



Select Board Meeting

Monday, March 27, 2023 6:30 PM

The Robb Center Lifelong Learning Room
30 Whittier Court, Andover, MA 01810

ANDOVER TOWN CLERK
RCUD 2023 MAR 23 PM4:20

I. Call to Order – 6:30 P.M.

II. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

III. Communications/Announcements/Liaison Reports

IV. Citizens Petitions and Presentations

V. Regular Business

A. Indigenous Peoples' Day

Board to review a request by the Commission on Diversity, Equity and Inclusion and discuss and consider voting to approve a process for facilitating a community discussion about recognizing the second Monday in October as Indigenous Peoples' Day, which is currently Columbus Day in the Town of Andover.

B. Retiree Cost of Living Adjustment – 2nd Reading

Board to discuss and consider voting on a 5% Cost of Living Adjustment (COLA) for Fiscal Year 2023.

C. P-37 – TIF Agreement – 1st Reading

Town Manager to introduce Flagship and provide overview of proposed TIF Agreement.

D. Annual Town Meeting Articles

Board to consider voting to take a position on the following articles:

P8A	Overlay Surplus Transfer
P10	Unpaid Bills
P14	Water Treatment Plant Maintenance
P17	Adoption of an Enterprise Fund for the Chandler Road Recreation Area
P32	Taking by Eminent Domain of Easements Related to Ledge Road Landfill
P33	Ledge Road Landfill
P35	Taking by Eminent Domain of Discontinued Portion of Lewis Street
P36	Zoning Bylaw Recodification
P39	Town Bylaw Amendment – Stormwater Management and Erosion Control
P44	Zoning Bylaw Amendment - Use Variances
P45	Andover Sustainability Resolution
P46	Taking by Eminent Domain of Hacienda Way
P47	Randomization of Order of Warrant Articles

E. Annual Town Meeting Warrant

Select Board to consider voting to sign the 2023 Annual Town Meeting Warrant.

F. Overview of Debt Service

Town Manager to provide an overview of non-exempt and exempt debt service.

VI. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Department	Name	Position	Rate/Term	Date of Hire
Department of Public Works	Michael Ferris (Christopher McQuade)	Equipment Operator II	\$30.25/hr	3/28/2023
Department of Public Works	Curtis Robarge (Miguel Hernandez)	Equipment Operator I	\$27.20/hr	3/28/2023
Department of Public Works	Kevin Ring	Temporary Cemetery Laborer	\$25.59/hr	3/28/2023
Memorial Hall Library	Loren Motew (Brianna Caron-DiPietro)	Library Assistant	\$26.74/hr	4/3/2023
Andover Police Department	Kathryn Kozikowski	Inspector of Animals	Term Expires April 30, 2024	5/1/2023

VII. Approval of Minutes

A. Board to approve minutes from the following meetings:

1. January 23, 2023
2. February 13, 2023
3. March 13, 2023

VIII. Adjourn

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Kathryn Forina in the Town Manager's Office at 978-623-8215 or by email at kathryn.forina@andoverma.us

MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45

MEMO

TO: Andrew Flanagan
FROM: Commission on Diversity, Equity and Inclusion
RE: Re-naming of Columbus Day
DATE: 4 January, 2023

At its most recent meeting on December 13, 2022, the Commission on Diversity, Equity and Inclusion (DEI) voted in support of re-naming Columbus Day Indigenous People's Day. What follows is the Commission's expanded request for consideration at an upcoming Select Board Meeting:

In the interest of promoting and celebrating the rich cultural heritage of the Town of Andover's current and historical Indigenous communities, the town of Andover's Commission on Diversity, Equity and Inclusion (DEI) recommends that the Town of Andover Select Board renames the Second Monday of October as Indigenous People's Day in Andover. Further, the DEI Commission recommends that the Town of Andover engage in a process of community dialogue around this anticipated change.

The DEI commission is happy to work with the Select Board to engage the wider community including but not limited to leadership of Indigenous Peoples Day MA and Italian Americans for Indigenous Peoples Day.

Background

While [Massachusetts lawmakers and advocates push](#) for a statewide change to establish Indigenous Peoples Day in lieu of Columbus Day, at least 20 towns have already changed the name of the holiday, citing the genocide of native people that followed Columbus' travels and a desire to honor those whose lands and lives were taken.

Below is a list of Massachusetts towns that have officially changed the name of the holiday to Indigenous People's Day, according to [Indigenous Peoples Day Massachusetts](#): Amherst, Arlington, Bedford, Belmont, Brookline, Cambridge, Easthampton, Falmouth, Great Barrington, Holyoke, Marblehead, Mashpee, Maynard, Melrose, Newton, Northampton, Provincetown, Salem, Somerville and Wellesley.

Nearly two dozen states, including Hawaii, Nevada, Minnesota, Alaska, and Maine and the District of Columbia have either recognized Indigenous Peoples Day or celebrate it with Columbus Day.

In Massachusetts, there are two bills under consideration, [H.3191](#) and [S.2027](#) to follow suit. State Rep. Brandy Fluker Oakley, a legislator in favor of the change said the desire to keep Columbus Day as the name is similar to efforts to "cling to racist monuments commemorating the Confederacy."

On October 8th 2021, President Joe Biden became the first commander in chief to formally recognize Indigenous People's Day by issuing a proclamation celebrating the holiday:

On Indigenous Peoples' Day, we honor the sovereignty, resilience, and immense contributions that Native Americans have made to the world; and we recommit to upholding our solemn trust and treaty responsibilities to Tribal Nations, strengthening our Nation-to-Nation ties.

For centuries, Indigenous Peoples were forcibly removed from ancestral lands, displaced, assimilated, and banned from worshipping or performing many sacred ceremonies. Yet today, they remain some of our greatest environmental stewards. They maintain strong religious beliefs that still feed the soul of our Nation. And they have chosen to serve in the United States Armed Forces at a higher rate than any other group. Native peoples challenge us to confront our past and do better, and their contributions to scholarship, law, the arts, public service, and more continue to guide us forward.

I learned long ago that Tribal Nations do better when they make their own decisions. That is why my Administration has made respect for Tribal sovereignty and meaningful consultation with Tribal Nations the cornerstone of our engagement and why I was proud to restore the White House Council on Native American Affairs. To elevate Indigenous voices across our Government, I appointed Deb Haaland as Secretary of the Interior, the first Native American to serve as a cabinet secretary, along with more than 50 other Native Americans now in significant roles across the executive branch.

My Administration is also directly delivering for Native communities — creating jobs, providing critical services, and restoring and preserving sacred Tribal lands. We have made the biggest investment in Indian Country in history, securing billions for pandemic recovery, infrastructural improvements, and climate change resilience, and we are working together with Tribal Nations to end the scourge of violence against Indigenous women and girls.

These efforts are a matter of dignity, justice, and good faith. But we have more to do to help lift Tribal communities from the shadow of our broken promises, to protect their right to vote, and to help them access other opportunities that their ancestors were long denied. On Indigenous Peoples' Day, we celebrate indigenous history and our new beginning together, honoring Native Americans for shaping the contours of this country since time immemorial.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 10, 2022, as Indigenous Peoples' Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of our diverse history and the Indigenous peoples who contribute to shaping this Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-seventh.

JOSEPH R. BIDEN JR.

Despite some misunderstanding of the nature of a presidential proclamation by the media, Indigenous People's Day is not yet a federal holiday. ⁱ

ⁱ MaGrath, Cassie, MASSLIVE, October 6, 2021



TOWN OF ANDOVER *Finance & Budget*

Hayley Green, CPA, Town Accountant/Assistant Finance Director
Accounting Department

36 Bartlet Street
Andover, MA 01810
(978) 623-8920
www.andoverma.gov

Andrew P. Flanagan
Town Manager

Michael Lindstrom
Deputy Town Manager

February 23, 2023

Dear Chairman Vispoli,

Chapter 269 of the Acts of 2022 allows a retirement system to increase the FY23 cost of living adjustment (COLA) for retirees from 3% up to 5% of their base annual pension. In order for this increase to occur, it must be approved by both the Retirement Board and the Select Board. On December 22, 2022, the Retirement Board voted 3-2 in favor of increasing the FY23 COLA for retirees to 5%.

I cast one of the 2 opposing votes on this motion. Although I am empathetic to retirees and the impacts of inflation, I feel it is fiscally irresponsible to approve at this time.

This request is presented as a one-time increase in the COLA, however it is permanent and will become part of the retiree's pension going forward. If the retiree's pension is below the COLA base, this will allow them to meet the maximum base sooner, thus increasing the total COLA payouts faster.

Per Chapter 32 Section 103(c) and (i), retirement systems can grant COLAs equal to that announced by the Social Security Administration or vote to increase it up to 3%. The 2022 COLA for Social Security was 5.9% which prompted this new law to allow an increase of the COLA up to 5%. The 2023 COLA for Social Security is 8.7%, so one may argue that since the Social Security COLA is higher this year, the law may be enacted next year as well. This could not be a "one-time event" and any votes may become precedent setting.

The entire community has taken significant measures in the past few years to preserve the retirees' benefits including: prior votes for not increasing the retiree's COLA, changes to employee buybacks, changes to retirement eligibility, employees contributing 1% of their pay towards the unfunded liability and most recently the pension obligation bond. After the issuance of the pension obligation bond, the system became one of the best funded systems in the country. Since then, the Retirement Board voted 3-2 and the 2022 Town Meeting subsequently approved COLA base increases from \$12,000 to \$13,000 in FY23 and from \$13,000 to \$14,000 in FY24. During the Town Meeting, inflation and the increased cost of living were discussed as support for the increased COLA bases. Changing the COLA bases increased the accrued liability by \$3.4 million and the FY23 appropriation by \$328,000. During 2022 the system faced poor market performance which will also contribute to the accrued liability and increased future appropriations. An increase in the appropriation impacts all of the town's taxpayers to meet the pension appropriation.

The Board's actuary performed an analysis of the impact on increasing the FY23 COLA to 5%. The analysis estimates that this would increase the accrued liability \$1,123,700 and increase the FY24 appropriation \$82,200, increasing at 4% per year. I have attached the analysis for your reference.

For all the reasons stated in this memo, I do not think this is the right time to knowingly increase the accrued liability and future appropriations. Please contact me should you have any questions or would like to further discuss my position.

Best Regards,

Hayley Green



October 13, 2022

Andover Contributory Retirement Board
Town Offices
36 Bartlet Street
Andover, MA 01810

Members of the Board:

As requested, we have prepared an analysis of the impact on the Andover Contributory Retirement System's liabilities and appropriation as a result of a one-time increase in the COLA from 3% to 5% on July 1, 2022, up to the COLA base of \$13,000 effective on July 1, 2022. We used the data and results of the January 1, 2021 valuation, further adjusted to incorporate the proceeds from the pension obligation bond and the subsequent increases to the COLA base from \$12,000 to \$13,000 effective July 1, 2022 and \$14,000 effective July 1, 2023. We developed the change in the unfunded actuarial accrued liability and the resulting impact on the FY2024 appropriation. The results of our analysis are provided below.

Cost-of-living adjustments (COLA) may be granted by the retirement board each year. If an increase is given, the COLA percentage is applied to a retiree's retirement allowance up to \$13,000 effective July 1, 2022 and \$14,000 effective July 1, 2023. If the COLA on July 1, 2022 increased from 3% to 5%, a one-time increase that will become a permanent part of retirees' current payable retirement allowance, the accrued liability and FY2024 appropriation are expected to increase as follows:

COLA	Accrued Liability	FY2024 Appropriation
5% July 1, 2022, increase up to \$650	\$1,123,700	\$82,200

The increase in the FY2024 appropriation is without regard to any limits on the annual increases in appropriations. The additional FY2024 appropriation will increase approximately 4% annually until the system is expected to be fully funded in 2040.

In closing, we are happy to answer any questions you may have regarding the material we have provided in this supplemental report.

Sincerely,

A handwritten signature in black ink that reads "Linda Bournival".

Linda L. Bournival, FSA, EA
Consulting Actuary

ARTICLE P37	TAX INCREMENTAL FINANCING AGREEMENT
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To see if the Town will vote to (i) approve a Tax Increment Financing Agreement (hereafter known as the TIF Agreement) with Flagship Pioneering for 3000 Minuteman Drive, shown on Andover Assessors Map 187 as Parcel's 4 & 4A, in substantially similar form to the TIF Agreement on file with the Andover Town Clerk, which TIF Agreement provides for real estate tax exemptions at the exemption rate schedules set forth therein, and (ii) approve an Economic Development Incentive Program ('EDIP') Local Incentive Only Application submission to the Massachusetts Economic Assistance Coordinating Council (the "EACC"), and (iii) authorize the Select Board to execute the TIF Agreement in substantially the same form as on file with the Andover Town Clerk and any documents related thereto, to take any such action as is necessary to obtain approval of the Local Incentive Only Application submission, and to implement the TIF Agreement. The TIF Agreement shall provide that the Town shall provide for an exemption of property taxes or a percentage thereof based on the incremental increase in property value in assessed valuation of the property for a period of not less than five years or more than twenty years in accordance with the requirements of the Massachusetts General Laws Chapter 40, Section 59; Chapter 23A, Section 3E and 3F; and the applicable regulations thereunder. In return for such tax benefits, in accordance with the TIF Agreement, Flagship Pioneering shall ensure at the above property the location and expansion of uses which increase job creation, provide higher property values, and retain or expand economic development in the Town and in the Commonwealth; or take any other action relates thereto.

On request of the Director of Planning and Land Use

ARTICLE P8	MINOR FINANCIAL ARTICLES (A THROUGH D)
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- A. **Overlay Surplus Transfer** To see if the Town will vote to transfer \$50,000 from Overlay Surplus to fund expenses related to the FY2024 valuation of personal property accounts of locally assessed gas distribution companies, or take any other action related thereto.

On request of the Chief Financial Officer

ARTICLE P10	UNPAID BILLS
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To see if the Town will vote to transfer from available funds a sum of money to pay unpaid bills for which obligation was incurred in prior fiscal years, or take any other action related thereto.

On request of the Town Accountant

ARTICLE P14	WATER TREATMENT PLANT MAINTENANCE
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To see if the Town will vote to appropriate the sum of \$300,000 in the Water Enterprise Fund for the purpose of paying various maintenance costs related to the water distribution system and the Water Treatment Plant, including any other costs incidental and related thereto, or take any other action related thereto.

On request of the Director of Public Works

ARTICLE P17	ADOPTION OF AN ENTERPRISE FUND FOR THE CHANDLER ROAD RECREATION AREA
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To see if the town will accept the provisions of Chapter 44, section 53F ½ of the Massachusetts General Laws establishing the Chandler Road Recreation Area as an enterprise fund effective fiscal year 2024 or take any other action related thereto.

On request of the Chief Financial Officer

ARTICLE P32	TAKING BY EMINENT DOMAIN OF EASEMENTS RELATED TO LEDGE ROAD LANDFILL
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To see if the Town will vote to authorize the Select Board to take by eminent domain and to appropriate a sum of money by taxation, borrowing or available funds or any combination thereof for the taking by eminent domain of the following described temporary and permanent easements at 168 Greenwood Road, 170 Greenwood Road and 172 Greenwood Road:

PERRPETUAL EASEMENT

In addition to, and not in limitation of, the rights granted in the Order of Taking by the Inhabitants of the Town of Andover dated April 24, 1972 and recorded with North Essex District Registry of Deeds in Book 1191, Page 656, the perpetual right and easement to locate, relocate, erect, construct, reconstruct, install, lay, dig up, operate, maintain, patrol, inspect, repair, replace, alter, change the location of, extend or remove one or more pipes for the drainage of surface water and all necessary and proper conduits, conductors, pipes, foundations, fittings, and fixtures and other apparatus, equipment and fixtures deemed necessary for the purposes specified above, as the Town may from time to time desire along, upon, under and across the land of the property owner shown as the area marked "50' Wide Drainage Easement, George H. Belanger, Jr. and Ida M. Belanger, former Boston & Maine R.R. Layout, Map 148, Lot 13," on Plan of Land entitled: "Plan of Drainage Easement, George H. Belanger, Jr. and Ida M. Belanger to Inhabitants of the Town of Andover, Massachusetts, Scale 1" = 40', March, 1972, John Avery, Jr., Town Engineer," recorded with North Essex District Registry of Deeds as Plan No. 6590 ("Easement Area"), and also shown on Land Court Plan No. 35854B as "Inhabitants of the Town of Andover Drain Easement," and also shown as "Exist. 50' Wide Drainage Easement (Bk. 1191, Page 656 - Pl. 6590)" on Lot 1 on "Plan of Land, 170 Greenwood Road, Andover, MA, Assessors Map 148, Lot 18," recorded as Plan No. 17559. Copies of the above referenced plans are on file with the Office of the Town Clerk.

This Easement includes the perpetual right and easement at any time and from time to time and without any further payment therefor to cut and trim trees, brush, overhanging branches and other obstructions on said strip of land to the extent that the Town deems necessary to clear and keep clear and operate safely the said pipes; and the right to enter said Easement Area for access thereto for all the above purposes.

Such drainage pipe or pipes and each and every part thereof, whether fixed to the realty or not, shall be and remain the property of the Town.

TEMPORARY EASEMENT

The right and easement along, upon, above, under and across the Easement Area described above for the purpose of bringing and placing on said Easement Area all construction materials, personnel, tools, equipment, vehicles and appliances necessary to: remove and dispose of waste located within the temporary construction easement area; without limitation, construct landfill features on Town of Andover property proximate to the Easement Area including but not limited to the landfill cap anchor trench, detention basins, berms, swales, landfill gas collector trench, landfill gas monitoring wells, and plantings; access other land of the Town of Andover property from the landfill property adjacent to the Easement area, transport arsenic-impacted and other wetland soils across the Easement Area from land of the Town of Andover west of the Easement Area to the landfill for disposal, and the right and easement to cut and trim trees, brush, overhanging branches and other

obstructions to the extent that the Town deems necessary, and the right to enter said Easement Area for access thereto for all the above purposes.

This temporary construction easement shall automatically terminate and be of no further force or effect at such time as the Massachusetts Department of Environmental Protection accepts the Certification of the Landfill Closure, and the accepted Certification is recorded at the Registry of Deeds, and to pay a sum of money as damages for said takings, or take any other action related thereto.

On request of the Town Manager and Director of Public Works

ARTICLE P33	LEDGE ROAD LANDFILL
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To see if the Town will vote to raise by taxation, borrowing or transfer from available funds or by any combination thereof, and appropriate a sum of money for the purposes of continuing the capping of the town landfill on Ledge Road including making any improvements to the area and any costs incidental and related thereto, or take any other action related thereto.

On request of the Town Manager and Director of Public Works

ARTICLE P35	TAKING BY EMINENT DOMAIN OF DISCONTINUED PORTION OF LEWIS STREET
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To see if the Town will vote to authorize the Select Board to take by eminent domain the property shown as “Portion of Lewis Street to be Discontinued 4,000 S.F. +/-“ on Plan of Land entitled “Discontinuance Plan, Portion of Lewis Street, Andover, Mass, Prepared for Town of Andover, Date: January 18, 2022, Scale 1” = 40’, “ prepared by Andover Consultants, Inc, which Plan is on file with the Office of the Town Clerk and which is recorded with the Essex North District Registry of Deeds as Plan No. 18312 for the purpose of resolving any matters regarding the title and boundaries of the property to be taken, and to appropriate a sum of money for the payment of damages for said taking, or take any other action related thereto.

On request of the Town Manager



TO: SELECT BOARD
ANDREW FLANAGAN, TOWN MANAGER

CC: THOMAS URBELIS, ESQUIRE, TOWN COUNSEL
AUSTIN SIMKO, ASSISTANT TOWN MANAGER/TOWN CLERK
MICHAEL MORSE, TOWN TREASURER

FROM: JACKI BYERLEY, PLANNER *JB*

SUBJ: TOWN MEETING 2023

DATE: MARCH 22, 2023

On March 21, 2023, the Planning Board held a public meeting to review several Town Meeting Articles. Following discussion, the Planning Board voted to take the following action:

Recommend No Position on the following Town Meeting Articles:

- P4 – Fiscal Year 2024 Budget (4-0)
- P5 – Fiscal Year 2024 Capital Projects Fund (4-0)

Recommend Approval of the following Town Meeting Articles:

- P35 – Taking by Eminent Domain of Discontinued Portion of Lewis Street (4-0)
- P46 – Taking by Eminent Domain of Hacienda Way (3-1)

ARTICLE P36	ZONING BYLAW RECODIFICATION
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To see if the Town will vote to amend and recodify the Zoning Bylaw Article VIII by making the following changes:

1. Delete, in their entirety, the following provisions of the existing Zoning Bylaw last printed with the date September 2020 and amended through Annual Town Meeting of June 5, 2021:

- Section 1.0 Purpose and Authority
- Section 2.0 Districts
- Section 3.0 Use Regulations
- Section 4.0 Dimensional Requirements
- Section 5.0 General Regulations
- Section 6.0 Special Regulations
- Section 7.0 Special Residential Regulations
- Section 8.0 Special District Regulations
- Section 9.0 Administration and Procedures
- Section 10.0 Definitions
- Appendix A
 - Table 1-Table of Use Regulations
 - Table 2-Table of Dimensional Requirements
 - Table 3-Table of Off-Street Parking Requirements
 - Table 4-Parking Dimensions

2. Substituting the following provisions and their subparts found in the Zoning Bylaw, Article VIII dated March 21, 2023, on file in the offices of the Town Clerk and Community Development & Planning:

- Section 1.0 Purpose and Authority
- Section 2.0 Districts
- Section 3.0 Use Regulations
- Section 4.0 Dimensional Requirements
- Section 5.0 General Regulations
- Section 6.0 Special Regulations
- Section 7.0 Special Residential Regulations
- Section 8.0 Special District Regulations
- Section 9.0 Administration and Procedures
- Section 10.0 Definitions
- Appendix A
 - Table 1-Table of Use Regulations
 - Table 2-Table of Dimensional Requirements
 - Table 3-Table of Off-Street Parking Requirements
 - Table 4-Parking Dimensions

And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws or do or take any other action related thereto.

On request of the Director of Planning and Land Use



TO: SELECT BOARD
ANDREW FLANAGAN, TOWN MANAGER

CC: THOMAS URBELIS, ESQUIRE, TOWN COUNSEL
AUSTIN SIMKO, TOWN CLERK/ASSISTANT TOWN MANAGER
MICHAEL MORSE, TOWN TREASURER

FROM: JACKI BYERLEY, PLANNER *JB*

SUBJ: TOWN MEETING 2023

DATE: MARCH 22, 2023

The Planning Board held public hearings on February 14, 2023, February 28, 2023, March 14, 2023, and March 21, 2023 to review Article P36 – Zoning Bylaw Recodification. Following discussion at the March 21, 2023 meeting, the Board voted to recommend Approval of the Zoning Bylaw dated March 21, 2023 (4-0).

ARTICLE P39	TOWN BYLAW AMENDMENT – STORMWATER MANAGEMENT AND EROSION CONTROL
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To see if the Town will vote to amend the Town Bylaws, Article XVI Stormwater Management and Erosion Control as follows:

By updating the Purpose and Objective section, the definitions section and to update the titling of Massachusetts Stormwater Management Policy to Massachusetts Stormwater Handbook where applicable throughout the sections of the bylaw.

STORMWATER MANAGEMENT AND EROSION CONTROL

§ 1. Purpose and Objective.

- A. The United States Environmental Protection Agency has identified sedimentation and polluted stormwater runoff from land disturbance, land development and redevelopment activities as major sources of water pollution.
- B. The purpose of this bylaw is to prevent or diminish the impacts of sedimentation and polluted stormwater from land disturbance, land development and redevelopment activities by controlling runoff and preventing soil erosion and sedimentation from site construction and development. The bylaw is necessary to protect the Town of Andover water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town.
- C. The objectives of this bylaw are to comply with state and federal statutes and regulations relating to stormwater discharges and to establish the Town of Andover’s legal authority to ensure compliance with the provisions of this bylaw through inspections, monitoring and enforcement by:
 - (1) Protecting water resources;
 - (2) Controlling the volume and rate of stormwater;
 - (3) Requiring practices to manage and treat stormwater runoff generated from new development and redevelopment;
 - (4) Protecting groundwater and surface water from degradation or depletion;
 - (5) Promoting infiltration and the recharge of groundwater;
 - (6) Preventing pollutants from entering the Andover’s municipal separate storm sewer system (MS4) and as well as private storm drain systems;
 - (7) Preventing flooding and erosion to abutting properties;
 - (8) Ensuring that soil erosion and sedimentation control measures and

- stormwater runoff management practices are incorporated into site planning and design process and are implemented and maintained;
- (9) Ensuring adequate long-term operation and maintenance of stormwater best management practices; and
 - (10) Requiring practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality.

§ 2. Definitions.

ABUTTER — The owner(s) of land adjacent to the land disturbance site.

AGRICULTURE — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and its implementing regulations (310 CMR 10.00).

ALTERATION OF DRAINAGE CHARACTERISTICS — Any activity on an area of land that changes the water quality or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include, but are not limited to, change from distributed runoff to confined, concentrated discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT — Shall be the owner of record of all of the land shown on any plan submitted for approval to the Planning Board in accordance with the Stormwater Management Bylaw and Regulations.

AUTHORIZED ENFORCEMENT AGENCY — The Town of Andover Planning Board, its employees or agents designated to enforce this bylaw.

BEST MANAGEMENT PRACTICE (BMP) — Any activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CERTIFICATE OF COMPLETION — A document issued by the Planning Board which confirms that all documents and final reports have been submitted and all work required by the terms of a stormwater management permit has been satisfactorily completed in accordance with this bylaw and its regulations.

CLEARING — Any activity that removes the vegetative surface cover and/ or organic layer. Clearing activities generally include grubbing activity as defined below.

CONSTRUCTION AND WASTE MATERIALS — Excess or discarded building or construction site materials that may adversely impact water

quality, including but not limited to concrete truck washout, chemicals, litter and sanitary waste.

DEP STORMWATER MANAGEMENT STANDARDS: The set of stormwater regulations promulgated by the Massachusetts Department of Environmental Protection under the following:

- The Wetland Protection Regulations (310 CMR 10.00) adopted pursuant to the Massachusetts Wetlands Protection Act G.L. c. 131, § 40; and
- The 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth, adopted pursuant to the Massachusetts Clean Waters Act G.L. c. 21, §§ 26-53.

DESIGNATED AGENT — Any person or entity designated by the Planning Board and approved by the Town Manager to assist in the administration, implementation and enforcement of the Stormwater Management and Erosion Control bylaw and Regulations.

DESIGN CRITERIA — Engineering design criteria as contained in the Stormwater Regulations authorized under this bylaw.

DETENTION — The temporary storage of storm runoff.

DEVELOPMENT — The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND — Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

ENVIRONMENTAL SITE MONITOR — A professional engineer or other trained professional selected by the Planning Board or its designee and retained by the Planning Board at the permit holder's expense to periodically inspect the work and report to the Planning Board.

EROSION — The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS — Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act regulations (310 CMR 10.00) and the Forest Cutting Practices Act regulations (304 CMR 11.00).

GRADING — Changing the level or shape of the ground surface.

GRUBBING — The act of clearing land surface by digging up roots and stumps.

IMPERVIOUS SURFACE — Any material or structure on or above the ground that limits water infiltrating the underlying soil. "Impervious surface" includes, without limitation, roads, paved parking lots, sidewalks, sports courts and rooftops. "Impervious surface" also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 0.70 or a runoff Curve Number (SCS Method) greater than 85.

LAND-DISTURBING ACTIVITY OR LAND DISTURBANCE — Any activity that alters the existing vegetation and/or underlying soil of a site, including such as clearing, grading, site preparation (e.g., excavating, cutting and filling), soil compaction, movement, stockpiling of top soils, and grubbing, or other action that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LOW IMPACT DEVELOPMENT (LID): - The design of a site development or redevelopment employing systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or beneficial use of stormwater, to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Practices include but are not limited to minimizing impervious surfaces, capturing rainfall or runoff for subsequent use on-site, promoting infiltration and evapotranspiration, and the use of vegetation-based stormwater treatment practices.

MASSACHUSETTS ENDANGERED SPECIES ACT — MGL c. 131A and its implementing regulations at (321 CMR 10.00) which prohibit the "taking" of any rare plant or animal species listed as "endangered," "threatened," or of "special concern."

MASSACHUSETTS STORMWATER HANDBOOK POLICY — The ~~policy handbook~~ issued by the Department of Environmental Protection, as amended, that describes how to apply DEP's Stormwater Management Standards as promulgated under ~~coordinates the requirements prescribed by state regulations promulgated under the authority of~~ the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and the Massachusetts Clean Waters Act, MGL c. 21, §§ 23-56.

MASSACHUSETTS WETLANDS PROTECTION ACT — MGL c. 131, § 40, and its implementing regulations (310 CMR 10.00).

MUNICIPAL STORM DRAIN SYSTEM OR MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together

comprise the storm drainage system owned or operated by the Town of Andover.

NEW DEVELOPMENT:- Any construction or disturbance of land that is currently in a natural vegetated state. New development also includes any disturbance beyond existing impervious and disturbed areas that is contiguous to redevelopment projects.

OPERATION AND MAINTENANCE PLAN — A plan developed by a Massachusetts licensed professional engineer (PE) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL — The point at which stormwater flows out from a discernible, confined point source or concentrated conveyance into waters of the commonwealth.

OUTSTANDING RESOURCE WATERS (ORWS) — Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER — Shall be the owner of record of all the land shown on any plan submitted. The owner shall submit the title reference or references from the Essex County Registry of Deeds indicating the owner of record.

PAVEMENT — The surface of an area which consists of bituminous concrete, cement concrete, or paving bricks made of masonry or stone.

PAVING, OVERLAY — The placement of pavement on top of an existing impervious surface. The underlying impervious surface is sometimes milled (partially ground down in thickness) before the overlay is placed.

PAVING, RECLAMATION — A procedure whereby existing pavement is broken and pounded into small fragments.

PERMITTEE — The person who holds a stormwater management permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

PERSON — An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the

commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

RECHARGE — Addition of stormwater runoff to the groundwater by natural or artificial means.

REDEVELOPMENT — ~~Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.~~ Any construction, land alteration, or improvement of impervious surfaces that does not meet the definition of new development. The following activities are considered redevelopment:

(a) Maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving; and

(a)(b) Development, rehabilitation, expansion, and phased projects on previously developed sites provided the redevelopment results in no net increase in impervious area.

RESPONSIBLE PARTIES — Owner(s), persons with financial responsibility, and persons with operational responsibility.

RETENTION — The holding of stormwater runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

RUNOFF — Rainfall, snowmelt, or irrigation water flowing over the ground surface or directed through a pipe or culvert.

SEDIMENT — Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION — The process or act of deposition of sediment.

SITE — Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE — The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL — Earth materials, including duff, humic materials, sand, rock, silt, clay and gravel.

STABILIZATION — The use, singly or in combination, of mechanical, structural, or vegetative methods to prevent or retard erosion.

STORMWATER — Stormwater runoff, snowmelt runoff, surface water runoff and drainage.

STORMWATER CONTROL MEASURE (SCM) – A technique, measure, or structural control that is designed to remove pollutants, control quantity, and improve the quality of stormwater runoff before the water discharges to the MS4 or Wetland Resource Area.

STORMWATER MANAGEMENT PERMIT — A permit issued by the Planning Board pursuant to this bylaw.

STORMWATER MANAGEMENT PLAN AND NARRATIVE — A document

containing narrative, drawings and details prepared by a Massachusetts licensed qualified professional engineer (PE) which includes structural and nonstructural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an operation and maintenance plan describing the maintenance requirements for structural best management practices.

STRIP — Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TSS — Total suspended solids; material, including but not limited to trash, debris, soils, sediment and sand, suspended in stormwater runoff.

VERNAL POOLS — Temporary bodies of fresh water which provide critical habitats for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE — A natural or man-made channel through which water flows including a river, brook, or stream.

WETLAND RESOURCE AREA — Areas specified in the Massachusetts Wetlands Protection Act MGL c. 131, § 40 and regulations promulgated thereunder and in the Town of Andover Wetland Protection Bylaw and Regulations.¹

WETLANDS — Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent communities in inland waters; that portion of any bank which touches any inland water.

§ 3. Authority.

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

§ 4. Applicability.

A. No person may undertake a construction activity that results in a land disturbance of 43,560 square feet or more without a stormwater management permit from the Planning Board.

- (1) Land disturbances. Land disturbances of 43,560 square feet or more, including multiple separate activities which in aggregate disturb 43,560 square feet or more, whether on one parcel or adjacent parcels held in common ownership, shall require a stormwater management permit.

¹ Editor's Note: See Art. XIV, Wetlands Protection By-Law.

- (2) Paving and impervious material. An increase of new pavement or other impervious material, reclamation of existing pavement, or a combination of both totaling 43,560 square feet or more shall require a stormwater management permit.
 - (3) The Town of Andover is not exempt from the provisions of this bylaw.
- B. Exempt activities. The following activities are exempt from the requirements of this bylaw:
- (1) Normal maintenance and improvement of Town-owned publicways, appurtenances to the publicways, and private and public utilities.
 - (2) Normal maintenance and improvement of land in agricultural use.
 - (3) Repair of septic systems when required by the Board of Health or the Massachusetts Department of Environmental Protection for the protection of public health.
 - (4) Normal maintenance of currently existing landscaping, gardens or lawn areas associated with an existing use.
 - (5) Overlaying of existing impervious surface.
 - (6) Areas of land that have had a stormwater management review and approval either through the Conservation Commission or Planning Board using design criteria that at a minimum comply with the latest edition of the Massachusetts Stormwater [Management Handbook Policy](#) or with design criteria as described in Town of Andover's Subdivision Rules and Regulations² or with the Town of Andover Stormwater Management and Erosion Control Regulations, whichever is more stringent in the protection of the Town's resources.

§ 5. Administration.

- A. The Planning Board, as the permit granting authority, shall administer, implement, and enforce this bylaw. Any powers granted to or duties imposed upon the Planning Board in this bylaw may be delegated to designated agents upon a majority vote of the Planning Board. Should the Planning Board designate an agent, such agent shall be approved by the Town Manager.
- B. The Planning Board may adopt and periodically amend rules and regulations to effectuate the purposes of this bylaw. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.
 - (1) Adoption of and revisions to regulations may only be made after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least 14 days before the hearing date.

² Editor's Note: See Art. XIII, Subdivision Rules and Regulations.

- C. The Planning Board shall refer to the criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater ~~Management Policy Handbook~~ or to the design criteria as described in the Town of Andover's Subdivision Rules and Regulations³ or to the Town of Andover Stormwater Management and Erosion Control Regulations, whichever is more stringent in the protection of the Town's environmental and infrastructure resources, for execution of the provisions of this bylaw.
- D. The Planning Board may waive strict compliance with any requirement of this bylaw or the regulations promulgated hereunder, where:
 - (1) Such action is allowed by federal, state or local statutes and/or regulations; and
 - (2) Is in the public interest; and
 - (3) Is not inconsistent with the purpose and intent of this bylaw and its regulations.

§ 6. Permits and procedures.

Projects requiring a stormwater management permit shall be subject to the Town of Andover Stormwater Management and Erosion Control Regulations promulgated under Section 5 of this bylaw in addition to the procedures as set forth below.

A. Application.

- (1) An application package shall be filed with the Planning Board and other departments as specified in the regulations.
- (2) The Planning Board shall review the application for completeness and compliance with this bylaw and its regulations.

B. Public meetings.

- (1) The Planning Board shall hold a public meeting on all applications for stormwater management permits for the purpose of reviewing the application and accepting public input.
- (2) Notice of the public meeting shall be given by posting and by first-class mailings to abutters and abutters to abutters within 300 feet of the property line of the project site at least seven days prior to the meeting.
- (3) The Board shall make the application available for inspection by the public during business hours at the Planning Division.

C. Actions. The Planning Board may:

- (1) Approve the application and issue a permit if it finds that the proposed

³ Editor's Note: See Art. XIII, Subdivision rules and Regulations.

plan meets the objectives and requirements of this bylaw and its regulations;

- (2) Approve the application and issue a permit with conditions, modifications, or restrictions that the Board determines meet the objectives and requirements of this bylaw and its regulations;
- (3) Disapprove the application and deny a permit if the Planning Board finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume; and
- (4) Disapprove the application and deny a permit if it finds that the proposed plan fails to meet the objectives and requirements of this bylaw or its regulations.

D. Time for action by the Board.

- (1) Within 45 days of the filing of an application for a stormwater management permit, the Planning Board or its designated agent shall:
 - i. Evaluate the application to ensure that it is complete prior to distribution;
 - ii. Distribute the complete application to boards and departments for technical review as specified in the regulations; and
 - iii. Arrange agenda time for a public meeting before the Planning Board.
- (2) Within 60 days of the filing of the application, an interdepartmental review shall be held.
 - i. Following the Interdepartmental review but prior to the Planning Board public meeting, the Town Engineer shall provide a written recommendation for action on the application. Such recommendation shall itemize all instances where the applicant has failed to meet the specifications and standards of the latest edition of the Massachusetts Stormwater ~~Management Policy Handbook~~ [Handbook](#) or of the design criteria as described in the Town of Andover's Subdivision Rules and Regulations⁴ or of the Town of Andover Stormwater Management and Erosion Control Regulations.
- (3) Within 90 days of the filing of an application for a stormwater management permit, the Planning Board shall hold a public meeting.
- (4) Once begun, the public meeting may not continue for more than 60 days unless such time is extended by written agreement between the applicant and the Board to a date certain announced at the meeting.

⁴ Editor's Note: See Art. XIII, Subdivision Rules and Regulations.

(5) The Planning Board shall take final action within 21 days of the close of the public meeting discussion.

E. Failure to act.

(1) Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, failure to take such action shall be deemed to be approval of said application and a stormwater management permit shall be issued.

F. Appeals of action by the Planning Board.

(1) A written decision of the Planning Board shall be final when it is executed by the Planning Board or its Chair or Acting Chair and filed in the Town Clerk's office. Further relief of a decision by the Planning Board made under this bylaw shall be in the Superior Court or Land Court in accordance with the applicable law. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

(2) No work shall commence until the applicable appeal period has passed with no appeal or, if an appeal has been filed the appeal has been finally resolved by adjudication or otherwise.

G. Permit duration.

(1) All activity permitted by this bylaw must be completed within one year of permit issuance. Extensions of time can be granted by the Planning Board upon formal written request by the applicant. If one year passes without an extension being granted, the Board may revoke the permit.

H. Certificate of completion.

(1) The Planning Board will issue a certificate of completion upon receipt and approval of final reports and documentation as specified in the regulations.

I. Public record.

(1) The following documents shall be recorded at the Essex Registry of Deeds at the applicant's expense and proof of recording provided to the Planning Division:

- i. The stormwater management permit.
- ii. The approved operation and maintenance plan.
- iii. The certificate of completion.

§ 7. Persons aggrieved.

Any person aggrieved by a decision or action of a designated agent appointed by the Planning Board under § 5A, including but not limited to matters regarding completeness of application, inspections, and compliance with

technical design criteria, may, within 30 days of such decision or action, request a public meeting with the Planning Board. In such cases, following the decision of the Planning Board, the provisions of § 6F(1) shall apply.

§ 8. Consultants.

At the applicant's expense, the Planning Board may retain independent consultants as needed to advise the Board on any and all aspects of a specific project. Independent consultants may include but are not limited to registered professional engineers and environmental site monitors.

§ 9. Fees.

The Planning Board shall establish fees, subject to approval of the Select Board, to cover expenses connected with application review, mailings and monitoring permit compliance. The fees shall be sufficient to cover direct and indirect costs to the Town of processing and reviewing the application. Provided that a revolving fund for such purpose is established by the Town in accordance with the provisions of MGL c. 44, § 53E 1/2, the Planning Board is also authorized to collect fees from the applicant in amounts sufficient to pay a registered professional engineer and such other professional consultants as the Planning Board requires to advise the Planning Board on any and all aspects of the project. The fees for such professional engineers and consultants shall be paid to the Town for deposit into the revolving fund.

§ 10. Security.

Before the start of land disturbance activity, the Planning Board may require the permittee to post acceptable security, to insure that the work will be completed in accordance with the permit. The form of the security shall be approved by the Planning Board and shall be in an amount deemed sufficient by the Planning Board. If the project is phased, the Planning Board may release part of the security as each phase is completed in compliance with the permit but may not be fully released until the Planning Board has issued a certificate of completion.

§ 11. Enforcement.

- A. The Planning Board or its designated agent shall enforce this bylaw, its regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations.
- B. Entry. The Planning Board or its agents shall have the authority, with prior approval from the property owner or pursuant to court process, to enter upon privately owned land for the purpose of performing their duties under this bylaw.
- C. Orders. The Planning Board or its designated agent may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:

- (1) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw or its regulations;
- (2) Maintenance, installation or performance of additional erosion and sediment control measures;
- (3) Monitoring, analyses, and reporting;
- (4) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity;
- (5) Compliance with the operation and maintenance plan.

D. If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

E. Criminal penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine in an amount of \$300. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.

F. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Planning Board may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, which has been adopted by the Town, in which case the Planning Board or designated agent shall be the enforcing person. The penalty for each violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

§ 12. Severability.

If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.


And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws or take any other action related thereto.

On request of the Planning Board



TO: SELECT BOARD
ANDREW FLANAGAN, TOWN MANAGER

CC: THOMAS URBELIS, ESQUIRE
AUSTIN SIMKO, TOWN CLERK/ASSISTANT TOWN MANAGER
MICHAEL MORSE, TOWN TREASURER

FROM: JACKI BYERLEY, PLANNER 

SUBJ: TOWN MEETING 2023

DATE: FEBRUARY 15, 2023

On February 14, 2023, the Planning Board held a public hearing to review Article P39 Stormwater Management and Erosion Control Bylaw Amendment. After a review of the amendment the Board voted to recommend approval of the Bylaw as drafted in the warrant (4-0).

ARTICLE P44	ZONING BYLAW AMENDMENT - USE VARIANCES
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To see if the Town will vote to amend Article VIII Section 3.1 titled “General” and Section 9.2.2.2 titled “Variances” of the Andover Zoning Bylaws by deleting the language stricken from the bylaw as shown below and adding the language in bold italic as shown as follows:

Section 3.1 General:

No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations, including the notes to the Table, or as otherwise set forth herein, or as exempted by the General Laws, ~~or by variance of the Board of Appeals, as provided in said Chapter 40A of the General Laws and in Section 9.2.2.2 of this bylaw.~~ Any building or use of premises not herein specifically permitted is hereby prohibited.

Section 9.2.2.2 Variances: To hear and decide appeals or petitions for variances from the terms of this bylaw, ~~including variances for uses,~~ with respect to particular land or structures, owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, where a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law, as set forth in G.L.c.40A,s.10. ***No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.***

On petition of Andrew Rouse and others

Purpose of Article P44

- Eliminate use variances.
 - Close this loophole that weakens zoning protections.
 - Prevent encroachment of commercial uses into residential districts.
 - Restore Town Meeting's exclusive authority to decide appropriate uses in each zoning district.

What is a Variance?

Variations are exceptions to the zoning bylaws that can be granted by the Zoning Board of Appeals.

1. ***Dimensional variations*** are exceptions to some measurable requirement.
2. ***Use variations*** are exceptions to allow a use that is prohibited in a zoning district.

What is the Impact of a Use Variance?

- Greater impact than a dimensional variance.
- Use variances bring more traffic, noise and activity to a residential neighborhood.

When Can Use Variances Be Granted?

- Massachusetts law gives communities the power to grant use variances in only one case:
 - When every permitted use would result in substantial hardship because of a property's unique features.

Problems with Use Variances

- Use variances are inherently unfair to other property owners in a zoning district.
 - Bring commercial uses to residential neighborhoods.
 - Give one property owner special privileges to use their property in ways that no one else in the zoning district can.
- Use variances are a type of spot zoning.

Problems with Use Variances

(continued)

- Town Meeting has the proper procedure for deciding which uses should be allowed in each zoning district.
 - Reviewed by the Planning Board and the Select Board
 - Reviewed and voted on by town residents
 - Reviewed by the Attorney General
- Use variances have no such reviews.

Problems with Use Variances

(continued)

- Use variances can too easily give the appearance of impropriety.
 - A use variance can greatly increase the value of a property while others nearby lose value.
 - Why is one property owner getting special treatment?

Examples of Use Variances in Andover

- (2017) Multi-family dwelling allowed in a single-family district.
- (2019) Sit-down restaurant allowed in a single-family district.
- (2021) Office building allowed in a single-family district.
- (2022) Indoor Commercial Recreational Establishment allowed as an accessory use for a restaurant in a mixed-use district.

Andover is an Outlier

- None of the seven communities bordering Andover allow use variances.
- Of 36 surrounding communities, only eight allow use variances.

Summary

- Use variances are a loophole in our zoning protections.
- Use variances allow encroachment of businesses into residential districts.
- Use variances are a form of spot zoning.
- Most towns don't allow them and neither should we.



TO: SELECT BOARD
ANDREW FLANAGAN, TOWN MANAGER

CC: THOMAS URBELIS, ESQUIRE, TOWN COUNSEL
AUSTIN SIMKO, TOWN CLERK/ASSISTANT TOWN MANAGER
MICHAEL MORSE, TOWN TREASURER

FROM: JACKI BYERLEY, PLANNER ¹³

SUBJ: TOWN MEETING 2023

DATE: MARCH 15, 2023

The Planning Board held public hearings on February 14, 2023, February 28, 2023, and March 14, 2023 to review Article P44 Zoning Bylaw Amendment – Use Variances. Following discussion at the March 14, 2023 meeting, the Board voted to recommend Disapproval of the Article (5-0).

ARTICLE P45	ANDOVER SUSTAINABILITY RESOLUTION
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Whereas:

- The United Nations Intergovernmental Panel on Climate Change (IPCC) forecast that unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming close to 1.5° or even 2°C will be beyond reach. Stabilizing the climate will require strong, rapid, unprecedented transitions in all aspects of society to achieve crucial emissions reductions. (<https://www.ipcc.ch/2021/08/09/ar-6-wg1-20210809-pr/>)
- The fastest warming region in the contiguous US is the Northeast (<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0168697>)
- In April of 2021, the Commonwealth of Massachusetts committed to a new statewide emissions limit of net-zero greenhouse gas emissions by 2050 in An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (<https://www.mass.gov/news/governor-baker-signs-climate-legislation-to-reduce-greenhouse-gas-emissions-protect-environmental-justice-communities>) followed in June 2022 by the Clean Energy and Climate Plan for 2025 and 2030 (<https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2025-and-2030>). In August 2022 Massachusetts enacted An Act Driving Clean Energy and Offshore Wind to put in place provisions to reach the climate plan goals.
- There is now a state-wide momentum developing for deploying technical, economic, and political means to achieve this goal.
- The climate crisis is an existential challenge. It is also an opportunity to reimagine Andover's future and to make that future both safe and equitable for all who live and work in our community.

Therefore:

In order for Andover to respond to the climate crisis and to align with the Commonwealth's goal to reach net-zero emissions by 2050, be it resolved that Andover Town Meeting 2023 recognizes meeting this challenge is imperative and presents an unprecedented opportunity to remedy environmental harms, create clean-energy jobs, and improve human lives.

Furthermore, Andover Town Meeting 2023 requests that the Andover Select Board, School Committee, Staff, Boards and Committees:

- **Advocate** for action, programs, and support from the State and Federal governments to help reduce net town-wide carbon emissions in accord with the Commonwealth's Climate Action Plan;
- **Promote actions** that residents, organizations, and businesses can take to reduce their individual carbon emissions;
- **Prioritize the reduction of fossil fuels** (including electricity created through fossil fuels) in existing and new town facilities, vehicles and operations;

- **Accelerate adoption of nature-based solutions** (such as protecting/restoring open spaces and forests, planting trees and native plants, and encouraging organic property management) to absorb carbon, reduce flooding, cool neighborhoods/downtown spaces, and contribute to biodiversity restoration efforts;
- **Equitably align the costs** of such mobilization efforts so that they do not unfairly burden those who are economically or socially disadvantaged, and that the benefits of a realized, sustainable future accrue to all; and
- **Develop and implement a Climate Action Plan** that outlines specific strategies and sets measurable, attainable and realistic interim targets for reducing greenhouse gas emissions in Andover, and provide an annual progress report to Andover Town Meeting.

In conclusion:

Andover Town Meeting 2023 deems that funding and implementation of a climate action plan needs to be a top priority. Andover Town Meeting 2023 therefore requests the Select Board and School Committee to direct all officers and departments of the Town to act, within the scope of their respective responsibilities and authority, to prioritize the above-stated goals.

On petition of Mary Pritchard and others

ARTICLE P46	TAKING BY EMINENT DOMAIN OF HACIENDA WAY
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To see if the Town will vote to authorize the Select Board of Andover to acquire by eminent domain, gift, purchase, or otherwise, any fee, easement or other interest in the land shown as Hacienda Way and all related easements, including but not limited to easements shown on Lots 18, 18A, 19 and 19A, all as shown on a plan entitled "Subdivision & Acceptance Plan Pleasant Street Estates, Andover, Mass." dated April, 1973, prepared by Charles E. Cyr, and recorded with Essex North District Registry of Deeds as Plan No. 7035 and on file in the Office of the Town Clerk, and as constructed, and to award no damages or compensation for said takings or payment for said acquisitions, and to appropriate and borrow or transfer from available funds or any combination thereof a sum of \$120,000 for required engineering services, legal services, repairs and improvements to Hacienda Way and expenses incidental thereto, or take any other action related thereto.

On petition of Courtney Famiglietti and others



TO: SELECT BOARD
ANDREW FLANAGAN, TOWN MANAGER

CC: THOMAS URBELIS, ESQUIRE, TOWN COUNSEL
AUSTIN SIMKO, ASSISTANT TOWN MANAGER/TOWN CLERK
MICHAEL MORSE, TOWN TREASURER

FROM: JACKI BYERLEY, PLANNER *JB*

SUBJ: TOWN MEETING 2023

DATE: MARCH 22, 2023

On March 21, 2023, the Planning Board held a public meeting to review several Town Meeting Articles. Following discussion, the Planning Board voted to take the following action:

Recommend No Position on the following Town Meeting Articles:

- P4 – Fiscal Year 2024 Budget (4-0)
- P5 – Fiscal Year 2024 Capital Projects Fund (4-0)

Recommend Approval of the following Town Meeting Articles:

- P35 – Taking by Eminent Domain of Discontinued Portion of Lewis Street (4-0)
- P46 – Taking by Eminent Domain of Hacienda Way (3-1)

ARTICLE P47	RANDOMIZATION OF ORDER OF WARRANT ARTICLES
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To see if the Town will determine the order or warrant articles for all Town Meetings randomly and acted on by a lottery system to ensure a fair representative of voters.

If any provision in this warrant shall be found or beheld to be invalid or unenforceable, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this warrant which shall remain in full force or effect.

Wording from Medfield, MA

<https://www.town.medfield.net/322/Town-Meeting-Information>

On petition of Steve Walther and others



Select Board Meeting

Monday, January 23, 2023 7:00 PM
Robb Center – Lifelong Learning Room
30 Whittier Court, Andover, MA 01810

I. Call to Order – 7:00 P.M.

Chair Alex Vispoli called the Select Board Meeting of January 23, 2023 to order at 7:00 PM. Members in attendance: L. Gregory, C. Huntress, M. Danisch, A. Gilbert, Clerk. Others in attendance: Town Manager Andrew Flanagan, Deputy Town Manager Mike Lindstrom, Asst. Town Manager/Town Clerk Austin Simko, Town Counsel Tom Urbelis.

II. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence followed by the Pledge of Allegiance. The Chair recognized Enzo Fosella, an Andover native who recently passed away. Enzo was the owner of a well-known tailor shop in Andover and contributed his time to many charitable organizations in the Merrimack Valley and was the founder of the Andover Service Club.

III. Communications/Announcements/Liaison Report

The Town Manager announced that the FY-2024 Budget will be released on February 1st. The budget document is a collection of five months of work and deliberations internally. Mr. Flanagan also announced that David Billard, the Town's Chief Assessor, will be retiring this year after 35-years of service. Andrew looks forward to celebrating David's commitment to the Town.

Austin Simko provided an update on the Annual Town Election. The ballots for the March 28th election will be printed at the end of February. Residents can also apply for a mail in ballot; the applications are available on the election page of the Town website. The deadline for candidates to submit papers is February 7, 2023.

Chris Huntress said Andover residents can get salt and sand mix at the Municipal Facility on Campanelli Drive. In addition, Chris provided an update on the status of the extension request brought before the Board last year by the owners of the Bueno Malo Restaurant. They will be opening another 70 seats in about ten days.

Laura Gregory commented on the condition of the roads in Andover from today's snow storm. The crews were out and doing a great job.

IV. Citizen Petitions and Presentations

None

V. Regular Business

A. AHS Building Committee- 1st Reading

Board to receive an update from the Andover High School Building Committee and to consider voting to accept the proposed schedule.

Several members of the AHS Building Committee Mark Johnson, Shannon Scully, Janet Nicosia, Keith Taverna, and Lori Cowles, Principal at HMFH, Inc. the architect for the high school project, were present. Mark Johnson provided an update along with a realistic timeline of the project. A copy of the PowerPoint presentation was given to the Board members in advance of the meeting.

The presentation included a review of previous work and a comprehensive plan from 2016. From 2017-2022 they held more than 50 community and public meetings, and developed eleven various project options. The presentation provided a review of AHS programming, a timeline of the past year, and important upcoming dates.

February 2023: Decision Point: Building Committee to choose two building options for pricing.

March 2023: Present Preliminary Cost Option to the Select Board.

April 2023: Select Board to recommend preferred option.

May 2023 Select Board and School Committee approval.

May 2023 Town Meeting approval of Schematic Design Funds.

The presentation also included information on the various site approach options; additions/renovations/courtyard/extended wings floor plans, and new construction.

A Statement of Interest has not been resubmitted to MSBA. They have previously applied to MSBA for funding ten times (information is available on their website). MSBA provided funding for the Bancroft Elementary School and are providing funding for the West Elementary/Shawsheen Preschool Building Project. Andover would be competing against other schools in the state, some who have more of a need.

If the funding for the schematic design is approved at the 2023 Town Meeting, they will come back to the Town for approval of the full cost at a Special Town Meeting in January 2024.

In March 2023, they will provide a high-level cost of the project with different options including a parking garage (that may give them an additional playing field), a stand-alone new school, and repairing or replacing the Collins Center. If the option is to approve a new stand-alone school without an auditorium, then they would look at renovating the Collins Center as it will need to be brought up to code. If the Collins Center will not be part of the project, then the cost to demolish it will be determined. The field house will remain as is.

The presentation provided several site approaches (see attached link), including a new campus and theatre, new standalone building, Campus 2 fully attached, the Courtyard and/or extended wings. They are reviewing the timeline for new construction and add-on renovations. Students would be in-school during the construction process. They are looking for input from the community and hope they attend the school building project meetings/forums.

Additionally, they will be working with the landscape architects on options for the site and shape of the school building(s), various site implications are for each, layout of wings, as

well what the floor plans could look like, and possibly create a 9th Grade Academy on the property that would be part of the school. They would like to relocate the Science Wing which is not in a very good location and has a lot of construction issues.

The presentation included information on keeping/replacing the Collins Center or adding a new theater. This will be an ongoing discussion as will the parking structure.

Draft Timeline

January 2023	Present options to Select Board
February 2023	Select two building options for pricing
March 2023	Present preliminary cost information
April 2023.	Decision point: Vote to recommend preferred option.
May 2023	Select Board & School Committee Approval Town Meeting Approval of Schematic Design.

Information can be found on the Town Website

www.andoverhighschoolbuildingproject.org

Contact by email: andoverhighbuildingproject@andoverma.us

VI. **Town Governance**

Board to discuss and consider voting to accept the Town Governance Study Committee's recommendations on the following recommendations which were previously presented at a Select Board Meeting.

1. Removing the Town Manager Requirement from the Town Charter to live in the Town.

Discussion: The Board discussed removing the Town Charter requirement for Town Manager to live in Andover. It was noted that the Select Board had an outstanding round of candidates the last time they were hiring a Town Manager, having the requirement to live in Andover does bring a different perspective to the job. Chris Huntress would lean towards keeping that requirement. Other Board members were more inclined to approve to accept this recommendation. The hope is that the sitting Board, at the time of hiring, would make the right decision for the Town of Andover as this option would provide more flexibility for a larger pool of candidates to apply and for those that cannot live in Andover for a variety of reasons and to remove this requirement from the Town Charter (vote at Town Meeting).

Melissa Danisch moved to adopt the Town Governance Study Committee recommendation to seek Town Meeting approval to remove the requirement that the Town Manager be a resident of Andover Motion seconded by Laura Gregory and voted 4-1 to approve. Chris Huntress opposed.

2. Endorsing the practice of Moderator asking each Town Meeting to affirm that deliberations be honest, open, civil, and respectful of attendee's time.

Annie Gilbert moved to approve endorsing the practice of the Moderator asking each Town Meeting to affirm that deliberations be honest, open, civil, and respectful of attendee’s time. Motion seconded by Laura Gregory and voted 5-0 to approve. Motion seconded by Laura Gregory and voted 5-0 to approve.

VII. Consent Agenda

Chris Huntress moved that the following appointments by the Town Manager be approved. Motion seconded by Melissa Danisch and voted 5-0 to approve.

Department	Name	Position	Rate/Term	Date of Hire
Memorial Hall Library	Caitlin Callahan Gallaudet	Part-time Library Assistant	\$26.73/hr.	1/24/2023
Community Services-Youth Services	John Meade	Building Monitor	\$15.00/hr.	1/18/2023
Community Services- Youth Services	Tanner Peckham	Building Monitor	\$15.00/hr.	1/18/2023

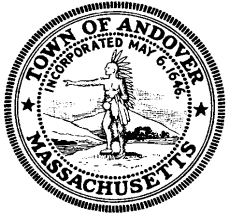
VIII. Executive Session

A. Annie Gilbert moved that the Board to go in to Executive Session pursuant to option 6 to discuss the purchase, exchange, lease, or value of real property, and to vote to approve and not release the meeting minutes of November 21, 2022 and December 12, 2022, and for the Chair to declare that an open session may have a detrimental effect on the negotiating position of the Town and not to return to open session. The Chair so declared that an open session may have a detrimental effect on the negotiating position of the Town. Motion seconded by Melissa Danisch. Roll call: Laura Gregory-Y, Melissa Danisch-Y, Chris Huntress-Y, Annie Gilbert-Y, and Alex Vispoli-Yes. Motion passes 5-0.

IX. Adjourn

At. 7:52 P.M. the Board adjourned from Open Session and moved to Executive Session not to return to Open Session.

Respectfully submitted,
Dee DeLorenzo
 Recording Secretary



Select Board Meeting
Monday, February 13, 2023
Ballardvale Fire Station Training Room
161 Andover Street, Andover, MA 01810

I. Call to Order – 7:00 P.M.

Chair, Alex Vispoli called the Select Board Meeting of Monday, February 23, 2023 to order at 7:00 PM.

Members in attendance: Laura Gregory, Annie Gilbert, Chris Huntress, Melissa Danisch.

Others in Attendance: Town Manager Andrew Flanagan, Deputy Town Manager, Mike Lindstrom, Asst. Town Manager/Town Clerk Austin Simko, Town Counsel Tom Urbelis,

II. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence in memory of the Robinson Family, followed by the Pledge of Allegiance.

III. Communications/Announcements/Liaison Reports

The Town Manager announced that they will be launching their fully reconfigured website on February 14th. The new website is the result of a lot of hard work from staff across all departments. The redesign took into account the responses from the survey sent out and also from the focus group.

Mike Lindstrom reported that they have started on collaborative projects for the spring with Andover Trails on the Merrimack River and presenting to the Conservation Commission at their next meeting. A public Community Paddle Day is scheduled for May 13th in collaboration with Andover trails and providing all equipment, boats, life vests, and items needed to get people on the Merrimack River. For the first time since 2018, their office, in collaboration with Andover Recreation, is going to take over the Shawsheen Boat Storage passes and help with the management of the sticker program. Registration for the stickers is available online.

Austin Simko reported that mail-in ballots that were requested for the Andover Town Election to be held on Tuesday, March 28th will be going out in the mail the week of February 27th. Information on the Andover Town Election can be found on the Town's Website / Town Clerk.

Melissa Danisch said that on February 1st the third public Master Plan Meeting took place and the turnout was fantastic with a lot of information shared. The next meeting in February will be a public virtual meeting. Melissa also thanked Ann Ormond for arranging the first Annual Artisan Market that was held in the Old Town Hall and well attended. She hopes that they find other creative ideas for using the Old Town Hall.

IV. Citizens Petitions and Presentations

Susanne Korschun from the Andover Pollinator Pathways Group spoke about their mission to promote native plantings and healthy habitats for pollinators throughout the community. They are united around this issue to save the many plants and animals threatened worldwide.

Everyone can make a difference starting in their own yard by planting native plants, reducing the use of chemical fertilizers, controlling invasive plants, reducing lawn size, leaving the leaves on the ground in the fall and not mowing lawns in the spring. More information on future events can be found on the following link: www.pollinator-pathway.org/towns/Andover

They had 650 people sign up for their first webinar at Memorial Hall Library tonight's webinar on native shrubs. Mark Fortier will be presenting on native trees at their next webinar. They will be scheduling garden visits in the spring.

Becky Bachmann, 19 Pomeroy Road asked about the development of Town Yard. We were supposed to have a land disposition agreement signed with Minco in 60-days. As a taxpayer, we are going to be asked to take on some large projects and it would be nice to have valuable real estate to be yielding property taxes. If some of the other applicants had known that Andover was going to give this additional time, we might have had somebody else working there. Alex Vispoli reported that it is in process and things are moving forward with the developer. The Town Manager said negotiations are going on outside of public meetings. He is hopeful that they will be able to provide an update in the near future.

Jane Gifun, Castle Heights Road, reminded everyone that Winter Fest is being held on Sunday, February 19th from 10:00 AM -2:00 PM at Pomp's Pond.

Kristen Wise, Inman Lane, has concerns with the increase on the tax bill which is more than prop 2.5. The tax on an average home will be @ \$11,700, an increase of the assessment of 13% and an increase of taxes of 5.7%. If the taxes continue to go up, the average payment on the bonds and school debt will be significantly higher. Her concern is with the cost of the price tag which is so enormous compared to what it was projected to be. A lot of people at home didn't pay attention at the ballot box, but they will when they receive their tax bill. This increase will impact residents who are already are being burdened; she is also concerned with the cost of the AHS Project.

The Town Manager provided a version of the slide that was presented at Town Meeting when he presented the Pension Obligation Bonds (POB) Plan. At that time they were estimating that the POB debt service would cost the taxpayer (average bill) \$207 a year over the life of the 18-year borrowing term.

He explained the plan and the chart of the general fund contribution; the amount will decrease yearly. The average impact over time will be \$167.00. The West Elementary /Shawsheen Project cost of \$69M is still an estimate and they hope it will be less when they borrow the \$69M. Everything is controlled by the interest rate.

V. Regular Business

A. Liquor License – Change in Manager

Board to review and consider voting to approve the application of 99 Restaurant Holdings, LLC for a Liquor License Change of Manager to Sheila Winn at Ninety-Nine Restaurant & Pub, 464 Lowell Street, Andover, MA. Austin Simko said the background check and certifications are all

in order. There have been no issues over the past number of years. Sheila Winn, has been with the 99 Restaurant for 30-years and they follow all of the guidelines with the ABC.

Laura Gregory moved to approve the application of 99 Restaurant Holdings, LLC dba Ninety – Nine Restaurant & Pub, 464 Lowell Street, Andover, for a Change of Manager on its All-Alcoholic Restaurant Beverage License; the new Manager to be, Sheila Winn of 62 Ledgewood Road, Pelham, New Hampshire; subject to the condition that all other requirements of the Town are met prior to issuance of the license. Motion seconded by Chris Huntress. Motion passes unanimously 5-0.

A. Shoyu Restaurant and Bar License Issuance Extension

Board to consider voting to approve a two-month extension of the Board’s April 25, 2022 approval of a new All Alcoholic Beverages Pouring License for BTTMV LLC, d/b/a Shoyu Restaurant and Bar, 38-40 Park Street, Andover, MA, so that the new license can be issued at any time before April 2, 2023.

Austin Simko provided information on the request for the extension. They were approved at the local level last year and at the state level, but there is a six-month limit on an extension approved by the Andover Select Board.

Chris Huntress moved that the Board approve a two-month extension of the Board’s April 25, 2022 approval of a new All Alcoholic Beverages Pouring License for BTTMV LLC, d/b/a Shoyu Restaurant and Bar, 38-40 Park Street, Andover, MA, so that the new license can be issued at any time before April 2, 2023; on the condition that all conditions of the Town are met prior to issuance. Motion seconded by Melissa Danisch. Motion voted 5-0 to approve.

B. Andover High School Building Committee – 2nd Reading

Andover High School Building Committee Chair Mark Johnson provided an update to the Board and requested a vote to accept the proposed schedule. They have held many public meetings, conducted tours of the high school, met with students and staff and updated the Select Board. They will be meeting with the School Committee this Thursday. Representatives from HMFH Architects were present at the meeting. They will price out the courtyard, renovations and the possibility of having a parking garage. Other options to be priced separately include the Collins Center (to demolish or replace with a new theatre).

They are looking for the Select Board to approve the recommendation and for approval at Town Meeting in 2023 to fund the cost of the schematic design. The January 2024 Town Meeting will be to vote on the cost of construction. Mr. Johnson provided a Draft Project Timeline, Schematic Design, and various site approaches they have looked at. Adjacency Diagrams the architects use for the floor plans were included in the presentation. PMC estimators are used by HMF (architects) with a second estimator to cost out the price. The level of work at this point is a feasibility study/cost analysis to compare the two options; the schematic design cost is what the scope and budget will be based on. All information is available on the Town website.

The Board discussed the process and the schedule presented. Alex Vispoli asked when they could expect to have a financial analysis on the cost. The Town Manager said if the preliminary

numbers are provided to the Town Manager's Office in March, they can put together a model and price line for the March 23rd Building Committee Meeting; he would like a timeline that goes through May 2023. Chris Huntress suggested holding on a decision until after the March 23rd meeting. The Board had a lengthy discussion on voting before they have more information. Annie Gilbert said that because we will be asked to vote whether it is going to be a new building or a renovation, the Board needs to agree to the timeline. The vote on the two options is in May, after Town Meeting. The schematic design is just an amount that will fund the process.

Mr. Coffey, Stafford Lane agrees that we have to do something with AHS but it will be the largest expense the Town has ever undertaken, getting an estimate on the table early is important. The Town Manager said the Warrant Article for the Schematic Design is \$1.3M.

The School Building Committee will be making a decision April, 27, 2023. There is not much time until the May Town Meeting to provide feedback.

Annie Gilbert moved to accept the proposed schedule of the Andover High School Building Committee through May 2023. Motion seconded by Melissa Danisch and voted 5-0 to approve.

C. MBTA Communities Zoning Update and Timeline

Director of Planning and Land Use to update the Board on multi-family zoning requirements and timeline for MBTA communities.

Paul Materazzo provided an update on the what the new law is to create multi-family zoning requirement for MBTA Communities; about 15 units per acre within a ½ mile from a commuter rail, and suitable for children. We have to create a district that complies with the law to build 2,000 units (in total). Choosing to comply effects the funding Andover receives from the state vs the impact a high-density area at either location can have on the Town. The Historic Mill District that was approved contains 100 acres so this might be a place to start as the community has already invested a lot of work in the downtown station. A timeline of the MBTA Communities Compliance was explained by Mr. Materazzo.

Tom Urbelis would encourage residents from the areas around the train stations to attend the meetings because those are the areas that are going to be affected; the downtown and the Ballardvale areas. Two-three months is a very short time-frame for something that could potentially change the entire makeup of that part of town.

D. 2023 Annual Town Election Warrant

Board to consider voting to approve the March 28, 2023 Annual Town Election Warrant. Austin Simko said the precincts are the same with 11 total precincts at 3 locations. The ballot includes: a vote for one Moderator, one Select Board Member, one School Committee Member, and two Trustees of the Punchard Free Schools.

Melissa Danisch moved to approve the March 28, 2023 Annual Town Election Warrant. Motion seconded by Chris Huntress and voted 5-0 to approve.

E. Annual Town Meeting Articles

Board to consider voting to take a position on the following articles:

P24	<p>Authorize Electricity Supply/On Bill Credit Purchase Agreements at Bancroft Elementary School.</p> <p>Laura Gregory moved to recommend Town Meeting Approval of Article P24, Authorize Electricity Supply/On Bill Credit Purchase Agreements at Bancroft Elementary School. Motion seconded by Annie Gilbert and voted 5-0 to approve.</p>
P25	<p>Authorize Lease of Land/Rooftop Space at Bancroft Elementary School for Solar Photovoltaic Facilities</p> <p>Laura Gregory moved to recommend Town Meeting Approval of Article P25, Authorize Lease of Land/Rooftop Space at Bancroft Elementary School for Solar Photovoltaic Facilities. Motion seconded by Annie Gilbert and voted 5-0 to approve.</p>
P26 HOLD	<p>Authorize Agreements for Payment in Lieu of Taxes at Bancroft Elementary School</p>
P27	<p>Authorize Electricity Supply/On Bill Credit Purchase Agreements at West Elementary School / Shawsheen Pre-school</p> <p>Melissa Danisch moved to recommend Town Meeting Approval of Article P27, Authorize Electricity Supply/On Bill Credit Purchase Agreements at West Elementary School/Shawsheen Pre-school. Motion seconded by Annie Gilbert and voted 5-0 to approve.</p>
P28	<p>Authorize Lease of Land/Rooftop Space at West Elementary School / Shawsheen Pre-school for Solar Photovoltaic Facilities</p> <p>Melissa Danisch moved to recommend Town Meeting Approval of Article P28, Authorize Lease of Land/Rooftop Space at West Elementary School / Shawsheen Pre-school for Solar Photovoltaic Facilities. Motion seconded by Annie Gilbert and voted 5-0 to approve.</p>
P29 HOLD	<p>Authorize Agreements for Payment in Lieu of Taxes at West Elementary School / Shawsheen Pre-school.</p>
P41	<p>Bylaw Amendment Electronic Voting at Town Meeting</p> <p>Annie Gilbert moved to recommend Town Meeting Approval of Article P41, Bylaw Amendment Electronic Voting at Town Meeting. Motion seconded by Melissa Danisch and voted 5-0 to approve.</p>
P42	<p>Rental of Electronic Voting Equipment.</p> <p>Laura Gregory moved to recommend Town Meeting Approval of Article P42, Rental of Electronic Voting Equipment. Motion seconded by Chris Huntress and voted 5-0 to approve.</p>
P43	<p>Town Charter Removal of Residency Requirement for Town Manager</p> <p>Laura Gregory moved to recommend Town Meeting Approval of Article P43, Town Charter Removal of Residency Requirement for Town Manager. Motion seconded by Melissa Danisch. Motion passes 4-1.</p> <p>Chris Huntress opposed.</p>

VI. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Melissa Danisch moved approve the appointments by the Town Manager as listed in the Consent Agenda. Motion seconded by Annie Gilbert and voted 5-0 to approve.

Department	Name	Position	Rate/Term	Date of Hire
Community Services – Elder Services	James Swasey <i>(Francisco Melendez)</i>	Manager of Food and Nutritional Services	\$73,758.29/yr	2/14/2023

VII. Approval of Meeting Minutes

A. Board to consider voting to approve minutes from the following meetings:

Chris Huntress moved to approve the meeting minutes of:

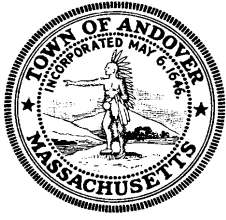
1. September 12, 2022
2. October 17, 2022
3. November 7, 2022
4. November 21, 2022
5. December 5, 2022
6. December 7, 2022 – Triboard
7. December 12, 2022
8. January 9, 2023

Motion seconded by Laura Gregory. Motion passes 5-0.

VIII. Adjourn

At 9:25 PM on a motion by Laura Gregory and seconded by Melissa Danisch, the Select Board voted 5-0 to adjourn the meeting of February 13, 2023.

Respectfully submitted,
Dee DeLorenzo
Recording Secretary



Select Board Meeting – Amended 3.10.2023

Monday, March 13, 2023

Executive Session. 6:30 PM. Regular Session 7:00 PM

Lifelong Learning Room at The Robb Center

30 Whittier Court, Andover, MA 01810

I. Call to Order – 6:30 P.M.

Select Board Chair, Alex Vispoli called the Select Board Meeting of Monday, March 13, 2023 to order at 6:30 PM.

Members in attendance: Chris Huntress, Laura Gregory, Annie Gilbert, Melissa Danisch.

Others in attendance: Town Manager Andrew Flanagan, Deputy Town Manager, Mike Lindstrom, Town Manager/Town Clerk Austin Simko and Town Counsel Tom Urbelis.

II. Executive Session

Annie Gilbert moved to go into Executive Session pursuant to Purpose 7 to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements (Open Meeting Law, G.L. c. 30A, s. 22); specifically, to perform a review and approval of executive session minutes from 2018 - 2023 and to determine whether all or portions thereof may be publicly released and to return to Open Session. Motion seconded by Melissa Danisch. Roll call: C. Huntress-Y, L. Gregory-Y, M. Danisch-Y, A. Gilbert-Y, A. Vispoli-Y. Motion passes 5-0.

III. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence which was dedicated to Susan Dalton a former member of the Select Board who recently passed away, followed by the Pledge of Allegiance.

IV. Communications/Announcements/Liaison Reports

The Town Manager said there has been interest in the Indigenous People's Day discussion as it relates to Columbus Day and a lot of questions on how it has been implemented in other communities. He has asked the Director of Community Services, Jemma Lambert, to do some research on this and present the findings to the Board.

Mike Lindstrom announced that the Andover Youth Services (AYS) Spring 2 and Summer Outer Limit Programming Booklet is now online with registration beginning this Wednesday at 10:00 AM. The summer program will have many activities from hiking to archery, ultimate frisbee, gaming, running clubs and baseball and softball lessons. The

Outer Limit Summer Program runs for seven weeks and includes many trips to the Merrimack River for Boating and kayaking on Pomp's Pond.

Austin Simko reported that the Annual Town Election is two weeks from tomorrow and the deadline to apply to vote by mail is March 21st at 5:00 PM. Applications are available online or at the Town Clerk's Office. The deadline to return ballots is 8:00 PM on election day.

Tom Urbelis reported that when Gov. Baker made his Declaration of Emergency with regard to the Covid Pandemic and modified the Open Meeting Law to allow for remote meetings that continued until last summer when legislation was passed to extend it to March 31, 2023 at which time it will expire. The House has passed legislation to extend the modified Open Meeting Law to March 31, 2025 which passed in the House and went to the Senate. They are working on it as part of the bond bill and hopefully it will be extended to March 2025.

Melissa Danisch and Laura Gregory reported on the Council on Aging Meeting they attended last week that included discussions on programming topics, the Meals on Wheels Program who has a unique partnership with the Community Food Pantry located at the Ballardvale Church, the increase in programming and support of Day Programs with attendance increasing 3-fold. Social Services, despite where we are beyond the pandemic, the number of people who need assistance has increased over last year. The Council has been conducting a needs assessment and have several areas of focus, one of which is housing. They are hosting a coffee with the planner to find out more on the new MBTA/housing law in April and studying other non-traditional housing models. There was a lot of discussion of different options available for seniors that included assistance with taxes and transportation in and around Town.

Chris Huntress thanked the Cub Scouts at South School who invited him to talk to the students on what is going on around Town, what the Select Board does, the budget and other things. It was a lot of fun.

Laura Gregory reported that the League of Women Voters is holding a Candidate Forum on Wednesday for those who are running in the upcoming election for Select Board, School Committee, Moderator, and Trustees of the Free Punchard School

Alex Vispoli asked the Town Manager if they could have a presentation on the OPEB Bond Obligation, where the debt analysis stands, and how it is going.

V. Citizens Petitions and Presentations

None

VI. Regular Business

A. Board of Registrars Appointment

Board to consider nominees for appointment to the Board of Registrars of Voters and to appoint a registrar for a term expiring March 31, 2026. The Democratic Town Committee nominates Emran Baqui of 5 Peach Tree Path. The Republican Town Committee nominates Jennifer Zhang of 3 Windemere Drive. This is the unexpired term of Amy Senate who is not seeking reappointment

Mr. Emran Baqui of 5 Peach Tree Path wants to be part of the Board of Registrars as it is important that there be transparency and he is now part of the Andover Leadership Academy training and wants to be part of Andover Committees. He is also on the Board of the Merrimack Valley YMCA and the Boys and Girls Club. As a Board member, he will make sure the process is transparent and that every vote counts. He is a mechanical engineer and has an MBA in Finance. Mr. Baqui wants to serve his community.

Jennifer Zhang of 3 Windemere Drive has lived in Andover since 1998 and became a US Citizen in 2006. She deeply appreciates the value of democracy and the importance of ensuring that every person has a vote. She has served as a poll-worker at Town Elections and worked alongside dedicated individuals who made sure every citizen had a vote and their voice was heard. She is a founder and prior principal of the Chinese Culture School in Winchester that provided her with valuable skills in leadership, communication, and organization. All of which she believes would be invaluable in the role of a Registrar of Voters.

Chris Huntress moved to appoint Jennifer Zhang of 3 Windemere Drive to the Board of Registrars for a term expiring March 31, 2026. Motion seconded by Annie Gilbert and Voted 5-0 to approve.

B. Town Governance

Phillip Geoffroy, Director of Communications, reviewed the recommendations relative to Community Outreach and Communications in the Town Governance Committee's 2021 Report for approval by the Select Board.

1. Facilitation of enhanced pre-Town Meeting event for discussion of warrant articles. This would allow participants to discuss Warrant Articles prior to Town Meeting and would take place in a hybrid format and broadcast by AndoverTV and recorded for on-demand viewing. Details about the event will be disseminated in the weeks ahead. Implementation Goal: April 2023.
2. Provide accessible education material to convey both general information about Town Meeting and produce materials around particular warrant articles using videos and info-

graphics and other tools to convey details of key warrant articles providing succinct information. Create information for residents who may not be familiar with Town Meeting and create FAQ's. Implementation Goal: Spring 2023.

3. Providing Town Meeting education resources to residents. These are items on the main page of their website which residents can subscribe to be delivered to their in-box. Creation of Bartlet Street Dispatch complements the use of Newsflash function on the website and rolls into the bi-weekly newsletter. Currently, 750 people subscribe to the Bartlet Street Dispatch. Social media channels and sign-up sheets at in-person events will be used to drive new subscriptions to both sources. Implementation Goal: Spring 2023. Andoverma.gov/newsletter

4. Providing welcome packets to new residents.

To have a printed and digital pamphlet to include overview of Town Meeting and other information on Town Governance, a guide to access municipal services (permits registering to vote, library cards, etc.). This would be mailed to residences. This would be a pamphlet in digital and printed form and used for other information new residences might be interested in. This will be mailed when the Town is notified of the changing of a vehicle registration.

5. "Tagging" website videos of public meetings to allow residents to easily find portions of meetings. Allows a viewer to skip to a certain area of a video. They have spoken with AndoverTV on implementing this service.

Laura Gregory asked if the digital welcome pamphlet that would be available online. Mr. Geoffroy said they anticipate it will be relatively reasonable to print and mail. Laura also suggested it might be something to have the schools and library share as well since they tend to have the largest email lists in Town. Implementing these recommendations would improve both participation in Town Meeting, people's understanding and streamline the process.

Annie Gilbert asked if the Town Governance Study Committee (TGSC) considered adding a recommendation around having hybrid meetings? Austin Simko said the TGSC did recommend 'where feasible' and that hybrid meetings allow residents to participate remotely.

Annie Gilbert moved that the Select Board accept and recommend the Town Governance Study Committee's recommendations to facilitate communication as printed in the agenda. Motion seconded by Chris Huntress and voted 5-0 to approve.

C. Hacienda Way

Board to receive an update on Hacienda Way.

Chris Cronin, Director of DPW, reported that public works is ready to pave the road and in the process of obtaining the necessary easements. Austin Simko shared that it is complicated because it is being driven by a private warrant approved at the 2022 Town Meeting to provide some funds for some title work to look at Hacienda Way and to get a

legal understanding of the legal landscape. Heading into 2023, the title work has been largely done and there will be a private warrant article that the Board will hear about at the end of the month asking for funds to make improvements to the road to put it in a place where it could be accepted or improved on a physical level and to authorize a taking of the way. Right now, it is owned by a developer that is not in communication to cooperate with the Town. Atty. Urbelis provided information on the taking of the easement.

D. Acceptance of Grant of Easements

Board to discuss and consider voting to accept three grants of easements from Dipankar and Sonal Biswas of 168 Greenwood Road, Anastasia Driscoll and Jessica Valkenberg of 170 Greenwood Road, and Hung Ngoc Nguyen of 172 Greenwood Road.

Austin Simko reported that in order to cap the Ledge Road Landfill, the most direct route for getting the trucks through to the landfill is along property that is owned by the three residents listed above. They have been in touch with the residents and they have signed off to grant a temporary construction easement. They will restore the surface back to its original state.

The Board thanked the residents and Austin Simko who participated in getting this accomplished. Chris Cronin said they had a number of meetings with the residents and they will have access to the drainage pipe going forward.

Melissa Danisch moved that the Board accept and sign the three grants of easements from Dipankar and Sonal Biswas of 168 Greenwood Road, Anastasia Driscoll and Jessica Valkenberg of 170 Greenwood Road, and Hung Ngoc Nguyen of 172 Greenwood Road. Motion seconded by Laura Gregory and voted 5-0 to approve.

E. Extension of Land Disposition Agreement Negotiation Period

Board to discuss and consider voting to extend the period during which the Town and Minco Development Corp. may negotiate the Land Disposition Agreement in connection with the Town's disposition of the former Town Yard.

Austin Simko reported that Section 5 of the Request for Proposals issued by the Town in 2021 stated that once a preferred developer had been selected the Land Distribution Agreement would be executed, if it goes past the 60-days the Select Board has to put it in writing. This is required to meet the terms of Agreement extending it to May 1, 2023.

Alex Vispoli said there have been conversations with the Town Manager and others in Executive Sessions around this negotiation which is still going on. They are hopeful that they will move forward on this as soon as possible.

Laura Gregory moved that Pursuant to Section 5. of the Request for Proposals to Redevelop the Former Town Yard, which was issued by the Town on March 8, 2021, the Town hereby extends to May 1, 2023 the period during which the Town and Minco Development Corp. may negotiate the Land Disposition Agreement. Motion seconded by Chris Huntress and voted 5-0 to approve.

F. Annual Town Meeting Articles

Board to consider voting to take a position on the following articles:

The Town Manager spoke to each of the Articles.

P4	Fiscal Year 2024 Budget Annie Gilbert moved to recommend Town Meeting Approval of Article P4, the Fiscal Year 2024 Budget. Motion seconded by Melissa Danisch and voted 5-0 to approve. Total budget: \$223,821,556
P5	Fiscal Year 2024 Capital Projects Fund. Total budget: \$2,890,000. Chris. Huntress moved to recommend Town Meeting Approval of Article P5, Fiscal Year 2024 Capital Projects Fund. Motion seconded by Melissa Danisch and voted 5-0 to approve.
P6	Financial Housekeeping Articles (A-I). Patrick Lawlor reported on the following Housekeeping Articles: F-P6 I for approval. A. Budget Transfers Expected to be withdrawn B. Supplemental Budget Appropriations - Hold C. Stabilization Fund Expected to be withdrawn D. Free Cash Expected to be withdrawn E. Unexpended Appropriations – Expected to be withdrawn F. Unexpended Appropriations Capital Projects Fund Expected to be withdrawn G. Fiscal Year 2024 Revolving Accounts H. PEG Access and Cable Related Expenses Pension Obligation Bond Stabilization Fund Transfer: Laura Gregory moved to recommend Town Meeting Approval of Housekeeping Articles P6: Articles F, G, H and I. Motion seconded by Melissa Danisch and voted 5-0 to approve.
P7	Home Rule Petition for Excess Levy Capacity Chris Huntress moved to recommend Town Meeting Approval of Article P7, Home Rule Petition for Excess Levy Capacity. Motion seconded by Melissa Danisch and voted 5-0 to approve.
P20	Capital Projects From Free Cash Total Budget: \$1,919,128 Laura Gregory moved to recommend Town Meeting Approval of Article P 20, Capital Projects from Free Cash. Motion seconded by Annie Gilbert and voted 5-0 to approve.
P21	Capital Projects From Water and Sewer Enterprise Funds Total Budget \$13,360,000. Presentation by Chris Cronin, Director Public Works. Annie Gilbert moved to recommend Town Meeting Approval of Article P-21, Capital Projects from Water and Sewer Enterprise Funds. Motion seconded by Chris Huntress and voted 5-0 to approve.

P36 Hold	Zoning Bylaw Recodification to reformat and reset the existing Bylaw. Presentation by Paul Matarazzo.
P39 Hold	Presentation by Paul Matarazzo. Town Bylaw Amendment – Stormwater Management and Erosion Control .

D. Update on Barron v. Southborough

Town Counsel to provide the Board with an update on Barron v. Southborough.

Tom Urbelis said last week’s Supreme Judicial Court re: Prohibitions at Select Board Public Speak Sessions that describes certain rights that citizens have. Tom described the facts of the case and at the decisions of the Town of Southborough because it definitely effects this Board.

Louise Barron V. Town of Southborough and Daniel Kolenda Chair of Select Board. Louise Barron made certain statements to the Chair who said he was going to call a recess if she did not stop and he was going to have her removed. Ms. Barron filed a lawsuit claiming that the policy was unconstitutional and that the Chair was liable for damages under the Mass Civil Rights Act for violation of her constitutional rights and that he should be held liable individually. The Trial Court dismissed the case. Louise Barron critiqued the Select Board for open meeting law violations. Atty. Urbelis shared the conversation between the Chair Kalenda and resident Louise Barron. The court looked at the facts and analyzed the policy in relation to Article 19 of the Mass. Declaration of Rights which states:

“The People have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions or remonstrances, redress of the wrongs done them and of the grievances they suffer”. The Court looked back 240 years and looking at the actions at the Southborough Meeting and Policy 19, the court made significant statements. Atty. Urbelis shared two slides showing the actual statements of the court with regard to Article 19 that reads that people have the right to assemble in peaceable and orderly manner is not the same as respectful or courteous. The content thought to be prohibited, is clearly protected by Article 19. The speech directed at government officials be respectful and courteous and free of rude remarks.

The Court concluded that the Town’s Public Comment Policy was unconstitutional which has several ramifications. The Court also allowed that the Plaintiff’s claim that the Select Board Chair violated her constitutional rights to go forward against him seeking relief against him in his individual capacity and the Court indicated that on the facts aligned he did not have qualified immunity from such a claim, stating “In the instant case, the contours of the rights are sufficiently clear and a reasonable public official would understand that his response to the exercise of those rights was unlawful”.

Based upon this case, Atty. Urbelis stated that the Andover Select Board Policy on Public Speak sessions needs to be revisited. It is possible that a public official who violates rights as described in this case could be liable, individually, for monetary damages, for violating a person’s exercise of those rights. There will be a continuing robust discussion and interpretation of this case by municipal officials, municipal attorneys, Town Moderators and that some Select Boards and City Councils may decide not to have a public speak session.

VII. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Annie Gilbert moved to approve the appointments by the Town Manager as listed in the consent agenda. Motion seconded by Melissa Danisch and voted 5-0 to approve.

Department	Name	Position	Rate/Term	Date of Hire
Andover Police Department	Jenna Couture <i>(Joshua Barbosa)</i>	Dispatcher	\$54,140.78/yr	3/14/2023
Memorial Hall Library	Jennifer Burke <i>(Kathy MacDonald)</i>	Library Assistant	\$28.64/hr	3/20/2023
Facilities	Trevor O’Shea <i>(Stephen Winget)</i>	Junior Custodian	\$25.06/hr	3/20/2023

VIII. Adjourn

At 8:55 PM on a motion by Chris Huntress and seconded by Laura Gregory the Select Board voted 5-0 to adjourn the meeting of Monday, March 10, 2022.

Respectfully submitted,
Dee DeLorenzo

Recording Secretary