

ZONING BY-LAWS



WESTPORT, MASSACHUSETTS

Revised January 11, 2012

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ARTICLE XIV - ZONING BY-LAWS

ARTICLE 1

PURPOSE AND DEFINITIONS (Formerly Section I)

1.0 PURPOSE

The purpose of this By-Law is declared to be the promotion of the public health, safety, convenience, and welfare by:

- A. Encouraging the most appropriate use of land;
- B. Preventing overcrowding of land;
- C. Conserving the value of land and buildings, including the conserving of natural resources and the preventing of blight and polluting the environment;
- D. Lessening the congestion of traffic;
- E. Preventing undue concentration of population;
- F. Providing for adequate light and air;
- G. Reducing hazards from fire and other dangers;
- H. Assisting in the economical provisions of transportation, water, sewerage, schools, parks, and other public facilities;
- I. Encouraging housing for persons of all income levels;
- J. Preserving and increasing the amenities of the Town;
- K. Giving effect to the policies and recommended proposals of the Master Plan of Westport.

The use, construction, repair, alteration, extension, and height of buildings and structures and the use, or alteration or extension of use of premises in the Town are hereby regulated as hereinafter provided.

(1963 ATM, Article 38; 1978 ATM, Article 21)

(Editorial Note): Article 21 of 1978 completely rewrote this section. (For original, see Appendix)

1.1

DEFINITIONS (Formerly Section II)

In this By-Law, the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings: Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." The word "person" includes a corporation as well as an individual.

Accessory Apartment - An independent dwelling unit of five hundred (500) to nine hundred (900) square feet contained within a single-family residence. The unit shall have a separate exterior entrance, a kitchen/living room, a bathroom and a maximum of one bedroom. Either unit shall be occupied by the owner.

Accessory Use - A use or building customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. In buildings restricted to residence use, the office of a professional man, customary family occupations and workshops not conducted for compensation, shall be deemed accessory uses.

Adult Entertainment Establishment - The following uses, as defined in G.L. c.40A, §9A, shall be known as Adult Entertainment Establishments: Adult Bookstore, Adult Motion Picture Theatre, Adult Paraphernalia Store, Establishment Which Displays Live Nudity For Its Patrons, and Adult Video Store.

For purposes of this By-Law, the term "substantial or significant portion of stock in trade" shall be deemed to exist under any of the following circumstances:

- a When the cost (either wholesale or retail) of the portion of the stock in trade on hand characterized or distinguished by depicting or concerning sexual conduct or sexual excitement, as defined in G. L. c. 272, §31, comprises more than ten percent (10%) of the total stock in trade on hand; or
- b When monthly revenues, including rentals, from

such stock in trade exceeds more than ten percent (10%) of the monthly revenues from all stock in trade; or

- c. When an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such stock in trade; or
- d. When a business with any such stock in trade fails, upon request of the Inspector of Buildings to produce accurate information to determine whether the thresholds set forth in paragraphs (a), (b) or (c) have been exceeded, there shall be a presumption that such business comprises an Adult Entertainment Establishment.

Adult Theater - (2008 ATM, Article 45 deleted this section)

Affordable Housing Restriction - A deed restriction approved by the Board and Town Counsel that designates a Dwelling Unit as affordable housing pursuant to the statutory requirements of the General Laws of the Commonwealth of Massachusetts, regulations and guidelines adopted pursuant thereto by the Dept. of Housing and Community Development, as well as any applicable requirements of the Westport Zoning By-Laws and regulations promulgated thereunder and that renders the unit eligible for inclusion in the SHI maintained by DHCD or any successor agency. (2009 ATM, Article 28)

Affordable Unit - A housing unit that by deed restriction is and shall remain permanently affordable by being available, upon sale or resale, for purchase or rent to purchasers or renters so that the unit shall count towards the Town's Subsidized Housing Inventory as maintained by the Department of Housing and Community Development.

Agriculture - The normal maintenance or improvement of land in agricultural or aquaculture use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

Alter - Activities such as demolition, construction, clearing, excavation, grading, filling, and reconstruction that result in a change in the natural cover or topography.

Applicant - The person or persons, including a corporation or other legal entity, applying for a special permit hereunder. The Applicant must own, or be the beneficial owner of, all

the land included in the proposed site, or have authority from the owner(s) to act for him/her/ it/them or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site. A property owner or agent of a property owner who has filed an application.

Area Median Income - Median income as reported by the most recent information from the United States Department of Housing and Urban Development and/or DHCD for the Providence-Fall River, RI-MA HUD Metro FMR Area.

Area Of Special Flood Hazard - Is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated on a FIRM as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

Assisted Living Facility (ALF) - A facility as defined in 651 CMR 12.02.

Base Flood - The flood having a one percent chance of being equaled or exceeded in any given year.

Bed & Breakfast (homestay) - A private owner occupied residence with one to three guestrooms. The bed and breakfast homestay is subordinate and incidental to the main residential use of the building. The home is to be the primary and legal residence of the owner, is a single-family residence, and the owner shall be responsible for the operation of the property and shall be a resident of the property when the Bed and Breakfast establishment is in operation. Individual guests are prohibited from staying at a particular bed and breakfast establishment for more than fourteen (14) days in any 30-day period.

Biofiltration, Bioretention and/or Rain Garden - A stormwater treatment practice that uses soils, plants, and microbes to treat storm water before it is infiltrated and/or discharged. Bioretention cells are shallow depressions filled with sandy soil topped with a thick layer of mulch and planted with dense native vegetation.

Building - An independent structure having a roof supported by columns or walls, resting on its own foundations and designed for the shelter, housing or enclosure of persons, animals, chattel or property of any kind.

Coastal High Hazard Area - An area of special flood hazard extending from offshore to the inland limit of a primary

frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

Detention - The temporary storage of stormwater runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

Detention Facility - A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Developer - A person who undertakes land disturbance activities.

Development - Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Disturbance Of Land - Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See Land Disturbance Activity.

Dwelling - A building designed or used as the living quarters for one or more families as the principal use.

Dwelling, Multi-Family - A building containing more than two dwelling units, with each unit containing its own sleeping, cooking and sanitary facilities.

Dwelling, One-Family - A detached building containing one dwelling unit only and having two side yards.

Dwelling, Two-Family - A detached building containing two (2) dwelling units, with each unit containing its own sleeping, cooking and sanitary facilities.

Easement - A legal right granted by a landowner to a third party grantee allowing the use of private land for stormwater management purposes.

Eligible Household - A household whose total income does not exceed 80% of the area median income, adjusted for household size, as reported by the most recent information from the United States Department of Housing and Urban Development

and/or DHCD.

Family - One or more persons occupying a dwelling unit and living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

Federal Emergency Management Agency (Fema) - Administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

First Flush - Pollutant concentrations, including suspended sediments, carried by storm water in the beginning of a storm. These concentrations are typically higher than at the middle or end of the storm. To determine "first flush", see Water Quality Volume definition.

Flood Boundary And Floodway Map - An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500 year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (Fhbm) - An official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

Flood Insurance Rate Map (Firm) - An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study - An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Frontage - That portion of a lot fronting upon a street or way, said frontage to be measured continuously along one street line between its side lot lines and their intersection with the street line.

Front Yard - A "front yard" is a required open unoccupied space, within and extending the full width of the lot, between the street line and the front of a building.

Green Roof - The roof of a building that is partially or completely covered with vegetation and soil, or a growing medium, planted over a waterproofing membrane. A green roof is used to mitigate the effects of urbanization on water quality by filtering, absorbing or detaining rainfall.

Heat Island Effect - Built up areas that are hotter than nearby rural areas. Common strategies for reducing the heat island effect are: 1) increasing tree and vegetative cover, 2) installing green roofs 3) installing cool, mainly reflective, roofs, and 4) using cool pavements.

Hot Spot - A stormwater hotspot is an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Infiltration basins should never receive runoff from stormwater hotspots, unless the stormwater has already been fully treated by another stormwater treatment practice. This is due to potential groundwater contamination.

Impervious Cover - Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

Independent Living Facility (ILF) - A facility reserved by deed for occupancy by persons over the age of fifty-five who are able to care for themselves, but with some common facilities as described herein.

Infiltration - The flow of water from the ground surface down into the soil.

Infiltration Facility - Any structure or device designed to infiltrate retained water to the ground. These facilities may be above grade or below grade.

Land Disturbance Activity - Any activity that changes the volume or peak flow discharge rate of rainfall runoff from the land surface, including: grading, digging, cuffing, scraping, excavating of soil, placement of fill materials, paving construction, substantial removal of vegetation, any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

Landowner/Owner - The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding propriety rights in the land.

Land Uses With Higher Potential Pollutant Loads ("LUHPPL") - Defined in 310 CMR 10.04 and 314 CMR 9.02 to include the following: Land uses identified in 310 CMR 22.208(2), 310CMR 22.20C(2)(a-k) and (m), 310 CMR 22.21 (2)(a)(1 -8) and 310 CMR 22.21 (2)(b)(1 -6), areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination System ("NPDES") permit or the NPDES Multi-Sector General Permit; auto fueling facilities (gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high-intensity-use; confined disposal facilities and disposal sites.

Lot - An area of land in one ownership with definite boundaries, used, or available for use, as the site of one or more buildings.

Lot Area - The horizontal area of a lot exclusive of any area in a street or recorded way open to public use.

Low Impact Development (LID) - A comprehensive land planning and engineering design strategy that emphasizes conservation and use of existing natural site features integrated with distributed small-scale storm water controls to closely mimic natural hydrological patterns.

Low Impact Development (LID) Management Plan - A plan required to be submitted as part of this bylaw.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Market Rate Dwelling Unit - A Dwelling Unit available for sale or rent within a project or development at an unsubsidized price commensurate with the fair market value of said dwelling unit

Median Income - The area median income, adjusted by household size, reported by the most recent information from the U.S. Department of Housing and Urban Development and/or DHCD.

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 Westport.

New Construction - Means, for flood plain management purposes, structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

Non-Conforming Use - A building or land lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

Nonpoint (NPS) Source Pollution - Pollution from any source other than from any discernible, confined, and discrete conduit or waterway, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

One-Hundred-Year Flood - See Base Flood

Open Space Residential Development (OSRD) - A residential development of one-family and two-family dwellings in which the buildings and accessory uses are grouped together with reduced lot sizes into one or more areas. The land not included in the building lots shall be permanently protected as open space. The design of the development shall be in accordance with the four-step design process described in Article 18 of these By-Laws.

Permeable, Pervious or Porous Pavement - is a paved surface with a higher than normal percentage of air voids to allow water to pass through it and infiltrate into the subsoil. Permeable paving techniques include porous asphalt, pervious concrete, paving stones, and manufactured "grass pavers" made

of concrete or plastic.

Permit Granting Authority - Shall mean the Board of Appeals.

Rear Yard - A "rear yard" is a required open unoccupied space, the full width of the lot lying between the extreme rear wall of the building and the rear line of the lot or the line of the public street or private way in case the lot borders on such street or way.

Recharge - The replenishment of water to aquifers.

Redevelopment - Any construction, alteration, or improvement exceeding one acre in area where existing land use is high-density commercial, industrial, institutional or multi-family residential.

Regulatory Floodway - See Floodway

Resource Area - Any area protected under the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Westport Conservation Commission regulations.

Sexually-Orientated Business - (2008 ATM, Article 45 deleted this section)

Side Yard - A "side yard" is required open unoccupied space, within the lot within a side lot line, not a street line, and the parts of the building nearest to such lot line. Such a yard shall extend for its required width from the street line or its equivalent to the rear or its equivalent to another street.

Sign - Any structure or part thereof attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. The word sign does not include the flag, pennant or insignia of any nation, state or other political unit, or of any educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event.

Sign - Area Of - The area of a free-standing sign includes all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed. The supporting framework, open or enclosed, may be part of the design, but for the purposes of this By-Law shall not be considered part of the sign area

unless used for lettering, wording or symbols. When the sign consists of individual letters or symbols attached to or painted on a surface, building wall or window, the area shall be considered to be that of the smallest rectangular or other regular shape which encompasses all of the letters and symbols.

Single Family Dwelling Unit (Noquochoke Overlay District Only) - A detached building containing not more than one dwelling unit.

Social Sustainability - Design of the physical environment so as to provide, or easily to allow future adaptation to provide, full accessibility to persons with a range of physical abilities as these may change throughout their lifetime.

Soil Mottling - Redoximorphic features.

Special Flood Hazard Area - An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

Special Permit Granting Authority - Shall include the Board of Selectmen, Board of Appeals, Planning Board, as designated by this By-Law for the issuance of special permits.

Start of Construction - The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Stormdrain System - The conveyance system, including catchbasins, manholes, pipes and drainage ditches to transport stormwater runoff [usually to a storm water management practice(s)].

Stormwater Management Plan - A plan required to be submitted as part of this bylaw.

Stormwater Management Practice(s) - Techniques used to control the impacts (flooding, increased volume, and pollution) of stormwater runoff.

Stormwater Management System - All components associated with the management of stormwater runoff including the Stormdrain

System and the Stormwater Management Practice(s).

Stormwater Pollution Prevention Plan (SWPPP): A plan required under the Environmental Protection Agency's (EPA) NPDES Construction General Permit for projects that disturb one acre or more of land (See DEP Handbook Chapter I, Volume I).

Stormwater Runoff - Water resulting from precipitation that flows overland.

Stormwater Treatment Practices - Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies

Street - Any duly-accepted public way, any way not less than 40 feet wide shown on plan duly recorded after April 10, 1920, or any other way equivalent to a public way for the purposes of subdivision control as specified in General Laws, Chapter 41, Section 81L.

Structure - Means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. STRUCTURE, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

Upland - Land other than land classified under the Wetlands Protection Act as freshwater wetland, beach, flat marsh or swamp and land under any water bodies such as ocean, creek, river, stream, brook, pond or lake.

Visitability - Dwelling units are deemed Visitable if they meet the following three criteria: zero step entrance, all doorways that are 32 inches clear, and a toilet on the first floor.

Watercourse - Any body of water, including, but not limited to, lakes, ponds, rivers and streams.

Waterway - A channel, either natural or man-made, that directs surface runoff to a watercourse or to the public storm drain.

Water Quality Volume - the volume generated by the first 1.25 inches of stormwater runoff. This first inch of runoff carries the majority of accumulated pollutants from impervious surfaces. The first flush volume in cubic feet (VwQ) is determined by the following formula:

$VWQ = (1.25/12 \text{ inches}) (RwQv) (\text{Site Area in square feet});$

Where: $RwQv = 0.05 + 0.009(I);$

I = the % impervious area.

Way - Same as Street.

Zero Step entrance - An entrance that has no steps, and is at grade level with the exterior grounds. The zero step entrance can be at any doorway; front, side, rear.

Zone A - The 100-year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

Zone A1-30 and Zone Ae (For New And Revised Maps) - The 100-year flood plain where the base flood elevation has been determined.

ZONE AH and ZONE AO - The 100-year flood plain with flood depths of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Zone A99 - Areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

Zone V - A special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

Zone V1-30 and Zone VE (For New and Revised Maps) - A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

Zoning By-Laws - The Zoning By-Laws of the Town of Westport as amended.

(1963 ATM, Article 38; 1964 ATM, Article 54; 1973 STM, Article 19; 1978 ATM, Article 21; 1982 STM, Article 19; 1990 ATM, Article 52; 1995 ATM, Article 43; 1998 ATM, Article 64; 2005 ATM, Article 4; 2007 ATM, Article 20; 2008 ATM, Article 45, 2009 ATM, Articles 28 & 31; 2010 ATM, Article 36; 2011 ATM, Article 37)

(Editorial Note): Article 54 of the 1964 ATM added the definitions of "Sign" and "Sign, Area of" to the original. Article 19 of the 1973 Special Town Meeting replaced entirely the old definitions of "Lot" and "Street Line" (see Appendix for prior ones) and added "Way," "Permit Granting Authority" and "Special Permit Granting Authority" were added by 1978 ATM, Article 21. "Front yard," "Side Yard," and "Rear Yard," were added by 1982 STM, Article 19. "Accessory Apartment" was added by 1990 ATM, Article 52). Article 43 of the 1995 ATM added the definitions of "Lot Area" and "Upland." The 1998 ATM, Article 64 added the definitions of "Adult Live Entertainment Establishment," "Adult Theater," and "Sexually-Oriented Business." The 2005 ATM, Article 4 added "Affordable Unit," "applicant," "Assisted Living Facility (ALF)," "Eligible Household," "Independent Living Facility (ILF)," and "Median Income." Article 20 of the 2007 ATM added the definition of "Open Space Residential Development (OSRD)". Article 45 of the 2008 ATM revised the definition of "Adult Entertainment Establishment". Article 28 of the 2009 ATM added the definitions of "Affordable Housing Restriction", "Dwelling, Two-Family", "Dwelling, Multi-Family", "Market Rate Dwelling Unit", "Single Family Dwelling Unit (Noquochoke Overlay District Only)", "Social Sustainability", "Visitability", "Zero Step Entrance", and "Zoning By-Laws". Article 31 of the 2009 ATM added the definitions of "Area of Special Flood Hazard", "Base Flood", "Coastal High Hazard Area", "Development", "Federal Emergency Management Agency", "Flood Boundary And Floodway Map", "Flood Hazard Boundary Map", "Flood Insurance Rate Map", "Flood Insurance Study", "Floodway", "Manufactured Home", "New Construction", "One Hundred-Year Flood", "Regulatory Floodway", "special Flood Hazard Area", "Structure", "Zone A", "Zone A1-30 And Zone Ae", "Zone A99", "Zone V", "Zone V1-30 And Zone VE"; Article 36 of the 2010 ATM revised the definition of "Affordable Unit." and added the definition of "Area Median Income". Article 37 of the 2011 ATM added the following definitions "Agriculture", "Alter", "Applicant", "Biofiltration, Bioretention and/or Rain Garden", "Building", "Detention", "Detention Facility", "Developer", "Disturbance of Land", "Easement", "First Flush", "Green Roof", "Heat Island Effect", "Hot Spot", "Impervious Cover", "Infiltration", "Infiltration Facility", "Land Disturbance Activity", "Landowner/Owner", "Land Uses With Higher Potential Pollutant Loads (LUHPPL)", "Low Impact Development (LID)", "Low Impact Development (LID) Management Plan", "Municipal Storm drain System or Municipal Separate Storm Sewer System (MS4)", "Nonpoint Source Pollution (NPS)",

"Permeable, Pervious or Porous Pavement", "Recharge", "Redevelopment", "Resource Area", "Soil Mottling", "Start of Construction", "Stormdrain System", "Stormwater Management Plan", "Stormwater Management Practice(s)", "Stormwater Management System", "Stormwater Pollution Prevention Plan (SWPPP)", "Stormwater Runoff", "Stormwater Treatment Practices", "Watercourse", "Waterway", and "Water Quality Volume".

ARTICLE 2

ADMINISTRATION (Formerly Section VII)

2.0 ENFORCEMENT

- 2.0.1** If the Inspector of Buildings shall be informed, or have reason to believe that any provision of this By-Law has been, is being, or may be violated, he or his agent shall investigate the facts and inspect the property in question.
- 2.0.2** If he shall find such violation he shall give notice thereof in writing to the owner or to his duly authorized agent and to the occupant of the premises, and order that any use of any building or premises contrary to the provision of this By-Law shall immediately cease.
- 2.0.3** If the Inspector of Buildings is requested in writing to enforce the Zoning By-Law against any person allegedly in violation of the same and the Inspector of Buildings declined to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reason therefore, within fourteen (14) days of receipt of such request.
- 2.0.4** Penalty for non-compliance with any lawful order of the Inspector of Buildings pertaining to the Zoning By-Laws shall be punishable by a fine of \$300.00, in accordance with the requirements of G.L. c.40, ss21D; provided that each day such violation continues shall constitute a separate offense.

(1963 ATM, Article 38; 1978 ATM, Article 21; 1986 ATM, Article 55; 2010 ATM, Article 34)

(Editorial Note): The 1978 article struck the former provision in its entirety and replaced it with the above section. See Appendix. The

1986 article deleted the words "no more than" prior to "twenty (\$20.00) dollars").

2.1 AMENDMENT (Formerly Section VII C)

This By-Law may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of M.G.L. Chapter 40A, Section 5.

(1963 ATM, Article 38; 1978 ATM, Article 21)

2.2 VALIDITY (Formerly Section VII D)

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.

(1963 ATM, Article 38)

2.3 EFFECTIVE DATE (Formerly Section VII E)

These By-Laws and any amendments thereto shall become effective upon vote of the Town Meeting, subject to approval by the Attorney General of the Commonwealth of Massachusetts.

(1963 ATM, Article 38)

2.4 BOARD OF APPEALS

2.4.0 There is hereby established a Board of Appeals of five (5) members and two (2) associate members to be appointed by the Selectmen as provided in M.G.L. Chapter 40A, Section 12 for terms of such length and so arranged that the terms of one (1) member shall expire each year.

2.4.1 The Board of Appeals shall elect annually a chairperson, a vice-chairperson, and a clerk from its own number and may, subject to appropriation, employ experts and clerical and other assistants. The Board shall adopt rules for the conduct of its business and for the purpose of M.G.L. Chapter 40A and shall file a copy of said rules with the Town Clerk.

2.4.2 The Board of Appeals for the purpose of this By-Law and M.G.L. Chapter 40A, shall be designated as the "Permit Granting Authority" and the "Special Permit Granting Authority." The Board shall act on all matters within its jurisdiction under this By-Law in the manner prescribed in M.G.L. Chapter

40A.

The Board shall have the following powers:

2.4.2.0 Appeals

To hear and decide appeals by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. Chapter 40A by the regional planning agency in whose area the Town is situated, or by any persons including an officer or Board of the Town, or of an abutting City or Town aggrieved by an order or decision of the Building Inspector or other administrative official, in violation of any provision of Chapter 40A or any ordinance or By-Law adopted thereunder, including this Zoning By-Law.

2.4.2.1 Permits and Special Permits

To hear and decide on applications for permits and/or special permits as provided by sections of this By-Law when it shall be found that the use involved is in harmony with the general purpose and intent of the By-Law, subject to appropriate conditions safeguards, and limitations on time and use.

2.4.2.2 Variances

To hear and decide petitions for variances and to grant upon appeal or petition with respect to particular land or structures a variance from the terms of the Zoning By-Laws, including a use or activity not otherwise permitted in the district where the land or structure is located, where the Board specifically finds that owing to circumstances relating to soil conditions, shape, or topography of such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the By-Law would involve substantial hardship, financial

or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law. (Formerly Section VII F)

The Board of Appeals may grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this By-Law where the Board of Appeals makes the required findings and follows the requirement of M.G.L Chapter 40A, Sections 10, 11, 13, 15, and 16 and the provisions of the foregoing section entitled **SPECIAL PERMITS**. (Formerly Section VII B)

2.4.2.3 In exercising the above powers the Board of Appeals may, in conformity with the provisions of M.G.L. Chapter 40A, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

(1963 ATM, Article 38; 1975 ATM, Article 36; 1978 ATM, Article 21)

(Editorial Note): The 1978 article rewrote the entire section. See Appendix for original - Formerly Section VII.

2.5 **SPECIAL PERMITS (Formerly Section VI E)**

2.5.0 A special permit shall be required for all uses and for all exceptions to dimensional regulations, which are designed in this By-Law as requiring a special permit before the Inspector of Buildings may issue a building or occupancy permit.

2.5.1 Each application for a special permit shall be on forms supplied and shall be filed in triplicate with the Town Clerk who shall transmit copies thereof to the Planning Board and the Board of Appeals within three (3) days of receipt of them (Saturdays, Sundays, and holidays excluded).

- 2.5.2** The Planning Board may at any time up to the date of the public hearing held as provided in Chapter 40A, Section 9, transmit to the Board of Appeals a report accompanied by such materials, maps, or plans as will aid the Board of Appeals in judging the application and in determining special conditions and safeguards.
- 2.5.3** The Board of Appeals shall not render any decision on an application for a special permit before one of the following has taken place:
- A.** The public hearing has been held without notification from the Planning Board to the Board of Appeals that a report will be submitted by the Planning Board.
 - B.** Said report has been received as of the date of the public hearing.
- 2.5.4** The Board of Appeals shall, at the expense of the applicant, give public notice of the appeal in the manner provided in Chapter 40A, Section 9, which require among other things, publication of a notice of a hearing not less than fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in Westport, and by posting such notices in a conspicuous place in the Town for a period of not less than fourteen (14) days before the day of such hearing, and by mail to all interested parties, according to Chapter 40A, Section 9. Public hearings shall be held within sixty-five (65) days after the filing of an application.
- 2.5.5** The decision of the Board of Appeals must be made within ninety (90) days following a public hearing. Failure to take final action upon an application for a special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for. The Board shall cause to be made a detailed record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all which shall be filed within fourteen (14) days in the office of the Town Clerk and in the office of the

Planning Board and shall be mailed forthwith to parties in interest, as designated in Section Eleven (11) of Chapter 40A, and to each person present at the hearing who request that notice be sent to him and states the address to which notice is to be sent.

2.5.6 No variance or special permit, any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certificate of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds and indexed in the grantor index under the name of the owner of the record or is recorded and noted on the owner's certificate of title.

2.5.7 No appeal for a variance and no application for a special permit which has been unfavorably acted on by the Board of Appeals shall be reconsidered on its merits, within two (2) years of such action, unless the Board of Appeals finds, by unanimous vote specific and material changes in the conditions upon which previous unfavorable action was based, and describes such change in the records of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties of interest of the time and place of proceedings when the question of such consent will be considered.

2.5.8 The period within which final action shall be taken may be extended for a definite period by mutual consent of the Board of Appeals and the applicant. In the event the Board determines that the site plan and evidence presented to it at the public hearing are inadequate to permit the Board to make a finding or determination, or to permit the Planning Board the proper amount of time to make its report, the Board may, at its discretion, instead of denying the application, adjourn the hearing to a later date to permit the applicant to submit a revised site plan and further evidence, provided, however that such adjournment shall not extend the ninety (90) day period within which final action shall be taken by the Board unless said period is extended to a day certain by mutual consent.

2.5.9 A special permit granted under this section shall lapse within nine (9) months from the grant thereof if a permit for construction has not been received, except for good cause as determined by the permit granting authority, or, in the case of a permit for construction, if the construction has not begun by such date and continued except for good cause as determined by the Board of Appeals.

(1978 ATM, Article 21)

2.6 The Planning Board is hereby designated as the Special Permit Granting Authority (SPGA) for Assisted and Independent Living Facilities (Article 11), for Inclusionary Housing (Article 13), for Drive-Through Facilities (Article 14), and for the Noquochoke Overlay District (Article 19). The Planning Board shall act on all special permit applications as provided by the Rules and Regulations of the Planning Board as Special Permit Granting Authority to be adopted hereunder.

(2004 ATM, Article 19; 2005 ATM, Article 30; 2009 ATM, Article 28)

2.7 (Article 28, 2009 ATM deleted this section)

ARTICLE 3

ESTABLISHMENT OF DISTRICTS (Formerly Section III)

3.0 TYPES OF DISTRICTS

For the purposes of this By-Law, the Town of Westport is hereby divided into the following types of use districts:

- A.** Business
- B.** Residence/Agriculture
- C.** Unrestricted
- D.** Flood Plain
- E.** Aquifer Protection
- F.** Telecommunication Facilities Overlay
- G.** Adult Entertainment Overlay District
- H.** Noquochoke Overlay District

(1963 ATM, Article 38; 1975 STM, Article 11; 1998 ATM, Articles 63 & 65; 2008 ATM, Article 45; 2009 ATM, Article 28)

(Editorial Note): Article 11 of 1975 merely added "Flood Plain". Article 45 of 1990 ATM changed "Residence" District to "Residence/Agriculture" District.

3.1 LOCATION OF DISTRICTS

Said districts, except flood plain and other overlay districts, are located and bounded as shown on a map entitled "Zoning Map of Westport, Massachusetts," dated March 28, 1974, and on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this By-Law. The map is described as follows:

A. As Residence/Agriculture: The portion of the Town bounded and described as follows:

Beginning at the boundary line between Little Compton and Westport at the southerly limit of private rights in the Atlantic Ocean, thence northerly along said boundary line to the southerly line of Adamsville Road; thence easterly in the southerly line of Adamsville Road to the southerly line of Cornell Road, thence easterly in the southerly line of Cornell Road to the west line of Main Road; thence easterly in right angles to the west line of Main Road across Main Road to the east line thereof and continuing easterly in the same course one thousand feet; thence southerly in a line parallel to the east line of Main Road and one thousand feet easterly there from to a point distant northerly one thousand feet measured in a southerly extension of said line from the west line of Drift Road thence easterly; northeasterly and northerly in a line parallel to the west line of Drift Road and one thousand feet there from to the south line of Kirby Road; thence easterly in the south line of Kirby Road one thousand feet more or less to the west line of Drift Road; thence easterly at right angles to the west line of Drift Road across Drift Road to the east line thereof and continuing easterly in the same course to the East Branch of the Westport River and into said River as far as private rights extend; thence southerly by the East Branch of said River to Westport Point; thence northwesterly by the West Branch of said River to the head thereof; thence southeasterly by the West Branch of said River to the Ocean; thence westerly by the Ocean to the place of beginning.

All of that portion of the Town not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District bounded and described as follows:*

Southerly by the American Legion Highway (Route 177); Westerly by the Westport-Fall River boundary line and the South Watuppa Pond; Northeasterly by the State Highway (Route 6); Easterly by the Westport-Dartmouth boundary line.

That portion of the Town, bounded and described as follows:

Northerly by Interstate 195; Easterly by the Westport-Dartmouth boundary line; Southerly by a line five hundred (500) feet north of and parallel to the north line of the State Highway (Route 6); Westerly by the east line of Washington Street extended to Interstate 195.

That portion of the Town, bounded and described as follows:

Beginning at a point on the westerly line of Washington Street, which point is 500' on a perpendicular line from the northerly line of the State Highway (Route 6); thence northwesterly 500' along a line which is 500' from and parallel to the northerly line of the State Highway (Route 6); thence northwesterly and northerly along a line parallel to and 500' on a perpendicular line from the westerly line of Washington Street to the northerly line of Hobart Street; thence easterly 150' in the northerly line of said Hobart Street; thence northerly in a line parallel to said westerly line of Washington Street for a corner at a point which is on a perpendicular line to the westerly line of Washington Street and from the terminus of Washington Street, said terminus is at the intersection of westerly line of Washington Street and the southerly line of Interstate Route 195; thence at a right angle easterly 350' to the westerly line of Washington Street; thence southerly and southwesterly along the westerly line of Washington Street to the point of beginning.

That portion of the Town, bounded and described as follows:

Northerly by the Westport-Fall River boundary line; Easterly by the Westport-Dartmouth boundary line;

Southerly by the north line of Old Bedford Road;
Westerly by the Westport-Fall River boundary line.

All of that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District bounded and described as follows:*

Beginning at the intersection of the south line of the American Legion Highway (Route 177) with the Westport-Fall River boundary line; thence easterly along said south line of the American Legion Highway to its intersection with the west line of Old County Road to the west line of Main Road; thence southerly along said west line of Main Road to a point one thousand (1,000) feet northerly of the north line of Kirby Road; thence westerly at a right angle to the west line of Main Road one thousand (1,000) feet; thence southerly along a line which line is one thousand (1,000) feet westerly from, and parallel to the west line of Main Road, to the south line of Cornell Road; thence westerly along said south line of Cornell Road to its intersection with the south line of Adamsville Road; thence southwesterly along said south line of Adamsville Road to the Westport-Rhode Island boundary line; thence northerly along said boundary line to the Westport-Fall River boundary line; thence northerly along last said boundary line and Sawdy Pond to the point of beginning.

All that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District, bounded and described as follows:*

Beginning at a point on the south line of Kirby Road, which point is one thousand (1,000) feet easterly of the intersection of the south line of Kirby Road with the east line of Main Road; thence southerly along a line, which is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road to a point one thousand (1,000) feet northerly of the west line of Drift Road; thence northerly along a line, which line is one thousand (1,000) feet westerly from, and parallel to the west line of Drift Road, to a point on the south line of Kirby Road; thence easterly along the south line of Kirby Road to the west line of Drift Road; thence easterly at right angles to the west line of Drift Road across Drift Road to the east line thereof and continuing easterly in the same course to the west bank of the East Branch of the Westport River, and into said River as far as private rights extend; thence northerly along the west bank of the East Branch of the Westport

River to the south line of Old County Road; thence southerly along the east bank of the East Branch of the Westport River to the east bank of the Let; thence southerly along the east bank of the Let to a point, which point is on the westerly extension of the north line of Third Street; thence easterly along the north line of Third Street as extended to Horseneck Road and Westport-Dartmouth boundary line; thence northerly along the Westport-Dartmouth boundary line to the south line of American Legion Highway (Route 177); thence westerly along the south line of American Legion Highway (Route 177) to the west line of Old County Road; thence southerly along the west line of & Old County Road to the east line of Main Road; thence southerly along the east line of Main Road to a point one thousand (1,000) feet northerly of the intersection of the north line of Kirby Road with the east line of Main Road; thence easterly at right angles to the east line of Main Road one thousand (1,000) feet; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road, one thousand (1,000) feet to the north line of Kirby Road and thence in the same course to the point of beginning.

All that portion of the Town, not previously voted by a two-thirds vote of a Town Meeting to be included in the Business District, bounded and described as follows:*

On the east by the Westport-Dartmouth boundary line from the Atlantic Ocean to the easterly extension of the north line of Third Street; on the south by the Atlantic Ocean; on the west by the West Branch of the Westport River; on the north, by the West and East Branches of the Westport River, by the east bank of the Let and by the north line of Third Street and its extension westerly to the Let; including all the islands in the Westport River, the Horseneck and Gooseberry Neck.

All that portion of Town lying northerly of Interstate Route 195.

(1957 STM, Article 6; 1963 ATM, Article 38; 1973 STM, Articles 27, 28, 29, 31, 38, 42 & 44; 1975 STM, Article 11; 1987 ATM, Article 80; 1990 ATM, Articles 45 & 49; 2008 ATM, Article 45)

(Editorial Note): The 1963 Article added the introduction to this section, which was amended by Article 44 in 1973 to incorporate the updated zoning map, and again by Article 11 in 1975 which added the words "except flood plain districts." Articles 27, 28, 29, 31, 38, and

42 passed in 1973 added the second, third, fourth, fifth, sixth and seventh descriptive paragraphs. The 1990 ATM, Article 45 changed the Residence District name to "Residence/Agriculture District" while Article 49 changed a portion of the Unrestricted District to Residence/Agriculture, which added the present fourth paragraph. The 2008 ATM added the words "and other overlay districts" in the first line of 3.1 Location of Districts.

*All references above to "Business Districts voted by Town Meeting" refer to zones contained in 3.1.B., below.

B. As Business: The portion of the Town bounded and described as follows:

Beginning at the intersection of the south line of Cornell Road and the west line of Main Road; thence easterly at right angles to the west line of Main Road across Main Road to the east line thereof and continuing easterly in the same course one thousand feet; thence northerly in a line parallel to the east line of Main Road and one thousand feet easterly there from to a point distant northerly one thousand feet measured in said line from the north line of Kirby Road; thence westerly at right angles to the east line of Main Road one thousand feet to the east line of Main Road; thence continuing westerly in the same course across Main Road to the west line of Main Road and continuing westerly in the same course one thousand feet beyond the west line of Main Road; thence southerly in a line parallel to the west line of Main Road and one thousand feet westerly there from to the south line of Cornell Road; thence easterly in the south line of Cornell Road one thousand feet more or less to the place of beginning.

The portion of the Town bounded and described as follows:

Southerly by the American Legion Highway (Route 177); (Route 6); Easterly by the Westport-Dartmouth boundary line.

The portion of the Town bounded and described as follows:

Beginning at the intersection of the west line of Forge Road with the north line of the American Legion Highway (Route 177); thence proceeding northerly along said west line of Forge Road five hundred (500) feet; thence proceeding westerly along a line, which line is five

hundred (500) feet northerly from, and parallel to the north line of the American Legion Highway to a point on the east line of Sanford Road; thence proceeding southerly along said east line of Sanford Road five hundred (500) feet to the north line of the American Legion Highway (Route 177); thence proceeding easterly along said north line of the American Legion Highway to the point of the beginning.

The land bounded and described as follows:

Beginning at the intersection of the south line of the American Legion Highway (Route 177) with the west line of Beeden Road; thence proceeding westerly along the south line of said American Legion Highway to a point two thousand (2,000) feet west of the southerly extension of the west line of Sanford Road; thence proceeding south five hundred (500) feet; thence proceeding easterly along a line, which line is five hundred (500) feet southerly from, and parallel to the south line of the American Legion Highway, to a point on the west line of Beeden Road; thence proceeding northerly five hundred (500) feet along the west line of Beeden Road to the point of beginning. Beginning at the intersection of the west line of Old County Road with the north line of Mouse Mill Road; thence proceeding westerly four hundred (400) feet; thence southerly and parallel to the west line of Old County Road four hundred (400) feet; thence easterly four hundred (400) feet to the west line of Old County Road; thence proceeding northerly four hundred (400) feet along the west line of Old County Road to the point of beginning.

The land bounded and described as follows:

Beginning at the intersection of the south line of the line; thence southeasterly along said south line of said State Highway (Route 6) to the west line of Forge Road; thence southerly along said west line of Forge Road to a point five hundred (500) feet northerly of the north line of the American Legion Highway (Route 177); thence westerly along a line, which line is five hundred (500) feet northerly from, and parallel to the north line of the American Legion Highway, one thousand (1,000) feet; thence northerly to a point, which is five hundred (500) feet east of the end of the east line of Center Street; thence northerly along a line, which line is five hundred (500) feet easterly from and parallel to the east line of Center Street to a point five hundred (500) feet southerly from the south line of the State Highway

(Route 6); thence northwesterly along a line, which line is five hundred (500) feet southerly from, and parallel to the south line of the State Highway, to the Westport-Fall River boundary line; thence northerly five hundred (500) feet along said boundary line to the point of beginning.

The land bounded and described as follows:

Beginning at the intersection of the north line of the State Highway (Route 6) with the Westport-Dartmouth boundary line; thence northwesterly along said north line of the State Highway (Route 6) to the east line of Washington Street; thence northerly along said east line of Washington Street; five hundred (500) feet; thence southeasterly along a line, which line is five hundred (500) feet northerly from and parallel to the north line of State Highway (Route 6) to a point on the Westport-Dartmouth boundary line; thence southerly along said boundary line to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at the intersection of the westerly line of Washington Street and the northerly line of the State Highway (Route 6); thence northwesterly along said northerly line of the State Highway (Route 6) to its intersection with the easterly line of Davis Road; thence northeasterly along said easterly line of Davis Road to a point which is 500' on a perpendicular line from the northerly line of the State Highway (Route 6); thence southeasterly along a line, which is 500' from and parallel to the northerly line of the State Highway (Route 6) to the westerly line of Washington Street; thence southeasterly along said westerly line of Washington Street to the northerly line of the State Highway (Route 6) to the point of beginning. The portion of the Town, bounded and described as follows:

Beginning at the intersection of the north line of the American Legion Highway (Route 177) with the west line of Sanford Road; thence northerly along the west line of Sanford Road one thousand (1,000) feet; thence westerly along a line, which line is northerly from, and parallel to the north line of the American Legion Highway, two thousand (2,000) feet; thence southerly along a line, which line is parallel to the west line of Sanford Road, one thousand (1,000) feet to a point on the north line of the American Legion Highway (Route 177); thence

easterly along said north line of the American Legion Highway (Route 177) to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at a point in the south line of Hix Bridge Road, which point is one thousand (1,000) feet easterly from the intersection of said south line with the east line of Main Road; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road one thousand (1,000) feet; thence easterly at a right angle to the last said line to Route 88; thence northerly along Route 88 to the south line of Kirby Road; thence westerly along said south line of Kirby Road to a point, which point is one thousand (1,000) feet easterly from the intersection of said south line with the east line of Main Road; thence southerly along a line, which line is one thousand (1,000) feet easterly from, and parallel to the east line of Main Road to the point of beginning.

The portion of the Town, bounded and described as follows:

Beginning at the intersection of the east line of Route 88 with the north line of Hix Bridge Road; thence northerly along the east line of Route 88 one thousand (1,000) feet; thence proceeding easterly along a line, which line is one thousand (1,000) feet northerly from, and parallel to the north line of Hix Bridge Road, five hundred (500) feet; thence proceeding southerly along a line, which line is five hundred (500) feet easterly from, and parallel to the east line of Route 88, to a point, which point is one thousand (1,000) feet southerly of the south line of Hix Bridge Road; thence proceeding westerly along a line which line is one thousand (1,000) feet southerly from, and parallel to the south line of Hix Bridge Road, five hundred (500) feet to the east line of Route 88; thence northerly along the east line of Route 88 to the point of beginning.

The portion of the Town bounded:

Northerly by Interstate Route 195;

Easterly by Old Bedford Road;

Southerly by Route 6;

Westerly by the Westport-Fall River boundary line.

The portion of the Town bounded as follows:

Bounded on the east by Route 88; on the south by the State Highway (Route 6); on the north by Interstate Route 195, and on the west by Old Bedford Road.

The portion of the Town bounded as follows:

Bounded on the west by Route 88; on the north by Interstate Route 195; on the east by Davis Road; and on the south by State Highway (Route 6).

(1957 STM, Article 6; 1973 STM, Articles 20, 21, 22, 23, 24, 25, 32 & 33; 1975 ATM, Article 38; 1990 ATM, Articles 46, 47 & 48)

(Editorial Note): The July 1973 meeting added paragraphs 2, 3, 4, 5, 6, 7, 8, and 9. The 1975 Article added the last paragraph "to clarify the zoning status of property currently occupied by White's Restaurant." Articles 46, 47, and 48 in 1990 changed portions of the Unrestricted District to the Business District as described in 3.1.B present paragraphs 7, 11, and 12 respectively.

C. As Unrestricted: All remaining portions of the Town.

(1963 ATM, Article 38)

D. Flood Plain District: See Article 6 and the maps referenced in Section 6.2.

(1975 STM, Article 11; 1977 ATM, Article 54; 2006 ATM, Article 8; 2009 ATM Article 31)

(Editorial Note): Article 8 of the 2006 ATM replaced section 3.1.D and then Article 31 of the 2009 ATM replaced section 3.1.D.

E. Aquifer Protection District: See Article 8 and map.

F. Telecommunications Facilities Overlay District: See Article 9 and Zoning Map.

G. Adult Entertainment Overlay District: The portion of the Town described as the following assessors' parcels as of May, 2008:

Assessor's Map 3, Lots 144, 144B through E

Assessor's Map 3, Lots 145 and 146

Assessor's Map 4, Lots 13 through 15, 16 and 16A

Assessor's Map 4, Lots 17 & 17A.

and further described on the Adult Entertainment Overlay District zoning map detail approved May, 2008, on file with the Town Clerk.

(Editorial Note): Article 54 of 1977 amended the map designation.

H. **Noquochoke Overlay District:** The portion of the Town described as the following assessors' parcels as of November, 2008:

Assessor's Map 33, Lot 17
Assessor's Map 33, Lot 45
Assessor's Map 33, Lot 47
Assessor's Map 33, Lot 47A
Assessor's Map 33, Lot 47E

And further described on the Noquochoke Overlay District Zoning Map detail approved May, 2009 on file with the Town Clerk.

(1998 ATM, Article 63 added the Aquifer Protection District and Article 65 added the Telecommunications Facilities Overlay District; 2008 ATM added the Adult Entertainment Overlay District; 2009 ATM added the Noquochoke Overlay District)

ARTICLE 4

USE REGULATIONS (Formerly Section IV)

4.0 Except as provided in Section 4.1.0 hereof, no building or structure shall be constructed, and no building, structure or land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized.

4.0.1 Residence/Agriculture Districts

- A.** Permitted Uses
(SEE TABLE OF USE REGULATIONS - pages 91-95)
- B.** Accessory use on the same premises, including, but not limited to the following:
 - 1.** Use of room or rooms in a dwelling for customary home occupations conducted by

resident occupants, such as dressmaking, candy making, or for the practice, by a resident, of a recognized profession.

2. Use of premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other artisan, provided that no manufacturing or business requiring substantially continuous employment be carried on.
3. Display of a sign pertaining to a permitted use with a total area of not more than six (6) square feet.
4. Use of the premises by a resident fisherman, possessing a commercial shellfish license, for the shucking or removal of meats from shellfish, caught by said resident.
5. Use of an accessory apartment, an independent dwelling unit of five hundred (500) to nine hundred (900) square feet contained within a single-family residence. The unit shall have a separate exterior entrance, a kitchen/living room, a bathroom and a maximum of one bedroom. Either unit shall be occupied by the owner.

One Accessory apartment shall be allowed by right providing the following criteria are met:

- a. Approval from the Board of Health.
- b. Approval from the Fire Department.
- c. Building, plumbing, electrical and any other required permits are obtained.
- d. The accessory apartment is contained within a single-family dwelling.
- e. If an external staircase is needed

to reach an accessory apartment, this staircase must be enclosed and not change the general appearance of a single-family house.

- f.** Space may be provided by either raising the roof, or extending the dwelling, but only in accordance with current height and setback requirements.
- g.** To maintain the single-family character of the neighborhood, the entrance to the accessory apartment should be on the side or rear, if possible, but may be through the front door, if there is a vestibule.
- h.** The owner must occupy one of the two units.
- i.** There shall be no more than one accessory apartment within a single-family dwelling.
- j.** Accessory apartments shall be occupied by no more than 2 persons.
- k.** The family dwelling containing an accessory apartment shall be in conformity with By-Law "**Permitted Uses - d.** Renting of rooms or furnishing of board for not more than four persons in a dwelling regularly occupied for residential purposes."
- 1.** The gross area of the accessory apartment shall be: **minimum** - 500 square feet; **maximum** - 35% of the total area of the single-family dwelling before conversion, but not to exceed 900 square feet, exclusive of staircase and entrance area.

(2006 ATM, Article 6)

- C.** The keeping of less than four dogs, three

months old or over except that multi-family (houses or premises containing more than three separate family) units may have a maximum of one dog per separate family unit.

D. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in 2.4.2.1 of this By-Law.

1. Private club not conducted for profit.
2. Conversion of a one-family dwelling existing at the time of adoption of this By-Law into a two-family dwelling.
3. Bath houses, beach clubs, boat landings, wharves, and boat yards for construction, storage, maintenance and repair of boats.
4. Public or private golf courses; which shall not include driving tees, ranges, miniature courses and similar uses operated for commercial purposes.
5. Public or private facilities for outdoor recreation including play and sporting areas, horseback riding, swimming, skin-diving, camping, boating, hiking, field trails, nature study and fishing.
6. Public or private facilities for the hatching and propagation of finfish and shellfish.
7. The keeping of more than three dogs, but less than seven, three months old or over for non-commercial/recreational purposes.
8. Bed and Breakfast consisting of renting rooms on a daily or weekly basis and providing breakfast meals to guests renting such rooms.
 - a. The only meal to be provided guests shall be breakfast, and it shall only be served to guests taking lodging at the facility and shall

be included in the guestroom rate. The business owner shall conform to any requirements of the Massachusetts Department of Public Health and the Department of Public Health and Code Enforcement, adhere to all existing rules, regulations, codes and other Federal, Commonwealth of Massachusetts and Town of Westport requirements pertaining to health and safety as typically regulated and enforced by the Building Department, Board of Health, Conservation Commission, Fire Department, Planning Board and/or Board of Selectmen. A maximum of two guests per room are allowed and children under the age of twelve (12) shall not be considered in the total number of guests. Guestroom shall not include individual kitchen facilities and shall have at least one toilet, one bath/shower, and one washbasin separate from those required for the single-family residence portion of the dwelling. Additionally not more than forty-five (45%) percent of the entire habitable living space shall be allocated for Bed and Breakfast establishment purposes. One non-illuminated sign may be erected on the property, not to exceed eight (8) square feet in size, with no single dimension exceeding four feet (4').

9. Wind Energy Facility, commercial.
10. Wind Energy Facility, commercial or non-commercial, with tower height over 140 feet.
11. Shared Wind Energy Facilities.
12. Wind turbines, three or more on one parcel.

(2007 ATM, Article 21)

- E. Uses which may be permitted by the Planning Board in accordance with Section 2.6 Special Permits - Planning Board.

- 1. Assisted and Independent Living Facilities (Article 11.0)

(1957 STM, Article 5; 1963 ATM, Article 38; 1973 STM, Articles 18 & 43; 1975 ATM, Article 42; 1977 STM, Article 7; 1978 ATM, Article 25; 1979 ATM, Article 21; 1981 ATM, Article 42; 1990 ATM, Article 53; 2000 ATM, Article 51; 2003 ATM, Article 48; 2005 ATM, Article 5, 2007 ATM, Article 21) (References are to former sections)

(Editorial Note): Article 38 in 1963 added the introductory paragraph. Article 18 in 1973 added section "A(6) Two-family dwelling" and Article 43 added sections B(4), B(5) and B(6). In 1975, Article 42 added section A(8). Article 7 in 1977 added section A(5)(d). In 1978, Article 25 added the second and third sentences to section A(8). Section A(9) was added by Article 21 of 1979. The second and third sentences in section A(8) were deleted by Article 42 in 1981. Article 53 in 1990 added section 4.0.1.B.5. allowing one accessory apartment with criteria. (See Appendix.) Article 48 of the 2003 ATM added provisions for a Bed & Breakfast. Article 5 of the 2005 ATM added provisions for Assisted and Independent Living Facilities. Article 6 of the 2000 ATM revised 4.0.1.B.5.(d), deleted the entire section of 4.0.1.B.5.(e), changed the numbering of 4.0.1.B.5.(f) to 4.0.1.B.5.(e), deleted 4.0.1.B.5(g) and inserted a new section 4.0.1.B.5(f) and then renumbered the balance of that section of article 4.0.1.B.5.(g) through 4.0.1.B.5.(l). Article 21 of the 2007 ATM added 4.0.1.D.8 -12 provisions for wind turbines.

4.0.2 Business District

- A. Permitted Uses
(SEE TABLE OF USE REGULATIONS - pages 91-95)
- B. Any wholesale or retail business, research laboratory, service, or public utility not involving manufacture on the premises, except for products, the major portion of which is sold on the premises by the producer to the consumer.
- C. Uses which may be permitted by the Board of Appeals in accordance with the regulations appearing in Section 2.4.2.1 of this By-Law.
 - 1. Place of amusement of assembly, club conducted for profit.

2. Wind Energy Facility, commercial.
3. Wind Energy Facility, commercial or non-commercial, over 140 feet in height.
4. Shared Wind Energy Facilities.
5. Wind turbines, three or more on one parcel.

(2007 ATM, Article 21)

- D. (2008 ATM, Article 45 deleted this section)

(1963 ATM, Article 38; 1998 ATM, Article 64)

4.0.3 Unrestricted District

- A. Any lawful use shall be permitted, provided that it does not impair the use of adjacent properties by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration, or danger of explosion or fire.
- B. No new tire storage yard or site shall be established, and no existing tire storage yard or site shall be expanded in area, inventory, or capacity, without a special permit granted by the Board of Appeals in accordance with the regulations appearing in Section 2.4.2.1. of this By-Law. For purposes of this section, "tires" shall include new or used rubber tires, tire casings, tire tubes, rubber scraps, and/or any other by-product of rubber tires.
- C. (2008 ATM, Article 45 deleted this section)
- D. Uses that may be permitted by the Board of Appeals in accordance with Section 2.4.2.1 of this by-law:
 1. Wind Energy Facility, commercial.
 2. Wind Energy Facility, Commercial or Non-commercial, over 140 feet in height.
 3. Shared Wind Energy Facilities.

4. Wind turbines, three or more on one parcel.

(1963 ATM, Article 38; 1987 ATM, Article 78; 1998 ATM, Article 64; 2006 ATM, Article 9; 2007 ATM, Article 21)

4.0.4 Flood Plain District

- A. Any use permitted in the applicable residence/ agriculture, business or unrestricted district in which the flood plain district is located except that no new construction, substantial improvement or other land development shall be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Town.

(1975 STM, Article 11; 1978 ATM, Article 22)

(Editorial Note): The 1978 Article replaced everything after "located" in the first sentence. See Appendix for prior version. The 2007 Article added the provisions for wind energy facilities.

4.0.5 Aquifer Protection District (See Article 8)

4.0.6 Telecommunications Facilities Overlay District (See Article 9)

4.0.7. Adult Entertainment Overlay District (AEOD - see Article 16)

4.0.8 Noquochoke Overlay District (NOD - see Article 19)

(2009 ATM, Article 28)

4.1 NON-CONFORMING USES

- 4.1.0 The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with the regulations of the district in which it is located and allow the right to be sold to any equal or similar business.

4.1.1 Abandonment

A non-conforming use, which has been abandoned four years shall not be re-established and any future use shall conform with this By-Law.

4.1.2 Changes

A non-conforming use may be changed so as to conform to this By-Law but once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use or structure may be changed provided there is a finding by the Board of Appeals that such change shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

4.1.3 Alteration

Pre-existing non-conforming structures or uses may be altered provided there is a finding by the Board of Appeals that such alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

4.1.4 Restoration

A non-conforming structure damaged or destroyed by fire or other causes may be repaired or rebuilt.

4.1.5 Signs

The above provisions shall not apply to billboards, signs, or other advertising devices subject to the provisions of Section 29-33, inclusive of, Chapter 93 and to Chapter 93D of the General Laws.

(1963 ATM, Article 38; 1973 STM, Article 16; 1978 ATM, Article 21; 2008 ATM, Article 45)

(Editorial Note): Article 16 of 1973 repealed the 1963 section - See Appendix for earlier version. Article 21 changed sections 4.3.2 0 - 4.3.4 substantially and added section 4.3.5. At the May 3, 2006 ATM, Article 9 replaced section 4.0.3.C and added sections a. through j. and sections 1 through 8.

4.2 **COMPLIANCE WITH M.G.L CHAPTER 40A**

It is the intent and purpose of these By-Laws to conform with M.G.L. Chapter 40A and amendments thereto, and to the extent that any provisions hereof are in conflict with the provisions of said Chapter 40A, the provisions of Chapter 40A shall supersede and control the subject matter thereof. Additionally, all matters of procedure regarding Zoning By-Laws and provisions thereof are specifically incorporated herein by reference thereto.

(1978 ATM, Article 21)

ARTICLE 5

PARKING AND SIGN REGULATIONS (Formerly Sections VI I & VI B)

5.1 **OFF-STREET PARKING**

5.1.0 Parking facilities off the street right-of-way on any lot which is hereafter developed for new construction shall be provided on the same lot as the building for each use within the district or within a radius of 500 feet of any part of the building which it is intended to serve. Off-street parking shall be designed to prevent the necessity of any vehicles backing into a public way. No parking shall be less than 5 feet from a road or property line. Each parking space shall have a usable area of at least 180 square feet and be served by a two-way access lane at least 26 feet wide, except that if parking stalls are angled at 60 degrees or less, a one-way access lane may be used with a minimum of 20 feet. The 26-foot two-way access lane shall not be required for dwellings of up to four units. In such cases a 12-foot one-way access is sufficient. Joint use of off-street parking facilities is permitted provided that the area of such facilities shall be not less than the sum of the requirements of the various users computed in accordance with the schedule. The number of spaces required for each use shall be determined by the Building Inspector based upon the following criteria:

<u>Use</u>	<u>Minimum Requirements</u>
Residence - housekeeping, rooms For roomers or boarders,	1.5 spaces per unit.

apartments, multi-family	
Customary Home Occupation or recognized profession	1 space for each home occupation or profession in addition to residential requirements.
Retail stores, Financial Institutions, Consumer Services, Professional or Business Services and similar businesses, and municipal buildings except schools.	1 space for each 200 square feet floor space.
Wholesale showrooms and operations, warehouses and storage areas	1 space for each 1,000 sq. ft. plus one additional space for each 2 employees actively engaged at any one time.
Bed and Breakfast	1 space per guest room, plus two spaces for the residence, in a location normal for residential use, and on the premises.
Hotels and Motels	1 space per room and 1 space for every three seats in restaurants and meeting rooms and 1 space for each two employees.
Restaurants, clubs, theaters,	1 space for every 3 seats, churches or other places of public 50 square feet of gross assembly floor area and 1 space for every 2 employees.
Barber shops and beauty parlor	3 spaces for each operator
Bowling alley and Tennis Courts	4 spaces for each alley or court.
For any use not specifically listed	1.5 spaces for each 1,000 square feet of floor space and 1 space for each 2 employees.

5.1.1 Other uses conducted for profit on premises within or without a building such as flea markets, auction houses, churches and fairs shall provide for off-street parking in accordance with use

schedule.

The Board of Appeals may grant a special permit to any person or organization to allow for sporadic or intermittent use of a premises without complying with the requirements of this section.

- 5.1.2** Industrial and Commercial buildings shall provide adequate parking, maneuvering, and loading space on premises for freight and delivery trucks in addition to the minimum requirements for spaces in paragraph 5.1.0 above.

(1984 ATM, Article 35)

(Editorial Note): The 1984 Article rescinded the off-street parking regulation adopted at the Sept. 13, 1983 STM, Article 19, and substituted the above section therefore. (See Appendix for original).

5.2 **SIGNS**

- 5.2.1** The provisions of Section 29-33, Chapter 93 G.L., (relating to outdoor advertising), and the Rules and Regulations adopted thereunder by the Outdoor Advertising Division of the Massachusetts Highway Department.

- 5.2.2** Nothing in this By-Law shall be construed to abrogate:

- A.** The Town's control under Ch. 87, Section 9, governing signs placed on shade trees, enforceable by the Tree Warden;
- B.** The Town's control under Ch. 85, Section 8, over signs placed within a public way, enforceable by the Selectmen;
- C.** The Town's control under Ch. 111, Section 123 to 125, governing Board of Health action against nuisances.

ARTICLE 6

WESTPORT FLOOD PLAIN DISTRICTS

6.1 **STATEMENT OF PURPOSE**

The purposes of the Flood Plain District are to:

- 6.1.1 Ensure public safety through reducing the threats to life and personal injury;
- 6.1.2 Eliminate new hazards to emergency response officials;
- 6.1.3 Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 6.1.4 Avoid the loss of utility services, which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- 6.1.5 Eliminate costs associated with the response and cleanup of flooding conditions;
- 6.1.6 Reduce damage to public and private property resulting from flooding waters.

6.2 **FLOOD PLAIN DISTRICT BOUNDARIES, FLOODWAY DATA AND BASE FLOOD ELEVATION**

The Flood Plain District, Flood Way Data and Base Flood Elevation are as follows:

Flood Plain District Boundaries and Base Flood Elevation Data

The Flood Plain District is herein established as an overlay district.

The District includes all special flood hazard areas within the Town of Westport designated as Zone A, AE, AH, AO, A99, V, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Bristol County FIRM that are wholly or partially within the Town of Westport are panel numbers 25005C0342F, 25005C0344F, 25005C0353F, 25005C0354F, 25005C0361F, 25005C0363F, 25005C0366F, 25005C0368F, 25005C0432F, 25005C0442F, 25005C0452F, 25005C0454F, 25005C0456F, 25005C0458F, 25005C0459F, 25005C0461F, 25005C0462F, 25005C0463F, 25005C0464F, 25005C0466F, 25005C0467F, 25005C0468F, 25005C0469F, 25005C0526F, 25005C0531F and 25005C0550F dated July 7, 2009. The exact boundaries of the District may be defined by the 100-year

base flood elevations shown on the official FIRM (Flood Insurance Rate Map) dated July 7, 2009, and further defined by the Bristol County Flood Insurance Study (FIS) report dated July 7, 2009. The Firm and the FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning, Building Inspector, Conservation Commission and Zoning Board of Appeals.

(2010 ATM, Article 35)

6.2.1 Floodway Data

In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data consistent with the State Building Code as stated in 780 CMR, 7th Edition, Appendix 120.G301.1, Item 3, shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2010 ATM, Article 35)

6.2.2 Base Flood Elevation Data

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

6.3 NOTIFICATION OF WATERCOURSE ALTERATION

In a riverine situation, the Building Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- Bordering States (optional)
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor

6.4 **USE REGULATIONS**

6.4.1 **Reference To Existing Regulations**

The Flood Plain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code, which addresses flood plain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

6.4.2 **Other Use Regulations**

6.4.2.1 Within Zones AH and AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

- 6.4.2.2** In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Bristol County Flood Insurance Rate Map (FIRM) encroachments are prohibited in the regulatory floodway, which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 6.4.2.3** Man-made alteration of sand dunes within Zones V1-30, VE, and V, which, would increase potential flood damage are prohibited.
- 6.4.2.4** All new construction within Zones V1-30, VE, and V must be located landward of the reach of mean high tide.
- 6.4.2.5** All subdivision proposals must be designed to assure that:
- a.** Such proposals minimize flood damage;
 - b.** All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c.** Adequate drainage is provided to reduce exposure to flood hazards.
- 6.4.2.6** Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
- 6.4.2.7** There shall be established a "routing procedure," which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, Building Commissioner and Zoning Board of Appeals for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

6.5 **PERMITTED USES**

Except as otherwise provided, in the Flood Plain District, no new building shall be constructed, and no existing structure shall be enlarged within its existing footprint, moved to a more vulnerable location, or altered except to upgrade for compliance with health and safety codes; nor shall any land, building or structure be used for any purposes permitted in the underlying district, except:

- 6.5.1 Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- 6.5.2 Forestry and nursery uses.
- 6.5.3 Outdoor recreational uses, including fishing, boating, play areas, etc., but excluding buildings and structures.
- 6.5.4 Conservation of water, plants, wildlife.
- 6.5.5 Wildlife management areas, foot, bicycle, and/or horse paths.
- 6.5.6 Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- 6.5.7 Uses lawfully existing prior to the adoption of these provisions.

(1975 STM, Article 11; 1978 ATM, Article 22; 1982 STM, Article 21; 1985 ATM, Article 48; 1985 STM; Article 11; 2006 ATM, Article 8; 2009 ATM, Article 31)

(Editorial Note): The original Flood Plain Zoning was inserted into the By-Law by Article 11, of a 1975 Special Town Meeting, and consisted of seven sections. In 1978, sentences were added to 6, sections 6.0.3 and 6.0.5 and 6.0.6. The original section 6, 6.0.8 submitted at that meeting did not pass. A new section, 6.0.9 was added. The 1981 Annual Town Meeting passed over Article 52, which attempted to add 6, sections 6.0.10 and 6.0.11 to allow trailers in the flood plain on a year-round basis. The revised Section 6, 6.6.11 was adopted at the adjourned Special Town Meeting held August 25, 1982. At the Annual Town Meeting, April 3, 1985, Section 6, 6.0.1 was replaced to conform to the Revised Flood Insurance Rate Map, effective retroactively to March 18, 1985. A new section 6, 6.0.8 was added at the June 11, 1985 Special Town Meeting. See Appendix for original 1975 flood zoning. Article 40 at the 5/23/96 ATM amended the Flood Insurance Rate Map effective date from 3/18/85 to 7/15/92. At the Annual Town Meeting, May 3, 2006,

Sections 6, 6.0.1, 6.0.4 & 6.0.5 were replaced to conform to the Westport Flood Insurance Rate Map, and 6.0.10 & 6.0.12 were added. Article 31 at the 2009 Annual Town Meeting replaced the existing language of Article 6 with language required by the Federal Emergency Management Agency to be in compliance with Title 44, Chapter I, Part 67, Code of Federal Regulation (see Appendix for original) Article 35 of the 2010 ATM revised two sections for the purpose of the acceptance of the official Flood Insurance rate Map (FIRM) from the Federal Emergency management Agency.

ARTICLE 7

INTENSITY REGULATIONS (Formerly Section V)

7.0 Except as is otherwise permitted under the provision of Section 6 of Chapter 40A of the General Laws, a dwelling hereafter erected or placed in any district shall be located on a lot having not less than 60,000 square feet of area and 150 feet of frontage. At least 30,000 square feet of that area must be contiguous upland. No existing lot shall be changed as to size or shape so as to result in the violation of such area or frontage requirements. And no more than one dwelling shall be built on any such lot. Provisions of this Article 7.0 shall not apply to any existing lot, which complies with previously approved intensity regulations as to area and frontage if such lot was recorded in the Registry of Deeds at the effective date of this regulation.

(1957 ATM, Article 36; 1959 ATM, Article 25; 1963 ATM, Article 38; 1970 ATM, Article 50; 1973 STM, Article 17; 1978 ATM, Article 21; 1995 ATM, Article 43; 2000 ATM, Article 50)

(Editorial Note): See Appendix for earlier versions. Article 17 of 1973 Special Town Meeting deleted all prior sections. Article 21 in 1978 inserted "section 6 of Chapter 40A" in place of "Section 5A or Section 7A of Chapter 40A".

7.1 A dwelling hereafter erected or placed in the Residence/ Agriculture District or in the Business District shall not exceed either 2 1/2 stories or 40 feet in height.

(1957 ATM, Article 36; 1970 ATM, Article 50; 1973 STM, Article 17)

(Editorial Note): See Appendix for earlier versions.

7.2 No dwelling for occupancy by two families shall hereafter be erected or located on a lot having an area of less than 80,000 square feet and 200 feet frontage. For each

additional 20,000 square feet of area and 50 feet of frontage in the lot, the size of the dwelling may be increased to accommodate one additional family or dwelling unit. A lot to contain a dwelling for occupancy by more than one family must contain not less than 30,000 square feet of contiguous upland, plus 15,000 additional square feet of contiguous upland for each family in excess of one.

(1970 ATM, Article 50; 1973 STM, Article 17; 1995 ATM, Article 43; 2000 ATM, Article 50)

(Editorial Note): See Appendix for 1970 version.

7.2.1. Notwithstanding any contrary provisions in the foregoing requirements of Sections 7.1 and 7.2, or in the requirements of Section 7.6, the following dimensional and density requirements shall be applicable to Assisted Living Facilities and Independent Living Facilities authorized under Article 11 of this By-Law.

	Residence/ Agricultural	Business
Minimum land area per unit*	5,500 sq. ft.	5,500 sq. ft.
Minimum front setback	100 ft.	100 ft.
Minimum side and back yard setback/buffer	60 ft.	60 ft.
Minimum setback from surface water or wetlands	80 ft.	80 ft.
Minimum open space	50%	30%
Maximum height	40 ft.	40 ft.
Minimum frontage	200 ft.	200 ft.

- Exclusive of wetland resource areas, water bodies, and required open space. For projects proposing more than 10 dwelling units, either assisted or independent living units, with more than 50% of these being rental units, the Planning Board may increase the total number of units allowed by 10%. At least 50% of the bonus units must be maintained as affordable units.

(2004 ATM, Article 18)

All age-qualified Assisted and Independent Living developments for the elderly must comply with the provisions of M.G.L. Chapter 151B, Section 4, including but not limited to the requirement that such development be built on one parcel or on contiguous parcels of land totaling at least five (5) acres in size.

(2005 ATM, Article 26)

- 7.3** No dwelling hereafter erected shall occupy, either alone or with other buildings, more than 65% of a corner lot nor more than 50% of any other lot, the measurements to be taken at ground level.

(1983 STM, Article 21)

- 7.4** Any lot hereafter created for any non-residential purpose in any district must conform to the minimum standards stated above of 150 feet of frontage and 60,000 square feet of area. At least 30,000 square feet of that area must be contiguous upland. Existing lots or parcels of land shall not be changed as to size or shape so as to result in the violation of such minimums and lots containing less than such minimums shall not be changed to further decrease the area or frontage but may be added to.

(1975 ATM, Article 39; 1995 ATM, Article 43; 2000 ATM, Article 50)

- 7.5** The current provisions of Section 7.0.1 Intensity Regulations pertaining to frontage and/or area requirements shall not apply to a lot for single family residential use which at the effective date of this bylaw amendment was not held in common ownership with any adjoining land and had less than the current requirement, but at least 20,000 square feet of area and 100 feet of frontage. This bylaw shall apply only to such land as is currently recorded in the Registry of Deeds.

(1982 STM, Article 22)

7.6 YARD OR SET-BACK REQUIREMENTS

7.6.1 Front Yards

Every building or structure shall be built or placed on a lot so that there shall be a front yard at least 25 feet clear depth from the street line or lines to be part of such building or

structure closest to the street line; provided that no building or structure need be set back more than the average of the set backs of the building next thereto within 250 feet on both sides of the lot in question.

7.6.1.1 Front Yard Width

7.6.1.1.1 Purpose

The purpose of this By-Law is convenient access to buildings; and to discourage irregularly configured front yards and lots, which create difficulties in assigning addresses, in public safety response, and in maintenance.

7.6.1.1.2 Minimum Width

The minimum front yard width, as measured between the side lot lines, shall be fifty (50) feet. The minimum front yard width shall be maintained from the street line (street layout line/sideline) to the street setback line (front building line). Lot Width shall be determined by measuring the diameter of the largest circle that can be located along a continuous, but not necessarily straight line from the lot frontage to the principal structure on the lot without the circumference intersecting the side lot lines.

7.6.1.1.3 Corner Lots

For corner lots, the minimum width requirement shall apply to yards on all streets bounding the lot, and shall be maintained from the street line (street layout

line/sideline) to the street setback line (side or rear building line) of the nearest corresponding side of the building.

7.6.1.1.4 Waiver

In order to accommodate constraints posed by existing irregular lots and streets, such as lots fronting on existing streets with small sideline radii (tight curves) and existing lots with environmental, agricultural and topographic constraints, or historical significance, this requirement may be waived or modified by the grant of a special permit by the Planning Board, upon findings by that Board that waiving this requirement will not detract from the public health, safety, welfare and convenience and that such waiver is not inconsistent with the intentions of this By-Law. In such cases, the lot shall comply to the greatest extent practicable with this provision.

7.6.1.1.5 Applicability

The minimum front yard width requirements of Section 7.6.1.1 requirement shall apply to all subdivision or re-subdivision of land into new lots, by whatever process, with the exception of creation of lots measuring 7 acres or more. The re-configuration of lawfully pre-existing non-conforming lots shall not increase the degree of non-conformity of the front yard

width.

(2006 ATM, Article 5)

7.6.2 Side Yards

At each side of every building or structure, there shall be a side yard not less than ten feet in clear width between side of the building or structure and the side lot lines. However, in the case of corner lots, there shall be a set back requirement of 25 feet from the street line to the side of any building or structure; provided that no building or structure need be set back more than the average of the set backs of the buildings next thereto within 250 feet of said lot in question.

7.6.3 Rear Yards

Behind every building or structure there shall provided a back yard between the rear line of a building or structure and the rear lot line not less than six feet in depth and/or 25 feet from a rear street line.

(1982 STM, Article 19)

(Editorial Note): The 1982 article rescinded existing By-Laws and/or regulations concerning set backs and inserted the above setback requirements into the Zoning By-Law. Article 5 of the 2006 ATM added 7.6.1.1 "Front Yard Width" and sections 7.6.1.1.1. through 7.6.1.1.5.

7.6.4 Whenever a property line, road layout or street line cannot be determined with certainty, and there is a clearly defined traveled portion of the street or way consisting of pavement, gravel or other road surface material, a building or structure shall be set back a minimum of fifty (50) feet from the edge of the traveled portion of such way, in lieu of twenty-five (25) feet from the line of the layout.

(1987 ATM, Article 74)

7.7 (Reserved)

7.8 Any lot shown on a recorded plan which was endorsed by the Planning Board under General Laws, Chapter 41, Section 81P because the plan depicted a division of land on which two or

more substantial buildings were standing when the Subdivision Control Law went into effect in the Town into separate lots, on each of which one of such buildings remained standing on the date the plan was endorsed, shall hereafter be treated for all purposes hereunder as a lawful, pre-existing non-conforming lot. No such lot shall hereafter be changed to create a new violation of any provision of these By-Laws, or increase or change an existing non-conformity with these By-Laws.

(1998 ATM, Article 74)

ARTICLE 8

AQUIFER PROTECTION DISTRICT

8.0 PURPOSE OF DISTRICT

The purpose of this Aquifer Protection District is:

- A.** To protect, preserve and maintain the groundwater supply and the major groundwater recharge areas within the Town.
- B.** To preserve and protect the sources of water supply for the public health and safety.
- C.** To conserve the natural resources of the Town.
- D.** To protect the groundwater and the major groundwater recharge areas of the Town from adverse land use practices.

8.1 SCOPE

The Aquifer Protection District encompasses those areas of the Town where groundwater flow rates equal 1400 gallons per minute (G.P.M.) or greater, as delineated on a map on file at the office of the Town Clerk, which map reflects the best USGS hydro-geologic information as of the date of enactment hereof. The boundaries encompass the aquifer, and the aquifer's most significant recharge areas. The Aquifer Protection District overlays all other zoning districts.

8.2 ESTABLISHMENT AND DELINEATION OF AQUIFER PROTECTION DISTRICT

There is hereby established within the Town an Aquifer Protection District, consisting of aquifers and/or aquifer recharge areas. Aquifers and aquifer recharge areas are

defined by USGS standard geologic and hydrologic investigations which may include drilling observation wells, utilizing existing boring data and stratigraphic profiles, conducting seismic surveys or other geophysical techniques, performing pumping tests, water sampling and geologic mapping.

The boundaries of this District are delineated on a map at a scale of 1 inch to 1,000 feet entitled "Aquifer Protection District, Town of Westport" on file in the office of the Town Clerk. These boundaries reflect the best USGS hydro-geologic information available as of the date of the map.

8.3 **USE REGULATIONS**

8.3.1 The following uses, if allowed within the underlying District, are allowed within the Aquifer Protection District.

A. All primary uses permitted by the underlying District where the land is located, except those expressly prohibited under Section 8.3.2 or requiring a special permit under Section 8.3.3 below, and subject to the following:

- 1.** Pesticides and fertilizers shall not be stored in amounts exceeding what is necessary for household or business use on the premises for a period of twelve (12) months.

- 2.** Storage of home or business fuel intended to be consumed on-site for space heating, hot water heating and cooking purposes shall be in tanks not exceeding 660 gallons for residential use and 2,000 gallons for commercial use, whose design and installation is reviewed and approved by the Fire Department in accordance with applicable safety regulations, 527 CMR 9.0. Storage must be above ground, either in a freestanding container within a building or outdoors with protection adequate to contain a spill the size of the container's total storage capacity.

B. Existing non-conforming prohibited uses in

conformance with any applicable state and local regulations.

8.3.2 The following uses are prohibited within the Aquifer Protection District:

- A.** The manufacture, use, storage or disposal of toxic materials or hazardous wastes.
- B.** Car washes, laundromats, automotive service and repair facilities, sanitary landfills, dumps, junk yards, storage or disposal of solid waste. Sludge or septage may only be stored in compliance with 310 CMR 32.30 and 32.31.
- C.** Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).
- D.** Storage of commercial fertilizers as defined in M.G.L. c. 182, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- E.** The removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States geological survey), unless the original substances removed are redeposited within forty-five (45) days of removal on site to achieve a final grading greater than four (4) feet above the historical high water mark and except for excavations for the construction of building foundations or the installation of utility works and roadway construction.
- F.** Impervious cover on any lot, including buildings, structures, driveways, parking areas, gravel areas, patios, storage areas or any other impermeable surfaces that exceed fifteen (15) per cent of land area or 2,500 square feet, whichever is greater, unless a

system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality and exempting land primarily used for Agricultural or Horticultural purposes.

- G.** Sewage treatment facilities with the exception of:
 - 1.** Individual sewage disposal systems; and
 - 2.** Decentralized Innovative/Alternative (I/A) Treatment System(s) or Localized Enhanced Treat System(s), approved by the Westport Board of Health, that significantly reduce bacterial and nutrient discharge levels to the environment (as compared with conventional on-site septic systems).

(2009 ATM, Article 30)

- H.** Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Aquifer Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.
- I.** Truck or bus terminals.
- J.** Disposal of solid wastes with the exception of brush and stumps.
- K.** Storage of liquid hazardous materials, as defined in M.G.L. c.21E, unless such storage is either in a free standing container within a building or in a free standing covered container above ground level with protection adequate to contain a spill one and one half the size of the container's total storage capacity.
- L.** Storage of liquid petroleum products of any kind, except those incidental to normal household use and outdoor maintenance or the heating of a structure.
- M.** Industrial uses that discharge process

wastewater to the ground.

- N. Floor drainage systems discharging to the environment in any facility managing hazardous materials and wastes.
- O. Storage of road salt or deicing chemicals.

8.3.3 The uses set forth below are permitted within the Aquifer Protection District by **SPECIAL PERMIT** only, and are subject to the approval of the Granting Authority with such conditions as they may attach to their approval and subject to Section 8.3.2. The Special Permit Granting Authority shall be the Zoning Board of Appeals.

- A. All commercial and industrial activities permitted in the underlying district, after site plan review that demonstrates compliance with the requirements of this section:

All such commercial and industrial uses may be constructed and operated in such a manner as to discharge no wastewater except normal sanitary waste to subsurface disposal systems.

- B. Replacement, rehabilitation and modification of pre-existing non-conforming uses, in accordance with section 4.1 of Westport's Zoning By-Laws. The Special Permit Granting Authority shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater.

8.4 **SITE PLAN SUBMISSION REQUIREMENTS**

A. **General**

Eight copies of a site plan including all of the information required below shall be submitted at a scale no smaller than one inch (1") equals forty feet (40'). The site plan shall have been prepared, stamped and signed by a registered professional engineer, registered land surveyor or registered architect for each pertinent design element.

B. **Legal**

1. Name and address of the applicant and authorization of the owner, if different from the applicant.
2. Name and address of the owner(s) of record, if different from the applicant.
3. Name and address of person and firm preparing the plan.
4. Assessor's plat and lot number.
5. Existing zoning classification of the property, including the location of any zoning district boundary. All setbacks shall be clearly shown on each parcel.
6. Real property boundary of the parcel. All distances, angles, and total parcel area to be shown. Tie lines shall be used, if necessary to provide closure.
7. North arrow, scale and date of plan preparation. Benchmark data to be referenced. Dates of field surveys and dates of revisions to the plan, including purpose of each revision, shall be shown.
8. Location, width and purpose of all existing easements, reservations, restricted development areas, and areas dedicated to public use within and adjoining the parcel.
9. Description of all existing deed restrictions or covenants applying to the property, and their depiction on the plan if they apply to less than the entire parcel.

C. Physical Features

1. Geologic features, such as depth to bedrock, rock outcrops, depth to groundwater.
2. Existing topography at a two-foot (2') contour interval.
3. Vegetative cover, including existing wooded areas, significant isolated trees, meadows, cultivated fields, orchards, vineyards and similar features. A recent aerial photograph at a scale no smaller

than the scale of the site plan may be submitted to illustrate these features, provided that the parcel boundaries are superimposed thereon.

4. USDA-NRCS (Natural Resources Conservation Service).
5. Wetlands, streams, drainage swales, waterbodies, shorelines with mean high water reference, flood hazard areas.
6. Location, right-of-way and pavement width and location, and name of existing streets, roads, or ways bounding or intersecting the parcel.
7. Location of all existing structures including stonewalls, culverts, and drain pipes on the parcel.
8. Location of all wells, water mains, and other underground utilities and storage facilities.
9. Location of all septic tanks and leaching fields with appurtenant approval references noted.
10. Location of all uses not requiring structures, including outdoor storage, vehicular or equipment parking or repair areas.

D. Proposed Development

1. Grading and drainage plan showing proposed topography at two-foot (2') intervals. This information may be combined with the map showing existing conditions if it can be clearly depicted.
2. Location and proposed use of buildings and other structures, such as retaining walls, fences, and outdoor storage tanks.
3. Location and arrangement of site access and egress, including all paths for pedestrian and vehicular travel within the site. Cross-sections and profiles shall be supplied as necessary.
4. Location and size of well, water lines, sewage lines including septic tanks and leaching fields.
5. Proposed alterations to any of the physical

- features shown in Section D, item 2 above.
6. Location of all proposed uses not requiring structures, as in Section D, item 2 above.
 7. Additional information or detail as the SPGA may deem necessary to review the plan.

8.5 PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT

- 8.5.1 Each application for a special permit shall be filed with the Zoning Board of Appeals. The Zoning Board of Appeals shall transmit a copy of the application to the Planning Board, Conservation Commission, Board of Health and Fire Department, and request their comments and recommendations upon the application.
- 8.5.2 The Zoning Board of Appeals shall hold a hearing in conformity with the provisions of M.G.L. chapter 40A, § 9, within sixty-five (65) days after the filing of the application with the Zoning Board of Appeals. Notice of the Public Hearing shall be given by publication and posting and by first class mailing to "parties of interest" as defined in M.G.L. chapter 40A, § 11. The decision of the Zoning Board of Appeals and any extension, modification or renewal thereof shall be filed with the Town Clerk within thirty (30) days following the closing of the Public Hearing. Failure of the Zoning Board of Appeals to act within ninety (90) days after the application is filed shall be deemed as a Granting of the Permit.
- 8.5.3 The Special Permit Granting Authority shall grant a special permit only upon findings that (I) the proposed use does not pose an actual or potential threat of material damage to groundwater quality, and (ii) that all adverse impacts to groundwater and disturbance of natural vegetation have been avoided or minimized to the maximum extent reasonably practicable, giving due regard to the economic scope of the project, and the public benefits to be secured from the project.
- 8.5.4 The Special permit Granting Authority may impose reasonable restrictions and conditions upon an approval action to achieve maximum compliance with

this By-Law.

8.6 **ENFORCEMENT OF THIS BY-LAW**

Enforcement of this By-Law shall be by the Zoning Enforcement Officer of the Town.

8.7 **RIGHT OF APPEAL**

Any person aggrieved by a decision of the Board of Appeals may seek judicial review thereof in accordance with M.G.L. Chapter 40A, Section 17.

8.8 **SEVERABILITY**

A determination that any portion or provision of this Aquifer Protection District By-Law is invalid shall not invalidate any other portion or provision thereof. **NOTE: See Map in Back**

(1998 ATM, Article 63)

ARTICLE 9

TELECOMMUNICATIONS FACILITIES OVERLAY DISTRICT

9.0 **Establishment of District**

This section establishes a Telecommunication Facilities Overlay District in addition to the zoning districts described in Article 3 and other overlay districts described herein. The District is established as a special district, which may overlay any other zoning district. The provisions of this Article shall apply in addition to the requirements of the underlying zoning district.

9.1.1 **Purpose**

The telecommunications Facilities Overlay District is established for the purpose of permitting wireless communications towers and related facilities in specific areas of Westport, in order to minimize visual impacts from such towers and facilities on the Town's rural, residential and village areas.

9.1.2 **Location**

The Telecommunications Facilities Overlay District consists of all areas of the Town zoned as "Business" or "Unrestricted," and any other areas that may be added thereto by amendment to the Zoning Map duly adopted in accordance with law.

9.1.3 Use Regulations

Land within the Telecommunications Facilities Overlay District may be used for all the purposes permitted in the underlying zoning district, as modified by any other overlay district, and for telecommunications facilities subject to the provisions of Section 9.2. All development shall be subject to the regulations of the underlying zoning district, and of any applicable overlay district that are not specifically modified by the provisions of Section 9.2.

9.2 Telecommunications Facilities

9.2.1 General Provisions for Wireless Communications Facilities

9.2.1.1 Special Permit Requirement: Wireless communications towers and facilities (including antennas and accessory structures, if any) may be erected only in a Telecommunications Facilities Overlay District upon the issuance of a special permit with site plan approval by the Board of Appeals, subject to the condition herein.

9.2.1.2 Applicability: The provisions of this Section 9.2 (except Section 9.2.7) shall apply to any wireless communication tower or facility except the following:

- a. An antenna structure used by a federally licensed amateur radio operator, provided that the (1) tower shall be set back from property lines a distance at least equal to its height, and (2) the tower must be removed if the use is discontinued for six months.

9.2.2. Standards for Towers

Construction of wireless communication towers shall be subject to all of the following conditions:

9.2.2.1 Only self-supporting towers shall be permitted. Guyed towers are specifically prohibited.

9.2.2.2 Tower height shall not exceed 190 feet above the existing terrain.

- 9.2.2.3 A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base.
- 9.2.2.4 A tower shall be set back from any public way, except interstate highways, a distance at least equal to one and one-half times the vertical height of the tower, measured at the mean finished grade of the tower base.
- 9.2.2.5 Towers shall be designed to accommodate facilities for at least three separate carriers, and the owners shall allow co-location by such carriers, on terms and conditions prevailing in the market place.
- 9.2.2.6 Towers shall not include facilities for microwave transmission.
- 9.2.2.7 All network interconnections from the communications lot shall be via landlines.
- 9.2.2.8 One telecommunications facility accessory building, not to exceed in the aggregate 300 square feet gross floor area per carrier may be constructed, provided that the building is similar in architectural style and materials to other structures in the neighborhood.
- 9.2.2.9 Any electrical generators shall be shielded so as to prevent unreasonable noise impacts on neighboring properties.
- 9.2.2.10 Tower lighting shall not be permitted. If the FAA would require lighting of proposed tower because of its height, the height should be reduced to eliminate the need for lighting.
- 9.2.2.11 Existing on-site vegetation shall be preserved to the maximum extent practicable.

9.2.3 **Special Permit Procedures**

9.2.3.1 **Submittal Requirements**

An application for a permit for a

wireless communications tower or other exterior wireless communications facility shall include seven copies of a site plan prepared by a professional engineer or land surveyor registered to do business in the Commonwealth of Massachusetts, which shall show the following at minimum:

- a. Ownership, zoning, use, the general location of structures and topography within two hundred feet of the property line of the lot; and
- b. All major site features; including:
 - i. Driveways, including widths;
 - ii. Parking areas;
 - iii. Street line, including widths;
 - iv. Roadways, including widths;
 - v. Pedestrian walks, including widths;
 - vi. Wetlands;
 - vii. Drainage, including detail design data, pipe sizing, etc.; and
 - viii. Stone walls.

The applicant shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures.

9.2.3.2 Required Findings: The Board of Appeals may grant a special permit for a tower only if it makes all of the following findings:

- a. Existing or approved towers available for use by the applicant cannot accommodate the wireless communications equipment planned for the proposed tower.

- b. The design of the tower and supporting facilities will minimize adverse visual effects on the environment to the extent feasible.
- c. Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.

9.2.3.3 Conditions: The Board of Appeals may impose reasonable conditions on a special permit granted under this section, including fencing requirements and painting and lighting standards.

9.2.4 Modification of Approved Facility

9.2.4.1 Additional antennas and equipment may be added to a facility that has received a special permit under this section, unless specifically prohibited in the special permit decision. The Zoning Enforcement Officer must be notified at least 30 days prior to any such modification.

9.2.4.2 Any modifications to approved facilities must be consistent with the requirements of this Section 9.2.

9.2.5 Non-Use

Any wireless communications tower, facility or accessory structure, which has not been used for two years shall be dismantled and removed at the owner's expense.

(1998 ATM, Article 65; 2001 ATM, Article 50)

ARTICLE 10

PHASED DEVELOPMENT

10.0 PHASED DEVELOPMENT

10.1 PURPOSE

The purpose of this section is to promote orderly growth in the Town of Westport; to preserve the water quality of the Westport River watershed; to phase growth so that it will not unduly strain the community's ability to provide basic education, public facilities and services; to provide the

town, it's boards and agencies information, time and capacity to incorporate such growth into the Master Plan and the town's budget, and to preserve and enhance existing community character and the value of property.

10.2 APPLICABILITY AND EXEMPTIONS

This section 10 regulates the rate at which building permits may be issued for land that is the subject of a plan submitted to the Planning Board after the date of enactment hereof by Town Meeting, either for approval under the subdivision control law, or for endorsement "approval not required" under M.G.L. c.41, Section 81P. This section shall not apply to any plan for which an application for such approval or endorsement was filed with the Planning Board before the date of enactment, nor to any definitive plan filed after enactment hereof, if the land shown thereon was included in a preliminary plan filed under M.G.L. c.41, Section 81S before the date of the enactment, provided that application for approval of such definitive plan is filed within seven months of the date that such preliminary plan was filed.

10.3 DEVELOPMENT SCHEDULE

In any calendar year, the Building Inspector shall not issue a permit for the construction for any lot created by a plan that is subject to this section 10, if the aggregate number of permits issued for lots shown on the plan, when combined with permits issued in previous calendar years, exceeds the totals set forth below.

Year	Maximum Total Permits
Year of endorsement of plan	Greater of 2 lots or 20% of total lots on plan
2nd year after endorsement	Greater of 4 lots or 40% of total lots on plan
3rd year after endorsement	Greater of 6 lots or 60% of total lots on plan
4th year after endorsement	Greater of 8 lots or 80% of total lots on plan
5th year after endorsement	No limit

For the purpose of calculations hereunder, all fractional totals shall be rounded upward.

10.4 MULTIPLE SUBDIVISIONS FROM SINGLE PARCEL

The Building Inspector will, for the purpose of calculations under this By-Law, aggregate all lots created from two or more plans of land if all the lots shown on such plans were divided from a single, contiguous parcel of land that was in one-ownership or under the control of one entity on the date of enactment of this By-Law.

(2005 ATM, Article 25)

10.5 PERIOD OF PHASED DEVELOPMENT

The provisions of this By-Law shall apply to all lots created through the division of land for the period of eight (8) years from and after the effective date of this By-Law.

(2000 ATM, Article 49)

10.6 AFFORDABLE UNITS

Affordable Units, as defined in Article 1.1, and units in Assisted and/or Independent Living Facilities shall be exempt from the phased development schedule.

(2005 ATM, Article 25)

ARTICLE 11

ASSISTED AND INDEPENDENT LIVING FACILITIES

11.0 ASSISTED AND INDEPENDENT LIVING FACILITIES

11.1 PURPOSE

The purpose of this Assisted and Independent Living Facility By-Law is to provide a mechanism for the approval of:

11.1.1 Assisted Living Facilities (ALFs) within a residential environment that offers supportive services to individuals who are unable to live independently in the community by offering supervision and/or assistance with basic activities of daily life, such as, but not limited to, dressing, bathing, toileting, and nutrition; and

11.1.2 Independent Living Facilities (ILFs) that offer congregate living arrangements to persons over the age of fifty-five;

11.1.3 The development of ALFs and ILFs in a manner that conserves environmental features, woodlands, wet areas, open space, areas of scenic beauty, views and vistas as well as encouraging the renovation and rehabilitation of older, existing buildings; and

11.1.4 The development of ALFs and ILFs in a manner that

is harmonious with the surrounding land uses while protecting natural resources and open space.

11.2 **DEFINITIONS**

Within this Section, the following terms shall have the following meanings:

Bedroom: A separate room intended for, or which customarily could be used for sleeping.

Dwelling Unit: A residence, including studio units. Each residence shall contain a living area, bathroom and, except in studio units, one or more bedrooms, and may contain a kitchen area or combination kitchen/living area.

Land: Land, including areas covered by water.

Subdivision Regulations: The rules and regulations of the Planning Board relative to subdivisions.

Wetlands: Lands subject to the provisions of M.G.L. c. 131, ss.40 and 40A.

11.3 **USE RESTRICTIONS**

An ALF and/or an ILF may be constructed, subject to the requirements set forth herein, upon the issuance of a special permit by the Planning Board.

11.3.1 Area, setback, height, frontage, and density requirements for ALFs and ILFs are set forth in Section 7.2.1.

11.3.2 No other use or structures shall be permitted, except as specifically provided herein.

11.3.3 An ALF or an ILF may consist of a single building or multiple buildings.

11.3.4 Structures and uses accessory to the ALF or ILF may also be provided within the same building, including, but not limited to, the following: beauty and barber salons; recreational, physical fitness and therapy services; nondenominational chapel; library; bank automated teller machine; management offices; adult day care or adult health care facility; hospice residence; food service; laundry and covered parking areas; provided, however, that such accessory uses and structures

shall be designed for the primary use of the residents and staff of the ALF or ILF. Such accessory uses may not be designed for or used as a general business by the general public. Such accessory uses shall be wholly within a structure containing residential units, and shall have no exterior advertising display.

11.3.5 The facility shall be served by municipal water and/or sewer systems unless the applicant can provide on-site water supply and sewage treatment.

11.4 An application for special permit shall be on forms furnished by the Planning Board and accompanied by a special permit filing fee determined by the Planning Board. The Planning Board may waive the submittal of technical information or documents otherwise required hereunder where the applicant demonstrates that, due to the simplicity of the proposal, such information is not necessary for or applicable to the Planning Board's decision pursuant to this section. Unless so waived, an application for a special permit shall consist of the following:

11.4.1 The following plans:

11.4.1.1 A plan at a scale of 1" = 40', or other scale acceptable to the Planning Board, showing existing conditions, including: the topography of the site at a minimum of two foot intervals; vegetation and unique features, including wetlands, perennial streams and ponds, trees of more than 8" caliper, stonewalls, and rock outcroppings; slopes in excess of 15%; existing trails, paths and ways; open vistas; structures of historical importance; wildlife habitats, and existing easements and restricted areas;

11.4.1.2 A plan depicting the horizontal layout of the site, including types, location and layout of buildings, parking areas, vehicular and pedestrian circulation, stormwater facilities, lighting, signage, trash disposal areas, loading areas, etc.

11.4.1.3 Elevation drawings of buildings and other major structures;

- 11.4.1.4 A grading plan depicting stormwater management provisions;
- 11.4.1.5 A landscape plan with planting schedule showing types, number and characteristics of proposed plantings;
- 11.4.1.6 Detail drawings of drainage structures, signage, lighting, tree plantings, and other site features, as necessary.
- 11.4.1.7 Perspective drawings or 3-D models may be subsequently required by the Planning Board;
- 11.4.1.8 The Planning Board may describe the required content of the above plans in greater detail in regulations promulgated under this By-Law.

11.4.2 The following narrative reports or data:

- 11.4.2.1 A proposed development schedule showing the beginning of construction, the rate of construction and development, including stages, if applicable, and the estimated date of completion;
- 11.4.2.2 A development impact statement prepared impact of the development on the Town's capacity to furnish services including, but not limited to, roads, police, fire, emergency services, water and sewage treatment;
- 11.4.2.3 Information pertaining to any organization which the Applicant proposes to form where the development is to be a condominium development, including forms and plans to be used to organize and manage the same, for approval as to form by Town Counsel;
- 11.4.2.4 Copies of all proposed covenants, easements, and other restrictions which the Applicant proposes to grant to the Town, the Conservation Commission, utility companies, any condominium

organization and the owners thereof, including plans of land to which they are intended to apply, for approval as to form by Town Counsel;

11.4.2.5 A stormwater management plan complying with all local, state, and federal requirements, including drainage calculations, erosion and sedimentation control provisions during and after construction, and on-going maintenance plan.

11.4.2.6 Any and all other information that the Planning Board may reasonably require in an acceptable form to assist in determining whether the Applicant's proposed development plan meets the objectives of this Section.

11.4.2.7 The Planning Board may describe the required content of the above plans in greater detail in regulations promulgated under this By-Law.

11.4.3 Each such application shall be accompanied, if applicable, by a definitive plan of land pursuant to the provisions of Massachusetts General Law Chapter 41, sections 81-0 and 81-T, as the same may be from time to time amended and the Subdivision Regulations as well as a filing fee determined in accordance with the Subdivision Regulations. Approval of a special permit under this section shall not substitute for compliance with Subdivision Control Law, G. L. c. 41, ss81k et seq. A definitive subdivision plan submitted in connection with an approved special permit for an ALF or ILF shall substantially conform with plans upon which the special permit approval was based.

11.5 **STANDARDS**

In order to be eligible for consideration for a special permit pursuant to this Section, the proposed development shall meet all of the following standards:

11.5.1 **Affordability**

At least fifteen percent (15%) of the total number

of dwelling units in an Independent Living Facility (ILF), which proposes more than ten units shall meet the definition of Affordable Units as defined in Article 1, Section 1.1 of the Westport Zoning By-Law. These affordable units shall be marketed and administered through the Westport Housing Authority with resale restrictions to assure continued affordability. Dwelling units reserved for occupancy by persons or families of low to moderate income, or for occupancy by a single individual, shall not be segregated from market rate or larger dwelling units in the development.

11.5.2 Open Space Requirement for ALFs and ILFs:

In the Residence/Agriculture districts a minimum of fifty (50) percent of the parcel shown on the Development Plan shall be contiguous open space. In the Business districts a minimum of thirty (30) percent of the parcel shown on the Development Plan shall be contiguous open space. Such open space may be separated by road(s) constructed within the development. Said contiguous open space shall have at any point the minimum width of 125 feet.

The required open space shall be used for conservation, historic preservation and education, outdoor education, park purposes, existing agriculture, existing horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

The required open space shall remain unbuilt upon, provided that five percent (5%) of such open space may be paved or built upon for structures accessory to the dedicated use or uses of such open space, community center, pedestrian walks, bike paths, and existing agriculture.

The required open space shall be conveyed in conformance to the requirements provided in the Subdivision Regulations.

Any proposed open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be

perpetually kept in an open state, that it shall be preserved for exclusively existing agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

11.5.3 Buffer Areas and Building Setbacks

All dwellings and structures shall be located a minimum of sixty (60) feet from adjacent properties, and eighty (80) feet from adjacent surface waters or wetlands. All buildings shall be set back a minimum of 100 feet from the street except that, in the Business District this setback requirement may be modified at the discretion of the Planning Board. Buffer areas shall be retained in their natural vegetative state to the maximum extent feasible, where the 60 foot buffer of natural vegetation is not adequate (in the Planning Board's opinion) to screen the development from adjacent properties the Board may require additional plantings, earthen berms and/or fencing.

The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation so long as a buffer is established of at least fifty (50') feet in depth which may include such restricted land area within such buffer area calculation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the site is a mixed-use area or a downtown area where providing a buffer is infeasible or is inconsistent with the Town's planning goals for the area; or (iv) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

11.5.4 Removal and Replacement of Vegetation

Within the site, no clear cutting shall be permitted, except incidental to construction of buildings, roads, trails and parking areas.

11.5.5 Roadways

The principal roadway(s) serving the site shall be designed to conform with the standards of the Subdivision Regulations as they apply to Residential Streets, or the roadways may be designed to comply with the Town's Secondary Road construction standards, but must be paved with asphalt. Gravel paving or any other non-asphaltic material may not be used as a finished pavement.

11.5.6 Parking

Notwithstanding any other provisions in this By-Law to the contrary, the applicant shall provide adequate parking to serve all anticipated uses on the property, and shall provide information detailing the method of computation of parking spaces. The minimum number of parking spaces provided on the site shall be 0.3 parking space per dwelling unit in an ALF and 1.0 parking space per dwelling unit in an ILF. For both ALFs and ILFs one (1) additional parking space shall be provided for every three (3) employees during the largest shift. The Planning Board may increase the required parking by up to 10% to serve the needs of employees, visitors and service vehicles. All parking areas shall be screened from view from adjacent residentially zoned or occupied premises located outside the site, including public ways, by a landscaped border at least ten (10) feet in width. Parking lots in front setbacks in residential zones, and in buffer areas in all zones, with the exception of necessary access driveways, are prohibited. Parking areas in residential districts shall be located to the side or rear of all buildings. Parking lot layout shall be planned to permit landscaping, buffering, or screening to prevent direct views of parked vehicles from adjacent streets. The use of traditional picket fencing, hedges, walls, or landscape berms to define parking areas is encouraged. In parking areas of eleven or more parking stalls, at least one tree of three inch or greater caliper shall be planted for every six parking places. Adequate tree wells and irrigation shall be provided for all parking lot landscaping. Pedestrian access is to be taken into consideration in parking lot design. The use of separate walkways is encouraged.

11.5.7 Loading

Loading areas, if required, must be at least 20 X 9 feet, and have a minimum overhead clearance of 10 feet. Screening and landscaping shall be provided to block all views of loading areas (except those specifically designated for emergency vehicles) from the public right-of-way and adjacent properties.

11.5.8 Stormwater Management

Drainage provisions shall be provided to ensure compliance with all local, state and federal requirements regarding stormwater management including; Article 20, Low Impact Development and the Board of Health's Stormwater Quality and Quantity Control Regulations dated April 15, 2009 effective on August 1, 2009 or as amended and shall be subject to review by the Planning Board's engineering consultant at the expense of the applicant. Drainage shall be designed so that the rate of run-off shall not be increased, groundwater recharge is maximized, surface and ground water quality is maintained or improved, and neighboring properties will not be adversely affected. The Board may require that existing drainage problems on/or adjacent to the site be mitigated as a condition of approval of the special permit under this section. Drainage facilities shall not be allowed in the required open space areas.

(2011 ATM, Article 39)

11.5.9 Utilities

All electric, gas, telephone, water distribution lines, and other utilities shall be placed underground except upon a demonstration of exceptional circumstances.

11.5.10 Paths

Paths for the use of residents shall be attractively designed with proper regard for convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities

and facilities on the site and to pathways on adjacent sites.

11.5.11 Paving and Curbing

Curbing is to be sloped or cut to provide a barrier free transition at road crossings and building entrances. Paving should be textured or of different materials at pedestrian crossings and walkways. The use of stone, brick or cultured stone pavers for entrance walkway borders is encouraged. The use of textured materials for walkway borders is encouraged.

11.5.12 Design and Architectural Character

Architectural style shall be in harmony with the historical design elements that are contextually consistent with regional New England architecture.

11.5.13 ALF or ILF shall have an integrated emergency call, Telephone and other communications system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of the residents with emphasis on ensuring the safety of residents with physical impairments.

11.5.14 No building/structure shall be floodlit. Drives, walkways, entryways, and parking areas shall not be illuminated by lights higher than fifteen (15) feet, which shall be shielded to have a total cutoff of all light at less than ninety (90) degrees and a beam cutoff less than seventy-five (75) degrees. The total cutoff of all light shall occur within the property lines of the parcel to be developed.

11.5.15 In order to be eligible for consideration for a Special Permit pursuant to this section, the ALF or ILF shall comply with all Federal and State access requirements.

11.6 INCENTIVES FOR CONVERSION OF STRUCTURES

It is the intent of this subsection to encourage the appropriate reuse of land and buildings that are no longer needed or suitable for their original use. Such building

conversions shall:

- 11.6.1 Be compatible with the character of the neighborhood; and
- 11.6.2 Minimize removal or disruption of historic existing building features or architectural elements, whether these exist on the site or on adjacent properties.
- 11.6.3 Notwithstanding other sections of this bylaw, the buffer requirements, minimum open space requirements, and building height requirements for the ALF or ILF shall be those physically existing on the ground as of the date of enactment of this bylaw.
- 11.6.4 The Planning Board may permit expansion of the structure to the degree reasonably necessary to construct entryways and features to comply with Federal and State access requirements and fire escape and fire protection features.

11.7 ACTION BY THE PLANNING BOARD

The Planning Board may approve, approve with conditions, or deny an application for an ALF or an application for an ILF, after assessing whether the proposed development complies with the requirements of this By-Law and serves the purpose of the By-Law as expressed in section 11.1.

11.8 RELATION TO OTHER REQUIREMENTS

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law.

11.9 SEVERABILITY.

A determination that any portion or provision of this Assisted and Independent Living Facilities By-Law is invalid shall not invalidate any other portion or provision thereof.

(2004 ATM, Article 15)

ARTICLE 12

BUILDING PERMIT LIMITATIONS (Proposed Article Did Not Pass Town Meeting)

ARTICLE 13

INCLUSIONARY HOUSING

13.0 INCLUSIONARY HOUSING

13.1 PURPOSE AND INTENT

The purpose of this By-Law is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Town of Westport Master Plan, The Westport Planned Production Plan, or any superceding Westport Housing Production Plan and MGL c.40B sec. 20-23, and in tandem with on-going Town of Westport programs to promote a reasonable percentage of housing that is affordable to low and moderate-income households. It is intended that the affordable housing units that result from a special permit issued under this By-Law be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Massachusetts Department of Housing and Community Development (DHCD) and that said units count toward the Town's requirements under MGL c.40B, sec 20-23. It is intended that this By-Law provide a mechanism to compensate for those decreases in the town's percentage of affordable housing that are directly caused by increases in the Town's overall housing stock.

13.2 DEFINITIONS

13.2.1 Division of Land: This By-Law shall apply to the division of land held in single ownership as of June 1, 2005 or anytime thereafter into ten (10) or more lots, whether said ten (10) or more lots are created at one time or are the accumulation of ten (10) or more lots created from said land held in single ownership as of June 1, 2005. This By-Law shall apply to Town of Westport Open Space Residential Development, "conventional" or "grid" divisions allowed by M.G.L. Chapter 41, Section 81-L and Section 81-U, as well as those divisions of land that do not require subdivision approval per G.L. c. 41, §81P.

13.2.2 Multi-Family Dwelling Units and Duplexes: This By-Law shall apply to the construction of ten (10) or more multi-family dwelling units or duplexes, whether on one

or more contiguous parcels in existence as of June 1, 2005.

- 13.2.3** **Exemption:** The provisions of Article 13.3 hereof shall not apply to the construction of ten (10) or more single-family dwelling units on individual lots, if said ten (10) or more lots were in existence prior to June 1, 2005 nor to Assisted and Independent Living Facilities.

(2011 ATM, Article 41)

- 13.2.4** **Administration:** The Planning Board shall be the Special Permit Granting Authority (SPGA) for all special permits under this By-Law.

13.3 **MANDATORY PROVISION OF AFFORDABLE UNITS**

The SPGA shall, as a condition of approval of any development referred to in Article 13.2, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this By-Law and more fully described in Article 13.4. Any special permit granted hereunder shall contain a condition that a regulatory agreement, executed by DHCD, the Town of Westport, and the applicant is recorded at the Registry of Deeds and a copy provided to the Inspector of Buildings and the Planning Board prior to issuance of a building permit, except as provided through special permit in accordance with Article 13.5.

13.4 **PROVISION OF AFFORDABLE UNITS**

The SPGA shall grant any application for a special permit if the application satisfies the following minimum affordable housing requirements:

- 13.4.1** At least 10% of the units in any residential development and any division of land subject to this By-Law shall be established as affordable housing units. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing ten (10) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two (2) affordable units, and so on, except as provided through Article 13.5.

- 13.4.2** The affordable unit(s) shall be constructed or rehabilitated on the locus property, except as provided through Article 13.5.

13.5

ALTERNATIVES AND INCENTIVES

The SPGA is authorized, by grant of a Special Permit, to allow the following alternatives and incentives to the provisions of 13.3 and 13.4.

13.5.1 Off-Site Alternative: An applicant subject to this By-Law may develop, construct or otherwise provide affordable units equivalent to those required by Article 13.5 off-site. All requirements of this By-Law that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location and design of the off-site units to be provided shall be approved by the Special Permit Granting Authority as an integral element of the special permit review and approval process.

13.5.2 Cash Contribution: As an alternative to the requirements of Article 13.5, and as allowed by law, an applicant may contribute funds to the Westport Affordable Housing Trust Fund to be used for the creation of affordable housing in lieu of construction and offering affordable units within the locus of the proposed development. For the purposes of this Bylaw, the cash payment per affordable unit required shall be equal to the difference between the median single-family home sales price in Westport for the most recent calendar year as determined by the SPGA and the price affordable to a qualified purchaser as determined by the SPGA, based on applicable guidelines of the DHCD, Local Initiative Program (LIP). Where the calculation of affordable units results in fractional units, a cash payment may be made as provided in this section on a pro rata basis. The cash payment formula and timetable may be adjusted by the SPGA from time to time through the issuance of guidelines or regulations. If the SPGA issues a Special Permit to authorize a cash payment in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said contributions, the payment shall be paid to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale

of any lots, if applicable. Alternatively, the SPGA may allow payment of said contributions according to a specified timetable in proportion to the rate of development or sale of lots. This cash contribution alternative shall apply only to homeownership developments and division of land and shall not apply to rental developments.

13.5.3 Donations of Land: An applicant may offer, and the Board of Trustees of the Westport Affordable Housing Trust Fund (Trustees) with the approval of the SPGA, may accept donations of land in fee simple, on or off-site, that the SPGA and Trustees determine are suitable for the construction of an equivalent number of affordable housing units. The SPGA may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of affordable housing units. If the SPGA issues a Special Permit to authorize donations of land in lieu of units and the Board of Trustees of the Westport Affordable Housing Trust Fund votes to accept said donations, the donation shall be made to the Westport Affordable Housing Trust Fund prior to the issuance of any building permits for the development or prior to the sale of any lots, if applicable.

13.5.4 Combination of Alternatives: The applicant may offer, and the SPGA may approve the acceptance of, any combination of the alternatives provided in sections 13.6.1-13.6.3 provided that in no event shall the net result of the combination provided be less than the equivalent number or value of affordable units required by this By-Law.

13.5.5 Density Bonus: The SPGA may allow the addition of two market rate units for each affordable unit provided as part of compliance with this By-Law, provided that the expanded development complies with the open space requirements, design standards, and all other provisions of Article 18 Open Space Residential Development of the Westport Zoning By-Law. In addition, a development that exceeds the minimum affordable housing requirements of this By-Law may receive the same

density bonus benefits; however the net increase in housing units as a result of this By-Law and Article 18 shall not exceed fifty percent (50%) of the original property yield before any density bonuses were applied.

13.6 **PROVISIONS APPLICABLE TO AFFORDABLE HOUSING UNITS ON OR OFF-SITE**

13.6.1 Siting of affordable units: All affordable units constructed or rehabilitated under this By-Law shall be situated so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

13.6.2 Minimum design and construction standards for affordable units: Affordable housing units within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

13.6.3 Timing of construction or provision of affordable units or lots: The Special Permit Granting Authority shall impose conditions on the special permit requiring construction of affordable housing according to a specified time table, so that affordable housing units, whether on the locus property or off site, shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<u>Market-Rate Units</u>	<u>Affordable Housing Units</u>
Up to 30%	At least one unit
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
UP to 90%	100%
*Any fractions of an affordable unit shall be rounded up to a whole unit.	

13.7 **LOCAL PREFERENCE**

To the extent permitted by law, the SPGA may require the applicant to comply with local preference requirements, if any, as may be established by regulations promulgated hereunder.

13.8 **MARKETING PLAN FOR AFFORDABLE UNITS**

Applicants under this By-Law shall submit a marketing plan (or other method approved by the SPGA) to the SPGA and DHCD, which describes how the affordable units will be marketed to potential homebuyers/tenants. If applicable, this plan shall include a description of the lottery or other process to be used for selecting buyers/tenants. The plan shall be in conformance to any applicable guidelines issues by DHCD, and shall be subject to the prior review and approval of Town Counsel at the applicant's expense.

13.9 **PRESERVATION OF AFFORDABILITY; RESTRICTIONS ON RESALE**

Each affordable unit created in accordance with this By-Law shall be subject to a deed restriction in form and substance acceptable in to Town Counsel and the Massachusetts Department of Housing and Community Development ("DHCD"). The deed restriction shall run with the land in perpetuity or for the longest period of time allowed by law unless the SPGA determines that a shorter period of affordability will facilitate the development of affordable housing. The deed restriction shall limit the resale price of any ownership units or, in the case of rental property ensure the continued availability of affordable rental units, consistent with the regulations and guidelines issued from time to time by DHCD. Prior to the issuance of any occupancy permits for affordable or market rate units, the deed restriction(s) for each affordable unit constructed in accordance with the provisions of 13.6.3 shall be recorded at the Bristol County (S.D.) Registry of Deeds or Registry District of the Land Court. The deed restriction shall survive any bankruptcy or foreclosure.

13.10 **REGULATIONS**

The Special Permit Granting Authority shall adopt regulations for the orderly administration of this By-Law.

13.11 **EXPIRATION**

Any special permit issued pursuant to this Article shall be

recorded with the Registry of Deeds or Registry District of the Land Court. A special permit shall lapse within two years from the date of issuance, not including time required for appeals or challenges pursued under G. L. c. 40A Section 17, if substantial use has not been made or if construction has not begun within that time period except for good cause.

13.12 SEVERABILITY

If any portion of this By-Law is declared to be invalid, the remainder shall continue to be in full force and effect.
(2005 ATM, Article 24, 2010 ATM, Article 37)

(Editorial Note): Article 37 of the 2010 ATM deleted Article 13 in its entirety and replaced it with the above language.

ARTICLE 14

DRIVE-THROUGH FACILITIES

14.0 DRIVE-THROUGH FACILITIES

14.1 PURPOSE:

The purpose of this By-Law is to enhance the public health, safety, convenience and welfare by providing detailed review of the design and layout of drive-through facilities, which have a substantial impact upon the character and environment of the Town and upon traffic, utilities and services therein.

14.2 POWERS AND ADMINISTRATION:

The Planning Board is hereby designated the Special Permit Granting Authority (SPGA) for Drive-Through Facilities. The SPGA shall, after a public hearing, adopt regulations relative to the issuance of special permits for Drive-Through Facilities, including submission requirements, design standards and BMPs. After holding a public hearing, the SPGA may establish administrative and review fees.

After notice and public hearing as required by M.G.L. Chapter 40A, Section 9, and review of the site plan and accompanying submissions required by its regulations (to be adopted hereunder), the SPGA may grant the special permit, deny the special permit, or grant the special permit with conditions appropriate to serving the purposes of this section.

14.3

DEFINITIONS:

As used in this By-Law section and any regulations adopted by the Planning Board under this By-Law, the following words shall have the meanings specified herein as follows:

Access: A way or means of approach to provide vehicular or pedestrian access to a property.

Access Connection: Any driveway, street, curb cut, turnout or other means of providing for the movement of vehicles to or from the public/private roadway network.

Best Management Practice (BMP): For the purposes of stormwater management, structural or nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent or reduce non-point source pollution from entering receiving waters.

Cross Access: A service drive providing vehicular access between two or more contiguous sites so that the driver need not enter the public street system.

Drive-Through Facility: A commercial facility that provides a service or delivers a product directly to a motor vehicle (including, but not limited to, quick lube facilities and drive-through car washes); or to the occupants of the vehicle, without requiring them to leave the vehicle (including, but not limited to fast food restaurants and drive-through automatic teller machines). This definition does not include the selling of fuel at a gasoline filling station or the accessory functions of a car wash facility such as vacuum cleaning stations.

Driveway/Curb Cut Spacing: The distance between access connections, as measured from the closest edge of pavement along the public/private roadway.

Fast Food Restaurant: Any restaurant serving the majority of its food in disposable containers, packages, or other similar wrapping, for consumption on or off the premises.

Joint Access (or Shared Access): A driveway or other Access Connection connecting two or more contiguous lots to the public/private street system.

Lot, Corner: Any lot having at least two (2) contiguous sides abutting upon one or more streets, provided that the interior angle at the intersection of such two sides is less than one hundred thirty-five (135) degrees.

14.4 APPLICABILITY:

The provisions of this By-Law shall apply to all new drive-through facilities, whether such drive-through is the principal use on the lot or a use that is accessory to another use on the lot and to any existing drive-through facility undergoing alteration or reconstruction which substantially changes its location, footprint, access connection, or service capacity.

14.5 EXEMPTIONS:

The provisions of this By-Law do not apply to businesses such as take-out restaurants that require the vehicle occupant(s) to leave their vehicle and to walk to a take-out window or counter for service.

14.6 DIMENSIONAL AND INTENSITY REGULATIONS:

14.6.1 Drive-Through Facilities shall only be permitted on lots which meet the minimum standards for non-residential lots pertaining to lot area and contiguous upland area contained in Section 7.4 of these By-Laws and which have a minimum lot frontage of 250 feet, and a minimum lot depth of 200 feet.

14.6.2 **Driveway/Curb Cut Spacing:** Separation between access connections on all collectors and arterials shall be based on the posted speed limit in accordance with the following table:

<u>Posted Speed Limit (MPH)</u>	<u>Access Connection Spacing (Feet)</u>
20	85
25	105
30	125
35	150
40	185
45	230
50	275

14.7 PARKING SPACE REQUIREMENTS:

Developments that provide joint (shared) access or cross access drives between properties may be allowed a 10% reduction in the required number of parking spaces. If the applicant demonstrates to the satisfaction of the Special Permit Granting Authority (SPGA) that the periods of peak parking demand for developments with shared parking and joint

or cross access are not simultaneous, the SPGA may reduce the number of required parking spaces by 20%.

14.8 SEVERABILITY:

Should any section or provision of this By-Law be held invalid, it shall not affect the validity of the remainder of the Westport Zoning By-Laws.

(2005 ATM, Article 30)

ARTICLE 15

SITE PLAN APPROVAL

15.0 PURPOSE

The purpose of Site Plan Approval is to protect the health, safety, convenience, property values, and general welfare of the inhabitants of the Town of Westport by providing for review of plans for uses and structures which may have significant impacts on traffic; municipal and public services and utilities; environmental and design quality; and community character.

15.1 POWERS AND ADMINISTRATIVE PROCEDURE

All applications for Site Plan Approval shall be submitted to the Planning Board prior to the issuance of a building permit. In exercising its jurisdiction under this section, the Planning Board shall, unless otherwise provided, follow the procedural requirements for special permits as set forth in Section 9 of M.G.L. Chapter 40A; however, a motion to approve, approve with conditions, or disapprove a Site Plan shall require only a majority vote of the members present. The Board shall adopt Rules and Regulations relative to Site Plan Approval, a copy of which shall be filed with the Town Clerk. After notice and public hearing and after due consideration of the reports and recommendations of outside consultants and other town boards, commissions and/or departments, the Planning Board may approve a Site Plan. The Planning Board may impose, in addition to any applicable conditions specified in this section, such conditions as reasonably appropriate to improve the site design and/or mitigate the impacts of the proposed development. Such conditions shall be imposed in writing; the applicant may be required to post a bond or other surety for compliance with

said conditions in an amount satisfactory to the Planning Board.

15.2 APPLICABILITY

For specific uses requiring Site Plan Approval, see the Table of Use Regulations. The following types of activities and uses require Site Plan Approval by the Planning Board:

1. Construction with a gross floor area (GFA) of over 1,000 square feet of a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units;
2. Exterior expansion by more than 1,000 square feet GFA of a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units;
3. Change of use within a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units, that requires either:
 - More than 5 additional parking spaces; or
 - Increased impervious surfaces other than building footprint (for example, additional loading areas, access driveways, paved parking spaces, sidewalks) totaling more than 1000 square feet;
4. Construction or expansion of a parking lot proposing more than 5 new parking spaces for a municipal, institutional, commercial, or industrial building, or a multi-family building with three or more dwelling units.

For the purposes of computing the total gross floor area and total external changes and increases in parking spaces of a site plan, the Planning Board shall aggregate all such applications for building/special permits and/or site plan approval made within the five (5) previous calendar years.

Where provisions for site plan approval of specific uses and buildings exist elsewhere in the Westport Zoning By-Laws, the provisions of the pertinent section shall supersede the provisions of this section.

Site Plan Approval shall not be construed to supersede the exemptions granted by Section 3 of Mass. Gen. Laws Ch. 40A.

15.3 WAIVER OF TECHNICAL COMPLIANCE

The Planning Board may, upon written request of the applicant, waive any of the technical requirements of Westport's Site Plan Approval Rules and Regulations and the procedures of this By-Law provided that the Board determines that such waiver is not inconsistent with the provisions of the Zoning By-Law, or with the intent of Site Plan Approval.

(2007 ATM, Article 19)

15.4 PERFORMANCE STANDARDS

All Site Plans presented for approval shall be prepared in compliance with applicable Westport Zoning Bylaws; the Rules and Regulations Governing the Subdivision of Land, to the extent applicable; and the explicit standards of the Rules and Regulations for Site Plan Approval. In evaluating and rendering a decision on a Site Plan Approval application the Planning Board shall consider whether the proposal will achieve the objectives listed below and may require conditions and safeguards deemed necessary to realize, within reason, these performance standards:

1. Provide convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent streets, properties, buildings, structures, and other improvements.
2. Buffer and protect adjoining premises against detrimental or offensive uses.
3. Provide adequate and functional off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment.
4. Provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations to the extent applicable, and all applicable local, state and federal codes, statutes, By-Laws, policies, standards and regulations.

5. Minimize negative impacts to the environment by limiting or eliminating: volumes of cut and fill; removal of trees 6" caliper or larger and other vegetation; removal of stone walls; impact on wetland resources, wildlife habitat and other areas of environmental sensitivity; flooding and other impacts of stormwater flow both on- and off-site; soil erosion; and air, water, noise and light pollution.
6. Prevent contamination of groundwater and surface water from onsite wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances by utilizing Best Management Practices in accordance with all statutes, By-Laws, regulations and policies governing these activities;
7. Promote compatibility among uses by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or from premises residentially used or zoned;
8. Divide large expanses of parking with landscaping and shade trees and minimize lighting intrusion and the glare from headlights.
9. Screen service facilities located near the perimeter of the site, including but not limited to: garbage collection, recycling containers, refrigeration units, and utility areas.
10. Relate buildings and structures to the natural and built environment by attention to appropriate scale, massing, height and other factors necessary to achieve harmony with the surrounding natural environment, neighborhood, and Town as a whole.
11. Minimize obstruction of scenic views from publicly accessible locations.
12. Ensure compliance with the provisions of the Board of Health Regulations for Stormwater Quality and Quantity Control Regulations and this Zoning Ordinance including but limited to, Low Impact Development Regulations, stormwater management, parking, loading and signage.

(2011 ATM, Article 40)

15.5 ADMINISTRATION

1. The Planning Board may adopt reasonable fees for administration, technical review, and construction inspection for site plan approval proposals. All expenses for use of outside consultants, ancillary reports or reviews, supplemental studies, advertising, publication of notices, postage and mailings and all other expenses in connection with the site plan including without limitation, sampling and/or testing, shall be borne by the applicant.
2. The Planning Board shall adopt reasonable Rules and Regulations governing Site Plan Approval including administrative procedures and requirements, and design and construction standards.

(2010 ATM, Article 38)

3. The Planning Board may distribute plans to other Boards, Commissions, departments, and outside technical and legal consultants and agencies for their review and comments.
4. The Planning Board may require narrative assessments and/or quantitative studies of the on-site and off-site impacts of the proposed project, including: traffic, drainage, noise, lighting and other environmental factors.

15.6 **ENFORCEMENT**

The Building Inspector shall have enforcement powers over any Site Plan Approval. The Building Inspector shall inspect and enforce any and all stipulations and/or conditions placed upon the approval of any Site Plan. Failure to satisfy the conditions of any Site Plan Approval will result in the withholding of the Certificate of Occupancy.

15.7 **REVIEW AND DECISION**

The Planning Board shall ensure the use of the site consistent with the uses permitted in the district in which the site is located and shall give due consideration to the reports received. Prior to the approval of any Site Plan, the Planning Board shall find that the site plan:

1. Protects adjoining premises by avoiding adverse effects on the natural environment and abutters.
2. Provides for convenient and safe vehicular and

pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site;

3. Provides an adequate arrangement of parking and loading spaces in relation to proposed uses of the premises;
4. Provides adequate methods of disposal of refuse or other wastes resulting from the uses permitted on the site;
5. Complies with all applicable requirements of this By-Law, the Rules and Regulations of Site Plan Approval, and the Rules and Regulations Governing the Subdivision of Land (to the extent applicable), unless explicitly waived by the Planning Board.

15.8 APPEAL

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. Gen. L. Ch. 40A, §17 or other such provision of the General Laws pertaining to site plan review/approval as they may be amended from time to time. Appeal of a decision on a Site Plan for a by-right use shall be by appeal (to the Zoning Board of Appeals) of the action of the Building Inspector in granting or denying a building permit.

15.9 RELATIONSHIP TO SUBDIVISION PLAN AND OTHER PERMITS

The Planning Board approval of a Site Plan shall neither oblige the Planning Board to approve any related preliminary or definitive plan for subdivision nor substitute for such approval. However, the Planning Board may allow an applicant to combine a submission for Site Plan Approval with a submission for a preliminary or definitive subdivision if such submission conforms to all requirements for both Site Plan Approval and subdivision application. In such case, the Planning Board may conduct a combined public hearing for both Site Plan Approval and subdivision application.

Where the Planning Board serves as the Special Permit Granting Authority for a proposed use, it shall, when possible, consolidate the Site Plan Approval and the Special Permit processes.

An application to the Zoning Board of Appeals for either a Special Permit or a variance requiring Site Plan Approval under this By-Law, shall be accompanied by a site plan

approved by the Planning Board; in the alternative, any special permit or variance granted for work set forth in 15.2 shall contain the following condition: "The work described herein requires the approval of a site plan by the Planning Board pursuant to Article 15 of the Westport Zoning By-Law. Any conditions imposed in such a site plan approval shall also be conditions of this special permit/variance."

Where the Planning Board approves a site plan "with conditions", and said site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

No deviation from an approved site plan shall be permitted without the approval of the Planning Board.

15.10 **EXPIRATION**

Approval of a Site Plan shall lapse after two (2) years from the date of approval, or the date of resolution of any appeal of the decision, if substantial use thereof or construction has not begun, except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

15.11 **SEVERABILITY**

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Westport Zoning Bylaw.

(2006 ATM, Article 4; 2007 ATM, Article 19 Amended Sec. 15.2 & Sec. 15.3; 2010 ATM, Article 38 amended Sec. 15.5)

ARTICLE 16

ADULT ENTERTAINMENT OVERLAY DISTRICT

16.0 **PURPOSE AND INTENT**

It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment Establishments are

distinguishable from other business uses and that the location of adult entertainment uses degrades the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime, increased demands on police, fire departments and other municipal resources, decreased tax base, and blight resulting from the clustering and concentration of adult entertainment uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This by-law is enacted pursuant to Massachusetts General Law Chapter 40A, Section 9A and the Massachusetts Home Rule Amendment with the purpose and intent of regulating and limiting the location of Adult Entertainment Establishments (as defined within Article 1, Section 1.1 of these By-Laws) so as to prevent or minimize the secondary effects associated with these establishments, and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Westport.

The provisions of Article 16 have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually-oriented matter or materials. Similarly, it is not the intent or effect of this Article 16 to restrict or deny access by adults to sexually-oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matters may have to sell, distribute, or exhibit such matter or materials. Nor is it the intent or effect of this Article 16 to legalize the distribution of obscene matter or materials.

16.1 APPLICABILITY

Article 16 shall apply to all Adult Entertainment Establishments, as defined in Article 1, Section 1.1. Definitions of these By-Laws. Any existing Adult Entertainment Establishment shall apply for an Adult Entertainment Special Permit within 90 days of the effective date of this By-Law. This By-law shall not be construed so as to be more permissive than G.L. c.40A, §§6 and 9A.

16.2 ESTABLISHMENT OF ADULT ENTERTAINMENT OVERLAY DISTRICT (AEOD) & RELATIONSHIP TO UNDERLYING DISTRICTS

The AEOD is established as a district that overlays the underlying district(s), such that any parcel of land lying in the AEOD shall also lie in one or more of the other zoning districts in which it was previously classified, as provided

for in these Zoning By-Laws.

16.3 PERMITTING AUTHORITY

The Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals.

16.4 SPECIAL PERMIT USES

All Adult Entertainment Establishments, shall require a Special Permit from the Zoning Board of Appeals with Site Plan Approval under Article 15 from the Planning Board.

16.5 SPECIAL PERMIT SUBMITTAL REQUIREMENTS

Special Permit applications for approval by the Zoning Board of Appeals under this Article 16 shall contain, without limit, the following information:

- a. Name of the proposed business;
- b. A copy of the lease for the business premises;
- c. A full description of the intended nature of the business;
- d. The proposed days and hours of operation;
- e. Name and address of each person who has or will have a legal or beneficial interest in the business. If a corporation has such interest, the names and addresses of the officers and directors of same; if such corporation is not publicly owned, the names of the stockholders; if a partnership has such a legal or beneficial interest, the names and addresses of all general and limited partners and all persons with a beneficial interest in the partnership.
- f. Name and address of each person who will have management responsibility for the proposed business and specification of the days and times at which each such person will be present at the business premises. The application shall include the names and addresses of each person with management responsibility that shall be authorized and available to respond promptly to complaints at any time when a manager is not present at the business premises and shall specify how each such person can be contacted without delay at any such time.
- g. A certification that none of the persons named in the

previous two subparagraphs has ever been convicted of violating the provisions of General Laws Chapter 119, Section 63 or General Laws Chapter 272 Section 28.

- h.** A plan to scale showing the lot on which the proposed business will be located, including all buildings, parking spaces, driveways, abutting streets and lots and any proposed landscaping; a floor plan to scale showing the proposed layout of the business premises; exterior elevation drawings to scale showing the proposed exterior appearance of the business premises, including each proposed sign and its content and the treatment of doors and windows. Should the special permit be granted, the Planning Board will require additional plans and information as specified under Article 15 Site Plan Approval and its regulations for same. In the interest of efficiency, the applicant is advised to prepare plans, drawings and reports such that they are consistent with the Planning Board's requirements or may be augmented with additional information to meet those standards.
- i.** A traffic study prepared by a Massachusetts Registered Professional Civil Engineer reliably determining the effect on traffic likely to be caused by the proposed business and setting out all measures proposed to be taken to mitigate any adverse traffic impact. The traffic study shall reliably determine any parking needs of the proposed business and shall specify how these needs will be met without adverse impact on- or off-site.
- j.** Total number of employees and hours they are expected to work;
- k.** Proposed security precautions including, without limit, a security plan ensuring that minors in no event be exposed to sexually explicit material or performances except as authorized by law.
- l.** A proposed plan for ensuring that the stock in trade of the business or any performance presented shall include no obscene material, as defined in General Laws Chapter 272, Section 31.
- m.** If the application is for renewal of a special permit for an Adult Entertainment Establishment, it shall contain a certification that the establishment has complied with the terms and conditions of the special

permit for which renewal is sought, and shall specify any and all proposed changes to the extent, nature and location of the use.

16.6 **RULES AND REGULATIONS**

The Zoning Board of Appeals shall promulgate rules and regulations governing the issuance of special permits for Adult Entertainment Establishments and shall file a copy of said rules and regulations with the office of the Town Clerk, as required by General Laws Chapter 40A, Section 9A. The Board may assess reasonable fees for administration and review of such applications, including, but not limited to, consultant review fees, including legal fees incurred by the Zoning Board of Appeals in reviewing the application, as provided in G.L. c.40, §53G.

16.7 **SPECIAL PERMIT STANDARDS FOR ADULT ENTERTAINMENT**

A Special Permit shall be granted, subject to such reasonable conditions relative to time, place and manner of the operation as the Zoning Board of Appeals may deem necessary or appropriate, for an Adult Entertainment Establishment unless one or more of the following conditions is not satisfied:

a. **Submission Standards:**

An application containing inaccurate or incomplete information shall be cause for denying a special permit. If a special permit is issued and information in the application is later found to be false, this shall be cause for revoking, denying renewal of or modifying the special permit. An application for a renewed special permit shall be determined in the same manner as the original application except that failure to comply with the conditions of the original perm it or to follow the approved plans shall be cause for denial of a renewal and for revocation of the original permit.

b. **Location and Site Standards:**

No Adult Entertainment Establishment may be located outside of an AEOD.

Maximum lot coverage, including but not limited to structures, parking and driveway areas, shall be less than fifty percent (50%), including parking and driveway areas.

c. Display Standards:

No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise, or other implements, items or advertising, depicting, describing or relating to sexual conduct or sexual excitement as defined in Massachusetts General Law Chapter 272, Section 31 shall be displayed in the windows of, or on the exterior of the building of, any Adult Entertainment Establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such establishments.

d. Screening Standards:

All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the Adult Entertainment Establishment by the public.

e. Minors:

No Adult Entertainment Establishment shall be allowed to disseminate adult matters to minors, to cause Adult Entertainment Establishment displays to be viewed by minors, or to allow minors to linger on the premises.

f. Applicant Standards:

No Special Permit shall be issued absent compliance with the provisions of Section 16.5 (e), (f) and (g) and confirmation of the truthfulness of the information provided by the applicant in this regard.

g. Parking and Access Standards:

Parking shall comply with the requirements of Article 5.1 of these By-Laws governing off-street parking, except that off-site parking shall not be allowed, and with recommendations of traffic and engineering consultants including those made during the Site Plan Approval process. Drive-through facilities are prohibited at all Adult Entertainment Establishments.

h. Security Standards:

The applicant may be required to provide and pay for a police security detail at any time when, in the opinion

of the Chief of Police, conditions warrant additional security.

16.8 LAPSE OF SPECIAL PERMIT

A special permit issued under this Section 16 shall lapse upon anyone of the following occurrences:

- a. A change in or expansion of the location(s) of the adult use, including but not limited to access, parking, and areas for performance or sales;
- b. Sale, transfer or assignment of the business or the business and/or premises;
- c. Change in ownership or management.
- d. Failure to commence a permitted Adult Entertainment Establishment, within the term of the special permit as established in Section 16.8(e), except for good cause, including such time as is required to pursue or await the determination of an appeal to the court from the grant thereof.
- e. Any special permit issued for an Adult Entertainment Establishment shall be for a term specified by the Board of Appeals not to exceed two (2) years.

16.9 SEVERABILITY

If any portion of this by-law is ruled invalid, such ruling shall not affect the validity of the remainder of the By-Law.

(2008 ATM, Article 45)

ARTICLE 17

COMMERCIAL AND NON-COMMERCIAL WIND ENERGY FACILITIES

17.0 PURPOSE

The purpose of this by-law is to minimize the impacts of wind turbines on the character of neighborhoods, property values, scenic, historic, and environmental resources of the Town and to protect health and safety while allowing wind energy.

17.1 APPLICABILITY

Construction and use of a Wind Energy Facility,

Meteorological Tower or any part thereof shall be permitted in all zoning districts subject to the requirements set forth by this By-Law.

17.2 **DEFINITIONS**

17.2.1 **Wind Energy Facility:**

All equipment, machinery, and structures, whether underground, on the surface, or overhead used to collect, transmit, distribute, store, supply, or sell energy derived from wind, including but not limited to wind turbines (rotors, electrical generators and towers), anemometers (wind measuring equipment), transformers, substations, power lines, control and maintenance facilities, and site access and service roads.

17.2.2 **Wind Energy Facility, Commercial:**

A Wind Energy Facility that has a rated capacity of more than 60kw.

17.2.3 **Wind Energy Facility, Non-Commercial:**

A Wind Energy Facility that has a rated capacity of less than or equal to 60kw.

17.2.4 **Shared Wind Energy Facility:**

A Wind Energy Facility that serves multiple properties held under separate ownership.

17.2.5 **Wind Turbine:**

A device for converting wind energy to mechanical, electrical or another form of energy.

17.2.6 **Tower:**

The monopole, freestanding, or guyed structure that supports a wind turbine.

17.2.7 **Meteorological Tower (Met Tower):**

Meteorological tower (Met Tower): Includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators),

wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

17.2.8 Tower Height:

The vertical distance from ground level to the highest point of the tower.

17.2.9 Total Height:

The vertical distance from ground level to the tip of a Wind Turbine blade when it is at its highest point.

17.3 REQUIREMENTS

The requirements of this Section, 17.3, with the exception of 17.3.5 and 17.3.6, shall apply to both Towers and Met Towers.

17.3.1. Mounting and Engineering Requirements.

Wind turbines and associated tower-mounted components shall be mounted only on a guyed, monopole or lattice structure. The applicant shall provide engineered drawings, plans and supporting data for the tower and tower foundations as well as a site plan depicting location of the Wind Energy Facility relative to property lines, buildings and other structures to the Building Inspector/Zoning Enforcement Officer.

Where a special permit and/or Site Plan Approval are required, the applicant shall submit said documents to the Zoning Board of Appeals and Planning Board. Said plans, drawings and supporting data shall be prepared and stamped by the appropriate registered professional engineer licensed in the state of Massachusetts. Site Plans showing setbacks from property boundaries shall be prepared and stamped by a Registered Professional Land Surveyor licensed in Massachusetts. The Zoning board of Appeals and/or Planning board may require peer review of the engineering at the applicant's sole expense.

17.3.2. Maximum Height.

The total height of the Wind Energy Facility shall not exceed 190 feet. A Wind Energy Facility with tower height over 140 in height may be allowed by special permit from the Zoning Board of Appeals.

17.3.3. Lighting.

Tower lighting shall not be permitted. If the FAA requires lighting of a proposed tower because of its height, the height shall be reduced to eliminate the need for lighting.

17.3.4. Setback Requirements.

Towers shall be set back from property lines a distance equal to the total height. Upon provision by the applicant of a recordable easement from an abutting property owner(s) that is satisfactory to the appropriate permitting authority (Building Inspector/Zoning Enforcement Officer for facilities allowed as a matter of right) or special permit granting authority (Zoning Board of Appeals for those requiring a special permit), that authority may allow a reduction in property line setback to such abutting property.

17.3.5. Density.

A maximum of two (2) wind turbines shall be allowed on a lot. A special permit from the Zoning Board of Appeals shall be required for more than two (2) wind turbines.

17.3.6. Shared Wind Energy Facility.

A special permit from the Zoning Board of Appeals shall be required for a Shared Wind Energy Facility. The applicant(s) shall submit for review and approval legal agreements providing for the repair and maintenance of the shared facility.

17.3.7 Discontinuance.

A Wind Energy Facility that is out-of-service for a continuous 24-month period shall be deemed to have been discontinued. Upon receipt of a Notice

of Discontinuance from the Building Inspector/Zoning Enforcement Officer, the owner shall have the right to respond to the Notice of Discontinuance within 30 days from receipt. The Building Inspector/Zoning Enforcement officer shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates that the Wind Energy Facility has not been discontinued. If the Wind Energy Facility is determined to be discontinued, the owner of the Wind Energy Facility shall remove the system at the owner's sole expense within three months of receipt of the Notice of Discontinuance. Failure to remove the system within the said time period may subject the owner to action by the Building Inspector/Zoning Enforcement Officer under the Non-Criminal Disposition provisions of Mass. Gen. Law Ch.40, Section 21D and Section 3702 of the general By-Laws and regulations of the Town of Westport. The Building Inspector/Zoning Enforcement Officer may impose fines not exceeding three hundred dollars per day until the discontinued Wind Energy Facility is removed.

17.3.8 Tower Access.

The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 12 feet above the ground.

17.3.9 Tower Uses.

Towers permitted for Wind Energy Facilities shall not be used for any purpose inconsistent with the definition of a Wind Energy Facility.

17.3.10 Color.

Wind Energy Facilities shall be of neutral color, to minimize visual impact.

17.4 Severability.

The invalidity of any section, subdivision, paragraph or other part of this By-Law shall not affect the validity of the remainder of the By-Law.

ARTICLE 18

OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)

18.0 PURPOSE AND INTENT

The purpose of Article 18 of the Westport Zoning By-Law is to allow Open Space Residential Development (OSRD) upon review and approval of the Planning Board ("the Board") pursuant to Sections 81K to 81GG of Mass. General Law Ch. 41 The Subdivision Control Law), and in accordance with the Board's Rules and Regulations Governing the Subdivision of Land, as a flexible alternative to conventional subdivision.

The intent of Westport's OSRD By-Law is to:

- a. Encourage the permanent preservation and efficient stewardship of open space, agricultural land, forestry land, wildlife habitat, and other natural resources, including aquifers, water bodies, riverine areas and wetlands, historical and archeological resources, passive recreational areas, and scenic areas;
- b. Protect drinking water supplies;
- c. Facilitate the siting and construction of innovative and shared septic systems that will provide more effective treatment and cleaner effluent;
- d. Minimize the total amount of disturbance on the site;
- e. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- f. Perpetuate the appearance of Westport's traditional New England landscape;
- g. Allow for greater flexibility and creativity in the design of residential developments;
- h. Promote more sensitive siting of buildings and better overall site planning;
- i. Protect the value of real property;
- j. Allow landowners a reasonable return on their

investment; and

- k. Facilitate the construction and maintenance of streets and utilities, and the provision of public services in a more economical and efficient manner.
- l. Generally encourage more sustainable development using recognized principles such as low Impact Development and Smart Growth.

18.1 **APPLICABILITY AND ELIGIBILITY**

In order to be eligible for consideration as an OSRD, the tract to be subdivided must meet all of the following criteria.

Minimum Size of Tract:

The tract to be subdivided (which may consist of more than one contiguous parcel) shall contain a minimum of five (5) total acres.

Location:

The Zoning Districts in which OSRD's may be permitted by the Board are noted in the Table of Use Regulations of these Zoning By-Laws.

The entire tract shall be located within the Town of Westport.

The Board may, in its sole discretion, permit lots on directly opposite sides of a street to qualify as a single tract of land for OSRD purposes only. In order to allow such qualification of a tract of land divided by a street, the Board must find that this action is consistent with and enhances the purpose and intent of the OSRD By-Law and would not result in any more dwelling units than would be allowable under the Westport Zoning By-Law and the Board's Rules and Regulations Governing the Subdivision of Land if the lots on either side of the street were developed separately.

Land Division:

The tract may be a subdivision or a division of land pursuant to Mass. General Law c.41, section 81-P.

Dwelling Type:

The proposed dwelling types shall be single-family or two-family dwellings, or a mix thereof.

18.2 ADMINISTRATIVE PROCEDURE

All applications for OSRD Approval shall be submitted to the Board and shall be reviewed by the Board following normal procedures as established by Chapter 41, Sections 81K-81GG "The Subdivision Control Law" and the Board's Rules and Regulations Governing the Subdivision of Land, as each may be amended from time to time. The Board may approve, with conditions, or deny an application for an OSRD after assessing whether the OSRD better promotes the intent of this By-Law than a conventional subdivision.

18.3 PRE-APPLICATION

The applicant is encouraged to request a pre-application review at a regular meeting of the Board. The Board may invite representatives from other boards and commissions, such as the Conservation Commission and Board of Health to attend. The purpose of a pre-application review is to minimize the applicant's costs of engineering and other technical expenses by commencing discussion with the Board at the earliest possible stage in the development. At the pre-application review, the applicant may outline the proposed OSRD and seek preliminary, but not binding, feedback from the Board and other Town bodies and staff. This process will streamline administration of the application, enhance communication and coordination among Town departments, and save the Town time and money.

18.4 DESIGN PROCESS

Schematic Drawings from the Four-Step Design Process.

Each development plan shall follow a Four-Step Design Process, as described below. From the beginning of the submittal and review process, applicants shall demonstrate to the Planning Board, through schematic drawings, that these four design steps were followed by their site designers in determining the layout of their proposed streets, house lots, and open space.

- a. Designating the Open Space.** First, the open space is identified. The open space shall include, to the extent feasible, the most sensitive and noteworthy natural, scenic, and cultural resources on the property. Such items may include without limit: specimen trees, stonewalls, archaeological features, unique habitats,

plant communities, distinctive vistas, wetlands and riverine areas, or other areas of special natural, cultural or recreational interest.

- b. **Location of House Sites.** Second, potential house sites are tentatively located. House sites should be located not closer than 100 feet to wetlands areas, but may be situated within 50 feet of open space areas, in order to enjoy views of the latter without negatively impacting the former.
- c. **Street and Lot Layout.** Third, align the proposed streets to provide vehicular access to each house in the most reasonable and economical way, in conformance with existing natural landforms. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on open space. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged.
- d. **Lot Lines.** Fourth, draw in the lot lines. These are generally drawn midway between house locations, in a manner that meets the lot requirements below.

18.5 **GENERAL APPLICATION REQUIREMENTS**

18.5.1 **Application Form**

Applications for OSRD's shall be submitted on a form provided by the Board.

18.5.2 **Concept Plan**

In addition to the requirements set forth in the Board's Rules and Regulations Governing the Subdivision of Land, an application shall include a Concept Plan and a Yield Plan. The Concept Plan shall address the general features of the land; give approximate configurations of the lots, open space and roadways; and include the information required for a preliminary plan in the Board's Rules and Regulations Governing the Subdivision of Land. The concept plan shall incorporate the Four-Step Design Process above, and the Design Standards below, to propose a conceptual design for the development. Production of the Concept Plan by a Registered Landscape Architect is strongly encouraged.

18.5.3 Yield Plan

The basic number of units shall be determined by the number of lots shown on a preliminary subdivision plan conforming to the requirements of the Rules and Regulations Governing the Subdivision of Land. Such preliminary plan shall include a perimeter survey prepared by a Registered Professional Land Surveyor, location of wetlands delineated by a wetlands scientist, and topography based, at a minimum, on the most recent USGS topography map. The applicant shall demonstrate to the satisfaction of the Board and its consulting engineer that the preliminary plan is buildable without reliance on waivers of the subdivision regulations, without multiple wetlands crossings, and without extraordinary engineering techniques.

18.5.4 Other Information

The submittals required by this By-Law are in addition to any other requirements of the Rules and Regulations Governing the Subdivision of Land or by other sections of the Westport Zoning By-Laws.

18.6 SITE VISIT

The Board and/or its agents may conduct site visits either at the pre-application stage or during the public hearing. The applicant and/or his agents are encouraged to attend.

18.7 REDUCTION OF DIMENSIONAL REQUIREMENTS

The Board may authorize modification of lot size, shape, width, and other dimensional requirements for lots within an OSRD, subject to the following limitations:

	Zoning District	
Dimensional Requirements	Residence/ Agricultural, Business, Unrestricted	Residence/ Agricultural, Business, Unrestricted
	Single-Family	Two-Family

Minimum Lot Area (sq.ft.)	20,000	30,000
Minimum Lot Area of Upland (sq.ft.)	20,000	30,000
Minimum Lot Frontage (ft.)	80	120
Minimum Front Yard Width (ft.)	50	50
Minimum Front Setback (ft.)*	25	25
Minimum Side Setback (ft.)	10	10
Minimum Rear Setback (ft.)	25	25
Maximum Lot Coverage		

The Board may, in its sole discretion, allow one (1) additional building lot where the applicant proposes to use decentralized Innovative/Alternative (I/A) Treatment system(s), or decentralized "localized" treatment system(s) (typically for flows over 10,000 gallons per day), that significantly reduce bacterial and nutrient discharge to the environment (as compared with conventional onsite septic systems), and that are acceptable to the Westport Board of Health and to Massachusetts Department of Environmental Protection.

There shall be a minimum building location area on each lot where a circle having a diameter equal to the required lot frontage in feet can be placed. Such circle shall contain an area of land that, in the opinion of the Board, provides a suitable dwelling site.

Lots having reduced area or frontage in accordance with the above table shall not have frontage on a street other than a street created through the OSRD application; provided, however, that the Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.

18.8 OPEN SPACE REQUIREMENTS

18.8.1 Area Requirements

A minimum of fifty percent (50%) of the parcel shown on the development plan shall be open space and shall exclude required yards. No more than 30% of such open space shall be wetland resource areas, as defined pursuant to Mass. General Law

Ch. 131, section 40.

The open space shall be contiguous. Contiguous shall be defined as being connected. Such open space may, however, be separated by the roadways or accessory amenities constructed within the OSRD. The Planning Board may waive this requirement for all or part of the required open space if it determines that allowing non-contiguous open space will promote the goals of this By-Law.

18.8.2 Uses and Restrictions

The required open space shall be used for conservation, historic preservation, environmental education, passive recreation, aquifer recharge, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access if necessary for such purposes. No commercial use shall be made of the required open space. The open space shall be arranged so as to achieve the preservation or other objective for which it is intended. Based on the resources identified in step one of the four-step design process, the Board may restrict the use of open space to one or more of the above uses, in order to meet the intent of this By-Law. Where open space is used for shared wastewater treatment facilities, the use of said open space is subject to Title V restrictions. The Board may permit up to 10% of the open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space (e.g. pedestrian walks and bike paths).

Any proposed open space shall be subject to a recorded restriction enforceable by the Town or a non-profit organization the principal purpose of which is the conservation of open space, providing that such land shall perpetually be kept in an open state, that it shall be preserved exclusively for the purposes set forth herein, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes. Where common open space and/or other shared facilities, including without limit septic systems and trails are to be owned by the homeowners in an OSRD, they

shall be subject to a Homeowner's Agreement and deed restrictions as deemed necessary by, and recommended and/or approved by Town Counsel and to ensure their maintenance.

The Board may allow stormwater management systems serving the OSRD to be located within the open space, where care is taken to avoid placing them near sensitive natural or cultural resources. Surface systems, such as retention and detention ponds shall not qualify towards the minimum open space required.

Wastewater shall be managed in accordance with Title V, Town By-Laws, and the regulations of the Westport Board of Health. Where town sewer is available nearby, the OSRD shall be connected at the applicant's expense to that system. Where town sewer is not available, septic systems may be installed on individually owned lots. Where this arrangement cannot be met, alternatives such as shared septic designs may be proposed in consultation with the Board of Health. In the case of shared systems, the wastewater system may be located in the open space, when the Planning Board finds such arrangement will enhance the purpose and intent of the OSRD.

For on-site and shared systems, decentralized Innovative/Alternative (I/A) Treatment system(s), or decentralized "localized" treatment system(s) (typically for flows over 10,000 gallons per day), that significantly reduce bacterial and nutrient discharge to the environment (as compared with conventional onsite septic systems), and that are acceptable to the Westport Board of Health and to Massachusetts Department of Environmental Protection are preferred.

18.8.3 Ownership of Open Space

The open space shall, at the Board's election, be conveyed to:

- The Town or its Conservation Commission;
- A non-profit organization, the principal purpose of which is the conservation of open

space and any of the purposes for such open space set forth above;

- A corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of the open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of the open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. The owner of each lot shall be deemed to have assented to the town filing a lien against each lot in the development for the full cost of such maintenance, which liens shall be released upon payment to the town of same. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded in the Registry of Deeds.

18.9 DESIGN STANDARDS

The following design standards shall apply to all OSRD's and shall govern the design and development process.

- The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. Individual building sites shall be designed to maintain existing topography and cover. Topography, tree cover,

and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.

- Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.
- The removal or disruption of significant historic, archaeological, or traditional uses, structures, or architectural elements shall be avoided or minimized insofar as practicable, whether these exist on the site or on adjacent properties.
- A buffer area of 50 feet shall normally be provided at the perimeter of the property where it abuts residentially zoned and occupied properties. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance of structures and landscapes approved as part of the project. Where the Planning Board determines that a smaller buffer (or no buffer) will suffice to accomplish the objectives set forth herein, the 50-foot buffer is not required. Where the development abuts or includes a body of water or wetlands, these areas and the 100-foot buffer to such areas shall be incorporated into the open space.
- Drainage. The Planning Board shall encourage the use of "soft" (non-structural) stormwater management techniques (such as vegetated swales) and other low-impact drainage techniques that reduce impervious surface and enable infiltration where appropriate, and are consistent with the drainage standards of the Board's Rules and Regulations Governing the Subdivision of Land and other Town by-laws.
- Streets and Utilities. All streets and ways, whether public or private, and utilities shall be designed and constructed in compliance with the Board's Rules and Regulations Governing the Subdivision of Land. Variations shall be permitted by the Board on a finding that the objectives of this section are better served with such variations.

The Board shall review and process an OSRD application consistent with the procedures of Mass. General Law c. 41, Sections K - GG, and the Board's Rules and Regulations Governing the Subdivision of Land. The Board may approve, approve with conditions, or deny an application for a OSRD, after assessing whether the OSRD better promotes the objectives of this section than a conventional subdivision development.

18.11 RELATION TO OTHER REQUIREMENTS

The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning By-Law. The Planning Board shall coordinate the review procedures and public hearing required for any application for an OSRD with the review procedures and public hearing required for approval of a conventional subdivision plan.

18.12 SEVERABILITY.

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Westport Zoning Bylaw.

(2007 ATM, Article 20)

ARTICLE 19

NOQUOCHOKE OVERLAY DISTRICT (NOD)

19.0 PURPOSE

The purpose of the NOD by-law is to provide a mechanism for the approval of:

- A range of housing choices, including but not limited to, moderate-density, multi-family dwellings;
- Housing suitable for households of varying ages, sizes, and income levels;
- Dwelling units that shall be eligible for inclusion on

Westport's Subsidized Housing Inventory under the Local Initiative Program of M.G.L. Ch. 40B, as administered by the Department of Housing and Community Development (DHCD);

- Development in a manner that conserves natural features, such as wetland resources, open space, areas of scenic beauty, and vegetated buffers along public ways and adjacent residential properties;
- Development that groups buildings to preserve open space; facilitate efficient provision of utilities; and create a sense of neighborhood and community;
- Development in accordance with a site plan demonstrating a design that is both technically functional and in harmony with both the site and surrounding land uses.
- Development that, by means of site planning and building design, promotes social sustainability.

19.1 DEFINITIONS

Development: Any project applied for and/or approved pursuant to Article 19 of the Zoning By-Laws.

19.2 POWERS AND ADMINISTRATIVE PROCEDURE

This Bylaw shall apply to developments in the Noquochoke Overlay District (NOD) as defined in Article 3 of the Westport Zoning By-Laws. Any such development shall require, without limit, a special permit under Article 2 of the Zoning By-Laws and G.L. c. 40A, §9; Site Plan Approval under Article 15; and an Inclusionary Housing Special Permit under Article 13. For the purposes of Article 19, the Planning Board of the Town of Westport (the "Board") is hereby designated as the Special Permit Granting Authority (SPGA). As such, the Board may adopt any additional regulations, forms, fees, design guidelines, and design and construction standards it deems necessary to administer this By-Law, provided that it shall not regulate or restrict the use of materials or methods of construction of structures that are regulated by the State Building Code. In granting a special permit, the Board may, without limit, impose controls on the dimensions, and bulk of buildings to enhance architectural compatibility with the surrounding neighborhood, and on locations of buildings and site improvements to enhance a sense of community and to ensure public health, safety and convenience and the protection of natural and cultural resources.

19.2.1 Procedures

The Board shall act on all special permit applications as provided by the Rules and Regulations of the Planning Board as a Special Permit Granting Authority.

19.2.2 Consolidation of Permits and Procedures

When approval is sought under this article for a project that requires special permit relief from the Planning Board pursuant to multiple Articles of the Zoning By-Laws such as, but not limited to, Article 13 Inclusionary Housing, and requiring Site Plan Approval where the Board serves as the reviewing authority, the applicant is strongly encouraged to simultaneously apply to the Board for all of the relief and submit all materials and fees initially required by those articles with the application made under this article. Whenever possible and practicable, the Board may consolidate the multiple special permits and site plan approval proceedings, with regard to conducting the public hearings and issuing decisions. If a decision is granted under this article and other relief is addressed as well, whenever possible, the Board will issue an integrated decision for the entire project. Notices for public hearings should reference the Zoning By-Law sections under which relief is sought.

19.3 PERMITTED AND PROHIBITED USES

19.3.1 Permitted Uses

Uses allowed by right pursuant to the Table of Use Regulations in the underlying district shall also be allowed by right in this overlay district. The following uses in the Noquochoke Overlay District shall require a special permit:

- a. Developments including Single-family, Two-, and/or Multi-family dwellings with up to 12 dwelling units per building, including structures and facilities accessory thereto,
- b. Community uses accessory to the residential

uses,

- c. Projects containing a combination of uses allowed by right and the aforementioned uses.

19.3.2 Prohibited Uses

Those uses prohibited in the underlying district pursuant to the Table of Use Regulations or not expressly allowed in this overlay district shall be prohibited.

19.4 APPLICATION FOR A SPECIAL PERMIT APPROVAL

An application for a Noquochoke Overlay District Special Permit shall adhere to the Rules and Regulations of the Planning Board as Special Permit Granting Authority.

19.5 RELATIONSHIP TO OTHER REGULATORY REQUIREMENTS

The submittals and permits of Article 19 shall be in addition to any other requirements of the applicable sections of the Rules and Regulations governing the Subdivision of Land in Westport, MA, Rules and Regulations of the Westport Planning Board for Site Plan Approval, and the Rules and Regulations of the Westport Planning Board for Inclusionary Housing Special Permits. Where such requirements conflict, the more stringent requirement shall control unless the Board determines that requirement to be unnecessary to protect the public interest and/or inconsistent with the intent of Article 19.

19.6 DENSITY

The maximum number of dwelling units allowed shall be established by calculations based upon a Net Usable Land Area (NULA) plan for the overall property, submitted by the applicant as part of the initial submission. The NULA acreage shall be established by subtracting all water bodies and any wetland resource area subject to protection under M.G.L. Ch. 131 s. 40 (the "Wetland Protection Act") and 310 CMR 10.00 (the "Wetland Protection Regulations") from the gross acreage of the site. The remaining upland area shall be the NULA for the purposes of establishing the number of units allowed in a development. The total number of proposed units within the development shall not exceed eight (8) dwelling units per NULA acre with a maximum of fifty-four (54) total dwelling units in the district. These may be in one-bedroom, two-bedroom, or three-bedroom dwelling units. The percentages of unit types shall be dispersed equally among market-rate

units and affordable units. The distribution of unit types shall conform with Westport's Housing Plan and/or Needs Assessment.

19.7 **AREA AND DIMENSIONAL REQUIREMENTS**

There shall be no minimum lot area, frontage, floor area ratio, lot width or yard requirements within the NOD, or for any lot or building within the NOD, except as provided in this section; however, all developments with the NOD shall comply with the applicable requirements of the Aquifer Protection and Flood Plain Overlay Districts. The Board may impose appropriate conditions on the layout, location and size of buildings, structures and open spaces. Nothing contained herein shall relieve the owner of a proposed Development from receiving final approval of a definitive subdivision plan in accordance with the Town's Subdivision Regulations if the Development proposes subdividing or re-subdividing the development site. In this case, the Special Permit application shall be accompanied by such other data as is required by the Rules and Regulations Governing the Subdivision of Land.

19.7.1 **Building Height, Bulk and Setback Requirements**

19.7.1.1 **Building Height and Bulk**

The maximum height of any building in the NOD shall be 35 feet. Building height shall be measured as the vertical distance from the Average Natural Grade under the footprint of the building, to the highest point of the roof assembly.

Architectural elements that do not add interior or exterior floor area to a building, such as chimneys, and vents, are not considered part of the height of the building. Average Natural Grade shall be derived from the average elevation of the natural grade along the exterior of the building facing the front lot line or street line and the average elevation of the natural grade along the exterior of the rear or opposite side of the building.

The livable floor area of the third level or floor of a building shall be 50 percent or less of the livable floor

area of the second level or floor of that building.

19.7.1.2 Setbacks from NOD Boundary

All buildings, structures and facilities within the NOD shall maintain a minimum setback of 30 feet from the NOD boundary where that boundary coincides with the sideline of American Legion Highway.

The setback of all buildings from the NOD boundary in all other instances shall be at least 1.5 multiplied by the height of the intersection of building wall and roof on the side of the building nearest the NOD boundary.

Other major structures, and major stormwater management facilities, such as retention/detention basins, shall be set back at least 20 feet from the NOD boundary. Other utilities, roads and access driveways, swales, and minor improvements such as accessory buildings shall be set back at least 10 feet from the NOD boundary unless otherwise specified by the Board. All buildings, structures and major facilities within the NOD shall be shielded from adjacent properties by a buffer, adequate in the Board's opinion, which shall contain landscape elements.

19.7.1.3 Separation of Buildings

The minimum separation of buildings within the NOD shall be 20 feet. The Board may require greater separation of between larger buildings or may permit lesser separations if it finds that separation of less than 20 feet meets the purpose and intent of the NOD.

19.7.1.4 Front Yard Setbacks

The minimum front yard setback from the street or access drive within the NOD shall be 20 feet for a single-family or

two-family dwelling, and 30 feet for a multi-family dwelling.

19.8 BUILDING REQUIREMENTS FOR MULTI-FAMILY DWELLINGS

In the NOD, there shall be no more than 12 dwelling units and two garage spaces per dwelling unit in any residential building. The maximum length of any residential building shall be not more than 120 feet.

19.9 OPEN SPACE REQUIREMENTS

The development shall meet the Open Space Requirements as delineated in section 18.8 of Article 18 Open Space Residential Development (OSRD). Any special permit granted shall contain, as a condition of approval, that the required open space shall be protected by a permanent conservation restriction which shall be recorded before the conveyance of any unit occurs. Said restriction shall be held by the Conservation Commission, a non-profit conservation organization, or an organization or trust representing homeowners in the development, at the option of the Planning Board. The open space shall allow walking paths and other passive recreational uses, but shall not be use for the siting of any structure, building, septic system, well (drinking water or geothermal) or utilities or pipes.

19.10 ARCHITECTURAL DESIGN, COMMUNITY OPEN SPACES AND AMENITIES, AND NON-VEHICULAR CIRCULATION

19.10.1 Community and Private Open Spaces and Amenities

In addition to the contiguous open space required to be restricted to conservation and passive recreational use, the design of the site shall incorporate small private and community outdoor spaces, designed as "outdoor rooms", such as greens or other landscaped areas, and a system of pathways or sidewalks designed to provide for internal pedestrian circulation among dwellings and other facilities. The open spaces surrounding buildings and within neighborhoods shall provide for plantings and outdoor sitting areas, as well as small gathering and recreational areas for the use of the residents of the development. Outdoor areas for the use of inhabitants of each building shall be provided contiguous to each building with attention being paid to the delineation of public versus private outdoor spaces. Amenities such as

porches and landscaped sitting areas may be used to fulfill this requirement. Areas or facilities designed for use by all members of the Noquochoke community or neighborhood shall be distributed in such a manner as to allow easy, non-vehicular, access for all of the Noquochoke residents they are designed to serve, as well as vehicular access, where appropriate.

19.10.2 Non-Vehicular Circulation

Sidewalks shall be provided along at least one side of all streets and/or access driveways within the development unless waived by the Board in favor of equivalent, alternative pathways providing convenient access among all buildings and community amenities. A pedestrian connection shall be provided to American Legion Highway.

19.10.3 Architectural Design

Building design shall be consistent in scale, bulk, materials, color and typology with the architecture of the South Coast of Massachusetts. Private, ground floor entries for each dwelling unit, located on the front of residential buildings are preferred. Window area equivalent to a minimum of twenty-five percent of the first floor wall area of the primary facade of residential buildings is preferred. For larger buildings, variation in roof shape and building form, articulation of the facade, variation of street setback, and other means to enhance architectural interest are encouraged. In granting a Special Permit, the Board may impose conditions to ensure architectural compatibility with the character of the region and/or neighborhood.

19.11 SOCIAL SUSTAINABILITY, ACCESSIBILITY, AND VISITABILITY

Social sustainability is design that acknowledges that a person's abilities may change over his or her lifetime and allows their home and neighborhood to accommodate the changing needs. Principles of social sustainability should be applied throughout the development - to the buildings, landscapes and amenities. The design can provide full accessibility or can be easily adapted to meet changing needs. For people to fully participate in community life, in

homes they may visit, as well as in public spaces, the design shall meet the following standards/guidelines.

19.11.1 Goals

- To create socially equitable homes and communities that includes persons with a range of abilities.
- To minimize the economic and social costs of expensive renovations or the need to move from one's home.
- To avoid the structural barriers that can prevent older adults and persons with disabilities from leading independent lives and participating fully in their communities.

19.11.2 Accessible Dwelling Units

A minimum of 30 percent of the total dwelling units in the Development shall be Visitable in accordance with the criteria in Section 19.11.3.

19.11.3 Performance Criteria for Social Sustainability and Visitability

Dwellings in the NOD shall meet the following criteria for visitability unless explicitly waived by the Planning Board. Visitability increases the supply of accessible housing through the inclusion of three basic structural features at the time of home construction:

- A zero-step entrance;
- Doorways (both interior and exterior) with at least 32 inches of clear width, but shall not conflict with any requirement of the State Building Code;
- At least a half bath on the main floor of the home.

19.11.4 Additional Guideline

Reinforcement in the bathtub area of bathroom walls of all dwelling units to allow easy addition of grab bars is suggested.

19.12 **OFF-STREET PARKING**

Off-Street Parking shall, in general, adhere to the design and dimensional requirements of Section 5.1.0 Off-Street Parking; however, the minimum requirements for parking spaces shall be as follows:

- | | |
|-----------------------------|---|
| Residential dwelling units: | 2 spaces per unit |
| Visitor Parking: | 1 space for every 3 residential dwelling units |
| Community Buildings: | 3 spaces per 1000 square feet of gross floor area |
| Recreational uses: | To be determined during the review process. Where feasible the ITE Parking Generation Manual in effect during January 2009 shall be used. |

19.13 **ACCESS WAY CONSTRUCTION**

Construction of access ways within the NOD shall conform to the applicable requirements of the Rules and Regulations Governing the Subdivision of Land. The Board may waive any requirements of the Rules and Regulations it deems to be unnecessary either to meet the intent of this by-law or to ensure public safety. The minimum paved width shall not be less than 20 feet and the minimum right-of-way width shall be 32 feet. A sidewalk on at least one side of each access way shall be required.

19.14 **CONDOMINIUM ASSOCIATION**

In cases of sale of individual units as condominiums, there shall be included in the deed a requirement obligating the purchasers to join in an organization of unit owners incorporated under Chapter 183A as amended, of the General Laws of the Commonwealth. If any unit is sold separately, there shall be a deed restriction that shall require mandatory membership in a homeowner's association, which shall satisfy all of the same requirements. No conveyance of an individual unit shall take place until this requirement has been satisfied. The organization shall file a written

report, including the names of officers, with the Town Clerk by February 15 of each year. Such report may be the same written report rendered to all unit owners referred to in G.L. c. 183A, § 10, par. D.

19.14.1 The Condominium or Homeowners Association (the "Association") shall provide for the maintenance of common open space, drainage facilities, community water and sewage disposal systems, the access ways, parking areas, recreational facilities or any other commonly held property or facility. The Association shall be a permanent agreement, either through a non-profit homeowner's and/or condominium association, and be recorded by a covenant or other agreement in the Bristol County Registry of Deeds before the conveyance of any unit or dwelling. Drafts of the proposed agreements shall be submitted to the Board with the development plan and shall be subject to approval by the Board and by Town Counsel, at the applicant's expense, as a condition of approval of the special permit relief.

- a. The agreement shall provide for the maintenance of all common land and facilities and specify the required methods of maintenance
- b. Membership in the Association shall be compulsory as a requirement of ownership of any lot or unit in the development.
- c. The agreement shall require compulsory assessment upon the individual owners for the cost of maintenance and the creation of a lien on any unit that is assessed for failure to pay such assessment.
- d. The agreement shall mandate that the Association shall not be dissolved without the consent of the Board; and any other specifications deemed necessary by the Board.
- e. The agreement shall provide that, in the event the Association or any successor organization, fails to maintain the common open space or any commonly owned facility in reasonable order and condition in accordance with the development plan, the Town shall

have the right but not the obligation enforce the provisions of the agreement and shall be provided with an easement that shall allow the Town and its agents to enter onto such portions of the land in the development as are necessary to perform the required maintenance in order to preserve the taxable values of the properties within the development and to prevent the common land or facility from becoming a hazard or nuisance. If the Town performs any maintenance or repair work, the Association and its members shall be jointly and severally liable to reimburse the Town for its costs and the cost, if unpaid, shall become a lien upon the properties in the development until said cost has been paid in full.

- f. The developer shall turn over such Association to the homeowners at such time as 51 percent of the units or lots have been leased or sold. The agreement shall provide that the developer shall bear the responsibility for installation and/or maintenance of common open space, community water and sewage disposal systems, private ways, recreational facilities or any other commonly held property or facility until (1) such time as these facilities are completed to the satisfaction of the Board and (2) at least 51 percent of the units or lots have been sold, at which time the homeowner's or condominium association shall bear the responsibility of maintaining these areas and facilities.

19.15 HOUSING AFFORDABILITY

19.15.1 Marketing Plan

Applicants under this by-law shall submit a marketing plan as outlined in **Section 13.8, Marketing Plan for Affordable Units**, of these By-Laws.

19.15.2 Required Affordable Units

Not less than 30% of the total dwelling units constructed in each development shall be

designated as Affordable Units as defined in Section 1.1.E of these By-Laws and shall be eligible for inclusion in the SHI maintained by DHCD and the applicant shall provide written evidence of such eligibility from DHCD. For purposes of calculating the number of units of affordable housing required within a development, any fraction of a unit shall be deemed to constitute a whole unit.

19.15.3 Design and Construction

Affordable Units shall be finished housing units; the exterior shall be comparable in initial construction, quality and exterior design to Market Rate Units in the development.

19.15.4 Affordable Housing Restrictions

Each Affordable Unit shall be subject to a permanent Affordable Housing Restriction which shall be approved by the Board and Town Counsel and duly recorded, before any Affordable Unit is sold, with the appropriate registry of deeds or district registry of the Land Court and which contains the following:

- a. Specification of the term of the Affordable Housing Restriction which shall be the maximum period allowed by law but not less than ninety-nine years;
- b. The name and address of an administering agency with a designation of its power to monitor and enforce the affordable housing restriction;
- c. Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan for the Affordable Units may provide for preferences in resident selection to the extent consistent with applicable law; the plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that the preference

for such Unit shall be given to a household of the appropriate size;

- d.** A requirement that residents shall be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
- e.** A description of the Affordable Unit by address and number of bedrooms;
- f.** Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership shall be set;
- g.** Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions;
- h.** A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit shall be given to the administering agency;
- i.** Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the administering agency;
- j.** Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency and the Town of Westport, and shall limit initial sale and resale to and occupancy by an Eligible Household;
- k.** Provision that the restriction on an Affordable Rental Unit shall run in favor of the administering agency and The Town of Westport, and shall limit rental and occupancy to an Eligible Household;
- l.** Provision that the owner (s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the administering agency in a form specified by that agency certifying compliance with the affordability provisions

of this By-Law, and containing such other information as may be reasonably requested in order to ensure affordability.

- m. A requirement that residents in Affordable Housing provide such information as the administering agency may reasonably request in order to ensure affordability.

19.15.5 Affordable Housing Administering Agency

An administering agency for affordable units, which may be the Westport Housing Authority, or other qualified housing entity shall be designated in the special permit. In a case where the administering agency cannot adequately carry out its administrative duties, such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Board or, in the absence of such timely designation, by an entity designated by the DHCD. In any event, such agency shall ensure the following:

- a. Prices of Affordable Homeownership Units are properly computed, rental amounts of Affordable Rental Units are properly computed;
- b. Income eligibility of households is properly and reliably determined;
- c. The housing marketing and resident selection plan conforms to all requirements and is properly administered;
- d. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given;
- e. Affordable Housing Restrictions meeting the requirements of this section are recorded with the proper registry of deeds;
- f. All payments to the Town of Westport and their assigns are made in a timely manner pursuant to the requirements of the deed

restrictions for the Market Rate Units.

19.15.6 Housing Marketing and Selection Plan

The housing marketing and selection plan shall make provision for payment by the Development applicant or successor in title of reasonable costs to the administering agency to develop, advertise, and maintain the list of Eligible Households, and to monitor and enforce compliance with affordability requirements. Such payment as determined by the SPGA shall not exceed one-half (1/2%) percent of the amount of rents received for each Affordable Rental Unit (payable annually by the Owner of said Affordable Rental Unit) and/or one (1%) percent of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale), as applicable.

19.15.7 Payment in Lieu of Eligible Buyer

The Board may allow a developer of non-rental housing units to make a cash payment to the Town through its Affordable Housing Trust Fund for each affordable low-or moderate-income unit, if after one-year's time, a buyer cannot be found for an affordable unit. The cash payment shall be equal either to (1) the difference between the fair market value for a typical market-rate housing unit in the proposed development, as determined by the Board, and the price of a housing unit affordable to a low- or moderate-income household; or (2) the difference the between the actual fair market price paid for the unit and the price of an affordable unit, whichever is greater.

19.16 DECISION

The Board may approve or approve with conditions an application for a NOD Special Permit, if the Board determines that the Development better promotes the objectives herein, than a conventional development would and that the Development is in compliance with applicable sections of the Rules and Regulations governing the Subdivision of Land in Westport, MA, Rules and Regulations of the Westport Planning Board for Site Plan Approval, and the Rules and Regulations of the Westport Planning Board for Inclusionary Housing Special Permits.

19.17 **ISSUANCE OF OCCUPANCY PERMITS**

The Building Inspector shall not issue an occupancy permit for a unit without prior receipt of evidence that all restrictions and covenants required as set forth hereunder have been duly recorded at the Registry of Deeds and that the low-and moderate-income units have been approved for listing by DHCD for Westport's SHI.

19.18 **FURTHER CONDITIONS**

No lot shown on a plan for which relief is granted under this section may be further subdivided, and a restrictive covenant imposing this condition shall be recorded against the subject land before any building permit issues and a note regarding this condition shall be placed on the approved plan and it shall be recorded as a condition of the special permit taking effect. Subsequent to granting relief, the Board may permit minor adjustments of lot lines within the development that do not result in the creation of additional lots. However, any change in overall density, street layout, or open space layout shall require a modification of the special permit and full public hearing, with notice.

(2009 ATM, Article 28)

ARTICLE 20

LOW IMPACT DEVELOPMENT (LID) SITE PLAN APPROVAL

20.1 **PURPOSE**

The purpose of this bylaw is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of soil erosion, sedimentation, and stormwater runoff. This section seeks to meet that purpose through the following objectives:

- 20.1.1** To eliminate or reduce the adverse effects of soil erosion and sedimentation;
- 20.1.2** To minimize stormwater runoff from any development;
- 20.1.3** To minimize nonpoint source pollution caused by stormwater runoff from development;

20.1.4 To provide for groundwater recharge where appropriate; and

20.1.5 To ensure controls are in place to respond to objectives in Subsections 20.1.1 and 20.1.2 and that these controls are properly operated and maintained.

20.2 **APPLICABILITY**

This bylaw shall apply to all activities that result in a land disturbance activity of 40,000 sq. ft. of land, or that will disturb less than 40,000 sq. ft. of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 40,000 sq. ft. of land. No person shall perform any activity that results in a land disturbance activity of 40,000 sq. ft. or more of land without site plan approval by the Planning Board, by majority vote, following review at a duly posted meeting, but without a formal public hearing, of soil erosion and sediment control plan and a stormwater management plan. Normal maintenance and/or improvement of land in agricultural or aquaculture use, as defined by the Wetland Protection Act Regulation 310 CMR 10.4, shall be exempt from this by-law. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an Order of Conditions or Request for Determination of Applicability (RDA) issued by the Town of Westport Conservation Commission shall be deemed to be in compliance with this bylaw.

20.3 **AUTHORITY**

This stormwater site plan review bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, G.L. c.40 and G.L. c.40A, and the Federal Clean Water Act and applicable regulations, including 40 CFR 122.34.

20.4 **RESPONSIBILITY**

The Planning Board shall administer, implement and enforce this bylaw. The Planning Board may distribute plans to other boards, commissions, departments, and outside technical and legal consultants and agencies for their review and

recommendations.

20.5 **DESIGN STANDARDS**

The applicant shall submit a plan to the Planning Board that illustrates how the following LID site design standards were utilized to the maximum extent feasible and explains any site and financial constraints which limited application of items 1 through 10 below and how items 11 and 12 were considered for implementation:

- 20.5.1** Preservation of the site's natural features and environmentally sensitive areas such as wetlands, existing vegetation, slopes, drainage ways, permeable soils, flood plains, woodlands and soils to the greatest extent possible;
- 20.5.2** Minimization of grading and clearing;
- 20.5.3** Clustering of buildings and a reduction in size of building footprints;
- 20.5.4** Use of stormwater management components that provide filtration, treatment and infiltration such as vegetated areas that slow down runoff; maximizing infiltration and reducing contact with paved surfaces;
- 20.5.5** Creation of subwatersheds to treat and micromanage runoff in smaller, decentralized, innovative stormwater management techniques to treat and recharge stormwater close to the source;
- 20.5.6** Lengthen flow paths and maximize sheet flow;
- 20.5.7** Emphasis on simple, nonstructural, innovative, low-cost methods including open drainage systems, recharging of roof runoff, parking areas and/or roadways, to recharge on site as close to the source as possible.
- 20.5.8** A maintenance program including information on regular street and parking lot sweeping shall be provided to the Planning Board for approval;
- 20.5.9** Reduction of impervious surfaces wherever possible through alternative street design, such as omission of curbs and use of narrower streets, the use of porous pavement or permeable pavers, shared

driveways and through the use of shared parking areas;

20.5.10 Reduction of the heat island effect;

20.5.11 Use of vegetation in buffer strips and in rain filter runoff);

20.5.12. Techniques integrated into every part of site design to create a hydrologically functional lot or development site, including but not limited to the following:

A. Grass swales along roads;

B. Rain gardens;

C. Buffer areas;

D. Use of roof gardens where practicable;

E. Use of amended soils that will store, filter and infiltrate runoff;

F. Bioretention areas;

G. Use of rain barrels and other cisterns to provide additional stormwater storage;

H. Use of permeable pavement and/or pavers in driveways, overflow parking, outside sales areas, etc.

I. Use of native plants and grasses

20.6 **LID PLAN CONTENTS**

The LID Management Plan shall contain sufficient information for the Planning Board to evaluate the environmental impact, effectiveness, and acceptability of the site planning process and the measures proposed by the applicant for reducing adverse impacts from stormwater runoff. This plan shall be in accordance with the criteria established in these Bylaws and must be submitted with the stamp and signature of a Professional Engineer (PE) licensed in the Commonwealth of Massachusetts. The LID Management Plan shall fully describe the project in drawings, narrative, and calculations. It shall include:

20.6.1 Contact Information. The name, address, and

telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected;

- 20.6.2 A locus map;
- 20.6.3 Existing site plan (for comparison to 20.6.15 below);
- 20.6.4 The existing zoning, and land use at the site;
- 20.6.5 The proposed land use;
- 20.6.6 The location(s) of existing and proposed easements;
- 20.6.7 The location of existing and proposed utilities;
- 20.6.8 The site's existing & proposed topography with contours at 2-foot intervals,
- 20.6.9 The existing site hydrology (both groundwater recharge and surface runoff);
- 20.6.10 A description and delineation of existing stormwater conveyances, impoundments, wetlands, drinking water resource areas, shellfishing areas, swimming beaches or other critical environmental resource areas, on or adjacent to the site or into which stormwater flows;
- 20.6.11 A delineation of 100-year flood plains, if applicable;
- 20.6.12 Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration;
- 20.6.13 The existing and proposed vegetation and ground surfaces with runoff coefficients for each;
- 20.6.14 A drainage area map showing pre and post construction watershed boundaries, drainage area and stormwater flow paths, including municipal drainage system flows;
- 20.6.15 A recharge area analysis that calculates pre-and post-project annual groundwater recharge rates on the parcel;

20.6.16 A description and drawings of all components of the proposed LID Management system including:

- A.** Locations, cross sections, and profiles of all brooks, streams, d rainage swales and their method of stabilization;
- B.** All measures for the detention, retention or infiltration of water;
- C.** Description of non-structural BMPs;
- D.** All measures for the protection of water quality;
- E.** The structural details for all components of the proposed drainage systems and LID Management facilities;
- F.** Notes on drawings specifying materials to be used, construction specifications, and expected hydrology with supporting calculations;
- G.** Proposed site plan including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable;
- H.** Any other information requested by the Planning Board.

20.6.17 Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in this Bylaw. Such calculations shall include:

- A.** Description of the design storm frequency, intensity and duration;
- B.** Time of concentration;
- C.** Soil Runoff Curve Number (RCN) based on land use and soil hydrologic group;
- D.** Peak runoff rates and total runoff volumes for each watershed area;
- E.** Information on construction measures used to

maintain the infiltration capacity of the soil where any kind of infiltration is proposed;

- F. Infiltration rates, where applicable;
- G. Culvert capacities;
- H. Flow velocities;
- I. Data on the increase in rate and volume of runoff for the specified design storms; and
- J. Documentation of sources for all computation methods and field test results.

20.6.18 Post-Development downstream analysis if deemed necessary by the Planning Board;

20.6.19 Soils Information from test pits performed at the location of proposed LID Management facilities, including but not limited to soil descriptions, depth to seasonal high groundwater, depth to bedrock, and percolation rates. Soils information will be based on site test pits logged by a Massachusetts Registered Soil Evaluator, or a Massachusetts Registered Professional Engineer;

20.6.20 Landscaping plan describing the woody and herbaceous vegetative stabilization and management techniques to be used within and adjacent to the stormwater practice.

20.7 OWNERS ASSOCIATION

As a condition of approval of a LID Management Plan the Applicant shall create and properly fund an Owners Association and all purchasers of land within the project shall be required to belong to the Owners Association. The Owners Association shall be responsible for the perpetual operations and maintenance of the components of the approved LID management Plan. The Owners Association shall maintain permanent ownership of any drainage basins or ponds in the subdivision, including all pipes and other appurtenant devices, and shall have the permanent responsibility of maintaining, repairing and replacing said drainage systems, as necessary. The Owners Association documents shall be reviewed and approved by the Planning Board, in consultation with Town Counsel, and the Owners Association shall have an

initial fund that is deemed satisfactory to the Planning Board, in consultation with the Planning Board's technical consultant. The Owners Association shall send correspondence to all members of the Association twice a year, once during March and once during September, to advise each member of the Association's duties and responsibilities to: (1) operate and maintain the components of the approved LID management Plan; and (2) maintain, repair and replace the drainage systems. At the same time, the Owners Association shall provide a written reminder to each individual member to maintain any portion of the systems on each member's property, including the mowing and clearing of drainage swales and berms.

20.8 CONNECTIONS TO MUNICIPAL SYSTEMS

There shall be no connections to the Town of Westport Municipal Storm Drain Systems (MS4)

20.9 PROMULGATION OF RULES AND REGULATIONS

The Planning Board may promulgate rules and regulations to effectuate the purpose of this bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

20.10 INSPECTIONS, SUBMISSION OF FINAL PLANS, MAINTENANCE

20.10.1 The Planning Board, or designated agent, shall make inspections as hereinafter required and either shall approve that portion of the work completed in accordance with the approved plans or shall notify the owner or person responsible for the implementation of the plans wherein the work fails to comply with the approved soil erosion and sediment control plan, or the approved stormwater management plan as described in Planning Board's Rules and Regulations. Plans for grading, removal, stripping, excavating, and filling work approved by the Planning Board and shall be stored on site during the progress of the work. To obtain inspections, the permittee shall notify the Planning Board agent at least two working days before each of the following:

- A.** Installation of sediment and erosion control measures.
- B.** Start of construction.

- C. Completion of site clearing.
- D. Completion of rough grading.
- E. Installation of stormwater controls.
- F. Close of the construction season.
- G. Completion of final landscaping.

20.10.2 The person responsible for the implementation of the approved plans shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved soil erosion and sediment control plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Planning Board Agent at the time interval specified in the approved permit.

20.10.3 The Planning Board, or designated agent, shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

20.10.4 The applicant shall submit an "as-built" plan for the stormwater controls after the final construction is completed. The plan must show the final design and specifications of all stormwater management systems and must be prepared by a professional land surveyor.

20.10.5 An Operation and Maintenance plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the Permit and this Bylaw during all seasons and throughout the life of the system. The Operation and Maintenance Plan shall remain on file with the Planning Board and shall be an ongoing and enforceable requirement. The O&M Plan shall include:

- A. The name(s) of the owner(s) for all components of the system;
- B. A map showing the location of the systems and facilities including catch basins,

manholes/access lids, main, and stormwater devices;

C. Maintenance agreements that specify:

- a.** The names and addresses of the person(s) responsible for operation and maintenance;
- b.** The person(s) responsible for financing maintenance and emergency repairs;
- c.** An Inspection and Maintenance Schedule for all LID Management facilities including routine and non-routine maintenance tasks to be performed;
- d.** A list of easements with the purpose and location of each;
- e.** The signature(s) of the owner(s).

D. LID Management Easement(s)

- a.** LID Management easements shall be provided by the property owner(s) as necessary for:
 - 1.** Access for facility inspections and maintenance;
 - 2.** Preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event;
 - 3.** Direct maintenance access by heavy equipment to structures requiring regular maintenance.
- b.** The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
- c.** Stormwater Management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Planning Board.

d. Easements shall be recorded with the County Registry of Deeds prior to issuance of a Certificate of Completion by the Planning Board.

E. Changes to Operation and Maintenance Plans

a. The owner(s) of the LID Management system shall notify the Planning Board of changes in ownership or assignment of financial responsibility.

b. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this Bylaw by mutual agreement of the Planning Board and the Responsible Parties. Amendments shall be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

20.11 **PROJECT CHANGE**

The permittee, or his or her agent, shall notify the Planning Board in writing of any change or alteration of a land-disturbing activity authorized in either the soil erosion and sediment control plan or the stormwater management plan before any change or alteration occurs. If the Planning Board determines that the change or alteration is significant, based on the design requirements listed in this bylaw and accepted construction practices, the Planning Board may require that an amended soil erosion and sediment control plan and/or stormwater management plan application be filed.

If any change or deviation from these plans occurs during a project, the Planning Board may require the installation of interim measures before approving the change.

20.12 **FEES**

The appropriate application fee as established by the Planning Board shall accompany each application. Applicants shall pay review fees, as determined by the Planning Board, sufficient to cover any expenses connected with any public hearing, review of the soil erosion and sediment control plan, and site inspection.

20.13 **APPEAL**

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. Gen. L. Ch. 40A or other such provision of the General Laws.

(2011 ATM, Article 36)

ARTICLE 21

DRIVEWAYS AND COMMON DRIVEWAYS

21.1 **INTRODUCTION**

In an effort to preserve, protect and enhance environmentally sensitive land that might otherwise be cleared, excavated, filled and/or covered with impervious surface this bylaw seeks to minimize negative impacts on community character and improve safety and emergency access. Common driveways may be allowed by Special Permit granted by the Planning Board in accordance with the provisions of this section. A Special Permit will not be required when the common driveway is approved as part of the definitive subdivision process. For existing common driveways: a Special Permit shall be required when alterations are proposed to the common driveway.

21.2.1 **PURPOSE**

The purpose of allowing access to no more than two (2) lots in any zoning district, except in an Open Space Residential Development, over a common driveway is:

- 21.2.1** To enhance public safety by reducing the number and frequency of points at which vehicles may enter upon the ways used by the public;
- 21.2.2** To preserve, protect, and enhance environmentally sensitive land, such as well discharge areas, wetlands and flood plains, by reducing the area of land that is cleared, excavated, filled and/or covered with impervious material;
- 21.2.3** To encourage the protection and preservation of significant features and vistas.

21.3 **APPLICABILITY AND REQUIREMENTS**

The Planning Board may grant a Special Permit for a Common

Driveways that serves no more than two (2) lots, provided that each lot shall have the required frontage on a public way or a way approved by the Planning Board. An application for a special permit shall include a site plan prepared by a registered engineer and registered land surveyor that provides satisfactory evidence that such Driveway or Common Driveway meets the following requirements:

21.3.1 The common portion of the common driveway shall not be in excess of five hundred (500) feet in length or as allowed by the Rules and Regulations;

21.3.2 Driveway/Curb Cut Spacing: Separation between access connections on all collectors and arterials shall be based on the posted speed limit in accordance with the following table:

<u>Posted Speed Limit (MPH)</u>	<u>Access Connection Spacing (Feet)</u>
20	85
25	105
30	125
35	150
40	185
45	230
50	275

21.3.3 The integrity of the edge of the public roadway pavement shall be protected and stormwater, sand, silt, mulch, and other debris shall be kept off of the road and out of town drainage systems.

21.3.4 Upon completion of the project, the applicant shall insure that the edge of the paved road is supported and not undermined. Any construction damage to the edge of town road shall be repaired by the applicant.

21.3.5 The radius of the driveway at the intersection of the street shall be designed to accommodate public safety & emergency vehicles.

21.3.6 Compliance with Emergency 911 requirements shall be maintained by the lots served by the common driveway. Permanent signs indicating the street

number address assigned to each lot served by the common driveway shall be installed within ten (10) feet of the intersection of the common driveway with the street, as well as within ten (10) feet of the intersection of an individual lot driveway with the common driveway. Numbered signs shall be placed in a manner so that they shall not be blocked during heavy snow pack;

- 21.3.7** The common driveway shall access the property over the frontage of either or both of the lots served by the driveway;
- 21.3.8** The applicant shall provide evidence to the Planning Board that the owners of the properties to be served by the common driveway have a deeded right to the common portions of the common driveway;
- 21.3.9** The common driveway shall meet the Secondary Road standard found in Table A of the Planning Board's Subdivision Rules & Regulations. The traveled way width requirement shall apply only to that portion of a driveway, which is used in common by more than one (1) lot. The maximum grade shall be 10%. The minimum grade shall be 1%, with a 3% maximum grade within fifty (50) feet of its intersection with a street right of way. The driveway right-of-way (or easement for a single driveway) shall be calculated as the width of the traveled way, plus 4' on either side, or at least 20' for a common driveway.
- 21.3.10** No common driveway shall be accepted as a public road nor shall the Town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway.
- 21.3.11** The presence of a common driveway accessing an undevelopable lot does not imply that the lot is buildable.
- 21.3.12** A lot may be served by a common driveway only if the ownership of the lot provides mandatory membership in an owners' association responsible for annual and long term maintenance, including, but not limited to, removal of ice and snow from the common drive. The plan shall identify all land that is to be held and administered by the mandatory owners' association. It shall bear

restrictions satisfactory to the Planning Board and the Town Counsel, to run with the land, restricting the way shown to remain private property and not to be extended, and any other restrictions and easements that are required for common driveway development by these by-laws. It shall incorporate by reference the document(s), satisfactory to the Planning Board and the Town Counsel, creating the mandatory owners' association and setting forth restrictive covenants and easements binding present and future owners of all the lots served by the common driveway. Such document(s) shall include, at a minimum the following:

- a. Specific standards for the maintenance of all structures designed to be requirements of a common driveway Special Permit, including, but not limited to, the travel way, drainage system, and signage;
- b. Provisions for allocating responsibility for snow removal, maintenance, repair, or reconstruction of the common driveway, drainage system, and signage;
- c. Text of proposed easement including the metes and bounds description;
- d. A procedure for the resolution of disagreements. Said document(s) shall be recorded along with the site plan and public utility and drainage easements in the Bristol County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the common driveway.

21.4 ADOPTION OF RULES AND REGULATIONS

The Planning shall adopt an application form and rules and regulations in accordance with the provisions of this by-law. Rules and regulations shall specify the application process, type and number of required plans, and general requirements in order to assist the developer in complying with the intent of this by-law. Pursuant to M.G.L. Chapter 44, Section 53G, the Planning Board may accept and expend funds to engage peer review services, including engineering and legal services.

21.5 FEES AND CONCURRENT HEARING PROCESS

The appropriate application fee as established by the Planning Board must accompany each application. Applicants shall pay review fees, as determined by the Planning Board, sufficient to cover any expenses connected with any public hearing and review of the plan.

21.6.1 WAIVER OF COMPLIANCE

The Planning Board, under this section, may waive strict compliance with dimensional requirements (for length and width) of this section, where such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Act or this section.

21.7 APPEAL

The appeal of any decision of the Planning Board hereunder shall be made in accordance with the provisions of Mass. Gen. L. Ch. 40A, §17 or other such provision of the General Laws.

21.8 VALIDITY

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

(2011 ATM, Article 38)

TABLE OF USE REGULATIONS

Y = Allowed By Right
N = Prohibited

SPBA = Special Permit Board of Appeals
SPPB = Special Permit Planning Board
SPA-PB = Site Plan Approval Planning Board

<u>USES</u>	<u>RESIDENTIAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>
ACCESSORY APARTMENT (see section 4.0.1.B.5.)	Y	Y	Y
ACCESSORY USE Included but not limited to: HOME OCCUPATION	Y	Y	Y
ADULT ENTERTAINMENT ESTABLISHMENT	N	N Except SPBA & SPA-PB in AEOD)	N
AGRICULTURAL, FORESTRY NURSERY, GARDENING, FARM,	Y	Y	Y
AMUSEMENT OR ASSEMBLY (see section 4.0.2.C)	N	SPBA/ SPA-PB	Y/SPA-PB
ASSISTED AND INDEPENDENT LIVING FACILITIES	SPPB	SPPB	SPPB

*AUTO BODY SHOP/AUTO REPAIR SHOP	N	Y/SPA-PB	Y/SPA-PB
*AUTO SALESROOM CLASS 1 & 2	N	Y/SPA-PB	Y/SPA-PB
*AUTO SALES, TRAILER SALES, OR FARM EQUIPMENT SALES	N	Y/SPA-PB	Y/SPA-PB
*AUTO SERVICE STATIONS	N	Y/SPA-PB	Y/SPA-PB
*AUTO STORAGE GARAGE	N	Y/SPA-PB	Y/SPA-PB
BANKS	N	Y/SPA-PB	Y/SPA-PB
<u>USES</u>	<u>RESIDENTIAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>
BATH HOUSES, BEACH CLUBS, BOAT LANDINGS, WHARVES (see section 4.0.1.D)	Y/SPBA	Y/SPA-PB	Y/SPA-PB
BOAT YARDS FOR CONSTRUCTION, STORAGE, MAINTENANCE, REPAIR OF BOATS (see section 4.0.1.D)	SPBA	Y/SPA-PB	Y/SPA-PB
BED & BREAKFAST	SPBA	Y/SPA-PB	Y/SPA-PB
CLUB, PRIVATE: NOT FOR PROFIT (See section 4.0.1.D)	SPBA	Y/SPA-PB	Y/SPA-PB
CLUB, PROFIT (see section 4.0.2.C)	N	SPBA/ SPA-PB	Y SPA-PB
*COMMERCIAL & NON-COMMERCIAL KENNELS	N	Y	Y
CONVALESCENT HOMES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
CONVERSION OF SINGLE-FAMILY INTO TWO-FAMILY STRUCTURE	SPBA	SPBA	SPBA

(see section 4.0.1.D)

DOGS: MAXIMUM 3 (see section 4.0.1.C)	N	Y	Y
DOGS: MAXIMUM 6	SPBA	Y	Y
DRIVE-THROUGH FACILITIES	N	SPPB	SPPB
DWELLING: ONE FAMILY	Y	Y	Y
DWELLING: TWO FAMILY	Y	Y	Y
<u>USES</u>	<u>RESIDENTIAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>
DWELLING: MULTI-FAMILY	N	N	Y/SPA-PB
*EARTH REMOVAL/MINING	N	N	Y/SPA-PB
EDUCATIONAL USES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
FLEA MARKET (see section 4.0.1.D)	N	Y/SPA-PB	Y/SPA-PB
GREENHOUSES FOR AGRICULTURAL USE ONLY	Y	Y	Y
GOLF COURSE: PUBLIC OR PRIVATE (see section 4.0.1.D)	SPBA/ SPA-PB	Y/SPA-PB	Y/SPA-PB
HOME OFFICE (See section 4.0.1.B for Standards and Limitations)	Y	Y	Y
HOSPITALS	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
HOTEL	N	Y/SPA-PB	Y/SPA-PB

INCLUSIONARY HOUSING	SPPB	SPPB	SPPB
JOB PRINTING	N	Y/SPA-PB	Y/SPA-PB
MISCELLANEOUS RETAIL OR SERVICE BUSINESS (see section 4.0.2.B)	N	Y/SPA-PB	Y/SPA-PB
MOBILE HOME PARK	N	N	N
MOTEL	N	Y	Y
METEOROLOGICAL TOWER (Met Tower)	Y	Y	Y
<u>USES</u>	<u>RESIDENTIAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>
MUNICIPAL	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
NEWSPAPER	N	Y/SPA-PB	Y/SPA-PB
NURSING HOMES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
OFFICES: BUSINESS OR PROFESSIONAL	N	Y/SPA-PB	Y/SPA-PB
OPEN SPACE RESIDENTIAL DEVELOPMENT	Y	Y	Y
OUTDOOR ADVERTISING WITH PERMIT	N	Y/SPA-PB	Y/SPA-PB
PUBLIC OR PRIVATE FACILITIES FOR AQUACULTURE (see section 4.0.1.D)	SPBA	SPBA	Y
PUBLIC UTILITY	N	Y/SPA-PB	Y/SPA-PB
RELIGIOUS USES	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
RESEARCH LABS	N	Y/SPA-PB	Y/SPA-PB

RESIDENT FISHERMEN SHUCKING	Y	Y	Y
RESTAURANTS	N	Y/SPA-PB	Y/SPA-PB
ROOM RENTAL/BOARDING FOR NOT MORE THAN FOUR PERSONS IN A DWELLING	Y	Y	Y
SANITARIUMS	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
SHARED WIND ENERGY FACILITIES	SPBA	SPBA	SPBA
<u>USES</u>	<u>RESIDENTIAL</u>	<u>BUSINESS</u>	<u>UNRESTRICTED</u>
SIGNS (ACCESSORY)	Y	Y	Y
TEMPORARY TRAILER	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
TIRE STORAGE YARDS	N	N	SPBA/ SPA-PB
TRADESMAN	Y/SPA-PB	Y/SPA-PB	Y/SPA-PB
WHOLESALE BUSINESSES (see section 4.0.2.B)	N	Y/SPA-PB	Y/SPA-PB
WIND ENERGY FACILITY, COMMERCIAL	N	SPBA/ SPA-PB	SPBA/ SPA-PB
WIND ENERGY FACILITY, COMMERCIAL OVER 140 FEET IN HEIGHT	N	SPBA SPA-PB	SPBA SPA-PB
WIND ENERGY FACILITY NON-COMMERCIAL	Y	Y	Y
WIND ENERGY FACILITY, NON-COMMERCIAL OVER			

140 FEET IN HEIGHT	N	SPBA	SPBA
WIND TURBINES, THREE OR MORE ON ONE PARCEL	SPBA	SPBA	SPBA
YARD SALES & AUCTIONS: 3 DAYS IN 1 MONTH 4 DAYS CALENDAR YEAR	Y	Y	Y

* - These uses have been recognized and allowed under Town licensing statutes.

(1990 ATM, Article 44; 1995 ATM, Article 42 [correction])(1996 ATM, Article 39 [correction])(1998 ATM, Article 64; 2000 ATM, Article 51; 2003 ATM, Article 48; 2005 ATM, Articles 6, 24, 29 [correction], & 30; 2006 ATM, Articles 4 & 9; 2007 ATM, Article 21)

APPENDIX A

TOWN OF WESTPORT ARTICLE XIV - ZONING HISTORICAL REFERENCES

NOTE: Historical References are Original By-Laws and Sections
The following pages contain those sections of the Westport Zoning By-Laws that have been repealed or amended by subsequent provisions. They are included for reference purposes only. The date appearing beside each entry is the date that the Article passed at the Town Meeting, NOT its effective date. The relevant effective dates must be obtained from the Town Clerk.

(Editorial Note): Prior to January 1, 1976, the effective date of Zoning By-Laws or amendments thereto was governed by M.G.L. Chapter 40 Section 32, which provided for approval by the Attorney General and publication prior to the By-Laws becoming effective. When Chapter 40A (the Zoning Enabling Act) Section 5 was amended, to take effect January 1, 1976, it carved out an exception to this rule from Chapter 40 which provided that the effective date of subsequent Zoning By-Laws and/or amendments thereto would be the date on which the provision passed the Town Meeting. If for any reason the provision was rejected by the Attorney General, the original provision would be reinstated as though no amendment or change had been voted).

1. The following three articles refer to the original zoning, which is of no current significance due to its total repeal in 1957. It is included for purposes of continuity and reference.

ARTICLE 32 - March 10, 1931:

(Authority of M.G.L. c. 40 sections 25 - 99) For the purpose set forth in General Laws, Chapter 40, Section 25 and all acts in amendment thereof, a district is hereby established to be known as Zone A in the locations and having the following boundaries:

a. That portion in South Westport known as Horseneck East Beach included within the limits extending from a point on the shore at the Dartmouth town line to a point 300 feet northerly of the East Beach Road in Westport, thence westerly on a line 300 feet north of and parallel to said East Beach Road to a point 300 feet easterly of Reed Road, thence south and parallel with Reed Road 300 feet and thence continuing in a straight line to the ocean and thence easterly to the point of beginning.

b. That portion in South Westport known as Horseneck West Beach included within the limits extending from a proposed street known as Ocean Avenue at the shore, thence northeasterly on said Ocean Avenue to its intersection with the East Beach Road and thence northeasterly to Reed Road, thence northwesterly and westerly on said Reed Road to a point 300 feet easterly of its intersection with the road running south from Westport Point, thence southerly on a line 300 feet easterly of said last named road to the shore, thence easterly and southeasterly on the ocean to said Ocean Avenue; excepting, however, so much of said territory as lies 300 feet east and west of Sixteenth Avenue so called between said Reed Road and the Ocean.

Sec. 2. In the Zone A district no building or structure or part thereof shall be constructed, altered, enlarged, reconstructed or used and no premises shall be used for:

a. Any industry, trade, manufacturing or commercial purpose, or for

b. Any purpose except the following specified uses:

1. Single or two-family detached house;

2. Boarding or lodging house;

3. Place of worship;

4. Public school or other public use;

5. Private club;

6. Tea room or gift shop in a dwelling;

7. Private garage for no more than two motor vehicles;

8. Parking spaces not less than 50 feet from the property line of another, 40 feet from mean high water shore line or 12 feet from the street line of any street or way;

9. Private bathhouses, not to exceed four separate compartments and covering an area of not more than 100 square feet, but no bathhouse shall be erected on the front half of any lot.

Sec. 3. In the Zone A district no building shall be located nearer than 2 feet from the street line of any street or way, 20 feet from mean high water shore line, or 6 feet from the side line of any adjoining lot, except that a private garage may be located within 2 feet of the side or rear lot line but shall not be located on the half of any lot adjacent to the shore or on the front half of any lot.

Sec. 4. No dwelling house shall be constructed on a lot whose area is less than 4,000 square feet provided, however, that where a lot has already been platted at the time of the adoption of these By-Laws and it appears that the owner thereof has no land adjacent thereto, such, lot may be occupied by a single-family dwelling providing it contains more than 3,000 square feet.

Sec. 5. No building or buildings shall be erected so as to occupy more than 50 percent of the area of any lot.

Sec. 6. No lot shall be reduced in area or its dimensions so that any structure thereon shall be within the limits prohibited by the By-Laws.

Sec. 7. Before any structure within the Zone A district shall be constructed, altered, enlarged, or reconstructed, the owner, or lessee or the agent of either or the architect or builder employed for the purpose, shall, except for ordinary repairs apply to the Selectmen for a permit and shall submit a detailed description of the location, purpose and construction proposed and such reasonable plans and information as the Selectmen may require.

Sec. 8. It shall be the duty of the Selectmen to approve said application within a reasonable time if the location, purpose and construction aforesaid shall be within the requirements of these By-Laws.

Sec. 9. No person shall commence the erection, alteration or reconstruction of any structure within the Zone A district without first receiving a permit in writing from the Selectmen.

Sec. 10. Whoever violates the provision of these Zoning Laws shall be liable for a penalty of not more than twenty (\$20.00) dollars for each violation thereof.

Sec. 11. Any person aggrieved by the refusal of the Selectmen to grant a permit in accordance with these By-Laws, may appeal therefrom and the Selectmen shall thereupon appoint a Board of Appeal consisting of three disinterested persons who shall review the proceedings and who are hereby empowered to grant or reject the permit requested.

ARTICLE 28 - March 15, 1949:

Voted: To amend that section of the Zoning Laws adopted by the Town

of Westport on March 10, 1931, and approved by the Attorney General on April 8, 1931, identified as sub-section "b" and substituting therefore a new sub-section "b", reading as follows:

That portion in South Westport known as Horseneck West Beach included within the limits extended from a proposed street known as Ocean Avenue at the shore, thence northeasterly on said Ocean Avenue to its intersection with the East Beach Road, and thence northeasterly to Reed Road, thence northwesterly and westerly on said Reed Road to its intersection with the road running south from Westport Point, thence southerly on said last named road to the shore, thence easterly and southeasterly on the ocean to said Ocean Avenue, excepting, however,

1. So much of said territory as lies 300 feet east and west of Sixteenth Avenue, so-called between said Reed Road and the ocean, and
2. So much of said territory as lies between the ocean and a line parallel with and 500 feet northerly of West Beach Road, so-called, west of a line parallel with and 300 feet west of Sixteenth Avenue, so-called, and east of the road running south from Westport Point. All of said new sub-section "b" as delineated on Plan of Horseneck Beach, Westport, Mass., Showing Zone Areas, dated January 31, 1949, Francis S. Borden, C.E. which plan is made a part hereof.

ARTICLE 36 - March 27, 1957:

A. A dwelling hereafter erected in any district shall be located on a lot having not less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

<u>District</u>	<u>Minimum Lot Dimension</u>		<u>Maximum Height Building (a)</u>	
	<u>Area in Sq. Ft.(a)</u>	<u>Frontage in Ft.(a)</u>	<u>No. of Stories</u>	<u>Ft.</u>
Residence	(20,000)	(100)	2 ½	(40)
Business	(20,000)	(100)	2 ½	(40)

Industrial - No restrictions except minimum lot size of 20,000 sq. ft.

B. Lot Size Exceptions

The foregoing provisions of this section shall not prohibit the erection of a dwelling in any district upon a vacant lot having less than such minimum requirements as to area, frontage or width:

- (1) If such lot was shown on a plan on file in the Registry of Deeds on the effective date of this By-Law; or
- (2) If the owner of such lot on the effective date of this By-Law

owned no adjoining land available for use in connection with such lot.

ARTICLE 4 - June 6, 1957:

Voted: To repeal the Zoning By-Laws adopted on March 10, 1931 as amended March 15, 1949.

ARTICLE 38 - March 26, 1963:

Section 1. Purpose

In order to promote the health, safety, convenience and general welfare of its inhabitants, to lessen the danger from fire and congestion and to improve the town under the provisions of General Law, Chapter 40A, the use, construction, repair, alteration and height of buildings and structures and the use of premises in the Town are hereinafter provided.

3. Section II. Definitions

ARTICLE 38 - March 26, 1963:

6. Lot: A parcel of land having not less than the frontage, area, and width required under the provisions of this By-Law and the Building Regulations and having its principal frontage on a street or other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit.

8. Street Line: The dividing line between the street right of way and the lot.

4. Section IIB. Location of Districts

ARTICLE 38 - March 26, 1963:

Location of Districts: Said districts are located and bounded as shown on a map entitled "Zoning Map of Westport, Massachusetts", dated June 6, 1957 and on file in the office of the Town Clerk. The Zoning Map, with all explanatory matter thereon is hereby made a part of this By-Law. The map is described as follows:

ARTICLE 25 - March 17, 1959:

Voted: To amend Section V-A of its Zoning By-Laws by requiring that

all lots shall have a minimum of 100 foot frontage.

ARTICLE 38 - March 26, 1963:

A. Amend by changing the word "Industrial" to read "Unrestricted."

ARTICLE 38 - March 26, 1963:

A. Non-conforming Uses

1) The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with provisions of the By-Law.

2) Abandonment. A non-conforming use that has been abandoned two years shall not be re-established and any future use shall conform with this By-Law.

3) Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

ARTICLE 38 - March 26, 1963:

A. Enforcement

This By-Law shall be enforced by the Selectmen through the Building Inspector appointed by them. No building shall be built or altered and no use of land or a building shall be begun or changed without a permit having been issued by the Building Inspector. No building shall be occupied until a certificate of occupancy has been issued by the Building Inspector. Any person violating any of the provisions of this By-Law may be fined not more than twenty dollars for each offense. Each day that such violation continues shall constitute a separate offense.

B. Board of Appeals

There is hereby established a Board of Appeals of (3) members and (2) associate members to be appointed by the Selectmen, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this By-Law in the manner prescribed in Chapter 40A of the General Laws. The Board of Appeals shall have the following powers:

1). Appeals. To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings, or

other administrative official in violation of any provisions of Chapter 40A of the General Laws, or of this By-Law.

2). Special Permits. To grant a special permit for an exception as provided by sections of this By-Law when it shall have found that the use involved will not be detrimental to the established or future character of the neighborhood and town and subject to appropriate conditions or safeguards if deemed necessary.

3). Variances. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of this By-Law where, owing to conditions especially affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship to the 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 this By-Law, but not otherwise.

ARTICLE 38 - March 26, 1963:

C. Amendment. This By-Law may be amended from time to time at the annual or special town meeting in accordance with the provisions of Section 6 of Chapter 40A.

ARTICLE 50 - April 7, 1970:

A. A dwelling hereafter erected or placed in any district shall be located on a lot having not less than the minimum requirements set forth in the table below and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

<u>District</u>	<u>Minimum Lot Dimension</u>		<u>Maximum Height Building</u>	
	<u>Area in Sq. Ft.</u>	<u>Frontage in Ft.</u>	<u>No. of Stories</u>	<u>Ft.</u>
Residence	(40,000)	(100)	2 ½	(40)
Business	(40,000)	(100)	2 ½	(40)
Unrestricted	(40,000)	(100)	none	none

B. Lot Size Exceptions

The foregoing provisions of this section shall not prohibit the erection of a dwelling in any district upon a vacant lot having less than such minimum requirements as to area or frontage:

1) If such lot was shown on a plan or deed on file in the Registry of Deeds on July 11, 1957 and had a minimum of 30 feet frontage; or

2) If the owner of such lot on July 11, 1957 owned no adjoining land available for use in connection with such lot; or

3) If such lot has an area of at least 20,000 square feet and a frontage of at least 100 feet and is shown on a plan or deed on file in the Registry of Deeds on the effective date of this By-Law; or

4) If such lot, a plan of which was on file in the Registry of Deeds on July 11, 1957 and does not have the 30 feet minimum frontage required by V-B(1) and the owner of such lot on July 11, 1957 owned no adjoining land available for use in connection with such lot and an application is made and approved by the Appeals Board for a special permit to construct a single dwelling on a lot.

C. No dwelling for occupancy by two families shall hereafter be built, erected or located on a lot having an area of less than 40,000 square feet and 100 feet frontage. For each additional 20,000 square feet of area and 50 feet of frontage in the lot, the size of the dwelling may be increased to accommodate one additional family or dwelling unit.

7. Section VI. General Regulations

ARTICLE 16 - July 31, 1973:

Voted: To amend the Zoning By-Law of the Town of Westport by deleting the present non-conforming use and adopting the following new regulations:

A. Non-Conforming Uses

1) The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this By-Law may be continued although such structure or use does not conform with the regulations of the district in which it is located and allow the right to be sold to any equal or similar business.

2) Abandonment. A non-conforming use that has been abandoned four years shall not be re-established and any future use shall conform with this By-Law.

3) Changes. A non-conforming use may be changed so as to conform to this By-Law but once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use. A non-conforming use may be changed to another use not substantially different in character or not more detrimental to the district upon approval by the Board of Appeals.

4) Alteration. A non-conforming structure may be altered or reconstructed or replaced.

5) Extension. A non-conforming use may be expanded in size or scope

of the activity within the confines of the lot used therefore and to the extent permitted by the building regulation By-Law.

6) Restoration. A non-conforming structure damaged or destroyed by fire or other causes may be repaired or rebuilt.

ARTICLE 36 - April 15, 1975:

Voted: To amend the Westport Zoning By-Law to increase the membership of the Board of Appeals to 5 persons, by deleting the number 3 in the first sentence of the first paragraph of Section VII-B Board of Appeals, and inserting in place thereof the number 5.

ARTICLE 11 - July 16, 1975:

Under Section III-B Location of Districts, add new paragraph "4. As Flood Plain: All portions of the Town included in Paragraphs 1,2, and 3 above and indicated as zones A7, A8, and A9, on Department of Housing and Urban Development maps, entitled Westport, Mass., FIA Flood Hazard Boundary Map #802 and #803, effective date August 12, 1970, with interim map revision effective July 1, 1974, lying below the elevations of 10 feet, 11 feet, and 12 feet above mean sea level for said Zones A7, A8, and A9 respectively. (copies of the aforesaid maps are on file in the Town Clerk's office)."

5. Section IV. Use Regulations

ARTICLE 11 - July 16, 1975:

After Section IV-C add IV-D. Flood Plain District

1. Any use permitted in the applicable residence, business, or unrestricted district in which the flood plain district is located, except no use may be permitted which when combined with all other existing and anticipated uses will increase the water surface elevation of the 100 year flood more than one foot at any point.

6. Section V. Intensity Regulations

ARTICLE 11 - July 16, 1975:

After Section VI-B add VI-C. Flood Plain Districts.

1) The following provisions apply to the areas located within Zones A7, A8, and A9 indicated on the flood hazard boundary maps, and having elevations below the base flood elevation, (100 year flood) which is 10 feet, 11 feet and 12 feet above mean sea level Zones A7, A8 and A9 respectively.

2) The ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting ordinances.

3) Building permits are required for new construction, substantial improvements and major repairs, and applications will be reviewed to determine that materials, equipment, and construction methods and practices conform with the Massachusetts State Building Code.

4) New construction or substantial improvements of residential structures shall have the lowest floor (including basement) elevated to or above the level of the 100-year flood.

5) New construction or substantial improvements of non-residential structures shall have the lowest floor (including basement) elevated to or above the 100 year flood, or together with attendant utility and sanitary facilities be flood-proofed up to the level of the 100-year flood.

6) Subdivision proposals and other proposed new developments will be reviewed to assure that all such proposals are consistent with the need to minimize flood damage; all public utilities and facilities are located, elevated, and constructed to minimize or eliminate flood damage; and adequate drainage is provided so as to reduce exposure to flood hazards.

7) New or replacement water supply systems and/or sanitary sewerage systems shall be designed and located to minimize infiltration into and discharge from the systems into flood waters, and shall conform to the Massachusetts State Sanitary Code.

ARTICLE 25 - April 4, 1978:

Section IV Paragraph A.1.h. "A permit, cost not to exceed two (\$2.00) dollars and valid for one year from date of issue will be required for Yard, Barn and Garage Sales." Penalty for failure to comply will result in a fine of not more than twenty (\$20.00) dollars.

ARTICLE 19 - September 13, 1983:

Off-Street Parking

1) Parking facilities off the street right-of-way for new construction shall be provided on the same lot as the building for each use within the district. Off-street parking shall be designed to prevent the necessity of any vehicles backing into a public way. No parking area shall be less than 5 feet from a road or property line. Each parking space shall have a usable area of at least 180 square feet and be served by two-way access lane at least 26 feet wide, except that if parking stalls are angled at 60 degrees or less, a one-way access

lane may be used with a minimum of 20 feet. The 26 foot two-way access lane shall not be required for dwellings of up to four units. In such cases a 12 foot one-way access is sufficient. The number of spaces required for each use shall be determined by the building inspector based upon the following criteria:

Use	<u>Minimum Required Space</u>
Residence - Housekeeping Rooms for roomers or boarders, apartments, multi-family	1.5 spaces per unit.
Customary home occupation or recognized profession	1 space for each home occupation or profession in addition to residential requirements
Retail stores, Financial Institutions, Consumer Services, Professional or Business offices and similar businesses	1 space for each 200 square feet floor space
Wholesale Showrooms and Operations	1 space for each 1,000 square feet plus one additional space for each 2 employees actively engaged at any one time.
Hotels and Motels	1 space per room and one space for every 3 seats in restaurants and meeting rooms and 1 space for each 2 employees.
Restaurants, Clubs, Theaters, Churches, or other places of public assembly	1 space for every 3 seats or 50 square feet of gross floor area and 1 space for every 2 employees.
Barber Shops and Beauty Parlors	3 spaces for each operator
Bowling Alleys and Tennis Courts	4 spaces for each alley or court.
For any use not specifically listed	1.5 spaces for each 1,000 square feet of floor space and 1 space for each 2 employees
Parking for Handicapped Persons shall be in accordance with Chapter 40, Section 21, as amended by Chapter 644 of Massachusetts General Laws.	

2) Other uses conducted for profit on premises within or without a building such as flea markets, auction houses, and fairs shall provide for off-street parking. The Board of Appeals may grant a special permit to any person or organization to allow for sporadic or intermittent use of a premises without complying with the requirements of this section.

3) Industrial and commercial buildings shall provide adequate parking, maneuvering and loading space on premises for freight and delivery trucks in addition to the minimum requirements for spaces listed in Article 19-1) above.

8. Section VII. Administration

ARTICLE 44 - April 3, 1990

This article changed the format and style of the Zoning By-Law but not the substance thereof.

ARTICLE 45 - April 3, 1990:

Voted: To amend the Zoning By-Law to change the present zoning district name of "Residence" of the Town Zoning By-Laws to "Residence/Agriculture" wherever the district name "Residence" appears.

2. Section I. Purpose

Article 28 - May 26, 2009

This article added the "Noquochoke Overlay District" to the Zoning By-Laws and amended the "Definitions" in Section 1.1.

Article 30 - May 26, 2009

This article amended section 8.3.2 - "Sewage Treatment Facilities".

Article 31 - May 26, 2009

This article deleted Zoning By-Law Article 6 in its entirety and substituted new language. It also amended the "Definitions" in Section 1.1." and amended "Section 3.1.D - Flood Plain District". The following is the old language for Article 6.

ARTICLE 6

SPECIAL REGULATIONS (Formerly Section VI C)

6.0 FLOOD PLAIN DISTRICTS

6.0.1 The following provisions apply to the Flood Plain District as defined in Section 3.1.D Flood Plain Districts of Article 3 of these By-Laws.

(2006 ATM, Article 8)

6.0.2 Ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting ordinances.

6.0.3 Building permits are required for new construction, substantial improvements and major repairs, and applications will be reviewed to determine that materials, equipment and construction methods and practices conform with the Massachusetts State Building Code. All permits required by any Town, State or Federal agency must be obtained or be in the process of being obtained at the time of building permit application.

6.0.4 **Base Flood Elevation And Floodway Data**

6.0.4.1 **Floodway Data**

In zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

6.0.4.2 **Base Flood Elevation Data**

Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

6.0.5 **Notification Of Watercourse Alteration**

In a riverine situation, the Building

Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Municipalities
- Bordering States
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
(Or successor entity at its then current address)
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110
(Or successor entity at its then current address)

(2006 ATM, Article 8)

- 6.0.6** Subdivision proposals and other proposed new developments will be reviewed to assure that all such proposals are consistent with the need to minimize flood damage; all public utilities and facilities are located, elevated, and constructed to minimize or eliminate flood damage, and adequate drainage is provided so as to reduce exposure to flood hazards. Base flood elevation data shall be provided by the applicant for all proposals within the Flood Plain District.
- 6.0.7** New or replacement water supply systems and/or sanitary sewerage shall be designed and located to minimize or eliminate infiltration into and discharge from the systems into flood waters, and will conform to the Mass. State Sanitary Code.
- 6.0.8** All new constructions within Zones V1-30 of the Flood Insurance Rate Map shall be located landward of the reach of the mean high tide.
- 6.0.9** The Board of Appeals may issue a variance only upon a showing of good and sufficient cause;

determination that failure to grant the variance would result in exceptional hardship to the applicant; determination that granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with local laws; and determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and will increase the risks to life and property.

6.0.10 Reference To Existing Regulations

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities; whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Massachusetts State Building Code provisions addressing floodplain and coastal high hazard areas (currently 780 CMR 3107, "Flood Resistant Construction");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only

be granted in accordance with the required variance procedures of these state regulations.

(2006 ATM, Article 8)

6.0.11 All mobile homes to be placed within the Flood Zone shall have (i) stands or lots that are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler are provided, and (iii) in the instance of elevation of pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten feet apart, and reinforcement is provided for piers more than six feet above ground level.

6.0.12 Man-made alteration of sand dunes within Zones V1-30, VE and V that would increase potential flood damage are prohibited)

Article 37 - June 8, 2010

This article deleted Zoning By-Law Article 13 in its entirety and substituted new language.

ARTICLE 13

INCLUSIONARY HOUSING

13.0 INCLUSIONARY HOUSING

13.1 PURPOSE AND INTENT

The purpose of this By-Law is to outline and implement a coherent set of policies and objectives for the development of affordable housing in tandem with on-going Town of Westport programs to promote a reasonable percentage of housing that is affordable to moderate-income buyers. It is intended that the affordable housing units that result from special permits issued under this By-Law be included on the Town's subsidized housing inventory, as kept by the Massachusetts Department of Housing and Community Development ("DHCD"). It is intended that this By-Law provide a mechanism to compensate for those decreases in the town's percentage of affordable housing that are directly caused by increases in the Town's overall housing stock.

13.2 DEFINITIONS

13.2.4 Affordable Housing Unit: A dwelling unit that can be purchased at an annual cost that is deemed affordable for a household that is earning no more than 70% of the area median income as reported by the U.S. Department of Housing and Urban Development and/or DHCD.

13.2.2 Qualified Affordable Housing Unit Purchaser: An individual or family with a household income that does not exceed 80% of the area median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development and/or DHCD

13.3 APPLICABILITY

13.3.1 Division of Land: This By-Law shall apply to the division of land held in single ownership as of June 1, 2005 or anytime thereafter into eight (8) or more lots, whether said eight (8) or more lots are created at one time or are the accumulation of eight (8) or more lots created from said land held in single ownership as of June 1, 2005, and shall require a special permit under Article 2 of the Zoning By-Law and G.L. c. 40A, §9. A special permit shall be required for "conventional" or "grid" divisions allowed by M.G.L. Chapter 41, Section 81-L and Section 81-U, as well as those divisions of land that do not require subdivision approval per G.L. c. 41, §81P.

13.3.2 Multi-Family Dwelling Units and Duplexes: This By-Law shall apply to the construction of eight (8) or more multi-family dwelling units or duplexes, whether on one or more contiguous parcels in existence as of June 1, 2005, and shall require a special permit under Article 2 of the Zoning By-Law and G.L. c. 40A, §9.

13.3.3 Exemption: The provisions of Article 13.3.1 hereof shall not apply to the construction of eight (8) or more single-family dwelling units on individual lots, if said eight (8) or more lots were in existence as of June 1, 2005.

13.3.4 Administration: The Planning Board shall be the Special Permit Granting Authority for all special permits under this By-Law.

13.4 **MANDATORY PROVISION OF AFFORDABLE UNITS**

The Special Permit Granting Authority shall, as a condition of approval of any development referred to in Article 13.3, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this By-Law and more fully described in Article 13.5. Any special permit granted hereunder shall contain a condition that no construction of any of the proposed development may commence until the affordable units created thereby are eligible for inclusion on the Town's subsidized housing inventory.

13.5 **PROVISION OF AFFORDABLE UNITS**

The Special Permit Granting Authority shall deny any application for a special permit for development if the applicant for special permit approval does not comply, at a minimum, with the following requirements for affordable units:

13.5.1 At least 10% of the units in a division of land or units in a multi-family or duplex unit development subject to this By-Law shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing eight (8) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two (2) affordable units, and so on.

13.5.2 The affordable unit(s) shall be constructed or rehabilitated on: The locus property; or a locus different from the one subject to the special permit (see Article 13.9); or the applicant may offer and the Special Permit Granting Authority may accept any combination of the Article 13.5 requirements provided that in no event shall the total number of units or land area provided be less than ten (10%) percent of the total number of units/lots approved under the permit.

13.6 **PROVISIONS APPLICABLE TO AFFORDABLE HOUSING UNITS ON- OR OFF-SITE**

13.6.1 Siting of affordable units: All affordable units

constructed or rehabilitated under this By-Law shall be situated so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

13.6.2 Minimum design and construction standards for affordable units: Affordable housing units within market-rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

13.6.3 Timing of construction or provision of affordable units or lots: The Special Permit Granting Authority may impose conditions on the special permit requiring construction of affordable housing according to a specified time table, so that affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

<u>Market-Rate Unit %</u>	<u>Affordable Housing Unit %</u>
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
UP to 90%	100%

Any fractions of an affordable unit shall be rounded up to a whole unit.

13.7 **LOCAL PREFERENCE**

To the extent permitted by law, the Special Permit Granting Authority may require the applicant to comply with local preference requirements, if any, as may be established by regulations promulgated hereunder.

13.8 **MARKETING PLAN FOR AFFORDABLE UNITS**

Applicants under this By-Law shall submit a marketing plan or other method approved by the Special Permit Granting Authority, which describes how the affordable units will be marketed to potential homebuyers. If applicable, this plan

shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance to DHCD rules and regulations, and shall be subject to the prior review and approval of Town Counsel at the applicant's expense.

13.9 PROVISION OF AFFORDABLE HOUSING UNITS OFF-SITE

Subject to the approval of the Special Permit Granting Authority, an applicant subject to this By-Law may develop, construct or otherwise provide affordable units equivalent to those required by Article 13.5 off-site. All requirements of this By-Law that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location and design of the off-site units to be provided shall be approved by the Special Permit Granting Authority as an integral element of the special permit review and approval process.

13.10 PRESERVATION OF AFFORDABILITY; RESTRICTIONS ON RESALE

Each affordable unit created in accordance with this By-Law shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The deed restriction must be deemed acceptable to DHCD and Town Counsel prior to the issuance of any building or occupancy permits and shall be recorded at the Bristol County (S.D.) Registry of Deeds or the Land Court and shall be in force for the longest period allowed by law, unless the Planning Board determines that a shorter period of affordability will facilitate the development of affordable housing.

13.10.1 The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the deeds to the affordable housing unit contain a restriction requiring that any subsequent renting or leasing of said affordable housing unit shall not exceed an amount that is deemed affordable for a household earning no more than 70% of the area median income, as determined by the DHCD.

13.10.2 The Special Permit Granting Authority shall require, as a condition for special permit approval under this By-Law, that the applicant comply with the mandatory set-asides and accompanying deed restrictions on affordability.

13.11 **REGULATIONS**

The Special Permit Granting Authority may adopt regulations for the orderly administration of this By-Law.

(2005 ATM, Article 24)

Article 39 - May 25, 2011

This article amended the Zoning By-Laws by deleting the following Section 11.5.8 and replacing it with new language.

11.5.8 **Stormwater Management**

Drainage provisions shall be provided to ensure compliance with all local, state and federal requirements regarding stormwater management and shall be subject to review by the Planning Board's engineering consultant at the expense of the applicant. Drainage shall be designed so that the rate of run-off shall not be increased, groundwater recharge is maximized, surface and ground water quality is maintained or improved, and neighboring properties will not be adversely affected. The Board may require that existing drainage problems on/or adjacent to the site be mitigated as a condition of approval of the special permit under this section. Drainage facilities are not allowed in the required open space areas.

Article 40 - May 25, 2011

This article amended the Zoning By-Laws Article 15, Site Plan Approval, 15.4 Performance Standards by deleting the following Section 12 and replacing it with new language.

- 12.** Ensure compliance with the provisions of this Zoning Ordinance including, but not limited to, parking, loading, and signage.
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Article 41 - May 25, 2011

This article amended the Zoning By-Laws by deleting the following Section 13.2.3 and replacing it with new language.

- 13.2.3** **Exemption:** The provisions of Article 13.3.1 hereof shall not apply to the construction of ten (10) or more single-family dwelling units on individual lots, if said ten (10) or more lots were in existence prior to June 1, 2005 nor to Assisted and Independent Living Facilities.
