

*"Preserving public trust, providing professional services"*

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



June 1, 2021

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

Chair John Fulone  
Mashpee Planning Board

Dear Chairman Fulone:

On May 25, 2021, it was brought to my attention that a "conflict" may exist regarding the motion passed on May 24, 2021 at the Board of Selectmen meeting. The Planning Board meeting of October 7, 2020 was specifically brought to my attention. I was told that a motion was passed unanimously to expand the Planning Board Development Agreement Negotiation Team to include one member of the Board of Selectmen, provided that person "has absolutely no conflict of interest with Mashpee Commons (accepted no campaign funds, has no work connection) This set a higher code of conduct than the Mass Ethics Law."

I collected the minutes from the meeting and had the said minutes reviewed by Legal Counsel. The motion approved indicates that the BOS member have "no conflict of interests." The presumption is that applies to no conflict pursuant to Massachusetts General Law (MGL) Chapter 268A. The reference to "no financial dealings with Mashpee Commons" is subject to a varying interpretation and there is no clear distinction or definition of the term. It is reasonable to presume "financial" means relating to money. "Dealings" can have multiple connotations and "Mashpee Commons" is vague and ambiguous. Does it refer to the entity which is the formal applicant for the development agreement, identified as Mashpee Commons Limited Partnerships or also its principals, officers, employees, agents, contractors, tenants, etc.? The October Planning Board Meeting doesn't provide the clarity that is necessary to resolve this matter.

The Selectman that was appointed on May 24, 2021 by unanimous vote to the Negotiating Team was John Cotton. I informed Selectman Cotton about the potential conflict and he informed me that he was seeking advice from the State Ethics Commission. I believe that Selectman Cotton will share any opinion that he receives with you. That will clear up any provision of MGL 268A. The question is what was intended by the vote of October 7, 2021? Does the Planning Board seek a higher standard than required by the Massachusetts State Ethics Commission? If so, to what extent? Such clarity would be required to resolve the ambiguity referenced. This is why I requested the Planner and you hold an agenda item for your next meeting.

Sincerely,

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

RODNEY C. COLLINS  
Town Manager

Cc: Town Planner; Selectman Cotton

## Rodney C. Collins

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**From:** Mary Waygan <marywayganmashpeegovernment@gmail.com>  
**Sent:** Tuesday, May 25, 2021 9:23 PM  
**To:** Rodney C. Collins  
**Subject:** Development Agreement Negotiation Team  
**Attachments:** 1072020 PLANNING BOARD Minutes DA Vote.pdf

**WARNING! EXTERNAL EMAIL:** : This message originated outside the Town of Mashpee mail system. DO NOT CLICK on links or attachments unless you are absolutely certain the content is safe.

Hi Rodney,

I heard there was discussion this past Monday by the Selectmen regarding a rep to the Planning Board w/rt Mashpee Commons. In hopes of clarifying the matter, i have attached the Planning Board minutes from the Oct 7, 2020 meeting; the link to the video is below (start listening at 14 minutes).

I made the motion, which passed unanimously, to expand the Planning Board Development Agreement Negotiation Team to include one member of the Board of Selectmen, provided that person has absolutely no conflict of interest with Mashpee Commons (accepted no campaign funds, has no work connection). This set a higher code of conduct than the Mass Ethics Law. The selectperson would be a non-voting member as per zoning bylaw (below) the Planning Board votes on the Development Agreement, not the Negotiating Team. Teh selectmen vote yes or no on the Development Agreement, or refers it back to the Planning Board with proposed amendments.

It is my understanding the Development Agreement process has not started because the Cape Cod Commission and the Town of Mashpee has not jointly convened the Development Agreement process.

<https://www.mashpeema.gov/home/events/41923>

Hope that helps.

Yours,  
Mary

### The Town of Mashpee Development Agreement Bylaw:

#### **§174-27.1 Development Agreements**

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

A. Purpose and Intent - This bylaw enables the Town to enter into Development Agreements consistent with the provisions of the Cape Cod Commission Act and Chapter D - Code of Cape Cod Commission Regulations of General Application. The Act provides that such Development Agreements may be entered into so long as the Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan and said certification has not been revoked.

B. In addition to the definitions contained in §174-3, the following shall apply to this section

Development Agreement – a voluntary binding contract entered into among the Town and/or the Cape Cod Commission, and/or another municipality or municipalities within a development is proposed, a state agency or agencies and a holder of majority legal or equitable interest in the subject property or their

authorized agent (Qualified Applicant). The principal purpose of the contract is to define the scope and substance of the proposed development.

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

Lead Community – Where the Commission is not a party, the Town or, where more than one (1) municipality is a signatory on a Development Agreement, the municipality that the involved municipalities agree shall be the Lead Community, or where the involved municipalities cannot agree on a Lead Community, the municipality having the largest area encompassed by the proposed development. The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a Development Agreement.

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

Qualified Applicant - A person who has a majority legal or equitable interest in the real property which is the subject of the Development Agreement. A Qualified Applicant may be represented by an authorized agent.

Participating Parties – Those entities who have been selected by a Qualified Applicant to consider a particular Development Agreement, including the Qualified Applicant, and a municipality(ies), and/or a state agency(ies).

C. Who May Participate in a Development Agreement - A Development Agreement may be executed by and between the Town, a Qualified Applicant and

- 1) the Cape Cod Commission; or
- 2) the Cape Cod Commission and another municipality or municipalities within which the development is proposed; or
- 3) the Cape Cod Commission and another municipality or municipalities within which the development is proposed and with a state agency or agencies; or
- 4) another municipality or municipalities within which the development is proposed; or
- 5) another municipality or municipalities within which the development is located and a state agency or agencies.

Those parties selected to participate are referred to within the Section as "Participating Parties.

D. Negotiation and Execution of Development Agreements by the Town

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

Development Agreements involving the Cape Cod Commission shall be negotiated and executed in accordance with Section 5 of Chapter D of the Code of the Cape Cod Commission Regulations of General Applications.

*History: Added 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

**1) Negotiation of the elements of a Development Agreement between Participating Parties (Subsection C.) and a Qualified Applicant shall follow all pertinent rules of due process currently required for public meetings, public hearings, and ratification of board decisions.**

2) Negotiation of the elements of a Development Agreement between Participating Parties (Subsection C.) and a Qualified Applicant shall be led by the Planning Board or its designee, and may include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process. Upon completion of such negotiations, the Planning Board shall prepare a proposed Development Agreement and vote to recommend it to the Board of Selectmen for execution.

3) The Board of Selectmen may execute the Development Agreement or propose amendments and refer the Development Agreement back to the Planning Board for further action.

4) The Board of Selectmen or their designee shall be authorized to execute, on behalf of the Town, a Development Agreement. Prior to executing said Development Agreement, the Board of Selectmen shall, at a public meeting, vote to authorize said execution. The Board of Selectmen shall, within seven (7) days of the vote authorizing the execution of the Development Agreement, cause said Development Agreement to be so executed and forward the same to the Qualified Applicant by certified, return receipt mail. Within twenty-one (21) days of the date said Development Agreement has been mailed by the Board of Selectmen,

the Qualified Applicant shall execute the agreement and return either by certified mail or hand delivery, the fully executed Development Agreement.

#### E. Elements of Development Agreements.

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

1) Proffers by a Qualified Applicant: A Development Agreement may include, but is not limited to, provisions whereby a Qualified Applicant agrees to provide certain benefits which contribute to one or more of the following: infrastructure; public capital facilities; land dedication and/or preservation; fair affordable housing, either on or off-site; employment opportunities; community facilities; recreational uses and/or any other benefit intended to serve the proposed development, the Town, another municipality or the county, including site design standards to ensure preservation of community character and natural resources.

2) Proffers by a Lead Community: A Development Agreement may include provisions whereby a Lead Community and/or an abutting municipality agree to provide certain protection from future changes in applicable local regulations and assistance in streamlining the local regulatory approval process. Streamlining may include, where not in conflict with existing local, state or federal law, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. A Development Agreement may also provide for extensions of time within which development approvals under state, regional and local laws may be extended to coincide with the expiration of the Development Agreement established in Subsection G below. A Development Agreement shall vest land used development rights as described in Section 14(a) of the Cape Cod Commission Act and Section 7 of Chapter D of the Cape Cod Commission Regulations and General Application, as revised, for a period or periods specified in the Agreement. When the Town is not a party to a Development Agreement, then land use development rights shall not vest with regard to the Town's development bylaws and regulations. When the Commission is not a party to the Development Agreement, no land use development rights shall vest with respect to the Regional Policy Plan, Commission regulations and decision and the property shall be subject to subsequent changes in the Commission regulations and decisions.

#### F. Procedural requirements for Development Agreements where the Cape Cod Commission is a party to the Agreement.

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

Where the Cape Cod Commission is to be a party to a Development Agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Applications, as revised shall be followed and no such Development Agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

#### G. Procedural requirements for Development Agreements where the Cape Cod Commission is not a Party to the Agreement.

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

1) Where the Cape Cod Commission is not to be a party to a Development Agreement, a Qualified Applicant shall complete a Development Agreement Application Form. The Development Agreement Application Form shall include:

- (a) A fully completed Cape Cod Commission Development Agreement Application Form, including a certified list of abutters prepared by the Assessors in the town or towns where the abutters are located;
- (b) A legal description and survey of the land subject to the agreement, along with the names of its legal and equitable owners;
- (c) The proposed duration of the agreement;
- (d) The development uses currently permitted on the land, and development uses proposed on the land including residential population densities, and building densities and height;
- (e) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve the development are available concurrent with the impacts of the development;
- (f) A description of any reservation or dedication of land for public recreation,

conservation, agricultural or historic purposes;

(g) A description of all local development permits needed for the development of the land;47

(h) A statement acknowledging that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant or Participating Parties of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

(i) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under MGL Ch.30 §61-§62h.

(j) Additional data and analysis necessary to assess the impact of the proposed development as determined by the Planning Board, or where the Town is not the Lead Community, the appropriate body in said Lead Community.

2) All Qualified Applicants seeking to enter into a Development Agreement without the Cape Cod Commission as a party shall submit the proposed development to the Cape Cod Commission for a Jurisdictional Determination. If the Cape Cod Commission determines that the proposed development is not a Development of Regional Impact, then the Qualified Applicant may pursue a Development Agreement without the Cape Cod Commission as a party pursuant to Subsection G above. If the Cape Cod Commission determines that the proposed development is a Development of Regional Impact, then the Cape Cod Commission must be a party to the Development Agreement, in which case, the provisions of Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall apply. If the Commission determines that the proposed development is not a Development of Regional Impact, then the provisions of Subsections (3) through (10) below shall apply.

3) The Town, or when more than one (1) municipality is a party to the agreement, then the Lead Community, shall oversee the Development Agreement process as specified in this section. The Town/Lead Community shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed Development Agreement. At least one public hearing shall be held in (at least one of) the municipality(ies) in which the proposed development is located. The public hearing regarding review of a Development Agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development.

4) When more than one (1) municipality is a party to the Agreement, the Lead Community shall oversee the Development Agreement process as specified in this section. Any conflicts between the Lead Community and other municipality(ies) which are a party to the Agreement shall be resolved through negotiation by the relevant parties. Because a Development Agreement is a voluntary process, unresolved disputes may result in one or more parties making a determination not to remain a party to the proposed Development Agreement.

5) The Town/Lead Community shall provide notice of the public hearing to consider a Development Agreement by publication as required by Sections 5(d) (1-3) of the Cape Cod Commission Act and shall also provide notice to the Cape Cod Commission at least fourteen (14) days prior to such hearing.

6) The Qualified Applicant shall pay the cost of providing notice of the public hearing to consider the proposed Development Agreement.

7) The Town/Lead Community shall review proposed Development Agreements for their consistency with Local Comprehensive Plans. A Development Agreement that is inconsistent with local zoning shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed under the Zoning Bylaws of the Town as may be needed to resolve the inconsistency, unless the Development Agreement is approved by the same entity and the same quantum of votes as would be required to amend the Zoning Bylaw of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the Development Agreement shall be deemed effective.

8) The Town/Lead Community shall file its Development Agreement with the Clerk of the Cape Cod Commission and with the town clerk(s) of the municipality(ies) in which the

development is located. Notices of Development Agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the Development Agreement and a statement that copies of the Development Agreement are available for public inspection at the Town Clerk's office during normal business hours of any municipality which is a party to the agreement. In addition, the Lead Community shall provide the Cape Cod Commission with a summary of the Development Agreement, which the Commission shall publish in its official publication pursuant to section 5(i) of the Cape Cod Commission Act.

9) The Town Clerks of the contracting Town or Town shall issue a certificate which certifies the effective date of the Development Agreement. The effective date of the Development Agreement shall be the date of recording at the Barnstable County Registry of Deeds. The certificate shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The Town or Lead Community shall record the certificate, to which the Development Agreement shall be attached as an exhibit, in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Clerk of the Cape Cod Commission within fourteen (14) days of such recording. The Qualified Applicant shall bear the expense of recording.

10) The Board of Selectmen, or the appropriate body in the Lead Community if it is not Mashpee, may establish the fees or charges imposed for filing and processing each application or document provided for or required under this section. Any other municipality or state agency which is also a party to the Development Agreement may establish additional fees and charges to be imposed for the filing and processing of each application and document provided for under Chapter D of the Code of Cape Cod Commission Regulations of General Applications.

#### H. Limitations on, and duration of, Development Agreements

1) Nothing in this section may be construed to permit the Town to require a Qualified Applicant to enter into a Development Agreement.

2) A Development Agreement will commence upon the date of recording of the certificate(s) by the Clerk of the Cape Cod Commission or by the Town Clerk(s), as appropriate, and terminate as agreed by the parties, in writing, except as otherwise provided in this subsection and section 5(q) of Chapter D of the Cape Cod Commission Regulations of General Applications, as revised. Where the Cape Cod Commission is not a party, a Development Agreement shall not exceed ten (10) years. However, provisions in the Development Agreement pertaining to the preservation of open space and park areas, or agreement to pay for maintenance of utilities and other infrastructure, may exceed such ten-year limitation. Where the Cape Cod Commission is a party, a Development Agreement may extend for a longer period of time than that noted above, as set forth in Section 7 Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised.

3) A Development Agreement may not be used to prevent a Lead Community or other governmental agency from requiring a Qualified Applicant or Participating Party to comply with any laws, rules, regulations and policies enacted after the date of the Development Agreement, if the Lead Community or governmental agency determines that the imposition of, and compliance with, the newly effective laws and regulations is essential to ensure the public health, safety or welfare of the residents of all or part of its jurisdiction.

#### I. Amendments and Rescission

*History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012*

A Development Agreement may be amended or rescinded by petition of a Participating Party as provided below. Requirements for hearings, notice, costs and filing and recording of the amendments and rescissions of Development Agreements shall be followed as provided in Sections 5 and 6 of Chapter D of the Cape Cod Commission Regulations of General Application, as revised.

1) Minor Modification - Amendments that are de minimis changes or technical corrections, as determined by both the Cape Cod Commission and/or the Planning Board (or the appropriate body in the Lead Community if it is not Mashpee) may be made without following the notice

and public hearing requirements provided in Section F and G above. Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Regulatory Committee of the Cape Cod Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.

2) Major Modification - When the Cape Cod Commission is a party to the Development Agreement, any party to the Development Agreement may petition to amend or rescind the Development Agreement. The Participating Parties may petition to rescind the Development Agreement; the Cape Cod Commission may petition to rescind the Development Agreement only in the event of failure of consideration. Such petition shall be made in writing, and shall state in detail the petitioner's reasons for amendment or rescission. The Petitioning Party shall provide notice to all parties to the Development Agreement.

When the Cape Cod Commission is not a party to the Development Agreement, any other party to the Development Agreement may petition the Town or Lead Community to amend or rescind the Development Agreement. The petitioning party shall provide notice to all parties to the Development Agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Cape Cod Commission with a copy of the petition seeking such amendment or rescission. When the Town or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the Agreement.

Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Cape Cod Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement. Where the Cape Cod Commission is not a Participating Party, such changes may be authorized by a majority vote of the Board of Selectmen, after review and favorable recommendations by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.

3) Any Development Agreement may contain provisions further regulating its amendment or recession.

J. Enforcement - A Development Agreement is a binding contract that is enforceable in law or equity by a Massachusetts court of competent jurisdiction. If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Town's zoning bylaw.

*History: Amended 5-3-1999 ATM, Article 31, approved by Attorney General July 29, 1999*



**Meeting of the Mashpee Planning Board  
Wednesday, October 7, 2020  
Waquoit Meeting Room  
Mashpee Town Hall  
16 Great Neck Road North  
Mashpee, MA 02649  
7:00 PM**

**\*Virtual / Remote Meeting\***

**\*Broadcast Live on Local Channel 18\***

**\*Call in Conference Number: 508-539-1400 extension 8585\***

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

**Call Meeting to Order**

- Pledge of Allegiance

**Approval of Minutes**

- Review of meeting minutes from September 2, 2020

**Public Hearings**

**7:10 PM – Southworth Mashpee Properties LLC (Continued from 8/5/2020)**

Pursuant to Massachusetts General Laws, Chapter 40A Section 11, the Mashpee Planning Board will hold a public hearing on Wednesday, July 1, 2020 at 7:10PM at the Mashpee Town Hall, 16 Great Neck Road North, to consider an application from Southworth Mashpee Properties LLC, property owner, to modify the Willowbend Country Club Special Permit. The applicant proposes to construct a 6-unit multifamily residential townhouse structure to be known as the Clubhouse Villas on a 40,009 square foot parcel located north of Quinaquisset Avenue and found on Assessors Map 69 Block 117.

**7:20 PM – October 19, 2020 Town Meeting Warrant, Proposed Zoning Amendments**

- **Warrant Article 13:** To amend Section 174-24.B – Plan Review Committee Procedures
- **Warrant Article 14:** To amend Section 174.27.2 – Stormwater Management
- **Warrant Article 15:** To amend Section 174-41.F – Driveway Design

**7:30 PM – Rules and Regulations Governing the Subdivision of Land**

Pursuant to Massachusetts General Laws, Chapter 41, Section 81Q, the Mashpee Planning Board will consider updating the Mashpee Rules and Regulations Governing the Subdivision of Land. The Planning Board is considering adding a requirement to show the location and means of access and egress to a Cluster Box Unit (mailboxes). The post office now requires all new developments to have a CBU mailbox installed.

**New Business**

- C. Rowley Billing – September Invoice

MASHPEE TOWN CLERK

OCT 01 2020

RECEIVED BY: Sm





# Town of Mashpee

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16 Great Neck Road North  
Mashpee, Massachusetts 02649

## Chairman's Report

- Comprehensive Plan Update
- Consulting Engineer RFP Process
- Mashpee Commons Development Agreement

## Town Planner Report

- Stormwater Task Force Update
- Windchime Wastewater Treatment Upgrade and Annual Reporting
- CZM Coastal Resiliency Grant Update
- Electrical Vehicle Fleet

## 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.

## Correspondence

- Town of Falmouth Board of Appeals Notices
- Town of Sandwich Board of Appeals Notices
- Town of Barnstable Notices
- Waterways License Application – 21 Metacomet Road
- August 2020 Discharge Monitoring Report for South Cape Village – N = 5.8
- July 2020 Discharge Monitoring Report for South Cape Village – N = 3.8
- June 2020 Discharge Monitoring Report for South Cape Village – N = 5.9

## Additional Topics (not reasonably anticipated by Chair)

## Adjournment

MASHPEE TOWN CLERK

OCT 01 2020

RECEIVED BY: SM

**Mashpee Planning Board  
Minutes of Meeting  
October 7, 2020 at 7:00 p.m.  
Mashpee Town Hall-Waquoit Meeting Room  
16 Great Neck Road North-Mashpee  
Approved 10/21/2020**

**Virtual/Remote Meeting-Call In (508) 539-1400 x8585  
Broadcast Live on Local Channel 18 & Streaming at [www.mashpeema.gov/channel-18](http://www.mashpeema.gov/channel-18)**

**Present:** Chairman John (Jack) Phelan, Mary Waygan, Dennis Balzarini, Joseph Callahan, John Fulone, Robert (Rob) Hansen (Alt.)

**Also Present:** Evan Lehrer-Town Planner

**CALL TO ORDER**

Chairman Phelan called the meeting to order at 7:00 p.m. and welcomed meeting attendees in the Waquoit Meeting Room at Mashpee Town Hall. The Chair announced that viewers wishing to provide comment could call (508) 539-1400, extension 8585. The meeting was being live streamed on Channel 18 and could also be viewed at [www.mashpeema.gov/channell18](http://www.mashpeema.gov/channell18).

The Pledge of Allegiance was recited.

**APPROVAL OF MINUTES—September 2, 2020**

Mr. Lehrer corrected the spelling of Ms. Belfit. There were no additional changes.

**MOTION: Mr. Balzarini made a motion to accept the minutes, modified for the correction of the spelling of the last name. Mr. Callahan seconded the motion. All voted unanimously.**

**PUBLIC HEARING**

**7:10 p.m. Southworth Mashpee Properties LLC**

The Chair read for the record the Public Hearing Notice. A letter was received from Attorney Jack McElhinney, and read by the Chair, requesting to withdraw Southworth's pending application, without prejudice.

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

**MOTION: Ms. Waygan made a motion to accept the withdrawal, without prejudice, of this application. Mr. Balzarini seconded the motion. All voted unanimously.**

**7:20 p.m. October 19, 2020 Town Meeting Warrant, Proposed Zoning Amendments**

The Chair read the Public Hearing notice for the Planning Board's proposed Zoning Articles for Town Meeting. The Chair noted that the Board had extensively reviewed the Articles previously. There were no additional questions or concerns regarding the proposed

Articles. The Chair opened the matter for public comment and shared the call-in number, and awaited calls. It was noted that these articles would be considered on October 19<sup>th</sup> at the High School. Mr. Balzarini inquired about requirements for a stone driveway pavement, and the Chair responded that pavement was necessary up to 150 feet.

**Warrant Article 13:** To amend Section 174-24.B-Plan Review Committee Procedures

**Warrant Article 14:** To amend Section 174-27.2-Stormwater Management

**Warrant Article 15:** To amend Section 174-41.F-Driveway Design

Seeing no calls to provide public comment, the Chair asked for a motion to close the Public Hearing.

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

**MOTION: Ms. Waygan made a motion to recommend Warrant Article 13, 14 and 15 for approval by Town Meeting. Mr. Balzarini seconded the motion. All voted unanimously.**

#### **7:30 p.m. Rules and Regulations Governing the Subdivision of Land**

The Chair read for the record the Public Hearing Notice and opened the Public Hearing. Mr. Lehrer reported that the Board had reviewed all prior drafts and memos regarding the update to Mashpee Rules and Regulations Governing the Subdivision of Land. There were no additional questions or concerns. The Chair opened up the matter for public comment and again shared the call-in number. With no calls to provide public comment, the Chair asked for a motion to close the Public Hearing.

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

**MOTION: Ms. Waygan made a motion to approve. Mr. Balzarini seconded the motion. All voted unanimously.**

Mr. Lehrer will forward the final document to Board members, prior to submitting to Land Court.

#### **NEW BUSINESS**

**Charles Rowley Billing-**There were no questions regarding the September invoice received from Mr. Rowley.

**MOTION: Mr. Fulone made a motion to pay Charles Rowley \$295. Mr. Balzarini seconded the motion. All voted unanimously.**

Board members signed the authorization.

## **BOARD MEMBER COMMITTEE UPDATES**

**Cape Cod Commission**-Ms. Waygan reported that the Cape Cod Commission was holding regional meetings about climate, and a working group meeting would be held October 13<sup>th</sup> at 12:30 to include Bourne, Mashpee, Falmouth and Sandwich. Ms. Waygan will send the meeting link to Mr. Lehrer.

**Community Preservation Committee**-Ms. Waygan referenced a Warrant Article to make a land purchase with CPA funds, but those funds had yet not been recommended or voted on by the CPC. The Chair added that there had been no assessment of the island so it was likely going to be considered at the next Town Meeting.

**Design Review Committee**-Mr. Callahan reported that there was a sign approved for New Day Ministry Community Church, located in the Historic District.

**Plan Review**-No update

**Environmental Oversight Committee**-Mr. Fulone indicated that it was the first meeting since February and he would forward minutes to the Board. It was confirmed that two of their Articles had been pulled.

**Greenway Project**-No update

**Historic District Commission**-No meeting

**Military Civilian Advisory Council**-The Chair stated that there had been discussion regarding the gun range and a meeting would be held tomorrow night at 5:30, which he would attend. The Chair believed that public comment would not allowed at the meeting, but would report back at the next meeting. Mr. Hansen inquired about a meeting link and the Chair responded that he would look into it and forward it to Mr. Lehrer.

## **CHAIRMAN'S REPORT**

**Comprehensive Plan Update**-The Chair noted that the pandemic had slowed initial efforts to initiate the Comprehensive Plan update and it would be necessary to further consider the matter and identify ways to involve the public. The Chair reported that Yarmouth had developed a visioning project to update their plan. Ms. Waygan confirmed that Yarmouth was updating 19 chapters of their plan and offered to forward Yarmouth's links for updates. Mr. Lehrer emphasized the importance of engaging the public, beyond a survey, noting that Yarmouth provided a good example for consideration. Mr. Fulone noted that Brewster was doing the same. Ms. Waygan referenced Mark Forest, who had served as Brewster's interim Town Administer, and was now the Chair of Yarmouth's Board of Selectmen.

**Consulting Engineer Process**-The Chair confirmed that he, Mr. Fulone and Mr. Lehrer had met to discuss Mr. Rowley's recommendations regarding the hiring of a new Consulting Engineer. It was the Chair's hope that the RFP would be voted on at the next meeting. Mr. Lehrer confirmed that he was finalizing a draft RFP for further consideration by the Board, requesting that approval occur at the next meeting to allow for RFP issuance in November. With procurement timelines, a new consultant may not be hired until January or February. Mr. Balzarini stated his preference that the new Consulting Engineer continue to attend Planning Board meetings. The Chair responded that it may be necessary to hire a company, for the necessary breadth of experience, and Mr. Lehrer confirmed that language would be included in the RFP to encourage attendance at the meetings. Mr. Fulone inquired whether Mr. Rowley

would be available to assist the Board during a gap and Mr. Lehrer responded that the Board could inquire about his availability.

**Mashpee Commons Development Agreement-** Although the Planning Board would serve as the lead group for negotiations, the Chair reported that he had been approached by Board of Selectmen Planning Board Liaison, Andrew Gottlieb, regarding participation in negotiations for the Mashpee Commons Development Agreement. It was the Chair's opinion that it would be beneficial to include a representative from the Board of Selectmen to participate in the negotiations. There was consensus from Board members, including Ms. Waygan, who cautioned against any conflict of interest.

**MOTION: Mr. Balzarini made a motion that the Planning Board's Selectman Liaison attend the meetings.**

There was discussion regarding adding "or a representative" to the motion. Ms. Waygan agreed, in the event there were individuals with a conflict of interest, when it would not be appropriate to have anyone receiving money from Mashpee Commons participate in negotiations.

**Ms. Waygan offered the motion to add a member of the Board of Selectmen that has no conflict of interest, has not taken any money as campaign donation or campaign contribution from a principal of Mashpee Commons, does not work for a company that takes money from Mashpee Commons, or does not have business transactions to benefit from Mashpee Commons.**

It was the Chair's opinion that "no conflict of interest" would be sufficient, as anyone could have made a purchase in a store at Mashpee Commons, but Ms. Waygan responded that it was not the same as her prior statement. Mr. Fulone inquired whether there was a conflict of interest for the Liaison and the Chair responded that the Conflict of Interest Law was in place to address the matter, and if it became an issue, it could be discussed as a group. Ms. Waygan felt that it was important for the wording to be included in the motion though Mr. Fulone suggested it could be redundant. Mr. Balzarini agreed with the more restrictive wording. There was further discussion regarding potential vendors and financial benefit. There was consensus to make the motion.

**MOTION: Ms. Waygan made a motion to expand the negotiating team for the Development Agreement with Mashpee Commons, with one member of the Board of Selectmen, provided that Selectman has absolutely no conflict of interest, and has no financial dealings with Mashpee Commons. Mr. Balzarini seconded the motion. All voted unanimously.**

There was consensus that it would be helpful to have the Selectmen involved early in the process since they would be voting to approve the agreement. Mr. Balzarini inquired whether additional parties could be involved and the Chair confirmed that others could join at the invitation of the Planning Board. Ms. Waygan noted that the negotiation team had now been expanded to 6 voting members and recommend that Mr. Hansen be promoted to serve as full member on the negotiating team in order to have an odd number of voting members.

**MOTION: Ms. Waygan made a motion to promote the Associate Planning Board Member to be a full member of the negotiating team.**

It was the Chair's opinion that anyone added to the negotiation team would be involved in the discussion, but not serve as a voting member. Mr. Lehrer stated that the Development Agreement would be led, voted and adopted by the Planning Board, then submitted to the Board of Selectmen for their vote, before being considered at Town Meeting. The Planning Board vote for the Agreement could not be taken by a non-elected Planning Board member, but such persons could be involved in discussion.

### **TOWN PLANNER REPORT**

**Stormwater Task Force Update-** Mr. Lehrer confirmed that Stormwater obligations had been met, in conjunction with the Planning Board's proposed Zoning Article, and reported that, in FY20, the Board reviewed four site plans for Special Permit projects, one Definitive Subdivision, reviewed and approved, one Cluster Subdivision reviewed, but withdrawn and 34 inspections conducted by Mr. Rowley.

**Windchime Wastewater Treatment Upgrade and Annual Reporting-**Mr. Lehrer would be forwarding a digital copy of Windchime's Annual Report, in regard to the upgrade of its Wastewater Treatment, now showing numbers below 5 mg/L nitrogen in their discharge since their upgrade.

**CZM Coastal Resiliency Grant Update-**Mr. Lehrer confirmed that the Planning Department had applied for two very competitive grants, including an MVP Action Grant for Santuit Pond, which unfortunately was not funded this year. However, Mr. Lehrer worked collaboratively on a proposal with Save Popponesset Bay for a nourishment project on the spit, which received the largest award for the State, and would allow them to complete their construction plan.

**Electrical Vehicle Fleet-**Another grant Mr. Lehrer drafted last year has helped fund the Town's electric vehicle fleet. Infrastructure has been added and a meter would soon be installed to fuel the four new vehicles. The Chair and members of the Board congratulated Mr. Lehrer on his work acquiring the grant.

### **CORRESPONDENCE**

- Town of Falmouth Board of Appeals Notices
- Town of Sandwich Board of Appeals Notices
- Town of Barnstable Board of Appeals Notices
- Waterways License Application-21 Metacomet Road
- August 2020 Discharge Monitoring Report for South Cape Village-N=5.8
- July 2020 Discharge Monitoring Report for South Cape Village-N=3.8
- June 2020 Discharge Monitoring Report for South Cape Village-N=5.9

### **ADDITIONAL TOPICS NOT ANTICIPATED BY THE CHAIR**

Mr. Balzarini referenced the many new homes built by New Seabury at the Cottages and expressed frustration that an affordable home could not have been negotiated, when the new construction would be creating a burden on the natural resources of the Town. Additionally, Mr.

Balzarini suggested an additional per toilet charge prior to occupancy to add to future sewer expenses. There was discussion about the positives and negatives of the additional development. Ms. Waygan suggested future discussion about inclusionary zoning to address affordable housing and sewer needs. The Chair referenced a similar practice used at Tidewatch Village. Mr. Lehrer recommended that further discussion occur by voting to add the item to the agenda or adding to a future agenda. The Chair requested that the matter be added to the next agenda.

## **ADJOURNMENT**

**MOTION: Mr. Balzarini made a motion to adjourn. Ms. Waygan seconded the motion. All voted unanimously.**

**The meeting adjourned at 7:49 p.m.**

Respectfully submitted,

Jennifer M. Clifford  
Board Secretary

## **LIST OF DOCUMENTS**

*Documentation available online at Mashpee's Planning Board website page*