



WELLFLEET SELECTBOARD

Note: Start Time of 7pm

The Wellfleet Selectboard will hold a public virtual meeting on **Tuesday, January 24, 2023, at 7:00 p.m.** The Chapter 107 of the Acts of 2022, this meeting will be conducted solely through the virtual format via Zoom, 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.

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 to 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 must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.

II. *Consent Agenda*

- A. Approve the DPW Spring Tax Insert ~ DPW~ has been approved by the collector
- B. Appointment of Adrien Kmiee to the Shellfish Advisory Board
- C. Support Letter ~ FY22/23 Housing Rehab & Childcare Voucher Program Application
- D. Compact of Cape Cod Conservation restriction, signatures needed ~ Dennis O'Connell
- E. Common Victualler Licenses ~
 - Wellfleet Beachcomber
 - The Bagel Hound

III. ***Public Hearings***

- A. **Continued from January 17, 2023**; Application received December 9, 2022, from New Fleet Corporation, dba Hog Island Surf Lodge & Beer Yard, 842 Route 6 Wellfleet, MA, Mike McNamara, Manager, for a new Year-Round All Alcohol Restaurant License.

IV. ***Use of Town Property***

- A. Second Summer Cycle, LLC ~ Cape Cod Chamber of Commerce ~ September 17, 2023, 10:30am – 2:30pm ~ See packet for full details.

V. ***Board/Committee Appointments and Updates***

- A. CNR Bridge noise bylaw ~ work being performed ~ Town Administrator
B. Possible Wellfleet Residential Zoning Task Force ~ Wellfleet Affordable Housing Trust ~ Harry Terkanian
C. Nauset Regional school district agreement
D. Marina Advisory Committee Charge Amendment ~ Joe Aberdale MAC Chair
E. Discuss amendments to Wellfleet’s Demolition Delay Bylaws, to resemble the Massachusetts Historical Commission’s Sample Demolition Delay Bylaws ~ Wellfleet Historical Commission ~ Merrill Mead-Fox
F. Update & New Specialized Code ~ Wellfleet Energy and Climate Action Committee ~ David Mead Fox

VI. ***Business***

- A. Letter regarding wastewater funding and DEP draft regulations
B. Capital Improvement Budgets
 - Wellfleet IT Department
 - Maurice’s Campground Planning & Development

C. Zoning Bylaw Amendment ~ Food Establishment ~ Chair Curley

VII. ***Selectboard Reports***

VIII. ***Topics for Future Discussion***

IX. ***Adjournment***



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

I

ANNOUNCEMENTS, OPEN SESSION, AND PUBLIC COMMENTS

REQUESTED BY:	Wellfleet Selectboard
DESIRED ACTION:	Announcements to the board and public
PROPOSED MOTION: SUMMARY:	NOTE: Public comments must be brief. 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: January 24, 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">○ Approve DPW Sprint Tax Bill Insert ~ Has been previously approved by the tax collector, Karen Murphy○ Appointment of Adrien Kmiec to the Shellfish Advisory Committee○ Support Letter ~ FY 22/23 housing rehab & Childcare Voucher Program○ Compact of Cape Cod Conservation restriction, signatures needed ~ Dennis O'Connell○ Common Victualler Licenses ~ Wellfleet Beachcomber ~ The Bagel Hound

Notice of Re-Inspections of Private Paved Roads for Winter of 2023 - 2024

Dear Private Paved Road Residents,

The Department of Public Works will be starting re-inspections of Private Paved Roads in April of 2023. Improvements may include roadside brushing, canopy, pavement improvements and signage. We will list the deficiencies, if any, for each private paved road on the Town website on or by June 2, 2023.

If your road is deficient, you will have until October 2, 2023, to address and correct. Once corrected, please call the DPW at 508-349-0315 to schedule a final inspection, conducted by the Department of Public Works, in consultation with Police and Fire.

The policy and list of roads included is listed on the Town of Wellfleet's website: www.wellfleet-ma.gov. Please note it is in the resident's best interest to comply with the requirements. Roads that are not in compliance will not be plowed or sanded, except in the case of an emergency, which is determined by the Fire or Police Departments.

As a reminder, the deadline to make improvements to your private paved road for snow removal and sanding for the upcoming winter 2023 - 2024 is October 2, 2023.

Please call 508-349-0315 with any questions and thank you for your cooperation.



**TOWN OF WELLFLEET
APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

Wellfleet depends on its citizens to carry out many of our government's activities. Your community needs your help. *Please volunteer.*

FILL OUT THE FORM BELOW and mail it to:

Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

Name Adrien Kmiec Date 10/28/22

Mailing Address 25 Old High Toss Bridge
Wellfleet, Ma

Phone (Home) 508-349-5580 (cell) 508-246-2066

E-mail AdrienK@comcast.net

Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town: I have worked in the fishing industry

since I was 15 years old. I have shellfished for
over 25 yrs. I worked for the shellfish department
for a month and a half in the late nineties.

Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc.:

I have a degree in Wildlife management and
own Hatch's Fish market

Committees/Boards of Interest: 1) Shellfish Advisory Board

2) _____

3) _____

January 17, 2023

Jennifer Maddox, Undersecretary
Department of Housing and Community Development
Commonwealth of Massachusetts
100 Cambridge Street, Suite 300
Boston, MA 02114

Re: CDBG Housing Rehabilitation Application for FY22/23

Dear Ms. Maddox,

I am writing in support of The Resource Inc's FY22/23 Community Development Block Grant (CDBG) applications to the MA Department of Housing and Community Development (DHCD). These grants will allow the regional lead towns of Brewster, Truro, Edgartown and Oak Bluffs to continue meeting the housing rehabilitation and childcare voucher needs of LMI (low-moderate income) residents in 13 towns across Cape Cod and Martha's Vineyard.

The affordable housing and economic development challenges across the Commonwealth are historically well documented; our current economic and health crisis has only exacerbated those challenges. Now, more than ever, CDBG funding is a vital resource for stabilizing and preserving existing homes in our region and ensuring that working families have affordable childcare.

The Housing Rehab Program provides homeowners earning less than 80% of the area median income with an opportunity to address critical safety and energy upgrades to their homes. The childcare component of these grants provides financial assistance for LMI families who rely on local, licensed childcare providers to care for their children while they are at work. Given the extraordinary current economic situation in our region, these programs typically reach full capacity by the third quarter of the fiscal year. Together, the Housing Rehab Program and Childcare Voucher Program play a vital role in stabilizing the year-round families living in these towns.

For FY22/23, The Resource Inc. is expected to serve approximately 222 local households through the following grants:

- The Brewster Regional Grant, serving the towns of Dennis, Brewster and Wellfleet, will provide approximately \$1.7 million to rehab about 26 homes and provide childcare vouchers for up to 37 families;
- The Truro Regional Grant, serving the towns of Truro, Eastham, Harwich and Provincetown, will provide approximately \$1.7 million to rehab about 27 homes and provide childcare vouchers for up to 18 families;
- The Oak Bluffs Regional Grant, serving the towns of Oak Bluffs, Tisbury and Chilmark, will provide approximately \$1.7 million to rehab about 25 homes and provide childcare vouchers for up to 35 families; and
- The Edgartown Regional Grant, serving the towns of Edgartown, Aquinnah and West Tisbury, will provide approximately \$1.7 million to rehab about 26 homes and provide childcare vouchers for up to 28 families.

I urge you to provide the funds requested so that our local communities can continue their work with LMI homeowners in need of critical home repairs and with working families in need of safe and affordable childcare for their young children. Thank you for your consideration of these proposals.

Sincerely,

APPROVAL OF SELECTBOARD

We, the undersigned, being a majority of the Selectboard of the Town of Wellfleet, hereby certify that at a public meeting duly held on _____, 2023, the Select Board voted to approve the foregoing Conservation Restriction from The Compact of Cape Cod Conservation Trusts, Inc., to Orenda Wildlife Land Trust, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

SELECTBOARD:

Ryan Curley, Chr.

Michael DeVasto

Barbara Carboni

Kathleen Bacon

John A. Wolf

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this _____ day of _____, 2023, before me, the undersigned notary public, personally appeared Ryan Curley, Chair, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023



PUBLIC HEARINGS

~ A ~

REQUESTED BY:	New Fleet Corp dba Hog Island Surf Lodge and Beer Yard
DESIRED ACTION:	To approve the application to go from a seasonal on premises alcohol license to a year-round on-premises alcohol license
PROPOSED MOTION: SUMMARY:	I move to approve the application from New Fleet Corp, DBA Hog Island Surf Lodge & Beer Yard, Manager Mike McNamara to go from a seasonal alcohol license to a year round alcohol license, following all the rules and regulations of the Town of Wellfleet.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s): _____
VOTED:	Yea _____ Nay _____ Abstain _____



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

**RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION
 MONETARY TRANSMITTAL FORM**

APPLICATION FOR AMENDMENT-Change of License Classification

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

Please make \$200.00 payment here: [ABCC PAYMENT WEBSITE](#)

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

ENTITY/ LICENSEE NAME

ADDRESS

CITY/TOWN STATE ZIP CODE

For the following transactions (Check all that apply):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> New License | <input type="checkbox"/> Change of Location | <input checked="" type="checkbox"/> Change of Class (i.e. Annual / Seasonal) | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License | <input type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of License Type (i.e. club / restaurant) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock) |
| <input type="checkbox"/> Change of Manager | <input type="checkbox"/> Change Corporate Name | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officers/
Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest
(LLC Members/ LLP Partners,
Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder | <input type="checkbox"/> Change of Hours |
| | | <input type="checkbox"/> Other <input type="text"/> | <input type="checkbox"/> Change of DBA |

THE LOCAL LICENSING AUTHORITY MUST SUBMIT THIS APPLICATION ONCE APPROVED VIA THE ePLACE PORTAL

Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3
 Chelsea, MA 02150-2358



The Commonwealth of Massachusetts
 Alcoholic Beverages Control Commission
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358
 www.mass.gov/abcc

APPLICATION FOR AMENDMENT-Change of License Classification

Change of Category

(e.g. All Alcohol, Wines and Malt)

- Payment Receipt
- Monetary Transmittal Form
- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Category Application
- Vote of the Entity
- Abutter's Notification*
- Advertisement*

Change of Class

(e.g. Seasonal /Annual)

- Payment Receipt
- Monetary Transmittal Form
- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Classification Application
- Vote of the Entity
- Abutter's Notification*
- Advertisement*

Change of License Type

(\$12 ONLY, e.g. general on premises, tavern, inn, restaurant)

- Payment Receipt
- Monetary Transmittal Form
- Change of License Type Application
- Vote of the Entity
- Advertisement*
- Payment Receipt

*If abutter notification and advertisement are required for transaction, please see the local licensing authority.

1. BUSINESS ENTITY INFORMATION

Entity Name	Municipality	ABCC License Number
NEW FLEET CORP	WELLFLEET	06222-RS-1348

Please provide a narrative overview of the transaction(s) being applied for. Attach additional pages, if necessary.

CHANGE OF LICENSE CLASS FROM SEASONAL LICENSE TO ANNUAL

APPLICATION CONTACT

The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
DONNA DIGIOVANNI	DIRECTOR	DMDIGIO@GMAIL.COM	413-575-5582

2. LICENSE CLASSIFICATION INFORMATION

2a. Change of License Category	Last-Approved License Category	All Alcoholic Beverages
All Alcohol, Wine and Malt, Wine Malt and Cordials	Requested New License Category	All Alcoholic Beverages
2b. Change of License Class	Last-Approved License Class	Seasonal
Seasonal or Annual	Requested New License Class	Annual
2c. Change of License Type*	Last-Approved License Type	\$12 Restaurant
E.g. Restaurant to Club *Certain License Types CANNOT change once issued*	Requested New License Type	\$12 Restaurant

APPLICANT'S STATEMENT


I, DONNA DIGIOVANNI the: sole proprietor; partner; corporate principal; LLC/LLP manager
Authorized Signatory

of NEW FLEET CORP
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: 

Date: X 12/7/22

Title: DIRECTOR

ENTITY VOTE

The Board of Directors or LLC Managers of

NEW FLEET CORP
Entity Name

duly voted to apply to the Licensing Authority of

WELLFLEET
City/Town

and the

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on

Dec 7, 2022
Date of Meeting

For the following transactions (Check all that apply):

- Change of Class (i.e. Annual / Seasonal)
- Change of License Type (i.e. club / restaurant)
- Change of Category (i.e. All Alcohol/Wine, Malt)
- Other

"VOTED: To authorize

DONNA DIGIOVANNI
Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

A true copy attest,

X Donna DiGiovanni
Corporate Officer /LLC Manager Signature

Donna DiGiovanni
(Print Name)

For Corporations ONLY

A true copy attest,

X Donna DiGiovanni
Corporation Clerk's Signature

Donna DiGiovanni
(Print Name)

Payment Confirmation

YOUR PAYMENT HAS PROCESSED AND THIS IS YOUR RECEIPT

Your account has been billed for the following transaction. You will receive a receipt via email and via text message.



Transaction Processed Successfully

INVOICE # 1a83b29c-3373-4ca9-a002-0007fa93289a

Description	Invoice #	Amount
FILING FEES-RETAIL	0622-RS-1348	\$200.00
		\$200.00

Total Convenience Fee: \$4.70

Date Paid: 12/7/2022 1:06:56 PM EDT

Total Amount Paid: \$204.70

Payment On Behalf Of
License Number or Business Name:
 0622-RS-1348

Fee Type:
 FILING FEES-RETAIL

Billing Information

First Name:
 DONNA

Last Name:
 DIGIOVANNI

Address:
 BOX 49

City:
 Truro

State:
 MA

Zip Code:
 02666

Email Address:
 RSS@PKCAPADVISORS.COM

SEASONAL

LICENSE

06227 RS-1348

ALCOHOLIC BEVERAGES

THE LICENSING BOARD OF

The...Town...of...Wellfleet.....

MASSACHUSETTS

HEREBY GRANTS A

COMMON VICTUALER

License to Expose, Keep for Sale, and to Sell

All Kinds of Alcoholic Beverages

To Be Drunk On the Premises

To New Fleet Corp. dba Flair
Jeffrey Baker, Manager 842 State Highway

on the following described premises

One floor, twelve indoor rooms with an outdoor patio and bocce court 4,130 square feet
four entrances four exits.

This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of the Liquor Control Act, Chapter 138 of the General Laws, as amended, and any rules or regulations made thereunder by the licensing authorities. This license expires November 30 20 21, unless earlier suspended, cancelled or revoked.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this twenty sixth day of July 20 21

The Hours during which Alcoholic Beverages may be sold are

From

8:00 am - 1:00 am

Sunday, Memorial Day &

Thanksgiving:

10:00 am - 1:00 am

[Handwritten signatures]
Licensing Board

THIS LICENSE SHALL BE DISPLAYED ON THE PREMISES IN A CONSPICUOUS POSITION WHERE IT CAN EASILY BE READ



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

IV

USE OF TOWN PROPERTY

~ A ~

REQUESTED BY:	Second Summer Cycle, LLC – Cape Cod Chamber of Commerce
DESIRED ACTION:	To approve the use of various roads in Wellfleet for a bicycle race on September 17, 2023, ~ See Selectboard Packet for full details
PROPOSED MOTION:	I move to approve the use of various roads throughout Wellfleet to Cape Cod Chamber of Commerce on September 17, 2023. For a fee of \$500 and all police details to be worked out with the Wellfleet Police Department within at least two-weeks of the event.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

APPLICATION FOR PERMIT TO USE TOWN OWNED PROPERTY

**TOWN OF WELLFLEET
300 MAIN STREET
WELLFLEET, MA 02667**

Applicant Second Summer Cycle, LLC Affiliation or Group Cape Cod Chamber of Commerce _____

Telephone Number 508-280-7903 _____ Mailing Address 5 Patti Page Way, Centerville, MA 02632 _____

Email address infor@goldensummerenterprises.com _____

Town Property to be used (include specific area) Roads through Wellfleet _____

Date(s) and hours of use: Septemper 17, 2023 from approximately 10:30 a.m. to 2:30 p.m. _____

Describe activity including purpose, number of persons involved, equipment to be used, parking arrangements, food/beverage service, etc. Also, please indicate if fees will be charged by applicant.

See attached description _____

Describe any Town services requested (police details, DPW assistance, etc.)

Need to sit down with police and work out where police details will

Pbe. _____

NOTE TO APPLICANTS: All applications must be accompanied by a non-refundable \$50.00 processing fee. Applications must be received at least 30 days prior to the first event date to ensure that all reviews can be completed prior to the event. This application is only for permission to use Town property. Any additional licenses, such as food service permit, etc., may be required and it is the applicant's responsibility to secure the same.

Action by the Board of Selectmen:

_____ Approved as submitted

_____ Approved with the following condition(s): _____

_____ Disapproved for following reason(s): _____

Date: _____

Processing Fee: _____ \$50.00 _____

Fee: _____

APPLICANT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSPECTIONS

Health/Conservation Agent: OK - per Helary Demos Comments/Conditions: Permits/Inspections needed: riders must be riding on paved roads + food trucks are located in Provincetown	Inspector of Buildings: N/A Comments/Conditions: Permits/Inspections needed:
---	--

Police Department: OK - Chief Hurley Comments/Conditions: will work out all details with PD before event	Fire Department: Comments/Conditions:
---	---

DPW: OK - Jay Norton Comments/Conditions	Community Services Director: OK per Suzanne Thomas Comments/Conditions: curious about route may have questions
---	---

Harbormaster: N/A Comments/Conditions	Shellfish: N/A Comments/Conditions
--	---

Recreation: N/A Comments/Conditions	Town Administrator: OK per Rich Walden Comments/Conditions
--	---

Second Summer Cycle

A Charity Ride

What:

An exciting new event. A ride covering 10 of the 15 towns on Cape Cod benefitting more than 20 non-profits on Cape Cod. Three distances in the event. A Century, A Metric Century Plus, and a 30 mile Plus. With a major celebration at Motta Field. As part of your registration fee you will receive \$30 in tickets to be used at least at 4 different food trucks (your choice). Barnstable Brewing will be there for those that want a cool beverage after, with Second Summer Cycle Cans as memorabilia.

You don't want to miss it!!!

When:

September 17, 2023

Where:

The Century starts in Mashpee, The Metric Century in Sandwich and the 30 Mile Plus in Orleans. All of the rides end in Provincetown at Motta Field. With a major celebration at Motta Field. As part of your registration fee you will receive \$30 in tickets to be used at least 4 different food trucks. Barnstable Brewing will be there for those that want a cool beverage after, with Second Cycle Cans as memorabilia.

Links for the rides maps are as follows:

Century: <https://ridewithgps.com/routes/41630782>

Metric Century: <https://ridewithgps.com/routes/41630632>

30 Mile Plus: <https://ridewithgps.com/routes/41645332>

The Century and the Metric Century offer a version that allows you to take the Rail Trail for part of the ride.

Century with Rail Trail option: <https://ridewithgps.com/routes/41630820>

Metric Century with Rail Trail option: <https://ridewithgps.com/routes/41630905>

There is also going to be a fast group of up to 50 riders who can average 20 miles per hour that will do the Century. They Will start 10 minutes before the main group of riders for the Century.

By Whom:

Put on by the **Cape Cod Chamber of Commerce**, it is to become their signature event, with **We Can** and **Golden Summer Enterprises**.

The goal is to provide the safest most enjoyable ride on Cape Cod.

Benefits: All monies raised by the riders will be paid directly to the beneficiaries. Riders are expected to raise \$250.00 each, each team is expected to raise \$5,000.00.

Teams: We Can, Youth Athletic Foundation (YAF), Cotuit Center for the Arts, YMCA

Pricing:

Century Fast Group: \$170.00 until April 1, then \$180.00

Century: \$120.00 until April 1, then \$130.00

Metric Century: \$90.00 until April 1, then \$100.00

30 Mile Ride: \$60.00 until April 1, then \$70.00

Return to the starts:

Bus transportation will be provided back to the starts along with trailers for your bikes. If you wish you can have someone meet you at the finish and they can buy tickets to be used at the Motta Field and join you in the celebration.

Water and food stops:

There will be water and food stops every fifteen miles or so.

Marshalls:

We will have marshalls at every turn.

Support services:

We will have bicycle shops providing Sag services along the whole course.

Motorcycle Patrol:

We will have motor cyclists patrolling the whole course.

Medical Support:

We will have medical support at all water stops.

Come join us for a great ride, a great day and great fun. A good friend of mine says it is worth training for, beautiful scenery, a great route, a great after party and benefits a lot of great non-profits. A must do.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARD/COMMITTEE APPOINTMENTS AND UPDATES ~ B ~

REQUESTED BY:	Town Administrator ~ Rich Waldo
DESIRED ACTION:	To review the noise bylaw regarding the Herring River Restoration Project and the Chequessett Neck Rd Bridge
PROPOSED MOTION:	A motion will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

MANUAL

1.10 WORK RESTRICTIONS

A. Work Restrictions, General: Comply with restrictions on construction operations.

1. Comply with limitations on use of public roads and with other requirements of authorities having jurisdiction.

B. On-Site Work Hours: Limit work in the existing building to normal business working hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise indicated.

1. Should access to the Site at other days and/or times be necessary, provide written request to the Owner at least two (2) business days in advance. Transport of materials to or from the Site is not permitted on Saturdays, Sundays or legal holidays.

C. Existing Utility Interruptions: There are no known underground utilities at the site. Existing overhead utilities must be temporarily relocated and reinstalled after site work is completed.

1. Notify Owner not less than two days in advance of proposed utility interruptions.

2. Obtain utility owner's written permission before proceeding with utility interruptions.

D. Noise, Vibration, and Odors: Coordinate operations that may result in high levels of noise and vibration, odors, or other disruption with Owner.

1. Notify Owner not less than 2 days in advance of proposed disruptive operations.

BYLAW

Section 26. It shall be unlawful for any person or persons occupying, having the charge of, or being present in or about any building, structure, premises, shelter, mobile or stationary vehicle, boat, or any conveyance, or any part thereof, in the Town, from 10:00 p.m. until 8:00 a.m., at any time to cause, suffer, allow, or countenance any unnecessarily loud, excessive or unusual noise, including any such noise in the operation of any radio, phonograph or other mechanical or electronic sound-making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid; or the making of loud outcries, exclamations or other loud boisterous noise, or loud or boisterous singing by any person or persons or the use of any device to amplify the aforesaid noise, where such noise is plainly audible at a distance of one hundred and fifty (150) feet from the building, structure premises, shelter, mobile or stationary vehicle, boat, or any conveyance, or any part thereof in which and/or from which it is produced.

The fact that the noise is plainly audible at said distance of one hundred and fifty (150) feet shall constitute prima facie evidence of a violation of this bylaw. **Except as authorized by the Board of Selectmen, any person or**

persons shall be deemed in violation of this bylaw who shall make, aid and abet, or cause, suffer, allow, or countenance the making of such noise, and shall be subject to punishment by fine.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARD/COMMITTEE AND UPDATES

~ B ~

REQUESTED BY:	Wellfleet Affordable Housing Trust ~ Harry Terkanian
DESIRED ACTION:	Discuss possible residential zoning Task Force
PROPOSED MOTION:	If any action is decided upon a motion will be made at the time of the meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition (s):
VOTED:	

ZONING TASK FORCE CHARGE

Appointing Authority: Select Board

Classification: Advisory to the Select Board

Membership: A minimum of seven voting members, with no more than ten members

Staff Support: Community Development Director/Town Planner

Charge

There shall be a Task Force on residential zoning and regulation. This Task Force will be made of at least 7 members and no more than 10 members plus 1 alternate member. All members shall be chosen from those who have applied to serve.

- At least one member shall be a member of the Planning Board.
- At least one member shall be a member of the Zoning Board of Appeals.
- At least one member shall be a member of the Affordable Housing Trust, should one apply.
- At least some members shall be from the community, who are not presently serving on a Town regulatory board.
- The alternate member shall become a full member in the event that membership falls below the minimum number specified.
- The Director of Community Development (Town Planner) shall provide staff assistance to the Task Force.
- The Select Board shall designate a liaison to serve as a point of contact for the Task Force. No member of the Select Board shall be a member of the Task Force, as recommendations are to be made to the Select Board. Select Board members are welcome to attend Task Force meetings.

The Task Force shall examine issues relating to homes and housing toward the goal of presenting any necessary and suggested residential zoning or regulatory changes to the Select Board for consideration for placement on the Town Warrant for the May 2022 Town Meeting.

The Task Force shall present its recommendations to the Select Board for approval. The issues to be considered shall include, but shall not be limited to, the following:

- Non-resident divided ownership of properties
- Limits or other regulatory changes (including requirements for permits) on use of house for commercial purposes; including, but not limited to, large parties and weddings.
- Limits on consolidation / merger of lots to facilitate larger homes.
- Extension of the 50% maximum size increase rule to zoning districts other than the Seashore District.
- Protection of historic homes and scenic landscapes
- Review of historic overlay districts
- Development of 'tiny homes' in Eastham and applicable zoning

Meetings: The committee shall meet monthly or as needed to accomplish its work, and shall convene a minimum of one public hearing annually.

Reports/Reviews: The committee shall present its progress and findings to the Select Board twice per year.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARD/COMMITTEE APPOINTMENTS AND UPDATES ~ D ~

REQUESTED BY:	Brian Sosner
DESIRED ACTION:	To review Nauset Regional school district agreement.
PROPOSED MOTION: SUMMARY:	If a motion is needed one will be decided at the time of this discussion on the agenda.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



Ryan Curley <ryan.d.curley@gmail.com>

Fwd: Recent Communications

Christopher Easley <easleyc@nausetschools.org>
To: "Ryan.D.Curley@gmail.com" <Ryan.D.Curley@gmail.com>
Cc: Christopher M Easley <cmeasley@yahoo.com>

Wed, Jan 18, 2023 at 6:57 PM

----- Forwarded message -----

From: **Christopher Easley** <easleyc@nausetschools.org>
Date: Thu, Dec 15, 2022 at 12:42 PM
Subject: Recent Communications
To: brian Sosner <sosner.brian@gmail.com>

Brian,

Dear Mr. Sosner,

Thank you for your outreach and concern for the District's finances. After review, the documents you provided do not appear to meet the standards for a citizen amendment as set forth in the regional agreement. Amending the regional agreement is a lengthy, complicated, and often expensive process that involves many stakeholders, including the school committee, the Department of Elementary and Secondary Education (DESE), the town meetings of the member towns, and all of their respective legal counsels. While the school district cannot give you legal advice, you can find related materials published by DESE at <https://www.doe.mass.edu/finance/regional/>. To the extent you are requested that the Nauset Regional School Committee initiate an amendment to the Regional Agreement to add the towns of Truro and Provincetown, I do not foresee the Committee doing so at this time and, in any case, it's unlikely the existing members could require the admission of additional member towns, as the fundamental nature of an agreement means any new member would also have to accept the membership. In the past, these towns have not been interested in regionalization with our school district. However, we will continue to review the financial viability of the attendance of students from outside the District and ensure that any renewed tuition agreement places the District in a strong financial position.

Let me know if you'd like to discuss further.

Sincerely,

Chris Easley

Wellfleet Representative

Nauset Regional School Committee, Chair



Brian Sosner Original Letter 12-12-22.pdf

48K

Original

**PROVINCETOWN TUITION AGREEMENT WITH THE
NAUSET REGIONAL SCHOOLS
FOR SCHOOL YEARS 2019-20 THROUGH 2023-24**

OVERVIEW

This agreement will serve as an extension of the existing agreement with the Nauset Regional School Committee (NRSC) to provide students in Grades 9-12 from the Town of Provincetown with full enrollment and access to all of the programs, services, and benefits available at Nauset Regional High School.

LENGTH OF AGREEMENT

The term of this agreement shall be for five (5) years from school year 2019-2020 through school year 2023-2024.

PER PUPIL TUITION-FY20

The tuition rate for 2019-2020 shall be a flat fee of \$18,457 per pupil.

TUITION INCREASES

The cost per pupil shall increase:

2020-2021 = 2.5%

2021-2022 = 2.5%

2022-2023 = 2.5%

2023-2024 = 3.5%

GOVERNANCE

The Nauset School Committee is supportive of Provincetown having a say in the governance of Nauset High School. At a future time, The Nauset Regional School Committee would entertain a proposal from Provincetown to become a full member of the Nauset Regional Schools through a process of amending our Regional Agreement with our four member towns to include Provincetown.

The Nauset Regional School Committee agrees to send electronic copies of its meeting agendas to the Provincetown Superintendent so that the Provincetown School Committee may stay well informed about the successes and the challenges in operating the Nauset Regional High School. A representative from the Provincetown School Committee shall be welcomed to attend any meeting of the Nauset Regional School Committee (regular, special, and sub-committee meetings) and said representative's attendance will be acknowledged by the Chair of the Regional School Committee. Should a representative from the Provincetown School Committee attend a Nauset School Committee meeting, he/she shall be entitled to participate in discussions in all areas, except as may be precluded by law. Provincetown representatives will not have the right to vote on any matters before the NRSC.

TERMS

In accordance with the provisions of Massachusetts General Laws Chapter 71, sections 1, 4, and 6, to permit the town of Provincetown not to maintain certain public schools, the Nauset Regional and the Provincetown School Committees enter into this tuition agreement applicable to students who reside in the town of Provincetown to attend Nauset Regional High School in grades 9-12.

The Nauset Regional School District agrees to accept upon request high school students in grades 9-12. In turn, the Provincetown Public School District agrees to provide the Nauset Schools with all student, school, health, or other data or records of any prospective student from Provincetown as required by the Nauset Schools. Said Provincetown students are entitled to attend Nauset Regional High School and participate in any and all programs and services on the same basis as resident students from the member towns that comprise the Nauset Regional High School. Provincetown students will be subject to all of the privileges and restrictions as outlined in the Nauset High School program of studies, student handbook, including but not limited to the Nauset High School discipline code.

The Nauset Schools and the Provincetown Schools each reserve the right to refuse or to terminate a placement in specific cases where one or the other feels that the Nauset program does not or cannot meet the Provincetown students' needs. Only students requested by the Provincetown School Department will be considered for placement at Nauset Regional High School. All students admitted will be allowed to complete their schooling at Nauset Regional High School so long as Provincetown continues to pay their tuition or unless individual circumstances occur that warrant termination.

ADDITIONAL COSTS/RESPONSIBILITIES OF PROVINCETOWN

A. Costs for Special Education for which the Provincetown School Committee retains full responsibility:

1. Independent Educational Evaluations if requested by the parents, pursuant to MA Special Education Law Ch. 71B 603 CMR 28.04 (5) (a-f).
2. Home or hospital instruction per 28.03 (3) (c) of the Regulations. Placements over 30 calendar days will result in the suspension of basic tuition charges.
3. Special Transportation per 28.05 (5) (a-c) of the regulations.
4. Students who require IEP services and placements which are not generally available within the Nauset continuum of programs (Examples: assignment of a 1:1 educational assistant, certain specialized therapies, out of district placements, out of school tutorial or home services, in-district or out of district extended day/year services). Nauset will invite the Provincetown special education administration and/or staff to any student meeting that could result in a student receiving services and/or placements outside of what is typically available to Nauset students. This will facilitate communication, budget planning, and resource allocation.
5. Nauset will communicate with the Provincetown administration regarding any student at risk for academic or behavioral failure.
6. Any evaluation beyond what is typically available to Nauset Regional students. (Example: vocational assessment, full psychological testing).
7. The Provincetown School Committee will defend any rejected IEP for which the parent has requested either a hearing before the Bureau of Special Education Appeals or a judicial hearing. A Provincetown representative will be notified of any rejected IEP as soon as it is received by the Nauset Special Education Department. The Nauset Special Education Department will collaborate with the Provincetown Special Education Administration if parents request mediation through the BSEA or through another method of resolution. A Provincetown representative will be invited to any BSEA or other mediation meetings involving Provincetown resident students.

B. Mandated services for Regular Education for which the Provincetown School Committee retains full responsibility:

1. All transportation for Provincetown resident students
2. Out of district regular education placements (i.e. 45 day suspension or evaluation programs or placements during which time the basic tuition charge will be suspended).
3. Court or State agency ordered placements or services beyond a regular day program at Nauset High School site.
4. Home schooling; tuition will not be charged upon student withdrawal for the purpose of home schooling.

PAYMENT TERMS:

The Nauset School Committee shall submit invoices to the Provincetown School Committee on a monthly basis with the first invoice being sent on or about October 1st. Invoices shall show the names of the students enrolled and the days they were members of Nauset High School. Provincetown agrees to make payment within 21 days of receipt of an invoice. Every attempt will be made by Provincetown to pay the final bill for June by June 30th.

The Provincetown School Committee and the Nauset Regional School Committee realize the mutual benefit of this agreement and are committed to working cooperatively in the best interests of the students and their families.

Thomas M. Conrad

Thomas M. Conrad
Superintendent of Schools duly authorized by
Nauset Regional School Committee

Date

Beth Singer

Beth Singer
Superintendent of Schools duly authorized by
Provincetown School Committee

4/25/19

Date

Chapter A201. Nauset Regional School District Agreement

Agreement for a regional school district for the Towns of Brewster, Eastham, Orleans and Wellfleet, Massachusetts (hereinafter sometimes referred to as the member towns), such district to be called "Nauset Regional School District."

SECTION I. Membership of the Nauset Regional District School Committee.

[Amended 5-9-1994 ATM, Art. 33; 10-28-2002 STM, Art. 4]

A. Number of Members. The Regional School District Committee, hereinafter referred to as the Committee, beginning with the annual town elections of 2003, shall consist of ten members, four from the Town of Brewster, three from Orleans, two from Eastham and one from Wellfleet. To achieve proportional representation on the Committee, effective following the annual elections of 2003, the members from Brewster, Eastham and Wellfleet shall have one vote per member, and the members from Orleans .8 (8/10) votes per member. All ten members shall be elected by their individual towns, as prescribed in Paragraph B. below.

B. Election of Members. The Nauset Regional School District shall consist of four member towns, each of which shall elect representatives to serve for three-year terms as described above; provided, however, that any member elected prior to 2001 shall serve for a three-year term.

At the annual town elections in 2002, Brewster and Orleans shall elect one member each for terms of three years. At the 2003 elections, Brewster, Eastham, and Orleans shall elect one member each, for terms of three years. At the 2004 elections, Brewster shall elect two members, and Eastham, Orleans and Wellfleet one member each, for terms of three years. The terms of all such elected members shall commence on the day following their election and continue for the terms for which they are elected and thereafter until their successors are elected and qualified. Thereafter, at every succeeding annual and special town election when a member town is required to elect a member, each town shall elect such member to serve on the Committee for a term of three years commencing on the day following such elections.

C. Holding office/vacancies. Each member shall hold office during this term and thereafter until the appointment, or election and qualifications of his successor. If a vacancy exists, the Selectmen of the member town or towns of the district involved shall appoint a member to serve until the next annual or special election and at such election, a successor to serve for the unexpired term, if any, shall be elected.

D. Officers of the Committee. Annually upon the election or appointment and qualification of its members, the Committee shall organize and choose by ballot a Chairman and a Vice Chairman from its own membership. At the same meeting or at any other meeting, the Committee shall appoint a Treasurer and Secretary who may be the same person but who need not be members of the Committee, choose such other officers as it deems advisable, determine the terms of office of its officers (except the Chairman and Vice Chairman, who shall be elected annually as provided above) and prescribe the powers and duties of any of its officers, fix the time and place for its regular meetings and provide for the calling of special meetings.

SECTION II. Types of regional district schools.

The regional district schools shall consist of facilities to serve the needs of grades six (6) through twelve (12).

The Committee is hereby authorized to establish and maintain state-aided vocational education, acting as trustees therefor, in accordance with the provisions of Chapter 74 of the General Laws and Acts amendatory thereto or dependent thereon, if the Committee deems it desirable.

SECTION III. Locations of regional district schools.

The regional district schools shall be located within the district and within a five-mile radius from the intersection of Mid Cape Highway (Route 6) and Samoset Road (in Eastham).

SECTION IV. Apportionment and payment of costs incurred by the district.

- A. For the purpose of apportioning assessments levied by the district against the member towns, costs shall be divided into two (2) categories: capital costs and operating costs.
- B. Capital costs shall include all expenses in the nature of capital outlay, such as the cost of acquiring land, the cost of constructing, reconstructing and adding to buildings and the cost of remodeling or making extraordinary repairs to a school building or buildings, including without limitation the cost of the original equipment and furnishings for such buildings or additions, plans, architects' or consultants' fees, costs of sewage treatment or disposal, grading and other items incidental to placing school buildings and additions and related premises in operating condition and any other costs (whether or not so financed) which the district is or may be authorized by statute to finance by the issuance of bonds. Capital costs shall also include payment of principal and interest on bonds or other obligations issued by the district to finance the foregoing costs. Capital costs represented by debt service shall be apportioned as capital costs of the year in which the debt service falls due.
- C. Operating costs shall include all costs not included in capital costs as defined in Section IV(B) but including interest on temporary notes issued by the districts in anticipation of revenue.
- D. Payment of all capital costs in any fiscal year shall be apportioned among the member towns on the basis of their respective enrollments in the regional district schools on October 1 of the preceding fiscal year.
- E. Operating expenses of each fiscal year shall be apportioned to the member towns on the basis of their respective enrollments in the regional district schools on October 1 of the preceding fiscal year.
- F. Each member town shall pay its proportionate share of the capital and operating expenses to the regional school district in each fiscal year in four (4) equal installments, not later than the first days of September, December, March and June.

SECTION V. Transportation.

Transportation of all pupils to and from the regional district schools shall be furnished by the regional school district and the cost thereof shall be apportioned among the member towns as an operating expense.

SECTION VI. Admission of additional towns.

By an amendment of this agreement adopted under and in accordance with Section VIII below, any other town or towns may be admitted to the regional school district upon adoption as herein provided of such amendment and upon acceptance by the town or towns seeking admission of the agreement as so amended and also upon compliance with such provisions of law as may be applicable and such terms as may be set forth in such amendment.

SECTION VII. Separation.

- A. Any member town may petition to withdraw from the regional school district under terms stipulated in a proposed amendment to the agreement, provided (1) that the town seeking to withdraw shall remain liable for any unpaid operating costs which have been certified by the District Treasurer to the treasurer of the withdrawing town, including the full amount so certified for the year in which such withdrawal takes effect, and (2) that said town shall remain liable to the district for its share of the indebtedness, other than temporary indebtedness incurred in anticipation of revenue, of the district outstanding at the time of such withdrawal, and for interest thereon, to the same extent and in the same manner as though the town had not withdrawn from the district, except that (i) where any portion of such liability is computed on the basis of pupil enrollment, such portion shall be assessed as if the withdrawing town had the same pupil enrollment in each grade each year as it had on the October 1 preceding its withdrawal, and (ii) such liability shall be reduced by any amount which such town has paid over at the time of withdrawal and which has been applied to the payment of such indebtedness or interest.
- B. Said petitioning town shall cease to be a member town if the proposed amendment is approved by the Committee and accepted by the petitioning town and each of the other member towns, acceptance by the petitioning town and by the other member towns to be by majority vote at an Annual or Special Town Meeting.
- C. Money received by the district from the withdrawing town for payment of funded indebtedness or interest thereon shall be used for this purpose only, and until so used shall be deposited in trust in the name of the district with a bank or trust company having its principal office in Massachusetts having a combined capital and surplus of not less than five million dollars (\$5,000,000.).
- D. Upon the effective date of withdrawal the terms of office of all members serving on the Committee from the withdrawing town shall terminate and the total membership of the Committee, as provided in Section IA, shall be decreased accordingly.

SECTION VIII. Amendments.

This agreement may be amended from time to time in the manner hereinafter provided, but no such amendment shall be made which shall substantially impair the rights of the holders of any bonds or notes or other indebtedness of the district then outstanding, or the rights of the district to procure the means for payment thereof, provided that nothing in this section shall prevent the admission of a new town or towns to the district and the reapportionment accordingly of capital costs of the district then outstanding and of interest thereon. A proposal for amendment may be initiated by a signed petition bearing the signatures of ten percent (10%) of the registered voters of any one (1) of the member towns or by a majority of all the members of the regional district school committee. Any such proposal for amendment shall be presented to the Secretary of the Committee, who shall mail or deliver a notice, in writing, to the Board of Selectmen of each of the member towns that a proposal to amend this agreement has been received and shall enclose a copy of such proposal (without the signatures in the case of a proposal by petition). The Selectmen in each member town shall include in the warrant for the next Annual or a Special Town Meeting called for the purpose, an article stating the proposal or

the substance thereof. Such amendment shall take effect upon its acceptance by each member town, in the manner hereinabove provided.

SECTION IX. Budget.

The Committee shall determine the amounts necessary to be raised to maintain and operate the regional schools during the ensuing fiscal year and the amount required for payment of debt and interest incurred by the District, which will be due in said year, and shall adopt an annual maintenance and operating budget for said year. The Committee shall then submit copies to the Finance or Advisory Committee of each member town or, if there is no Finance or Advisory Committee in a member town, to the Chairman of the Board of Selectmen of such town, for their consideration at least forty-five (45) days prior to the earliest business session of any member's Annual Town Meeting. The Committee shall apportion the annual budget in accordance with the provisions of Section IV. The amount so apportioned for each town shall be certified in accordance with M.G.L. c. 71, § 16B by the District Treasurer to the Treasurers of the member towns, and each town shall appropriate the amounts so certified.

[1] *Note: Orleans Town Charter requires submission one hundred fifty (150) days prior to Annual Town Meeting. See Charter Ch. 8, § 2.*

SECTION X. Tuition pupils.

The Committee may accept for enrollment in the regional district school pupils from towns other than the member towns on a tuition basis and on such terms as it may determine.

Original

**TRURO TUITION AGREEMENT WITH THE
NAUSET REGIONAL SCHOOLS
FOR SCHOOL YEARS 2019-2020 THROUGH 2023-24**

OVERVIEW

This agreement will serve as an extension of the existing agreement with the Nauset Regional School Committee (NRSC) to provide students in Grades 7-12 from the Town of Truro with full enrollment and access to all of the programs, services, and benefits available at Nauset Regional Middle and High School.

LENGTH OF AGREEMENT

The term of this agreement shall be for five (5) years from school year 2019-2020 through school year 2023-2024

PER PUPIL TUITION – FY20

The tuition rate for 2019-2020 shall be a flat fee of \$18,457 per pupil.

TUITION INCREASES

The cost per pupil shall increase as follows:

2020-2021 = 2.5%

2021-2022 = 2.5%

2022-2023 = 2.5%

2023-2024 = 3.5%

TERMS

In accordance with the provisions of Massachusetts General Laws Chapter 71, sections 1, 4, and 6, to permit the town of Truro not to maintain certain public schools, the Nauset Regional and the Truro School Committees enter into this tuition agreement applicable to students who reside in the town of Truro to attend Nauset Regional Middle School in Grades 7&8 and Nauset Regional High School in grades 9-12.

The Nauset Regional School District agrees to accept upon request middle school students in grade 7 and 8 and high school students in grades 9-12. In turn, the Truro Public School District agrees to provide the Nauset Schools with all students, school, health, or other records of any prospective student from Truro as required by the Nauset Schools. Said Truro students are entitled to attend Nauset Regional Middle School or High School and participate in any and all programs and services on the same basis as resident students from the member towns that comprise the Nauset Regional School District. Truro students will be subject to all of the privileges and restrictions as outlined in the Nauset Middle and/or the Nauset High School program of studies, student handbook, as well as the Nauset Middle School and Nauset High School discipline code.

The Nauset Schools and the Truro Schools each reserve the right to refuse or to terminate a placement in specific cases where one or the other feels that the Nauset program does not or cannot meet the Truro students' needs. Only students requested by the Truro School Department will be considered for placement at Nauset Middle or Nauset High School. All students admitted will be allowed to complete their schooling at Nauset Middle and/or Nauset High so long as Truro continues to pay their tuition or unless individual circumstances occur that warrant termination.

ADDITIONAL COSTS/RESPONSIBILITIES OF TRURO

A. Costs for Special Education for which the Truro School Committee retains full responsibility:

1. Independent Educational Evaluations if requested by the parents, pursuant to MA Special Ed. Law Ch. 71B 603 CMR 28.04 (5) (a-f).
2. Home or hospital instruction per 28.03 (3) (c) of the Regulations. Placements over 30 calendar days will result in the suspension of basic tuition charges.
3. Special Transportation per 28.05 (5) (a-c) of the regulations.
4. Students who require IEP services and placements which are not generally available within the Nauset continuum of programs (Examples: assignment of a 1:1 educational assistant, out of district placements, out of school or home services; provided that home services are not generally available to other students enrolled in that program, or out of district extended day/year services). Nauset will invite the Truro special education administration and/or staff to any student meeting that could result in a student receiving services and/or placements outside of what is typically available to Nauset students. This will facilitate communication, budget planning, and resource allocation.
5. In order to promote continuity of services for students, the Truro and Nauset school administration agree to consider and work to allow a 1:1 educational assistant to be employed and paid by the Truro School District but assigned to a student who attends Nauset Middle School or Nauset High School. Said 1:1 educational assistant while employed by Truro, would be required to follow all policies, procedures, and directives of the Nauset School District.
6. Nauset will communicate with the Truro administration regarding any student at risk for academic or behavioral failure.
7. Any evaluation beyond what is typically performed for Nauset Regional students. (Example: vocational assessment, neuropsychological testing).
8. The Truro School Committee will defend any rejected IEP for which the parent has requested either a hearing before the Bureau of Special Education Appeals or a judicial hearing. A Truro representative will be notified of any rejected IEP as soon as it is received by the Nauset Special Education Department. The Nauset Special Education Department will collaborate with the Truro Special Education Administration if parents request mediation through the BSEA or through another method of resolution. A Truro representative will be invited to any BSEA or other mediation meetings involving Truro resident students.

B. Mandated services for Regular Education for which the Truro School Committee retains full responsibility:

1. All transportation for Truro resident students
2. Out of district regular education placements (i.e. 45 day suspension or evaluation programs or placements during which time the basic tuition charge will be suspended).
3. Home or hospital tutoring if required
4. Tuition will not be charged upon student withdrawal for the purpose of home schooling.

PAYMENT TERMS:

The Nauset School Committee shall submit invoices to the Truro School Committee on a monthly basis with the first invoice being sent on or about October 1st. Invoices shall show the names of the students enrolled and the days they were members of Nauset Regional High School or Nauset Regional Middle School. Truro agrees to make payment within 21 days of receipt of an invoice. Every attempt will be made by Truro to pay the final bill for June by June 30th.

The Truro School Committee and the Nauset Regional School Committee realize the mutual benefit of this agreement and are committed to working cooperatively in the best interests of the students and their families.

Thomas M. Conrad

Thomas M. Conrad
Superintendent of Schools duly authorized by
Nauset Regional School Committee

4/26/19

Date

Michael Gradone

Michael Gradone
Superintendent of Schools duly authorized by
Truro School Committee

4/26/19

Date

Nauset Regional School District

District Enrollment

Comparison 10-1-2021 and 10-1-2020 (2020 in red)

Elementary

School	PK		K		01		02		03		04		05		Total		Difference
Eastham Elementary School	22	16	22	34	30	21	28	28	29	28	34	32	31	34	196	193	-3
Eddy Elementary School		0		0		0		0	53	72	80	57	79	85	212	214	2
Orleans Elementary School		0	16	30	24	18	29	23	32	27	36	29	38	38	175	165	-10
Stony Brook Elementary	20	27	67	63	64	64	62	71		0		0		0	213	225	12
Wellfleet Elementary School		0	14	22	16	17	24	13	15	23	21	18	15	20	105	113	8
Elementary Totals	42	43	119	150	134	120	143	135	129	150	171	136	163	176	901	910	9

Middle

Town	06		07		08		Total		Difference
Brewster	75	70	77	71	77	75	229	216	-13
Eastham	29	30	33	27	41	30	103	87	-16
Orleans	28	33	33	33	30	35	91	101	10
Provincetown	0	1	2	1	1	2	3	4	1
Truro	5	12	9	6	18	8	32	26	-6
Wellfleet	19	15	14	16	32	15	65	46	-19
Choice	20	13	26	17	14	26	60	56	-4
Middle School Totals	176	174	194	171	213	191	583	536	-47

NOTE:
 Truro – students in Gr. 6 are school choice (Truro has a K-6 elem. school)
 Students in Grades 7 & 8 are tuition students
 Provincetown – students in Grades 6, 7 & 8 are school choice (Provincetown has a K-8 school)
 Students in Grades 9, 10, 11, 12 are tuition students

High School

Town	09		10		11		12		SP		Total		Difference
Brewster	70	66	73	74	66	69	65	66	6	6	280	281	1
Eastham	29	39	28	27	33	24	31	31	1	0	122	121	-1
Orleans	30	36	25	27	34	26	23	35	1	0	113	124	11
Provincetown	4	5	6	5	7	4	6	6		0	23	20	-3
Truro	15	18	15	14	11	14	19	11		3	60	60	
Wellfleet	12	30	17	11	28	18	24	33		0	81	92	11
Choice	37	32	49	35	42	46	70	43	0	0	198	156	-42
High School Totals	197	226	213	193	221	201	238	225	8	9	877	854	-23

Summary	2021	2022	Difference
Preschool	42	43	1
Elementary	859	867	8
Region	1084	1068	-16
School Choice	258	212	-46
Truro	92	86	-6
Provincetown	26	24	-2
Grand Total	2361	2300	-61

NAUSET REGIONAL SCHOOLS		Oct-21							
ENROLLMENT TRENDS									
HIGH SCHOOL	As of 1-Oct 2021	Live in District 618	Live in Truro 60	Live in Provincetown 20	School Choice IN 156	OTHER STUDENTS	TOTAL 854		
	2020	596	60	23	198		877		
	2019	616	60	26	219		921		
	2018	624	63	29	228		944		
	2017	603	48	37	236		924		
	2016	642	52	40	211		945		
	2015	676	52	44	209		981		
	2014	687	50	40	197		974		
	2013	706	61	43	214		1024		
	2012	695	52	33	190		970		
	2011	696	56	28	185		965		
	2010	737	50	32	168		987		
	2009	800	40	NA	153		993		
	2007	880	42	NA	119		1041		
MIDDLE SCHOOL	As of 1-Oct 2021	Live in District 450	Live in Truro 26	Live in Provincetown 4	School Choice IN 56	OTHER STUDENTS	TOTAL 536		
	2020	488	32	3	60		583		
	2019	480	41	4	64		589		
	2018	445	43	5	90		583		
	2017	419	38	7	89		553		
	2016	424	31	9	77		541		
	2015	437	31	9	67		544		
	2014	463	37	7	53		560		
	2013	489	22	7	65		583		
	2012	490	19	8	73		590		
	2011	490	27	8	46		571		
	2010	477	24	10	43		554		
	2009	489	23		55		567		
	2007	460	14		31		505		
AS OF OCTOBER 1, 2021 Students Attending Nauset High School Under School Choice by Home Town									
Barnstable	Bourne	Chatham	Dennis	Harwich	Sandwich	Yarmouth	Falmouth	Mashpee	TOTAL
28	2	15	24	44	3	37	1	2	156
AS OF OCTOBER 1, 2021 Students Attending Nauset High School - Tuitioned In									
	Gr. 9	Gr. 10	Gr. 11	Gr. 12	Total				
Truro	18	14	14	14	60				
Provincetown	5	5	4	6	20				
(Barnstable includes: Centerville, Marston Mills, Osterville, Sagamore and Barnstable)									
AS OF OCTOBER 1, 2021 Students Attending Nauset Middle School Under School Choice by Home Town									
Barnstable	Chatham	Dennis	Harwich	Sandwich	Yarmouth	Provincetown	Truro	Total	
11	2	12	12	1	18	4	14	74	
AS OF OCTOBER 1, 2021 Students Attending Nauset Middle School - Tuitioned In									
	Gr. 7	Gr. 8	Total						
Truro	6	8	14						
AS OF OCTOBER 1, 2021 Nauset Resident Students Attending Other High Schools									
	Lighthouse	Sturgis	Tech						
2021	82	14	100						
2020	64	10	92						
2019	46	12	76						
2018	53	15	77						
2017	67	16	88						
2016	67	17	81						
2015	64	19	86						
2014	62	23	69						
2013	64	25	72						
2012	69	23	72						
2011	86	10	80						
AS OF OCTOBER 1, 2020 International Student Program									
2021	0								
2020	0								
2019	2								
2018	3	2 Chinese, 1 German							
2017	4	2 Chinese, 1 Indonesian, 1 German							
2016	5	2 Brazil, 3 Chinese							
2015	17	1 German, 2 Brazilians, 1 Spanish, 1 Norwegian and 12 Chinese							
2014	17	8 Chinese, 2 Brazilian, 2 French, 3 Spanish, 1 Norwegian and 1 German							
2013	11	3 Chinese, 2 Italian, 4 Brazilians, 1 German, 1 Monaco							
2012	6	2 French, 3 Chinese, 1 Belgium							

TO: Christopher Easley, Chair
Judith Schumacher, Vice Chair
Brooke Clenchy, Superintendent
Nauset Regional School Committee
Nauset Public Schools
79 Eldredge Park Way
Orleans, MA 02653

December 12, 2022

CC: Select Boards and Town Administrators:
Town of Brewster
Town of Orleans
Town of Eastham
Town of Wellfleet
Rep. Tim Whelan Brewster
Rep. Sarah Peake
Massachusetts School Building Authority

RE: CHAPTER A201: Nauset Regional School District Agreement
AMENDMENT TO SECTION VI AND VIII ADMISSION
OF ADDITIONAL TOWNS AND UNDUE BURDEN LEGAL REVIEW

To all of the above:

In accordance with Section VIII of the Nauset Regional School District Agreement, concerned citizens of the four towns comprising the current Nauset Regional School District, require the immediate take up of the allowed process to amend such Agreement into a six town school district, to include the towns of Truro and Provincetown in accordance with the Agreement. This letter instructs the Committee to immediately initiate this by 1) a majority vote of the RDSC committee and/or to also 2) initiate a Warrant to be presented to each of the four towns to gather 10% of the registered voters to bring such Amendment.

This requires NRSD to take up immediate discussion with the towns of Truro and Provincetown whose Tuition agreements expire in 2024 (attached) . They currently send approx 80 students to Nauset Regional for which no capital cost is paid to, or planned to be paid under the present plan now slated for a January 10 vote to the four towns increasing the total project cost from approx. \$130MM to \$170MM. By sending approx 12% of the current enrollment, an allocation of similar proportion must be allocated to the operating and capital budgets including amounts spent to date.

Several operating deficiencies and legal challenges are present insofar as potential violations of these current Agreements. First, the fact that the two towns may soon contribute nothing to the operating costs, trailering, staging and pre-development costs without an amended Agreement. The current tuition costs by agreement only approximate \$20,000 per student (\$1.8MM combined annually) but current budget costs are actually closer to \$30,000 per district student.

As to paying the share of development and capital costs, Truro and Provincetown will pay nothing and the municipal and undue burden arguments are obvious. The four towns cannot pay for the capital and operating costs of six, and the other two towns may not receive a free ride to a new \$170MM school. Is denial of enrollment when these towns have no facilities in the cards for them? Will they Choice-in and pay a meager \$5,200 per student? Their share of capital costs need to be proposed to these two towns of approx \$17MM (12%) in the same form as the four district towns are facing today. The burden here of the four towns is grossly inequitable. The real estate taxation of a Brewster or Orleans resident for a Truro or Provincetown student to attend public school is without precedent and an undue burden. Approval to build and bonding such cost, cost overrun and debt service measures by January 10, 2023 is inappropriate and needs to be legally reviewed and operationally corrected through these Agreements. We strongly urge the committees, District and State Boards and their legal councils to take swift review, amendment action, and if necessary postpone and or correct the January 10 Warrant and the upcoming vote to incorporate an equitable six town district.

Regards,

Concerned citizens of Orleans, Brewster, Eastham and Wellfleet



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARD/COMMITTEE APPOINTMENTS AND UPDATES

~ D ~

REQUESTED BY:	Marina Advisory Committee ~ Joe Aberdale (chair of MAC)
DESIRED ACTION:	To approve the Marina Advisory Charge Amendment
PROPOSED MOTION:	I move to approve the amendment in the charge of the Marina Advisory Committee as drafted at tonight's meeting.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s): _____
VOTED:	Yea _____ Nay _____ Abstain _____

Marina Advisory Committee Charge

To establish a Marina Advisory Committee consisting of seven members and two associate members to be appointed by the Board of Selectmen for terms of two years. The Chairman of the Committee may designate any such associate member to sit on the committee in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the committee until said vacancy is filled in the manner provided in this section.

The committee is to study and make recommendations to the Harbormaster and the Board of Selectmen relative to Marina operations, the establishment and enforcement of policies and procedures, future planning, and, as a committee, examine complaints made by any vessel owner or other user of the Marina and referring any recommendations regarding such to the Harbormaster.

Proposed Revision Charge

To establish a Marina Advisory Committee consisting of seven members and two associate members to be appointed by the Board of Selectmen for terms of two years. The Chairman of the Committee may designate any such associate member to sit on the committee in case of absence, inability to act or conflict of interest on the part of any member thereof, or in the event of a vacancy on the committee until said vacancy is filled in the manner provided in this section.

The Committee is to study and make recommendations to the Harbormaster and Board of Selectmen relative to the following: Marina operations, Wellfleet Waterways, Marina finances, the establishment and enforcement of policies and procedures and future planning. The Committee shall examine complaints made by any vessel owner or other user of the Marina and Wellfleet Waterways and refer recommendations regarding such to the Harbormaster and Board of Selectmen.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARD/COMMITTEE APPOINTMENTS AND UPDATES

~ E ~

REQUESTED BY:	Wellfleet Historical Commission ~ Merrill Mead-Fox
DESIRED ACTION:	To review amendments to Wellfleet's demolition delay bylaws, so they resemble the Massachusetts Historical Commissions sample Demolition Delay Bylaws.
PROPOSED MOTION:	I move to approve that the Wellfleet Demolition Delay Bylaws are amended so they resemble the Massachusetts Historical Commissions Sample Demolition Bylaws, as presented at tonight's meeting.
SUMMARY:	
Project	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Rebekah Eldridge

From: mmeadfox <mmeadfox@gmail.com>
Sent: Friday, December 23, 2022 11:20 AM
To: Board of Selectmen
Subject: Request for placement on agenda

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



Board of Selectmen

Request for Placement on Agenda

Name: Merrill Mead-Fox
Address: 35 Pine Point Way ; Wellfleet, MA 02667
Company or Organization Representing: Wellfleet Historical Commission
Phone Number: 417-519-8644
Email Address: mmeadfox@gmail.com

Specific Request: To meet with the selectboard
1) To discuss a possible working definition for or '131/23
of "demolition in part" in Wellfleet's Demolition
Delay Bylaw
2) To discuss possible amendments to Wellfleet's
Demolition Delay Bylaw so that it is more
similar to the Massachusetts Historical Commission's
sample Demolition Delay Bylaw. (materials will follow)

To be filed out by Dept. _____

Applicant Notified: _____ Date of Hearing: _____

Date Request Completed: _____

Introduction re: Definition of Partial Demolition:

The Wellfleet Historical Commission (WHC) has not received any referrals from the Building Department for several months. The Building Commissioner has informed us that this is because they have not received proposals for complete demolition, and partial demolition is not clearly defined.

The WHC is working to amend Wellfleet's Demolition Delay Bylaw (DDB). Before our proposal for DDB amendments is hopefully included in the Warrant for Wellfleet's Spring Town Meeting, the WHC would like to agree with the Building Department on a working definition of "demolition in part", so that we can fulfill our mandate of protecting and preserving Wellfleet's historically significant meetings. I met with the Building Commissioner and discussed options for a working definition of "demolition in part", and he requested that the WHC meet with the Selectboard for your approval of a working definition. Defining Partial Demolition is important because it clarifies the threshold for referral.

According to Wellfleet's Demolition Delay Bylaw, the WHC should be reviewing proposals for *partial or complete demolition* of Historically Significant Buildings in Wellfleet, which are:

- a. Listed in the National Register of Historic Places
- b. More than 75 years old
- c. Designated by the Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and method of construction or association with historic persons or events

Wellfleet's DDB defines Demolition as "the act of pulling down, destroying, removing, or razing a building, *in whole or in part*, including the demolition of exterior walls or roof, or commencing such work with the intent of completing the same, all as determined by the Building Inspector; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair of any building. In addition, the term "Demolition" defined under this bylaw section shall include the act of enclosing or encapsulating an existing building within new exterior walls or roofed areas".

In the process of working on DDB Amendments, the WHC has consulted with the Building Department, Assistant Town Administrator, Massachusetts Historical Commission (MHC), and Cape Cod Commission (CCC), and researched Demolition Delay Bylaws of several Massachusetts towns. We are meeting with the Selectboard on 1/24/23, and the Assistant Town Administrator intends to consult with the Town Counsel about our proposal.

Our MHC consultant recommends that we include percentages in our definition in order to clarify the threshold for review. Because of this, we originally proposed this definition, based on Salem, MA, to the Building Commissioner:

"Partial Demolition means any act of pulling down, destroying, removing, or razing any of the following: 25 percent or more of all exterior walls of a Building including framing, windows, doors, exterior finishes and details; 25 percent or more of exterior walls of a building that are viewable from a public way; 25 percent or more of all roof structures of a building; or 25 percent or more of roof assemblies of a building that are viewable from a public way, enclosure or alteration of more than 25 percent of the exterior walls of a building so that they no longer function as exterior walls. Any combination of the above that occurs within a five-year time period shall be included in the calculation".

Wellfleet Demolition Delay Bylaw	Proposed Bylaw
<p>Section 1. Purpose. The purpose of this ordinance is to protect from demolition historically significant buildings which reflect the historical, cultural or architectural heritage of the Town of Wellfleet, and to encourage the owners of such buildings to explore and develop acceptable alternatives to demolition such as preservation, renovation, restoration or relocation.</p>	<p><u>Intent and Purpose</u> This by-law is enacted for the purpose of preserving and protecting significant buildings, streetscapes and neighborhoods within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this bylaw.</p>

Section 2. Definitions.

2.1 **Historically Significant Building:** Any building which is either: a. Listed in the National Register of Historic Places, b. More than seventy-five (75) years old. c. Designated by the Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and method of construction or association with historic persons or events.

2.2 **Preferably Preserved.** Any "historically significant" building, the preservation of which is in the public interest as determined by the Board.

2.3 **Demolition.** The act of pulling down, destroying, removing, or razing a building, in whole or in part, (including the demolition of exterior walls or roof), or commencing such work with the intent of completing the same, all as determined by the Building Inspector; provided, however, that the 24 term "demolition" shall not include the ordinary maintenance or repair of any building. In addition, the term "Demolition" defined under this bylaw section shall include the act of enclosing or encapsulating an existing building within new exterior walls or roofed areas.

SIGNIFICANT BUILDING — Any building within the town (city) which is in whole or in part fifty years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.
- **The Building is listed in the National Register of Historic Places**

PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the eighteen month demolition delay period of this bylaw.

DEMOLITION-Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

SUBSTANTIAL DESTRUCTION. Destruction of at least 25% of all exterior walls of the building, or at least 25% of all roof structures or assemblies. Any combination of the above that occurs within a five-year time period shall be included in the calculation.

2.4 **Board.** The Historical Commission, established by vote of the Town pursuant to Article 54 of the 1980 Annual Town Meeting.

APPLICANT-Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION-An application for the demolition or substantial destruction of a building.

BUILDING-Any combination of materials forming a shelter for persons, animals, or property

BUILDING COMMISSIONER - The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION —The Wellfleet Historical Commission or its designee.

	<p><u>Procedure</u></p> <p>An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application containing the following information:</p> <ul style="list-style-type: none"> ▪ The address of the building to be demolished. ▪ The owner's name, address and telephone number. ▪ A description of the building. ▪ The reason for requesting a demolition permit. ▪ A brief description of the proposed reuse, reconstruction or replacement. ▪ A photograph or photograph(s) of the building including all elevations.
<p>3.1 The Board shall furnish the Building Inspector with a list of all "historically significant buildings."</p>	
<p>3.2 The Building Inspector shall, within five (5) days of receipt of an application for a demolition permit for a "historically significant building", forward a copy of the application to the Board.</p>	<p>The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.</p>

<p>3.3 The Board shall determine if the building is “preferably preserved.” If the Board makes an initial determination that the building is “preferably preserved,” then within forty-five (45) days of the receipt of the demolition permit application, the Board shall hold a public hearing to explore alternatives to demolition.</p>	<p>Upon determination that the building is not significant, the Commission shall so advise the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.</p> <p>Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.</p>
<p>3.4 Notice of the time, place and subject matter of hearings hereunder shall be given by publication in a newspaper of general circulation in the Town once a week for two (2) successive weeks, the first notice to appear at least fourteen (14) days before the day of the hearing (including the day of publication and excluding the day of the hearing) and by mailing a notice of hearing to the owner or applicant, all abutters to the subject property, the Planning Board of the town, the Historical District Commission, the Wellfleet Historical Society the Conservation Commission, the Selectmen and such other persons as the Board may determine.</p>	<p>If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be properly posted according to local and state law by the municipality and shall be for a period of not less than seven days prior to the date of said hearing. The applicant, the owners of all adjoining property, the building inspector and the planning board shall be sent a copy of the notice.</p>

	<p>The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.</p> <p>If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.</p>
<p>3.5 If after hearing, the Board determines that the proposed work would destroy or substantially diminish an historic value, it is empowered to impose a demolition delay of up to eighteen (18) months from the date of said hearing to afford an opportunity to develop alternatives to demolition.</p> <p>3.6 The Board shall with seven (7) days of said hearing notify the owner or applicant and the Building Inspector of its decision.</p>	<p>If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty one days of the public hearing, the Building Commissioner may issue the demolition permit.</p> <p>Upon a determination by the Commission that a building is preferably preserved, no building permit for new construction or alterations to the subject building shall be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission.</p>

3.7 If at the end of a Board mandated delay, no alternatives have been agreed to by the owner or applicant, the Board shall within seven (7) days notify the Building Inspector who may then issue the permit.

3.8 In addition to the provisions of Section 3.7, the Building Inspector may issue a demolition permit upon written notice from the Board that the building is not "preferably preserved" or that there is no likelihood that either the owner or some other person or group is willing to purchase, preserve, restore or rehabilitate the building or that the applicant has agreed to accept a demolition permit on specified conditions.

3.9 Nothing in this Bylaw shall restrict the building Inspector from issuing a demolition permit if in his opinion the condition of the building poses an imminent and substantial threat to public health or safety.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the delay period if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.

Following the delay period, the Building Commissioner may issue the demolition permit.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

Section 4. Enforcement

4.1 The Building Inspector shall be authorized to enforce the provisions of this Bylaw.

Section 5. Non-compliance

5.1 Anyone who undertakes demolition of any "historically significant" building without a demolition permit shall be subject to a fine of \$1,000.00. Each day such demolition continues shall constitute a separate offense.

5.2 No building permit shall be issued or be valid for a period of up to two (2) years after demolition of any "historically significant" building in violation of this Bylaw.

Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful recreation referred to above or unless otherwise agreed to by the Commission.

<p>Section 7. Historic District Act</p> <p>7.1 If any provisions of this Bylaw conflict with Massachusetts General Laws, Chapter 40C, the Historic District Act, that Act shall prevail</p>	<p><u>Historic District Act</u></p> <p>Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail. Buildings included within the boundaries of a local historic district established under M.G.L Chapter 40C shall not be subject to this bylaw so long as the proposed demolition is regulated by the local historic district bylaw.</p>
<p>Section 6. Severability</p> <p>6.1 If any provision of this Bylaw is determined to be invalid or unconstitutional by any court of competent jurisdiction, said determination shall not affect the validity of any other section hereof.</p>	<p><u>Severability</u></p> <p>In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.</p>

Introduction re: Wellfleet Historical Commission DDB Amendments Proposal:

In September, 2022, the WHC met with Jennifer Doherty of the Massachusetts Historical Association (MHC) and Sarah Korjeff of the Cape Cod Commission (CCC) to discuss preservation options. During this meeting, Jennifer Doherty recommended that we work with the town to update our Demolition Delay Bylaw (DDB).

Four reasons to amend Wellfleet's DDB:

1. Jennifer Doherty of MHC recommended that we clarify threshold for review and adjust our process so it's more similar to MHC sample bylaw.
2. Define Demolition in Part
3. Change 75 years to 50 years so that it includes Modern House Trust Buildings
4. Find a way to require that an independent evaluation be conducted by a structural engineer when there are claims that a building is structurally unsound.

As we have been working on amending the DDB, we have communicated with Building Commissioner (Badera), Chair of Planning Bd (Parent), Assistant Town Administrator (Roughly), Selectboard Chair (Curley), and Jennifer Doherty at MHC. We understand that our proposed Amendments will also need to be reviewed by Town Counsel, that our proposal is essentially a first draft that will likely need some revision, and that a final draft will need to be voted on at Town Meeting.

We have included several documents for your review:

1. An Introduction for our discussion about Amending Wellfleet's Demolition Delay Bylaw
2. A Chart which compares Wellfleet's Current DDB with the MHC sample bylaw. Since we are proposing using most of the MHC sample bylaw, we have included edits we would like to make to this document on the right hand side of the chart.
3. A Redline "Track Changes" version of Wellfleet's current DDB, including amendments
4. A Clean Copy of our proposed amended DDB
5. An Introduction for our discussion about defining Partial Demolition

Please note:

As you review our the chart comparing Wellfleet's DDB Amendment and the MHC Sample Bylaw, you will see that the term "substantial destruction" is used in the MHC Sample Bylaw,. We researched definitions of "substantial destruction" from six Massachusetts towns, and five out of six towns used percentages to define substantial destruction. Because of this, we propose a definition for substantial destruction in our proposed bylaw that uses percentages. We are aware that Wellfleet's Building Commissioner would prefer that we avoid using percentages, and we welcome your input to help us find a compromise between recommendations of our MHC consultant, precedents re: definitions of substantial destruction, and the preferences of our Building Commissioner.

Introduction re: Definition of Partial Demolition:

The Wellfleet Historical Commission (WHC) has not received any referrals from the Building Department for several months. The Building Commissioner has informed us that this is because they have not received proposals for complete demolition, and partial demolition is not clearly defined.

The WHC is working to amend Wellfleet's Demolition Delay Bylaw (DDB). Before our proposal for DDB amendments is hopefully included in the Warrant for Wellfleet's Spring Town Meeting, the WHC would like to agree with the Building Department on a working definition of "demolition in part", so that we can fulfill our mandate of protecting and preserving Wellfleet's historically significant meetings. I met with the Building Commissioner and discussed options for a working definition of "demolition in part", and he requested that the WHC meet with the Selectboard for your approval of a working definition. Defining Partial Demolition is important because it clarifies the threshold for referral.

According to Wellfleet's Demolition Delay Bylaw, the WHC should be reviewing proposals for *partial or complete demolition* of Historically Significant Buildings in Wellfleet, which are:

- a. Listed in the National Register of Historic Places
- b. More than 75 years old
- c. Designated by the Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and method of construction or association with historic persons or events

Wellfleet's DDB defines Demolition as "the act of pulling down, destroying, removing, or razing a building, *in whole or in part*, including the demolition of exterior walls or roof, or commencing such work with the intent of completing the same, all as determined by the Building Inspector; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair of any building. In addition, the term "Demolition" defined under this bylaw section shall include the act of enclosing or encapsulating an existing building within new exterior walls or roofed areas".

In the process of working on DDB Amendments, the WHC has consulted with the Building Department, Assistant Town Administrator, Massachusetts Historical Commission (MHC), and Cape Cod Commission (CCC), and researched Demolition Delay Bylaws of several Massachusetts towns. We are meeting with the Selectboard on 1/24/23, and the Assistant Town Administrator intends to consult with the Town Counsel about our proposal.

Our MHC consultant recommends that we include percentages in our definition in order to clarify the threshold for review. Because of this, we originally proposed this definition, based on Salem, MA, to the Building Commissioner:

"Partial Demolition means any act of pulling down, destroying, removing, or razing any of the following: 25 percent or more of all exterior walls of a Building including framing, windows, doors, exterior finishes and details; 25 percent or more of exterior walls of a building that are viewable from a public way; 25 percent of or more of all roof structures of a building; or 25 percent or more of roof assemblies of a building that are viewable from a public way, enclosure or alteration of more than 25 percent of the exterior walls of a building so that they no longer function as exterior walls. Any combination of the above that occurs within a five-year time period shall be included in the calculation".

The Building Commissioner said that he would prefer not to include percentages, because he says percentages are difficult to calculate and builders will try to go just under the limit to avoid referral to the WHC. He was open to the following definition, based on Sudbury, MA:

“Partial demolition, as determined by the Building Commissioner, can include, but is not limited to: the structural removal of any part of the building or structure such as the roof frame, wall, porch, portico, chimney, architectural trim, enlargement, relocated windows or doors, or additions to the existing structure. However, our MHC consultant says that we need to be sure that any definition we agree on is within the limits of Wellfleet’s Demolition Delay Bylaw, which means that we can’t get specific about architectural elements.

In order to find a compromise, we consulted the Cape Cod Commission Act. This act requires that local Historical Commissions (including Wellfleet’s) refer any proposed Demolition or Substantial Alteration of NRHP properties on Cape Cod to the Cape Cod Commission for review. According to the CCC, **Substantial Alteration includes:** 1) Any demolition of the original or primary historic building mass, 2) renovation projects that replace a significant amount of the building’s structural frame and character-defining features, 3) Additions to primary building facades or primary roof slopes that change the historic character or require removal of distinctive architectural features, 4) Additions or new construction which are highly visible and dramatically different from the historic property or surrounding historic district. Single family homes are exempt from Cape Cod Commission DRI Review unless they change at least 25% of the gross floor area of the building. This measure is cumulative, so that the Historical Commission can consider small scale alterations as part of a larger project that has impacted more than 25% of the building.

Based on our consultations and research, in order to clarify the threshold for referrals from the Building Department to the WHC for the time being, the WHC proposes that demolition “in part” be defined as follows (Based on Salem, MA and CCC definitions):

Partial Demolition: 1) Any demolition of the original or primary historic building mass, including framing, roof structures and assemblies, exterior walls, finishes and details, windows, and doors, 2) renovation projects that replace a significant amount of the building’s structural frame and character-defining features, 3) Additions to primary building facades or primary roof slopes that require removal of distinctive architectural features. Single family homes are exempt from Historical Commission Review unless they change at least 25% of the gross floor area (GFA) of the building. This measure is cumulative, so that any combination of the above that occurs within a five year period will be included in the calculation of the GFA.

ARTICLE XIII DEMOLITION DELAY BYLAW

Section 1 Purpose. The purpose of this ordinance is to protect from demolition historically significant buildings which reflect the historical, cultural or architectural heritage of the Town of Wellfleet, and to encourage the owners of such buildings to explore and develop acceptable alternatives to demolition such as preservation, renovation, restoration or relocation.

DELETE SECTION 1 AND IN ITS PLACE INSERT THE FOLLOWING TEXT

Intent and Purpose. This by-law is enacted for the purpose of preserving and protecting significant buildings, streetscapes and neighborhoods within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this bylaw.

Section 2, Definitions.

Historically Significant Building: Any building which is either:

- b. Listed in the National Register of Historic Places;
- e. More than seventy-five (75) years old;
- d. Designated by the Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and method of construction or association with historic persons or events.

2.1 Significant Building: Any building within the town which is in whole or in part fifty (50) years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings; or
- The Building is listed in the National Register of Historic Places

2.2 Preferably Preserved. Any "historically significant" building, the preservation of which is in the public interest as determined by the Board.

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Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the eighteen month demolition delay period of this bylaw.

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2.3 Demolition. The act of pulling down, destroying, removing, or razing a building, in whole or in part, (including the demolition of exterior walls or roof), or commencing such work with the intent of completing the same, all as determined by the Building Inspector; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair of any building. In addition, the term "Demolition" defined under this bylaw section shall include the act of enclosing or encapsulating an existing building within new exterior walls or roofed areas.

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Any act of pulling down, destroying, removing, dismantling, or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

2.4 Substantial Destruction. Destruction of at least 25% of all exterior walls of the building, or at least 25% of all roof structures or assemblies. Any combination of the above that occurs within a five-year time period shall be included in the calculation.

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2.5 Demolition Permit. The building permit issued by the Building Commissioner for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

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2.6 Applicant. Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

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2.7 Application. An application for the demolition or substantial destruction of a building.

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2.9 Building. Any combination of materials forming a shelter for persons, animals, or property.

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2.10 Building Commissioner. The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

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2.11 Commission. The Wellfleet Historical Commission, or its Designee.

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Board. The Historical Commission, established by vote of the Town pursuant to Article 54 of the 1980 Annual Town Meeting.

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Section 3. Procedure.

3.1 The Board shall furnish the Building Inspector with a list of all "historically significant buildings."

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3.2 The Building Inspector shall, within five (5) days of receipt of an application for a demolition permit for a "historically significant building", forward a copy of the application to the Board.

3.3 The Board shall determine if the building is "preferably preserved". If the Board makes an initial

determination that the building is "preferably preserved", then within forty five (45) days of the receipt of the demolition permit application, the Board shall hold a public hearing to explore alternatives to demolition.

Notice of the time, place and subject matter of hearings hereunder shall be given by publication in a newspaper of general circulation in the Town once a week for two (2) successive weeks, the first notice to appear at least fourteen (14) days before the day of the hearing (including the day of publication and excluding the day of the hearing) and by mailing a notice of hearing to the owner or applicant, all abutters to the subject property, the Planning Board of the town, the Historical District Commission, the Wellfleet Historical Society, the Conservation Commission, the Selectmen and such other persons as the Board may determine.

3.4 If after hearing, the Board determines that the proposed work would destroy or substantially diminish an historic value, it is empowered to impose a demolition delay of up to eighteen (18) months from the date of said hearing to afford an opportunity to develop alternatives to demolition.

3.4 The Board shall with seven (7) days of said hearing notify the owner or applicant and the Building Inspector of its decision.

3.4 If at the end of a Board mandated delay, no alternatives have been agreed to by the owner or applicant, the Board shall within seven (7) days notify the Building Inspector who may then issue the permit.

3.4 In addition to the provisions of Section 3.7, the Building Inspector may issue a demolition permit upon written notice from the Board that the building is not "preferably preserved" or that there is no likelihood that either the owner or some other person or group is willing to purchase, preserve, restore or rehabilitate the building or that the applicant has agreed to accept a demolition permit on specified conditions.

3.4 Nothing in this Bylaw shall restrict the building Inspector from issuing a demolition permit if in his opinion the condition of the building poses an imminent and substantial threat to public health or safety.

DELETE SECTION 3 AND IN ITS PLACE INSERT THE FOLLOWING TEXT.

3.1 An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application containing the following information:

- The address of the building to be demolished.
- The owner's name, address and telephone number.
- A description of the building.
- The reason for requesting a demolition permit.

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so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

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3.9 If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty one days of the public hearing, the Building Commissioner may issue the demolition permit.

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3.10 Upon a determination by the Commission that a building is preferably preserved, no building permit for new construction or alterations to the subject building shall be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission.

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3.11 No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

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3.12 The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the delay period if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.

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3.13 Following the delay period, the Building Commissioner may issue the demolition permit.

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ADD SECTION 4.

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Section 4. Administration.

4.1 The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.

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4.2 The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

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4.3 The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

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4.4 The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

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ADD SECTION 5

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Section 5. Emergency Demolition.

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

DELETE SECTION 4 AND ADD SECTION 6 BELOW

Section 4. Enforcement

~~The Building Inspector shall be authorized to enforce the provisions of this Bylaw.~~

Section 6. Enforcement and Remedies

6.1 The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

6.2 Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

6.3 If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful recreation referred to above or unless otherwise agreed to by the Commission.

Section 5. Non-compliance

~~1.3 Anyone who undertakes demolition of any "historically significant" building without a demolition permit shall be subject to a fine of \$1,000.00. Each day such demolition continues shall constitute a separate offense.~~

~~1.5.1 No building permit shall be issued or be valid for a period of up to two (2) years after demolition of any "historically significant" building in violation of this Bylaw.~~

DELETE SECTION 5 (INCORPORATED IN SECTION 6 ABOVE)

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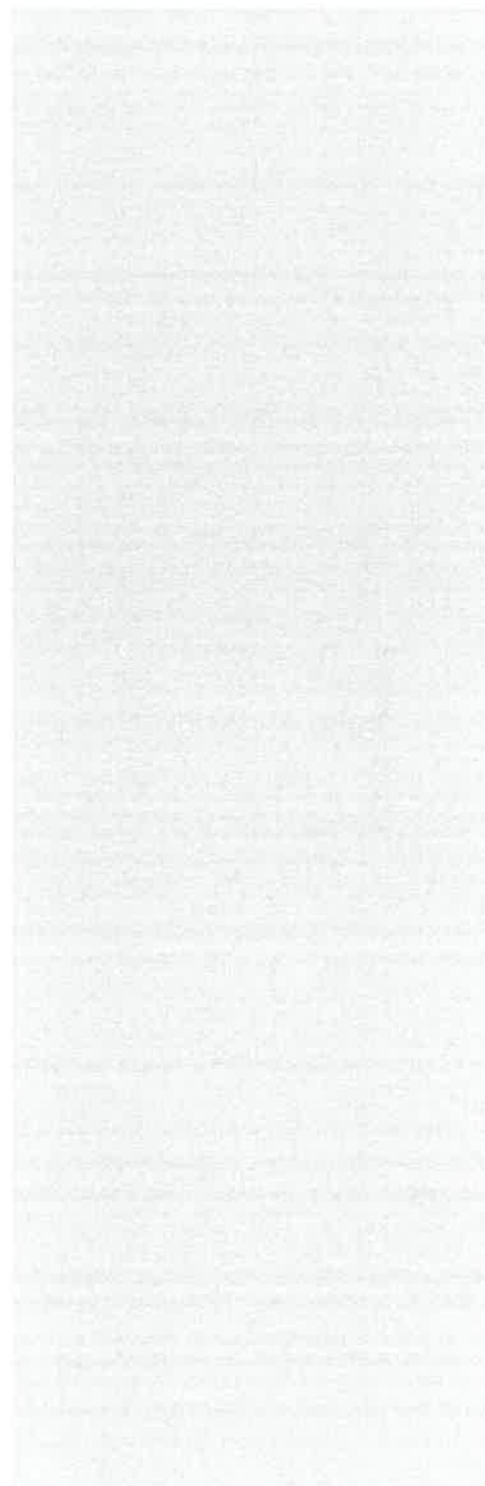
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unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.



ARTICLE XIII DEMOLITION DELAY BYLAW

Section 1 Intent and Purpose This by-law is enacted for the purpose of preserving and protecting significant buildings, streetscapes and neighborhoods within the Town of Wellfleet which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this bylaw.

Section 2. Definitions

- 2.1 **Significant Building:** Any building within the town which is in whole or in part fifty (50) years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:
- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
 - The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings; or
 - The Building is listed in the National Register of Historic Places
- 2.2 **Preferably Preserved.** Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the eighteen month demolition delay period of this bylaw.
- 2.3 **Demolition.** Any act of pulling down, destroying, removing, dismantling, or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.
- 2.4 **Substantial Destruction.** Destruction of at least 25% of all exterior walls of the building, or at least 25% of all roof structures or assemblies. Any combination of the above that occurs within a five-year time period shall be included in the calculation.
- 2.5 **Demolition Permit.** The building permit issued by the Building Commissioner for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.
- 2.6 **Applicant.** Any person or entity who files an application for a demolition permit. If the applicant is

not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

2.7 Application. An application for the demolition or substantial destruction of a building.

2.9 Building. Any combination of materials forming a shelter for persons, animals, or property.

2.10 Building Commissioner. The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

2.11 Commission. The Wellfleet Historical Commission, or its Designee.

Section 3. Procedure.

3.1 An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application containing the following information:

- The address of the building to be demolished.
- The owner's name, address and telephone number.
- A description of the building.
- The reason for requesting a demolition permit.
- A brief description of the proposed reuse, reconstruction or replacement.
- A photograph or photographs of the building including all elevations.

3.2 The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.

3.3 Upon determination that the building is not significant, the Commission shall so advise the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

3.4 Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

3.5 If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be properly posted according to local and state law by the municipality and shall be for

a period of not less than seven days prior to the date of said hearing. The applicant, the owners of all adjoining property, the building inspector and the planning board shall be sent a copy of the notice.

- 3.6 The applicant, the owners of the adjoining property, the Building Commissioner and the Planning Board shall be sent copy of the notice.
- 3.7 The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.
- 3.8 If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.
- 3.9 If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty one days of the public hearing, the Building Commissioner may issue the demolition permit.
- 3.10 Upon a determination by the Commission that a building is preferably preserved, no building permit for new construction or alterations to the subject building shall be issued for a period of eighteen months from the date of the determination unless otherwise agreed to by the Commission.
- 3.11 No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.
- 3.12 The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the delay period if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit.
- 3.13 Following the delay period, the Building Commissioner may issue the demolition permit.

Section 4. Administration.

- 4.1 The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.
- 4.2 The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

4.3 The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

4.4 The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

Section 5. Emergency Demolition.

5.1 If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his decision which shall be forwarded to the Commission.

Section 6. Enforcement and Remedies.

6.1 The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

6.2 Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

6.3 If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful recreation referred to above or unless otherwise agreed to by the Commission.

Section 7. Historic District Act.

7.1 Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail. Buildings included within the boundaries of a local historic district established under M.G.L Chapter 40C shall not be subject to this bylaw so long as the proposed demolition is regulated by the local historic district bylaw.

Section 8. Severability.

8.1 In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

V

BOARDS/COMMITTEE APPOINTMENTS AND UPDATES

~ F ~

REQUESTED BY:	Wellfleet Energy and Climate Action Committee ~ David Mead-Fox
DESIRED ACTION:	To review and possible vote on the updates and new specialized code
PROPOSED MOTION: Summary:	I move to approve the updates and new specialized code for the Wellfleet Energy and Climate Action Committee as presented at tonight's meeting.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

MA Stretch Code Update & New Specialized Code

DOER Overview

November 2, 2022

Maggie McCarey, Paul Ormond & Ian Finlayson

Agenda

- Three levels of code (base, stretch, municipal opt-in)
- **Stretch code:** Timeline
- Key modifications in the updated Stretch Code
- **Specialized code:** Timeline & adoption process
- Key modifications in the new Specialized code
- Resources, Next Steps, your Questions

Base, Stretch, and Specialized – 3 Options

Base Code (IECC 2021)

- New construction in towns & cities not a green community
- **52 communities**

Expected from BBRs:
July 2023

Stretch Code (2023 update)

- New construction in towns & cities that are a green or stretch community
- **299 communities**

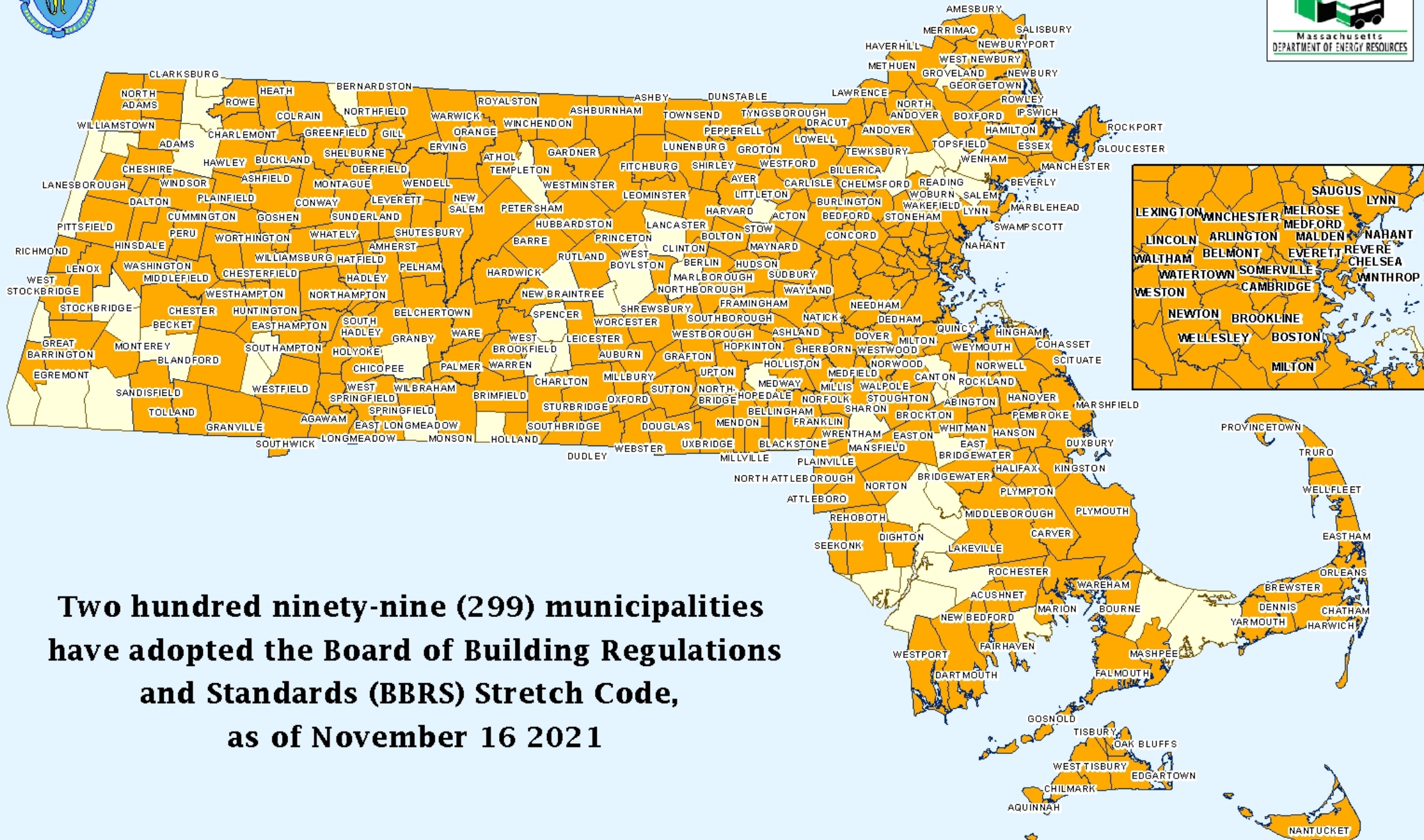
Residential : Jan 2023
Commercial: July 2023

Specialized Code ("Net-Zero")

- New Construction in towns & cities that vote to opt-in to this code
- **Effective date:**
Typically 6-11 months after Town/City vote

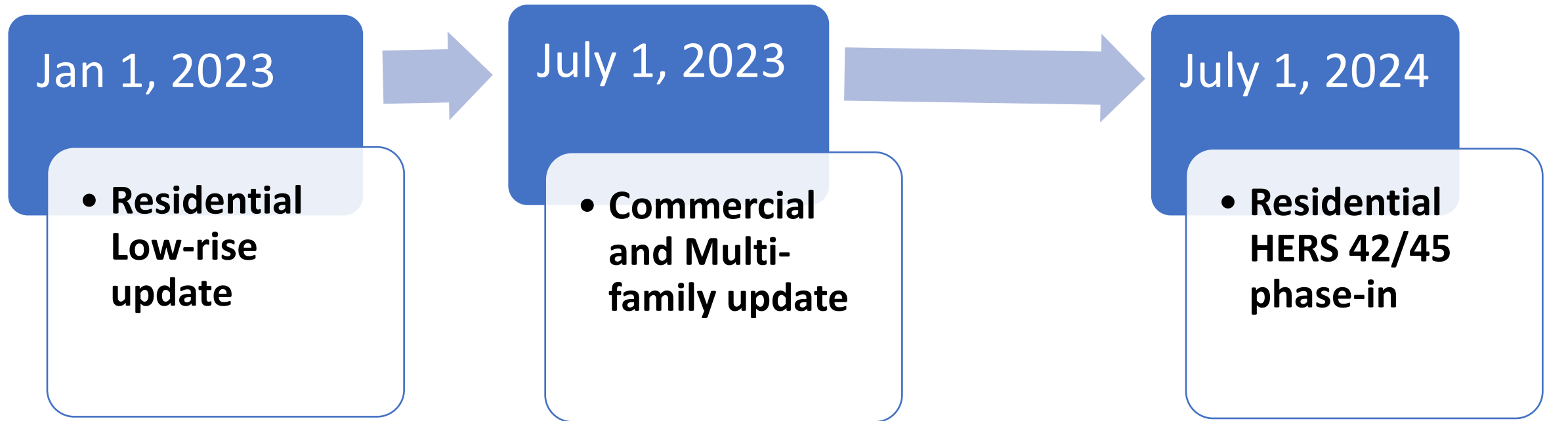


Stretch Code Adoption, by Community



**Two hundred ninety-nine (299) municipalities
have adopted the Board of Building Regulations
and Standards (BBRS) Stretch Code,
as of November 16 2021**

Timeline: Stretch code update





STRETCH CODE
RESIDENTIAL
LOW RISE

What changes on January 1, 2023?

Only Residential Low-Rise: 1 & 2 family and Town-houses

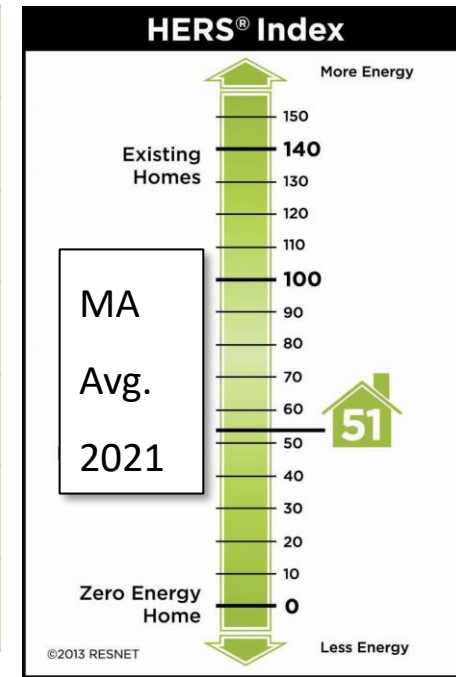
- New construction
 - Slightly lower HERS ratings
 - Energy Star 3.1 no longer an option for these homes
- Large Additions & Level III Alterations (Over 1,000 sf)
 - Required to meet HERS rating

New requirements for New construction:

- EV ready wiring: 1x 240volt, 50-amp circuit per home
- Heat/Energy recovery ventilation

Residential low-rise: New Construction

New Construction			
	Max. HERS index (before solar credit)		
On-site Clean Energy application	2017-2022	Jan 1, 2023	July 1, 2024
Mixed-fuel	HERS 55	HERS 52	HERS 42
Mixed-fuel & Solar	HERS 60	HERS 55	HERS 42
All-Electric	HERS 60	HERS 55	HERS 45
All-Electric & Solar	HERS 65	HERS 58	HERS 45



- Energy Star 3.1 option goes away
- Passive House option updates from Phius2018 to Phius2021 or PHI

Residential low-rise: Large Additions & Level III Alterations >1,000 sf

Additions, Level III Alterations and Change of Use - Over 1,000 sf		
On-site Clean Energy application	Max. HERS index (before solar credit)	
	2017-2022	Jan 1, 2023
Mixed-fuel	HERS 65	HERS 52
Mixed-fuel & Solar	HERS 70	HERS 55
All-Electric	HERS 70	HERS 55
All-Electric & Solar	HERS 75	HERS 58

Increased Incentives for builders & developers

- All-electric homes are generally cheaper to build
Heat Pump replaces both Central A/C + Furnace
- Mass Save 1-4unit all-electric incentives
\$15,000 for HERS 45
\$25,000 for HERS 35 / Passive House
- Federal IRA:
45L tax credit: \$2,500 or \$5,000/home (aligned with HERS)
179D tax credit: up to \$6/sqft for commercial & multi-family

<https://www.masssave.com/saving/residential-rebates/all-electric-home>

<https://www.masssave.com/saving/residential-rebates/passive-house-incentives>



STRETCH CODE - COMMERCIAL

Key Changes to Commercial Stretch Code

Current Stretch Code

Site energy reduction

10% reduction

Buildings over 100,000-sf
No add'tns, alt'ns

Replaced with



New Stretch Code

Heating and cooling
demand reduction

up to 90% reductions

all building sizes
Includes add'tns, alt'ns

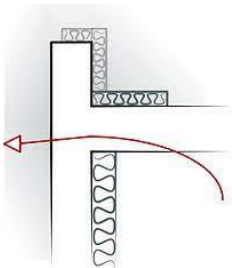
New Provisions for Demand Reduction



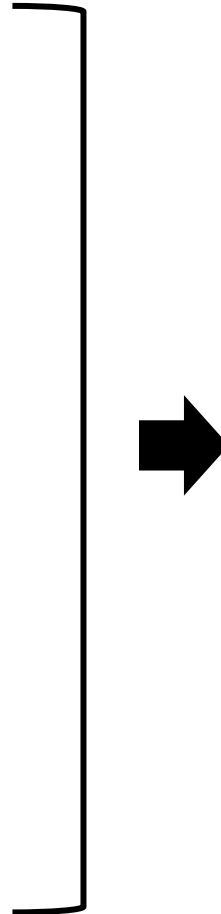
**Quality envelop +
air-leakage testing**



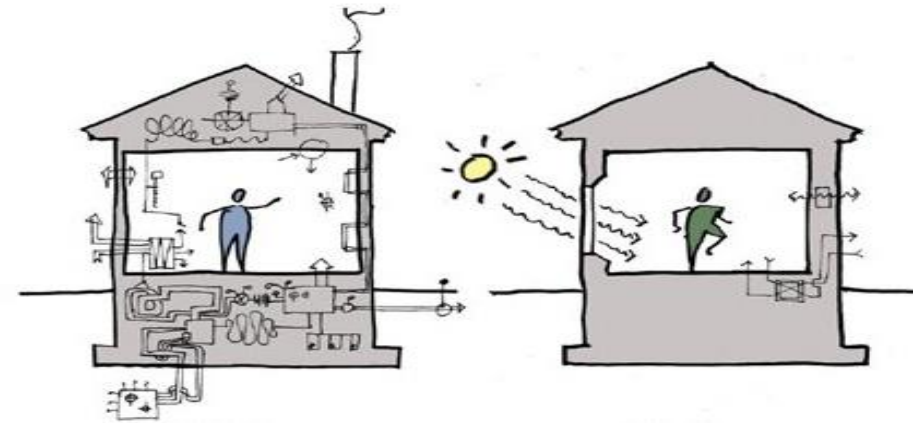
**Ventilation energy
recovery**



**Mitigating thermal
bridges**



Result: Better Buildings



The old way

The new way

- Less equipment
- Improved durability
- Easier electrification
- More comfort
- Enhanced resilience

Improved Life Cycle Cost

Our 2021 study team (below) found that reducing energy demand:

- Lowered LCC for all building types
- Lowered first cost for some building types

<https://www.mass.gov/lists/stretch-energy-code-development-support-documentation>



Demand reduction means less equipment and equipment elimination



What about the grid?

Our 2021 study team (below) found the following:

- The same or lower peak electric use for most building types
- Modest peak electric increases in residential
- Across Massachusetts: about 5% increase in peak electric
- Key is demand reduction, which is key priority in new code

<https://www.mass.gov/lists/stretch-energy-code-development-support-documentation>



What happens to the grid when we “electrify everything”

Thermal Energy Demand Intensity (TEDI)

Stretch code now directly regulates heating and cooling demand for office, muni buildings, schools, and residential buildings:

Heating TEDI

*Total annual energy **delivered to** the building for space conditioning and conditioning of ventilation air, normalized by area (kBtu/sf-yr)*

Cooling TEDI

*Total annual energy **removed from** the building for space conditioning and conditioning of ventilation air, normalized by area (kBtu/sf-yr)*



Important: even though they have the same units, TEDI is not the same as energy use intensity (EUI)
TEDI is demand while EUI is consumption

TEDI Limits – by Building Size and Type

Building type	Heating TEDI limit (kBtu/sf-yr)	Cooling TEDI limit (kBtu/sf-yr)
K-12 school	2.2 - 2.4	12 -20
Office, fire & police station, library, post office, town hall	1.5 - 2.5	21 - 23
Multi-family	2.8 – 3.2	15 - 22

The same models currently used for stretch code compliance also produce TEDI information



Other Key Modifications



Envelope backstop

Add'l stringency



Tenant spaces

Treated like new construction



Electrification of space heating

Highly ventilated: partial

Highly glazed: full



Mixed-use

Treat each use independently



EV ready parking

Wire 20% of new Business & Residential spaces

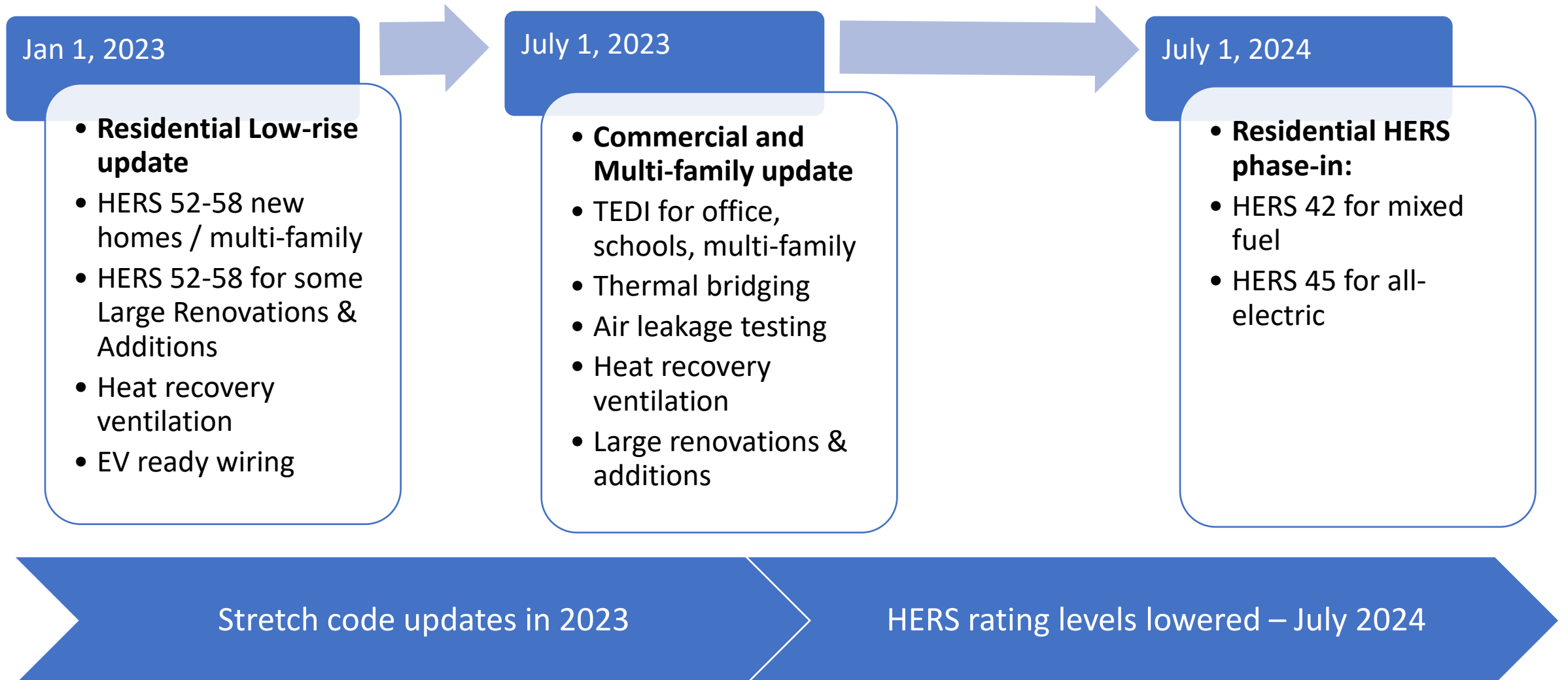
Wire 10% of spaces for other uses

Additions, Alterations, Change of Use

***Additions and alterations are explicitly exempted from the current stretch code.
Starting in July 2023, the new stretch code will require:***

Scenario	Stretch Code Requirement
Additions up to 100% of existing building size; or, up to 20,000-sf	Follow stretch code prescriptively
Additions which exceed either of above	Treat addition like new construction
Alteration of existing building	Altered portions: follow stretch code prescriptively Unaltered portions: no updates required
Change of use	Follow stretch code prescriptively

Timeline: Stretch code update



Specialized Code Net zero in 2050



Specialized Code: Adoption process & Timeline

Adoption Process: Similar to the Stretch code

- Warrant article
- Town Meeting Bylaw vote or City Council vote

Timeline: Published in State Register – Dec 2022

- Town meeting / city council vote
- Effective date: Jan 1, or July 1
- recommend 6-12 months



ANNUAL TOWN MEETING 2020 Warrant Article Guide

ARTICLE 1 - TOWN REPORT

Through this article, the Town presents the reports of many departments and committee leaders for the previous calendar year.

ARTICLE 2 - OPERATING BUDGET

This article approves the operating budget for the Town, Salisbury Public Schools and Middlebury Regional High School for the year starting on July 1, 2020. The budget includes all personnel, contractual services, goods and other payments. For additional information on the budget or the warrant visit our Town Manager's Proposed FY20 Budget: <https://www.townofsalisbury.com>

ARTICLE 3 - FIDEI-CAPITAL BUDGET

This article includes capital needs for the town that are under \$200,000. For more information visit our website: <https://www.townofsalisbury.com>

Specialized Code: Low Rise Residential

Builds on Stretch Code with 3 paths:

- **All-Electric:** HERS 45
Or Passive House
- **Mixed Fuel:** HERS 42 + Solar install + Wired for Electric
Or Passive House + Wired for Electric
- **Zero Energy:** HERS 0 (HERS 42 + Solar)
Or Passive House (Phius Zero)

New homes over 4,000 sf must use *All-Electric* or *Zero Energy*

Additions & Alterations – same as Stretch code

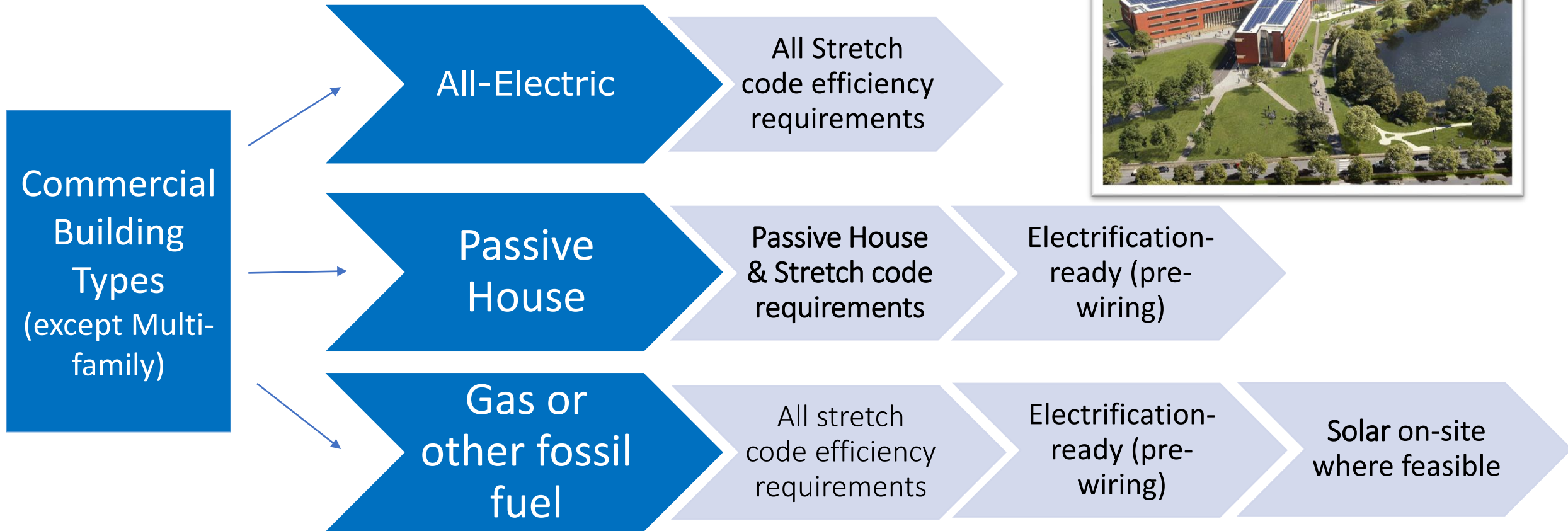


Specialized Code Multi-Family Passive House

- **January 2023:** Passive House required for 5 stories or less, if over 12,000 sf
- 6+ Stories choose TEDI or HERS 42/45 or ASHRAE App. G
- **January 2024:** Passive House required for all Residential over 12,000 sf



Specialized Code - Commercial



Solar PV

- Required:
 - Using Fossil fuels
 - Using Net Zero path
- Optional:
 - All-electric building
- Exceptions for shaded sites can reduce min. size



Next Steps & Resources

Stay in touch

Sign up for DOER energy code email updates:

<https://app.e2ma.net/app2/audience/signup/1965182/1356542/>

Code language, case studies, detailed technical information here:

<https://www.mass.gov/info-details/stretch-energy-code-development-2022>

Contact your local Green Communities Coordinator

<https://www.mass.gov/service-details/contact-gc-coordinator>

Energy Code Training (free via Mass Save®)

- <https://www.masssave.com/en/learn/partners/energy-code-training-and-events>

Contractor Training

- <https://www.masssave.com/en/saving/residential-rebates/passive-house-training>

Questions?

Contact DOER:

Stretchcode@mass.gov

Paul Ormond

Ian Finlayson

Building Code Changes

As per the Green Communities Act of 2008, Massachusetts is required to update its building code every three years to be consistent with the most recent version of the International Energy Conservation Code (IECC). As a result, In 2022 the Commonwealth updated the full set of building codes to the MA 10th edition, including updates to the stretch energy code.

Green Communities Stretch Energy Code Update

The MA Department of Energy Resources (DOER) has updated the Stretch energy code, a key requirement for municipalities that are **Green Communities**. All other towns in Barnstable County are Green Communities except Sandwich, Barnstable, and Hyannis. Green Communities are automatically required to use the updated Stretch Energy Code. The updated Code includes: higher energy efficiency standards, EV ready wiring, and Heat/Energy Recovery Ventilation and is phased in over 2023 and 2024.

Municipal Opt-In Specialized Stretch Code

In addition, DOER has developed a new climate-focused energy code alongside the Stretch Energy Code update. As mandated in the 2021 Climate Act, this Specialized Code may be adopted by any town at its Town Meeting. The specialized code includes all the requirements of the Green Communities stretch energy code update and:

- More stringent building performance standards
- a definition of net-zero building
- designed to achieve **MA GHG emission limits and sub-limits** including a 50% Green House Gas emissions reduction by 2030 from 1990 levels

Effective Dates

December, 2022 - Specialized Code published in State Register

January 1, 2023 - Stretch Energy Code update, Residential Low-rise

July 1, 2023 - Stretch Energy Code update, Commercial and Multi-Family

July 1, 2023 - July 1, 2024 - If adopted by Town, Specialized Code

July 1, 2024 - Additional (increased energy efficiency, Residential) Stretch Code Energy Code updates

Benefits for Builders

- All-electric homes are generally cheaper to build
Heat Pump replaces both Central A/C + Furnace
- Mass Save 1-4unit all-electric incentives
\$15,000 for HERS 45

\$25,000 for HERS 35 / Passive House

- Federal IRA:
45L tax credit: \$2,500 or \$5,000/home (aligned with HERS)
179D tax credit: up to \$6/sqft for commercial & multi-family

- Passive House and All-Electric Home training:

Mass Save will provide training at low or no cost for: Architects, builders, contractors, developers, engineers, estimates, general contractors, and sub-contractors

General Benefits

- Better energy efficiency, lower energy bills, higher indoor air quality, less risk of fire, higher comfort and better performance.
- May include additional incentives for Municipalities
- Lowered Life Cycle Costs for all building types
- Reduced energy use, fossil fuel use, and greenhouse gas emissions
- A quieter, more comfortable home

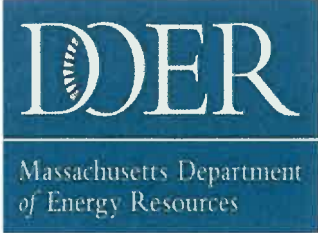
Next Steps

With Selectboard approval, and ideally in coordination with other outer cape towns, the following process is recommended, with the goal of the Selectboard proposing an Article for placement on the Spring Town Meeting Warrant.

1. Meet with Building Commissioner
2. Meet with Builders
3. Draft Warrant Article
4. Present Draft Warrant Article to Selectboard
5. Conduct public education about the Article
6. Town meeting vote



GUIDANCE for Specialized Energy Code Adoption



Specialized Energy Code Adoption Process

INTRODUCTION

The Municipal Opt-in Specialized Stretch Energy Code (Specialized Code) is required ([MGL 25A Section 6](#)) to be designed to help achieve MA GHG emission limits and building sector sub-limits set every five years from 2025 to 2050. As a result, all compliance pathways under the Specialized Code are designed to ensure new construction that is consistent with a net-zero Massachusetts economy in 2050, primarily through building envelope energy efficiency, that it turn enables reduced heating loads and efficient electrification. The largest greenhouse gas emissions impact for many buildings stems from the heating loads and choice of heating fuel for the building. Buildings reliant on combustion equipment have no clear path to zero emissions, while electrically heated buildings using heat pump technologies do due to the steady increase in renewable and clean energy sources on the ISO-NE electric grid, and opportunities for distributed solar and other on-site renewable energy generation. Accordingly, the Specialized Code requires all new buildings to be designed with electric service and wiring sufficient for future electrification of space and water heating as well as any combustion equipment appliance loads.

The Specialized Code regulations may be adopted by any municipality in the Commonwealth, by decision of its governing body.

PROCESS for ADOPTION

In a city having a Plan D or Plan E charter the governing body shall be the city manager and the city council, and in any other city the mayor and city council. In towns the governing body shall be the town meeting. In order to be adopted, the regulations must be considered at an appropriate municipal public hearing, subject to the municipality's existing public notice provisions. Cities are advised to adopt the stretch and specialized energy codes by general ordinance and towns are advised to adopt the codes as a general bylaw.

Please note, once the Specialized Code is adopted by a municipality, all future editions, amendments, and modifications of the Specialized Code are automatically adopted unless the municipality rescinds adoption of the Specialized Code itself. A community must adopt the Specialized Code "as-is," without applying any amendments or conditions, and in full; both the low rise residential and the commercial appendices are adopted together. As such, Municipalities must adopt the entirety of 225 CMR 22 and 23 including Appendices RC and CC

The following sample article, sample motion, and sample bylaw are provided as examples:

SAMPLE TOWN WARRANT ARTICLE:

To see if the Town will vote to enact Chapter ____ of the Town of _____ General Bylaws, entitled “Specialized Energy Code” for the purpose of regulating the design and construction of buildings for the effective use of energy and reduction of greenhouse gas emissions, pursuant to the entirety of 225 CMR 22 and 23 including Appendices RC and CC, including future editions, amendments or modifications thereto, with an effective date of _____, a copy of which is on file with the Town Clerk, or take any other action relative thereto.

SAMPLE TOWN MEETING MOTION:

I move that the Town will enact Chapter ____ of the Town of _____ General Bylaws, entitled “Specialized Energy Code” for the purpose of regulating the design and construction of buildings for the effective use of energy and reduction of greenhouse gas emissions, pursuant to the entirety of 225 CMR 22 and 23 including Appendices RC and CC, including future editions, amendments or modifications thereto, with an effective date of _____

SAMPLE BYLAW:

Chapter ____

SPECIALIZED ENERGY CODE

[Adopted 0-0-2023 ATM / STM by Art.]

§ ____-1 Definitions

§ ____-2 Purpose

§ ____-3 Applicability

§ ____-4 Stretch Code

§ ____-1 Definitions

International Energy Conservation Code (IECC) – The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards and published in state regulations as part of 780 CMR.

Specialized Energy Code – Codified by the entirety of 225 CMR 22 and 23 including Appendices RC and CC, the Specialized Energy Code adds residential and commercial appendices to the Massachusetts Stretch Energy Code, based on amendments to the respective net-zero appendices of the International Energy Conservation Code (IECC) to

incorporate the energy efficiency of the Stretch energy code and further reduce the climate impacts of buildings built to this code, with the goal of achieving net-zero greenhouse gas emissions from the buildings sector no later than 2050.

Stretch Energy Code - Codified by the combination of 225 CMR 22 and 23¹, not including Appendices RC and CC, the Stretch Energy Code is a comprehensive set of amendments to the International Energy Conservation Code (IECC) seeking to achieve all lifecycle cost-effective energy efficiency in accordance with the Green Communities Act of 2008, as well as to reduce the climate impacts of buildings built to this code.

§ ____-2 Purpose

The purpose of 225 CMR 22.00 and 23.00 including Appendices RC and CC, also referred to as the Specialized Energy Code is to provide a more energy efficient and low greenhouse gas emissions alternative to the Stretch Energy Code or the baseline Massachusetts Energy Code, applicable to the relevant sections of the building code for both new construction and existing buildings.

§ ____-3 Applicability

This energy code applies to residential and commercial buildings.

§ ____-4 Specialized Code

The Specialized Code, as codified by the entirety of 225 CMR 22 and 23 including Appendices RC and CC, including any future editions, amendments, or modifications, is herein incorporated by reference into the Town of _____ General Bylaws, Chapter ____.

The Specialized Code is enforceable by the inspector of buildings or building commissioner.

¹ Note: The Stretch energy code was previously codified in 780CMR appendix 115.aa, prior to the passage of the 2021 Act Creating a Next-generation Roadmap for Massachusetts Climate Policy (2021 Climate Act). The 2021 Climate Act transferred authority for promulgation of the Stretch energy code to the Department of Energy Resources.



SELECTBOARD

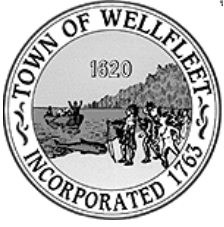
AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

VI

BUSINESS

~ A ~

REQUESTED BY:	Ryan Curley ~ Chair
DESIRED ACTION:	To review and approve the letter regarding wastewater funding and DEP draft regulations
PROPOSED MOTION:	If a motion is needed one will be made at the time of the meeting
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____



TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667

Tel (508) 349-0300 Fax (508) 349-0305

www.wellfleet-ma.gov

Mr. Martin J. Suuberg, Commissioner
Massachusetts Department of
Environmental Protection
Bureau of Water Resources
Division of Watershed Management
One Winter Street, 5th Floor
Boston, MA 02108
Attention: Draft Title 5 & Watershed Permit Regulations

Dear Mr. Suuberg;

The Selectboard of the Town of Wellfleet - wants to express our concerns regarding the proposed new Title V regulations aimed at protecting the watersheds within our region and the ability of the area's towns to meet the financial commitments necessary to achieve those aims and the capacity of area septic installers and engineers.

As you are aware, Wellfleet has submitted a Targeted Watershed Management Plan to secure the second Watershed Permit in the Commonwealth utilizing various proposed techniques to achieve our TDML. Our plan incorporates a phase-out of the installation of new Title 5 systems. One element that is key to the success of any TWMP is a clear and consistent regulatory environment. The suddenness and the scope of the Draft Title 5 regulation changes are a cause for concern.

The challenge presented to every town with a Watershed subject to a TDML is funding. We can move as fast as our funding and resources allow us to, but without significant help in additional funding sources through the Commonwealth, relying on locally generated funds present serious issues and will result in longer implementation timelines. It is critical that the Commonwealth allocates additional direct funding to assist the towns now subject to a TDML or that may be subject to a TDML in the future.

One of the funding sources that towns on Cape Cod rely upon is the Cape and Island Water Protection Fund. This fund supplies a 25% loan forgiveness for IUP projects. Unfortunately, the fund's revenues will be unable to support even this modest amount without substantial new revenues or infusions of money by the State due to the

costs of the projects associated with addressing water quality issues. The 2023 draft IUP has projects totaling \$167 million based on projected revenues of approximately \$21 million. This outstrips the capacity of the revenues by a factor of two.

We also need to be cognate that there are considerable expenses that ultimately will fall on the property owners, whether in the form of taxes, betterments, or out-of-pocket. This is at a time when we, as a region, are experiencing a housing crisis that shows no signs of abating. There are considerable numbers of households that are already housing cost-burdened and are struggling. How can we protect the people we can not afford to lose who can not afford the costs associated with addressing the region's wastewater issues?

Massachusetts Municipalities are constrained in our ability to raise funds locally by *Article LXXXIX Section 7. Limitations on Local Powers of the Massachusetts Constitution*. As well as Proposition 2 ½. Proposition 2 ½ also binds the Commonwealth to not impose unfunded mandates on municipalities via legislation or regulation. We need additional support, funding, and technical assistance from our State partners. More financial assistance is needed to implement all phases of our plan.

The Wellfleet Harbor Watershed is unique on the Cape in many ways. It encompasses, for all intents and purposes, our entire town. While important, the scope of other town's contributions to the Watershed is limited. And its ability to support one of the State's largest shellfisheries, where residents directly derive their livelihoods plying its waters. Wellfleet Harbor's health is paramount to the town's residents.

We hope the DEP will also more closely examine the capacity of area septic installers and engineers before setting an unrealistic timetable for the replacement of currently compliant title 5 septic systems. This should be accompanied with funding from the State being made available to local homeowners as grants for the replacement of their septic systems and the additional expenses in the operation of those systems. We understand that we will have some flexibility with a Watershed permit, but competing for limited resources is a concern.

We support regulations that will strengthen our partnership with DEP, and help us sustain local community support. We specifically would like to comment on the draft changes to the Watershed permits in 314 CMR 21.04 (1) (c) "The requirement to remove at least 75% of the nitrogen load needing to be removed in each nitrogen-sensitive area watershed within 20 years presents logistical issues based on groundwater flows. Flow times vary significantly within the Wellfleet Harbor Watershed. Properties can be at some distance to the estuary lags between when remediation of nutrient sources is addressed and when that remediation will be seen in the waters of the estuary. This section should be clarified so that it is a reduction of nutrients from the sources with an understanding

that the results will take time to be fully realized within the surface waters. Establishing a reduction of 75% within twenty years is arbitrary as it does not address the varied nature of watersheds contributing areas and places an undo burden on towns. Additionally, this requirement does not take into consideration differences in the current health of various watersheds across the region. These also results could be more readily achieved if additional State or Federal funds were available.

We are appreciative of the DEP's willingness to engage with our town and the extension of the public comment period for the Draft Title 5 and Watershed regulations.

Sincerely:

The Wellfleet Selectboard

cc: Mille Garcia-Serrano, Director of MassDEP Southeast Region Office

Governor Maura Healey

Lieutenant Governor Kim Driscoll

State Senator Julian Cyr

State Representative Sarah Peake



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

VI

BUSINESS ~ B ~

REQUESTED BY:	Town Administrator ~ Rich Waldo
DESIRED ACTION:	To approve the remaining Capital Improvement Budgets for Wellfleet IT and Maurice's Campground Planning and Development
PROPOSED MOTION: SUMMARY:	I move to approve the ten-year Capital Improvement Budgets for the Wellfleet IT Department and the Maurice's Campground Planning and Development.
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

DEPARTMENT:

REQUESTED BY:

Project Description & Objectives

Maurice Housing Planning and Development

Project Need & Background

Town purchased Maurice's Campground with the vision of developing for affordable housing opportunities. This request will allow the planning committee to utilize a facilitator and/or consulting services for visioning efforts to determine best future use of the site.

Priority #	of Projects Submitted	Priority #	for Fiscal Year
<input type="text" value="3"/>	<input type="text" value="3"/>	<input type="text" value="1"/>	<input type="text" value="2024"/>

Degree of Urgency (check all that apply)

- Legislation: required by state or federal legislation or regulation
- Hazard: removes an obvious or potential hazard to public health or safety
- Efficiency: replaces equipment or facility that is obsolete, or would be too costly to repair or maintain and better utilizes existing standard of service
- Standard of Service maintains or provides existing standard of service
- Economic Advantage: directly benefits the Town's economic base by increasing property values or other revenue potential
- Increased Service: expands or increases a service or improves a standard of service
- New services: makes possible a new service or increases convenience of an existing service.

Priority of Function (check all that apply)

- Protection of persons and property: police, fire, rescue, inspections, etc.
- Environmental health: water, sewer, sanitation, public health, etc.
- Heritage and cultural: education, libraries, etc.
- Housing: public housing, etc.
- Pedestrian and vehicular transportation: street construction and maintenance, parking, etc
- Recreation: parks, athletic programs, etc.
- General government: office facilities, central services, etc.

Projected Costs by Year

FY 2024	<input type="text" value="50000"/>	FY 2030	<input type="text"/>
FY 2025	<input type="text"/>	FY 2031	<input type="text"/>
FY 2026	<input type="text"/>	FY 2022	<input type="text"/>
FY 2027	<input type="text"/>	FY 2033	<input type="text"/>
FY 2028	<input type="text"/>	TOTAL	<input type="text"/>
FY 2029	<input type="text"/>		

Other Comments

DEPARTMENT: Maurice's Campground

REQUESTED BY: Town Administrator

Project Description & Objectives

Maurice Wastewater Planning

Project Need & Background

Town purchased Maurice's Campground with the vision of developing for affordable housing opportunities. This request will allow the planning team to utilize engineering and consulting services to evaluate existing infrastructure and plan for future wastewater needs associated with developing the site.

Priority # of Projects Submitted Priority # for Fiscal Year
2 3 1 2024

Degree of Urgency (check all that apply)

- Legislation: required by state or federal legislation or regulation
Hazard: removes an obvious or potential hazard to public health or safety
Efficiency: replaces equipment or facility that is obsolete, or would be too costly to repair or maintain and better utilizes existing standard of service
Standard of Service maintains or provides existing standard of service
Economic Advantage: directly benefits the Town's economic base by increasing property values or other revenue potential
Increased Service: expands or increases a service or improves a standard of service
New services: makes possible a new service or increases convenience of an existing service.

Priority of Function (check all that apply)

- Protection of persons and property: police, fire, rescue, inspections, etc.
Environmental health: water, sewer, sanitation, public health, etc.
Heritage and cultural: education, libraries, etc.
Housing: public housing, etc.
Pedestrian and vehicular transportation: street construction and maintenance, parking, etc
Recreation: parks, athletic programs, etc.
General government: office facilities, central services, etc.

Projected Costs by Year

Table with 2 columns: Year (FY 2024-2029, TOTAL) and Projected Cost (150000, empty boxes)

Other Comments

Empty text box for other comments

DEPARTMENT: Maurice's Campground

REQUESTED BY: Town Administrator

Project Description & Objectives

Eastham Municipal Water Main Extension

Project Need & Background

The Town purchased Maurice's campground in December of 2022 with limited water supply from their two production wells. In order to maximize the development on the site the Town should opt-in to connecting to the Eastham municipal water system. Eastham has endorsed the connection.

Priority # 1 of Projects Submitted 3 Priority # 1 for Fiscal Year 2024

Degree of Urgency (check all that apply)

- Legislation: required by state or federal legislation or regulation
Hazard: removes an obvious or potential hazard to public health or safety
Efficiency: replaces equipment or facility that is obsolete, or would be too costly to repair or maintain and better utilizes existing standard of service
Standard of Service maintains or provides existing standard of service
Economic Advantage: directly benefits the Town's economic base by increasing property values or other revenue potential
Increased Service: expands or increases a service or improves a standard of service
New services: makes possible a new service or increases convenience of an existing service.

Priority of Function (check all that apply)

- Protection of persons and property: police, fire, rescue, inspections, etc.
Environmental health: water, sewer, sanitation, public health, etc.
Heritage and cultural: education, libraries, etc.
Housing: public housing, etc.
Pedestrian and vehicular transportation: street construction and maintenance, parking, etc.
Recreation: parks, athletic programs, etc.
General government: office facilities, central services, etc.

Projected Costs by Year

Table with 2 columns for years (FY 2024-2029 and FY 2030-2033) and a TOTAL row. FY 2024 cost is 500000.

Other Comments

Empty text box for other comments.



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

VI

BUSINESS

~ C ~

REQUESTED BY:	Ryan Curley ~ Chair
DESIRED ACTION:	To review and amend the food establishment zoning bylaw amendments
PROPOSED MOTION:	I move to refer the food establishment zoning bylaw amendments as discussed tonight to town counsel for review and comment and to the Planning Board as a draft for comment.
SUMMARY:	
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____

Revised through 1/17/223 version 004

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 ~~Service~~ Establishment categories defined in this By-law, Bulk Storage, Motor Vehicle Repair or Sales Shop, or any other commercial use that involves more than 4,000 square feet of floor area of ~~new~~ commercial construction.

Food Establishment: Bakery - A commercial food service establishment primarily engaged in the retail sale of baked goods for off-site consumption. 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 sales of ice cream, frozen yogurt and/or similar products for consumption on or off the premises; provided, however, that this article 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 ~~are~~ provided with individual menus; (3) a restaurant employee serves the customers at the same table or counter where the meals are consumed; and (4) non-disposable dinnerware is used. ~~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.

Commented [CMM1]: Does the 4,000SF of new commercial construction apply to any commercial use or just those already listed?

Commented [RR2R1]: PB would like to know the answer to this question as well. Please Clarify

Commented [CMM3R1]: The Planning Board has repeated my question, which goes to what is the intent of this bylaw? To regulate just food establishments, bulk storage and motor vehicle repair or sales or ANY new commercial construction greater than 4,000SF?

Commented [CMM4]: Based on our discussion last week, I added this language to be clear any commercial use adding 4,000 SF of new construction triggers review under this bylaw. Please confirm this is consistent with what the Town wishes to regulate.

Commented [CMM5]: Must the bakery also prepare the goods on premises?

Commented [RR6R5]: PB voted unanimously to strike out this definition altogether and add it into take out food establishments definition

Commented [RR7]: PB Voted unanimously to add the word "primarily"

Commented [RR8]: PB voted unanimously to strike section 4 from the definition

Commented [RR9]: Carolyn, the PB would like you to review this sentence

Food Establishment: Take-Out Restaurant – A commercial food service establishment where (1) prepared 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; and (3) the customers pick up their orders either at a counter inside the building or at a walk-up window; and (3) food is prepared on site. 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.

Fast Food Restaurant – A food service establishment where (1) prepared pre-packaged and ready-to-eat meals food and beverages that are not cooked or prepared fresh on the premises are served and sold in disposable containers for consumption either on the premises or off the premises; (2) the menu and operation are designed for quick service; and (3) the customers pick up their orders either at a counter or walk-up window. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site.

Food Establishment: Fast Food Restaurant – A commercial food service establishment where (1) prepared food and beverages are sold in disposable containers for consumption either on the premises or off the premises; (2) the menu and operation are designed for quick service (3) the customers pick up their orders either at a counter or walk-up window; Or (4) serving pre-packaged and ready-to-eat meals and beverages that are not cooked or prepared fresh on the premises are served. For purposes of this definition, “prepared” does not include warming or re-heating food that was assembled off-site.

Food Establishment: Drive-through Facility – A service-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,

Commented [RR10]: PB voted unanimously to add the word "primarily"

Commented [CMM11]: We discussed ice cream shops where the ice cream is made off-site. Shall we exclude ice cream shops from this definition? Consider them to be retail? Or is it enough that an ice cream shop offers frappes and sundaes for sale food enough to be a take-out restaurant?

Commented [RR12]: Carolyn, PB would like you to review this sentence

Commented [CMM13R12]: Please clarify. I don't know what sentence you are referring to.

Commented [CMM14]: I recognize the different types of restaurants we are trying to regulate. Take out restaurants would include an ice cream shop, pizza/sub shop, clam shack, etc. However, if any of these uses add picnic tables or benches outside but on the premises, they could become Fast Food Restaurants, which are not allowed. Similarly, if McDonald's eliminated their dining room and only offered food to be eaten off-premises, they would fit the definition of Take-out Restaurant and be allowed in three districts.

Commented [RC15R14]: Added that food has been prepared on site.

Commented [RR16]: Carolyn - PB would like to know why we need two separate categories for full service and take out since they are in the same categories? Why can't we make it one category?

Commented [CMM17R16]: Full service if the overarching category, whereas Take Out is only for off-premises consumption, meaning no table service on site. In my opinion, they should be defined separately.

Commented [CMM18]: Should this say NOT cooked or prepared fresh on site to distinguish it from Take-Out restaurant?

Commented [CMM19]: This could apply to some Take-Out Restaurants, too, like a pizza or fish and chips shop.

Commented [RC20R19]: Maybe instead ready to eat meals/ premade? Other types prepare food to order, but what would constitute premade?

Commented [RR21]: Is there anything else we can write in this 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 [CMM22R21]: Fast Food includes consumption on or off premises, while Take Out is only off-premises. However, I 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, so are we prepared to not allow Take Out restaurants to offer picnic tables? Fast Food also includes the service of

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. <u>Commercial</u>	CD	R1	R2	NSP	C	C2
	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	<u>A</u>
<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>	<u>A</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>A</u>	
Restaurant, Indoor	A	O	O	O	A	O
Restaurant, Drive-In	O	O	O	O	A	O
Restaurant, Fast Food	O	O	O	O	O	O
Restaurant, Formula	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 ~~an~~ 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 Bulk Storage, Motor Vehicle Repair or Sales Shop.

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 to a level that will 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 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 or Other Commercial Developments involving more than 4,000 square feet of floor area

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 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;
whether the building incorporates a gabled roof;
whether the building proposes to use 6 over 6 or similar paned windows and doors;
- (2) exterior lighting uses gooseneck or similarly designed lighting;
- (3) use of permeable pavement or pavers for parking areas and walkways;

Commented [CMM23]: Since Bulk Storage and MV repairs and Sales is addressed above, I think the intent of this section is to establish design criteria for food service establishments and other commercial developments adding 4,000 SF or more. Or should this section only pertain to food establishments? Please confirm.

Commented [CMM24]: This is proposed exemption language we discussed last week, which can be modified if too broad or narrow.

- (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 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) When practical, whether parking is provided to the sides of the building and parking in the front of the building is minimized;
- ~~(11)~~ Whether customers place and pay for their own orders directly and electronically without the assistance of staff;
- ~~(12)~~(11) Whether the business model includes curbside pick-up or delivery of goods to patrons in their vehicles; and
- ~~(13)~~ Whether entrances are automatic or manual.
- ~~(14)~~(12) 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 to a level that will 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;

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

6.29.2.3 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

Commented [RR25]: PB voted unanimously to have Town Counsel and the SB look into having 6.29.4 a #1-16 to apply to only the CD District and overlay. Do we need to add both or just the CD since the overlay is within the CD district.

Commented [CMM26R25]: Is the above comment necessary if we exempt pre-existing nonconforming restaurants from strict compliance with these design criteria?

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.

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.](#)

Town Counsel Comments 10/25/2022

I recognize that you are using definitions I provided in a memorandum regarding Formula Restaurants back in May 2022, so the definitions are fine. However, the definition for "Food Service Establishment" was intended to be a broad, overarching category applicable to all types of restaurants, whether take-out, full-service or fast food. I recommend deleting "Food Service Establishment" from Section 5.3 Use Regulations because a "Fast Food Restaurant" (which is a prohibited use) could argue that it fits the definition of "Food Service Establishment" (which is permitted by SP in three zoning districts). In fact, you might delete the definition of "Food Service Establishment" unless that term is going to be used in a broader sense elsewhere in the Zoning Bylaw.

Commented [RC27]: Deleted but I used the term to organize the definitions after hearing some concerns expressed in a PB meeting so that they appear in order in the definitions together

I notice that both a "Food Service Establishment" and "Full-Service Restaurant" are expanded to be allowed by SP in the C2 zoning district, whereas indoor restaurants are not presently allowed in the C2 Zoning district.

You have also proposed a new Section 6.29 Development of Significant Impact, but a Section by that title already exists at Section 6.3.13 (unless this was renumbered by the recent recodification). Consider whether the two sections can be combined or Section 6.29 renamed to avoid confusion. Also, "Development of Significant Impact" is not defined, except under Section 6.3.13. Consider expanding the definition under Section 6.3.13 or adding a definition under the proposed zoning amendment to clarify that any Food Service Establishment and the various other uses in this amendment (Bulk Storage, MV Repair or Sales Shop) is considered a "Development of Significant Impact" and must comply with this Section.

Commented [RC28]: A number of restaurants operate within one section of C2 district as well as part of R2. It might be beneficial in the future to covert that portion of C2 to C. Made the correction

Commented [RC29]: 6.3.13 has to do with parking requirements, Retitled



Ryan Curley <ryan.d.curley@gmail.com>

**FW: KP-#844967-v1-
WELL_ZBL_DSPI_and_Food_Establishments_Amendments_w__RR_and_KP_comments_1_4_23_(003)**

Carolyn M. Murray <CMurray@k-plaw.com>

Tue, Jan 17, 2023 at 4:27 PM

To: Ryan Curley <ryan.d.curley@gmail.com>, Rebecca Roughley <Rebecca.Roughley@wellfleet-ma.gov>

Cc: Gerry Parent <geparent@yahoo.com>

All,

Attached is version 4 of the Development of Significant Planning Interest with edits to design criteria from Ryan and my proposed exemption language for pre-existing nonconforming food service establishments. The waiver language can be expanded or made more restrictive, as you see fit. I also tweaked the 4,000 SF of new commercial construction, since the consensus was that this bylaw would also apply to other commercial uses adding 4,000 SF of GFA, not just food establishments, bulk storage or MV repairs/sales.

Rebecca,

You also asked me to reiterate what was discussed on our call last week about pre-existing nonconforming restaurants. Any pre-existing nonconforming use, whether it is a restaurant or other commercial use, that seeks to expand or alter its operation would require a finding from the ZBA pursuant to G.L. Ch. 40A, Sec. 6, which is also styled a special permit from the ZBA pursuant to Section 235-6.1.A of the ZBL.

Let me know if you have any further questions.

Thank you,


Carolyn M. Murray, Esq.

KP | LAW

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[Quoted text hidden]

 **KP-#846683-v1-KP-WELL_ZBL_DSPI_and_Food_Establishments_Amendments_w_RC_and_KP_comments_1_17_23_(004).DOCX**
52K



TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667
Tel (508) 349-0300 www.wellfleet-ma.gov

To: Select Board and Carolyn M. Murray, Esq.

From: Rebecca Roughley on behalf of the Planning Board

Date: December 7, 2022

Re: Response to Restaurant Definitions

The Wellfleet Planning Board held a meeting on December 7, 2022, and discussed the restaurant definitions within the Developments of Significant Interest and Food Establishments.

The attached version has purple line comments and comments in my name that represent the Planning Board's comments/concerns.

I have labeled this version (003). In order to keep track of the back-and-forth changes, please label the versions accordingly as you or your Board make changes.

Under Section 6.29A, what is triggering **Development of Significant Planning Interest: Any of the Food Establishment categories defined in this By-law, Bulk Storage, Motor Vehicle Repair or Sales Shop**, or involve more than 4,000 square feet of floor area of commercial construction?

The definition above is not clarifying enough to the owner. What is triggering a special permit if it's a pre-existing non-conforming use? If a business tears down their building and rebuilds in the same footprint, do they need to abide by this bylaw? If an owner goes outside the footprint by putting on an addition, do they need to abide by this bylaw? The Planning Board would like clarity on who this bylaw applies to, particularly pre-existing non-conforming and conforming situations. The Planning Board shares the same question as Town Counsel's in that does it apply to any commercial use or just the ones listed?

The Planning Board will defer discussions on Intensity of Use of Multi-Family Dwellings, ADU Bylaws 2022 Changes on Penalty, and the tree bylaw to the next meeting on January 4, 2023.

If any clarification is needed regarding the draft bylaw, or this memo, feel free to reach out to me to discuss further and/or relay information to the Planning Board.

Respectfully,
Rebecca Roughley

Carolyn M. Murray
cmurray@k-plaw.com

MEMORANDUM

TO: Ryan Curley, Selectboard Chair
(ryan.d.curley@gmail.com)

cc: Charles Sumner, Interim Town Administrator
(Charles.sumner@wellfleet-ma.gov)

Rebecca Roughley, Assistant Town Administrator
(Rebecca.roughley@wellfleet-ma.gov)

FROM: Carolyn M. Murray, Town Counsel

DATE: May 31, 2022

RE: FORMULA RESTAURANT ZONING ISSUES - WELLFLEET

You have asked me to review the Town of Wellfleet’s current Zoning Bylaw (“ZBL”) provisions governing Fast Food and Formula Restaurants, in order to determine whether they are vulnerable to potential legal challenge. If so, you have asked for suggestions as to appropriate Bylaw amendments. As will be discussed below, it is my opinion that the ZBL Section 6.29 prohibition against Formula Restaurants is vulnerable to the same legal challenges that resulted in the invalidation of the Town’s Formula Business regulations. It is my opinion, moreover that the Town’s Zoning Bylaw already provides many of the zoning tools necessary to lawfully achieve the purposes described in Section 6.29. Therefore, I recommend that that the Town repeal Section 6.29, rather than amend it, or adopt an alternative formula based bylaw.

Background and Analysis

The Bylaw

The Town of Wellfleet currently prohibits Fast Food Restaurants and Formula Restaurants in all Zoning Districts of the Town, while allowing Drive-in Restaurants by special permit in the Commercial District, and [indoor] Restaurants by special permit in both the Commercial and Central Districts. See ZBL Section 6.29, and Section 5.3.

ZBL Section 6.29, entitled Fast Food & Formula Restaurant Prohibition, states:

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. [Emphasis added.]

Section 6.29 also states that the prohibition is consistent with the policy direction of the Town's Comprehensive Plan, the Cape Cod Commission Act, and the enabling act of the Cape Cod National Seashore.

The term "Formula Restaurant" is defined in ZBL Section 2 as:

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 or phrase, symbol, design or logo, or a combination of words, phrases, symbols, design, and/or architecture, façade, or color scheme that identifies the restaurant as one (1) of twenty-five (25) or more other restaurants worldwide. [Emphasis added.]

Related Legal Challenge

The Town's adoption of the Fast Food and Formula Based Restaurant prohibition in 2011 was contemporaneous with its adoption of ZBL Section 6.30, which required a special permit for the use of any structure by a "Formula Business." The term "Formula Business" was defined with substantially the same language as used in the above-quoted definition of "Formula Based Restaurant," describing the use as a:

retail trade business which does or is required by contractual or other arrangement or as a franchise to maintain any of the following features: Standardized (formula) array of merchandise, exterior trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols, designs, and/or architecture, façade that identifies the business as one (1) of twenty-five (25) or more businesses worldwide. [Emphasis added.]

The stated purpose and intent of Section 6.30 were also essentially the same as set forth in Section 6.29 of the Bylaw relative to the prohibition of fast food and formula restaurants.

The Massachusetts Attorney General approved the Section 6.29 and the Section 6.30 provisions in 2011, but warned the Town about applying these bylaws to protect locally owned and operated businesses from competition, and about regulating features that may

not be reasonably related to the stated purposes of these sections.¹ The Attorney General's letter noted, for example, that features such as standardized menus or a standardized array of merchandise, could not reasonably be expected to impact the visual quality of a neighborhood. As there were no appellate decisions concerning the validity of formula-based zoning regulations, the Attorney General's approval letter advised that it expressed no view on how a Massachusetts Court might resolve a challenge to the new bylaws based upon a full factual record. However, recognizing the principal that all presumptions are to be made in favor of the validity of municipal bylaws, the Attorney General approved Sections 6.29 and 6.30.²

The following year, Cumberland Farms filed a complaint in Land Court, Cumberland Farms, Inc. v. Board of Appeals of the Town of Wellfleet and the Town of Wellfleet, MISC 12-459503, challenging the validity of the Section 6.30 Formula Business provisions, both facially and as applied to the Cumberland Farms operation. Following a trial, the Land Court issued a decision in 2015, invalidating the Formula Business regulations 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.

The Land Court Judge determined that Wellfleet's Formula Business regulations violated the uniformity requirements of the Zoning Act by regulating businesses based on ownership rather than use. He criticized the Formula Business bylaw as:

draw[ing] a sharp distinction between similarly-situated landowners – for example, a hypothetical 'Wellfleet Convenience Mart' and a Cumberland Farms convenience store, both carrying identical inventory and operating in the identical way – with only the Cumberland Farms required to make the numerous showings necessary for the Formula Business special permit before it can open its doors. All that is needed to trigger the bylaw is the name on the exterior sign, regardless of its size or style.

In response to the Town's argument that the Section 6.30 Formula Business regulations were consistent with the Town's zoning authority to protect the aesthetics of a small New England town from the more standardized appearance associated with Formula Businesses, the Court observed that there are other ways of achieving such a goal, such as through design regulations. Moreover, the Land Court Judge observed that Section 6.30 regulated more than aesthetics, although there had been no evidence presented to demonstrate that Formula Businesses generate greater or different adverse impacts from traffic, garbage, noise, glare, obstruction of scenic views, or other such factors than non-formula businesses. In addition, he found that the Formula Business provisions that did

¹ Between 2008 and 2011, a number of other communities in Massachusetts adopted similar, formula-based business zoning regulations – all apparently adapted from the same set of model regulations. During that period, the Attorney General approved most of the formula-based business regulations with the same warnings that were given to Wellfleet.

² The Attorney General approved Section 6.30 with the deletion of two special permit criteria considered overly vague.

address aesthetics (such as requiring a special permit finding that the Formula Business “will not substantially alter or detract from the established character of the location”) were so vague and ambiguous that they left the Planning Board with “untrammelled discretion.”

The Town did not appeal the 2015 Land Court decision invalidating Section 6.30. Instead, the Town repealed the Formula Business regulations. However, the Section 6.29 prohibition of Formula and Fast Food Restaurants has never been repealed and remains in effect. Since there have been no controlling Massachusetts appellate decisions on this topic, the Land Court decision applies only to Wellfleet’s Section 6.30 regulations. Nevertheless, as will be explained below, it is my opinion that Section 6.29 suffers from the same uniformity issues that resulted in the invalidation of Section 6.30. That is, it regulates restaurants based on factors related to the owner’s identity, rather than on actual “use.”

Analysis of Section 6.29 following Cumberland Farms

A “Restaurant” use is allowed by special permit in the Commercial and Central Zoning Districts. The term “Restaurant” is defined in Section 2.1 of the Bylaw as:

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 on issuance of a Special Permit. [Emphasis added.]

However, pursuant to Section 6.29, a building or premises used for meal preparation, sale and consumption, (i.e., a restaurant use that would otherwise be allowed by special permit) is prohibited if it “*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 or phrase, symbol, design or logo, or a combination of words, phrases, symbols, design, and/or architecture, façade, or color scheme that identifies the restaurant as one (1) of twenty-five (25) or more other restaurants worldwide.*”

Given that the definitions and express purposes of the Formula Restaurant regulations mirror the definitions and purposes the invalidated Formula Business regulations, it is my opinion that Section 6.29 is equally vulnerable to legal challenge. In order to successfully defend a legal challenge to the validity of a bylaw that distinguishes between restaurants that are owned and operated as part of a large restaurant chain (Formula Restaurants), and restaurants that are either individually owned and operated, or operated as part of a smaller chain, the Town would have the burden of demonstrating that Formula Restaurants generate substantially greater adverse impacts from “noise, litter, traffic, and aesthetically inappropriate development,” than non-formula restaurants do. In other words, the Town would have to produce clear and convincing evidence that a restaurant operated as a “Chili’s,” for example, would, by virtue of its standardized menu, color scheme, and/or distinctive logo, generate substantially greater adverse health or safety impacts than a non-formula restaurant with similar size, hours, food preparation and service methods. With respect to any adverse aesthetic impacts, the Town would

have to show that building, signage and other design features of a Formula Restaurant cannot be regulated adequately either through the same special permit regulations and procedures that apply to all other restaurants in the Town, or by enacting design regulations applicable to all restaurant uses in a district. Moreover, the Town would have to demonstrate that regulation of interior elements, such as color schemes or standardized menus, bears a rational relationship to the aesthetic goals articulated in Section 6.29.

For these reasons, it is my opinion that Section 6.29 would suffer the same fate as Section 6.30, if challenged in court. As will be discussed below, however, it is my opinion that the Town can readily avoid violation of the uniformity clause, and still achieve the stated purposes of Section 6.29, by employing other, already existing Zoning Bylaw provisions in lieu of retaining or amending the Section 6.29 prohibition of Formula Restaurants.

In my opinion, the Section 6.29 prohibition of all Fast Food restaurants does not necessarily present the same legal issues as the Section 6.29 prohibition of Formula Restaurants. This is because of the distinct operational differences between restaurants where food is served primarily for consumption by patrons at tables on the premises, and restaurants where food is sold primarily for consumption off premises or in vehicles. Such distinct operational differences are more likely to generate different neighborhood impacts, and thus justify treating the two types of restaurants as two different use categories. Nevertheless, I am concerned that the Wellfleet Zoning Bylaw definitions of “Fast Food Restaurant” and “Drive-in Restaurant” are too similar to each other to provide a reasonable basis for prohibiting one entirely, while allowing the other by special permit.

The term “Fast Food Restaurant” is defined in Section 2.1 as:

A restaurant with drive-up window service, or otherwise receives payment and/or dispenses products to patrons while in their vehicles. [Emphasis added.]

Section 2.1 defines the term “Drive-in Restaurant” as:

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. [Emphasis added.]

Notably, the definition of “Drive-In Restaurant” is silent on whether the nourishment and refreshment offered for sale are dispensed to patrons “while they are in their vehicles;” nor does the definition of “Fast Food Restaurant” specify whether the products it dispenses “are intended to be consumed on or off the premises.” Unless the definitions are amended to better distinguish between these two types of uses, enforcement of the Fast Food Restaurant prohibition may prove difficult.

Regulation of Formula Businesses and Restaurants Post Cumberland Farms.

Since 2015, several Massachusetts towns have attempted to modify their formula-based zoning regulations in order to avoid some of the problems articulated in the Cumberland

Farms ruling. In all but one instance, these amendments were approved by the Attorney General, with the warning that the bylaws as amended were still similar to the Wellfleet regulations invalidated in the Cumberland Farms decision where no evidence was presented to justify the different treatment of formula businesses. The amendments were approved only "because we cannot conclude that the amendments...are clearly inconsistent with state law."

The Town of Concord's 2011 and 2019 amendments to its formula business regulations were approved without the same warnings that were given to the other towns. Although recognizing that Concord's regulations were similar in many respects to the regulations struck down in the Cumberland Farms decision, the Attorney General's Office determined that Concord's regulations differ from Wellfleet's in important aspects that could serve as a basis for a court to conclude that Concord is not singling out businesses for additional regulation based on the ownership of the business, but rather based on lawful zoning considerations. The Attorney General described those aspects as: (1) that the Concord regulations apply to a limited geographical area, recognized under G.L. c.10, 58A as a "State designated cultural district;" (2) that the regulations allow for a business to change its activities so that it no longer qualifies as a formula business, and (3) that Concord's definition of "Formula Business" focuses on standardized features "regardless of ownership."³ Based on these differences, and given the limited scope of the Attorney General's zoning review authority, the Attorney General's Office "[could] not conclude that [the amendments are] inconsistent with state law or the Land Court's decision in Cumberland Farms."⁴

Overall, it is my opinion that, notwithstanding the Attorney General's approvals, these formula-based bylaws are still vulnerable to legal challenge on the same grounds that Wellfleet's Section 6.30 was invalidated. As noted above, it appears that the all of the formula-based zoning bylaws adopted by the various Massachusetts towns have been adapted from the same model.

Recommendations

Having reviewed the Cumberland Farms decision, as well as the Attorney General's assessment of the numerous formula business zoning bylaws adopted and amended by Massachusetts towns in the past 15 years, it is my strong recommendation that the Town repeal the Section 6.29 prohibition of "Formula Restaurants," as well the Section 2 definition. Nevertheless, it is my opinion that the Town may lawfully accomplish the purposes and intent of that prohibition through already existing provisions in the Wellfleet Zoning Bylaw. More specifically, I note that Wellfleet does not allow *any* restaurants or other business uses in any of the zoning districts, except by special permit. See ZBL Section 5.3.2. Therefore, any proposed restaurant or other business use is

³ In fact, the standards employed by Concord are very similar to those in other Formula Business bylaws, including Wellfleet's Section 6.29, except that the list of standards is modified by the phrase "regardless of ownership."

⁴ It should be noted, however, that the Attorney General's approval was based on her limited scope of determining whether a bylaw is inconsistent with state law or a permissible exercise of a town's zoning power and does not extend to whether the bylaw could withstand a legal challenge on other grounds.

necessarily subject to the requirements and criteria set forth in Section 8.4.2 of the Bylaw. Section 8.4.2 provides in relevant part that a special permit may not be granted:

“ unless the special permit granting authority finds that the benefits of the proposal to the town will outweigh any adverse effects on the Town of [sic] the vicinity, taking into consideration the stated district objectives (Sec. 3.2) and, where germane, the following matters:

8.4.2.1 Suitability of the proposed location for this proposal, taking the following into consideration.

- (a) Nearby land uses, and whether they would be supported or damaged by having the proposed use nearby.
- (b) Uses of the site which would be displaced by or preempted by this use.
- (c) Adequacy of roads, drainage, and other public services in relation to the location.
- (d) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from a proposal such as this....

8.4.2.2 Activity type, mix, and intensity, taking the following into consideration.

- (a) Whether the proposal contributes to the diversity of services ... locally.
- (b) Seasonal consequences, including addition to peak period congestion.
- (c) Service to local,⁵ in preference to regional, markets and to year-round, in preference to seasonal, activities.
- (d) For business developments, likelihood of year-round employment opportunities.

...

8.4.2.3 Building and site design, including consideration of the following.

- (a) Whether scenic views from public ways and developed properties have been considerably treated.
- (b) Whether reasonable efforts have been made to minimize visibility of parking and service areas from public streets.
- (c) Whether traditional public access to or along the shoreline has been maintained.”

In my opinion, the Town can readily address many of the safety and aesthetic concerns stated in Section 6.29 as reasons for prohibiting Formula Restaurants, through application of the detailed special permit considerations set out in Section 8.4.2, in conjunction with application of the Bylaw’s Section 6 landscaping requirements and Section 7 sign regulations. I recommend, however, that the Town consider strengthening these existing tools by amending Section 6.3.15 to add specific landscape, lighting, and building design

⁵ The local preference consideration may be problematic, in that such a preference may be vulnerable to challenge under the Interstate Commerce Clause of the U. S. Constitution. I certainly recommend that local preference never be used as a primary consideration for denying a special permit.

standards for all restaurants and other businesses that qualify as “Developments of Significant Impact.”

Pursuant to Section 6.3.15, any use that is subject to a special permit and which involves required parking for ten or more cars, or involves new construction of more than 4,000 s.f. of floor area, or any use in the Main Street Overlay District, regardless of floor area or number of parking spaces, is considered to be a “Development of Significant Impact.” Section 6.3.1.5 spells out certain information that must be included with a special permit application for such a Development. I recommend adding detailed site and building design standards to Section 6.3.1.5 that will apply to all restaurants, retail establishments, and/or other businesses that qualify as Developments of Significant Impact.⁶ Doing so, should assist the Zoning Board of Appeals in its review of the special permit applications for these uses, and allow for more defensible decision-making. Ultimately, it is my opinion that adoption of carefully considered design standards for all restaurants, and/or all retail businesses, etc. will help the Town to avoid many of the more objectionable features attributable to chain business establishments, without conflicting with the Chapter 40A uniformity requirements. The Town might consider the Cape Cod Commission design guidelines for further recommendations or even incorporate said design guidelines by reference in the ZBL.

Finally, I have drafted proposed definitions for your consideration to address my concerns raised above:

Food Service Establishment – a commercial establishment whose primary business is the sale of food in individual portions to be consumed either on the premises or off the premises.

Full-Service Restaurant – A food service establishment where (1) meals are prepared to order and are served primarily for consumption on the premises, either indoors or outdoors; (2) customers are provided with individual menus; (3) a restaurant employee serves the customers at the same table or counter where the meals are consumed; and (4) non-disposable dinnerware is used. A Full Service Restaurant operation may include ancillary delivery service and/or take-out service, but may not include a drive-through facility.

Take-Out Restaurant – A food service establishment where (1) prepared food and beverages are sold in disposable containers for off-premise consumption only; and (2) the customers pick up their orders either at a counter inside the building, or at a walk up window. A Take-Out Restaurant operation may include ancillary delivery service, but may not include a Drive-through facility.

Fast Food Restaurant – A food service establishment where (1) prepared food and beverages are sold in disposable containers for consumption either on the premises or off the premises; (2) the menu and operation are designed for quick service; and (3) the customers pick up their orders either at a counter or walk-up window, or by using a Drive-through facility.

⁶ Consider adopting standards similar to those set out in Section 2 for the Commercial 2 District.

Drive-through Facility – A service 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. (*This type of facility would be prohibited entirely.*)

Please let me know if you require further assistance concerning this matter.

816307/WELL/0001



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

VII

SELECTBOARD REPORTS:

Reported by:	Topic:



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

VIII

TOPICS FOR FUTURE DISCUSSION

- **The Selectboard will discuss a list of current items that are outstanding**



SELECTBOARD

AGENDA ACTION REQUEST
Meeting Date: January 24, 2023

IX

ADJOURNMENT

REQUESTED BY:	Selectboard Chair Ryan Curley
DESIRED ACTION:	To Adjourn
PROPOSED MOTION:	I move to Adjourn
ACTION TAKEN:	Moved By: _____ Seconded By: _____ Condition(s):
VOTED:	Yea _____ Nay _____ Abstain _____