



Wellfleet Selectboard

Note: Start Time of 7pm

The Wellfleet Selectboard will hold a public meeting on **Tuesday, July 25, 2023, at 7:00 p.m.** The Chapter 2 of the Acts of 2023, this meeting will be conducted in person and as a courtesy via remote means, per 940 MCR 29.10 and the Town's Remote Participation Policy. While an option for remote attendance and/or participation is provided as a courtesy to the public, the meeting/hearing may not be suspended or terminated if technological problems interrupt the virtual broadcast unless otherwise required by law.

Joining the Meeting:

In-person at the Wellfleet ACC, 715 Old King's Highway, Wellfleet, MA, 02667

Join the meeting hosted in Zoom by using the following link:

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

By Phone: **phone to +1 929 205 6099** and enter **Meeting ID: 856 8960 4806** | **Passcode: 611877** Landline callers can participate by dialing *9 to raise their hand.

To Participate during public comment:

- Zoom: Raise hand to be called on to speak.
- Phone: dial *9 to raise your hand.

It is at the Chair's discretion to call on members of the public. All speakers must be recognized to speak. If attending a meeting in person, please find the closest available microphone and confine any personal conversations to outside the meeting room. Anyone may record the session but must notify the Chair and may not interfere with the meeting to record it.

Additionally, the meeting will be broadcast live, in real time, via live broadcast on Comcast cable (Wellfleet Government TV Channel 18), also available via livestream or Video on Demand (VOD) recordings at wellfleet-ma.gov

I. *Announcements, Open Session and Public Comments*

Note: Public comments are limited to no more than two minutes per speaker.

The Board will not deliberate or cote on any matter raised solely during Announcements & Public Comments.

II. *Consent Agenda*

- A. Application received July 17, 2023, from Bob Dupuis to be appointed as a member of the Commission on Disabilities.

III. *Public Hearings*

- A. **CONTINUED** from 06/20/2023 - Verizon New England to place approximately eight-hundred feet (800') of new conduit adjacent to 1065 Chequessett Neck Rd. Wellfleet MA

IV. *Business*

A. Approval of Agreements with Friends of Herring River to Support Herring River Restoration Project Implementation~ Carole Ridley

B. Herring River Restoration Project Update – Wes Stinson (OPM)

C. Special Town Meeting Warrant

Referred Zoning Articles (for Comment)

~ Inclusionary Zoning

~ Cottage Colonies

~ Landscape and Tree Preservation

Articles that have not been voted to insert or recommend will be voted on at this time.

D. Illegal Parking and safety Concerns at Long Pond ~ Discussion on how to improve the safety of the area around Long Pond ~ Brent Harold.

E. Special Election Warrant – Election of Town Officer (Selectboard - partial term)

V. *Selectboard Reports*

VI. *Topics for Future Discussion*

VII. *Vacancy Reports*

VIII. *Minutes*

A. July 11, 2023

B. July 13, 2023

C. July 18, 2023

IX. *Adjournment of Open Session*

X. *Executive Session; M.G.L. Ch. 30A; Section 21.*

Purpose 7: To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.

- Executive Session Meeting Minutes of June 27, 2023.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

I

ANNOUNCEMENTS, OPEN SESSION, AND PUBLIC COMMENTS

REQUESTED BY:	Wellfleet Selectboard
DESIRED ACTION:	Announcements to the board and public
PROPOSED MOTION: SUMMARY:	NOTE: <i>Public comments are limited to no more than two minutes per speaker.</i> The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST

Meeting Date: July 25, 2023

II

CONSENT AGENDA

REQUESTED BY:	Various Parties
DESIRED ACTION:	To approve the following without objection
SUMMARY:	I move to approve the following items with no objection: <ul style="list-style-type: none">• Appointment of Bob Dupuis to the Wellfleet Commission on Disabilities; Application received July 17, 2023; please see Selectboard packet for application

July 17, 2023

Application for membership to the Commission on Disabilities, Wellfleet, Ma.

I am applying for a member position on the Wellfleet Commission on Disabilities. In reading the committee's report in the 2022 Wellfleet Town Report it was mentioned that the committee was seeking additional members. I believe that I have the interest and background that could assist this committee in its deliberations.

Background

I am an architect and educator working out of my home office in Montreal. In 2009, my wife and I purchased our Wellfleet home located at 109 Avery Avenue. Since that time, we spend 4-5 months in Wellfleet during the summer and fall.

As for my professional background I have been practicing architecture for over 40 years and have also taught architectural technology at the college level. One of the courses that I taught was on Building Codes and Regulations with an emphasis on Accessibility in the Built Environment.

For more than 15 years I have been involved with the Canadian Commission on Building and Fire Codes as a member of the Standing Committee on Housing and Small Buildings. As such, we are responsible for the National Building Code of Canada section regarding Small Buildings (3 storeys or less and 6,000 square feet or less), including housing.

As a member of this Standing Committee I have also been involved in working on various task groups investigating updates to existing code regulations. Some of these task groups include Step Geometry, Grab Bars in Residential Bathrooms, Stairs, Ramps, Handrails and Guards, and Accessibility.

In December of 2022, I joined the Technical Committee on Emergency Measures for Accessibility Standards Canada as the Chairperson. Accessibility Standards Canada is a departmental corporation created in 2019 under the *Accessible Canada Act*. ASC is committed to creating accessibility standards for all Federal Government regulated entities and federal organizations in Canada. Currently, our proposed regulations are out for Public Review.

Although I am not a permanent resident I am still able to participate in meetings that are conducted online. Should this situation change, and meetings are held face-to-face then I would only be able to attend the meetings held when I would be on the Cape.

Thank you for reviewing my application and I look forward to the Selectboard's decision.

Regards,



Bob Dupuis, Architect
109 Avery Ave.
Wellfleet, Ma. 02667
c. 514-895-1680
robertcdupuis@gmail.com



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023



PUBLIC HEARINGS

~ A ~

REQUESTED BY:	Pike Telecom ~ Marc Monestime, Sean Couepel, and Daryl Crossman
DESIRED ACTION:	To approve the placement of conduit at 1065 Chequesset Neck Road, Wellfleet
PROPOSED MOTION: SUMMARY:	I move to approve the placement of approximately 700 feet of new conduit adjacent to 1065 Chequesset Neck Road, Wellfleet MA.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



Outside Plant Engineering
44 Old Townhouse Road
South Yarmouth, MA 02664

February 7, 2023

Town of Wellfleet
Town Hall Office
300 Main Street
Wellfleet, MA 02667

Honorable Select Board,

Attached is a petition# MA2022-48, for Verizon New England Inc., to place approximately eight-hundred feet (800') of new cable in conduit provided by MassDOT, at #1065 Chequessett Neck Rd, in Wellfleet, MA.

Would you kindly consider this petition and return the executed copies.

Sincerely,

A handwritten signature in cursive script that reads "Daryl Crossman".

Verizon New England Inc.
Attn: Daryl Crossman
44 Old Townhouse RD
South Yarmouth, MA 02664

Phone: 508-398-5754
daryl.crossman@verizon.com

PETITION FOR CONDUIT/CABLE LOCATION

February 7, 2023

To the Town Select Board
of Wellfleet, Massachusetts

VERIZON NEW ENGLAND INC. requests permission to lay and maintain underground wires and cables to be placed therein, under the surface of the following public way or ways:

Chequessett Neck Rd:

Place approximately eight-hundred feet (800') of cable beginning at an existing pole 15/41 at 1065 Chequessett Neck Rd, which is situated on the southerly side of Babcock Street, thence extending in a northerly direction across Chequessett Neck Rd, to existing pole 15/44 at the corner of Chequessett neck Rd and Duck Harbor Rd.


This petition is necessary in order to place new cable and provide service to this area.

Also for permission to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

Plan marked-VZ N.E. Inc. No. MA2022-48 dated December 1st, 2022 showing location of conduit to be constructed is filed herewith.

VERIZON NEW ENGLAND INC.

By _____



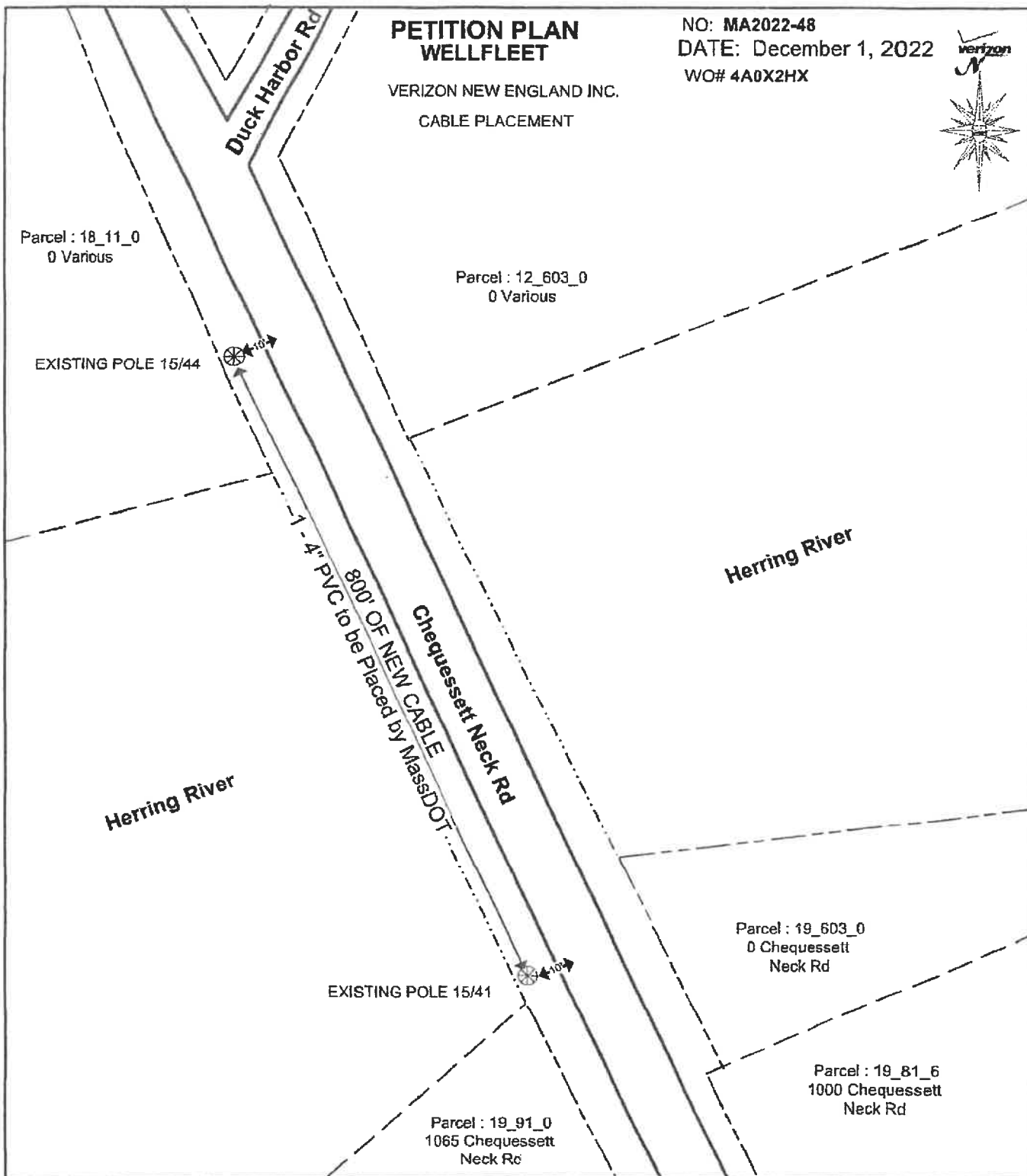
Manager Rights of Way

Dated this 7 day of FEB, 2023.

PETITION PLAN WELLFLEET

VERIZON NEW ENGLAND INC.
CABLE PLACEMENT

NO: MA2022-48
DATE: December 1, 2022
WO# 4A0X2HX



LEGEND

⊗ EXISTING JOINTLY OWNED POLE TO REMAIN

- ⋯⋯⋯ EDGE OF BRIDGE
- EDGE OF PAVEMENT
- - - - - EDGE OF PROPERTY
- CENTER OF ROAD

ABUTTERS LIST

PARCEL ID: 19_91_0
1065 CHEQUESSETT NECK RD

EURICH DONALD A & LAZARUS JILL
7 WALNUT ST
NEWTONVILLE, MA 02460

PARCEL ID: 19_81_6
1000 CHEQUESSETT NECK RD

WELLFLEET CONSERVATION TRUST
BOX 84
WELLFLEET, MA 02667

PARCEL ID: 19_603_0
0 CHEQUESSETT NECK RD

CAPE COD NATIONAL SEASHORE
99 MARCONI SITE RD
WELLFLEET, MA 02667

PARCEL ID: 12_603_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

PARCEL ID: 18_11_0
0 VARIOUS

CCNS
0 VARIOUS
WELLFLEET, MA 00000

ORDER FOR CONDUIT LOCATION

By the Town Council of the Town of Wellfleet, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
It is HEREBY ORDERED:

That permission be and hereby is granted VERIZON NEW ENGLAND INC. to lay and maintain underground wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated the 7th day of February 2023.

Chequessett Neck Rd:

Place approximately eight-hundred feet (800') of cable beginning at an existing pole 15/41 at 1065 Chequessett Neck Rd, which is situated on the southerly side of Babcock Street, thence extending in a northerly direction across Chequessett Neck Rd, to existing pole 15/44 at the corner of Chequessett neck Rd and Duck Harbor Rd.

This petition is necessary in order to place new cable and provide service to this area.

Substantially as shown on plan marked- VZ N.E. Inc. No. MA2022-48 dated December 1st, 2022 - filed with said petition. Also, that permission be and hereby is granted said VERIZON NEW ENGLAND INC. to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

The foregoing permission is subject to the following conditions:

1. The conduits and manholes shall be of such material and construction and all work done in such manner as to be satisfactory to such municipal officers as it may appoint to the supervision of the work, and a plan showing the location of conduits constructed shall be filed with the Town when the work is completed.
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained for the limited purpose of attaching one-way low voltage fire and police signaling wires owned by the municipality or governmental entity for public safety purposes only.
3. Said Company shall indemnify and save the Town harmless against all damages, costs and expense whatsoever to which the Town may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the Town.
4. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of Ten Thousand Dollars (\$10,000) (reference being had to the bond already on file with said Town) conditioned for the faithful performance of it duties under this permit.
5. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the Town Council of the Town of WELLFLEET, Massachusetts, held on the _____ day of _____ 2023.

Selectboard Clerk

ORDER FOR CONDUIT LOCATION

We hereby certify that on _____ 2023, at _____ o'clock ____ M. at _____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. for permission to lay and maintain underground conduits, manholes and connection, with the wires and cables to be placed therein, described in the order herewith recorded, and that we mail at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to construct the lines of said Company under said order. And that thereupon said order was duly adopted.

Town Council of the Town of WELLFLEET, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of location order, and certificate of hearing with notice adopted by the Town Council of the Town of WELLFLEET, Massachusetts, on the _____ day of _____ 2023, and recorded with the records of location orders of said Town, Book _____ Page _____. This certified copy is made under the provisions of Chapter 166 General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk

PLEASE RETURN TO: Verizon New England Inc.,
Attn: Daryl Crossman – ENG – ROW
44 Old Townhouse Rd, South Yarmouth, MA 02664

ORDER FOR CONDUIT LOCATION

By the Town Council of the Town of Wellfleet, Massachusetts.

Notice having been given and a public hearing held, as provided by law,
It is HEREBY ORDERED:

That permission be and hereby is granted VERIZON NEW ENGLAND INC. to lay and maintain underground wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated the 7th day of February 2023.

Chequessett Neck Rd:

Place approximately eight-hundred feet (800') of cable beginning at an existing pole 15/41 at 1065 Chequessett Neck Rd, which is situated on the southerly side of Babcock Street, thence extending in a northerly direction across Chequessett Neck Rd, to existing pole 15/44 at the corner of Chequessett neck Rd and Duck Harbor Rd.

This petition is necessary in order to place new cable and provide service to this area.

Substantially as shown on plan marked- VZ N.E. Inc. No. MA2022-48 dated December 1st, 2022 - filed with said petition. Also, that permission be and hereby is granted said VERIZON NEW ENGLAND INC. to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

The foregoing permission is subject to the following conditions:

1. The conduits and manholes shall be of such material and construction and all work done in such manner as to be satisfactory to such municipal officers as it may appoint to the supervision of the work, and a plan showing the location of conduits constructed shall be filed with the Town when the work is completed.
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained for the limited purpose of attaching one-way low voltage fire and police signaling wires owned by the municipality or governmental entity for public safety purposes only.
3. Said Company shall indemnify and save the Town harmless against all damages, costs and expense whatsoever to which the Town may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the Town.
4. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of Ten Thousand Dollars (\$10,000) (reference being had to the bond already on file with said Town) conditioned for the faithful performance of it duties under this permit.
5. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the Town Council of the Town of WELLFLEET, Massachusetts, held on the _____ day of _____ 2023.

Selectboard Clerk

ORDER FOR CONDUIT LOCATION

We hereby certify that on _____ 2023, at _____ o'clock ____ M. at _____
_____ a public hearing was held on the petition of the VERIZON NEW ENGLAND INC. for
permission to lay and maintain underground conduits, manholes and connection, with the wires and cables to be placed
therein, described in the order herewith recorded, and that we mail at least seven days before said hearing a written notice
of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment
for taxation) along the ways or parts of ways upon which the Company is permitted to construct the lines of said
Company under said order. And that thereupon said order was duly adopted.

Town Council of the Town of WELLFLEET, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of location order, and certificate of hearing with notice adopted
by the Town Council of the Town of WELLFLEET, Massachusetts, on the _____ day of _____
2023, and recorded with the records of location orders of said Town, Book _____ Page _____. This certified copy
is made under the provisions of Chapter 166 General Laws and any additions thereto or amendments thereof.

Attest:

Town Clerk



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

IV

BUSINESS

~ A ~

REQUESTED BY:	Carole Ridley ~ Herring River Restoration Project Manager
DESIRED ACTION:	To approve the agreements with Friends of Herring River to support Herring River Restoration Project Implementation
PROPOSED MOTION: SUMMARY:	I move to authorize the town of Wellfleet to approve and execute an agreement with Friends of Herring River to allow use of up to \$375,000 in technical assistance funds granted to the town by the US Department of Agriculture Natural Resource Conservation Service (NRCS) for the purpose of completing construction plans and bid documents for the Chequessett Neck Bridge, low lying road elevation and culvert replacements, and work to protect structure on three private properties.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Memorandum

To: Wellfleet Selectboard
From: Christa Drew, Executive Director, Friends of Herring River
Carole Ridley, Project Coordinator
Date: July 19, 2023
Re: Herring River Restoration Project: Sub-award of NRCS Technical Assistance Funds and Sub-award of NOAA Funds

For more than a decade, non-profit Friends of Herring River (Friends) has administered grant funding and contracts for engineering design, technical studies, permitting and other technical services needed to advance the Herring River Restoration Project. As the project moves into the construction stage, Friends is preparing to complete final design contracts that have been extended, and to provide other critical permit compliance and implementation support needed for the project to succeed. This work involves managing contracts with qualified consultants and contractors for project coordination, water and tide monitoring and analysis, archeological surveys, communications, and a variety of other permit compliance activities. Recent project implementation grants to the Town include funding for these activities.

Accordingly, the Selectboard is asked to approve two sub-award agreements with Friends of Herring River for critical non-construction tasks in support of the Herring River Restoration Project. The proposed agreements have been reviewed by Town Counsel.

Sub-award #1: NRCS Technical Assistance Funds for Final Design

As discussed with the Selectboard on May 16, up to \$375,000 in Technical Assistance funds granted to the Town by the US Department of Agriculture Natural Resource Conservation Service (USDA NRCS) is needed to complete final design for the Chequessett Neck Bridge and final design and bid documents for the low-lying road elevations/culvert replacements project elements. These funds will be used to pay invoices which outline work satisfactorily completed by Fuss & O'Neill, Inc and WSP USA. The USDA NRCS approved the use of a portion of the \$3,200,000 in Technical Assistance funds granted to the Town of Wellfleet for final design services to finalize construction plans and bid documents.

Friends will indemnify the Town for Friends' conduct in the course of administering the sub-award. As described above, to facilitate the project's completion of important milestones, Friends has entered into contracts with Fuss & O'Neill and WSP. Those consultants have agreed to add the Town as an insured party in those contracts and to add indemnification language that will protect the Town in case of the consultants' errors. The scope of indemnification language has been reviewed by Town Counsel and the Town Administrator, and final versions of this language will be adequately protective of the Town's interests.

Suggested Motion

Authorize the Town of Wellfleet Selectboard to approve and execute an agreement with Friends of Herring River to allow use of up to \$375,000 in Technical Assistance funds granted to the Town by US Department of Agriculture Natural Resource Conservation Service (NRCS) for the purpose of completing construction plans and bid documents for the Chequessett Neck Bridge, low-lying road elevation and culvert replacements, and work to protect structures on three private properties.

Sub-award #2: NOAA Transformation Habitat Restoration Funds for Permit Compliance and Non-construction Implementation Support

NOAA awarded a grant of up to \$14,690,000 (NO. NA23NMF4630089) to the Town of Wellfleet for activities within the Herring River Restoration Project. This grant includes funding for a sub-award to the FHR in the amount of \$350,000 over the three-year grant term to undertake permit compliance and associated data collection, modeling and analysis necessary for permit compliance, as well as other non-construction implementation support including external communications in support of Project implementation, Project documentation, data management and data sharing, and archiving of plans, studies, permits and other records in support Project implementation and data sharing. Some of the work is to be performed by Friends, and some is to be performed by consultants.

Suggested Motion

Authorize the Town of Wellfleet Selectboard to approve and execute an agreement with Friends of Herring River for access to a sub-award of up to \$350,000 from the National Oceanic and Atmospheric Administration (NOAA) grant to ensure permit compliance and associated data collection, modeling and analysis necessary for permit compliance, as well as other non-construction implementation support including external communications and documentation.

**GRANT AGREEMENT
BETWEEN TOWN OF WELFLEET AND FRIENDS OF HERRING RIVER
(NRCS FUNDING)**

THIS GRANT AGREEMENT (this “Agreement”) is entered into on this _____ day of _____, 2023, by and between the **Town of Wellfleet** (the “Town”), a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, and acting by and through its Selectboard, having a usual place of business at 300 Main Street, Wellfleet, MA 02667 and **Friends of Herring River, Wellfleet/Truro, Inc.** (the “Grantee” or “FHR”), a Massachusetts nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, having a usual place of business at 1580 Route 6, South Wellfleet, MA 02663, collectively the “Parties.”

WHEREAS, the Town, in collaboration with the Cape Cod National Seashore, is undertaking restoration of approximately 890 acres of salt marsh in the Herring River Watershed which shall include removal of multiple tidal restrictions and replacement with water control structures, including construction of a bridge with sluice gates, elevation of low-lying road segments and replacement of associated culverts, various mitigation measures on low-lying private properties to prevent flood impacts to structures, and vegetation and marsh management on the floodplain (the “Project”), and FHR has worked to facilitate the Town and the Cape Cod National Seashore’s work on the Project;

WHEREAS, a financial and technical assistance grant of up to \$27,200,000 from the Natural Resources Conservation Service, United States Department of Agriculture (No. NRCS-ADS-093) have been awarded to the Town as recipient agency to pay eligible Project costs, and a copy of such grant is attached hereto as Exhibit A and incorporated herein (the “NRCS Grant”);

WHEREAS, the NRCS Grant includes technical assistance funding in the amount of \$3,200,000 for non-construction eligible Project costs, which assistance includes \$2,600,000 for the Chequessett Neck Bridge and \$200,000 for low-lying road elevation, culvert replacements and one water control structure (the “Eligible Project Elements”), and the NRCS Grant may be used for final design and engineering services for the Eligible Project Elements;

WHEREAS, in order to assist the Town and to help advance the Project, FHR has entered into contracts with consultants Fuss & O’Neill, Inc. to develop design plans for the Chequessett Neck Bridge and with WSP USA Solutions, Inc. (formerly Louis Berger U.S., Inc.) (together, Fuss & O’Neill and WSP USA Solutions are referred to as “the Consultants”) to develop design plans for low-lying road elevation, culvert replacements and one water control structure;

WHEREAS, in the past, engineering design services under contracts between FHR and the Consultants (the “Prior Contracts”) have been funded by grants from Massachusetts Division of Ecological Restoration (MA DER) and US Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), which funding has supported development of plans needed to secure permits and funding for the Herring River Restoration Project, Phase 1;

WHEREAS, additional funding is needed to complete final design plans and bid documents for construction of the Eligible Project Elements; and

WHEREAS, the Town desires to sub-grant to Grantee a portion of the available technical assistance funds from the NRCS Grant to fund the Consultants' completion of final design plans and bid documents for the Eligible Project Elements in accordance with terms of this Agreement (as described herein and in Section 3(a) and Exhibits B and C below, the "Work"), and Grantee desires to facilitate the Project and receive the Grant Amount (defined below) to fund the Consultants' completion of the Work in accordance with the terms of this Agreement.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

Agreement

1. **Recitals.** The recitals above are true and accurate and are incorporated herein by reference.
2. **Funding.** The Town shall sub-grant a portion of the NRCS Grant to Grantee in an amount not to exceed three hundred and seventy-five thousand dollars (\$375,000.00) (the "Funds" or the "Grant Amount") on the condition that Grantee shall use the Funds only for eligible expenses associated with the purposes of undertaking the work in accordance with the terms of this Agreement.
3. **Conditions.** The award and release of the Grant Funds to Grantee is conditioned upon the following:
 - a) The Work shall be comprised of, and completed by the Consultants in accordance with, the detailed scopes of work incorporated in this agreement as Exhibit B (for Fuss & O'Neill, Inc.) and Exhibit C (for WSP USA).
 - b) Any remaining Funds shall be returned to the Town if the Work has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause in writing.
 - c) Grantee agrees that, prior to the receipt of any Funds, Grantee shall provide the Town an opportunity to review and approve the plans, products and contract documents relevant to the Work (the "Contract Documents"), such approval not to be unreasonably withheld or delayed.
 - d) **Town Contact.** Grantee shall seek the approval of, and work closely with, the Town Administrator or their designee, in the implementation of the Work.
 - e) **Grantee Contact.** Grantee's authorized representative is Christa Drew, Executive Director, who can be reached at 508-214-0656 and christa@herringriver.org.
4. **Budget/Other Sources of Funding.** Grantee must submit the scopes of work and budgets for the Work that account for: (a) the expenditure of all Funds awarded under this

Agreement, and (b) all other sources of funding, if necessary, to complete the Work as described herein. If the Town determines that funds have been spent in a manner inconsistent with the budgets and scopes of work, reimbursement may not be authorized or, if the Grant Amount has already been granted, Grantee shall repay such Grant Amount to the Town. The Parties acknowledge that if sources of funding other than the Grant Amount have contributed to payment for the Work, this Agreement shall not apply to those other sources of funding.

5. The Work. The Work shall be performed in a good and workmanlike manner, by contractors who are licensed in their respective disciplines and shall conform to all applicable laws, bylaws, rules and regulations. The Grantee shall ensure that the Consultants be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals prior to commencing the Work, and comply with the terms of the Contract Documents. No local permit or license or fee is waived by the award of the Funds. The Town shall have the right to review plans and specifications showing the Work to be done for compliance with the Exhibit B and Exhibit C.

6. Payment. The Town shall reimburse Grantee an amount not to exceed 100% of the Grant Amount (or three hundred and seventy-five thousand dollars (\$375,000.00)) for the cost of performing the Work, which disbursements shall be apportioned based on the Work done and made no more than once a month and paid only upon the presentment of invoices from Grantee listing in detail the Work performed by the Consultants and the cost thereof. The Town shall have the right to ask for supplementary information. Prior to any payment, the Town shall have the right to inspect the Work and/or ensure that Grantee is in compliance with this Agreement. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with legal and regulatory requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described herein. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess.

7. Progress Reports. Grantee shall provide the Town with progress reports (in a form to be agreed upon by the Parties) at three (3)-month intervals beginning sixty (60) days from the date of the signing of this Agreement for as long as the Funds remain unexpended, and with final notification within thirty (30) days after the Work has been completed. The Town reserves the right to require supplementary information from Grantee. Grantee shall submit a final report to the Town, including digital photographs and other documents, if applicable, within thirty (30) days from the Work completion date.

8. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Work is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. The Town shall have full and free access to such records and may examine and copy such records during normal business hours, with at least two days' notice to Grantee.

9. Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement, as reasonably determined by the Town, and such failure is attributable to the Grantee and not the Consultants, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 10 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 9, 10, 11, 12 and 18 shall survive said expiration or earlier termination. If either party takes legal action under this Agreement, each shall be responsible for its own costs.

10. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 9, any funds paid to Grantee under this Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the amount of the Grant Amount provided under this Agreement related to such negligent or intentional acts, and the Town may take such steps as are necessary, including legal action, to recover such funds.

11. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 6 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.

12. Indemnification. Grantee shall indemnify, defend, and hold the Town and its departments, officers, employees, representatives and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including reasonable attorneys' fees, arising as a result of Grantee's actions or omissions concerning the administration of this Grant Agreement. For clarity, Grantee's indemnification shall not apply to actions or omissions by the Consultants. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an instrumentality, employee, or agent of the Town for any purpose.

14. Successors and Assigns. This Agreement is binding upon the parties hereto and their successors and permitted assigns. Grantee shall not assign, subcontract or otherwise transfer this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the Town, which may be withheld in its sole and absolute discretion.

15. Compliance with Laws. Grantee shall comply, with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement. Grantee's contractors (including the Consultants) shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of Grantee to comply with the previous sentence.

16. Notice. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: NRCS Grant

Exhibit B: Fuss & O'Neill scope and budget

Exhibit C: WSP scope and budget

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

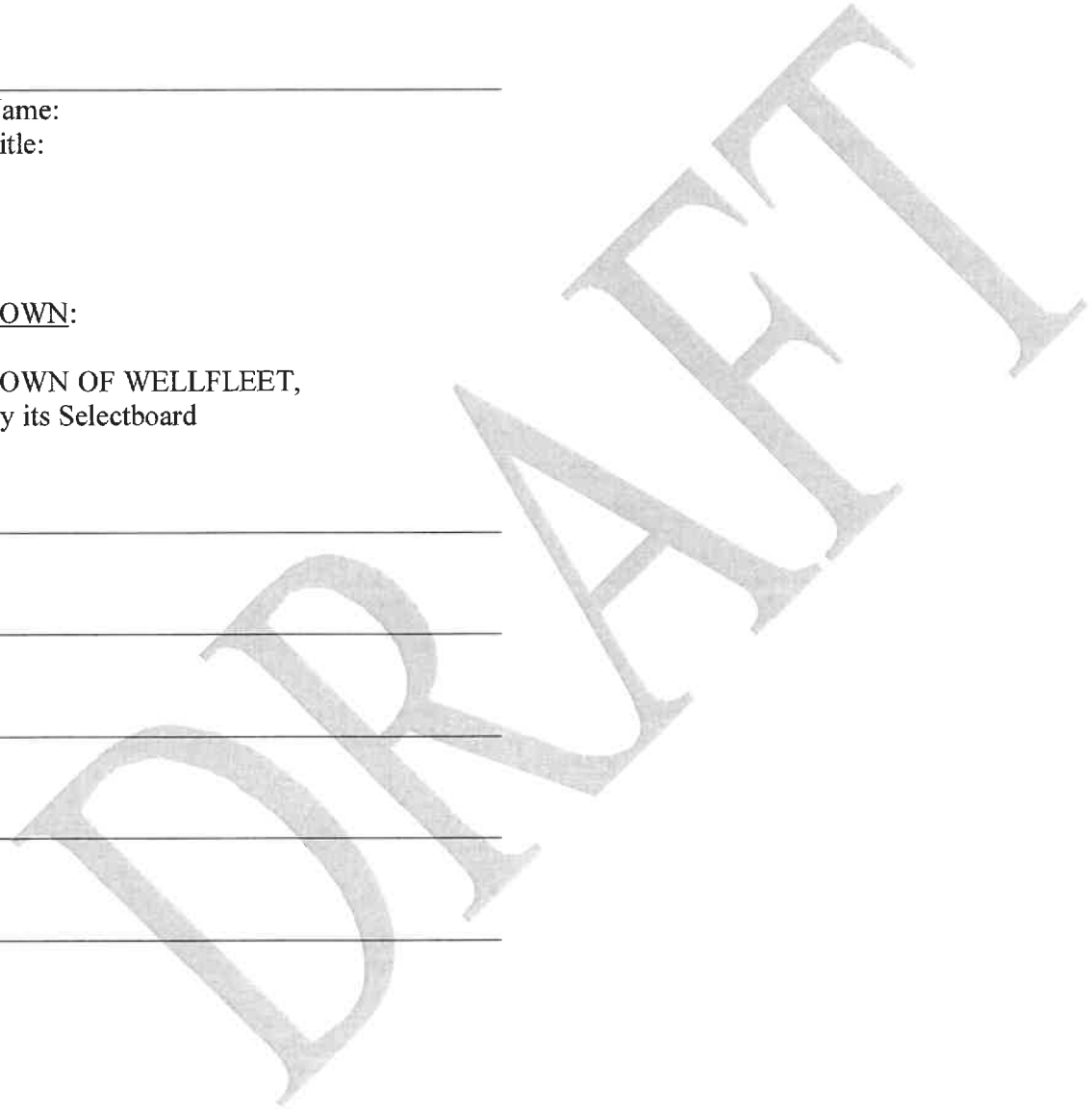
GRANTEE:

FRIENDS OF HERRING RIVER, WELLFLEET/TRURO, INC.

Name:
Title:

TOWN:

TOWN OF WELLFLEET,
By its Selectboard



**GRANT AGREEMENT
BETWEEN TOWN OF WELLFLEET AND FRIENDS OF HERRING RIVER
(NOAA FUNDING)**

THIS GRANT AGREEMENT (this “Agreement”) is entered into on this _____ day of _____, 2023, by and between the **Town of Wellfleet** (the “Town”), a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, and acting by and through its Selectboard, having a usual place of business at 300 Main Street, Wellfleet, MA 02667 and **Friends of Herring River, Wellfleet/Truro, Inc.** (the “Grantee” or “FHR”), a Massachusetts nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, having a usual place of business at 1580 Route 6, South Wellfleet, MA 02663, collectively the “Parties.”

WHEREAS, the Town, in collaboration with the Cape Cod National Seashore, is undertaking restoration of approximately 890 acres of salt marsh in the Herring River Watershed which shall include removal of multiple tidal restrictions and replacement with water control structures, including construction of a bridge with sluice gates, elevation of low-lying road segments and replacement of associated culverts, various mitigation measures on low-lying private properties to prevent flood impacts to structures, and vegetation and marsh management on the floodplain (the “Project”), and FHR has worked to facilitate the Town and the Cape Cod National Seashore’s work on the Project;

WHEREAS, a grant of up to \$14,690,000 from the US Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), (No. NA23NMF4630089) have been awarded to the Town as recipient agency to pay eligible Project costs, and a copy of such grant is attached hereto as Exhibit A and incorporated herein (the “NOAA Grant”);

WHEREAS, the NOAA Grant includes funding for a sub-award to the FHR in the amount of \$350,000 over the three-year grant term to undertake permit compliance and associated data collection, modeling and analysis necessary for permit compliance, as well as other non-construction implementation support including external communications in support of Project implementation, Project documentation, data management and data sharing, and archiving of plans, studies, permits and other records in support Project implementation and data sharing (the “Work”). Some of the Work is to be performed by FHR, and some is to be performed by consultants, as described in Exhibit A;

WHEREAS, the Town does not otherwise have the staff or consultant capacity to undertake the Work to be performed under the scope of this agreement, and FHR is uniquely positioned to oversee the Work due to its prior work to develop and administer permit applications, stature in the community, oversight of engineering design plans, established relationships with Project partners and unmatched familiarity with all aspects of the Project. WHEREAS, in order to undertake the permit compliance and implementation support work authorized under this agreement, to assist the Town and help advance the Project, FHR has entered into contracts with several consultants to accomplish the scope of work described in Exhibit B (collectively, the “Consultants”). These contracts and associated work scopes may be modified and other contracts and associated work scopes may be added as needed to perform the Work authorized by this agreement;

WHEREAS, in the past, certain services under some contracts between FHR and the Consultants (the "Prior Contracts") have been funded by grants from Massachusetts Division of Ecological Restoration (MA DER) and NOAA, which funding has supported development of plans needed to secure permits and funding for the Project; and

WHEREAS, the Town desires to sub-grant to Grantee the funds, and Grantee desires to receive the Grant Amount (defined below) to fund the completion of the Work in accordance with the terms of this Agreement.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

Agreement

1. **Recitals.** The recitals above are true and accurate and are incorporated herein by reference.
2. **Funding.** The Town shall sub-grant a portion of the NOAA Grant to Grantee in an amount not to exceed three hundred and fifty thousand dollars (\$350,000.00) (the "Funds" or the "Grant Amount") on the condition that Grantee shall use the Funds only for eligible expenses associated with the purposes of undertaking the work in accordance with the terms of this Agreement. Details regarding the mechanics of payment are described below in Section 6.
3. **Conditions.** The award and release of the Grant Funds to Grantee is conditioned upon the following:
 - a) The Work shall be comprised of, and completed by the Consultants in accordance with, the scopes of Work per their agreements with FHR, which are available for Town's reference at any time.
 - b) Any remaining Funds shall be returned to the Town if the Work has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause in writing.
 - c) Grantee agrees that, prior to the receipt of any Funds, Grantee shall provide the Town an opportunity to review and approve the plans, products and contract documents relevant to the Work (the "Contract Documents"), such approval not to be unreasonably withheld or delayed.
 - d) **Town Contact.** Grantee shall seek the approval of, and work closely with, the Town Administrator or their designee, in the implementation of the Work.
 - e) **Grantee Contact.** Grantee's authorized representative is Christa Drew, Executive Director, who can be reached at 508-214-0656 and christa@herringriver.org.
4. **Budget/Other Sources of Funding.** Grantee must submit the scopes of work and budgets for the Work that account for: (a) the expenditure of all Funds awarded under this Agreement, and (b) all other sources of funding, if necessary, to complete the Work as described herein. If the Town determines that funds have been spent in a manner inconsistent

with the budgets and scopes of work, reimbursement may not be authorized or, if the Grant Amount has already been granted, Grantee shall repay such Grant Amount to the Town. The Parties acknowledge that if sources of funding other than the Grant Amount have contributed to payment for the Work, this Agreement shall not apply to those other sources of funding.

5. The Work. The Work shall be performed by contractors who are experienced in their respective disciplines, and have any applicable license or certification as may be required by law, and shall conform to all applicable laws, bylaws, rules and regulations. The Grantee shall ensure that the Consultants be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals, if applicable, prior to commencing the Work. No local permit or license or fee, if applicable, is waived by the award of the Funds. The Town shall have the right to review all approved consultant work scopes and deliverables to confirm that Work is done in compliance with approved scopes.

6. Payment. The Town shall, within 30 days of receipt, reimburse Grantee an amount not to exceed 100% of the Grant Amount (or three hundred and fifty thousand dollars (\$350,000.00)) for the cost of performing the Work, which disbursements shall be apportioned based on the Work done and paid only upon the presentment of invoices from Grantee listing in detail the Work performed by the Consultants and the cost thereof. FHR shall submit invoices from the Consultants to the Town, and the Town shall in turn draw down funds from the NOAA Grant funds and issue a check or wire transfer to the FHR to reimburse for the amount of that Consultant invoice to FHR. FHR shall, in turn, promptly make payment to the appropriate Consultant. Prior to any payment, the Town shall have the right to inspect the Work and/or ensure that Grantee is in compliance with this Agreement. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with legal and regulatory requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described herein. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess.

7. Progress Reports and Information Sharing. Grantee shall provide the Town with progress reports (in a form to be agreed upon by the Parties) if the Town so requests. The Town reserves the right to require supplementary information from Grantee. Grantee shall submit a final report to the Town, including digital photographs and other documents, if applicable, within thirty (30) days from the Work completion date. The Town shall provide relevant information and support in a timely fashion to Grantee and the Consultants to facilitate completion of the Work.

8. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Work is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. The Town shall have full and free access to such records and may examine and copy such records during normal business hours, with at least two days' notice to Grantee.

9. Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement, as reasonably determined by the Town, and such failure is attributable to the Grantee and not the Consultants, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole

discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 10 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 9, 10, 11, 12 and 18 shall survive said expiration or earlier termination. If either party takes legal action under this Agreement, each shall be responsible for its own costs.

10. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 9, any funds paid to Grantee under this Agreement for reimbursement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the amount of the Grant Amount provided under this Agreement related to such negligent or intentional acts, and the Town may take such steps as are necessary, including legal action, to recover such funds.

11. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 6 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.

12. Indemnification. Grantee shall indemnify, defend, and hold the Town and its departments, officers, employees, representatives and agents harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including reasonable attorneys' fees, arising as a result of Grantee's actions or omissions concerning the administration of this Grant Agreement. For clarity, Grantee's indemnification shall not apply to actions or omissions by the Consultants. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

13. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an instrumentality, employee, or agent of the Town for any purpose.

14. Successors and Assigns. This Agreement is binding upon the parties hereto and their successors and permitted assigns. Grantee shall not assign, subcontract or otherwise transfer this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the Town, which may be withheld in its sole and absolute discretion.

15. Compliance with Laws. Grantee shall comply, with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement. Grantee's contractors (including the Consultants) shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of Grantee to comply with the previous sentence.

16. Notice. Any and all notices, or other communications required or permitted under this

Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: NOAA Grant

Exhibit B: Summary of Consultant Scopes of Work

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

GRANTEE:

FRIENDS OF HERRING RIVER, WELLFLEET/TRURO, INC.

Name:
Title:

TOWN:

TOWN OF WELLFLEET,
By its Selectboard

DRAFT



SELECTBOARD

AGENDA ACTION REQUEST

Meeting Date: July 25, 2023

IV

BUSINESS

~ B ~

REQUESTED BY:	Wes Stinson, OPM
DESIRED ACTION:	To update the board and public on the Herring River Restoration Project.
PROPOSED MOTION:	If a motion is determined to be needed one will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition (s):
VOTED:	

WELLFLEET CHEQUESSETT NECK RD. BRIDGE SELECTBOARD CONSTRUCTION UPDATE JULY 25, 2023

Construction Overview

- MIG construction broke ground March 1, 2023 establishing their staging area off of Duck Harbor Rd.
- MIG has furnished field offices, installed traffic signage and installed sediment and turtle protection controls in accordance with the contract documents.
- Work onsite has included both temporary bridge and permanent bridge components.

Temporary Bridge

- Work Completed
 - MIG established site access along the upstream side of the existing dike utilizing steel sheeting and backfilling this area with gravel.
 - Steel sheets were driven to form the exterior walls of the temporary bridge abutments.
 - Steel tie-rods were secured between the exterior walls of the abutments and steel dead-man sheeting to reinforce the temporary bridge abutments.
 - The temporary bridge abutments were backfilled and compacted with gravel.
- Work Upcoming
 - MIG construction will proceed with installation of 24" dia. pipe piles. These pipe piles will form the three piers that will carry the temporary bridge super structure over the river.
 - MIG will form and pour concrete pier caps that will distribute the load across the pipe piles.
 - MIG will form and pour concrete bridge abutments that will be the terminus of each end of the temporary bridge super structure.

Permanent Bridge

- Work Completed
 - MIG has begun installation of 5' thick stone armor upstream of the existing dike to serve as scour protection when flow is introduced under the permanent bridge.
 - MIG has installed 16" dia. permanent bridge test pile to perform load analysis.
- Work Upcoming
 - MIG will complete installation of stone armor scour protection upstream of the existing dike.
 - MIG will begin fabrication of permanent bridge components.

Schedule

- Work for the next three months will focus primarily on establishing the temporary bridge.
- MIG forecasts the temporary bridge being completed by November 2023.
- Following installation of the temporary bridge work will begin in earnest on the permanent bridge.

Budget

Original Contract Amount	\$	29,835,430.00
Approved Change Orders	\$	10,094.61
Contract Sum to Date	\$	29,845,524.61
Total Completed and Stored to Date	\$	4,403,021.43
Less Retainage	\$	207,146.34
Total Earned Less Retainage	\$	4,195,875.09
Balance Due Upon Completion	\$	25,649,649.52



Figure 1. – Showing steel sheeting installed as MIG works from the Duck Harbor Road staging area towards the river.



Figure 2. – Showing steel sheet coffer cell where MIG installed 5' thick stone armor for scour protection.



Figure 3. – View looking north across the river. Showing temporary bridge abutments with steel tie-rods, and stone armor coffer cell.



Figure 4. – View looking south across the river. Showing temporary bridge abutments, and stone armor coffer cell.



Figure 5. – View showing permanent test pile load testing setup.



Figure 6. – View showing false work installed in anticipation of temporary bridge pile installation.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

IV

BUSINESS

~ C ~

REQUESTED BY:	Rich Waldo, Town Administrator
DESIRED ACTION:	To review, and possibly vote to send the three remaining Zoning Bylaw Articles to the Planning Board for a public hearing and to insert and possibly recommend the remaining warrant articles.
PROPOSED MOTION: SUMMARY:	<ul style="list-style-type: none">• I move to approve the edits from town counsel and send the Inclusionary Zoning Bylaw to Planning Board to hold a public hearing within 65 days.• I move to approve the edits from town counsel and send the Cottage Colonies Zoning Bylaw to the Planning Board to hold a public hearing within 65 days.• I move to approve the edits from town counsel and send the Landscape and Tree Preservation, Locally Notable Trees, Definition of Trees, and Cutting of Timber Zoning Bylaws to the Planning Board to hold a public hearing within 65 days.• I move to insert an article ____ into the special town meeting warrant.• I move to recommend an article __ into the special town meeting warrant.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

ARTICLE NO. ## INCLUSIONARY ZONING BYLAW

To see if the Town will vote to amend Chapter 235, Article II DEFINITIONS by inserting the following definitions in alphabetical order and to amend Chapter 235, Article VI by adding a new Section 6.28 Inclusionary Zoning Bylaw as follows:

§235 - 2.1 Definitions

Affordability Gap – the difference between the appraised value of a market-rate dwelling units within the proposed development and the appraised value of an affordable housing unit in Wellfleet comparable to the market-rate unit in terms of type, size, and number of bedrooms and calculated at the time of sale or issuance of a certificate of occupancy, whichever occurs sooner, for any market-rate unit in the proposed development. The applicant shall submit an appraisal of the development in question that was prepared by a licensed appraiser approved by the Town using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Town may obtain an expert peer review of the appraisal at the applicant’s expense.

Affordable Housing Unit - a dwelling unit that is affordable to and occupied by a Low- or Moderate-Income Household and meets the requirements for inclusion on the Subsidized Housing Inventory maintained by the Department of Housing and Community Development.

Affordable Housing Restriction – A deed restriction entered into and enforceable under G.L. c. 184, §§31-33 in a form acceptable to the Town that restricts occupancy of an affordable housing unit to a low- or moderate-income-eligible purchaser or renter and which provides for the administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period allowed by law.

§235 – 6.28 INCLUSIONARY ZONING BYLAW

§235 – 6.28.1 Purpose and Intent

The purpose of this bylaw is to encourage the development of housing that is affordable to persons of various ages and income levels in accordance with Massachusetts General Law, Chapter 40A, Section 9, which allows municipalities to adopt “incentive” bylaws for the creation of affordable year-round housing, and for the purposes of:

- A. Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; ~~and,~~
- B. Encouraging the creation of a range of housing opportunities for households of all incomes, ages, and sizes in order to support a strong, stable, and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Wellfleet residents;
- C. Mitigating the negative impact of residential development on the availability and cost of housing;

Commented [CMM1]: AS requested, see revised language. The only concern with using the delta between a market rate and affordable unit is that the Town will not receive enough \$ to create another affordable unit.

Another option is to set the Payment In Lieu at an amount equal to the required number of affordable housing units multiplied by the median sales price of a Wellfleet market rate house comparable in type, size and number of bedrooms calculated at the time that a Special Permit application is made, or calculated at the time of sale or issuance of an occupancy permit for any market rate unit in the development, whichever occurs sooner. This would result in a higher payment to be used to create affordable housing elsewhere in town.

- D. Protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land; **and**
- E. Creating dwelling units eligible for inclusion on the Town's Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD).

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Commented [RC2]: Barbara's amendment says there are other SH beyond CH and we should not limit it to just CH

Commented [CMM3R2]: Agreed

Commented [RC4]: Last note from me, had to be clear this will apply to any new cottage colonies as well does that need to be specified to ensure clarity?

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Commented [CMM5]: In my experience, imposing an affordability requirement when two or more units are applied for is an unusually low threshold. I have seen bylaws applying to 10 units or more and generally requiring 10% of those units to be affordable.

Commented [RC6R5]: We had settled on 3

Commented [CMM7]: This may seem obvious to some, but it doesn't hurt to clarify

§235 6.28.2 Applicability

In the CD, R1, R2, C, and C2 zoning districts, the inclusionary zoning provisions of this section shall apply to any residential project that results in a net increase of three or more dwelling units as part of a single application, whether by new construction, a change in use, or by the alteration or rehabilitation of existing structures, provided, however, this bylaw shall not apply to nursing homes.

§235 6.28.3 Mandatory Provision of Affordable Housing for Development of New Residential Units

In order to contribute to the local stock of Affordable Housing, any residential project that results in a net increase of three or more dwelling units as part of a single application as described in Section 6.28.2 shall provide a percentage of the dwelling units as deed restricted Affordable Housing units. This Affordable Housing requirement shall be one-sixth (1/6) of the number of new dwelling units to be developed rounded up to the nearest whole number and shall be made a condition of a Special Permit, or the applicant shall meet the requirement in accordance with the following:

- A. Development of 3 to 6 new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 - 8.4.2 and a Payment in Lieu of providing the required number of affordable units to be made to the Wellfleet Affordable Housing Trust Fund to fulfill the Affordable Housing requirement.

- (1) Payment shall be made in accordance with the following formula:
 - For 3-4 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(1/6)x(affordability gap)
 - For 4-6 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(1/6)x(affordability gap)

Commented [CMM8]: Based on language above, I think both of these should be 1/6, not 1/9.

- (2) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser.
- (3) The Payment in Lieu shall be due:

- a. upon the issuance of a certificate of occupancy of any market-rate unit in the development; or
- b. The total Payment in Lieu shall be divided by the total number of market rate units in the development, and the resulting quotient shall be payable upon the closing of each market rate unit.

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- B. Development of 7 or more new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 - 8.4.2 and at least one-sixth (16.67%) of the new units created shall be established as Affordable Housing units, which shall be rounded up to the nearest whole number and shall be made a condition of a Special Permit, in any one or combination of methods provided for below:

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- (1) The Affordable Housing units shall be constructed or rehabilitated on the site subject to the Special Permit, in accordance with §235 Section 6.28.4; or
- (2) The Affordable Housing units shall be constructed or rehabilitated on a site other than the one subject to the Special Permit, in accordance with §235 -

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6.28.4, provided justification is provided that on-site development of said units is not feasible and off-site development of said units is beneficial to the Town, and applicable Building or Zoning Permits are granted contemporaneously for both developments; or

(3) A Payment in Lieu of providing Affordable Housing units shall be made to the Wellfleet Affordable Housing Trust Fund. Payment shall be made in accordance with the following formula:

- a) For 7 or more new dwelling units, the Payment in Lieu = (total # of new dwelling units) x (1/4) x (affordability gap).
- b) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser.
- c) The Payment in Lieu shall be made ~~upon at and upon~~ the sale or certificate of occupancy of each market-rate unit, whichever occurs sooner. ~~When the development consists of year-round rental units, memorialized in the affordable deed restriction which states that the Payment in Lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use at current market rate, or~~

(4) A Land Donation in Lieu of providing Affordable Housing units shall be provided to the Wellfleet Affordable Housing Trust, provided that:

- a) The receiving organization agrees in writing to accept the land; ~~and~~
- b) The applicant demonstrates to the Zoning Board of Appeals' satisfaction that the land may support ~~serves~~ the future development of Affordable Housing; ~~and~~
- c) The value of donated land shall be equivalent to or greater than the value of the required Payment in Lieu. The Zoning Board of Appeals may require, prior to accepting ~~the donation of land to the Wellfleet Affordable Housing Trust~~ as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Zoning Board of Appeals may obtain expert peer review of the appraisal at the applicant's expense; and
- d) Closing on the land donation shall occur before the issuance of the first building permit.

Commented [CMMS]: What if a developer is required to provide 2 affordable units and offers to create one at a property that is already developed? There would be no contemporaneous SF for the off-site unit.

Commented [RC10R9]: Permits are required to be in hand.

Commented [CMM11]: Is the 1/4 correct or should this be 1/6?

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Commented [CMM12]: I suggest revising this to be the same as both 6.28.3 A, 3.2 and B above.

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Commented [CMM13]: I suggest deleting the text shown as struck-through, as it is making the payment overly complicated and will require monitoring by the Town. We are requiring the Payment in Lieu either upon the sale of a market-rate unit or if it is a rental, upon the issuance of a certificate of occupancy.

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§235 6.28.4 Provisions Applicable to Affordable Housing Units Located On-Site and/or Off-Site

- A. Affordable Housing units created in accordance with this bylaw shall have a deed restriction and Regulatory Agreement to regulate the future re-sale or rental of the unit and that requires the units to remain income restricted in perpetuity or the longest period allowed by law. Said deed restriction and Regulatory Agreement shall be consistent with the forms used in the Local Initiative Program and Regulatory Agreement approved by DHCD. The Regulatory Agreement shall be prepared in a form acceptable to Town Counsel by the Applicant and submitted for

- review and approval. The Regulatory Agreement will be executed by the Applicant, the Town of Wellfleet and DHCD and shall be recorded with the Barnstable County Registry of Deeds or and
- B. The applicant shall be responsible for preparing and submitting any documentation that may be required to receive Local Action Unit approval from DHCD and to qualify the Affordable Housing Units for listing on the SHI. The applicant shall also be responsible for providing annual compliance monitoring and certification to the Town or its monitoring agent and to pay for the costs of the Town for providing such compliance monitoring.
 - C. No Building Permit shall be issued for any units in the development until the Zoning Board of Appeals receives evidence that the Affordable Housing deed restriction has been approved by DHCD or by Town Counsel.
 - D. No Certificate of Occupancy shall be issued for any units in the development until the Building Commissioner receives evidence that the Affordable Housing deed restriction has been executed and recorded at the Barnstable County Registry of Deeds or that the Payment in Lieu has been made in accordance with this bylaw or as modified by the Special Permit conditions.
 - E. Affordable Housing units shall be integrated with the rest of the development or with the off-site location and shall be comparable to and indistinguishable from market rate units in exterior design, including appearance, construction and quality of materials, and in energy efficiency.
 - F. The number of bedrooms in each Affordable Housing unit shall be made a part of the Special Permit and shall be based on local need as determined by the Zoning Board of Appeals in consultation with the Wellfleet Housing Authority.
 - G. Owners and tenants of on-site Affordable Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.
 - H. The development of Affordable Housing units shall take place at the same rate and timeframe as the development of market rate units.
 - 1) Building Permits for any phased development shall be issued at a ratio of no greater than five (5) market rate units to one (1) Affordable Housing unit. Building Permits for subsequent phases shall not be issued unless all the required Affordable Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
 - 2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of five (5) market rate units to one (1) Affordable Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless and until all Affordable Housing units are occupied.

Commented [CMM14]: The deleted language is usually included in 406 projects where the development does not comply with zoning. This will not be the case here.

Commented [RC15]: The intent is to not allow a developer to build say 5 units and not have to not seek a building permit for the affordable units.

Commented [CMM16R15]: ok

§235 6.28.5 Maximum Incomes and Selling Price; Affordable Housing Inventory

Maximum rents and/or sale price for Affordable Units shall not exceed 30% of an occupant's or tenant's annual income for a household at or below 80% of Area Median Income adjusted by household size.

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Commented [CMM17]: Since the rent and re-sale price will be addressed in the regulatory agreement, I don't think we need to include this provision in a zoning bylaw.

§235 6.28.6. Segmentation Prohibition

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. "Segmentation" shall be defined as subdividing one parcel of land into two or more parcels of land in such a manner that each parcel can support only a single dwelling unit or phased development that cumulatively results in a net increase of three or more dwelling units above the number existing

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Commented [CMM18]: I recommend striking the text shown as struck-through for clarity.

thirty-six (36) months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section.

§235 6.28.7 Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental ~~to~~ of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

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§235 6.28.8 Severability

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 Wellfleet's Zoning Bylaws.

With KP edits 7/19/2023

Black pre-existing language in Wellfleet's Zoning By-Laws

Strikethrough is where a deletion is being made in the current language, **underlined** is additions.

ARTICLE XX Amending Wellfleet Zoning By-Laws, Cottage Colony

To see if the Town will amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article II DEFINITIONS by deleting text that is struck through and inserting text that is underlined as follows:

§235 - 2.1 Definitions

Cottage Colony - A group of two or more detached dwellings located on the same lot not within the NSP, each containing one dwelling unit only which is designed for independent family living including cooking facilities. Each unit shall contain not less than ~~550~~ 300 sq. ft. of floor area and not more than ~~768~~ 800 sq. ft.

Cottage Colony NSP - A group of two or more detached dwellings located on the same lot within the NSP, each containing one dwelling unit only which is designed for independent family living including cooking facilities. and occupied on a seasonal basis only. Seasonal shall be defined as a period commencing April 1 of each calendar year and terminating November 30 of the same calendar year. Each unit shall contain not less than ~~550~~ 300 sq. ft. of floor area and not more than ~~768~~ 800 sq. ft.

Summary: The changes in floor area bring a number of the pre-existing cottage colonies into compliance with zoning. 250 sq ft of floor area is the minimum allowed for two people to reside in per state codes. Wellfleet has a number of cottages in colonies that are well below 550 sq. ft. An example is Brownies cabins out of a total of thirteen cottages, nine are below 550 sq. ft. This would also enable a property owner to build a cottage colony with modest structures that could serve as homes for those just starting on their own or are looking to downsize. The change from 768 sq ft to 800 sq ft is a reflection that there are cottage colonies where there are units that are slightly over 768 sq. ft. 800 sq ft also is a standardized size that is easy to measure. Cottage Colilys would remain permitted by special permit only in the districts they are currently allowed in.

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Article XX3 Landscape and Tree Preservation Bylaw

To see if the Town will vote to amend the Wellfleet Zoning By-Laws, **Chapter 235, Article VI - General Provisions** by inserting a new **§235- 6.9.2** as follows:

§235 - 6.9.2 Landscape and Tree Preservation Bylaw

§235 - 6.9.2.1 Purpose: A wide variety of landscapes are necessary to provide a richness of habit required to support a diverse variety of species. Planting of native species in disturbed areas prevents those areas from being colonized by invasive species. **Massachusetts General Law, Chapter 40A, Section 9, Fourth paragraph as amended by 2021, 24, Sec. 20 effective July 1, 2021. See 2021, 24, Sec. 149. allows municipalities to adopt "incentive" ordinances in a manner that protects open space.**

§235 - 6.9.2.2

No construction, site preparation work **or grading** shall be done on any land, resulting in the removal of greater than twenty percent (20%) of existing vegetation or **Timber** or a maximum area of disturbance of 10,000 square feet, whichever is less **or the grading of the site** until any necessary permits and approvals have been obtained. If the total area of disturbance is greater than 12,500 square feet, a special permit shall be required in all districts.

At the conclusion of all site work, including but not limited to the construction of structures, grading, and grubbing, the disturbed area must be re-vegetated with native species. In the absence of re-vegetation with native species of the disturbed area, a fee determined by the table **(Table §235 - 6.9.2.3)** shall be applied to be paid to the **Environmental Betterment Fund**. Landscaping with **Invasive Plants** is hereby prohibited.

Table §235 - 6.9.2.3

Area not re-vegetated	Base Fee	Fee for area not re-vegetated
5,000-9,999 sq ft	\$100	25 ¢/sq ft
10,000-19,999 sq ft	\$100	50 ¢/sq ft
> 20,000 sq ft	\$100	75 ¢/sq ft

Commented [RC12]: There is a number of decisions made by the state regarding the manner in which development rights are transferred between districts. This is a very complex and technical matter. It is not clear that the state has any authority to regulate the manner in which development rights are transferred between districts. It is possible that the state has authority to regulate the manner in which development rights are transferred between districts, but it is not clear. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40a/Section9>

Commented [RC13]: Note in order to have a permit to build, it requires a special permit.

Commented [CMM14]: Please be advised that all funds paid to the Town must be deposited in the General Fund, unless state law allows otherwise or unless a special fund has been created by the State Legislature. The Town will have to petition the Legislature to create this fund, if it does not already exist. Please note I found no mention of this fund on the state website.

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§235 - 6.9.2.4 Exemptions:

This section shall not apply to the removal of **Invasive Plants** as determined by a certified arborist, trees that are diseased in the opinion of a certified arborist, or the removal of trees threatening people, structures, roadways, or utilities.

This section shall not apply to federal, state or municipal projects.

If Wellfleet adopts a Community Wildfire Protection Plan, the specifications contained therein shall supersede this section.

This section shall not prohibit site work reasonably necessary for conducting land survey or tests required as a condition precedent to the issuance of any permit or approval. If, after obtaining all necessary permits and approvals, such work is commenced and then abandoned, all areas of the site which were disturbed during construction or site preparation shall be re-vegetated with native species in a manner sufficient to avoid erosion.

Deed-restricted affordable housing or housing deed restricted to year-round residency shall be exempt from payments in lieu of re-vegetation.

Tree Thinning may be permitted by the Building Commissioner where the total canopy cover is retained, and disturbance to the ground and other vegetation is minimized. Such Tree thinning may be exempt from payments in lieu of re-vegetation.

Whereas Wellfleet is a **Right to Farm Community**, land clearance in association with agriculture, provided all necessary permits and approvals have been obtained, shall be exempt from payment in lieu of re-vegetating so long as the land is re-vegetated within three years of the cessation of agriculture operations.

§235 – 6.9.2.5 Special Permits for Under §235 6.9.2

The Board of Appeals acting as the SPGA, shall grant a special permit under §235 – 6.9.2 unless it finds that the proposal shall have adverse effects on the Town or the vicinity of the subject parcel that outweighs any benefits, taking into consideration the stated district objectives (§235 - 3.2) and, where germane, the following matters:

- (a) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from a proposal such as this, taking into consideration erosion, siltation potential groundwater or surface water contamination, habitat disturbance, or loss of valuable natural vegetation;
- (b) Whether impacts to scenic views from public ways and developed properties have been adequately mitigated considerably treated;
- (c) Whether any traditional public access to or along the shoreline has been maintained.

Commented [CMM15]: At the Selectboard meeting on 7/11, there was discussion on removing the certified arborist requirement.

Commented [CMM16]: Previously, I questioned whether this provision may violate the uniformity requirements of G.L. c. 40A, Sec. 4. To clarify, these properties would be exempt from the payment in lieu but not the requirement to re-vegetate?

Commented [CMM17]: Is the intent to exempt all agriculture or just commercial agriculture which is currently exempt under G.L. c. 40A, Sec. 3?

Commented [CMM18]: Will the ZBA also apply the SP criteria of Sec. 8.4.B?

Summary: At the 2022 Annual town meeting, the petitioned Article 48 "Tree Preservation Resolution," passed with an overwhelming majority. The Selectboard was charged with causing a tree preservation bylaw to be drafted. Girth (circumference) is the standard forest measurement of a tree as breast height. The petitioned article made no provision for cutting trees not associated with construction or demolition activities. The bylaw before you prohibits large scale removal of trees and ground cover unless all permits have been issued as well as protecting other forms of vegetation. A payment in lieu of re-vegetation, as requested in the Tree Preservation referendum at the 2022 Town Meeting in the instance of large-scale disturbance, requires the bylaw to operate under Massachusetts General Law, Chapter 40A, Section 9, Fourth paragraph, which requires a Special Permit, this establishes the presumption that a special permit would be granted unless the SPGA reaches a finding that the proposed clearing is unusually detrimental. Additionally, a payment in lieu of re-vegetation is required and the receipts are placed into the **Environmental Betterment Fund** as a means to offset the environmental disturbance.

Commented [RC19]: zoning ordinance or by-law may provide for special permits allowing the exercise of development rights of land within a between cities. These zoning ordinance or by-law shall include provisions such as: to be in the vicinity of population, intensity of use, amount of disturbance as a percentage of lot coverage, that encourage the transfer of development rights, and number and protect public space, preserve facilities, promote housing for persons of low and moderate income, further public responsibility, direct, provided, however, that nothing herein shall constitute a ceiling on the number of by-law items which transfer of development rights to be received as of right within a general by-law or zoning ordinance. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section9>

Commented [CMM20]: Again, this fund has to be created through special legislation.

w/ KP edits 7/19/2023

Article XX4 Locally Notable Trees

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article VI - General Provisions by ~~§235-2.1~~, and ~~§235-6.9~~ and inserting a new Section **§235 - 6.9.3** as follows:

§235 - 6.9.3 Locally Notable Trees

Purpose and Applicability: Recognizing the value large older trees provide to wildlife and the unique role they play in the ecosystem they should be preserved whenever possible. No removal of or trimming of **Locally Notable Trees** shall be permitted until all necessary permits and approvals have been obtained unless there is an immediate threat to public safety, structures, or utilities.

§235 - 6.9.3.1 Removal of **Locally Notable Trees** shall require a special permit from the **Zoning Board of Appeals** as the **Special Permit Granting Authority**. Any application for the removal of a **Locally Notable Tree** shall be referred to the **Conservation Commission** for comment prior a hearing pursuant to Ch. 40A, Sec. 9 before the Special Permit Granting Authority. A priority shall be placed on retaining these trees during the course of any construction activities or site plan and or landscaping.

Commented [CMM21]: Will the hearing require notice to abutters per Ch. 40A, Sec. 11?

§235 - 6.9.3.2 Applications for the trimming of a **Locally Notable Tree** must include a letter from a certified arborist that the trimming poses little risk to the health of the tree prior to any such work being performed and are subject to the approval of the Tree Warden. Said Trimming includes that of the Tree's root system. If the Tree Warden or Arborist determines that the trimming of a **Locally Notable Tree** poses a threat to its health, they shall refer the matter to the Special Permitting Authority, who will refer it to the Conservation Commission for comment prior to the hearing.

§235 - 6.9.3.3 EXEMPTIONS

This section shall not apply to the removal of **Invasive Plants**, diseased trees, or those posing an imminent threat to people, structures, roadways, or utilities.

This section shall not apply to **federal, state or** municipal projects.

Commented [CMM22]: Previously, I suggested that some Town official should be notified and verify that the tree is diseased or poses a threat. Otherwise, someone can cut a Locally Notable Tree and after-the-fact argue that it was diseased. Even if the Town disagrees, the tree is lost forever. This is a policy decision for the Town.

§235 - 6.9.3.4 Special Permits for Under ~~§235-6.9.3~~

The Board of Appeals acting as the SPGA, may grant a special permit for the removal of a **Locally Notable Tree** if the SPGA ~~it reaches a~~ finds that there is no viable alternative to said removal.

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Summary: It also requires a special permit to remove or for the trimming that may pose a risk to the health of very large trees. Very large trees provide extensive ecosystem benefits as well as often natural playgrounds. This also clarifies and strengthens the prohibition of the cutting of timber in the NSP.

FOR REFERENCE CH 40 S 9

~~"Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives, such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protects open space, preserves farmland, promotes housing for persons of low and moderate income or further other community interests; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval."~~

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter40a/Section9>

FOR REFERENCE ATM 2022

For the Tree Preservation :

ARTICLE NO. 48 - TREE PRESERVATION RESOLUTION:

To see if the Town will vote to adopt the following **TREE PRESERVATION RESOLUTION**

N:
WHERE AS, trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods and roadways, provide natural privacy to neighbors, and reduce ambient carbon in the atmosphere; and

WHERE AS, the preservation and protection of certain trees on private property, the requirement to replant trees to replace those removed, and the collection of financial contributions to support the Town's tree planting and maintenance efforts are public purposes that protect the public health, welfare, environment, and aesthetics; and

WHERE AS, at our 2021 Town Meeting, the voters of Wellfleet passed a resolution declaring a climate emergency and committing to eliminate the town's carbon emissions by or before 2050; and in order to achieve that goal, we will need not only to maintain,

but also to *increase* our net number of trees, to compensate for emissions we are not able to eliminate.

Now, therefore, be it RESOLVED: That the Town vote to authorize the Select Board to cause to be prepared for consideration at the next Town Meeting, a Tree Preservation ByLaw supporting the preservation and protection of trees on residential, municipal and *commercial* lots *preceding* or during significant demolition and/or construction activity, by designating areas of a lot where trees must be protected, and requiring mitigation for trees removed via replanting or collection of fees to support the Town's tree planting and maintenance efforts; and

FURTHER RESOLVED: That in order to effectuate the purposes of the resolution, the Town of Wellfleet's Select Board appoint a committee of five (5) members (Tree Preservation Bylaw Committee), with a recommendation to include one member of the Wellfleet Conservation Commission, and one member of the Wellfleet *Zoning Board*, to be charged with the drafting of the Bylaw for the Select Board's review and approval prior to submission for the Town's approval at the 2023 Town Meeting; and;

FINALLY

RESOLVED: That the Tree Preservation Bylaw Committee *consider* the following non-binding recommendations:

1. The Tree Preservation Bylaw only apply to trees that are six (6) inches in diameter or greater and located within a lot's twenty-five (25) foot setback area (Protected Trees);
2. The Tree Preservation Bylaw will prohibit the removal of Protected Trees during construction, or for a period of time not to exceed fifteen (15) months prior to an application for a demolition or building permit for:
 - a. demolition of an existing structure of 250 gross square feet or greater, (b) construction of any building or structure on a vacant lot, or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area by 50% or greater.
3. The Tree Preservation Bylaw will provide an option, if it is not practical to save a Protected Tree, for it to be removed and replaced with new trees elsewhere, or pay into a tree fund, which the Town will use to buy and plant trees in residential areas.
4. The Tree Preservation Bylaw will not apply to the subdivision of land under the Town's Subdivision Rules and Regulations, those areas of a property under the jurisdiction of the Wetlands Protection Act, public shade trees pursuant to M.G.L. Chapter 87, emergency projects necessary for public safety, health, and welfare, trees severely damaged as the direct result of a natural disaster, or trees that are hazardous.
5. The Tree Preservation Bylaw will require that mitigation be based upon the DBH (diameter at breast height) of Protected Tree(s) removed. For each inch of DBH of the Protected Tree(s) removed, no less than one half (½) inch caliper of a new native tree(s) shall be replanted with each new tree having a minimum

caliper of two (2) inches. If the Protected Tree to be removed is an overstory tree species, the replacement tree(s) to mitigate the removal shall be a native overstory tree species; or to take any other action relative thereto:
(Citizens Petition)

Majority Vote Required

Recommendations:

Selectboard: Yes - 0, No - 5, Abstain - 0.

Bylaw Committee: Yes – 0, No – 3, Abstain -0.

Ms. Harriet Korim moved, and it was seconded, that Article No. 48, Tree Preservation Resolution, be adopted as printed in the warrant except in paragraph four to correct, Select Board to one word, the word By-law to only have the B be capitalized, line three include no italics, and treeson is two words. Line five reads, and by requiring mitigation for trees removed by via replanting or collection, ect. Line six ends with efforts and a period and most importantly the last paragraphs five and six, beginning with further resolved and finally resolved be removed.

Mr. Devasto moved, and it was seconded to amend the motion where in the fourth paragraph to end after the word By-law.

The Moderator called for a vote of Mr. Devasto's amendment, and declared that carried on a majority vote.

The Moderator called for a vote on Ms. Korim's motion as amended and declared it carried on a majority vote.

w/ KP edits 7/19/2023

Article XX DEFINITIONS OF TREES

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending **Chapter 235, Article II – Definitions §235 2.1** by inserting the following new definitions in alphabetical order:

Community Wildfire Protection Plan (“CWPP”): A plan developed in the collaborative framework established by the Wildland Fire Leadership Council and agreed to by the local government, local fire department, federal land management agencies managing land in the vicinity of the planning area, and other stakeholders. A CWPP may address issues such as wildfire response, hazard mitigation, community preparedness, structure protection, or all the above.

Invasive Plants: Plant species identified by the Massachusetts Invasive Plant Advisory Group as Invasive, Likely Invasive, or Potentially Invasive. [\[Link for reference\] \(www.massnrc.org>mipag\)](http://www.massnrc.org/mipag)

Locally Notable Trees: Native trees with a girth of 120 inches or greater measured at breast height (4.5 feet) or below the lowest branching trunk, whichever is less, or tree species listed as Endangered, Threatened, or of Special Concern by MassWildlife’s Natural Heritage & Endangered Species Program.

Timber: Woody plants and trees with a girth of sixteen (16) inches measured at breast height (4.5 feet) or below the lowest branching trunk, whichever is less.

Tree Thinning: Tree removal in an immature forest stand that reduces tree density and between-tree competition performed by a certified arborist.

Summary: This adds definitions to the Zoning Bylaws in regards to trees and timber. This contains no applications of the definitions in and of themselves, but the definitions can be utilized by other bylaws.

Commented [RC1]: Switched from metric to imperial and set at an even number (10” in girth) is slightly larger, if perfectly round it is 35.2” in diameter prior was 3m (118.11 inches) 37.8 inches in diameter

Commented [RC2]: I checked with the Health and Conservation Agent and the list with the list of species they were not aware of any present locally at this time. These are protected under the Massachusetts Endangered Species Act

For Reference:
Juniperus
Retula purpurea - Swamp Birch
Corylus americana - White Birch
Thuja occidentalis - Eastern White Pine
Thuja occidentalis - Eastern White Pine
Pinus strobus - White Pine
Pinus resinosa - Red Pine
Thuja occidentalis - Eastern White Pine

Threatened
Asplenium platyneuron - Common Spotted Fern
Asplenium platyneuron - Common Spotted Fern
Asplenium platyneuron - Common Spotted Fern

Special Orders
Order #2 - 2019 - 2019 - 2019 - 2019

Commented [RC3]: 17” in girth could be 15.5 inches in diameter
10” G would be 11.8” in diameter

15.5 in girth, 6” in diameter

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Article XX2 CUTTING OF TIMBER AMENDMENT

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending Chapter 236, Article VI - General Provisions, §235 6.9 by inserting text that is underlined and deleting text that is ~~struck through~~ as follows:

§235 - 6.9.1 CUTTING OF TIMBER WITHIN NSP

Within the National Seashore Park District, there shall be no cutting of timber except as permitted by the Building Commissioner and for the following reasons:

- (a) By an owner for the purpose of reasonably controlling brush or trees;
- (b) Maintenance cutting in pastures;
- (c) Cutting for clearance or maintenance on right-of-way including those pertaining to public utilities or public highways.
- (d) as specified in a Community Wildfire Protection Plan by the Wellfleet Fire Department or the National Park Service.
- (e) the removal of Invasive Plants as determined by a certified arborist.

Exemptions:

This section shall not apply to federal, state or municipal projects.

Summary: This updates the "Cutting of Timber". The assumption is that the current bylaw dates to the 1960s, and there was not much of an awareness of the detrimental impacts of most invasive species, and fewer were considered invasive. A Community Wildfire Protection Plan [CWPP] seeks to mitigate some of the risks of a wildfire to life and property and would be developed under the aegis of the Town and the Park. As of now, there is not a CWPP but the park does issue fire safety recommendations to property owners, so this provision is future looking.

Commented [CMM4]: At the Selectboard meeting on 7/11, there was a suggesting to remove the permitting by the BC.

Commented [CMM5]: I had suggested including "provided said clearance or maintenance complies with Chapter 200, the Town's Scenic Road bylaw, is applicable" but this has been removed from this draft. After the incident on LeCount Hollow Road, I still recommend inserting this language.

Commented [CMM6]: Who prepares this plan and who is it filed with? What prevents a property owner from coming up with a "plan" just to avoid obtaining a SP?

Commented [RC7#6]: The Fire Department or NPS not the homeowners

Commented [CMM8]: Who verifies that only invasive species are removed?

Commented [RC9#8]: Certified arborist

Commented [CMM10]: At the Selectboard meeting on 7/11, there was discussion about removing "as determined by a certified arborist."

Commented [RC11]: See 25 exemptions

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w/ KP edits 7/20/2023

ARTICLE NO. 14 – ZONING BYLAW AMENDMENT – ZONING ENFORCEMENT PENALTY:

To see if the Town will vote to amend the Wellfleet Zoning Bylaws by amending Chapter 235, Article VIII – Administration, Section 8.3 Penalty by deleting the ~~strike through~~ language and adding the underlined language or take any other action relative thereto.

[Amended 6-26-2021 ATM by Art. 45]8.3 PENALTY

~~8.3 Penalty Any person violating any of the provisions of these Bylaws may be fined not more than \$50.00 for each offense, except in the case of violations of Section 6.21 Accessory Dwelling Units, the fine shall be \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.~~

§ 235-8.3 Penalty.

A. Any person, association, firm or corporation violating any of the provisions of this bylaw may be fined \$300 for each offense. Each day that such a violation continues shall constitute a separate offense. This bylaw may be enforced by noncriminal disposition pursuant to the provisions of General Laws Chapter 40, Section 21D.

B. Accessory Dwelling Units: Any person, association, firm or corporation violating § 235-6.21 Accessory dwelling units (ADU), may be fined \$300.00 for each offense. Each Accessory Dwelling Unit in violation shall be a separate violation. Each day that such violation continues shall constitute a separate offense. This bylaw may be enforced by noncriminal disposition pursuant to the provisions of General Laws Chapter 40, Section 21D.

Commented [RC1]: The local zoning by-law to enforce that assess a penalty of more than \$500 per violation provided however that nothing in this section shall be construed to prohibit local zoning by laws or ordinances from providing that each day the violation continues that constitute a separate offense
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40a/Section7>

Commented [CMM2]: If all zoning violations are going to be subject to a \$300 fine, there is no need for Paragraphs A and B; instead Paragraph B can be deleted and "A" can also be deleted.

Commented [RC3]: Wording not quite right. Trying to address what would happen if there are more than one unit in violation. This was distinguished before.

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w/ KP edits 7/20/2023

Intensity of Use of Multi-Family Dwellings

To see if the Town will vote to amend the Wellfleet Zoning By-Laws, Chapter 235, Article V – Uses, Section 235-5.4(F) by deleting the text that is struck through as follows, or to do or act on anything thereon:

§235 - 5.4(F)

~~Intensity of Use Application to Multiple Family Dwellings. The first unit of a multiple family dwelling or of an apartment building shall require a minimum land area equal to the lot requirements of the district in which located. Each additional unit will require 8,000 square feet of land area. Front, side and rear yard and maximum building coverage requirements of the district in which the structures are located shall apply. (Amended 4/30/85 ATM, Art. 64.)~~

Summary: Multifamily Dwellings are allowed by special permit in the Commercial District. The minimum lot size in the commercial district is 40,000 square feet. The requirement to have an additional 8,000 sq ft effectively prohibits multifamily housing on a significant proportion of lots in the Commercial District and limits the number of potential dwellings as well. This does not change the number of bedrooms allowed on a parcel, just how they are configured. The intent here is to provide a greater opportunity for diversity in Wellfleet's housing stock to better suit the needs of our population.

Revised through 2/15/23 version 006 w/ KP edits 3/3/2023 and 7/20/2023

Developments of Significant Planning Interest and Food Establishments

To see if the Town will vote to amend the Wellfleet Zoning Bylaws by repealing the existing Chapter 235, **Article VI – General Regulations** - Section 235 - 6.29, Fast Food & Formula Restaurant Prohibition and replacing it with a new Chapter 235 - Section 235 - 6.29, Development of Significant Planning Interest and Food Service Establishments and by amending Chapter 235 - Sections 235 - 2.1, 235 - 5.3, and 235 - 8.4.2. by inserting text shown as underlined and deleting text that is ~~struck through~~ as follows, or take any action related thereto:

A. By amending Chapter 235 – Article II – Definitions, Section 235 - 2.1 by inserting in alphabetical order new definitions for “Development of Significant Planning Interest,” “Food Establishment: Bakery,” “Food Establishment: Full-Service Restaurant,” “Food Establishment: Take-Out Restaurant,” “Food Establishment: Fast Food Restaurant,” and “Food Establishment: Drive-through Facility” and deleting the definitions of “Restaurant,” “Restaurant Drive-In,” “Restaurant Fast Food” and “Restaurant, Formula” as follows:

Development of Significant Planning Interest: Any of the Food Establishment categories defined in this By-law, Boat House, Commercial, Bulk Storage, Open, Bulk Storage, Tanks, Filling Station, Motor Vehicle Repair Shop, Motor Vehicle Sales, and Warehouse, or Other Commercial Developments involving more than 2,500 square feet of floor area, or Commercial Developments in the Central District.

Food Establishment: Bakery - A commercial food service establishment primarily engaged in the preparation and retail sale of baked goods for consumption on or off the premises. A bakery may include, as an accessory use, wholesale distribution of goods prepared on the site.

Food Establishment: Ice Cream Parlor - An establishment where the primary activity is the retail sale of ice cream, frozen yogurt and/or similar products for consumption on or off the premises; provided, however, that this definition shall not apply to restaurants where such ice cream, ices, or beverages are sold and consumed in connection with the serving of meals.

Food Establishment: Full-Service Restaurant – A commercial food service establishment where (1) meals are primarily freshly cooked and prepared to order on-premises and are served primarily for consumption on the premises, either indoors or outdoors; (2) customers may be provided with individual menus; (3) a restaurant employee serves the customers at the same table or counter where the meals are consumed. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Full-Service

Commented [CMM1]: Revised to be consistent with 6.29.4 below

Commented [RC2]: The Board deemed it desirable to the design criteria to apply more broadly, to structures and within the capital district. Also point of identification the word OR is used as approved to add.

Commented [CMM3R2]: Also, the definition of DSP applies to a commercial use with more than 1,000 SF of GFA of construction. Here, that threshold drops to 2,500 SF and so applies to ANY commercial use in the CD district. These same changes must be made to the definition of DSP above, too.

Commented [RR4]: SR added this language on 1/31/2022

Commented [RCSR4]: For discussion, should this also include onsite consumption as well?

Restaurant operation may include ancillary bakery, delivery service and/or take-out service but may not include a drive-through facility.

Food Establishment: Take-Out Restaurant – A commercial food service establishment where (1) food is primarily freshly cooked or prepared on site by employees; (2) food and beverages are sold in disposable containers for off-premises consumption only; (3) the customers pick up their orders either at a counter inside the building or at a walk-up window. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Take-Out Restaurant operation may include an ancillary delivery service but may not include a Drive-through facility.

Food Establishment: Fast Food Restaurant – A commercial food service establishment (1) whose principal business is the sale of food and beverages served pre-packaged and ready-to-eat or quickly prepared upon a short waiting time, (2) the food and beverages are packaged and presented in such a manner that it can readily be eaten on or off the premises, (3) the business is characterized by high sales volume and frequent customer turnover, and (4) meals and beverages that are not cooked or prepared fresh on the premises are served, principally in disposable containers. For purposes of this definition, “prepared” does not include warming or reheating food that was assembled off-site. For purposes of this bylaw, Food Establishment: Fast Food Restaurant shall not include Food Establishment: Bakeries or Food Establishment: Ice Cream Parlor as defined herein.

Food Establishment: Drive-through Facility – A drive-up window or a mechanical device where customers waiting in motor vehicles may order and/or pick up prepared food and beverages from a food service establishment.

Restaurant – A building or part thereof to be used for the preparation, indoor sale, and consumption of meals and refreshments on the premises. Seating area for a restaurant may include open or outdoor terrace or patio upon issuance of a Special Permit. ATM 4/23/90

Restaurant, Drive-In – Premises where meals and other items of nourishment and refreshment are offered for sale, and where any portion of these are consumed or intended to be consumed off-premises or within cars parked on the premises. ATM 4/23/90.

Restaurant, Fast Food – A restaurant with drive-up window service, or that otherwise receives payment and/or dispenses products to patrons while in their vehicles. (ATM 4/25/11)

Restaurant, Formula – A restaurant that stands alone or with other use(s), and which prepares food and beverage on site for sale to the public, and which is required by contractual or other arrangement or as a franchise to offer any of the following features: Standardized menu, trademark or service mark, defined as a word, phrase, symbol, design or logo, or a combination of words, phrases, symbols, designs and/or architecture, façade, or color scheme that identifies the restaurant as one (1) of twenty-five (25) or more other restaurants worldwide. (ATM 4/25/11)

Commented [KR6]: Is there anything else we can write in the definition to make this language stronger? The PB is concerned that a fast food restaurant could say they are a take-out restaurant. They feel that the two definitions are not differentiated enough.

Commented [CMM7R6]: Fast food includes consumption on or off premises, while Take Out is only off-premises. However, raise the question above about a clam shack putting out a few picnic tables--does that make it consumption on premises? In my opinion, it would, to are we prepared to not allow Take Out restaurants to offer picnic tables? Fast Food also includes the service of packaged and ready-to-eat meals, as opposed to Take Out which primarily prepares fresh food to order. Take Out and Fast Food are so similar that I think we have differentiated them as much as possible, but I am open to any suggestions the Planning Board may have.

Commented [RR8R6]: The Select Board would like a better definition for fast food. This was discussed at their 1/31/23 Meeting. There was also a question of whether or not the Town could limit franchises to [?].

Commented [RC9]: Simplified definition. Do we need one additional sentence stating "Not to include Food Establishment: Ice Cream Parlors or Not to include Food Establishment: Bakeries separately defined"?

Commented [CMM10R9]: I added some text to your simplification.

B. By amending Chapter 235, Section V – Uses, Table §235 - 5.3.B – Commercial, by striking from the table the uses of “~~Restaurant, Indoor,~~” “~~Restaurant Drive-In,~~” “~~Restaurant Fast Food,~~” and “~~Restaurant Formula~~” and inserting the uses of “Food Establishment: Bakery”; “Food Establishment: Full-Service Restaurant”; “Food Establishment: Take Out Restaurant”; “Food Establishment: Fast Food Restaurant”; “Food Establishment: Drive-Through Facility”, and Food Establishment: Ice Cream Parlor, which shall be allowed by special permit (A) or prohibited (O) as follows in the various zoning districts:

5.3.2 Use Regulations:

5.3.2 Commercial	CD	R1	R2	NSP	C	C2
<u>Food Establishment: Bakery</u>	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
<u>Food Establishment: Full-Service Restaurant</u>	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
<u>Food Establishment: Take-Out Restaurant</u>	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>O</u>
<u>Food Establishment: Fast Food Restaurant</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>
<u>Food Establishment: Drive-through Facility</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>
<u>Food Establishment: Ice Cream Parlor</u>	A	O	O	O	A	
Restaurant, Indoor ⁸	A	Ø	Ø	Ø	A	Ø
Restaurant, Drive In ⁹	Ø	Ø	Ø	Ø	A	Ø
Restaurant, Fast Food ¹⁰	Ø	Ø	Ø	Ø	Ø	Ø
Restaurant, Formula ¹¹	Ø	Ø	Ø	Ø	Ø	Ø

C. By repealing Chapter 235-Section 6.29 – Fast Food & Formula Restaurant Prohibition in its entirety and replacing it with a new Chapter 235, Section 235 - 6.29 - Developments of Significant Planning Interest by inserting the following underlined text:

§235 - 6.29.1-Purpose:

The purpose of this bylaw is to regulate the location, traffic, scale, impacts, and visual features of Developments of Significant Planning Interest in Wellfleet to maintain the unique, small-scale, small-town character and the quality of life for all Wellfleet residents by preserving the individuality and distinctive appeal which are among the Town’s most recognized features. Preservation of the existing character, diversity, variety, and scale of commercial activities is vital to the continuation of Wellfleet’s ability to attract both residents and visitors. Wellfleet

must retain its distinctive Cape Cod character, general welfare, and historical and cultural relevance.

This bylaw incorporates by reference and shall be construed consistently with the policy direction of the Town's Comprehensive Plan, the Cape Cod Commission Act, the enabling act of the Cape Cod National Seashore, and Wellfleet's designated historic districts, with which Wellfleet is intimately and intricately associated.

§235 - 6.29.2 Application Requirements

Applicants for Special Permits for uses so controlled as **Developments of Significant Planning Interest** shall submit to the Zoning Board of Appeals three copies of the following:

- a) An application identifying the intended use and narrative description of the proposed use;
- b) A site plan prepared by a licensed architect, licensed landscape architect, or Registered Professional Engineer, showing proposed structures, building design, lighting, drives, parking, landscaping, screening, dust mitigation, and provision for stormwater management and drainage;
- c) A floor plan for all floors, an elevation plan of all sides of the proposed building and a plan or rendering showing the proposed building in relation to adjoining structures and abutting properties;
- d) A plan showing the dimensions, type, location and elevations of all proposed signs; and
- e) photographs of the premises in its current condition and all adjoining structures.

Forthwith upon receipt of the above materials, the Board of Appeals shall transmit one set of them to the Planning Board for their review and recommendation.

§235 - 6.29.3 Special Permits for Development of Significant Planning Interest

§235 - 6.29.3.1 Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse.

In addition to **§235 - 8.4.B (1) through (3)** of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit for the following uses, **Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse.**

- (a) whether the proposed use will increase the intensity of use on the site so as to adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;
- (b) whether the proposed design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;

(c) whether the proposed design retains the historic characteristics if located within a designated historic district;

(d) whether the proposed design preserves the character-defining elements of an historic building, if applicable, and its setting when adapting to a new use;

(e) whether the proposed use incorporates the use of permeable pavement or pavers for parking areas and walkways;

(f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;

(g) whether the proposed use includes the storage or presence of hazardous and/or combustible materials; and

(h) the overall impact of the proposed use on the health and safety of area residents.

§235 - 6.29.4 Food Service Establishments (all) or Other Commercial Developments involving more than 2,500 square feet of floor area, or Any Commercial Developments in the Central District

In addition to §235 - 8.4.B(1) through (3) of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit; provided, however, that the Special Permit Granting Authority shall not require strict compliance with the design criteria contained in this section with respect to pre-existing nonconforming structures and uses as of the date of adopting this zoning amendment at the September 2023 Special Town Meeting but may grant waivers when the Special Permit Granting Authority finds such waiver(s) to be in the best interests of the Town or that strict compliance would cause an undue financial hardship to the food service establishment or that strict application of the design criteria would not be consistent with the existing style or character of the pre-existing nonconforming food service establishment:

- (a) Whether the proposed use is designed and operated in a manner that preserves the community's distinctive small-town character, including the following:
- (1) the use of natural shingles or clapboards as exterior finishes;
 - (2) exterior lighting uses gooseneck or similarly designed fully shielded downward-facing lighting and shall eliminate light trespass onto streets or abutting parcels;
 - (3) use of permeable pavement or pavers for parking areas and walkways;
 - (4) whether the scale of the building is in keeping with a small-town, coastal setting;
 - (5) Preservation of the character-defining elements of an historic building, if applicable, and its setting when adapting to a new use.

Commented [CMM11]: By stating "Food Establishments (all)", this applies to bakeries and ice cream parlors. Do we really wish to subject bakeries and ice cream parlors to these requirements? I thought the intent was to exclude bakeries and ice cream parlors from these requirements?

Commented [RC12]: The Board deemed it desirable for the design criteria to apply more broadly, to structures and within the central district. Also point of clarification the word OR is used as opposed to and.

Commented [CMM13R12]: Above, the definition of USEF applies to a commercial use with more than 4,000 SF of GFA of construction. Here, that threshold drops to 2,500 SF and now applies to ANY commercial use in the CD district. These same changes must be made to the definition of USEF above, too.

- (6) whether the façade is broken up in terms of color scheme, use of materials and incorporates segments that protrude forward or are recessed to minimize the appearance of massing;
- (7) whether the design is compatible with the character of surrounding properties or the zoning district;
- (8) use of native plantings of a suitable size, diversity and hardiness to survive Cape Cod's climate and minimize use of water, herbicides and pesticides;
- (9) use of small-scale, painted wooden signs that are externally illuminated; and
- (10) Whether the business model includes curb-side pick-up or delivery of food or goods to patrons in their vehicles;
- (11) Accessibility of the development for disabled individuals;

(b) whether the proposed use contributes to the diversity of uses to assure a balanced mix of businesses available to serve residents and visitors;

(c) whether the proposed building design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;

(d) whether the proposed use will increase the intensity of use on the site so as adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;

(e) whether the size, style and design of signage is appropriate to maintain the scale and character of Wellfleet;

(f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;

(g) whether the proposed use includes the storage or presence of hazardous or combustible materials; and

(h) the overall impact of the proposed use on the health and safety of area residents.

§235 - 6.29.5 Floor Area Applicability

Any increase in floor area shall be cumulative upon the adoption of this bylaw (ATM 2023).

6.29 FAST FOOD & FORMULA RESTAURANT PROHIBITION (ATM 4/25/11) Purpose: The Cape Cod seaside character of Wellfleet is unique, and is important to the people of the community and their collective identity as a community, as well as to the visiting public. Far more than most Cape Cod towns, Wellfleet retains its rural village character, which is integral to the fabric of the community. Wellfleet is also traditionally home to small, locally owned and operated businesses. In these senses, Wellfleet has maintained its identity in a manner rare in the region.

Commented [CMM14]: Meeting 1/16/23. If a claimant filed for 2,000 SF and wants to add 2,000 SF, i.e. this bylaw applies?

Commented [CMM15]: I don't think the comment about has been resolved.

The purpose and intent of the Formula-Based Restaurant Prohibition is to address the adverse impact (in terms of noise, litter, traffic, and aesthetically inappropriate development) that standardized fast food and formula restaurants would have on Wellfleet's distinctive Cape Cod character, general welfare, and historical and cultural relevance as a rural community. These uses are therefore prohibited in order to preserve and protect the unique and locally-oriented community experience of Wellfleet, and all that this offers to its citizens and tourists alike as a treasured destination. This policy is also consistent with the policy direction of the Town's Comprehensive Plan, the Cape Cod 77 Commission Act, and the enabling act of the Cape Cod National Seashore, with which Wellfleet is intimately and intricately associated.

Summary: When Wellfleet adopted both the Formula Business and Fast Food & Formula Restaurant provisions in 2011, the Attorney General warned the Town about both provisions but noted that at the time, no court rulings had been made. Both provisions used substantially the same language and definitions. The following year, *Cumberland Farms, Inc. v. Board of Appeals of the Town of Wellfleet* and the Town of Wellfleet challenged the validity of Section 6.30 Formula Business. In 2015 a ruling was made invalidating Wellfleet's Formula Business provisions on the grounds that they (1) violated G.L. c.40A, §4, which requires that zoning regulations be uniform within a zoning district for each class or kind of structure or use permitted, and (2) imposed impermissibly vague and subjective special permit standards. We have also been advised that the definitions of Drive-In Restaurants and Fast Food Restaurants are likely too similar to prohibit one and allow the other. We have been informed by Town Counsel that the Fast Food and Formula Restaurants is similarly vulnerable to challenge. In order to protect the Town from development that it considers deleterious, we need to amend our Zoning Bylaw. This proposal retains the prohibition on Fast Food Restaurants, strengthens our definitions, and gives the Zoning Board of Appeals additional tools to protect the character of Wellfleet and extends them to some other commercial uses of particular concern. It also defines certain light industrial uses or scales as activities that require additional considerations to be taken into account.

KP LAW EDITS:

1. One of the driving goals behind this bylaw amendment is to prohibit Fast Food establishments, which we know we cannot define or exclude based on its corporate ties. I continue to agree with others that the definitions for Take Out and Fast Food are too similar, but as we have spent months on this, and I have researched multiple definitions for these uses in other bylaws, I do not see a clear way of allowing PJ's Clam Shack as Take Out, for example, but prohibiting McDonald's as Fast Food. In my research, I failed to locate any other municipality that distinguished between Take Out and Fast Food, as we are attempting here; instead, Take Out and Fast Food were more often synonymous.. Also, I think McDonald's could make an argument that they satisfy the definition for Full-Service Restaurant, which defeats the purpose of this amendment. There are other uses that may be vulnerable under this amendment, too, such as a deli or a pizza shop, which may be Fast Food and therefore, prohibited. I am concerned that with the currently proposed definitions, where Take Out and Fast Food are so similar, we may lose a legal challenge. I offer the following for the Selectboard's and Panning Board's consideration:
 - a. As currently written, the only real distinction between Take Out and Fast Food is that Take Out is for off-premises consumption only, which means that no clam shack can add a picnic table in the parking lot. Where so many restaurants added outdoor dining during COVID, this off-premises consumption requirement may place Take Out restaurants at a competitive disadvantage, having the opposite effect of what this amendment was designed to achieve.
 - b. Combine Take Out and Fast Food into one definition and prohibit this use entirely. Lawful, pre-existing places like a clam shack will be rendered nonconforming uses, but they will be allowed to continue to operate, to alter their structure or use or even to expand, subject to a special permit/finding by the ZBA. This would have the effect of excluding McDonald's or the like from the Town, except perhaps if it was taking the place of an existing Take-Out restaurant.
 - c. Combine Take Out and Fast Food into one definition or even consider placing all of these uses under the umbrella of a Full-Service restaurant while still prohibiting Drive-Throughs. This alone will not prohibit McDonald's, but it will discourage such uses where the Drive-Through is an integral part of their business model. Subject all restaurants to a SP and apply the design criteria proposed by this amendment. Again, this will not prevent a McDonald's from locating in Town, but it will force the building to look like it belongs on the Cape.
2. We deliberately added definitions for bakeries and ice cream parlors so as to differentiate them from the other food establishment uses, yet the amendment would still subject these uses to a SP and the design criteria. Do we really intend

to subject a bakery and ice cream parlor to these requirements, or should they be allowed as of right?

3. The amendment does not really address how to treat places with mixed uses. For example, Cumberland Farms is a retail store, but it may also offer self-serve coffee and microwavable breakfast sandwiches to be consumed off-premises. I assume we would want to prohibit this as an accessory use, if it is prohibited as a principal use.
4. Section 235-6.29.3 contains the SP criteria for other commercial uses, like Boat Houses and Bulk Storage, but I am not sure the criteria matches the uses or considers the zoning districts where these uses may be exercised. For example, do we anticipate that any of these uses to locate within an historic district or building with historical character or to use permeable pavers? If not, we should re-think the criteria to be applied.
5. Section 235-6.29.4 establishes the SP criteria for all Food Establishments (which would include bakeries and ice cream parlors) and any other commercial development greater than 2,500 SF and any commercial development in the CD district (regardless of the size). Consider adding criteria no. 6 relative to façade color scheme, use of materials and massing to Sec. 235-6.29.3. Criteria no. 11 requires accessibility for disabled persons. Restaurants are places of public accommodation by law, and therefore they are required to be accessible. If a pre-existing restaurant is not currently accessible, when and to what extent is must become accessible is governed by the size and cost of any renovations under the ADA and Architectural Access Board. I recommend deleting this criterion rather than expecting the ZBA to become conversant in accessibility requirements.
6. Section 235-6.29.5 states that the increase in floor area shall be cumulative. But it is not clear to me how that is to be interpreted. If an existing restaurant has 2500 SF and wants to add 500 SF, it appears to require a SP under this amendment, or does this apply to all restaurants, regardless of size of the new construction or addition? If we require a SP for restaurants and commercial developments, does the 2500 SF requirement matter?

Thank you,

Carolyn M. Murray, Esq.

KP | LAW

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**SPECIAL TOWN MEETING
Monday September 18, 2023
6:00 PM**

at

**Wellfleet Elementary School
100 Lawrence Road, Wellfleet, MA**

&

**SPECIAL TOWN ELECTION
Wednesday September 27, 2023**

at

**12:00 Noon to 7:00 PM
Wellfleet Senior Center
715 Old King's Highway**

v.2 (Draft)

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FINANCIAL & PROPOSITION 2½ TERMS

Chapter 59, section 21C of the Massachusetts General Laws is commonly referred to as Proposition 2½ (Prop. 2½) or the Tax Limiting Law for Cities and Towns in Massachusetts.

LEVY: The property tax levy is the revenue a Town can raise through real and personal property taxes. The property tax levy is the largest source of revenue for the Town.

LEVY CEILING: This is the maximum the levy can be. The ceiling equals 2.5% of the Town's full and fair cash value. The levy ceiling is equivalent to a tax rate of \$25.00.

LEVY LIMIT: The maximum the levy can be in a given year. The limit is based on the previous year's levy limit plus certain allowable increases, such as debt exclusions.

LEVY LIMIT INCREASE: The levy limit automatically increases each year by 2.5% of the previous year's levy limit.

NEW GROWTH: New construction and new parcel subdivision may also increase the Town's levy limit.

OVERRIDE: A community can permanently increase its levy limit by successfully voting at a referendum to exceed the limits. A community may take this action as long as it is below the levy ceiling.

DEBT EXCLUSION: This type of override ballot question can be placed on a referendum by a two-thirds vote of the Selectboard. If a majority of the voters approve the ballot question, the Town's levy limit is increased only for the amount voted at the referendum for the life of that debt only. The levy limit increase may exceed the Town's levy ceiling.

DEBT SERVICE: The repayment cost, usually stated in annual terms and based on an amortization schedule, of the principal and interest owed on any particular bond issue.

ENCUMBRANCE: A reservation of funds to cover obligations chargeable to but not yet paid from a specific appropriation account.

CAPITAL OUTLAY EXPENDITURES EXCLUSION: This type of override ballot question can be placed on a referendum by a two-thirds vote of the Selectboard. If a majority of the voters approve the ballot question, the additional amount for the payment of the capital project cost is added to the levy limit or levy ceiling only for the year in which the project is being undertaken.

CONTINGENT VOTES: Chapter 59, section 21C (m) permits a Town Meeting to appropriate funds contingent upon passage of a referendum question (OVERRIDE/DEBT EXCLUSION). A contingent vote does not automatically result in an override referendum. An override referendum can only be called by the Selectboard. If a referendum is called by the Selectmen, it must take place within forty-five days of the Town Meeting vote.

TOWN MEETING PROCEDURES

A quorum of 6% of the Town’s registered voters must be present to conduct business (Charter: Sect. 2-1-3).

Voters are identified by voter cards issued when they check in with the registrars at the beginning of the meeting.

Only voters may participate in voice votes. In case of a counted vote, voters will be identified by their voter cards.

Non-voters who have been admitted to the meeting must sit in the section designated for them. Non-voters who may wish to speak must identify themselves and may address the meeting only by permission of the Moderator (Charter: Sect. 2-1-2).

No voter will be allowed to speak until recognized by the Moderator.

Voters and others recognized to address Town Meeting may only speak twice to any motion or amendment unless authorized by the Moderator (Charter: Sect. 2-7-8).

All motions or amendments must be in writing and be legible. Exceptions for very simple motions or amendments are at the discretion of the Moderator (General Bylaws: Sect. II-2).

The order of consideration of the Articles as printed in the Warrant may be changed only by a 2/3 majority vote (Charter: Sect. 2-7-4).

A motion for indefinite postponement, if passed, ends any action on the motion currently being debated. It may only be made after a voter has been recognized and may not come at the end of a speaker’s remarks. It is fully debatable to the same extent as the main motion under consideration.

A motion to end debate (known as a “motion for the previous question”) may only be made by a voter who has been recognized. Anonymous calls from voters to “call the question” are out of order and will be ignored by the Moderator. A motion to end debate requires a separate 2/3 majority vote, so it may be more efficient to hear from one or two more speakers and then proceed to a vote on the main motion itself.

A motion to reconsider must be made at the same session as the vote it seeks to reconsider. It can only be made after some intervening business and must be made within one hour of the vote to be reconsidered (Charter: Sect. 2-7-9). It is debatable to the same extent as the motion it seeks to reconsider and requires a majority vote. A motion to reconsider will only be allowed if there is new information that was not available at the time of the original debate. A motion to reconsider will be ruled out of order if, in the judgment of the Moderator, it is simply an attempt at “another bite at the apple.”

Some other common motions which require more than a simple majority to pass:

Zoning bylaws	2/3 majority (with some statutory exceptions)
Zoning bylaws subject to Housing Choice Act	majority
To authorize borrowing or incur debt	2/3 majority
To transfer or sell Town land	2/3 majority
To approve proposed Charter amendments	2/3 majority
To pay unpaid bills of a prior fiscal year	4/5 majority at an Annual Town Meeting
	9/10 majority at a Special Town meeting

FINANCE COMMITTEE STATEMENT

XXXX

SPECIAL TOWN MEETING WARRANT

Monday, September 18, 2023

The Commonwealth of Massachusetts

To either of the Constables in the Town of Wellfleet in the County of Barnstable:

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn the inhabitants of the Town of Wellfleet qualified to vote in Town Affairs, to meet in the Wellfleet Elementary School, 100 Lawrence Road in Wellfleet on the 18th day of September 2023, at **six** o'clock in the evening, then and there to vote upon the following Articles:

SECTION I: BUDGET ARTICLES

ARTICLE NO. 1 – PRIOR YEAR INVOICES:

To see what sum the Town will vote to transfer from available funds for the purpose of paying prior year unpaid bills listed below:

	Vendor	Source	Line-item	Amount
a.	XXX	xxx	xxx	\$0.00
	Grand-total			\$0.00

or to do or act on anything thereon.

(Requested by the Selectboard)

Nine-Tenths Vote Required

Recommendations:

Selectboard:

Insert Yes – 4, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: Invoices received after the close of the fiscal year for services rendered or goods received prior to July 1 are considered prior year bills. Per MGL Chapter 44 Section 64, prior year bills to be paid from the Town’s general operating fund may only be paid by a vote of Town Meeting.

ARTICLE NO. 2 – FY 2024 BUDGETARY TRANSFERS:

To see if the Town will vote to transfer from available funds and/or authorize the transfer from various line items within FY 2024 appropriations such sums of money necessary to supplement the operating budgets of the various Town Departments as follows:

	From (Decrease)	Line Item	To (Increase)	Line Item	Amount
a.	Beach Fund	FND	Beach Expenses	699	\$ 10,000
	Grand-Total				\$ 10,000

or to do or act on anything thereon.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes- 4, No – 0, Abstain – 0.

Recommend Yes – 0, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: This article is seeking permission to transfer funding within the FY 2024 operating budget ending June 30, 2024. We have shortfalls in various departmental budgets that will be remedied by transferring monies from those areas within the budget that have surpluses.

ARTICLE NO. 3 – 95 LAWRENCE ROAD – WASTEWATER TREATMENT FACILITY – PHASE I:

To see if the Town will vote to appropriate a sum of money, not to exceed \$3,500,000 for the purpose of, designing, permitting, and constructing of wastewater facilities in conjunction with an Affordable Housing Project at 95 Lawrence Road, including connecting nearby Town buildings in Phase I, and for the payment of all other costs incidental and related thereto, and that to meet this appropriation the Town Treasurer, with the approval of the Selectmen be and hereby is authorized to borrow said amount under and pursuant to Chapter 44, Section 8 of the General Laws, or pursuant to any other enabling authority including the Massachusetts Clean Water Trust, and to issue bonds or notes of the Town therefore; provided, however that no sums shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts necessary to pay debt service on any bonds or notes issued pursuant to this vote from the limits of Chapter 59, Section 21C of the Massachusetts General Laws (Proposition 2 ½) or take any other action in relation thereto.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 4, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: The Town is contractually obligated as part of the 95 Lawrence Rd Housing Project's Request For Proposals to provide for advanced wastewater treatment facilities located at this site. The plan is to install a cluster system servicing both the housing project and the Wellfleet Elementary School, the Police Station, and Fire Station in Phase I. Connecting these town-owned buildings will result in a net improvement of water quality in the neighborhood even after accounting for the housing project. Phase II is planned to connect a number of the surrounding properties to this system which will cost significantly less money than individual septic system upgrades, a centralized sewer system, or any other means evaluated.

Mass Works Grant

Developers Contribution

There is already borrowing authorization of \$1.932 million dollars from Annual Town Meeting in June of 2021. This borrowing request will supersede the previous borrowing authorization allowing the Town to

seek competitive borrowing from the State Revolving Fund and open the door for grant subsidies from the Cape and Island Water Protection Fund (CIWPF). The CIWPF allows for grant subsidies up to 25% of the project cost.

ARTICLE NO. 4 – ENHANCED INNOVATIVE & ALTERNATIVE SEPTIC PROGRAM:

To see if the Town will vote to appropriate a sum of money, not to exceed \$450,000 to assist in the installation of high performance, so called “enhanced” Innovative & Alternative (I&A) Septic Systems within the Wellfleet Harbor Watershed,, and for the payment of all other costs incidental and related thereto, and that to meet this appropriation the Town Treasurer, with the approval of the Selectmen be and hereby is authorized to borrow said amount under and pursuant to Chapter 44, Section 8 of the General Laws, or pursuant to any other enabling authority including the Massachusetts Clean Water Trust, and to issue bonds or notes of the Town therefore; provided, however that no sums shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts necessary to pay debt service on any bonds or notes issued pursuant to this vote from the limits of Chapter 59, Section 21C of the Massachusetts General Laws (Proposition 2 ½) or take any other action in relation thereto.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 4, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: This would allow the Board Health to provide assistance to homeowners who need to replace their septic system. This Assistance corresponds with the incremental cost of enhancement to upgrade to an “enhanced” IA system. Upgrading these systems to high performance I&A systems can reduce nitrogen similar to the levels obtained with a wastewater treatment plant, thereby improving the groundwater quality and reducing the nutrient loading of Wellfleet Harbor at a significantly reduced cost compared with sewer connection. The funding sought is a \$12,500 grant to property owners to pay for the additional costs to upgrade to one of these “enhanced” IA systems when their pre-existing system is required to be upgraded. This grant would keep the cost of the septic the same as what is already required under title 5 and will encourage the use of an enhanced IA system. Upgrading septic systems will be a critical element in addressing the Town’s wastewater needs.

There is already a total borrowing authorization of \$450,000 dollars from Annual Town Meeting in June of 2021 and April of 2022. This borrowing request will supersede the previous borrowing authorization adding language that allows the Town to seek competitive borrowing from the State Revolving Fund and open the door for grant subsidies from the Cape and Island Water Protection Fund (CIWPF). The CIWPF allows for grant subsidies up to 50% for projects costing less than \$1 million dollars.

ARTICLE NO. 5 – TOWN PLANNER – NEW STAFF:

To see if the Town will vote to raise and appropriate and/or transfer from any available source of funds the sum of \$145,000.00, or any other sum for the purpose of funding a Town Planner position; provided, however, that no sums shall be expended hereunder unless and until the Town has voted to assess an

additional \$145,000.00 in real estate and personal property taxes pursuant to the provisions of Chapter 59, Section 21C of the Massachusetts General Laws (Proposition 2 ½), or do or act on anything thereon.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 5, No – 0, Abstain – 0.

Recommend: Yes – 5, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: This article would fund the cost of hiring a Town Planner, including salary and benefits. The lack of a dedicated Town Planner is severely impacting the town’s ability to address land use and long-range planning. Planning is one of the tasks assigned to the Assistant Town Administrator. The Assistant Town Administrator position is overburdened regardless of who the Assistant Town Administrator and that results in initiatives and committees not receiving the support they need. A Town Planner is essential for Wellfleet to form a functional administration. The lack of dedicated Town Planner results in the burnout of staff. Wellfleet needs to address its underinvestment in the professional positions that are essential to governing. A dedicated Planner would support the Building Commissioner and the ZBA in zoning enforcement, assist in developing bylaws, the development of housing initiatives and programs.

ARTICLE NO. 6 – MAURICE’S CAMPGROUND – HOUSING PLANNING FUNDS:

To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$xx,xxx.00, or any other sum, for the purpose of hiring a consultant to assist the Maurice Planning Committee in Housing related services including preparing a scope of work, bid documentation, and an estimated project cost associated with the development of Maurice’s Campground, or to do or act on anything thereon.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

Finance Committee: Yes – 0, No – 0, Abstain – 0.

SUMMARY: XXX

SECTION II: BYLAWS, INITIATIVE PETITIONS

ARTICLE NO. 7 – ZONING BYLAW AMENDMENT – INCLUSIONARY ZONING:

To amend Chapter 235, Article II DEFINITIONS by inserting the following definitions in alphabetical order and to amend Chapter II by adding a new Section 6.28 Inclusionary Zoning Bylaw as follows:

§235 - 2.1 Definitions

Affordability Gap – the difference between the appraised value of a market-rate dwelling units within the proposed development and the appraised value of an affordable housing unit in Wellfleet comparable to the market-rate unit in terms of type, size and number of bedrooms and calculated at the time of sale or issuance of a certificate of occupancy, whichever occurs sooner, for any market-rate unit in the proposed development. Affordable Housing Unit - a dwelling unit that is affordable to and occupied by a Low- or Moderate- Income Household and meets the requirements for inclusion on the Subsidized Housing Inventory maintained by the Department of Housing and Community Development.

Affordable Housing Restriction – A deed restriction entered into and enforceable under G.L. c. 184, §§31-33 in a form acceptable to the Town that restricts occupancy of an affordable housing unit to a low- or moderate- income-eligible purchaser or renter and which provides for the administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period allowed by law.

§235 – 6.28 INCLUSIONARY ZONING BYLAW

§235 – 6.28.1 Purpose and Intent

The purpose of this bylaw is to encourage development of housing that is affordable to persons of various age and income levels in accordance with Massachusetts General Law, Chapter 40A, Section 9, which allows municipalities to adopt “incentive” bylaws for the creation of affordable year-round housing, and for the purposes of:

- A. Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; and,
- B. Encouraging the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year-round community and a viable and healthy local workforce and to prevent the displacement of Wellfleet residents;
- C. Mitigating the negative impact of residential development on the availability and cost of housing;
- D. Protecting the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land;
- E. Creating dwelling units eligible for inclusion on the Town’s Chapter 40B Subsidized Housing Inventory as maintained by the Department of Housing and Community Development (DHCD).

§235 6.28.2 Applicability

In the CD, R1, R2, C and C2 zoning districts, the inclusionary zoning provisions of this section shall apply to any project that results in a net increase of three or more dwelling units as part of a single application, whether by new construction, a change in use, or by the alteration or rehabilitation of existing structures, provided, however, this bylaw shall not apply to nursing homes

§235 6.28.3 Mandatory Provision of Affordable Housing for Development of New Residential Units

In order to contribute to the local stock of Affordable Housing, any residential project that results in a net increase of three or more dwelling units as part of a single application as described in Section 6.28.2 shall provide a percentage of the dwelling units as deed restricted Affordable Housing units. This Affordable Housing requirement shall be one-sixth (16.67%) of the number of new dwelling units to be developed rounded up to the nearest whole number and shall be made a condition of a Special Permit, or the applicant shall meet the requirement in accordance with the following:

- A. Development of 3 to 6 new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 8.4.2 and a Payment in Lieu of providing the required number of affordable units to be made to the Wellfleet Affordable Housing Trust Fund to fulfill the Affordable Housing requirement.

(1) Payment shall be made in accordance with the following formula:

Commented [CMM1]: As requested, see revised language. The only concern with using the delta between a market rate and affordable unit is that the Town will not receive enough \$ to create another affordable unit.

Another option is to set the Payment In Lieu at an amount equal to the required number of affordable housing units multiplied by the median sales price of a Wellfleet market-rate house comparable in type, size and number of bedrooms calculated at the time that a Special Permit application is made, or calculated at the time of sale or issuance of an occupancy permit for any market rate unit in the development, whichever occurs sooner. This would result in a higher payment to be used to create affordable housing elsewhere in Town.

Commented [RC2]: Barbara's amendment, says there are other SHI beyond LIP and we should not limit it to just LIP

Commented [CMM3R2]: Agreed

Commented [CMM4]: In my experience imposing an affordability requirement when two or more units are applied for is an unusually low threshold. I have seen bylaws applying to 10 units or more and generally require 20% of those units to be affordable.

Commented [RC5R4]: We had just had an 8

Commented [CMM6]: This may seem obvious to some, but it doesn't hurt to clarify.

- For 3-4 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(16.67%)x(affordability gap)x(67%)
 - For 4-6 new dwelling units, the Payment in Lieu= (total # of new dwelling units)x(16.67%)x(affordability gap)x(100%)
- (2) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - (3) The Payment in Lieu shall be due:
 - a. upon the issuance of a certificate of occupancy of any unit in the development;
or
 - b. The total Payment in Lieu shall be divided by the total number of market rate units in the development, and the resulting quotient shall be payable upon the closing of each market rate unit
- B. Development of 7 or more new dwelling units shall require the granting of a Special Permit by the Zoning Board of Appeals per §235 8.4.2 and at least one-sixth (16.67%) of the new units created shall be established as Affordable Housing units in any one or combination of methods provided for below:
- (1) The Affordable Housing units shall be constructed or rehabilitated on the site subject to the Special Permit, in accordance with §235 Section 6.28.4; or
 - (2) The Affordable Housing units shall be constructed or rehabilitated on a site other than the one subject to the Special Permit, in accordance with §235 6.28.4, provided justification is provided that on-site development of units is not feasible and off-site development of units is beneficial to the Town, and applicable Building or Zoning Permits are granted contemporaneously for both developments; or
 - (3) A Payment in Lieu of providing Affordable Housing units shall be made to the Wellfleet Affordable Housing Trust Fund. Payment shall be made in accordance with the following formula:
 - a) For 7 or more new dwelling units, the Payment in Lieu = (total # of new dwelling units)x(16.67%)x(affordability gap)x(150%)
 - b) The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser
 - c) The Payment in Lieu shall be made at and upon the sale or certificate of occupancy of each unit, whichever occurs sooner. When the development consists of year-round rental units, memorialized in the affordable deed restriction which states that the Payment in Lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use at current market rate; or
 - (4) A Land Donation in Lieu of providing Affordable Housing units shall be provided to the Wellfleet Affordable Housing Trust, provided that:
 - a) The receiving organization agrees in writing to accept the land; and
 - b) The applicant demonstrates to the Zoning Board of Appeals' satisfaction that the land serves the future development of Affordable Housing; and
 - c) The value of donated land shall be equivalent to or greater than the value of the required Payment in Lieu. The Zoning Board of Appeals may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Zoning Board of Appeals may obtain expert peer review of the appraisal at the applicant's expense; and

Commented [CMM7]: I am not sure I understand the math here. Wouldn't it be easier to require a developer to make a payment equal to the value of the required number of Affordable Housing Units multiplied by the median sales price of a Wellfleet market-rate home comparable in type, size, and number of bedrooms over a period of XX months prior to the date of application submission, provided the amount of such payment shall not be decreased based on the value of an Affordable Housing Unit. Data for sales could be provided by the Wellfleet Assessors.

Commented [RC8R7]: The sample size would be too small in 2022 we had 62 home sales and 15 condos. To get a large enough sample for certain bedroom sizes it would require multiple years of sales at that would introduce lag in the values accessed.

This schedule is a modification of Provincetown, it progressively becomes more expensive not to include the units.

Commented [CMM9]: What if a developer is required to provide 2 affordable units and offers to create one at a property that is already developed? There would be no contemporaneous SF for the off-site unit

Commented [RC10R9]: Permits are required to be obtained.

Commented [CMM11]: I suggest revising this to be the same as 6.28.3.A.3 a and b above.

- d) Closing on the land donation shall occur before the issuance of the first building permit.

§235 6.28.4 Provisions Applicable to Affordable Housing Units Located On-Site and/or Off-Site

- A. Affordable Housing units created in accordance with this bylaw shall have a deed restriction and Regulatory Agreement to regulate the future re-sale or rental of the unit and that requires the units to remain income restricted in perpetuity or the longest period allowed by law. Said deed restriction and Regulatory Agreement shall be consistent with the forms used in the Local Initiative Program and Regulatory Agreement approved by DHCD. The Regulatory Agreement shall be prepared in a form acceptable to Town Counsel by the Applicant and submitted for review and approval. The Regulatory Agreement will be executed by the Applicant, the Town of Wellfleet and DHCD and shall be recorded with the Barnstable County Registry of Deeds or and
- B. The applicant shall be responsible for preparing and submitting any documentation that may be required to receive Local Action Unit approval from DHCD and to qualify the Affordable Housing Units for listing on the SHI. The applicant shall also be responsible for providing annual compliance monitoring and certification to the Town or its monitoring agent and to pay for the costs of the Town for providing such compliance monitoring.
- C. No Building Permit shall be issued for any units in the development until the Zoning Board of Appeals receives evidence that the Affordable Housing deed restriction has been approved by DHCD or by Town Counsel.
- D. No Certificate of Occupancy shall be issued for any units in the development until the Building Commissioner receives evidence that the Affordable Housing deed restriction has been executed and recorded at the Barnstable County Registry of Deeds or that the Payment in Lieu has been made in accordance with this bylaw or as modified by the Special Permit conditions.
- E. Affordable Housing units shall be integrated with the rest of the development or with the off-site location and shall be comparable to and indistinguishable from market rate units in exterior design, including appearance, construction and quality of materials, and in energy efficiency.
- F. The number of bedrooms in each Affordable Housing unit shall be made a part of the Special Permit and shall be based on local need as determined by the Zoning Board of Appeals in consultation with the Wellfleet Housing Authority.
- G. Owners and tenants of on-site Affordable Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.
- H. The development of Affordable Housing units shall take place at the same rate and timeframe as the development of market rate units.
 - 1) Building Permits for any phased development shall be issued at a ratio of no greater than five (5) market rate units to one (1) Affordable Housing unit. Building Permits for subsequent phases shall not be issued unless all the required Affordable Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
 - 2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of five (5) market rate units to one (1) Affordable Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless and until all Affordable Housing units are occupied.

Commented [CMM12]: The deleted language is usually included in AOC projects where the development does not comply with zoning. This will not be the case here.

Commented [RC13]: The intent is to not allow a developer to build say 3 units and not have to not seek a building permit for the affordable unit/s

Commented [CMM14R13]: ok

§235 6.28.5 Maximum Incomes and Selling Price: Affordable Housing Inventory

Maximum rents and/or sale price shall not exceed 30% of an occupant's or tenant's annual income for a household at or below 80% of Area Median Income adjusted by household size.

§235 6.28.6. Segmentation Prohibition

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. "Segmentation" shall be defined as subdividing one parcel of land into two or more parcels of land in such a manner that each parcel can support only a single dwelling unit or phased development that cumulatively results in a net increase of three or more dwelling units above the number existing thirty-six (36) months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section.

§235 6.28.7 Conflict with Other Bylaws

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

§235 6.28.8 Severability

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 Wellfleet's Zoning Bylaws.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: XXX

ARTICLE NO. 8 – ZONING BYLAW AMENDMENT – COTTAGE COLONIES:

To see if the Town will amend the Wellfleet Zoning By-Laws by amending Chapter 235, Article II DEFINITIONS as follows:

§235 - 2.1 Definitions

Cottage Colony - A group of two or more detached dwellings located on the same lot not within the NSP, each containing one dwelling unit only which is designed for independent family living including cooking facilities. Each unit shall contain not less than ~~550~~ **300** sq. ft. of floor area and not more than ~~768~~ **800** sq. ft.

Cottage Colony NSP - A group of two or more detached dwellings located on the same lot within the NSP, each containing one dwelling unit only which is designed for independent family living including cooking facilities. and occupied on a seasonal basis only. Seasonal shall be defined as a period commencing April 1 of each calendar year and terminating November 30 of the same calendar year. Each unit shall contain not less than ~~550~~ **300** sq. ft. of floor area and not more than ~~768~~ **800** sq. ft

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: The changes in floor area bring a number of the pre-existing cottage colonies into compliance with zoning. 250 sq ft of floor area is the minimum allowed for two people to reside in per state codes. Wellfleet has a number of cottages in colonies that are well below 550 sq. ft. An example is

Brownies cabins out of a total of thirteen cottages, nine are below 550 sq. ft. This would also enable a property owner to build a cottage colony with modest structures that could serve as homes for those just starting on their own or are looking to downsize. The change from 768 sq ft to 800 sq ft is a reflection that there are cottage colonies where there are units that are slightly over 768 sq. ft. 800 sq ft also is a standardized size that is easy to measure. Cottage Colonies would remain permitted by special permit only in the districts they are currently allowed in.

ARTICLE NO. 9 – ZONING BYLAW AMENDMENT – INTENSITY OF USE OF MULTI-FAMILY DWELLINGS:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by deleting the text that is struck-through as follows, or to do or act on anything thereon:

A. By Amending Chapter 235 Section 5.4.5 Intensity of Use Application to Multiple Family Dwellings by striking the section:

~~5.4.5 Intensity of Use Application to Multiple Family Dwellings~~

~~The first unit of a multiple family dwelling or of an apartment building shall require a minimum land area equal to the lot requirements of the district in which located. Each additional unit will require 8,000 square feet of land area. Front, side and rear yard and maximum building coverage requirements of the district in which the structures located shall apply. (Amended 4/30/85 ATM, Art. 64.~~

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: Multifamily Dwellings are allowed by special permit in the Commercial District. The minimum lot size in the commercial district is 40,000 square feet. The requirement to have an additional 8,000 sq ft effectively prohibits multifamily housing on a significant proportion of lots in the Commercial District and limits the number of potential dwellings as well. This does not change the number of bedrooms allowed on a parcel, just how they are configured. The intent here is to provide a greater opportunity for diversity in Wellfleet’s housing stock to better suit the needs of our population.

ARTICLE NO. 10 – ZONING BYLAW AMENDMENT – DEVELOPMENTS OF SIGNIFICANT PLANNING INTEREST AND FOOD ESTABLISHMENTS:

To see if the Town will amend the Wellfleet Zoning By-Laws by repealing the existing Chapter 235 - Section 6.29, Fast Food & Formula Restaurant Prohibition and replacing it with a new Chapter 235 - Section 6.29, Development of Significant Planning Interest and Food Service Establishments and by amending Chapter 235 -Sections 2.1, 5.3, and 8.4.2. by inserting text shown as underlined and deleting text that is ~~struck through~~ as follows, or take any action related thereto:

A. By amending Chapter 235 – Article II – Section 2.1 DEFINITIONS by inserting in alphabetical order new definitions for “Development of Significant Planning Interest.” “Food Establishment: Bakery.” “Food Establishment: Full-Service Restaurant,” “Food Establishment: Take-Out Restaurant,” “Food Establishment: Fast Food Restaurant.” and “Food Establishment: Drive-through Facility” and deleting the

definitions of “Restaurant,” “Restaurant Drive-In,” “Restaurant Fast Food” and “Restaurant, Formula” as follows:

Development of Significant Planning Interest: Any of the Food Establishment categories defined in this By-law, Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse, or Other Commercial Developments involving more than 2,500 square feet of floor area, or Commercial Developments in the Central District.

Food Establishment: Bakery - A commercial food service establishment primarily engaged in the preparation and retail sale of baked goods for consumption on or off the premises. A bakery may include, as an accessory use, wholesale distribution of goods prepared on the site.

Food Establishment: Ice Cream Parlor - An establishment where the primary activity is the retail sale of ice cream, frozen yogurt and/or similar products for consumption on or off the premises; provided however, that this definition shall not apply to restaurants where such ice cream, ices, or beverages are sold and consumed in connection with the serving of meals.

Food Establishment: Full-Service Restaurant - A commercial food service establishment where (1) meals are primarily freshly cooked and prepared to order on-premises and are served primarily for consumption on the premises, either indoors or outdoors; (2) customers may be provided with individual menus; (3) a restaurant employee serves the customers at the same table or counter where the meals are consumed. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Full-Service Restaurant operation may include ancillary bakery, delivery service and/or take-out service but may not include a drive-through facility.

Food Establishment: Take-Out Restaurant - A commercial food service establishment where (1) food is primarily freshly cooked or prepared on site by employees; (2) food and beverages are sold in disposable containers for off-premises consumption only; (3) the customers pick up their orders either at a counter inside the building or at a walk-up window. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. A Take-Out Restaurant operation may include an ancillary delivery service but may not include a Drive-through facility.

Food Establishment: Fast Food Restaurant - A commercial food service establishment whose principal business is the sale of food and beverages served pre-packaged and ready-to-eat or quickly prepared upon a short waiting time and packaged and presented in such a manner that it can readily be eaten on or off the premises, characterized by high sales volume and frequent customer turnover. Meals and beverages that are not cooked or prepared fresh on the premises are served, principally in disposable containers. For purposes of this definition, “prepared” does not include warming or reheating food that was assembled off-site. For purposes of this bylaw, Food Establishment: Fast Food Restaurant shall not include Food Establishment: Bakeries or Food Establishment: Ice Cream Parlor as defined herein.

Food Establishment: Drive-through Facility - A drive-up window or a mechanical device where customers waiting in motor vehicles may order and/or pick up prepared food and beverages from a food service establishment.

Restaurant - A building or part thereof to be used for the preparation, indoor sale, and consumption of meals and refreshments on the premises. Seating area for a restaurant may include open or outdoor terrace or patio upon issuance of a Special Permit. ATM 4/23/90

Restaurant, Drive-In - Premises where meals and other items of nourishment and refreshment are offered for sale, and where any portion of these are consumed or intended to be consumed off premises or within cars parked on the premises. ATM 4/23/90.

Commented [CMM15]: Revised to be consistent with 6.29.4 below.

Commented [RC16]: The Board deemed it desirable for the design criteria to apply more broadly, to structures and within the central district. Also point of clarification the word OR is used as opposed to and.

Commented [CMM17R16]: Above, the definition of DSP1 applies to a commercial use with more than 4,000 SF of GFA of construction. Here, that threshold drops to 2,500 SF and now applies to ANY commercial use in the CD district. These same changes must be made to the definition of DSP1 above, too.

Commented [RR18]: SB added this language on 1/31/2022

Commented [RC19R18]: For discussion, should bakeries include onsite consumption as well?

Commented [RR20]: Is there anything else we can write in this definition to make the language stronger? The Board concerned that a fast food restaurant could say they are a take-out restaurant. They feel that the two definitions are not differentiated enough.

Commented [CMM21R20]: Fast Food includes prepackaged food on premises, while Take Out is only off-premises. However, I raise the question above about a corner shack that has a few picnic tables—does that make it a take-out restaurant? In my opinion it would be since it prepared food and take-out restaurants to offer picnic tables? Fast Food also includes the service of packaged and ready-to-eat meals, as opposed to Take Out which generally provides fresh food to order. Take Out and Fast Food are similar in that we have differentiated them as much as possible, but I am open to any suggestions for further wordings.

Commented [RR22R20]: The Board would like a better definition for fast food. This was discussed at their 1/22/22 meeting. There was also a question of whether or not the Town could limit financing to (3).

Commented [RC23]: Simplified definition. Do we need one additional sentence stating "Not to include Food Establishment: Ice Cream Parlors or Not to include Food Establishment: Bakeries separately defined"?

Commented [CMM24R23]: I added some text for your consideration.

Restaurant, Fast Food—A restaurant with drive-up window service, or that otherwise receives payment and/or dispenses products to patrons while in their vehicles. (ATM 4/25/11)

Restaurant, Formula—A restaurant that stands alone or with other use(s), and which prepares food and beverage on-site for sale to the public, and which is required by contractual or other arrangement or as a franchise to offer any of the following features: Standardized menu, trademark or service mark, defined as a word, phrase, symbol, design or logo, or a combination of words, phrases, symbols, designs and/or architecture, façade, or color scheme that identifies the restaurant as one (1) of twenty-five (25) or more other restaurants worldwide. (ATM 4/25/11)

B. By amending Chapter 235, Section V – Uses, Table 5.3.2 – Commercial, by striking from the table the uses of “**Restaurant, Indoor,**” “**Restaurant Drive-In,**” “**Restaurant Fast Food,**” and “**Restaurant Formula**” and inserting the uses of “**Food Establishment: Bakery**”; “**Food Establishment: Full-Service Restaurant**”; “**Food Establishment: Take Out Restaurant**”; “**Food Establishment: Fast Food Restaurant**”; and “**Food Establishment: Drive-Through Facility**”, which shall be allowed by special permit (A) or prohibited (O) as follows in the various zoning districts:

5.3.2 Use Regulations:

5.3.2 Commercial	CD	R1	R2	NSP	C	C2
Food Establishment: Bakery	A	O	O	O	A	O
Food Establishment: Full-Service Restaurant	A	O	O	O	A	O
Food Establishment: Take-Out Restaurant	A	O	O	O	A	O
Food Establishment: Fast Food Restaurant	O	O	O	O	O	O
Food Establishment: Drive-through Facility	O	O	O	O	O	O
Food Establishment: Ice Cream Parlor	A	O	O	O	A	
Restaurant, Indoor⁸	A	O	O	O	A	O
Restaurant, Drive-In⁹	O	O	O	O	A	O
Restaurant, Fast Food¹⁰	O	O	O	O	O	O
Restaurant, Formula¹¹	O	O	O	O	O	O

C. By repealing Chapter 235-Section 6.29 – Fast Food & Formula Restaurant Prohibition in its entirety and replacing it with a new Chapter 235, Section 6.29 - Developments of Significant Planning Interest by inserting the following underlined text:

6.29.1-Purpose:

The purpose of this bylaw is to regulate the location, traffic, scale, impacts, and visual features of Developments of Significant Planning Interest in Wellfleet to maintain the unique, small-scale, small-town character and the quality of life for all Wellfleet residents by preserving the individuality and distinctive appeal which are among the Town’s most recognized features. Preservation of the existing character, diversity, variety, and scale of commercial activities is vital to the continuation of Wellfleet’s ability to

attract both residents and visitors. Wellfleet must retain its distinctive Cape Cod character, general welfare, and historical and cultural relevance.

This bylaw incorporates by reference and shall be construed consistently with the policy direction of the Town's Comprehensive Plan, the Cape Cod Commission Act, the enabling act of the Cape Cod National Seashore, and Wellfleet's designated historic districts, with which Wellfleet is intimately and intricately associated.

6.29.2 Application Requirements

Applicants for Special Permits for uses so controlled as **Developments of Significant Planning Interest** shall submit to the Zoning Board of Appeals three copies of the following:

- a) An application identifying the intended use and narrative description of the proposed use;
- b) A site plan prepared by a licensed architect, licensed landscape architect, or Registered Professional Engineer, showing proposed structures, building design, lighting, drives, parking, landscaping, screening, dust mitigation, and provision for stormwater management and drainage;
- c) A floor plan for all floors, an elevation plan of all sides of the proposed building and a plan or rendering showing the proposed building in relation to adjoining structures and abutting properties;
- d) A plan showing the dimensions, type, location and elevations of all proposed signs; and
- e) photographs of the premises in its current condition and all adjoining structures.

Forthwith upon receipt of the above materials, the Board of Appeals shall transmit one set of them to the Planning Board for their review and recommendation.

6.29.3 Special Permits for Development of Significant Planning Interest

6.29.3.1 Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse.

In addition to Sections 8.4.2.1, 8.4.2.2, and 8.4.2.3 of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit for the following uses: **Boat House, Commercial; Bulk Storage, Open; Bulk Storage, Tanks; Filling Station; Motor Vehicle Repair Shop; Motor Vehicle Sales; and Warehouse.**

- (a) whether the proposed use will increase the intensity of use on the site so as to adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;
- (b) whether the proposed design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;
- (c) whether the proposed design retains the historic characteristics if located within a designated historic district;
- (d) whether the proposed design preserves the character-defining elements of an historic building, if applicable, and its setting when adapting to a new use;
- (e) the use of permeable pavement or pavers for parking areas and walkways;
- (f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;
- (g) whether the proposed use includes the storage or presence of hazardous and/or combustible materials;
- (h) the overall impact of the proposed use on the health and safety of area residents.

6.29.4 Food Service Establishments (all) or Other Commercial Developments involving more than 2,500 square feet of floor area, or Any Commercial Developments in the Central District

In addition to Sections 8.4.2.1, 8.4.2.2, and 8.4.2.3 of this Bylaw, the following shall be considered by the Special Permit Granting Authority prior to the issuance of a special permit; provided, however, that

Commented [RC25]: The Board deemed it desirable for the design criteria to apply more broadly, to structures and within the central district. Also point of clarification the word OR is used as opposed to and.

Commented [CMM26R25]: Above, the definition of DSPFI applies to a commercial use with more than 4,000 SF of GFA of construction. Here, that threshold drops to 2,500 SF and now applies to ANY commercial use in the CD district. These same changes must be made to the definition of DSPFI above, too.

the Special Permit Granting Authority shall not require strict compliance with the design criteria contained in this section with respect to food service establishments that are pre-existing nonconforming as of the date of adopting this zoning amendment at the Spring 2023 Annual Town Meeting but may grant waivers when the Special Permit Granting Authority finds such waiver(s) to be in the best interests of the Town or that strict compliance would cause an undue financial hardship to the food service establishment or that strict application of the design criteria would not be consistent with the existing style or character of the pre-existing nonconforming food service establishment:

(a) Whether the proposed use is designed and operated in a manner that preserves the community's distinctive small-town character, including the following:

- (1) the use of natural shingles or clapboards as exterior finishes;
- (2) exterior lighting uses gooseneck or similarly designed fully shielded downward-facing lighting and shall eliminate light trespass onto streets or abutting parcels;
- (3) use of permeable pavement or pavers for parking areas and walkways;
- (4) whether the scale of the building is in keeping with a small-town, coastal setting;
- (5) Preserve the character-defining elements of an historic building, if applicable, and its setting when adapting to a new use.
- (6) whether the façade is broken up in terms of color scheme, use of materials and incorporates segments that protrude forward or are recessed to minimize the appearance of massing;
- (7) whether the design is compatible with the character of surrounding properties or the zoning district;
- (8) use of native plantings of a suitable size, diversity and hardiness to survive Cape Cod's climate and minimize use of water, herbicides and pesticides;
- (9) use of small-scale, painted wooden signs that are externally illuminated;
- (10) Whether the business model includes curb-side pick-up or delivery of food or goods to patrons in their vehicles; and
- (11) Accessibility of the development for disabled individuals.

(b) whether the proposed use contributes to the diversity of uses to assure a balanced mix of businesses available to serve residents and visitors;

(c) whether the proposed building design and any other improvements to the site are compatible with the existing architecture and unique aesthetic appearance of the zoning district;

(d) whether the proposed use will increase the intensity of use on the site so as adversely impact land uses in the area, pedestrian or motor vehicle traffic or the public welfare;

(e) whether the size, style and design of signage is appropriate to maintain the scale and character of Wellfleet;

(f) whether the proposed use will generate noise, dust, odor, glare, fumes, vibration, risk of fire or explosion or similar noxious impacts to surrounding properties and whether these impacts can be sufficiently mitigated;

(g) whether the proposed use includes the storage or presence of hazardous or combustible materials; and

(h) the overall impact of the proposed use on the health and safety of area residents.

6.29.5 Floor Area Applicability

Any increase in floor area shall be cumulative upon the adoption of this bylaw (ATM 2023).

Commented [CMM27]: Should this relaxation of the criteria apply to ANY pre-existing nonconforming use, and not just to re-existing nonconforming food services establishments? Other pre-existing businesses may find it difficult to satisfy the design criteria.

Commented [CMM28]: Meaning what? If a commercial use is currently 2,000 SF and wants to add 2,000 SF, then this bylaw applies?

6.29 FAST FOOD & FORMULA RESTAURANT PROHIBITION (ATM 4/25/11) Purpose: The Cape Cod seaside character of Wellfleet is unique, and is important to the people of the community and their collective identity as a community, as well as to the visiting public. Far more than most Cape Cod towns, Wellfleet retains its rural village character, which is integral to the fabric of the community. Wellfleet is also traditionally home to small, locally owned and operated businesses. In these senses, Wellfleet has maintained its identity in a manner rare in the region. The purpose and intent of the Formula Based Restaurant Prohibition is to address the adverse impact (in terms of noise, litter, traffic, and aesthetically inappropriate development) that standardized fast food and formula restaurants would have on Wellfleet's distinctive Cape Cod character, general welfare, and historical and cultural relevance as a rural community. These uses are therefore prohibited in order to preserve and protect the unique and locally oriented community experience of Wellfleet, and all that this offers to its citizens and tourists alike as a treasured destination. This policy is also consistent with the policy direction of the Town's Comprehensive Plan, the Cape Cod 77 Commission Act, and the enabling act of the Cape Cod National Seashore, with which Wellfleet is intimately and intricately associated.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: When Wellfleet adopted both the Formula Business and Fast Food & Formula Restaurant provisions in 2011 the Attorney General warned the Town that both provisions but noted that at the time, no court rulings had been made. Both provisions used substantially the same language and definitions. The following year, Cumberland Farms, Inc. v. Board of Appeals of the Town of Wellfleet and the Town of Wellfleet challenged the validity of Section 6.30 Formula Business. In 2015 a ruling was made invalidating Wellfleet's Formula Business provisions on the grounds that they (1) violated G.L. c.40A, §4, which requires that zoning regulations be uniform within a zoning district for each class or kind of structure or use permitted, and (2) imposed impermissibly vague and subjective special permit standards. We have also been advised that the definitions of Drive-In Restaurant and Fast Food Restaurants are likely too similar to prohibit one and allow the other. We have been informed by Town Counsel that the Fast Food and Formula Restaurants is similarly vulnerable to challenge. In order to protect the Town from development that it considers deleterious we need to amend our Zoning Bylaw. This proposal retains the prohibition on Fast Food Restaurants, strengthens our definitions, and gives the Zoning Board of Appeals additional tools to protect the character of Wellfleet and extends them to some other commercial uses of particular concern. It also defines certain light industrial uses or scale as activities that require additional considerations to be taken into account.

ARTICLE NO. 11 – ZONING BYLAW AMENDMENT – DEFINITION OF TREES:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending ~~§235-~~2.1 by inserting the following new definitions in alphabetical order as follows:**§235 - 2.1 Definitions:**

Community Wildfire Protection Plan ("CWPP"): A plan developed in the collaborative framework established by the Wildland Fire Leadership Council and agreed to by the local government, local fire

department, federal land management agencies managing land in the vicinity of the planning area, and other stakeholders. A CWPP may address issues such as wildfire response, hazard mitigation, community preparedness, or structure protection - or all the above.

Invasive Plants: Plant species identified by the Massachusetts Invasive Plant Advisory Group as Invasive, Likely Invasive, or Potentially Invasive. [\[Link for reference\]](#)

Locally Notable Trees: Native trees with a girth of 120 inches or greater measured at breast height (4.5') or below the lowest branching trunk, whichever is less. Or tree species listed as Endangered, Threatened, or of Special Concern by Massachusetts

Timber: Woody plants and trees with a girth of sixteen (16) inches measured at breast height (4.5') or below the lowest branching trunk, whichever is less.

Tree Thinning: Tree removal in an immature forest stand that reduces tree density and between-tree competition performed by a certified arborist.

(Requested by the Selectboard)

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: This adds definitions to the Zoning Bylaws in regards to trees and timber. This contains no applications of the definitions in and of themselves, but the definitions can be utilized by other bylaws.

ARTICLE NO. 12 – ZONING BYLAW AMENDMENT – CUTTING OF TIMBER:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by amending §235 -6.9 as follows:

§235 - 6.9.1 CUTTING OF TIMBER WITHIN NSP

Within the National Seashore Park District, there shall be no cutting of timber except permitted by the Building Commissioner for the following reasons:

- (a) By an owner for the purpose of reasonably controlling brush or trees;
- (b) Maintenance cutting in pastures;
- (c) Cutting for clearance or maintenance on right-of-way including those pertaining to public utilities or public highways, provided said clearance or maintenance complies with Chapter 200, the Town’s Scenic Road Bylaw, if applicable;
- (d) as specified in a Community Wildfire Protection Plan by the Wellfleet Fire Department or the National Park Service; or
- (e) the removal of Invasive Plants as determined by a certified arborist.

Exemptions:

This section shall not apply to federal, state or municipal projects.

(Requested by the Selectboard)

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

Commented [RC29]: Switched from metric to imperial and set at an even number (10' in girth) is slightly larger. If perfectly round it is 38.2" in diameter prior was 3m (118.11 inches 37.6 inches in diameter)

Commented [RC30]: I checked with the Health and Conservation Agent and the NPS with the list of species they were not aware of any present locally at this time. These are protected under the Massachusetts Endangered Species Act

For Reference:

- Endangered
- Betula pumelia- Swamp Birch
- Crataegus bicknellii- Bicknell's Hawthorn
- Ilex montana- Mountain Winterberry
- Magnolia virginiana- Sweet Bay Magnolia
- Morus rubra- Red Mulberry
- Populus heterophylla- Swamp Cottonwood
- Sorbus decora- Northern Mountain Ash
- Thuja occidentalis- Northern White Cedar, Arborvita

Threatened:

- Alnus viridis ssp. crispa- Mountain Alder
- Quercus muehlenbergii- Yellow Oak, Chinkapin Oak
- Salix exigua ssp. interior- Sandbar Willow

Special Concern:

- Quercus macrocarpa- Bur Oak, Mossy Cup Oak

Commented [RC31]: 12" in girth would be 3.82 inches in diameter.

16"G would be 5.1" D if perfectly round

18.5 is approx. 6" in diameter.

Commented [CMM32]: In light of the fact that currently there is no CWPP, should we add here "or pursuant to a fire safety recommendation from the NPS"?

Commented [RC33]: See PB's previous comments

Commented [CMM34]: Added since the NSP is under federal jurisdiction

SUMMARY: This updates the “Cutting of Timber”. The assumption is that the current bylaw dates to the 1960s, and there was not much of an awareness of the detrimental impacts of most invasive species, and fewer were considered invasive. A Community Wildfire Protection Plan [CWPP] is seeks to mitigate some of the risks of a wildfire to life and property and would be developed under the aegis of the Town and the Park. As of now, there is not a CWPP but the park does issue fire safety recommendations to property owners, so this provision is future looking.

ARTICLE NO. 13 – ZONING BYLAW AMENDMENT – LANDSCAPE AND TREE PRESERVATION:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by inserting a new **§235 -6.9.2** as follows:

§235 6.9.2 Landscape and Tree Preservation Bvlaw

§235- 6.9.2.1 Purpose: A wide variety of landscapes are necessary to provide a richness of habit required to support a diverse variety of species. Planting of native species in disturbed areas prevents those areas from being colonized by invasive species.

§235 - 6.9.2.2

Applicability: No construction, site preparation work or grading shall be done in any zoning district on any parcel of land, which will result in the removal of greater than twenty percent (20%) of existing vegetation or Timber or a maximum area of disturbance of 10,000 sq ft, whichever is less, until any necessary permits and approvals have been obtained. If the total area of disturbance is greater than 12,500 sq ft, a special permit shall be required in all districts.

At the conclusion of all site work, including but not limited to the construction of structures, grading, and grubbing, the disturbed area must be re-vegetated with native species. In the absence of re-vegetation with native species of the disturbed area, a fee determined by the table [Table 6.9.2.3] shall be applied to be paid to the **Environmental Betterment Fund**. Landscaping with **Invasive Plants** is hereby prohibited.

Table 6.9.2.3 Payment to the Environmental Betterment Fund

Area not re-vegetated	Base Fee	Fee for area not re-vegetated
5,000-9,999 sq ft	\$100	\$0.25 /sq ft
10,000-19,999 sq ft	\$100	\$0.50 /sq ft
> 20,000 sq ft	\$100	\$0.75 /sq ft

§235-6.9.2.4 Exemptions:

This section shall not apply to the removal of **Invasive Plants** as determined by a certified arborist, trees that are diseased in the opinion of a certified arborist, or the removal of trees threatening the safety of people, structures, roadways, or utilities.

This section shall not apply to any federal, state or municipal projects.

Commented [CMM35]: Who will issue permits for clearing or cutting under 12,500 SF? Building Commissioner? Conservation Agent? Need to specify.

Commented [CMM36]: Assuming the disturbed area cannot be fully re-vegetated, such as an area cleared for a structure, you could allow for comparable re-vegetation on-site (if possible), and if not possible, payment to the fund.

Commented [RC37]: Note in order to have a payment in lieu of it requires a special permit

Commented [CMM38]: Totally separate from zoning, we should talk about whether this fund already exists or needs to be created and who oversees expenditures from the fund. Otherwise, these payments just go to the general fund.

If Wellfleet adopts a Community Wildfire Protection Plan, the specifications contained therein shall supersede those herein.

This section shall not prohibit site work reasonably necessary for conducting land survey or tests required as a condition precedent to the issuance of any permit or approval. If, after obtaining all necessary permits and approvals, such work is commenced and then abandoned, all areas of the site which were disturbed during construction or site preparation shall be re-vegetated with native species in a manner sufficient to avoid erosion.

Deed-restricted affordable housing or housing deed restricted to year-round residency shall be exempt from payments in lieu of re-vegetation.

Tree Thinning may be permitted by the Building Commissioner where the total canopy cover is retained, and disturbance to the ground and other vegetation is minimized. Tree thinning may be exempt from payments in lieu of re-vegetation.

Whereas Wellfleet is a Right to Farm Community, land clearance in association with commercial agriculture, as provide under G.L. c. 40A, Section 3, shall be exempt from this bylaw.

§235-6.9.2.5 Special Permits

In addition to the provisions and criteria set forth in §235-8.4.4, the Board of Appeals acting as the SPGA, shall grant a special permit under §235-6.9.2 unless it finds that the proposal shall have an adverse effects on the Town or the vicinity of the subject parcel that outweighs any benefits, taking into consideration the stated district objectives (Section 235-3.2) and, where germane, the following matters:

- (a) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from a proposal such as this, considering erosion, siltation potential groundwater or surface water contamination, habitat disturbance, or loss of valuable natural vegetation;
- (b) Whether scenic views from public ways and developed properties have been considerately treated; and
- (c) Whether any traditional public access to or along the shoreline has been maintained.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: At the 2022 Annual town meeting, the petitioned Article 48 "Tree Preservation Resolution," passed with an overwhelming majority. The Selectboard was charged with causing a tree preservation bylaw to be drafted. Girth(circumference) is the standard forest measurement of a tree as is breast height. The petitioned article made no provision for cutting trees not associated with construction or demolition activities. The bylaw before you prohibits large scale removal of trees and ground cover unless all permits have been issued as well as protecting other forms of vegetation. A payment in lieu of re-vegetation, as requested in the Tree Preservation referendum at the 2022 Town Meeting in the instance of large-scale disturbance, requires the bylaw to operate under Massachusetts General Law, Chapter 40A, Section 9, Fourth paragraph, which requires a Special Permit, this establishes the presumption that a special permit would be granted unless the SPGA reaches a finding that the proposed clearing is unusually detrimental. Additionally, a payment in lieu of re-vegetation is required and the receipts are placed into the Environmental Betterment Fund as a means to offset the environmental disturbance

Commented [CMM39]: This may run afoul of G.L. c. 40A, Sec. 4, which requires that each class of use be treated uniformly within a zoning district. If you want to exempt any lot to be cleared or cut for single-family dwellings, in my opinion, this would be allowed. However, I don't think you can treat affordable-housing or houses to be deed restricted to year-round use from the bylaw without violating the uniformity provision.

Commented [CMM40]: Tree thinning either has to be exempt or not. By saying it "may be" exempt, requires some entity to decide when and if exempt and has to include some authority for granting the exemption. It would be easier to simply exempt tree thinning that preserves the canopy.

Commented [CMM41]: Commercial agriculture is exempt from zoning.

Commented [RC42]: "Zoning ordinances or by-laws may provide for special permits authorizing the transfer of development rights of land within or between districts. These zoning ordinances or by-laws shall include incentives, such as increases in density of population, intensity of use, amount of floor space or percentage of lot coverage, that encourage the transfer of development rights in a manner that protects open space, preserves farmland, promotes housing for persons of low and moderate income or further other community interests; provided, however, that nothing herein shall prohibit a zoning ordinance or by-law from allowing transfer of development rights to be permitted as of right, without the need for a special permit or other discretionary zoning approval."
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40a/Section9>

ARTICLE NO. 14 – ZONING BYLAW AMENDMENT – LOCALLY NOTABLE TREES:

To see if the Town will vote to amend the Wellfleet Zoning By-Laws by inserting a new Section §235-6.9.3 as follows:

§235- 6.9.3 Purpose and Applicability

Recognizing the value large older trees provide to wildlife and the unique role they play in the ecosystem they should be preserved whenever possible. No removal of or trimming of Locally Notable Trees shall be permitted until all necessary permits and approvals have been obtained unless there is an immediate threat to public safety, structures, or utilities.

§235 - 6.9.3.1 Special Permit Required

Removal of Locally Notable Trees shall require a special permit from the Zoning Board of Appeals as the Special Permit Granting Authority. Any application for the removal of a Locally Notable Tree(s) shall be referred to the Conservation Commission for comment prior a hearing per Ch. 40A, Sec. 11 before the Special Permit Granting Authority. A priority shall be placed on retaining these trees during the course of any construction activities or site plan and or landscaping.

§235 - 6.9.3.2 Applications for the trimming of a Locally Notable Tree must include a letter from a certified arborist that the trimming poses little risk to the health of the tree prior to any such work being performed and are subject to the approval of The Tree Warden. Said Trimming includes that of the Tree's root system. If the Tree Warden or Arborist determines that the trimming of a Locally Notable Tree poses a threat to its health, they shall refer the matter to the Special Permitting Authority, who will refer it to the Conservation Commission for comment prior to the hearing.

§235 - 6.9.3.3 EXEMPTIONS

This section shall not apply to the removal of Invasive Plants, diseased trees, or those posing an imminent threat to people, structures, roadways, or utilities, as determined by the Tree Warden.

This section shall not apply to federal, state or municipal projects.

§235 6.9.3.4 Special Permit Criteria

In addition to the provisions and criteria set forth in §235-8.4.4, the Board of Appeals acting as the SPGA, may grant a special permit for the removal or trimming of a Locally Notable Tree if it reaches a finding that there is no viable alternative to said removal.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: It also requires a special permit for removal or for the trimming that may pose a risk to the health of very large trees. Very large trees provide extensive ecosystem benefits as well as often natural playgrounds. This also clarifies and strengthens the prohibition of the cutting of timber in the NSP.

Commented [CMM43]: Why not combine this paragraph with the preceding paragraph and refer all applications for trimming or removal of Locally Notable Trees to the Con Comm and Tree Warden?

ARTICLE NO. 15 – ZONING BYLAW AMENDMENT – ZONING ENFORCEMENT PENALTY:

To see if the Town will amend the Wellfleet Zoning By-Laws by amending Chapter 235, section 8.3 Penalty by deleting the language struck through and adding the language underlined.

[Amended 6-26-2021 ATM by Art. 45] 8.3 PENALTY

~~8.3 Penalty Any person violating any of the provisions of these Bylaws may be fined not more than \$50.00 for each offense, except in the case of violations of Section 6.21 Accessory Dwelling Units, the fine shall be \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.~~

§ 235-8.3 Penalty.

- A. Any person, association, firm or corporation violating any of the provisions of this bylaw may be fined not more than \$300 for each offense. Each day that such a violation continues shall constitute a separate offense.

- B. Accessory Dwelling Units: Any person, association, firm or corporation violating § 235-6.21
- C. Accessory dwelling units (ADU), the fine shall be \$300.00 for each offense. Each Accessory Dwelling Unit in violation shall be a separate violation. Each day that such violation continues shall constitute a separate offense.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: The maximum allowed fine under MGL Ch 40a Section 7 for zoning infractions is \$300 dollars per violation. Most Massachusetts municipalities have adopted the maximum allowable fine. This does not mean that the fine is always \$300. With the exception of ADUs, the fine is at the discretion of the building commissioner. Enforcing zoning is expensive, and this provides both a means to recapture some of the costs based on the level of the infraction as well as providing the commissioner with additional leverage to address zoning infractions. ADUs are required to be occupied on a year-round basis, and clarifies that the fine is applied to each ADU out of compliance.

ARTICLE NO. 16 – GENERAL BYLAW AMENDMENT – MINIATURE “NIPS” BOTTLE BAN:

To see if the Town will vote to adopt the following as a general bylaw and to insert it into the Code of the Town of Wellfleet, Massachusetts.

General Bylaws

Chapter 187. Plastics and Other Environmental Hazards

Article V Prohibition on Sale of Alcoholic Beverages in Miniature or “Nip” Bottles

Section 1. Sale of

Commented [RC4]: This was being updated to reflect that it shall assess a penalty of more than \$300 per violation, provided however that nothing in this section shall be construed to prohibit fines for multiple violations for the same offense that are not a violation against shall constitute a separate offense.
<https://maleplasure.gov/State/GeneralLaw/Part/TitleVII/Chapter40a/Section?>

Commented [RC45]: Wording not quite right. Trying to address what would happen if there are more than one unit in violation. The wet disinfection below.

Effective on September 1, 2024, it shall be unlawful to sell or offer for sale alcoholic beverages in containers less than or equal to 100 milliliters within the Town of Wellfleet.

Section 2. Enforcement

Enforcement of this article shall be the responsibility of the Town Administrator or his/her designee. The Town Administrator shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate.

Any establishment conducting sales in violation of this article shall be subject to a non-criminal disposition fine as specified in G. L. Chapter 40 § 21D. The following penalties apply:

- First violation: Written warning
- Second violation: \$150 fine
- Third and subsequent violations: \$300 fine

Each day a violation continues constitutes a separate violation, incurring additional fines. Any such fines collected shall be payable to the Town of Wellfleet.

All businesses will be routinely inspected until the Town Administrator deems the inspection to no longer be required.

(Requested by the Selectboard)

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: Nips are miniature single-serve liquor bottles made of plastic or glass. The plastic nip bottles are not recyclable, due to their small size, nor are nips bottles covered by the state bottle redemption law. Nips litter is a pervasive problem, dotting roadsides and beaches. A Falmouth group surveyed litter on that town’s roadways in 2021 and found that nips made up 32% of roadside garbage. The reason nips end up on roadsides is a public health and safety concern. Nip bottles are a convenient way to consume alcohol while driving and dispose of the container out the window. In 2018, data showed Chelsea received 742 alcohol related emergency calls. Chelsea's ban passed that year and by August of 2019, that number had decreased to 128 calls of the same kind. Nips bans are now in effect in Chelsea, Falmouth, Mashpee, Newton, Wareham, and Nantucket. The two Martha’s Vineyard towns that sell nip bottles, Oak Bluffs and Edgartown, passed nip bottle bans earlier this year.

ARTICLE NO. 17 – GENERAL BYLAW AMENDMENT – ANIMAL CONTROL REGULATIONS:

To see if the Town will amend the Wellfleet Zoning By-Laws by amending Chapter 111 by deleting the language struck through and adding the language underlined.

(Requested by the Selectboard)

Article I

Animal Control

[Adopted 6-26-2021 ATM by Art. 47 (Art. XV of the General Bylaws)]

§ 111-1 Purpose.

The purpose of these bylaws is the control of animals to prevent injury to property, persons and animals.

§ 111-2 Administration.

The Selectboard shall appoint an Animal Control Officer who, in addition to any other authorized enforcement officers, shall be responsible for the enforcement of these bylaws.

§ 111-3 Definitions.

For the purposes of this bylaw, the following terms shall have the following definitions:

ADEQUATE SHELTER

Means a structure that is large enough for the animal to stand naturally, turn around and lie down inside of the structure without being exposed to the elements of weather. The roof and walls of the structure are waterproof and windproof. Bedding must be kept dry and changed regularly to preserve insulating qualities. Insulation and an inner wall must be included in shelter for dogs with short fur (example: Pointers, Staffordshire Terriers, Boxers, Labrador Retrievers) to provide adequate protection from cold. During cold weather a moveable flap must be placed over the entrance to a shelter to preserve the animal's body heat. Adequate shelter from sun may be provided by a tarp placed in a manner to provide deep shade and allow air to pass through for ventilation.

BEACH

The zone above the water line at a shore of a body of water, marked by an accumulation of sand, stone, or gravel that has been deposited by the tide or waves.

DOMESTICATED ANIMAL

Any of various animals that have been tamed and made fit for a human environment.

KEEPER

Any person, other than the owner, possessing, harboring, keeping, or having control or custody of a dog either permanently or on a temporary basis. If a person under the age of 18 owns or keeps a dog, that person's custodial parent(s) or legal guardian(s) shall be responsible for complying with the requirements of these bylaws.

KENNEL, COMMERCIAL

A kennel maintained as a business where four or more dogs three months of age or older are kept for the breeding, boarding, sale, in-residence training, grooming or other business purposes, and including any shop where dogs are on sale or a kennel of 10 or more dogs regardless of the purpose for which the kennel is maintained.

KENNEL, RESIDENTIAL

Means a collection of four up to and including nine dogs, three months of age or older, owned or kept on a single premises, maintained for any non-commercial purpose except for the sale of one litter per year; provided, however, that a veterinary hospital shall not be considered a kennel unless it contains an area for the selling or boarding of dogs for other than medical purposes.

DANGEROUS DOG

Any dog that attacks, bites or injures any human or domesticated animal without provocation or which, because of its temperament, conditioning or training, has a propensity to attack, bite or injure humans or domesticated animals.

LICENSING PERIOD

The licensing period means the time between January 1st and the following December 31st of each year, both dates inclusive.

§ 111-4 Dog licensing.

Dogs must be leashed.

All dogs within the territorial limits of the Town of Wellfleet shall be restrained by a leash unless confined to the property of their owners. Any dog found running at large will be removed and impounded. The owner of any dog so removed is also liable for boarding expenses at the pound at the established rate. The Town of Wellfleet Police Department (including special officers), the Animal Control Officer, and any other officials whom the Selectboard may from time to time designate shall have the authority to enforce this section.

- A. Any person residing in the Town of Wellfleet, who at the beginning of the license period (January 1 to December 31), or who during the license period, becomes the owner or keeper of a dog six months old or over, shall cause the dog to be licensed within 30 days. The Town Clerk shall issue dog licenses and tags based on the completion and the approval of the dog license application form that is available on the Town's website. The completed form, along with the required additional documentation, can be brought to the Town Clerk's office or sent to the Town Clerk by mail.
- B. An applicant for a dog license will also bring to the Town Clerk's office or send to the Town Clerk by mail the following required additional documentation:

- (1) Copy of current rabies certificate.
- (2) Copy of spaying/neutering certificate (if not noted on rabies certificate).
- (3) Self-addressed envelope with sufficient postage (license will be held in office if a completed return envelope is not enclosed).
- (4) Check made payable to "Town of Wellfleet" for the total of the licensing fee.

- C. On the license form, the Town Clerk shall record the name, address, mailing address, email address, phone number and the date of birth of the owner or keeper of the dog, and the name, age, breed, sex, and description of each dog. Each tag shall include the license number, the name of the Town and the year of issue.
- D. The owner or keeper of the dog shall cause each dog to wear around its neck or body a collar or harness to which they shall securely attach the license tags. In the event that any license tag is lost, defaced or destroyed, substitute tags shall be obtained by the owner or keeper from the Town Clerk at the cost of \$1. Such moneys shall be transmitted to the Town of Wellfleet in the same manner as license fees.
- E. The Town Clerk shall not issue a license for any dog unless the owner or keeper provides the Town Clerk with a veterinarian's certificate verifying that the dog is currently vaccinated against rabies.
- F. An exemption from the requirements of having to produce a valid rabies certificate in order to obtain a dog license shall be granted if the owner or keeper presents a signed statement from a

veterinarian, indicating that, because of infirmity, other physical condition or regimen of therapy, inoculation is thereby deemed inadvisable.

- G. The fee for each dog license shall be \$10 unless a certificate from a veterinarian stating that the dog has been spayed or neutered, or a statement from a veterinarian indicating that because of age, infirmity or other physical condition spaying or neutering is deemed inadvisable, is presented to the Clerk, in which case the fee shall be \$5. No fee shall be charged for a dog specially trained to lead or serve a blind, deaf, or handicapped person upon presentation to the Town Clerk of a certificate of such training.
- H. The Clerk shall collect a late fee of \$5 for every dog license issued after the thirty-day licensing period, as defined in § 111-3 of this article.
- I. Any owner or keeper of a dog who moves into the Town of Wellfleet and has a valid dog license for his/her dog from another city or town in the commonwealth shall, within 30 days, obtain a dog license from the Town of Wellfleet.
- J. No license fee or part thereof shall be refunded because of subsequent death, loss, spaying, neutering, or removal from the Town of Wellfleet or any other disposal of said dog.
- K. This section shall not apply to a person to whom a valid kennel license has been issued under § 111-10, or a dog housed in a research institution.
- L. Penalties shall be imposed as per § 111-11B(1).

§ 111-5 Dog waste removal.

- A. All dog owners, keepers or persons having control of a dog are responsible for immediately removing and disposing of all solid wastes produced by said dog on any property (other than the property of the dog owner) in a sanitary manner and where it will not cause pollution, either directly or indirectly.
- B. No written warning shall be given.
- C. Penalties shall be imposed as per § 111-11B(2).

§ 111-6 Barking and other noise caused by dogs.

- A. No person owning, keeping or otherwise responsible for a dog shall allow said animal to annoy another person's reasonable right to peace or privacy by making loud or other continuing noise, where such noise is plainly audible at a distance of 100 feet from the building, premises, vehicle, or other means of conveyance or housing of said dog, or where such noise is continuing for 15 minutes. The fact that such noise is plainly audible at said distance or continuing in excess of 15 minutes on a daily basis shall be prima facie evidence of a violation.
- B. Penalties shall be imposed as per § 111-11B(3).

§ 111-7 Animals in parked vehicles.

No animal may be left unattended in a parked vehicle at any time of year.

Any person owning, keeping, or otherwise responsible for a companion animal or pet or farm animal or livestock who confines said animal in a parked vehicle or trailer where the vehicle confinement has the

possibility to endanger or does in fact endanger the health or safety of the animal shall be subject to a fine.

§ 111-8 Licensing and regulation of dangerous dogs.

A. Determination of a dog being dangerous. The Animal Control Officer shall investigate all complaints made to the Animal Control Officer, the Town of Wellfleet Police Department, the Selectboard, or the Town Administrator that any dog owned or kept within the Town of Wellfleet has attacked, bitten, or injured any person or domesticated animal, or which by its temperament, conditioning or training has a propensity to attack, bite or injure persons or domesticated animals.

B. The Animal Control Officer is authorized to make whatever inquiry is deemed necessary to determine the accuracy of said complaint, and if the Animal Control Officer determines that the complaint is accurate, the Officer may find that the dog is dangerous and may make such orders as he or she deems necessary to ensure compliance with the provisions of this bylaw and to promote public safety.

C. Upon determination by the Animal Control Officer that a dog is dangerous, the Animal Control Officer shall issue a written order to the owner or keeper of said dog concerning the restraint, remedial actions allowed under G.L. c. 140, § 157, or disposal humane euthanasia of such dog as they may deem necessary. At a minimum, said order shall state that the dog has been determined to be dangerous and shall require the owner or keeper of such dog to comply with the requirements of this bylaw.

D. Without limiting the generality of the foregoing, the Animal Control Officer may order that said dog be humanely euthanized in accordance with the provisions of MGL c. 140, § 151A, or that said dog be confined in accordance with such limitations as the Animal Control Officer deems appropriate. If an order to euthanize is issued, a certificate must be provided to the Animal Control Officer confirming the action was carried out. If the Animal Control Officer determines that the dog is to be permanently given or sold to new owner, removed, the new owner or keeper shall provide the Animal Control Officer with the name, address, and telephone number of the new owner or keeper of the dog.

E. The owner or keeper of any dog determined to be dangerous by the Animal Control Officer may request a hearing before the Selectboard. Said request shall be in writing and received by the Selectboard within five business days of the owner's or keeper's receipt of the Animal Control Officer's order. A copy of the hearing request shall also be delivered to the Animal Control Officer. The hearing request shall include an explanation of the measures that the owner or keeper intends to take to protect public safety pending disposition of the matter by the Selectboard. If the Selectboard determines that the measures described are inadequate, it may order that said dog be impounded, at the owner's or keeper's expense, until such time as the Selectboard rules otherwise.

F. After a hearing, at which those testifying shall be sworn under oath, the Selectboard may affirm the order, reverse or nullify the order, or issue any such order as it deems necessary to ensure compliance with the provisions of these bylaws and the protection of public safety. The determination of the Selectboard after a hearing shall be final.

G. Nothing in this bylaw is intended to limit or restrict the authority of the Selectboard to act in accordance with MGL c. 140, § 157.

§ 111-9 Control of dangerous dogs.

A. The Animal Control Officer shall notify the Town Clerk of all dogs determined to be dangerous, pursuant to the terms of this bylaw.

B. The owner or keeper of any dog determined to be dangerous in accordance with this bylaw, which has not been ordered euthanized, shall re-license said dog as "dangerous" within 30 days of such

determination. A unique licensing number shall be assigned to such a dog by the Town Clerk. That number shall be noted in the Town licensing files.

C. No dangerous dog shall be licensed by the Town of Wellfleet for any licensing period unless the owner or keeper of such vicious dog displays a sign not to exceed one square foot on his or her premises warning that there is a dangerous dog on the premises. The sign shall be visible and capable of being read from the public or private roadway.

D. All dangerous dogs shall be confined in an enclosure approved in writing by the Animal Control Officer. It shall be unlawful for any owner or keeper to maintain a dangerous dog upon any premises which does not have a locked enclosure or for any owner or keeper to allow any such dog to be outside of the dwelling of the owner or outside of the enclosure, unless it is necessary for the owner or keeper to obtain veterinary care for the vicious dog, or to sell or give away the vicious dog or to comply with the orders or directions of the Animal Control Officer and/or the Selectboard with respect to the vicious dog, or to comply with the provisions of these bylaws. In such event, the dangerous dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog. Dangerous dogs shall not be permitted to run loose on any public or private way or any area within the Town of Wellfleet that is open to the general public, including but not limited to parks and beaches.

E. License revocation. If the Animal Control Officer determines that a dangerous dog is being kept in the Town in violation of these bylaws or any order issued by the Animal Control Officer, or the Selectboard, or of any court, the Animal Control Officer shall so notify the Selectboard. After giving notice to the owner or keeper of the hearing, the Selectboard shall hold a public hearing on whether to revoke the license of said dog or to take further action as outlined in G.L. c. 140, § 157, including euthanizing the dog. If the Selectboard revokes the license of decides to take further action against said dog and does not order it to be euthanized, they shall notify the owner or keeper of the dog and the Town Clerk within 10 days that said dog will be impounded and euthanized if it is found within the Town after the succeeding seven days. The Animal Control Officer or any Town of Wellfleet police officer shall seize and impound any dangerous dog found outside of its enclosure in violation of this bylaw or any order issued by the Animal Control Officer, Selectboard or any court.

§ 111-10 Kennel licenses, inspection and regulation.

A. Requirement for kennel license. Any owner or keeper of four up to and including nine dogs, three months of age or older, being maintained at a premises, shall secure a Residential Kennel License. The Town Clerk shall not issue a Residential Kennel License unless the owner or keeper provides the Town Clerk with a veterinarian's certificate verifying that each dog three six months of age or older is currently vaccinated against rabies. Any owner or keeper of 10 or more dogs, three months of age or older, or of a premises maintained as a commercial kennel, shall obtain a Commercial Kennel License.

B. Application and issuance of kennel license and fees.

(1) A Residential or Commercial Kennel License shall be issued annually by the Town Clerk upon written application by an owner or keeper of dogs and after inspection of the kennel and a determination, made by the Animal Control Officer, that the basic standards of cleanliness, proper care, confinement, and adequate shelter of said dogs exist on the premises. The name and address of the owner or keeper of each dog kept in any kennel, if other than the person maintaining the kennel, and a veterinarian's certificate verifying that each dog, three six months of age or older, is currently vaccinated against rabies and

kennel cough, shall be kept on file on the premises and available for inspection by the Animal Control Officer or any authorized persons. Such license shall be in the form prescribed by the Town Clerk.

(2) The Residential Kennel License fee shall be \$50. The Commercial Kennel License fee shall be \$150. The Town Clerk shall, upon application, issue without charge a Commercial Kennel License to any domestic charitable corporation, incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse, and for the relief of suffering among animals. The holder of a license for a kennel shall cause each dog kept therein to wear, while it is at large, a collar or harness of leather or other suitable material, to which shall be securely attached a tag upon which shall appear the current dog license information of the town where the dog resides. A veterinary hospital shall not be considered a kennel unless it contains an area for the selling or boarding of dogs for other than medical purposes, in which case it shall apply for a Commercial Kennel License. The license period for a kennel license shall be from January 1 to December 31, inclusive. Kennel licenses are non-transferrable.

C. Inspection. The Animal Control Officer, Animal Health Inspector, or any agent authorized by the Town may at any reasonable time inspect any kennel or premises for which a Residential or Commercial Kennel License has been issued.

D. Loss of kennel license. If the Animal Control Officer, Animal Health Inspector, or other authorized agent, after inspection, determines that the kennel or premises that are the subject of a kennel license are not kept in a sanitary or humane condition, or if records are not kept as required by law, the inspecting officer shall notify the Selectboard of that determination and the facts upon which it is based. The Selectboard may, by order after a hearing, revoke or suspend such license. If a license has been revoked or suspended, the license may be reinstated after inspection and a reinstatement order by the Selectboard after a new hearing.

E. Procedure for complaint to the Selectboard. Upon written petition of any person or persons, filed with the Selectboard, setting forth that they are aggrieved or annoyed to an unreasonable extent by one or more dogs at a kennel because of excessive barking or dangerous disposition of said dogs, or other conditions connected with such kennel constituting a public nuisance, said Selectboard, within seven days after the filing of such a petition, shall give notice to the owner or keeper of the kennel, the petitioner(s), and any other person the Selectboard determine should be given notice, of a public hearing to be held within 14 days after the date of such notice. Said notice shall also be posted on a Town bulletin board. Within seven days after such public hearing, said Selectboard shall make an order either revoking or suspending such kennel license, or otherwise regulating said kennel or premises, or dismissing said petition.

F. Petition for relief to court. The holder of a kennel license or other person who is the subject of an order under Subsection E may petition the District Court for relief in accordance with MGL c. 140, § 137C.

G. Penalties shall be imposed as per § 111-11B(4).

§ 111-11 Fines and penalties.

A. Criminal disposition. In addition to any other legal remedies that may be available, the Animal Control Officer, or other designated enforcing person, may enforce this bylaw by non-criminal disposition. If a non-criminal disposition process, as provided in MGL c. 40, § 21D and the Town's Non-Criminal Disposition Bylaw is elected, then any person who violates the provisions of Chapter 111, Article I, of the Town's General Bylaws shall be subject to the following enforcement fines and penalties.

(1) The enforcing officer may give a written warning for the first offense or shall impose the following fines:

- (a) First offense \$50.
 - (b) Second offense \$100.
 - (c) Third offense \$300.
 - (d) Fourth and subsequent offenses \$500.
 - (2) Each day or portion thereof shall constitute a separate offense. If more than one, each provision violated shall constitute a separate offense.
- B. These penalties shall apply to all violations of Wellfleet's General Bylaws, Chapter 111, Article I, except that:
- (1) Any person who violates the provisions of § 111-4 shall be subject to a verbal or written warning for the first offense, a fine of \$50 for the second offense and a fine of \$100 for the third and any subsequent offenses.
 - (2) Section 111-4, Dogs must be leashed, and §
 - (2) Section 111-5, Dog waste removal. Owners or keepers of dogs found to be in violation shall be fined immediately as a first offense and subsequently as listed for the third, fourth and subsequent offenses, with no written warning;
 - (3) Section 111-6, Barking and other noise caused by dogs. Owners or keepers of dogs found in violation shall be fined \$50 for each offense;
 - (4) Section 111-10, Kennel licenses, inspection and regulation. Kennel owners shall be subject to a penalty in the amount of \$50 per day for each day of violation. Each day or portion thereof shall constitute a separate offense. If more than one, each provision violated shall constitute a separate offense.

Article II

Dogs at Large

[Adopted as Art. VII, Sec. 25, of the General Bylaws]

§ 111-12 **Dogs in cemeteries.**

No person shall permit a dog to enter within the boundaries of any cemetery in the Town of Wellfleet.

§ 111-12. (Reserved)

§ 111-13 **Restraint requirements.**

All dogs within the territorial limits of the Town of Wellfleet shall be restrained by a leash unless confined to the property of their owners. Any dog found running at large will be removed and impounded. The owner of any dog so removed is also liable for boarding expenses at the pound at the established rate. The Town of Wellfleet Police Department (including special officers) and the Animal Control Officer and any other officials whom the Selectboard may from time to time designate shall have the authority to enforce this section.

§ 111-14 **Violations and penalties.**

Any dog found running at large will be removed and impounded. If it is the first offense subject to this article committed by a person within a calendar year, the charge shall be dismissed without the payment of any fine; if it is the second offense so committed in the calendar year, the payment of a fine of \$25 shall operate as final disposition of the case; if it is the third offense so committed in a calendar year payment of a fine of \$30 shall operate as final disposition of the case; if it is the fourth or subsequent offense so committed the payment of a fine of \$50 shall operate as a final disposition of the case. The owner of any dog so removed is also liable for boarding expenses at the pound at the established rate. The Town of Wellfleet Police Department (including special officers), and the Dog Officer Animal Control Officer, and any other officials whom the Selectboard may from time to time designate shall have the authority to enforce this article.

Article III

Wildlife Protection: Feeding

[Adopted 9-10-2022 STM by Art. 15]

§ 111-15 Feeding of songbirds and other backyard birds permitted on private property.

The feeding of songbirds and other backyard birds shall be permitted on private property subject to the condition that birds shall only be fed from bird feeders.

§ 111-16 Feeding of wildlife

The feeding of wild animals and/or wildlife is prohibited.

A. No person shall feed, bait, or in any manner provide access to food to any wild animal and/or wildlife within Town of Wellfleet on lands either publicly or privately owned, except as permitted by § 111-15.

B. No person shall fail to take remedial action to avoid contact or conflict with wild animals, which may include the securing or removal of outdoor food sources or attractant after being advised by the Town to undertake such remedial action. Further, after an initial contact or conflict with a wild animal, no person shall continue to provide, or otherwise fail to secure or remove, any likely food sources or attractants.

C. The prohibitions of this section shall not apply to naturally growing shrubs, live crops, plants, flowers, vegetation, gardens, or trees.

§ 111-17 Enforcement.

A. The Animal Control Officer shall enforce the provisions of this article.

B. Violations of this article shall be enforceable under the noncriminal disposition procedures established by MGL c. 40, § 21D. The noncriminal disposition penalties for any person violating this article shall be a written warning for the first violation; \$25 for the second violation; \$100 for the third violation; and \$300 for each subsequent violation. Each day of violation shall constitute a separate offense.

2/3rd Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 5, No – 0, Abstain – 0.

Recommend: Yes – 5, No – 0, Abstain – 0.

SUMMARY:

SECTION III: STANDARD CLOSING ARTICLES

ARTICLE NO. 18 – ENVIRONMENTAL BETTERMENT FUND:

To see if the Town will vote to establish a special purpose “Environmental Betterment Fund” fund pursuant to G.L. c. 40, §5B and further to dedicate one hundred percent (100%) of the revenue received as payments in lieu of under [article and section of zoning] Tree Preservation, to be appropriated by future votes of Town Meeting as grants or to support initiatives benefiting the environment within the Town of Wellfleet, or to act on anything thereon.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes – 0, No – 0, Abstain – 0.

Recommend: Yes – 0, No – 0, Abstain – 0.

SUMMARY: This creates a dedicated fund to support environmental initiatives within Wellfleet. It is funded by contributions received as mitigation (payments in lieu of) under the Tree Preservation Zoning Bylaw. Expenditures from this fund must be approved by town meeting.

SECTION IV: STANDARD CLOSING ARTICLES

ARTICLE NO. 19 - REPORTS OF BOARDS AND COMMITTEES:

To hear reports of the Selectboard, Town Officers, and all other Committees and to act thereon, or do or act on anything thereon.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes - 0, No - 0, Abstain - 0.

Recommend Yes - 0, No - 0, Abstain - 0.

ARTICLE NO. 20 - OTHER BUSINESS:

To act on any other business that may legally come before the meeting.

(Requested by the Selectboard)

Majority Vote Required

Recommendations:

Selectboard:

Insert Yes - 0, No - 0, Abstain - 0.

Recommend Yes - 0, No - 0, Abstain - 0.

ANNUAL TOWN ELECTION WARRANT

Wednesday September 27, 2023

The Commonwealth of Massachusetts

To either of the Constables in the Town of Wellfleet in the County of Barnstable:

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn the inhabitants of the Town of Wellfleet qualified to vote in Town Affairs, to meet at the **WELLFLEET ADULT COMMUNITY CENTER, 715 OLD KING'S HIGHWAY in Wellfleet on Wednesday the 27th day of September, 2023, between twelve o'clock noon and seven o'clock p.m.**, then and there to vote on the following questions:

Question 1: Shall the Town of Wellfleet be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bonds issued in order to pay costs associated with design and construction of Phase I Wastewater Treatment System to serve 95 Lawrence Road and surrounding municipal buildings?

Majority Vote Required

Question 2: Shall the Town of Wellfleet be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bonds issued in order to pay to assist in the installation of high performance, so called "enhanced" Innovative & Alternative Septic Systems within the Wellfleet Harbor Watershed?

Majority Vote Required

2023 SPECIAL TOWN ELECTION WARRANT

And you are hereby directed to serve these warrants by posting attested copies thereof, one in the Post Office in Wellfleet and one in the Post Office in South Wellfleet, fourteen (14) days at least before the date of said meetings.

Hereof fail not and make do return of these warrants with your doings thereon, to the Town Clerk, at the time and place of said meetings.

Given under our hands this ____ day of AUGUST 2023.

Wellfleet Selectboard

Ryan Derek Curley, Chair

Barbara Carboni, Vice Chair

Michael F. DeVasto, Member

Kathleen Bacon, Member

John A. Wolf, Clerk

Constable's Return of Service

I have served the foregoing warrant by posting attested copies thereof in the Post Office in Wellfleet and the Post Office in South Wellfleet in the Town on _____, which is at least seven (14) days before the date of said meeting, as within directed.

Date: _____

Constable: _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

IV

BUSINESS

~ D ~

REQUESTED BY:	Brent Harold
DESIRED ACTION:	To discuss with the board safety concerns at Long Pond.
PROPOSED MOTION:	If a motion is needed one will be made at the time of the meeting.
SUMMARY:	
Project	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

IV

BUSINESS

~ E ~

REQUESTED BY:	Barbara Carboni, Chair & Town Clerk, Jennifer Congel
DESIRED ACTION:	Vote to accept the resignation effective September 26, 2023, and place the vacancy on the ballot for the September 27, 2023, Special Town Election.
PROPOSED MOTION: Summary:	I move to accept the resignation of Kathleen Bacon from the Wellfleet Selectboard Effective September 26, 2023, and to direct the Town Clerk to place the vacancy on the ballot for the September 27, 2023, special town Election a seat for the Selectboard member for a seven (7) month term to fulfill the vacancy.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Rebekah Eldridge

From: Kathleen Bacon
Sent: Wednesday, July 19, 2023 7:41 AM
To: Board of Selectmen
Subject: Resignation

To my fellow board members , at 6:00 am this morning I submitted a letter of resignation to town clerk Congel . Citing irreconcilable differences with the board , lack of leadership and un -due stress . I have worked incredibly hard in the year I have been back on the board , but I simply lack the enthusiasm needed at this time . I will stay on thru the special election , slated for 9/27. This leaves 8 months left on the two year term I was elected to replace Helen . I wish to give hopeful candidates time to mount a campaign for the 8 month seat . Wish you all well . I will continue with due diligence until I can exit . With sincere best regards Kathleen Bacon Please do not respond . But I did want you to have this information at the same time

Sent from my iPad

SPECIAL TOWN ELECTION WARRANT

Wednesday September 27, 2023

The Commonwealth of Massachusetts

To either of the Constables in the Town of Wellfleet in the County of Barnstable:

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn the inhabitants of the Town of Wellfleet qualified to vote in Town Affairs, to meet at the **WELLFLEET ADULT COMMUNITY CENTER, 715 OLD KING'S HIGHWAY in Wellfleet on Wednesday September 27th, 2023 , between twelve o'clock noon and seven o'clock p.m.**, then and there to vote for the election of the following Town officer: One Selectboard to fill the remainder of a term. Also, to vote on the following questions:

Question 1: Shall the Town of Wellfleet be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bonds issued in order to pay costs associated with design and construction of Phase I Wastewater Treatment System to serve 95 Lawrence Road and connect surrounding municipal buildings?

Majority Vote Required

Question 2: Shall the Town of Wellfleet be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bonds issued in order to pay to assist in the installation of high performance, so called "enhanced" Innovative & Alternative Septic Systems within the Wellfleet Harbor Watershed?

Majority Vote Required

Question 3: Shall the Town of Wellfleet be allowed to assess an additional \$145,000.00 in real and personal property taxes for the purpose of funding a new Town Planner position for the fiscal year beginning July 1st, two thousand and twenty-three?

Majority Vote Required

2023 SPECIAL TOWN ELECTION WARRANT

And you are hereby directed to serve these warrants by posting attested copies thereof, one in the Post Office in Wellfleet and one in the Post Office in South Wellfleet, fourteen (14) days at least before the date of said meetings.

Hereof fail not and make do return of these warrants with your doings thereon, to the Town Clerk, at the time and place of said meetings.

Given under our hands this 25th day of July 2023.

Wellfleet Selectboard

Barbara Carboni, Chair

John A. Wolf, Vice Chair, Clerk

Michael F. DeVasto, Member

Kathleen Bacon, Member

Ryan Derek Curley, Member

Constable's Return of Service

I have served the foregoing warrant by posting attested copies thereof in the Post Office in Wellfleet and the Post Office in South Wellfleet in the Town on _____, which is at least seven (14) days before the date of said meeting, as within directed.

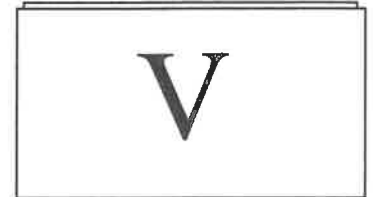
Date: _____

Constable: _____



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023



SELECTBOARD REPORTS:

Reported by:	Topic:



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

VI

TOPICS FOR FUTURE DISCUSSION

- **The board will bring up topics that they wish to be on future agendas**



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

VII

VACANCY REPORTS

*****Please see the packet for full report*****

Boards and Committees

Affordable Housing Trust – 1-year term –

- Elaine McIlroy 6/30/2024
- Gary Sorkin 6/30/2024
- Sharon Rule-Agger 6/30/2024
- James Hood 6/30/2024
- Harry Terkanian 6/30/2024
- Kathleen Nagle 6/30/2024
- Michael DeVasto 6/30/2024

Bike and Walkways – 3-year term – 5 Members – NO LONGER MEETS

- Ned Oliver
- Christie O'Campbell
- Peter Cook complete term
- **2 Vacancies**

Board of Assessors – 3-year term – 3 Members, 1 Alternate

- Nancy Vail 6/30/2025
- Diane Galvin 6/30/2024
- Gail Stewart 6/30/2024

Board of Health – 3-year term – 5 Members 1 Alternate

- Kenneth Granlund 6/30/2026
- Janet Drohan 6/30/2024
- Nick Picariello 6/30/2024
- Gary Locke 6/30/2024
- Deborah Freeman 6/30/2025
- **1 Alternate position open**

Board of Water Commissioners – 3-year term – 5 Members, 1 Alternate

- Jim Hood 6/30/2026
- Peter Simon 6/30/2026
- Thomas Flynn 6/30/2024
- Curt Felix 6/30/2025
- Neal Gadwa 6/30/2024
- **2 Alternate positions open**

Board of Registrars – 3- year term – 4 Members

- Andrea Pluhar 2025
- Sheryl Jaffee 2026
- Jennifer Congel ex-officio
- **1 Vacancy**

Building and Needs Assessment Committee – 3-year term – 5 Members

- Sean Donoghue
- Jay Horowitz
- Harry Terkanian
- Jay Norton – DPW Liaison
- Kathy Granlund – Finance Committee Liaison
- **2 Vacancies**

Bylaw Committee – 3-year term – 3 Members

- Dawn Rickman ATM 2025
- Lizanne Stansell ATM 2026
- Sam Pickard ATM 2024

Cable Internet and Cellular Service Advisory Committee – 1-year term – 5 Members

- Josh Yeston Chair 6/30/2024
- Steven Kopits Vice-Chair 6/30/2024
- Thomas Cole 6/30/2024
- Heather Doyle 6/30/2024
- Larry Marchal 6/30/2024
- **1 Vacancy**

Cemetery Commission –

- Nancy Vail Chair ATE 2025
- Bonnie Robicheau ATE 2026
- David Agger ATE 2024

Commission on Disabilities – 3-year term – 5 Members

- Suzanne Grout Thomas ADA Coordinator
- Fred Gentner 6/30/2026
- Kate Clemens 6/30/2026
- James McAuliffe 6/30/2024
- George Harris 6/30/2024
- **1 Vacancy**

Community Preservation Committee – 3-year term

- Gary Sorkin Chair LHP 6/30/2026
- Jan Plaue Vice-Chair At Large 6/30/2026
- Elaine Mellroy Housing Authority 6/30/2026
- Fred Streams Open Space 6/30/2024
- James McAuliffe Historical Comm. 6/30/2025
- Rhonda Fowler Recreation 6/30/2024
- David Mead-Fox Planning Board 6/30/2024
- Geraldine Ramer At Large 6/30/2024
- Michael Fisher Conservation Com. 6/30/2024

Conservation Commission – 3-year term – 7 Members, 2 Alternates

- Barbara Brennessel 6/30/2026
- Martin F Murphy 6/30/2024
- John Cumbler 6/30/2026
- Michael Fisher 6/30/2024
- Leon Shreves 6/30/2026
- Benjamin Fairbank 6/30/2026
- Robert Stewart 6/30/2026
- **2 Alternate vacancies**

Council on Aging – 3-year term – 9 Members

- Brian Quigley co-chair 6/30/2026
- Wayne Clough co-chair 6/30/2026
- Sarah Multer 6/30/2026
- Laura Gazzano 6/30/2024
- Denya Levine 6/30/2024
- Judith Cumbler 6/30/2024
- Mary Goodhouse 6/30/2026
- **1 Vacancy**

Cultural Council – 3-year term – No more than 15 Members

- Carolyn Rogers Chair 6/30/2025
- Francis Corbin Treasurer 6/30/2025
- Susan Blake Secretary 6/30/2026
- Yvonne Barocas 6/30/2026
- Merrill Mead-Fox 6/30/2024
- Kevin McMahon 6/30/2024
- Moira Meehan 6/30/2024
- David Blackman 6/30/2024
- Vicki Solomon 6/30/2024
- Kathleen Grzewinski 6/30/2025
- **5 Vacancies**

Dredging Task Force – 3-year term – 7 Members

- Christopher Allgeier Co-Chair 6/30/2025
- Joseph Aberdale Co-Chair 6/30/2026
- Skip Annette 6/30/2025
- Curt Felix 6/30/2024
- **3 Vacancies**

Energy Committee – 3-year term – 7 Members

- Suzanne Ryan Chair 6/30/2025
- Lilli-Ann Green Vice Chair 6/30/2026
- Mary (Carol) Magenau Secretary 6/30/2025
- Robert Shapiro 6/30/2025
- David Mead-Fox 6/30/2024
- Gorham Brigham 6/30/2025
- Dick Elkin 6/30/2024
- Jay Norton – DPW Liaison
- Jeff Tash – Finance Committee Liaison
- **No vacancies**

Finance Committee – 3-year term – 9 Members, 2 Alternates

- Kathleen Granlund Chair ATM 2026
- Fred Magee ATM 2026
- Stephen Polowczyk ATM 2026
- Jeff Tash ATM 2026
- Robert Wallace ATM 2026
- Ira Wood ATM 2026
- Moe Barocas ATM 2026
- Jennifer Rhodes ATM 2026
- **1 Vacancy**

Historical Commission – 3-year term – 7 Members

- Merrill Mead-Fox Co-Chair 6/30/2024
- Susan Baker Co-Chair 6/30/2024
- Timothy Curley-Egan 6/30/2024
- Gordon Kahn 6/30/2024
- James McAuliffe 6/30/2024
- David Kornetsky 6/30/2025
- Milton Gatch 6/30/2024

Housing Authority – 5-year term – 5 Members

- Elaine McIlroy Chair ATE 2026
- Sarah Pechoukas-Slivka ATE 2026
- Gary Sorkin ATE 2025
- Richard Ciotti ATE 2024
- Michele Olem ATE 2027

Library Trustees:

- Robin Robinson Chair ATE 2026
- Andrew Freeman Member ATE 2026
- Yvonne Barocas Member ATE 2024
- Adam James Miller Member ATE 2024
- Kathleen Shorr Member ATE 2024
- Kathleen Hickey Member ATE 2025

Local Comprehensive Planning Committee – 2-year term ~ **HAVEN'T MET**

Local Housing Partnership – 1-year term – At least 10 Members

- Sharon Rule-Agger 6/30/2024
- Anne Suggs 6/30/2024
- John Cumbler 6/30/2024
- Susan Spear 6/30/2024
- Karen Kaminski 6/30/2024
- Judy Taylor 6/30/2024
- Alfred Pickard Planning Board
- Gary Sorkin Housing Authority
- Sharon Inger Zoning Board of Appeals

Marina Advisory Committee – 3-year term – 7 Members, 2 Alternates

- Joseph Aberdale Chair 6/30/2024
- David Stamatis Vice -Chair 6/30/2024
- Edward Kane 6/30/2024
- William Barrio 6/30/2024
- Martha Wilson 6/30/2026
- Fredrick Felix 6/30/2024
- **1 VACANY Voting Member**
- Doug Straus Alternate 6/30/2024.
- James Gray Alternate 6/30/2024

Natural Resource Advisory Board – 3-year term – 7 Members

- John Duane Chair 6/30/2024
- Laura Hewitt 6/30/2025
- Thomas Slack 6/30/2026
- Herbert Gstalder 6/30/2024
- **3 Vacancies**

Open Space Committee – 3-year term – 7 Members

- Bruce Hurter Chair 6/30/2024
- Thomas Slack Vice-Chair 6/30/2024
- Lynn Southey 6/30/2024
- Fred Streams 6/30/2024
- Margaret Sagan 6/30/2024
- John Grieb 6/30/2024
- Elizabeth McDonald 6/30/2024

Personnel Board – 3-year term – 4 Members, TA & FinCom Representatives

- **Haven't Met**

Planning Board – 3-year term – 7 Members, 2 Alternates

- Gerald Parent Chair 6/30/2025
- Bonnie Shepard 6/30/2024
- David Mead-Fox 6/30/2024
- Alfred Pickard Jr. 6/30/2026
- Beth Ann Singer 6/30/2026
- **2 Voting Member Vacancies**
- **2 Alternate Vacancies**

Recreation Committee – 3-year term – 7 Members

- Christine Bezio 6/30/2026
- Kevin Scalley 6/30/2026
- Kerry Cox 6/30/2026
- Kathy Granlund FinCom Liaison
- Rhonda Fowler CPC Liaison
- **2 Vacancies**

Recycling Committee – 3-year year term – 7 Members, 2 Alternates

- Christine Lustig Shreves Co- Chair 6/30/2025
- Lydia Vivante Co-Chair 6/30/2025
- Jaya Karlson 6/30/2024
- Nancy Najmi 6/30/2024
- Christine Wisniewski 6/30/2024
- Olivia Kraus 6/30/2024
- (Mary) Carol Magenau 6/30/2026
- **2 Alternate Vacancies**

Rights of Public Access Committee – 3-year term – 5 Members

- Melissa Yow
- **4 Vacancies**

Shellfish Advisory Board – 3-year term – 7 Members, 2 Alternates

- Rebecca Taylor Chair 6/30/2024
- John Duane 6/30/2024
- Nick Sirucek 6/30/2025
- Ethan Etsey 6/30/2024
- Adrien Kmiec 6/30/2026
- Stephen Pickard 6/30/2025
- Karen Johnson 6/30/2025
- Damian Parkington – Alternate 6/30/2025
- Brad Morse– Alternate 6/30/2026

Taxation Aid Committee – 3-year term

- Dawn Rickman Chair 6/30/2026
- Nancy Bierhans Vice-Chair 6/30/2026
- Susan Messina Secretary 6/30/2024
- Diane Galvin Board of Assessors
- Town Treasurer – Vacant

Wellfleet Elementary School Committee – 3 -year term

- Martha Gordon Chair ATE 2026
- Liberty Schlipp ATE 2024
- Laura Baghetti ATE 2026
- Joan Zukas ATE 2025

Wellfleet Affordable Housing Trust – 2-year term

- Gary Sorkin Trustee
- Kathleen Nagle Trustee
- Harry Sarkis Terkanian Trustee
- Elaine McIlroy Trustee
- Sharon Rule-Agger Trustee
- James Hood Trustee

Wellfleet Public Library Trustees – 3-year term- 7 Members

- Robin Robinson Chair ATE 2026
- Kathleen Hickey ATE 2025
- Andrew Freeman ATE 2026
- Yvonne Barocas ATE 2024
- Adam James Miller ATE 2024
- Kathleen Shorr ATE 2024
- **1 Vacancy**

Zoning Board of Appeals – 3-year term – 5 Members, 4 Alternates

- Sharon Inger Chair 6/30/2026
- Michael Lynch Vice-Chair 6/30/2026
- Theodore Heyliger Clerk 6/30/2025
- C. Wilson Sullivan 6/30/2026
- Trevor Pontbriand 6/30/2024
- Reatha Ciotti 6/30/2026
- Janet Morrissey 6/30/2024
- Andrew Freeman Alternate 6/30/2026
- Al Mueller Alternate 6/30/2024



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023

VIII

MINUTES

REQUESTED BY:	Executive Assistant
DESIRED ACTION:	Approval of the Meeting Minutes of July 11, 2023, July 13, 2023, & July 18, 2023.
PROPOSED MOTION:	I move to approve the minutes of July 11, 2023, July 13, 2023, and July 18, 2023 as printed in draft.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

**Wellfleet Selectboard
Hybrid Meeting
Zoom/ 715 Old King's Highway, Wellfleet
Tuesday July 11, 2023
Meeting Minutes**

Members Present: Ryan Curley, chair; Barbara Carboni, Vice Chair; Michael DeVasto, Kathleen Bacon, John Wolf

Others Present: Richard Waldo, Town Administrator; Rebekah Eldridge, Executive Assistant; Kevin LaRocco, Deputy Chief of Police; Suzanne Grout Thomas, Community Service/Beach Director; Jay Pawa, Sacred Surf School, LLC; Leigh Cremin, Collective Dynamics; Rebecca Arnoldi, Be Body & Earth; Jeffry Korgen, Planning Board Applicant; Chris Merl, Resident; Tim Sayer; Dan Murray, owner of the Beach Comber; Curt Felix; Suzane Reverby, Kevin LaRocco; Deputy Chief; Lt. Turner; Suzanne Grout Thomas, Beach/Community Service Director; Rebecca Arnoldi, applicant for use of town property, Gerry Parent, Chair of the Wellfleet Planning Board

Chair Called the meeting to order at: 7:00pm

I. *Announcements, Open Session and Public Comments*

Note: *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

Merl spoke to the board about a scallop dinner at the Congregational Church on the 16th of July, he also explained he will not be able to attend the July 13th meeting as an applicant as he will need to be fishing.

Murray, General Manager of the Beach Comber: he spoke about the Cahoon Hollow beach issues, he questioned the enforcing of alcohol drinking on the beach. He read a complaint letter to the board about the vibe that is being killed on the beach. He explained there are many other ways that the town can enforce safety.

Bacon spoke to the board; stating that there has been 2 members of the board that have asked for a reorganization of the board and has been ignored and wanted this known for public record.

Felix spoke to the board stating that there is a crisis in leadership, stating there was significant overreach because of the chair, and he is stating that if the overreaching continues from the chair there will be more issues in Wellfleet. He stated he felt the Selectboard should be reorganized to keep in the spirit of.

Reverby, spoke to the board about the issues about the board and stated there needs to be reorganization of the board before the town goes into receivership.

II. *Consent Agenda*

There were no items on the consent agenda to be voted on or approved.

III. Community Updates

A. Police Department fourth of July weekend update

LaRocco and Turner briefed the board and public on the weekend of July 4th he stated there was a letter to the board, with a decrease in busses due to the weather. He stated this year there were 36 buses compared to last year there were 109 buses. Wolf questioned the Chief about the large presence of the police at the beach. LaRocca explained that they are there to educate the public with the new regulations not to ruin the beachgoers time on the beach. The board spoke to the Lt. and Chief thanking them for their service and time on the beach. Waldo stated that after this season they would go back to the Park Service to discuss the season and moving forward with drop off locations.

NO ACTION WAS TAKEN

IV. Public Hearing

Chair Curley opened the public hearing at 7:16pm:

A. Beach Rules and Regulations ~ Maguire's Landing/Lecount Landing Beach to be a resident and Taxpayer Beach permanently ~ Suzanne Grout Thomas
Thomas spoke to the board making this a permanent decision, so it doesn't need to be brought back in front of the board in the future. DeVasto made the point that this is just a parking privilege for residents and taxpayers, the beach is open to all. Sayer spoke to the board asking to amend the motion stating it is for parking.

Chair Curley Moved; Board Member Wolf Seconded; and it was voted to approve McGuire's Landing at Lecount Hollow to be a resident taxpayer parking only.

Roll Call Vote: 5-0

V. Use of Town Property

A. Sacred Surf School, LLC ~ Jay Pawa ~ Whitecrest Beach, surf lessons for groups of no more than 10 people.

Jay was not on the meeting,

Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to approve Jay Pawa of Sacred Surf LLC, to use Whitecrest Beach for surf lessons for small groups for a fee of \$385.00.

Roll Call Vote: 5-0

B. Collective Dynamics ~ Leigh Cremin ~ varies sidewalk and grassy areas to do street performances with her 2x2 chalkboard for "Word Play" ~ see application for further details.

Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to approve the various places in Wellfleet to perform word play with a chalk board and chalk ending September 30, 2023.

Roll Call Vote: 4-1 (Bacon voted No)

C. Rebecca Arnoldi ~ Nature classes/walks ~ Newcomb Hollow, Mayo Beach August through September.

Arnoldi spoke to the group explaining her nature walks and what she plans to do with them. There was discussion of a fee.

Chair Curley moved; Board Member Carboni Seconded; and it was voted to approve the use of Newcomb Hollow and Mayo Beach for nature walks

and calming classes for a fee to be negotiated with the Community Service Director.

Roll Call Vote: 5-0

VI. *Board/Committee Appointments and Updates*

A. Appointment of Jeffrey Korgen to the Wellfleet Planning Board

Korgen spoke to the board about his application. The board asked if Korgen knew anything about zoning and housing, he spoke to both. Stating he didn't have a lot of knowledge with zoning, and he spoke about housing and his work on studying land trusts. Curley asked him to review the housing production plan.

Chair Curley Moved; Board Member Seconded; and it was voted to approve the appointment of Jeffrey Korgen to the Wellfleet Planning Board as a voting member, for a term of three years to end June 30, 2026, to be sworn in by the town clerk and to take the required ethics class online before voting at a public meeting.

Roll Call Vote: 4-0-1 (DeVasto abstained)

DeVasto spoke to the board members stating that there was a discussion to reorganize the board. Chair Curley stated that this would be an illegal motion and DeVasto was out of order.

DeVasto moved; Board Member Wolf Seconded; and it was voted to reorganize the board at the agenda on the next meeting.

Roll Call Vote: 4-1 (Curley voted no)

There was much discussion on this, and it was decided that town counsel will look over this motion and determine if it is legal. Town counsel joined the meeting and the Chair refused to go back to this item.

VII. *Zoning Bylaws for Special Town Meeting Warrants*

A. Inclusionary Zoning

Chair Curley spoke to the board about this bylaw stating the Harry Terkanian amended it a little to take most of the math out of it. The board spoke about some of the amendments and the bylaw.

Parent spoke to the board about posting a public hearing regarding the zoning. He then stated that this is a very short amount of time for zoning bylaws to be on a warrant.

Curley explained to Parent that the Planning Board spoke about all these zoning bylaws previously. Parent explained that these were changes and there still hasn't been a final version sent over to them for them to review. DeVasto spoke in favor of Parent's remarks.

Chair Curley Moved; Board Member Wolf Seconded; and it was voted to refer the Inclusionary Zoning Bylaw as a draft to the Planning Board and town counsel for comment and respond to the town administrator.

Roll Call Vote: 5-0

B. Cottage Colonies

Chair Curley stated that this was a straightforward bylaw. Parent agreed. The board had a few questions for the increase of numbers.

Chair Curley Moved; Board Member Bacon Seconded; and it was voted to refer The Cottage Colonies Zoning Bylaw Amendment to the Planning

Board and town counsel as a draft to follow the town administrator's schedule.

Roll Call Vote: 5-0

C. Intensity of Use of Multi-Family Dwellings

Chair Curley spoke to the board and has been seen by the Planning Board and town counsel and has not been changed. The board discussed this bylaw, including septic and the watershed permit.

Chair Curley Moved; Board member Wolf seconded; and it was voted to defer the Intensity of Use of Multi-Family Dwellings Zoning Bylaw Amendment for a public hearing to be held within 65 days.

Roll Call Vote: 4-1 (DeVasto voted no)

D. Developments of Significant Planning Interest and Food Establishments

Bacon stated she wanted this to be send to the Planning Board and town counsel in draft form and to town counsel for review. She stated this needs to go back to them with changes. DeVasto stated he has trouble with this bylaw stating that he believes this could cause unending litigation. Parent stated that this could make most if not all the restaurants in Wellfleet preexisting nonconforming. The board continued to discuss this bylaw and how it would be determined.

Board Member Bacon Moved; Chair Curley Seconded; and it was voted to refer the Development of Significant Planning Interest and Food Establishments to the Planning Board for a public hearing to be held within 65 days.

Roll Call Vote: 4-1 (DeVasto voted No)

E. Definition of Trees

Board Member Bacon Moved; Chair Curley seconded; and it was voted to refer the Definition of Trees to the Planning Board for a public hearing to be held within 65 days.

Roll Call Vote: 4-1 (DeVasto voted no)

F. Cutting of Timber Amendment

Sayre spoke against this motion stating that the board doesn't have the right to not allow the members to strip property owners. The board discussed having the building commissioner be the person to allow the cutting of trees.

Chair Curley Moved, Board Member Carboni Seconded; and it was voted to refer the Cutting of Timber Zoning Bylaw Amendment to the Planning Board for a public Hearing as amended to be held within 65 days.

Roll Call Vote: 5-0

G. Landscape and Tree Preservation Bylaw

The board moved onto this bylaw Chair Curley explained that this was a vote at town meeting to ask the Selectboard to draft a bylaw.

DeVasto stated that he is against this bylaw, and he feels the town shouldn't be telling residents they can't cut trees on their own property. Wilson spoke to this article.

Chair Curley Moved; Board Member Seconded, and it was voted to refer the Landscape and Tree Preservation Bylaw to the Planning Board and town counsel as a draft for comments to follow the town administrator's schedule.

Roll Call Vote: 4-1 (DeVasto voted no)

H. Locally Notable Trees

Wolf stated he couldn't find the definition of locally notable trees. Chair Curley read the definition.

Board Member Bacon Moved; Board Member Carboni Seconded; and it was voted to refer the Locally Notable Trees Zoning Bylaw to the Planning Board for a public hearing to be held within 65 days.

Roll Call Vote: 5-0

I. Zoning Enforcement Penalty

Parent stated there are Zoning Bylaw violations all over town. He stated that he has spoken with the Building Commissioner and stated that \$50 for the 3rd offense is something that doesn't cause a violator to change. He stated the higher the fee the more compliant the offender would be.

Board Member Bacon Moved, Board Member Carboni Seconded; and it was voted to refer the Zoning Enforcement Penalty Bylaw to the Planning Board for a public hearing to be held withing 65 days.

Roll Call Vote; 5-0

VIII. *Special Town Meeting Warrant*

A. The board will review and may take votes on articles for the September town meeting.

Chair Curley Moved this item up so the animal control officer.

Chair Curley Moved; Board Member Seconded and it was voted to insert and recommend the amended working for the animal control bylaw.

Roll Call Vote: 5-0

IX. *Business*

A. Special Town Election ~ Date to be chosen ~ Selectboard.

Chair Curley asked if there was a date that worked for the election, Waldo stated that in speaking with the town clerk she would not like to have an election the day after town meeting. He explained there were other days in September that wouldn't work due to Yom Kippur and an event being held at the Community Center. He mentioned October 2nd or October 9th. Chair Curley questioned the tax rate being able to be set on time. Bacon stated waiting that long for a special election wouldn't be in the best interest.

Waldo stated that he would work with the clerk about September 27th or 28th for a special election.

NO ACTION WAS TAKEN

X. *Selectboard Reports*

Carboni spoke about establishing a scholarship fund. She stated she met with the proponent of the article.

Wolf spoke about the dredging task force regarding the dredging mitigation.

XI. *Town Administrator's Report*

Waldo gave some points on his report. He acknowledged the Chamber of Commerce for the fourth of July parade. He also stated that the town received a grant for fiber optics, and he met with the Cable Committee earlier in the day, to try and help with getting service to the beach.

XII. *Topics for Future Discussion*

Art Shacks at the Beach need to be put on an upcoming agenda.

XIII. *Vacancy Reports*

Carboni would like to talk about the rights of Public Access Committee

XIV. *Minutes*

A. June 20, 2023, ~ Board Member Bacon Moved; Chair Curley Seconded; and it was voted to approve the meeting minutes of June 20, 2023 in draft.

B. Roll Call Vote: 5-0

XV. *Adjournment*

Chair Curley Moved; Board Member Bacon Seconded; and it was voted to adjourn.

Roll Call Vote: 5-0

Meeting Adjourned: 10:11pm

**Wellfleet Selectboard
Hybrid Meeting
Zoom/715 Old King's Highway
Thursday July 13, 2023; 6:30pm
Meeting Minutes**

Members Present: Ryan Curley, Chair; Barbara Carboni, Vice Chair; Michael DeVasto, John Wolf

Members Absent: Kathleen Bacon

Finance Committee Members Present: Kathy Granlund, Chair; Bob Wallace, Stephen Polowczyk, Ira Wood, Jenn Rhodes

Others Present: Rich Waldo, Town Administrator; Rebekah Eldridge, Executive Assistant; Catherine Pomeroy, accountant consultant; Nancy Civetta, Shellfish Constable; Jude Ahern; Tim Sayre, Adrien Kmiec, Shellfish Advisory Board applicant; Bradford Morse, Shellfish Advisory Board Applicant; Nemanja Krsmanovic, Shellfish Advisory Board Applicant; Chris Merl, Shellfish Advisory Board Applicant; Alfred Pickard, Ginny Parker, Lisa Dexter, shell fisher woman, Helen Miranda Wilson, Resident, Diane Brunt, resident

Chair Curley called the meeting to order: 6:35pm

I. *Announcements, Open Session and Public Comments*

Note: *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

Chief Pauley stood up to the microphone and read a statement to the board and public, stating that town leadership is at an all time low, speaking his full support of the town administrator and the need for this board to reorganize.

DeVasto spoke to the public regarding the motion that was made and voted on at the previous meeting, he was upset that it was not placed on tonight's agenda.

Brad Morse spoke to the board stating that the board was taking up the time this room needs for a meeting.

II. *Year End Budgetary Transfers*

A. The finance committee will approve any transfers that need to be made at this meeting for the end of the year. ~ Finance Committee, Selectboard, Town Administrator

Granlund explained to the board that this is a normal process for the town at the end of every fiscal year. Polowczyk spoke to the boards and public about budgets and how these transfers take place. Sayre asked some questions about the budget, why there was more money in one account verses another account. Sayre continued to go back and forth with the board and finance committee regarding the negative accounts. Chair Curley explained the process.

Pomeroy spoke to the board and public explaining the legal aspect of this vote to transfer.

Chair Granlund moved; board member Wood seconded; and it was recommending the budgetary transfers listed in the packet for tonight's meeting.

Roll Call Vote: 5-0

Chair Curley Moved; Board Member Carboni Seconded; and it was voted to approve and recommend the \$5 for the budgetary transfers.

Roll Call Vote: 4-0

Board Member Wood Moved; Board Member Polowczyk seconded, and it was voted to adjourn the finance committee portion of the meeting.

Roll Call Vote: 5-0

III. *Deputy Shellfish Constable Appointments ~ Seasonal Positions*

A. Erika Smith

B. Mark Howard

Chair Curley Moved; Board Member Wolf Seconded and it was voted to appoint Erika Smith and Mark Howard as seasonal Deputy Shellfish Constables for the town of Wellfleet, Starting June 28, 2023, through September 30, 2023, and again May 12th through June 30, 2024.

Roll Call Vote: 4-0

BOARD MEMBER DEVASTO RECUSED HIMSELF FROM THE REST OF THE MEETING AS A BOARD MEMBER.

IV. *Shellfish Advisory Board Applicants*

A. Adrien Kmiec ~ Voting Member application received June 5th to move from alternate member to voting member.

The board questioned Kmiec on his experience with the shellfish community, he stated he has been an alternate for 6 months and would like to be a full-time voting member. Pickard asked about how he feels about bringing corporations coming into the town. He stated he felt he understood both sides. Parker questioned if he would be able to be biased because Nancy Civetta is his sister-in-law. He stated he didn't feel this would be an issue.

B. Bradford Morse ~ Application received May 11, 2023, to be on the board in any capacity.

Morse came to the table and was spoken to by the board, he stated there are a lot of issues going on at the ocean, he gave a little bit of information about his background and stated that he knows a lot that is going on throughout the town and to be able to sit on the board and get involved in town matters. He stated his care for Wellfleet and gave some background. It was asked of Morse when he submitted his application. Wolf questioned his feeling for corporations being able to hold a grant. He stated he doesn't like the idea and then explained why he felt this way.

- C. **Nemanja Krsmanovic** ~ Application Received June 1, 2023, to be on the Shellfish Advisory board in any capacity.
Ahern asked him how many grants he was working. He explained to the board before he makes a decision. He stated he believes in empathy and that people should help each other.
- D. **Helen Miranda Wilson** ~ Application received June 12, 2023, to be on the Shellfish Advisory Board as a Voting Member – **Withdrew her application.**
- E. **Chris Merl**, application received June 28, 2023, to be on the board as a voting member. Chris Merl was unable to be at the meeting but submitted a letter to the board stating that he was fishing but wanted to be a part of the board because he has been a long time shellfisherman and would like to give back to the town of Wellfleet. Board Member Wolf read the letter from Merl.
Chair Curley spoke about all the applicants and how important it is to have them be a part of the board. DeVasto spoke as a fisherman, stating that if Merl were voted on that would be the 4th member of the shellfish advisory board it would be unfair. An argument ensued.
Board Member Carboni Moved; Board Member Wolf Seconded: and it was voted to approve Adrien Kmiec as the voting member on the Shellfish Advisory Board. For a term of three years with the term to end June 30, 2026.
Roll Call Vote: 2-1 (Wolf Voted No)
Board Member Wolf Moved; Chair Curley Seconded; and it was voted to appoint Brad Morse as an alternate member to the Shellfish Advisory Board. For a term of three years with the term to end June 3, 2026.
Roll Call Vote: 3-0.

V. **Business**

- Civetta spoke to the board stating that the two people before them have not obtained commercial shellfish license and she stated that because this is a fairly new policy, so she is requesting that they approve both hardship exemptions.
- A. **Mary Mallory commercial permit hardship exemption**
Mallory was discussed first, and what her hardship would be if she wasn't able to obtain a commercial permit. Carboni stated she supported the constable and vote in support of this.
Chair Curley Moved; Board Member Carboni Seconded; and it was voted to direct the shellfish constable to issue a commercial shellfishing permit to Mary Mallory per section 6.1.5 Hardship Exemption.
Roll Call Vote: 3-0
 - B. **Kathleen Murphy commercial permit hardship exemption**
Civetta spoke to this exemption, stating that Murphy was going to try to do a corporation and because that was denied she then wanted to be named to the grant and has requested a hardship. Chair Curley stated he felt it doesn't qualify for a hardship. Board Member Wolf spoke to the board disagreeing with Chair Curley. Murphy spoke to the board stating she has a lot of equipment on the grant and if she didn't have a commercial license.

Board Member Carboni Moved; Board Member Wolf Seconded; and it was voted to direct the shellfish constable to issue a commercial shellfishing permit to Mary Mallory per section 6.1.5 Hardship Exemption.

C. Letter to Legislature in support of Bill S261 & H60

Chair Curley spoke to the board about this letter that has been drafted where legislature is holding meetings that allows universal school meals for all children to receive school lunch programs. Chair Curley stated that Martha Gordon wrote the letter and thanked her for her support.

Board Member Carboni moved, Chair Curley Seconded, and it was voted to approve the letter drafted to send a letter to the legislature in support of Bill S261 & H600

Roll Call Vote: 3-0

D. Open Meeting Law Complaint ~ Chad Williams – taken out of order to move after the financial transfers.

Waldo spoke to the board regarding this complaint and stated that town counsel has written a response to Mr. Williams on behalf of the town.

Board Member Carboni moved; Board Member Wolf seconded; and it was voted to have town counsel submit the letter as written to the attorney general on behalf of the town.

E. Principal Clerk, shellfish job position description

Chair Curley read the job description of the principal clerk to the board and public. There was a lot of discussion on the changing of job positions. Brunt spoke to the board stating she had issues. Stating that she had to much help.

Chair Curley Moved; Board Member Bacon Seconded, and it was voted to approve the reorganization of the Principal Clerks job description.

Roll Call Vote: 3-0

VI. Public Hearings 7PM

In accordance with MGL Chapter 130 Sections 52, 57, 58, 60, and 68 and all applicable Town Shellfish Regulations, notice is hereby given that the Wellfleet Selectboard will hold a hybrid public hearing on July 13, 2023, at 7:00 p.m. to consider the following:

Chair Curley Opened the public hearings:

A. Application received on 4/14/2023 from Brent Valli (Wellfleet, MA) and Sandra Mitchell (Wellfleet, MA) for the renewal of shellfish grant license #s 95-21/22 consisting of approximately two acres on Egg Island for seven years beginning March 1, 2023, and expiring March 1, 2030.

Civetta spoke to the board and advised the board to approve this renewal for even years. Chair Curley spoke to the board about his renewal.

Chair Curley Moved; Board Member Wolf Seconded; and it was voted to approve the renewal of Brent Valli and Sandra Mitchell's shellfish grant license #95-21 and #95-22 consisting of approximately two acres on Egg Island for seven years beginning March 1, 2023, and expiring March 1, 2030.

Roll Call Vote: 3-0.

B. Application received on 5/5/2023 from Jeremy Storer (Wellfleet, MA) for the renewal of shellfish grant license #s 95-13/14 consisting of approximately two

acres on Egg Island for ten years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.

Civetta spoke to the board about this renewal.

Chair Curley Moved; Board Member Carboni Seconded; and it was voted to grant a waiver to sections 7.8.6 and 7.8.7 and approve the renewal of Jeremy Storer's shellfish grant licenses #95-13 and #95-14 consisting of approximately two acres in Egg Island for ten years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.

Roll Call Vote: 3-0

- C. Application received on 5/5/2023 from Jeremy Storer (Wellfleet, MA) and Alfred Pickard (Wellfleet, MA) for the renewal of shellfish grant license # 2000-4 consisting of 2.16 acres on Egg Island for ten years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.

Chair Curley Moved, Board Member Wolf Seconded; and it was voted to grant a waiver to sections 7.8.6 and 7.8.7 and approve the renewal of Jeremy Storer's and Alfred Pickard's shellfish grant license #2000-4 consisting of 2.16 acres on Egg Island for the years, one month and 29 days beginning March 1, 2023, and expiring April 30, 2033.

Roll Call Vote: 3-0

- D. Application received on 5/5/2023 from Jeremy Storer (Wellfleet, MA) for the transfer of shellfish grant license #s 95-13/14 consisting of approximately two acres on Egg Island from Jeremy Storer to Jeremy Storer and Brandon Silva (Wellfleet, MA).

Civetta spoke to the board about this application.

Chair Curley Moved; Board Member Carboni Seconded and it was voted to approve the transfer of shellfish grant license #s 95-12/14 consisting of approximately two acres on Egg Island from Jeremy Storer (Wellfleet, MA) to Jeremy Storer and Brandon Silva (Wellfleet, MA)

Roll Call Vote: 3-0

- E. Application received on 5/5/2023 from Jeremy Storer (Wellfleet, MA) and Alfred Pickard (Wellfleet, MA) for the transfer of shellfish grant license # 2000-4 consisting of 2.16 acres on Egg Island from Jeremy Storer and Alfred Pickard to Jeremy Storer, Alfred Pickard and Brandon Silva (Wellfleet, MA).

Chair Curley Moved; Board Member Wolf Seconded, and it was voted to grant a waiver to sections 7.8.6 and 7.8.7 and approve the transfer of shellfish license #2000-4 consisting of 2.16 acres on Egg Island.

Roll Call Vote: 3-0

- F. Application received on 5/30/2023 from Peter Rennert (Wellfleet, MA) and Zach Rennert (Wellfleet, MA) for the transfer of shellfish grant license #s 95-23/24 consisting of approximately two acres on Egg Island from Peter Rennert and Zach Rennert to Zach Rennert.

Chair Curley Moved; Board Member Wolf Seconded and it was voted to approve the transfer of shellfish grant licese #95-23 and #95-24 consisting of a total of approximately two acres on Egg Island from Zach Rennert and Peter Rennert to Zach Rennert.

Roll Call Vote: 3-0

- G. Application received on 6/29/2023 from Michael Ramsdell (Wellfleet, MA) and Michael DeVasto (Wellfleet, MA) for the transfer of shellfish grant license #s 855 and 855B consisting of approximately two acres on Field Point from Michael Ramsdell and Michael DeVasto to Michael DeVasto and Kathleen Murphy (Wellfleet, MA).

Chair Curley Moved; Board Member Carboni Seconded; and it was voted to approve the transfer of shellfish grant license #s 855 and 855B consisting of approximately two acres on Field Point from Michael Ramsdell and Michael DeVasto to Michael DeVasto and Kathleen Murphy.

Roll Call Vote: 3-0

- H. Application received on 6/29/2023 from Michael DeVasto (Wellfleet, MA) for the transfer of shellfish grant license # 855C consisting of approximately 1.6 acres on Field Point from Michael DeVasto to Michael DeVasto and Kathleen Murphy (Wellfleet, MA).

Chair Curley Moved, Board Member Wolf Seconded; and it was voted to approve the transfer of shellfish grant license #855C consisting of approximately 1.6 acres on Field Point from Michael DeVasto to Michael DeVasto and Kathleen Murphy.

Roll Call Vote: 3-0

- I. Application received on 6/29/2023 from Rebecca Taylor (Wellfleet, MA) and Myron Taylor (Wellfleet, MA) to transfer shellfish grant license #s 734 and 734A consisting of a total of approximately 3.5 acres on Mayo Beach from Rebecca Taylor and Myron Taylor to Rebecca Taylor.

Chair Curley Moved; Board Member Carboni Seconded, and it was voted to approve the transfer of shellfish grant license #s 734 and 734A consisting of a total of approximately 3.5 acres on Mayo Beach from Rebecca Taylor and Myron Taylor to Rebecca Taylor.

Roll Call Vote: 3-0

- J. Application received on 6/9/2023 from Rebecca Taylor (Wellfleet, MA) for two extensions to shellfish grant license # 734 (to be called 734B and 734C) on Mayo Beach for approximately 1.4 acres total, reconfigured from an extension approved by the Wellfleet Selectboard at its 3/21/2023 public hearing.

Chair Curley Moved; Board Member Carboni Seconded; and it was voted to approve two shellfish grant license extensions to be called #734B and 734C to shellfish grant license #s 734 and 734A consisting of a total of approximately 0.61 and 0.79 acres respectively on Mayo Beach for Rebecca Taylor.

Roll Call Vote: 3-0

CHECK RECORDING FOR REVISED VOTE

- K. **CONTINUED FROM 6/6/2023** ~ Application received 1/10/2023 for a grant extension (to be numbered #99-1 Ext) to shellfish grant license #99-1 consisting of approximately .43 acres on Mayo Beach from Angela Osowski (Wellfleet, MA), Robert Mallory (Wellfleet, MA) and Mary Mallory (Wellfleet, MA). New configuration of proposed grant extension submitted on 5/26/2023 equal to 0.35 acres.

Chair Curley Moved; Board Member Carboni Seconded and it was voted to approve Angela Osowski's and Robert and Mary Mallory's request for a

grant extension to be called #99-1ext. consisting of approximately 0.35 acres on Mayo Beach.

Roll Call Vote: 3-0

- L. Application received on 5/26/2023 from Stephen Pickard (Wellfleet, MA), Iris Pickard (Wellfleet, MA) and Benjamin Pickard (Wellfleet, MA) for an extension to shellfish grant license # 2000-2 (to be called 2000-2 Ext.) on Egg Island for approximately 1.23 acres.

Chair Curley Moved; Board Member Wolf Seconded, and it was voted to approve an extension to shellfish grant license #2000-2 (to be called 2000-2 ext.) on Egg Island for approximately 1.23 acres for Stephen Pickard, Iris Pickard, and Benjamin Pickard.

Roll Call Vote: 3-0.

VII. ***Special Town Meeting Warrant ~ continued to July 18th meeting.***

VIII. ***Adjournment***

Chair Curley Moved; Board Member Seconded, and it was voted to adjourn the meeting.

Roll Call Vote: 3-0

Meeting Adjourned: 9:10pm

Public Documents:

Spreadsheet for yearend transfers

Letter to Massachusetts Division of Marine Fisheries to appoint Ericka Smith and Mark Howard as

Seasonal Deputy Shellfish Constables

Applications to be on the Shellfish Advisory Board

Commercial Permit Hardship exemption for Mary Mallory and Kathleen Murphy

Letter to the legislature to support all school free meals.

Open meeting law complaint and town counsel's response to the letter

Job Description of Principal Clerk with regard to the shellfish department

Public hearing documents lettered A through L

Special Town Meeting Warrant

Wellfleet Selectboard
Tuesday July 18, 2023; 7pm
Hybrid Meeting
Zoom/715 Old King's Highway
Meeting Minutes

Board Members Present: Ryan Curley, Chair; Barbara Carboni, Vice Chair; Kathleen Bacon, John Wolf, Michael DeVasto (virtual)

Others Present: Richard Waldo, Town Administrator; Rebekah Eldridge, Executive Assistant (Virtually); Will Sullivan, Harbormaster; Chris Allgeier, Dredging Task Force, Curt Felix, Dredging Task Force, Chris Merl, Shellfisherman; Tim Hughes, Resident; Jude Ahern, resident; Sheila Lyons, Barnstable County Commissioner, Susan Reverby, Resident; Tim Sayre, resident; Josh Yeston, Cable Advisory chair.

Chair Curley called the meeting to order at 7:03pm

I. *Announcements, Open Session and Public Comments*

Note: *Public comments are limited to no more than **two minutes per speaker**. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

Merl, spoke to the board thanking the board for the support, he expressed the inaccuracy of the statement from DeVasto at the previous meeting stating that if Merl were elected to the Shellfish Advisory Board, he would be the fifth member of the Shellfish Fisherman's Association. He stated this was untrue, also stating he felt that DeVasto was unfit to be chair of the Selectboard.

Bacon made a statement recognizing the resignation of John Ryerson and thanked him for his service. She also thanked Chris Merl for the outstanding community event of the scallop dinner bringing the community together.

DeVasto explained he is on the meeting but remotely because he has Lymes Disease and wasn't feeling well.

Hughes came to the microphone stating that the town received a complaint from him with regard to the Harbormaster and stated the town also received a cease and desist letter from him and residents regarding the harbor dredging, he continued stating the town could avoid a lawsuit from him if they bring the dredging to town meeting.

Chair Curley thanked him for his comments.

II. *Consent Agenda*

A. Collective Bargaining Ratifications

- WEA

Chair Curley Moved; Board Member Bacon Seconded; and it was voted to adopt the consent agenda as drafted.

Roll call vote: 5-0

III. *Board Reorganization*

Chair Curley made a statement about being the chair of the selectboard, and he was looking forward to stepping down and taking some time.

Wolf nominated Barbara Carboni as chair, Curley seconded.

Ahern asked if the public was ever going to know what happened to put this item on the agenda. Curley stated that town counsel has put a letter together regarding the charter.

Blair spoke to the board stating that something has happened and as taxpayers they deserve to know, Bacon stated that yes something happened and it would be revealed in time.

Bacon nominated herself to be chair, she stated to the comment made by Blair, and stated that something did happen, and it was bad enough, that the board felt the need to reorganize.

Curley stated that there was a nomination and a second on the chair of Carboni.

It was voted to approve Barbara Carboni as Chair

Roll Call Vote: 5-0

Carboni thanked Curley and stated that there needs to be a vice chair and clerk. She again stated that leadership is needed to rotate.

Curley Nominated John Wolf as Vice-Chair, Bacon Seconded the nomination and it was voted to approve John Wolf as vice Chair.

Roll Call Vote: 5-0

DeVasto Nominated Kathleen Bacon as Vice Chair, Wolf seconded; Bacon stated that she didn't wish to be vice chair.

Bacon Nominated John Wolf as Clerk of the board; Chair Carboni seconded the nomination, and it was voted to have John Wolf as Clerk of the Selectboard.

Roll Call Vote: 5-0

IV. *Use of Town Property*

A. Baker's Field Pavilion ~ Celebration of Life for Jane Tesson ~ date to be determined based on availability.

Eldridge presented to the board stating that Jane Tesson who was an employee for over 20 years of the town. She explained that Jane's last wishes were to not be sad and to celebrate her life. The date was still to be determined but it would be within the next 2 weeks.

Board Member Curley Moved; Board Member Bacon Seconded; and it was voted to approve the use of Baker's Field Pavilion for a Celebration of Life for a long-time town employee Jane Tesson at a date to be determined with the Recreation Director for availability, the fee is to be waived do to Jane's many years of service to the town.

Roll call Vote: 5-0

V. *Business*

A. Dredging Mitigation ~ Board Member DeVasto recused himself for this item

Allgeier came to the microphone to discuss with the board the most recent draft of the mitigation plan made with the Army Corp of Engineers. Wolf questioned the methodology for assessing the baseline oyster parameters, stating he was unclear on how this would work. Allgeier stated that GEI the engineers for the mitigation were on. Wolf had more questions for Allgeier regarding the draft document. Curley stated that he would like to move this to town meeting. There was discussion on the funding of this project.

Reverby questioned what would happen if the dredging was voted down at town meeting and what would the consequences be of that. Curley spoke to that and stated it would establish the will of the people. Sayer, spoke to the board stating his concern is the culching of the grounds giving the square meters. The holding of the bid was questioned, Waldo stated that the town did ask the successful bidder for an extension of time and the town now has until August 23, 2023. It was questioned what would happen if they missed this deadline, Waldo explained that the town would need to rebid the project. Chair Carboni questioned if they did do this, when would the dredging take place? It was explained the dredging would happen in October. Lyons spoke to the board stating that the dredging has been planned for many years and the dredging needs to happen. She stated the opinion of her and the town who originally voted to do this dredging, she explained this is necessary to do this project. She asked the board to please make this decision. Felix came to the microphone and spoke to the point about the permit costs and the mitigation plan. The discussion about the mitigation plan and the dredging project listing the pros and cons of this project. Bacon stated the board has discussed this at numerous meetings and it was time to vote on this tonight. Waldo stated the grant funds are available until December 20, 2024. Curley gave his advice and input on the mitigation plan.

Board Member Wolf Moved; Board Member Bacon Seconded; and it was voted to accept the most recent mitigation draft agreement as presented at tonight’s meeting, subject to clarification from town counsel about the operating expenses associated, with the mitigation agreement and the funding mechanism.

There was more discussion on funding, easements, and culching. The Audubon was discussed and the acreage that they oversee and own.

Roll Call Vote: 4-0-1 (DeVasto was recused)

Board Member Curley Moved; Board Member Wolf Seconded; and it was voted to approve the letter prepared by administration requesting participation in the Mass Audubon Sanctuary.

Roll Call Vote: 4-0-1

Board Member Bacon left the meeting ill (8:15pm)

B. Financial Update

Chair Carboni questioned Waldo about the financial updates for the town, Board Member Curley questioned if the sales tax for the town was ready, and Waldo explained that it wasn’t now, but they have some of the revenues up. Curley asked about the email from the DOR and asked Waldo to speak on the letter and his response. Waldo spoke about the letter that was sent and the status of the fiscal 2022 audit. Discussion of when the auditors would come to meet with the board. Waldo gave some information on the end of the fiscal year. Discussion on free cash and the next steps with the tax recap. He informed the board that the interim town treasurer has a lot of knowledge and will help the town put their money in appropriate accounts to increase interest and make the money that town can make.

C. Town Administrator Development Plan

Waldo spoke to the board per his contract he is required to further his education. He stated the MCPPO training is completed, and he did receive his MCPPO designation. He gave a run down of his upcoming educational goals.

Board member Curley Moved; Board member Wolf Seconded, and it was voted to approve the town administrator's professional development plan as presented at tonight's meeting.

Roll Call Vote: 4-0

D. Departmental Goals

Administration
Human Resources
Police
Fire
DPW
Building Department
Community Services
Town Clerk
Shellfish Department
Harbor Master

The board spoke to the department head goals. Each Department gave a brief update and goals they wish their departments accomplish.

Selectboard goals were discussed and when they would be due to the town meeting. It was decided that the board would get their goals into the Administration office by August 3, 2023.

E. Special Town Meeting Warrant

Chair Carboni spoke to the board asking how long they wanted to spend on the warrant tonight. It was discussed that the zoning bylaws were set for the most part they could spend some time on the other articles. Waldo began with asking the board to vote on a date for the special town election.

Board member Curley Moved; Board member Wolf Seconded; and it was voted to approve Wednesday September 27, 2023, from 12 noon to 7pm, to be held at the Wellfleet Adult Community Center.

Roll Call Vote: 4-0

The board moved to the packet with new articles, the Town Planner was mentioned and discussed stating that the town needs a planner this position provides support to the building commissioner, the Planning Board, and the Zoning Board of Appeals. The board discussed this position.

Board member Curley Moved; Board Member DeVasto seconded; and it was voted to insert a warrant article for a town planner.

Roll Call Vote: 4-0

Waldo continued discussing and reviewing the warrant.

Board Curley Moved; Board member DeVasto seconded; and it was voted to insert Article 1 prior year invoices into the Special Town Meeting Warrant.

Roll Call Vote: 4-0

Board member Curley Moved; Board member Wolf Seconded; and it was voted to insert Article 2 FY2024 Budgetary transfers into the Special Town Meeting Warrant.

Roll Call Vote: 4-0

Waldo continued with the next article which was the wastewater article, he gave an explanation and information on the warrant article. The board discussed the funding and the ability to receive a grant.

Board Member Curley Moved; Board Member DeVasto Seconded; and it was voted to insert Article 3, 95 Lawrence Road Wastewater treatment facility into the Special Town Meeting Warrant.

Roll Call Vote: 4-0

The board moved onto article 4, Waldo discussed with them borrowing and appropriating funds.

Board Member Curley Moved; Board member DeVasto Seconded, and it was voted to insert an article, Enhanced Innovative & Alternate Septic Program into the Special town meeting Warrant.

Roll Call Vote: 4-0

Felix came to the microphone and explained the financial aspect of the IA systems, coming up with a plan to get this going Felix stated was very important.

Curley questioned Waldo on his sewer and wastewater installation experience. Waldo explained it is a large process and everything takes a long time to work through. He stated there are a lot of issues to work out when it comes to sewer, money, were the sewer system will be.

Curley stated he needed to provide an update on the Maurice's warrant article and will have that for the next meeting. Waldo stated the planning board was to have a meeting the following night on the 19th to produce their comments to the selectboard. It was explained by media services that there was no meeting scheduled for the Planning Board.

VI. *Adjournment of Open Session; Enter into Executive Session; M.G.L. c.30A, Sec. 21 This was postponed for a later date to be determined.*

Purpose 3: To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.

- Collective Bargaining
WEA

VII. *Adjournment*

Board Member Curley Moved; Board member Wolf Seconded; and it was voted to adjourn,

Roll Call Vote: 4-0

Meeting adjourned, 9:45pm



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: July 25, 2023



ADJOURNMENT OF OPEN SESSION
MOVE INTO EXECUTIVE SESSION

REQUESTED BY:	Selectboard Chair Barbara Carboni
DESIRED ACTION:	To Adjourn open session and move into open session to not return to open session.
PROPOSED MOTION:	I move to Adjourn the Open session portion of this meeting and open into Executive session pursuant to M.G.L. c. 30A, §21(a) (7) To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements. Not to reopen into Open Session. <ul style="list-style-type: none">• Executive Session Minutes June 27, 2023
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):