

ORDINANCES

CITY OF NEWBURYPORT



 IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO AMEND CERTAIN PROVISIONS OF THE NEWBURYPORT ZONING ORDINANCE, INCLUDING DEFINITIONS, YARD REGULATIONS, AND REQUIREMENTS OF THE DEMOLITION CONTROL OVERLAY DISTRICT (DCOD) AND THE DOWNTOWN OVERLAY DISTRICT (DOD).

Be it ordained by the City Council of the City of Newburyport as follows:

WHEREAS, a Zoning Advisory Committee was formed in 2014 by Mayor Donna D. Holaday and then-City Council President Thomas F. O'Brien to consider revisions to the Zoning Ordinance of the City of Newburyport, Massachusetts (the "Zoning Ordinance"); and

WHEREAS, the Zoning Advisory Committee convened irregularly from 2014 to 2019, and suggested amendments to the Zoning Ordinance; and

WHEREAS, the position of Zoning Administrator became effective in 2018, and such official has suggested amendments to the Zoning Ordinance;

THEREFORE, LET IT BE ORDAINED THAT subsections 5, 8, 10, 11, 19, 21, 24, 25, 26, 27, 33, 36, 41, 46, 50, and 54 of Section II-B of the Zoning Ordinance entitled "Definitions" be amended, and new subsection 55 of Section II-B of the Zoning Ordinance be added, pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double strikethrough and in bold~~, and additions double-underlined and in bold:

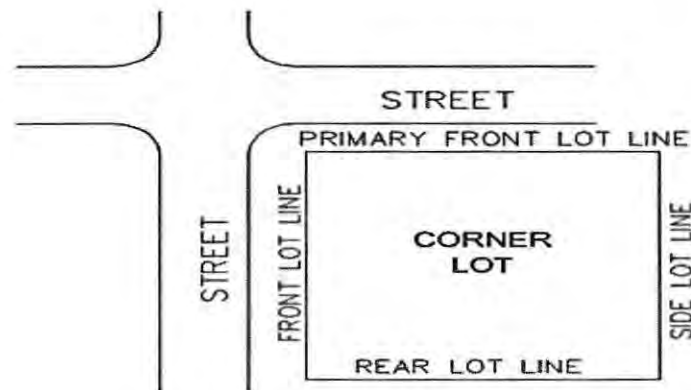
5. *Building*. A combination of any materials, whether portable or fixed, having a roof, enclosed within exterior (external) walls or fire walls, built to form a structure for the shelter of persons, animals or property. For purposes of this ~~Ordinance definition~~, "roof" shall include an awning or any similar covering, whether or not permanent in nature, and "exterior" or "external" walls shall include columns supporting a roof and screened enclosures.
8. *Building area*. The aggregate of the areas of all ~~enclosed and~~ roofed spaces of all buildings located at a lot including without limitation roofed porches or decks, regardless of the height of such buildings, including both the principal

building and all accessory buildings; ~~all such and~~ areas shall be computed by using maximum outside building dimensions measured on a horizontal plane, excepting roof overhang.

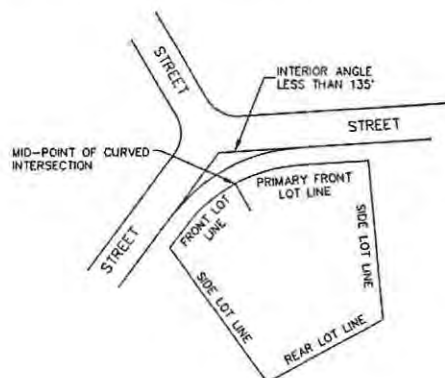
10. *Building height.* Building height is measured from the mean grade elevation (average grade around perimeter of building) to the mean highest roof elevation line (one-half the vertical distance from eave to ridge) not including architectural features explicitly exempted from the height requirements of this Ordinance.
11. *Building line.* A line formed by the intersection of a horizontal plane at average outside grade level and a vertical plane at ground surface that coincides with the exterior surface of the building on any side. All yard requirements are to be measured to the building line except where otherwise expressly provided in this Ordinance.
- In case of a cantilevered section of a building, or projected roof greater than two (2) feet, or porch, the vertical plane will coincide with the most projected surface, ~~but an~~ entrance way, ~~or~~ permanently installed canopy and similar projections measuring less than one-third ($1/3$) of the length of the elevation from which they are projected, and also projecting less than one-half ($1/2$) of the required setback, are is excluded from the setback requirements of this Ordinance.
19. *Floor area, total.* The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for occupancy or the conduct of business, and shall be measured between the inside face of exterior walls, or from the centerline of walls separating two (2) uses, but garage space, accessory building space, or cellar space is excluded, except if these areas are utilized by the principal use occupying or conducted within the lot and/or building.
21. *Inspector of buildings.* The person appointed and confirmed to serve in such office under Section 5-41 of the Newburyport Code ~~officially established zoning and building enforcement officer for the City of Newburyport.~~
24. *Lot, corner.* A lot at the point of intersection of and abutting on two (2) or more intersecting streets, the interior angle of intersection of the street lot lines, or extended lot lines in case of a curved street being not more than one-hundred and thirty-five degrees (135°). For purposes of this Ordinance chapter, the yard adjacent to each street shall be considered a front yard; provided, however, this will not affect designation of the front lot line.

Corner Lot Diagrams: A corner lot ~~shall have~~ has two front lot lines. The front lot line of greater length shall be known as the primary front lot line, and the front lot line of lesser length shall be known as the secondary front lot line. When an

unbuilt corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application. This shall be known as the primary front lot line.



Where the interior angle of intersecting street is less than one hundred thirty-five ~~degrees~~ (135°) ~~degrees~~, the lot shall be considered a corner lot.



25. *Lot coverage.* That percentage of the lot area which is devoted to building area, regardless of such building's building height.
26. *Lot line, front.* The property line dividing a lot from the adjacent a single street right-of-way. In the case of a corner lot the front lot line of greater length shall be known as the primary front lot line. ~~When a corner lot has front lot lines of equal length, the owner shall designate a single front lot line as the primary front lot line, on the applicable plan and/or application.~~
27. *Lot line, rear.* The property line most nearly opposite and furthest from the front lot line, or the primary front lot line in the case of corner lots. In a wedge- or pie-shaped lot, the rear lot line is assumed to be where a line can be drawn with a ten- (10-) foot offset from the rear-most point parallel to the front lot line and intersecting two (2) adjacent side lot lines.

33. *Open space.* The space on a lot unoccupied by buildings, unobstructed to the sky, not devoted to streets, driveways or off-street parking or loading spaces, and expressed as a percentage of total lot area. Open space areas shall be used for landscape areas and for active or passive recreation including but not limited to non-roofed decks (one level only), patios, pools or tennis courts.
36. *Parking space.* An ~~delineated~~ area, whether interior or exterior, that is intended or used for occupancy by a motor vehicle in compliance with this Ordinance.
41. *Setback.* ~~Setback is~~ The horizontal distance measured perpendicularly from the property lot line to the nearest building line wall.
46. *Structure.* A combination of materials, which may or may not constitute a building, requiring a permit to that is erected, placed, or constructed to form a configuration ~~and includes, but is~~. Structures include, but are not limited to, unroofed stadiums, platforms, radio towers, sheds, unroofed pens sheds, storage bins (lidded or unlidded), mechanical equipment greater than six (6) feet in height, signs, swimming pools, and fences.
50. *Yard.* ~~An open space unobstructed from the ground up, on the same lot with a principal~~ The area within a lot extending along a lot line and inward to the building line. The size of a required yard setback shall be measured as the shortest distance between the building line and the lot line. Those portions of buildings or structures that Structures which are below the finished lot grade, including, but not limited to, basements, shall not be deemed to occupy required yards setbacks. Unroofed deck structures may project into applicable yard setbacks to the extent of up to fifty percent (50%) of the required lateral dimension.
54. Zoning Administrator. The zoning code enforcement officer for the City of Newburyport, Massachusetts, duly appointed and confirmed under Section X-B of this Ordinance Zoning board of appeals. The Zoning Board of Appeals of the City of Newburyport, Massachusetts.
- 54.55. Zoning board of appeals. The Zoning Board of Appeals of the City of Newburyport, Massachusetts.

AND FURTHER, THAT Section VI-B of the Zoning Ordinance entitled "Lot areas" be amended pursuant to Section XII-B (Adoption and Amendment) by inserting the following new provision, with additions double-underlined and in bold:

- D. To ensure the long-term preservation of local farming and agricultural properties of sufficient size to maintain viable and sustainable businesses and operations

related thereto, and notwithstanding any provisions of this Ordinance to the contrary, the minimum Lot Area within the Agricultural/Conservation (Ag/C) District, regardless of use, shall be 400,000 square feet.

AND FURTHER, THAT Section VI-F of the Zoning Ordinance entitled “Yard requirements (setbacks)” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

VI-F - Yard requirements (setbacks).

- (1) Except for fences, walls, ~~and~~ and accessory structures, and specific features as described below or elsewhere in this Ordinance, no building or ~~sub-surface~~ structure, nor any above-grade ~~or~~ portion thereof, including, without limitation, decks extending upward by more than thirty (30) inches above existing grade, shall be permitted within the required front, side, or rear setback areas.
- (2) Where a side or rear yard is adjacent to a street, the side or rear yard requirement shall be the same as the distance specified for front yard setback.
- (3) Where a side or rear yard of a structure is adjacent to a park, cemetery, or other permanent public open space, all but ten (10) feet of the required yard may be measured from the center of said open space.
- (4) Mechanical equipment less than six (6) feet in height and otherwise permitted within the required, side, or rear yard shall be screened from view with fencing and/or landscaping.
- (5) No advertising display or other type of sign, merchandise, vending machines, or charitable donation collection boxes shall be located within any required front, side, or rear yard. ~~Business structures or uses shall not display or advertise goods for sale purposes or display coin-operated vending machines of any type in any location which would infringe upon the required yard areas specified in this ordinance.~~
- (6) Structures, such as fences, and landscape walls, may project into required side and rear yards provided that they do not exceed seven (7) feet in height. Corner lots and locations adjacent to driveways shall comply with the requirements of Section VI-J and VI-K. In all other instances fences, landscape walls, and other hardscape features may project into required front yards provided they do not exceed four (4) feet in height above existing grade. Structures of any kind such as, without limitation, sheds, swimming pools, and mechanical equipment greater than four (4) feet in height above existing grade shall be prohibited in the front yard setback.
- (7) Porches, porticos, stoops, external stairways or steps attached to a principal structure, whether roofed or unroofed, may project into up to fifty percent (50%) of

- the required front yard setback, provided, however, that no such projection shall exceed more than thirty percent (30%) of the width of that façade of the principal structure to which such feature is attached.*
- (8)** Any accessory structure not requiring a building permit under the State Building Code shall require that the owner or applicant obtain a “Letter Permit” from the Zoning Administrator to ensure compliance with applicable provisions of this Ordinance including, without limitation, setbacks, height, and lot-coverage requirements hereof.
- (9)** An accessory building attached to a principal building shall comply in all respects with the yard requirements of this ordinance for the principal building, and shall not interfere in any way with access to parking spaces in off street parking areas.
- (10)** A detached accessory building or structure within the side or rear-yard setbacks shall conform to the following provisions, *in addition to any other provisions of this Ordinance.* It shall ~~be~~:
- a. be* set back from ~~all streets by the public way~~ the required front yard distance for the district in which it is located;
 - b. be set back* at least six (6) feet from any side and rear lot line ~~or~~ *and also at least* ten (10) feet from any *lawfully existing* principal building or structure *located* on an abutting lot ~~property~~; and
 - c. separated from the principal building or structure on the subject lot a minimum of three (3) feet; and*
 - d. cover no more of the ground than an area measuring 528 square feet and have no wall length exceeding more than* ~~not exceed twenty-two (22) feet~~ *by* twenty-four (24) feet ~~in dimension~~, nor *shall it* exceed fifteen (15) feet in height.
 - e.* Garages or other such accessory structures, whether attached or detached, that exceed the above dimensions shall conform to the height, front, side and rear yard setback requirements applicable to accessory buildings or structures in the zoning district where located.
 - f.* In-ground and above-ground pools shall be located in the side or rear yard *only, and not in the front setback,* and are subject ~~only~~ to the six (6) foot lot-line *setback* restrictions as herein stated *but need not be located at least ten (10) feet from any lawfully existing principal building or structure located on an abutting lot.*

AND FURTHER, THAT Section VI-I of the Zoning Ordinance entitled “Exceptions to maximum height regulations” be amended pursuant to Section XII-B (Adoption and

Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions **double-underlined and in bold**:

The height limitations as set forth in the table of dimensional controls shall not apply to chimneys, ventilators, skylights, water tanks, bulkheads, elevators, and other accessory additions which are required or are customarily carried above the roofs of buildings, nor to towers, spires, domes, cupolas, and similar additions to buildings if such additions are not used for living purposes, and if such structures occupy not more than ten (10) percent of the ground floor of the building. Additionally, all farm accessory structures are exempt from the height requirements of this ordinance. In no instance shall any such structure extend more than ten (10) feet above the highest point of the structure on which it is proposed to be attached unless required by building and safety codes.

Accessory buildings or structures used for accessory purposes in all residential (R) districts **beyond those permitted in section VI-F** shall not exceed a height of twenty (20) feet.

AND FURTHER, THAT Section VI-J of the Zoning Ordinance entitled “Traffic visibility across corners” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions **double-underlined and in bold**:

Along ~~Between the~~ property lines **of abutting** intersecting streets and ~~a line joining points on such lines for a distance of~~ twenty (20) feet ~~distant~~ from their point(s) of intersection; (or in the case of a rounded corner, the point of intersection of their tangents); no building or structure in any district may be erected and no vegetation other than shade trees may be maintained between a height of three (3) feet and seven (7) feet above the plane **created by street pavement through their curb grades. For work on properties within zoning districts providing for zero lot line setbacks, this requirement may be waived upon written approval of the City Engineer after consultation with the Zoning Administrator.**

AND FURTHER, THAT Section VI-M of the Zoning Ordinance entitled “Awnings for business or industry” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions **double-underlined and in bold**:

Solely outside of the Downtown Overlay District (DOD), where awnings require review and approval as provided under Section XXVII of this Ordinance, ~~a~~ awnings for business or industry ~~will be~~ **shall be** allowed **by right** in any district. They may extend from the building a maximum of five (5) feet and the lowest point of the awning or supporting structure must be at least seven (7) feet, six (6) inches above the average finished grade of the area which the awning is intended to shelter. The awning may contain the name of the business or industry, but no other advertising.

AND FURTHER, THAT Section X-B of the Zoning Ordinance entitled “Administrative officials” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

The duties of administering and enforcing the provisions of this ordinance are hereby conferred upon ~~the inspector of buildings and a city employee to be known as the Zoning Administrator~~zoning administrator, who shall have such powers as are conferred upon them by this ~~Ordinance~~zoning ordinance, and as reasonably may be implied. ~~At the first regular meeting of the city council in January, the mayor shall appoint and the city council~~Pursuant to the City of Newburyport Home Rule Charter, the Mayor shall appoint and the City Council may confirm someone to hold office as the ~~Zoning Administrator, for a term of two (2) years~~zoning administrator for the City of Newburyport. The zoning administrator shall hold office from January 1, 2018, through December 31, 2018, and for two-year terms thereafter, unless sooner removed by the ~~Mayor and City Council~~mayor and city council. Among ~~their~~his or her other duties, the ~~Zoning Administrator~~zoning administrator shall assist the ~~City Council~~city council in all matters pertaining to the purpose and intent of this ~~Ordinance~~zoning ordinance.

AND FURTHER, THAT Section X-C of the Zoning Ordinance entitled “Duties of the inspector of buildings and of the zoning administrator” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

1. Generally. It shall be the duty of the ~~Inspector of Buildings~~inspector of buildings, or ~~their~~his duly authorized agents, to cause any plans, buildings, or premises to be examined or inspected to determine that they are not in violation of provisions of this ~~Ordinance~~ordinance. The ~~Zoning Administrator~~zoning administrator shall have the independent authority and duty to cause any plans, buildings, or premises to be examined and determine compliance with any and all provisions of this Ordinance. In the case of any disagreement between the ~~Inspector of Buildings~~inspector of buildings and the ~~Zoning Administrator~~zoning administrator regarding an interpretation of this ordinance, the ~~Zoning Administrator~~zoning administrator's decision shall control.
2. *Violations*. Where the ~~Inspector of Buildings~~inspector of buildings, in the course of ~~his~~their duties, determines that any plans, buildings, or premises are in violation of the provisions of this ordinance, he shall so inform the ~~Zoning Administrator~~zoning administrator. In such case, or if the ~~Zoning Administrator~~zoning administrator in the course of ~~their~~his or her duties determines that any plans, buildings, or premises are in violation of the provisions of this ~~Ordinance~~ordinance, the ~~Zoning Administrator~~zoning administrator shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation

found to exist, the remedy ordered, the time permitted for such action, and the penalties and remedies which may be invoked by the City, and the violator's right of appeal; all as provided for by this Section X-C.

On the serving of notice by the Zoning Administrator to the owner for any violation of any provisions of this Ordinance, a new certificate of occupancy shall be required for any further use of such building or premises.

3. *Records.* The Inspector of Buildings and Zoning Administrator shall maintain a permanent public records of all matters considered and all actions taken by their respective offices. All such records, as well as the permanent public record of all matters considered and all action taken pursuant to this zoning ordinance, or chapters 5, 12 or 16 of the Newburyport Code, by any city official, board, commission, or department and maintained by it, shall be deemed to form a part of the records of the Inspector of Buildings and Zoning Administrator.

An individual shall permanent files for each application by street address property for all permits provided for by this Ordinance shall be established at the time the application is made. Said files shall contain at least one (1) copy of the application and all supporting documents, maps, and plans; notations regarding pertinent dates and fees, and the like, as appropriate; at least one (1) copy of the written decisions (including any associated drawings and specifications) by any city official, board, commission, or department acting on the application; and the date the permit applied for was issued or denied by the Inspector of Buildings and/or Zoning Administrator, respectively.

4. *Enforcement and monthly reports.* If the Zoning Administrator is requested in writing to enforce this Ordinance against any person allegedly in violation of same, and the Zoning Administrator declines to act, the Zoning Administrator shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen (14) days after such receipt.

The Zoning Administrator shall prepare a monthly report for the City Council, which inspector of buildings and the zoning administrator shall each prepare a monthly report for the city council. Said report shall cite all actions taken by such official, including all referrals made by them, all permits and certificates issued and denied; and all complaints of violations received, and all violations found by them, and the action taken by them consequent thereon. A copy of this monthly report shall also be transmitted by such officer to the Assessor, Planning Board, and Zoning Board of Appeals at the same time it is transmitted to the City Council.

AND FURTHER, THAT Section X-D of the Zoning Ordinance entitled “Permits” be amended pursuant to Section XII-B (Adoption and Amendment) to insert a new third paragraph as follows with additions **double-underlined and in bold**:

No application for any permit or review by municipal officials under this Ordinance (whether by boards or staff) shall be considered complete or eligible for consideration unless submitted in its entirety, including the completion of related forms promulgated by the Office of Planning and Development (or Building Department, as applicable) and posted on the City website at the time of submission, as well as any required attachments or supporting documentation enumerated therein. Requests for waiver of any particular submission requirements, or listed attachments, must be requested of and approved in writing by the applicable staff or board in advance of formal submission of the applicable application.

AND FURTHER, THAT subsection (7)(C) of Section X.H of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions **~~double-stricken through and in bold~~**, and additions **double-underlined and in bold**:

- C. *Time limitation on special permit.* Any special permit granted under this section shall lapse within ~~two (2)~~ **three (3)** years if a substantial use thereof has not sooner commenced except for good cause, in the case of permit for construction, if construction has not begun by such date except for good cause. Additionally, if construction or operations has not begun within six (6) months, or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial six (6) months, then the construction or operations shall conform to any amendment to this ordinance.

AND FURTHER, THAT Section XI-J of the Zoning Ordinance entitled “Conformance to performance standards” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions **~~double-stricken through and in bold~~**, and additions **double-underlined and in bold**:

An application for a building permit and/or certificate of occupancy for any ~~industrial~~ use in any district ~~believed by the building inspector~~ **determined by either the Inspector of Buildings or the Zoning Administrator** to be potentially in conflict with the performance standards shall be accompanied by a plan in quadruplicate of the proposed construction or development, including a description of the proposed machinery operations and products and specifications for the mechanisms and techniques to be used in restricting the emission of dangerous and objectionable elements. One (1) copy of said plans and descriptions shall be filed with the ~~Inspector of Buildings~~ **Inspector of Buildings**, one (1) with the ~~Zoning Administrator~~ **Zoning Administrator**, one (1) with the ~~Planning Board~~ **Planning Board** and one (1) with the ~~City Council~~ **City Council**. The fee for such applications shall include the cost of the special reports required herein.

The City Council~~city council~~, with the advice of the Planning Board~~planning board~~ and the Zoning Administrator~~zoning administrator~~, when there is likelihood of reasonable doubt as to conformance, shall refer the application to one (1) or more expert consultants who shall return a report with their findings within thirty (30) days. A copy of such report will be furnished to the applicant.

AND FURTHER, THAT Section XII-B of the Zoning Ordinance entitled “Adoption and amendment” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double struck through and in bold~~, and additions double-underlined and in bold:

This Ordinance~~zoning ordinance will~~ be originally adopted and from time to time changed by amendment, addition, or repeal in the manner hereinafter provided.

The adoption or change of this Ordinance~~ordinance~~ may be initiated by the submission to the City Council~~city council~~ of the proposed zoning ordinance or change ~~to~~ by the City Council~~city council~~, the Zoning Board of Appeals~~zoning board of appeals~~, by a person~~an individual~~ owning land to be affected by the change or adoption, by ten (10) registered voters in the city, by the Planning Board~~planning board~~, by ~~two (2) members of~~ the regional planning agency, or by other methods provided by the City of Newburyport Home Rule Charter~~charter~~ as it may be amended. The City Council~~city council~~ shall, within fourteen (14) days of receipt of such zoning ordinance or change, submit it to the Planning Board~~planning board~~ for review.

No zoning ordinance or amendment thereto shall be adopted until after the Planning Board and the City Council~~planning board and the city council~~ or a committee of said City Council designated or appointed for the purpose by said council, has jointly held a public hearing thereon at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five (65) days after the proposed zoning ordinance or change is submitted to the planning board by the City Council~~city council~~. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing (not counting the day of the hearing) and by posting such notice in a conspicuous place in city hall for a period of not less than fourteen (14) days before the day of said hearing.

Notice of said hearing shall also be sent by mail, postage prepaid, to the Massachusetts Department of Housing and Community Development (DHCD)~~commonwealth executive office of communities and development (EOCD)~~, the Merrimac Valley Planning Commission (MVPC), or to their respective successor agencies, and to the planning boards of all abutting cities and towns.

No vote to adopt any such zoning proposed ordinance or amendment shall be taken until a report with recommendations by the Planning Board~~planning board~~ has

been submitted to the ~~City Council~~city council, or twenty-one (21) days after said hearing have elapsed without submission of such report or recommendations. After such notice, hearing and report, or after twenty-one (21) days shall have lapsed after such hearing without submission of such report, ~~the City Council~~city council may adopt, reject or amend any such proposed ordinance. If the ~~City Council~~city council fails to vote to adopt any proposed ordinance or amendment within ninety (90) days after such hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as above provided.

Except as otherwise provided under Chapter 40A of the General Laws, no zoning ordinance shall be adopted or changed except by a two-thirds ($\frac{2}{3}$) vote of all the members of the ~~City Council~~city council provided that, if there is filed with the ~~City Clerk~~city clerk prior to final action by the ~~City Council~~city council a written protest against such change, stating the reasons duly signed by owners of twenty (20) percent or more of the area of the land proposed to be included in such change, or of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred (300) feet therefrom, no such change of any such zoning ordinance shall be adopted except by a three-fourths ($\frac{3}{4}$) vote of all members.

No proposed zoning ordinance or amendment which has been unfavorably acted upon by the ~~City Council~~city council shall be considered by the ~~City Council~~city council within two (2) years after the date of such unfavorable action unless the adoption of such proposed ordinance or amendment is recommended in the final report of the ~~Planning Board~~planning board.

The effective date of the adoption or amendment of this ~~Ordinance~~zoning ordinance shall be the date on which such adoption or amendment was voted on by the ~~City Council~~city council, **except as otherwise expressly provided in the Ordinance or such amendment thereto**; after adoption by the ~~City Council~~city council of the zoning ordinance or amendments, the ~~City Clerk~~city clerk shall send a copy of same to **DHCD, or to its successor agency**~~the department of community affairs~~.

No claim of invalidity of this ~~Ordinance~~zoning ordinance arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceeding and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless within **ninety (90) one hundred and twenty (120)** days after adoption of this ordinance or amendment legal action is commenced and notice specifying the court, parties, invalidity claimed, and date of filing is filed, together with a copy of the petition with the ~~City Clerk~~city clerk within seven (7) days after commencement of the actions.

AND FURTHER, THAT Section XXII of the Zoning Ordinance entitled “Federal Street Overlay District (FSOD)” be amended pursuant to Section XII-B (Adoption and Amendment) by

deleting said section in its entirety, and replacing it with the following text, with additions **double-underlined and in bold**.

XXII – RESERVED.

AND FURTHER, THAT Section XXV of the Zoning Ordinance entitled “Towle Complex Redevelopment Overlay District (TCROD)” be amended pursuant to Section XII-B (Adoption and Amendment) by deleting said section in its entirety, and replacing it with the following text, with additions **double-underlined and in bold**.

XXV – RESERVED.

AND FURTHER, THAT subsections 4(b) and 4(c) of Section XXVII-F of the Zoning Ordinance entitled “Procedure and criteria” be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double striken through and in bold~~, and additions **double-underlined and in bold**:

- b. *Demolition of historic buildings and structures:* The SPGA may approve demolition of an historic building or structure only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration, or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs. **Notwithstanding the foregoing, the SPGA may approve the moving of an historic building or structure from one (1) portion of a lot to another, or from one (1) lot to another, regardless of where the receiving lot is located.**

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the ~~applicant owner~~ shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant ~~selected~~ **deemed necessary** by the SPGA in its reasonable discretion to investigate and prepare a written report upon the existing condition and feasibility of preservation of the historic building or structure proposed for demolition (Conditions Report). The SPGA shall engage such architect, engineer, or specialist ~~no later than ten (10) calendar days by vote at any time after its having openinged~~ the required public hearing on the matter. Said Conditions Report shall include an estimate of the reasonable cost to rehabilitate the relevant building or structure to meet the requirements of the State Building Code as it applies to historic buildings or structures. The Conditions Report required in connection with the proposed demolition of an historic building or structure shall not be waived by any City board, commission, or officer, including, without limitation by variance.

No later than thirty (30) calendar days after the historical commission has received: (a) a complete application; or (b) new materials in the case of a further revised submission, the historical commission shall submit to the SPGA its written report (Historical Report) regarding: (x) the significance of the historic building or structure proposed for demolition; and (y) the relative importance of such historic building or structure to its setting within the DOD.

In addition, pursuant to M.G.L. c. 44, § 53G, the applicant owner shall pay all costs for the SPGA to ~~select in its reasonable discretion and~~ engage a properly licensed real estate appraiser deemed necessary to investigate and prepare a written report upon the existing market value of the relevant historic building or structure (Appraisal Report), for the purposes of comparing this value against the cost estimate contained within the Conditions Report. The SPGA shall engage such appraiser ~~no later than ten (10) calendar days by vote at any time~~ after ~~its having~~ opened the required public hearing on the matter. The Appraisal Report required in connection with the proposed demolition of an historic building or structure shall not be waived by any city board, commission, or officer, including, without limitation by variance.

Before acting on a DOD-SP application to demolish an historic building or structure, the SPGA shall consider any and all advisory reports generated in relation to the subject application, including but not limited to: (a) both the Conditions Report; ~~(b) and~~ any Historical Report(s) submitted by the historical commission; ~~as well as~~ and (c) the Appraisal Report.

- c. *Demolition of historic exterior architectural features:* Historic exterior architectural features shall be retained and repaired whenever reasonably feasible. If the SPGA determines that such features cannot reasonably be retained and repaired, then they shall be replaced in kind, both in design and materials, whenever reasonably feasible.

Advisory reports: Pursuant to M.G.L. c. 44, § 53G, and to aid the SPGA in its review, the applicant owner shall pay all costs for the SPGA to engage an architect specializing in historic preservation, architectural historian, builder specializing in historic preservation, engineer specializing in historic preservation, or other similar consultant ~~selected by the SPGA in its reasonable discretion~~ deemed necessary to investigate and prepare a written report upon the existing conditions and feasibility of preservation of the relevant historic exterior architectural features (Conditions Report). Said Conditions Report shall include an estimate of the reasonable cost of all work required to preserve, rehabilitate, or restore the relevant historic exterior architectural features. The SPGA shall engage such architect, engineer, or specialist ~~no later than ten (10) calendar days by vote at any time~~ after ~~its having~~ opened the required public hearing on the matter, unless the Conditions Report required in connection with the proposed demolition of historic exterior architectural features is waived by unanimous vote of the SPGA.

No later than thirty (30) calendar days after the historical commission has received (a) a complete application, or (b) new materials in the case of a further revised submission, the historical commission shall submit to the SPGA a written report regarding application of the relevant criteria of this section to the proposed work (Historical Report).

Before acting on a DOD-SP application, the SPGA shall consider both the Conditions Report, if any, and any Historical Report submitted by the historical commission.

AND FURTHER, THAT subsection (5)(e)(iii) of Section XXVII-F of the Zoning Ordinance entitled "Procedure and criteria" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions double-underlined and in bold:

Parts of replacement windows, such as exterior sills, molding and/or casing, exterior frames, and exterior sash windows shall match exactly those of the historic windows whenever reasonably feasible. Otherwise, replacement shall match the historic windows in dimensions, configuration, ~~mode of operation~~, and other general characteristics, but materials need not be duplicated exactly. Proposed replacement windows may include the new modes of operation, provided, however, that such modes shall be approved by the SPGA under a DOD-SP.

AND FURTHER, THAT subsection 1 of Section XXVIII-D of the Zoning Ordinance entitled "Definitions" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions double-underlined and in bold:

1. *Demolition, to demolish: The act, whether partial or complete, of: (a) pulling or tearing down, razing, or otherwise destroying; or (b) moving from one (1) portion of a lot to another, or from one (1) lot to another, regardless of where the receiving lot is located. For the purposes of this Section XXVIII, demolition of exterior walls shall include removal and/or enclosure of the external walls of such structure.*

AND FURTHER, THAT subsection 2 of Section XXVIII-D of the Zoning Ordinance entitled "Definitions" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through and in bold~~, and additions double-underlined and in bold:

2. *Demolition of a building or structure: Demolition of greater than twenty-five ~~(25)~~ percent (25%) of all external walls of a building or structure, with such demolition calculated on a cumulative basis since the initial adoption of this Section XXVIII, and measured based upon their total exterior surface area, regardless of the age or visibility of such walls from a street, way, or public body of water. The mere replacement of siding (i.e., without removal of external-wall sheathing and/or external-wall framing) shall not constitute demolition of an external wall for*

purposes of this Section XXVIII. Similarly, the mere replacement of existing windows and external doors (without alteration of their overall dimensions) shall not be considered demolition for purposes of this Section XXVIII. In accordance with subsection XXVIII-E.1, demolition of a building or structure shall not include the demolition of a single external wall in order to build an addition, presuming such wall does not constitute greater than twenty-five percent (25%) of all external walls of such building or structure. However, for the purposes of calculating the total area of external walls involved in proposed demolition such area shall include any elimination or relocation of any existing window openings (i.e. infilled with wall area) and any wall area which will be hidden from exterior view behind proposed additions. The Zoning Administrator and/or Office of Planning and Development may promulgate regulations, including, without limitation, illustrative diagrams, that further clarify what work constitute demolition under this Section XXVIII.

AND FURTHER, THAT subsection 2 of Section XXVIII-E of the Zoning Ordinance entitled "Procedure and criteria" be amended pursuant to Section XII-B (Adoption and Amendment) to add the following new sentence at the end of the existing provision:

To ensure compliance with this Section XXVIII, the Zoning Administrator, Building Commissioner, and/or Zoning Board of Appeals may require that applicants for permits or approvals within the Demolition Control Overlay District (DCOD) provide a clear, properly scaled drawing and/or diagram accurately depicting proposed demolition work, as defined and further clarified within subsections 1 and 2 of Section XXVIII-D.

AND FURTHER, THAT subsection 3 of Section XXVIII-E of the Zoning Ordinance entitled "Procedure and criteria" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

Required findings: The SPGA may approve a DCOD-SP application only if it makes written findings based upon substantial evidence in the record that such historic building or structure retains no substantial remaining market value or reasonable use, taking into account the cost of rehabilitation to meet the requirements of the State Building Code as it applies to historic buildings or structures, or of other applicable laws. Costs necessitated by any new construction, alteration or demolition conducted in violation of this section shall not be included in the calculation of rehabilitation costs.

Notwithstanding the foregoing, the SPGA may approve demolition of an historic building or structure from one (1) portion of a lot to another, or from one (1) lot to another, regardless of where the receiving lot is located.

Councillor Jared J. Eigerman

Councillor Heather L. Shand

Councillor Christine E. Wallace

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 10, 2021

AN ORDINANCE TO LIMIT ON-STREET PARKING ON MERRIMAC STREET DURING GAME TIMES AT THE LOWER ATKINSON COMMON FIELDS

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

Sec. 13-174. - Parking limited—Generally.

No person shall park any vehicle on the following streets or portions of streets during the times indicated below:

Street	Zones
<u>Merrimac Street</u>	<u>Northerly side from Plummer Avenue to Moulton Street during game times at the Lower Atkinson Common Fields</u>
<u>Merrimac Street</u>	<u>Southerly side from Moulton Street for a distance of approximately 150 feet east during game times at the Lower Atkinson Common Fields</u>

Submitted,

Councillor Christine E. Wallace

COMMITTEE ITEMS

Committee Items- May 10, 2021

Budget & Finance

Budget & Finance

In Committee:

COMM314_03_29_2021	FY2022-FY2026 Capital Improvement Program Submission COTW
COMM319_04_12_2021	FY22-Memo to Council from Councillor re: CIP
TRAN090_04_12_2021	Water Ret. Earnings \$155K to Watershed Land Acquisition \$155K
TRAN095_04_26_2021	DPS Recpts Res for Approp. \$35K to Highway Fuel & Oil \$35K



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4413 • (978) 465-4402 (FAX)
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council

From: Donna D. Holaday, Mayor

Date: March 23, 2021

Subject: FY2022-FY2026 Capital Improvement Program Submission

In accordance with Section 6-5 of the Charter, which requires the submission of a capital improvement plan to the City Council by April 1 of each year, I am pleased to submit an updated Capital Improvement Program (CIP) for Fiscal Years 2022 through 2026. The CIP document will be presented to the City Council at its next meeting and posted online for the public to review no later than March 29, 2021.

The CIP serves as a planning tool that provides a means of identifying, prioritizing and scheduling needed capital improvements projects over the next five years. These projects include purchases of major pieces of equipment, infrastructure improvements, facility construction and renovation projects, major improvements to or acquisition of parks/grounds/open space, as well as, major studies and surveys. As defined in the City's Financial Policies, a capital improvement project must be valued over \$15,000 with an expected useful life of at least five years to be included in the CIP.

I submitted last year's CIP at a time of immense uncertainty in the world surrounding the COVID-19 pandemic. Most funding requests for capital projects were deferred, where possible, so that the City would have more time to better understand the implications of the global pandemic on City revenue, as well as, the economy and society as a whole. A year later, with the roll-out of the vaccines, along with the passage of federal relief packages, I have a greater level of confidence as we work to plan and execute this year's CIP.

I urge the members of the City Council to carefully review the plan, and I look forward to working with you through the public hearing and adoption process as specified in the Charter.

Thank you for your consideration.

Memo

To: Newburyport City Council
From: Sharif Zeid
Date: April 6th, 2021
Re: FY22 Capital Improvement Plan

Councillors,

I did an analysis on the Capital Improvement Plan and wanted to discuss it with you during an upcoming committee meeting. This analysis is based on the Mayor's Capital Improvement Proposal, without any changes to the proposed amounts or sequencing. I am appreciative for the analysis prepared by Finance Director Ethan Manning and presented in the Mayor's plan.

To ensure the public had access to this same document, I submit this as a communication for referral to Budget and Finance.

Thank you,
Sharif

Capital within the operating budget - Debt

New Debt & Service	2022		2023		2024		2025		2026	
	Debt	Service	Debt	Service	Debt	Service	Debt	Service	Debt	Service
	\$0	\$0	\$16,941,444	\$656,283	\$10,756,379	\$416,684	\$1,588,608	\$61,540	\$1,075,834	\$41,676

5 yr new debt **\$30,362,265**

Project Listing from 2022-26 CIP proposed from operating budget supported debt

Project	CIP #	Page	Amount
Fire Station 2	FD003	21	\$ 6,000,000
Center Waterfront Bulkhead	PL001	40	\$ 3,000,000
Parks Field Office	PK016	58	\$ 1,000,000
NYS Facility	YS002	76	\$ 5,000,000
Roadway Improvements	HW002	78	\$ 7,500,000
Sidewalk Replacement	HW003	79	\$ 2,500,000
Downtown Utility Upgrades (design)	HW004	80	\$ 500,000
Phillips Drive	HW005	81	\$ 4,200,000
Nock Moilin Gym/Aud Roof	SC016	124	\$ 662,265
			Total: \$ 30,362,265

Core Questions:

- 1) Can the operating budget support the new debt service? (income statement)
- 2) Does new debt service coming from the operating budget impact creation of free cash
- 3) Is the level of debt acceptable? (balance sheet)
- 4) Do the projects and amounts listed make sense?
- 5) Are the projects sequenced as desired?

Capital within the operating budget - Pay As You Go (free cash + budget)

	2022	2023	2024	2025	2026
Free Cash	\$1,618,572	\$1,061,300	\$1,037,000	\$453,000	\$578,000
Budget	\$754,470	\$651,089	\$681,089	\$669,089	\$471,422

5 yr "pay as you go" **\$7,975,030**

Project Listing from 2022-26 CIP proposed for pay-as-you-go				Free Cash Cont'd			
Project	CIP #	Page	Amount	Project	CIP #	Page	Amount
IT Hardware	IT001	18	\$ 210,000	Enclosed Landscaping Trailer	PK032	70	\$ 12,000
Replace/Update Radio Equipment	FD002	20	\$ 165,000	HVAC System Replacement	LI003	73	\$ 54,000
SCBA Replacement	FD005	23	\$ 80,000	Carpet Replacement	LI004	74	\$ 25,000
Hose Replacements	FD006	24	\$ 60,000	Roadway Paving Improvement	HW002	78	\$ 1,000,000
Fire Data Control Systems	FD007	25	\$ 100,000	Plummer Spring Bridge Replacement	HW006	82	\$ 600,000
Surveillance Camera Integration	PD001	26	\$ 185,000	DPS Salt Shed Replacement/Upgrades	HW011	86	\$ 250,000
Dispatch Center Renovation	PD002	27	\$ 475,000	Two (2) Sander Inserts for Dump Trucks	HW012	87	\$ 47,960
Carpet Replacement	PD003	28	\$ 40,000	Pick-Up Truck with Plow	SC007	115	\$ 43,800
Facility Weatherproofing	PD004	29	\$ 30,000	Snow Thrower Attachment for Plow	SC008	116	\$ 17,500
Six (6) Radar Units	PD005	30	\$ 25,000	NHS/Nock Control System Upgrades	SC009	117	\$ 150,000
Dive Team Equipment	PD006	31	\$ 41,600	NHS School Auditorium Plaster Repairs	SC013	121	\$ 50,000
Thirty Four (34) Taser Replacements	PD007	32	\$ 108,000	Budget	CIP #	Page	Amount
Records Room	PD008	33	\$ 20,000	Cruiser/Vehicle Replacements	PD009	34	\$ 325,000
Electric Cruiser Pilot Program	PD010	35	\$ 60,000	Twenty Five (25) Body Worn Cameras	PD011	35	\$ 105,688
Twenty Five (25) Body Worn Cameras	PD011	36	\$ 3,412	Alarm Panel Replacement	LI001	71	\$ 13,750
Building Records Reorganization	BD001	45	\$ 22,500	Purchase of Trackless Vehicle	HW001	77	\$ 225,000
Complete Streets Transportation Projects	PL005	44	\$ 150,000	Sidewalk Replacement/New Construction	HW003	79	\$ 1,750,000
Infield Groomer	PK001	46	\$ 15,000	Purchase of Two 6 Wheel Dump Trucks	HW007	83	\$ 230,000
Cushing Park Lot Resurfacing	PK002	47	\$ 200,000	Purchase of Loader	HW008	84	\$ 216,000
Mini Excavator Purchase	PK006	50	\$ 65,000	NHS-Engineering Services	SC002	110	\$ 40,000
Mower Attachment Purchase	PK007	51	\$ 24,500	NHS-Exterior Painting	SC004	112	\$ 120,000
Worksite Utility Vehicle	PK010	53	\$ 30,000	Toro Groundsmaster 3500-D	SC005	113	\$ 35,720
Lower Atkinson Common Improvement (Desj)	PK014	56	\$ 300,000	NHS-Furniture Replacement	SC010	118	\$ 48,000
Purchase of Two (2) Pickup Trucks	PK031	69	\$ 87,600	Nock Molin-Walkway/Sidewalk Repairs	SC011	119	\$ 18,000
				NHS-Carpet Replacement	SC012	120	\$ 50,000
				Nock Molin-Furniture Replacement	SC015	123	\$ 50,000



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

Department: Department of Public Services

Submitted by: Anthony J. Furnari, Director

Date Submitted: 4/12/2021

Transfer From:

Account Name:	<u>Water Retained Earnings</u>	Balance:	<u>\$ 1,398,128.00</u>
Account Number:	<u>60-35920</u>	Category:	<u>\$ -</u>
Amount:	<u>\$155,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

The Massachusetts Department of Revenue certified Retained Earnings for the Water Enterprise Fund for FY2021 at \$1,398,128. These funds are available for any legal expenditure with the approval of the Mayor and a majority vote of the City Council.

Transfer To:

Account Name:	<u>Watershed Land Acquisition</u>	Balance:	<u>\$ -</u>
Account Number:	<u>New</u>	Category:	<u>\$ -</u>
Amount:	<u>\$155,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

To purchase property within the watershed for the City of Newburyport's public water supply. Please see attached memo.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date:

4/6/21

Ethan R. Manning, Auditor:

Ethan R. Manning

Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400 • (978) 465-4452 (FAX)

DONNA D. HOLADAY
MAYOR

MEMORANDUM

TO: NEWBURYPORT CITY COUNCIL
FROM: TOM CUSICK, WATER TREATMENT SUPERINTENDENT, & GEORDIE VINING, SENIOR PROJECT MANAGER
CC: DONNA HOLADAY, MATT COOGAN, ANDY PORT, ETHAN MANNING, TONY FURNARI
SUBJECT: 117 INDIAN HILL STREET WATERSHED PROTECTION PROJECT
DATE: 4/6/2021

We are writing to request the City Council's approval of the \$155,000 purchase of a high priority 6.1-acre watershed property (117 Indian Hill Street) that is critical to the protection of the City's public water supply.

The subject property contains a portion of the outlet stream that is the only connection between the City's Indian Hill Reservoir, which contains the majority of Newburyport's drinking water supply, to the Artichoke Reservoir and ultimately the treatment plant. The City has sought to purchase this priority property for two decades, and the City's partnership with Essex County Greenbelt Association has been crucial to securing this current opportunity.

The 6.1-acre woodland property is entirely within MassDEP's Surface Water Supply Protection Zones A and B. The property is directly adjacent to protected land owned by Greenbelt, which is adjacent to watershed land owned by the City of Newburyport around the Indian Hill Reservoir. If left unprotected, this watershed property is clearly threatened by development. Five years ago, the landowner developed plans and successfully secured an Order of Conditions to build an access roadway, including a stream crossing, and a house and septic system near the outlet stream and reservoir. In addition to the potential for impacts from a potential failing septic system in the future, development would significantly alter the property with impermeable surfaces providing a vector for potential household hazardous waste, motor oil, gasoline, road salt, lawn chemicals, etc., which would threaten the City's ability to maintain a clean, reliable public water supply.

In addition, the City's consultant Tighe & Bond has identified this property as a key part of a potential water pipeline route if the City chooses in the future to develop a raw water main pipeline that would carry water directly from the Indian Hill Reservoir to the Water Treatment Plant Intake Pump Station at the Lower Artichoke Reservoir.

Essex County Greenbelt Association has the property under agreement, and, based on the current landowner's needs, is pre-acquiring the property for the City in mid-April. Greenbelt is also contributing all of the due diligence materials for the acquisition, including a recent appraisal, environmental site assessment, and title review, and will handle the closing for the City and recording of the property. The City will provide a conservation restriction to Greenbelt and will retain rights to potentially build a public water main transmission line in the future if desired.

The Newburyport Water and Sewer Commission reviewed and approved this watershed land acquisition project in March 2021. The \$155,000 purchase price is under the recently appraised value of \$165,000. Funding for the \$155,000 acquisition will come from the Water Enterprise Fund Retained Earnings, which has ample funding for this purpose (\$1.4 million).

Attached materials include: a draft Purchase & Sale Agreement between the City and Greenbelt including the draft conservation restriction, which has been sent to the City Solicitor for review; Survey Plan; Map of the Newburyport Drinking Water Supply Protection District; Appraisal; Photographs; and Environmental Site Assessment cover letter and summary. The Finance Department is providing the transfer form.

Thank you for your consideration and support of this important public project.

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into as of _____, 2021 (the "Effective Date"), by and between ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts nonprofit corporation (together with its successors and assigns, "Seller") and the CITY OF NEWBURYPORT, a municipal corporation within Essex County in the Commonwealth of Massachusetts, acting by and through its Water & Sewer Commissioners ("Buyer").

RECITALS

A. The addresses, telephone numbers and facsimile numbers of the parties are as follows. Email addresses are provided for informational purposes only.

SELLER:

Essex County Greenbelt Association, Inc.
82 Eastern Avenue
Essex, MA 01929
Attn: Vanessa Johnson-Hall
Tel: (978) 768-7241 x 16
Fax: (978) 768-3286
Email: vkjohnson@ecga.org

With a copy to:

Lauren L. Butler, Esq.
258 Harvard Street #281
Brookline, MA 02446
Tel: (617) 654-8282
Fax: (617) 730-8449 (*faxes must include telephone number above on fax cover sheet in order to constitute valid notice*)
Email: lauren@laurenbutlerlaw.com

BUYER:

City of Newburyport
Attn: _____
60 Pleasant Street
Newburyport, MA 01950
Tel: () _____
Fax: () _____
Email: _____

With a copy to:

_____, Esq.

Tel: () _____
Fax: () _____
Email: _____

B. Seller has the right to acquire fee simple title to that certain 6.1+/- acre parcel of land located at 117 Indian Hill Street, West Newbury, Essex County, Massachusetts, and shown as Lot 2 on that certain plan entitled "West Newbury, Massachusetts, Subdivision of Land Prepared For: Flying W Realty Trust, Sandra Roulier, Trustee, 111 Indian Hill Street," prepared by Reid Land Surveyors, dated March 26, 2014, and recorded in the Southern Essex District Registry of Deeds in Plan Book 444 as Plan 20 (a copy of which is attached hereto as **Exhibit A** and incorporated herein), which parcel is commonly identified as Assessor Parcel 0180-0000-0019C in the Town of West Newbury property records (collectively, together with any and all improvements, fixtures, timber, water and/or minerals located thereon and any and all rights appurtenant thereto, including, but not

limited to, timber rights, water rights, grazing rights, access rights and mineral rights, and rights in or to abutting roadways, the "Subject Property") from John J. O'Connor ("Current Owner") pursuant to a purchase and sale agreement dated as of February 25, 2021 (as it may be amended from time to time, the "Acquisition Contract").

C. Seller wishes to sell the Subject Property to Buyer and Buyer wishes to purchase the Subject Property from Seller subject to the terms of this Agreement.

D. Immediately following its acquisition of the Subject Property, Buyer shall convey to Seller a permanent conservation restriction on, over and across the Subject Property (in its final form, the "CR"), which conservation restriction shall be substantially similar to the draft document attached hereto as **Exhibit B** and incorporated herein, and Seller agrees to accept the CR, subject to the terms of this Agreement.

E. Seller represents to Buyer that it is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands in Essex County, Massachusetts. Seller represents to Buyer that it is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Seller is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

AGREEMENT

1. **Purchase and Sale.** In consideration of the covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Subject Property to Buyer and to accept the CR from Buyer, and Buyer agrees to buy the Subject Property from Seller and convey the CR to Seller, all on the terms and conditions set forth in this Agreement.

2. **Purchase Terms.** The purchase price for the Subject Property shall be One Hundred Fifty-Five Thousand Dollars (\$155,000.00) (the "Purchase Price"). The Purchase Price shall be delivered to Escrow Agent (as defined in Section 5 herein) for the Closing (as defined in Section 5 herein) by a wire transfer of immediately available funds at least three (3) business days prior to the Closing Date (as defined in Section 5 herein), subject to credits, prorations and adjustments provided elsewhere in this Agreement. The CR is being conveyed by Buyer to Seller in accordance with the terms of that certain vote dated _____, and no consideration is being paid by Seller for the CR.

3. **Due Diligence Investigations; As-Is, Where-Is Condition.**

(a) **Property-Related Materials; Access:** At no expense to Buyer, Seller has provided Buyer with the following materials relating to the Subject Property: (i) a title commitment issued by Fidelity National Title Insurance Company with an effective date of February 8, 2021 (the "Title Commitment") and copies of all instruments of record referenced therein, (ii) a Phase I environmental assessment report, and (iii) an appraisal

prepared by an independent appraiser licensed by the Commonwealth of Massachusetts. Additionally, upon Buyer's request, Seller shall arrange for Buyer, its employees and/or agents to tour the Subject Property prior to Closing to confirm that the Property is being delivered in accordance with the terms of Section 12 herein, provided that Seller shall accompany Buyer on all entries upon the Subject Property.

(b) As-Is, Where-Is Condition. Unless this Agreement has been earlier terminated in accordance with the terms of Section 11 herein, at Closing, Buyer hereby agrees to purchase and accept the Subject Property in AS-IS, WHERE-IS condition as of the date hereof, reasonable wear and tear excepted. Accordingly, Buyer hereby waives any and all claims it might otherwise have against Seller, now or in the future, relating to the title to, condition of, siting and/or boundaries of, and/or value of the Subject Property, provided, however, that this sentence shall not serve to negate, modify, or amend any warranties of title and/or covenants made by Seller in the Deed (as defined in Section 4 herein).

4. Title. The Subject Property shall be conveyed to Buyer subject only to (i) applicable laws and regulations of any governmental authority in effect on the date hereof, (ii) the nondelinquent lien of real property taxes, water and sewer charges and municipal betterments, if any, (iii) those matters of record set forth in the Title Commitment, and (iv) those matters which would have been disclosed by a current survey of the Subject Property (collectively, the "Permitted Encumbrances"). At Closing, Seller's right, title and interest in and to the Subject Property shall be conveyed by a good and sufficient Massachusetts quitclaim deed running to Buyer from Seller and conveying good and clear record title to the Subject Property (the "Deed"). The CR shall be granted to Seller by Buyer subject only to the Permitted Encumbrances and the CR shall be recorded in the Essex Southern District Registry of Deeds immediately following the Deed.

5. Closing. The delivery and exchange of the Deed, Purchase Price, CR and other closing documents and the full settlement of the obligations of the parties hereto (collectively, the "Closing") shall occur on July 30, 2021, or at such other time or place mutually agreeable to the parties.

The transaction contemplated hereunder shall be closed by a representative of Fidelity National Title Insurance Company or Chicago Title Insurance Company (as applicable, "Escrow Agent") in accordance with the general provisions of the usual form of escrow agreement then in use by Escrow Agent (with such special provisions inserted in said escrow agreement as may be required to conform with the terms and conditions of this Agreement) and/or pursuant to closing instructions provided by the parties, with the cost of the escrow being borne by Seller. No later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date, (a) Seller shall deposit with Escrow Agent the Seller Deliveries (as defined in Section 6 herein), and (b) Buyer shall deposit with Escrow Agent the Buyer Deliveries (as defined in Section 6 herein). At the Closing, Escrow Agent shall disburse all monies in strict accordance with the closing statement, record the Deed, the CR and any other required documents or plans, and deliver to the appropriate parties all other closing documents. It is agreed that Escrow Agent shall have no liability to Seller or Buyer for the performance of its services herein, except in the event of Escrow Agent's gross negligence and/or willful misconduct.

6. **Closing Deliveries.** All closing documents shall be originals executed by an authorized representative of Seller or Buyer, as applicable, and if such closing document is intended to be recorded, each signature will be properly acknowledged.

(a) **Seller's Deliveries.** Seller shall execute and/or deliver to Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date (collectively, "**Seller's Deliveries**"): (i) counterparts to a settlement statement by and among Seller, Buyer and Escrow Agent (the "**Settlement Statement**"), (ii) the Deed, (iii) an owner's affidavit attesting to the absence of parties in possession and mechanics' liens, (iv) a Foreign Investment and Real Property Tax Act (FIRPTA) affidavit, (v) the fully executed CR, and (vi) such other instruments and documents as Buyer may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents, the conveyance of the Subject Property to Buyer and the acceptance of the CR by Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law.

(b) **Buyer's Deliveries.** Buyer shall execute and/or deliver to Seller or Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date (collectively, "**Buyer's Deliveries**"): (i) a counterpart to the Settlement Statement, (ii) the Purchase Price, and (iii) such other instruments and documents as Seller may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents and the conveyance of the CR to Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law, provided, however, that Buyer shall not be required to indemnify Seller for any matters arising from the transaction contemplated herein.

7. **Closing Expenses and Prorations.** Seller shall pay all statutorily required transfer taxes, if any, and all costs associated with the recording of the Deed, the CR and any other instruments. Taxes for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the Closing Date, taxes will be apportioned as of the Closing Date in accordance with G.L. c. 59, §72A; if, however, taxes have been paid through and past the Closing Date, such payments shall not be refunded, it being acknowledged that Buyer has no funds to refund Seller for such taxes paid and Buyer, being tax exempt, has no obligation to pay taxes upon acquisition of the Subject Property. Each party shall be responsible for its own legal expenses and the cost of its own title policies, if any.

8. **Seller's Representations and Warranties.** Seller makes the following representations and warranties:

(a) Seller is not a "foreign person" pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

(b) Neither Seller nor any key personnel of Seller have engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United

States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or (ii) in contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Executive Order 13224") or (iii) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time.

(c) Neither Seller nor any key personnel of Seller is or will be a person or entity (i) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224, (ii) whose name appears on OFAC's most current list of "Specially Designated Nationals and Blocked Persons," (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/tl1sdn.pdf>), (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in Executive Order 13224, or (iv) who has been associated with or is otherwise affiliated with any entity or person listed above.

(d) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement) and to convey the Subject Property and accept the CR at Closing.

(e) Neither the execution and delivery of the Agreement nor Seller's performance of its obligations hereunder will constitute a breach or default under any agreement to which Seller is bound.

Each of the above representations is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive Closing. If, before Closing, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information.

9. **Seller's Covenants.** Seller covenants and agrees as follows:

(a) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, make and/or extend any lease, contract, option or agreement affecting the Subject Property which would grant any third parties any rights to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer; and

(b) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, cause and/or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer.

10. **Buyer's Covenants.** To facilitate the execution of the CR by the Commonwealth of Massachusetts, Buyer covenants and agrees to deliver its original executed and acknowledged counterpart to the CR to Seller no later than the twenty-first (21st) calendar day after the CR has been approved by the Commonwealth of Massachusetts for local signature.

11. **Remedies Upon Failure of Performance.**

(a) In the event that Seller fails to perform any of Seller's obligations under this Agreement, Buyer shall have as its sole remedies the right to (i) waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, (ii) terminate this Agreement upon written notice to Seller, in which case the parties shall have no further obligations hereunder, or (iii) specific performance. Notwithstanding the foregoing, however, Buyer acknowledges and agrees that Seller's performance hereunder is expressly conditioned upon Seller's acquisition of the Subject Property pursuant to the Acquisition Contract, and if Seller fails to acquire the Subject Property under the Acquisition Contract for any reason whatsoever prior to Closing, Seller may terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder; provided, however, that Seller shall exercise good faith and due diligence with respect to the Acquisition Contract (which good faith and due diligence shall not include any instigation of and/or participation in litigation).

(b) In the event that Buyer fails to perform any of its obligations under this Agreement, Seller shall have as its sole remedies, the right to (i) waive such failure or breach and proceed to Closing or (ii) terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder.

12. **Delivery of the Subject Property.**

(a) At Closing, Seller shall deliver to Buyer full possession of the Subject Property free and clear of the rights and claims of all other parties, other than as set forth in the Permitted Encumbrances. Seller also shall deliver to Buyer any and all keys, lock combinations and/or alarm codes that control access to the Subject Property or any portion thereof.

(b) At Closing, the Subject Property is to be then in substantially the same condition as it was on the Effective Date, reasonable wear and tear excepted, except that the Subject Property shall be free and clear of any and all personal property (whether owned and/or leased by Current Owner or owned and/or leased by any tenant or occupant), trash and/or debris.

13. **No Assignment of Buyer's Interest.** Buyer may not assign its interest in this Agreement without the written consent of Seller.

14. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties personally, by facsimile, commercial express courier service or by first class United States mail, postage prepaid, addressed to the parties at the addresses set forth in Recital A. All notices given personally or by facsimile shall be deemed given when received. All notices given by mail or by commercial express courier service shall be deemed given when deposited in the mail, first class postage prepaid, or with such courier, addressed to the party to be notified. The parties may, by notice as provided above, designate a different address to which notice shall be given.

15. **Time of the Essence.** Time is of the essence in this Agreement.

16. **Next Business Day.** In the event that any date for performance or notice hereunder falls on a Saturday, Sunday, a date on which a state of emergency has been declared in the Commonwealth of Massachusetts, a state, federal or bank holiday, or, with respect to the Closing Date, a date on which the applicable registry of deeds is closed for any reason, the deadline for such performance or notice shall be automatically extended to the next business day.

17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will, to the extent permitted by law, indemnify and hold the other party harmless from and against said claim. The provisions of this Section 17 shall survive the Closing and any earlier termination of this Agreement.

18. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.

19. **Binding on Successors.** This Agreement shall be binding not only upon the parties, but also upon their respective assigns and/or successors in interest.

20. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom

such supplement, modification, waiver or amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any of the conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Legible facsimile copies, electronically scanned copies and photocopies of documents signed by either party are deemed to be equivalent to originals.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized signatory(ies) on the date first written above.

SELLER:

ESSEX COUNTY GREENBELT
ASSOCIATION, INC., a Massachusetts
nonprofit corporation

BUYER:

CITY OF NEWBURYPORT, a municipal
corporation within Essex County,
Commonwealth of Massachusetts, acting through
its Water & Sewer Commissioners

By: _____
Katherine Bowditch
President

John Tomasz

Roger Jones

Sandy Friede

EXHIBIT A

Plan of Subject Property

(see attached)

EXHIBIT B

Form of CR

(see attached)

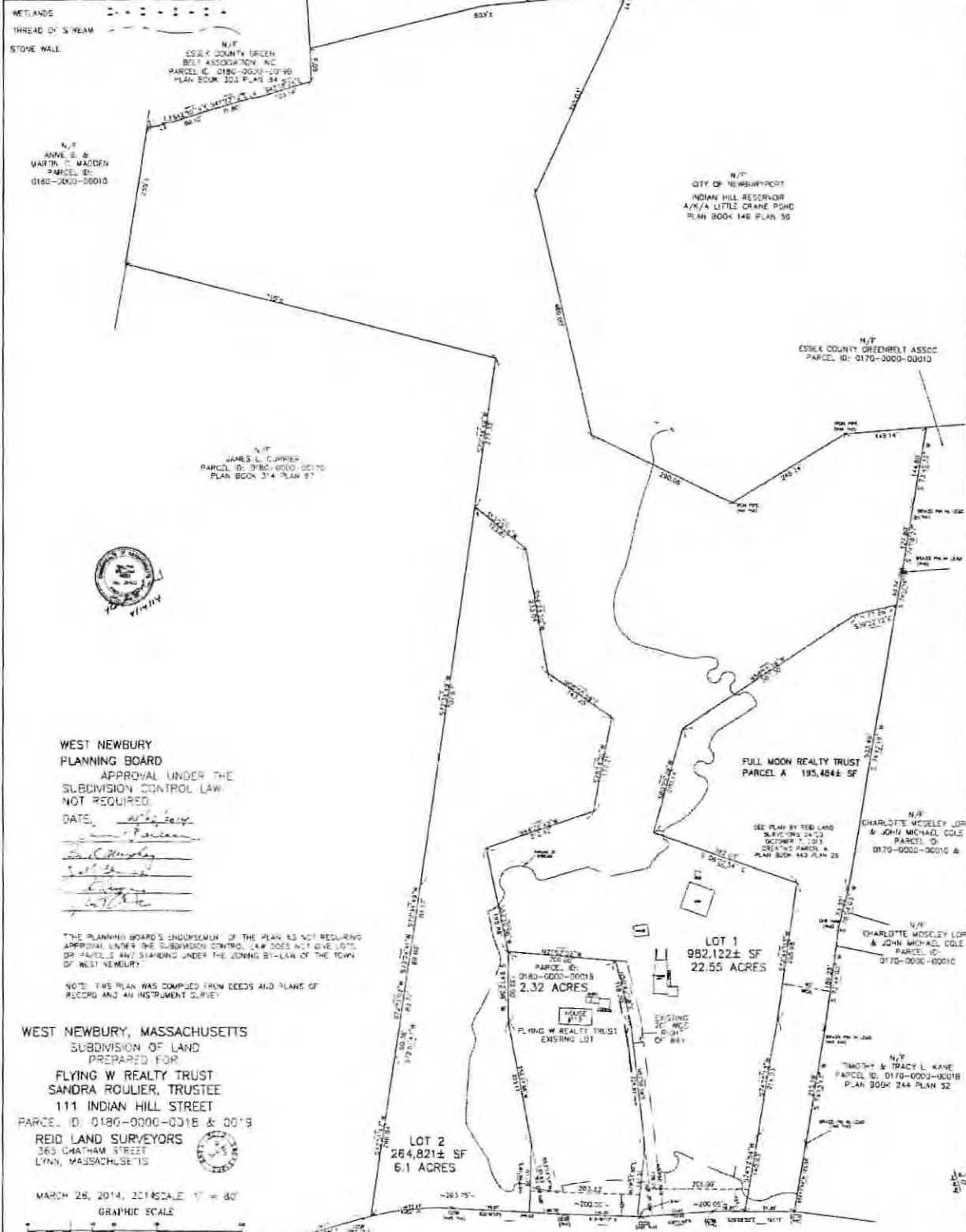


20
444

LINE TABLE	
LINE LENGTH	BEARING
L1 18.41	S37°00'00"E
L2 14.70	S52°00'00"E
L3 17.35	S28°24'18"E
L4 18.22	S42°00'00"E

PLAN BOOK 444 PLAN 20
ESSEX COUNTY MASS.
 Approved July 21, 2014
 [Signature]
 Register of Deeds

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.



Address of Premises: 117 Indian Hill Street, West Newbury

GRANTOR: City of Newburyport
GRANTEE: Essex County Greenbelt Association, Inc.
FOR GRANTOR'S TITLE SEE: Essex County Registry of Deeds at Book [enter book], Page [enter page].

CONSERVATION RESTRICTION

The CITY OF NEWBURYPORT, a Massachusetts municipal corporation having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950 ("City"), acting by and through its Board of Water and Sewer Commissioners ("BOWSC") under G.L. c. 40, section 41, for their successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts non-profit corporation having an address of 82 Eastern Avenue, Essex, Massachusetts 01929, its permitted successors and assigns ("Grantee"), for no consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in West Newbury, Massachusetts containing 6.1 acres and shown as "Lot 2" on the plan recorded at Plan Book 444 Plan 20 at the Southern Essex District Registry of Deeds ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

The conservation values include the following:

- A. **Open Space Protection.** The Premises contributes to the protection of the scenic and natural character of West Newbury and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts already-conserved land, including watershed land owned by the Grantor, and the Indian Hill Reservation owned by the Grantee.

- B. **Water Supply Protection.** The Premises is mapped by the Massachusetts Dept. of Environmental Protection as Zone A and C watershed areas of the Indian Hill Reservoir, which supplies drinking water for the City of Newburyport and the Town of West Newbury; the protection of the Premises is critical to maintaining the public drinking water supply.
- C. **Wetlands and Waterways.** A stream and wetlands on the Premises provide valuable habitat for a diverse array of species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws). Wetlands on the Premises are mapped as being within the top 50% of areas with the highest ecological integrity in the Commonwealth by the UMass Conservation Assessment and Prioritization System (CAPS).
- D. **Climate Change Resilience.** The Premises scored Above Average and Far Above Average Resilience by The Nature Conservancy's Resilient Land Mapping Tool, which scores reflect areas of land where high microclimate diversity and low levels of human modification provide species with the conditions they will need to persist and adapt to a changing climate.
- E. **Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.** The protected Premises furthers government policy and goals to protect and preserve open space, habitat, natural resources, passive recreational opportunities and scenic values, as enumerated by (1) the Grantor's 2017 Master Plan adopted by the Newburyport City Council and Planning Board, including specifically the four goals listed in Chapter 8 of such Master Plan, (2) the 2020 Newburyport Open Space and Recreation Plan, including specifically Goal 1 to protect lands of public conservation and recreational interest to provide essential wildlife habitat and drinking water protection.
- F. **Baseline Documentation Report.** These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

- A. **Prohibited Acts and Uses.** Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:
 - 1. Constructing, placing or allowing to remain any temporary or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips, mobile homes, swimming pools, asphalt or concrete pavement, signs, fences, billboards or other advertising displays, antennae, utility poles, towers, solar panels, solar arrays, conduits, lines

or other temporary or permanent structures, facilities, or improvements on, above or under the Premises;

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
3. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying native trees, grasses or other vegetation;
5. Planting, broadcasting, placement, disposal, transfer, destruction, composting, dumping, or otherwise preventable introduction of "invasive" plant species or any other nuisance or disease carrying species, as defined in *A Guide to Invasive Plants in Massachusetts* (Somers P. et al. 2006) or as amended or contained in a similar professionally acceptable publication available in the future;
6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
7. Use, parking or storage of vehicles including cars, trucks, motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
8. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation as defined in Section 2031(c) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder or any successor statute or regulation;
10. The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
11. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions to Prohibited Acts and Uses. The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

1. Vegetation Management. The selective minimal removal, pruning and cutting of vegetation to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises.

2. Invasive Species Management. The removal of non-native or invasive species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
3. Composting. The stockpiling and / or composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream.
4. Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species of flora or fauna, including selective planting of native trees, shrubs and plant species.
5. Passive Recreational Activities. Any and all recreational activities that do not materially alter the surface of the Premises or require any other development of the land (other than as permitted under Section II(B) herein), do not degrade environmental quality and do not involve the use of motors or motorized vehicles (other than power-driven mobility devices whose accommodation may be required in accordance with the Americans with Disabilities Act and similar legislation), such as, but not limited to, walking, jogging, hiking, snowshoeing, cross-country skiing, and hunting (collectively, "Passive Recreational Activities").
6. Trails. Maintaining and constructing Passive Outdoor Recreation (as defined herein) trails as follows:
 - a. *New Trails*. With prior approval of the Grantee, constructing new trails, provided that any construction minimizes impact to water resources.
 - b. *Trail Features*. With prior approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
7. Signage: Installing, maintaining, and replacing a minimal number of signs with respect to hunting, trespass, trail access, identity and address of occupants, sale of the Premises, the location of boundary lines, the Grantee's interest in the Premises and the protected conservation values, permitted and prohibited uses, and other regulations with respect to public use; interpretive, informational or other similar signs designed to enhance public use.
8. Forestry and Cutting. Conducting sound silvicultural uses of the Premises solely for the purposes of habitat or drinking water supply management, including the right to commercially (as such term may be defined from time to time in Section I of Chapter 61 of the Massachusetts General Laws, or successor law) sell forest products that result from said management activities (hereinafter, "Forestry Activities"), provided that any such Forestry Activities are carried out pursuant to a Forest Stewardship Plan. All Forestry Activities shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester. Before any Forestry Activities occur on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (hereinafter, "DCR") or appropriate successor agency, and to any other required state agencies for their approval. The Forestry Plan shall:

- a. be prepared by a forester licensed through DCR and shall follow the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" (as such guidelines may be amended by DCR or its successor agency) and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan; and
 - b. include provisions designed to comply with the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau (hereinafter the "Forestry BMPs"); and
 - c. include a certification that the Forest Stewardship Plan complies with the terms of this Conservation Restriction; and
 - d. be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional Forestry Activities are desired.
 9. Drinking Water Supply Pipeline. With prior notice to Grantee, constructing an above- or below-ground drinking water supply pipeline to bring water from the Indian Hill Reservoir to the Artichoke Reservoir, provided the construction of the pipeline seeks to minimally impact the Conservation Values of the Premises, and that Grantor restores the Premises in accordance with Paragraph 11 below.
 10. Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
 11. Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and native vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and native vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
 12. Other Activities. Such other activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights or, as applicable, are included in an approved Forest Stewardship Plan, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.
- C. **Best Management Practices.** Prior to exercising any right reserved by Grantor under Section II, Paragraph B that may result in more than *de minimis* surface alterations, the Grantor shall consult, if available, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency such as the Dept. of Conservation and Recreation (DCR) or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

- D. Permits, Regulations, Laws.** The exercise of any right reserved by Grantor under Section II, Paragraph B shall be in compliance with then-current building, zoning, planning, and conservation regulations, bylaws, or ordinances applicable to the Premises, the Wetlands Protection Act (MGL Chapter 131, Section 40), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth of Massachusetts takes any position whether such permit should be issued.
1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.
 2. Grantee agrees to use reasonable diligence to respond to Grantor's request within 60 days of delivery. Grantee's failure to respond within the sixty (60) calendar day period shall be deemed a denial of the request (hereinafter, a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval.

III. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE

- A. Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.
- B. Reimbursement of Costs of Enforcement.** Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.
- C. Boundary Disputes.** In the event of a dispute over the boundaries of the Conservation Restriction, Grantee shall have the right to require Grantor, at its sole expense, to commission a survey and / or have the boundaries of the Premises permanently marked.
- D. Non-Waiver.** Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to

enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

- E. **Disclaimer of Liability.** By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.
- F. **Acts Beyond the Grantor's Control.** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.
- G. **Actions to Prevent or Remedy Violations.** The Grantee shall have the right to take appropriate actions to prevent, abate, or remedy violations of this Conservation Restriction, including violations by non-parties.

IV. ACCESS BY THE GRANTEE

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. The Grantee shall have the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying the Grantee as the holder of this Conservation Restriction.

V. EXTINGUISHMENT

- A. **Termination only by Judicial Proceeding and Grantee's Right to Recover Proportional Value.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Commonwealth of Massachusetts Secretary of the Executive Office of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, which extinguishment or release must be accomplished by judicial proceedings in a court of competent jurisdiction, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.
- B. **Proceeds.** Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the

unrestricted Premises at that time and represents all land development rights associated with the Premises, except as such rights may have been specifically retained pursuant to this Conservation Restriction. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- C. **Grantor/Grantee Cooperation Regarding Public Action.** Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than a fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

- A. **Running of the Burden.** The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable in perpetuity against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises, by the Grantee, its successors and assigns acting by and through its duly designated officers, directors, employees or agents as holders of this Restriction.
- B. **Execution of Instruments.** The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. **Assignability; Running of the Benefit.** The benefits of this Conservation Restriction shall run to the Grantee, shall be deemed to be in gross and shall not be assignable by the Grantee, except the Grantee and its successors and assigns shall have the right to assign all or a portion of its right, title and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that such assignee shall also be an eligible grantee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, that such assignee is not an owner of the fee in the Premises, and provided further that, as a condition of such assignment, the assignee is required to hold this Conservation Restriction and enforce its terms for conservation purposes and ensure that the purposes of this Conservation Restriction continue to be carried out. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

- A. **Reference to Conservation Restriction in Future Deeds and Required Notification of Transfers.** The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which divests any interest in all or a portion of the Premises, including any leasehold interest or option, and to notify the Grantee in writing not less than thirty (30) days prior to the execution of such transfer. Failure to do any of the above

shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

- B. Termination of Rights and Obligations.** The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to, any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Southern Essex District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Southern Essex District Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: City of Newburyport
City Hall
60 Pleasant Street
Newburyport, MA 01950
Attn: Board of Water and Sewer Commissioners

To Grantee: Essex County Greenbelt Association, Inc.
ATTN: Director of Stewardship
82 Eastern Ave.
Essex, MA 01929
Phone: 978-768-7241

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

- A. **Controlling Law.** The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. AFFIRMATIVE COVENANTS OF THE GRANTOR

- A. **Payment of Taxes.** The Grantor shall pay before delinquency all taxes, assessments, betterments, liens, fees and charges levied on or assessed against the Premises by any federal, state, or local government authority or other competent authority or entity (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.
- B. **Subordination of Mortgage.** The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises

- C. **Adverse Possession.** The Grantor represents and warrants that to the best of his knowledge no person has occupied or used the Premises without the Grantor's permission or has openly claimed ownership of the Premises as against the Grantor or the Grantor's predecessors in title or has conducted continuous activities or uses on the Premises (such as, but not limited to, logging, camping or similar uses). The Grantor agrees that if any such activity is observed now or in the future, the Grantor shall immediately notify the Grantee and shall cooperate with the Grantee to notify such persons of their wrongful entry onto the Premises.

XIV. MISCELLANEOUS

- A. **Pre-existing Public Rights.** Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. **Homestead.** The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.
- E. **Representations of the Grantee.** The Grantee represents that it is a not for profit corporation, that it has a perpetual existence, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, that it has both the necessary funds and commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms, that it is a "Qualified Organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and that it is an eligible donee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, as amended.
- F. **Prior Encumbrances.** This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.
- G. **Signature Pages and Exhibits.** Attached hereto and incorporated herein by reference are the following:

Grantor [*If Grantor is a Trust – attach Trustee's Certificate*]
Grantee Acceptance
Approval by City Council
[Enter any other applicable signatures or certifications]
Approval of the Secretary of Energy and Environmental Affairs.
Exhibit A: Legal Description of Premises
Exhibit B: Sketch Plan of Premises
[Applies to CPA purchases] Exhibit C: Town or City Vote
[Enter additional Exhibits, Addendums, Appendices, Management Agreements, votes, grant agreements, exclusions, etc...]

WITNESS our hand and seal this ____ day of _____, 2021,

We, the undersigned, being a majority of the Board of Water and Sewer Commissioners of the City of Newburyport, Massachusetts ("Board"), hereby certify that at a public meeting duly held on _____, 2021, the Board voted to grant the foregoing Conservation Restriction to Essex County Greenbelt Association, Inc. pursuant to G.L. c. 40, section 41, and G.L. c. 184, section 32, and do hereby grant the foregoing Conservation Restriction.

CITY OF NEWBURYPORT,
By its Board of Water and Sewer Commissioners

John Tomasz, Chair

Roger Jones, Commissioner

Sandy Friede, Commissioner

COMMONWEALTH OF MASSACHUSETTS
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared John Tomasz, Roger Jones and Sandy Friede, as the members of the City of Newburyport Board of Water and Sewer Commissioners, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the City of Newburyport Board of Water and Sewer Commissioners.

Notary Public
My Commission expires:

APPROVAL BY THE MAYOR OF THE CITY OF NEWBURYPORT

I, the undersigned Mayor of the City of Newburyport ("City"), hereby approve the grant of the foregoing Conservation Restriction from the City's Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. in the public interest pursuant to G.L. c. 184, section 32.

CITY OF NEWBURYPORT

Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Donna D. Holaday, as the Mayor of the City of Newburyport, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as the Mayor of the City of Newburyport.

Notary Public
My Commission expires:

ACCEPTANCE OF GRANT

This Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners, was accepted by Essex County Greenbelt Association, Inc. this ____ day of _____, 2021.

ESSEX COUNTY GREENBELT ASSOCIATION, INC.

By: _____
Name: Katherine Bowditch
Title: President
Hereunto duly authorized

By: _____
Name: Kent Wosepka
Title: Treasurer
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Kent Wosepka, as Treasurer of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2021

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this day of _____, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

117IndianHill_CRFORMforPS_4.5.21

EXHIBIT B

Reduced Copy of Plan of Premises

For official full size plan see Southern Essex District Registry of Deeds Plan Book 444 Plan 20.

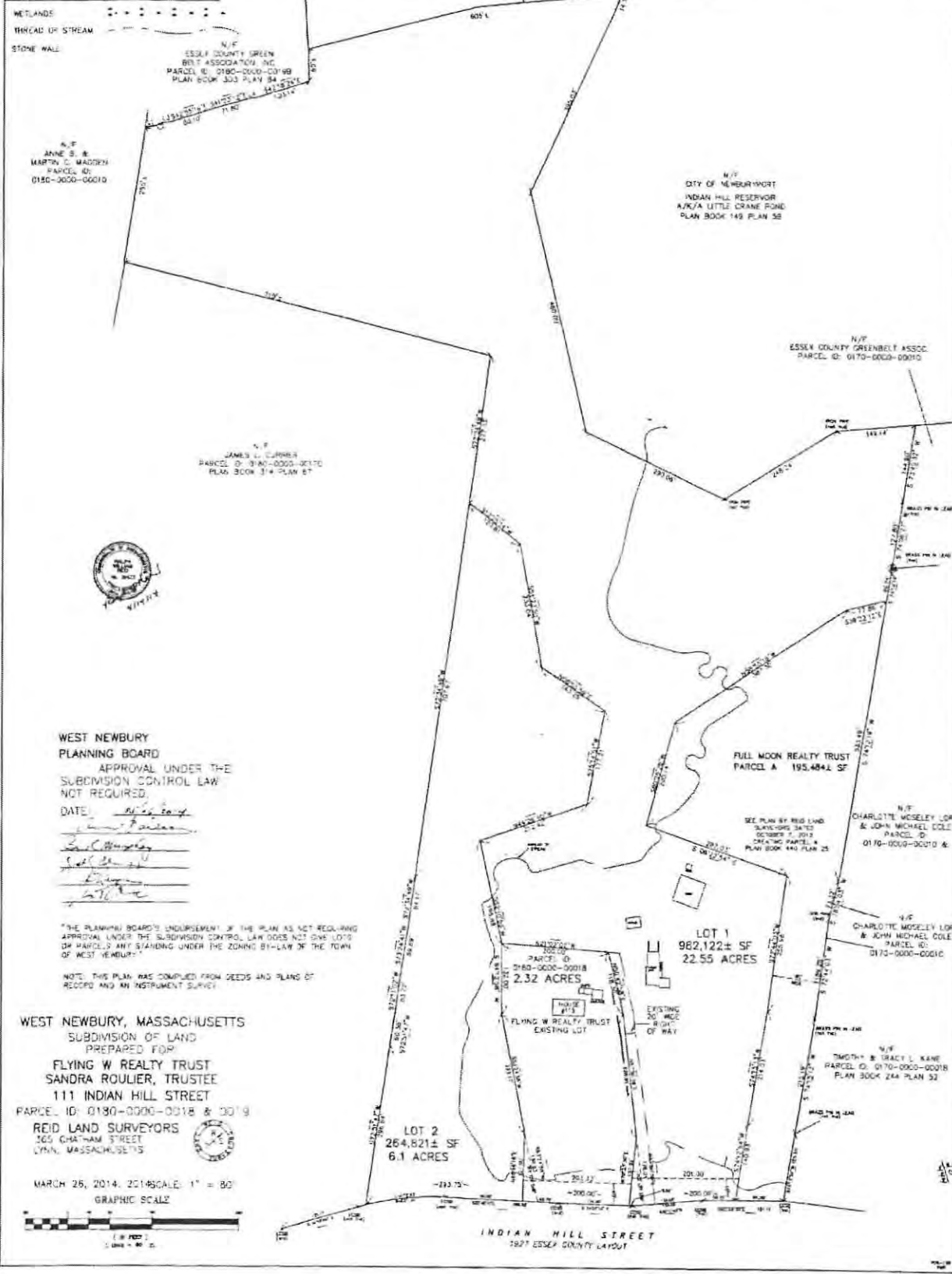


20
444

LINE LENGTH	BEARING
1	13.47 S45D50E2.6
2	12.20 S02D25.24E
3	12.00 S82D4.10E
4	18.22 S32D58.11E

PLAN BOOK 444 PLAN 2 #
 RECORDED JULY 21, 2014
 REGISTER OF DEEDS
 [Signature]

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.



WEST NEWBURY
 PLANNING BOARD
 APPROVAL UNDER THE
 SUBDIVISION CONTROL LAW
 NOT REQUIRED.
 DATE: 03/25/14
 [Signatures]

THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOT'S OR PARCELS ANY STANDING UNDER THE ZONING BY-LAW OF THE TOWN OF WEST NEWBURY.

NOTE: THIS PLAN WAS COMPILED FROM DEEDS AND PLANS OF RECORD AND AN INSTRUMENT SURVEY.

WEST NEWBURY, MASSACHUSETTS
 SUBDIVISION OF LAND
 PREPARED FOR
 FLYING W REALTY TRUST
 SANDRA ROULIER, TRUSTEE
 111 INDIAN HILL STREET
 PARCEL ID: 0180-0000-0018 & 0019
 REID LAND SURVEYORS
 100 CHATHAM STREET
 LYNN, MASSACHUSETTS

MARCH 25, 2014 SCALE: 1" = 80'
 GRAPHIC SCALE



CITY OF NEWBURYPORT
FY 2021

RECEIVED
CITY CLERK'S OFFICE

TRANSFER/APPROPRIATION REQUEST

2021 APR 23 PM 1:51

Department: Department of Public Services

Submitted by: Anthony J. Furnari, Director

Date Submitted: 4/26/2021

Transfer From:

Account Name:	<u>Receipts Reserved for Appr. Fuel</u>	Balance:	<u>\$ 155,803.91</u>
Account Number:	<u>2722-59600</u>	Category:	<u>\$ -</u>
Amount:	<u>\$35,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

This is the standard method of funding the DPS fuel and oil account. As City departments pay for gasoline, the funds are deposited into this reserve for appropriation account and then transferred into the fuel and oil expenditure account within the Highway budget to purchase more fuel.

Transfer To:

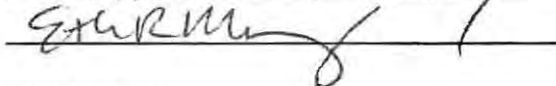
Account Name:	<u>DPS Highway Fuel & Oil</u>	Balance:	<u>\$ 11,804.70</u>
Account Number:	<u>01421004-54801</u>	Category:	<u>\$ 72,889.16</u>
Amount:	<u>\$35,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

Funds are required to buy gasoline and oil that is used by City vehicles.

Donna D. Holaday, Mayor: 

Date: 4/20/21

Ethan R. Manning, Auditor: 

Date: 4/20/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:

**Committee Items-
May 10, 2021
Planning & Development**

In Committee:

ODNC073_03_29_2021 Late File

Zoning Amendment Storage Warehousing
(As Amended in Committee (5/05/2021))

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO AMEND SECTION V-E OF THE NEWBURYPORT ZONING ORDINANCE AS TO THE DEFINITION OF USE # 613 "OPEN STORAGE":

Be it ordained by the City Council of the City of Newburyport as follows:

THAT the definition of use # 613 (Open Storage) in Section V-E of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

Open s Storage / <u>Warehousing</u>	613	<u>Enclosed storage or o</u> Open storage (properly screened from public view by means of a buffer as described in site plan standards) of raw materials, finished goods or equipment. Junk yards <u>and retail storage warehousing with public access</u> are specifically excluded <u>per section V-F.</u>
---	-----	--

AND FURTHER, THAT said use # 613 (Open Storage) as listed in Section V-D of the Zoning Ordinance (Table of use regulations) be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

~~Open s~~Storage / Warehousing

AND FURTHER, THAT the parking requirements for said use # 613 listed within Section VII-B of the Zoning Ordinance, entitled "Parking requirements" be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double-stricken-through-and-in-bold~~, and additions double-underlined and in bold:

~~Open s~~Storage / Warehousing 613 1 per company vehicle plus 1 per employee

Councillor Heather L. Shand

In City Council March 29, 2021:

Motion to refer to Planning & Development by Councillor Shand, seconded by Councillor Khan.
Roll call vote. 11 yes. Motion passes.

Committee Items-May 10, 2021

Public Safety

In Committee:

ODNC075_04_26_2021

Safety Zone Merrimac St

Removal from Committee Form

Instructions: Remit to rjones@cityofnewburyport.com; pbarker@cityofnewburyport.com by Tuesday, 5 PM preceding Council meeting

Committee Name: Public Safety For CC meeting May 10, 2021

Committee Chair: McCauley

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	ODNC075	Safety Zone Merrimac St	NO	Regular
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 26, 2021

AN ORDINANCE TO DESIGNATE A SAFETY ZONE ON MERRIMAC STREET ADJACENT TO LOWER ATKINSON COMMON

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in-italicized~~, and additions double-underlined and italicized:

DIVISION 8. - SAFETY ZONES

Sec. 13-192. - Established.

The City of Newburyport establishes Safety Zones under the provisions of M.G.L. c. 90, § 18B that regulate statutory speed limits to twenty (20) miles per hour in these designated areas. Regulatory speed limit signs, including Safety Zone speed limit signs, are required to conform to the Manual on Uniform Traffic Control Devices, per M.G.L. c. 85 § 2.

Sec. 13-193. - Designated.

The following portions of streets are located in designated safety zones:

<u>Street</u>	<u>Extent</u>
<u>Merrimac Street</u>	<u>Moulton Street to Plummer Avenue</u>

Submitted,

Councillor Christine E. Wallace

Councillor James J. McCauley

Councillor Charles F. Tontar

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____

Committee Items-May 10, 2021

Public Utilities

COMM292_02_08_2021

Memo-Electricity Aggregation Order

ODNC078_05_10_2021

Municipal Electrical Aggregation

(REDRAFT OF
ORDR245_04_26_2021)

Removal from Committee Form

Instructions: Remit to rjones@cityofnewburyport.com; pbarker@cityofnewburyport.com; cgreen@cityofnewburyport.com by Wednesday, 5 PM preceding Council meeting

Committee Name: Committee on Public Utilities

Committee Chair: Tontar

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	COMM292_02_08_2021	Memo-Electricity Aggregation Program	No	Consent
2.	ORDR245_04_26_2021	Municipal Aggregation Order	Yes (attached)	Consent
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				

MEMORANDUM

To: Council President Eigerman and City Council
 From: Mayor Donna D. Holaday
 Energy Advisory Committee
 Date: January 25, 2021
 Re: City of Newburyport-Community Choice Electricity Aggregation Program

The City of Newburyport approved a Community Electricity Aggregation program (program) in 2015 authorizing our community to aggregate the electricity load (usage) of those residents and businesses that are on Basic Service with National Grid, see attached. The goals of the program then were, and continue to be, to:

- Provide residents and businesses with competitive choice for potential costs savings
- Provide long-term price stability

The above goals were explicitly approved by the City Council at its meeting on June 8, 2015¹ and included in the CITY OF NEWBURYPORT COMMUNITY CHOICE POWER SUPPLY PROGRAM AGGREGATION PLAN² that was approved by the Massachusetts Department of Public Utilities in Case Number D.P.U. 15-62. There is hope and the expectation that Newburyport will be able to amend its approved municipal aggregation plan to include, at minimum, the following two goals and attributes:

1. Provide the residents and businesses the opportunity to acquire more, locally sourced renewable energy in its electric supply mix than currently is mandated by the Commonwealth of Massachusetts state law; and
2. Offer a retail electric supply choice that has the oversight protections, explicitly included in the CITY OF NEWBURYPORT COMMUNITY CHOICE POWER SUPPLY PROGRAM AGGREGATION PLAN, to protect residents with fixed incomes, those with English as a second language and senior-age residents from being drawn into the execution of alternative electric retail supply contracts from unscrupulous providers with unfair, un-competitive terms.

We want to reacquaint and introduce you to the program and how it will work once it is rolled out. We continue to work with Colonial Power Group, an independent energy consulting

¹ See https://www.newburyportnews.com/news/local_news/energy-aggregation-plan-goes-to-state-for-review/article_fa616b3c-b680-5d95-930a-406b6abdc46c.html

² See <https://colonialpowergroup.com/wp-content/uploads/2017/12/Newburyport-Aggregation-Plan.pdf>

“The goals of this Plan are as follows:

- provide the basis for aggregation of eligible consumers on a non-discriminatory basis;
- acquire a market rate for power supply and transparent pricing;
- provide equal sharing of economic savings based on current electric rates;
- allow those eligible consumers who choose not to participate to opt-out;
- provide full public accountability to participating consumers; and
- utilize municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.”

company that specializes in helping municipalities to create and manage electric Community Choice Power Supply (Municipal Aggregation) Programs. We have worked with Colonial since 2014 as Newburyport's municipal aggregation plan selected consultant and vendor. Currently, almost half of all Massachusetts cities and towns have approved aggregation programs of which Colonial has helped 75 of them including Boston. Soon aggregation programs may represent a larger purchasing pool for electricity than the utilities. We should be part of that market and help ensure retail competitive forces will work to drive the electric supply markets to produce the products demanded by society at the lowest available costs.

ENROLLMENT³- This is an "opt-out program", meaning any resident and business will be automatically enrolled in the Newburyport Community Choice Electricity Program unless one chooses not to participate. Every Basic Service customer in Newburyport will receive an opt-out letter 30 days prior to the start of the program. They can sign the card and put it in preaddressed stamped envelope or call a dedicated 800 number to opt -out. They can also go online to opt-out of the program. Colonial manages all opt-out program logistics. One must mail and postmark their opt-out card on or before a specified date to avoid automatic enrollment in the aggregation program.

SUPPLY⁴ -After Colonial manages a competitive bid process, an energy supplier will be selected as our electricity supplier with a contract term from execution date to a date to be determined based on the various pricing we get for each supply period. There is no guarantee of savings compared to National Grid "Basic Service". The primary intent of the program is to provide residents with price stability and the assurance of fair access to competitively priced electric products over the duration of each contract term (typically 1-to-3 years). However, NGrid rates for electric supply change every six months (May 1 and November 1) for Residential and Small Business & Lighting customers and every three months for Large Business customers. Thus, NGrid's Basic Service rates may be above or below the Newburyport Community Aggregation program rates during any subsequent 6-month Basic Service Rate period. While we cannot guarantee that the residential and business electric consumers of Newburyport will, in aggregate, save money relative to National Grid's Basic Service electric energy supply over the full term of a given supply contract, we will have the peace of mind that we had the freedom to choose the contract terms and pricing rather than having had those default to National Grid, our area's franchised monopoly supplier. The City decides whether they wish to proceed or not, and Colonial is the consultant in this process. This is about bringing local control and decision to the electricity market place while providing consumers at least five levels of protections:

1. Consultant vets offers and brings them to the City,
2. Mayor and their advisory team review offers and will only sign contracts that appear favorable,

³ See: "4.1.4 Notification of Enrollment for Eligible Consumers" at <https://colonialpowergroup.com/wp-content/uploads/2017/12/Newburyport-Aggregation-Plan.pdf>

⁴ See: "4.1.2 Acceptance of ESAs by City Council and Mayor" and "4.1.3 Signing of ESA by City Council and Mayor" at <https://colonialpowergroup.com/wp-content/uploads/2017/12/Newburyport-Aggregation-Plan.pdf>

3. The City Council has oversight and approval authority of the principles of the Municipal Aggregation Program and the procedures that need to be followed to solicit, consider, and approve contract offerings;
 4. The MA Department of Utility Control has oversight and approval authority of the program that the City proposes to offer to its citizens, monitors the annual results of the program through required periodic reporting, and is an authority to which concerns and complaints can be raised for possible investigation; and
 5. The individual consumer can choose to opt out of the Municipal Aggregation Program with appropriate, timely notice being provided within the monthly billing cycle and will be automatically be re-enrolled in National Grid's Basic Service for the supply of electric energy.
1. **ADMINISTRATIVE ADDERS**-In accordance with the terms of the CITY OF NEWBURYPORT COMMUNITY CHOICE POWER SUPPLY PROGRAM AGGREGATION PLAN, all program fees are included in the rates offered by the electric supplier(s). These fees are: \$0.001/kWh for the aggregation consultant Colonial which is a standard fee across the industry. It should be noted that under the terms that generally are available under competitive retail electric supply contracts, CITY OF NEWBURYPORT COMMUNITY CHOICE POWER SUPPLY PROGRAM prices also could increase as a result of a Change in Law that results in a direct material increase in electric supply costs during the term of the electric supply agreement. Colonial will always vet any anticipated or pending change in law and discuss that with the city.

PROGRAM DETAILS

Each eligible residence or business in Newburyport:

- Will be automatically enrolled in the program and have a municipal aggregation account established unless they choose to opt out.
- May leave the program at any time for any reason without early termination fees.⁵
- May return to the program at any time for any reason without fees or penalties.⁶
- Will continue to receive one bill from NGrid.
- Will continue to send payments to NGrid.

⁵ "If a commercial or industrial consumer directly notifies NGRID of the choice to terminate generation service from the Competitive Supplier, the generation service shall be terminated on the date of the customer's next scheduled meter read. If a residential, commercial, or industrial customer notifies the Competitive Supplier of the choice to terminate receipt of generation service, the termination shall take place on the date of the customer's next scheduled meter read, so long as the Competitive Supplier has submitted the transaction to NGRID no fewer than two business days prior to the meter read date." (see: "4.1.6 Beginning of Opt-Out Period" at <https://colonialpowergroup.com/wp-content/uploads/2017/12/Newburyport-Aggregation-Plan.pdf>)

⁶ "Eligible consumers who opt-out and subsequently wish to Re-enroll may be enrolled at the Competitive Supplier's contracted rate and pursuant to NGRID's Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1201, as amended or superseded from time to time." (see: "4.1.6 Beginning of Opt-Out Period" at <https://colonialpowergroup.com/wp-content/uploads/2017/12/Newburyport-Aggregation-Plan.pdf>)

- NGrid will continue to respond to emergencies and outages.
- Reliability and quality of service will remain the same: NGrid continues to be responsible for the wires and distribution.
- Colonial will provide a scope of services that includes full broker service, organizational structure design, a public education plan and outreach program, and analysis of the marketplace for the life of the contract. See attached list for complete scope of services. Many towns and cities have had created for their constituents a dedicated website to educate the public and to provide a single source to gather information and forms they need to manage their participation in the Municipal Aggregation Program.

TIERS and RENEWABLE ENERGY

The City may decide to make amendments to the CITY OF NEWBURYPORT COMMUNITY CHOICE POWER SUPPLY PROGRAM AGGREGATION PLAN so that the standard product that can be offered will be able to automatically include at least five percentage points more of local renewable energy originating from qualified Massachusetts Class 1 renewable energy sources than is currently required by state law⁷. If so, the City Council must vote on the amended plan. Options we hope to offer in the future include:

1. Receive a default level of Class 1 locally-sourced renewable electricity which is at least 5% beyond that required under state law total
2. Opt-up to 100% renewable electricity
3. Opt-down and receive the state mandated "Renewable Portfolio Standard" minimum
4. Opt-out. Stay with the current supplier (NGrid basic service) or other individually negotiated contract.

Members of the Newburyport Energy Advisory Committee and Colonial Power will be happy to make themselves available to answer any questions that you might have and to provide additional information if-and-when needed.

⁷ That is, it is hoped that NBPT can have a retail supply of electricity for its citizens that exceeds the 2022 Class I RPS target of 18 percent by 5 percentage points, for a total of 23 percent Class I renewables in its energy mix at the same price, or less, than National Grid Basic Service which would only be required to have the lower 2022 Class I RPS target in its electric energy mix.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

IN CITY COUNCIL

May 10, 2021

AN ORDINANCE TO ESTABLISH THE CITY OF NEWBURYPORT AS A MUNICIPALLY AGGREGATED COMMUNITY

Be it ordained by the City Council of the City of Newburyport as follows:

Add to Chapter 14, a New Article III – “Municipal Electrical Aggregation” to read as follows:

ARTICLE III. - Municipal Electrical Aggregation

Sec. 14-90. – Purpose and Authority

The City of Newburyport publicly declares that it is a municipally aggregated community for the purpose of entering into an electric supply contract on behalf of its residential and business communities.

The ordinance is intended to enable the City of Newburyport to combine the purchasing power of its residents and businesses so that it can provide them with an alternative electricity supply. The authority to do so is promulgated by Massachusetts Law (M.G.L. c. 164, § 134).

Sec. 14-91. – Authority of Mayor to Enter into an Electrical Supply Contract

The Newburyport City Council authorizes the Mayor to negotiate and enter into an electric supply contract in consultation with the City’s Energy Advisory Committee and the City’s Electrical Aggregation Consultant, engaged pursuant to the Newburyport Electrical Aggregation Plan, subject to all of the requirements of this Article.

Sec. 14-92. – Required Contract Terms

The contract shall be:

- (1) negotiated for the lowest price to end users, on a kilowatt-hour basis, including all supplemental charges,
- (2) consistent with the Massachusetts Renewable Energy Standard, established under the Massachusetts Electric Utility Restructuring Act of 1997 and the Green Communities Act of

2008, as both may be amended, and all regulations and guidelines promulgated by the Commonwealth thereunder,

- (3) consistent with the Newburyport Electrical Aggregation Plan, as approved by the City Council and subsequently the Commonwealth,
- (4) for a term not to exceed thirty-six (36) months, and
- (5) in the best interests of electricity consumers in the City.

Councillor Heather L. Shand

Councillor Charles F. Tontar

Councillor Christine E. Wallace



MASSACHUSETTS RENEWABLE ENERGY REQUIREMENT

By law, all electric supply products are required to include a mandatory minimum percentage of clean/renewable energy resources. For example, products sold in 2021 must include a minimum of 49% clean energy resources that are located within the New England region (the “MA Requirement”). The total MA Requirement consists of several different state initiatives, each with different objectives and different resource types that qualify. Currently, the MA Requirement equals the sum of the Clean Energy Standard (inclusive of RPS Class I), the Clean Energy Standard for existing resources (CES-E), and RPS Class II. The table below provides a detailed breakdown of the different categories and the minimum requirements of each category through 2022.

(% of electricity sales)

Year	Clean Energy Standard (CES) [1]				RPS Class II [3]	RPS Class II Waste Energy [3]	MA Renewable Energy Requirement *	Other Mandates (Excluded)**	
	"Clean Generation"			"Clean Existing Generation"				APS [4]	CPES [5]
	RPS Class I [2]	Other "Clean Generation"	Total CES	CES-E					
2019	14%	4%	18%		2.7%	3.5%	24.2%	4.75%	0.0%
2020	16%	4%	20%		3.2%	3.5%	26.7%	5.00%	1.5%
2021	18%	4%	22%	20%	3.6%	3.5%	49.1%	5.25%	3.0%
2022	20%	4%	24%	20%	3.6%	3.5%	51.1%	5.50%	4.5%

* MA Renewable Energy Requirement ("MA Requirement") = (CES) + (CES-E) + (RPS Class II) + (RPS Class II Waste Energy)

** The state Department of Public Utilities excludes APS and CPES from its definition of "MA Renewable Energy Requirement"

Code of Massachusetts Regulations (CMR):

[1] Clean Energy Standard ("CES") – 310 CMR 7.75

[2] Renewable Energy Portfolio Standard – RPS Class I – 225 CMR 14.00

[3] Renewable Energy Portfolio Standard – RPS Class II – 225 CMR 15.00

[4] Alternative Energy Portfolio Standard ("APS") – 225 CMR 16.00

[5] Clean Peak Energy Portfolio Standard ("CPES") – 225 CMR 21.00

Current, predominant resource types by category:

Category

Resource Types

RPS Class I

wind, solar, landfill gas

CES Clean Generation

wind, solar, landfill gas

CES-E

nuclear and large hydro

RPS Class II

hydroelectric, landfill gas

Many Community Choice Power Supply Programs offer products that exceed the MA Requirement. Where such products are offered, the product description on the Program's website page will display the percentage and the type (e.g., RPS Class I, National Wind, etc.) of "voluntary" renewable energy resources acquired *over and above* the MA Requirement.