



# Town of Mashpee

# Planning Board

16 Great Neck Road North  
Mashpee, Massachusetts 02649

Meeting of the Mashpee Planning Board  
Wednesday, December 4, 2019  
Waquoit Meeting Room  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

MASHPEE TOWN CLERK

DEC 02 2019

RECEIVED BY JM

## Call Meeting to Order

7:00PM

- Pledge of Allegiance

## Approval of Minutes

- Review of meeting minutes from October 23, 2019 and November 20, 2019

## New Business

- Blue Sky Towers Complaint in US District Court against the Town of Mashpee and the Planning Board, and Board of Selectmen Actions regarding said Complaint.
- Charles Rowley – November 2019 Invoice.

## Old Business

- The Cottages at New Seabury Phase I – Performance Bond Release
- Review and discussion regarding update of Local Comprehensive Plan

## Chairman's Report

## Board Member Committee Reports

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

## Updates from Town Planner

- Solar energy systems zoning proposal

## Correspondence

October 2019 Discharge Monitoring Report for South Cape Village N=4.40  
September 2019 Discharge Monitoring Report for South Cape Village N=3.40  
August 2019 2019 Discharge Monitoring Report for South Cape Village N=3.40  
July 2019 Discharge Monitoring Report for South Cape Village N=6.50  
June 2019 Discharge Monitoring Report for South Cape Village N=5.90  
May 2019 Discharge Monitoring Report for South Cape Village N=3.50  
April 2019 Discharge Monitoring Report for South Cape Village N=4.50  
March 2019 Discharge Monitoring Report for South Cape Village N=6.50  
February 2019 Discharge Monitoring Report for South Cape Village N=4.60  
January 2019 Discharge Monitoring Report for South Cape Village N=6.70

## Additional Topics (not reasonably anticipated by Chair)

## Adjournment

**Mashpee Planning Board  
Minutes of Meeting  
October 23, 2019 at 7:00 p.m.  
Mashpee Town Hall-Waquoit Meeting Room  
16 Great Neck Road North**

**Present:** Chairman Mary Waygan, Vice Chairman Joe Cummings, Dennis Balzarini, Joseph Callahan, John (Jack) Phelan

**Also:** Evan Lehrer-Town Planner

**Absent:** Robert (Rob) Hansen (Alt.)

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by Chairman Waygan, at 7:00 p.m. on Wednesday, October 23, 2019. The Pledge of Allegiance was recited.

**APPROVAL OF MINUTES—October 2, 2019 and October 16, 2019**

There were no changes offered to the October 2nd minutes. The Chair referenced page 11 in the October 16<sup>th</sup> minutes, asking that a 2. be added to the statement beginning with “Lease Agreement by the Town . . .” in the middle of the page.

**MOTION: Mr. Balzarini made a motion to accept the minutes of October 2<sup>nd</sup> as presented. Mr. Callahan seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to accept the minutes of October 16<sup>th</sup> as amended. Mr. Callahan seconded the motion. All voted unanimously.**

**OLD BUSINESS**

**Sign Special Permit Decision regarding application made by Blue Sky Towers II LLC to erect a 150 foot monopole-type wireless communications facility at 101 Red Rook Road (Fire Station #2)-**The Chair had reviewed the decision and had no changes, and stated that, if there was no further discussion, she would sign the Special Permit decision, dated October 16<sup>th</sup>. There were no additional comments.

**ADDITIONAL TOPICS**

The Chair confirmed that she wished for the Board to continue to meet during the regular first and third Wednesdays of November and recommended that the Board begin working on the LCP by dividing the chapters amongst Board members.

**ADJOURNMENT**

**MOTION: Mr. Balzarini made a motion to adjourn. Mr. Callahan seconded the motion. All voted unanimously. The meeting adjourned at 7:05 p.m.**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

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BLUE SKY TOWERS II, LLC  
d/b/a BSTMA II, LLC

Plaintiff

v.

TOWN OF MASHPEE,  
TOWN OF MASHPEE  
PLANNING BOARD, and  
MARY WAYGAN, JOSEPH CUMMINGS,  
JOSEPH CALLAHAN, JOHN PHELAN  
and DENNIS BALZARINI,  
as they are members of the PLANNING  
BOARD OF THE TOWN OF MASHPEE,

Defendants.

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**COMPLAINT**

Blue Sky Towers II, LLC d/b/a BSTMA II, LLC (“Blue Sky”) hereto brings this complaint under Section 704 of the Telecommunications Act of 1996, as codified at 47 U.S.C. § 332(c)(7) (“TCA”), for declaratory judgment and injunctive relief from the denial of the Town of Mashpee Planning Board’s (“Board”) denial of Blue Sky’s application for a 150-foot monopole telecommunications facility at 101 Red Brook Road, Mashpee, Massachusetts (“Proposed Site”). Blue Sky seeks expedited hearing and relief under the TCA where the Board’s denial prohibits or has the effect of prohibiting the provision of wireless services within a significant gap in wireless coverage for two (2) national wireless service providers and was wholly unsupported by substantial evidence in the administrative record.

Mashpee, MA ("Proposed Site"), the location of the existing Mashpee Fire Station #2, of which Blue Sky was the successful bidder.

13. In October of 2017, Blue Sky and the Town of Mashpee entered into a Lease Agreement, ("Lease") for approximately 100' x 100' square feet of ground space for the location of the Proposed Site with access and utility service over the property. A Memorandum of Lease was recorded at the Barnstable County Registry of Deeds in Book 31843, Page 324.
14. Pursuant to the Lease, Blue Sky has the right to permit, construct and operate a personal wireless service facility on the Proposed Site, with access and utility rights over the property to the Proposed Site.
15. The Proposed Site is located in a wooded area to the east of the existing Mashpee Fire Station #2 building on an approximate 37-acre parcel. The property is bounded to the north, east and south by forested areas and to the west by the Mashpee Fire Station. See **Exhibit 1 – Site Plan**.
16. The Proposed Site includes a 150-foot monopole type telecommunications tower within the 100' x 100' lease area, with 70' x 70' of the lease area contained within a fenced compound.
17. Access to the Proposed Site will be from the public right of way (Red Brook Road) over an existing access and parking area to a 20' wide access and utility easement and through 6-foot-wide double gates into the facility.
18. The Proposed Site is located on municipal land, which allows the Town of Mashpee greater control over the site.
19. The Proposed Site is designed to accommodate up to a total of four (4) wireless service carriers' antennas and equipment, in addition to the Town of Mashpee's public safety antennas (for police, fire and emergency medical services).
20. Blue Sky has signed Letters of Intent ("LOI") with two personal wireless service providers licensed by the Federal Communications Commission ("FCC"), Cellco Partnership d/b/a Verizon Wireless

30. As determined by the National Environmental Policy Act (“NEPA”) Report, the proposed personal wireless service facility at this location should not adversely impact designated wilderness areas, designated wildlife preserves, threatened or endangered species or critical habitats, historic places, Indian religious sites, floodplain, wetlands, or aviation standards.
31. To ensure compliance with the local, regional and state standards for sound, Blue Sky retained Modeling Specialties to conduct a Sound Impact Assessment Study at the Proposed Site.
32. In its report, Modeling Specialties confirmed that at full-build out of the Proposed Site, the conservative estimates of sound remain in compliance with all relevant regulations for sound.
33. The Commission confirmed Modeling Specialties findings.
34. To determine compliance with all relevant radio frequency emissions standards, Blue Sky retained Dr. Donald Haes to prepare a cumulative radio frequency exposure report for the Proposed Site.
35. Dr. Haes’ concluded that the proposed personal wireless service facility, including the antennas and equipment of Verizon Wireless, T-Mobile, and the Town’s EMS equipment, will comply with all regulatory guidelines for radio frequency exposure, including relevant sections of the Massachusetts Department of Public Health regulations and the FCC’s guidelines for RF exposure.
36. The Commission confirmed Dr. Haes findings.
37. The Board did not retain an expert in the field of radio frequency.
38. To ensure that the Proposed Site would not adversely affect property values, Blue Sky retained the services of FairMarket Advisors, LLC and Mark Correnti, Massachusetts Certified Residential Appraiser.
39. FairMarket Advisors, LLC’s report and supplemental report concludes that the Proposed Site will not adversely affect property values.
40. The Commission concluded that the Proposed Site would not adversely affect property values.
41. The Board did not retain an expert or engage the services of an appraiser.

neighborhoods, including the communities of New Seabury, Seabrook, Monomoscoy Island and Popponeset Island (the "Coverage Gap").

50. Verizon Wireless and T-Mobile are experiencing increased network capacity in this area of south Mashpee and as a result, the existing personal wireless service facilities are burdened, calling for a new facility to off-load capacity.
51. The existence of the Coverage Gap and capacity issues led Verizon Wireless and T-Mobile to enter into agreements with Blue Sky to co-locate on the Proposed Site.
52. The Coverage Gap and capacity needs have been documented and established by Blue Sky, Verizon Wireless and T-Mobile through multiple scientific, industry standard methods.
53. Verizon Wireless and T-Mobile each independently conducted computer-based Radio Frequency Propagation Studies that showed a lack of coverage for this area.
54. These studies consider coverage and capacity needs from existing wireless facilities in this area and show predicted coverage with and without the proposed 150-foot monopole.
55. These studies show a significant Coverage Gap and capacity need for both carriers in this area.
56. The Coverage Gap was further demonstrated through "drive-test data" provided for both Verizon Wireless and T-Mobile, which collects and measures actual radio frequency signal strength for each carrier as a vehicle travels along specific roads.
57. The drive test data confirmed that neither Verizon Wireless nor T-Mobile has adequate signal strength in the area of the Coverage Gap.
58. The Coverage Gap was also fully reviewed and confirmed by the Cape Cod Commission's independent wireless expert, Isotrope, LLC.
59. Isotrope, LLC reviewed all of the studies and drive-test data together with additional data that it requested regarding location, height and the interrelationship with existing sites and the Commission confirmed the need for the Proposed Site at the requested height and location.
60. The Coverage Gap is physically large and affects a substantial number of users.

70. Once it was determined that there are no tall existing structures available within the area, Blue Sky reviewed suitable raw land sites on which to place a personal wireless service facility to remedy the Coverage Gap and capacity needs.
71. After its initial analysis, approximately twenty-five potentially viable sites remained and each site was extensively reviewed as a potential alternative and subsequently dismissed for reasons such as access issues, restrictive covenants, unavailability for lease or sale, parcel size, wetlands, lacking adequate screening.
72. Many of these sites would also have a greater impact on neighboring residences.
73. After a thorough analysis of all existing structures and raw land, the Applicant identified the proposed site, the Town's preferred location for a new wireless facility, as the only feasible location to close this significant Coverage Gap for Verizon Wireless and T-Mobile while satisfying setback requirements and other requirements of the Town's Bylaws and Commission regulations.
74. Blue Sky, Verizon Wireless and T-Mobile then determined, and the Cape Cod Commission and the Mashpee Zoning Board of Appeals agreed, that the proposed tower was in the only location and the minimal height necessary to remedy the Coverage Gap and capacity issues in southern Mashpee.
75. The Board did not propose a single viable alternative or identify any manner in which Blue Sky's search was flawed.
76. Members of the public proposed several alternatives which Blue Sky reviewed.
77. Blue Sky provided definitive reasons why each site raised by a member of the public was not a viable alternative.

*Proceedings before the Cape Cod Commission*

78. The Proposed Site is located in the R-3 Zoning District. Pursuant to the Town of Mashpee Zoning Ordinance, §174-25(H)(9), a personal wireless service facility is allowed in the R-3 Zoning District by special permit from the Planning Board.

88. The Cape Cod Commission requested third-party, independent technical review of the Project from its contracted wireless communications technical consultant, David Maxson, principal of Isotrope, LLC.
89. The Cape Cod Commission found, among other things, that “[w]ithout development of the Project, the Carriers cannot provide reliable service to the southern portions of the Town of Mashpee pursuant to the Telecommunications Act of 1996 and their licenses issued by the FCC.”
90. The Commission found that Blue Sky has provided appropriate and sufficient documentation and analyses to evidence the Carriers' problems in wireless coverage and thus the need and demand for the Proposed Site, including documentation consistent with guidance set out in the Commission's Wireless Technical Bulletin.
91. The Commission found that Blue Sky provided sufficient documentation, reviewed by their retained wireless expert, of the deficiencies in wireless coverage for both Verizon Wireless and T-Mobile and that there are no existing structures and no feasible raw land sites which the carriers could provide coverage and capacity effectiveness comparable to what is being proposed.
92. The Commission found, in consultation with their wireless expert and based upon the testimony and documentation provided by the Blue Sky's two Radio Frequency Engineers, that a distributed antenna system (“DAS”) or “small cell” system is not feasible to replace the proposed tower.
93. Further, the Commission found that the information provided by Blue Sky confirmed the need for the facility at the proposed height to address coverage and capacity issues in this area of Mashpee.
94. The Commission found that the facility is appropriately located on municipal land and that there is sufficient existing forested area on the property to substantially obscure and limit views and to blend in with the natural environment to the greatest extent possible.
95. The Commission's extensive review by its Subcommittee, professional staff, retained wireless consultant and the full Commission confirmed that the proposal in its location and at the proposed



located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. Section

106. 174-45.3(E)(2) states that ground-mounted personal wireless service facilities shall not project higher than ten (10') feet above the average building height or, if there are no buildings within three hundred (300') feet, these facilities shall not project higher than ten (10') feet above the average tree canopy height, measured from ground level (AGL).
107. On January 10, 2019, Blue Sky requested a variance from the Mashpee Zoning Board of Appeals, seeking relief from the height requirements for Personal Wireless Service Facilities.
108. The Mashpee Zoning Board of Appeals granted the variance on February 13, 2019 finding that there is a known condition of a gap in cellphone coverage in the area of the Proposed Site and that the proposed height and location will significantly close this gap.
109. The Mashpee Zoning Board of Appeals concluded that there is a need for the Proposed Site to provide safety for its citizens.
110. The Mashpee Zoning Board of Appeals concluded that the proposed height is not excessive but is high enough to address the topographical impediments to provide the necessary coverage.
111. The variance was appealed by a group of residents in Barnstable Superior Court (No. 1972CV130) on March 19, 2019, said appeal pending.
112. Due to Town elections during the proceedings before the Cape Cod Commission and the Zoning Board of Appeals, the Planning Board, a five-member Board, retained only three of the original members that sat on Blue Sky's application. As such, in order to preserve its due process rights and to be heard by a full five-member Board, Blue Sky withdrew its application, without prejudice, on June 19, 2019, and refiled its application on August 02, 2019.
113. The following items were included with Blue Sky's application to the Board:
- a) Letter of Authorization to file from the property owner
  - b) Zoning Drawings
  - c) Photographic Simulations
  - d) Equipment Specifications

120. Mr. Correnti also refuted news articles submitted by the public concerning the impact of a cell tower on property values.
121. Counsel for Blue Sky provided information on how the Proposed Site meets the requirements of the Town's Bylaws, the Commission and the TCA.
122. During the course of the proceedings before the Board, Blue Sky submitted a supplemental legal memorandum to the Board addressing comments from the Board on the appropriate zoning relief for the Proposed Site, the Middle Class Tax Relief and Job Creation Act of 2012, the coverage gap and required evidence, alternative site analysis, and specifically addressed one particular alternative questioned by a local resident, and aesthetic impacts.
123. Blue Sky also provided a complete copy of the NEPA to the Board at their request.
124. Through its extensive submissions and testimony, Blue Sky established that it had satisfied all of the Bylaw criteria, Commission criteria, and criteria under the TCA for the requested special permit.
125. Paragraph A under Section 174-45.3 states that in accordance with the requirements of 47 U.S.C. 332(c)(7)(B), and until these requirements are modified, amended or repealed, in regulating the placement, construction and modification of personal wireless service facilities, the administration of this bylaw shall not be undertaken in a manner which unreasonably discriminates among providers of functionally equivalent services or prohibits, or has the effect of prohibiting, the provision of personal wireless services.
126. Blue Sky conclusively established that there is a significant gap in wireless coverage for two national wireless providers in the area of the Proposed Site, that the Proposed Site is the minimal height necessary and the only feasible location to place it.
127. Blue Sky conclusively established that there are network capacity issues for two national wireless providers in the area of the Proposed Site, that the Proposed Site is critical to rectifying those capacity issues.

135. Blue Sky has never maintained, defended, or submitted that an alternative was rejected as a result of the existence of the RFP or lease with the Town.

136. The denial states that the Town of Mashpee Zoning Bylaws do not allow the Proposed Site at 101 Red Brook Road as the property is outside of the Wireless Facility Overlay District ostensibly ignoring the Commission's findings and their own Bylaws which allows personal wireless service facilities in the R-3 Zoning District.

COUNT I

**Violation of 47 U.S.C. §332(c)(7)(B)(iii)**

**Failure to Support the Denial with Substantial Evidence in the Written Record**

137. Blue Sky repeats and realleges paragraphs 1 through 136 as if set forth fully herein.

138. Pursuant to the TCA, "[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record."

139. The Board's decision is not supported by substantial evidence in the administrative record, in violation of this requirement.

140. The Board's denial is based upon standards that are not in the Bylaws and are not valid basis for denial.

141. The Board's denial is based upon purely subjective and vague determinations on impact on property values and aesthetic character, contrary to the expert analysis presented to the Board and the Commission's findings to the contrary.

142. The Board's denial does not contain any supporting evidence for the assertions that the Proposed Site would result in adverse impacts on aesthetics, character of neighboring homes, or property values but rather makes vague and general statements that such a result will occur.

143. The Board's denial fails to cite any evidence to support the assertion that Blue Sky failed to meet any applicable criteria under the Bylaws.

154. Where the denial lacks substantial evidence, the denial violates the TCA under § 332(c)(7)(B) and must be vacated.

155. Blue Sky is entitled to judgment ordering the issuance of the special permit necessary for the development of the Proposed Site.

**COUNT II**  
**Violation of 47 U.S.C. §332(c)(7)(B)(i)(II)**  
**Prohibition of Wireless Services**

156. Blue Sky repeats and realleges paragraphs 1 through 155 as if set forth fully herein.

157. The TCA provides in relevant part, that [t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof...shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

158. An applicant may prove an effective prohibition based upon a single land use decision and a blanket ban is not required under the Bylaws.

159. To prove an effective prohibition, an applicant must prove that there is a significant gap in wireless services in the area, and that there are no feasible alternatives for providing coverage to the area of the coverage gap.

160. In this case, Blue Sky has provided propagation studies, drive test data, which has all been reviewed and confirmed by an independent wireless expert retained by the Commission to demonstrate that there is a significant Coverage Gap for two national wireless service providers, Verizon Wireless and T-Mobile.

161. It is well-established in this Circuit that propagation studies and drive test data are highly probative evidence.

162. While Blue Sky had the initial burden to prove the absence of feasible alternatives, under binding First Circuit precedent, there are limits on a municipality’s ability to insist that Blue Sky keep searching.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff Blue Sky Towers II, LLC d/b/a BSTMA II, LLC respectfully requests the following relief:

1. An expedited review of the matters set forth in this Complaint, as provided by the Telecommunications Act of 1996, Pub. L. 104-104, § 704, 110 Stat. 56, codified at 47 U.S.C. § 332(c);
2. A declaration that the Board's decision is not based upon substantial evidence in a written record under 47 U.S.C. § 332(c)(7)(B)(iii);
3. A declaration that the Board's decision has the effect of prohibiting the provision of personal wireless services in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II);
4. An order annulling the denial;
5. An order of mandamus ordering the Board and the Town of Mashpee to grant a special permit and any and all necessary zoning approvals and relief allowing the construction of the Proposed Site;
6. Award Blue Sky its reasonable attorneys' fees and costs in connection with this action; and
7. Such further relief as the Court may deem proper and appropriate.

**PLAINTIFF**  
**BLUE SKY TOWERS II, LLC**  
**d/b/a BSTMA II, LLC**  
By its Attorneys,

/s/ Earl W. Duval  
Earl W. Duval (BBO #565909)  
[eduval@dkl-legal.com](mailto:eduval@dkl-legal.com)

Duval & Klasnick LLC  
210 Broadway, Suite 204  
Lynnfield, MA 01940  
(781) 873-0023

Dated: November 12, 2019

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Blue Sky Towers II, LLC d/b/a BSTMA II, LLC v. Town of Mashpee et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 635, 830\*, 835\*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Earl W. Duval

ADDRESS Duval & Klasnick, LLC, 210 Broadway, Suite 204, Lynnfield, MA 01940

TELEPHONE NO. (781) 873-0023

JS 44 (Rev. 09/19)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> Blue Sky Towers II, LLC d/b/a BSTMA II, LLC  (b) County of Residence of First Listed Plaintiff <u>Middlesex, MA</u> (EXCEPT IN U.S. PLAINTIFF CASES)  (c) Attorneys (Firm Name, Address, and Telephone Number) Earl W. Duval, Duval & Klasnick LLC, 210 Broadway, Suite 204, Lynnfield, MA 01940 (781) 873-0023	<b>DEFENDANTS</b> Town of Mashpee, Town of Mashpee Planning Board, Mary Waygan, Joseph Cummings, Joseph Callahan, John Phelan, and Dennis Palmer County of Residence of First Listed Defendant <u>Barnstable, MA</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys (If Known)
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																																			
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Incorporated or Principal Place of Business In This State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Incorporated and Principal Place of Business In Another State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Foreign Nation</td> <td colspan="2"></td> </tr> </table>	PTF	DEF		PTF	DEF	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4			Incorporated or Principal Place of Business In This State			<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5			Incorporated and Principal Place of Business In Another State			<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6			Foreign Nation		
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		Foreign Nation																																		

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)					Click here for: <a href="#">Nature of Suit Code Descriptions.</a>				
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes				
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement							

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from Another District (specify)   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
47 U.S.C. s. 332(c)(7)(B)(v)

Brief description of cause:  
Appeal of denial of special permit for telecommunications facility in violation of the TCA

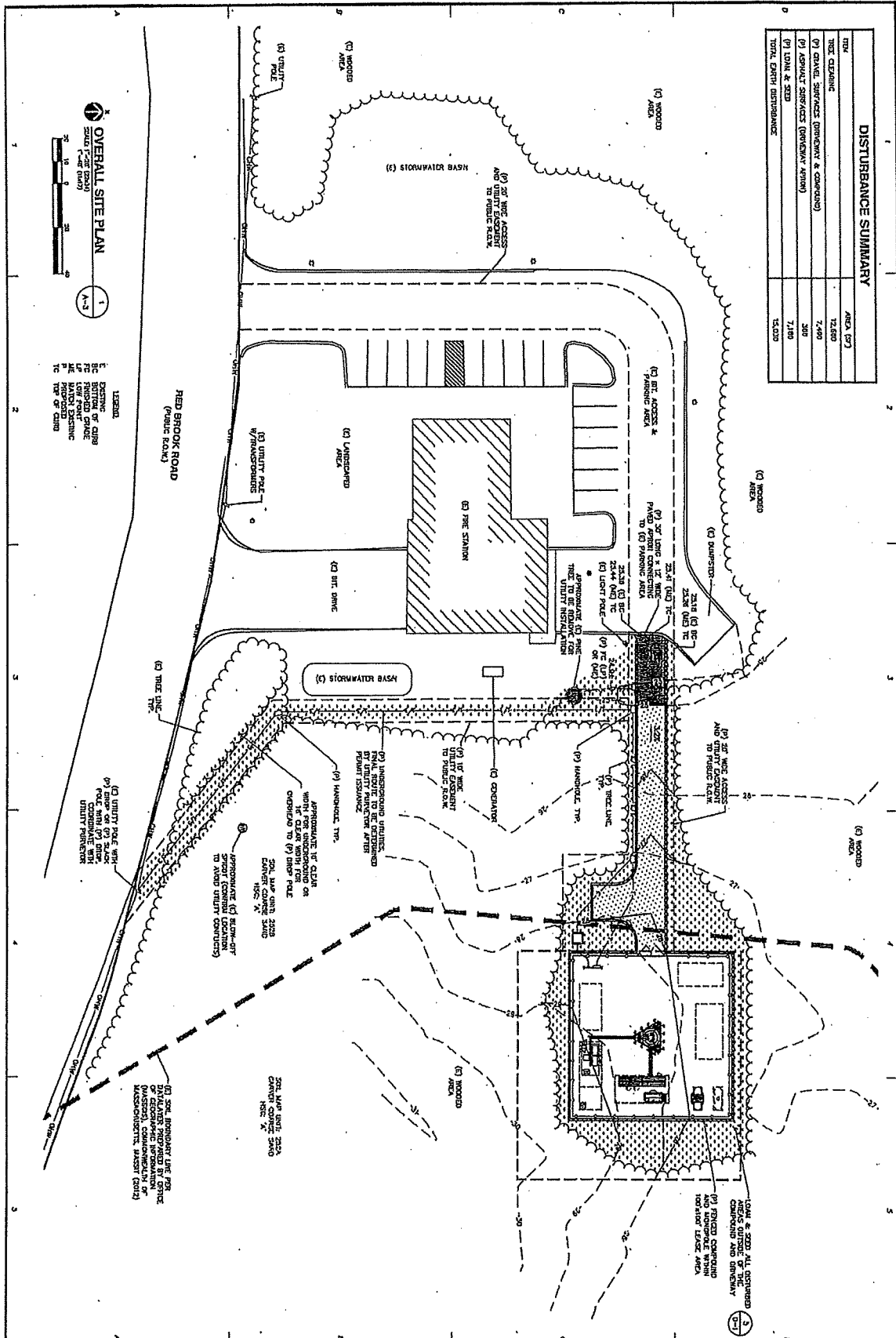
**VII. REQUESTED IN COMPLAINT:**   
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.   
 DEMAND \$ \_\_\_\_\_   
 CHECK YES only if demanded in complaint:  
 JURY DEMAND:   
 Yes   
 No

**VIII. RELATED CASE(S) IF ANY** (See instructions):   
 JUDGE \_\_\_\_\_   
 DOCKET NUMBER \_\_\_\_\_

DATE: 11/13/2019   
 SIGNATURE OF ATTORNEY OF RECORD: Earl W. Duval

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_   
 AMOUNT \_\_\_\_\_   
 APPLYING IFP \_\_\_\_\_   
 JUDGE \_\_\_\_\_   
 MAG. JUDGE \_\_\_\_\_



DISTURBANCE SUMMARY	
NO.	AREA (SQ FT)
TRUCK CLEANING	12,600
(P) GRAVEL SERVICES (CONCRETE & CONCRETE)	7,400
(P) ASPHALT SERVICES (CONCRETE AREA)	300
(P) SOIL & SAND	7,100
TOTAL DISTURBANCE	14,200

<p><b>ProTerra</b> DESIGN GROUP, LLC</p> <p>Address: 250 N. 10th St. Boston, MA 02111 Tel: (617) 552-4444</p>	<p><b>PROJECT:</b> BLUE SKY TOWERS II, LLC 354 PARK STREET SOUTH RM NORTH READING, MA 01864</p>	<p><b>NO. DATE REVISIONS</b></p> <p>A 09/27/17 ISSUED FOR REVIEW</p> <p>B 10/18/17 ECO PRELIM REVIEW</p> <p>C 01/27/17 ISSUED FOR REVIEW</p> <p>D 03/14/17 ISSUED FOR REVIEW</p> <p>E 03/10/18 ISSUED FOR PERMITTING</p> <p>F 02/28/18 PERMITTING REVISED</p> <p>G 10/24/18 PERMITTING REVISED</p> <p>H 01/08/19 PERMITTING REVISED</p> <p>I 05/20/19 PERMITTING REVISED</p> <p>J 07/24/19 PERMITTING REVISED</p>	<p><b>DATE:</b> 08/22/17</p> <p><b>DRAWN:</b> BJA/SZC</p> <p><b>CHECK:</b> ASB/TJC</p> <p><b>SCALE:</b> SEE PLAN</p> <p><b>NO. FILE:</b> 17-045</p>
<p><b>OVERALL SITE PLAN</b></p> <p><b>A-3</b></p>			





## Town of Mashpee

16 Great Neck Road North  
Mashpee, Massachusetts 02649

### Special Permit Decision

**Blue Sky Towers II, LLC**  
**150' monopole-type personal wireless service facility**  
**101 Red Brook Road**  
**Mashpee Firestation #2**  
**Mashpee, MA 02649**

#### **I. BACKGROUND / PROCEDURAL RECORD**

This decision concerns the application of Blue Sky Towers II, LLC, of 352 Park Street, Suite 106, North Reading, MA, 01864 (the "Applicant") for approval of a Special Permit to erect a 150' monopole-type personal wireless service facility at 101 Red Brook Road, Fire Station #2, Mashpee, MA 02649. The Property is identified on the Mashpee Assessors Maps as Map 104 Block 2.

The proposal includes the construction of a 150' monopole-type personal wireless service facility within a 70'x70' fenced-in compound on a 100'x100' leased area adjacent to the Mashpee Fire Substation at the same address. The proposal includes driveway access to the compound from the fire substation parking area. The proposed monopole shows space for up to four (4) wireless providers with two (2) providers attached to this application, Verizon Wireless and T-Mobile. The proposal also includes space for Town EMS antenna system.

The applicant was the successful bidder of a Request for Proposals, the 'RFP', issued by the Town of Mashpee in May 2017. The applicant was awarded the project and entered into a lease agreement with the Town in July 2017. The Applicant submitted an application for the construction of a 150' monopole-type personal wireless service facility on May 4, 2018. The applicant withdrew the application, without prejudice, on June 19, 2019. Prior to the application's withdrawal, this project was referred by the Planning Board on June 6, 2018 to the Cape Cod Commission for review as a Development of Regional Impact pursuant to the Cape Cod Commission Enabling Regulations Governing Review of Developments of Regional Impact, Section 3 (I)(1). The Cape Cod Commission approved this project on October 18, 2018 and is recorded in the Barnstable County Registry of Deeds in Book 31689 Page 331.

The applicant filed a petition with the Mashpee Zoning Board of Appeals on January 10, 2019 requesting a variance under all provisions of §174-45.3(E)(1) and §174-45.3(E)(2) of the Mashpee Zoning Bylaws and M.G.L. c.40A §10. Variance relief of 116' in height was granted by the Board of Appeals on February 13, 2019 and filed with the Town Clerk on February 27, 2019. That decision was appealed in Barnstable Superior Court (No. 1972CV130) with notice of the appeal being filed with the Town Clerk on March 19, 2019.



## Town of Mashpee

16 Great Neck Road North  
Mashpee, Massachusetts 02649

- The Town of Mashpee Zoning Bylaws do not allow the proposed wireless communications facility at 101 Red Brook Road, Mashpee, MA 02649 as the property is outside of the Wireless Facility Overlay District.
- October 2018 Mashpee Town Meeting did not amend the Town of Mashpee Zoning Bylaws to include 101 Red Brook Road, Mashpee, MA 02649 in the Wireless Facility Overlay District.
- Mashpee Zoning Board of Appeals decision for a variance V-2019-10 is not effective in this matter as the decision is not recorded with the Barnstable County Registry of Deeds.
- Mashpee Zoning Board of Appeals decision for a variance V-2019-10 will never be effective in this matter pursuant to Mashpee Zoning Bylaw Article VI, §174-24K, "No use specifically listed in the table of use regulations shall be allowed by the Zoning Board of Appeals in any district where it is prohibited," and Massachusetts General Laws Chapter 40A, §10, "Except where local ordinances or bylaws shall expressly permit variances for a use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.
- Mashpee Zoning Board of Appeals decision for a variance V-2019-10 would not be effective in this matter even if the property were located within the Wireless Facility Overlay District pursuant to Mashpee Zoning Bylaw as it is the Planning Board, not the Zoning Board of Appeals, which may grant a waiver to allow additional height of a personal wireless service facility of within the Wireless Facility Overlay District.
- The applicant fails to address how the proposed wireless service facility will be monitored and maintained, and how it shall bond the facility in case of abandonment or discontinuance of use as required by Article IX, §174-45.3.L Monitoring and Maintenance provisions (1), (2), and §174-45.3.M Abandonment or Discontinuation of Use provisions (1), (2), and (3).

In voting for the proposal members Phelan and Callahan made the following findings:

- Variance relief was granted by the Mashpee Zoning Board of Appeals and the proposed 150' monopoles location outside of the Wireless Facility Overlay District is irrelevant unless that decision is overturned.
- The proposed monopole would not inflict dramatic and wholly unnecessary adverse impacts upon the aesthetics and character of neighboring homes given that the applicant stated a commitment to camouflaging the proposed monopole at the discretion of the Planning Board, and also that its proposed location mitigates visibility to as many neighboring homes as is feasible.
- The proposed monopole would be a dramatic benefit to public safety as there is a significant coverage gap in South Mashpee impacting emergency response.



# Town of Mashpee

16 Great Neck Road North  
Mashpee, Massachusetts 02649

## V. Signature and Filing.

This special permit decision was made by the Mashpee Planning Board on this 16<sup>th</sup> day of October 2019.

A true copy  
Attest

Mary Elaine Waygen  
Member, Mashpee Planning Board

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

October 23, 2019

Date

On this 23 day of October 2019, before me, the undersigned notary public, personally appeared Mary Elaine Waygen, a member of the Mashpee Planning Board, proved to me through satisfactory evidence of identification, which were personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily for its stated purpose.

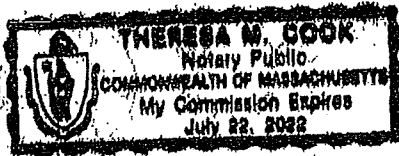
Theresa M. Cook

Notary Public

Theresa M. Cook

My Commission expires: July 22, 2022

Date of expiration



A copy of this decision has been duly filed on Oct 24, 2019 with the Town Clerk of Mashpee.

Deborah Davis

Town Clerk

Notice of this decision was mailed on October 24, 2019 to the applicant, to the parties in interest designated in M.G.L. Chapter 40A, Section 11 and to all persons at the hearing who requested such notice. Any appeal shall be made pursuant to Section 17 of the Chapter 40A of the Massachusetts General Laws within twenty (20) days after the date of said filing.

I, \_\_\_\_\_, Town Clerk of the Town of Mashpee, hereby certify that a copy of this decision was filed with the office of the Town Clerk on \_\_\_\_\_, 2019 and that no appeal of that decision was filed within twenty (20) days thereafter.

\_\_\_\_\_  
Date

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

**Mashpee Planning Board  
Minutes of Meeting  
September 4, 2019 at 7:00 p.m.  
Mashpee Town Hall-Waquoit Meeting Room  
16 Great Neck Road North  
Approved 10/16/19**

**Present:** Chairman Mary Waygan, Vice Chairman Joe Cummings, Dennis Balzarini, John (Jack) Phelan, Joseph Callahan, Robert (Rob) Hansen (Alt.)  
**Also:** Evan Lehrer-Town Planner, Charles Rowley-Consultant 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 Chairman Waygan, at 7:02 p.m. on Wednesday, September 4, 2019. The Chair welcomed attendees and the Pledge of Allegiance was recited. The Chair stated that the meeting was being videotaped and recorded and noted that, if the public addressed the Board, to do so stating their name, address and comment. Comments should be made through the Chair, after being acknowledged, and may be addressed directly by the Board, the project proponent, staff, consultant engineer or taken under advisement.

**APPROVAL OF MINUTES—August 7, 2019**

**MOTION:** Mr. Balzarini made a motion to accept the August 7<sup>th</sup> minutes as presented. Mr. Callahan seconded the motion. All voted unanimously.

**PUBLIC HEARINGS**

**7:05 p.m. Best Buy Beverage (Continued from 8/21/19)**

Application for a Special Permit filed by Kevin Andrade to construct a commercial building to be used for retail use, redemption center and office space to be located at 11 Evergreen Circle, currently identified as Lot A on the plan titled Definitive Subdivision Plan, Evergreen Circle, prepared for Evergreen Industrial Park, #588 Main Street (Route 130) approved on 11/20/17 by Mashpee Planning Board. This application is made pursuant to Sections 174-24 C (1) and under Section 174-25 E (12) under the Mashpee Zoning Bylaw. The property is located in the C-3 Zoning District and is within the Light Industrial Overlay District.

The appointed time having arrived, the Chair opened the Public Hearing and read the Public Hearing Notice and request. Raul Lizardi-Rivera, Cape and Islands Engineering, represented the applicant and returned to address additional information requested by the Board. Mr. Lizardi-Rivera confirmed that plans had been revised and submitted, including the water quality report previously submitted by Evergreen, turning movement reports for emergency vehicles and revised building elevations and footprint, which reflected the standards requested by the Cape Cod Commission. Projections and awnings added character to what was previously a plain rectangular building and traditional materials replaced what were initially metal walls. Mr. Lizardi-Rivera confirmed that all comments provided by Mr. Rowley were addressed except for 1) fire/water service off of Route 130 instead of Evergreen Circle, due to water pressure concerns expressed; 2) grading adjustment at the entrance that would have placed the driveway at an 8% slope, but showing that the water would be directed to the waterway with some adjustments; and 3) changes to the landscape material, including ground cover species.

Mr. Lizardi-Rivera inquired whether the Public Hearing could be closed, action taken and revisions be included in the conditions due to a closing for the property. Mr. Lizardi-Rivera stated that he would be agreeable to incorporating Mr. Rowley's comments into the plan and change the zoning compliance table. Mr. Lehrer inquired whether the Board wished to take a vote without the draft decision. The Chair stated that they could close the Public Hearing, excluding further discussion regarding the draft decision at the next meeting. Mr. Lehrer would draft a decision including the conditions.

**MOTION: Mr. Balzarini made a motion to close the Public Hearing. Mr. Cummings seconded the motion. All voted unanimously.**

There were no additional comments from Board members.

**MOTION: Mr. Balzarini made a motion to approve the project as amended with two changes; 1) that the Zoning Compliance Table is amended to reflect the proper verbiage regarding the undisturbed natural space and 2) that the low point for the drainage area closest to Evergreen Circle will be modified to eliminate runoff toward Evergreen Circle. Mr. Callahan seconded the motion. All voted unanimously.**

Mr. Callahan will sign the signatory page.

**7:10 p.m. Blue Sky Towers II, LLC**

**Application for a Special Permit to erect a Personal Wireless Service Facility as required by Section 174-25 (H)(9); 174-45.3 of the Mashpee Zoning Bylaw at 101 Red Brook Road, Mashpee Fire Station #2 consisting of a 150' monopole. This Public Hearing is being reopened by the Planning Board following referral to the Cape Cod Commission as a Development of Regional Impact (DRI).**

The appointed time having arrived, the Chair opened the Public Hearing for Blue Sky Towers II, LLC and read for the record the Public Hearing Notice and request. The Chair read a statement regarding the process as to how the matter would be discussed and considered during the Public Hearing, beginning with a presentation from the project proponent. The Chair explained that a prior proposal had been submitted, but withdrawn without prejudice. All testimony, materials or information submitted previously would need to be submitted again for Board consideration.

Attorney Elizabeth Thompson, representing Blue Sky Towers II, LLC, described the proposal for a 150 foot monopole telecommunications tower to be located at Mashpee Fire Station #2 at 101 Red Brick Road. Verizon Wireless cellular service would be located at 146 feet, T-Mobile at 136 feet and Mashpee emergency management system at 100 feet. Space remained for two additional providers. Equipment for the facility would be located at the base of the tower, surrounded by fencing.

The project proposal was in response to an RFP award issued by the Town of Mashpee to allow greater control of the site and to generate revenue for the Town and increase wireless access for the Town. The project proponent was required to identify any alternative sites that would be feasible and discovered that there was no existing cell tower or roof tops available in the search area to accommodate the coverage gap, requiring Blue Sky Towers to consider raw land sites. It was determined that the proposed site was the only feasible location.

Mr. Balzarini inquired whether the site in New Seabury could have closed the coverage gap. Ms. Thompson stated that there was a proposal, but that she did not state that it would cover everything. Mr. Balzarini inquired why the Federal mandate would not apply to the New Seabury site and Ms. Thompson responded that the site was not feasible because there was not a willing landlord and the site considered had conservation restrictions. Mr. Balzarini inquired about the wildlife sanctuary located near the proposed site and Ms. Thompson responded that it did not sit within the boundary area and reference Exhibit 5.

Mr. Cummings inquired about the use of Verizon antennas on telephone poles in New Seabury and Ms. Thompson stated that she was unaware of any such arrangement. Ms. Thompson referenced Exhibit 10 regarding a letter and feasibility of using alternative technology, and the reasons it would not work. Likewise, Exhibit 14 was a report from T-Mobile stating that alternative technology would not be feasible.

There was discussion regarding the information provided by the cellular services to Blue Sky Towers, and the Radio Frequency Engineers hired by the cellular services to conduct the studies and information regarding closing the coverage gap.

Richard Karreocke, representing T-Mobile, referenced his Exhibits 12, 13 and 14. Mr. Karreocke described T-Mobile's need to extend coverage and its location at 135 feet, with the proposed cell tower. Existing coverage was currently offered at three sites, at 130 feet in 550-B Falmouth, 165 feet 512-A Industrial Drive Mashpee and 93 feet in 511-C Falmouth.

Mark Correnti, Residential Appraiser, provided a report located in Exhibit 17. Mr. Correnti stated that he considered existing cell towers, comparing properties and analyzing home sales. Mr. Correnti noted that buyers set the market values. Referencing 9 Nancy Lane with a view of a cell tower, Mr. Correnti indicated that the property sold quickly and above the comparison. A home at 12 Windmere Way also had a view of a cell tower and had a similar sale as its comp. Additional properties at 114 Dover Road and 2 Oxfordshire Place, in sight of cell towers, also featured sales similar to their comps. Mr. Correnti added that there were no filed tax abatements in Mashpee, due to the proximity of the cell towers. Mr. Correnti indicated that buyers were paying full price for properties. Mr. Correnti also referenced his June 13 letter that highlighted information from the National Institute of Science Law and Public Policy and a cell tower study from New Zealand.

Mr. Balzarini inquired about the location of the comps and Mr. Correnti confirmed that they were not located within proximity of a cell tower. Mr. Phelan inquired about the height of the towers in the pictures and Mr. Correnti believed that they were 150 feet and 250 feet. Mr. Callahan inquired whether his company performed other cell tower market studies and Mr. Correnti confirmed that they did.

Ms. Thompson explained the results of the photo simulation package, which included balloons at varying heights and simulations of the fully loaded cell tower at 150 feet and 125 feet, painted light blue, painted light grey and as a monopine.

Denise Peterson, resident of Popponeset, confirmed that she also had no cell service during the microburst, expressing concern if she had needed access to emergency responders, particularly as trees were down and children were outside playing. Ms. Peterson added that, with no electricity, her landline also did not work. Ms. Peterson asked Planning Board members to vote for the cell tower for safety reasons.

Leland Muldowney, Water Way, stated his support for the cell tower, noting that he was a telecommuter who was not able to work from his home without cell service. In addition, Mr. Muldowney pointed out that home values could be diminished by not having adequate cell service.

Scott Benstein, Paddock Circle, expressed concerns about cell service and safety when his parents visit, in case there was a need for access for medical reasons and stated his support for the cell tower.

Bill Peterson, resident of Popponeset, described the tree loss and potential danger as a result of the micro burst and expressed concern about children playing outside afterwards, and the potential need for access to communication in case of an emergency. Mr. Peterson felt as though they were being treated like second class citizens adding that, for three days, they had no access to communication as a result of the microburst and limited road access. Mr. Peterson stated that, as a former law enforcement officer, adequate access was not being provided for the area of Popponeset

Marlene Perkins, Bowsprit Point, expressed concern regarding safety and lack of cell service at the beach. Ms. Perkins stated that no cell service available at the beach impacted the entire community and emphasized that she was in favor of the cell tower.

Laraine Michaelson, Degross Road, stated that those who opposed the cell tower did not do so because they felt that Popponeset was undeserving of cell service but because they were concerned about the location of the cell tower. Ms. Michaelson inquired whether there had been consideration of placing the facility at the New Seabury Highwood water tower at 111 Rock Landing Road, to allow greater access to cell service. Ms. Michaelson referenced other lawsuits against cell towers due to health and safety issues. Ms. Michaelson further pointed out that property values referenced in the report reflected details from 2015, when concerns regarding cell tower were not available. Ms. Michaelson stated that, as an abutter to the cell tower, she was not opposed to cell service for New Seabury but that she was opposed to the proposed location for this cell tower.

Dana Roberts, Degross Road, confirmed that the water tower at 111 Rock Landing Road was owned by the Mashpee Water District, and featured 60.5 acres, which could serve as a site for the cell tower. In addition, the site provided a 40-50 foot elevation above the hill of concern, and could address the areas of concern in New Seabury and Popponeset that were lacking coverage. It was Mr. Robert's opinion that, based on the maps of service provided, 25% of New Seabury still would not receive cell service with the cell tower. Mr. Roberts also noted that the maps were mislabeled showing New Seabury located at Degross Road. Mr. Roberts also inquired about the hiring of an independent RF engineer and the Chair responded that she would ask the Board if they wished to do so. Mr. Roberts also noted that the project proponent responded specifically to the Town's RFP for a cell tower at the Fire Station, suggesting that it was unlikely they considered other sites, but that the priority should be providing service to residents of New Seabury.

Federal, State and Town government, located in the area, which totaled 468.33 acres and inquired whether those sites had been considered for use. It was Mr. Ronhock's opinion that the cell tower did not have to be located in anyone's backyard with that many acres available for a cell tower. Mr. Ronhock referenced a previous parcel of conservation land in Mashpee that had been used for infrastructure to create drainage pits. Mr. Ronhock noted that coverage maps continued to show that many areas in Popponesset would still lack coverage with the addition of the proposed cell tower. Mr. Ronhock also referenced the Middle Class Tax Relief Act of February 2012, Section 6409 regarding cell towers, which allowed an additional 10 feet in height to approved cell towers. Mr. Ronhock also referenced the outdoor antennae system that was considered at New Seabury.

Jane Lebel, Lisa Lane, stated that she had attended all previous meetings and felt that the Town should look at all options to ensure that all areas received appropriate cell service coverage.

Erik Lubrano, Blue Castle Drive, believed that Blue Sky had not proven that the proposed site would be the best site for the project and felt that the location was inefficient for the necessary coverage. Mr. Lubrano inquired whether the real estate assessment included discussion with the homeowner to determine whether they were advised to ask for a lower price due to the presence of a cell tower. Mr. Lubrano asked that the Planning Board not vote in favor of the project.

There was no further comment from the Public so the Chair turned to Board members for questions and comment.

Mr. Callahan inquired about the height variance from the ZBA and Ms. Thompson confirmed that the ZBA had approved a height variance of 150 feet. Ms. Thompson confirmed that the variance was found in Exhibit 7 and the DRI was located in Exhibit 6.

Mr. Phelan inquired about the additional percentage increase that could be utilized without additional approvals. Ms. Thompson responded that additional information would be submitted to address the various issues stated. Ms. Thompson indicated that Section 64019 allowed an increase of 20%, but that the project proponent needed only the 150 feet at this time.

The Chair stated that she would be submitting, for the record, the Zoning Bylaw, Mashpee's RFP for a cellular wireless equipment at Fire Station #2 issued in 2016, Lease Agreement between Mashpee and Blue Sky Tower in 2017, the failed Town Meeting vote October 2018 to amend the Bylaw to place the site in an overlay district, ZBA variance appealed by abutters to the Superior Court in March 2019, Massachusetts Chapter 40 Zoning Act and Istotrope Report on the Application to the Cape Cod Commission for the DRI. The Chair asked that the documents be placed on the record for access to the public, the project proponent and to Board members. The Chair also referenced monitoring the cell tower and removal if abandoned, and asked that it be incorporated into the discussions and a plan provided, as found in Mashpee Bylaw Section 174, 45L and Section 174, 45M.

The Chair expressed concern about the Cape Cod Commission's DRI decision as it related to Page 6, Finding 25, stating that the cell tower was in the overlay district. The Chair has asked the Cape Cod Commission to reconsider the decision and strongly recommended that the applicant request a modification. Ms. Thompson responded that she had spoken with Chief Regulatory Officer Idman



issues was for the Fire Station. In addition, the water tower was located within the Conservation and Open Space restricted area, and moving the tower from one site to another, would likely still have impacts to others. Mr. Cummings inquired about the outdoor antennae distributing systems and Ms. Thompson referenced Exhibits 10 and 14, from the engineers, which indicated that the technology would not be a feasible alternative. Mr. Cummings inquired about increasing the height of the Falmouth antenna and Ms. Thompson responded that they had no control over that tower, and that it would not accomplish the goal to fill the coverage gap.

Mr. Balzarini expressed concern that the coverage maps continued to show gaps in coverage and Ms. Thompson responded that those areas were considered less than acceptable coverage, but there was no one tower that could cover every pocket of coverage, so the goal was to do the best that they could, with other solutions to be considered in the future. Mr. Balzarini expressed concern that another tower could be considered for the future, possibly in New Seabury. Ms. Thompson emphasized that there was no feasible option in New Seabury with one reason being that a private property owner could not be forced into allowing a cell tower. Mr. Balzarini stated that if the tower was approved, he preferred a tree.

The Chair acknowledged Mr. Lehrer who stated that the Water District served as a quasi-government agency, but operated independently of the Town, so was similar to a private landowners. Mr. Lehrer stated his belief that the Water District had been approached but opted not to lease the water tower to a cell phone tower developer. Mr. Lehrer wished to clarify public comments regarding federally owned property but the Chair stated her preference that the project proponent respond to public comments and that Mr. Lehrer provide his technical review of the proposal. Mr. Phelan suggested that Mr. Lehrer share his comments and the Chair expressed her concern that the Town Planner was not a neutral party. Mr. Lehrer stated that he was offering objective information regarding regulations for properties identified by the public for consideration. Mr. Lehrer clarified that the Town Meeting vote in October 2018, which failed, was to include the parcel in question within the wireless overlay, not to support or deny the project being considered. Due to the parcel not being located within the overlay, it was necessary to seek a variance from the ZBA, which was granted. Federal or state properties previously mentioned were likely within the Wildlife Refuge or Tribal properties and would likely have conservation restrictions. Mr. Lehrer added that Chapter 84 allowed for the development of conservation land with the approval of the Conservation Commission. Mr. Lehrer confirmed that he had been in receipt of quotes should the Board wish to hire an RF engineer.

Regarding conservation parcels, Mr. Phelan inquired whether the sites had been considered and Ms. Thompson stated that the restrictions were pursuant to a court settlement and different from seeking approval from the Conservation Commission. The site at the fire station was preferable because it would not have conservation restrictions.

Mr. Rowley was recognized and reported the results of his technical review of the plan dated July 24, 2019. Mr. Rowley stated that the paving detail on the plan should be incorporated into the full set of plans, rather than an attachment. All prior issues had been addressed. Ms. Thompson stated that the sheet detail was included in the exhibits.

Mr. Lehrer provided a draft decision. Mr. Rowley reported that he reviewed the plans with Mr. Johnson and recommended approval. Mr. Rowley suggested that stormwater operations and maintenance plan be included with the decision and include the language "responsibility of all successive property owners as shown," as drafted in Condition #6.

The Chair invited Public Comment.

Kathleen Pearson, Main Street, inquired about the additional potential tenant that would be moving in to the facility. Mr. Kirrane confirmed that a future tenant was not yet locked in. The Chair read the condition that would require any tenant be of compatible use and not negatively impact the sanitary use of the facility or detrimental impact to surrounding properties. Mr. Lehrer read through the conditions of the Draft Decision. There was discussion regarding the signage and replication of Cape Cod Coffee's previous sign.

There were no additional comments.

**MOTION: Mr. Balzarini made a motion to close the Public Hearing. Mr. Callahan seconded the motion. All voted unanimously.**

**MOTION: Mr. Balzarini made a motion to approve the Decision as presented. Mr. Callahan seconded the motion. All voted unanimously.**

#### **NEW BUSINESS**

**Charles Rowley, August Invoice-** An invoice dated September 3 was received in the amount of \$1,440 for regular Planning Board business in August.

**MOTION: Mr. Balzarini made a motion to pay Charles Rowley \$1,440. Mr. Phelan seconded the motion. All voted unanimously.**

Planning Board members signed the authorization.

#### **Set Public Hearing Date for Zoning Article Proposals for October 2019 Town Meeting**

**MOTION: Mr. Balzarini made a motion to set the Public Hearing for October 2 at 7:10 p.m. Mr. Callahan seconded the motion. All voted unanimously.**

#### **OLD BUSINESS**

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

No report at this time.

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

No updates at this time

##### **UPDATES FROM TOWN PLANNER**

**Mashpee Planning Board  
Minutes of Meeting  
October 2, 2019 at 7:00 p.m.  
Mashpee Town Hall-Waquoit Meeting Room  
16 Great Neck Road North  
Approved 10/23/19**

**Present:** Chairman Mary Waygan, Vice Chairman Joe Cummings, Dennis Balzarini, Joseph Callahan, John (Jack) Phelan

**Also:** Evan Lehrer-Town Planner

**Absent:** Robert (Rob) Hansen (Alt.)

**CALL TO ORDER**

The Town of Mashpee Planning Board meeting was opened with a quorum in the Waquoit Meeting Room at Mashpee Town Hall by Chairman Waygan, at 7:00 p.m. on Wednesday, October 2, 2019. The Pledge of Allegiance was recited.

The Chair stated that the meeting was being videotaped and recorded and anyone wishing to address the Board, should do so at the microphone. All comments would be made through the Chair and as needed, directed to other Board members, staff, project proponent or taken under advisement.

**APPROVAL OF MINUTES—August 21, 2019, September 4, 2019 and September 25, 2019**

**MOTION:** Mr. Balzarini made a motion to accept the minutes of August 21 as presented. Mr. Cummings seconded the motion. 4 yes, 1 abstain.

The September 4 minutes were tabled until the next meeting and the September 25 minutes were not yet available.

**PUBLIC HEARINGS**

7:10 p.m.      **October 21, 2019 Town Meeting Warrant, Proposed Zoning Amendments**  
                  **Warrant Article 26: To amend Section 174-45.4-Accessory Apartments**  
                  **Warrant Article 27: To amend Section 174-25 (A)(8) in the Table of Use Regs**  
                  **Warrant Article 28: To amend Section 174-3 Terms Defined**

The appointed time having arrived, the Chair opened the Public Hearing and read for the record the Public Hearing Notice. The Chair explained that, in order to meet the deadline, the Planning Board had submitted revisions to the ADU Bylaw three months ago to the Board of Selectmen. The Board of Selectmen offered their comments to the changes, after which the Planning Board hosted a workshop to further discuss the comments and accept public comment. Additional changes were made and the changes were now being considered in this official Public Hearing.

Mr. Balzarini inquired whether the Bylaw allowed up to two bedrooms in the accessory apartment. It was confirmed that the septic system could allow for the two bedrooms, as determined through a Building Permit. Plans would be certified by the Board of Health, confirming that the existing septic system could handle the added flow. Mr. Balzarini inquired whether a bedroom could be eliminated from the principal dwelling unit in order to add a bedroom to an existing garage and Mr. Lehrer

Stephanie Simpson works with the elderly and emphasized the need for those homeowners to remain in their homes, with a little extra help, rather than entering into a care facility. The bylaw changes would also allow for younger families to remain in the community. Ms. Simpson added that a focus needed to be on year round residents rather than second home owners.

Elaine Sweeney, Clover Lane, offered her support for the bylaw changes and thanked the Board for their work. Working in Human Resources, Ms. Sweeney had seen the challenge of identifying housing to fill positions, noting that short term rentals and affordable housing options were needed on the Cape. Ms. Sweeney wished to maintain the character of Mashpee, but to be able to offer more housing options, and shared her support of the bylaw changes.

Robert Maffei, Nicolettas Way and Taurus Drive, noted that he chose Mashpee to raise his family and to start his business, expressing his support for the ADU bylaw changes. Mr. Maffei stated that it was challenging to recruit workers with the housing shortage here on the Cape. Mr. Maffei stated that his company had acquired housing in an effort to assist with recruiting employees.

Michael Ronhock, Sunset Circle, stated his support for the ADU bylaw changes and inquired about height restrictions for ADUs. Mr. Lehrer responded that the building height maximum was 35 feet, with no plans to expand the height requirements at the next Town Meeting.

Sharon DeFrancisco, Scituate Road, inquired whether there was a maximum number of people allowed to rent an ADU. The Chair stated that Board of Health Regulations addressed the matter and Mr. Lehrer confirmed that Zoning did not address the allowable number of people. The Chair referenced the OSID definition and Mr. Lehrer responded that there was a limit of two people, but he proposed to have that struck from the definition since it would eliminate families.

Mr. Lehrer noted that First Citizens Federal Credit Union had established a loan program for the construction costs associated with building of an ADU. The Chair announced that an email was received from Noelle Pina supporting the ADU bylaw changes.

There was no additional comment.

**MOTION:** Mr. Balzarini made a motion to close the Public Hearing. Mr. Callahan seconded the motion. All voted unanimously.

**MOTION:** Mr. Balzarini made a motion to recommend this Article 26 to Town Meeting. Mr. Cummings seconded the motion. All voted unanimously.

**MOTION:** Mr. Phelan made a motion to accept Article 27 to present to Town Meeting and recommend Town Meeting passage. Mr. Balzarini seconded the motion. All voted unanimously.

**MOTION:** Mr. Balzarini made a motion to recommend Article 28 to Town Meeting. Mr. Callahan seconded the motion. All voted unanimously.

District was specific to the height of the tower so the applicant sought relief from the Zoning Board for the height because the use was already allowed in the R-3 district. The Chair acknowledged Mr. Balzarini's question and stated that variances were not always a good fit outside of the district, which was a concern, and asked if the project proponent was willing to keep the hearing open until the matter regarding the appeal of the ZBA decision was settled. Ms. Thompson responded that they were not willing to keep the hearing open.

Mr. Phelan sought confirmation that the ZBA granted the variance and Ms. Thompson confirmed that they had. Referencing the last meeting when the Chair indicated that the Fire Department would be in receipt of a \$100,000 payment, Mr. Phelan inquired whether that existed in the lease agreement. Ms. Thompson responded that there was a payment to be made to the Town. Mr. Phelan clarified that it was to the Capital Improvement Plan and Ms. Thompson agreed. Mr. Phelan stated that the Capital Improvement Plan would maintain infrastructure throughout the Town and the \$100,000 payment would not be made to the Fire Department, nor was the Fire Department stated in the lease agreement. Mr. Phelan referenced the property sites analysis, tower heights and views from Dover Road, Nancy Lane and Windermere and noted that the Comcast Tower was 250 feet and another privately owned tower was 330 feet, both of which were much taller than the proposed tower. Regarding alternative heights, Mr. Phelan noted that 22 sites had been reviewed and Ms. Thompson responded that many more had been considered. Regarding Outside Distributed Antenna Systems (ODAS), Mr. Phelan indicated that they were very costly, required significant infrastructure and still needed to be tied to a base station. Additionally, the system was backed with battery power, which would only last for a few hours during a power outage. ODAS provided service only for cellular and could not address public safety needs or trunking abilities for the radio system. Ms. Thompson stated that Exhibits 10 and 14 were letters from the Radio Frequency Engineers from Verizon and T-Mobile who stated that small cell systems were not feasible.

Mr. Callahan inquired about the 22 sites and whether any were feasible and Ms. Thompson confirmed that they were not feasible.

The Chair acknowledged Mr. Lehrer, who stated that a letter had been received from Sharon DeFrancesco regarding the project. The Chair stated that she would summarize the letter during Public Comment.

The Chair invited the public to comment, asking that those who had already spoken or provided testimony did not need to repeat what had already been stated. The Chair asked first for those who supported the application.

Chief Thomas Rullo, Fire Chief and resident of Mashpee, stated that the importance of the tower to the entire community should be strongly considered. Chief Rullo referenced this past summer's microburst, which highlighted the existing problems in New Seabury, and residents being unable to make calls or felt stranded in the area, unable to call 911. Chief Rullo stated that visitors to the area would be expecting cellular service and emphasized that the lack of service presented a public safety issue. Chief Rullo expressed concern that, should this application not be successful, it could be a long time before someone else could provide service. Chief Rullo stated that the tower would enhance the Fire Department's radio service, which was severely hampered. The Chair referenced the tower plan

Terry Ronhock, Sunset Circle and Degross Road, had spoken previously, but this time addressed her prior suggestion that Mr. Lehrer look into Cape towns utilizing Distributed Antenna System (DAS) and how they were working and inquired whether the Chair had been in receipt of such research. The Chair had not and Mr. Lehrer responded that research had not been done, but he would add it to his agenda, further noting that it was not relevant to the current application. Ms. Ronhock completed research on her own, reporting that Provincetown used the system. Ms. Ronhock spoke with the Dennis Town Planner, Daniel Fortier who confirmed that they were using the system, with 12 systems approved by their Planning Board. Dennis liked the systems in order to provide necessary cell coverage but also because they had restrictive zoning bylaws that did not allow for cell tower heights above 30 feet in residential areas. Ms. Ronhock further stated that Mr. Fortier indicated the systems worked best in beach areas and asked if he would be willing to speak with Mr. Lehrer, but he responded that he had already discussed the systems with him. Ms. Ronhock also researched systems in Wellesley, Martha's Vineyard and Nantucket and provided research for the Board's consideration. Ms. Ronhock noted that David Maxim's initial Isotope report to New Seabury indicated that DAS was a viable system. Ms. Ronhock reported that New Seabury already had a system designed. It was Ms. Ronhock's opinion that the DAS was a superior system that would not create coverage gaps.

Mr. Lehrer responded that he regularly spoke with his colleagues, but that he never spoke with Mr. Fortier regarding cell towers or DAS systems, adding that his last conversation with Mr. Fortier was seeking a reference for 950 Falmouth Road for affordable housing. Mr. Lehrer stated that he would not withhold information from the Board or the public.

Ms. Ronhock submitted her documentation to Mr. Lehrer for distribution to Board members and the project proponent.

The Chair recognized the project proponent to address any comments. Ms. Thompson stated that there was not one site that would cover every gap, but that it was up to the carriers to identify the gaps in coverage and the best solutions to address those gaps. Ms. Thompson stated that this location was the only solution. Regarding the RFP, only one site had been put forward and Ms. Thompson would have no idea whether or not the Town had considered additional sites. Ms. Thompson stated that the independent site analyses completed by the applicant and service providers was separate from the RFP. Ms. Thompson noted that the RFP provided an attractive option because the Town was a willing landlord, creating the only solution to address a significant gap. Ms. Thompson referenced the NEPA report in regard to the oceans and wildlife which indicated that there would be no adverse impacts to the ocean or wildlife, historic properties or endangered species. Ms. Thompson also encouraged review of the analyses provided by the RF engineers stating that DAS would not be feasible technologies for the location, adding that anecdotal evidence did not have any bearing on the application being considered since testimony had been received that the tower was needed in the proposed location. Regarding the Peninsula Club, Ms. Thompson stated that there could have been a report indicating that an alternative system could work by the water, but there were not two federally licensed service providers stating that it would close the gap. Ms. Thompson asked that the Board carefully review her memorandum identifying the federal parameters of the law, adding that the applicant had conclusively shown there was a coverage gap and capacity problem, and that they had two carriers that could bring services to the area and there was no alternative technologies to address the issues. Ms. Thompson asked that the Board close the public hearing and vote on the matter, or

Amos House, and #4 in the NEPA summary report stated there were no adverse impacts. The photo was reviewed, which was taken toward the balloon, and there was no visual of the balloon.

Regarding additional correspondence, the Chair added that: Opposition-Michael and Teresa Ronhock, John and Jane Lebel, Jody Davis and Freda Bryon, Wendy and Danielle Pennini, Donna and Steve Gallagher, Joan Ford, Michelle Swilla, Barbara Allen, Jody Bergeron, Lisa Pasquali, John Halperin, David Coughlin, Peter and Laraine Michaelson, Alexander and Bella Slavin, Diane and Dennis Scannell and Jane Scannell. In addition, the Chair referenced a 17 page petition submitted in opposition to the project, which had not been cross referenced to letters sent individually, but represented 250 signatures.

The Chair referenced an email received from Sharon DeFrancesco, who was present at the meeting. Ms. DeFrancesco had inquired whether the Town could release an RFP without specifying a location but questioned how only one parcel of town-owned land could be the only plausible location for the cell tower. Mr. Lehrer responded that Towns issued RFPs in order to solve a problem, granting development rights on Town-owned property. The site at Red Brook Road had been identified as a solution to address the coverage gap and respondents could submit a proposed plan to address the problem. Mr. Lehrer further stated that the RFP could not grant development without the proposer acquiring the appropriate permitting. Additionally, a town could only issue an RFP on a parcel that they owned. Ms. DeFrancesco inquired about another possible site and Mr. Lehrer responded that it was his understanding that there was no other parcel within the search area that could provide a solution to the coverage problem, and the coverage deemed adequate. Ms. DeFrancisco inquired whether it was the Town's goal to provide complete coverage and Mr. Lehrer responded that complete coverage would be ideal but that the problem had been identified and a solution proposed, but no solution would be perfect. The Chair read the first sentence of the RFP Introduction, and indicated that she did not recall specific details for coverage location. The Chair was unsure about the Committee that developed the RFP, suggesting that there could have been a detailed discussion directly with the respondents. Ms. DeFrancesco stated that she understood there to be a problem that needed to be addressed, noting that it was likely additional technology would be needed and, as a resident and taxpayer, suggested that the project be completed correctly the first time.

The Chair asked how many additional members of the public wished to speak, wanting to allow further comment from Board members and the project proponent, before discussing the closure of the Public Hearing. Mr. Phelan suggested that the same issues continued to be discussed.

Mr. Robert referenced the RFP requirements and the Chair responded that she would be reading the RFP again.

The Chair recognized the project proponent. Ms. Thompson stated that the RFP was issued by the Town, and the site had been within an active search ring for many years. The problem was not new, and this application was the first solution to the problem. Ms. Thompson further indicated that there was no perfect solution, and that the solution was dictated by the carriers and not the Town or public.

There were no additional comments from the Board members. The Chair suggested considering a motion to close the Public Hearing and deliberate at the next public meeting. The Board would not be

**UPDATES FROM TOWN PLANNER**

Discussion on amending standards for development in C-3 Districts and the requirements established in Section 174-31, special footnote 14, at a future Town Meeting-Mr. Lehrer provided his proposed language for amending the standards. The Chair asked that the matter be considered at a future meeting. There was discussion regarding specificity of planting species and Cape Cod Commission recommended plantings for landscape designs.

**ADDITIONAL TOPICS**

**ADJOURNMENT**

**MOTION:** Mr. Balzarini made a motion to adjourn. Mr. Callahan seconded the motion. All voted unanimously. The meeting adjourned at 9:16 p.m.

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

**LIST OF DOCUMENTS PROVIDED**

*Additional documentation available online at the Mashpee's Planning Board website page*

- September 2019 Invoice from Charles Rowley
- September 20, 2019 Letter from Eliza Cox Regarding Mashpee Commons' Notice of Intent with Cape Cod Commission for a Development Agreement
- Cape Cod Commission's Community Climate Meetings
- Public Hearing Notice for Warrant Articles 26, 27 and 28
- Warrant Articles 26, 27 and 28
- 9/23/19 Noelle Pina Letter Supporting the ADU Bylaw Changes
- 10/2/19 Letter from Sharon DeFrancesco Regarding Blue Sky Towers
- Proposed Amendment to Special Footnote 14



**MOTION:** Mr. Phelan made a motion to accept the proposal as written with conditions, the condition being that it successfully go through the ZBA process. Mr. Callahan seconded the motion.

Initiating deliberations, the Chair invited Mr. Phelan to offer any findings to support the motion. As it was Mr. Phelan's first deliberations, he deferred to the senior members of the Board. The Chair invited Mr. Callahan to present any findings, who also deferred. The Chair confirmed that she had written findings but invited other members to present their findings.

Mr. Balzarini stated that he was against the permit because it had been addressed at Town Meeting. Mr. Balzarini stated that the site had never been zoned to allow for the cell tower. Mr. Balzarini stated that Town Meeting voted down Article 14, suggesting that it was a done deal. Mr. Balzarini indicated that a failed Article could not be revisited at Town Meeting for another two years and inquired how the matter could then be considered by the Zoning Board of Appeals, when it failed at Town Meeting. In addition, Mr. Balzarini stated that there would be double coverage from the Industrial Park to the proposed site, but where the service was needed in New Seabury and South Cape Beach, the proposed cell tower would offer only spotty coverage. Mr. Balzarini further stated that the people of New Seabury could petition to have the cell tower placed in New Seabury, noting that there would be sufficient land, and it would provide better coverage. Mr. Balzarini noted that the proposed site covered wilderness areas and indicated that he would vote against the motion.

Mr. Cummings stated that he would also vote against the motion, agreeing with Mr. Balzarini regarding the zoning, adding that the tower did not belong at the proposed site. Mr. Cummings added that the proposed site would not provide the necessary coverage and recommended that it should be sited at New Seabury on the golf course.

The Chair offered the findings she drafted. The Chair stated that findings were necessary in the event that the matter was appealed to Federal Court and it would be necessary for the Board to provide their reasonings if they did not accept the ramifications of the Federal Communications Act.

**TOWN of MASHPEE ZONING BYLAWS DOES NOT ALLOW THE PROPOSED WIRELESS COMMUNICATIONS FACILITY AT 101 REDBROOK ROAD, MA:**

*The personal wireless service facility, a 150' monopole telecommunication tower, is proposed at 101 Red Brook Road, Mashpee MA (Assessor's Map 104, Lot 2) in Zoning District R-3.*

*101 Red Brook Road is located outside the Town of Mashpee Wireless Facility Overlay District.*

*The use and construction of a ground mounted 150 foot wireless service facility (monopole) is not permitted outside the Town of Mashpee Wireless Facility Overlay District. Outside of the District, a ground-mounted facility can only be ten (10') feet higher than the surrounding building or trees:*

*Article III Section 174-5.C The Wireless Facility Overlay District shall include...all other land in the Town not located...within the R-3 or R-5 Zoning Districts...*

*Mass. General Law Ch 40A the Zoning Act Section 10. Variances states: Except where local ordinances or bylaws shall expressly permit variances for a use; no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located;*

*The Mashpee Zoning Bylaw does not expressly permit variances in this way; in fact, the bylaw expressly prohibits them: Article VI Section 174-24.K. ...No use specifically listed in the Table of Use Regulations shall be allowed by the Zoning Board of Appeals in any district where it is prohibited.*

***In conclusion, 150' personal wireless service facilities are prohibited outside of the Wireless Facility Overlay District, and a variance from the Mashpee Zoning Board of Appeals cannot authorize any 150 foot personal wireless service facility outside the Wireless Facility Overlay District.***

The Chair summarized the various districts located in town, noting that districts had been identified in order to prevent allowable uses within a district, outside of that district, with a variance from the Board of Appeals. If a variance could be granted, it would allow uses from the commercial or industrial district in residential districts. Chapter 40 A stated that it would need to be part of the Mashpee Zoning Bylaw, which it did not.

Chairman Waygan, Mr. Balzarini and Mr. Cummings agreed with the finding. There were no additional opinions expressed. The Chair could not recognize Mr. Hansen because he did not sit on the matter.

The Chair referenced page 6 in her findings.

**MASHPEE ZONING BOARD OF APPEALS DECISION FOR A VARIANCE V-2019-10 IS NOT EFFECTIVE IN THIS MATTER**

*A complaint (No. 1972CV/30) has been filed in the Commonwealth of Massachusetts Barnstable County Superior Court challenging the decision of the Town of Mashpee Zoning Board of Appeals to issue a variance (V-2019-10) to Blue Sky Towers II, LLC.*

*In conclusion, variance V-2019-10 has not been recorded with the Barnstable County Registry of Deeds or Land Court and is at this time not effective.*

Chairman Waygan, Mr. Balzarini and Mr. Cummings agreed with the finding. The Chair invited opinions and Mr. Phelan responded that, because the matter was being appealed, it could not yet be recorded.

Mr. Callahan wished to return to discussion regarding the variance and the Chair cautioned Mr. Callahan for accepting any information from anyone in the room, including receiving a note. Mr. Callahan indicated that height was the issue. The Chair responded that extra height could not be granted outside of the district, except when certain requirements were met, such as the offering of open space with the OSID Bylaw. Mr. Phelan stated that it was different for town-owned property and the Chair asked for the reference in the Zoning Bylaw that would indicate it was different. Mr. Phelan stated that the matter was a public safety issue. Mr. Balzarini inquired about installing a 100 foot tower for public safety communications but Mr. Phelan stated that it would insufficient. The Chair asked for the Bylaw allowing for matters of public safety be identified as a means to violate the

*Even in the Wireless Facility Overlay District, the Planning Board is the entity which may grant a waiver to allow height of a personal wireless service facility of up to 200 feet, and only if there are no serious impacts on neighboring properties. There is no provision that height restrictions may be waived by the Zoning Board Of Appeals:*

*Article IX Section 174-45.3.E.6 "Within the Wireless Facility Overlay District, personal wireless service facilities of up to one hundred (100') feet in height may be permitted by Special Permit, except that the Planning Board may grant a waiver to allow height up to two hundred (200') feet where circumstances warrant (e.g. no serious impacts on neighboring properties, residential areas...).*

Mr. Phelan inquired about specific examples of serious impacts and the Chair responded that issues could be aesthetics, property value loss or a home located in a fall zone. Mr. Phelan stated there were no homes in the fall zone. Mr. Phelan inquired whether the Chair was suggesting that the Planning Board should take action against the ZBA and the Chair responded that she did not join the appeal, adding that she stated on September 4 that she was not confident that the variance would hold. Mr. Phelan stated that the Court would make the determination. Mr. Balzarini stated that the ZBA went beyond their boundaries. Mr. Callahan stated that the Planning Board needed to address what was in front of them. Mr. Phelan expressed concern that Board members were concerned with aesthetics over public safety matters. There was clarification that they were discussing page 8, and that the ZBA was not the place to acquire a variance, but the Planning Board was the authority to waive the height. Mr. Phelan asked why it was not discussed with the project proponent and the Chair responded that Ms. Thompson did not wish to discuss it and Mr. Balzarini responded that he had questioned how the ZBA was able to grant a variance. There was disagreement as to whether or not the matter was adequately explained. Mr. Balzarini stated that he lived at his home for 37 years and heard no complaints regarding safety and he had no issues with Verizon. Mr. Callahan stated that there was testimony last spring indicating that people were unable to make calls to 911. The Chair asked for a location in the Bylaw that allowed acceptance of the proposal due to public safety. Mr. Balzarini stated that the cell tower should be located where it could benefit the most people, the first time. Mr. Phelan stated that the ZBA granted the variance and the Court would offer the legal judgement.

Chairman Waygan, Mr. Balzarini and Mr. Cummings agreed with the finding.

The Chair referenced page 9.

**THE MASHPEE ZONING BYLAW REQUIRES COMPLIANCE WITH PROVISIONS FOR MONITORING AND MAINTENANCE, AS WELL AS ABANDONMENT OR DISCONTINUANCE OF USE**

*The Blue Sky Tower's application fails to address how the proposed wireless service facility will be monitored and maintained, and how it shall bond the facility in case of abandonment or discontinuance of use in compliance with the following sections of the Zoning Bylaw:*

1. Article IX Section 174-45.3.L Monitoring and Maintenance provisions (1), (2), and
2. Article IX Section 174-45.3.M Abandonment or Discontinuance of Use provisions (1), (2), and (3)

Mr. Phelan stated that the Telecommunications Act of 1996 clearly outlined the concern, in 143 pages, to address all the issues. In addition, Section 704 required that the Board be very specific in their

*Article I Purpose and Validity, Section 174-1 Purpose: Establishment of Districts: ...the height, area, location and use of building and structures and the use of land throughout the Town of Mashpee are hereby regulated as provided herein, and the town is hereby divided into districts hereinafter designated, defined and described...),*

*Article VI – Land Use Regulations Section 174-24.C.2 A special Permit may be issued only following the procedures specified by the General Laws and maybe approved only if it is determined that the proposed use or development is consistent with applicable state and town regulations, statutes, bylaws, and plans,...,will not have a significant impact on... neighboring properties.*

*Article IX Section 174-45.3.A. Personal Wireless Service Facilities: Purpose and Intent: For the purpose of minimizing the visual and environmental impacts, as well as any potential deleterious impact on property values, of personal wireless service facilities, no personal wireless service facility shall be placed, constructed or modified within the town except in compliance with the requirements of this section, in conjunction with other regulations adopted by the Town..."*

*Special Permit requirement for the construction and use of a personal wireless service facility cannot be granted unless and until the Board finds that the facility will not adversely affect the neighborhood.*

*The Proposed Tower Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of Neighboring Homes. There is Substantial Evidence of the Actual Adverse Aesthetic Impact the Proposed Tower Would Inflict Upon the Residential Area.*

*The people who own homes abutting and in close proximity to 101 Red Brook Road have concluded and testified that the proposed wireless service facility will have an unacceptable, adverse aesthetic impact on their homes, and have called for the Planning Board to deny the Blue Sky Tower special permit application. These include:*

*Letter from Barry and Jewel Blake dated September 17, 2019*

*Letter from Jerilyn Collier Davis and Freda Bryon-Twyman dated May 29, 2018*

*Email from Joan Ford dated May 13, 2019*

*Email from Peter and Laraine Michaelson dated May 6, 2019*

*Letter Jane Scannell dated May 9, 2019*

*It is the finding of one or more Planning Board member upon reviewing the Photographic Simulations of the proposed wireless service facility, which resulted from a balloon test conducted on 4/4/2018, that the property at 95-103 Degross Road and 56 Blue Castle would be suffer significant and unacceptable adverse aesthetic impact, and that the proposed monopole would dominate the aesthetics of the homes.*

*It is the finding that the project proponent failed to modify the plan to reduce the aesthetic impact on the abutting and neighboring property, such as moving the facility away from the abutting properties and/or camouflaging the monopole as a tree, i.e. a monopine.*

Mr. Phelan disagreed with the finding, stating that only two homes would be affected, as compared to many more at a location in New Seabury. Mr. Balzarini suggested that there would be less homes

Mr. Phelan stated that he disagreed, adding that the distance of the tower from the property exceeded 1200 feet and some of the properties listed by Mr. Ronhock had no view of the tower. Mr. Phelan suggested that Mr. Ronhock's study was presented in the finding as superseding the analysis provided by the project proponent. The Chair stated that the project proponent's study did not consider property value and tax impact before and after tower installation, adding that the homeowners were best suited to determine whether the value of their homes would decline. Mr. Phelan again stated that the issue was a public safety matter and the Chair again stated the necessity to identify the location in the Bylaw that allowed cause for devaluation of property values as a public safety matter.

Chairman Waygan agreed with the finding.  
Mr. Phelan disagreed.

The Chair referenced page 3 of the findings but Mr. Phelan asked to dispense with the reading due to the lengthiness of the reading.

**MOTION: Mr. Phelan asked to dispense with the reading as Board members were in possession of the document.**

The Chair did not accept the motion. Mr. Phelan made a point of order, adding that the motion could be seconded for discussion. The Chair stated that the Chair was responsible for entertaining motions.

**MOTION: Mr. Phelan asked to dispense with the reading.**

The Chair indicated that if she did not read the findings in to the record, it could cause problems.

Mr. Callahan seconded the motion. 3 yes, 1 no

The Chair stated that she needed to read the document in to the record.

**BLUE SKY TOWERS II, LLC HAS FAILED TO ESTABLISH THAT LESS INTRUSIVE AND MORE COMPLIANT ALTERNATIVES ARE NOT AVAILABLE**

*Blue Sky Tower II, LLC's application fails to establish that it cannot remedy any coverage gap by alternative measures that would inflict substantially less adverse impacts. Blue Sky Towers II, LLC has continually ignored that:*

- 1. it can, in fact, fulfill its coverage needs through less intrusive and more zoning compliant means.*
- 2. vast areas of coverage is open space and conservation land located in the Mashpee National Wildlife Refuge. These areas will be closest to the facility and would have the best and high quality coverage; and*
- 3. the most densely populated areas of coverage are at the fringe of coverage, will have the least reliable coverage, and be most vulnerable to lose coverage as usage by other customers increase.*

*Less intrusive and more compliant alternatives include*

- 1. service coverage by the construction of an Outdoor Distributed Antenna System (ODAS)*

Sewer Commission Meeting-October 17, 2019  
Town Meeting-October 21, 2019  
Board of Selectmen Special Meeting on Nitrogen Management/Waste Water Planning-  
October 28, November 25 and December 9, 2019  
Cape Cod Commission Climate Change Initiative-October 29, 2019 at 10 a.m.  
Cape Housing Institute-November 15, 2019  
MVP Kick Off meeting-November 15, 2019

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

Cape Cod Commission-The Climate Change Initiative Meeting was October 29 at 10 a.m.  
Design Review Committee-No meeting  
Community Preservation Committee-Applications due November 1 at the Town Manager's  
office.  
Plan Review-No meeting  
Environmental Oversight Committee-Bylaws at Town Meeting regarding straws and  
styrofoam  
Greenway Project & Quashnet Footbridge-No meeting  
Historic District Commission-No meeting  
Military Civilian Advisory Council-Mr. Phelan reported that the meeting was canceled and  
postponed to February.  
Stormwater Task Force-No meeting

#### **UPDATES FROM TOWN PLANNER**

Discussion on amending standards for development in C-3 Districts and the requirements  
established in Section 174-31, special footnote 14, at a future Town Meeting-The Chair asked that  
the information be resent to Board members.

Municipal Vulnerability Preparedness Program-Mr. Lehrer asked for Planning Board  
participation, adding that the kick off was an 8 hour workshop that would include community  
stakeholders to develop a community visioning process. Mashpee was working toward becoming  
certified MVP in order to address climate change and resiliency concerns. Once certified, Mashpee  
would be eligible to pursue grants to address such projects as beach nourishment, public safety and  
regulatory reform.

#### **ADDITIONAL TOPICS**

#### **ADJOURNMENT**

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

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

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

*Additional documentation may be available online at Mashpee's Planning Board website page*  
-Findings offered by Chairman Waygan

# Charles L. Rowley, PE, PLS

Consulting Engineer and Land Surveyor

5 Carver Road  
PO Box 9  
West Wareham, MA 02576

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

December 2, 2019

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

Re: Services for month of November, 2019

Attendance at two regular meetings \$ 390.00

Inspections:

New Seabury Cottages, III

11/5, 6, 7, Inspections of sewer manholes SMH-5, SMH-7 and pipe installation  
2.5 hrs. 250.00

11/12, 14, 22, Inspection of sewer manholes SMH-7A, pipe and discussion of  
connections to be made by coring, discussion with contractor regarding work to  
be done going forward, water, drainage structures and infiltration area.  
1.5 hrs. 150.00

Willowbend Project, Sampson's Mill Road

11/6 Drainage area check, SWM-8, SWM-9. Noted no exposure of system in  
center of project near well. Requires certification from Baxter Nye.  
1.0 hr. 100.00

11/12 Inspection of SWM-7, cultec units, stone and filter fabric installation  
1.0 hr. 100.00

11/22 Inspection of leaching pit installation near golf course, 8 of 10 in place  
1.0 hr. 100.00

11/25 Inspection of remaining leaching pits, pipe installation and mortaring in  
place, with ok to backfill when completed. 1.0 hr. 100.00

Total Amount Due \$1190.00



November 4<sup>th</sup>, 2019

Mary Waygan, Chair  
Mashpee Planning Board  
c/o Evan R. Lehrer, Town Planner  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649

**RE: Phase I Cottages Remaining Performance Bond Release**

Dear Ms. Waygan,

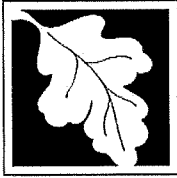
Bayswater Development, LLC respectfully requests for you to reduce the remaining performance bond amount to \$0.00 from \$29,740.

Regards,

A handwritten signature in cursive script that reads "John Falacci".

John Falacci, Project Manager





Massachusetts Department of Environmental Protection

## **eDEP Transaction Copy**

---

Here is the file you requested for your records.

To retain a copy of this file you must save and/or print.

**Username: EBELAIR**

**Transaction ID: 1151297**

**Document: Groundwater Discharge Monitoring Report Forms**

**Size of File: 1612.22K**

**Status of Transaction: Submitted**

**Date and Time Created: 11/21/2019:10:17:32 AM**

**Note:** This file only includes forms that were part of your transaction as of the date and time indicated above. If you need a more current copy of your transaction, return to eDEP and select to "Download a Copy" from the Current Submittals page.



# Groundwater Permit

## DAILY LOG SHEET

2. Tax identification Number

2019 OCT DAILY

3. Sampling Month & Frequency

### A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

10/31/2019

a. Date Sampled (mm/dd/yyyy)

WHITEWATER

b. Laboratory Name

LAURA JOHNSON

c. Analysis Performed By (Name)

### B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Daily Log Sheet - 2019 Oct Daily

All forms for submittal have been completed.

2.  This is the last selection.

3.  Delete the selected form.



# Groundwater Permit

## DAILY LOG SHEET

2. Tax identification Number

2019 OCT DAILY

3. Sampling Month & Frequency

### C. Daily Readings/Analysis Information

Date	Effluent Flow GPD	Reuse Flow GPD	Irrigation Flow GPD	Turbidity	Influent pH	Effluent pH	Chlorine Residual (mg/l)	UV Intensity (%)
1	8800					7.3		
2	9100					7.3		
3	8800					7.4		
4	9533					7.4		
5	9534							
6	9533							
7	8500					7.3		
8	8500					7.3		
9	8900					7.4		
10	9300					7.3		
11	8300					7.3		
12	8300							
13	8300							
14	8300					7.5		
15	8300					7.4		
16	6800					7.3		
17	10000					7.4		
18	9700					7.4		
19	7150							
20	7150							
21	6800					7.3		
22	10600					7.2		
23	9300					7.3		
24	10550					7.3		
25	10550					7.4		
26	8150							
27	8150							
28	11000					7.3		
29	8400					7.2		
30	9900					7.2		
31	7000					7.3		



# Groundwater Permit DISCHARGE MONITORING REPORT

2. Tax identification Number

2019 OCT MONTHLY

3. Sampling Month & Frequency

## A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

10/2/2019

a. Date Sampled (mm/dd/yyyy)

RI ANALYTICAL

b. Laboratory Name

DAWNE SMART

c. Analysis Performed By (Name)

## B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Discharge Monitoring Report - 2019 Oct Monthly

All forms for submittal have been completed.

2.  This is the last selection.

3.  Delete the selected form.



# Groundwater Permit DISCHARGE MONITORING REPORT

2. Tax identification Number

2019 OCT MONTHLY

3. Sampling Month & Frequency

## D. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled

1. Parameter/Contaminant	2. Influent	3. Effluent	4. Effluent Method Detection limit
Units			
BOD	63	ND	3.0
MG/L			
TSS	120	ND	2.0
MG/L			
TOTAL SOLIDS	470		
MG/L			
AMMONIA-N	19		
MG/L			
NITRATE-N		2.2	0.25
MG/L			
TOTAL NITROGEN(NO3+NO2+TKN)		4.40	0.25
MG/L			
OIL & GREASE		ND	0.5
MG/L			



# Groundwater Permit DISCHARGE MONITORING REPORT

2. Tax identification Number

2019 QUARTERLY 4

3. Sampling Month & Frequency

## A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

10/2/2019

a. Date Sampled (mm/dd/yyyy)

RI ANALYTICAL

b. Laboratory Name

DAWNE SMART

c. Analysis Performed By (Name)

## B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Discharge Monitoring Report - 2019 Quarterly 4

All forms for submittal have been completed.

2.  This is the last selection.

3.  Delete the selected form.



# Groundwater Permit

## DISCHARGE MONITORING REPORT

2. Tax identification Number

2019 QUARTERLY 4

3. Sampling Month & Frequency

### D. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled

1. Parameter/Contaminant	2. Influent	3. Effluent	4. Effluent Method Detection limit
Units			
TOTAL PHOSPHORUS AS P		6.8	0.02
MG/L			
ORTHO PHOSPHATE		5.8	0.50
MG/L			



# Groundwater Permit

## MONITORING WELL DATA REPORT

2. Tax identification Number

2019 OCT MONTHLY

3. Sampling Month & Frequency

### A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

10/1/2019

a. Date Sampled (mm/dd/yyyy)

WHITEWATER

b. Laboratory Name

LAURA JOHNSON

c. Analysis Performed By (Name)

### B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Monitoring Well Data Report - 2019 Oct Monthly

All forms for submittal have been completed.

2.  This is the last selection.

3.  Delete the selected form.





# Groundwater Permit

## MONITORING WELL DATA REPORT

2. Tax identification Number  
2019 OCT MONTHLY  
3. Sampling Month & Frequency

### C. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled
- DRY = Not enough water in well to sample.

Parameter/Contaminant	P-1	P-2	P-4	P-6		
Units	Well #: 1	Well #: 2	Well #: 3	Well #: 4	Well #: 5	Well #: 6
PH	5.74	6.13	6.38	6.56		
S.U.						
STATIC WATER LEVEL	18.3	51.93	47.28	50.47		
FEET						
SPECIFIC CONDUCTANCE	1038	469	597	1088		
UMHOS/C						



# Groundwater Permit

## MONITORING WELL DATA REPORT

2. Tax identification Number

2019 QUARTERLY 4

3. Sampling Month & Frequency

### A. Facility Information

**Important:** When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Facility name, address:

SOUTH CAPE VILLAGE

a. Name

672 FALMOUTH ROAD/RTE. 28

b. Street Address

MASHPEE

c. City

MA

d. State

02649

e. Zip Code

2. Contact information:

MYLES OSTROFF

a. Name of Facility Contact Person

6174311097

b. Telephone Number

myles@chartweb.com

c. e-mail address

3. Sampling information:

10/1/2019

a. Date Sampled (mm/dd/yyyy)

RI ANALYTICAL

b. Laboratory Name

DAWNE SMART

c. Analysis Performed By (Name)

### B. Form Selection

1. Please select Form Type and Sampling Month & Frequency

Monitoring Well Data Report - 2019 Quarterly 4

All forms for submittal have been completed.

2.  This is the last selection.

3.  Delete the selected form.



# Groundwater Permit

## MONITORING WELL DATA REPORT

2. Tax Identification Number

2019 QUARTERLY 4

3. Sampling Month & Frequency

### C. Contaminant Analysis Information

- For "0", below detection limit, less than (<) value, or not detected, enter "ND"
- TNTC = too numerous to count. (Fecal results only)
- NS = Not Sampled
- DRY = Not enough water in well to sample.

<

Parameter/Contaminant	P-1	P-2	P-4	P-6		
Units	Well #: 1	Well #: 2	Well #: 3	Well #: 4	Well #: 5	Well #: 6
NITRATE-N	1.3	3.8	3.8	3.1		
MG/L						
TOTAL NITROGEN(NO3+NO2+TK)	1.30	4.46	8.80	3.10		
MG/L						
TOTAL PHOSPHORUS AS P	0.26	0.97	1.3	3.8		
MG/L						
ORTHO PHOSPHATE	ND	0.79	0.95	3.4		
MG/L						



# Groundwater Permit

2. Tax identification Number

**Important:**When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



Any person signing a document under 314 CMR 5.14(1) or (2) shall make the following certification

If you are filing electronic-ally and want to attach additional comments, select the check box.



## Facility Information

SOUTH CAPE VILLAGE		
a. Name		
672 FALMOUTH ROAD/RTE. 28		
b. Street Address		
MASHPEE	MA	02649
c. City	d. State	e. Zip Code

## Certification

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

ELIZABETH BELAIR	11/21/2019
a. Signature	b. Date (mm/dd/yyyy)

## Reporting Package Comments

FACILITY WAS IN FULL COMPLIANCE WITH ALL PERMIT REQUIREMENTS FOR THE MONTH OF OCTOBER 2019. 10,00 GALLONS PUMPED. WESTON AND SAMPSON SERVICES BEGAN PLANT UPGRADE 11-18-2019.

**Model Zoning for the Regulation of Solar Energy Systems<sup>1</sup>**  
Department of Energy Resources  
Massachusetts Executive Office of Energy and Environmental Affairs  
December 2014

*This model zoning and accompanying Guidance were prepared to assist Massachusetts cities and towns in establishing reasonable standards to facilitate development of solar energy systems. These systems include small-, medium- and large-scale as well as both ground-mounted and roof-mounted installations.<sup>2</sup> The model zoning language provided here is not intended for adoption precisely as it is written. Communities will need to carefully consider how this language may be modified to suit local conditions and where it should be inserted into an existing Zoning Bylaw/Ordinance. Further, it is highly recommended that any language adapted from this model be reviewed by municipal counsel prior to adoption.*

*As small-, medium-, and large-scale ground-mounted and roof-mounted solar energy systems become more prevalent in Massachusetts, many communities are attempting to regulate the installation of these systems through their Zoning Bylaw/Ordinance. Developing these regulations has been particularly challenging for a number of reasons. Most notably, the Massachusetts General Laws contains several provisions that specifically address the ability of local governments to regulate solar energy systems and/or to protect solar access from development or vegetation (shading) on adjacent properties. While the language within Chapter 40A Section 3 states that a local government may not prohibit these uses, it does say they cannot be “unreasonably regulated” without providing guidance on what that particular phrase means. The Solar Energy Systems Policy Guidance, which accompanies this model zoning and succeeding sections of this document provide more explanation regarding the implications of the statutes on this issue and its significance to local zoning.*

*Unlike model bylaws/ordinances typically developed by the Commonwealth, the regulatory language provided here is not packaged as a “stand-alone” section of a Zoning Bylaw/Ordinance. With ground-mounted and roof-mounted solar energy systems, the statutory framework and “accessory” nature of some of these installations lend themselves to a different approach. This model zoning therefore assumes that municipalities will have many “typical” sections within their Zoning Bylaw/Ordinance and that several of these sections would be amended to address this issue. For the purposes of this model zoning, the Bylaw/Ordinance sections that are amended include:*

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<sup>1</sup> This material is based upon work supported by the U.S. Department of Energy under Award Number DE-EE0005692. This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

<sup>2</sup> This material was prepared by the Horsley Witten Group.

*The Definitions Section;  
Allowable Uses;  
Dimensional Requirements; and  
Site Plan Review.*

*There is also further discussion intended to help communities regulate these systems in the context of a Local Historic District.*

## **Definitions**

*Commentary: Within a Zoning Bylaw/Ordinance, the Definitions Section usually stands alone. Definitions are also sometimes included as a sub-section within other sections of the Zoning Bylaw/Ordinance. For example, terms related to the protection of water resources may be included in a water resource protection overlay district section. We recommend that the following terms be added to the general Definitions Section of the Zoning Bylaw/Ordinance.*

Photovoltaic System (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Access: The access of a solar energy system to direct sunlight.

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

*Commentary: While it is anticipated that installed solar energy systems will most frequently be photovoltaic, this model zoning uses the statutory definition of a solar energy system, which is broader and permits the installation of solar thermal systems as well.*

Solar Energy System: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Solar Energy System, Active: A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Solar Energy System, Grid-Intertie: A photovoltaic system that is connected to an electric circuit served by an electric utility.

Solar Energy System, Ground-Mounted: An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

Solar Energy System, Large-Scale: An Active Solar Energy System that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).

Solar Energy System, Medium-Scale: An Active Solar Energy System that occupies more than 1,750 but less than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).

Solar Energy System, Off-Grid: A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

Solar Energy System, Passive: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Solar Energy System, Roof-Mounted: An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

Solar Energy System, Small-Scale: An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

Solar Thermal System: An Active Solar Energy System that uses collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling.

## **Use Regulations**

*Commentary: Within a Zoning Bylaw/Ordinance, the Use Regulations describe which land uses are allowed within different zoning districts of the community, and which permits are required. The Use Regulations typically include a Use Table and/or a narrative description of the principal and accessory uses that are allowed, prohibited and/or allowed only through a Special Permit within each zoning district.*

*Pursuant to Chapter 40A Section 3, a Massachusetts municipality may not prohibit or unreasonably regulate solar energy systems except where necessary to protect public health, safety or welfare. Therefore, although these systems must be allowed within the community, they may be regulated where necessary to protect public health, safety or welfare through other provisions of the Zoning Bylaw/Ordinance. For example, these systems will still need to meet dimensional regulations and other performance standards necessary to protect public health, safety or welfare. In addition, a Site Plan Review process may be used to collect information that will ensure compliance with the performance standards in the Zoning Bylaw/Ordinance. Where some communities include Design Review in their permit processes, these communities will need to balance their desire for certain design objectives with the Commonwealth's protection of solar energy systems. Finally, as drafted this model zoning requires a special permit for a large-scale ground-mounted facility in a residential district and prohibits such systems in another residential district. While a special permit is discretionary, and language expressing uncertainty and cautioning communities about the lack of case law regarding Chapter 40A Section 3 has been included, the Attorney General's Office has approved local*

*zoning using this permitting mechanism. While DOER cannot offer a definitive interpretation, limited use of special permits when applied to the largest of solar systems, especially when these systems are allowed elsewhere by right, may well be reasonable regulation. In DOER's view, given the plain language of the statute, it is prudent to allow opportunity to site all scales of solar energy systems somewhere in the community. These provisions are described in more detail in the following sections. A more detailed discussion of DOER's understanding of Chapter 40A Section 3 is provided in the Policy Guidance for Regulating Solar Energy Systems that serves as a companion piece to this regulatory guidance.*

*As a cautionary note, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on materials, setbacks or height, and other similar items, as related to aesthetics, can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems, or that they do so very cautiously, due to the strong statutory protections in Chapter 40A Section 3.*

*Two examples are provided in this section for how roof-mounted, small-scale ground-mounted, medium-scale ground-mounted, and large-scale ground-mounted solar energy systems can be incorporated into a municipality's Use Regulations. In these examples, roof-mounted solar energy systems, regardless of size, are allowed as-of-right throughout the community. As-of-right siting means that development may proceed without the need for a Special Permit, variance, amendment, waiver, or other discretionary approval. These projects cannot be prohibited, and can be built once a building permit has been issued by the inspector of buildings, building commissioner or local inspector.*

*For ground-mounted systems, there is a distinction between how small-scale, medium-scale and large-scale systems are treated and where each are allowed as-of-right, via site plan review, or by special permit. The model zoning allows small-scale ground-mounted systems as-of-right throughout the community. These are of a size that would service a house, small businesses, or small municipal building.*

*The model zoning allows medium-scale ground-mounted systems as-of-right in all districts except residential zoning districts; in these districts Site Plan Review is required. This means that medium-scale ground-mounted systems cannot be prohibited, and that DOER considers Site Plan Review reasonable regulation. Site Plan Review is discussed in more detail later in this document, but in general it establishes criteria for the layout, scale, appearance, safety, and environmental impacts of certain types and/or scales of development. Typically, site plan approval must be obtained before the building permit is issued. Since medium-scale ground-mounted systems can reach up to approximately an acre in size, DOER believes it is reasonable and appropriate to provide more regulatory scrutiny via Site Plan Review for these projects in residential districts to protect public health, safety, or welfare.*

*As drafted, the model zoning requires Site Plan Review for large-scale ground-mounted systems within most zoning districts, a special permit in one residential district, and prohibits such systems in another residential district. However, communities should remember that the language of the zoning exemption for solar energy systems is imprecise. While some communities already require a Special Permit to install a large-scale ground mounted solar facility, and/or*



restrict them to certain districts, it is not clear whether these regulations are consistent with the Chapter 40A Section 3 mandate that they be reasonable and necessary to protect public health, safety, or welfare.

### **Connection to the Massachusetts Green Communities Designation and Grant Program**

Recognizing the uncertainty around how regulations may or may not be interpreted as reasonable, DOER allows communities to meet Green Communities Criterion One by zoning for the as-of-right installation of a solar facility of at least an acre in size in a designated location. For more information on the Green Communities Designation and Grant Program, please visit: <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/>.

### **Siting Preferences**

Where a solar facility is sited, as well as placement on the site once selected, is an important consideration, particularly in regard to large-scale ground mounted facilities. DOER strongly discourages locations that result in significant loss of land and natural resources, including farm and forest land, and encourages rooftop siting, as well as locations in industrial and commercial districts, or on vacant, disturbed land. Significant tree cutting is problematic because of the important water management, cooling, and climate benefits trees provide.

In regard to farm properties, rooftops are preferable. If roof space is inadequate non-productive, non-arable agricultural land is the second choice. Should this also prove infeasible or inadequate a dual use of land design concept could preserve productive farmland by continuing crop production underneath high-mounted and well spaced panels. Finally, if none of these are feasible or they are inadequate the least productive land should be used first to minimize the loss of productive food/crop land.

### **Overlay Zoning Districts**

Overlay zoning districts are one zoning approach that could be used to permit solar energy systems, and in ways not allowed under the base zoning districts. For example, the model zoning as drafted requires Site Plan Review for medium-scale ground mounted solar energy systems in residential districts. An overlay district could be used to permit such facilities without Site Plan Review in a portion of these residential districts where Site Plan Review is deemed unnecessary, while retaining the review for the balance of the districts.

In addition, some communities may wish to conduct a feasibility analysis to determine where large-scale solar energy systems are most appropriate within the municipality and use an overlay zoning district approach to encourage the siting of facilities in the most feasible locations. Once an area has been established through a thoughtful and analytical process, the municipality could enact overlay zoning legislation to prioritize these areas for large-scale solar energy systems. Many Massachusetts communities have already taken this approach through adoption of a large-scale ground-mounted solar overlay district, often based on DOER's [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#).

**Agricultural Exemption:**

*In addition to the exemption pertaining to solar energy systems Section 3 of Chapter 40A also exempts agricultural uses from zoning regulations that would otherwise apply. Thus, when the majority of the power from a solar energy system (or a wind turbine) is integral to farm production construction and operation of the system would covered by the exemption. Questions on the applicability of the agricultural exemption to solar energy systems should be directed to Gerry Palano at the Dept. of Agricultural Resources ([Gerald.Palano@state.ma.us](mailto:Gerald.Palano@state.ma.us) or 617-626-1706).*

Example 1 (Use Tables):

	<b>Residential-1 (R1)</b>	<b>Residential-2 (R2)</b>	<b>Residential-3 (R3)</b>	<b>Commercial (C)</b>	<b>Industrial (I)</b>	<b>Public (P)</b>
<b><u>PRINCIPAL USE</u></b>						
Medium-Scale Ground-Mounted Solar Energy System	SPR	SPR	SPR	Y	Y	Y
Large-Scale Ground-Mounted Solar Energy System	SP	N	SPR	SPR	SPR	SPR

Y = Allowed  
SP = Special Permit

N = Prohibited  
SPR = Site Plan Review

	<b>Residential-1 (R1)</b>	<b>Residential-2 (R2)</b>	<b>Residential-3 (R3)</b>	<b>Commercial (C)</b>	<b>Industrial (I)</b>	<b>Public (P)</b>
<b><u>ACCESSORY USE</u></b>						
Roof-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y
Small-Scale Ground-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y
Medium-Scale Ground-Mounted Solar Energy System	SPR	SPR	SPR	Y	Y	Y

Y = Allowed  
SP = Special Permit

N = Prohibited  
SPR = Site Plan Review

Example 2 (Uses listed):

1.0 Residential District Uses

1.1 Uses Permitted

1.1.1 Roof-Mounted Solar Energy Systems

1.1.2 Small-Scale Ground-Mounted Solar Energy Systems

## 1.2 Uses Allowed through Site Plan Review

- 1.2.1 Medium-Scale Ground-Mounted Solar Energy Systems
- 1.2.2 Large-Scale Ground-Mounted Solar Energy Systems in the R3 District

## 1.3 Uses Allowed via Special Permit

- 1.3.1 Large-Scale Ground-Mounted Solar Energy Systems in the R1 District

## 2.0 Non-Residential District Uses

### 2.1 Uses Permitted

- 2.1.1 Roof-Mounted Solar Energy Systems
- 2.1.2 Small-Scale Ground-Mounted Solar Energy Systems
- 2.1.3 Medium-Scale Ground-Mounted Solar Energy Systems

### 2.2 Uses Allowed through Site Plan Review

- 2.2.1 Large-Scale Ground-Mounted Solar Energy Systems

## Dimensional Regulations

*Commentary: In most cases, the existing dimensional standards in a Zoning Bylaw/Ordinance will allow for the development of small-, medium-, and large-scale solar energy systems. However, if a municipality finds alternate dimensional standards are necessary to allow solar energy systems while protecting public health, safety, or welfare, it may impose them. As a reminder, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on dimensional standards, such as setbacks or height, as they relate to aesthetics can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems due to the strong statutory protections in Chapter 40A Section 3, or that they do so very carefully.*

*With regard to more basic dimensional requirements such as setbacks from the property line, municipalities may also find that adjustments can be made to encourage broader use of solar energy systems. Below is a series of dimensional regulation amendments that a municipality could adopt to further encourage small-, medium-, and large-scale ground-mounted and roof-mounted solar energy systems, or simply clarify requirements pertaining to them.*

### Height

*Commentary: It is recommended that for purposes of height, roof-mounted solar energy systems should be considered similar to chimneys, television antennae, roof-top mechanical equipment and other appurtenances that are usually either allowed a much higher maximum height (e.g., 100 feet instead of 35 feet) or are exempted altogether from building height requirements. Such*

*an exemption can be stated in the definition of “Building Height” or through language similar to that provided in the following example.*

*It is recommended that existing zoning district height limitations apply for all ground-mounted solar energy systems. If the ground-mounted solar energy system is accessory to a principal building or structure on a lot, then the height restriction for accessory structures would apply. If the ground-mounted solar energy system is the principal structure on a lot, then the height restriction for principal structures would apply.*

Example:

## 1.0 Building Height Regulations

### 1.1 Exemptions

1.1.1 Mechanical equipment and appurtenances necessary to the operation or maintenance of the building or structure itself, including chimneys, ventilators, plumbing vent stacks, cooling towers, water tanks, broadcasting and television antennae and roof-mounted solar energy systems.

### Setbacks

*Commentary: It is recommended that small- and medium-scale ground-mounted solar energy systems that are accessory to a primary building or structure on a lot be provided with more flexible setback requirements than those that would typically apply to a primary structure. Many communities already provide some flexibility for “accessory structures” like sheds, allowing these to be closer to the lot line than the primary structure. For example, where a front/side/rear yard setback for the primary structure may be 50 feet, setbacks of 20 feet may be allowed for accessory structures. When ground-mounted solar energy systems are developed as accessory structures to a home, business or other building or structure, they should be afforded at least the same flexibility.*

*If a community does not have this type of reduced setback already built into the Zoning Bylaw/ Ordinance, a provision could be added that effectively reduces the setback distance just for this use. For example, if the community has a dimensional table, a special footnote could be added to the dimensional table as indicated in the following examples. It should be noted that often times there is a distinction between how accessory structures are regulated in a residential zoning district and how they are regulated in a commercial or industrial district. Therefore, communities should ensure that provisions for flexible setbacks for small- and medium-scale ground-mounted solar energy systems are incorporated wherever appropriate.*

*The first example applies a reduction of 50% to the otherwise required setbacks for accessory uses. The value of 20 feet is used in the second example; however, this may be altered based on local conditions. For example, in some communities, particularly urban communities, the required side- and rear-yard setback distances may be shorter than 20 feet. In these*

*circumstances, the existing shorter setback distances should remain for small- and medium-scale ground-mounted solar energy systems.*

*As opposed to small- and medium-scale ground-mounted solar energy systems, which are typically sited as accessory to a principal building or structure on a lot, large-scale ground-mounted solar energy systems are usually sited as principal structures. Whenever a solar energy system is sited as a principal structure on a lot, it is recommended that the setback requirements for principal structures in that zoning district apply. Regardless of the scale of the system or the minimum setback required solar energy system installers often allow a sufficient setback to avoid the issue of shading by vegetation on neighboring properties.*

*Placement of solar energy systems in front yards should be avoided if at all possible. However, in DOER's view the statutory protections for solar energy systems create a situation where a ground-mounted array could not be prohibited outright in a front yard, so the language provided in the following example includes a standard for the front yard setback. DOER recognizes the concerns this may raise in residential neighborhoods and acknowledges that communities should work with property owners to find appropriate locations for ground-mounted systems in side or rear yards.*

#### Example Dimensional Table Footnotes for Accessory Installations:

- (1) Small- and medium-scale ground-mounted solar energy systems accessory to principal use may be located no closer than [1/2 of the setback that would otherwise apply] from the front, side or rear lot line. All ground-mounted solar energy systems in residential districts shall be installed either in the side yard or rear yard to the extent practicable
- (2) Small- and medium-scale ground-mounted solar energy systems accessory to a principal use may be located no closer than [twenty (20) feet] from the front, side or rear lot line. All ground-mounted solar energy systems in residential districts shall be installed either in the side yard or rear yard to the extent practicable.

#### **Lot Coverage**

*Commentary: A number of communities use "maximum lot coverage" or "maximum impervious surface" as one of their dimensional standards. While it is clear that such features as driveways or buildings would be included in any calculation of lot coverage, many other features may be more ambiguous depending on how clearly the definition in the Zoning Bylaw/Ordinance is written. Awnings, porches, decks and similar features can often become a matter of dispute. Regardless of the definition, it is recommended that solar energy systems with grass or another pervious surface under them be exempted from lot coverage or impervious surface calculations. If the area is to be paved or otherwise rendered impervious then this land area should in fact count toward any coverage or impervious surface limit. It is also important to note that this recommended exemption is not intended to apply to municipal stormwater regulations, as the panels could have the effect of altering the volume, velocity, and discharge pattern of stormwater runoff. The following provision could be included as a footnote to the Dimensional Table related*

*to maximum lot coverage and impervious cover requirements, or as a separate provision within the dimensional regulations.*

Example:

Solar energy systems shall not be included in calculations for lot coverage or impervious cover as defined in [INSERT SECTION REFERENCE FOR ‘DEFINITIONS’].

### **Site Plan Review Requirements and Performance Standards**

*Commentary: Although not specifically addressed under Chapter 40A, Site Plan Review is included within the local Zoning Bylaws/Ordinances of many Massachusetts communities. Site Plan Review is meant to enforce clear and fair design standards for different types of development. This is typically done through a coordinated review process that circulates development applications among, and invites input from, all local boards and commissions that might permit a project, including Local Historic District Commissions as applicable. Site Plan Review is usually triggered by either specific types of uses (e.g., commercial or industrial development), or certain scales of uses (e.g., non-residential buildings over 5,000 square feet).*

*Typically, Site Plan Review procedures and requirements are provided within a separate section of the Zoning Bylaw/Ordinance. However, there are instances when communities provide separate Site Plan Review provisions and procedures within a section pertaining to a particular use or development type (e.g., Planned Business Development, etc.). Consistent with the Legislature’s intent to facilitate the siting of solar energy, communities should shape the Site Plan Review provisions of their Zoning Bylaws/Ordinances to enable large-, medium- and small-scale solar energy system projects to proceed without undue delay.*

*Model language for Site Plan Review for medium-scale ground-mounted solar energy systems is provided in the following Example 1. As discussed earlier in this document, Site Plan Review may be appropriate when medium-scale ground-mounted systems are sited within residential districts. The model language provided in Example 1 below is based on, but is less stringent than, the provisions in the Massachusetts DOER [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#).*

*Example 2 provides model language for Site Plan Review for large-scale ground-mounted solar energy systems when they are permitted as of right. As discussed earlier in this document, Site Plan Review may be appropriate for large-scale ground-mounted systems when they are sited anywhere within the community. The model language provided in Example 2 below is based on the provisions in the Massachusetts DOER [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations](#). Example 2 is also intended for use in concert with the special permit language in the next section of this model zoning.*

*Example 3 provides model language for roof-mounted and small-scale ground-mounted systems when they are part of a larger project where Site Plan Review is triggered through another threshold (e.g., commercial development, non-residential buildings over 5,000 square feet, etc.). It is important to note that the installation of roof-mounted or small-scale ground-mounted solar*



*energy systems does not trigger Site Plan Review on its own. However, when such systems are included as part of a larger development proposal that requires Site Plan Review, the municipality has the opportunity to review the roof-mounted or small-scale ground-mounted solar energy systems as part of the larger proposal.*

*As discussed earlier in this document, while regulating aesthetics can arguably be considered a matter of protecting public welfare, attempting to place restrictions on solar energy systems as they relate to aesthetics can create roadblocks to actual installation. It is therefore not recommended that communities regulate aesthetics of solar energy systems, or that they do so very cautiously, due to the strong statutory protections in Chapter 40A Section 3. However, where communities already have Site Plan Review standards that relate to aesthetics, such as screening requirements, these standards should also apply to solar energy systems. In other words, solar energy systems should not be singled out and regulated more stringently than other uses that require Site Plan Review; however, they can be held to the same level of restrictions that are in place for other uses.*

Example 1 (Site Plan Review provisions for medium-scale ground-mounted solar energy systems in residential zoning districts):

1.0 Site Plan Review

1.1 Applicability

1.1.1 Medium-scale ground-mounted solar energy systems proposed within residential zoning districts shall undergo Site Plan Review prior to construction, installation or modification as provided in this section.

1.2 Site Plan Document Requirements

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority:

1.2.1 A site plan showing:

- (a) Property lines and physical features, including roads, for the project site;
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (c) Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;

- (d) Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- (e) Name, address, and contact information for proposed system installer;
- (f) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- (g) The name, contact information and signature of any agents representing the project proponent; and
- (h) Zoning district designation for the parcel(s) of land comprising the project site.

*If the following are not addressed in existing site plan review regulations, then the community may wish to include them:*

- (i) Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP.*
- (j) Locations of floodplains or inundation areas for moderate or high hazard dams;*
- (k) Locations of local or National Historic Districts;*

- 1.2.2 Proof that the project proponent will meet the required Site Plan Review notification procedures.

*Commentary: Provision 1.2.2 above should reference the municipality’s existing Site Plan Review public and/or abutter notification procedures if applicable. For example, a community may require projects that are subject to Site Plan Review to notify all property owners within 100 feet of the project site.*

### 1.3 Site Plan Review Design Standards

- 1.3.1 Standards for medium-scale ground-mounted solar energy systems proposed within residential zoning districts

1.3.1.1 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer’s intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.



1.3.1.2 Utility Connections - Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

1.3.1.3 Safety - The medium-scale ground-mounted solar energy system owner or operator shall provide a copy of the Site Plan Review application to the local fire chief. All means of shutting down the solar installation shall be clearly marked.

*Commentary: With regard to issues of access and safety, communities looking to adopt zoning for medium-scale solar energy systems should be aware of any unique local requirements that could apply. For example, if the fire department will want an Emergency Response Plan as part of approval, this should be folded into the review process as seamlessly as possible.*

1.3.1.4 Visual Impact – Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures.

1.3.1.5 Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.

*Commentary: As drafted, this model zoning does not require medium-scale ground mounted solar energy systems to be fenced, but this is something communities will want to consider. Regardless, many project proponents will find fencing prudent.*

Example 2 (Site Plan Review provisions for large-scale ground-mounted solar energy systems):

1.0 Site Plan Review

1.1 Applicability

1.1.1 Large-scale ground-mounted solar energy systems shall undergo Site Plan Review prior to construction, installation or modification as provided in this section.

1.2 Site Plan Document Requirements

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents, as deemed applicable by the Site Plan Review Authority:

1.2.1 A site plan showing:

- (a) Property lines and physical features, including roads, for the project site;
- (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- (c) Blueprints or drawings of the solar energy system signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- (d) One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- (e) Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- (f) Name, address, and contact information for proposed system installer;
- (g) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- (h) The name, contact information and signature of any agents representing the project proponent; and
- (i) Zoning district designation for the parcel(s) of land comprising the project site.

*If the following are not addressed in existing site plan review regulations, then the community may wish to include them:*

- (j) *Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP.*
- (k) *Locations of floodplains or inundation areas for moderate or high hazard dams;*
- (l) *Locations of local or National Historic Districts;*

- 1.2.2 Documentation of actual or prospective access and control of the project site (see also Section 1.3.1.1);
- 1.2.3 An operation and maintenance plan (see also Section 1.3.1.2);
- 1.2.4 Proof of liability insurance; and
- 1.2.5 A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required Site Plan Review notification procedures and otherwise inform abutters and the community.

*Commentary: Provision 1.2.6 above should reference the municipality's existing Site Plan Review public and/or abutter notification procedures if applicable. For example, a community may require projects that are subject to Site Plan Review to notify all property owners within 100 feet of the project site.*

### 1.3 Site Plan Review Design and Operation Standards

#### 1.3.1 Standards for large-scale ground-mounted solar energy systems

1.3.1.1 Site Control - The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.

1.3.1.2 Operation & Maintenance Plan - The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation, stormwater controls, as well as general procedures for operational maintenance of the installation.

1.3.1.3 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

1.3.1.4 Lighting - Lighting of large-scale ground-mounted solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar energy system shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

1.3.1.5 Signage - Signs on large-scale ground-mounted solar energy systems shall comply with a municipality's sign bylaw/ordinance. A sign consistent with a municipality's sign bylaw/ordinance shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.

1.3.1.6 Utility Connections - Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

1.3.1.7 Emergency Services – The large-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

*Commentary: With regard to issues of access and safety, communities looking to adopt zoning for large-scale solar energy facilities should be aware of any unique local requirements that could apply.*

1.3.1.8 Land Clearing, Soil Erosion and Habitat Impacts - Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.

## 1.3.2 Monitoring and Maintenance

1.3.2.1 Solar Energy System Installation Conditions - The large-scale ground-mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief, Emergency Management Director, and Emergency Medical Services. The owner or operator

shall be responsible for the cost of maintaining the solar energy system and any access road(s), unless accepted as a public way.

1.3.2.2 Modifications - All material modifications to a large-scale ground-mounted solar energy system made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

### 1.3.3 Abandonment or Decommissioning

#### 1.3.3.1 Removal Requirements

Any large-scale ground-mounted solar energy system which has reached the end of its useful life or has been abandoned consistent with Section 1.3.3.2 of this bylaw/ordinance shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

#### 1.3.3.2 Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale ground-mounted solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large-scale ground-mounted solar energy system. As a condition of Site Plan approval, the applicant and landowner

shall agree to allow entry to remove an abandoned or decommissioned installation.

*Commentary: Recognizing that other remedies, such as a tax lien, are available to communities in the event an abandoned facility is legitimately putting public safety at risk this model zoning does not require the provision of surety to cover the cost of removal in the event the municipality must remove the installation and remediate the landscape. Communities can, however, require surety in circumstances where a valid planning purpose for doing so exists.*

*Commentary: As drafted, this model zoning does not require large-scale ground mounted solar energy systems to be fenced, but this is something communities will want to consider. Regardless, many project proponents will find fencing prudent.*

Example 3 (Site Plan Review provisions for roof-mounted and small-scale ground-mounted solar energy systems as part of a larger project that triggers Site Plan Review):

## 1.0 Site Plan Review

### 1.1 Site Plan Document Requirements

1.1.1 Requirements for Roof-Mounted and Small-Scale Ground-Mounted Solar Energy Systems - Where these solar energy systems may be accessory to a use allowed through Site Plan Review, the Site Plan Review shall include review of their adequacy, location, arrangement, size, design, and general site compatibility.

1.1.1.1 Roof-Mounted Solar Energy Systems – For all roof-mounted systems, the applicant shall provide:

- (a) The shortest distance between the solar collector and all edges of the roof.
- (b) The distance between the solar collector and any other existing rooftop features such as chimneys, spires, access points, etc.
- (c) The height of the solar collector both from finished grade and, where applicable, from the finished surface of the roof.

1.1.1.2 Small-Scale Ground-Mounted Solar Energy Systems – For all ground-mounted systems, the applicant shall provide:

- (a) The distance between the proposed solar collector and all property lines and existing on-site buildings and structures.
- (b) The tallest finished height of the solar collector.
- (c) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

1.1.1.3 System Components – The Plan must include documentation of the major system components to be used, for example the panels, mounting system, and inverter.

1.1.1.4 Installer Details – The Plan must include the name, address, and contact information for proposed system installer.

## 1.2 Site Plan Review Design Standards

### 1.2.1 Standards for roof-mounted and small-scale ground-mounted solar energy systems

1.2.1.1 Utility Notification - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Site Plan Review Authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

1.2.1.2 Emergency Access - Solar energy systems shall be located in such a manner as to ensure emergency access to the roof, provide pathways to specific areas of the roof, provide for smoke ventilation opportunities, and provide emergency egress from the roof.

- (a) For buildings with pitched roofs, solar collectors shall be located in a manner that provides a minimum of one three-foot wide clear access pathway from the eave to the ridge on each roof slope where solar energy systems are located as well as one three-foot smoke ventilation buffer along the ridge.
- (b) Residential rooftops that are flat shall have a minimum three-foot wide clear perimeter and commercial buildings that are flat shall have a minimum four-foot wide clear perimeter between a solar energy system and the roofline, as well as a three-foot wide clear perimeter around roof-mounted equipment such as HVAC units.
- (c) To the extent practicable, the access pathway shall be located at a structurally strong location on the building (such as a bearing wall).

*Commentary: Building and Fire Department personnel should be involved in the development of emergency access standards, and any zoning standards that are adopted should be consistent with local building and fire codes.*

1.2.1.3 Safety – No roof-mounted solar energy system shall be located in a manner that would cause the shedding of ice or snow from the roof into a porch, stairwell or pedestrian travel area.

## Special Permits

*Commentary: Special Permits are addressed in Chapter 9 of the Zoning Act, and most Massachusetts communities have regulations pertaining to them within their zoning bylaw or ordinance. Below is model language for municipalities requiring special permits for large-scale ground-mounted solar energy systems. It is intended to be adopted and implemented alongside Site Plan Review language for large-scale ground-mounted systems included as Example 2 in this model zoning. Rather than include separate special permit standards applicable specifically to large-scale ground-mounted solar energy systems, this language simply directs that a permit be issued pursuant to the already established special permit bylaw/ordinance of the community.*

*Municipalities will, however, want to audit their special permit language, especially the approval standards, for compatibility with the siting of large-scale ground-mounted solar energy systems. Such systems should have far lower impacts than commercial or industrial uses that often require issuance of special permit, and communities should keep in mind the requirement in Chapter 40A Section 3 that any regulations pertaining to solar energy systems be reasonable.*

### 1.0 Special Permit with Site Plan Review

#### 1.1 Special Permit Requirements

- 1.1.1 Where required a special permit shall be issued prior to construction, installation or modification of any large-scale ground-mounted solar energy system. The special permit granting authority shall include as part of its special permit review and proceedings all the provisions and requirements of the Site Plan Review standards applicable to large-scale ground-mounted solar energy systems.

## Pre-Existing Non-Conforming Uses and Structures

*Commentary: Alterations, extensions and structural changes to pre-existing non-conforming uses and structures (e.g., existing buildings that do not meet the dimensional requirements of the Zoning Bylaw/Ordinance) that intensify non-conformities or result in additional non-conformities may not be allowed beyond a certain threshold or may require a Special Permit pursuant to the local Zoning Bylaw/Ordinance. It is recommended that the installation of roof-mounted or small-scale ground-mounted solar energy systems associated with pre-existing non-conforming uses or structures be exempt from this requirement. An example provision is provided below. Communities not comfortable with providing this exemption to small-scale ground mounted systems due to their potential to be located on very small lots may wish to apply Site Plan Review or continue to require a Special Permit where this can be justified to protect public health, safety, or welfare. As to roof mounted systems on non-conforming properties, given the exemption afforded solar energy systems, DOER believes it would be unreasonable to disallow them or require a Special Permit even when installation would exacerbate a pre-existing building height non-conformity.*



Example:

1.0 Pre-Existing Non-Conforming Uses and Structures

1.1 Improvements that do not change the use or the basic exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

1.1.1 Installation or replacement of solar energy systems.

**Historic Districts**

*Commentary: Many communities in the Commonwealth have adopted Local Historic Districts to protect and preserve buildings, landscapes and neighborhoods of historic significance. In recent years, conflict has occasionally arisen about the installation of solar energy systems within these districts on historic buildings and structures, since some argue that they have adverse impacts on the visual appearance and integrity of the buildings and structures.*

*As described in the DOER Policy Guidance for Regulating Solar Energy Systems, Local Historic District Commissions must consider the policy of the Commonwealth to encourage the use of solar energy systems and to protect solar access when considering issuance of a certificate of appropriateness for a solar energy system. However, thoughtful design guidelines can help ensure that solar energy systems are sited while the goals of historic preservation continue to be achieved.*

*Design guidelines can require that solar energy systems not be visible from public areas, to the greatest extent practicable. When it is not feasible (either physically or economically) to locate solar energy systems out of the public eye, solar energy systems can be required to be designed to certain architectural standards (e.g., building-integrated, use of solar shingles) to the greatest extent practicable. However, these options may be infeasible as well due to the high cost and low performance of many of these technologies. To meet these challenges, Local Historic District Commissions are encouraged to write design guidelines that support the development of solar energy systems and are sensitive to the historic preservation goals of the Commission.*

Article \_\_\_\_\_ :

To see if the Town will vote to amend §174-3 of the Mashpee Zoning Bylaw- Terms Defined as follows:

Photovoltaic System (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

Rated Nameplate Capacity: The maximum rated output of electric power production of a photovoltaic system in watts of Direct Current (DC).

Solar Collector: A device, structure, or a part of a device or structure for the primary purpose of harvesting solar energy for use in a solar energy system.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System: A device or structural design feature for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Solar Energy System, Active: A solar energy system that collects and transforms solar energy into another form of energy or transfers heat from a solar collector to another medium, via mechanical, electrical, or chemical means.

Solar Energy System, Grid-Intertie: A photovoltaic system or other active solar energy system designed to generate electricity that is connected to an electric circuit served by an electric utility.

Solar Energy System, Ground-Mounted: An active solar energy system that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

Solar Energy System, Large-Scale: An active solar energy system that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).

Solar Energy System, Medium-Scale: An active solar energy system that occupies more than 1,750 but less than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).

Solar Energy System, Off-Grid: A photovoltaic system or other active solar energy system designed to generate electricity in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

Solar Energy System, Passive: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Solar Energy System, Roof-Mounted: An active solar energy system that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

Solar Energy System, Small-Scale: An active solar energy system that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 15 kW DC or less).

Submitted by Planning Board

EXPLANATION

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Article\_\_\_\_:

To see if the Town will vote to amend §174-25 (A)(8) of the Mashpee Zoning By Law “Table of Use Regulations” by replacing the letters ‘SP’ located in the columns identified as R-3 and R-5 with a ‘Y’ as follows:

Type of Use	Residential		Commercial			Industrial
	R-3	R-5	C-1	C-2	C-3	I-1
Accessory apartment subject to the provisions of §174-45.4	<del>SP</del> Y	<del>SP</del> Y	--	--	--	--

Submitted by Planning Board

EXPLANATION:

This article would allow the development of accessory apartments in the residential zoning districts of the Town as a by-right use.

Article\_\_\_\_:

To see if the Town will vote to add §174-25 (H)(15) of the Mashpee Zoning By Law “Table of Use Regulations” by adding the letters ‘SP’ located in the columns identified as R-3, R-5, C-1, C-2, and I-1:

Type of Use	Residential		Commercial			Industrial
	R-3	R-5	C-1	C-2	C-3	I-1
Large-scale Solar Energy System, subject to the provisions of Sec. 174-45.7	<b>SP</b>	<b>SP</b>	<b>SP</b>	<b>SP</b>	--	<b>SP</b>

Submitted by Planning Board

**EXPLANATION:**

This article would allow the development of large scale solar energy systems in the residential, commercial and industrial zoning districts of the Town by special permit.


*"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

**MEMORANDUM**

To: Planning Board  
From: Town Manager Rodney C. Collins   
Reference: Blue Sky Towers II, LLC vs. Town of Mashpee  
Date: December 3, 2019

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Please be advised that upon review and discussion of the Complaint filed with the United States District Court in the above-referenced action at its meeting on December 2, 2019 the Board of Selectmen determined that the prompt disposition/settlement of this action is fiscally prudent and would best serve the interests of public safety and convenience of the Town and its residents. Accordingly, pursuant to the authority vested in the Board of Selectmen by G.L c. 40, §2 and General Bylaws, §§ 4-4, 4-5 and 5-21, the Board has directed Town Counsel to contact the Plaintiff's counsel forthwith to discuss terms for the prompt disposition/settlement of this matter.

While this matter is pending in litigation, the Town will make no further comments. It is also recommended that other public officials refrain from comments since they could be detrimental to the Town's interests.