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Town Manager

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TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

SELECTBOARD'S MEETING AGENDA

MONDAY, OCTOBER 15, 2018

6:30 PM EXECUTIVE SESSION JOINT MEETING WITH THE ZBA

7:00 PM – REGULAR SESSION

TOWN HALL, 334 MAIN STREET

ORDER OF AGENDA

6:30 PM - OPEN MEETING

1. CALL TO ORDER:

6:30 pm Open Session

6:30 pm Conference Room

CONVENE INTO EXECUTIVE SESSION and Return to Open Session - Town Manager's Conference Room

A. Executive Session under MGL c.30A, §21(a)(3) and (6), to discuss litigation strategy relating to pending litigation known as (1) Belanger v. Zoning Board of Appeals, Berkshire Superior Court, C.A. No. 1876CV00134; (2) GJO, LLC v. Zoning Board of Appeals, et al., Land Court Docket No. 2018MISC000240; and (3) GJO, LLC v. Ronald Majdalany et al, Land Court Docket No. 18MISC000240 (KCL); and (4) Town of Great Barrington v. GJO LLC, So. Berkshire District Court Docket No. 1829C1000008, if the Chair declares that an open meeting may have a detrimental effect on the Town's litigating and/or negotiating position. A vote regarding whether to go into executive session is expected; and votes may occur during the executive session.

Roll Call Vote

Chair's Declaration:

I declare, under MG.L. c.30A, §21(a)(3) and (6), that the purpose of the executive session will be to discuss litigation strategy regarding pending litigation concerning 11 Roger Road known as: (1) Belanger v. Zoning Board of Appeals, Berkshire Superior Court, C.A. No. 1876CV00134; and (2) GJO, LLC v. Zoning Board of Appeals, et al., Land Court Docket No. 18MISC000240; (3) GJO, LLC v. Ronald Majdalany et al, Land Court Docket No. 18MISC000240 (KCL); and (4) Town of Great Barrington v. GJO LLC, So. Berkshire District Court Docket No. 1829C1000008 because

discussions of the foregoing in open session could have a detrimental effect on the litigating and/or negotiating position of the Town and to **Return To Open Session** at the conclusion of the executive session.

Motion Convening the Executive Session:

I move that the Selectboard go into executive session under M.G.L. c.30A, §21(a)(3) and (6) for the purposes and reasons declared by the Chair and with the Board to **Return to Open Session** at the conclusion of the Executive Session.

Roll Call Vote:

OPEN SESSION:

7:00 PM - OPEN MEETING

1. CALL TO ORDER:

2. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:

A. General Comments by the Board.

3. TOWN MANAGER'S REPORT:

A. Department Updates/DPW

- Transfer Station Presentation.

B. Project/Issues Updates

- Update on DEP's Enforcement of Housatonic Water Works Company.

- Update on Bids for Electrical Aggregation.

- Adding Fee for Electrical Management.

- Update on Water Bottle Ban.

4. PUBLIC HEARINGS:

A. Application of Berkshire Cooperative Association, Inc. d/b/a Berkshire Co-Op Market, Daniel Esko, Manager for a New Package Store Beer and Wine Liquor License at 42 Bridge Street, Great Barrington, MA. The premises consist of a supermarket area, four bathrooms, a café seating area and two means of entrance/exit. (Discussion/Vote)

a. Motion – Continue Public Hearing to SB November 26, 2018, meeting.

B. Special Permit Application of 26 Manville, LLC, PO Box 628, Great Barrington, for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase Impervious area of a lot by more than 15% or 2,500 square feet. Proposed impervious surfaces are in connection with a proposed development of 47 apartments in three new buildings, and associated parking, driveway and site work, at the site comprised of **21 Manville Street, 26 Manville Street, and 28 Manville Street.** (Discussion/Vote)

a. Open Public Hearing

b. Explanation of Project

c. Speak in Favor/Opposition

d. Motion to Close Public Hearing

e. Motion re: Findings

f. Motion re: Approval/Denial/Table

- C. Special Permit Application from Jeffrey Taylor on behalf of H&H Capital Enterprises LLC, to convert an existing three-family residence at **137 Bridge Street**, permitted by Special Permit #861-16, to a four-family residence, in accordance with Sections 3.1.4 A(3), 8.3 and 10.4 of the Great Barrington Zoning Bylaw. (Discussion/Vote)
 - a. Open Public Hearing
 - b. Explanation of Project
 - c. Speak in Favor/Opposition
 - d. Motion to Close Public Hearing
 - e. Motion re: Findings
 - f. Motion re: Approval/Denial/Table
- D. Special permit application from Benjamin Wohlfert, PO Box 1347, Canaan, CT, for work in a floodplain at **121 Bridge Street**, Great Barrington, in accordance with Sections 9.1 and 10.4 of the Great Barrington Zoning Bylaw. Proposed work is within the 100-year flood plain of the Housatonic River, and consists of demolition of the existing single family home and construction of a new single family home. (Discussion/Vote)
 - a. Open Public Hearing
 - b. Explanation of Project
 - c. Speak in Favor/Opposition
 - d. Motion to Close Public Hearing
 - e. Motion re: Findings
 - f. Motion re: Approval/Denial/Table
- E. Application of Fiddleheads Grille Inc. d/b/a Fiddleheads Grille, David Michael Pullaro, Manager for a new Common Victualler All Alcoholic Restaurant Liquor License at 999 Main Street, Great Barrington, MA 01230 to include seasonal seating on the deck up to 16 and in the outdoor gazebo up to 44. (Discussion/Vote)
 - a. Open Public Hearing
 - b. Explanation of Project
 - c. Speak in Favor/Opposition
 - d. Motion to Close Public Hearing
 - e. Motion re: Findings
 - f. Motion re: Approval/Denial/Table

5. LICENSES OR PERMITS:

- A. Robert F. Avery, Jr./Blessed Teresa of Calcutta –Diocese of Springfield for One Day Beer and Wine Liquor Licenses for Friday, November 2, 2018 from 5:00 pm – 11:00 pm at St. Peter Parish Center, East and Cottage Streets, Great Barrington. (Discussion/Vote)

6. OLD BUSINESS:

- A. SB - To Consider Revision of Local Policy regarding the number of Beer and Wine Package Store Liquor Licenses. (Discussion/Vote) **Continue to SB November 26, 2018** meeting.

7. NEW BUSINESS:

- A. SB and Board of Library Trustees – Joint Appointment of Two (2) Library Trustees. (Discussion) **(Roll Call Vote)**
- B. SB – Appointment of Planning Board Associate member. (Discussion/Vote)
- C. SB (Chair and Vice Chair) – Recommendation of Consultant for the Town Manager Search. (Discussion/Vote)

8. CITIZEN SPEAK TIME:

9. SELECTBOARD'S TIME:

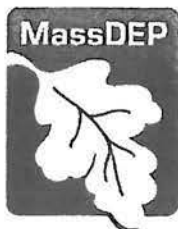
10. MEDIA TIME:

11. ADJOURNMENT:

NEXT SELECTBOARD'S MEETINGS: SPECIAL - Tuesday, October 23, 2018, 7:00 PM
REGULAR - Monday, October 29, 2018, 7:00 PM


Jennifer Tabakin, Town Manager

Pursuant to MGL. 7c. 30A sec. 20 (f), after notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium. At the beginning of the meeting, the chair shall inform other attendees of any such recordings. Any member of the public wishing to speak at the meeting must receive permission of the chair. The listings of agenda items are those reasonably anticipated by the chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

August 10, 2018

Mr. James Mercer
Housatonic Water Works
80 Maple Street, Suite 1
Great Barrington, MA 01230

Re: Great Barrington - DWP
Housatonic Water Works
PWS ID# 1113003
Unilateral Order #00004151

Dear Mr. Mercer:

The Massachusetts Department of Environmental Protection's ("MassDEP") has determined that your water system is in noncompliance with various requirements of the Drinking Water Regulations and that immediate action is necessary to address that noncompliance.

If you fail to take any action set forth in this Order by the prescribed deadline, or if you otherwise fail to comply with the requirements of this Order, you could be subject to legal action, as described in this Order.

Pursuant to M.G.L. c. 111, § 160, MassDEP may issue such orders as it deems necessary to ensure delivery of fit and pure drinking water to all consumers. MassDEP reserves its rights to exercise this authority, if it determines that additional actions not required by this Order are necessary to ensure that the water provided to consumers is fit for human consumption.

If you have any questions regarding this matter, please contact Deirdre Doherty at 413-755-2148 or Deirdre.Doherty@state.ma.us.

Respectfully,

Brian D. Harrington
Deputy Regional Director
Bureau of Water Resources

Encl.: Unilateral Order #00004151

cc: DEP DWP-Boston
DEP DWP WERO

Certified Mail Return Receipt #7017 0660 0000 1536 4338

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This information is available in alternate format. Call the MassDEP Diversity Office at 617-556-1139. TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

**Housatonic Water Works
Company**

**UNILATERAL
ADMINISTRATIVE ORDER**

File # 00004151

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection ("MassDEP" or "the Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7. MassDEP has its principal office located at One Winter Street, Boston, Massachusetts 02108, and its Western Regional Office at 436 Dwight Street, Springfield, Massachusetts 01103.
2. Housatonic Water Works Company ("PWS") is a company with its principal offices located at 80 Maple Avenue, Great Barrington, Massachusetts, 01230. Housatonic owns and operates a community public water system, which is a type of Public Water System, as defined in 310 CMR 22.02, in Great Barrington, Massachusetts.¹ Housatonic Water Works' mailing address is also 80 Maple Avenue, Great Barrington, Massachusetts, 01230.

II. STATEMENT OF FACTS AND LAW

3. The Department is charged with administration and enforcement of the requirements of the Federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq. and the regulations promulgated thereunder by the United States Environmental Protection Agency ("EPA"). MassDEP implements and enforces statutes and regulations of the Commonwealth of Massachusetts for the protection of the public drinking water supply, including, without limitation, M.G.L. c. 111, § 5G and § 160, M.G.L. c. 25G § 15, and 310 CMR 22.00 ("the Massachusetts Drinking Water Regulations").

The Massachusetts Drinking Water Regulations apply to all Public Water Systems in the Commonwealth. The regulations define a Public Water System as "a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year." A Public Water System includes: "any collection,

¹ A Supplier of Water is considered: (i) a Community Water System if it has 15 or more service connections used by year-round residents and/or regularly serves 25 or more year-round residents; (ii) a Non-transient Non-community water system if it has 15 or more service connections and/or regularly serves 25 or more of the same persons approximately four or more hours per day, four or more days per week, more than six months or 180 days per year; or (iii) a Transient Non-community Water System if it has 15 or more service connections and/or serves water to 25 or more different persons at least 60 days of the year.

treatment, storage, and distribution facilities under control of the operator of such a system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.”

The Department’s authority to issue this Unilateral Administrative Order (“Order”) and to set deadlines for compliance are conferred by the foregoing and by M.G.L. c. 111, § 2C.

4. The following facts have led to the issuance of this Order:
 - A. PWS owns and operates a Community Public Water System serving approximately 1,400 people in the Great Barrington village of Housatonic. The PWS is supplied by a single surface water reservoir subject to the requirements of the Surface Water Treatment Rule (SWTR). A filtration and disinfection system originally constructed in 1939 and upgraded in 1997 provides treatment of the reservoir at a level requiring continuous operation unless MassDEP issues an exemption from this requirement based on system controls and automation. MassDEP conducts inspections to assess PWS’s compliance with the SWTR.
 - B. Within a May 9, 2016 Administrative Consent Order (ACOP-WE-15-5D012), PWS agreed to make improvements in operation and to install modifications to achieve more consistent and reliable compliance with the Surface Water Treatment Rule (SWTR), including PWS chlorine disinfection treatment operation, chlorine measurements and calculating and reporting SWTR contact time inactivation (CT).

The Order specifically required PWS to use accurate and appropriate data in determining compliance with the Surface Water Treatment Rule disinfection treatment requirements including: treated water pH values, treated water temperature readings, minimum chlorine residual prior to first customer at time of peak hourly flow and to use the above information and the appropriate disinfection tables to document adequate disinfection through the submittal of the required monthly treatment forms.
 - C. Currently, PWS’ water from the chlorine contact basin flows back to the water filter plant where it can either flow to the distribution system or be pumped to the storage tank. Under this configuration only the contact time within the contact basin can be applied to CT compliance calculations.
 - D. On August 31, 2017, PWS submitted a WS25 Treatment Plant Modifications permit application. Piping modifications were proposed to allow the PWS to withdraw the unrestricted flow rate of its high lift pump through the contact basin plus the additional contact time which can be provided by the 1.0 MG water storage tank to determine SWTR CT compliance.
 - E. MassDEP issued a Conditional Approval dated November 15, 2017 and required accurate CT calculations and appropriate chlorine analyzers for measurements in its conditions.

- F. PWS submitted the proposed equipment required in the above November 15, 2017 Conditional Approval on June 18, 2018 within a WS34 Chemical Addition Permit Application for corrosion control treatment.
- G. During July and August 2018, PWS customers complained of extended periods of discolored water and odors, including but not limited to strong chlorine odors ("pool like") in the water followed by periods of "pond like" odors.
- H. During this time, MassDEP continued to receive complaints and to have regular communications with the PWS.
- I. During this time, reports of water quality indicate the drinking water quality did not meet the secondary drinking water requirements associated with aesthetics and odor.
- J. All routine bacteria samples collected on July 24th and prior to that have been free of bacteria.
- K. The PWS conducted additional bacteria sampling in the system at 3 locations in the distribution system on 7/31/18 and all results were free of bacteria.
- L. On August 3, 2018, MassDEP directed the system to conduct additional sampling in the area of disruption by no later than August 6th. The additional sampling required was (1) Field analyses for: pH, Chlorine residual, Turbidity and (2) lab analyses for Total Dissolved Solids, Color, Iron, Manganese, and Alkalinity. The owner identified sample locations acceptable to MassDEP and collected the samples for analysis. The results are expected to assist MassDEP in further understanding the system and any potential water quality issues.
- M. MassDEP's August 3, 2018 sampling requirements provide that the sampling requirements must continue every 2 weeks until further direction is provided by MassDEP.
- N. On August 9, 2018, two Engineers from MassDEP met with the PWS and reviewed the PWS operations. MassDEP staff observed the following:
 - a. The water was warm; the operator reported July water as warm: 23°C to 28.7°C (84°F).
 - b. The operator failed to maintain PWS' chlorine analyzer in accordance with manufacturer standards, specifically, the analyzer was not receiving consistent flow. The analyzer was receiving slugs and therefore PWS' chlorine analyzer was not providing accurate readings of the water treatment operations. The equipment was not maintained in accordance with 310 CMR 22.20A.
 - c. The current operation allows for water to enter the distribution system either by going through the storage tank or directly from the water filter plant. Water entering

- S. The PWS has conducted directional flushing of the PWS distribution system including August 1, 2018 through August 8, 2018.
5. The foregoing facts constitute violations of the following statutes and regulations
- A. Massachusetts Drinking Water Regulation 310 CMR 22.20A(5)(a) states in part: "Only the analytical method(s) specified in 310 CMR 22.20A(5)(a), or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of 310 CMR 22.20A(2), 310 CMR 22.20A(3), and 310 CMR 22.20A(4). Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a certified operator...2. Public Water Systems must measure Residual Disinfectant Concentrations with one of the following methods in the following table. Residual Disinfectant Concentrations for free chlorine and combined chlorine also may be measured by using digital meter versions of DPD colorimetric test kits. Suppliers serving less than or equal to 3,300 persons may use non-digital meter DPD colorimetric test kits. Free chlorine and total chlorine may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the Department."
- B. Massachusetts Drinking Water Regulation 310 CMR 22.03(1) states "No source of water used by a Public Water System, no system of water supply used by a Public Water System, and no treatment facilities or treatment works used by a Public Water System shall be deemed by the Department to be safe, fit, or pure, or in any other way approved; and no Supplier of Water, or other Person subject to a requirement of 310 CMR 22.00 shall supply drinking water to the users of a Public Water System, including without limitation for emergency use; unless that Public Water System complies with 310 CMR 22.00. In the event of a violation of 310 CMR 22.00, the Department may establish a schedule for compliance within an administrative consent order or other enforceable document that may include interim measures that the Supplier of Water must take. It shall be a violation of 310 CMR 22.00 to fail to comply with:
- (a) any provision or requirement of 310 CMR 22.00;
 - (b) a schedule for compliance, including any interim measures required by the Department in an administrative consent order or other enforceable document; or
 - (c) any term or condition of a permit, written approval, registration, certification or order issued by the Department pursuant to M.G.L. c. 111, § 160 or 310 CMR 22.00."
- C. Massachusetts Drinking Water Regulation 310 CMR 22.04(7) states "Each Supplier of Water shall operate and maintain its system in a manner that ensures the delivery of safe drinking water to consumers. In determining whether a Supplier of Water is properly operating and maintaining a Public Water System, the Department will apply the standards for Public Water Systems set forth in the Drinking Water Program's *"Guidelines and Policies for Public Water Systems."*

- the distribution system directly from the water filter plant presently has additional chlorine added to it when entering the distribution system, while the water entering from the tank does not receive additional chlorination.
- d. Demand within the distribution system dictates whether water is drawn from the tank or if it comes directly from the filtration plant.
 - e. When the operator set the water system to send water from the tank to the distribution system, the recorded chlorine residuals dropped quickly. PWS' automated response triggered additional chlorine added to the water entering the distribution system. This additional chlorine may result in spikes of chlorine.
 - f. The spikes in chlorine are consistent with complaints describing times of "pool like" odors and times of "pond like odors".
 - g. The chlorine spikes may also cause disruption within the distribution system which is consistent with the color and other aesthetic issues that were identified within complaints received by MassDEP.
 - h. The operations as described do not provide consistent and reliable treatment of drinking water and result in inconsistent dosages of chlorine.
- O. MassDEP engineers reviewed instrument calibration with the operator and appropriate QA/QC for in-line and bench top equipment.
- P. MassDEP engineers also reviewed flushing procedures with PWS, including processes to assure adequate flushing velocities, installation of blow offs on dead ends, metering techniques to measure unaccounted-for water, and taking chlorine samples during the flushing events. PWS flushing process was not consistent with the American Water Works Association (AWWA) techniques.
- Q. In addition to meeting with the PWS, the MassDEP engineers visited several customers within the area of disruption, including sites that were the subject of the complaints to MassDEP. At the customer sites:
- a. Water quality in the distribution system appeared clear.
 - b. In addition, staff checked for visual turbidity and odor.
 - c. Customers reported that the discoloration was better that day than it has been.
 - d. Customers provided documentation through pictures of discolored water from the previous weeks.
 - e. Staff collected field samples of water and conducted field analyses for chlorine. Adequate levels of chlorine were detected in the distribution system in MassDEP field samples collected on August 9, 2018.
- R. On July 26, 2018, the PWS reported that a significant break had been discovered and repaired on Grove Street. The PWS estimated that the repair has resulted in a water usage reduction within the system of approximately 30%. In a subsequent conversation, PWS stated that the break was in a customer's service line on Grove Street and was discovered by the property owner when the leak broke out at the surface. A significant leak can cause disruption to the distribution system.

III. ORDER

6. For the reasons and pursuant to the authority stated above, the Department hereby orders that:

- A. Within 72 hours of this Order, PWS shall ensure operation of the chlorine analyzer(s) is consistent with manufacturer requirements, to include that sufficient and consistent flow through the analyzer is provided. PWS shall review operations manual requirements on a weekly basis and maintain a log of PWS maintenance and calibration of chlorine analyzers.
- B. At the earliest reasonable date, and in no event more than 21 days from the date of this Order, PWS shall install a continuously recording chlorine analyzer on the existing 8" pipe in the water filter plant from the contact basin.
- C. At the earliest reasonable date, and in no event more than 21 days from the date of this Order, PWS shall install a continuously recording chlorine analyzer and flow meter on the 12" pipe from the storage tank at the entry point to the distribution system. Chlorine and flow readings during peak hourly flow, together with storage tank levels from the existing tank level recorder, can then be used to calculate Contact Time (CT) compliance.
- D. At the earliest reasonable date, and in no event more than 21 days from the date of this Order, MassDEP requires that the new 6" diameter water main to the 1.0 MG storage tank be pressure-tested and disinfected in accordance with Chapter 9 of the MassDEP DWP Guidelines for Public Water Systems and AWWA Standards prior to connecting to the tank.
- E. At the earliest reasonable date, and in no event more than 21 days from the date of this Order, PWS shall submit to MassDEP, written procedures for calculating CT compliance prior to placing the modifications in service. PWS shall demonstrate compliance, using the CT provided in each segment (the chlorine contact basin and its pumped flow rate and the 1.0 MG storage tank and its gravity flow rate). PWS shall calculate the CT daily using peak hourly flow and continuously monitored residual chlorine levels. The SWTR Form I shall be completed and submitted monthly for each segment and the Form H, which is the summation of the CT provided in each segment, shall be completed and submitted monthly to demonstrate total inactivation.
- F. PWS design and installation shall comply with all requirements of the Drinking Water Regulations, including, Chemical Safety Control for Critical Chemical Feed Systems set forth at 310 CMR 22.04(14).
- G. PWS shall revise its existing Operations and Maintenance Manual to include provisions for the operations of the newly installed equipment, including the in-line (flow through) analyzer, including but not limited to a written log for the operation and reading of the chlorine analyzers, including the flow through the chlorine analyzers.
- H. PWS shall notify MassDEP of the completion of the actions required in paragraphs III6 A through 6G above and the completion and readiness for the final inspection pursuant to

the WS 25 Treatment Plant Modifications permit Conditional Approval dated November 15, 2017.

- I. Upon MassDEP inspection and PWS receipt of MassDEP's written final approval, PWS shall place the treatment plant modifications described in the Conditional Approval dated November 15, 2017, on-line.
- J. PWS shall fully complete all required monthly operations reporting and water quality monitoring required for compliance with 310 CMR 22.00. Specifically PWS shall calculate the CT daily using peak hourly flow and continuously monitored residual chlorine levels. The SWTR Form I shall be completed and submitted monthly for each segment and the Form H, which is the summation of the CT provided in each segment, shall be completed and submitted monthly to demonstrate total inactivation.

7. Failure to comply with this Order may constitute grounds for further legal action. You are hereby advised that, if you fail to comply with this Order, M.G.L. c. 111, § 160 provides for fines and civil penalties of up to \$25,000 and by imprisonment for up to one year for each day during which each violation covered by this Order continues or is repeated. The PWS is further advised that if it fails to comply with this Order, M.G.L. c. 21A, § 16 provides for civil administrative penalties of up to \$25,000, plus the economic benefit realized for such noncompliance. The Department reserves the right to exercise the full extent of its legal authority, including without limitation, pursuit of criminal prosecution or civil action, court-imposed civil penalties, and/or administrative penalties assessed by the Department.

IV. APPEAL RIGHTS AND TIME LIMITS

8. Pursuant to M.G.L. c. 111, §§ 147 and 163, whoever is aggrieved by this Order may, within three (3) days after service of the Order upon him/her, give written notice of appeal to MassDEP and file a petition for a jury in the superior court in the county where the premises affected are located, and, after notice to MassDEP, may have a trial in the same manner as other civil cases are tried by jury. If by mistake of law or fact or by accident such person fails within said three (3) days to apply for a jury, and if it appears to the court that such failure was caused by such mistake or accident, and that such person has not, since the service of the Order upon him/her, violated it, such person may apply for a jury within thirty (30) days of such service. Pursuant to M.G.L. c. 111, § 163, any such aggrieved person must comply with this Order while the appeal is pending, unless otherwise authorized in writing by MassDEP.

PRICES AND TERMS
Great Barrington's Community Choice Power Supply Program

Price by Rate Classification

Rate Class	Price for Period 1* (November 2018 – November 2019) \$/kWh
Residential	\$0.11259
Commercial/Streetlight	\$0.11259
Industrial	\$0.11259

**Rate includes Operational Adder of \$0.000 per kWh [no max].*

Terms for System Supply Service

Period 1 Pricing: applies to service commencing with the Participating Consumers' first meter read dates for the month of November 2018 (billed in arrears, therefore the December 2018 billing statements) and terminating with the Participating Consumers' first meter read dates for the month of November 2019 (final bill, therefore the November 2019 billing statements).

The price for All-Requirements Power Supply shall be as stated on this Exhibit A for the applicable Pricing Periods, and shall be fixed for the entire length of each Pricing Period. Prices must include all adders and ancillary charges. However, the Competitive Supplier may offer price reductions to Participating Consumers at any time during the term of this ESA.

Start-Up Service Date: All-Requirements Power Supply will commence at the prices stated above as of the Participating Consumers' first meter read dates for the month of November 2018.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy in the All-Requirements Power Supply mix in an amount equal to Massachusetts' Renewable Portfolio Standards and Alternative Energy Portfolio Standards starting with the year in which load is served on the Start-Up Service Date or pay all penalties imposed by the Department related to Renewable Energy requirements. The price stated above also includes the purchase of National Wind RECs for a total amount equal to 100% Renewable Energy. The Competitive Supplier shall identify the technology, vintage, and location of the renewable generators that are the sources of the Renewable Energy Certificates (RECs). All such RECs will be created and recorded in the New England Power Pool Generation Information System or be certified by a third party such as Green-e. **[100% National Wind RECs]**

Administrative Adder
Example over 24 months

ReadDate	Total kWh	Delivery Charges (from Ngrid)	Supply Charges (from Supplier)	Administrative Adder Rate	\$0.001 Adder Total Fee	Electrical Rate	Total Charges	Total Charges with 1-Mil Adder
9/20/2018	735	\$86.32	\$83.12	\$0.001	\$0.74	0.113	\$169.44	\$170.18
8/20/2018	795	\$92.94	\$89.93	\$0.001	\$0.80	0.113	\$182.87	\$183.67
7/23/2018	884	\$103.16	\$100.01	\$0.001	\$0.88	0.113	\$203.20	\$204.08
6/22/2018	624	\$75.36	\$70.52	\$0.001	\$0.62	0.113	\$145.88	\$146.50
5/22/2018	579	\$70.86	\$65.41	\$0.001	\$0.58	0.113	\$136.27	\$136.85
4/20/2018	514	\$64.58	\$58.03	\$0.001	\$0.51	0.113	\$122.61	\$123.12
3/22/2018	757	\$92.47	\$85.62	\$0.001	\$0.76	0.113	\$178.09	\$178.85
2/21/2018	795	\$92.94	\$89.93	\$0.001	\$0.80	0.113	\$182.87	\$183.67
1/22/2018	884	\$103.16	\$100.01	\$0.001	\$0.88	0.113	\$203.20	\$204.08
12/20/2017	656	\$80.79	\$60.90	\$0.001	\$0.66	0.093	\$141.69	\$142.35
11/20/2017	896	\$108.35	\$83.30	\$0.001	\$0.90	0.093	\$191.65	\$192.55
10/20/2017	610	\$75.55	\$56.61	\$0.001	\$0.61	0.093	\$132.16	\$132.77
9/20/2017	609	\$75.39	\$56.51	\$0.001	\$0.61	0.093	\$131.90	\$132.51
8/22/2017	553	\$68.98	\$51.29	\$0.001	\$0.55	0.093	\$120.27	\$120.82
7/24/2017	661	\$81.39	\$59.81	\$0.001	\$0.66	0.090	\$141.20	\$141.86
6/21/2017	554	\$69.09	\$50.07	\$0.001	\$0.55	0.090	\$119.16	\$119.71
5/22/2017	579	\$71.48	\$52.37	\$0.001	\$0.58	0.090	\$123.83	\$124.41
4/21/2017	526	\$64.31	\$47.53	\$0.001	\$0.53	0.090	\$111.84	\$112.37
3/22/2017	492	\$58.96	\$44.43	\$0.001	\$0.49	0.090	\$103.39	\$103.88
2/21/2017	598	\$64.76	\$54.08	\$0.001	\$0.60	0.090	\$118.84	\$119.44
1/20/2017	653	\$70.22	\$69.91	\$0.001	\$0.65	0.107	\$133.80	\$134.45
12/20/2016	700	\$74.88	\$68.51	\$0.001	\$0.70	0.098	\$143.06	\$143.76
11/18/2016	472	\$52.32	\$43.33	\$0.001	\$0.47	0.092	\$95.32	\$95.79
10/21/2016	550		\$0.00	\$0.001	\$0.55		\$102.23	\$102.78
	15676	Total usage over 24 Months		2-Year Total		\$15.68		
	653.17	Average Monthly kWh usage						
\$	0.65	Average Monthly Administration Fee						

6.1 RATE SETTING

Under Department orders, NGRID assigns the rate classification and corresponding character of service and associated regulated rates. These rates include a monthly customer charge, a distribution charge, a transmission charge, a transition charge, an energy conservation charge, and a renewable energy charge that currently make up a portion of a ratepayer's bill. Although the Town, or its agent, may participate in regulatory proceedings and represent the interests of ratepayers regarding these regulated rates, it will not assign or alter existing rate classifications without the approval of the Department. [See Section 6.3 for an example of a typical residential bill.]

The focus of the Town, as noted above, will be acquisition of competitive prices and terms for power supply. This price, or prices, will be set through the competitive bid and negotiation process, and will be noted on the participating consumer's bill as the "generation charge".

The competitive bid process will seek prices that will differ among the rate classifications established by NGRID's tariffs. The terms and conditions of service may also vary among rate classifications.

6.2 COSTS

There is no cost to eligible or participating consumers. The Program funding will be derived from a \$0.001 per kWh commission fee payable by the Competitive Supplier to the Consultant.

In addition, the Town may fund administration costs associated with Energy Management services, of which one of the responsibilities would be to assist with the Aggregation Program, through an Operational Adder payable by the Competitive Supplier to the Town.

6.3 BILLING

Participating consumer billing under the Town's Program will be made by the Competitive Supplier under contract and shall be incorporated into the standard monthly utility billing. Participating consumers will receive a "complete bill" from NGRID that incorporates the power supply charge and NGRID's delivery charges. The bill shall include a clear delineation of all regulated and non-regulated charges.

The typical residential "complete bill" for use of 500 kWh shows the following charges for NGRID's Basic Service in November 2015:



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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October 3, 2018

Marie Y. Ryan, Town Clerk
Town of Great Barrington
334 Main Street
Great Barrington, MA 01230

RE: Great Barrington Annual Town Meeting of May 7, 2018 - Case # 8866
Warrant Articles # 18 and 19 (Zoning)
Warrant Articles # 22, 23, and 26 (General)

Dear Ms. Ryan:

Articles 22 and 26 - We approve Articles 22 and 26 from the May 7, 2018, Great Barrington Annual Town Meeting.¹ Our comments on Articles 22 and 26 are provided below.

Article 22 - Article 22 adds to the Town's general by-laws a new by-law that prohibits the sale of drinking water sold in single-use PET plastic bottles in the Town starting on or after January 1, 2019.

During our review of Article 22 we received a telephone call from a resident urging our disapproval of the Article on the basis that it discriminates against persons with disabilities and of low income. As provided in more detail below, we appreciate this input as it has informed us in our review of the by-law. However, we have determined that these asserted grounds for opposing the by-law do not provide a basis for us to disapprove Article 22.

A. Attorney General's Standard of Review.

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." *Amherst v. Attorney General*, 398 Mass. 793, 795-96 (1986). The Attorney General does not review the policy arguments for or against the enactment. *Id.* at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.")

¹ In a decision issued on June 6, 2018, we approved Article 19. In a decision issued on August 6, 2018, we approved Articles 18 and 23.

Rather, in order to disapprove a by-law, the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass 136, 154 (1973) (emphasis added). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

B. Water Bottle Bans Generally.

We have approved similar water bottle bans in other towns.² In approving Article 22, we incorporate by reference our comments in a decision issued to the Town of Concord on September 5, 2012 (Case # 6273). We attach a copy of the Concord by-law decision. The Town should consult with Town Counsel regarding any questions on this issue.

C. Discrimination Against Persons with Disabilities and of Low Income.

It has been argued to us that Article 22 discriminates against people with disabilities and low income because it interferes with access to drinking water. It is suggested that certain disabilities make it difficult for a person to wash reusable drinking containers. It is also suggested that it will be more expensive to buy bottled water because residents will need to travel out of town to purchase single-use plastic bottle drinking water and this will cause an added burden to persons with disabilities and with limited income.

The Attorney General respects these concerns and the sincerity with which they have been advanced. However, based on our standard of review, and the absence of any caselaw so holding, we cannot conclude that banning the sale of drinking water sold in single-use PET plastic bottles violates anti-discrimination laws. However, the Town may wish to discuss with Town Counsel whether Article 22 needs further amendments and whether it should be enforced in light of these concerns.

Article 26 - Article 26 was a citizen petition warrant article proposing to amend the Town’s general by-laws to add the following text³:

The acceptance period for Citizen Petitions will be no less than thirty (30) days.

Based on our discussions with the Town, we understand that the intent of Article 26 is to require the Town Meeting Warrant to remain open for no less than thirty days in order to accept citizen petitions. It is unclear whether the by-law requires the warrant to remain open for no less

² See Lincoln (Case # 8807) issued on July 2, 2018; Sudbury (Case # 8330) issued on August 1, 2017; and Concord (Case # 6273) issued on September 5, 2012.

³ Article 26 does not specify where in the Town’s general by-laws such text will appear.

than thirty days before: (1) the closing of the warrant or (2) the date of Town Meeting.⁴ Regardless what the Town intended, we nevertheless approve Article 26, but offer the following comments for the Town's consideration.

A. Separation of Powers.

It could be argued that Article 26 constitutes an invalid directive from the legislative branch (Town Meeting) to the executive branch (the Board of Selectmen) on matters within the exclusive authority of the executive branch: the authority of the Board to call Town Meetings pursuant to G.L. c. 39, § 9. Town Meeting serves as "the legislative body for the town." Conroy v. Conservation Commission of Lexington, 73 Mass.App.Ct. 552, 558 (2009). As such, Town Meeting is "vested the traditional powers of the legislative branch of any level of government, i.e. the power to make laws (by-laws) and the power of the purse." Wright v. Town of Bellingham, 2007 WL 1884657 (Mass.LandCt.), *quoting Town Meeting Time*, 2d Ed. 1984. However, there are restrictions placed on the legislative power of Town Meeting. A legislative body cannot interfere with the executive branch on a matter which is in the exclusive authority of the executive branch. *See, e.g. Anderson v. Board of Selectmen of Wrentham*, 406 Mass. 508 (1990) (Selectmen not bound by Town Meeting vote purporting to establish the Town's rate of contribution for group insurance benefits). Massachusetts courts have long recognized that "when a board of selectmen is acting in furtherance of a statutory duty, the town meeting may not command or control the board in the exercise of that duty." Anderson v. Board of Selectmen of Wrentham, 406 Mass. 508, 512 (1990).

We have considered this argument but determine that it is not sufficient ground for us to disapprove Article 26. However, Article 26 must be applied consistent with the Board of Selectmen's authority to call Town Meetings pursuant to G.L. c. 39, § 9. General Laws Chapter 39, Section 9, authorizes the Board of Selectmen to call Town Meetings pursuant to a warrant. The warrant for such meetings must be noticed not less than seven days before the Annual Town Meeting and not less than fourteen days before a Special Town Meeting. G.L. c. 39, § 10. The Town may wish to consult with Town Counsel when applying Article 26 to ensure the Town meets the deadlines in G.L. c. 39, § 10.

B. Consistency with Local Law.

It could also be argued that Article 26 is inconsistent with Section 41-4 of the Town's existing by-laws because Section 41-4 authorizes the Board of Selectmen to set the closing date for insertion of articles in a Town Meeting Warrant. *See* Section 41-4. Although not grounds for our disapproval of Article 26 (because the Attorney General reviews town by-laws for consistency with state law and not local law, *see* G.L. c. 40, §32), we urge the Town to discuss this potential by-law conflict with Town Counsel to determine whether a future amendment is needed.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory

⁴ The Town may wish to address these drafting issue as a by-law amendment at a future Town Meeting.

duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel David J. Doneski

Amy Pulver

From: Jennifer Tabakin
Sent: Friday, October 12, 2018 3:49 PM
To: Helen Kuziemko; Amy Pulver
Subject: Fwd: Bottle ban
Attachments: Concord 6273A APP.pdf

Helen and Amy -

Can you include this email from David and the AG's ruling on the bottle law in the package?

Jennifer Tabakin

Begin forwarded message:

From: David Doneski <DDoneski@k-plaw.com>
Date: October 12, 2018 at 2:52:16 PM EDT
To: Jennifer Tabakin <jtabakin@Townofgb.org>
Cc: Marie Ryan <MRyan@Townofgb.org>
Subject: Bottle ban

Jennifer,

In the bylaw approval letter the Attorney General's Office refers to its comments in the 2012 approval of a water bottle prohibition in the Town of Concord, and directs the Town to consult with Town Counsel regarding any related questions. (The approval letter stated that the Concord decision was attached, but that decision was not included with the e-mail message transmitting the approval letter. Assistant Attorney General Hurley subsequently forwarded the Concord letter and it is attached to this message.)

The issues addressed in the Concord decision did not include asserted discrimination against persons with disabilities and of low income, as identified in the Great Barrington approval letter. Rather, they were largely questions of federal constitutional law and compliance/consistency with Massachusetts law regarding public health and protection of the environment. Accordingly, and where the Concord decision is a 27-page document, I am not offering any analysis of that decision.

As with any bylaw, the water bottle bylaw must be applied in a consistent and even handed fashion. On this point, one comment in the Concord decision is applicable. The exemption for emergencies in section 2 of the Great Barrington bylaw tracks the language in the Concord bylaw, and on that subject the Attorney General commented as follows: "It is unclear whether, in order to trigger this exemption, a declaration of emergency must specifically state that the emergency is one 'adversely affecting the availability and/or quality of drinking water to Concord residents,' or whether merchants are left to make that judgment themselves whenever an emergency is declared. We caution the Town to apply this language in a manner that provides fair notice of when a Section 2 exemption is and is not in effect." (decision at pp. 26-27) If it is ever the case that the Town must declare a state of emergency, it would be appropriate to include in the declaration a statement regarding applicability of the bylaw's exemption provision. In the case of a declaration of emergency by the state or federal government, it is my opinion that whether the exemption will apply is a matter to be determined, through the office of the Town Manager – and in consultation with the Selectboard if deemed appropriate – and based on the particular circumstances of the emergency.

As amended before adoption at Town Meeting, the prohibition in the plastic water bottle bylaw becomes effective on January 1, 2019, but enforcement is not to begin until May 1, 2019. This provides some time for discussion and education regarding the bylaw's requirements. Such discussion could include the accessibility issue for persons with disabilities which the Attorney General's approval letter noted. In that regard, I note that while the Selectboard may invite comment and suggestions for implementation of the bylaw or possible amendment at a future Town Meeting, the approval letter does not state that the Town must amend the bylaw or take a particular approach to enforcement. Rather, the letter states, "based on our standard of review, and the absence of any caselaw so holding, we cannot conclude that banning the sale of drinking water sold in single-use PET plastic bottles violates anti-discrimination laws." Therefore, at this time, it is my view that there is no particular modification of the bylaw which the Town is obligated to pursue.

To the extent any Town 'discussion' process suggests legitimate cost issues in administration of the bylaw, the suspension provisions of section 4 may be utilized. Under that section, if the Town Manager determines that "the cost of implementing and enforcing this Bylaw has become unreasonable, then the Town Manager shall so advise the Board of Selectmen and the Board of Selectmen shall conduct a Public Hearing to inform the citizens of such costs." The Board may then decide whether to continue the bylaw in force or suspend it permanently or for a fixed length of time."

We can discuss further if you like.

David J. Doneski, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

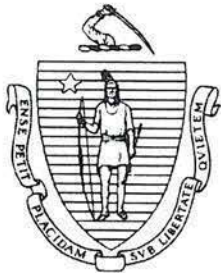
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September 5, 2012

Anita S. Tekle, Town Clerk
Town of Concord
22 Monument Square
P.O. Box 535
Concord, MA 01742-0535

**RE: Concord Annual Town Meeting of April 23-26, 2012– Case # 6273
Warrant Articles # 31, 32 (General)**

Dear Ms. Tekle:

We approve the amendments to the Town by-laws adopted under Article 32, concerning “Drinking Water in Single-Serve PET Bottles.” This letter briefly describes the by-law; discusses the Attorney General’s limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we are not persuaded by the arguments made to us that the by-law should be disapproved.¹ Our analysis is substantially influenced by the Supreme Court’s decision in Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981), holding that a Minnesota law that banned the retail sale of milk in non-returnable, non-refillable plastic containers, in order to further the state’s interest in reducing the generation of solid waste, did not violate the federal equal protection or due process clauses or unlawfully burden interstate commerce.

We emphasize that our approval in no way implies any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with

¹ Along with Article 32, the Town submitted Article 31 (relating to non-criminal disposition of alleged violations of a by-law). We remind the Town that in a decision issued July 24, 2012, we approved Article 31. Pursuant to the authority granted by G.L. c. 40, § 32 as amended by Chapter 299 of the Acts of 2000, the time for the Attorney General’s review of Article 32 was extended to September 16, 2012.

state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986). The state constitution's Home Rule Amendment, as ratified by the voters themselves in 1966, confers broad powers on individual cities and towns to legislate in areas that previously were under the Legislature's exclusive control. Towns have used these home-rule powers to prohibit, within their borders, certain commercial activities that state statutes generally recognize as lawful and that are widely accepted in the remainder of the Commonwealth--for example, coin-operated amusement devices, or self-service gas stations. Amherst, 398 Mass. at 798 n.8. The Supreme Judicial Court has upheld such by-laws, and has overturned the Attorney General's disapproval of them where they did not create any specific conflict with state law. Amherst, *id.*; see also Milton v. Attorney General, 372 Mass. 694, 695-96 (1977). The Attorney General thus has no power to disapprove a by-law merely because a town, in comparison to the rest of the state, has chosen a novel, unusual, or experimental approach to a perceived problem.

Also, our limited scope of review precludes us from making detailed factual evaluations of certain issues that may affect the validity of by-laws. Therefore, as noted later in this letter, our rejection, based on a limited factual record, of certain arguments against the validity of Article 32, does not foreclose later court challenges to Article 32 based on those same legal claims and a more fully developed record.

I. Description of Article 32

Section 1 of Article 32 declares, "It shall be unlawful to sell non-sparkling, unflavored drinking water in single-serving polyethylene terephthalate (PET) bottles of 1 liter (34 ounces) or less in the Town of Concord on or after January 1, 2013."

Section 2 provides an exemption for emergencies, declaring, "Sales occurring subsequent to a declaration of an emergency adversely affecting the availability and/or quality of drinking water to Concord residents by the Emergency Management Director or other duly-authorized Town, Commonwealth or United States official shall be exempt from this Bylaw until seven days after such declaration has ended."

Section 3 declares that enforcement of the by-law shall be the responsibility of the Town Manager or his/her designee, and it further provides that "[a]ny establishment conducting sales in violation of this Bylaw shall be subject to a non-criminal disposition fine as specified in Appendix A of the Regulations for the Enforcement of Town Bylaws under M.G.L. Chapter 40, §21D[.]" Article 32 also amends the referenced Appendix A to provide that a first violation shall be the subject of a warning; a second offense, a fine of \$25; and a third or subsequent offense, a fine of \$50.

Section 4 provides for suspension of the by-law in certain circumstances. "If the Town Manager determines that the cost of implementing and enforcing this Bylaw has become unreasonable, then the Town Manager shall so advise the Board of Selectmen and the Board of Selectmen shall conduct a Public Hearing to inform the citizens of such costs. Subsequent to the Public Hearing, the Board of Selectmen may continue this Bylaw in force or may suspend it permanently or for such length of time as they may determine."

II. The Attorney General's Standard of Review

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the Constitution or laws of the Commonwealth. Id. at 796.² "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973) (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155.

III. Challenges to the Validity of Article 32

We have received numerous letters from citizens and organizations raising various challenges to the validity of Article 32. Although, as discussed below, we are unable to agree that any of these arguments furnishes a basis for disapproval of the by-law, we greatly appreciate these submissions, which have substantially assisted us in our review. We also appreciate the numerous letters from citizens and organizations offering legal arguments in support of Article 32. Finally, we acknowledge the many letters from citizens and businesses in Concord expressing, on policy grounds, either support for or opposition to the Article 32. While we cannot base our decision on such policy arguments, the letters have helped inform our understanding of the issue and its importance to the Town.

A. Procedural Challenges

1. Assertedly Misleading Language on the Town Meeting Warrant

It has been argued that Article 32 is procedurally invalid on the ground that certain assertedly misleading language regarding Article 32 was contained in the Town Meeting warrant. That language stated, "A 'yes' vote on this Article will allow the bylaw to be sent to the State of Massachusetts Office of the Attorney General for review." It has been argued that voters at Town Meeting, in voting "yes," could have thought they were merely voting to send

² The Attorney General also reviews by-laws for consistency with the federal constitution and statutes. This is because towns draw their legislative power from the state's Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (as amended by amend. art. 89), which allows a town to exercise, subject to certain limits, "any power or function which the general court has power to confer upon it," and the Legislature has no power to confer on a town the power to enact by-laws contrary to federal law.

text to this Office for review, rather than voting to enact an actual by-law. For the reasons set forth below, we conclude that the language on the warrant provides no basis for us to disapprove Article 32.

First, it is important to understand the context in which the quoted language appeared -- not as a part of the warrant article itself, but as explanatory text that followed the article and that was not required by the statute governing the contents of warrants. As it appeared on the warrant, Article 32 stated (with emphasis added) that its purpose was “[t]o determine whether the Town of Concord will vote to amend the Town Bylaws by adding a provision for the sale of drinking water in PET bottles, as follows [with the proposed text of Article 32 set forth verbatim] or take any other action relative thereto.” There followed a printed box containing this explanatory text (with emphasis added):

In April 2011, the vote on Article 38: Drinking Water in Single-Serving PET Bottles Bylaw was very close (within 7 votes). This year’s article is very similar to the 2011 article. It is formatted as a bylaw, focuses on drinking water in single-serve plastic bottles (only) and provides a flexible means of enforcement. It continues to provide an exemption during a declared State of Emergency and empowers the Town to determine direction should the cost of the bylaw become unreasonable. A ‘yes’ vote on this Article will allow the bylaw to be sent to the State of Massachusetts Office of the Attorney General for review.

No challenge is made to the accuracy of the first three sentences of the explanation, setting forth some of the procedural history of the effort to ban the sale of drinking water in single-serving PET bottles in Concord. Nor is the literal accuracy of the final sentence challenged, in the sense that there is no disagreement that a “yes” vote would allow the text to be sent to this Office for review. What is challenged is whether voters also understood that this Office’s review could result in an actual by-law taking effect. This would contrast with what occurred in 2010, when certain language concerning sales of bottled water was approved by Town Meeting and sent to this Office for review, but, since it was not formatted, phrased, or labeled as a bylaw, returned without action by this Office (see Letter to Town Clerk, Case #5555, July 9, 2010), thus leading to revised efforts in 2011 and again in 2012.

The relevant statute requires in pertinent part that “[t]he warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat.” G.L. c. 39, § 10. “This means only that the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action which the town meeting will take on these subjects.” Johnson v. Town of Framingham, 354 Mass. 750, 753 (1968) (citations and internal quotations omitted). “Warrants are held sufficient if they indicate with substantial certainty the nature of the business to be acted on.” Coonamessett Inn v. Chief of Falmouth Fire Department, 16 Mass. App. Ct. 632, 634 (1983) (citation and internal quotations omitted).

Here, the warrant plainly indicated that the purpose of Article 32 was “[t]o determine whether the Town of Concord will vote to amend the Town Bylaws” relative to the sale of drinking water in PET bottles. And the explanatory language in the box printed after Article 32

used the term “bylaw” in no fewer than four places – including (with emphasis added) that “[a] ‘yes’ vote on this Article will allow the bylaw to be sent to the State of Massachusetts Office of the Attorney General for review.” We have no reason to believe that voters thought the purpose of Article 32 was anything other than to enact a by-law that, if approved by the Attorney General, would take effect--unlike the 2010 language that (as we may presume voters were aware) was reviewed but not acted upon by this Office and never took effect as a by-law.

Moreover, the certified copy of the vote taken under Article 32 at Town Meeting, sent to us by the Town pursuant to G.L. c. 40, §32, states (with emphasis added), “On a MOTION made by Jean Hill and duly seconded, the following was VOTED (with 403 voting in favor and 364 opposed): To amend the Town Bylaws by adding a provision for the sale of drinking water in PET bottles, as follows,” after which the full text of the new by-law (which clearly refers to itself as such) was set forth. We must presume that this certified copy accurately reflects what occurred at Town Meeting. The Attorney General’s review of a by-law is based primarily if not exclusively on the materials that G.L. c. 40, § 32, requires a town to submit: “a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with.” Any inquiry into whether voters were materially confused or misled by the explanatory text following Article 32 on the warrant would involve consideration of evidence and determination of factual issues going well outside the bounds envisioned by G.L. c. 40, § 32. Accordingly, we conclude that the inclusion of the explanatory text furnishes no basis for us to disapprove Article 32.³

2. Asserted Failure to Adhere to Concord’s By-Laws Governing Motions to Reconsider

It has been argued that we should disapprove Article 32 based on certain events that assertedly occurred after the initial Town Meeting vote to approve it. None of these events are reflected--or required to be reflected--on the materials submitted to us by the Town. According to a letter that asks us to disapprove Article 32, however, after the initial vote, the Town Moderator gave a confusing explanation of the process and timing for reconsideration of that vote. As related to us, a vote on reconsideration was taken that same evening (instead of at the Town Meeting session scheduled to occur the following evening, as the voter calling for reconsideration assertedly requested), resulting in a decision not to reconsider. Based on how the voter is said to have characterized his request for reconsideration, it has been argued to us that the Town’s “Town Meeting Bylaws”⁴ required the Moderator to postpone reconsideration until the following evening, and that his decision not to do so invalidates Town Meeting’s approval of Article 32.

³ The determination of these issues is best left for a court, which, if a case were properly initiated, would be better equipped to find the facts on a full record and determine the appropriate remedy for any errors found to have occurred.

⁴ See http://www.concordma.gov/Pages/ConcordMA_Bylaws/Town%20Meeting%20Bylaws.pdf (last visited July 17, 2012).

Even based on how the events have been described to us in the letter urging disapproval of Article 32, the Moderator's actions regarding the reconsideration request appear to have been consistent with Concord's "Town Meeting Bylaws." However, we need not and do not reach any final conclusion on that issue, because it is beyond the scope of our review under G.L. c. 40, § 32. Although, as noted above, that statute requires the Town to submit "adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with," the Attorney General interprets the phrase "procedural requirements" in G.L. c. 40, § 32, to refer primarily if not exclusively to those established by statute as basic conditions essential to the validity of Town Meeting action. It does not encompass all possible procedural requirements (such as by-laws or rules of order) that might govern the conduct of Town Meeting itself.

The Attorney General has never interpreted the statute to require submission of a detailed exposition of all motions made, moderator explanations and rulings issued, and votes taken in relation to a by-law, or how such actions were consistent with local procedural requirements. As already explained above with regard to the explanatory language in the warrant, our review of alleged non-compliance with local procedural requirements, including the materiality of any such non-compliance to the overall validity of the by-law approval process, would in many cases (including this one) involve consideration of evidence and determination of factual issues going outside the bounds of G.L. c. 40, § 32. Accordingly, we conclude that the alleged noncompliance with the Town's by-laws governing reconsideration of matters at Town Meeting furnishes no basis for us to disapprove Article 32.

B. Substantive Challenges

1. Federal and State Equal Protection and Substantive Due Process

We have considered the argument that Article 32 violates federal and state constitutional guarantees of the equal protection of the laws--that is, that Article 32 is invalid because it is not "rationally related to the furtherance of a legitimate State interest." Massachusetts Federation of Teachers v. Board of Education, 436 Mass. 763, 777 (2002) (citation and internal quotations omitted) ("MFT").⁵ We have also considered the closely related argument that Article 32 violates federal and state constitutional guarantees of substantive due process--that is, that Article 32 bears no "reasonable relation to a permissible legislative objective," or no "real and substantial relation to the public health, safety, morals, or some other phase of the general

⁵ The standard for equal protection analysis under the state constitution is the same as under the federal constitution's Fourteenth Amendment. MFT, 463 Mass. at 77; see Gillespie v. City of Northampton, 460 Mass. 148, 158 (2011). Where "a statute implicates a fundamental right or uses a suspect classification, we employ strict judicial scrutiny[; for] all other statutes, we employ the rational basis test." Commonwealth v. Weston W., 455 Mass. 24, 30 (2009) (citations and internal quotations omitted); see MFT, 463 Mass. at 777. There is no argument here that Article 32 implicates a fundamental right or uses a suspect classification.

welfare.” MFT, id. at 779 (citation and internal quotations omitted).⁶ For the following reasons, we are unable to accept these arguments. Cf. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981) (holding that there was rational basis for state statute banning retail sale of milk in plastic non-returnable, non-refillable containers, but permitting such sale in other nonreturnable, non-refillable containers, such as paperboard milk cartons).

To show that a law lacks a rational basis is a “heavy burden.” Leibovich v. Antonellis, 410 Mass. 568, 576 (1991). “A legislative enactment carries with it a presumption of constitutionality, and the challenging party must demonstrate beyond a reasonable doubt that there are no conceivable grounds which could support its validity.” Id. (citation and internal quotations omitted). “A classification will be considered rationally related to a legitimate purpose if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” MFT, 436 Mass. at 777 (citations and internal quotations omitted).

Here, for equal protection purposes, the most obvious “classification” made by Article 32 is between “non-sparkling, unflavored drinking water in single-serving polyethylene terephthalate (PET) bottles of 1 liter (34 ounces) or less,” sales of which are banned by Article 32, and other beverages in such bottles, sales of which will still be permitted. This classification appears rationally related to the legitimate governmental interest in reducing the generation of solid waste, in the form of plastic bottles, that must be recycled or otherwise disposed of.⁷ Unlike other beverages, non-sparkling, unflavored drinking water is available from faucets in virtually every home, workplace, and public building in the Town, as well as in various outdoor locations. It is “reasonably conceivable,” MFT, 436 Mass. at 777, that persons who are unable to buy such water in the Town in PET bottles of one liter or less will instead obtain such water from faucets and either drink it directly (e.g. from cups or glasses) or put it into other types of portable containers--ones that either (1) are intended for re-use (i.e., re-filling) and will be re-used, or (2) have in fact been re-used, after originally having been filled with water (prior to Article 32’s effective date) or with some other beverage. Such re-used containers in this second category may include both containers that are subject to the Bottle Bill, G.L. c. 94, §§ 321-327 (and thus carry a financial incentive for recycling), and containers that are not. But even if these latter containers are not ultimately recycled, their temporary re-use can rationally be thought to have contributed to some reduction in the total generation of the beverage-container component of solid waste in the Town.

Of course, it is also possible that persons who desire the convenience of having drinking water in lightweight disposable bottles of one liter or less will simply purchase such water in PET bottles in near-by municipalities, and then bring such bottles back to the Town, where they

⁶ The federal and state substantive due process guarantees are largely coextensive. Id. n.14.

⁷ The Town’s undoubted interest in managing solid waste generated within its borders is shown by various Town programs aimed at reducing, reusing, and recycling materials that would otherwise end up as waste, and for collecting and disposing of waste from residents. See http://www.concordma.gov/Pages/ConcordMA_Recycle/curbside (last visited August 1, 2012).

may end up in the solid waste stream. Or persons who generally desire the convenience of having non-carbonated beverages in lightweight disposable bottles of one liter or less will simply purchase beverages other than plain drinking water (e.g., juices, sports drinks) in PET bottles in the Town, where again they may end up in the solid waste stream.⁸ Although in these respects Article 32 is under-inclusive, we cannot say that it is irrationally under-inclusive. To address the first issue would require the Town to ban the possession (rather than merely the sale) of drinking water in PET bottles of one liter or less, a measure that, assuming for purposes of argument that it were within the Town's power, would be much more difficult to enforce. To address the second issue would require the Town to ban sales of these other beverages in bottles of the type in question—even though (unlike drinking water) such beverages are not available out of faucets. This would create a much more substantial barrier to residents obtaining lawful beverages of their choice.

The constitutional guarantee of equal protection does not require that legislative classifications be perfect. “If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. . . . Some degree of overinclusiveness or underinclusiveness is constitutionally permissible in this regard. . . . [A legislative body] is permitted to deal with problems one step at a time . . . [I]n confronting a multitude of evils, it may address itself to the phase of the problem most urgently requiring remedial action.” *MFT*, 436 Mass. at 778 (citations and internal quotations omitted). “[E]qual protection does not require [the] State to choose between attacking every aspect of a problem or not attacking the problem at all”; a legislative body “may proceed one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.” *Id.* (citations and internal quotations omitted).

It is also possible that Article 32 will result in persons within the Town purchasing assertedly less healthy, sweetened beverages instead of plain water—whether in containers that are subject to the Bottle Bill, such as soda,⁹ or in containers that are not, such as juice or sports drinks. Similarly, it has been argued that Article 32 will interfere with the ability of institutions such as Emerson Hospital to serve, in convenient form, what may be the healthiest beverage in existence—plain water—to its patients, visitors, and staff. But, in these circumstances, whether

⁸ Also, Article 32 arguably classifies between drinking water in PET bottles of one liter or less, and drinking water in bottles of one liter or less made of other types of plastic, that would not be subject to the Bottle Bill, yet are not banned by Article 32, and so might end up in the Town's solid waste stream. It has not been argued to us, nor are we independently aware, that drinking water is commonly sold in this latter type of bottle. Even if it were, this would appear to raise an issue of under-inclusivity of the type that, as explained in the text, is insufficient to invalidate a legislative enactment on equal protection grounds.

⁹ It could rationally be thought that despite the health implications of such beverages, they at least have the virtue of being sold in containers that, because they are subject to the Bottle Bill, are more likely to be recycled.

Article 32 strikes the proper balance between solid waste reduction and public health is not relevant to the equal protection analysis. The question is “whether the statute falls within the legislative power to enact, not whether it comports with a court’s idea of wise or efficient legislation.” Leibovich, 410 Mass. at 576 (citations and internal quotations omitted). “The rational basis test does not require that we agree with the Legislature’s classification[],” so long as there is a conceivable rational basis for it. Harlfinger v. Martin, 435 Mass. 38, 50 (2001); see U.S. v. Carolene Products Co., 304 U.S. 144, 154 (1938) (where “the question is at least debatable,” court may not substitute its judgment for that of legislative body). Again, a legislative body “may address itself to the phase of the problem most urgently requiring remedial action.” MFT, 436 Mass. at 778 (citations and internal quotations omitted). We acknowledge that the Town’s Board of Health expressed the view (in a 2010 letter to the Board of Selectmen) that a measure banning bottled water sales “lacks the core elements of a public health initiative.” But it is for the Town as a whole to decide, as policy matter, how to balance the effects of beverages sold in small containers on the Town’s interest in reducing solid waste, on the one hand, and the Town’s interest in promoting public health on the other.

Much the same may be said for the argument that Article 32 will cause Town residents to travel to neighboring municipalities to purchase bottled water and, perhaps, do other shopping as well, to the overall detriment of merchants in (and the economic wellbeing of) the Town. Such an effect is foreseeable, but it would not violate the equal protection clause. It is for the Town to decide, as a policy matter, whether the solid waste problem posed by bottled water should be addressed despite the risk to the viability of merchants within the Town. In a similar vein, it has been argued that Article 32 irrationally interferes with emergency preparedness and the ability to respond quickly to emergencies that might cut off access to tap water. Even if Article 32 made no allowance for bottled water sales in emergencies (as it does in Section 2), and even if drinking water were not available for consumer purchase in containers that are not banned by Article 32,¹⁰ as an equal protection matter it is for the Town to balance the competing considerations of solid waste generation and emergency preparedness and response.

It has also been suggested that, apart from solid waste reduction at the local level, some of the arguments in favor of Article 32 that were assertedly offered at Town Meeting are not rationally related to the furtherance of any legitimate interest of the Town. Cf. MFT, 436 Mass. at 777. Although we have no independent knowledge of what was said at Town Meeting, these arguments assertedly included the ideas that Article 32 would make a symbolic statement that could gain attention at the state or national levels; that PET bottles may be harmful to human

¹⁰ We take notice that drinking water is commercially available in plastic bottles holding five gallons, (<http://www.polandspringhomedelivery.com/water-delivery.cfm>); four gallons, (http://www.costco.com/Browse/Product.aspx?ProdId=11676505&whse=BC&Ne=4000000&eCat=BC|3605|90020|90021&N=4043619&Mo=7&No=5&Nr=P_CatalogName:BC&cat=90021&Ns=P_Price|1|P_SignDesc1&lang=en-US&Sp=C&hierPath=3605*90020*90021*&topnav=); one gallon (<http://www.peapod.com/itemDetailView.jhtml?productId=56717&NUM=1343079356270>); and three liters, (<http://www.peapod.com/itemDetailView.jhtml?productId=127110&NUM=1343079356268>) (all last visited July 23, 2012).

health; that PET bottles consume scarce crude oil in their manufacture; that bringing bottled water to the Town by truck, where tap water is already widely available, further wastes energy and other resources and creates unnecessary noise and air pollution in the Town; and that Article 32 could help reduce the amount of trash floating in the Pacific Ocean. We express no view on whether these possible goals of Article 32 are legitimate Town interests, or whether Article 32 rationally furthers them. The question for equal protection purposes is not whether a law furthers all of the purposes that may have been articulated for it, but whether a court can “visualize possible legitimate public purposes for the legislation”; “in the absence of a factual record establishing the lack of any conceivable rational basis for the legislation,” a court must conclude that the statute satisfies equal protection requirements. Opinion of the Justices, 401 Mass. 1211, 1219 (1987) (emphasis added); see Comm. v. Henry’s Drywall Co., 366 Mass. 539, 543 (1974). Cf. Cloverleaf Creamery, 449 U.S. at 465 (if any one of four asserted bases for statute banning sale of milk in non-returnable plastic containers was rational, Court was required to uphold statute).¹¹ Moreover, “it is irrelevant for constitutional analysis whether a reason now advanced in support of a statutory classification is one that actually motivated the Legislature.” Prudential Ins. Co. v. Comm’r of Revenue, 429 Mass. 560, 568 (1999) (citing FCC v. Beach Communications, Inc., 508 U.S. 307, 315 (1993)).

For essentially the same reasons, we conclude that Article 32 does not violate state and federal constitutional guarantees of substantive due process. See MFT, 436 Mass. at 779 & n.14 (treating equal protection rational basis analysis as essentially dispositive of substantive due process analysis); Chebacco Liquor Mart, Inc. v. ABCC, 429 Mass. 721, 724 (1999) (same). We cannot conclude that Article 32 bears no “reasonable relation to a permissible legislative objective,” or no “real and substantial relation to the public health, safety, morals, or some other phase of the general welfare.” MFT, 436 Mass. at 779 (citation and internal quotations omitted). Cf. Cloverleaf Creamery, 449 U.S. at 470 n.12 (given Court’s conclusion that Minnesota statute banning retail sale of milk in non-refillable plastic containers had rational basis for equal protection purposes, “it follows a fortiori that the Act does not violate the Fourteenth Amendment’s Due Process Clause”).

It has been suggested that Article 32 violates the state substantive due process guarantee as applied in Coffee-Rich, Inc. v. Commissioner of Public Health, 348 Mass. 414, 422-26 (1965) (invalidating, as having “no rational basis,” statute that completely prohibited sale within Commonwealth of non-dairy coffee creamer, an “admittedly wholesome” food product). But the fact that a product is “admittedly wholesome” does not end the inquiry here, any more than it did in Coffee-Rich. In that case the court, having concluded that the product was wholesome and thus that there was no rational public health basis for banning its sale, id. at 422-23, went on to consider whether there was a consumer-protection basis for doing so. Id. at 423-25. Although the court rejected that argument as well, id., here the argument is that the Town’s interest in reducing its generation of solid waste is a legitimate goal that is rationally furthered by Article

¹¹ In Cloverleaf Creamery, the state of Minnesota’s asserted rational bases were related to environmental protection, energy conservation, and the state’s solid waste disposal problem. 449 U.S. at 465-70. The Court ruled that each of the asserted bases was rational.

32. Nothing in Coffee-Rich either (1) establishes that the sale of wholesome products may never be banned or (2) otherwise negates the legitimacy of Article 32's goals or the rationality of its means.

Moreover, Article 32 does not ban the sale of drinking water. It bans the sale of drinking water only in one specific type of bottle, which the Town has concluded creates a particular, and readily avoidable, solid waste problem. Cf. Coffee-Rich, 348 Mass. at 424-25 (noting that, to the extent a ban on sale of product was aimed at protecting consumers, there was a "less arbitrary . . . and particularly obvious" alternative to a complete ban). For these reasons, we conclude that Article 32 is consistent with state, as well as federal, substantive due process guarantees.

2. Commerce Clause

We have considered whether Article 32 impermissibly burdens interstate commerce, in violation of the so-called "dormant Commerce Clause." "The Commerce Clause provides that 'Congress shall have Power ... [t]o regulate Commerce with foreign Nations, and among the several States.' U.S. Const., Art. I, § 8, cl. 3. Although the Constitution does not in terms limit the power of States to regulate commerce, we have long interpreted the Commerce Clause as an implicit restraint on state authority, even in the absence of a conflicting federal statute." United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 338 (2007) (plurality opinion). This is the "so-called 'dormant' aspect of the Commerce Clause[.]" Id. Here, on the limited record available to the Attorney General under G.L. c. 40, § 32, we conclude that Article 32 does not violate the dormant Commerce Clause.

a. Discrimination Against Interstate Commerce

The first question is whether Article 32 "discriminates on its face against interstate commerce." United Haulers, id. "In this context, 'discrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. . . . Discriminatory laws motivated by simple economic protectionism are subject to a virtually per se rule of invalidity[.]" Id. (citation and internal quotations omitted). "A court may find that a state law constitutes economic protectionism on proof either of discriminatory effect . . . or of discriminatory purpose[.]" Clover Leaf Creamery, 449 U.S. at 471 n.15 (citations omitted).

Here, we see nothing in Article 32 that facially discriminates against interstate commerce, nor are we aware that Article 32 has the purpose or effect of discriminating against interstate commerce. The ban on sales of drinking water in certain plastic bottles involves no discernible "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." United Haulers, 550 U.S. at 338. The ban applies whether the bottles and the water they contain originate in the Commonwealth or elsewhere, and, based on the limited facts available to us, we have no reason to think that the effect on in-state economic interests will be any less than the effect on out-of-state interests.

It has been suggested to us that Article 32 “discriminates against interstate commerce by restricting the sale of drinking water in Concord sold by sources other than the [T]own itself” through its municipal water and sewer division.¹² According to this argument, Article 32 discriminates in favor of a single vendor--the Town--and it makes no difference that Article 32 discriminates against in-state wholesalers or distributors (that is, Massachusetts businesses that sell bottled water to Town merchants for ultimate re-sale to consumers) as well as out-of-state wholesalers or distributors. The argument is based on Dean Milk Co. v. City of Madison, 340 U.S. 349, 354 & n.4 (1951) (invalidating, on Commerce Clause grounds, ordinance banning sale of milk as “pasteurized” unless it had been processed and bottled at an approved pasteurization plant within five miles of city; it was “immaterial that Wisconsin milk from outside the Madison area is subjected to the same proscription as that moving in interstate commerce”).

We do not find this argument persuasive. First, Article 32 does not ban all sales of drinking water by commercial entities so as to clear the way for the Town to dominate the market. Rather, commercial entities, whether from the Commonwealth or elsewhere, remain free to sell drinking water, so long as they do not sell it in PET bottles of one liter or less--and the Town is likewise barred from selling drinking water in such bottles. Cf. Clover Leaf Creamery, 449 U.S. at 471-72 (“Minnesota’s statute does not effect ‘simple protectionism,’ but ‘regulates evenhandedly’ by prohibiting all milk retailers from selling their products in plastic, nonreturnable milk containers, without regard to whether the milk, the containers, or the sellers are from outside the State”).

Second, in Dean Milk, the Court characterized the challenged ordinance as “erecting an economic barrier protecting a major local industry against competition from without the State,” and thus “Madison plainly discriminate[d] against interstate commerce.” 340 U.S. at 354. Here, in contrast, the Town’s water and sewer department is not a “major local industry” that Article 32 aims to protect from competition. Even if Article 32 were viewed as benefiting the Town, “ordinances [that] benefit a clearly public facility, while treating all private companies exactly the same . . . do not discriminate against interstate commerce for purposes of the dormant Commerce Clause.” United Haulers, 550 U.S. at 342 (emphasis added). “Compelling reasons justify treating these laws differently from laws favoring particular private businesses over their competitors.” Id. (emphasis added). “Laws favoring local government . . . may be directed toward any number of legitimate goals unrelated to protectionism,” e.g., goals related to solid waste disposal. Id. at 343. The Dean Milk case, in contrast, “involved discrimination in favor of private enterprise” and “is readily distinguishable on [that] ground.” United Haulers, id. at 340 & n.4.

b. Excessive Burden on Interstate Commerce

That we cannot find Article 32 to discriminate against interstate commerce does not end our inquiry. “Even if a statute regulates ‘evenhandedly,’ and imposes only ‘incidental’ burdens on interstate commerce, the courts must nevertheless strike it down if ‘the burden imposed on

¹² See http://www.concordma.gov/Pages/ConcordMA_Water/index (last visited July 24, 2012).

such commerce is clearly excessive in relation to the putative local benefits.” Clover Leaf Creamery, 449 U.S. at 471 (quoting Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)). “Moreover, ‘the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.’” Id. (quoting Pike).

Here, the absence of any detailed, undisputed factual record necessarily limits the extent of our review. We cannot say either what absolute amount or what proportion of the bottled water that would be subject to Article 32 originates in other states, and thus we cannot evaluate the extent of the burden on interstate commerce. But we cannot merely assume that the burden is so great as to be “clearly excessive in relation to the putative local benefits.”¹³ Pike, 397 U.S. at 142 (emphasis added).

Whether Town residents respond to Article 32 by obtaining drinking water from their faucets, or by purchasing beverages in containers that are subject to the Bottle Bill and thus are more likely to be recycled, we cannot second-guess the apparent conclusion of Town Meeting that Article 32 will reduce the number of PET bottles of one liter or less that are introduced into the solid waste stream. It may be that some Town residents will respond to Article 32 in part by going elsewhere to purchase drinking water in PET bottles of one liter or less and bringing them into the Town, or in part by purchasing types of beverages that are not subject to the Bottle Bill, which in either case could result in additional beverage containers being introduced into the Town’s solid waste stream. Nevertheless, we cannot simply assume that this will offset or significantly diminish the reduction in solid waste generation due to Article 32.

This is because, “under Pike, it is the putative local benefits that matter. It matters not whether these benefits actually come into being at the end of the day.” Pharmaceutical Care Mgt. Ass’n v. Rowe, 429 F.3d 294, 313 (1st Cir. 2005), cert. denied, 547 U.S. 1179 (2006) (emphasis in original) (rejecting dormant Commerce Clause challenge). A dormant Commerce Clause claim cannot be based on “second-guess[ing] the empirical judgments of lawmakers concerning the utility of legislation.” CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 92 (1987) (citations and internal quotations omitted). The focus is on the “hoped-for local benefits” of the local enactment. Wine and Spirits Retailers, Inc. v. Rhode Island, 481 F.3d 1, 15 (1st Cir.) (emphasis added), cert. denied, 552 U.S. 889 (2007).

¹³ The Court’s analysis in Clover Leaf Creamery is illustrative, although not dispositive here. There, the Court said, “The burden imposed on interstate commerce by the statute is relatively minor. Milk products may continue to move freely across the Minnesota border, and since most dairies package their products in more than one type of containers, . . . the inconvenience of having to conform to different packaging requirements in Minnesota and the surrounding States should be slight. . . . Within Minnesota, business will presumably shift from manufacturers of [the banned plastic] containers to producers of [other containers], but there is no reason to suspect that the gainers will be Minnesota firms, or the losers out-of-state firms.” Clover Leaf Creamery, 449 U.S. at 472-73 (citations omitted).

In Clover Leaf Creamery, the Court concluded that even if Minnesota's ban on sales of milk in non-refillable plastic containers burdened an out-of-state industry more than an in-state industry,

we find that this burden is not 'clearly excessive' in light of the substantial state interest in promoting conservation of energy and other natural resources and easing solid waste disposal problems, which we have already reviewed in the context of equal protection analysis. . . . We find these local benefits ample to support Minnesota's decision under the Commerce Clause.

449 U.S. at 473; cf. United Haulers, 550 U.S. at 346-47 (upholding solid waste ordinances under Pike test, based in part on substantial benefits to local recycling efforts; waste disposal is "a typical and traditional concern of local government"). Here, similarly, based on the limited facts before us, we cannot say that Article 32 causes such a manifestly greater harm to out-of-state than in-state economic interests that it "clearly" outweighs the Town's "substantial . . . interest" in reducing its solid waste disposal problem.

The final part of the dormant Commerce Clause inquiry is whether the local interest "could be promoted as well with a lesser impact on interstate activities." Pike, 397 U.S. at 142. In Clover Leaf Creamery, the Court concluded that no such equally effective, less burdensome alternative approach was available. Although the parties challenging Minnesota's ban on selling milk in non-refillable plastic containers had "suggested several alternative statutory schemes, . . . these alternatives [were] either more burdensome on commerce than the Act (as, for example, banning all nonreturnables) or less likely to be effective (as, for example, providing incentives for recycling)." Clover Leaf Creamery, 449 U.S. at 473-74. The Court's observation that "providing incentives for recycling" was "less likely to be effective" was evidently based on the Minnesota Legislature's express statement of its purpose in banning the non-refillable plastic containers: that "recycling of solid waste materials is one alternative for the conservation of material and energy resources, but it is also in the public interest to reduce the amount of materials requiring recycling or disposal." Id. at 459 n.2 (quoting Minnesota statute) (emphasis added).

Here, similarly, based on the limited record, we are unaware of alternatives that would cause Article 32 to fail the final part of the Pike test. If the Town banned sales of all beverages in PET bottles of one liter or less, the result would presumably be a greater impact on interstate commerce. And even if the Town acting alone could provide greater incentives to recycle drinking water PET bottles of one liter or less,¹⁴ that would not necessarily be equally effective

¹⁴ It is unclear how the Town could do so. It is very doubtful that the Town could require a deposit on such bottles; the state Bottle Bill imposes deposits to encourage recycling of "beverage containers," but its definition of "beverage" does not include drinking water (see G.L. c. 94, § 321), and the Bottle Bill's operation could easily be disrupted if cities and towns imposed deposits on additional types of containers. Moreover, imposing a deposit on bottled water sold in the Town, but not elsewhere in the Commonwealth, could create non-uniform labeling requirements that might themselves increase the burden on interstate commerce.

in furthering the Town's apparent goal of reducing the amount of packaging materials requiring recycling or disposal in the first place. This is a goal that may rationally be imputed to the Town, given Article 32's focus on a beverage that is readily available without any packaging materials at all, i.e., out of faucets.

Application of the Pike test frequently requires factual records and findings. E.g., United Haulers, 550 U.S. at 346 (finding no dormant Commerce Clause violation under Pike test, where "[a]fter years of discovery," trial court "could not detect any disparate impact on out-of-state as opposed to in-state businesses"); Clover Leaf Creamery, 449 U.S. at 472-74; Pike, 397 U.S. at 149-56. Here, we do not have the benefit of stipulations, findings, or officially noticeable facts regarding the extent of Article 32's effect on interstate commerce as compared to its hoped-for local benefits. Because Article 32 comes to us with a presumption of validity, Amherst, 398 Mass. at 795-96, and because invalidation under the Pike test would require us to conclude that Article 32's burden on interstate commerce is "clearly excessive" in relation to its putative local benefits, we cannot find that Article 32 violates the dormant Commerce Clause. Our conclusion does not and cannot, of course, foreclose such a challenge in court, based on a fuller factual record.

3. Preemption by Federal Law

Under the federal constitution's Supremacy Clause, Article VI, cl. 2, federal law may supersede, or "preempt," the effect of state law (including municipal law). This may occur in any of three ways. "State action may be foreclosed by express language in a congressional enactment, . . . by implication from the depth and breadth of a congressional scheme that occupies the legislative field, . . . or by implication because of a conflict with a congressional enactment" Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 540-541 (2001) (citations omitted). Where "federal law is said to bar state action in fields of traditional state regulation, . . . we have worked on the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." California Div. of Labor Standards Enforcement v. Dillingham Construction NA, Inc., 519 U.S. 316, 325 (1997) (citations and internal quotations omitted).

It has been argued to us that Article 32 is preempted by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301-399d, which authorizes the federal Food and Drug Administration (FDA) to establish standards of identity, labeling, and quality for foods (including bottled drinking water), and which, in 21 U.S.C. § 343-1(a), expressly preempts non-identical standards established by states and political subdivisions. The FDA has established "standard of identity" regulations (21 CFR § 165.110(a)), which define different types of bottled drinking water such as spring water and mineral water, and "standard of quality regulations" (21 CFR § 165.110(b)), which establish allowable levels for contaminants in bottled drinking water. The FDA has also established Current Good Manufacturing Practice (CGMP) regulations for the processing and bottling of bottled drinking water (21 CFR Part 129),¹⁵ and generally applicable

¹⁵ These bottled water CGMP regulations, as well as the relevant portions of CGMPs for foods generally as set forth in 21 CFR Part 110, "apply in determining whether the facilities, methods, (footnote continued)

food labeling requirements (21 CFR Part 101) that apply to bottled water.

Although these federal requirements are extensive and detailed, we find nothing in Article 32 that conflicts with them. Article 32 does not establish any standard for the identity, quality, or labeling of bottled water. Nor do we find anything in any of the cited federal regulations that mandates that bottled water be sold in PET bottles of one liter or less. Simply put, the FDA requirements applicable to bottled water are aimed at ensuring consumer knowledge, health, and safety--not at ensuring that bottled water be available in types of containers that consumers may desire, or types of containers that may have some impact on the generation of solid waste.¹⁶ It has not been argued to us, nor can we independently determine, that it is impossible or impractical to comply with both the FDA regulations and Article 32, nor do the FDA regulations "occupy the field" of regulation of bottled water packaging. We therefore conclude that those regulations, and the preemption language in 21 U.S.C. § 343-1(a), do not preempt Article 32.

4. Preemption by State Law

As noted earlier, the Attorney General must disapprove a by-law if it conflicts with state law. Amherst, 398 Mass. at 796. Municipalities have "considerable latitude" in legislating, and so there must be a "sharp conflict" with state law before a local enactment may be disapproved. Bloom, 363 Mass. at 154. "The legislative intent to preclude local action must be clear." Id. at 155.

"This intent can be either express or inferred." St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dept. of Springfield, 462 Mass. 120, 125-26 (2012). Local action is precluded in essentially three instances, paralleling the three categories of federal preemption: (1) where the "Legislature has made an explicit indication of its intention in this respect"; (2) where "the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject"; or (3) where "legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field." Wendell v. Attorney General, 394 Mass. 518, 524 (1985). "The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be

(footnote continued)

practices, and controls used in the processing, bottling, holding, and shipping of bottled drinking water are in conformance with or are operated or administered in conformity with good manufacturing practice to assure that bottled drinking water is safe and that it has been processed, bottled, held, and transported under sanitary conditions."

¹⁶ The same is true of another FDA regulation, 21 C.F.R. § 177.1630, which appears to provide that PET is safe for use in contact with food, and which may thereby (although not explicitly) allow PET to be used to manufacture bottles for drinking water.

achieved in the face of a local ordinance or by-law on the same subject[.]” Bloom, 363 Mass. at 156; see Wendell, 394 Mass. at 527-28 (“It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.”).

a. **Executive Office of Energy and Environmental Affairs Statutes**

It has been suggested that Article 32 is preempted by general statutes concerning the responsibilities of the state Executive Office of Energy and Environmental Affairs (EOEEA). Those statutes, among other things, direct EOEEA to “provide for the management of air, water and land resources to assure the protection and balanced utilization of such resources within the commonwealth, realizing that providing safe water to drink and clean air to breathe is a basic mandate” (G.L. c. 21A, § 2(2)); and to “encourage recycling, resource recovery and environmentally sound purchasing practices to conserve resources and reduce waste[.]” Id. § 2(19). Although these statutory responsibilities are broad, we find in them nothing that explicitly preempts local law, nothing that conflicts with Article 32, and no intention to “occupy the field” of solid waste reduction and thereby preclude municipal efforts towards that goal.

b. **Bottle Bill**

We have also considered the possible preemptive effect of the Bottle Bill, G.L. c. 94, §§ 321-327, and its associated regulations, 301 CMR §§ 4.01-4.09. No doubt the law and regulations represent a comprehensive approach to the creation of financial incentives for consumers to return beverage containers so they may be recycled.¹⁷ The Bottle Bill and its regulations do not, however, expressly preempt local action, nor does Article 32 conflict with them. The Bottle Bill imposes a deposit on “beverage container[s],” G.L. c. 94, § 323(a); but it defines the term “beverage” so as to exclude plain drinking water. Id. § 321.¹⁸ Thus the operation of Article 32 will have no apparent adverse impact on the operation of the Bottle Bill’s system for encouraging recycling.

As for “field preemption,” we may assume for purposes of argument that the Bottle Bill was intended to occupy the field of, and ensure a uniform state system of, direct financial incentives for consumers to return beverage containers for recycling. But Article 32 does not

¹⁷ “The objective of the bottle bill is to encourage the conservation of materials and energy, and to reduce litter, through the recycling and reuse of containers. To achieve this end, the statute provides a financial incentive, through deposits, refunds, and handling fees, to encourage the return of empty beverage containers.” All Brands Container Recovery, Inc. v. Merrimack Valley Distributing Co., 54 Mass. App. Ct. 297, 298 (2002).

¹⁸ That statute defines “beverage” as “soda water or similar carbonated soft drinks, mineral water, and beer and other malt beverages, but shall not include alcoholic beverages other than beer and malt beverages as defined in chapter one hundred and thirty-eight, dairy products, natural fruit juices or wine.”

operate in that field. Rather, Article 32 seeks to reduce the generation of plastic bottles that must then be recycled or otherwise disposed of. Although the Bottle Bill and Article 32 share an overall goal of reducing the number of beverage containers that consumers introduce into the solid waste stream, they seek to accomplish that goal by entirely different mechanisms. The Bottle Bill embodies no legislative judgment that its consumer-paid deposit system shall be the uniform and only approach to achieving the goal just stated. The Bottle Bill's exclusion of certain beverage containers does not represent a legislative decision that disposal of those containers is not a matter of legitimate governmental concern.¹⁹ The exclusion of certain containers (e.g., plastic drinking water bottles) does not represent a legislative decision to prohibit other steps that could reduce the number of those containers introduced into the solid waste stream.

c. Statutes and Regulations Concerning Bottled Water

We have also considered the possible preemptive effect of various state statutes and regulations concerning bottled drinking water. The bottling of drinking water within the Commonwealth requires a permit from the board of health in the municipality where the bottling facility is located, and persons or companies engaged in the business of bottling drinking water outside of the Commonwealth may not sell such water within the Commonwealth without a permit from the state Department of Public Health (DPH). G.L. c. 94, §§ 10A, 10B. Bottled water intended for human consumption must be tested periodically and labeled appropriately. *Id.* §§ 10D½, 10E½. As authorized by G.L. c. 94, § 10E, DPH has issued regulations to implement the foregoing statutes. 105 CMR §§ 570.001-570.031 ("Manufacture, Collection and Bottling of

¹⁹ We are aware that the Legislature has rejected numerous efforts to extend the Bottle Bill's coverage to containers of beverages such as plain drinking water, juices, and sports drinks. This legislative decision that such containers should not be brought within the Bottle Bill's approach to encouraging recycling and reducing waste does not represent a decision that such non-covered containers do not pose a solid waste disposal problem or that cities and towns may not take steps (apart from imposing a consumer deposit system like the Bottle Bill's) to control that problem.

We have also been informed that in May 2012, the state Senate, in declining to adopt an amendment to the FY 13 state budget that would expand the Bottle Bill to cover bottled water, also declined to adopt an amendment that would ban the sale of bottled water unless such bottles were subject to the Bottle Bill. This occurred in the context of a budget debate that ultimately did not lead to any legislation addressing the Bottle Bill or bottled water. We cannot infer, from the rejection of such a conditional ban by one branch of the Legislature in these circumstances, any affirmative intent by the Legislature as a whole to preclude cities and towns from taking action in this area. Unenacted legislative proposals are usually an unreliable basis for determining legislative intent. *E.g., Rosing v. Teachers' Retirement System*, 458 Mass. 283, 294 n.12 (2010); *Franklin v. Albert*, 381 Mass. 611, 615-16 (1980). Likewise, we cannot find any preemptive intent based on the Legislature's ultimate failure to adopt a May 2012 Senate budget amendment to create a commission to study the sale of bottled water and the possible need for legislation to reduce the generation of associated solid waste.

Water and Non-carbonated Beverages”). “The purpose of these regulations is to establish standards for the manufacture, collection, bottling and labeling of bottled water and carbonated non-alcoholic beverages . . . to promote the underlying purpose of protecting the public health.” *Id.* § § 570.001 (emphasis added). We find nothing in these statutes or regulations, however, that requires that bottled water be made available for sale in particular types of bottles (*e.g.*, PET bottles of one liter or less), or that addresses the solid waste issues, as opposed to public health issues, that the sale of bottled water may create.²⁰ In short, these statutes and regulations do not preempt Article 32, either expressly, or by conflicting with Article 32, or by occupying any field in which Article 32 operates.

We have also reviewed G.L. c. 94, § 323A, which prohibits the sale of plastic containers in the Commonwealth, regardless of their contents and whether they contain beverages that are covered by the Bottle Bill, unless they include one of seven codes indicating the type of plastic of which the container is made, along with a triangle formed of three rounded arrows and commonly recognized as a symbol of recycling. One of the codes set forth in the statutes is the number “1,” which indicates “PETE (polyethylene terephthalate).” *Id.* § 323A(a). This is apparently the same type of plastic as the “PET” addressed by Article 32. The obvious purpose of § 323A (which is placed between other sections of c. 94 that constitute the Bottle Bill, §§ 321-323E) is to allow the identification of different types of plastic containers if and when they must be separated for recycling purposes. We do not construe § 323A as embodying a legislative judgment that sales of containers manufactured out of any of the types of plastic listed therein must be permitted in the Commonwealth, regardless of their contents. Neither the words nor the placement of § 323A hints at any such purpose. Section 323A does not say that sales of plastic containers shall be permitted, provided that they are properly labeled. Rather, § 323A prohibits sales of plastic containers unless they are properly labeled. In short, § 323A does not expressly preempt local action regarding container sales; while it may well occupy the field of labeling plastic containers by the type of plastic involved, Article 32 does not enter that field; and Article 32 does not conflict with § 323A.

Finally, we have considered the possible preemptive effect of state Department of

²⁰ The same is true of various other DPH statutes and regulations that have been called to our attention. For example, DPH issues licenses to operate food and beverage vending machines, which may include machines that dispense bottled water (G.L. c. 94, §§ 308-313), but this licensing system appears to be primarily concerned with public health and other issues addressed in G.L. c. 94, not with the issue addressed by Article 32. *See id.* § 311(b) (“Whenever the commissioner [of DPH] finds that an operator has violated any applicable provision of this chapter or that unsanitary or other conditions exist in the operation of any vending machine or commissary, he shall issue a written notice . . . advising the operator that unless such violation and condition is corrected within a specified and reasonable period of time his license may be suspended or revoked”). The same may be said of DPH’s regulation 105 CMR § 590.006(A), which concerns “bottled drinking water used or sold in a food establishment.” This regulation is a part of 105 CMR Part 590, which establishes “Minimum Sanitation Standards for Food Establishments.”

Environmental Protection (DEP) regulations under which DEP may “require a public water system to use bottled water, point-of-use devices, [or] point-of-entry devices as a condition of granting an exemption from the requirements of [other DEP regulations setting maximum contaminant levels or requiring certain treatment methods for piped water] to avoid an unreasonable risk to health.” 310 CMR §§ 22.14(23)-(25).²¹ We are not aware, however, that the Town has sought any such exemption or that DEP has identified the need for one. Nor is it clear that, if such an exemption were sought, DEP would mandate the use of bottled water (as opposed to point-of-entry or point-of-use devices), or that any such mandate would require that such water be furnished in PET bottles of one liter or less. The DEP regulation describing the use of bottled water as a condition for obtaining an exemption does not establish any requirements for the types or sizes of bottles to be used. Assuming arguendo that DEP were to require water to be furnished in PET bottles of one liter or less, there is room in Article 32, through the “exemption for emergencies” procedure in its section 2, and the “suspension” procedure in section 4, to allow such sales. Accordingly, we find no necessary conflict between the DEP regulations and Article 32, nor do those regulations preempt Article 32 expressly or by occupying any field in which Article 32 necessarily operates.

In sum, we are unable to conclude that Article 32 is preempted by or conflicts with any state statutes or regulations concerning bottle water.²²

²¹ The regulations define a “Point-of-entry Treatment Device” as “a device installed to treat the water entering a house or building or portion of such for the purpose of reducing contaminants in the water distributed throughout the house or building or portion of such.” *Id.* § 22.02(1). A “Point-of-use Treatment Device” is “a treatment device installed on a single faucet or spigot used for the purpose of reducing contaminants in drinking water at that one faucet or spigot.” *Id.*

²² It has been suggested to us that Article 32 may interfere with the performance of contracts that the Commonwealth has entered into with private vendors for the supply of bottled water to state agencies and institutions, which could include the Massachusetts Correctional Institution-Concord operated by the state Department of Correction (DOC), or the Concord District Court. We have reviewed the contracts (identified by the code “GRO 26”), the terms of which are available at <https://www.ebidsourcing.com/displayPublicContSummView.do?doValidateToken=false&docViewType=ACTIVE&docId=120208&docStatus=ACTIVE&docUserId=3141&userType=PUBLI> (last visited August 1, 2012). It is unclear whether, under these contracts, any “sales” of the type prohibited by Article 32 occur in the Town, either by vendors to DOC or the Court, or by DOC or the Court to persons on state premises. We caution the Town that Article 32 should not be applied in a manner that would interfere with the essential governmental functions of DOC and the Court. A state agency is not subject to local regulations unless “those regulations do not interfere with its ability to fulfill its essential governmental purposes and have only a negligible effect on its operations.” *Town of Boxford v. Massachusetts Highway Department*, 458 Mass. 596, 602 (2010) (citation and internal quotations omitted).

5. Home Rule Amendment Limitations

We have considered whether Article 32 is consistent with limitations established by the state constitution's Home Rule Amendment, Mass. Const. amend. art. 2 (as amended by amend. art. 89). Generally, "[a]ny city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court[.]" *Id.* § 6. However, "[n]othing in this article shall be deemed to grant to any city or town the power . . . (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power[.]" *Id.* § 7(5). Although a proviso to § 7 allows the Legislature to grant such power, we are unaware of any legislation doing so in this context. As explained below, however, we conclude that, even accepting the doubtful proposition that Article 32 constitutes "private or civil law governing civil relationships," any such aspect of Article 32 is valid, as "an incident to an exercise of an independent municipal power." We also conclude that Article 32 is consistent with various other Home Rule Amendment limitations that have been cited to us.

a. Private or Civil Law Governing Civil Relationships

The Supreme Judicial Court first interpreted the meaning of the "private or civil law" clause in *Marshal House, Inc. v. Rent Review and Grievance Board of Brookline*, 357 Mass. 709 (1970), where the court held that a by-law enacting a form of rent control was an impermissible private or civil law governing a civil relationship. The *Marshal House* court acknowledged that "[a]mbiguity exists . . . concerning the meaning of . . . § 7(5)." *Id.* at 713. The court was "faced with interpreting novel and very general language concerning which there exist only inconclusive indications concerning the intentions of the [Home Rule Amendment's] draftsmen." *Id.* at 714.

Nonetheless, the court concluded that "[t]he term 'private or civil law governing civil relationships' is broad enough to include law controlling ordinary and usual relationships between landlords and tenants." *Id.* at 716. The court noted that although the by-law contained some provisions for public enforcement (by the rent review and grievance board), "the method adopted is primarily civil in that it affords to the board power in effect to remake, in important respects, the parties' contract creating a tenancy." *Id.* In contrast to, for example, the "regulation of a temporary relationship between [a] taxi operator and his customer," the by-law "more directly intervenes in the continuing landlord-tenant relationship." *Id.* at 715. It is now well established that local enactments that affect the landlord-tenant relationship by, e.g., imposing rent control or regulating condominium conversions, are "private or civil law governing civil relationships." *Bannerman v. City of Fall River*, 391 Mass. 328, 330-31 (1984) (citing *Marshal House* and *CHR General, Inc. v. Newton*, 387 Mass. 351, 354 (1982)).

In contrast, in *Bloom*, 363 Mass. 136, the court held that an ordinance establishing a municipal human rights commission was not an enactment of private or civil law governing a civil relationship. The court distinguished *Marshal House* on the grounds that "[n]o new rights or obligations between persons are created by the ordinance; no existing rights or obligations between persons are modified or abolished." *Bloom*, 363 Mass. at 146.

Together, Marshal House and Bloom suggest certain distinguishing features of private or civil laws governing civil relationships. An enactment that “remake[s], in important respects,” a private agreement governing a “continuing . . . relationship,” and which is enforced through means “predominantly civil in character” (i.e., through the parties’ own enforcement of the agreement) is likely a private or civil law governing a civil relationship. See Marshal House, 357 Mass. at 716-17. (To date, Massachusetts courts have not applied the limitation on private or civil law governing civil relationships to any relationship other than the landlord-tenant relationship.) In contrast, an enactment in which “[n]o new rights or obligations between persons are created [and] no existing rights or obligations between persons are modified or abolished,” Bloom, 363 Mass. at 146, is likely not a private or civil law governing a civil relationship.

This conception of private or civil law is consistent with that offered by other legal authorities. The court in Bloom, 346 Mass. at 146 n.6, cited Note, Municipal Home Rule Power: Impact on Private Legal Relationships, 56 Iowa L. Rev. 631 (1971), which states that “a municipality is considered to have enacted private law when an ordinance significantly affects private legal relationships” Id. at 631. “Broadly defined, private law is the law governing civil relationships, including such fields as tort, contract, and property law.” Id. (footnote omitted). The “private or civil law” limitation on home rule powers grows out of “social and economic considerations of uniformity, certainty, and predictability in private legal relationships For example, the effect of a different law of contracts or torts in each city would obviously be chaotic.” Id. at 632. As another commentator has stated, “Private law consists of the substantive law which establishes legal rights and duties between and among private entities, law that takes effect in lawsuits brought by one private entity against another.” Gary T. Schwartz, The Logic of Home Rule and the Private Law Exception, 20 UCLA L. Rev. 671, 688 (1973). Examples include “contracts, property, and torts.” Id. at 687. According to a third commentator, “Obviously, we do not wish to give our cities the power to enact a distinctive law of contracts, for example. On the other hand, the exercise of municipal powers is very likely to have important bearings upon private interests and relationships. The approach of the . . . [language now in § 7(5) of the Home Rule Amendment] is to strike a balance” Jefferson B. Fordham, Home Rule-AMA Model, 44 Natl. Municipal Rev. 137, 142 (1955) (quoted in Marshal House, 357 Mass. at 714).

Here, Article 32 does not appear to meet any of the criteria that identify “private or civil law governing civil relationships.” First, it does not remake, in any important respect, any private agreement governing a continuing relationship. The “relationship” between a merchant wishing to sell drinking water in PET bottles of one liter or less and a customer wishing to buy it is not, to our knowledge, ordinarily governed by any continuing contract; rather, it is a “temporary relationship,” more akin to that “between [a] taxi operator and his customer” than to the landlord-tenant relationship. Marshal House, 357 Mass. at 715. Second, prohibiting the merchant from selling such bottled water does not appear, in any meaningful way, to create or modify any “rights” or “obligations” between private persons. Merchants and customers certainly have expectations that lawful products may be freely bought and sold, but these are not “rights” or “obligations,” absent some law or contract so declaring, and we are aware of none. Third, Article 32 is not a form of contract, property, or tort law. At most, by prohibiting sales of a certain category of bottled water, it indirectly prohibits the formation of contracts for such

sales.

Finally, Article 32's enforcement mechanism also suggests that it is not a "private or civil law governing civil relationships." Article 32 is not enforceable through "lawsuits brought by one private entity against another." The Logic of Home Rule and the Private Law Exception, 20 UCLA L. Rev. at 688 (stating that such a private enforcement mechanism is one feature of "private or civil law"). Rather, enforcement of Article 32 "is the responsibility of the Town Manager or his/her designee," through a system of warnings and "fines paid to the Town of Concord." See Article 32, § 3 & Amendment to Appendix A of Town's Non-Criminal Disposition Bylaw. Although the existence of such a public enforcement mechanism is not dispositive where a local enactment operates primarily by remaking the terms of a private legal relationship, Marshal House, 357 Mass. at 716-17, that is not the case here. Judging by its enforcement mechanism, Article 32 establishes a duty running from merchants to the Town, not from merchants to their customers. In sum, we cannot conclude that Article 32 constitutes "private or civil law governing civil relationships."

b. Exercise of an Independent Municipal Power

Even if Article 32 constituted "private or civil law governing civil relationships," any such aspect of Article 32 is "an incident to an exercise of an independent municipal power"--here, the power to regulate the generation of solid waste within the Town. As the court stated in Marshal House,

Doubtless, under art. 89, § 6, a town possesses (subject to applicable constitutional provisions and legislation) broad powers to adopt by-laws for the protection of the public health, morals, safety, and general welfare, of a type often referred to as the 'police' power. We assume that these broad powers would permit adopting a by-law requiring landlords (so far as legislation does not control the matter) to take particular precautions to protect tenants against injury from fire, badly lighted common passageways, and similar hazards. Such by-laws, although affecting the circumstances of a tenancy, would do so (more clearly than in the case of the present [rent-control] by-law) as an incident to the exercising of a particular aspect of the police power.

Marshal House, 357 Mass. at 717-18. To be sure, "a municipal civil law regulating a civil relationship is permissible (without prior legislative authorization) only as an incident to the exercise of some independent, individual component of the municipal police power." Id. at 718 (emphasis added).

We conclude that it would be, in effect, a contradiction (or circuitous) to say that a by-law, the principal objective and consequence of which is to control rent payments, is also merely incidental to the exercise of an independent municipal power to control rents. We perceive no component of the general municipal police power, other than the regulation of rents itself, to which such regulation fairly could be said to be incidental.

Id. at 718 (footnote omitted); see Bannerman, 391 Mass. at 332 (condominium conversion

ordinance could not be justified as incident to exercise of city's power to "[f]urther[] . . . the general public welfare," but instead must be based on an 'individual component of the [city]'s police power'" (quoting Marshal House).

Here, unlike in Marshal House, any effect that Article 32 has on private civil relationships between merchants and customers is incidental to the exercise of the Town's independent power to regulate the generation of solid waste--a separate component of its police power that has no necessary link to regulating relationships between merchants and customers. Article 32 is akin to the hypothetical by-law in Marshal House, requiring landlords to "to take particular precautions to protect tenants against injury from fire" and similar hazards--a by-law that the court assumed would be a valid "exercise[e] of a particular aspect of the police power" even though the by-law would incidentally "affect[] the circumstances of a tenancy." Marshal House, 357 Mass. at 717-18.

The Supreme Judicial Court has appeared to accept that a municipality's "power to operate [a] water and sewer system" and its "power to regulate traffic and city streets" would constitute "individual component[s] of the [municipality's] police power," that is, "independent municipal power[s]." Bannerman, 391 Mass. at 332 (finding, however, that challenged condominium conversion ordinance was not, in the circumstances, an exercise of those powers).²³ We conclude that the Town's power to control the generation of solid waste within its borders is, likewise, an "independent, individual component of the municipal police power." See Marshal House, 357 Mass. at 718. Article 32 appears to be a valid exercise of that power, to which any effect on private civil relationships is incidental.

c. Other Home Rule Amendment Limitations

We have also considered the argument that Article 32 is invalid because it is unauthorized by G.L. c. 40, § 21, which, it has been argued to us, "implements" the Home Rule Amendment. That statute lists a number of subjects on which municipalities may enact ordinances and by-laws, in some cases subject to certain express limitations. But the statute predates the 1966 adoption of the Home Rule Amendment. See, e.g., G.L. c. 40, § 21 (Ter. Ed. 1932). In light of that Amendment's authorization to each municipality to legislatively "exercise any power or function which the general court has power to confer upon it," amend. art. 2, § 6 (as inserted by amend. art. 89)--whether or not the general court has actually done so--G.L. c. 40, § 21 cannot be read to preclude, by implication, ordinances and by-laws on subjects not listed therein. See generally Bloom, 363 Mass. at 157.

In any event, G.L. c. 40, § 21(1), authorizes municipalities to adopt ordinances and by-laws "[f]or directing and managing their prudential affairs, preserving peace and good order, and maintaining their internal police." The phrase "internal police" refers not to municipal police

²³ See also CHR General, 387 Mass. at 356 (municipal zoning power was an "independent municipal power," although challenged condominium conversion ordinance was not, in the circumstances, an exercise of that power).

departments but is, instead, “a term sometimes applied to the police power, or power to enact laws in the interest of the public safety, health, and morality[.]” Black’s Law Dictionary 732 (5th ed. 1979). As discussed above, we conclude that Article 32 is a valid exercise of the Town’s police power. Thus, Article 32 is within the terms of G.L. c. 40, § 21, although that is not necessary to Article 32’s validity.

We also do not accept the argument that Article 32 violates the Home Rule Amendment by restricting traffic between municipalities or regulating activities outside Town boundaries. See Beard v. Town of Salisbury, 378 Mass. 435, 440-41 (1979) (neither statute nor Home Rule Amendment authorized municipality to regulate either inter-municipal traffic or areas outside municipality’s boundaries). Article 32 may, or may not, have the effect of reducing the number of delivery trucks traveling from other municipalities to the Town, but it does not purport to regulate such traffic. Nor does Article 32’s prohibition on sales of bottled water “in the Town of Concord,” Article 32, § 1, purport to regulate sales occurring in other municipalities. Questions may arise about where particular sales occur for purposes of Article 32--an issue that we address immediately below--but the possibility of such questions does not lead to the conclusion that Article 32 prohibits sales occurring outside Town boundaries.

6. Vagueness

We have considered the argument that Article 32 is unconstitutionally vague, because it (a) does not define what constitutes a sale “in the Town of Concord,” (b) does not define what constitutes “drinking water,” and (c) does not provide for any means to notify merchants about which bottles are “polyethylene terephthalate (PET) bottles,” all of which phrases are used in the sales prohibition set forth in Article 32, § 1. We are unable to agree with these contentions.

Under the “void for vagueness” doctrine, a law that “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” Commonwealth v. Carpenter, 325 Mass. 519, 521 (1950) (citation and internal quotations omitted). Vague laws violate due process because individuals do not receive fair notice of the conduct proscribed by the law, id., and because vague laws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement. Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 363-64 (1973).

Nevertheless, “proscribed conduct is not always capable of precise legal definition”; “mathematical precision” is not required; and a law is not vague “if it requires a person to conform his conduct to an imprecise but comprehensible normative standard[.]” Commonwealth v. Williams, 395 Mass. 302, 304 (1985) (citations and internal quotations omitted). “Uncertainty as to whether marginal offenses are included within the coverage of a statute does not render it unconstitutional if its scope is substantially clear.” Commonwealth v. Bohmer, 374 Mass. 368, 372 (1978). “The fact that close questions may arise in determining [the existence of violations] does not render the statute unconstitutionally vague.” Opinion of the Justices, 378 Mass. 822, 827 (1979). Particularly where statutes regulating business activities are concerned, “the due process clause does not require great exactitude,” and “the meaning and application of terms must be arrived at by . . . the gradual process of judicial inclusion and exclusion.” Commonwealth v. Gustafsson, 370 Mass. 181, 187 (1976) (citations and internal quotations

omitted).

Judged against these standards, Article 32 is not unconstitutionally vague. First, it is clear enough that where both the transfer from seller to buyer of a bottle of water and the buyer's payment to the seller occur within the Town, the sale has occurred within the Town. Closer questions may arise where either the transfer or the payment occurs outside of the Town, but these may be resolved if and when they arise in an enforcement action. Gustafsson, 370 Mass. at 187. The Town is presumed to be aware that it cannot regulate activities occurring outside of Town boundaries. See Beard, 378 Mass. at 440-41. Moreover, the only consequence of first offense is a warning (see Article 32, Amendment to Appendix A of Town's Non-Criminal Disposition Bylaw), meaning that merchants will be on sufficient notice, before being subject to any monetary penalty, that the Town considers them to have violated Article 32. Ambiguities in business regulations may be clarified through the administrative process so as to avoid a vagueness claim, see MFT, 436 Mass. at 781, and Article 32's warning mechanism appears sufficient to accomplish this result.

Second, the argument that Article 32's phrase "drinking water" is unconstitutionally vague is both unpersuasive standing alone, and misses the point that Article 32 more specifically prohibits the sale of "non-sparkling, unflavored drinking water in single-serving polyethylene terephthalate (PET) bottles of 1 liter (34 ounces) or less[.]" This phrase does not require persons "of common intelligence" to "guess at its meaning and differ as to its application[.]" Carpenter, 325 Mass. at 521. We do not see any significant uncertainty in what types of bottled water are and are not subject to Article 32. The argument made to us that bottled water suitable for drinking may in fact be purchased for other uses (e.g., cooking, washing, bathing an infant), and therefore is not "drinking water" within the meaning of Article 32, appears strained. If such a case arises, the applicability of Article 32 may be clarified by its warning process and by case-by-case adjudication.

The argument that merchants may be unaware of whether particular plastic bottles are made of polyethylene terephthalate (PET) is answered by the requirement of G.L. c. 94, § 323A, discussed above, that all plastic containers sold in the Commonwealth be labeled with a code identifying the type of plastic of which they are made. Section 323A requires that polyethylene terephthalate containers be identified by the code number "1" along with the triangular recycling symbol. Any remaining questions on this issue may, as noted above, be clarified by the warning process contemplated by Article 32 and by case-by-case adjudication.

We do note that some question may arise about the scope of the "Exemption for Emergencies" established by Article 32. Section 2 of Article 32 provides:

Sales occurring subsequent to a declaration of an emergency adversely affecting the availability and/or quality of drinking water to Concord residents by the Emergency Management Director or other duly-authorized Town, Commonwealth or United States official shall be exempt from this Bylaw until seven days after such declaration has ended.

It is unclear whether, in order to trigger this exemption, a declaration of emergency must specifically state that the emergency is one "adversely affecting the availability and/or quality of

Legal Notice

Town of Great Barrington

Public Hearing

*Continued
to October 15/18
meeting.*

The Selectboard will hold a public hearing on Monday, September 17, 2018 at 7:00 PM at the Town Hall, 334 Main Street, Great Barrington, MA 01230 to act on the application of Berkshire Cooperative Association, Inc. d/b/a Berkshire Co-Op Market, Daniel Esko, Manager for a New Package Store Beer and Wine Liquor License at 42 Bridge Street, Great Barrington, MA. The premises consist of a supermarket area, four bathrooms, a café seating area and two means of entrance/exit.

Stephen Bannon

Chair

Please publish August 24, 2018 and August 31, 2018 —

Berkshire Record

SP # 882-18

NOTICE OF PUBLIC HEARING

The Great Barrington Selectboard will hold a public hearing on Monday, October 15, 2018 at 7:00 PM at Town Hall, 334 Main Street, Great Barrington, MA, to act on the special permit application of 26 Manville, LLC, PO Box 628, Great Barrington, for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase impervious area of a lot by more than 15% or 2,500 square feet. Proposed impervious surfaces are in connection with a proposed development of 47 apartments in three new buildings, and associated parking, driveway and site work, at the site comprised of 21 Manville Street, 26 Manville Street, and 28 Manville Street.

Stephen C. Bannon, Chair

Please Publish Friday, September 21, 2018 and Friday, September 28, 2018

Berkshire Record

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Conservation Agent

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TOWN OF GREAT BARRINGTON MASSACHUSETTS

CONSERVATION COMMISSION

MEMORANDUM

To: Great Barrington Selectboard

Fm: Shepley Evans, Conservation Agent

Date: October 11, 2018

Copy: Chris Rembold, Town Planner

Re: Special Permit application #882-18

At its September 26, 2018 public meeting, the Conservation Commission reviewed Special Permit application #882-18 from 26 Manville, LLC for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase impervious area of a lot by more than 15% or 2,500 square feet.

After reviewing Mass GIS Aerial photography, the interactive maps on the MuniMapper web site, and the language in the Zoning Bylaw dealing with Water Quality Protection, the Commission determined that the subject project at the end of Manville Street did not present any wetland permitting issues and that it was "not jurisdictional". The Commission therefore voted not to offer any comment or recommendation on this matter.

Thank you.

Michael Lanoue, Chair
Peter Stanton, Vice Chair
Ruby Chang, M.D.
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Phone: 413-528-0680
Fax: 413-528-3064

TOWN OF GREAT BARRINGTON MASSACHUSETTS

BOARD OF HEALTH

October 10, 2018

Special Permit #882-18: Application from 26 Manville, LLC, PO Box 628, Great Barrington, for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase impervious area of a lot by more than 15% or 2,500 square feet. Proposed impervious surfaces are in connection with a proposed development of 47 apartments in three new buildings, and associated parking, driveway and site work, at the site comprised of 21 Manville Street, 26 Manville Street, and 28 Manville Street.

Dear Selectboard,

The Board of Health reviewed the Special Permit 882-18 application on October 3, 2018. The Board requested that the project manager secure the necessary demolition permits with the Health Department but otherwise found no health risks or jurisdictional concern associated with the special permit application for work in the Water Quality Protection Overlay District.

The Board voted, unanimously, to recommend that the Special Permit 882-18 application is passed on to the Selectboard with the above mentioned comment.

MOTION: Peter Stanton moved to pass on Special Permit 882-18 to the Selectboard with the recommendation that the necessary demolition permits are secured with the Health Department in a timely manner

SECOND: Dr. Ruby Chang

VOTE: 3-0

Sincerely,
Rebecca Jurczyk
Agent of the Great Barrington Board of Health



RECEIVED
TOWN MANAGER

SEP 12 2018

BOARD OF SELECTMEN
GREAT BARRINGTON, MA

41 MAHAIWE STREET
GREAT BARRINGTON, MA 01230

PH 413-528-1985 | FX 413-528-0192

September 10, 2018

OFFICERS

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Jane Ralph
Executive Director

TO: Mr. Stephen Bannon, Chairperson
Great Barrington Select board
Town Hall – 334 Main Street
Great Barrington, MA 01230

Ms. Brandee Nelson, Chairperson
Great Barrington Planning Board
Town Hall – 334 Main Street
Great Barrington, MA 01230

RE: Special Permit Application
Site Plan Approval
21-28 Manville Street
Great Barrington, MA 01230

Dear Chairs,

Please accept Construct Inc.'s enthusiastic letter of support for the Manville St. Apartments. Construct serves households living in poverty and, generally, those who are at 60% of the area median income or below with housing and support services. Those who have slightly more income are often ineligible for our support yet are part of the vital workforce needed in Great Barrington who can't afford to live here. With limited housing stock, those who find rental housing who can afford more are often occupying units that would otherwise be affordable for those Construct serves. Those who can't are often paying close to 50% of their income on housing –far more than the recommended 30%.



WWW.CONSTRUCTINC.ORG

Manville Apartments meets several of these needs as well as addressing other needs identified in Great Barrington's housing master plan: This project infills a neighborhood zoned for mixed use and will abut Construct's Mahaiwe St. property. We are excited to have these new neighbors who plan to develop our neighborhood so thoughtfully! With 47 new units, this may also justify increased public transportation which would further benefit our clients.

These new apartments also address the need for new, accessible housing stock. Many families who come to us for help have either an aging extended family member or young children who need basic housing that older housing stock does not provide. Apartments designed for mobility accessibility and that are lead-free meet a growing need. The apartments will also be much more energy efficient and rely less on fuel consumption than older housing stock while costing less for tenants and business owners.

Construct hired Ian Rasche to be its Development Consultant on Forest Springs. Through that process, we gained first-hand knowledge of his commitment to sustainable housing and community building across income levels. Manville Apartments furthers that commitment and meets urgent needs for housing at the moderate income level, enhances our neighborhood –a priority area for mixed use- and is in keeping with the Great Barrington Master Plan.

For all these reasons and yet, unsuspected benefits when the actual neighbors move in, Construct heartily supports the Manville St. Project.

Sincerely,

A handwritten signature in cursive script that reads "Jane Ralph". The ink is dark and the signature is fluid, with the first name and last name clearly distinguishable.

Jane Ralph

SP # 882-18

Application from 26 Manville, LLC, PO Box 628, Great Barrington, for a Water Quality Protection Overlay District Special Permit, in accordance with Sections 9.2 and 10.4 of the Great Barrington Zoning Bylaw, in order to increase impervious area of a lot by more than 15% or 2,500 square feet. Proposed impervious surfaces are in connection with a proposed development of 47 apartments in three new buildings, and associated parking, driveway and site work, at the site comprised of 21 Manville Street, 26 Manville Street, and 28 Manville Street.

DRAFT MOTIONS

VOTE ON FINDINGS

(If the Board has amended the Findings based on the Public Hearing and its discussion, be sure to specify those changes and approve the findings "as amended.")

move to approve the Findings of Fact for Special Permit #882-18, as *submitted* and referenced as Exhibit A.

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

VOTE ON SPECIAL PERMIT

move to approve, in view of the approved Findings of Fact, Special Permit #882-18 for 26 Manville, LLC for the proposed work in the Zone II of the water quality protection overlay district.

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

EXHIBIT A

FINDINGS OF FACT AND BASIS FOR DECISION

Re: **Special Permit #882-18**
 Manville Street

A. Introduction

This Special Permit application was filed on August 30, 2018 by 26 Manville, LLC, Owner of property at 21, 26, and 28 Manville Street. These three lots are clustered at the western end of Manville Street. The application seeks permission from the Great Barrington Selectboard to do work in the Zone II of the Water Quality Protection Overlay District (WQPOD). The application has been filed in accordance with Sections 9.2 and 10.4 Great Barrington Zoning Bylaw.

The Applicant/Owner is proposing to dispose / demolish the existing three residences on these lots and build a new mixed-use multifamily apartment complex here. The proposal will require the actual consolidation of the lots as well as the legal discontinuance of this portion of Manville Street, which Town Meeting has authorized. The proposed development will have up to a total of 47 apartments and one commercial unit in three new buildings, and associated parking, driveway and site work.

The civil engineering plans accompanying the application were prepared by SK Design, Inc. the proposal also includes both the Special Permit and Site Plan applications, illustrations of the site and neighborhood character, a traffic study prepared by a qualified transportation engineer, and architectural plans and elevations of the proposed buildings.

B. General Findings

The property lies within the MXD zone and a Zone II of the WQPOD. The proposed mixed-use multifamily development is by-right in the MXD zone, but requires Site Plan approval from the Planning Board.

The site is surrounded by a mix of single and two-story single family residential homes, mixed-uses and commercial uses in older structures that originally served as residential dwellings, a multi-building apartment complex to the south containing 66 units for seniors, and the railroad tracks.

Letters from the Great Barrington Sewer Department and the Fire District demonstrate that there are adequate utilities to serve the development. A letter from the Fire Chief demonstrates that adequate emergency access is provided. The traffic study demonstrates that no significant traffic congestion or safety issues will be created.

The Conservation Commission reviewed the project and found that there are no issues within the Commission's jurisdiction.

The Planning Board has made a positive recommendation on the Special Permit. The Planning Board is still discussing the Site Plan application and has not yet issued a decision.

The Board of Health reviewed the project application materials and did not make a recommendation with regards to the water quality protection district special permit. However

the Board requested that the Applicant's project manager secure the necessary demolition permits with the Health Department prior to demolishing the existing homes, but otherwise found no health risks or jurisdictional concern associated with the special permit application.

C. Water Quality Protection Overlay District Criteria and Specific Findings

Per Section 9.2.12 of the WQPOD, the proposal requires a special permit because it increases the impervious area of a lot by more than 15% or 2,500 square feet. Specifically, the total project site area of the three lots plus a to-be-discontinued portion of Manville Street is 93,700 square feet. The proposed development will render 60,985 square feet, or 65%, of the area impervious.

The special permit requirements of the WQPOD ensure that a project provides a method(s) to capture, treat, and infiltrate stormwater into the underlying aquifer, so that the development of impervious surface does not degrade the quality or quantity of water entering into and recharging the groundwater aquifer.

The proposed development includes a system for groundwater recharge that includes rain gardens and stormwater collection, treatment, and infiltration systems. As detailed in the proposed plans, these are designed and sized appropriately for the amount of new impervious surface and the underlying soil types. The Applicant's engineer calculates that 3,050 cubic feet of recharge volume is required in order to balance out the proposed impervious surface. The Applicant proposes recharge volume of 21,008 cubic feet.

These calculations have been reviewed by an independent engineer engaged by the Planning Board, and paid for by the Applicant. The independent engineer, White Engineering, Inc., confirmed that the Applicant's calculations are correct and that the proposed infiltrations systems are appropriate.

Section 9.2.13 item 3 states that the Selectboard may grant the special permit if it finds the standards of 9.2.8, 9.2.9, and the following two standards are met: (a.) [the project will] in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Quality Protection District; and (b.) [the project] be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

The Selectboard hereby finds:

1. Sections 9.2.8 and 9.2.9 do not apply.
2. The required amount of recharge volume is provided and the proposed infiltration system complies with the standards of this section.
3. The project will not diminish the quantity or quality of water available in the Water Quality Protection Overlay District.
4. The project is designed to avoid substantial disturbance of the soils, topography, drainage, and other water-related natural characteristics of the site. The project by its nature does disturb the vegetation of the site but this disturbance will not compromise the quantity or quality of water recharging the aquifer.

D. General Special Permit Criteria and Specific Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit requires a written determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh

its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #882-18:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
 - The proposed work will result in new rental housing units which will be priced at a level that much of the area workforce will be able to afford. It develops an area that is zoned for this type of higher density use, and which is identified in the Master Plan as an area for mixed use residential development.
2. Traffic flow and safety, including parking and loading.
 - The traffic study included with the application demonstrates that the proposed development will not result in traffic flow and safety issues. The study does recommend certain signage and crosswalk improvements, which the Planning Board will incorporate into its Site Plan decision.
3. Adequacy of utilities and other public services.
 - There are adequate public utilities, as demonstrated by the materials submitted with the application.
4. Neighborhood character and social structures.
 - The proposed work will result in a redeveloped site that is appropriately scaled to the heights and character of buildings and uses in the surrounding neighborhood. The proposed development is designed in way that will encourage public use of the grounds and interaction of the community.
5. Impacts on the natural environment.
 - The work will remove trees on the site but includes a landscaping plan to replace trees and vegetation on the site. As discussed in the WQPOD section above, the proposed work will not impair the aquifer.
6. Potential fiscal impact, including impact on town services, tax base, and employment.
 - The proposed work will have a positive fiscal impact by increasing overall property values in the area, providing housing opportunities for area employees.

Finding:

In consideration of the above Findings, this Selectboard finds that the benefits of the proposal outweigh any possible detrimental impacts.

E. Proposed Conditions

1. Any necessary demolition permits shall be secured from the Health Department prior to demolition.

Special Permit Application Site Plan Approval

For

Manville Place A Mixed-Use Development

For Property Located at

**21-28 Manville Street
Great Barrington, Massachusetts**

Prepared by:



DESIGN GROUP, INC.

CIVIL ENGINEERS - SURVEYORS - CONSULTANTS

2 FEDERICO DR., PITTSFIELD, MA 01201 (413) 443-3537

August 2018



August 30, 2018

Mr. Stephen Bannon, Chairperson
Great Barrington Selectboard
Town Hall – 334 Main Street
Great Barrington, MA 01230

Ms. Brandee Nelson, Chairperson
Great Barrington Planning Board
Town Hall – 334 Main Street
Great Barrington, MA 01230

RE: Special Permit Application
Site Plan Approval
21-28 Manville Street
Great Barrington, Massachusetts

Dear Board Members;

Enclosed please find the required fourteen (14) copies of a Special Permit and Site Plan Review Application prepared for Manville Place and property located at 21-28 Manville Street, Great Barrington (Map 22, Lots 45, 47, 79A & 80). This application is prepared under Section 9.2, 10.4 and 10.5 of the Town of Great Barrington Zoning Bylaws.

The property is approximately 2.15 acres which includes 3 single family home parcels and a portion of Manville Street which was discontinued at the May 2018 Annual Town Meeting. The properties contain residential dwelling units with accessory buildings, paved driveways and lawn areas. Landscaping and woody vegetation surround the perimeter. The property is located at the end of Manville Street and abuts the Housatonic Railroad.

This application includes the demolition of the existing buildings, driveways and utilities and the construction of a Mixed-Use Development, to be known as Manville Place. The development will contain 47 residential units with 1 commercial space encircled by an access driveway and the required parking. Utilities will be relocated and installed as necessary to accommodate the new development and stormwater will be managed on-site. Supporting documentation and project plans can be found herein.

We look forward to discussing the application with you. If you should have any questions or concerns, or require additional information, please do not hesitate to contact the office.

Sincerely,
SK DESIGN GROUP, INC.

James M. Scalise, II, PE
President

Attachments

Cc: 26 Manville, LLC

F. Sydney Smithers, Esq.

Elisabeth C. Goodman, Esq.

INC Architecture

File

G:\SK DESIGN GROUP\2017\170133 GOLogic Arch-21,26&28 Manville St, GB-Topo\Documents\Word\SPR SP\02 Cover Letter.docx

TABLE OF CONTENTS

**Special Permit Application
Site Plan Approval
Of
Manville Place
Prepared for
26 Manville, LLC
Located At
21-28 Manville Street
Great Barrington, Massachusetts**

- **The Application**
 - Special Permit Application
 - Site Plan Review Application
 - Certified Abutters List
- **Project Narrative**
 - A. Project Overview
 - B. Zoning Compliance
 - C. Municipal Impacts
 - D. Conclusion
- **Figures:**
 - 1. USGS Map
 - 2. NHESP Map
 - 3. FEMA Floodplain Map
 - 4. Town of Great Barrington Assessor's Map
 - 5. Great Barrington Zoning Map
- **Attachments:**
 - A. Site Photos
 - B. Soil Test Pits & Soil Borings
 - C. Lighting Design
 - D. Landscape Design
 - E. Traffic Impact Analysis prepared by VHB
 - F. Stormwater Report
 - G. Preliminary Architectural Plans and Elevations
 - H. Plans to Accompany Permit Applications prepared for 26 Manville, LLC, Dated August 30, 2018

Special Permit Application

TOWN OF GREAT BARRINGTON
Application for a Special Permit
to the Board of Selectmen or Planning Board

FORM SP-1
REV. 11-2013

FOR OFFICE USE ONLY

Number Assigned _____ Date Received _____
Special Permit Granting Authority _____
Copy to Recommending Boards _____
Advertised _____ & _____
Public Hearing _____
Fee: \$150.00 Paid: _____

APPLICATION FOR SPECIAL
PERMIT UNDER TOWN ZONING
BYLAWS FOR TOWN OF
GREAT BARRINGTON,
MASSACHUSETTS

MAP 22 LOT 45, 47 BOOK 2418 PAGE 335 ZONING DISTRICT(s) MXD
79A, 80 2428 18
2437 320
Site Address: 21, 26, 28 Manville Street, Great Barrington, MA

Date of Application August 30, 2018

Applicant's name and complete mailing address 26 Manville, LLC; P.O. Box 628
Great Barrington, MA 01230

Applicant's phone number (413) 822-9074 Applicant's email address: ian@alanderconstruction.com

Name and Address of Owner of land exactly as it appears on most recent tax bill:
Same

I (we) request a Special Permit for: Construction of impervious area more than
15% of lot area in WQPOD

Under Section(s) 9.2 and 10.4 of the Great Barrington Zoning Bylaws.

APPLICANTS MUST READ AND COMPLY WITH THE FOLLOWING:

One Signed Original application with each of the items below, as applicable, and fourteen (14) exact copies of the entire application package are to be submitted. Applications must include:

1. Completed application form, including signatures.
2. Brief written description of how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)
3. Site Plan, drawn to scale, applicable to the site and the proposed use of said site for which this special permit is requested.
4. Any other specifications necessary to further describe the site or proposed use for which a special permit is requested. At least one copy of any maps being submitted shall be no larger than 11" X 17". Plans should show all existing and proposed structures, property lines and dimensions, driveways, walkways and parking areas. All proposed landscaping, parking, loading, and similar improvements must be in compliance with the applicable sections of the Zoning Bylaw.
5. Certified list of abutters within 300' on the Assessors Maps to the subject property, including map and lot number. List must be obtained from the Assessors' Office.

6. Zoning Map designating the zoning district(s) and location for the area for which a special permit is requested, plus a USGS map enlarged and showing the site location within the Town.
7. Drainage Plan indicating the destination of all runoff from the property. In the event of substantial increase in impervious surfaces, the SPGA may require calculations or expert analysis of the plan.
8. Landscaping Plan drawn to scale and showing existing and proposed landscaping.
9. If applicant and owner are different, a letter signed by the owner of the property authorizing the applicant to apply for the special permit.

SPECIFICS:

1. All site plans and specifications must be signed and dated by the preparer.
2. **ALL OWNERS** of property must also sign the application.
3. A copy of special permit procedures is available upon request.
4. Fee for application is \$150.00 to cover the cost of the public hearing notices in the newspaper and notification to parties in interest. If the cost exceeds \$150.00, the applicant shall pay the balance due upon notification from the Granting Authority.
5. Once all the necessary papers, maps, etc. are compiled into the required Original and Fourteen sets, call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application. The application will be reviewed for completeness and a date for a public hearing before the Board of Selectmen or Planning Board will be scheduled. Meetings of recommending boards (e.g. Planning Board, Conservation Commission and Board of Health) will also be arranged at this time.

See Attached Signature Page

Signature of Applicant

Signature of Co-Applicant (e.g. Property Owner, if different)

PLEASE READ AND SIGN BELOW

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD, AND APPROVED BY THE BOARD OF SELECTMEN, FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO THE APPLICANT IF REQUESTED.

I have read the above regulation and agree to be bound by it.

Signature See Attached Signature Page

Signature of Co-Applicant (e.g. Property Owner) _____

Date _____

I have read the above regulation and agree to be bound by it.

26 Manville, LLC

By: Framework I, LLC, Member

By: Ian Rasch
Ian Rasch, Authorized Representative

Date: August 27th, 2018

Site Plan Review Application



**Town of Great Barrington
Planning Board**

PB SPR 1
Rev. Aug 2011

**Application to the Planning Board for
Site Plan Review
in accordance with Section 10.5 of the Zoning Bylaw**

INSTRUCTIONS

Please fill in all applicable information on this form.
If you believe any requirements should be waived, you must formally request waivers from the Board.
You may download and save this form, and fill it in electronically.
Save and print the form.
Submit an original and seven (7) copies to the Town Planner's office along with your payment, site plan, and other required information.
Call the Town Planner at (413) 528-1619 ext. 7 if you have any questions.

FOR OFFICE USE ONLY

Filing Date: _____ Decision due: _____
Number Assigned: _____ Paid? _____
☐ Original and seven (7) copies received
☐ Original filed with and stamped by Town Clerk
☐ Copy to Town Planner
☐ Six (6) copies to Planning Board

ESTIMATED TIMELINE: The Planning Board must review and act upon the site plan within 60 days of receipt of the application, unless the time limits are extended after the applicant's written request.

A. SITE LOCATION

Site Address 21, 26 & 28 Manville Street
Map 22 Lot 45, 47, 79A-8 Deed Book 2418/2428/2437 Deed Page 335/18/320
Zoning District MXD Overlay District (if any) WQPOD Water Quality Protection Overlay District

B. APPLICANT AND PROPERTY OWNER

Applicant's
Information

Name (please print) 26 Manville, LLC
Street Address P.O. Box 628
City, State, Zip Code Great Barrington, MA 01230
Phone (area code first) (413) 822-9074 Email Address: ian@alanderconstruction.com
By: Framework I, LLC
Signature Ian Rasch
Ian Rasch, Authorized Representative

- ☒ Check here if Applicant and Property Owner are the same, and skip to step C., Description.
☐ Check here if Applicant is different than the Property Owner, and to verify that you have the Property Owner's permission to file this Application. Property Owner must sign this form indicating permission to file this Application.

Enter Property Owner's information EXACTLY as it appears on the most recent tax bill.

Property
Owner's
Information

Name (please print) _____
Street Address _____
City, State, Zip Code _____
Phone (area code first) _____ Email Address: _____
Signature _____

C. DESCRIPTION Briefly describe your project, and indicate how it complies with the Master Plan and the Design Guidelines Workbook. If additional space is needed, please submit on additional sheet(s) as required.

The project includes the construction of a Mixed Use Development located at 21, 26 and 28 Manville Street, as well as a portion of the road which was discontinued at the Annual Town meeting. The project includes the construction of 47 residential dwelling units, with a combination of 1, 2 and 3 bedroom units, 1 commercial unit with required parking. Other improvements include utilities, stormwater management and landscaping.

Please refer to the Project Narrative, Page 8 for compliance with the Great Barrington Master Plan.

D. APPLICABILITY: Check the reason(s) for your Application (choose all that apply)

- ☒ 1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure.
- ☒ 2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or use involving more than six spaces.
- ☒ 3. Grading or clearing of more than 10 % of a lot or 10,000 square feet, whichever is the lesser (except as provided in 10.5.1, of the Zoning Bylaw).
- ☐ 4. Other, as required by the Zoning Bylaw. (Please specify: Section(s) _____)

E. SPECIAL PERMITS AND OTHER REGULATIONS

- 1. Does your project require any Special Permit(s)? Yes ☒ No ☐
If yes, have you applied for any required Special Permit(s)? Yes ☐ No ☒ If yes, SP #: _____
- 2. Site Plan Approval does not imply approval of any Special Permits or compliance with other regulations, including, but not limited to, the Wetlands Protection Act. Check here to acknowledge. ☒
- 3. Does your project require filing of a Notice of Intent (NOI)? Yes ☐ No ☒
If yes, has NOI been filed? Yes ☐ No ☐ If yes, has NOI been approved? Yes ☐ No ☐
- 4. Does your project fall within Estimated Habitat or Priority Habitat of endangered species? Yes ☐ No ☒
If yes, has NHESP compliance been received? Yes ☐ No ☐

F. FEE

- ☐ Check here to confirm that your check of \$75 per application is enclosed. Make checks payable to Town of Great Barrington.

G. REQUIREMENTS

Applicant acknowledges that this application is accompanied by those items detailed in Section 10.5.3 of the Zoning Bylaw, including: (Check items 1. and 2. at a minimum. Check item 3. if it is required by the Planning Board. Check item 4 if applicable to your project.)

- | | |
|--|--|
| <input checked="" type="checkbox"/> 1. Plot Plan of the entire tract, signed by a licensed surveyor or engineer, and including details noted in Section 10.5.3, item #1, of the Zoning Bylaw | <input checked="" type="checkbox"/> 3. Traffic impact assessment, if required, as noted in Section 10.5.3, item #3, of the Zoning Bylaw |
| <input checked="" type="checkbox"/> 2. Signatures, letters, and fees as noted in Section 10.5.3, item #2, of the Zoning Bylaw | <input checked="" type="checkbox"/> 4. If project involves construction, exterior alteration or expansion, or change of use, this application must also contain floor plans and elevations of the building |

H. APPROVAL

APPLICANT SHOULD BE FAMILIAR WITH THE REQUIREMENTS OF SITE PLAN REVIEW PER SECTION 10.5 OF THE ZONING BYLAW AND SHOULD ENSURE THAT THE APPLICATION COMPLIES. FAILURE TO COMPLY MAY RESULT IN DENIAL OF THE APPLICATION. PLEASE CALL THE TOWN PLANNER IF YOU HAVE ANY QUESTIONS.

APPLICANT SHOULD BE FAMILIAR WITH THE APPROVAL CRITERIA PER SECTION 10.5.3 OF THE ZONING BYLAW.

Certified Abutters List

Christopher J. Lamarre, MAA
Principal Assessor

Bruce Firger, Board Member
John Katz, Board Member
Carol Strommer, Administrative Assessor



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-2220 x 5
Fax: (413) 528-2290
E-mail: clamarre@townofgb.org

TOWN OF GREAT BARRINGTON MASSACHUSETTS

ASSESSORS' OFFICE

July 26, 2018

ABUTTERS TO PROPERTY OF: 26 MANVILLE LLC

21 Manville St., Map 22 Lots 80 & 79A, Book 2428 Page 18

26 Manville St., Map 22 Lot 47, Book 2418 Page 335

28 Manville St., Map 22 Lot 45, Book 2437 Page 320

<u>MAP</u>	<u>LOT</u>	<u>ABUTTER</u>
22	48,50	Donald E. Willis Jr. & Priscilla Ann Willis, 210 8 th St., Huntington Beach, CA 92648-5020
22	52	Laura I. Meister, 22 Manville St., Gt. Barrington, MA 01230-1912
22	53	Elizabeth D. Fetherolf, Trustee, 20 Manville St., Gt. Barrington, MA 01230-1912
22 Unit 1	55	Michel Hanagan & Mirian Cohen, 10 Drouilhet Ln., Poughkeepsie, NY 12603+-3134
22 Unit 2	55	Joseph & Lisa Imberman, 8 South Mountain Ave., Montclair, NJ 07042-1756
22 Unit 3	55	Victoria Fleming, 12 Manville St. #3, Gt. Barrington, MA 01230-1952
22 Unit 4	55	Christopher E. Ryan, 12 Manville St. #4, Gt. Barrington, MA 01230-1952
22	75,76	Judith A. Haywood, 11 Manville St., Gt. Barrington, MA 01230-1911
22	77	John M. Polizzi III & Ashley L. Hannigan, 15 Manville St., Gt. Barrington, MA 01230-1911
22	74	Ivan & Miral Kruh, 7 Manville St., Gt. Barrington, MA 01230-1911
22	78,79	Edwin E. & Alice C. Leason, 17 Manville St., Gt. Barrington, MA 01230-1911
22	81	Paul A. Kleinwald, Trustee, 578 Main St. #2, Gt. Barrington, MA 01230-2081
22	82	Wards Nursery Inc., 600 Main St., Gt. Barrington, MA 01230-2010
22	33	Eliyho & Barbara Matz, 22 Mahaiwe St., Gt. Barrington, MA 01230-1902
22	34	Carolann Blanco, 60 Old Joe Rd., Gt. Barrington, MA 01230-9313
22	36	Wells Fargo Bank, 3000 Bayport Dr. #880, Tampa, FL 33607-8409
22	39	Diane Niewinski, Daniel Niewinski & David Niewinski, 29 Pope St., Gt. Barrington, MA 01230-1907
22	35,37	Rupert C. & Annalia D. Young, 5307 Asterwood Dr., Dublin, CA 94568-7717
22	49	Pat L. & Kathleen Greco, Co-Trustees, 259 Mahaiwe St., Gt. Barrington, MA 01230-1911
22	83	Beech Tree Apartments LLC, PO Box 1123, Sturbridge, MA 01566-3123
22	51	17 Mahaiwe Group LLC, 97 Castle St., Gt. Barrington, MA 01230-1503
22	44	Bellco Realty Inc., PO Box 99, South Egremont, MA 01258-0099
22	43A	Beartown LLC, PO Box 736, Monterey, MA 01245-0736
22	43	38 Mahaiwe LLC, PO Box 736, Monterey, MA 01245-0736
22	46	Construct Inc., 41 Mahaiwe St., Gt. Barrington, MA 01230-1901
22	54	Lawrence & Nancy Bronstein, 15 Mahaiwe St., Gt. Barrington, MA 01230-1911
22	42,27	1783 Whiting LLC, 141 West Ave., Gt. Barrington, MA 01230-1811
22	38	Topa Enterprises LLC, 32 Mahaiwe St., Gt. Barrington, MA 01230-1902
22	41A	Linda M. Shafiroff, Trustee, 15 Hillside Ave., Gt. Barrington, MA 01230-1482
21	28	Maple Avenue Professional Condominium Trust, c/o Yarmosky, 200 Elm St., Pittsfield, MA 01201-6551
21	28B	Louis M. Yarmosky & Steven E. Yarmosky, 200 Elm St., Pittsfield, MA 01201-6551

26 Manville LLC

<u>MAP</u>	<u>LOT</u>	<u>ABUTTER</u>
21	28A	Maple Avenue Associates, 100 Maple Ave., Gt. Barrington, MA 01230-1906
21	46B	Raymond J. Elling & Marlene Y. Goldstein, 34 Silver St., Gt. Barrington, MA 01230-1925
21	46A	Eleanor M. Neumuth, 147 Maple Ave., Gt. Barrington, MA 01230-1910
21	44	Laura Chekow, 58 Nelson St., Rochester, NY 14620-1540
21	30,28A,29	Carol E. Purcell, 120 Maple Ave., Gt. Barrington, MA 01230-1906
21	34,35	Brian T. Moffitt & Debra Descognets, 125 Maple Ave., Gt. Barrington, MA 01230-1910
21	36	Royce P. Jones & Rebecca Carnow Jones, 135 Maple Ave., Gt. Barrington, MA 01230-1910
21	31	Kristie A. Lord, Barbara J. Lord & Edward L. Lord Jr., 105 Maple Ave., Gt. Barrington, MA 01230-1910
21	32,33	Dorothy Jean Saterfiel Mill Kot, Trustee, 115 Maple Ave., Gt. Barrington, MA 01230-1910

The above list of abutters to the subject properties is correct
according to the latest records of this office.

Sincerely,



Christopher Lamarre, MAA
Principal Assessor

Project Narrative



IMPACT REPORT & PROJECT NARRATIVE
SPECIAL PERMIT APPLICATION AND SITE PLAN REVIEW

**Manville Place
21-28 Manville Street
Great Barrington, Massachusetts**

A. Project Overview

This Impact Report and Project Narrative has been prepared in support of a Special Permit Application and Site Plan Review for Manville Place, a Mixed-Use Development, located on Manville Street in Great Barrington, Massachusetts. The application is submitted in accordance with the Town of Great Barrington Zoning By-laws.

Existing Site Description

The property is comprised of 3 parcels of land, single-family homes each of 21 Manville Street, 26 Manville Street and 28 Manville Street, together with approximately 261 linear feet of Manville Street which was discontinued as a public way at the 2018 Annual Town Meeting. In total, the project site comprises 2.15 acres. The property is further described by the Town of Great Barrington Assessor's Maps as Map 22, Lots 45, 47, 79A and 80.

Existing site improvements for each lot include a dwelling with garage with paved driveway surrounded by mowed turf lawn. Individual trees are scattered throughout the property with screening provided around most of the perimeter. The properties are served by municipal water, sewer and other typical utilities. Generally, stormwater sheet flows to the southwest corner of the project site. However, catch basins are located in Manville Street. At the time of this application, the catch basins were inspected and found to be full of sediment and water. The catch basin on the north side of Manville Street connects to an old sewer line, converted to a drain line, which outlets to the 10" drain line in Olympian Meadows Road. The catch basin located on the south side of Manville Street is a leaching catch basin.

The project site is bordered to the west by the Housatonic Railroad, to the north by Construct Inc. and a mix of residential and small business offices, to the east by single family homes and to the south by Beech Tree Apartments and Ward's Nursery.

Zoning Districts

The parcel is located entirely within the MXD – Mixed Use Transition zoning district. The following is a listing of the Dimensional Requirements per the Town of Great Barrington Zoning By-laws:

Town of Great Barrington
Table of Dimensional Requirements for the MXD Zone District

	Minimum Area (Square Feet)	Lot Frontage (Feet)	Yard Minimum				Maximum Building Height (Feet)	Max. Coverage by Bldgs. (%)
			Front	Side	Rear	Stories		
Required	5,000	50	15	10	10	3 ½	40	75%
Provided	93,700	51'±	17'±	21'±	50'±	3	39'-10"	23%±

The entire property is also located within the Zone II boundary of the *Water Quality Protection Overlay District (WQPOD)* as seen on the Great Barrington Zoning Map, dated May 9, 2016, which requires compliance with By-laws Section 9.2.

Proposed Development

The proposed project includes the demolition of the 3 existing single-family homes, garages, driveways and landscaping along with the demolition a portion of Manville Street for the construction of a Manville Place, a Mixed-Use Development. The development will include the construction of 47 apartment units which will have a mix of single, two and three-bedroom units, along with 1 commercial space, all located within 3 buildings. These buildings will be accessed by a paved driveway around the perimeter of property. The proposed 54 parking spaces will be provided throughout the project and will be in accordance with local zoning and A.A.B. accessibility regulations. Paver sidewalks will be constructed to provide pedestrian access from Manville Street and circulation throughout the development, along with the construction of a courtyard area for open space and gatherings. Refuse collection areas will be located adjacent to each building to provide for proper disposal of trash and recyclables. Bike racks will be installed adjacent to Building L and Building M to encourage bicycle use.

The properties are presently served by municipal utilities. An existing 8" PVC sewer main is located in Manville Street. Each house now has a service connection. These will be removed and a new 8" service connection will be installed to each new building. A new sewer manhole will be constructed at the end of Manville Street and will be installed with a Muffin Monster Open Channel Grinder©. A second manhole will be constructed upgradient to collect flows from the entire development and drop the flow to the existing line level. An additional manhole will be installed to connect flows from Building M and Building L in the courtyard area. An existing 8" D.I. water main is located in the north shoulder of Manville Street and terminates near the hydrant located at the end of the street. Each individual house presently has a service connection with a gate valve.

These connections will be removed and a new 6" D.I. water main will loop around the perimeter of the project with a 6" service connection to each building for sprinkler and a 3" service for domestic water service. Separate service lines will be required for domestic water and sprinkler service. A new hydrant will be installed at the end of Manville Street to replace the demolished hydrant and a new hydrant will be installed near the southwest corner of the development. Overhead wires currently run down the south side of Manville Street on a series of utility poles. The last 2 poles on Manville Street will be removed and line extensions to the project will be installed underground. The proposed development will be serviced by underground electric, telephone and cable. Utility demands will be coordinated with each respective utility company to determine if the current layout and infrastructure are adequate. It is not expected that natural gas will be extended to or used at the project site. Refer to the attached project plans for existing and proposed utility connections. Utility demands are outlined below.

There is an older stormwater collection system currently in Manville Street. Two (2) catch basins are located on the north and south side of the street in the area of the project entrance. These appear to collect stormwater from a portion of the street. At the time of fieldwork and site inspection, the catch basins were found to be full of sediment and water. One of the catch basins connects into the abandoned sewer lines converted to drain lines and the other is a leaching catch basin. The majority of the site sheet flow to the southwest corner of the subject property (low point) with a small portion of the site flowing to the northern abutters. Soil investigation and test pits at the site have determined that the site is generally all sandy soils, well-draining, with no groundwater or ledge encountered to a depth of over 8 feet. The proposed stormwater design will include infiltration measures for new impervious areas and mitigation of stormwater on-site. A full stormwater report is at Attachment F.

The property is located within the Zone II boundary of the *Water Quality Protection Overlay District (WQPOD)* as noted on the Great Barrington Zoning Map, dated May 9, 2016. Work in the overlay district requires a Special Permit and compliance with Section 9.2. Also, because the development requires a Special Permit, in addition to meeting the applicability requirements outlined in *Section 10.5.1*, the proposed project is also required to file for a Site Plan Review under Section 10.5. Compliance with all the above zoning regulations is outlined below.

B. Zoning Compliance

Town of Great Barrington Zoning By-Laws

Each section of the zoning is outlined below, along with how the proposed development complies with that section.

6.1 Off-Street Parking and Loading

Parking is regulated under Section 9.11.5, see this section below.

6.3 General Landscaping Requirements

Please refer to Landscaping Design, Attachment D.

9.2 Water Quality Protection Overlay District (WQPOD)

According to the Town of Great Barrington Zoning Map, the property is within the Water Quality Protection Overlay District, Zone II classification. Special Permits are required for work within the WQPOD that meet the following conditions outlined in Section 9.2.12:

1. *Enlargement or alteration of existing uses that do not conform to the WQPOD; In accordance with Section 9.2.7(6), the use is permitted in the underlying Zoning District, therefore it is a permitted use in the WQPOD.*
2. *Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning district (except as prohibited hereunder). Such activities shall require a special permit to prevent contamination of groundwater;*
Not Applicable.
3. *Any use that will render impervious more than 15% of any lot or parcel or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner. Special permits for nonresidential uses as described in this subsection are not allowed in the Surface Water Source Protection Zones A and B.*

The proposed development will render 65% or 60,985 square feet of the lot impervious.

The project proposes groundwater infiltration in accordance with the Stormwater Management Standards regulated under the Wetlands Protection Act, although these standards do not apply at this site. Infiltration occurs through collection from all impervious areas and discharging to underground chambers. Infiltration will occur through the rain gardens as well. Stormwater management standards outline criteria for calculating the required recharge volume. The volume is equal to the target depth factor multiplied by the impervious area. The amount of new impervious area for the development is as follows:

Proposed Impervious Area:

1.4 acres (60,985 square feet). The required recharge volume is calculated to be:

“A” Soils = 60,985 square feet x 0.6 inches = 3,050 cubic feet required

Rooftop run-off will be collected in downspout that will discharge to either a rain garden or an infiltration bed. All of the parking runoff will be collected in either catch basins or by an infiltration trench and discharged to an infiltration bed. The (4) infiltration beds proposed provide the following recharge volumes:

9P = 6,556 cubic feet

10P = 5,767 cubic feet

12P = 6,848 cubic feet

30P = 1,837 cubic feet

Total recharge volume provided = 21,008 cubic feet

9.11 Mixed Use Transitional Zone (MXD)

9.11.1 Purpose. The Mixed Use Transitional zoning district (MXD) is hereby established to preserve and enhance the mix of residential and retail uses, to maintain the existing character of the area, and to bring existing uses and structures more into compliance with the Zoning Bylaw, thereby facilitating a variety of business and housing opportunities within walking distance of the Town's downtown core.

The proposed development creates significant new residential opportunities together with nonresidential uses within walking distance of the Town's main street, and is entirely compliant with the zoning bylaws.

9.11.2 *Location.* The MXD shall consist of the land shown on the 2015 Town of Great Barrington Assessors' Map 22 as Parcels 2, 3A, 4-13, 18-63, 66-88, 88A, and on Map 25 as Parcels 1-4.

The subject properties area Map 22, Lots 45, 47, 79A and 80.

9.11.3 *Permitted Uses.* Permitted uses in the MXD are set forth in Section 3.1.4, the Table of Use Regulations.

A mixed-use development is allowed by right as set forth in Section 3.1.4.

9.11.4 *Dimensional Requirements.* Minimum setback and dimensional requirements for the MXD shall be as set forth in Section 4.1.2, Schedule of Dimensional Requirements, except as follows:

1. Existing structures, or those for which valid building permits have been issued, as of May 9, 2016, with front, side, and rear setbacks that do not meet the requirements herein shall be permitted to maintain those setbacks.
2. Maximum front yard: New structures shall not be set back more than the average of the front yard setbacks of existing buildings on the abutting lots on either side. For averaging purposes, if a vacant lot exists on one side of a lot, the minimum front yard set forth in the Schedule of Dimensional Requirements shall be considered the front yard setback for the vacant lot.
3. No new nonconformity may be created except as may be permitted in accordance with Section 5 of this Zoning Bylaw.

The project meets the dimensional requirements set forth in Section 4.1.2.

9.11.5 *Parking.* The off-street parking requirements in Section 6.1 shall not apply in the MXD except as provided in this section. Off-street parking requirements in the MXD shall be as follows:

1. For new buildings, required off-street parking spaces shall not be located within the front yard area.

No parking is proposed in the front setback.

2. Only one space shall be required for any dwelling unit, whether in residential-only or in mixed-use buildings.

One space per residential unit is proposed.

3. For permitted uses in existing buildings (those in existence as of May 9, 2016) that are not substantially expanded, the existing parking spaces shall be retained, but no new spaces shall be required. A substantial expansion is defined, for the purpose of this section, as one which involves increasing the gross floor area of a structure by more than 25% or 500 square feet, whichever is less.

The project does not modify existing buildings; not applicable.

4. For permitted uses in new buildings or existing buildings that are substantially expanded, as defined in this section, or for any building greater than 5,000 square feet gross floor area, parking is required as follows: (a) one parking space shall be

required for each dwelling unit; (b) the parking requirements for business or industrial uses in Section 6.1.2 through 6.1.6 shall be calculated as follows: the sum of the required parking for each use multiplied by 0.5 with the product rounded down to the nearest whole number, plus handicapped parking as may be required by law or building code (Example: 3 spaces required for retail, 4 spaces required for offices: $(3 + 4) \times 0.5 = 3.5$, so 3 spaces, + 1 handicapped space, = 4 spaces are required); and

Proposed parking for the development is as follows:

**Residential: 1 space per unit 47 proposed units * 1 spaces per unit
47 parking spaces required**

Commercial: In accordance with section 6.1.2

**1 space per 200 square feet multiplied by 0.5 (round down)
1,015 square feet / 200 * .5 2 parking spaces required**

Accessible parking requirements (A.A.B.)

**total number of parking spaces (between 26-50) 2 accessible spaces required
including 1 van accessible**

**Total parking required 49 parking spaces required
Including 2 accessible
spaces, minimum 1 van acc.**

**Total parking provided 54 parking spaces provided
including 3 accessible
spaces, all van accessible**

Parking in the MXD district allows for a reduction from general parking requirements provided for in Section 6 of the Zoning Bylaws. The district was so designed due to its proximity to public transportation and pedestrian access to banks, grocery stores, retail shops and offices which eliminates the need for large expansive parking areas. Also, the MXD district is located within the Water Quality Protection Overlay District (WQPOD) which regulates impervious cover and encourages infiltration and vegetation. The reduction in parking reduces the amount of impervious area, which is key design criteria when evaluating Low Impact Design (LID). Also, the MXD district is located within the Water Quality Protection Overlay District (WQPOD) which regulates impervious cover and encourages infiltration and vegetation.

5. The parking requirements of paragraphs 2, 3, or 4 of this section may be waived if the SPGA grants a special permit pursuant to section 6.1.9.

No waiver is requested.

10.4 Special Permits

10.4.1 Special Permit Granting Authority. Unless specifically designated otherwise, the Board of Selectmen shall act as the Special Permit Granting Authority.

The Special Permit Granting Authority is the Board of Selectman.

10.4.2 Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;

The 2013 Great Barrington Master Plan recommends several methods to address the social, economic, and community challenges existing in Great Barrington today. The area between South Main Street and Maple Ave, including Manville Street, has been labeled a “Priority Area for Mixed Use and Development” to encourage the infill of existing urban town areas and limit alterations to the surrounding scenic qualities of the Berkshires. This recommendation was considered by the town and resulted in the area’s zoning reclassification to the MXD Zone. The proposed project will benefit the town by encouraging or providing several short and long-term needs that are recommended for these “Priority Areas”.

Workforce Housing – Great Barrington employs over 10,000 people within its limits. That’s twice as many workers as currently reside in the town. Many of these individuals would prefer to live in Great Barrington but cannot afford to do so. The average cost of a single-family home has doubled since 1997, without a comparable increase in wages. In addition, over half of all current homeowners and renters are exceeding the recommended income to housing expense ratio of 30%. The proposed project will produce 47 apartments that will be oriented towards the Great Barrington and Berkshire County workforce. Many residents will have the ability to walk, bike, or use public transportation to travel to their place of employment.

Accessible Housing – As the median age of Great Barrington residents rises, the need for additional housing that requires less maintenance, easier access,

and one level living will increase. The proposed project will fit those needs by providing one level living apartments with elevator access to all units.

Sustainability – The 2013 Master Plan stresses the need for Great Barrington to promote energy conservation in order to combat climate change and rising energy prices. By providing new construction housing, the proposed project will provide highly energy efficient spaces that both save its residents money and greatly reduce the amount of fossil fuels required to heat, cool, and illuminate the property. The addition of roof mounted solar panels will offset the utility cost of common spaces throughout the project.

2. Traffic flow and safety, including parking and loading;

The site has been carefully designed to provide parking required by zoning and provide adequate emergency vehicle access. Sidewalks are proposed to provide safe pedestrian access throughout the site and connect the project to Manville Street, which ultimately outlets to South Main Street / Route 7, a main thoroughfare with public transportation.

Please refer to the traffic study for impacts to the neighborhood. The traffic study is submitted with this application.

3. Adequacy of utilities and other public services;

The project has been preliminarily reviewed with town agencies responsible for municipal services and determined that there is adequate availability of such municipal utilities for the proposed development. Formal reviews with the Department of Public Works, Fire Department, Water Department and Wastewater Treatment facility operator will be forthcoming.

4. Neighborhood character and social structures;

The character of the neighborhood between South Main Street and Maple Ave is one of transition. Various levels of density and development currently exist from that intersection down to Silver Street. Many commercial establishments have repurposed existing residential buildings along South Main Street in order to provide retail, transient housing, and professional services. The southern properties of Manville Street abut the major commercial developments of Ward's Plant Nursery and a 66-apartment unit complex, Beach Tree Commons.

The 2013 Great Barrington Master Plan explored the unique characteristics of this neighborhood and identified it as an area of Mixed-Use in need of assessment. The new MXD Zoning district was created for this area to encourage additional mixed-use projects and pedestrian friendly density for

the Great Barrington core. The proposed project matches the intention of the Master Plan and meets the Zoning Bylaw requirements by-right.

Manville Street contains many residential style buildings, including single and multi-family homes. Their sizes range from 1.5 story to 3.5 stories. The proposed project will feature residential buildings with larger footprints but maintain the similar gable end style architecture and height of the other buildings along the public way. The project will also feature lush trees and vegetation in order to appropriately screen the project and integrate it into an already vegetated neighborhood. The grounds of the project will act as a public park and benefit to the residents of Great Barrington. Courtyard level interior spaces will be provided for commercial tenants in order to truly encourage mixed use development in the area.

5. Impacts on the natural environment; and

The project will be constructed in a previously developed area. A number of trees will be removed during construction throughout the site. New landscaping will provide both a positive aesthetic look and will naturally revegetate the site.

6. Potential fiscal impact, including impact on town services, tax base, and employment.

The proposed project will have multiple positive fiscal impacts on the Town of Great Barrington. Because the site is a “smart-growth” location – a location that already has municipal infrastructure including roads, sidewalks, water, sewer, and electricity – the project will add housing units to the Town without the need for construction of new infrastructure. This leverages previously made investments, rather than requiring additional Town spending on new infrastructure. Costs to maintain the existing infrastructure such as maintenance, and road resurfacing will not change. Indeed, within the project site those infrastructure costs will be borne by private parties.

The project’s impact on the Town tax base is twofold. Firstly, the value of the proposed construction improvements will result in a higher property tax value than the existing single- family homes on the project site. This will generate an increase in cash flow for the Town budget. Secondly, the households who will occupy the apartment units will patronize local businesses in Town, keeping more dollars in the local economy, and broadly strengthening local businesses. Local employers report that many current employees commute an hour or more to their workplaces in Great Barrington. By providing newly constructed rental apartments, employers will be able to offer a convenient housing option with a shorter commute time. The construction process itself

will also create a meaningful amount of work for local tradesman, artisans, consultants, and material suppliers. In a larger context, a better supply of new rental housing will make Great Barrington a more attractive location for new businesses to start up or relocate.

10.4.3 Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

No Comment Required.

10.4.4 Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions, safeguards or limitations may include, but are not limited to, the following:

No Comment Required.

10.4.5 Plans. Unless otherwise provided the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.5.3, herein.

Plans have been prepared in accordance with Section 10.5.3.

10.4.6 Regulations. The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

No Comment Required.

10.4.7 Fees. The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits, which shall be filed in the office of the Town Clerk.

The filing fee check in the amount of \$150.00 has been included with this application.

10.4.8 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

No Comment Required.

10.5 Site Plan Review

10.5.1 Applicability. The following types of activities and uses require site plan review by the Planning Board:

- 1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multifamily structure;*
- 2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multifamily structure or purpose involving more than six spaces;*
- 3. Grading or clearing more than 10% of a lot or 10,000 square feet, whichever is the lesser, except for the following: landscaping on a lot with an existing structure*

or a proposed single- or two-family dwelling; clearing necessary for percolation and other site tests, work incidental to agricultural activity, work in conjunction with an approved subdivision plan, or work pursuant to an earth removal permit.

4. Any other instance required by this bylaw.

The proposed development is required to file for a Site Plan Review with the Planning Board for applicability with 1, 2 and 3 above, and because the project is required to obtain a Special Permit.

10.5.2 Procedures.

1. Use, structure, or activity available as of right. An application for a building permit to perform work as set forth herein available as of right shall be accompanied by an approved site plan. Prior to the commencement of any activity set forth herein available as of right, the project proponent shall obtain site plan approval from the Board. Applications shall be submitted as set forth in the Planning Board's rules and regulations. The Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within 60 days of its receipt, and notify the applicant of its decision. The decision of the Board shall be upon a majority of the Board as constituted and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Board.

No response required.

2. An application for site plan approval shall be accompanied by a fee, as set forth in the Board's Rules and Regulations.

The project is submitting for a Special Permit in addition to Site Plan Review, therefore the filing fee for the Site Plan Review application is waived.

3. The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.

No response required.

4. No deviation from an approved site plan shall be permitted without modification thereof.

Acknowledged.

10.5.3 Submittal requirements. When specific requirements are not provided elsewhere in this bylaw, the following general submittal requirements apply unless waived by the Planning Board.

1. Plot plan of the entire tract, signed by a licensed surveyor or engineer, drawn to a scale adequate to represent all features of the property, clearly portraying the following:

- a. *Lot layout and dimensions.*
- b. *Access road locations and widths and all intersections and driveways located within 200 feet of any portion of the tract.*
- c. *Open space locations and dimensions.*
- d. *Location of major site features, such as existing stone walls, fences, large trees and rock outcroppings.*
- e. *All existing and proposed structures on the property.*
- f. *All existing and proposed driveways, walkways and parking areas.*
- g. *All bordering streets and/or highways; contours of elevation at intervals of no more than two feet.*
- h. *All existing and proposed wells and septic systems.*
- i. *Existing and proposed drainage patterns and stormwater drainage calculations.*
- j. *All proposed stormwater management devices, including but not limited to inlets, pipes, swales, and infiltration, retention and detention devices.*
- k. *Existing and proposed landscaping; limits of clearing; erosion and sediment control to be used during construction.*
- l. *Existing and proposed lighting, including heights, fixtures, and types of lighting.*
- m. *Other physical and topographical features of the property, including but not limited to streams, ponds, floodplains and wetlands.*
- n. *An arrow indicating magnetic North.*
- o. *Two locus maps showing the location of the property. One shall be an enlarged section of a United States Geological Survey Map, and the other shall be a copy of the current Great Barrington Zoning Map, each indicating the location of the property by arrow or other suitable mark.*

All of the above listed information can be seen herein, on the attached project plans, Plans to Accompany Permit Applications prepared for 26 Manville, LLC.

2. *The application shall be signed by the owner or owners of the property in question or, if the applicant is other than the owner of the property, shall be signed by the applicant and shall be accompanied by a letter from the owner authorizing the applicant to apply for the building permit or special permit. Said application shall also be accompanied by all appropriate fees. For the purposes of this section, an "owner" shall be defined as a person, corporation, partnership or other legal entity having a legal or equitable interest in the property.*

The application is signed by the applicant, who is also the owner.

3. *Traffic impact assessment.*

Please refer to the Traffic Study prepared by VHB in Attachment E.

10.5.4 Waiver of submittal compliance. The Board may, upon written request of the applicant, waive any of the submittal requirements of Section 10.5.3 where the project involves relatively simple development plans or constitutes a minor site plan.

No waivers of Section 10.5.3 are requested as a part of this application

10.5.5 Approval. Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alterations shall be designed with consideration of the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, in order to:

- 1. Minimize the volume of cut and fill, the number of removed trees six inches' caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution.*

The proposed project will not negatively impact the existing site. The volume of cut and fill material has been minimized. The project minimizes tree clearing and destruction of natural vegetation as the larger of the site is already developed and mowed turf lawn. The project will provide stormwater treatment and infiltration and prevents erosion. Refer to project design plans and accompanying narrative for details.

- 2. Maximize pedestrian and vehicular safety, both on the site and accessing and exiting the site.*

The project provides an encircling driveway for one-way travel and safety of vehicular traffic. Sidewalks are constructed around the perimeter of the development throughout the development for pedestrian access. Bike racks are proposed adjacent to Building L and Building M to further encourage bicycle use and reduce reliance on vehicles. Sidewalks will be constructed and upgraded to connect to the existing sidewalk along Manville Street, which provides access to South Main Street / Route 7.

Please refer to the Traffic Study for additional information and analysis.

- 3. Minimize obstruction of scenic views from publicly accessible locations.*

The site is located at the end of a dead-end street. The entrance will be landscaped to be aesthetically pleasing for abutting neighbors. At present there are minimal scenic views at the property.

4. *Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned.*

As noted above, the proposed project, including the parking areas, will be screened by natural vegetation along the property lines supplemented with infill planting.

5. *Minimize glare from headlights, minimize light glare into the night sky, and minimize overspill into adjacent properties.*

Site lighting will be limited to bollard lighting located along the sidewalks and paths. These bollards will be downcast, shining light just on the paths. Other lighting will be provided on the building in accordance with emergency lighting required by the building code. Please refer to Lighting Design in Attachment C.

6. *Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.*

The proposed buildings will be constructed in a style similar to the aesthetics of typical Berkshire County structures and homes. The buildings will be gabled ended wood frames with standing seam metal roofs and stucco finishes. Fenestrations will be aligned vertically and horizontally in the typical fashion. The height of the project will not exceed the zoning required 40' and 3.5 stories that is already shared by a number of existing buildings on the street. The proposed project directly abuts a similar density, but larger 66 unit residential apartment complex to the South.

Similar to many of the other properties located on and adjacent to the South Main Street Core Downtown area, the proposed project is a Mixed-Use Development. The proposed courtyard directly aligns with Manville Street to provide an inviting public park and commercial tenant spaces to the residents of the area. Proposed vegetation within the property's grounds will provide screening to its neighbors.

7. *Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.*

The project does not propose an on-site wastewater disposal system, nor does it contain any hazardous substances.

8. *Ensure compliance with the provisions of this zoning bylaw, including parking and landscaping.*

The proposed design meets the provisions of the by-law, including but not limited to parking and landscaping. Refer to supporting documentation enclosed herein.

C. Municipal Impacts

Sewer

An existing 8" PVC sewer main is located generally in the center of Manville Street. This main terminates at a sewer manhole located centrally in the subject lot. The slopes at about 0.5% towards South Main Street. Each dwelling unit is supplied with its own service connection. These will be demolished as a part of construction. According to the property cards for the subject lots, the total flow from 21, 26 and 28 Manville Streets are as follows in accordance with Title V:

Existing Residential

- 21 Manville Street – 4-bedroom house @ 110 gpd/bedroom = 440 gallons per day
 - 26 Manville Street – 2-bedroom house @ 110 gpd/bedroom = 220 gallons per day
 - 28 Manville Street – 2-bedroom house @ 110 gpd/bedroom = 220 gallons per day
- | | |
|----------------------|---------------------|
| Total existing flows | 880 gallons per day |
|----------------------|---------------------|

The existing manhole located at the end of the main will be demolished and a new municipal sewer manhole will be installed at the end of Manville Street main. Each of the new buildings will connect into the sewer manhole with an 8" service connection. Proposed flows from the development are as follows in accordance with Title V:

Proposed Residential

(21) One-Bedroom Units @ 110 gpd/bedroom = $20 \times 1 \times 110 =$	2,310 gallons per day
(24) Two-Bedroom Units @ 110 gpd/bedroom = $24 \times 2 \times 110 =$	5,280 gallons per day
<u>(2) Three-Bedroom Units @ 110 gpd/bedroom = $3 \times 2 \times 110 =$</u>	<u>660 gallons per day</u>
Total residential flows	8,250 gallons per day

Proposed Commercial

1,015 square feet retail space @ 50 gpd per 1,000 square feet (min 200 gpd)	
(Similar flow required for office space – Minimum 200 gpd)	
<u>1,015 sf/1,000 sf * 50</u>	<u>Use 200 gallons per day</u>
Total commercial flows	200 gallons per day
Total Design Flows	8,450 gallons per day
 Total Additional flows	 +7,570 gallons per day

A development of this size will require a grinder to ensure proper treatment and disposal at the town's wastewater treatment facility. The discharge pipe can gravity flow along Manville Street, therefore an inline grinder pump is proposed. The final manhole in Manville Street prior to the development will be fitted with a Muffin Monster Open Channel Grinder© or similar.

These flows will be reviewed with the Department of Public Works. The proper applications and fees will be provided for connection to the towns' sewerage system.

Water

For purposes of this application, the anticipated water demand will be equivalent to the expected sewage flows. The demand will be approximately 8,450 gallons per day, an increase of 7,570 gallons per day.

Water will be provided in a 6" water main that will loop around the outer perimeter of the facility. This main will connect into the existing 8" water main in Manville Street. Each building will be supplied by a separate 3" line strictly for domestic purposes.

It is expected the town's water supply system can adequately handle the increase. The proper applications and fees will be provided to connections to the towns' municipal water system.

Fire Protection

An existing hydrant located at the end of Manville Street will be demolished and a new hydrant will be installed at the end of the municipal main in Manville Street. A second hydrant will be installed near the southwest corner of the development. Each building will be serviced with a 6" line solely for fire protection purposes.

The design will be reviewed with the Great Barrington Fire Department for emergency vehicle access and fire protection.

Stormwater Management

Refer to Attachment F for full Stormwater Report.

Erosion Control

The site is relatively flat with very well-draining soils, therefore the erosion potential is minimized. A construction entrance is proposed at the entrance to the project site. Silt fence will be installed along the perimeter of the project to protect abutting properties from silt and sediment run-off and delineate a limit of work.

A Stormwater Pollution Prevention Plan (SWPPP) is required for land disturbances greater than 1 acre. This will be filed prior to construction.

Solid Waste Disposal

There is a solid waste disposal enclosure located near each proposed building. These locations are designed so that trucks may pull up to the area for ease of disposal. These areas will collect solid waste and recyclables from the entire development.

Snow Removal

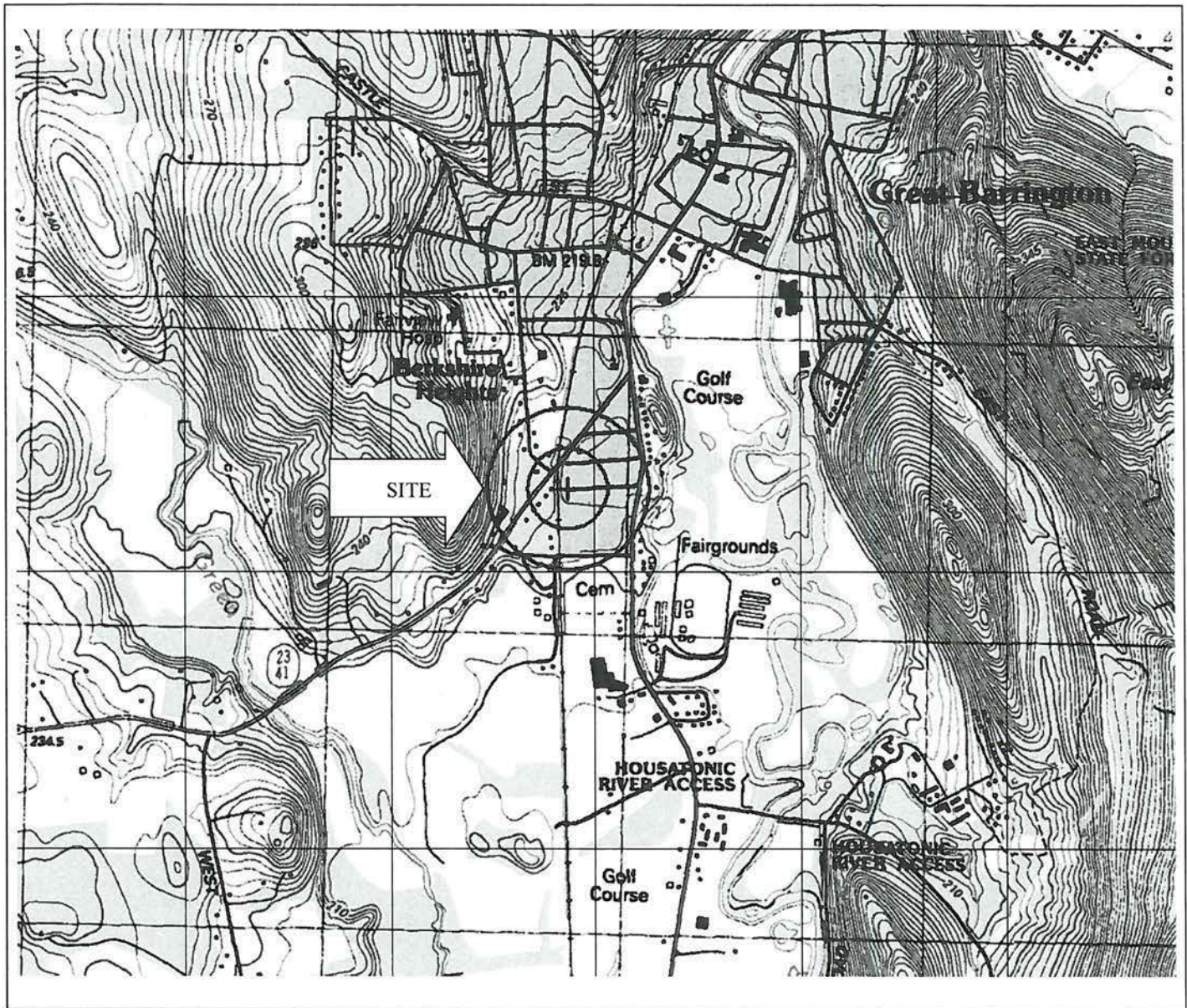
Sidewalks will be shoveled and snow-blow and collected on-site. The driveway and parking areas will have to be plowed and snow removed from the site. Some areas will be plowed along the perimeter of the project, but most will be removed from the site. Plowing of Manville Street by the town trucks will be piled at the project entrance in the lawn area as necessary and the trucks will be allowed to turn around using the project entrances.

D. Conclusion

As outlined above, the project, as proposed, meets the design goals of the petitioner and the intent of the Great Barrington Zoning By-Laws. The proposed project is the construction of a mixed-use development, for which housing is in need in Southern Berkshire County. The development provides adequate parking, it will not overload municipal utilities and will not negatively impact traffic patterns in the neighborhood.

Based upon the design and supporting materials included herein, all design objectives have been met. We look forward to discussing the project with the board.

Figures



Source: U.S.G.S. Map

FIGURE #1

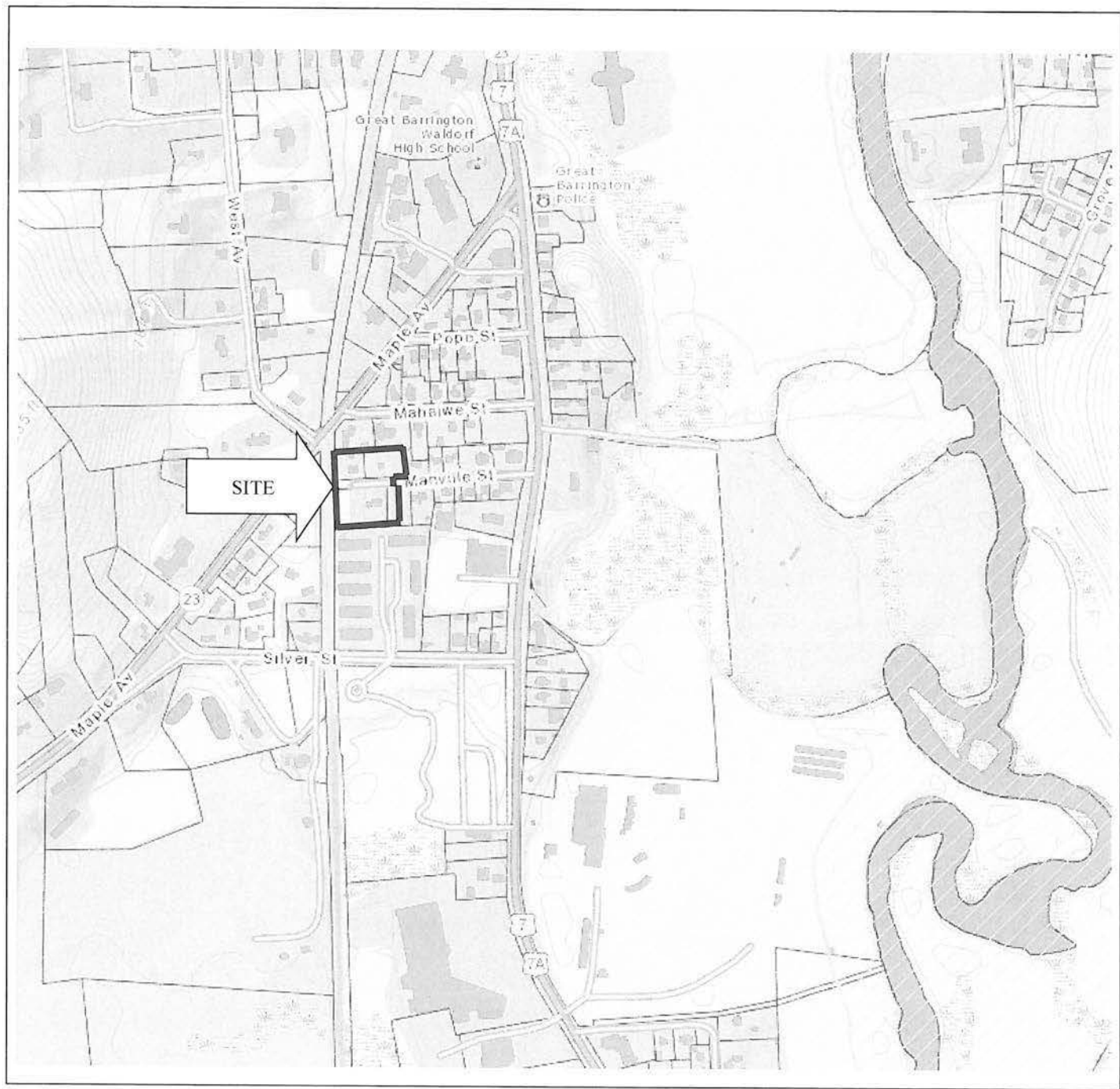
U.S.G.S. Map
 Manville Street
 Great Barrington, MA



DESIGN GROUP, INC.

CIVIL ENGINEERS - SURVEYORS - CONSULTANTS

2 FEDERICO DR., PITTSFIELD, MA 01201 (413) 443-3537



PRIORITY & ESTIMATED HABITAT

Source: Town of Great Barrington MuniMapper

FIGURE #2

N.H.E.S.P. MAP

Manville Street
Great Barrington, MA

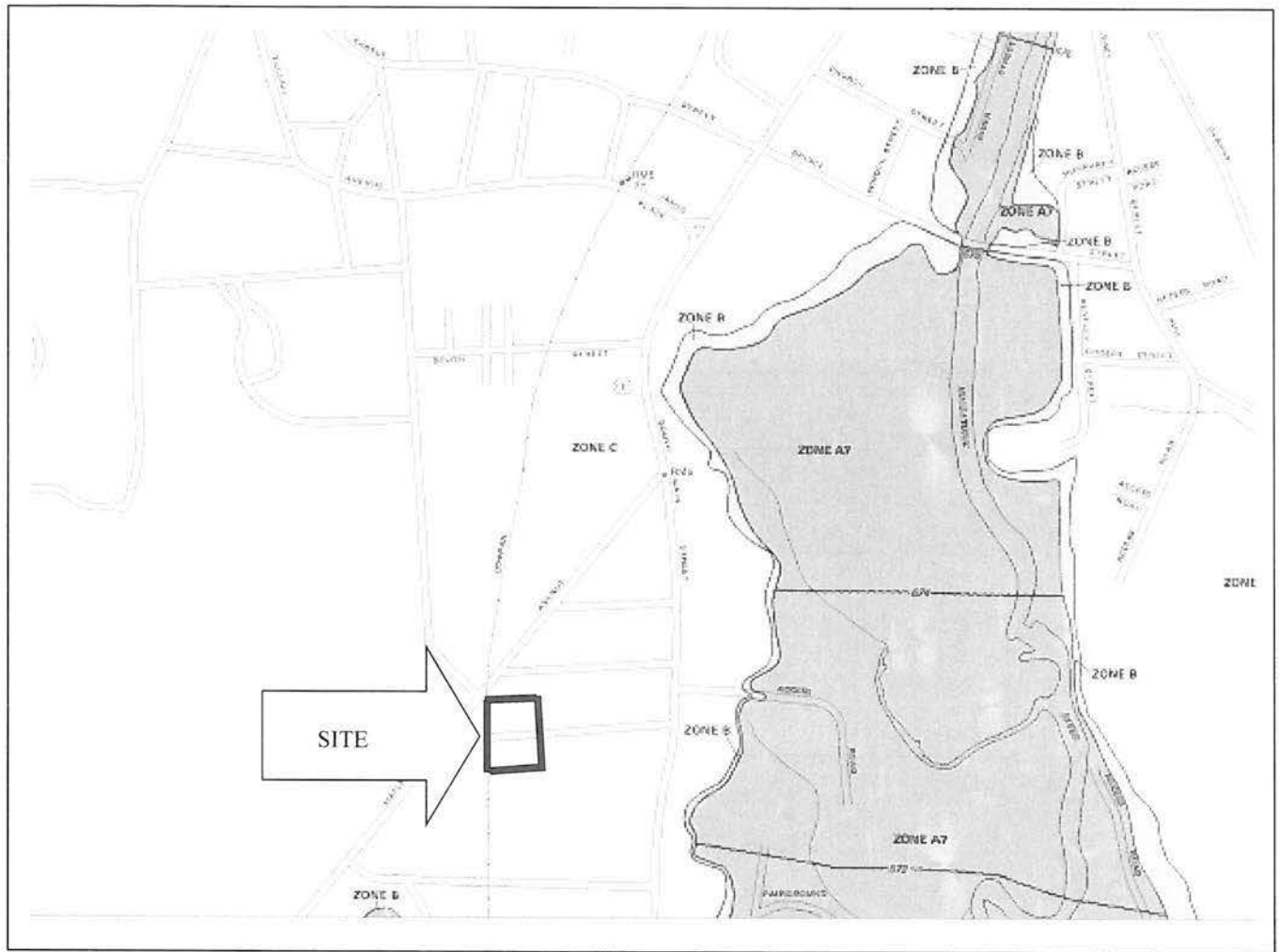


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(413) 443-3537



Source: www.msc.fema.gov

FIGURE #3

FEMA Floodplain Map
Manville Street
Great Barrington, MA

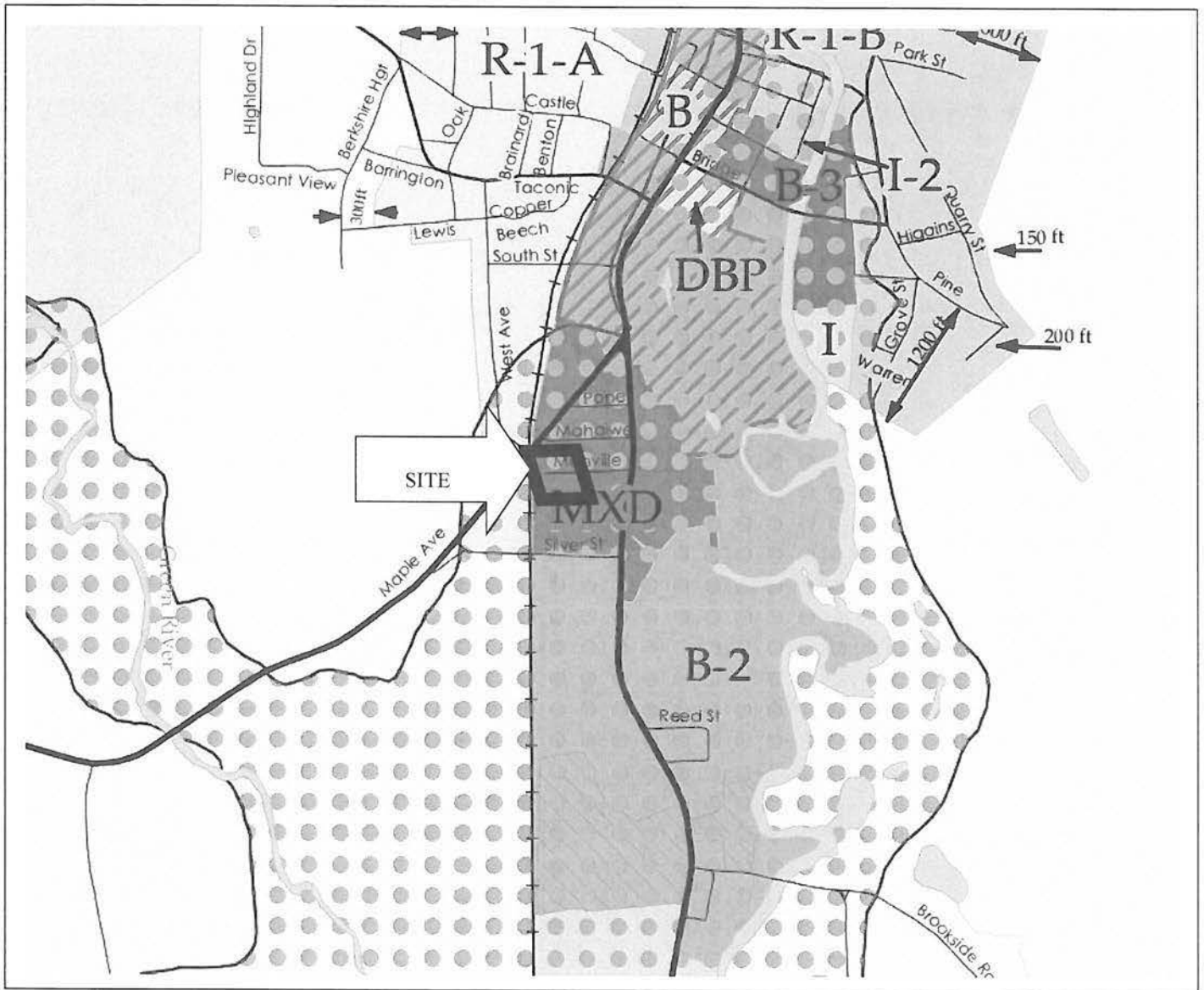


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Source: Town of Great Barrington Zoning Map

FIGURE #5

Great Barrington Zoning Map
Manville Street
Great Barrington, MA



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SB. 10/15
special Permit
883-18

NOTICE OF PUBLIC HEARING

The Great Barrington Selectboard will hold a public hearing on Monday, October 15, 2018 at 7:10 PM at Town Hall, 334 Main Street, Great Barrington, MA, to act on the special permit application from Jeffrey Taylor on behalf of H&H Capital Enterprises LLC, to convert an existing three-family residence at 137 Bridge Street to a four-family residence, in accordance with Sections 3.1.4 A(3), 8.3 and 10.4 of the Great Barrington Zoning Bylaw.

Stephen C. Bannon, Chair

Please Publish Friday, September 21, 2018 and Friday, September 28, 2018

Berkshire Record

SP # 883-18

Jeffrey Taylor on behalf of H&H Capital Enterprises LLC, to convert an existing three-family residence at 137 Bridge Street, permitted by Special Permit #861-16, to a four-family residence, in accordance with Sections 3.1.4 A(3), 8.3 and 10.4 of the Great Barrington Zoning Bylaw.

DRAFT MOTIONS

VOTE ON FINDINGS

(If the Board has amended the Findings based on the Public Hearing and its discussion, be sure to specify those changes and approve the findings "as amended.")

move to approve the Findings of Fact for Special Permit #883-18, as *submitted* and referenced as Exhibit A.

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

VOTE ON SPECIAL PERMIT

move to approve, in view of the approved Findings of Fact, Special Permit #883-18 for Jeffrey Taylor on behalf of H&H Capital Enterprises LLC, to convert an existing three-family residence at 137 Bridge Street, permitted by Special Permit #861-16, to a four-family residence, and to reduce the parking requirement to 6 spaces.

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

EXHIBIT A

FINDINGS OF FACT AND BASIS FOR DECISION

Re: **Special Permit #883-18**
 137 Bridge Street

A. Introduction

This Special Permit application was filed on September 6, 2018 by architect Jeffrey Taylor, on behalf of Owner H&H Capital Enterprises, LLC, for the property located at 137 Bridge Street, Great Barrington, MA. The application seeks permission from the Selectboard to allow a four-family residential use in the existing building. The application has been filed in accordance with Sections 3.1.4, 8.3 and 10.4 Great Barrington Zoning Bylaw. The application includes a Site Plan dated 8/31/18, prepared by Mr. Taylor.

In 2016, the then-Owner applied for a three-family use Special Permit (861-16), and it was approved by the Selectboard. At the time the Owner did wish to pursue a four-family use designation, although there was room in the dwelling for the fourth unit. The current Owner now seeks approval for the fourth unit.

B. General Findings

The property is located in an R-1-B zoning district on Bridge Street, between Humphrey and East Streets. Any multifamily residential use from three to eight units in this zone requires a Special Permit in this zone. The current Owner now seeks approval for the fourth unit.

The property consists of two structures, the main dwelling and a 2-car garage. The main house dates from the mid-1800s. The only proposed change to the main building is the addition of an egress stair on the side of the building, towards the rear, as shown on the included site plan. There are no proposed changes to the site. All existing driveways and parking areas will remain as shown in the site plan.

The Planning Board made positive recommendations on the proposal. In its deliberation, the Planning Board reviewed the parking configuration of the site and the actual parking needs of the residents. The Planning Board determined that not all spaces are needed, and strict compliance with the parking requirements of the zoning bylaw should not be required in this case. The Planning Board recommends the Selectboard include in its Special Permit decision that the parking may be reduced from eight to six spaces.

The Conservation Commission and the Board of Health made no recommendations.

C. Specific Multifamily Dwellings Criteria and Findings

§8.3.3 of the Zoning Bylaw sets forth certain requirements for new multifamily dwellings. These are listed below in italics. In this case, as a dwelling in existence prior to the enactment of these regulations, the permit requires waivers from some of the standards that would otherwise be required of a new multifamily use.

The requirements are listed below. To grant any of these waivers, the Selectboard must make specific findings relative thereto.

1. In a multifamily development, more than one principal building may be permitted on a lot, provided that such lot meets the minimum lot width requirements for the respective zoning district as set forth in Section 4.0, and further provided that there shall be at least 3,500 square feet of lot area for each dwelling unit in a development of three units or four units, regardless of the number of principal buildings on the lot, and 5,000 square feet of lot area for each dwelling unit in a development of five or more units.

Finding: The strict application of this regulation would require a total lot size of 14,000 square feet for four units. This is 5,288 square feet more than the actual lot size that exists (8,712 square feet, or 0.2 acre). The structures and the lot are already in existence, and there is no additional lot area available for the proposed use. There is no room to expand the lot in any direction. Therefore, a strict application of this regulation would be onerous and would have the detrimental impact of not allowing a needed housing unit to exist, causing the loss of a rental apartment in an in-town location.

2. Permeable open space on the lot, including lawn and/or garden area but exclusive of structures, driveways, walkways and parking spaces, shall be no less than 50% of the total area of the property.

Finding: Currently permeable open space totals approximately 40% of the lot area. The structures, dwellings and the lot are already in existence and there is no additional room on the lot to accommodate the permeable open space requirement. Strict application of this regulation would require / cause a loss of parking and dwelling units, which is undesirable.

3. No portion of any enclosing wall of any building and no portion of any other permissible structure shall be nearer than 25 feet to any street line, 10 feet to any side lot line and 30 feet to the rear lot line.

Finding: The dwelling preexists this regulation and is nonconforming in all respects. Strict application of this standard is impractical.

4. Two off-street parking spaces shall be provided for each dwelling unit. No space shall be considered available for parking if such space reduces the effective width of a driveway providing access to more than one dwelling unit to less than 16 feet. In the event that the required parking spaces cannot be provided on the property, the applicant shall, before the special permit is issued, present proof of a duly recorded permanent easement or deed providing such off-street parking space on other property, and the special permit shall be conditioned upon such permanent easement or deed.

Finding: The site plan shows that 8 parking spaces are possible on the site, but only with one of them partially on an adjacent lot, and two located in the garage creating on-site circulation problems. There no known issues related to parking or vehicular safety, and a fourth unit will have no impact on this situation. Based on the Planning Board recommendation, the Selectboard also finds that the strict application of this standard is not required; only 6 spaces are required.

5. Within the development, vehicular and pedestrian circulation shall provide for safe and convenient use to the satisfaction of the Planning Board.

Finding: If the development were required to provide all 8 parking spaces it could create circulation issues on site. The Planning Board reviewed the proposal and found the circulation adequate and safe, but that the parking requirement should be reduced from 8 to 6 to reflect the actual needs of the residents. Based on the Planning Board recommendation, the Selectboard also finds that the strict application of this standard is not required; only 6 spaces are required.

6. Front yards and all open areas shall be suitably landscaped and maintained with grass, trees, flowers, shrubs and/or walks. Such landscaping shall be specified in detail on the site plan and shall be made a condition of the special permit.

Finding: A waiver from this requirement is not required. The front lawn and open areas already consist of landscaped lawn.

7. The proposed development shall be located with respect to major thoroughfares and uses outside the development as not to create traffic hazards or congestion. Before issuance of a special permit by the Board of Selectmen, the Chief of Police and the Highway Superintendent shall give their written approval of said location.

Finding: This use represents a small increase over the current use and there are no known traffic hazards or congestion caused by the current use. The strict application of this standard is not required.

8. Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of each building, shall not be located on any building wall facing a street.

Finding: The proposed spiral egress stair is located as far to the rear as is possible.

9. Drainage controls as deemed necessary shall be specifically described as an added condition of the special permit.

Finding: There are no drainage issues. Additional drainage controls are neither proposed nor required in this case.

D. General Special Permit Criteria and Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit, requires a written determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #883-18:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
 - The proposed will allow a four-family rental apartment use to serve the housing needs of the town. The proposal is in keeping with the vision and goals of the Master Plan in that it allows for a diversity of housing options, in this case rental apartments, in in-fill locations.
2. Traffic flow and safety, including parking and loading.
 - Adequate and safe parking and traffic flow exist.
3. Adequacy of utilities and other public services.
 - Adequate utilities exist.
4. Neighborhood character and social structures.
 - The structure is not changing and there is not a significant expansion of the existing multifamily use. There are no concerns in this regard.
5. Impacts on the natural environment.
 - There are no impacts on the natural environment.
6. Potential fiscal impact, including impact on town services, tax base, and employment.
 - Retaining the multifamily use is a benefit to maintaining a diversity of housing stock.

Finding:

In consideration of the above Findings, this Selectboard finds that the benefits of the proposal outweigh any possible detrimental impacts.

E. Proposed Conditions

1. No special conditions proposed.

Shepley Evans
Conservation Agent

E-mail: conservation@townofgb.org
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-1619 ext. 122
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

CONSERVATION COMMISSION

MEMORANDUM

To: Great Barrington Selectboard

Fm: Shepley Evans, Conservation Agent

Date: October 11, 2018

Copy: Chris Rembold, Town Planner

Re: Special Permit application #883-18

At its September 26, 2018 public meeting, the Conservation Commission reviewed Special Permit application #883-18 from Jeffrey Taylor on behalf of H&H Capital Enterprises LLC to convert an existing three-family residence at 137 Bridge Street to a four-family residence, in accordance with Sections 3.1.4 A(3), 8.3 and 10.4 of the Great Barrington Zoning Bylaw.

After reviewing Mass GIS Aerial photography and the interactive maps on the MuniMapper web site, the Commission determined that the subject property did not present any wetland or scenic mountain issues and that it was "not jurisdictional". The Commission therefore voted not to offer any comment or recommendation on this matter.

Thank you.

Michael Lanoue, Chair
Peter Stanton, Vice Chair
Ruby Chang, M.D.
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Phone: 413-528-0680
Fax: 413-528-3064

TOWN OF GREAT BARRINGTON MASSACHUSETTS

BOARD OF HEALTH

October 10, 2018

Special Permit #883-18 Application from Jeffrey Taylor on behalf of H&H Capital Enterprises LLC, to convert an existing three-family residence at 137 Bridge Street to a four-family residence, in accordance with Section 3.1.4A(3), 8.3 and 10.4 of the Great Barrington Zoning Bylaw.

Dear Selectboard,

The Board of Health reviewed the Special Permit 883-18 application on October 3, 2018 and found no health risks or jurisdictional concern associated with the project.

The Board voted, unanimously, to recommend that the Special Permit 883-18 application is passed on to the Selectboard without comment.

MOTION: Peter Stanton moved to pass on Special Permit 883-18 to the Selectboard without comment or recommendation.

SECOND: Dr. Ruby Chang

VOTE: 3-0

Sincerely,
Rebecca Jurczyk
Agent of the Great Barrington Board of Health

Town Hall, 334 Main Street
Great Barrington, MA 01230



Telephone: (413) 528-1619
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

PLANNING BOARD

October 8, 2018

Selectboard
Town Hall
334 Main Street
Great Barrington, MA

RE: Special Permit
137 Bridge Street

Dear Members of the Selectboard:

At its meeting of September 27, 2018, the Planning Board voted to send a favorable recommendation on the special permit application of H&H Capital Enterprises, LLC for a four family residence at 137 Bridge Street.

The Planning Board also recommends that the Selectboard grant a parking waiver reducing the number of parking spaces from 8 to 6.

Thank you for your attention to this matter.

Sincerely,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary

Cc: Chris Rembold, Town Planner

SP # 883-18

TOWN OF GREAT BARRINGTON
Application for a Special Permit
to the Board of Selectmen or Planning Board

FORM SP-1
REV. 11-2013

FOR OFFICE USE ONLY

Number Assigned _____ Date Received _____
Special Permit Granting Authority _____
Copy to Recommending Boards _____
Advertised _____ & _____
Public Hearing _____
Fee: \$150.00 Paid: _____

APPLICATION FOR SPECIAL
PERMIT UNDER TOWN ZONING
BYLAWS FOR TOWN OF
GREAT BARRINGTON,
MASSACHUSETTS

MAP 20 LOT 30 BOOK 2410 PAGE 85 ZONING DISTRICT(s) R1-B

Site Address: 137 Bridge Street

Date of Application 08/31/2018

Applicant's name and complete mailing address Jeffrey Taylor, RA
3 Seekonk Road, Great Barrington, MA 01230

Applicant's phone number (413) 281-6193 Applicant's email address: jtaylor@taylorandmiller.com

Name and Address of Owner of land exactly as it appears on most recent tax bill:

H & H Capital enterprises, LLC

I (we) request a Special Permit for: converting the existing 3 unit multi-family to a 4 unit multi-family

Under Section(s) 8.3 and 10.4 of the Great Barrington Zoning Bylaws.

APPLICANTS MUST READ AND COMPLY WITH THE FOLLOWING:

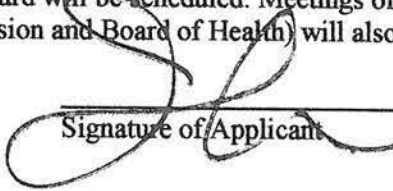
One Signed Original application with each of the items below, as applicable, and fourteen (14) exact copies of the entire application package are to be submitted. Applications must include:

1. Completed application form, including signatures.
2. Brief written description of how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)
3. Site Plan, drawn to scale, applicable to the site and the proposed use of said site for which this special permit is requested.
4. Any other specifications necessary to further describe the site or proposed use for which a special permit is requested. At least one copy of any maps being submitted shall be no larger than 11" X 17". Plans should show all existing and proposed structures, property lines and dimensions, driveways, walkways and parking areas. All proposed landscaping, parking, loading, and similar improvements must be in compliance with the applicable sections of the Zoning Bylaw.
5. Certified list of abutters within 300' on the Assessors Maps to the subject property, including map and lot number. List must be obtained from the Assessors' Office.

6. Zoning Map designating the zoning district(s) and location for the area for which a special permit is requested, plus a USGS map enlarged and showing the site location within the Town.
7. Drainage Plan indicating the destination of all runoff from the property. In the event of substantial increase in impervious surfaces, the SPGA may require calculations or expert analysis of the plan.
8. Landscaping Plan drawn to scale and showing existing and proposed landscaping.
9. If applicant and owner are different, a letter signed by the owner of the property authorizing the applicant to apply for the special permit.

SPECIFICS:

1. All site plans and specifications must be signed and dated by the preparer.
2. ALL OWNERS of property must also sign the application.
3. A copy of special permit procedures is available upon request.
4. Fee for application is \$150.00 to cover the cost of the public hearing notices in the newspaper and notification to parties in interest. If the cost exceeds \$150.00, the applicant shall pay the balance due upon notification from the Granting Authority.
5. Once all the necessary papers, maps, etc. are compiled into the required Original and Fourteen sets, call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application. The application will be reviewed for completeness and a date for a public hearing before the Board of Selectmen or Planning Board will be scheduled. Meetings of recommending boards (e.g. Planning Board, Conservation Commission and Board of Health) will also be arranged at this time.



Signature of Applicant

Signature of Co-Applicant (e.g. Property Owner, if different)

PLEASE READ AND SIGN BELOW

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD, AND APPROVED BY THE BOARD OF SELECTMEN, FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO THE APPLICANT IF REQUESTED.

I have read the above regulation and agree to be bound by it.

Signature _____

Signature of Co-Applicant (e.g. Property Owner) _____

Date _____

8.31.18

Christopher J. Lamarre, MAA
Principal Assessor

Bruce Firger, Board Member
John Katz, Board Member
Carol Strommer, Administrative Assessor



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-2220 x 5
Fax: (413) 528-2290
E-mail: clamarre@townofgb.org

TOWN OF GREAT BARRINGTON MASSACHUSETTS

July 6, 2018

ASSESSORS' OFFICE

ABUTTERS TO PROPERTY OF: H & H CAPITAL ENTERPRISES LLC, 137 BRIDGE STREET
Map 20 Lot 30, Book 2410 Page 85

MAP	LOT	ABUTTER
20	28	Edward J. & Elizabeth A. Domaney, 327 State Rd., Gt. Barrington, MA 01230-1496
20	29	Laura A. Spucches, 128 Gt. Barrington Rd., West Stockbridge, MA 01266-9209
20	31	Mimi Perry, 143 Bridge St., Gt. Barrington, MA 01230-1339
20	17	Benjamin E. Wohlfert, PO Box 1347, North Canaan, CT 06018-1347
20	46,47	Justin J. & Krista J. Haley, 233 East St., Gt. Barrington, MA 01230-1434
20	18,57	Helmuth K. & Ruth Ruthel, 22 Humphrey St., Gt. Barrington, MA 01230-1428
20	19	Kenneth N. Arce, 18 Humphrey St., Gt. Barrington, MA 01230-1428
20	24	Werner Georg Kunz-Cho & Mimi Y. Cho-Kunz, PO Box 273, Gt. Barrington, MA 01230-0273
20	26	Edward P. & Linda M. Pruhenski, 12 Humphrey St., Gt. Barrington, MA 01230-1428
20	20	James H. Jennison, 40 Humphrey St., Gt. Barrington, MA 01230-1428
20	22	Dorothy J. Capasse, PO Box 1263, Sheffield, MA 01257-01263
20	23	Justin J. & Krista J. Haley & Sandra Haley, 232 East St., Gt. Barrington, MA 01230-1436
20	25	Michael R. & Stacy L. Bertelli, 238 East St., Gt. Barrington, MA 01230-1436
20	27	Timothy & Mariana Siok, 23 Park Court #87, Verona, NJ 07044-2453
20	44	Florence Anne Sasso, 231 East St., Gt. Barrington, MA 01230-1434
20	40	Paul S. & Melissa A. P. Greene, PO Box 492, West Stockbridge, MA 01266-0492
20	56,63	Charles G. & Janet L. Bouteiller, PO Box 1119, Gt. Barrington, MA 01230-6119
20	58	J. M. Brodeur, 2 Pine St., Gt. Barrington, MA 01230-1416
20	59	Robert G. Hammer Jr. & Donna Hammer, 16 Pine St., Gt. Barrington, MA 01230-1416
20	60	Michael F. Leonard, 11 Bentley Rd., Gt. Barrington, MA 01230-1474
20	62	Richard Ridell DaCosta & Kimberly Ann DaCosta, 100 Bleecker St. #14A, New York, NY 10012-2205
20	50	Jeremy I & Hana E. Kenny, 9 Pine St., Gt. Barrington, MA 01230-1415
20	49,12	Thomas A. Cavanaugh, Trustee, 1 Pine St., Gt. Barrington, MA 01230-1415
20	12A	Kenneth R. Schumacher & Janice Seiger-Schumacher, 160 Castle St., GB, MA 01230-1541
20	39	Andrew G. Pramschufer, Trustee, 7050 Monza Place, Rancho Cucamongo, CA 91701-8531
20	11,10	Alton E. Stalker, 39 Humphrey St., Gt. Barrington, MA 01230-1427
20	16	Glen A. & Anne A. Jost, 117 Bridge St., Gt. Barrington, MA 01230-1338
20	8,8B	Green Houses Partners LLC, 30 Rowe Rd., Gt. Barrington, MA 01230-8902
20	9	Leonard Zinberg, 35 Humphrey St., Gt. Barrington, MA 01230-1427
20	61	Community Development Corp. of the South Berkshire Inc., PO Box 733, GB, MA 01230-0733

The above list of abutters to the subject property is correct according to the latest records of this office.

Sincerely,

Carol Strommer, Administrative Assessor

Taylor and Miller

ARCHITECTS

Agency Permission Letter To Whom it May Concern,

Project:
137 Bridge Street
Great Barrington, MA
01230

I, David Halley, owner of the property at 137 Bridge Street, Great Barrington, MA hereby authorize architect Jeffrey Taylor to act as my agent in the application for special permit dated August 31, 2018.

Prepared for:
Board of Selectmen
Town of Great Barrington

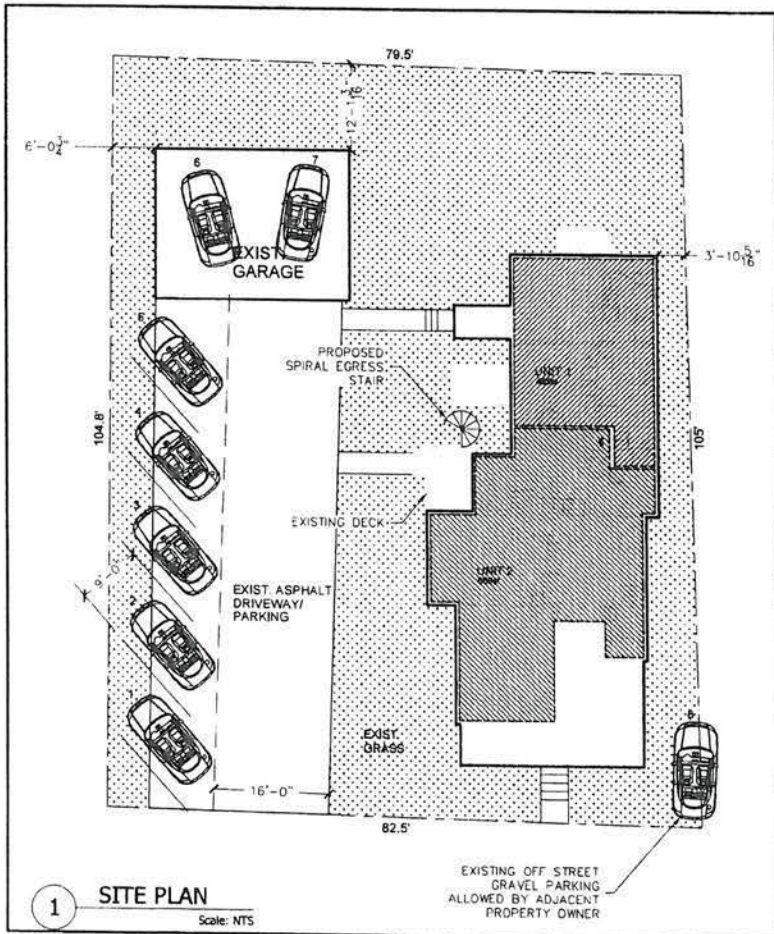
Sincerely,

08.28.18

1 of 1

David Halley

A large, stylized handwritten signature in black ink, likely belonging to David Halley, is written over the printed name and extends across the right side of the page.



Owner:
David J. Halley,
CEO H&H Capital
Enterprises, LLC
137 Bridge Street
Great Barrington, MA 01230
413.717.5703

Applicant:
Jeffrey Taylor, RA
3 Seekonk Road
Great Barrington, MA 01230
413.281.6193

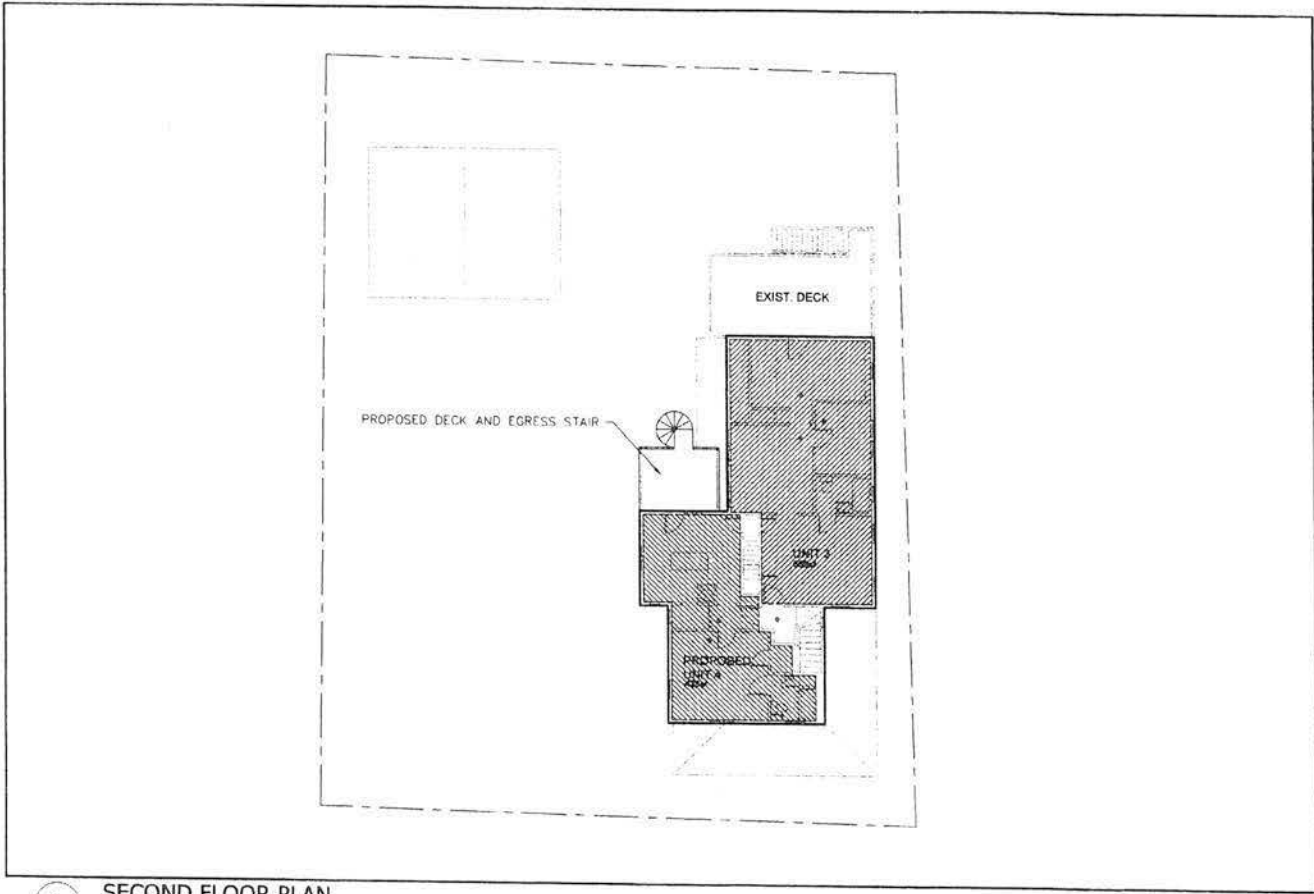
Property Information:
Zoning: R1-B
Lot Area: 8501 sf
Building Area: 2375sf
Hardscape Area: 1979sf
Lot Coverage: 51%
Public water
Public sewer

Reason for Application:
The owner seeks special permit to convert the existing three unit multifamily residence from to a four unit. The existing dwelling was granted special permit for three units on December 9, 2016. In addition, the owner will be seeking a building permit from the Department of Building for improvements to the property to meet current building codes. We believe the upgrade and addition of affordable rental units within close proximity to the amenities of the central business district to be in alignment with goals HO 1 and HO 2 of the Great Barrington Master Plan.



SITE PLAN 01

MULTI FAMILY DWELLING AT



1

SECOND FLOOR PLAN

Scale: NTS

02

SECOND FLOOR PLAN



MULTI FAMILY DWELLING AT

07/11/15

SP # 884-18

NOTICE OF PUBLIC HEARING

The Great Barrington Selectboard will hold a public hearing on Monday, October 15, 2018 at 7:15 PM at Town Hall, 334 Main Street, Great Barrington, MA, to act on the special permit application from Benjamin Wohlfert, PO Box 1347, Canaan, CT, for work in a floodplain at 121 Bridge Street, Great Barrington, in accordance with Sections 9.1 and 10.4 of the Great Barrington Zoning Bylaw. Proposed work is within the 100-year flood plain of the Housatonic River, and consists of demolition of the existing single family home and construction of a new single family home.

Stephen C. Bannon, Chair

Please Publish Friday, September 28, 2018 and Friday, October 5, 2018

Berkshire Record

SP # 884-18

Benjamin Wohlfert for work in a floodplain at 121 Bridge Street, Great Barrington, in accordance with Sections 9.1 and 10.4 of the Great Barrington Zoning Bylaw. Proposed work is within the 100-year flood plain of the Housatonic River, and consists of demolition of the existing single family home and construction of a new single family home.

DRAFT MOTIONS

VOTE ON FINDINGS

(If the Board has amended the Findings based on the Public Hearing and its discussion, be sure to specify those changes and approve the findings "as amended.")

move to approve the Findings of Fact for Special Permit #884-18, as *submitted* and referenced as Exhibit A.

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

VOTE ON SPECIAL PERMIT

move to approve, in view of the approved Findings of Fact, Special Permit #884-18 for Benjamin Wohlfert for the proposed work in the floodplain at 121 Bridge Street, with one condition:

1. any necessary demolition permits shall be secured from the Health Department prior to demolition

Second: _____

Roll call vote: Abrahams _____ Bailly _____ Cooke _____
Bannon _____ Burke _____

EXHIBIT A

FINDINGS OF FACT AND BASIS FOR DECISION

**Re: Special Permit #884-18
 121 Bridge Street**

A. Introduction

This Special Permit application was filed on September 18, 2018 by Benjamin Wohlfert, Owner of 121 Bridge Street, Great Barrington. The application seeks permission from the Great Barrington Selectboard to do work in the floodplain of the Housatonic River in order to demolish the existing home and build a new home in its place. The application has been filed in accordance with Sections 9.1, and 10.4 Great Barrington Zoning Bylaw.

The civil engineering plans accompanying the application were prepared by White Engineering, Inc. and dated 9/7/2018. Architectural plans of the new dwelling were prepared by Pamela Sandler Architect and dated 8/24/18.

B. General Findings

The Applicant/Owner is proposing to demolish the existing residence at 121 Bridge Street and build a new one in its place. The property lies within the R-1-B Residential zone, the Flood Plain Overlay District (FPOD) and Water Quality Overlay District (WQPOD) of the Zoning Bylaw.

The single family use is permitted in the zone, but the work in the floodplain requires a special permit. The new structure will be set back from the street with enough room to accommodate ramps for handicapped accessibility, thereby impacted the floodplain area to the rear (north side) of the property.

The requirements of the WQPOD at Section 9.2.12 are not triggered by this proposal. The area of the proposed house including ramps but not the deck (which is pervious surface) is 2,362 square feet, or 13.4% of the total lot area.

The project is in the jurisdiction of the Conservation Commission since work in a floodplain requires a permit under the Wetlands Protection Act. The Conservation Commission has approved the project by the issuance of an Order of Conditions.

The Planning Board has made a positive recommendation on the Special Permit.

The Board of Health requests that the Project and or Construction Manager secure the necessary demolition permits with the Health Department, but otherwise found no health risks or jurisdictional concern associated with the application.

C. Floodplain Overlay District Criteria and Specific Findings

Section 9.1 of the Zoning Bylaw states:

“Any person desiring to establish any permitted use in a FPOD involving or requiring the erection of new structures and/or alteration or moving of existing structures or dumping, filling, transfer, relocation or excavation of earth materials or storage of materials or equipment shall submit an application for a special permit...”

The proposed work this requires a Special Permit from the Selectboard, in order to ensure that:

lands in the town subject to seasonal or periodic flooding shall not be used for residential or other purposes in such a manner as to endanger the health or safety of the occupants thereof, or of the public, and to assure the continuation of the natural flow pattern of the watercourses within the town in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation. It is further intended to protect, preserve and maintain the water table and water recharge areas within the town so as to preserve present and potential water supplies for the public health and safety of the residents of the town. (Great Barrington Zoning Bylaw, Section 9.1.1.)

Finding: This proposal uses land in the floodplain area for a residential use, but such use and building systems are proposed to be situated above flood stage so as not to endanger the occupants, and additional flood storage and flood flow devices are proposed to ensure no reduction of flood storage capacity or movement of flood waters.

§9.1.6 of the Zoning Bylaw requires the Special Permit Granting Authority (SPGA), in this case the Selectboard, to find the following in order to grant a floodplain special permit:

(1) The use would otherwise be permitted if such land were not, by operation of this section, in the Floodplain Overlay District;

Finding: Residential uses are allowed by right in this zone.

(2) The use of such land for the proposed purpose will not interfere with the general purpose for which such Floodplain Overlay Districts have been established.

Finding: The proposal includes additional flood storage and flood flow devices so as to ensure no reduction of flood storage capacity or movement of flood waters.

§9.1.5 requires the SPGA to ensure that the applicant provides sufficient information to determine:

(1) That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation;

Finding: Living space is proposed to be at 676.62 feet above sea level, almost two feet above the flood level of 674.82.

(2) That furnaces and utilities are protected from flooding and that the structure will withstand the effects of flooding in accordance with the State Building Code;

Finding: All utilities will be above flood elevation.

(3) That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural water storage or increase stormwater runoff so that water levels on other land are substantially raised or danger from flooding increased;

Finding: The application has demonstrated that there will no loss of floodplain storage, and the foundation will not obstruct flood flow, runoff, or water storage, and will not

increase flood water levels on other land.

(4) That safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding; and

Finding: The driveway is above flood level, as shown in the accompanying plans.

(5) That the proposed methods of drainage and sewage disposal are approved by the Board of Health and will not cause pollution or otherwise endanger health in the event of flooding.

Finding: The house will be served by public utilities. A Board of Health permit will be required prior to demolition of the existing house.

§9.1.7 states that special permits for work in the floodplain issued under this section may be subject to such conditions as the SPGA deems necessary in the interests of the public health, safety and welfare. The burden of proving that the proposed use will not endanger the public health and safety of the occupants or the public shall rest upon the applicant.

Finding: The Selectboard does not see the need for any conditions of this nature.

§9.1.8 requires certification by a professional engineer, registered and licensed in the Commonwealth of Massachusetts, to demonstrate that proposed floodway encroachments shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.

Finding: The proposed work is not within the delineated floodway; this is not applicable.

§9.1.9 states that granting of a special permit under this section by the SPGA does not in any way indicate compliance with the provisions of the Wetlands Protection Act, MGL c. 131, § 40, which provides, among other things, that no person shall remove, fill, dredge or alter any swamp, creek, river, stream, pond or lake or any land subject to flooding, except with a written permit from the Conservation Commission.

Findings: Applicant filed for and received an Order of Conditions from the Conservation Commission, as required by the Wetlands Protection Act.

D. General Special Permit Criteria and Specific Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit requires a written determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #884-18:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
 - The proposed work will result in a new home that is accessible to persons with disabilities.
2. Traffic flow and safety, including parking and loading.
 - The proposed work has no impact on traffic flow or safety.
3. Adequacy of utilities and other public services.
 - The proposed work has no impact on public services.
4. Neighborhood character and social structures.
 - The proposed work will improve the property.
5. Impacts on the natural environment.
 - The proposed work will not impair flood storage and will not impact flood flows.
6. Potential fiscal impact, including impact on town services, tax base, and employment.
 - The proposed work will have a positive fiscal impact.

Finding:

In consideration of the above Findings, this Selectboard finds that the benefits of the proposal outweigh any possible detrimental impacts.

E. Proposed Conditions

1. Any necessary demolition permits shall be secured from the Health Department prior to demolition.

Michael Lanoue, Chair
Peter Stanton, Vice Chair
Ruby Chang, M.D.
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Phone: 413-528-0680
Fax: 413-528-3064

TOWN OF GREAT BARRINGTON MASSACHUSETTS

BOARD OF HEALTH

October 10, 2018

Special Permit #884-18: Application from Benjamin Wohlfert, PO Box 1347, Canaan, CT, for work in a floodplain at 121 Bridge Street, Great Barrington, in accordance with Section 9.1 and 10.4 of the Great Barrington Zoning Bylaw. Proposed work is within the 100-year flood plain of the Housatonic River, and consists of demolition of the existing single family home and construction of a new single family home.

Dear Selectboard,

The Board of Health reviewed the Special Permit 884-18 application on October 3, 2018. The Board requested that the Project and or Construction Manager secure the necessary demolition permits with the Health Department but otherwise found no health risks or jurisdictional concern associated with the special permit application for work with the 100- year flood plain of the Housatonic River.

The Board voted, unanimously, to recommend that the Special Permit 884-18 application is passed on to the Selectboard with the above mentioned comment.

MOTION: Peter Stanton moved to pass on Special Permit 884-18 to the Selectboard with the recommendation that demolition permits are secured in a timely manner with the Health Department.

SECOND: Dr. Ruby Chang

VOTE: 3-0

Sincerely,
Rebecca Jurczyk
Agent of the Great Barrington Board of Health

Shepley Evans
Conservation Agent

E-mail: conservation@townofgb.org
www.townofgb.org



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone: (413) 528-1619 ext. 122
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON MASSACHUSETTS

CONSERVATION COMMISSION

MEMORANDUM

To: Great Barrington Selectboard

Fm: Shepley Evans, Conservation Agent

Date: October 11, 2018

Copy: Chris Rembold, Town Planner

Re: Special Permit application #884-18

At its September 26, 2018 public meeting, the Conservation Commission Held a public hearing on a Notice of Intent (DEP File # 167-0423), and reviewed the related Special Permit application #884-18, from Benjamin Wohlfert for work in the floodplain at 121 Bridge Street, Great Barrington. The proposed work is within the 100-year flood plain of the Housatonic River, and consists of demolishing an existing single family residence and constructing of a new single family residence. The Commission has noted that the location of the proposed new house would be in greater compliance with the existing zoning setback requirements and that it would be constructed on a frost wall type of foundation with adequate flood vents that would allow flood waters to pass through unimpeded. Following the public hearing, the Commission voted unanimously to approve the project and to issue standard Order of Conditions. From the Conservation Commission's perspective, the project as proposed has been approved and the Commission has no additional comments to offer the Selectboard on this matter.

Town Hall, 334 Main Street
Great Barrington, MA 01230



Telephone: (413) 528-1619
Fax: (413) 528-2290

TOWN OF GREAT BARRINGTON
MASSACHUSETTS

PLANNING BOARD

October 8, 2018

Selectboard
Town Hall
334 Main Street
Great Barrington, MA

RE: Special Permit
121 Bridge Street

Dear Members of the Selectboard:

At its meeting of September 27, 2018, the Planning Board voted to send a favorable recommendation on the special permit application of Benjamin Wohlfert for work in a flood plain at 121 Bridge Street.

Thank you for your attention to this matter.

Sincerely,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary

Cc: Chris Rembold, Town Planner

PB - Chris R

Special Permit Application
for
Benjamin Wohlfert

121 Bridge Street
Great Barrington, MA 01230

September 2018



White Engineering, Inc.
55 South Merriam Street
Pittsfield, MA 01201
(P) 413-443-8011
(F) 413-443-8012
bwhite@whiteeng.com

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TOWN OF GREAT BARRINGTON
Application for a Special Permit
to the Board of Selectmen or Planning Board

FORM SP-1
REV. 11-2013

FOR OFFICE USE ONLY

Number Assigned 889-18 Date Received 9/18/18
Special Permit Granting Authority SB
Copy to Recommending Boards 9/19/18
Advertised 9/28 & 10/5
Public Hearing 10/15/18
Fee: \$150.00 Paid: Yes

APPLICATION FOR SPECIAL
PERMIT UNDER TOWN ZONING GREAT BARRINGTON
BYLAWS FOR TOWN OF
GREAT BARRINGTON,
MASSACHUSETTS
TOWN CLERK
SEP 18 2018 PM 2:1

MAP 20 LOT 17 BOOK 2423 ~~1338~~ PAGE 303 ~~306~~ ZONING DISTRICT(s) B3

Site Address: 121 Bridge Street

Date of Application 09/17/2018

Applicant's name and complete mailing address Benjamin Wohlfert, P.O. Box 1347,

Canaan, CT 06018-1347

Applicant's phone number (860) 491-5395 Applicant's email address: N/A

Name and Address of Owner of land exactly as it appears on most recent tax bill:

Benjamin E. Wohlfert, P.O. Box 1347, North Canaan, CT 06018-1347

I (we) request a Special Permit for: Demolition and reconstruction of a single-family house in the Flood Plain Overlay District.

Under Section(s) 9.1 and 10.4 of the Great Barrington Zoning Bylaws.

APPLICANTS MUST READ AND COMPLY WITH THE FOLLOWING:

One Signed Original application with each of the items below, as applicable, and fourteen (14) exact copies of the entire application package are to be submitted. Applications must include:

1. Completed application form, including signatures.
2. Brief written description of how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)
3. Site Plan, drawn to scale, applicable to the site and the proposed use of said site for which this special permit is requested.
4. Any other specifications necessary to further describe the site or proposed use for which a special permit is requested. At least one copy of any maps being submitted shall be no larger than 11" X 17". Plans should show all existing and proposed structures, property lines and dimensions, driveways, walkways and parking areas. All proposed landscaping, parking, loading, and similar improvements must be in compliance with the applicable sections of the Zoning Bylaw.
5. Certified list of abutters within 300' on the Assessors Maps to the subject property, including map and lot number. List must be obtained from the Assessors' Office.

6. Zoning Map designating the zoning district(s) and location for the area for which a special permit is requested, plus a USGS map enlarged and showing the site location within the Town.
7. Drainage Plan indicating the destination of all runoff from the property. In the event of substantial increase in impervious surfaces, the SPGA may require calculations or expert analysis of the plan.
8. Landscaping Plan drawn to scale and showing existing and proposed landscaping.
9. If applicant and owner are different, a letter signed by the owner of the property authorizing the applicant to apply for the special permit.

SPECIFICS:

1. All site plans and specifications must be signed and dated by the preparer.
2. **ALL OWNERS** of property must also sign the application.
3. A copy of special permit procedures is available upon request.
4. Fee for application is \$150.00 to cover the cost of the public hearing notices in the newspaper and notification to parties in interest. If the cost exceeds \$150.00, the applicant shall pay the balance due upon notification from the Granting Authority.
5. Once all the necessary papers, maps, etc. are compiled into the required Original and Fourteen sets, call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application. The application will be reviewed for completeness and a date for a public hearing before the Board of Selectmen or Planning Board will be scheduled. Meetings of recommending boards (e.g. Planning Board, Conservation Commission and Board of Health) will also be arranged at this time.

Benjamin E. Wohlfert/muc
Signature of Applicant

Signature of Co-Applicant (e.g. Property Owner, if different)

PLEASE READ AND SIGN BELOW

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD, AND APPROVED BY THE BOARD OF SELECTMEN, FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO THE APPLICANT IF REQUESTED.

I have read the above regulation and agree to be bound by it.

Signature Benjamin E. Wohlfert/muc

Signature of Co-Applicant (e.g. Property Owner) _____

Date 9/17/2018

Description of Project

Subject Property

The subject property is located at 121 Bridge Street, Great Barrington, Massachusetts. The project is for the demolition and reconstruction of a single-family house. The property falls within the Flood Plain Overlay District (FPOD).

How is this project in harmony with the Great Barrington Master Plan?

This project is in harmony with the Great Barrington Master Plan because it will allow us to be consistent with the Core Initiative of the Master Plan by protecting the special places and features--Great Barrington's compact village centers, historic treasures, natural resources, farms, and open space--that contribute to Great Barrington's distinctive character. In addition, we will be reusing an existing developed lot.

Proposed Use

The intent of this project is to place the new house in greater compliance with the Town of Great Barrington Zoning setback and allow for a handicap accessible ramp to the house.

The house will be constructed on a frost wall type foundation with flood vents and the deck and handicap ramp on piers. Roof run-off will sheet flow from the roof to stone at the drip line.

The existing house is located 102-ft from the stream. The new house will be 70-ft from the stream. This is to increase the space between the house and the front yard setback. The existing house is 1,621 SF in size and the proposed house including the ramp and deck is 2,714 SF.

The work will take place in the buffer zone. Erosion control silt fence is proposed between the work area and 50-ft from the stream. Work will also occur in the Bordering Land Subject to Flooding. Based on incremental elevations, 0.85 CY of flood storage is required. This is compensated for at the relevant elevation by the removal of 2" of material, and reseeded.

Christopher J. Lamarre, MAA
Principal Assessor

Brian Finger, Board Member
John J. Katz, Board Member
Carol Strommer, Administrative Assessor



Town Hall, 334 Main Street
Great Barrington, MA 01230

Telephone (413) 528-2220 x 5
Fax: (413) 528-2290
E-mail: clamarre@townofgb.org

TOWN OF GREAT BARRINGTON MASSACHUSETTS

September 13, 2018

ASSESSORS' OFFICE

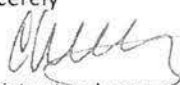
ABUTTERS TO PROPERTY OF: BENJAMIN E. WOHLFERT

121 Bridge St., Map 20 Lot 17, Book 2423 Page 303

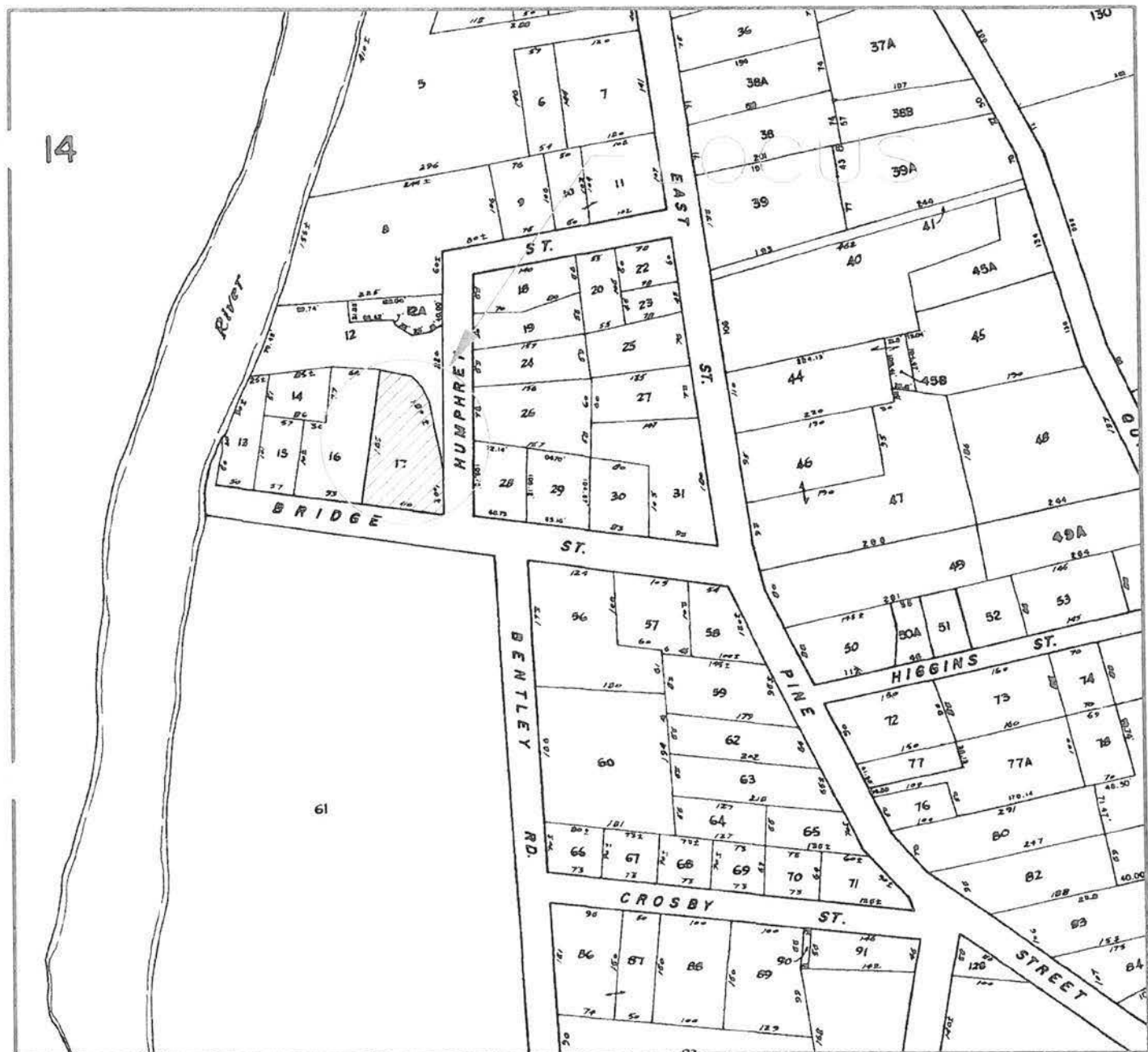
MAP	LOT	ABUTTER
20	13	Bridge-Building LLC, 113 Bridge St., Gt. Barrington, MA 01230-1338
20	14	Evelyn Faye West, 115 1/2 Bridge St., Gt. Barrington, MA 01230-1338
20	15	Lisa Ann Lindel & Kent Daniel Milligan, 115 Bridge St., Gt. Barrington, MA 01230-1338
20	16	Glen A. & Anne E. Jost, 117 Bridge St., Gt. Barrington, MA 01230-1338
20	12	Thomas A. Cavanaugh, Trustee, Mahaiwe Nominee Realty Trust, 1 Pine St., Gt. Barrington, MA 01230-1415
20	8A,12A	Kenneth R. Schumacher & Janice Seiger-Schumacher, 160 Castle St., Gt. Barrington, MA 01230-1541
20	8,8B	Green Houses Partners LLC, 30 Rowe Rd., Gt. Barrington, MA 01230-8902
20	9	Leonard M. Zinberg, 35 Humphrey St., Gt. Barrington, MA 01230-1427
20	10,11	Alton E. Stalker, 39 Humphrey St., Gt. Barrington, MA 01230-1427
20	18,57	Helmuth & Ruth Ruthel, 22 Humphrey St., Gt. Barrington, MA 01230-1428
20	19	Kenneth N. Arce, 18 Humphrey St., Gt. Barrington, MA 01230-1428
20	24	Werner Georg Kunz-Cho & Mini Y. Cho-Kunz, PO Box 273, Gt. Barrington, MA 01230-0273
20	26	Edward P. & Linda M. Pruhenski, 12 Humphrey St., Gt. Barrington, MA 01230-1436
20	28	Edward J. & Elizabeth A. Domaney, 327 State Rd., Gt. Barrington, MA 01230-1496
20	29	Laura A. Spucches, 128 Gt. Barrington Rd., West Stockbridge, MA 01266-9209
20	30	H & H Capital Enterprises LLC, PO Box 863, Gt. Barrington, MA 01230-0863
20	31	Mimi Perry, 143 Bridge St., Gt. Barrington, MA 01230-1339
20	27	Timothy David Siok & Mariana D. Vivas Siok, 23 Park Ct. #87, Verona, NJ 07044-2453
20	25	Michael R. & Stacy L. Bertelli, 238 East St., Gt. Barrington, MA 01230-1436
20	23	Justin J. & Krista J. Haley & Sandra Haley, 232 East St., Gt. Barrington, MA 01230-1436
20	22	Dorothy J. Capasse, PO Box 1263, Sheffield, MA 01257-1263
20	20	James H. Jennison, 40 Humphrey St., Gt. Barrington, MA 01230-1428
20	56	Charles G. & Janet L. Bouteiller, PO Box 1119, Gt. Barrington, MA 01230-6119
20	60	Michael F. Leonard, 11 Bentley Rd., Gt. Barrington MA 01230-1474
20	61	Community Development Corp. of South Berkshire Inc., PO Box 733, Gt. Barrington, MA 01230-0733
19	139	79 Bridge Street Realty LLC, 247 Stockbridge Rd., Gt. Barrington, MA 01230-1297

The above list of abutters to the subject property is correct according to the latest records of this office.

Sincerely,


Christopher Lamarre, MAA
Principal Assessor

14



TOWN ASSESSORS MAP FOR BENJAMIN WOHLFERT

121 BRIDGE STREET

GREAT BARRINGTON, MA



WHITE ENGINEERING INC.
CIVIL & ENVIRONMENTAL

55 SOUTH MERRIAM STREET, PITTSFIELD, MA 01201

PHONE (413) 443-8011

E-MAIL: SBOOMSMA@WHITEENG.COM

FAX (413) 443-8012

DATE: SEPTEMBER 5, 2010

DRN: GEA

APVD: BMW

DWG NO:

DSGN: SDB

CK'D: SDB

SCALE: N.T.S

18-04-04



USGS MAP
FOR
BENJAMIN WOHLFERT

121 BRIDGE STREET

GREAT BARRINGTON, MA



WHITE ENGINEERING INC.

CIVIL & ENVIRONMENTAL

55 SOUTH MERRIAM STREET, PITTSFIELD, MA 01201

PHONE (413) 443-8011

E-MAIL: SBOOMSMA@WHITEENG.COM

FAX (413) 443-8012

DATE: SEPTEMBER 6, 2018

DRN: GEA

APVD: BMW

DWG NO:

DSGN: SDB

CKD: SDB

SCALE: N.T.S

18-04-04



ORTHO PHOTO
FOR
BENJAMIN WOHLFERT

121 BRIDGE STREET

GREAT BARRINGTON, MA



WHITE ENGINEERING INC.
CIVIL & ENVIRONMENTAL

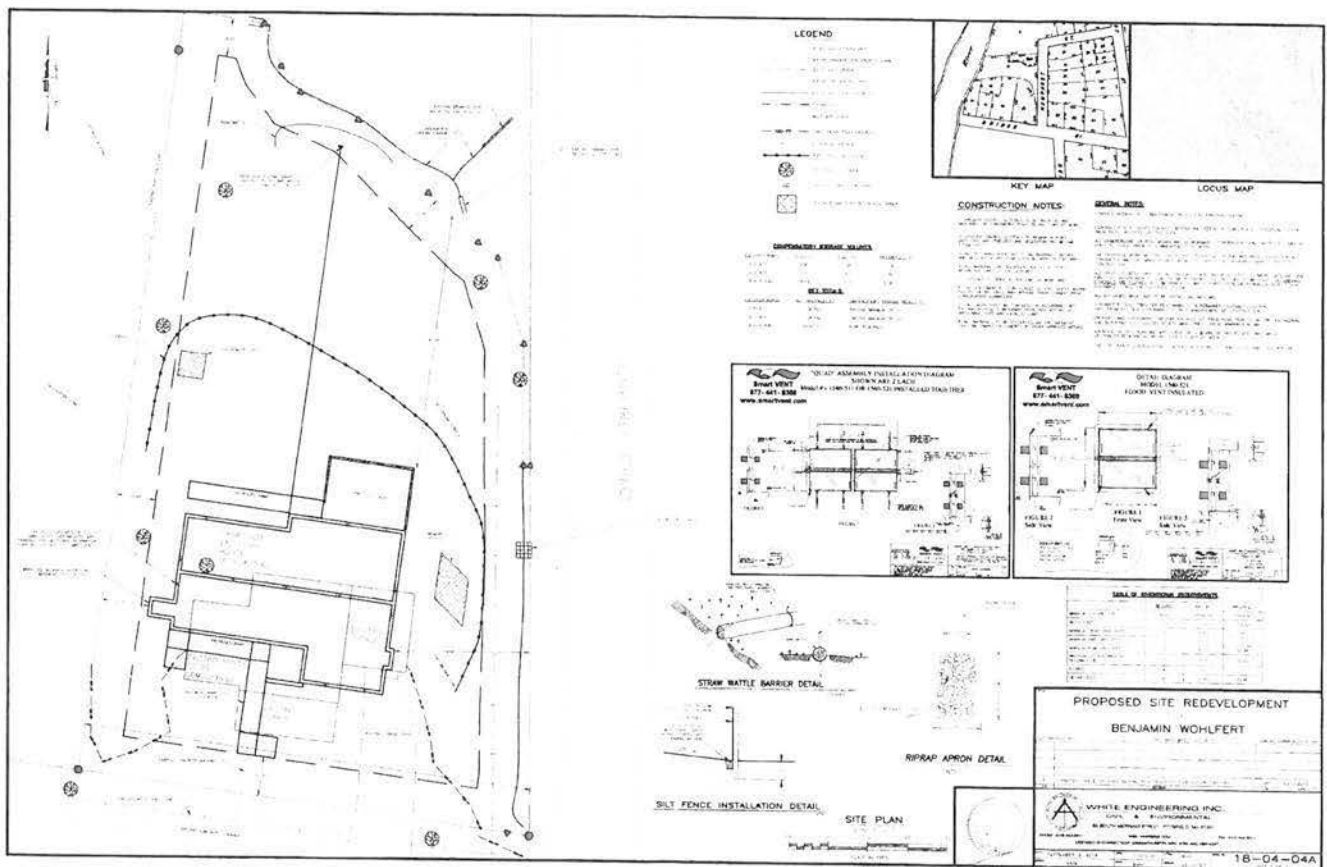
55 SOUTH MERRIAM STREET, PITTSFIELD, MA 01201

PHONE (413) 443-8011

E-MAIL: SBOOMSMA@WHITEENG.COM

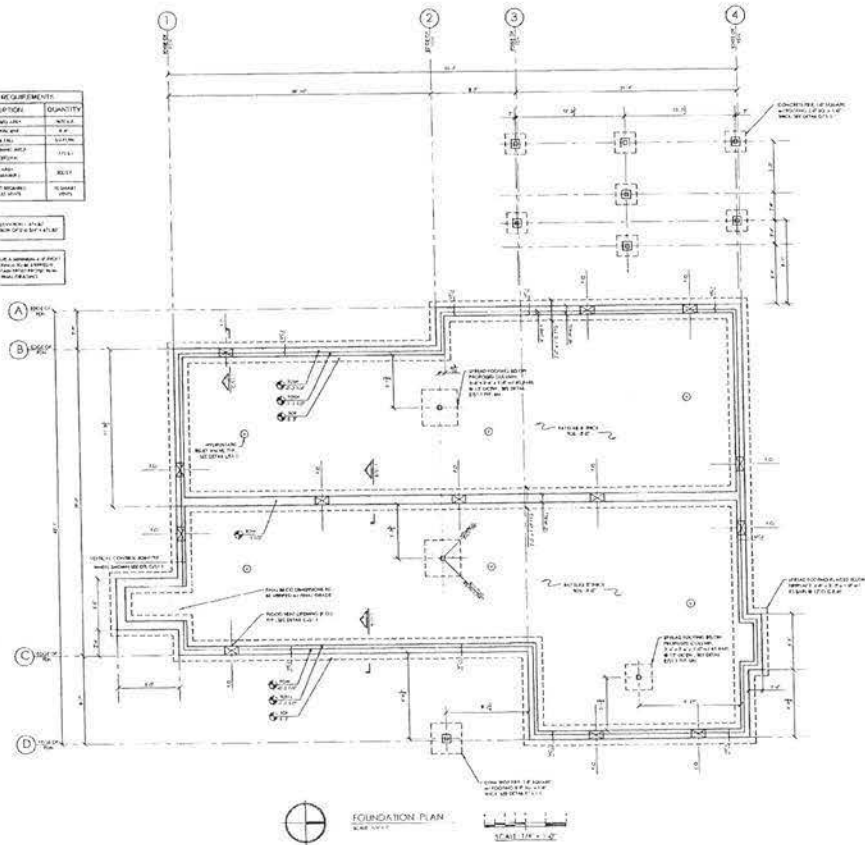
FAX (413) 443-8012

DATE: SEPTEMBER 5, 2018	DRN: GEA	APVD: BMW	OWG NO:
DSGN: SDB	CKD: SDB	SCALE: N.T.S.	18-04-04



F. CODE MATERIAL REQUIREMENTS		
SYMBOL	DESCRIPTION	QUANTITY
1	CONCRETE	10.00
2	STEEL REINFORCING	1.00
3	BRICK	10.00
4	CEMENT MORTAR	10.00
5	GRAVEL	10.00
6	FOUNDATION	10.00
7	CONCRETE	10.00
8	STEEL REINFORCING	1.00
9	BRICK	10.00
10	CEMENT MORTAR	10.00
11	GRAVEL	10.00
12	FOUNDATION	10.00

NOTES:
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



FOUNDATION PLAN
SCALE: 1/4" = 1'-0"

8/24/18
DRAFT

PAMULA KADLER

2018-2019
2018-2019
2018-2019
2018-2019



WOHLFERT RESIDENCE
BRIDGE STREET
GREAT BARRINGTON, MA

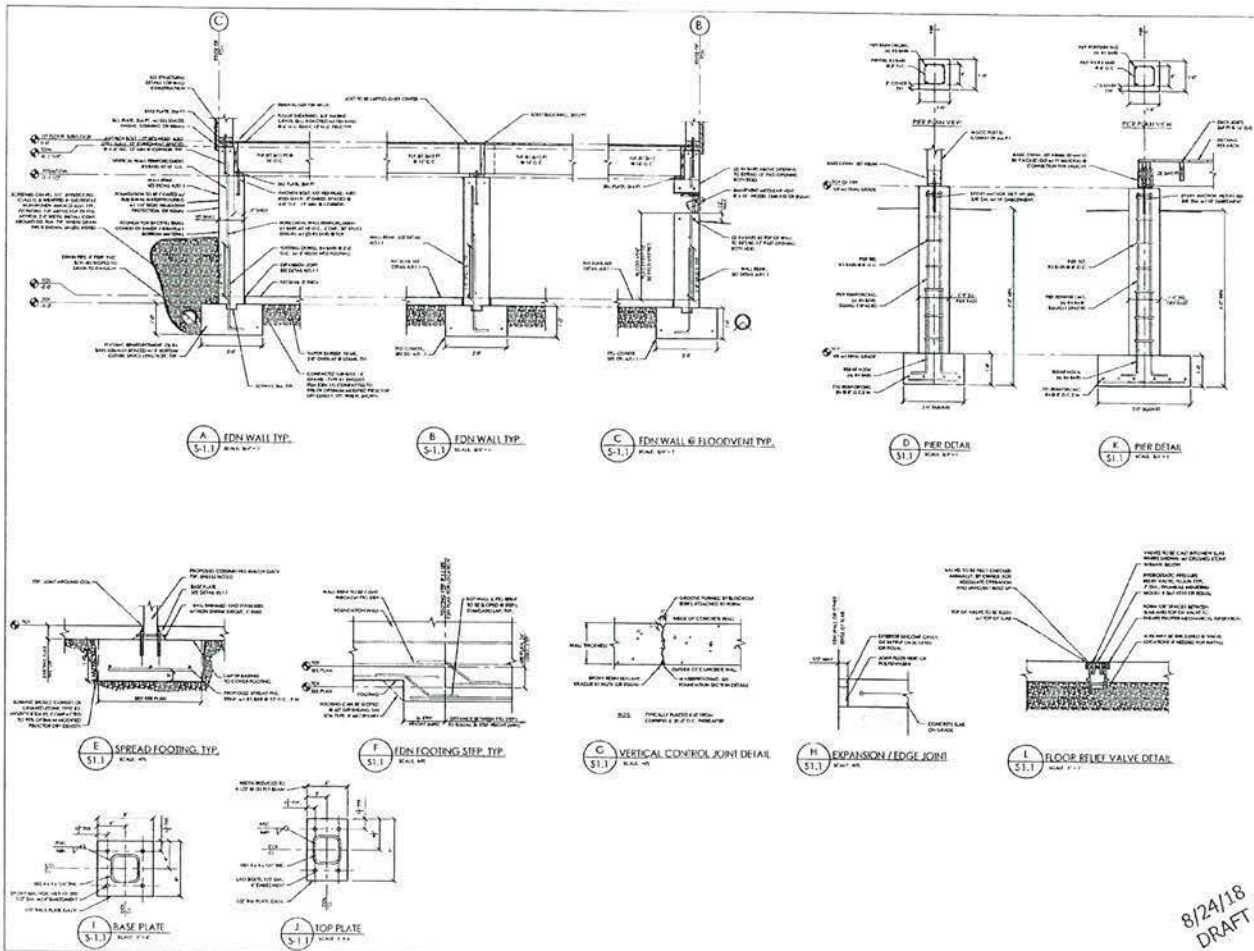
For Review ONLY

No.	Date	Description
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FOUNDATION PLAN

Scale: 1/4" = 1'-0"

S-1.0



FAMILA SANDLER

Project: Wohlfert Residence
 Location: Bridge Street, Great Barrington, MA
 Date: 8/24/18
 Scale: S-1.1

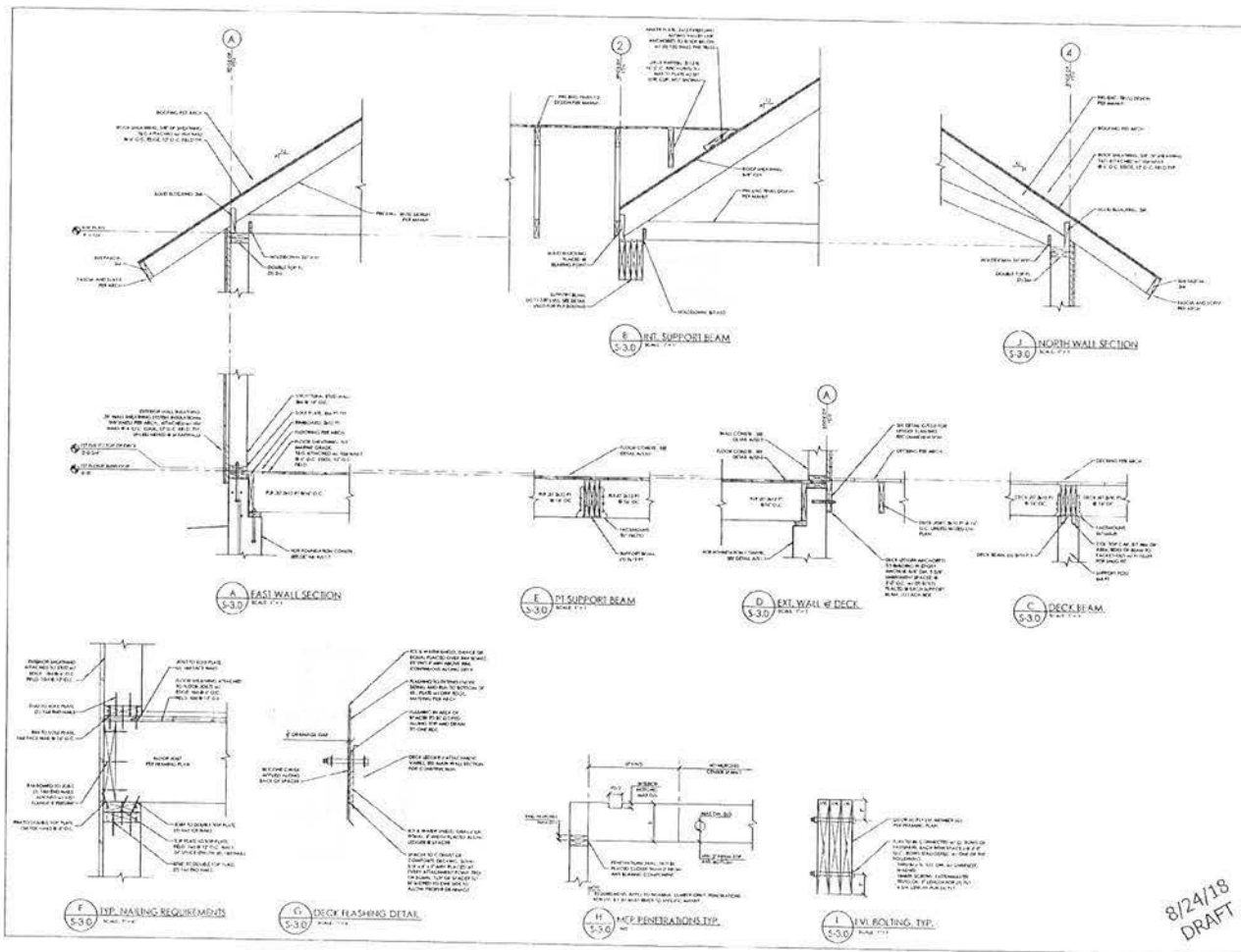
WOHLFERT RESIDENCE
 BRIDGE STREET
 GREAT BARRINGTON, MA

For Review ONLY

FOUNDATION DETAILS

8/24/18
 DRAFT

S-1.1



TOWN OF GREAT BARRINGTON

NOTICE OF PUBLIC HEARING

The Selectboard will hold a public hearing on Monday, October 15, 2018 at 7:00 PM at the Town Hall, 334 Main Street, Great Barrington, MA 01230 to act on the application of Fiddleheads Grille Inc. d/b/a Fiddleheads Grille, David Michael Pullaro, Manager for a new Common Victualler All Alcoholic Restaurant Liquor License at 999 Main Street, Great Barrington, MA 01230 to include seasonal seating on the deck up to 16 and in the outdoor gazebo up to 44.

Stephen Bannon
Chair

PLEASE PUBLISH October 5 and 12, 2018.

*Abutters Notified
mailed
10/2/18*

PUBLIC HEARING:

The Selectboard will hold a public hearing on Monday, October 15, 2018 at 7:00 PM at the Town Hall, 334 Main Street, Great Barrington, MA 01230 to act on the application of Fiddleheads Grille Inc. d/b/a Fiddleheads Grille, David Michael Pullaro, Manager for a new Common Victualler All Alcoholic Restaurant Liquor License at 999 Main Street, Great Barrington, MA 01230 to include seasonal seating on the deck up to 16 and in the outdoor gazebo up to 44.

- a. **Board** - **Open Public Hearing**
- b. **Applicant/Attorney** - **Explanation of Project**
- c. **Board** - **Motion to Close Public Hearing**
- d. **Board** - **Motion re: Findings**

FINDINGS OF FACT:

Completed application was submitted to the Selectboard on October 1, 2018.

Public Hearing was properly advertised in the Berkshire Record for two (2) consecutive weeks on October 5 and October 12, 2018.

Public Hearing is scheduled for October 15, 2018 @ 7:00 PM at Town Hall, 334 Main Street, Great Barrington, MA 01230.

No impediments were disclosed as to the approval or denial for a new Common Victualler All Alcoholic Restaurant Liquor License at 999 Main Street, Great Barrington, MA 01230.

- e. **Board** - **Motion re: Approval/Denial/Table**

Motion: _____ Move to approve the Findings of Fact on the application of Fiddleheads Grille Inc. d/b/a Fiddleheads Grille, David Michael Pullaro, Manager, for a new Common Victualler All Alcoholic Restaurant Liquor License at 999 Main Street, Great Barrington, MA 01230, and with the findings that the benefits of the proposal outweigh any possible detrimental impacts.

Second:

Vote:



The Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
239 Causeway Street Boston, MA 02114
www.mass.gov/abcc

APPLICATION FOR A NEW LICENSE

Municipality

1. LICENSE CLASSIFICATION INFORMATION

ON/OFF-PREMISES

TYPE

CATEGORY

CLASS

Please provide a narrative overview of the transaction(s) being applied for. On-premises applicants should also provide a description of the intended theme or concept of the business operation. Attach additional pages, if necessary.

Is this license application pursuant to special legislation?



Yes



No

Chapter

Acts of

2. BUSINESS ENTITY INFORMATION

The entity that will be issued the license and have operational control of the premises.

Entity Name

FEIN

DBA

Manager of Record

Street Address

Phone

Email

Alternative Phone

Website

3. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

Total Square Footage:

Number of Entrances:

Seating Capacity:

Number of Floors

Number of Exits:

Occupancy Number:

4. APPLICATION CONTACT

The application contact is the person whom the licensing authorities should contact regarding this application.

Name:

Phone:

Title:

Email:



THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF GREAT BARRINGTON
BERKSHIRE COUNTY
BUSINESS CERTIFICATE
2018

Date: OCTOBER 1, 2018

Personally appeared before me,

CYNTHIA JOYNER

DBA: FIDDLEHEADS GRILLE

And made an oath that the foregoing statement is true:

A certificate issued in accordance with this section shall be in force and effect for four years from the date of issue and shall be renewed each four years thereafter so long as such business shall be conducted and shall lapse and be void unless so renewed./

Expiration Date: OCTOBER 1, 2022

Ellyn Dupont
ASSISTANT Town Clerk

The Commonwealth of Massachusetts
Town of Great Barrington
DBA

No. 115-18

New ☒
Renew ☐

BUSINESS CERTIFICATE

In conformity with the provisions of Chapter one hundred and ten, Section five of the General Laws, as amended, the undersigned hereby declare(s) that a business under the title of

Fiddleheads Grille

is conducted at 999 main Street

for the purpose of (type of business) Restaurant

in Great Barrington, by the following person(s).

Please be advised that the attached Business Certificate is only valid if the business has followed the Town of Great Barrington Zoning Bylaws. It is the responsibility of the business owner to be sure that the business meets all the qualifications as required by law.

It is the responsibility of the person who has filed such a certificate, upon his discontinuing such business or changing location, to file a statement in the office of the Town Clerk and pay the fee per Mass General Law, C. 110, §5.

I have read the above statement and understand the terms of the Business Certificate provided to me by the Town clerk's Office.

FULL NAME


Cynthia Jayner
David Pullar

**Residence Street Address
and Mailing Address**

252 Park St
Gr Barrington MA
01230

Phone#: 413 274 6336

SIGNED:

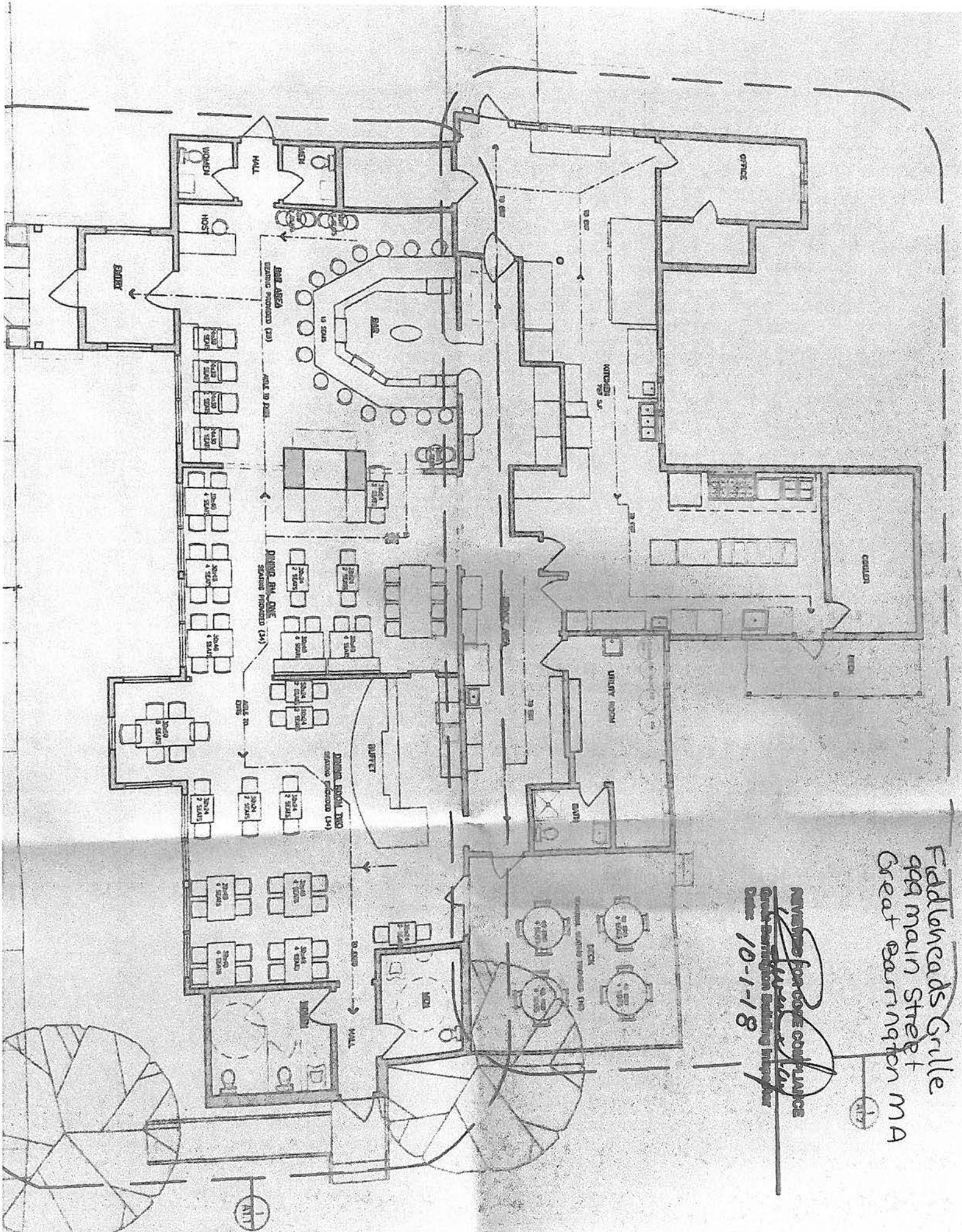


Federal Tax ID#:

464524207

Fiddleheads Grille
 999 Main Street
 Great Barrington MA

REVISIONS FOR CODE COMPLIANCE
 10-1-18
 Green Building Building Inspector



For 10/15 SB Meeting

Fee: \$25.00 (per day)



RECEIVED
TOWN MANAGER

SEP 26 2018

APPLICATION FOR ONE DAY LIQUOR LICENSE

BOARD OF SELECTMEN
GREAT BARRINGTON, MA

TO THE LICENSING AUTHORITY:

The undersigned hereby applies for a License in accordance with the provisions relating thereto:

Applicant's Name: Robert F. Avery, Jr

Organization Name: Blessed Teresa of Calcutta - Diocese of Springfield

Applicant's Address: 1 Pothul Drive, Great Barrington

Telephone Number: 413-528-4803

Type of License: ONE DAY BEER & WINE ONE DAY ALL ALCOHOLIC
(Circle one)

Event: Bazaar

Date: November 2, 2018 Start Time: 5:00 pm End Time: 11:00 pm

Event Address: St. Peter Parish Center, East Cottage St, GB

Is the Event on Town property? YES NO

PLEASE ATTACH THE FOLLOWING TO YOUR APPLICATION:

1. TIPS or ServSafe Alcohol certification for anyone serving alcohol.
2. Certificate of Insurance showing proof of Liquor Liability coverage.
(If the event is on Town property, the certificate must name the Town of Great Barrington as additional insured.)
3. If the event is not on applicant's property, a letter of permission from the owner is required.

Liability: The below individual agrees to take responsibility for the above-noted event and further agrees to indemnify, save harmless, and defend the Town of Great Barrington, its officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, which may occur in connection with this event.

Robert F. Avery, Jr
Signature of Applicant

9/26/2018
Date

FOR TOWN USE:

Approved _____

Denied _____

Postponed _____

Memo

To: SELECTBOARD

Date: 10.15.18

RE: Library Board of Trustees

Attached are the Applicants' resumes/letters of interest who expressed an interest to fill the vacancies (2) to serve on the Library Board of Trustees until the May 2019 Town elections. As per MGL c. 41, sec 11, this is a joint appointment of SB and the remaining Trustees by a Roll Call Vote.

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

From: **Samara Klein** <sqksqksqk@gmail.com>

Date: Sat, Aug 11, 2018 at 8:10 AM

Subject: Town of Great Barrington Board of Library Trustees vacancy application

To: <jtabakin@townofgb.org>

Dear Jennifer Tabakin,

Hello. I am writing in reference to the Town of Great Barrington Board of Library Trustees vacancy; I would like to apply for the position.

I was born and raised in Great Barrington, and I moved back to the area from New York City five years ago with my partner and our now six year-old daughter. I attended Housatonic Elementary School and went to the Ramsdell Library as a child; today, my daughter and I are frequent patrons of the library, living steps away (we are neighbors!) and attending weekly programs there. I collaborate with librarian Leslie Meltzer on a monthly Picture Book Project series, and I have written articles about library programs for the Berkshire Edge. I also utilize the Mason Library for weekly tutoring sessions I do with an ESL student through the program Literacy Network of South Berkshire. I feel strongly about the integral role libraries play as community centers with resources, spaces, and programs that meet the needs of the people of the community, and I would like to play a role in the transformation of the Ramsdell Library as a center that more fully realizes this role for the community of Housatonic.

My career has been in book publishing. I worked in foreign & subsidiary rights and trade sales at Abrams Books, and in marketing and rights at The New Press. Currently I work at PJ Library, a Jewish children's book gifting program, for which I publish books and sit on the Book Selection Committee. I love books, picture books especially, and I write about them on my blog, <https://bookswithpicturesandwords.wordpress.com/>, and Instagram feed, <https://www.instagram.com/bookswithpicturesandwords/>. Because of this, I have basic web and social media experience that may be helpful to the Trustees. I also have experience in grass-roots fundraising, having spearheaded three trivia night fundraisers for a soup kitchen in Greenpoint, Brooklyn.

I would welcome the opportunity to learn more about our local library system, and to become even more involved in it. With a lifetime of experience in books, a strong dedication to the Ramsdell Library and the community of Housatonic, and as a constituent of the community not yet

represented on the Board of Trustees, I believe that I could act as a voice for the community and be of help as a member of the Great Barrington Library Trustees.

Thank you for your consideration.

All the Best,
Samara Klein
Registered voter of Great Barrington
205 Meadow Lane / P.O. Box 758
Housatonic, MA 01236
H: 413.274.1045 / C: 413.439.5497
sqksqksqk@gmail.com

27 Hollenbeck Avenue
Great Barrington, MA 01230
August 20, 2018

Ms. Jennifer Tabakian
Town Manager
334 Main Street
Great Barrington, MA 01230

RECEIVED
TOWN MANAGER

AUG 22 2018

BOARD OF SELECTMEN
GREAT BARRINGTON, MA

Dear Ms. Tabakian,

I am interested in being considered for the vacancy on the Great Barrington Library Board of Trustees. I moved to Great Barrington last year from the Boston area and have "work-from-home" job and frequently work at the Mason Library for a change of pace. The Mason is a great library. I love browsing the collection of books and movies and using the CW MARS network. There's always a long list of interesting programs and events on the calendar. It's a great resource to the Town and an organization that I'd like to support.

As a Trustee, here are some of the things I can bring to the Board. First, I have a business background and currently lead a market research team for Pearson Education which is large K-12 educational publisher. From this work, I am closely familiar with the immense impact that digital technology has had on education and publishing. As part of my role, I help sales and product teams find new and innovative ways to remain competitive. As a Trustee, I'd like to be part of these conversations here in Great Barrington. Second, since I frequently work at the Mason, I've had a chance to see how it's used and what programs are taking place. I have some thoughts about how the library can increase its appeal to other "work-from-home" folks in the area who may be working at Fuel and Cafe Rubi instead. Finally, it's always been important to me to get involved in organizations where I live. Back in Brookline, I held leadership roles in various town organizations and understand the time and commitment they require. This short-term position at the Library will allow me to contribute to the Town and hopefully help me find out about other ways to get involved.

As a Trustee, I will be an enthusiastic advocate for the library and I welcome the chance to speak with someone about the position. During the day, the best way to reach me is via email at janedstanhope@gmail.com or on my cell, 617-233-8611. I've included my resume for your review as well.

I look forward to hearing from you.

Regards,


Jane Stanhope

Jane D. Stanhope

27 Hollenbeck Avenue

Great Barrington, MA 01230

janedstanhope@gmail.com

Cell: 617.233.8611

BUSINESS EXPERIENCE

PEARSON EDUCATION, Boston MA

2015 to present

Director, Market Intelligence, K-12 Learning Services

Established and lead market research team supporting 500+ member U.S. K-12 Sales organization responsible for \$600m in annual revenue. Provide ongoing and custom research on customer needs, industry trends, competitive products, and win/loss analysis to drive sales, marketing and new product development. Championed use of Salesforce to drive data-driven decisions.

Senior Manager, Content Services

2010 – 2015

Managed roadmap, requirements, and operations for worldwide K-20 ebook SaaS platform (hosted 10K titles and 500K daily users). Worked collaboratively with business units and development team during all phases of product life cycle. Added iOS and Android, 20+ user languages, and 504 compliance. Introduced user analytics and reporting platform and visualization tools used by all business units.

IBM/LOTUS, Cambridge MA

Senior Consultant, Worldwide Executive Briefing Program

2006 – 2009

Designed and facilitated technical/strategic briefings for global accounts. Worked closely with account teams and senior IBM management to deliver 90+ briefings that resulted in over \$750m in revenue. End-to-end responsibility for agenda, speaker selection/prep, and day-of facilitation. Created best practice/training materials for new managers.

INDEPENDENT CONSULTANT, Boston MA

2002 – 2006

- Managed IBM/Lotus content strategy and on-site execution of worldwide customer and business partner conferences including Lotusphere North America and Europe. Partnered with IBM marketing and product teams to develop agenda, identify/train speakers, and manage on-site activities. Achieved consistent year-over-year increases in attendee satisfaction.
- Designed and delivered market research/analysis for enterprise software clients to support sales, marketing, and business development goals. Clients included Adobe Systems (document management), Oracle/ATG (ecommerce), and EMC/VMware (cloud computing).

IBM/LOTUS, Cambridge MA

1994 – 2001

Group Product Manager, Lotus Notes/Domino

Held various senior product management positions related to Lotus tools strategy and delivery of 15+ products (visual tools, scripting, and APIs) used by global accounts and business partners to build

collaborative document-centric solutions. Provided market analysis, competitive positioning, product requirements, and sales enablement. Key spokesperson at worldwide customer events.

INTERNATIONAL DATA CORPORATION, Framingham MA 1992 – 1994

Associate Director, Image and Workflow Systems

Recruited to build market advisory service (research briefs, trend analysis, market surveys, etc.) targeted at software vendors and Fortune 500 IT clients on growing image/workflow market. Helped grow business to 30 clients and \$500K annual revenue.

BIS STRATEGIC DECISIONS (now Forrester Research), Norwell MA 1988 – 1992

Senior Analyst, Image and Workflow Systems

Delivered regular market research data and quantitative/qualitative analysis (research briefs, reports, newsletters) and in-person/phone consulting to vendors and IT clients on key industry trends. Created and managed *Imaging Excellence Award* given annually by Association for Image and Information Mgt.

GOLD HILL COMPUTERS, Cambridge MA 1983 – 1988

Senior Product Manager

Early contributor at MIT-based artificial intelligence software start-up.

EDUCATION

Shady Hill School/Lesley University, Cambridge MA 2009 – 2010
M.A. Education and Middle School Math/Science Teaching Certification

Massachusetts Institute of Technology, Cambridge MA 1984 – 1986
S.M. Marketing and Corporate Strategy/Planning
Teaching Assistant in Marketing and Director of Volunteer Consulting Group

University of Massachusetts/Amherst, Amherst MA 1979 – 1983
B.A. Economics, Phi Beta Kappa, *summa cum laude*

COMMUNITY ACTIVITIES

MIT Undergraduate Admissions Office, Seasonal Reader

Bountiful Brookline, Treasurer

Brookline Emergency Food Pantry, Volunteer

Brookline Commission for the Arts, former Co-chair and Commissioner

Brookline Council for the Arts and Humanities, former Treasurer and event organizer/volunteer
including Brookline Open Studios

Brookline Arts Center, former board member

INTERESTS

Cycling, swimming, local arts, cooking/baking, and mosaic design

From: sherry steiner <indearts@aol.com>
Sent: Wednesday, August 8, 2018 2:40 PM
To: Jennifer Tabakin <jtabakin@Townofgb.org>
Subject: Library Trustee Vacancy

Hi -

I am interested in the Library Trustee Vacancy.

Attached is a resume.

Sincerely,
Sherry Steiner

Sherry Steiner

POB 75 Housatonic MA 01236

413 329-4141

Email: indearts@aol.com

www.sherrysteiner.com

Education: The School of Visual Arts NYC Fine Arts

1989 – Present	Creative Arts Instructor (part-time) John Dewey Academy – Great Barrington MA Studio Art/Creative Writing/Music/Film/Art History
1989 – Present	Publisher/Editor – Indearts.org - Housatonic MA Marketing, Public Relations, Editing (online)
1995 - 2013	Property Manager - Dewey Court (part-time) Berkshire County Regional Housing – Sheffield MA
2006 - 2015	Le Petit Musee-Housatonic /Pittsfield/Great BarrMA
1992 - 1998	Curating, PR, Marketing, Programming, Outreach
1999 - 2002	Museum of Teen Art-Founder - Great Barrington MA Marketing, Public Relations, Curating, Outreach
1986 – 88	Public Relations Director Academy for Myotherapy – Lenox MA Marketing, PR, Outreach, Audience Targeting
1985 – 86	Jacob’s Pillow Dance Festival – Lee MA Group Sales Manager/ Advertising Sales Manager Marketing, Audience Targeting, Outreach
1983 - 85	Business Manager Berkshire Women’s News - Stockbridge MA

1983 – 85	<p>Founder/Owner Gallery Without Walls – Stockbridge MA Coordinate Studio tours, Marketing/Public Relations</p>
1982 - 83	<p>Gallery Owner/Curator/Public Relations/Marketing On Paper – Lenox MA</p>
1979 – 1981	<p>Graphic Arts Assistant Instructor Educational Collaborative – South Lee MA</p>
1975 – 79	<p>Personnel Technician - Human Resources Broome County Personnel – Binghamton NY</p>
1975	<p>Public Relations Coordinato/Consultant Mowry Associates – Binghamton NY Marketing, Public Relations, Outreach,</p>
1974 – 76	<p>Founder – Artists Action Group – Binghamton NY Curating, Public Relations, Marketing, Outreach</p>

- President/Member of the Berkshire Writers Room – 2003 - 2007
- Member/ Chair of the Great Barrington Cultural Council 2003 - 2018
- Board Member: CTSB-TV – Lee MA 2007 - 2009
- Member of Berkshire Sings 2012 - present
- Member of Berkshire Ukulele Band 2012 – present
- Member of The Sunday Strummers Ukulele Ensemble 2016 -present

Amy Pulver

From: Margaret Heilbrun <magsthebookie@gmail.com>
Sent: Tuesday, August 21, 2018 12:05 PM
To: Jennifer Tabakin
Subject: Library Board of Trustees application
Attachments: mheilbrunresume.doc

Jennifer Tabakin
Town Manager
Town of Great Barrington
Town Hall
334 Main Street
Great Barrington, MA 01230

August 21, 2018

Dear Ms. Tabakin,

Please accept this email and my attached resume as my application to fill the unexpired term on the town's Library Board of Trustees, to serve until the May 2019 town election. I notified the board of my interest when I attended its August 9th meeting.

I have lived part time in Alford since I was two years old, and have lived full time here (a longtime dream of mine) in Housatonic since last year. The Great Barrington libraries have been a meaningful part of my life for a long time.

I am a trained librarian, and worked as such--and in allied fields--in New York City for many years. Of course the chief joy of such work was in being a part of a team engaged by the library's mission to make its collections and programs accessible and a vital component of the community.

As I have experience with many of the responsibilities of library administration, including budget oversight, grant writing, public programs, staffing, and working with volunteers, not to mention the online cataloging, public service, and archival description that I undertook before I was in library administration, I believe that I could make a useful contribution to the board's work, fully recognizing the trustees' considerable knowledge and experience.

I am grateful to have an opportunity now to contribute time, attention, and support to my hometown library.

With all good wishes, yours sincerely,

Margaret Heilbrun

MARGARET HEILBRUN
P.O. Box 856
168 Front Street
Housatonic, MA 01236
mobile: (718) 744-4981 land: (413) 274-5134
magsthebookie@gmail.com

EXPERIENCE

Editor, Archivist, Literary Executor
(2014–present)

Work freelance with select writers, providing developmental, copy, and/or line editing of independent/academic/trade nonfiction following *Chicago Manual of Style*, Oxford University Press/*Hart's Guidelines*, among others. As an archivist, have processed small and larger collections, arranging and describing them to current online descriptive standards. Co-literary executor for the estates of May Sarton and Carolyn G. Heilbrun. Additionally, currently volunteer about 15 hours per week at The Guthrie Center in Housatonic.

Associate then Senior Book Review Editor, *Library Journal*
(2005–2014)

For bi-weekly trade magazine (libraryjournal.com), evaluated, assigned, and edited reviews of titles (about 65 per issue) across many nonfiction subjects, working with reviewers from both college/university faculties and public and academic libraries and within coexisting deadlines and print/digital platforms. Maintained cordial contact with trade and academic publishing houses. Also wrote book reviews of many titles myself, both fiction and nonfiction, conducted author interviews, and wrote profiles and pieces relating to forthcoming books.

Writing, editing, foundation work
(2003–2005)

Freelance grant writing/editing; secretary of the Kate Fansler Foundation.

Library Director, The New-York Historical Society
(1995–2003)

Oversaw library operations, including outreach and editorial work, collections management, project planning, budgets, and staffing. On curatorial team for numerous museum and library exhibits, interpreting items for the general public. Planned and wrote grant applications, including successful proposals to government agencies and private foundations.

Interim Associate Library Director, The New-York Historical Society
(1993–1994)

Worked on planning, budgeting, coordinating, supervising, and evaluating all library activities.

Curator of Manuscripts, The New-York Historical Society
(1989–1994)

Developed and oversaw procedures for manuscript acquisitions, processing, cataloging, and public service. Supervised graduate archives internships. Gave talks to visiting faculty, students, and other guests. Continued as *de facto* curator of manuscripts until next curator was hired in 2001.

Manuscripts Cataloger, The New-York Historical Society
(1987–1989)

Following national descriptive and editorial standards, processed and cataloged historical manuscript collections. Provided reference service to manuscript researchers.

Special Collections Intern, Columbia University Health Sciences Library
(1986–1987)

Processed historical manuscript collections and curated exhibit of Florence Nightingale materials.

Research Assistant to author Mary-Jo Shapiro
(1985)

Undertook primary-source research and caption writing for her Random House book, *Gateway to Liberty* (1986), a history of the Statue of Liberty and Ellis Island.

Assistant in Admissions Department, The Brearley School
(1982–1984)

Assistant to the Manager, Gotham Book Mart
(1979–1981)

EDUCATION

M.A., American Civilization, Graduate School of Arts and Sciences, New York University (1992)
Thesis explored the impact of the railroads on 19th-century American writing.

M.L.S., with honors, Columbia University School of Library Service (1987)
Double concentration in Archives and Rare Books. Archives practicum at The New York Public Library's Manuscripts Division. Received the Joseph Lewis Wheeler & Joseph Towne Wheeler Award "for outstanding intellectual achievement and strong potential for leadership in library service."

A.B., *cum laude*, Harvard College (1979)
Majored in Biological Anthropology while taking select history and literature courses and gaining admittance to restricted fiction and playwriting programs.

SELECTED PUBLICATIONS & PANELS

Author, editor, *Library Journal*. (All pieces copyright, LJLLC, Media Source, Inc.) Author of numerous reviews, interviews, blogs, etc., and editor of thousands of contributors' book reviews. Find some links to examples of my published writing at mheilbrun.wordpress.com (2005–2014).

Moderator of panels at *Library Journal's* Day of Dialog (2011–2012) and at BookExpo America (2011).

Author, "NYork, NCentury, N-YHS," *The New-York Journal of American History* (2003).

Panelist, "Inventing History in New York: The Founding of The New-York Historical Society in 1804," Gotham History Festival, CUNY Graduate Center, New York (2001).

Editor, *Inventing the Skyline: The Architecture of Cass Gilbert* (Columbia University Press, 2000).

Author, The New-York Historical Society Newsletters. Authored numerous articles relating to library collections (1998–2003).

Research curator, *The Dewey Years at Columbia, 1883–1888*. Pamphlet to accompany exhibition (see below), with a foreword by Terry Belanger (1987).

SELECTED EXHIBITIONS

Exhibitions curator at The New-York Historical Society, or elsewhere as indicated (1987–2003), including: “Presidential Treasures from the Library Collections”; “Pray For Me: Letters and Diaries From American Wars, 1758-1968”; “Inventing the Skyline: The Architecture of Cass Gilbert”; “George Washington: A Man of His Time, A Man for All Times” (co-curated with The Gilder Lehrman Institute); “Robert Fulton: America’s Leonardo?”; “New Members’ Collect: Nathaniel Hawthorne” (contribution to annual Grolier Club exhibit, 1996); “The Dewey Years at Columbia,” Columbia University, Low Library Rotunda, research curator (1987); “Florence Nightingale: Her Life and Influence,” Columbia University Health Sciences Library (1987).

BOARD MEMBERSHIPS

Editorial Advisory Board, “Advances in Library and Information Science” (ALIS) series, IGI-Global (2009–2011).

Advisory Board, Madison Square Reads (2005–2008).

Board of Directors, Kate Fansler Foundation (2003–2016).

APPLICATIONS

In addition to Microsoft Office: Adobe InCopy; K4 Cross-Media; WordPress; custom book review assigning/editing system from YuxiPacific; some HTML coding; *Chicago Manual of Style*.

Memo

To: SELECTBOARD

Date: 10.15.18

RE: Associate member on the Planning Board - 1 Vacancy

Garfield Reed submitted a letter of interest to serve as an Associate member on the Planning Board. 1 Vacancy exists for the appointment of an Associate member for the Planning Board for a term to expire June 30, 2021.

From: Garfield Reed
Sent: Tuesday, October 02, 2018 3:37 PM
To: 'hkuziemko@townofgb.org'
Subject: Planning Board Associate

October 2, 2018

Selectboard&Planning board town of Great Barrington
Town Hall
334 main street
Great Barrington Ma 01230
Re:planning board associate

Dear Select board& Planning Board

My name is Garfield Reed, I own my home on Castle Hill Ave I have resided there for 36years. In that time I have seen many changes in Great Barrington.

Some I agree with, some I do not. I know If I want to Have a voice in my town and to help affect change or protect the things that I love about Great Barrington then I need to get involved in our town government. Albeit I am a novice when it comes to the administrations of the town. But I have a desire to learn the mechanisms of how my town operates. I have read the community master plan that was written in 2013 and have attended two planning board meetings to help get acquainted with the workings of the board.

I see the planning board as one of the major "players" in our town government and a team I would very much like to be a part of in helping Great Barrington grow and maintain our small town aesthetics. I believe I have something to offer and would also add some diversity to our town government .

Sincerely
Garfield C Reed
107 castle hill ave
Gt Barrington ma 01230
413 528 4127

September 8, 2018

Mr. Stephen Bannon, Chair
Great Barrington Board of Selectmen
334 Main Street
Great Barrington, MA 02130

RE: Town Manager Recruitment Proposal

Dear Mr. Bannon:

I appreciate the opportunity to submit this proposal to the Town of Great Barrington for services that assist with the recruitment and selection of its next Town Manager. It is essential that this selection process result in an individual that has the skills, experience and management approach to assist the Town in addressing its challenges and opportunities.

I have attached a Proposal for Services (*Attachment A*), which includes the approach that we envision to be utilized in carrying out this recruitment and search. The timetable for a search and selection process is generally 12-16 weeks. Since Great Barrington is looking to fill this position in order to have a start date in June of 2019 we suggest a carefully timed process that can be intensified if a more rapid search and selection is needed. I have also included a Firm Profile that will provide some background to the services that are offered by Community Paradigm (*Attachment B*).


I believe that we bring three specific qualifications to the task of helping Great Barrington find its next Town Manager:

- First, we know the skills and characteristics of a municipal manager in carrying out his/her responsibilities, as many of the team will have experience with this role.
- Second, we have an extensive and current network of municipal managers, especially here in Massachusetts, and we utilize an approach of active recruitment, not simply advertising a position and waiting for responses.
- And third, the approach that we have always used in our recruitments includes active engagement of the stakeholders of the community in the process. We believe this approach produces the best possible selections as well as crucial community support during the all-important first few months in the position.

We certainly encourage the Town to review the recruitments that we have performed for other communities (*Attachment C*). We are confident that those communities will respond positively to the results of our work and the hands-on process that we have managed and provided.

I would be happy to respond to any questions regarding this matter and look forward to hearing from you. Thank you in advance for your interest.

Sincerely,



Bernard Lynch
Principal

Attachment A

PROPOSAL FOR SERVICES

I. Approach and Plan for Performing Services

It is a challenging period in municipal management recruitment with a growing number of retiring current managers providing increased opportunities, fewer individuals entering the profession, and many individuals opting to remain in secure positions. The result of these forces is smaller candidate pools for municipalities.

It has also become a period in which greater citizen involvement in the selection process is desired and required. Such involvement helps to ensure community support for the individual selected. Community Paradigm Associates has facilitated community forums in almost every municipal manager/administrator search we have conducted, and we have organized, guided and facilitated citizen Screening Committees in reviewing and interviewing candidates.

The recruitment and selection process require an understanding and knowledge of the candidate pool, aggressive outreach, citizen engagement and participation, and a nimble and creative approach to finding and choosing the “right” individual for the community. The approach that would be utilized as described herein, along with the already described experience and knowledge will work in finding the best Town Manager for the Town of Great Barrington. The following is a description of the process that will be utilized by the Consultant:

Preparation

1. Initial Consultation with the Board of Selectmen and Screening Committee

It is most important to have a clear understanding from the Board of Selectmen on the experience, management style, and personal attributes the Board wishes the next Town Manager to possess. The Consultant would meet with the Selectmen at the outset to obtain this information. This meeting would also be used to discuss recruitment strategies, discuss contractual provisions including compensation and conditions of employment, and review the timetable for the recruitment and selection process. A similar meeting will be held with the Screening Committee with a focus on process and timetable. The mission of the Screening Committee is to ultimately narrow the field of candidates to three (3) or four (4) finalists to present to the Board of Selectmen.

2. Supporting Information and Community Consultation

It is generally helpful to gather the views of Department Heads and other key town officials that will have regular interaction with the Town Manager. These will be obtained through a roundtable discussion with the consultant with follow-up information gathering with individual staff as deemed necessary. It has also been proven useful to have a community forum to ascertain the thoughts of residents and businesses as to the qualities that would be beneficial for the next Town Manager to possess. Community Paradigm has utilized such input sessions with success in most of its executive recruiting projects. It is anticipated that these information gathering sessions would be held during the course of one day with any interviews not available on that day occurring via phone interviews .

3. Preparation of Position Profile/Recruiting Brochure

The Consultant would assist in developing the required professional qualifications and recommended compensation package for the Town Manager position based in part by the updated job description. The information gathered from the Board of Selectmen, Department Heads and town officials, and any community input sessions would complete the development of the position profile. A community profile will also be developed with the position profile in order to create a Recruiting Brochure that will provide possible candidates a full understanding of the Town and its current issues, the statutory responsibilities of the Town Manager position, and the expectations of the Board and other members of the community. A sample Position Profile is included as *Exhibit 1*.

The Board will be asked to endorse or amend this Profile, and in Executive Session discuss and decide parameters of a compensation and benefits package. Specifics related to this package are held to be confidential as they will be part of negotiations with the final candidate.

4. Advertisements and Active Recruitment of Candidates

Ultimately, the success of selecting a new Town Manager for Great Barrington is ensuring the largest possible pool of qualified candidates. Certainly, one manner of gaining applicants is advertising the position through various publications and organizations. The consultant will make recommendations on the most effective locations to advertise but at a minimum would include the International City and County Management Association (ICMA) and Massachusetts Municipal Manager's Association (MMMA) publications.

However, the most important activity in recruiting is conducting targeted outreach to prospective, qualified candidates. This activity is imperative, as many qualified candidates do not respond to advertisements for various reasons. In particular, in highly visible positions, such as municipal managers, there is some concern about premature public disclosure of candidates, which could impact existing positions. A consultant-initiated contact can ease such concerns and expand the pool of candidates. The Consultant will conduct outreach by utilizing:

- Our MMA professional network;
- Our ICMA professional network;
- A professional academic network at Suffolk's MPA program;
- Our professional and alumni networks.

Review of Applicants

5. Receipt of Résumés

Applications and résumés should be sent directly to Community Paradigm Associates in order to maintain confidentiality of each inquiry and application. This will ensure the greatest number of qualified candidates. Any résumés sent to the Town, the Screening Committee, or the Board of Selectmen should be forwarded to the Consultant. All résumés need to be acknowledged by the Consultant.

6. Initial Review of Résumés

The Consultant will review all résumés to determine those which meet the Town's criteria as set forth in the parameters voted by the Board of Selectmen. Those that do not meet minimum criteria will be screened out from direct referral to the Screening Committee but will be made available upon request.

7. Screening Process: Review of Résumés and Assessment

The Consultant, summarizing each qualified applicant's experience, education and other notable information, will prepare a confidential assessment of the remaining qualified candidates. This information will be reviewed with the Screening Committee on a confidential basis, as will advisement by the Consultant as to which candidates are the most qualified. These reviews will occur in executive session and, with the advice of the Consultant, the Screening Committee will select the candidates to be interviewed in executive session.

Initial Interviews

8. Screening Committee Interviews

It is recommended that the Screening Committee personally interview 5-7 candidates. Interviews would be expected to last 60-75 minutes. The Consultant will assist the Screening Committee with the interview process. This will include the notifications to candidates and scheduling of interviews as well as assisting the Committee with the interviews including methods of interviews, possible questions, and evaluating responses, etc.

The Committee should only interview candidates once as second interviews are generally required to occur in public session; and public interviews of candidates prior to being named a finalist could have a chilling effect upon applicants/candidates.

9. Selection of Finalists

At the completion of the initial interviews the Committee will need to determine which three (3) or four (4) candidates should be forwarded to the Board of Selectmen as finalists. These finalists should NOT be ranked in any way as it can bias the process. Instead, a short description of the candidate can be prepared to accompany the finalists' résumés.

10. Reference and Background Review

The Consultant will obtain written authorization from each of the finalists acknowledging a desire to continue through the process and allowing for the Consultant to contact the finalists' provided professional references and conduct CORI checks as applicable. This process protects the finalists' confidentiality and the Town and its Screening Committee and Board of Selectmen from any charge of violation of privacy.

11. Referral of Finalists

Upon completion of the Reference and Background review, the Consultant will work with the Screening Committee, as needed, for final referral of finalist names to the Board of Selectmen. This step will allow for any modification to the chosen finalists if notable information is gathered during the background review. The Committee will take the final votes and publicly announce the finalists to the Board of Selectmen.

Board of Selectmen Selection

12. Finalist Interviews

The Consultant will assist the Board of Selectmen with the interview process including preparation, scheduling of interviews, etc. The Board may choose to conduct two interviews, the first involving a preliminary introduction and review of credentials and experience; and a second meeting that follows time spent with members of the community and staff. The second interview could focus upon management style and thoughts and ideas regarding Great Barrington.

13. Selection

At the conclusion of Selectmen interviews the Board will need to make a decision regarding the choice of the next Great Barrington Town Manager. The Consultant will help with organizing the process of making that decision. Any vote to offer the position of Town Manager to an individual should be “conditioned” upon the successful negotiation of a contract and any additional background checks deemed necessary.

14. Contract Negotiation

The Board of Selectmen can handle the process of negotiating an employment agreement directly or through the use of Town Counsel. The Consultant will assist with this process and can provide some valuable guidance in reaching a mutually beneficial agreement. It is strongly recommended that Town Counsel review an employment contract before execution. This should be done for the initial agreement and any future agreements in which language is modified.

II. Consulting Fee and Estimate of Costs

The fee associated with these services is \$12,000.00 with \$3,000 payable at the conclusion of each phase.

Phase 1: Preparation and Recruitment (Steps 1-4)

Phase 2: Review of Applicants (Steps 5-7)

Phase 3: Initial Interviews (Steps 8-11)

Phase 4: Board of Selectmen Selection (Steps 12-14)

The fee does not include expenses related to the search (advertisements, printing, miscellaneous, etc.), which will be paid directly by the Town or as reimbursement to the consultant with appropriate documentation. It is estimated that these costs will total approximately \$850.00.

III. Recommended Timetable

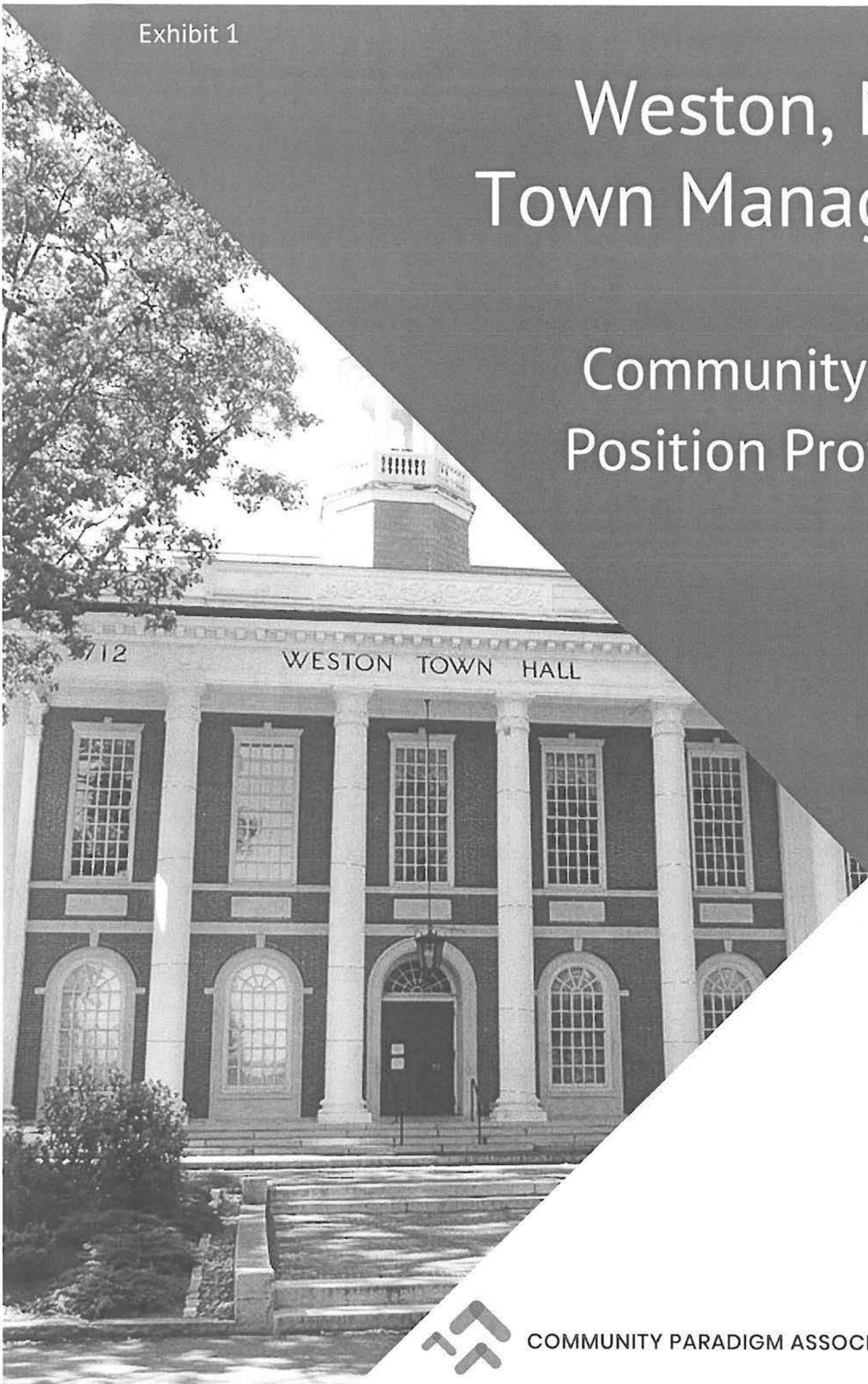
The following timetable anticipates an October 15, 2018 start date and completion of the process in mid-April order to have a selection starting in the position on June 1, 2019. The process can be expedited if necessary.

Dates	Actions
October 15 th - December 31 st	Information gathering with Screening Committee, Board of Selectmen, Department heads, and community; Position profile and advertisement created, reviewed and approved.
January 1 st – February 1 st	Position advertisements placed; Active recruitment.
February 2 nd – February 8 th	Initial Screenings, including preliminary background reviews.
Week of February 11 th	Meet with Screening Committee with 8-12 semi-finalist names.
February 19 th - February 28 th	Semi-finalist interviews with Screening Committee and tentative selection of finalists
Week of March 4 th	Background reviews and additional reference checks of tentative finalists.
Week of March 11 th	Names of 3-4 Finalists submitted to Board of Selectmen.
Week of March 25 th	Finalist interviews with Board of Selectmen. (Dates and Consultant involvement subject to the agreement of the Board of Selectmen.)
Week of April 1 st	Position offer and Contract Negotiations commence.
Week of April 15 th	Town Manager Contract Signed.

Exhibit 1

Weston, MA Town Manager

Community & Position Profile



COMMUNITY PARADIGM ASSOCIATES, LLC

The Community

The Town of Weston is an attractive, principally residential community of approximately 11,500 residents located 12 miles west of Boston. It has a tradition of professional and highly responsive government service, with strong citizen engagement, and is known for its semi-rural character with close access to the major city of Boston. The Town is seeking an innovative, community-focused and results-driven leader to serve as its next Town Manager.

Weston was first settled in 1642, incorporated in 1713, and is part of Middlesex County. The Town is bordered by Lincoln on the north, Waltham and Newton on the east, Wellesley on the south, Natick on the southwest, and Wayland on the west.



Weston's 17.3 square miles is primarily land, with approximately 25 percent some form of wetland or in a wetlands buffer area. The community consists mainly of residential properties, a quaint town center, and small commercial office buildings located on the perimeter of town near highways and major routes.

With close proximity to Boston, desirable real estate and highly ranked school system, Weston ranks amongst the most affluent towns in Massachusetts. Median household income of \$191,744 is the highest in the state

and represents 280% of the state median income of \$68,563. While the Town's population is largely financially prosperous, according to U.S. Census statistics, there are a small percentage of residents who fall below the poverty line and find it a financial challenge to retain their Weston residence.

The Town's racial makeup is 85.3% white, 9.9% Asian, 2.6% Hispanic or Latino, and 2.0% Black or African American. The Town is demographically dissimilar to the state regarding resident age cohorts with differences in the under-18 years cohort with Weston at 28.1% in the 2010 U.S. Census versus 21.7% for the state. In the under-5 years cohort, Weston has 4.5% of its population which is slightly lower than the state's 5.6%. Additionally, in the 65 years and over cohort, Weston has 17.8% of its population compared to the state's 13.8%. The median age of Weston's residents is 43.3 years.

Weston enjoys a strong property base for its size with total assessed value of approximately \$6.0 billion. Residential properties account for 95.5% of the tax base, commercial and industrial properties 3.5%, and personal property 1.0%. The average residential property assessment is \$1,488,049 and the median residential assessment is \$1,173,300. The average commercial assessment in Weston for FY2018 is \$3,584,238 and the median commercial assessment is \$1,001,600. The FY2018 tax rate for all properties is \$12.51 per thousand of the property's assessed value.

Weston has excellent access to rail, air and highway facilities. Interstate Route 495 and state Route 128 divide the greater Boston area into inner and outer zones, which are connected by numerous spokes providing direct access to the airport, port and intermodal facilities of Boston. Other principal highways easily accessed from Weston include state routes 30 and 117, U.S. Route 20, and the Massachusetts Turnpike, I-90. The MBTA commuter rail can be accessed in Weston via the Silver Hill, Hastings, and Kendal Green stops along the Fitchburg line. The Town has 87 miles of public accepted roads, 21 miles of private roads, and 31 miles of sidewalks.

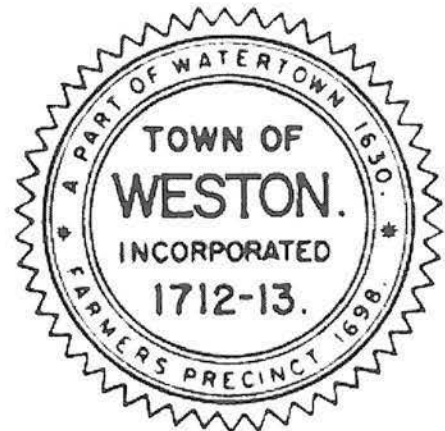
Government and Finance

Weston's government includes a three-member Board of Selectmen that serves as the governing body of the Town. Selectmen are volunteers and elected to staggered three-year terms. They oversee all matters impacting the interest and welfare of the community and are responsible for ensuring that Town government is responsive to and reflective of community needs and values.

There is also an elected five-member School Committee that oversees the policies and budget of the Town's public school system. Other elected positions include Board of Assessors, Moderator, Planning Board, Recreation Commission, Board of Health, Library Board of Trustees, and Commissioners of Trust Funds. In addition, the Town utilizes more than 30 appointed boards and commissions to conduct municipal operations.

Weston traditionally uses the Town Caucus to nominate candidates for town office. Town Caucus is normally held the first or second Monday in March. Weston has an Open Town Meeting form of government. Town Meeting is the legislative body of the Town and typically meets for the Annual Town Meeting in May during which the annual town budget is adopted and changes to the Town's General and Zoning by-laws are considered. Additional Special Town Meetings may be called as often as necessary, but one Special Town Meeting is typically held in November.

The Board of Selectmen appoints the Town Manager to provide day-to-day oversight of the Selectmen's office and to supervise all Town departments under the jurisdiction of the Selectmen. The Town Manager is responsible for executing the policy directives of the Board of Selectmen and for managing the operations and activities of the Town. The Board of Selectmen has designated specific Projects and Priorities for 2017-2018.



The Town Manager's specific responsibilities include the following:

- Provide support to the Board of Selectmen, including preparing, attending and maintaining records of all Board of Selectmen meetings
- Develop policy proposals and policy alternatives to recommend to the Board of Selectmen
- Serving as liaison between Selectmen and other town boards and committees
- Supervising all departments under the jurisdiction of the Board of Selectmen, including handling personnel and benefits administration for approximately 175 employees
- Oversee and coordinate the preparation of the annual budget
- Provide financial oversight of all municipal operations
- Preparing the warrant for the annual and all special Town Meetings
- Responding to written and verbal inquiries from the public, and
- Coordination of the Annual Town Report.

Weston holds a Moody's rating of AAA, with a stable outlook, as stated in a rating action of January 2018. The rating was based upon the community's stable financial position, manageable debt burden and pension liability, and its aggressive funding strategy toward its OPEB liability. Moody's noted that it expects that Weston will maintain a sound financial position bolstered by its strong fiscal management.

It also cited the Town's conservative approach to budgeting and expenditure management as well as its sizeable tax base and history of taxpayer support for capital expenditures which provides additional stability. Weston's tax base is approximately 96% residential.



In FY2018, Weston has an overall spending plan of approximately \$87.1 million, including \$8.9 million of exempt debt service. Approximately 66% of this spending is for schools, 22% for essential services (Public Safety, Public Works and Facilities) and 14% for general services. In FY2019,

the Town Manager and School Committee are recommending a principally level-services budget of \$89.8 million, a 3.1% YoY increase.

As of March 31, 2018, Weston had a stabilization balance of approximately \$3.1 million, a pension stabilization balance of \$415,029, and an OPEB trust fund balance of about \$16.2 million. The Town's OPEB liability is approximately \$65 million and it has a net pension liability of about \$60 million, as of the most recent actuarial valuation on July 1, 2016. Weston's debt is mainly excluded debt. Non-excluded debt is only \$19,760, which is less than one percent of the operating budget. The Town's debt-management policies include confining long-term borrowing to capital improvements too expensive to be financed from current revenues and limiting annual increases in debt to a level that will not materially jeopardize the Town's AAA credit rating.

Weston has set policies regarding its reserves, including both restricted and unrestricted. For example, the Town targets aggregated unrestricted reserves equal to five percent of the prior fiscal year's general operating budget amount excluding exempt debt service.

Challenges and Opportunities

Weston is fortunate to have a stable tax base, strong demographics and history of residents supportive of the schools and municipal services. However, there are several challenges and opportunities that face the Town and are being addressed.

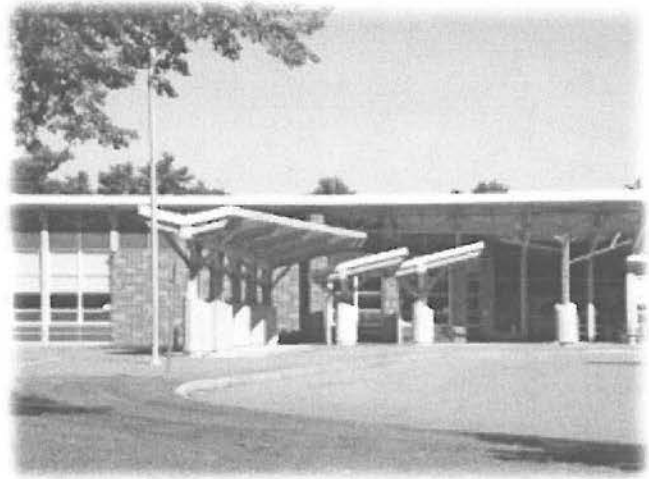
- **Finances**

Weston has a Moody's rating of AAA with a stable outlook, according to a January 2018 report. The Town's goal is to manage its finances in a manner that will maintain its high rating. Weston's FY2019 recommended budget is approximately \$81.1 million, excluding \$8.7 million gross debt service. Moody's highlighted Weston's stable financial position, strong fiscal management, manageable debt burden, and conservative approach to budgeting as strengths. The Town has

increased its debt load by 24% over the past 10 years to fund capital improvements, with several more on the horizon. The Town has managed to keep tax increases to an average of 3.8% over the past 10 years, though that is anticipated to be challenging in a higher inflation environment. Maintaining the Town's credit rating, financial strength and minimal tax increases continues to be a priority for the Town.

- **Education**

Weston highly values education. Its excellent public education system consistently ranks amongst the best in the state and is a primary attractor of families to the community. Also illustrative of the Town's strong support of education is the fact that approximately 99% of Weston's residents age 25 years and older have a high school diploma and about 84% of the population age 25 and older have a bachelor's degree or higher. Student enrollment in Weston Public Schools is approximately 2,111 at the Town's three elementary, one middle, and one high school. Enrollment has historically been cyclical, and is currently on a downward



trend, which presents challenges in budgeting. Approximately 18% of Weston's school-age population attends private schools, which is statistically similar to prior years.

- **Housing**

With a highly attractive location, semi-rural environment and excellent school system, Weston is an expensive community in which to live. Approximately 85% of the 3,400 homes in Weston are owner occupied with a median value of nearly \$1.2 million. Only 3.5% of housing is considered affordable, which is significantly below the state-mandated 10% level. This presents a challenge for the Town, which has identified a strong need for rental housing, particularly for the elderly and young families. Weston developed a Housing Production Plan as a proactive and studied means towards developing affordable housing that is in keeping with the Town's affordable housing policies and preferences. A proposal currently in negotiation is a 40B development of at least 200 units, with some percentage being designated affordable to make significant progress towards the state mandated level.

- **Capital Needs**

In the last 20 years or more, nearly all the Town and School buildings have been renovated or replaced, the Case House School Administration Building being the remaining major project. The Town has some surplus buildings for which appropriate re-use has been the subject of much discussion. Currently, Weston is undertaking a \$4 million renovation of the Old Library, which will become the Weston Library's new Weston Art & Innovation Center, providing hands-on learning opportunities related to art and technology for citizens of all ages. The Town is also considering extensive renovations to the neighboring historic Josiah Smith Tavern, which could cost as much as \$11 million. Weston has five-year capital improvement plans, which are updated annually, for such areas as drainage, water main program, roadways, and sidewalks. Roadways, in particular, are below residents' standards and expectations, and undergoing significant investment. Other

projects in the FY2019 Capital Improvement Program include: drainage improvements; burying utilities, enhancing parking, and improving sidewalks in the town center; Route 30 roadway reconstruction; the purchase of a fire engine pumper, three police cruisers, a street sweeper, and three school buses; guard rail replacements; and ongoing water main rehabilitation program costs.

- **Public Safety**

The Weston Police Department has 26 full-time officers, including patrol officers, captain, lieutenant, sergeants, detectives, community services officer, and chief. Its Fire Department has 31 full-time members on 24-hour shifts and operates out of two stations. It also runs the Town's ambulance service. Two additional firefighters are expected to join the department later this year and another two are requested for the following year. The Town utilizes a dual dispatch center, staffed by civilians, that serves both the police and fire departments. Neither the police nor the fire department is part of Civil Service. Increased traffic loads are a significant issue facing the Town as it is located at the intersection of two major highways (I-90 and I-95) and significant commuter passageways from western suburbs (Rtes. 30, 20, and 117).

- **Open Space and Recreation**

The 2017 Weston Open Space and Recreation Plan details the goals, objectives, and actions that guide Weston's stewardship of its open spaces, natural resources, and recreation facilities through the year 2023. The Plan is a tool to assist the Town in maintaining and improving its green infrastructure, such as conservation land, trails, working farms and forests, wildlife habitat, streams and ponds, parks, playing fields and courts, and swimming facilities. Weston residents have access to approximately 2,000 acres of protected conservation land and approximately 90 miles of trails. Additionally, there is an array of recreational facilities, including a popular swimming pool and playing fields, tennis courts, basketball courts, and extremely robust recreational programming. Weston is designated as a Green Community by Massachusetts, giving it the ability to apply for grants, technical assistance, and local support from the state. Some residents have expressed a desire for the Town to increase its sustainability and energy-saving efforts.

- **Economic Development**

Weston is 95% a residential town, with commercial activity confined primarily in Town Center and the fringes of Town. The Town Center Planning Committee has been developing a vision and plan to address traffic, safety, aesthetics and other issues to enhance Town Center for its businesses and residents. There are no public sewers in Town, which presents a challenge for Town Center development. Other Master Plans and Studies are located on the Town's website.

- **Citizen Engagement**

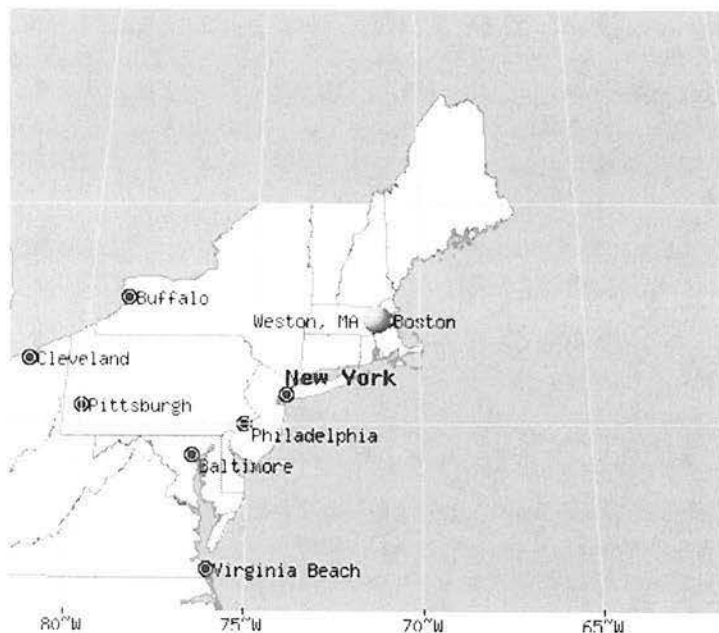
With many challenges and opportunities, the Town embraces civic engagement and appreciates the high levels of participation and discourse residents provide. Volunteer citizens serve on elected and appointed boards and committees as well as in other volunteer capacities. Attracting volunteers and maintaining a strong and collaborative relationship between residents, Town employees, and volunteers is vital to the success of the community. Although the Town has an award winning website and currently makes use of various social media platforms and methods of "pushing" information to residents, additional ideas and recommendations regarding improved methods of communicating with and engaging citizens, including innovative technologies, would be welcome.

Candidate Qualifications

The Board of Selectmen seeks a Town Manager with strong leadership abilities, municipal management experience, and an interest in a tenure of at least 10 years in Weston. The successful candidate must be able to demonstrate prior success in leading a complex municipal organization. The candidate should be competent in all areas of municipal management and operations, but especially in finance, project management, and personnel administration. The candidate should be knowledgeable of municipal management best practices, including the use of data analytics. Other areas of desired expertise include housing (both affordable and elderly) and long-term planning.

The Town Manager must be an innovative and decisive leader who can work collaboratively with various interests of the Town. He or she is expected to work cooperatively with citizens, volunteers, and the business community, should be highly approachable, and should be a skilled communicator.

The Town Manager must be able to delegate effectively, mentor department heads, and provide support and motivation to ensure high performance and professional growth for Weston employees. He



or she must develop and sustain relations with employees and union representatives and be a strategic and dynamic leader who can build strong teams and employ a teamwork approach. He or she should encourage collaboration between all departments, including schools, and to build morale. The Town Manager must be a creative problem-solver who is accessible, transparent, collaborative, a consensus-builder, and open to new ideas. He or she must lead by example, and be motivated, ethical, and respectful of others.

The Town Manager must be dedicated, organized and patient, have a strong work ethic, and inspire

trust and confidence. He or she must have the ability to effectively explain complex issues to individuals, committees, and the citizenry.

The successful candidate should possess a bachelor's degree in a field related to municipal management, with a Master's degree in public administration, business management, or a related field preferred, and have a minimum of 3-5 years of progressive experience as a municipal city/town manager or administrator, as an assistant city/town manager or administrator, or education and experience in or relatable to municipal government that is equivalent. The successful candidate should possess demonstrated skills, abilities and knowledge in municipal finance, economic development and community planning, project management, team building, government law, personnel administration, and intergovernmental relations.

Compensation Package

The Town of Weston will offer an employment agreement and compensation package that is competitive with comparable area communities, with a salary of \$180,000+, commensurate upon qualifications. An attractive benefits package, including health and retirement plans, is part of the Town Manager's total compensation. Residency is not required.

How To Apply

Interested applicants should send cover letters and résumés, in confidence, by May 18, 2018, 5:00 p.m., via email to:

Apply@communityparadigm.com

Subject: Weston Town Manager Search

Submit a single PDF containing both cover letter and résumé.

Following the closing date, résumés will be reviewed according to the outlined qualifications. A Screening Committee will interview the most qualified candidates in confidence. Based upon these interviews, a selection of finalists will be chosen for further evaluation and reference checks and then forwarded to the Board of Selectmen. Finalists will be contacted for references and approval of background reviews before their selection is advanced to the Board of Selectmen.

Questions regarding the position should be directed to:

Bernard Lynch, Principal
Community Paradigm Associates
Blynch@communityparadigm.com
978-621-6733

The Town of Weston, Mass., is an Equal Opportunity Employer.



FIRM PROFILE

Community Paradigm Associates, LLC, is a multi-dimensional organization focusing on governmental, nonprofit, community, and business concerns. It develops transformational initiatives and innovative solutions designed to enhance the dynamics of communities. Its Principal and Associates draw upon their extensive government, academic, and private sector experience to provide the answers clients need to effectively and efficiently manage their organizations.

Principal Bernard F. Lynch has devoted more than 35 years to guiding cities and towns toward brighter futures by focusing on the efficiency and responsiveness of organizational day-to-day operations as well as highly transformational initiatives that bring communities to a new level. His experience as an innovator, strategist, educator, researcher, and leader allow him to consider challenges from various viewpoints. Known for his collaborative problem-solving and innovative solutions, Mr. Lynch steered a Massachusetts city away from potential receivership to solid fiscal stability. He has managed the successful conception and completion of public libraries, police stations, community centers, school buildings, bicycle and walking trails, and recreation facilities.

Mr. Lynch served as City Manager of Lowell, Massachusetts, for eight years and as Town Manager of Chelmsford, Massachusetts, for 20 years. He serves on Lieutenant Governor Karyn Polito's Task Force on Local Government Workforce Skills Gap, is a Senior Fellow at Suffolk University, and serves as an adjunct professor at both Suffolk University and University of Massachusetts Lowell. He earned a Master of Public Administration degree from University of Massachusetts Amherst and a Bachelor of Science degree in Political Science from the University of Lowell.

Senior Associate Peter Hechenbleikner has 45 years of government experience, including over 30 years in Massachusetts. Prior to his retirement in 2013, he served as Reading's first Town Manager and he has continued his commitment to local government service by serving in a number of interim assignments and providing consulting to municipalities. He has extensive experience in operational reviews, government studies, budget development, and organizational development. He holds a Master of Science in City and Regional Planning from Pratt Institute in Brooklyn, New York, a Bachelor of Arts degree in Political Science and Public Administration from the University of Cincinnati, and a Certificate in International Studies from the University of Manchester, England.

Senior Associate Rocco Longo has devoted his career to local government, including 46 years working in the municipal sector with 34 of those years as a municipal manager. He served as the Chief Administrative Officer in the towns of Billerica, Marshfield, Duxbury, and Northborough in Massachusetts, as well as in the City of Wellsburg in West Virginia. Mr. Longo has extensive

experience in strategic planning, organizational development, team building, financial management, budgeting, collective bargaining, and personnel management. He directed major construction projects including a library, senior center, seawall, and ball fields as well as substantial reconstruction of school buildings. Mr. Longo was responsible for budgets of up to \$120 million and for organizations with as many as 550 employees. He served on both the Massachusetts Municipal Association Board of Directors and the Massachusetts Municipal Managers Association Executive Board for two terms. Mr. Longo holds a Master in Public Administration from West Virginia University and a bachelor's degree in Political Science from Salem College.

Senior Associate Mark Andrews, who will join the firm in July 2018, has more than 35 years of experience working in state and local government, including serving as the Chief Administrative Officer in the communities of Pepperell, Wenham, and Wareham, and overseeing finances in the City of Lawrence, at Northern Essex Community College, and for the Massachusetts House of Representatives. He also served as Director of the Economic Development and Planning for the City of Haverhill. Mr. Andrews has extensive experience in municipal administration and finance, municipal charters, economic and community development programs, financial management systems, and budget development. He has been an adjunct professor of public administrator and finance at Suffolk University for more than 30 years. Mr. Andrews holds a Master of Public Administration from Suffolk University and a Bachelor of Arts degree in Political Science and Secondary Education from the University of Lowell.

Senior Associate Sharon Flaherty has more than 25 years of experience in communications, public relations, project management, digital and traditional marketing, and brand management. She has worked as an editor at daily and weekly newspapers, and directed marketing and communications departments in the financial industry. Ms. Flaherty served as an adjunct professor in business at Middlesex Community College. She earned a Master of Business Administration degree from Rivier University, a Master of Arts degree in English and Writing from Southern New Hampshire University, and a Bachelor of Arts degree in Communications from Rivier University.

Associate Shanna Weitz is a Ph.D. candidate in Government at Harvard University where she is also a Bok Writing Fellow. She specializes in urban politics and survey research. She also works as a researcher and teaching assistant at Harvard University. She previously worked for a communications firm in Washington, D.C., and in the district office of U.S. Representative Niki Tsongas. Ms. Weitz earned a Master of Arts degree in Political Science from Harvard University and a Bachelor of Arts degree with honors in International Studies from Johns Hopkins University.

Associate Sam Gonyea is a candidate for a Juris Doctor/Master of Public Administration at Suffolk University. He specializes in contract law, budgeting, and research. He previously worked as an intern at the Suffolk County District Attorney's Office, as a law clerk at a Boston law firm, and as an intern at Massachusetts Superior Court. Mr. Gonyea holds a Bachelor of Arts degree in Political Science from Fitchburg State University.

Community Paradigm Associates has affiliations with numerous highly experienced industry professionals who assist with various projects. It has a network that includes professionals in such areas as finance, public works, telecommunications, land use and development, public safety, emergency management, municipal law and process, personnel management, and sustainability. Each is an experienced and proven leader in his or her field.

Services provided by Community Paradigm Associates include: executive recruiting, economic and community development, strategic analysis and counsel, public finance, public policy, community engagement, strategic management and planning, social innovation, building high performing organizations, marketing and communications, professional development, process improvement, community sustainability, and tactical research and solutions.

Community Paradigm Associates, LLC, has provided consulting services on a variety of projects to numerous clients, including:

- **Executive Recruitment**

- Municipal

- Town of Winchendon, Town Manager (2015)
 - Town of Amherst, Town Manager (2016)
 - Town of Wellesley, Executive Director (2016)
 - Town of Scituate, Sewer Superintendent (2017)
 - Town of Shrewsbury, Town Manager (2017)
 - Town of Leicester, Town Administrator (2017)
 - Town of Plympton, Town Administrator (2017)
 - Town of Norfolk, Town Planner (2017)
 - Town of Salem, NH, Town Manager (2017)
 - Town of Norwood, General Manager (2017)
 - Town of Lynnfield, Town Administrator (2017)
 - Town of Ipswich, Town Manager (2018)
 - Town of Natick, Town Administrator (2018)
 - Town of Boxborough, Town Administrator (2018)
 - Town of Avon, Town Administrator (2018)
 - Town of Weston, Town Manager (2018)
 - Town of Wayland, Town Administrator (2018)
 - Town of Hamilton, Town Manager (2018)
 - Town of Oxford, Town Manager (2018)
 - Town of Stoughton, Town Manager (Ongoing)
 - Town of Becket, Town Administrator (Ongoing)
 - Town of Coventry, RI, Town Manager (Ongoing)
 - Town of Walpole, Community Planning Director (Ongoing)
 - Town of Northfield, Town Administrator (Ongoing)

- Non-Profit/Quasi-Governmental

- Merrimack Valley Planning Commission, Executive Director (2016)
- Massachusetts Police Accreditation Commission, Program Manager (2017)
- Massport Community Advisory Committee, Executive Director (2018)
- Metro South/West WIOA / Partnerships for a Skilled Workforce, Executive Director (2018)

- **Public Management Projects**

- Town of Longmeadow: Selectmen/Town Manager Roles and Responsibilities and Setting of Joint Goals and Objectives
- Town of Southamptton: Government Study and Charter Development
- Town of Winchendon: Personnel System
- Town of Millis: Budget Improvement Project
- Town of Framingham: Downtown Re-Development
- Town of Ashburnham: Risk Assessment Project
- Town of Sharon: Operational Review of Health Department
- Town of Adams and Cheshire: Facilitation with Adams/Cheshire Regional School District
- Town of Westminster: Government Study Project
- Town of Shrewsbury: Organizational Assessment
- Town of Auburn: Council on Aging/Elder Services Operational Evaluation
- Massachusetts Municipal Management Association: Strategic Planning
- Town of Auburn: Clerical Union Job Description Updates

- **Interim Management**

- Town of Winchendon, Interim Town Management
- Town of Avon, Interim Town Management
- Town of Hamilton, Interim Town Management

- **Non-Profit/Private Sector Projects**

- Axuda
 - Development of non-profit peer-to-peer micro-lending program
 - Community relations
- Colonial Power Group, Inc.
 - Government relations/Marketing and communications
- Sustainable Strategies 2050, LLC
 - Government relations

CLIENT REFERENCE LIST**FOR TOWN MANAGER/ADMINISTRATOR SEARCHES**

Client/Position	Reference	Address	Phone #	Email Address
Weston, Mass. Town Manager	Harvey Boshart Selectmen Chair	11 Town House Road, Weston, MA 02493	781-786-5000	Boshart.h@westonmass.org
Weston, Mass. Town Manager	Thomas Palmer Search Comm. Chairman	11 Town House Road, Weston, MA 02493	617-943-9879	tom@tgpalmer.com
Wayland, Mass. Town Administrator	Lea Anderson Selectmen Chair	41 Cochituate Road, Wayland, MA 01778	508-358-3627	landerson@wayland.ma.us
Hamilton, Mass. Town Manager	Shawn Farrell Selectmen Chair	577 Bay Road, Hamilton, MA 01936	978-468-5570	sfarrell@hamiltonma.gov
Wellesley, Mass. Executive Director	Scott Szczebak HR Director	525 Washington St., Wellesley, MA 02482	781-431-1019	sszczebak@wellesleyma.gov
Natick, Mass. Town Administrator	Steve Levinsky Search Comm. Chairman	Town Offices 13 E. Central St., Natick, MA 01760	508-314-1695	levinskytasc@gmail.com
Amherst, Mass. Town Manager	Deborah Radway HR Director	4 Boltwood Avenue Amherst, MA 01002	413-259-3119	radwayd@amherstma.gov
Ipswich, Mass. Town Manager	William Craft Selectmen Chair	Town Hall 25 Green St. Ipswich, MA 01938	978-356-6604	craft@eatoncummings.com
Leicester, Mass. Town Administrator	Harry Brooks Selectmen Chair	3 Washburn Sq., Leicester, MA 01524	508-782-8420	BrooksH@LeicesterMA.org
Plympton, Mass. Town Administrator	Christine Joy Selectmen Chair	5 Palmer Road, Plympton, MA 02367	781-585-2700	cjoy@town.plympton.ma.us
Shrewsbury, Mass. Town Manager	Maurice DePalo Selectmen Vice Chair	100 Maple Ave., Shrewsbury, MA 01545	508-841-8504	moedepalo@townisp.com
Winchendon, Mass. Town Manager	Michael Barbaro Selectmen Chair	109 Front St., Winchendon, MA 01475	978-833-7069	MikeB@town.winchendon.ma.us
Norwood, Mass. General Manager	Michelle Pizzi HR Director	Town Hall, 566 Washington St., Norwood, MA 02062	781-762-1240 x178	mpizzi@norwoodma.gov
Boxborough, Mass. Town Administrator	Susan Bak Selectmen Chair	Town Hall 29 Middle Road Boxborough, MA 01719	978-264-1712	smbak55@gmail.com