 Great Neck Road North, Mashpee, Massachusetts 02649, acting by and through its Conservation Commission, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and its permitted successors and assigns (the "Grantee"), for Less than One Hundred Dollars (\$100.00) and in consideration of the mutual covenants, terms, conditions, and restrictions contained in the Limited Development of Regional Impact decision as described below, the receipt and sufficiency of which are hereby acknowledged, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on the entirety of a parcel of land constituting approximately 25.97 acres located in Mashpee, Barnstable County, Commonwealth of Massachusetts, (hereinafter, the "Premises"), which Premises is more particularly described in Exhibit A and shown on sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

#### **I. PURPOSES**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity for conservation purposes, in their natural, scenic and open condition and to prevent any use of or change to the Premises that would materially impair or interfere with the conservation values of the Premises (the "conservation values").

On December 15, 2011, the Cape Cod Commission approved the application of Cape Cod Cooperative Bank for the recombination and reorganization of an existing subdivision in Mashpee, Massachusetts into a new arrangement of commercial, industrial and open space lots as a Development of Regional Impact Hardship Exemption, Project #DRI/HDEX -11008 ("Decision") which Decision is recorded in the Barnstable Registry of Deeds in Book 26044 Page 147; as affected by a Minor Modification Type #1 decision granted to Evergreen Energy LLC, dated June 1, 2018 recorded in said Registry in Book \_\_\_\_\_ Page \_\_\_\_\_ (collectively the "DRI Decision") The DRI Decision requires the Grantor to satisfy the open space requirements by granting this Conservation Restriction which will permanently protect 25.97 acres of open space.

The conservation values include the following:

Open Space Protection. The Premises is a large parcel of contiguous open space and protection of the Premises contributes to the protection of the scenic and natural character of the Town of Mashpee.

Water Supply Protection. The Premises is located in the Wellhead Protection Area (WHPA) and the protection of the Premises will help protect the supply.

Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy. The Premises is a large parcel of contiguous open space mapped as Significant Natural Resources Area (SNRA) by the Cape Cod Commission's Regional Policy Plan Map.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO; PERMITTED USES

### A. Prohibited Acts and Uses.

Subject to the exceptions set forth herein, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on, above and below the Premises:

1. Constructing or placing or allowing to remain of any temporary or permanent structure, building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna (including so-called satellite receiving dishes), utility pole, tower, conduit, line, or other temporary or permanent structure or facility on, below or above the Premises;

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, brush, leaves, grass or tree cuttings, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying trees, grasses, ground covers or other vegetation;
5. Activities detrimental to wildlife habitat, drainage, flood control, water or soil conservation, erosion control or the quality of ground water;
6. The conveyance and/or discharge of stormwater runoff through point sources, i.e., pipes or other manmade structures, into the Premises;
7. The use, parking or storage of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles, except as required by police, firemen or other governmental agencies in carrying out their lawful duties;
8. The excavation of wildlife impoundments or the installation of outdoor decorative lighting or sounds which have the potential for disturbing wildlife;
9. Any commercial, residential or industrial use of the Premises;
10. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted);
11. No portion of the Premises may be used towards building requirements on this or any other parcel other than those in DRI Decision; and
12. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values unless reasonably necessary for the protection of the conservation values that are the subject of this Conservation Restriction.

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction:

1. Signs. Erection, maintenance, and replacement of signs or historic markers with respect to trespass, access, identity of the Grantor or Grantee, sale of the Premises, and to educate the public about the conservation values protected;
2. Limited Use of Motor Vehicles. The use of tractors, but not off road or recreational vehicles, on the Premises, solely as necessary for allowed maintenance activities on the Premises;
3. Fences and Gates. The erection, maintenance, or placement of sight-pervious fences and gates on the Premises that do not prevent passage of wildlife, subject to the prior written approval of the Grantee;
4. Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Survey, woods roads, fence lines and trails and meadows;
5. Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
6. Any other activity necessary to fully exercise the rights under the DRI Decision and to implement the Conditions contained in the DRI Decision and any subsequent amendments or modifications to the DRI Decision, provided that prior written notice is provided to the Cape Cod Commission as to any such activity.
7. Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report
8. Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. **Notice and Approval.** Whenever notice to or approval by the Grantee is required under the provisions of Paragraph B, or under other provisions of this Restriction, Grantor shall notify the Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where the Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore unless an extension in this period is requested and approved by Grantor. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes and intent of this Conservation Restriction. The provisions of this subparagraph shall apply to any approvals required under this Conservation Restriction from the Grantee.

D. **Other Regulatory Approvals.** The exercise of any right permitted to the Grantor under Paragraph A-B shall be in compliance with the then-current Zoning By-law applicable to the Premises, the Wetlands Protection Act (General Laws Chapter 131, § 40) and all other applicable federal, state and local laws. The inclusion of any right in Paragraphs A-B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should or could be issued.

### III. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable attorney's fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. Grantee Disclaimer of Liability. By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including but not limited to,

hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

C. Non-Waiver. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. Any election by the Grantee as to the manner and timing of its rights to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

D. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes, events or circumstances beyond the Grantor's control, including but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and the Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### IV. ACCESS

The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises, except as follows: There is granted to the Grantee and its duly authorized agents or representatives the right to enter the Premises at reasonable times and in a reasonable manner (with appropriate notice to Grantor) for the purpose of inspecting the Premises to determine compliance herewith or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

#### V. ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. Without limiting the foregoing, the Grantor and its successors and assigns agree to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee except in the following instances and from time to time:

- (i) as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continues to be carried out, and
- (ii) the assignee, is not an owner of the fee in the Premises, and at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws as a donee eligible to receive this Conservation Restriction directly; and
- (iii) the grantee complies with the provisions required by Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

#### VI. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any future deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

#### VII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall within sixty (60) days execute and deliver to the Grantor or to any party designated by the Grantor, any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction. Said certificate shall certify to the condition of the Premises as of the date of the Grantee's most recent inspection. If Grantor desires a more current certificate, Grantee shall conduct an inspection within sixty (60) days of the Grantor's written request (or other longer period should adverse weather conditions prevent a more timely inspection).

#### VIII. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained and it has been recorded in a timely manner in the Barnstable County Registry of Deeds.

## IX. EXTINGUISHMENT

A. Grantee's Receipt of Property Right. The Grantor, its successors and assigns, and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction determined at the time of the grant bears to the value of the unrestricted Premises at that time. Such proportionate value of the Grantee's property right shall remain constant.

B. Right of Grantee to Recover Proportional Value at Disposition. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to an extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value described in Paragraph IX (A) above, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by a public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph IX(A), above, after complying with the terms of any law, gift, grant, or funding requirement. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

## X. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## XI. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded with the Barnstable Registry of Deeds.

## XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: **EVERGREEN ENERGY LLC**  
81 Echo Road  
Mashpee, Massachusetts 02649

To Grantee: **TOWN OF MASHPEE**  
16 Great Neck Road North  
Mashpee, Massachusetts 02649  
Attn.: Conservation Commission

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## XIII. SEVERABILITY AND LIBERAL CONSTRUCTION

If any section or provision of this Conservation Restriction or the application thereof shall be held to be unenforceable by any court of competent jurisdiction, the remainder of the Conservation Restriction shall not be affected thereby. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws, c. 184, §§31-33.

If any section or provision of this instrument is ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

## XII. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of the Conservation Restriction pursuant to Massachusetts General Laws, Chapter 184, §32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

C. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

D. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises

Attached hereto and incorporated herein by reference are the following:

### Signature pages:

Grantor

Grantee Acceptance

Approval by Board of Selectmen

Approval of the Secretary of Energy and Environmental Affairs.

### Exhibits:

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of the Premises

**Signature Pages to Follow**

## X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may be appropriate, the Grantor and Grantee, with the approval of the Secretary of Energy and Environmental Affairs, may by mutual consent amend this Conservation Restriction provided that no amendment shall be allowed that will affect the qualifications of this conservation or the status of Grantee under any applicable laws, including Section 170 (h) of the Internal Revenue Code of 1986, as amended, or Massachusetts General Laws, c. 184, §§31-33. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, and shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution. Any such amendment, together with any necessary approvals to its effectiveness, shall be recorded with the Barnstable Registry of Deeds.

## XI. SEVERABILITY AND LIBERAL CONSTRUCTION

If any section or provision of this Conservation Restriction shall be held to be unenforceable by any court of competent jurisdiction, the remainder of the Conservation Restriction shall not be affected thereby. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws, c. 184, §§31-33. If any section or provision of this instrument is ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

## XII. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of the Conservation Restriction pursuant to Massachusetts General Laws, Chapter 184, §32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

C. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

**Signature Pages to Follow**

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

EVERGREEN ENERGY LLC

By: \_\_\_\_\_  
Name: Mark A. Govoni  
Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable County, ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared Mark A. Govoni, Manager, as aforesaid, proved to me through satisfactory evidence of identification which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it freely and voluntarily for its stated purpose on behalf of EVERGREEN ENERGY LLC.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**ACCEPTANCE OF GRANT**

We, the undersigned, being a majority of the Conservation Commission of the Town of Mashpee, Massachusetts, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2018, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from EVERGREEN ENERGY LLC, pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C) and do hereby accept the foregoing Conservation Restriction.

TOWN OF MASHPEE  
By its Conservation Commission

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

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, as aforesaid, proved to me through satisfactory evidence of identification which was \_\_\_\_\_, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it freely and voluntarily for its stated purpose on behalf of the Conservation Commission of the Town of Sandwich.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**APPROVAL and ACCEPTANCE OF BOARD OF SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Mashpee hereby certify that at a public meeting duly held on \_\_\_\_\_, 2018, the Board of Selectmen voted to approve the Conservation Restriction from EVERGREEN ENERGY LLC to the Town of Mashpee acting by and through its Conservation Commission in the public interest pursuant to Section 32 of the Chapter 184 of the General Laws of Massachusetts

TOWN OF MASHPEE  
By its Board of Selectmen

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

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, as aforesaid, proved to me through satisfactory evidence of identification which was \_\_\_\_\_, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it freely and voluntarily for its stated purpose on behalf of the Board of Selectmen of the Town of Mashpee.

\_\_\_\_\_  
Notary Public  
My Commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL  
AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from EVERGREEN ENERGY LLC to the Town of Mashpee, acting by and through its Conservation Commission has been approved in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
MATTHEW A. BEATON  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared MATTHEW A. BEATON, Secretary of the Executive Office of Energy and Environmental Affairs, proved to me through satisfactory evidence of identification which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it freely and voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission expires:

## **CONSERVATION RESTRICTION**

**Mashpee, Massachusetts**

### **EXHIBIT A**

#### **Description of the Restricted Premises**

The land subject to this Conservation Restriction, herein referred to as the Premises, is situated in Mashpee, in the County of Barnstable and Commonwealth of Massachusetts, described as follows:

The land area containing 25.97 acres and shown as “OPEN SPACE PARCEL 1 (25.97 Acres)” on a plan entitled “Definitive Subdivision Plan Evergreen Circle Prepared for Evergreen Industrial Park #588 Main Street (Route 130) in Mashpee, MA,” which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 674 Pages 38-40.

Property Address: Evergreen Circle, Mashpee, MA

For title reference see deed recorded in the Barnstable Registry of Deeds in Book 29541 Page 136.

## **CONSERVATION RESTRICTION**

**Mashpee, Massachusetts**

### **EXHIBIT B**

#### **Sketch Plan of the Premises**

See attached reduced copy of plan entitled "Definitive Subdivision Plan Evergreen Circle Prepared for Evergreen Industrial Park #588 Main Street (Route 130) in Mashpee, MA," which plan is recorded in the Barnstable County Registry of Deeds in Plan Book 674 Pages 38-40.



Excavation on land area under conservation restriction:  
Evergreen Energy Cluster Subdivision

Image 1



Image 2

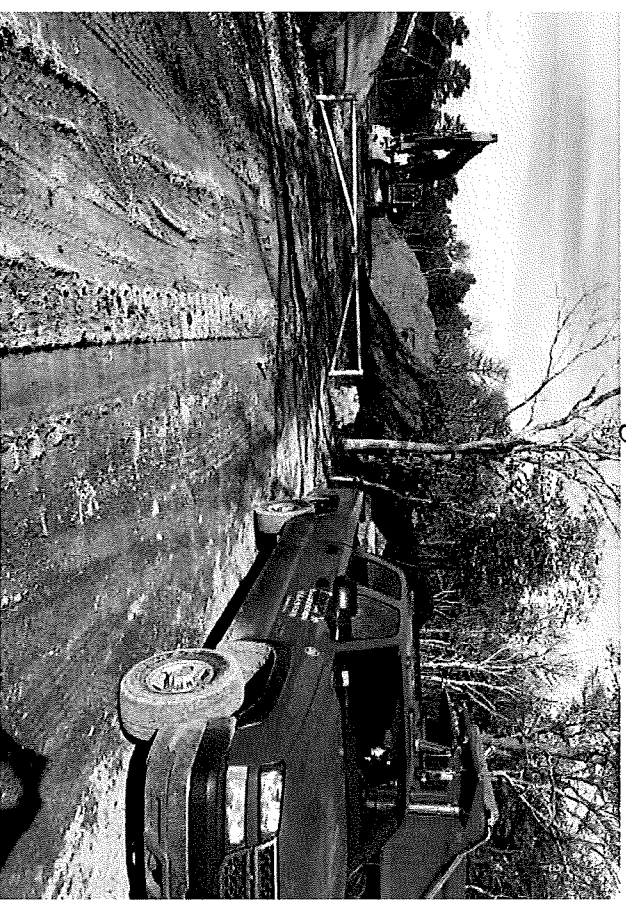
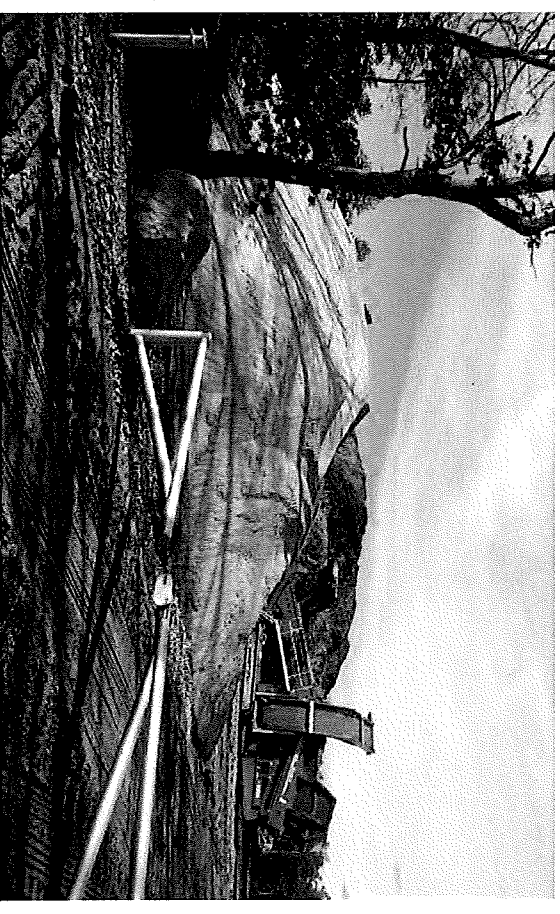


Image 3



Image 4





# Mashpee Town Map

Parcel Lookup

31 EVERGREEN CIRCLE X  
Show search results for 31 EVE...



App Store  
Click to restore the map extent and layers  
visibility where you left off.



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

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

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

**Absent:** David Kooharian

**CALL TO ORDER**

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

The Pledge of Allegiance was recited.

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

**APPROVAL OF MINUTES—July 18, 2018, August 1, 2018 and September 5, 2018**  
Minutes were not considered

**PUBLIC HEARING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There was no further public comment.

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

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

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

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

There were no additional comments.

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

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

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

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

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

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

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

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

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

## **ROAD TAKING**

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

## **NEW BUSINESS**

None at this time

## **OLD BUSINESS**

None at this time

## **CHAIRMAN'S REPORT**

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

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

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

## **BOARD MEMBER COMMITTEE UPDATES**

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

**Cape Cod Commission**-No update

**Design Review Committee**-No update

**Environmental Oversight Committee**-No update

**Historic District Commission**-No update

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

**Plan Review**-No update

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

## **PLANNING STAFF UPDATES**

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

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

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

## **CORRESPONDENCE**

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

-February 2018 Discharge Monitoring Report for Southport N=39.75

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

#### **WATERWAYS LICENSES**

None at this time

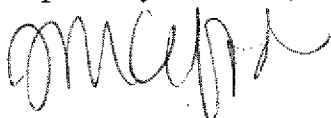
#### **ADDITIONAL TOPICS**

None at this time

#### **ADJOURNMENT**

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

Respectfully submitted,



Jennifer M. Clifford  
Board Secretary

#### **LIST OF DOCUMENTS PROVIDED**

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



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

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

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

**CALL TO ORDER**

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

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

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

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

**PUBLIC HEARING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There were no additional comments offered.

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

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

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

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

**All voted unanimously.**

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

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

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

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

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

The Board invited the public to comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**All voted unanimously.**

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

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

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

#### **NEW BUSINESS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **OLD BUSINESS**

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

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

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

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

## **CHAIRMAN'S REPORT**

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

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

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

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

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

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

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

#### **BOARD MEMBER COMMITTEE UPDATES**

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

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

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

**Environmental Oversight Committee**-No meeting

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

**Historic District Commission**-No update

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

**Plan Review**-No update

## **PLANNING STAFF UPDATES**

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

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

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

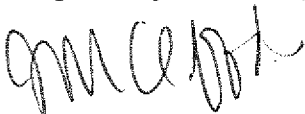
## **ADDITIONAL TOPICS**

None at this time

## **ADJOURNMENT**

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

Respectfully submitted,



Jennifer M. Clifford  
Board Secretary

## **LIST OF DOCUMENTS PROVIDED**

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



**Mashpee Planning Board  
Minutes of Meeting  
November 21, 2018 at 7:00 p.m.  
Waquoit Meeting Room, Mashpee Town Hall**

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

**Also:** Evan Lehrer-Town Planner

**Absent:** David Kooharian

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by the Chair at 7:03 p.m. on Wednesday, November 21, 2018. The Chair stated that the meeting was being videographed and recorded. The Pledge of Allegiance was recited.

**APPROVAL OF MINUTES—September 27, 2018 and November 7, 2018**

The lengthy meeting minutes would be considered at the next meeting.

**NEW BUSINESS**

**Reschedule Board Approved Public Hearings from 12/5/18 to 12/19/18**—In reference to Public Hearings scheduled for December 5, Mr. Lehrer reported that they had not been submitted in time to the paper for legal posting so would require a new motion to schedule them for December 19. Regarding the road renaming, Mr. Lehrer reported that abutters had met with GIS Coordinator Clay Nicholson and had reached a consensus regarding naming the road Santuit Lane, with a clarification regarding the numbering. The hearing remained open for the road renaming, so would need to be closed and a new Public Hearing scheduled, so that Shields Avenue and Santuit Lane be renamed Santuit Lane, with altered numbering.

**MOTION: Mr. Balzarini made a motion to schedule a Public Hearing for December 19 at 7:10 p.m. Mr. Weeden seconded the motion. All voted unanimously.**

Mr. Lehrer reported that David Bennett, representing Windchime, had submitted the application to modify their Special Permit on November 1 and included requests seeking release of escrow funds to make improvements and reduction in the Wastewater Treatment Monitoring Plan. Consideration for the modification would still be within the required 65 day window with a December 19 Public Hearing. Mr. Lehrer had been in contact with the project proponent regarding the date change.

**MOTION: Mr. Balzarini made a motion to re-schedule this Public Hearing to Wednesday, December 19 at 7:20 p.m. Mr. Weeden seconded the motion. All voted unanimously.**

The Chair asked for a roll call vote to add to the agenda a matter not anticipated by the Chair. Mr. Lehrer stated that he had been anticipating notification from the Cape Cod Commission regarding the Blue Sky Towers' lapse of appeal period. Today was the final day of the appeal period and it was confirmed by the Cape Cod Commission that they did not send notice to Mashpee Town Clerk. Now that the appeal period had lapsed, the Planning Board was at liberty to discuss the matter. The applicant has requested a Public Hearing, and Mr. Lehrer has proposed either December 19 or January 2. Mr. Lehrer further explained that the Public Hearing was currently open from June. Mr. Lehrer has

been advised to renote abutters and requested a vote on a time to reopen the Public Hearing. There was consensus to schedule the Hearing for January 2.

**MOTION:** Mr. Balzarini made a motion to continue the Public Hearing for the Wireless Tower Facility to January 2 at 7:10 p.m. Mr. Weeden seconded the motion. All voted unanimously.

#### **OLD BUSINESS**

None at this time

#### **CHAIRMAN'S REPORT**

None at this time

#### **BOARD MEMBER COMMITTEE UPDATES**

**Cape Cod Commission**-Mr. Weeden confirmed that the RPP would be moving forward to the Assembly of Delegates for further review. The Chair inquired whether there would be an additional Public Hearing and Mr. Weeden responded that he would check into it. The Chair stated that she had provided comment to the Cape Cod Commission, as a private citizen, that the State mandated 10% for affordable housing should be included within the main body of the RPP.

**Community Preservation Committee**-The Chair reported that the deadline for applications had been extended to November 30. Applications should be submitted to the Town Manager's office, to be distributed to the Committee.

**Design Review Committee**-Mr. Cummings reported that signs had been considered at their meeting, both street and building signs, for RCA and ABC. The signs fit within limits that had been discussed. Mr. Lehrer stated that he was working to develop a manual that would offer clarification for applicants and to provide a set criteria for the Committee, to assess such as issues as architectural features and provide consistency.

**Plan Review**-No meeting

**Environmental Oversight Committee**-Mr. Cummings reported that they were reviewing the plastic bag and plastic straw bylaw. Quahogs had been purchased and planted and the oyster season was open November 1-March 31. The Sewer Commission appointed their membership, but there had been no meetings. The algae bloom at Santuit Pond had subsided. AmeriCorps would be performing additional work at the herring run. A CPC application had been submitted for the Quashnet River realignment. The Chair discussed the history of the Base's impact to the bog, and Mr. Lehrer explained that the effort was to restore the area to its natural ecosystem and the River's natural flow. Mr. Weeden expressed interest in learning more about the project and the Chair stated that she would forward the application. Mr. Weeden noted that the Tribe advocate for restoring bog areas, which were typically located in cedar swamps, then reintroducing the white cedar to its original conditions, because of its sacred relationship to the Tribe. Mr. Cummings stated that once the area was restored, it was hoped that brook trout could be restored to the area.

**Greenway Project & Quashnet Footbridge**-Mr. Kooharian would take over the project and schedule the site visit. The Chair stated that the Coonamessett Rod & Gun Club may be able to assist. They were also interested in touring the bog restoration.

**Historic District Commission**-No update

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

#### **PLANNING STAFF UPDATES**

None at this time

**ADDITIONAL TOPICS**

None at this time

**ADJOURNMENT**

**MOTION:** Mr. Balzarini made a motion to adjourn. Mr. Cummings seconded the motion. All voted unanimously. The meeting ended at 7:25 p.m.

Respectfully submitted,

Jennifer M. Clifford

Board Secretary

**LIST OF DOCUMENTS PROVIDED**

- Draft Public Hearing Notice, Street Name Change from Shields Avenue and Santuit Lane to Santuit Lane
- Draft Public Hearing Notice, Windchime Condominium Trust
- Draft Public Hearing Notice, Blue Sky Towers II, LLC



**Mashpee Affordable Housing Committee**  
**Meeting Minutes**  
**October 23, 2018 at 6:30 pm**  
**Mashpee Town Hall**

**Present:** Chairman Allan Isbitz, Walter Abbott, Berkeley Johnson, Bruce Willard

**Absent:** Marie Stone

**Also:** Town Planner, Evan Lehrer

**CALL TO ORDER**

Chairman Isbitz opened the meeting at 6:40 p.m. with a quorum, and the roll was called.

**APPROVAL OF MINUTES**

It was confirmed that minutes from the September meeting had been approved at the October 16 meeting. Minutes from the recording of the October 16 meeting had not yet been produced.

**OLD BUSINESS**

**950 Falmouth Road, Review of the RFP Working Group Drafts-**Chairman Isbitz turned first to the comparative evaluation criteria of the Request for Proposals. The Chair read through the draft of the criteria in order to identify any necessary changes. Edits appear on the draft on file.

The Chair reported that, upon meeting with Laura Shufelt, she suggested that the Committee assign weight to each of the criteria categories. The Committee removed "SCORING" listed on the chart to avoid confusion and for each category, determined the appropriate points awarded for Advantageous and Highly Advantageous. The Chair noted that Ms. Shufelt recommended that, under M.G.L. Chapter 30B procurement regulations, if one RFP responding developer was interviewed, all developers would need to be interviewed.

CRITERIA CATEGORY	ADVANTAGEOUS	HIGHLY ADVANTAGEOUS
-Developer Experience & Capacity	maximum 10	maximum 20
-Affordability & Support Services	max 10	max 20
-Site Design	max 5	max 10
-Infrastructure & Green Design	max 8	max 15
-Building Design	max 8	max 15
-Financial Feasibility	max 8	max 15
-References, Site Visits & Interviews	max 2 or 3	max 5

The Chair discussed tax credit projects, clarifying that if units were 100% tax credit, unit rents would be set at no higher than 60% of the average median income. The Committee was also interested in offering moderate income units and the higher range of lower income and desired not to prohibit the option of market rent units. Ms. Shufelt had reported that market units were falling within 80%-100% of average median income. There was consensus to not be too restrictive.

Regarding Site Design, and pedestrian amenities and interconnections, Mr. Lehrer explained that it represented ways for people to move throughout the site, such as walking paths and site aesthetics, all of which needed to work together. Changed to "pedestrian amenities and connectivity that provide convenient and safe access for all tenants." Mr. Lehrer noted that the specifics were built out in the Advantageous and Highly Advantageous criteria, adding that the developers would understand the language. There was discussion regarding the incorporation of LEED recommendations, including the addition of potential charging stations in parking.

Likewise, Infrastructure & Green Design would provide higher rating with LEED standards being met or exceeded. The Chair discussed a checklist developed for affordable housing by Enterprise Community Partners, and adopts many elements from LEEDS criteria. There was a discussion regarding accessibility and visitability. Mr. Abbott suggested adding ADA requirement but the Chair responded that it was the law and a building permit could not be issued without ADA compliance.

Regarding References, the Chair suggested that five past projects would be sufficient for consideration.

There was question regarding whether the property was legally addressed 950 Falmouth Road or Old Falmouth Road and Mr. Lehrer confirmed that he would look at the road layout further, noting that it was historically known as Old Falmouth and referenced as such by Horsley Witten. Ms. Shufelt was also looking into the legal name of the site.

Regarding the Request for Proposals, the Chair clarified that proposals would be submitted to the Town Manager, who served as the Procurement Officer for the Town and as required by Chapter 30B, rather than Mr. Lehrer or the Affordable Housing Trust. Mr. Lehrer suggested that sealed bids also be submitted to the Chief Procurement Officer. Additional edits were offered to the document, including Mr. Lehrer's email address, as seen in the draft on file.

**Mr. Johnson made a motion to recommend approval of the two documents, as amended, to the Affordable Housing Trust. Mr. Willard seconded the motion. All voted unanimously.**

## **NEW BUSINESS**

None at this time.

## **COMMUNICATIONS**

**-Habitat for Humanity Homeownership Projects-**The Chair reported that Elizabeth Wade, from Habitat, was seeking a signature on a letter of support from the Committee, to be submitted to the Board of Selectmen and DHCD

**Mr. Willard made a motion to authorize Chairman Isbitz to sign the appropriate letter of support. Mr. Abbott seconded the motion. All voted unanimously.**

## **MEETING ADJOURNMENT**

Next meeting scheduled for Tuesday, November 13, 2018



Regarding Site Design, and pedestrian amenities and interconnections, Mr. Lehrer explained that it represented ways for people to move throughout the site, such as walking paths and site aesthetics, all of which needed to work together. Changed to "pedestrian amenities and connectivity that provide convenient and safe access for all tenants." Mr. Lehrer noted that the specifics were built out in the Advantageous and Highly Advantageous criteria, adding that the developers would understand the language. There was discussion regarding the incorporation of LEED recommendations, including the addition of potential charging stations in parking.

Likewise, Infrastructure & Green Design would provide higher rating with LEED standards being met or exceeded. The Chair discussed a checklist developed for affordable housing by Enterprise Community Partners. It is called the Enterprise Green Building Certification and adopts many elements from LEEDS criteria. There was a discussion regarding accessibility and visitability. Mr. Abbott suggested adding ADA requirement but the Chair responded that it was the law and a building permit could not be issued without ADA compliance.

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**Mr. Willard made a motion to authorize Chairman Isbitz to sign the appropriate letter of support. Mr. Abbott seconded the motion. All voted unanimously.**

## **MEETING ADJOURNMENT**

Next meeting scheduled for Tuesday, November 13, 2018

**Mr. Johnson made a motion to adjourn. Mr. Willard seconded the motion. All voted unanimously. The meeting adjourned at 8:15 p.m.**

Respectfully submitted by,

A handwritten signature in dark ink, appearing to read 'J. Clifford', written over a horizontal line.

Jennifer M. Clifford  
Board Secretary

**LIST OF DOCUMENTS**

- 905 Falmouth Road, Comparative Evaluation Criteria, Attachment A
- 905 Falmouth Road, Draft Request for Proposals

