TOWN OF NATICK
Meeting Notice

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, Sections 18-25

Natick Finance Committee

PLACE OF MEETING

School Committee Meeting Room, 3rd Floor, Town Hall 13 East Central St., Natick MA

DAY, DATE AND TIME

October 22, 2018 at 7:00 PM
This meeting agenda was originally posted on Thursday, October 18, 2018 at 5:15 PM; the revised motion was posted on Friday, October 19, 2018 at 1:30 PM

MEETING AGENDA

1. **Public Concerns/ Comments**
   a. Resident and Taxpayer Concerns and Comments
2. **Meeting Minutes**
   a. Review & Approve the September 11, September 25, October 4, and October 9, 2018 meeting minutes
3. **Old Business**
   a. Executive Session – to discuss and approve meeting minutes of the October 4 Executive Session
4. **New Business**
   a. Discussion of Free Cash and Tax Levy
5. **2018 Fall Town Meeting Warrant Articles - Public Hearing**
   a. Article 1 - FY '19 Omnibus Adjustments- Possible Reconsideration
   b. Article 32 - Amend Natick Zoning By-Laws: Inclusionary Affordable Housing Requirements
6. **Adjourn**

Please note the committee may take the items on this agenda out of order.

_____
SUBMITTED BY

ITEM TITLE: Resident and Taxpayer Concerns and Comments

ITEM SUMMARY: *a. A time not to exceed 4-5 minutes per resident/taxpayer and/or 15 minutes in total time for all speakers, to allow for brief resident/taxpayer comments on topics within the scope of the Committee charge but not on the current agenda*
b. There is no debate or discussion between the resident/taxpayer and the committee except as determined by the Chair

ITEM TITLE: Review & Approve the September 11, September 25, October 4, and October 9, 2018 meeting minutes

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
Sept 11 Meeting Minutes- Draft pending approval	10/1/2018	Exhibit
Sept 20 Meeting Minutes - Draft pending approval	10/1/2018	Exhibit

Natick Finance Committee

Pursuant to c. 40, § 3 of the Town of Natick By-Laws, I attest that the attached copy is the approved copy of the minutes for the following meeting:

Town of Natick Finance Committee
Meeting Date: September 11, 2018
The minutes were approved through the following action:

Motion:
Made by:
Seconded by:
Vote:
Date:

Respectfully submitted,

Bruce Evans

Secretary

Natick Finance Committee

NATICK FINANCE COMMITTEE MEETING MINUTES

September 11, 2018
Natick Town Hall
School Committee Meeting Room, Third Floor

This meeting has been properly posted as required by law.

MEMBERS PRESENT:

Dirk Coburn	David Gallo	Cathi Collins
Lynn Tinney	Bruce Evans	Patrick Hayes
Mike Linehan	Robert McCauley	Philip Rooney
Jim Scurlock	Linda Wollschlager	

MEMBERS ABSENT:

Dave Coffey	Kristine Van Amsterdam	Dan Sullivan
Jeff DeLuca		

Meeting Agenda

1. Public Concerns/ Comments

a. Resident and Taxpayer Concerns and Comments

2. Old Business

a. Finance Committee & Sub-Committee Scheduling
b. Review and Discuss Procedures for FTM and STM #2 Concurrent Public Hearings

3. 2018 Fall Town Meeting Warrant Articles - Public Hearing

a. Article 18 -Appropriate Funds for the Design and Development of Route 27 North Main Street - POSTPONED to Sept 13
b. Article 26 - Supplement Prior Town Meeting Vote Authorizing Acquisition and Preservation of the Sawin House and Adjacent Property at 79 South Street, Assessors Map 77 Lot 7 - POSTPONED to Sept 20
c. Article 29 - Amend Article 2 of the Town of Natick Home Rule Charter - POSTONED to Sept 20
d. Article 31 - Actions Pertaining to Acquisition and Preservation of the Town's easements on Mechanic Street - POSTPONED to Sept 20
e. Article 33 - Establish Study Committee: 1.5% Test of Land Use
f. Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws: Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B §s 20-23
g. Article 39 - Amend Natick Town Charter: Natick By-laws, Natick Zoning By-laws: Appointment and constitution of zoning board of appeals, division and distribution of powers, and assignment of counsel.

4. Adjourn

Mr. Hayes announced revisions on tonight's agenda:

Article 18 -Appropriate Funds for the Design and Development of Route 27 North Main Street - POSTPONED to Sept 13

Article 26 - Supplement Prior Town Meeting Vote Authorizing Acquisition and Preservation of the Sawin House and Adjacent Property at 79 South Street, Assessors Map 77 Lot 7 - POSTPONED to Sept 20

Article 29 - Amend Article 2 of the Town of Natick Home Rule Charter - POSTPONED to Sept 20 (may be heard Thursday, September 13, 2018)

Article 31 - Actions Pertaining to Acquisition and Preservation of the Town's easements on Mechanic Street - POSTPONED to Sept 20

Mr. Hayes stated the Finance Committee will not be hearing the marijuana Articles tonight due to the zoning by-law change proposed by the Planning Board to Town Meeting. This Finance Committee will hear that Article as well as three other companion Articles on Thursday, September 13, 2018, the earliest between 8:00-8:30 p.m. The Planning Board, sponsor of Article 22 on the Fall 2018 Town Meeting and sponsor of the same Article on the Special Town Meeting #2, will hold a public hearing exclusively on that Article on Wednesday, September 12, 2018 at Natick Town Hall, second floor, Dlott Meeting Room at 7:30 p.m. Members of the public are invited to attend and express their opinions.

Ms. Collins moved to open the public hearing on the 2018 Fall Town Meeting Warrant Articles, seconded by Ms. Wollschlager, Voted 11-0-0.

Ms. Collins announced the town is holding a non-official public meeting for discussions on a potential five lot assisted living facility on Wednesday, September 12, 2018 at 7:00 p.m. in the Community Senior Center, second floor. Please RSVP to jimwilliamson@barberry.com.

Article 33 - Establish Study Committee: 1.5% Test of Land Use

Julian Munnich, Town member Precinct 5, Planning Board member, speaking as a private citizen

Proposed Motion – Article 33

Article 33
Establish Study Committee: 1.5% Test of Land Use (Julian Munnich et al.)

Motion:
"To establish a study committee of Town Meeting, appointed by the Moderator, to address, research, study, analyze and recommend regarding the issue and question of where the Town stands relative to and whether the Town has met and/or can meet its obligation under the so-called "1.5% test" of land use as defined and more specifically described in MGL c.40B § 20-23, 760 CMR 56 and/or related guidelines issued by DHCD or any office of the Commonwealth or established in any legal proceeding; and, without limitation:

To establish the number of committee members as five (5);

To establish the charge of said committee including, but not limited to:

- Identify any and all components of the calculation and all individual parcels or acreage owned by the United States; the Commonwealth; or any political subdivision thereof; the Department of Conservation and Recreation or any state public authority; or where all residential, commercial, and industrial development has been prohibited by deed, decree, zoning or

restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A; or is dedicated to conservation or open space whether under control or ownership by trusts, corporations, partnerships, private parties, or elsewise; or is contained in the Subsidized Housing Inventory; and the size of all bodies of water located within Natick;

- Gather any other information necessary to analyze, evaluate, and calculate the Town's position relative to the 1.5% test;
- Identify and recommend any zoning changes or other actions that might strengthen or improve the Town's position relative to meeting or exceeding this test;
- Report its findings and recommendations to 2019 Fall Annual Town Meeting or such other date as Town Meeting shall establish provided, however, that this shall not preclude any preliminary or earlier report(s) to Town boards, committees, commissions, or to Town Meeting;

To authorize said committee to develop a database of properties to be included in and/or excluded from either the numerator or the denominator of the calculation;

To provide that said committee shall have access to Town Counsel and to Town staff, including but not limited to the Community and Economic Development, DPW (GIS), and Finance (Assessors) divisions and may utilize the services of outside consultants;

To provide that, in order to engage any such outside consultant, a reserve fund transfer not to exceed $4,000 may be authorized by the Finance Committee;

To set the term of said study committee to expire upon the dissolution of 2019 Fall Annual Town Meeting, unless otherwise extended by Town Meeting;

Said committee, being a multiple member body under the Town Charter, is authorized to sponsor warrant Articles for any Annual or Special Town Meeting Warrant."

Mr. Munnich stated Article 33 is a study committee proposal sponsored by private citizens that's designed to define Natick's land area. Mr. Munnich was unable to find agreement in town or state records as to what the gross area of the town is. Numbers bounce between 15.99 to 16.03 square miles. This is important for a town as built-out as Natick since we're in policy discussions such as whether to expand our industrial base. However, without knowing exactly how much land the town is; those are nebulous discussions. The most pressing issue is that is an important component of finding out if Natick has satisfied one of the listed criteria for "safe harbor", in c. 40B, the state statute that requires municipalities to create affordable housing per a scheme established by the state, a program that defines it by percentiles of regional income and other tests. By the other major tests of safe harbor, Natick is barely above the minimum percentage of the housing stock that is affordable (10.4%). In recent years, Town Meeting supported Articles that required multi-family or multi-unit housing be created, such as assisted living, 62+ housing and other housing inclusive of c.c. 40R, the Modera/Paperboard project. All those projects require more than 10% affordable housing so Town Meeting has taken on responsibility of keeping the town over 10%. There are many developments that could occur such as subdivisions and duplexes being built on land zoned for two-family where previously it was single-family. There is a possibility the town may dip below 10% in the 2020 census. The town will probably be exactly on or within one or two units of that 10% percent threshold. The importance of establishing whether we have an alternative safe harbor, is if we remain in safe harbor the town can address the needs of affordable housing in precisely the way that has been discussed over recent years and not by state formula or state scheme which creates housing below the 80th percentile that offsets what is referred to as "market rate housing" which the state mechanism does not allow communities to do. Through Natick's recent

work, not just broad spectrum affordable housing, but targeted for an aging population and into the realms of other types of housing it has shown that it wants to address the true needs of the town. Workforce housing would be where our teachers, firefighters or policeman live. The test of area is the 1.5% test of land. The land area of current affordable housing is the numerator of the equation; the denominator is the land available to be developed. If affordable housing takes up 1.5% of the denominator of available land you have met that test. Natick is a good community for many reasons, since we have created 10% affordable housing but also a host of other things. We are a host community for a very large state park and a large federal research and development facility (Natick Labs). We host other state and municipal lands, state-wide assets, and Mass Audubon assets such as land the town recently acquired at Pegan Hill with the Trustees of Reservations and New England Forestry. There are many claims on the area of town other than affordable housing and even in that environment Natick is succeeding in creating the 10%. It would be a shame, however for us not to understand whether we have a safe harbor in the 1.5% test so we can concentrate our efforts, not on disputing bad c. 40B projects, but concentrating on good projects that address community needs. This project would serve the purposes of the type of affordable housing we seek to create in town. It would also be a powerful instrument in land conservation. A large number of the acres in town are privately-owned and are under conservation restrictions. Many large property owners, much to their credit and for the social good, put large areas of land into permanent conservation easements. It would be good to capture that in this study because that also subtracts from the denominator. I have a quote from Town Counsel's letter I received under Article 33, In the 2nd paragraph of that letter it states, "Whether Natick meets the 1.5% general land area minimum [referred to as the 1.5% test of land use in the Article in motion] is a question of law and fact and in order to answer the legal question the underlying facts should be gathered and analyzed" which is truly the essence. There is information out there we should have that would benefit the town and the fine line for acquiring that information is current and very germane to what the town is currently doing.

Questions from the Committee:

Mr. Coburn asked Mr Munnich summarizes exclusion categories from the denominator.
Mr. Munnich responded exclusions are federally owned land, state owned land, county, municipal owned land, and water (rivers and lakes). We have a notable river, and a large number of lakes and ponds. Not excluded are true wetlands such as the Sunkaway since the state presumes that land is available land to be used to create affordable housing. There is also the presumptive exclusion because the way they talk about the land which is included is land already zoned for residential, commercial and industrial uses. For example, land which can be developed must be made available for affordable housing. In assessing one's land, putting it into the proper rubrics, many communities in Massachusetts already zone land as conservation land. That, in and of itself would also be an exclusion. It is important to note that there is a major expansion to town-owned land one we forget about because we think of the assessor's list and lots listed. Never showing up on those lists is land area of roads including Route 9, a state-owned road. One bit of roadway which we were able to catch is the Mass Pike because that is still on assessed lots that the state doesn't pay taxes on, unlike roads which are shown as rights of way. What one may think to be an automatic exclusion is not automatic. The statute is vague on that point and the regulations that came out this January do not clarify that. That may be one of the aspects where the town makes a decision to clarify that as conservation land.
Mr. Coburn asked Mr. Munnich to describe how the numbers of affordable multi-unit housing buildings in town that occupy land in condominium or common areas are treated in the numerator?
Mr. Munnich explained that, ten years ago, Natick looked at this formula and approached the state to inquire about this and get guidance on these regulations statute and was told there is nothing in regulations that provides guidance. The Department of Housing and Community Development advised we go to the Housing Appeal Board since it is a c. 4B issue and present questions to them. After several weeks, the town convened and met with the Housing Appeal Board and then we read in the Boston Globe that certain towns, including Natick were trying to get out of their c. 40B obligations by using this statute. Recently, , they came out with regulations in January 2018 that this study committee should be going through. Some items are clear such as you have a c.c. 40B project and the acres that go with it. Less clear is a question we put to them over a decade ago, one of the housing units we are aware of is a single unit house and it goes on to acres into wetlands. It is not clear how to interpret this, by

defaulting to what the zoning minimum lot size would be for that district. We received no answer to this question. Under the new regulations, they responded vaguely so it is still not clear
Mr. Coburn asked whether this study is more than just fact-finding, but instead is a study committee that corresponds with other bodies to help the town establish boundaries or facts of law that are not clear?
Mr. Munnich answered it would lead to that. The Natick Open Space Committee is grappling with issues such as what constitutes public open space and how the acres in private holdings are counted. The Open Space Committee will benefit from knowing what open space is in town, even if that space is inaccessible but is space preserved from development. In addition, bodies in town looking at economic development, thinking they have a number of acres of industrial-zoned land but no one knows how much is in wetlands and would never get developed for industrial or tax base use. Many corners and functions of the town would benefit from this fundamental bit of knowledge. **Mr. Linehan** said the open space plan was released in January 2012 and expires in seven years. Is this something that could be done in conjunction with the study committees' proposal?
Mr. Munnich It would be good input. Part of the data set aligns directly with modules that can plug in.. There are separate aspects of this which include what lots are affordable housing and what the criteria is for how that acreage is counted which would not be part of open space plans.
Mr. Linehan asked if developments that are not accessible open space because the town to want to take those areas and classify them as conservation-restricted?
Mr. Munnich These open spaces have conservation restrictions already. Much of this data is available in the Assessor's office. Property owners such as MathWorks, Apple Hill, and a section to the south being developed by the residential neighborhood below that are not paying full commercial rate taxes. They go to the Assessor's office and show them that the land cannot be developed at that rate so they might as well zone it as conservation area so it will show up on multiple maps of town making it clear that the land cannot be developed. Within the past 1.5 - 2years, regional agencies issued a report on Natick talking about the density of development in different communities. Natick was listed as one of those communities with areas to be developed because the density of housing to the square area was not that high because it did not account for rivers, lakes, parks, etc.
Mr Linehan asked if we get to 1.5% does that preclude the entire c. 40B,, so we can delay c. 40B development just as we get to the 10%.
Mr. Munnich It is different in the way it is applied. The 10% is sort of a bracketed number. Every ten years, there is a census where they take the numbers (different numerator/denominator) of affordable and overall housing in general. Once you get certified at a number over 10%, that's good for the next ten years. If you are below it, but at some point during that ten year period, you go over it that will run you through to the next census. Safe harbor is a snapshot, if a proposal comes in and you are at 9.95%, the town must accept my c. 40B project. The town can do a snapshot affirmative argument saying at this point in time we are over the 1.5% threshold which can only be said within the 15 day response period. If you have done your homework well ahead of time and have it in hand, this makes it simpler. It is a relatively fixed dataset so if an affordable unit drops off or if the state sells land, you are immediately notified of these changes and could capitalize on them. Once you create the initial study and determine you are in a good place it is just a matter of keeping it updated within 15 days.
Mr Linehan asked if railroad tracks considered state-owned land that can be developed.
Mr. Munnich Previously, the presumption would have been under the old CSX railroad tracks that were laid out as a right-of-way, would not have been considered state-owned land. However the Saxonville branch was always on lots zoned industrial so it would not have been land that could be developed. The right-of-way would have been exclusionary, both a right-of-way and a state entity the argument would be it is government-owned infrastructure.

Mr. Scurlock said that Mr. Munnich stated two numbers in his presentation about the size of the town, is there land in dispute or has it not been counted properly?
Mr. Munnich Everyone has a different methodology and when a major border of town has a river and other such items. At any given point in time, it was decided the numbers were close enough. I cannot tell you why there are so many different measures.
Mr. Scurlock asked whether the $4,000 request would fix the problem.
Mr. Munnich said not exactly. The specific wording in that part of the motion is to provide that in order to engage. It is one of those 'if' statements. If the study committee finds it needs an outside consultant, it would require more money. However, I believe all the information is publicly accessible. If there were to be a request or funding,

I suspect that it would probably be originating more from town administration. It is a lot to ask of our GIS department in computer/paper time or perhaps they need to purchase a module for their computer program to compute river area. If the town has a financial impediment, then this study committee would have to make the case to Town Meeting to hear it. The request gives the option if needed but could increase if an additional expense is discovered. This is something that should show up on the Spring 2019Town Meeting warrant Article.
Mr. Scurlock in your opinion, with this request of $4,000, will the town find out how it is?
Mr. Munnich Yes - we should know and I believe it would be with $0 dollars at this point.
Mr. Scurlock To be clear, this study will not do the proper land categorization throughout the town?
Mr. Munnich This is not a proposal to re-zone land from residential to commercial to industrial. However, if the facts show that there is acreage underwater or, as is the case with the Sunkaway, a historic wetland that goes back millennia, they may be in a position to recommend that it be zoned as conservation land. It would not change the nature of the land.
Ms. Wollschlager asked whether the Planning Board going to review this Article.
Mr. Munnich No, it is a citizen petition for a study committee. Any information that comes out of this would be available for that, although it is not a zoning Article. If this were not covering an issue within the exclusive purview of c. 40B belongs elsewhere, open space, and we have other committees.
Ms. Wollschlager said there does not seem to be a clear definition of what constitutes the numerator and denominator and asked whether the intention, once this analysis is done, to get approval on this number to find out we are calculating things correctly.
Mr. Munnich said the worst case scenario is to run the numbers and get a high level of confidence in the data collected and use the town's best judgment in assessing how we meet the criteria by the Department of Housing and Community Development (DHCD). At that point, you wait for a proposal to create an affirmative defense. The alternative is political impetus in Massachusetts for the town to do this even when DHCD an obligation to certify the numbers. In the interest of everyone, especially the state there is a methodology is in place otherwise they would have created regulations which are meaningless.
DHCD**Ms. Wollschlager** asked how much will involve effort on the part of someone who works for the town because I understand they were not willing to do this and questioned why this study committee was needed? Will it require a lot of resources or will the committee do most of it?
Mr. Munnich stated that there is the collection of the dataset. For example, how much work is done when you visit the library by the reference librarian whose responsibility is to make available the information you need, then you go to the study room and crack the data yourself. This information should be obtainable as a function of a reference librarian. If it is not available one could argue it should be which may be the argument there may be some incidental cost. I would not classify the demands on administration beyond that of reference librarians.
Ms. Tinney asked if this committee exist until completion of the study.
Mr. Munnich replied until the dissolution of 2019 Fall Annual Town Meetings. By 2019 Fall Town Meeting, they would Town Meeting unless the study is going so well they would only extend beyond this if Town Meeting determined it was worthwhile to continue.
Ms. Tinney questioned if this study would be fairly static with regular updates as things changed and shifted that there would be value in that. Whose responsibility would it be to track changes so the value of this study would exist beyond the short shelf life?
Mr. Munnich stated that the changes would be the stock of affordable housing which the town is generally going to track anyway. Between staff and programs, they have been doing a much better job of capturing that aspect of it. The classification is a little more difficult to do, however it is one of the smallest units that is group homes. There are a couple of agencies running transition houses and for developmental reasons those count towards the affordable housing stock. Due to the health confidentiality record laws they are not published on a list. At last count, I believe that was eleven houses. It is a finite set that at any given point of time you would have to take the snapshot moment but you are not collecting datasets of hundreds and then every certain number of months hundreds is still accurate. The rest of the dataset changes frequently.
Ms. Collins said you referenced that the town had tried this ten years ago and asked if Mr. Munnich was involved in those efforts.
Mr. Munnich I was involved and attended two of the preliminary meetings with DHCD. I was present at the meeting when Chief Counsel for DHCD said (paraphrasing) "You people put a lot of work into this with a lot of data

on this sheet and should probably put your questions to the Housing Appeals Board for them to give guidance as how to interpret some of these numbers." I was not at the meeting when he subsequently was seated as a member of the Housing Appeals Board and proceeded to berate the town for asking the questions.
Ms. Collins stated that you are submitting this Article as a private citizen, not member of the Planning Board Was this piece mentioned in the existing conditions of the master plan?
Mr. Munnich No, a lot of the Open Space Numbers are rounded numbers and seem to be pulled from sets that the Open Space Committee or Conservation Commission have been running from those number sets.
Ms. Collins asked why it wasn't included in the existing conditions of the Master Plan?
Mr. Munnich it's a matter of scope, interest and timeline. When I posed the question, the responses were 'well that is difficult to do and your chances of succeeding for the primary goal are slim'. As a result, I I submitted this Warrant Article.. That was what that Excel sheet was. It was rough only working from the datasets available from the Assessor's office and some other public sources. I did the exercise and I found we were within striking distance of the 1.5%.
Ms. Collins Are you aware of the email from Mr. Errickson, Director of Community Economic Development to the Chair of the Board of Selectmen, Ms. Amy Mistrot on July 9, 2018 on this issue?
Mr. Munnich I had heard that there was some response to questions.
Ms. Collins Members have a copy which I can forward to you. Essentially it breaks down to (Mr. Errickson's words) "I'm not aware of any community that successfully convinced the DHCD Mass Housing Appeals Court they have met this 1.5% threshold. In January 2018, DHCD came out with guidelines calculating the 1.5% among other things the town would need to hire a GIS specialist to assist with the submission requirements which could take six to twelve weeks to complete from past experience with other towns though our GIS is it could be shorter." This speaks to your statement earlier you do not get advisory things, so his second to last paragraph states "so at this time the way I interpret this even if we go through the process to analyze the town for the 1.5% and land assertion DHCD will not issue an advisory determination if we're already in safe harbor status." Essentially the town has to lose its safe harbor status i.e. dip under the 10% threshold have a project apply to the town for comprehensive permits. I suspect that we would also still need to make this argument on all future comprehensive permit applications until such time we meet the other safe harbor status requirements such as meeting the 10% threshold we currently meet." Are you aware the Director of Community Economic Development's statements in numerous meetings that he expects in 2020 after the census so probably be in 2021 we will fall below the 10%?
Mr. Munnich I've heard that but have not seen the dataset that it's based on. I have heard previously that they were straight--line projecting certain growth aspects but Town Meeting had voted so many ways of developing land that require affordable housing and do not know if those kinds of straight-line projections will still apply.
Ms. Collins said the guidelines for calculating general land area minimum were issued January 17, 2018 and revised April 20, 2018. The second section, the general sections for land area minimum state quite clearly in seven points, possibly eight if you count the last paragraph. What would be included and excluded and then detail is provided later. Is it fair to say property that belongs to residents that is deeded as Open Space for development but not zoned as Open Space could be determined by things like baseball fields, no, flower beds, yes, unkempt property like wooded areas maybe not. We should be able to have some idea if all of the property in a development that includes affordable housing as defined in our by-law is manicured and within the guidelines here. Is it your contention this is pretty straight-forward?
Mr. Munnich it would certainly bring us much closer to having a high level of certainty that what we are claiming.
Ms. Collins if we settle on 16 square acres for the town then my back of the envelope mail says 20% to 25% of the property in town without including water bodies is clearly owned by public bodies, public political sub-divisions is deeded as ConCom property. In your calculations was that about what you were coming out with?
Mr. Munnich My rough calculation was in excess of 20%.
Ms. Collins That would bring the denominator down to 12 square miles. The study committee, if constituted, could not identify but would only strengthen our position and that is group homes, is that correct because of confidentiality restrictions?
Mr. Munnich stated that when you make this safe harbor claim, you send them your official request, they send you GIS coordinates and then you have to send them your GIS list to make sure you aren't double counting. **Ms. Collins** in your experience on the Planning Board , is it conceivable we have group homes in town that are not well

known such as the property on Oak Street but rather and individual house here and there that would not appear on our GIS GIS but would only increase the amount?
Mr. Munnich The town said there are eleven I know personally know of six.
Ms. Collins asked if that would just increase the numerator to get us even closer?
Mr. Munnich Yes, even if we missed that entirely the fact we missed those numbers it could only make our case better.
Ms. Collins Do you have the guidelines in front of you? I have a question about the submittal requirements as I read it
Mr. Munnich I do not have the complete set but in my submission I provided the link to it.
Ms. Collins In the sentence reads in the submittal acquittal requirements "The board must also provide accompanying tables on each GIS including directly associated areas (that was the term I could not remember before). This date along with maps and calculations must be provided to the applicant and DHCD within fifteen days of the board opening hearing regarding the comprehensive permit filed by an applicant". My question goes back to the email if that's their requirement and Community and Economic Development (CED) takes six to nine months do you see any way else besides doing this committee that we would ever be in a position to argue this or not beginning to happen now?
Mr. Munnich Without having this draft format already played up and the only things you needed to do was tune up things that have changed I would say it is functionally impossible to otherwise make a claim, just to arrange the administrative needs of what would have to happen in that period of time.
Ms. Collins I remember you were a member of the 22 Pleasant Street Committee and the Conservation Commission Study, both of which had access to staff and Town Counsel. In your experience on those two committees was the committee could not do anything until a host of things were addressed or did we hit a stumbling block that needed clarification for the most part?
Mr. Munnich said both those studies proceeded on a broad front. Occasionally, one of the channels of inquiry where you would come up against a question that would need to be resolved, but you still proceeded on other aspects and then backfilled those items as the information came in. There were a couple of straggling elements that became a part of the final report, but it's not as if the committee came to a standstill.
Ms. Collins did the Study Committee pose questions to the staff and Town Counsel and tell you what or where there efforts on those parts to fill in where they could define parcels and such.
Mr. Munnich with 22 Pleasant Street the town had some of the deed and property records in its own record set. Members of the study committee were pulling other records from Registry of Deeds and from land court decisions. We were working out of one reference library.
Ms. Collins Some land within the town is not under the control of the town or the federal government could choose to sell the Army labs but the town would not sell the Open Space. A large number would be under our control but because of public reasons
Mr. Munnich the tax has been holding because of a tax and tried to leverage that through the Natick affordable housing trust so it would it would drop from the denominator to the numerator.
Mr. Evans I'm trying to understand the remit of this committee, what is the deliverable to Town Meeting next fall?
Mr. Munnich it is to gather the information and report its findings. It would have all the power of the multi-member bodies. As they collect their dataset and let's say when working on the Open Space component and working close with the Open Space Committee, on the basis of the report they could recommend that the town rezones the Sunkaway as conservation land.
Mr. Evans asked about the composition of the committee, how many members, skill sets?
Mr. Munnich if there is anyone who wants to state the numbers and look at they are qualified. We would not be hiring technical skills such as surveyors.
Mr. Evans if the denominator is higher it makes it tougher for us to get the 10% so if we have more exclusions that's to the betterment of the town.
Mr. Munnich Yes
Mr. Scurlock Of the two roads that were excluded, does that include where the curb could be claimed by the town not just the paved area?
Mr. Munnich it would the lay out of the road, the right-away which would be anything that isn't private ownership.

Questions from the Public:

Mr. Michael Hickey, Precinct 9, member of the Board of Selectmen, former Chair Member of the Zoning Board of Appeals, and sat on three c. 40B cases

Ms. Collins mentioned there was an email from our Community Economic Development Director and my concern is whether that email had been shared. I have sat on three c. 40B cases on the earlier side of 2006 through 2013 and am very interested in whatever tools or information the town might have had that might have been useful in the context of c. 40B. I recall than in 2008, the town was exploring the idea of the 1.5% of land area test. There was a portion of the email from our Community Economic Development Director that I would like to touch upon as I don't think it was called out. It states with reference to the guidelines. "Because both the total land area includable in the denominator and the sites of SHI eligible housing units includable in the numerator may change over time whether a municipality may invoke the general land area minimum Safe Harbor in response to a particular comprehensive permit application must be determined contemporaneously with the filing of the application accordingly consistent with DHCD regulations a municipality may not seek a DHCD determination as whether it was achieved the general land area minimum Safe Harbor outside the context of a particular comprehensive permit application. DHCD will not issue advisory determination". I agree with the sponsor with understanding and finding out what is behind and what is motivating this and agree one-hundred percent that knowledge is power and puts us in a position to make more informed decisions strategically or otherwise. My question in terms of man hours assuming there are so many different state agencies that may have variations of the town's land area denominator, would the results of whatever this process yields be accepted by DHCD prospectively, or any other controlling agency? Once we have the results, since the DHCD does not issue advisory determinations how is it tested and put on a shelf so we can pick it up quickly, date it down in a short turnaround time and be confident it is going to be meaningful presumably in the context of c. 40B? The c. 40B council has indicated there is very limited utility to this option. What do we do with that information, what is the deliverable and what does the DHCD do with it if anything? Does it stand for a helpful piece of information waiting in the wings for us when and if an application is filed and we are not in Safe Harbor?
Mr. Hayes: As I understand it, looking out in a year from now the Study Committee completed its work and they have a dataset that gives us an answer for where we are with the percent of total land use, the 1.5% target number. Although good information for us to have, we cannot take it to DHCD because they are not going to give us an advisory that says whether or not they like it or if it passes any test. We need the opportunity to present it as part of our case against a c. 40B housing application where we believe we are at risk of not being at the 10% Safe Harbor as one measure and we offer that as evidence that although we may not know we meet one standard, this shows we meet the other standard. At that point my interpretation is it becomes a set of facts that are entered into the case of deliberation by the appropriate body to consider or not consider and that's how we know whether it works or not.
Mr. Munnich: As far as the technical aspect of it, the DHCD did talk about a specific GIS standard so when the town presents its information to them they state there is a specific GIS standard so as long as the work meets that standard I believe it will remove the gray areas of the 15.99, etc. As far as what does the town do with that, for policy basis without it having been stamped and certified, if it turns out the study comes out that we are at 1 of 000001% I would feel good about it, if the study comes out with 20% over that at one point I would feel confident that when something comes over the transom making a c. 40B claim the town will be able to defend it. There is one trigger I don't think DHCD wants towns to do, we could have an internal body of the town of Natick Affordable Trust is working on conversions of tax land into an affordable housing they put in the claim under c. 40B and the state cannot deny us a point of determination at that time. There would be an open application at that point of time so we could force and trigger the study ourselves if we were so uncertain of our methodology.
Mr. Hickey: If we receive the results of the study or investigation and the denominator is worse than any of the record denominators out there do we need to advise anyone?
Mr. Hayes: Yes, if the GIS standard is a specific standard and there is very little wiggle room. The latitude and longitude points within the polygons that compromise the polygon which would be the town of Natick is a very

definitive boundary set. For instance plus or minus three meters you don't have much wiggle room of a latitude or longitude point which is multiple points around the polygon that is the town of Natick. They may work against us in the beginning but that is the answer.
Mr. Hickey: The point I make is we may not like the results but have to live with them.

Frank Foss, Town Moderator, 18 Sunshine Avenue

I would like to preface my remarks by stating I am not making a pro or con determination or going to testify whether this is good or bad. I heard this evening a letter was discussed and quoted by one of the speakers and wanted to ask if the letter I have dated September 5th on the cover page and September 10th on the former page has been entered into the record or is part of the public record.
Mr. Hayes: My understanding is Ms. Collins received that email today.
Ms. Collins: No, the email was from Mr Errickson to Ms. Mistrot and Mar. Hickey was on July 19, 2015 and I received it later that day. I don't know anything about the September 5th email..
Mr. Foss I'm talking about the document which I believe the sponsor mentioned and read from which is a letter from Karris North, Town Counsel to Town administrator Melissa Malone dated September 5 on the cover sheet, and September 10 on the second or third page. I'm confused of the date of the document it just says September 5 letter. If it is not part of the record, I do know it was transferred to everyone here emailed by the Chair I would request it be entered in the record before I make any further comment.
Mr. Hayes: It will be entered in the record and also posted on NovusAgenda when the Chair has an opportunity to post it tonight or tomorrow. (insert that email here)
Mr. Evans: requested that the email from Mr. Errickson to Ms. Mistrot also be included in the record. Can we have
Mr. Foss If you read the document it seems like the Town Administrator asks Town Counsel for some opinions on Articles we are discussing tonight 33, 38, and 39. The document was communicated by you Mr. Chairman to your members. Do you know the questions asked by the Town Administrator to the Town Counsel to get these opinions?
Mr. Hayes: I do not know the questions the Town Administrator asked of the Town Counsel to get this opinion.
Mr. Foss Nor do I, so it's clear amongst us all we don't know what the actual questions were.
Mr. Hayes: For full clarity, I submitted a set of questions to Town Counsel on these Articles particularly, but I am not sure if my questions were the questions the Town Administrator submitted. My understanding was she had already submitted her questions and I was told by Town Counsel she was already working on it. When the letter was sent back to the Town Administrator I was copied as a courtesy because of the questions I submitted, however at the moment I have no intention to interpret this response and then cross reference to my questions.
Mr. Foss The information has been provided to the committee members in advance of the committee so I have to assume that this is going to be thought in their minds if they happen to read the communication that may sway them to make a decision on Article 33. I make that statement because there is a boundary between the Town Counsel and Town Moderator that I want to make certain is perfectly clear. I'm on the line if someone should ask if this is in the scope of Town Meeting. I want to make clear that Ms. North asks uses the words **"**within the scope of authority of Town Meeting not of within scope of the Article" and I hope you understand what the difference in those two things are because they are very different. However, one should not be confused with the other because she may be saying in point one that it's okay to do this committee but I could s a motion come before town meeting that is outside the scope of the Article. I don't want to you to think because this opinion signals approval – I haven't seen the final motion. I want to make sure the Finance Committee makes its decisions and advisory opinions to Town Meeting based on that thinking because you have heard only half the story on Article 33 and still will not get the whole story until we're at Town Meeting and I'm able to hear the motion and make a ruling on it. I'm very disappointed in this communication and no copying me on something going back and forth with decisions and opinions by other official so of the town about Town Meeting without including the person who must deal with this issue at Town Meeting,

Mr. Coburn moved to recommend Favorable Action on the subject matter of Article 33 revised motion presented today posted on NovusAgenda, September 11, 2018, seconded by Ms. Collins, Voted 10-0-1

Debate:

Mr. Coburn: The case has been amply made that this information has a lot of potential value. We don't know what we will find and may not like all the facts; however we cannot fix facts we don't like. Some of the facts that can be fixed with full due process have been alluded to by the sponsor and I'm very comfortable that some of our great members in our community have brought forward a valuable proposal.

Ms. Collins: I have supported this since it was first brought to my attention. If we don't know where we stand we can never use the information. For example, if we don't know we are at 1.4995% then it's unlikely we make a case we should buy some parcel of land and put it under town ownership that would push us over the top. I want to be clear this does not mean we stop trying to put in affordable housing throughout town. I was the citizen sponsor that required it in most every district in Fall Town Meeting, however it will mean if we have two ways of stopping **"friendly 40B"** This gathers information and makes suggestions for proposing Warrant Articles to Town Meeting possibly to rezone something so it goes from not being excluded in the denominator to being excluded in the denominator requiring we don't have to sit at the beck and call of 40B developers. The town can then make concerted efforts and consideration into developing that next stage typically called workforce housing so our employees and our sons and daughters can stay in this community, however if we are always being whipsawed by developers who are not doing this for the greater good generally, in my experience are providing the affordable housing because it's the only way they can do a big project to make money. Affordable housing is something that should be valued. This town is one of the few who has gone over their 10%. Will it be over the 10% after the 2020 census? I don't know but if we don't calculate this information and have at the ready, maps, digital partial boundaries, and information in electronic format so we can submit it within fifteen days of a hearing being opened. It would take us fifteen days just to figure out who was going to accumulate the information in fifteen days. In my experience study committees in this community have done yeoman's , admitted when they could not because of lack of information or perhaps the town would take it on I do want to take issue with one interpretation I have is we calculate this and blow it it's not submitted to DHCD until there is an application for a 40B project, it's in the town's files and would know if one of the political sub divisions was going to sell off land in advance of that happening and we could make adjustments. I think we should still endeavor to be over the 10% but we will get to choose how we get to that 10%. I think more information always better and is disappointing to me it's not included in the existing conditions in the Master Plan and the answer seems to be that it's hard, we have to hire a consultant and no one has succeeded yet. I'm not afraid of being a trailblazer. This should be approved because it's an exercise in doing. If town staff does not believe it's worth doing or have no resources to do it and therefore concerned citizens can add their expertise and time to provide, even if it's only 95% of the data we need it's 95% more than we have today.

I resoundingly hope this is approved by Town Meeting and this committee.

Mr. Evans: I'm very torn on this one. I recognize the need for the data and baseline information but to me this sounds very much like a Hail Mary type of play. The Community Economic Development Director said that he needs six to twelve months dedicated GIS support. I hope that this data is readily available because as a colleague stated earlier they have a lot on their plate and don't have the bandwidth to do that much more than we are already asking of them. Having said that, a study committee for $4,000.00 sounds like a reasonable thing to do in order to get that baseline provided we do not have to divulge it if it's bad news. If it is bad news I want to keep it to ourselves and then figure out what to do to remedy that within our tent. I would like to clarify what a friendly 40B is and what that means from a Planning Board perspective. A friendly 40B vs. an unfriendly 40B, if you are below the 10% threshold you have no latitude as a Planning Board to oppose any conditions or modifications to their plans. When a friendly 40B comes along, because you are above the 10% threshold or even close you can impose a lot more conditions and remedial sources activities in terms of traffic, abatement, etc. that the Planning Board goes through. My colleague also talked about the affordable housing stock which is why we pushed for an inclusionary by law that will help us get above that threshold. I've heard testimony of someone who was on the Zoning Board of Appeals expressing reservations about it. For the amount of $4000.00 I will vote for this but recognize this may be the tip of the iceberg in terms of cost and I'm concerned about that.

Ms. Collins: I would like to clarify I understand the Director of Economic Development's reservations. This is the same individual who said that one week of showing up here he knew the Downtown Mixed Use (DMU) had no provision for affordable housing yet never proposed a requirement for affordable housing.

Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws: Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B §s 20-23

Mr. Munnich: Article 38 is quite straight forward in what it proposes. That is the function of being the Municipal Permitting body for 40B projects be the Planning Board instead of the Zoning Board of Appeals. There are multiple reasons for this:

- State statute provides the authority to Planning Board
- Over the years, Planning Board has developed into a body that has the set of competencies of doing site plan review and special permitting. For example, a 40B project is basically a site plan review on steroids and if it is an unfriendly 40B project where the Board cannot deny them, but the board has to reasonably regulate them. If it's a friendly 40B it is something you would treat as a project that would be in the By-Laws along the lines of a special permit. The scale of these projects is quite large such as the large 40B projects on Chrysler Road or at Cloverleaf.
- Prior to being on the Planning Board, I served on the Zoning Board of Appeals. Over the years, I've had some conversations with members and with four former members of the ZBA who all confessed it was the 40B projects that did them in. The ZBA works on very important aspects of variances, important aspects of people seeking appeals from determination from the Building Commissioner, the Zoning Code Enforcement Officer and there is a whole class of permitting that goes under the name of § 6 but basically what can you do with a pre-existing nonconforming structure or property. Those elements are very detailed, they are granular, they jump right into people's backyards and neighborhoods and they are a time consuming discipline of their own.
- There has been a prevailing view that it has to be the ZBA that is what the state statute says. In the hearings there was a lament from the current Chair of the 40B project before him, paraphrasing, we didn't ask for this, we don't get to say whether or not we hear this but have to do this. It doesn't sound like a group that wants to jump into this and is happy to entertain this kind of a project.
- Members have copies of the questionnaire so will not go through all of this. My supposition that the reason this ended up with the ZBA is because c. 40B was passed in 1969 and was the Zoning Act of that time and all permitting happened through ZBAs. In 1975, the Modern Zoning Act came along that empowered Planning Boards to be the site plan review and special permitting agency of communities if they so chose. In the four decades since, Natick has chosen that the Planning Board would do this. At one time, all of Route 9 was done by the ZBA, now all the Rte. 9 Golden Triangle and other districts is administered for site plan review and special permit purposes by the Planning Board. That is the trend in the town and well overdue in the scale, scope and size in the project that should be considered as part of the master plan of the town is the function of 40B. How is it that we can do this as a municipality? The 40B statute in § 21 says that the permitting body is the Zoning Board of Appeals but as constituted or as provided for in § 12 of c. 40A. § 12 lays it out for you that Zoning Board of Appeals will be constituted as follows unless otherwise provided for by the Town Charter. The Charter is the controlling element.. c. 43B, § 20 of the Town Charter speaks specifically to how the Charter can divide or combine functions of bodies that are created so if state statute says you can have this type of an office in town, it can be combined with another office in town provided your Charter says that. Alternatively, there can be an office or board of the town that has so much to do, the town can divide it into two bodies . By state statute, if the town chooses to by Charter to divide, segregate out that portion of ZBA-assigned functions from statute it can do so. Late this afternoon, I received a letter from Town Counsel that comes up with the previous default opinion that this is not permitted. However, there was enough doubt that the letter specified that this change <u>may conflict</u> with M.G.L. . The three statutes cited by Town Counsel as evidence you can't do that are actually the three cases that say you can do it. **Bloom vs. City of Worcester** specifically states that local regulations with state statutes have given considerable latitude to municipalities but municipalities must comply with state law **Grace vs. The Town of Brookline** says municipalities are prohibited from enacting a By-law or ordinance that conflicts with the state statute. I agree, but that is not the proposal here. We are not using a mechanism of a By-law ordinance but a mechanism (Town Charter) that is specifically called out. That element supports the argument by Charter

not By-law. **Green vs. Mayor of Fitchburg** states that, a change to survive on a local level, it has to survive a repugnancy test , so it's so abhorrent to the state statute that it is not permitted. That is not what we are discussing tonight - we are talking about site plan review and permitting of a project as envisioned by the statute. Town Counsel goes on to say the appeals process from a, starts quoting from a c. 40B, as I mentioned earlier the very definition of who does this is § 21 which refers back to § 12 which then goes to § 20. The very citation here which is supposedly being held up is you can't do it is the very that puts you on the trail that sends you to the place that says you can. Town Counsel's letter goes into the direct conflict with the statutory language, but there is no conflict. In Town Counsel's letter, they point to the trail you follow and further on, Town Counsel purports to address the issue of does § 20 of 43B say what it says. Counsel makes the argument that the section for division talks about the merger of division of offices which is not the same as multi-member bodies, therefore two different things, you are not talking about the same thing. The problem with that is if you go to Section A of that, intertwined, is a whole section here that talks about offices, Board of Selectmen, offices, School Committee. School Committee and Board of Selectmen are multi member bodies. The two are conjoined in the same section of Mass General Laws so you can't go down to another § and say it means two different things when the preceding section A absolutely puts them together and quite frankly if the interpretation of the later sections which says you can't mix the two together there would be no need for Section A because the whole thing that they are saying is that you can't change the way to constitute a Board of Selectmen.

Those are the only two exclusions from this combine and segregate function that goes on further. If the interpretation that offices and multi member bodies were two separate things and you were not to mix them, there would be no need for Section A. I disagree with that conclusion. There was one other quotation in here going back to c.c. 40A, § 12 where Town Counsel writes "Board of Appeals…. in lieu of separate applications applicable local boards as a statement that it has to be the Zoning Board of Appeals." However that ellipse, those three dots exclude specifically the 'words unless otherwise provided by Charter.' I disagree with the letter and conclusions on this. I believe the mechanism being proposed here is absolutely solid. It is unfortunate that the questions that were sent on to Town Counsel through the the Finance Committee Chair there was a second follow on question which am not sure was answered later on here. The question was if there is a change in the Charter which then renders obsolete a section in town By-Law whether or not that By-Law self amends and then afterwards it's just housekeeping you do later on to put in the wording that creates, invokes, empowers what the Charter has already done or if you have to at the same make a change. The proposed motion is worded in such a way it could all be captured at this one point in time. My preference is the town concentrates on the Charter and afterwards any housekeeping that has to occur precisely as that at a following Town Meeting.

Questions from the Committee:

Mr. Rooney asked if there had been any opportunity to discuss with Town Counsel any of the opinions or positions you have put forth tonight.

Mr. Munnich No, I have not had the opportunity.

Mr. Rooney You referenced a letter from Town Counsel stating many statutes and codes that are legal in nature. Based on that would say you have a difference of opinion?

Mr. Munnich Yes

Mr. Rooney Do you think it's fair to bring this to our attention when there has been a lot of reference to statute and legal information putting us in a position if you will to interpret before we vote on this or select one opinion over the other? Would you agree it puts us in an awkward position at best, and leaves the potential to create further gum in the works as this moves forward because we have not resolved the issue of difference of opinion?

Mr. Munnich To jump all the way to the conclusion that the process is effectively the start of, there is a series of hearings, there would be a presentation before Town Meeting, Town Meeting votes. and the result would be sent to the Attorney General's office. Ultimately it's the Attorney General's office who decides whether the proposed charter change is legal or not.. The way Massachusetts statutes go on matters of charters and bylaws, it would still need to go to the Attorney General's office if Town Counsel and I disagree or are in complete agreement - the AG may say you are both wrong or both right. I agree there may be some hazard if the town was rolling the dice on an issue that was irrevocable or created a bad position for the town. If we were voting on a form of bonding for

a school or on a form and how we are going to constitute a pension plan and there was disagreement, if we get that wrong then we are in trouble and there is no backing up. If Town Meeting goes through with this change and passes this and the AG says there is another arcane element of M.G.L. that we both missed that invalidates this. We are in no worse position than a half hour ago. We just don't have this passed so as far as the consequences to it perhaps we learned something about the process but it doesn't send down an irredeemable path.
Mr. Rooney I'm not worried about the consequences right now. Would you say you are asking us to make a decision and recommendation, I assume favorable, to move forward with the information we have before us now? I consider you to be extremely knowledgeable in this area and we asked for a legal opinion from someone who is knowledgeable in this area and we have two different conclusions. Do you think a reasonable person would make a decision on favorable upon favorable with the facts as we have them?
Mr. Munnich replied that Mr. Rooney was asking a difficult question. From a risk standpoint, I don't see the risk element but I will repeat what a previous speaker who referenced a previous Article in that I don't know what questions Town Counsel is responding to. I only know what is being proposed.
Mr. Rooney Should we find out before the Finance Committee does anything with this? I know your answer already so thank you.
Ms. Wollschlager Am I correct in assuming that currently there are no towns in Massachusetts that use their Planning Board to handle 40B issues? Is there a precedent elsewhere?
Mr. Munnich No, some communities have the ZBA being effectively an appointed subcommittee of the City Council. As far as being combined, I don't know of any towns that have done that.
Ms. Wollschlager Am I correct, this is something we would be a trailblazer in this and we would try to potentially change the interpretation that is commonly held to 40B and who's in charge?
Mr. Munnich We would be the first, I don't know if it's an interpretation but more of a presumption and I believe it would be the first that are coming to the end of what I consider to be an obvious trail that started in 1969 and has continued straight on since then.
Ms. Wollschlager Could you refresh my memory of how you are responding to Town Counsel 's letter on page 2 , last paragraph of her letter where it says '§ 21 is specifically provides an application to build low income, moderate housing should be submitted to the Board of Appeals in lieu of separate applications to the applicable local boards' and then later goes on to say that 'a local board is defined by including any number of bodies including the Planning Board'. With this interpretation, it seems she is saying that it's a Board of Appeals, that it cannot be a Planning Board. I know you had an argument to refute that, but I'd like more of an explanation.
Mr. Munnich It's precisely that § 21 which Town Counsel is quoting in the body of it, but the very beginning of § 21 reads 'may submit to the Board of Appeals, established under § 12 of c. 40A'. Everything that follows afterwards in 40B, § 22, 23, all those other citations come back to this one that points you at ZBA is creating a provision in § 12, c. 40A so you have to go to that §. What is the ZBA of which they speak? They are speaking of the 40A, § 12, ZBA. That's okay so what do they tell us in § 12? They say you can establish it by Charter.
Ms. Wollschlager I'm struggling with the part where it says 'the applicable local board includes a Planning Board'. Then later on it says you can't double dip and have the Planning Board and the ZBA be the same.
Mr. Munnich That's into the conclusions but § 20 of 43B says the exact opposite; it speaks about combining boards that is exactly what that whole section is. Theoretically, the town could, through Charter, create two ZBAs, one that handles variances and one that handles Section 6 findings. Do it as a two-step process. You can split the ZBA into two ZBAs, one handling variances and the other handling Section 6 findings. That's absolutely clear, but also clear in § 20 is you can combine things so if you can separate a functionality from the ZBA into a ZBA 2.0 then you can also combine it and merge it with the Planning Board because the other sections say you can clearly combine offices.
Ms. Wollschlager Is your plan to have this debate on Town Meeting floor or are you going to attempt to get any further clarification from Town Counsel
Mr. Munnich I truly believe these things are best worked out ahead of time which was the hope previously. I knew this was an unusual item and that Town Counsel would benefit from, as any of us who has communicated with their own counsel for personal purposes or business needs, you want to talk to your counsel so they understand exactly what it is you are trying to do and you understand what type of law that they are trying to apply. That is the whole issue of what question was asked and that is the element most missing right now and I think that single element would be the greatest benefit for Town Counsel to understand what the premise is behind all this.

Ms. Wollschlager asked the Chair if she could pose a question to the Town Moderator and was granted permission.
Ms. Wollschlager asked Mr. Foss, based on his vast experience as Town Moderator if he recalled any instances where Town Meeting passed an Article where we had a ruling from Town Counsel that basically said the Article was not "legal"?
Mr. Foss said he could not recall an instance offhand.
Ms. Collins addressed Mr Hayes. Along that line of questioning, one or two Town Meetings ago, this very committee voted something that it had been advised was not in compliance with the Zoning Bylaws, did it not?
Mr. Hayes asked if we did that.
Ms. Collins Some members did, locating a medical marijuana dispensary on Rte. 9 just west of the Wellesley border.
Mr. Hayes Yes - this committee took up that Article and this committee had motions made for recommendations to Town Meeting and this committee voted those recommendations because we had heard that or something like that a few times. I do not remember the outcome of the one you are thinking of because the motion changed a little bit but we did take recommendations on motions and voted.
Mr. Foss: there was a time two or three years that we had a motion for eminent domain and we modified the motion, removing the words eminent domain and left the borrowing portion in the motion. Town Counsel advised us not to do that and was certainly appropriate for Town Meeting to do that even though it may have been wrong and Bond Counsel then did come back to us and told us we have to vote that with the eminent domain in it. To your question, yes we have been advised at the meeting not necessarily like this, that was what I was thinking of we had a paper advisory and we were advised Town Meeting voted contrary to Town Meeting's advisory and still had to go back and revote it at the next Town Meeting.
Ms. Collins To summarize what you are saying that if c..40A, § 12, permits combinations and division as described by Charter, and c. 40B refers to c. 40A, then, in your opinion it would be allowed for. c.40B as well?
Mr. Munnich Yes, it directly refers to that section. If it was silent on it then could say well this is the one exception you have to do it the way it says on that one, but it specifically points you to § 12. More to the point if § 12 was silent as to the Charter that would also be. We have two sections here that are not silent so you follow the trail and there is your answer.
Ms. Collins Mr. Chair, request to you, c.c. 40A, §14 is entitled Boards of Appeals; powers. It says 'a Board of Appeals should have the following powers to hear and decide appeals in accordance with § 8 (which is neighboring towns, neighbors that are aggrieved) to hear and to see applications for special permits which upon which the board is empowered to act under set ordinance By-Laws (I'll come back to that in a minute) to hear and decide petitions for variances as set forth in § 10. To hear and decide appeals from decisions of Zoning Administrator if in accordance with § 13 and this section'. (this is where the Zoning Administrator said I couldn't build something and I want to appeal). If under this we cleaned up the Zoning By-Laws after making the Charter change to no longer empower our Board of Appeals to act under said ordinance or By-Laws. Town Counsel didn't mention that, and again I don't know what the questions were, but that § I did not see referenced anywhere in her letter. If this is part of c. 40A and c. 40A also allows us to make changes to the Charter that we could theoretically come back and change, but it doesn't say "to hear and to see applications for special permits which upon the board is empowered to act under M.G.L. It is under said ordinances or By-Laws which are town specific. If these are the only powers of the ZBA how can Town Counsel argue that the ZBA have to be the ones involved with 40B?
Mr. Hayes I appreciate you asking me the question but I am ill equipped both in terms of education and certification to answer that question. Town Counsel is not here.
Ms. Collins I understand that, however if I formulate that as a question and send it to you would you consider passing it on for an opinion that could be considered for our recommendation book?
Mr. Hayes I will pass on a request to Town Counsel to offer an opinion from any member of the Finance Committee on any legitimate questions on the scope of our business and I would consider that question to be in the scope of our business.
Ms. Collins Have you received answers to the questions specifically to the questions you forwarded to Town Counsel?
Mr. Hayes I have not received specific answers from Town Counsel to specific questions sent to Town Counsel. I am going to paraphrase this, the questions I asked of Town Counsel:

1. Whether a change to the Charter could be made as change to the Charter and then at a later date if it had favorable outcome say at Town Meeting and by the Attorney General's office whether then could you go back and make changes to By-Laws and such?
2. Whether a contemplated change to the Charter also needed to have contemplated changes to change the By-Law as contained in that as one thing changes would exclusively be made at the same Town Meeting and they would flow through automatically?
3. Whether an Article such as this which contemplates a change to the Charter is also required to have a petition for a Charter change whether the Article or warrant itself is sufficient to allow a change to the Charter?

Mr. Hayes stated that as he reads it, Town Counsel's letter , she addresses the third question but to be honest with you to a point that was made earlier I do not know what the question was that the Town Administrator asked that elicited that last large paragraph and so as much as I would like to make it my own I'm not sure that is appropriate at the moment. Those are three questions asked of Town Counsel and I have not received a direct answer back to my three questions.
Mr. McCauley Mr. Munnich: Earlier, you indicated that some of the former members of the ZBA you served with did not seem that thrilled with part of their responsibility. Do you have any feedback that constitutes the ZBA now, how they would feel about this taken off their plate and put on to the Planning Board?
Mr. Munnich With the exception of what was said during one of their open sessions with the current hearing, no and that is actually on purpose because it's not up to me to solicit them on something this broad policy wise for a c. 40B project when they have a current open hearing in front of them would probably be prejudicial to their process and don't want someone coming along to say they didn't even want to be doing this in the first place saying they are prejudice, so I didn't get a fair hearing in the first place. That's actually a conscience decision for us not to involve them.
Mr. McCauley asked for confirmation that is is a citizen petition not a Planning Board initiative
Mr. Munnich Absolutely not – it's a citizen petition. It would be somewhat prejudicial in a process where you are saying have the Planning Board submit this article. In theory, the Planning Board could be the one to do this. I think this is one of the elements where it is very appropriate that it be a Citizen Petition and not something that comes out of the parties that have perhaps conflicting interest or concurrent interest.
Mr. Coburn Mr. Munnich, you said there is some evidence that the situation of this function with the ZBA does or has in the past weighed heavily on the ZBA and perhaps influenced not to be a body marked by as much longevity and stability as it might otherwise have. Do we have any reason to believe or not to believe the same affect would or wouldn't visit itself on members of the Planning Board if we were to transfer the function?
Mr. Munnich I would argue that perhaps either because of the way it's constituted by election as opposed to appointment or perhaps it is a peculiarity of the current membership and quite frankly the previous membership of the Planning Board has historically shown a higher tolerance level for large projects such as the mall which went on for thirteen months, and even other large projects that went very quickly such as Apple Hill phase II from filing of application to actual shovels in the ground was under eight months, but a huge project with all sorts of traffic, engineers, consultants, the engineering reports on aquifers. The Planning Board has not shied away from large projects and has solicited large projects when developers come along and looked at parcels of land with low development options, the Planning Board actually said 'no, go bigger, better'. Those have all occurred and I think those projects have all benefited from it. I've been on the Planning Board for twenty-two years but even the least senior member on the board I don't know how many years but think there isn't a single member that has been on less than six years at this time and we have had many big projects in the meanwhile.
Mr. Coburn asked Chairman Hayes whether he would entertain amending the questions you forwarded to Town Counsel to ask specifically for a response to the argument presented here tonight of the chain from the basic assignment of responsibilities through §12 and §20 as presented tonight by the sponsor? It seems to me with ellipsis and attention that may have been directed by whatever questions were responded to by in that letter we may have heard an argument here presented tonight that was outside the attention span in part or in whole of what was being responded to in that letter and I would like to see attention focused on the argument presented tonight from Town Counsel.

Mr. Hayes I will accept from you any question that you want to put together for me that speaks to the argument you heard or a § or chapter of Massachusetts Law or Town By-Laws and forward it on to Town Counsel and ask for a written response.
Mr. Coburn I feel in profound limbo among various interpretations and propositions put forth regarding matters I would like to see more clarity on. I would like to entertain the thought we might come back and take action on this when we have more information.
Mr. Hayes It's a fair question, so you are asking whether this could be postponed?
Mr. Coburn Exactly
Mr. Hayes Just as a hypothetical we pose two or three or five more questions to Town Counsel with some level of specificity and we get written responses and opinions back with some level of specificity and after reading those we then have another continuation on another date the sponsor and the Town Counsel are still at odds with each other, how would you like to proceed then?
Mr. Coburn It depends on the specifics of how they are at odds with each other. If it is substantially unchanged from where it is now, on the event Ms. Collins mentioned about where we did proceed at odds with advice given to this body I recall the Chair encouraged the body to make its own determination and let the other chips fall where they may. I may be inclined to do that, I don't know.
Mr. Hayes I appreciate the recollection, however I am going to pause on the process questions because I'm going to see if anyone from the public would like to speak on the subject matter then we can come back to process and that time we will be ready to take motions from members.

<u>Comments from the Public:</u>

Mr. Foss I'm glad there was a question asked earlier about whether we had advice from Town Counsel, we followed it and what occurred. I want to remind the committee and Town Meeting members that Section 25 of Town Meeting Time really does address some of the things you are talking about right now. There are three levels of doubt or legality of motions that will come on Town Meeting floor:

1. You have been advised by Town Counsel that it is outside of the scope of the authority of Town Meeting and you cannot do that,
2. There are those things that exceed their authority, i.e. trying to fire a firefighter or police chief. Town Meeting may vote affirmatively but because they don't have the authority and it becomes an advisory.
3. If the process is flawed, the Moderator can rule the motion is out of order and the Article cannot be heard.

There is no flaw in this Article that causes me to rule this out until it gets to Town Meeting Town Meeting Time urges the Moderator to make certain Town Meeting members know of a Town Counsel's opinion and they be given the opportunity to impart that to Town Meeting. Once that knowledge is there, you let the chips fall where they may. If Town Meeting makes a decision (like the purchase of equipment where they removed the eminent domain language) and it goes by an authority that can approve it like the Bond Counsel or the AG and they kick it back. Town Meeting has the authority to make a mistake and do something that turns out to be illegal, and it turns into an advisory opinion at that point. There is value to advisory opinions and although I haven't heard it here, one might hear it when you get to the public body speaking on some of these things. There are a lot of people that are disenfranchised that feel very strongly about how the town is going in building its property out and developing. This plays to that to some degree with the affordable housing I've already had a couple of people reach out to me 'can I speak on that matter under this Article'. It depends if it is the purpose and meaning of the Article to make that change so the offices are a different board, that's why I pointed them to talk to the sponsor to see if that is the true meaning of the purpose and why he is doing it. You can go through this whole thing and can advise whatever you want and Town Meeting can still put a positive motion on the floor even if they know a positive motion on the floor will never fly through the AG's office or that is disparaged or divergent opinions that will basically be vetted after the decision has been made in the appeals process. Just because you get an early opinion in the game and it's divergent from a sponsor who is a proponent of the activity that reads things differently and they can't come together and it goes to Town Meeting they can still act on this.

Mr. Michael Hickey, Precinct 9; member, Board of Selectmen: As a former member of the ZBA, this is something the Zoning Board takes very seriously. They may not enjoy the late nights, but they take the role very seriously. As far as longevity goes, I served with Rob Havener (sp?) who served twenty-nine years on the ZBA, Rob Troccolo served about twenty years, and Scott Langren (sp?) is currently on the ZBA, and has been on the ZBA for fifteen years. I think the sponsor's absolutely correct; there may be a few members of the Zoning Board who may be leave a case of beer or chocolate on his doorstep for this change. In my own research, there is not a single municipality that I found where the Planning Board has been the comprehensive granting authority under c. 40B. In secondary publications, the experts refer to the Board of Appeals or Planning Board as the permit granting authority. I only saw a comprehensive permit authority and only saw letter from Town Counsel tonight and I can't see she quoted an Supreme Judicial Court (SJC) case about who had standing on 40B. The SJC noted the Planning Board had repeatedly appealed a 40B permit granted by the Board of Appeals in Hingham. I'll ready a quick excerpt from the SJC on this case "the statutory scheme for standing directs us to General Laws c. 40B does not grant standing to municipal boards Second General Law 40B, § 21, vests a Board of Appeals alone with the power to determine whether to issue a comprehensive permit and provides for Housing Appeals Committee review of the board's decision on the behest of the applicant in only two scenarios". In an Article that the Massachusetts Bar Association wrote about this case a couple of years later; an excerpt "more fundamentally, the developer and the ZBA argued the legislature to deliberately regulated Planning Board and all town officials including the ZBA to an advisory role in comprehensive permit process precisely to deprive them of the ability to often exercise in pre-Chapter 40B days to drag out approval processes for Affordable Housing until the development becomes uneconomic or the developer gives up. The Town Body statutorily deprived of all decision making authority at a local level should not be allowed to sidestep the limited advisory role designed for it by the legislature and attempt to use the courts to impose the will of the board on the developer. Hingham campus and the ZBA argued the court should deny 40B standing to town officials in order to finally deny the tactics of municipal delay and obstruction that Chapter 40B was designed to eliminate". The next paragraph describes how the SJC agreed with the developer and the Hingham Zoning Board of Appeals. I put that case out there in hope Town Counsel will consider as well as the sponsor of this Article.
Mr Hayes asked Mr. Hickey if he would send the Article to him and so he could forward it to the members.
Mr. Munnich I am a great believer in dialogue and the initial outreach. I don't know what the current status of having Town Counsel hours or the rest but if this is one of those things we know next Thursday, September 27, 2018 Town Counsel or that can be arranged I think this could quickly lay out the issues. I'm the lead sponsor; however the others signing on this were quite reasonable looking to come to a real solution and for the town.
Mr Hayes asked Mr. Munnich if he wanted more time adjust or perfect your motion, and have collaborative discussion with Town Counsel or others, the Chair would be willing to give you that time.
Mr. Munnich I am more than comfortable to continue this to a future date and to have that be productive. It seems like the past practice of access to town counsel through office hours or some other arrangement for a warrant Article sponsors to communicate directly with town counsel. In our current bylaws, the chair of the finance committee has the authority to meet to get advice from town counsel. I would be happy to participate in a discussion of this warrant Article and listen to the answers to the questions posed by the finance committee.
Mr. Hayes said he would work to arrange a meeting with Town Counsel, the Chair, and members who want to participate and continued the hearing on Article 38 until September 27.

Article 39 - Amend Natick Town Charter: Natick By-laws, Natick Zoning By-laws: Appointment and constitution of zoning board of appeals, division and distribution of powers, and assignment of counsel.

Proposed Motion:

"Moved:
The subject matter of Article 39 be referred to the Board of Selectmen for their review of the following matters:
- Whether the Zoning Board of Appeals should be elected or appointed.
- If by appointment; whether by the Board of Selectmen, or by other appointing authority.
- Whether the number of Members and Associate Members should remain the same, or if some other number should serve.

- To review the current ZBA practice of not considering aspects of the Zoning Bylaw, and statute, beyond specific relief required that has been identified by the building commissioner.
- To review, and consider changes to, Town Bylaws Article 22, "TOWN COUNSEL"
- For the Board of Selectmen to draft a set policy, and or criteria, for intervening in the statutory functions of town bodies and their requisite access to Town Counsel."

Mr. Hayes asked Mr. Munnich to confirm that he was looking for the finance committee to recommend favorable action on his referral motion. Mr. Munnich confirmed that was the case.
Mr. Munnich said the purpose of Article 39 was to have the town examine and possibly change the composition of the ZBA. The current way that the ZBA is set up in Natick has five members and three associate members. Previously, there were three members and one associate member. The ZBA sometimes has issues with obtaining quorums. So that may be easier to reach with a smaller quantum of members or the way it is set up with associate members. At present, the ZBA is appointed by the Board of Selectmen and should that process be continued or changed to be an elected board. There were multiple motions coming out of this discussion with the stakeholders and the proponents of this Article, and the consensus was that it would benefit from extensive review by the Board of Selectmen and the ZBA. Over time, in my opinion, there has been some drift in the way the ZBA addresses some issues that come before it the ZBA would only address issues raised by the Building Commissioner and not necessarily applying the Natick zoning bylaws. The second aspect of this Article touches on the issue of access to Town counsel.. Both the ZBA and the Planning Board occasionally need to speak with town counsel for statutory reasons to appeal decisions or defend decisions. Past practice was that the town would assign town counsel to do that work. In some cases, the Planning Board might appeal the ZBA decision. The 22 Pleasant St. property is constrained the way it is because the Planning Board appealed a ZBA decision to let that building expand to a size much greater than it should have, and that ended up in court-ordered restrictions. Lately, however, it seems to the new practice is that the Planning Board might get access to town counsel for advice. However there been a couple instances where the Planning Board goes to town counsel for advice and then the next thing you hear are decisions coming from the town administrator's office. Since the Planning Board was seeking town counsel for advice, the response shouldn't be filtered through the town administrator. Also, if that element then goes on to be part of a lawsuit, where the Planning Board brings suit against parties to defend the interest of the town, it should not be subject to arbitrary veto by the Board of Selectmen because they might disagree with the Planning Board. The Planning Board has statutory right to file lawsuits on behalf of the town for reasons of the Planning Board. That's not to say that the Board of Selectmen shouldn't be involved in the discussion, but there are no guidelines or criteria to follow. Recently, the Planning Board was appealing a decision by the Framingham ZBA that would've used up the last bit of developable land in Route 9 in the Golden Triangle to install a parking lot for residential housing on the Framingham side. The Planning Board voted to appeal that decision, but the prior Board of Selectmen opted not to appeal the decision because it "didn't want to offend our neighbors", and denied access to town counsel. Something has gone wrong with the process and needs to be clarified. There have been changes in the town administrator and the composition of the Board of Selectmen, so this is a good opportunity to examine this issue. Referral of this Article to the sponsor and Board of Selectmen will help clarify who has access to town counsel and the nature of that access.

<u>Questions from the Committee:</u>

Ms. Collins asked for confirmation that Mr. Munnich is looking for referral to the Board of Selectmen to answer these specific items listed in the referral motion. Mr. Munnich confirmed this is the case.
Ms. Collins asked whether the Moderator would opine on whether such a motion is permitted, i.e.., for Town Meeting to provide guidance on the parameters of the discussion
Mr. Foss said that as long as the guidelines are within the scope of the article, it is permissible.

Questions from the Public:

Mr. Hickey said that at their last meeting, the Board of Selectmen discussed bringing warrant article proponents in to discuss the requirements of their Articles. In this case, the proponent of this was generous with this time and speaking with me on this Article. I believe that this motion fosters the opportunity to continue these discussions.

Mr. Coburn moved Favorable Action on the subject matter of Article 39 as presented, seconded by Mr. Evans, ***Voted 11 – 0 – 0***

Debate:

Mr. Coburn said this sounds like a moment to have this healthy review and to have this debate on Town Meeting floor to see whether Town Meeting supports this kind of review. Town Meeting can express its views on the parameters included in this referral motion. There is no legal restriction for Town Meeting to restrict what the sponsors can discuss associated with this issue.
Ms. Collins stated that this is an ambitious Article and I support referral because the conversation needs to happen at multiple levels. In some cases, in my experience, some members of the ZBA aren't aware of some of their responsibilities. Referral of this motion by Town Meeting gets the conversation started and these things need to be revisited sometimes.

Mr. Munnich: The zoning act at that time, permitting happening through ZBJs. In 1975 the Modern Act came and allowed Planning Boards are the site plan review agencies of communities so chosen.

Ms. Collins as the appointment of authority the Board of Selectmen should have an opinion on that so Town Meeting gets what it wants. Setting parameters is a good idea. I support the referral requested by the sponsor. It is important because ZBA has more power than the Planning Board. If we more members perhaps we should revisit the number.

Mr. Evans moved to close the Fall Town Annual Warrant meeting, seconded by Mr. Linehan, ***Voted 11-0-0.***

Finance Committee & Sub-Committee Scheduling

Mr. Hayes: I encourage members to look at the agenda posted for Thursday September 13, 2018. It is a full agenda. We have the four marijuana Articles, a number of financial items, Articles OPEB, unpaid bills and proceeds. Article 29 - Changing the Number of Signatures Needed for Citizen Petition for Special Town Meeting. Motions have arrived in my email this evening which I will load to NovusAgenda and forward the links. I don't expect to get through all of them but I committed to the town administration we would take them on. Most important are the marijuana Articles because that is being put before Town Meeting in early October.
Mr. Linehan: reminded members of the Open Meeting Law training session at the Morse Institute Library on Wednesday September 12.
Mr. Hayes: Open meeting law tomorrow at 5:30 p.m. You should have RSVP'd to the AG's office.
Mr. Evans: I will be sending out the minutes for members to review by Thursday, September 13, 2018 as one of the challenges we have is getting those approved and turned around quickly given the heavy fall schedule, with Special Town Meeting #2 and 2018 Fall Town Meeting.
Mr. Hayes: I need members to pay special attention and respond quickly to the September 6, 2018 minutes that Mr. Evans will distribute. We need to turn those around very quickly and want to make sure they are accurate and represent what was said in this room in terms of questions and debate.
Ms. Collins: I request from Mr. Evans that minutes are sent to both of my accounts.

Mr. Gallo moved to adjourn, seconded by Ms. Collins, Voted 11- 0- 0

Natick Finance Committee

Pursuant to Chapter 40, Section 3 of the Town of Natick By-Laws, I attest that the attached copy is the approved copy of the minutes for the following meeting:

Town of Natick Finance Committee
Meeting Date: September 20, 2018
The minutes were approved through the following action:

Motion:
Made by:
Seconded by:
Vote:
Date:

Respectfully submitted,

Bruce Evans

Secretary

Natick Finance Committee

NATICK FINANCE COMMITTEE MEETING MINUTES

September 20, 2018
Natick Town Hall
School Committee Meeting Room, Third Floor

This meeting has been properly posted as required by law.

MEMBERS PRESENT:

Jeff DeLuca	David Gallo	Cathi Collins (arrived 7:10 PM)
Linda Wollschlager	Bruce Evans	Patrick Hayes
Mike Linehan	Robert McCauley	Philip Rooney
Jim Scurlock	David Coffey	Lynn Tinney
Kristine Van Amsterdam	Dirk Coburn (left 11;00 pm)	

MEMBERS ABSENT:

Dan Sullivan		

MEETING AGENDA

1. **Public Concerns / Comments**

a. Resident and Taxpayer Concerns and Comments

2. **Meeting Minutes**

a. Review & Approve the August 30, September 6, September 11 and September 13, 2018 meeting minutes

3. **Old Business**

a. Finance Committee Scheduling

4. **2018 Fall Town Meeting Warrant Articles - Public Hearing**

a. Article 26 - Supplement Prior Town Meeting Vote Authorizing Acquisition and Preservation of the Sawin House and Adjacent Property at 79 South Street, Assessors Map 77 Lot 7

b. Article 31 - Actions Pertaining to Acquisition and Preservation of the Town's easements on Mechanic Street - Will be moved to Sept 25 meeting agenda

c. Article 35 - Voting Requires Being Legal Resident of Massachusetts and this Municipality

d. Article 10 - Committee Reports

e. Article 17 - Change Authority for Acquisition of 22 Pleasant Street Among Other Items

f. Article 30 - Amend Town of Natick Zoning Map: Assisted Living Overlay Option Plan

g. Article 34- Amend Historic Preservation Zoning By-Law

h. Article 8 - Collective Bargaining

i. Article 27 - Prohibit Dog Kennels in Single Family Residential Zones RS and/or RG

j. Article 28 - Amend Zoning By-Law to Allow Indoor Amusement or Recreational Uses in Industrial Zoning Districts by Special Permit

5. **2018 Special Town Meeting #2 Warrant Articles - Public Hearing**

a. Article 1 - Excise Tax on Retail Sales of Marijuana for Adult Use

b. Article 2 - Marijuana Establishments Zoning Bylaw Amendment

c. Article 3 - Amend Zoning By-Law to create, extend, and/or modify the existing Temporary Moratorium Regarding Recreational Marijuana Establishments currently located in Section III-K: Marijuana Establishments of the Natick Zoning Bylaw.

d. Article 4 - Amend Town of Natick By-law Article 10: Board of Selectmen

e. Update and discussion on the Point of Order regarding the Special Town Meeting #2 public notice process

Mr. Hayes reviewed the agenda and said that we would start tonight's meeting with the 2018 special town meeting #2 Warrant Articles, beginning with discussion on the Point of Order regarding the Special Town Meeting #2 public notice process, and then start with Article 2, then 1, 3, and 4. Then we will open the 2018 Fall Town Meeting and discuss those Articles. The Planning Board is holding a meeting tonight to discuss these warrant Articles as well so we may have to juggle the order to accommodate the concurrent meetings.

Ms. van Amsterdam asked whether we could have a runner let us know when the Planning Board has made a decision on any of these Articles. Mr. Hayes said that he didn't think that would be necessary, that the proponents would show up at the finance committee meeting when their Planning Board session was over.

Mr. Rooney asked about how the committee should view town counsel recommendations **Mr. Hayes** said he talked to the moderator about this in the moderator said that finance committee members should view town counsel opinions as guidance information to help them make a decision. Town meeting has the prerogative to follow town counsel as guidance or not. That may lead to adverse outcomes where the AG's office disallows the town meeting vote or decision.

Mr. Evans moved to re-open the special town meeting #2 warrant Article public hearing, seconded by Ms. van Amsterdam, ***Voted 9 – 0 – 2*** *.*

Mr. Hayes, speaking

At the September 13, 2018 meeting **Ms. Collins** raised a point of order stating that she had concerns about the legitimacy of the posting of Special Town Meeting #2 and contended that the BOS had made the announcement of the Special Town Meeting #2 was not authorized by a vote of the Board of Selectmen. Members who were here at September 13 that meeting will remember that we went through chronology that night:

Ms. Collins cited section 2-11(c), the Town Charter "Whenever the Board of Selectmen shall determine it to be necessary to call a special Town Meeting, it shall by publication in a local newspaper give public notice of its intention. All requests for the inclusion of subjects, as provided above, which are received in the office of the Board of Selectmen prior to five o'clock in the afternoon of the second business day following such publication, or such longer period as may be authorized by a by-law adopted to further implement this provision, shall be included in the warrant for the said special Town Meeting." The question was whether the publication was illegal because the Board of Selectmen heard this at their

meeting beginning at 7 PM and wouldn't have voted in time to approve calling a special town meeting until later on the evening of August 20 and the notice of town special town meeting #2 appeared in the morning edition of the MetroWest Daily News on August 21. There are two elements to this: a) whether they acted in an illegal manner according to the Town Charter; and / or b) whether this was a violation of open meeting law. Members will remember that I asked the town administrator about the chronology and that was the summary that I just gave.
Following the meeting last Thursday I spent some time gathering some facts and figures on this issue. Spoke to the Chairman of the Board of Selectmen, town counsel, the town moderator, as well is doing my own research. The Board of Selectmen meeting was posted on August 16, as shown by the time stamp of the posting, and information was posted to NovusAgenda on August 17, so the notice language calling for the event was available a few days in advance of the August 20 meeting. The public meeting notice for the special town meeting #2 was submitted to the newspaper on August 20 by the town administrator's staff during the business day, with a request to run it on the morning of August 21. The road to call a special town meeting was on the evening of the August 20, they voted to call the special Town Meeting #2 and the notice appeared in the paper on August 21. I was able to determine that there were at least two other Board of Selectmen meanings where adult use marijuana was on the agenda and the potential necessity of a special town meeting was discussed. At the January 8 meeting, there was a memo circulated that spoke about a special Town Meeting ban vote on retail marijuana. There was also a memo dated April 12 from the Acting Town Administrator that was presented at the April 17 meeting that indicated there would likely be a special town meeting in the fall and that the acting town administrator was working on it. In addition, there was an inter-board meeting involving the Board of Selectmen, the finance committee, and Board of Health on July 30 that was to discuss adult use marijuana and the zoning bylaw changes that were likely to be required and identifying the potential zones on the zoning maps. The other item on the agenda for that meeting was for downtown parking. There was a Planning Board meeting on August 8 where the Planning Board was asked to approve zoning bylaw language for the special town meeting #2 in the 2018 fall town meeting.
I spoke to town counsel and provided the above information. town counsel stated that nothing was done illegally. I spoke to the town moderator and asked we need to be presented with this information, how would he rule and he stated that he didn't see anything illegal. Having said all that, I acknowledge that it may have been done awkwardly, but not illegally.

Ms. Amy Mistrot, Chairman, Board of Selectmen had asked Mr. Hayes to speak on this topic. After the multi-board meeting on July 30, the Town Clerk reached to me and expressed concern about the timing of the Special Town Meeting. The original thinking was that we would have Special Town Meeting #2 on the first night of the 2018 fall town meeting. On August 3, we spoke and she shared her concerns about being

able that given Fall Town Meeting, the early election cycle and early voting, she would not be able to get all the work done to submit the results of the Special Town Meeting to the AG in time to beat the expiration of the marijuana moratorium. Ms. Mistrot asked whether providing more resources to assist the Town Clerk would enable her to do so, and the Town Clerk replied that the work that has to be done can only be done by the Town Clerk. The Town Clerk suggested that we have the special town meeting #2 on Tuesday October 2, as well as Thursday October 4. I then talked with the Town Moderator, Mr. Errickson, the CED Director, the chair of the finance committee whether that date worked for those stakeholders. I worked with Ms. Malone and Mr. Errickson work backward from that date to establish timelines when the work needed to be completed in order to be ready for a special town meeting #2, including when the Planning Board would need to meet to achieve this objective. Given that the Board of Selectmen had been socialized about the need for the special Town Meeting #2, the August 20 was an update to let the board know that the stakeholders were aligned for a special town meeting #2 on October 2. One of the Executive Assistants shared a concern about a possible OML violation, but since I had never had a conversation with the other board members on the date prior to this meeting, I felt that it would not be an OML violation. Given the concerns about bandwidth, I authorized publication of the notice in the newspaper. Normally, I wouldn't have done that, but given that the 2018 Fall Town Meeting warrant had been open from July 15 through August 16, this provide ample time for a citizen petition to be put on me fall town meeting warrant. The 2018 fall town meeting warrant had closed for four days in advance of the August 20 meeting. This was not a decision of the Board of Selectmen – it was my decision based on the constraints.
Mr Hayes said after considering all the available information, I am ruling the point of order as out-of-order and believe that we can proceed with our review of Special Town Meeting #2.

During our September 13 meeting, we had both the Special Town Meeting #2 in the 2018 Fall Town Meeting open simultaneously and were discussing Articles 1 – 4 from the Special Town Meeting #2 and their equivalents on the 2018 Fall Town Meeting. However, given Ms. Collins' point of order, we only took votes on the 2018 Fall Town Meeting Articles. If members have additional questions that came out of the October 13 meeting or after reading the draft meeting minutes, please ask them.

Article 2 - Marijuana Establishments Zoning Bylaw Amendment

Motion A

2018 Special Town Meeting #2
ARTICLE 2

Marijuana Establishments Zoning Bylaw Amendment
(Planning Board)

Motion A
Move that the Town Replace the existing "Section III-K: Marijuana Establishments" with a new "Section III-K: Adult Use Marijuana Establishments", that reads:

Section III-K: Adult Use Marijuana Establishments

1. Purpose.

The purpose of this section is to regulate the time, place and manner of Adult Use Marijuana Establishments. The zoning will serve to preserve the character of the community and create a place for the public to have access to legal marijuana while mitigating community impact. This bylaw should serve as a guide that will support the public's right to access legal marijuana, protect the public health, safety, and well-being and expand new growth for the tax base.

2. Relationship to underlying districts and regulations

2.1 The Adult Use Marijuana Overlay Districts shall overlay all underlying districts so that any parcel of land lying in an Adult Use Marijuana Overlay District shall also lie in one or more of the other zoning districts in which it was previously classified, as provided for in this Zoning Bylaw.

2.2 All regulations of the underlying zoning districts shall apply within the Adult Use Marijuana Overlay Districts, except to the extent that they are specifically modified or supplemented by other provisions of the applicable Adult Use Marijuana Overlay District.

3. Scope.

This Section III.K relates only to Marijuana Establishments authorized by General Laws, Chapter 94G, and not to Registered Marijuana Dispensaries authorized by General Laws, Chapter 94I; the location and operation of which is governed by Section III.323.8 of these bylaws, nor to

marijuana-related businesses not required to be licensed by Chapter 94G, except as otherwise provided for herein.

4. Definitions.

The terms used herein shall be interpreted as defined in the regulations governing Adult Use of Marijuana (935 CMR 500.00) and otherwise by their plain language.

Commission: The Cannabis Control Commission established by M.G.L. c. 10, s. 76.with authority to implement the state marijuana laws, including, M.G.L. c.94I, and M.G.L. c.94G,and all related regulations, including 105 CMR 725.00 and 935 CMR 500.000.

Craft Marijuana Cooperative: A Marijuana Cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand marijuana or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

Hemp: The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

Host Community Agreement: An agreement, pursuant to General Laws, Chapter 94G, Section 3(d), between a Marijuana Establishment and a municipality setting forth additional conditions for the operation of a Marijuana Establishment, including stipulations of responsibility between the parties.

Independent Testing Laboratory: A laboratory that is licensed by the Commission in accordance with 935 CMR 500.00.

Manufacture: To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

Marijuana Cultivation: The use of land and/or buildings for planting, tending, improving, harvesting, processing and packaging, preparing and maintaining soil and other media and promoting the growth of marijuana by a marijuana cultivator, micro-business, research facility, craft marijuana cultivator cooperative, registered marijuana dispensary or other entity licensed by the Commission for marijuana cultivation. Such use is not agriculturally exempt from zoning.

Marijuana Cultivator: An entity licensed by the Commission to cultivate, process and package marijuana, to transfer marijuana to other Marijuana Establishments, but not directly to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment: A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a Medical Marijuana Treatment Center (Registered Marijuana Dispensary).

Marijuana Microbusiness: Means a co-located Marijuana Establishment that can be either a Marijuana Cultivator or Product Manufacturer or both, licensed in accordance with the requirements of 935 CMR 500.00.

Marijuana Products: Marijuana and its products unless otherwise indicated. These include products that have been manufactured and contain marijuana or an extract from marijuana ~~or marijuana or an extract from marijuana or marijuana~~, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana or marijuana products and to transfer these products to other Marijuana Establishments, but not directly to consumers.

Marijuana Retailer: An entity licensed to purchase and transfer marijuana or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering marijuana or marijuana

products to consumers and from offering marijuana or marijuana products for the purposes of onsite social consumption on the premises of a Marijuana Establishment.

Third Party Marijuana Transporter: An entity, that is licensed to purchase, obtain, and possess marijuana or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not directly to consumers.

Process or Processing: Means to harvest, dry, cure, trim and separate parts of the marijuana or marijuana plant by manual or mechanical means, except it shall not include manufacturing of marijuana products as defined in 935 CMR 500.002.

Marijuana Research Facility: Means an entity licensed to engage in marijuana research projects by the Commission.

5. Place.

5.1 A Marijuana Establishment is permitted by Special Permit issued by the Planning Board as the Special Permit Granting Authority (SPGA) in the Industrial Marijuana Overlay (IMo) and the Retail Marijuana Overlay (RMo) zoning districts as specified in the Marijuana Establishment Use Regulation Schedule below. Craft Marijuana Cooperatives, Marijuana Cultivators, Microbusinesses, Marijuana Product Manufacturers, Independent Testing Laboratories, Marijuana Research Facilities and Marijuana Transporters are allowed to locate in the Industrial Marijuana Overlay (IMo) district. Marijuana Retailers are allowed in the Retail Marijuana Overlay (RMo) district.

III-K.5 Marijuana Establishment Use Regulation Schedule

Marijuana Establishment Uses	**IMo**	**RMo**	RG	RM	RS	PCD	SH	AP	DM	HM	HPU	LC	CII	INI	INII	H
Craft Marijuana Cooperatives	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Marijuana Cultivators	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Marijuana Microbusinesses	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N

Marijuana Product Manufacturers	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Marijuana Research Facilities	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Third Party Marijuana Transporters	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Independent Testing Laboratories	**SP**	**N**	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Marijuana Retailers	**N**	**SP**	N	N	N	N	N	N	N	N	N	N	N	N	N	N

Y = Permitted By-Right SP = Allowed by Special Permit N = Not allowed or permitted

5.2 Intentionally left blank

5.3 No Marijuana Establishment shall be located within a building containing residential units, including transient housing and group housing.

5.4 No Marijuana Retailer shall be located within 500 feet of another Marijuana Retailer. Distance shall be measured by a straight line from the nearest point of the building in question to the nearest point of the building where the marijuana establishment is or will be located.

5.5 With the exception of a licensed Marijuana Transporter, no Marijuana Establishment shall be permitted to operate from a moveable, mobile or transitory location.

5.6 Home Occupation: Marijuana Establishments are not permitted as a Home Occupation, as defined within the Natick Zoning Bylaw.

5.7 Use Variances: Not withstanding any other provision of this Bylaw, no use variances shall be allowed for any Marijuana Establishment in the Town of Natick.

6. Time and Manner.

6.1 Odor: No Marijuana Establishment shall allow the escape of odors or gases from the cultivation, processing or manufacturing of marijuana or marijuana products and shall incorporate odor control technology to ensure that emission do not violate M.G.L c. 111, § 31 C.

6.2 Signage: All signage shall comply with the requirements of 935 CMR 500, and Section V of this Zoning Bylaw.

6.3 Hours: Marijuana Retailers shall be open and/or operating to the public only between the hours of 8:00 AM and 8:00 PM, unless otherwise modified by licensing regulations enacted and enforced by the Board of Selectmen.

6.4 Visual Impact: Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the marijuana establishment is located and shall comply with the requirements of 935 CMR 500. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen and the SPGA shall consider the surrounding landscape and viewshed to determine if an artificial screen would be out of character with the neighborhood.

6.5 Nuisance: Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding the premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, excessive pedestrian or vehicular traffic, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State or local traffic laws and regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public or private way (sidewalks and streets).

6.6 Security: The applicant shall submit a security plan to the Police Department to demonstrate that there is limited undue burden on the town public safety officials as a result of the proposed Marijuana Establishment. The security plan shall include all security measures for the site and transportation of marijuana and marijuana products to and from off-site premises to ensure the safety of employees and the public and to protect the premises from theft or other criminal activity. A letter from the Natick Police Department to the Planning Board acknowledging receipt and approval of such a security plan shall be submitted as part of the Special Permit application.

Safety plans should mitigate any potential harm to the employees and the public including ensuring all customers are at least 21 years of age.

7. Adult On-Site Social Consumption.

7.1 On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments unless permitted by a local ballot initiative process, as allowed by M.G.L. c.94G §3(b). The prohibition of on-site social consumption shall include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.

8. Other.

8.1 Host Community Agreement: No Special Permit shall be granted without first having an executed Host Community Agreement with the Town of Natick.

8.2 Community Outreach Meeting: No Special Permit application shall be deemed complete until a Community Outreach Meeting in accordance with 935 CMR 500 has occurred.

8.3 State Law: Marijuana Establishment operations shall conform at all times to General Laws, Chapter 94G, and regulations issued thereunder.

8.4 License requirements:

8.4.1 The applicant shall submit proof that the application to the Commission has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as part of the application to the SPGA, and no Special Permit application shall be deemed complete until this information is provided.

8.4.2 No Special Permit shall be granted by the SPGA without the Marijuana Establishment first having been issued a Provisional License from the Commission pursuant to 935 CMR 500.

8.4.3 No person shall operate a Marijuana Establishment without having a license in good standing from the Commission.

8.5 Energy Use: All Marijuana Cultivators shall submit an energy use plan to the SPGA to demonstrate best practices for energy conservation. The plan shall include an electrical system

overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.

8.6 Line Queue Plan: The applicant shall submit a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along the public right of ways will not be unreasonably obstructed.

8.7 Traffic Impact Statement: Any Marijuana Establishment open to the general public shall submit a detailed Traffic Impact Statement.

8.8 Parking: Parking shall be in accordance with Section V-D Off-Street Parking and Loading Requirements.

8.9 Permitting: The Planning Board shall be the Special Permit Granting Authority (SPGA). The application requirements and procedures shall be conducted pursuant to Section VI, Special Permits of the Zoning Bylaw. A special permit granted under this Section shall have a term limited to the duration of the applicant's ownership and use of the premises as a Marijuana Establishment. A special permit may be transferred only with the approval of the Planning Board in the form of an amendment to the special permit.

8.10 Hemp: For the purposes of this Bylaw, the cultivation of hemp shall require a Site Plan Approval from the Planning Board in accordance with Section III-A.7 "Regulation of Land or Structures for Purposes Otherwise Exempted from Permitting" and comply with all applicable sections herein.

Use of land or buildings for hemp processing and/or product manufacture shall be subject to such zoning controls as apply to other (non-marijuana) processing and product manufacture operations.

8.11 Notice of Enforcement Order: Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of the Health Department, Police Chief, and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued

by a state agency (including, but not limited to, the Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment or the Marijuana Establishment's Cannabis Control Commission license.

8.12 Annual Inspection: Any operating Marijuana Establishment within the Town shall be inspected annually by the Building Inspector, the Fire Chief, the Police Department, or their designee(s), to ensure compliance with this Section and with any conditions imposed by the SPGA as a condition of the Special Permit approval, unless otherwise modified by licensing regulations enacted and enforced by the Board of Selectmen.

9. Severability.

If any provision of this Section III.K is found to be invalid by a court of competent jurisdiction, the remainder of Section III.K shall not be affected but shall remain in full force.

The invalidity of any provision of this Section III.K shall not affect the validity of the remainder of this zoning bylaw.

Mr. Coffey recused himself from both the hearing and voting on all articles associated with Special Town Meeting #2.

Ms. Melissa Malone, Town Administrator

Questions from the Committee

Mr. Linehan pointed out a scrivener's error on the top of page 3 of Article 2 motion A and suggested the correction below.
Marijuana Products: Marijuana and its products unless otherwise indicated. These include products that have been manufactured and contain marijuana or an extract from marijuana ~~or marijuana or an extract from marijuana or marijuana~~, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Mr. Linehan At the end of Section 6, Time and Manner, it states "Safety plans should mitigate any potential harm to the employees and the public including ensuring all customers are at least 21 years of

age." Does this mean that no one under 21 years old cannot work in either a retail or industrial marijuana establishment? Ms. Malone did not know the answer and would find out from the committee.

Mr. DeLuca passed out a hand-drawn map of the East Natick industrial Park where he highlighted all businesses in that area that served children or young adults, including state-licensed daycare facilities, when the map legend shows that there should be a 300 foot buffer zone around daycare facilities. Ms. Malone indicated that they had used the Assessor's database that identified the primary use of the property. The said that his question was why hadn't the state licensed daycare and childcare facilities been identified on this map. Further, the Accept Collaborative School a K-12 school is in the overlay district and not listed and the Brandon School was not listed on this map, although it abuts the overlay district. Include the 300 foot buffer as for the daycare and childcare, plus the 500 foot buffer is from the schools, that excludes a great deal of this overlay district map. Ms. Malone stated that the map had been vetted by KP Law and verified that it complies with the CCC regulations. Mr. DeLuca said if the intention is for the 300 foot buffer around daycare and childcare facilities, then these businesses should be included in the map. If there is no 300 foot buffer, then that legend should be removed from the map.
Mr. DeLuca asked whether the intent was to have a 300 foot buffer around daycare facilities. Ms. and said no, only the K-12 500 foot buffers.

Mr. Evans asked if Accept Collaborative is a K-12 school, it would be subject to the 500 foot buffer required by state law. Ms. Malone will follow up with Mr. Errickson and KP Law and get back to the Committee.
Ms van Amsterdam noted that nowhere in the four motions is a requirement for a 300 foot buffer for licensed daycare and childcare facilities – can you confirm? Ms. Malone confirmed.

<u>Questions from the Public:</u>

Mr. Peter D'Agostino, representing 9 East Wine Emporium said M.G.L. c.94g § 12 precludes anyone under 21 years old from volunteering or working at any marijuana establishment. We were in front of this Committee discussing locating a marijuana facility at 6 Worcester Street. The current owners who are seeking the license have 19 years of experience selling age-restricted products (beer, wine & liquor) and the property abuts wetlands which provide a natural buffer zone to the surrounding community. We're continuing work with the Planning Board as directed by 2018 Spring Town Meeting. Marijuana retailers are considered regional resources and this location has drawn customers from surrounding communities.

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion A, as amended, seconded by Mr. Gallo, ***Voted 11 – 2 – 0***

Mr Evans said that this motion for zoning bylaw change is well-thought out, thoroughly reviewed for compliance with state law and protects the town's interests. This utilizes the overlay district format and defines the types of marijuana establishments in the town's zoning bylaws. Town Meeting has a say in what specific properties can be added to an overlay district and the Planning Board, as SPGCA , has broad powers to ensure the interests of the town are well protected.
Mr. Gallo said that this bylaw might not be perfect, but the licensing process, Host Community Agreement, and special permit process provide strong safeguards.
Ms. Collins pointed out that Accept Collaborative is paid by town taxpayers.
Mr. DeLuca said that oversight of a school is a significant oversight, and should be listed on the zoning map.
Mr. Linehan stated that he's comfortable voting Motion A, since this provides the basis for the overlay district and complies with state law.
Mr. Hayes asked Mr. Errickson whether the map was integral to any the motions or representational. Mr. Errickson said it was representational only.

Motion B

Move to amend the Town of Natick Zoning Bylaw to create the Industrial Marijuana Overlay (IMo) and the Retail Marijuana Overlay (RMo) zoning districts in Section II – Use Districts, II-A Types of Districts, by inserting in the list in Section II-A Types of Use Districts after the words "Independent Senior Living Overlay Option Plan" "ISLOOP" the words:

"Industrial Marijuana Overlay (IMo)"
"Retail Marijuana Overlay (RMo)"

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion B, seconded by Ms. Van Amsterdam, ***Voted 11 – 2 – 0***

Mr. Evans said that this motion establishes the two overlay districts as use districts in the town's zoning bylaws and is a follow-up to Motion A.

Motion C ***(Oak St Industrial Park)***

Move to amend the Town of Natick zoning map, as referenced under Section II-B Location of Districts (Zones) subsection 1, by placing the Industrial Marijuana Overlay District (IMo) over the following properties as shown on Town Assessors' maps:

- Map 8 Lots 1C, 1D, 1E, 1F, 1K, 1M, 1P, 1Q, 1R, 1SA, 1SB, 1T, 1U, 2B, 2C, 2D, 2E, 41A, 41B, 41C, 41D, 41Fa, 41Fb, 41G, 41H, 42, 42A, 42B, 42C, 42E, 42F, and 43; and
- Map 9 Lots 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2J, 2K, 2L, 2M, 2N, 28, 28A, and 28B; and
- Map 14 Lots 75E, 75G, 75I, 76, 76A, 77A, and 77B; and
- Map 15 Lots 105A, 105B, and 105C.

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion C, seconded by Mr. Gallo, ***Voted 11 – 2 – 0.***

Mr. DeLuca stated that Mr. Errickson had said that it was difficult to obtain information on the daycare and childcare facilities within the Oak Street industrial Park overlay district. I did an overlay map of the

state licensed daycare and childcare facilities within this district and passed it out to members. The legend provided on the maps were given to us indicates that there is a 300 foot buffer around all such daycare and childcare facilities. However, the language of the motions does not specify any 300 foot buffer. Mr. Errickson said the information provided on daycares was provided by the Town Assessor's database that typically only notes the primary use of a building, not secondary uses such as day care that might show up on a state licensing site. The 300 foot buffer zone was included in the map for reference purposes only. The use of overlay districts means that the town could determine where it wants to put the zone without having to write buffers into the zoning bylaw itself. The state buffer of 500 feet around a K-12 school applies in all cases, even if that facility exists in one of the overlay districts. If the town, as a policy decision, wanted to put a 300 foot buffer around daycare and childcare facilities, it could do so in will one of two ways: a) changed the zoning bylaw language; the b) map the daycare facilities and choose districts that don't touch those buffer zones.

Ms. Collins said that here understanding when you put a property to an overlay district was that this property was right for this type of treatment. Mr. Errickson confirmed that this is correct. Ms. Collins stated that the Accept Collaborative was within the East Industrial Park. Mr. Errickson said that, if it's a K-12 school, then the 500 foot buffer mandated by the state applies.

Ms. Tinney asked if a daycare facility were to locate in a district where the overlay zoning was IMo or RMo, would the marijuana business be forced to move. Mr. Errickson said it would not because state law doesn't require a buffer zone around daycare facilities, only a 500 foot buffer around K-12 schools.

Ms. Van Amsterdam asked whether there was any limit to the number of buffers the town could specify without running afoul of the law. Mr. Errickson replied that he was pretty sure there was no such restriction. The zoning law is very specific about not writing it in such a discriminatory way to preclude a business from locating in town.

Mr. McCauley asked whether there are any other industries that require buffer zones from K-12 schools. It is zoned industrial and many of the recreational facilities are there by use variances.

Mr. Hayes stated that if anyone had further questions about motions D through F to please ask them now.

Mr. DeLuca asked whether Mr. Errickson was able to confirm that the residential part of the Natick Mall is considered a separate building, compared with the retail portion of the Natick Mall. The residential section is a separate building. However, within the Natick Mall itself, there are multiple owners, so the building may be sub-divided into several buildings.

Debate:

Mr. Evans stated that he appreciated the points raised regarding the Accept Collaborative K-12 issue. If this were a retail use, I'd be more concerned about it, but it's industrial use. I would remind members that there are at least four steps during the process where the town has safeguards in place: the HCA the town and the applicant, the Board of Selectmen is the licensing authority, the town sends paperwork to the CCC which approves / disapproves, and finally it comes before the Planning Board in its special permit granting authority role.

Mr. Gallo agreed that the safeguards were sufficient to protect the interest of the town.

Mr. Coburn pointed out Ms. Mistrot's comments that the alternative to not having zoning for marijuana establishments is the worst the option since it provides no protection to the town. However, I'm rapidly losing confidence that this is the right approach. He applauded Mr. DeLuca for expressing concerns and is unhappy that there isn't a better option.

Ms. Collins voiced objections to inclusion of the Accept Collaborative School within the overlay district and noted that the Brandon School is directly adjacent to the overlay district. In addition, there appear to be other buildings that aren't appropriate to be in that overlay district.

Mr. Linehan also noted that if we do not take action, we could have it located anywhere in town with little latitude to influence where it could be located in other zoning issues. However, although it's an overlay district, the 500 foot buffer zones would remove significant portions of the overlay map shown in the motion C.

Mr. McCauley noted that without the zoning bylaws and the overlay districts, we relinquish control over these types of businesses.

Mr. DeLuca said that he remains concerned about the childcare facilities located within this overlay district. It's unfair to call this entire area available for industrial marijuana, since you will have a 500 foot buffer around each of the K-12 schools. He also noted that some of the uses were very resource intensive and more work should of been done to determine whether that would pose problems or risks for the town.

Mr. Rooney said he understands Mr. DeLuca's concerns, but if a marijuana business were to consider being located in this overlay district, these businesses would have the opportunity to voice their concerns at multiple points during the process.

Comments from Public:

Ms. Mistrot stated that the town is required to zone an area of town for industrial marijuana use. Mr. Errickson noted that the intent is to locate overlay districts in some area in town. If that does not pass town meeting and the moratorium is not extended, we're obligated to treat a marijuana business according to the existing zoning bylaw use table that provides the town with fewer protection options.

Motion D *(Rt. 9 East Town Line)*

Move to amend the Town of Natick zoning map, as referenced under Section II-B Location of Districts (Zones) subsection 1, by placing the Retail Marijuana Overlay District (RMo) over the following properties as shown on Town Assessors' maps:

- Map 21 Lots 1, 8 (portion with CII underlying zoning), 114, 115, 116, 117A, 117B, 118, 119, 309, 332, 333, 334, 335 (portion with CII underlying zoning), 357, 358, 359, 360, 376, 377A, and 377B.

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion D, seconded by Mr. Linehan, ***Voted 11 – 2 – 0.***

Debate:

Mr. Evans stated that that there was much discussion at the last meeting about protections of the abutting areas. There are 300 foot buffers around the East School area and a 500 foot buffer between the two overlay districts in Motion D. This is a well thought-out zone and we have a proponent that's been a long time adult use business that's been in this business for a long time, have been good neighbors to the community, and deserve a chance to be considered.

Ms. Wollschlager noted that the old version of the motions was on NovusAgenda and asked that it be updated. Mr. Hayes agreed to do so.

Motion E *(Rt. 9 East)*

Move to amend the Town of Natick zoning map, as referenced under Section II-B Location of Districts (Zones) subsection 1, by placing the Retail Marijuana Overlay District (RMo) over the following properties as shown on Town Assessors' maps:

- Map 20 Lots 1A (for a depth not to exceed 400 feet from the right of way of Route 9), 1B (for a depth not to exceed 400 feet from the right of way of Route 9), 97D, 98, 99, 99A, 100, 101A, 102C (portion with CII underlying zoning), 103, and 104.

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion E, seconded by Ms Van Amsterdam, ***Voted 11 – 2 – 0.***

Debate:

Mr. Evans said that this is a well thought-out zone; **Ms. Van Amsterdam** concurred.

Motion F *(Golden Triangle)*

Move to amend the Town of Natick zoning map, as referenced under Section II-B Location of Districts (Zones) subsection 1, by placing the Retail Marijuana Overlay District (RMo) over the following properties as shown on Town Assessors' maps:

- Map 10 Lots 4, 5, and 6;
- Map 16 Lots 2, 2B, 2C, 3, 4B, 4D, 4Ab, and 4Abb;
- Map 17 Lots 1, 3B, 4A, 4B, 4C, 5A, 5C, 5D, 5F, 5FA, 5FB, 5FC, 6, 9A, 9D, 9E, and 20;
- Map 23 Lots 1A, 1E, 73, and 74;
- Map 24 Lots 91 (portion with CII underlying zoning), 94, 100, 101, 88A, 89A, 89CA, 89CD, and 89CE, 89DA, 89E, 89f, 89G, 89G, 89H, 89I, 92A, 92C, 92D, 94A, and 94AA;
- Map 25 Lots 276, 277, and 251A.

Mr. Evans moved to recommend favorable action on subject matter of Article 2 motion F, as amended, seconded by Ms Van Amsterdam, ***Voted 4 –9 – 0.***
Mr. Linehan moved Indefinite Postponement on subject matter of Article 2 motion F, as amended, seconded by Mr Coburn, ***Voted 5 –7 –1.***

Mr. Hayes noted that the committee has no recommendation to town meeting on Article 2 motion F

Debate:

Mr. Evans said that we discussed it extensively at the October 13 meeting and wouldn't repeat them. One of the concerns was whether the Natick Mall was considered one single building entity or multiple building and we found out tonight that it is considered a multiple buildings, with the residential section a separate part of the mall and several components of what we consider the Natick that are considered individual buildings. My other comment is that "it takes two to tango". In my opinion, the owners of the Natick Mall would be loath to jeopardize losing the existing mall tenants by approving a retail marijuana store. Also discuss that the previous meeting was that this business bridges the town line with Framingham, and the likelihood of a retail marijuana establishment going in there is much more likely than the Natick Mall area.
Ms Van Amsterdam noted that has been productive discussion on motion F. I was not present at the previous meeting, but watched it on Pegasus and reviewed the notes, and feel that my questions have been answered.
Mr. Linehan noted a previous speaker's comments about unfairness to other owners in the East Industrial Area and noted that in his opinion, this is also true of the Natick Mall tenants. I'm also concerned that it wouldn't have the police visibility that the retail marijuana establishment should have.
Mr. Coburn seconded the IP motion for discussion. I think this problematic and am not sure how I'll vote on it. The Natick Mall is a substantial asset that contributes a large amount of tax revenue to the town.
Ms. Wollschlager said that he is uncomfortable with the Natick Mall be included in this overlay district. Perhaps there are other areas within the Golden Triangle that are more appropriate and I might be more supportive if the zone excluded the Mall Area.
Mr. Scurlock also opposed the inclusion of the Mall in the overlay district, citing businesses such as American Girl and Build-a-Bear. There also is a large amount of building in this area and he noted that we do have an alternative zone for retail marijuana on Route 9 East.
Mr. DeLuca said that Mall area has a number of nearby residential buildings child-oriented businesses and this overlay district is to broadly defined and cannot support it.

Article 35 - Voting Requires Being Legal Resident of Massachusetts and this Municipality

Mr. Tony Lista, Town Meeting Member, Precinct 6

Proposed Motion

To see if the Town will vote to:
amend its Home Rule Charter (Article 7 section 7-7 sub section (l)) and Town By-law, (Article 1 town election and town meeting) by inserting the following language:

"A person age of 18 and over shall be qualified to vote in municipal elections who is a United States citizen and a legal resident of Massachusetts and this municipality, and who meets the qualifications of M.G.L. Ch. 51, section 1."
or otherwise act thereon.

Mr. Lista said that he is looking to make voting a protected right for US citizens and naturalized citizens and record such in Natick's home rule charter.

Questions from the Committee:

Mr. Coffey asked who is eligible to vote in town as of now. **Mr. Lista** replied that M.G.L. c. 51 §1 doesn't specify that one has to be a citizen of the United States to vote in Massachusetts state and local elections.
Mr. Coffey asked whether **Mr. Lista** had consulted with the Town Clerk or an attorney on this matter. **Mr. Lista** said he had not consulted with the Town Clerk, but had consulted with attorneys who indicated that this is something that a town could elect to put into its home rule charter.
Mr. Rooney asked for data that would support the contention that ineligible voters were voting in Natick. Mr. Lista noted that he didn't know whether it's a particular problem in Natick, but I'm just trying to do something that most people seem to think is self-evident, that voting is a protected benefit.
Mr. Rooney asked how this would protect him as a citizen, given that he already is an eligible voter. Is it fair to say you can't point to anything specific now that requires citizens to be protected? Mr. Lista said that the charter doesn't say that you need to be a U.S. or naturalized citizen to vote in Natick.
Mr. Rooney asked whether federal law might supersede state and local law in this matter Tony said he didn't know.

Mr. Scurlock asked what would the Town Clerk need to do if this motion were approved by Town Meeting? Mr. Lista replied that it will be no different than the verification done today.
Ms. Collins when I look at the Commonwealth of Massachusetts Secretary of State's page, and click on Elections and Voting, and apply for voter registration, the first thing that it states is that you must be a citizen of the United States.
Mr. Lista said he disagreed with that position and stated that if you look at M.G.L. c. 51, the last page of the questionnaire "Every citizen eighteen years of age or older, not being a person under guardianship or incarcerated in a correctional facility due to a felony conviction, and not being temporarily or permanently disqualified by law…" It says nothing about U.S. citizenship. There are towns in Massachusetts that are trying to do the opposite – by providing these voting rights to non-citizens.
Mr. Linehan asked this article is to correct an issue or preclude the possibility of a determinant body in Natick from extending voting rights in local elections to residents who aren't necessarily citizens.
Mr. Lista said that this is a fair categorization.
Ms. Wollschlager stated that MR. LISTA said there would be no enforcement mechanism. Mr. Lista said that he did not go as far as an enforcement mechanism and that might be something that could be taken on in the future.

Comments from the public

Patty Cierra (sp?), Precinct 7 In addition to support for this article, I've worked at the election polls and some of the biggest proponents of something like this are new citizens who have gone through the process of becoming a citizen and are very excited to be able to vote. To let non-citizens vote takes away from that and it is something that other towns are going toward. We welcome non-citizens, but we want them to go the extra route to become citizens and enjoy the same privilege.

Mr. Coffey moved Indefinite Postponement on the subject matter of Article 35, seconded by Ms. Collins, ***Voted 6 –8 – 0.***
Mr. Linehan moved Favorable Action on the subject matter of Article 35, seconded by Mr. Gallo, ***Voted 2 – 12 – 0***

Debate:

Mr. Coffey: If you look at the Secretary of State's web site and try to register on-line, the first question it asks is whether you're a U.S. citizen. If you answer no, you cannot register to vote. With all due respect, I feel that this is an unnecessary measure from a legal standpoint. I also feel that it's nothing more than a

political area being done and I'm not inclined to support this. If someone wants to make this a resolution at Town Meeting floor, so be it. The sponsor of this article stated that this is not an issue.
Ms. Collins said that she read as far as M.G.L. c. 56, § 8, which states that a person who knowingly falsely represents themselves as eligible to vote shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both. This is a requested charter change. After it gets through here, it goes to Town Meeting, then it goes to the votes as a referendum and I will not have my name associated affixed to enshrining something that I feel is a racist move. I don't believe this is necessary or a good idea, and I'll quit Town Meeting before I enshrine this.

Mr Linehan said that he resents being called racist by moving favorable action on this article. The purpose of this article is to preclude Natick from adopting actions which other townships in Massachusetts and elsewhere are adopting. It has nothing to do with race, but citizenship vs. non-citizenship, a distinction of every sovereign country. I think that this is a reasonable idea and how valuable citizenship is.

Mr. Gallo said that he is concerned about cities and towns that are allowing residents who aren't U.S. citizens to vote, so I want to make it clear what being a voter in Natick means.

Mr. Evans said that he doubts that the AG would approve anything that's restrictive on people's civil rights. The right to vote is a guaranteed Constitutional right. I've also volunteered in local elections and I can tell you that the Town Clerk has a well-scrubbed list of voter registrations. IF someone is not on that list, we call the Town Clerk's office to find out why, since they thought they were eligible voters. In some cases, they've just moved to town and recently updated their address, but it hasn't been processed through the system; or they've registered online. A woman in Texas was jailed for five years because she thought she was eligible to vote in a precinct in Texas, was not, and a judge imposed the maximum penalty. This woman was a U.S. citizen and I think it's reprehensible that a judge in Texas would take that action. To me, this seems to be a poor solution in search of a non-existent problem.

Mr. McCauley stated that he believes that we're having the wrong argument at the wrong time. If someone wanted to turn us into Cambridge, that's probably the time to discuss this. Things can slip through the cracks as Mr. Evans alluded to earlier, an honest mistake. From a personal perspective, my sons were adopted and weren't U.S. citizens when they came here and became naturalized citizens. When the younger one reached 18 years old, he went to register to vote and then applied for financial aid

for school and was told that he wasn't a U.S. citizen. I'm going to come down on the side of IP for that reason.

Mr. DeLuca said that he understands that the proposal is a preemptive measure. However, it's questionable whether it's needed at this time. Given that this would have to go to the voters for approval, and should it not be approved, you could be starting a movement in the opposite direction.

Mr. Coburn said that he will not support either motion, but I do take the point that it could "wake a sleeping giant". I think it's provocative and not needed.

Mr Hayes said he listened carefully and heard you say that the size of the problem is not known and the enforcement mechanism is not identified. My problem is the same as I've seen in other charter or bylaw changes– that of enforcement of any regulations and the scope of the problem. I'd find it very difficult to ask the Town Clerk to go through verification of 16,000 voters in town. I can't vote in favor of this, but if you come back to me and show me there's a problem, and how you would put this in place and enforce it, and understand the burden to town staff to implement it, then I'd be more inclined to determine whether it made sense to me or not.

Article 34- Amend Historic Preservation Zoning By-Law

Proposed Motion

Motion:

Move to amend the Historic Preservation Bylaw Section III-J of the Town of Natick Zoning By Laws by deleting Section III-J(7)(3) in its entirety and replacing it with a new subsection 3 as follows:

"3. New construction shall be permitted on an individual basis at the discretion of the Planning Board after taking the following factors into consideration:

1. The square footage and net useable land area of the parcel(s);

2. Compliance of the existing buildings/structures and parcel with underlying zoning requirements;

3. Proposed restoration of the property to its original state – the extent and degree of the proposed restoration/preservation of the historic portion(s) of existing buildings/structures, as well as any proposed replication of previously demolished historic building/structures in order to bring the property/building(s)/structure(s) back to their original state."

George Richards, Lawyer, South Natick Law representing Joel and Linda Valentin (the sponsors)

Mr. Richards stated that the Valentins own property at 50 Pleasant Street. It used to be a nursing home and is quite a historic structure. The historic preservation by law was passed 2-3 years ago. The impetus behind that bylaw was the Sacred Heart church property in South Natick is looking for an adaptive reuse. It's zoned residential and only qualified as a single residential home. Given the mass of the church property, the historic preservation bylaw sought to allow townhouses and condos so that the church could be divided into multiple residential units. The bylaw was geared toward that specific project and was too restrictive and numbers were worked out that worked well for that particular parcel. There are many historic structures in town such as 50 Pleasant Street that demonstrate the one size doesn't fit all and the historic preservation bylaw needed to be adjusted to allow more flexibility for other historic structures. To qualify for the historic preservation bylaw, the property must pass one of two tests: 1) determination by the State Historic Commission that the property is eligible for nomination on the

national register of historic places; 2) unanimous vote of the Natick historic commission that the building was of historic or cultural significance. I forwarded a letter from Steve Evers of the Natick Historic Commission indicating that 50 Pleasant Street is a building of architectural significance by unanimous vote of the Natick Historic Commission. There are two provisions that require modification: 1) the calculation of the number of units allowed in a historic preservation district; 2) how much new construction is permitted.

The bylaw currently says that you take the net usable land divided by 3500 sq. ft. to determine the permitted number of units. The Sacred Heart church property came out at 7 units, I believe. 50 Pleasant Street is almost 1.5 acres of net usable land and 60,000 sq. ft., it comes out to 18 units, which is excessive in our opinion (the sponsors are looking for 10 units). The current bylaw limits new construction in a historic preservation district to 10%. My clients want to restore the property to its original condition and would like to restore some of the original architectural features of buildings that were demolished. However, the 10% limit will not allow that work to be completed (10% would be about a 12,000 sq. ft. addition). It would need to go through a special permit process with the Planning Board.

The only way that the redevelopment proposal can work is to increase the 10% new construction figure. This worked at Sacred Heart because it was a tight lot and the tightness of the church, the 10% new construction worked. This proposal is to change that amount to an unspecified percentage, with a cap that would be under the discretion of the Planning Board. The Planning Board has continued the review of this proposal until October 3 because all the materials hadn't been posted in time for the prior notice three weeks before tonight's Planning Board hearing. Depending on what the finance committee opts to do, we could come back to discuss this on October 4 after the Planning Board has viewed this.

Mr. Hayes asked whether the proposed motion is to apply across the whole town, not this specific property. Mr. Richards confirmed that it is town-wide. My guidance to the Committee is the same that I've given regarding other proposed building projects. We are not the Planning Board doing special permit review, site plan review. If the sponsor believes it's helpful to use a specific parcel or property as an illustration, they may do so.

Mr. Richards read the following email exchange from Mr. Steve Evers of the Natick Historic Commission.

c/ o 1Frost Street Natick, MA 01760
Sept. 17, 2018

Planning Board Town of Natick
13 East Central Street Natick Ma.
01760

RE: 50 Pleasant Street

Dear Board Members,

The Natick Historical Commission, in accordance with Section III - J of our Zoning By- laws, conducted a Public Hearing on July 16, 2018 on the above referenced property. By a unanimous vote, it was determined that the property is of "architectural sigqificance " to the Town of Natick and therefore is subject to the opportunities and obligations of the Historic Preservation by-law.

I can be reached via cell phone at 508.254.2017 if you have any questions regarding this matter.

Very Truly Yours,

Stephen N Evers, AIA
Chairman

Cc: George Richards Jamie Erickson Joel Valentin

Questions from the Committee:

Ms. Collins said the special permit criteria in the bylaw already includes a determination that a development isn't substantially detrimental to abutting properties and neighbors. Given the other proposed criteria of the historic preservation bylaw, that substantially preserves the building or structure that is appropriate use of materials and preservation of landscape features and scenic views, I'm trying to understand what going under historic preservation zoning bylaw achieves.
Mr. Richards said that it's in a single family zone (RS-B). The only thing that can be done as a right is to build a single family home on that site, and that's why this property has been on the market for some time.
Ms. Collins said that Mr. Richards said earlier that you are not opposed to putting numerical limits on…
Mr. Richards said that he would have to use speak with his clients, but could say that they don't want to build something that would overtake the character of the existing house. S since we haven't developed definitive plans yet, it's hard to say exactly what the numerical limits should be, but 50% may be a number the proponent can live with, an approximately 6,000 sq. ft. addition.
Ms. Collins advocated for an "not-to-exceed" number because I don't think Town Meeting likes to give a proponent an open book. Mr. Hayes reminded members that this historic preservation zoning bylaw is to be applicable for all of the town not just this property.
Mr. Richards talked about conformity with the existing zoning because if it was a prior non-conforming structure, you would not be able to extend that non-conforming structure.
Ms. Collins requested clarification on what conformity with existing zoning means. Mr. Richards noted that it was complete compliance with all the requirements of the residential zoning district where the historic preservation bylaw would apply.
Mr Coburn expressed concerns about the applicability of the historic preservation bylaw to many properties in town and asked if there might be a table of indexed percentages – for non-conforming lots, minimally conforming lots with excess space, etc. Also, what do other towns do?
Mr. Richards said that this idea was discussed, but to come up with a table that worked was a daunting task. We haven't explored what other towns do, but would be happy to do that. Trying to make the bylaw directly applicable to every potential size lot didn't make sense. Having the flexibility to enable the Planning Board to evaluate historic preservation opportunities on a case-by-case basis made more sense. Capping the percentage of new construction was thought to be a way to ensure that the building didn't over-burden the site or the neighborhood. The Planning Board could still protect the neighborhood while being able to encourage historic preservation.

Comments from the Public:

Marie Forbes, 18 Pleasant St: I live in a historic home also and what strikes me as a little unsettling and in this proposal, is that we're trying to change the town bylaw to fit a specific property. I think this would be better addressed as an individual variance. No one in the neighborhood has been contacted about this project, so I hope that that contact occurs.
Elizabeth Sedkin, As a Girl Scout leader who has been to every historic place in Natick, except perhaps 50 Pleasant St. This is such a special place and the fact that it someone is willing to spend money to get it back to being the special place it once was is great. I think it's amazing that the proponents respect the historical significance and intend to restore it to the 1800s.

Mr. Evans moved favorable action on the subject matter of Article 34, seconded by Ms. Collins, ***Voted 12 - 1 - 1.***
Mr. Linehan moved postponement subject matter of Article 34 to October 11, seconded by Mr. Coffey, ***Voted 2 – 12 – 0***

Debate:

Mr. Evans said he lives in a 100 year old house in Natick and is sympathetic to old houses and restorations. I love older houses and historic preservation. There are a couple of data points here that make me want to support this motion: 1) restoration of this building to one of historical significance is admirable in a town where factions are less amenable to restoration of historical buildings. 2) I noted that Mr. Errickson, the CED Director, when approached by Mr. Richards suggested that he write a change to the historic preservation zoning bylaw to do this, rather than come back to the Planning Board at some point in the future and request a variacne. Variances are precedents that can be avoided through changing the town zoning bylaws to reflect the overall needs of the town. 3) Mr. Evers is not only an avid preservationist and is a very knowledgeable resource on historic preservation, and if he's put his stamp of approval on this, it's good as gold for me.
Ms. Collins stated that she thinks this idea is great and is very supportive, but would advise the proponent to put some sort of limit on it (define it!). When Town Meeting first passed this, the 10% was intentionally restrictive to get one project off the ground. Further, I think that Mr. Errickson suggested a bylaw change because it may not be eligible for a variance because there aren't any changes in topography or lot shape or soil conditions, etc. I'd like to encourage as much historic preservation and adaptation as possible.
Mr. Linehan said that the main location of this knowledge sits in the Planning Board and they have not heard this article yet and whether they want a general solution for a specific lot or whether there is a

specific solution that doesn't have unintended consequences. I love the idea of historic preservation and the plans they have, but I want to hear what the Planning Board has to say on this topic.
Mr. Coffey would like to see a bit more information before he would be totally comfortable with it. He wants to know that the Planning Board supports this.
Mr. Coburn said that the proposal does have general applicability and is not about a specific project, and provides considerable discretion. If I were a Planning Board member, I'd probably be uncomfortable with the level of discretion provided in this bylaw change and would seek to put some parameters around it. Loosening the 10% restriction that was inappropriately included in the bylaw makes sense - there are many historic properties within town and the 10% limit on new construction is too restrictive. I would hope that the Planning Board might come up with a table that provides more guidance.
Ms. Wollschlager asked Mr. Hayes if the Planning Board opposed this article, would you as Chairman be prepared to reconsider this, were we to vote favorable action tonight?
Mr. Hayes said that if the information presented rose to a level that merited reconsideration, he would put it on an agenda for reconsideration. For example, if the Planning Board took no action or referral to the sponsor, I don't think that rises to the level of reconsideration whereas if the Planning Board made substantive changes to the version that we approved tonight, then reconsideration would be advisable.
Ms. Wollschlager said she approves the concept, but has reservations about this article due to its applicability throughout the town. She said that she has no sense of where this might be applicable in town, but my sense is that there may not be that many properties where this bylaw would apply. I would hope that, if new substantive information becomes available, members would be amenable to reconsideration.
Mr. McCauley said he's unable to support either favorable action or postponement. If there aren't a lot of properties that would fall under this revised bylaw, then we're changing a bylaw town-wide for one project. If there are a lot of properties where this is applicable, I foresee a lot of tear-down four unit condos being created under the guise of historic preservation that will further tax our schools and services.
Ms. Tinney said that this bylaw change will encourage the types of projects that we do want in town. I hope that there are more properties like this that can be preserved and hope that there are more people who are re- developing these properties were interested in historic preservation. I trust that the Planning Board will do their job properly. We have a bylaw that's written too tightly and hinders historic preservation. If we don't provide this flexibility, these properties can become derelict not be redeveloped or get bought and covered with condos with no historic significance.
Mr. Hayes stated that he will vote favorable action because he believes this bylaw applies throughout the town. The bylaw was originally written for one specific property. I'm not particularly concerned that people might perceive that we're changing it for another specific property because I think the suggested

changes make it more applicable across the town. Mr. Hayes said that the role of the Finance Committee is to review all warrant articles, hear the facts and make recommendations to Town Meeting. It doesn't say to wait for the Planning Board's decision.

Article 17 - Change Authority for Acquisition of 22 Pleasant Street Among Other Items
Mr. Robert Awkward, Pleasant Street, precinct 10; abutter 22 Pleasant St

Proposed Motion:
To create a committee appointed by the Moderator to negotiate for and acquire the property known as 22 Pleasant Street, alternatively known as Map 64 Parcel 44, in Natick for park and recreation purposes and/or conservation and/or passive recreation purposes. The 22 Pleasant Street Acquisition Committee will be comprised of a minimum of three (3), but no more than five (5) members who have expertise in commercial real estate, real estate law, environmental site remediation, as well as from the adjoining neighborhood and the Town at large. The Committee will coordinate its work with the Board of Selectmen, the Town Administrator and have access to the Town Counsel and any other Town agencies necessary to fulfill its mission. This Committee will subsume the authority previously granted to the Board of Selectmen in previous votes of Town Meeting under Article 35 of Spring 2015 Annual Town Meeting, Article 29 of Spring 2016 Annual Town Meeting, or any other previous warrant articles and votes of Town Meeting. Finally, the Committee shall be responsible for determining what additional sums of money the Town may raise, transfer from available funds, appropriate and authorize or raise from borrowing to accomplish the purposes of acquisition of 22 Pleasant street and/or to authorize acquisition of the fee interest in the property, a long term renewable ground lease whether rent paid over time of all upfront, in lump or an exclusive perpetual easement for the use of 22 Pleasant Street, and making such recommendations to Town Meeting as appropriate a sum, or an exclusive perpetual easement for the use of 22 Pleasant Street, and making such recommendations to Town Meeting as appropriate.

Mr. Awkward read a statement: Thank you for allowing me as the representative of the South Natick neighborhood Association to provide background for you on why we filed Article 17. We want the will of Town Meeting, as twice confirmed at 2015 Spring Town Meeting (Article 35) and 2016 Spring Town Meeting (article 29), to be fulfilled. Based on actions to date, the BOS, has not fulfilled the actions taken by Town Meeting. This apparent inaction should be of concern to all Town Meeting members. If the Selectmen can decide which votes they can selectively carry out, this will erode the system of local governance. Our neighborhood began this journey that a January 2015 Planning Board meeting, Three-and-a-half years later, we haven't had material movement on this issue, until we recently appeared at a BOS meeting on August 6 and August 29, 2018 and after we filed this Article. Then, a breakthrough

occurred last week. The BOS voted to hire two specialists to assist in their efforts to acquire this property. This action was commendable, but why did it take 3 ½ years for this to be done? The recent board actions and our actions seem to indicate that this was more than serendipitous. The process has taken far too long to be executed – there may be legitimate reasons for this, but as citizens, it is unclear to us. As a Town Meeting member, it's unclear to me how this vote of the legislative body hasn't been implemented, nor has there been any communication to Town Meeting as to why it has not been carried out., nor recommendations they have to get the job done. Town Counsel suggested in a recent letter that "Town Meeting cannot exercise authority on a BOS when it is acting in furtherance of a statutory duty". TC goes on to say "Boards of selectmen exercise power to acquire land on behalf of towns when so authorized by Town Meeting. This authority does not constitute a command. Thus, where Natick Town Meeting directed the acquisition of 22 Pleasant St.. The specifics of how and when that position was to be accomplished were vested to the control and discretion of the board of selectmen." We agree that the BOS has this control and discretion. However, it is not the role of the BOS to question whether the town should undertake an acquisition or to delay an acquisition because they: a) don't understand that Town Meeting voted twice to purchase this property; or b) they have decided not to act at all. If the Board is not able to fulfill the vote of Town Meeting, then the Board should have reported that back to any of the six Town Meetings that were held since the initial authorizing vote. Our objective is clear – we want the acquisition of an appropriately clean 22 Pleasant St. to be completed. If the board would carry this out in a reasonable timeframe, that would be fine. However, 3 ½ years with no apparent tangible progress is not any reasonable person's definition of a reasonable timeframe. To that end, our request to Town Meeting to have the Moderator create the 22 Pleasant Street Acquisition Committee to assume the role given to the BOS was not made lightly. We recognized that this is a legal, but unorthodox approach. The approach is unorthodox, but legal under state law (MGL, c, 45, § 14). The Town of Natick through its Planning Board, Recreation & Parks Commission, Open Space Advisory Committee, Conservation Commission, Finance Committee, and Town Meeting have already taken these considerations into account when they each voted twice to support the action to acquire 22 Pleasant Street. We would consider No Action if we believe there is truly his commitment to follow through by the Board. However, questions remain. For example, whether the Board is really committed to buying this property. The 3 ½ years to get to this point does not inspire confidence. Moreover, it's unclear that the town and the owner or even talking or whether the pot conversation is positive negative or neutral could easily be provided without divulging the nature of communications. Attached to the August 6 board of selectmen agenda was a redacted email. Apparently requested by selectmen Hickey from an environmental consultant who suggested that the town should not acquire the property. There was no new news in that letter. Why would the board pursue such material 3 ½ years later unless the board wishes not to fulfill its executive mandate, how many other communication suggest that the board does not wish to acquire this property and seeks to

block its execution by whatever means necessary, that the recent board meeting, it was stated that the owner has accepted the offer terms – was this accepted in writing? If so, why was in a purchase and sales agreement discussed at this meeting because that would be public record since real estate transactions must be written to be valid. Further, was it negotiated with the late Mr. Knott, Sr. ? If not, does anyone else in the family have legal standing to negotiate with the town for this property as the deed for the property was listed in Mr. Knott, Senior's name. The town, as represented by more than 1200 citizen signatures and the Town Meeting knows what it wants – that 22 Pleasant St. be acquired forthwith.

Ms. Amy Mistrot, Chairman, Board of Selectmen
The board of selectmen has not yet reviewed this article, but I can provide context that may be useful for the Finance Committee's decision-making process. I have been on the Board of Selectmen for 1.5 years. In that time, I would challenge the assertion of no action as we brought a warrant article back to 2017 Fall Town Meeting to get further direction to proceed. No reportable activity is not reflective of inactivity on the part of the board of selectmen. The restrictions placed on the Board of Selectmen by Town Meeting to pursue this acquisition is, in part, why there has been limited activity to date. We are following the guidance of Town Meeting which were the purchase price and a deliverable state. There are two parties to the negotiation and the fault does not lie with the board of selectmen as there has been a consistent good faith effort to complete this acquisition. A new dynamic is the change in ownership and with that, additional complexity. I suggest to this committee that changing the negotiating body at this point would be detrimental to progress. The board takes this responsibility very seriously and I ask for a short amount of additional time to get this done and if, not possible, give the town a full explanation why not. The Board of Selectmen has hired special environmental counsel and a Licensed Site Professional (LSP) to guide us moving forward.
Mr. Hayes confirmed with Ms. Mistrot that the 22 Pleasant St. acquisition is still in executive session with the Board of Selectmen. Mr. Hayes asked how many executive sessions have had 22 Pleasant St. on the agenda. Ms. Mistrot could not provide an exact number, but said that she believed that the Board of Selectmen hadn't talked about any other topic more than 22 Pleasant St. during the last year.
Mr. Coffey asked whether it is possible to negotiate the acquisition while the property is in probate. Ms. Mistrot said that Special Environmental Counsel will be critical in making forward progress, given the complexity of ownership given the recent death of Mr. Knott, Sr.

<u>Questions from the Committee</u>

Mr. Coffey asked if the proposed committee would be bound by the purchase price authorized by Town Meeting? Mr. Awkward confirmed it would be.

Mr. Rooney: Your motion says that "the Committee shall be responsible for determining what additional sums of money the Town may raise, transfer from available funds, appropriate and authorize or raise from borrowing to accomplish the purposes of acquisition of 22 Pleasant Street…". This would conflict with the way that we budget and allocate funds in the town. Mr. Awkward said that the Committee would need to work in concert with the Board of Selectmen to determine how to fund the acquisition.
Mr. Rooney observed that the motion, as written, implies that the Committee would be authorized to raise funds, etc. to make the acquisition.
Mr. McCauley noted that Town Meeting didn't set a timeline when it passed the authorization for this acquisition, so it cannot be said that they breached their responsibility.
Mr. McCauley asked whether there were any private interest that might compete with the town and the acquisition of this property. Mr. awkward indicated that he was not specifically aware of any other interests, but the property owner has put the property up for lease again, which is one of the reasons we're bringing it to the board of selectmen's attention.
Mr. Sherlock asked me is Ms. Mistrot whether the issues slowing down the acquisition were legal or economic. MM stated that the complexity has been due to the need to deliver an environmentally clean site.
Ms. Tinney acknowledged the frustration the delay has caused. The Board of Selectmen is bumping into serious issues. What would the formation of a committee do to help? Mr. Awkward said that the answers the Finance committee received tonight was far more that then we as individual citizens have been able to obtain. At each Board of Selectmen meeting, we requested a progress report and were told that it couldn't be discussed because it was in executive session. The actions that occurred (hiring counsel and LSP) took place after the warrant article was submitted.
Mr. Linehan asked whether the authorization for acquisition was for park and/or recreation purposes, and/or conservation and/or passive recreation. Mr. Awkward said that he thought open space was part of the list, but could not recall specifics of the authorization.
Mr. Linehan asked whether the Town Meeting authorization permitted the razing of the building. Mr. Hayes stated that the existing building was to be preserved according to the authorization to allow for other town uses.
Mr. Linehan noted that if we were to hand this authority to the proposed committee, then the purpose would be more limited than the prior authorization from Town Meeting.
Mr. Coburn noted that during Town debate, Town Meeting was told that environmental studies were completed. Mr. Hayes said that two studies were completed on this property and provided to Town Meeting. Ms. Mistrot added that the LSP they hired (Jonathan Kitchen) had done one of the studies.
Ms. van Amsterdam noted that, according to the Middlesex news, Town Meeting approved by a vote of 78 – 19 – 8 to modify wording of the 201 6 vote to potentially acquire the 22 Pleasant St. property

without a building on it. The Board of Selectmen supported the wording change. AM noted that Town Meeting was also asked, via a separate article, whether it would increase the purchase price of the property by $ 200K, but Town Meeting declined.
Ms. Wollschlager said that in the same MetroWest Daily News article, the funding source for this acquisition was borrowing.
Mr. Hayes asked Mr. Awkward if the at-large member from the community and the at-large member of the town could be the same person. Both agreed that it was two individuals.
Mr. Hayes stated that should this committee be formed, it would take at least 120 days from the end of Town Meeting to when this committee could receive its charge from the moderator.
Mr. Hayes stated that the wording "the Committee shall be responsible for determining what additional sums of money the Town may raise, transfer from available funds…" is confusing, since only Town Meeting is authorized to determine this. Mr. Awkward acknowledged that and stated that this was the same point that Mr. Rooney was trying to point out.
AM said that she is concerned about this article creating a precedent for special interests to potentially take things in a different direction that that approved by Town Meeting and authority granted to the Board of Selectmen.

Mr. Coburn moved to recommend Referral to the sponsor and Board of Selectmen, seconded by Mr. Coffey, Voted 14 - 0 - 0

Debate:

Mr. Coburn stated appreciation of the sponsor coming forward with this article. I understand the frustration and impatience of the sponsor and the reasonableness of moving forward with this acquisition. The representation suggested in this motion does feel loose and the financial language seems to overreach. The presence of the chair of the Board of Selectmen at this meeting is a sign of the good faith effort that the Board of Selectmen intends to make. I'm hoping that referral will result in this not coming back before this committee because progress will have been made.
Mr. Coffey said that he's had differences with the board of selectmen on this project, but isn't willing to usurp their authority. The guidelines that Town Meeting gave the board of selectmen where very set - a certain amount of money and clean environmental condition. Also, the controlling language of the motion, as Mr. Rooney pointed out regarding financial responsibility belongs to the Board of Selectmen. I don't know whether this property can be acquired until the probate issues are resolved and the property title is cleared up.

Mr. Evans said that the submission of this article served as the impetus to get things moving and appreciate it. I also want to commend the Board of Selectmen for persevering because this has had an intransigent owner who would not budge at all. That scenario may change, but we don't know yet - whether that's for better or worse. The environmental cleanup issues are of paramount concern. This property is unlikely to be leased to someone any time soon due to the environmental remediation that's required.

Article 27 - Prohibit Dog Kennels in Single Family Residential Zones RS and/or RG

Mr. George Richards

This article is the result of my law practice being contacted by abutters to proposed dog kennels in residentially zoned areas. Two of the three cases that were heard by the Planning Board withdrew their proposals in view of the opposition from abutters (an application for a 7X24 kennel on Route 16 and . A third proposal (Doggy Dates), was approved for a special permit by the Planning Board. Unfortunately, our dog kennels definition doesn't discriminate between a commercial kennel and a residence that has more than three dogs. The definition of kennel is more than three dogs on a single premises. The way the bylaw is currently written allows kennels in RG and RS zones, but not RM zones. We wanted to bring this discussion to Town Meeting to determine whether these kennels should be permitted in these zones. Mr. Richards claimed that the Planning Board is most concerned with residential owners with greater than three dogs being discriminated against were there a complete ban in these zoning districts. It was suggested by both the Planning Board and the board of selectmen that the best way to address this may be to clarify the definitions of perhaps, commercial kennel and personal kennel and prohibiting the locating of commercial kennels in residential zones. Following the discussion with the bos on Monday night, I emailed the moderator to ask whether changing the definitions to commercial kennel and personal kennel was outside the scope of this article. The moderator indicated that, at first glance, that definition changes would not be within the scope of this article. The Planning Board voted 5 – 0 – 0 to refer it to the sponsor. We acknowledge that people need places to bring dogs for day care or house them in kennels when they're away, so recognize the demand for these facilities. The Planning Board indicated that it was amenable to working with us on the definitions with a view towards changing this bylaw at 2019 Spring Town Meeting.

The third dog kennel is not the typical model. Doggy Dates brings dogs to a site that's located off Leach Lane, a large residentially zoned area. They bring the dogs there three times a day for 45 minutes for exercising and socializing. The Planning Board did issue a special permit, but this has been appealed to

Massachusetts Land Court by neighbors on Brook Street. The concern is that special permits cannot easily be denied by the Planning Board given the current zoning bylaw. The Planning Board did set conditions for the hours, number of trips, etc. It's also impossible to define excessive barking. Our position is that it would be better for Town Meeting to prohibit these uses in residential zones until the kennel definitions can be changed in the zoning bylaw next spring.

Questions from the Committee:

Mr. Linehan asked for clarification of what kennel is defined as under this bylaw – is it a structure, a usage? Mr. Richards said that this raises the definition issue. The definition of *dog kennel* in the bylaw is "One pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three dogs three months old, or over, owned or kept by a person on a single premises irrespective of the purpose for which they are maintained."
Ms. Wollschlager stated that she dog-sits neighbor's dogs occasionally, but usually doesn't exceed three dogs, but can see circumstances where someone would have more than four dogs in the household. Would that make us a kennel and not allowed?
Mr. Richards said technically the bylaw would be illegal, but the Building Commissioner could determine that the dogs are not permanently residing in that house, so it would be permissible.
Mr. DeLuca stated that he is quickly going through the state laws governing kennels and asked Mr. Richards to comment. Mr. Richards said c. 140 § 136A defines kennels as follows:
'*Commercial boarding or training kennel*", an establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that ''commercial boarding or training kennel'' shall not include an animal shelter or animal control facility, a pet shop licensed under section 39A of chapter 129, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.
''*Commercial breeder kennel*", an establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.
'Personal kennel'', a pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel and shall be to other breeders or individuals by private sale only and not

to wholesalers, brokers or pet shops; provided further, that a personal kennel shall not sell, trade, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department, may be sold, traded, bartered or distributed if the transfer is not for profit.
Thus, the state law does make a distinction between a commercial kennel and a personal kennel. Ultimately, we'll probably change the definitions in our zoning bylaws.
Ms Tinney asked whether this bylaw change would put any limits on dog licenses per household. If you had three dogs and got a fourth dog, would you be considered a kennel? Mr. Richards said that according to the current bylaw, you would be considered a kennel and would require a special permit. Our motion would eliminate that issue.
Ms. Collins stated that the town recently strengthened the special permit authority of the Planning Board. I know of at least two veterinarians in Natick that aren't in a C-II section. I'm confused as to how your proposed motion changes the situation for the "Doggy Dates" that received a special permit to operate on Leach Lane property off Brook Street since none of the dogs are boarding at that location. Mr. Richards said that, after filing the article, the issue of personal use was raised here tonight by the Planning Board and the finance committee.
Ms. Collins asked what other communities do to address this issue in their zoning bylaws. You said that kennels aren't allowed in residential areas in Needham and Weston, but the only places listed are veterinarians, so I don't see anything that compares to the "Doggy Dates" type business that has no boarding facilities. In Wayland, as long as you're obeying setback requirements, you can get a special permit. Mr. Richards said that Mr. Saul Beaumont did the research.
Mr. Beaumont said he called each of those towns and asked whether they allow commercial kennels in a residential area and where it says no, they answered no. However, in Wellesley, they do not allow commercial kennels in residential areas, but just approved a kennel because there was a woman who had a few dogs and takes care of several other neighbor's dogs during the day, they gave her a permit, with the requirement that she cannot have any employees working for her to take care of the dogs.
Mr DeLuca asked about the term "kept" and what that meant in terms of boarding. Also, how would this affect dog walkers? Does "kept" mean "kept under control" or boarding? Mr. Richards said that it would be dogs that were housed at that location at least overnight, or longer.
Mr. Linehan asked, if the appeal to land court were denied, would the permit granted by the Planning Board be "grandfathered"? Mr. Richards thought that it possibly could be grandfathered or the land court could remand it back to the Planning Board. Mr. Beaumont added that he spoke with the Town Clerk who told them that they have not received a permit, only an authorization to receive a permit, which has been suspended, pending the decision from the land court.

Comments from the Public:

Pam, 3 Brook St.: residents of Brook Street told the Planning Board that they did not think bringing a doggie daycare business to Leach Lane was advisable since they may bring 90 dogs per day for 45 minute exercise sessions fell within the definition of kennel. We relied on the word "kept" as the requirement under the kennel definition, but the Planning Board said that they felt the building Commissioner by referring the doggy dates business to the Planning Board, had already made the determination that it was a kennel. That is a point of contention that we disagreed with, which is one of the items in our appeal to the land court. It felt like there was a hole in the process since the kennel definition wasn't discussed to the length of the discussion tonight. Because we had no avenue for a town appeal, we pursued this in land court. I support the warrant article and believe that the dog kennel bylaw desperately needs to catch up with modern times, in terms of the existence of large commercial dog care kennels that didn't exist in the 1960s when this bylaw was created. Neighbors on Brook Street are concerned about the increased traffic on Brook St., which turns into a narrow dirt lane that has no characteristics of a public road and is an unsafe access route. The property where the dogs are brought is a Leach Lane address and the company was originally using Leach Lane for its access, but there are two Hunnewell properties involved – one property owner has denied access to the other property owner, causing the traffic to go up Brook St. This business was operating for two years before the permit was applied for. The building Commissioner did not feel the need issue a cease-and-desist order because the company claimed that it did not know it needed a permit to create this business in a residential zone. This week, the building Commissioner stated that he would allow the business to continue operations while the appeal is taking place. This motion would help the town, if this permit were to come up for review in the future. I was interested in the discussion of adopting this motion now and changing the bylaw definitions in the future. At least one of the Selectmen voiced support of this article because it would prevent any similar type businesses locating in a residential zone while the language for the bylaw was changed.

Ms. Elizabeth Sudkin, 1 Brook St. Our property is on ½ acre of land, but most of the properties on Brook Street are on three or more acres of land, backed up against conservation land. Now, we have a commercial company on Leach Lane, where there is a property with no dwelling and neither the property owner nor the business owner live there. This doesn't sound like the definition of a kennel. There are 27 trips coming in each day, with 90 dogs, 7000 gallons of urine and 5000 lbs. of feces on that site. Even if they pick up the feces, the bacteria is still there. We're not opposed to people running smaller scale businesses for dogs, but are trying to protect our neighborhood. They are using Brook Street which ends up in a dirt road that isn't wide enough to accommodate a car and someone walking a dog. It was not meant for a commercial business to access the property.

Ms. Kelly McPherson, Spring Valley Road. I had a chance to read through the warrant article, I'm not aware of the situation in South Natick. I'm troubled by language "kennel" in this article because I have been involved in the dog community for the past five years. I have friends and colleagues who live in this town and have small dog watching businesses in their homes. Because they make money from this, they are referred to as a "commercial kennel". This approach is too broad-brush. I'm not opposed to tightening these things up. I do live near a kennel that was started in a home, grew, moved to another town and came back and they are a great neighbor. My neighbors are quite happy to be able to drop their dogs off at this home. I urge you to re-draft this.
Mr. Saul Beaumont said that the town needs to be careful because the town should not be able to impose a situation like these folks have. If this warrant article isn't the right thing to do, if we pass it now and improve it in the future, we may be going in the right direciton. I also note that the other six towns I referenced have found a way to deal with these commercial kennels, which are not allowed in residential areas.

Mr. Coffey moved to refer the subject matter of Article 27 to the sponsors and the Planning Board, seconded by Mr. Evans, ***Voted 13 – 0 – 0***

Debate:

Mr. Coffey said he understands the frustration of the makers of the article, it's just not ready yet and I cannot buy in to the theory of passing it now, and fixing it later. The article, as crafted, says that a resident cannot have more than four dogs in their house or they are considered a commercial kennel.
Mr. Evans said that he thought this is a definition problem in that the Planning Board's hands were tied by the definition of kennel. I think there needs to be a third category to handle the "Doggy Dates" type business that are neither fish-nor-fowl – not a commercial kennel or personal kennel. We need to define them and figure out what restrictions we place on them and that needs to be worked out. I thank Ms. McPherson for bringing up the issue of small dog watching businesses because there are a lot of those that serve a useful purpose and would be hampered as an unintended consequence of this article.
Mr. Linehan said he sympathetic to the problem and since there was no support for favorable action. Sometimes you put in a law like this that doesn't get enforced until someone complains. If no one complains, there is no enforcement
Mr. Hayes stated that the way this motion is written would fix the problem that Brook Street residents have. A number of previous speakers have said that being restrictive probably isn't appropriate, but expanding the definitions would give us a better chance of getting there.

Article 28 - Amend Zoning By-Law to Allow Indoor Amusement or Recreational Uses in Industrial Zoning Districts by Special Permit

this article came to town meeting previously but I am making a different motion this evening. Last time, we suggested using an asterisk in the use table to allow recreational use in an industrial zone. I was hired by a client who was interested in putting an indoor volleyball facility at 0 Tech Circle.

Article 28 Proposed Motions

Motion # 1:

Move to Amend Recreational Use 12 in **Section** Ill- **A.2 - USE REGULATIONS SCHEDULE** of the Natick Zoning By-Laws by adding two (2) asterisks after the "O" in the Industrial One (INI) Column.

So then the applicable chart Section 111 - A.2 - USE REGULATIONS SCHEDULE, Recreational Use 12 now reads:

RECREATIONAL USES	RG	RM	RS	PCO	SH	AP	OM	CII	INI	INII	H
12. Indoor amusement or recreation place or place of assembly provided that the building is so insulated and maintained as to confine noise to the premises and is located not less than one hundred feet from a residential district	O	O	O	O	A	O	(*)	A	O**	O	O

And to add the following language at the end of Section Ill - A.2 - USE R EGULATIONS SCHEDULE , RECREATIONAL USES after Use 17:

"**Note: Use # 12 above shall be allowed by special permit in the East Natick Industrial Park on the east side of Oak Street and being an area including ONLY the following lots (but including any further subdivision of these lots) as shown on the Town's Assessors Maps: Map 8, Lots 41A, 41B, 41C, 41E, 41G, 41H, 41FA, 41FB, 41FBB, 42, 42A, 42B, 42C, 420, 42E, 42F and 43; Map 9, Lots 2A, 2B, 2C, 20, 2E, 2EA, 2F, 2G, 2J, 2K, 2L, 2M, 2N, 28, 28A and 28B; Map 14, Lots 76, 76A,
77A and 77B; and Map 15, Lots lOSA, lOSB and lOSC."

Motion #2:

Move to Amend "Recreational Use 12" in **Section 111 - A.2 - USE REGULATIONS SCHEDULE** of the Natick Zoning By-Laws by changing the "O" in the Industrial One (INI) Column to an "A".

So then the applicable chart in **Section Ill - A.2 - USE REGULATIONS SCHEDULE,** Recreational Use 12 now reads:

RECREATIONAL USES	RG	RM	RS	PCO	SH	AP	OM	CII	INI	INII	H
12. Indoor amusement or recreation place or place of assembly provided that the building is so insulated and maintained as to confine noise to the premises and is located not less than one hundred feet from a residential district	O	O	O	O	A	O	(*)	A	A	O	O

Motion # 3: <u>Motion A:</u>
Move to amend the Town of Natick Zoning By Laws

by inserting in **SECTION II - USE DISTRICTS,** II-A **TYPES OF DISTRICTS** a new overlay district as follows:
"Indoor Recreational Overlay District"
and

following **Section 111-J - Historic Preservation** by inserting a new section, **Section 111-K - Indoor Recreational Overlay District,** as follows

"Section 111-K - Indoor Recreational Overlay District

1. Purpose. The purpose of the District is to allow for indoor amusement and recreational uses by special permit in certain industrially zoned areas.
2. **Procedure & Standards.** The SPGA may allow such uses by grant of a Special Permit and approval under Site Plan Review under the procedures and criteria established in MGL 40 A and the Special Permit and Site Plan Review sections of this by-law and provided the SPGA finds that:

a. The building is so insulated and maintained so as to confine noise to the premises; and
b. The building is located not less than one hundred feet from a residential district.

Motion B:

Move to amend the Town of Natick Zoning Map by including in an Indoor Recreational Overlay District the land known as East Natick Industrial Park and being the lots shown Town's Assessors Maps: Map 8, Lots 41A, 41B, 41C, 41E, 41G, 41H, 41FA, 41FB, 41FBB, 42, 42A, 42B, 42C, 42D, 42E, 42F and 43; Map 9, Lots 2A, 28, 2C, 2D, 2E, 2EA, 2F, 2G, 2J, 2K, 2L, 2M, 2N, 28, 28A and 28B; Map 14, Lots 76, 76A, 77A and 77B; and Map 15, Lots OSA, OSB and lOSC.

Mr. Richards said that the Planning Board didn't like zoning by asterisk and preferred that we work on a way to b allow recreational uses on Tech Circle and to legitimize all the recreational use that is already up there. Most of these businesses were issued under use variances. However, town counsel determined that use variances weren't enabled by our town bylaws. The general consensus of the Planning Board and others is that this area is a good place for this type of use and we should legitimize the existing uses already up there as well as allow additional recreational uses. The Planning Board continued its review of this article to September 26. However, it did discuss the proposal in detail in the position possibility of adding a section C to procedures and standards in motion three to create indoor or recreation overlay

district. This was viewed as cleaner and allows future properties to consider this use also it's transferable to other industrial zones as an overlay district, subject to Planning Board and Town Meeting approval. The asterisk approach was specific to that specific property and not extensible to other properties. One of the Planning Board members had concerns about a recreational use taking over a large industrial parcel and maybe this might be a mixed use – a recreational use and an industrial use on the same parcel to reduce the possibility of incubator or other industrial uses and suggested that the Floor-Area-Ratio (FAR) of the recreational use should be limited in industrial zones to .10 so that the recreational use doesn't overtake the site. The client who wants to build at 0 Tech Circle wants to build a 90' x 30' structure, so the FAR limit would not be a problem. My client is not here tonight so I do have to speak with him to ensure that that works for him, but my calculation of this particular lot would allow a 20,200 sq. ft. building, which should be much more than he needs to construct three volleyball courts. One option is to vote for this provision as a new section C in motion 3.
Motion 3 Section 2c would read "*Recreational use shall be limited to .10 FAR in all industrial zones."* Based on this, the Planning Board thought that they would be able to approve this motion.
Mr. Hayes asked whether Mr. Richards is looking for the committee to recommend favorable action on this motion want to wait after the Planning Board is heard the revised motion. Mr. Richards said that it might be better to wait until September 27 the day after the Planning Board meeting to have the finance committee review this motion. ***Mr. Hayes postponed hearing motions on this article until September 27. If anyone has any further questions on this article please send them to me.***

Article 30 - Amend Town of Natick Zoning Map: Assisted Living Overlay Option Plan

Mr. Hayes said that the proponent of the Article requested Referral to the Sponsor on this article.

Mr. Hayes moved referral of Article 30 to the sponsor, seconded by Mr. Evans, ***Voted 13 – 0 – 0.***

Article 8 – Collective Bargaining

Town administration is not here because I told them she is not here because they are requesting No Action.

Mr. Evans moved No Action on Article 8, seconded by Ms. Collins, ***Voted 13 – 0 – 0***

Mr. Evans moved to adjourn, seconded by Ms. Collins, ***Voted 13 – 0 – 0***

ITEM TITLE: Executive Session – to discuss and approve meeting minutes of the October 4 Executive Session

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
OML Complaint #1	10/1/2018	Exhibit
OML Complaint #2	10/1/2018	Exhibit

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

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Instructions for filing a complaint:

- Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- To file the complaint:
  - For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body **AND** to the municipal clerk.
  - For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- The chair must disseminate the complaint to the members of the public body.
- The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

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OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Ronald Last Name: Alexander

Address: P.O. Box 81003

City: Wellesley State: MA Zip Code: 02481

Phone Number: +1 (617) 651-1120 Ext.

Email: ron.alexander10@comcast.net

Organization or Media Affiliation (if any): Self

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☒ Individual ☐ Organization ☐ Media

Public Body that is the subject of this complaint:

☒ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/ town, county or region, if applicable): Natick, MA Finance Committee

Specific person(s), if any, you allege committed the violation: All Members

Date of alleged violation: Sep 20, 2018

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

SUMMARY: The Natick, MA Finance Committee (Committee) has Failed to Timely Respond to a request to inspect the minutes of the open session meeting (s) of the Committee that were held on September 6, 2018 within the ten (10) day statutory time limit. The Committee is therefore in violation of the Open Meeting Law (OML).

DETAILS (all dates below refer to dates in 2018 unless otherwise specified):

1) On September 6, 2018, at approximately 8:15 p.m., the Committee met in open and executive sessions. The posted agenda for that meeting is attached hereto.

2) On September 10, 2018, I sent a request, via email, to the Committee for the minutes for all open and executive session meetings held by the Committee on September 6, 2018. My request is attached hereto.

3) The OML states that "Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days." G.L. c. 30A s. 22 paragraph c. By that law, the open session minutes requested on September 10 were due to be responded to and released no later than end of day on Thursday, September 20, 2018.

4) I have not yet received any response from the Committee regarding this request..

5) Since the Committee has Failed to Respond to my request to inspect the September 6 open session minutes within the statutory time limit, the Committee has violated the Open Meeting Law.

6) Since September 20, 2018 was the date of the alleged violation, this Complaint is being filed "within 30 days of the alleged violation" as stated in the instructions above.

7) Also attached are one or more precedent determinations where other public bodies were found guilty of similar violation(s) of the Open Meeting Law and its regulations.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

1) I want the Committee to make a public statement and apology, during an Open Session of the Committee, that they violated Open Meeting Law and Failed to Timely Respond to a request to inspect the September 6, 2018 open session meeting minutes.

2) I want the Committee to respond to my request.

3) I request that the Attorney General find that the above violation(s) are intentional, and take all steps appropriate to censure the Committee for these violations, including hearings and fines.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____ **Date:** _____

For Use By Public Body	*For Use By AGO*
Date Received by Public Body:	*Date Received by AGO:*

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

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Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Ext. _____

Email: _____

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☐ Individual ☐ Organization ☐ Media

Public Body that is the subject of this complaint:

☐ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/ town, county or region, if applicable): _____

Specific person(s), if any, you allege committed the violation: _____

Date of alleged violation: _____

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

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Signed: _____ **Date:**_____

For Use By Public Body	*For Use By AGO*
Date Received by Public Body:	*Date Received by AGO:*

ITEM TITLE: Discussion of Free Cash and Tax Levy
ITEM SUMMARY:

ITEM TITLE: Article 1 - FY'19 Omnibus Adjustments- Possible Reconsideration

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
Article 1 -MOTION	10/1/2018	Exhibit
Article 1 -Back Up Data (Spreadsheet)	10/1/2018	Exhibit
Town Administrator Email with supporting information	10/1/2018	Exhibit
Revised Motion on Oct 1 for the Oct 4 FC meeting	10/22/2018	Exhibit
Article 1 Motions updated Oct 3 for Oct 4 FC meeting	10/22/2018	Exhibit

MOTION A (Requires majority vote)

"Move that the Town vote to increase the appropriation voted by the 2018 Spring Annual Town Meeting under article 7 by the sum of $88,935, said sum to be distributed as follows:

- To supplement the Public Works budget as voted under Article 7 Motion C of the 2018 Spring Annual Town Meeting by adding $13,176 to Public Works Salaries.

- To supplement the Administrative Support Services budget as voted under Article 7 Motion E of the 2018 Spring Annual Town Meeting by adding $18,259 to Board of Selectmen Salaries.

- To supplement the Administrative Support Services budget as voted under Article 7 Motion E of the 2018 Spring Annual Town Meeting by adding $2,500 to Finance Salaries.

- To supplement the Committees and Commissions budget as voted under Article 7 Motion F of the 2018 Spring Annual Town Meeting by adding $30,000 to Affordable Housing Trust Expenses.

- To supplement the Shared Services budget as voted under Article 7 Motion G of the 2018 Spring Annual Town Meeting by adding $25,000 to Other Personnel Services - Merit / Performance

With the above Budget be raised from following sources:

Tax Levy of Fiscal Year 2018 $88,935"

MOTION B: (Requires majority vote)

"Move that the Town vote to decrease the appropriation voted by the 2018 Spring Annual Town Meeting under article 7 by the sum of $1,694,125, said sum to be distributed as follows:

- To reduce the Shared Services budget as voted under Article 7 Motion G of the 2018 Spring Annual Town Meeting by reducing the Debt Service line item by $1,694,125.

With the above Budget be reduced from the following sources:

Tax Levy of Fiscal Year 2018 $1,694,125"

MOTION C: (Requires majority vote)

"Move that the Town vote to decrease the appropriation voted by the 2018 Spring Annual Town Meeting under article 7 by the sum of $60,000, said sum to be distributed as follows:

- To reduce the Water and Sewer Operations budget as voted under Article 7 Motion H of the 2018 Spring Annual Town Meeting by $60,000.

With the above Budget be reduced from the following sources:

Water and Sewer User Fees $60,000"

MOTION D (Requires majority vote)

"Move that the Town vote to increase the appropriation voted by the 2018 Spring Annual Town Meeting under article 9 by the sum of $3,011, said sum to be distributed as follows:

- To supplement the Bacon Free Library Salaries and Expenses budget as voted under Article 9 of the 2018 Spring Annual Town Meeting by adding $3,011.

Account	Original Budget	Projected Budget	Variance	Rationale
DPW Admin Salaries Operational	154,647	166,348	11,701	Salary increases for EE #s 2041 & 46324
Engineering Salaries Supervisory	107,465	108,940	1,475	Salary for Town Engineer EE # 46617
BOS Salaries Management	579,797	598,056	18,259	Salary increases for TA EE # 46806 & DTAO EE # 3853
Bacon Salaries Tech/Prof	93,417	96,428	3,011	Salary increases for Tech/Prof staff (hourly rates)
Assessors Salaries Tech/Prof	203,700	206,200	2,500	Salary increase for Asst. Assessor EE # 43742
Merit Increases	150,000	175,000	25,000	Deferred increases from FY18
Other Costs	50,000	80,000	30,000	Increased contribution to Affordable Housing Trust
Debt (KMS)	704,125	-	(704,125)	KMS debt payment will be in FY20
Fire Station Debt	990,000	-	(990,000)	Debt payment will be in FY20
Water Treatment Plant Generators	60000	-	(60,000)	Debt payment will be in FY20
			(1,694,125)	
Snow & Ice Removal	557,872	1,275,587	717,715	Snow & Ice Deficit incurred from FY18

Motion Detail

2018 FATM Article 1 Motion A		
DPW Salaries	13,176	Motion C
BOS Salaries	18,259	Motion E
Finance Salaries	2,500	Motion E
Affordable Housing Trust Expenses	30,000	Motion F
Merit Increases	25,000	Motion G
	88,935	
2018 FATM Article 1 Motion B		
Debt Service	(1,694,125)	
2018 FATM Article 1 Motion C		
Water and Sewer Operations	(60,000)	Motion H
2018 FATM Article 1 Motion D		
Bacon Free Library	3,011	Article 9

Gmail by Google

Patrick Hayes <phayes.fincom@natickma.org>

article 1

1 message

Melissa Malone <mmalone@natickma.org> Sun, Sep 30, 2018 at 10:04 PM
To: Patrick Hayes <phayes.fincom@natickma.org>
Cc: "Bill Chenard," <chenard@natickma.org>, Donna Donovan <ddonovan@natickma.org>

good evening - attached in word is motion 1, and the attached excel document details the breakdown of the respective motions. BOS made favorable recommendation on this last week (unanimous).

of note included within the omnibus, is 25k that was for personnel board bonuses for FY 18. i started on june 1, and modified the existing method of notification and evaluation of this incentive program. it was impossible to make the modification and award the monies by the end of the FY 18. part of motion A seeks to return the 25k so that bonuses for fy 18 can be awarded.

pls. reach out with any questions or comments.

thanks
m.malone

Melissa A. Malone
Town Administrator
13 East Central Street
Natick, MA 01760
508-647-6410

2 attachments

Article 1 Potential Budget Updates 9-20-18 Revised (7) 9.30.18.xlsx
15K

2018 FATM Article 1 (3) 9.30.18.doc
33K

ITEM TITLE: Article 32 - Amend Natick Zoning By-Laws: Inclusionary Affordable Housing Requirements

ITEM SUMMARY:

ATTACHMENTS:

Description	Upload Date	Type
FINAL MOTION approved by Planning Board Oct 17, 2018	10/18/2018	Exhibit
Article 32 - Revised Motion 9-26-18 PB Approved	9/27/2018	Exhibit
Article 42 - Revised Motion 9-26-18 Redlined PB Approved	9/27/2018	Exhibit
State Inclusionary Housing Law from Cathi Collins	10/8/2018	Exhibit
Article 32 - Questionnaire Responses	9/24/2018	Exhibit
Artivcle 32 - Motion	9/24/2018	Exhibit

Motion A:

MOVE to amend **Section 200 - DEFINITIONS** of the Natick Zoning Bylaws replacing the existing definition of 'Affordable Housing Units' with the following:

> "Affordable **Dwelling Units**: Dwelling units that meet all the requirements of Affordable Housing. Also referred to as **Affordable Units**."

and by inserting new definitions for 'Buildable Land', 'Eligible Household', 'Fee-in-lieu-of Units', 'Initial Rent of an Affordable Dwelling Unit', 'Initial Sales Price of an Affordable Dwelling Unit', 'Median Income', 'Phased or Segmented Housing Development', 'Residential Project', and 'Total Development Cost' as follows:

> "**Buildable Land**: A parcel or parcels of property developable for the equivalent number of affordable units for which a building permit may be obtained to construct one or more dwelling units under the provisions of the Natick Zoning Bylaw. The parcel(s) must be developable for this purpose under existing zoning and subdivision regulations without variances or waivers of any kind, including those from other bodies having regulatory authority over the development of any portion unless such variances or waivers have already been obtained."
>
> "**Eligible Household**: A household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56."
>
> "**Fee-in-lieu-of units**: The fee paid to the Natick Affordable Housing Trust in lieu of the construction or provision of affordable units in Residential Projects, determined as a percentage of the Initial Sales Price of an Affordable Dwelling of identical size to the average number of bedrooms in dwellings proposed for the Residential Project."
>
> "**Initial Rent of an Affordable Dwelling Unit**: The initial rent of an Affordable Unit shall be determined to ensure that monthly rent payments and all utility charges shall not exceed thirty percent (30%) of household income of up to seventy percent (70%) of monthly Median Income."
>
> "**Initial Sales Price of an Affordable Dwelling Unit**: The initial sales price of an Affordable Unit shall be determined to ensure that the monthly housing payment shall not exceed thirty percent (30%) of household income of up to seventy percent (70%) of monthly Median Income. Calculation of the initial sales price shall include debt service at prevailing mortgage loan interest rates, calculated according to standards of the Local Initiative Program or other program administered or authorized by the Department of Housing and Community Development), condominium or related fees, property insurance, mortgage insurance (if required), real estate taxes, and parking fees (if any). The Initial Sales Price shall not exceed the Maximum Initial Sales Price, as defined in the MassHousing 40B Affordability Monitoring Handbook."
>
> "**Median Income**: The Eligible Household income limit entitled "Area Median Income," as set forth in or calculated according to regulations promulgated by the United States

Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard as determined by the Massachusetts Department of Housing and Community Development."

"**Phased or Segmented Housing Development**: A Residential Project containing dwellings on one lot or two or more adjoining lots in common ownership or common control for which special permits or building permits are granted within a period of ten years from the first date of approval for any special or building permits for the Residential Project."

"**Residential Project**: Development projects with residential uses including, but not limited to, 1, 1A, 2, 3, 4, 5, and 50B Listed in Use Regulation Schedule III-A.2 and residential overlay districts (including developments with a mix of residential and non-residential uses) subject to the requirements of Natick's Inclusionary Zoning Bylaw. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C. "

"**Total Development Cost**: The sum of all costs for site acquisition, relocation (if applicable), design, engineering, environmental testing and remediation, demolition, construction, interest, and carrying charges necessary to produce the required number of complete, habitable Affordable Dwelling Units required by this bylaw."

"**Unregulated Dwelling Units**: Dwelling units that are not intended to meet the requirements of Affordable Housing, either for rental or homeownership."

This motion proposes to replace, eliminate, or modify the following sections within the Natick Zoning Bylaw that relate to minimum affordable housing requirements, affordability requirements, affordable housing provisions, and/or other affordable provisions/requirements (either local or related to 760 CMR 56) through the following:

Motion B:

MOVE to amend the definition of 'Residential Use 4.*' in Section III-A.2 – USE REGULATIONS SCHEDULE of the Natick Zoning By-Laws, by replacing the words "provided that at least 10% of the total number of dwelling units, or such greater percentage as may be specified elsewhere in this By-Law are Affordable Dwelling Units." with "subject to and compliant with the provisions of Section V-J.", replacing the word "Housing Units" with "Dwelling Units" and replacing the word "A" with "P+" in the columns respectively entitled "RM" and "PCD", so that the pertinent portion of Section III-A.2 – USE REGULATIONS SCHEDULE now reads:

RESIDENTIAL USE	*RG*	*RM*	*RS*	*PCD*	*SH*	*AP*	*DM*	*CII*	*INI*	*INII*	*H*
4. Multiple family building types for not less than three (3)* dwelling units *in any one building, such as: apartment houses and/or town houses,* subject to and compliant with the provisions of Section V-J.	***O***	**P+**	***O*****	**P+**	***A***	***O***	***(*)***	***O***	***O***	***O***	***O***

Motion C:

MOVE to amend the Natick Zoning By-Laws, as follows:

In Section III-A.6.A.3 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP), by:

- deleting the phrase "Provided that additional units are granted by the Planning Board under the foregoing provision, then" in the first paragraph,
- replacing the words "Affordable Housing Units" in the first paragraph with the words "Affordable Dwelling Units",
- inserting, after the word "alternatives," in the first paragraph, the words "consistent with the provisions of Section V-J of this bylaw and"
- replacing the figure "10%" in the table with "15%, consistent with the provisions of Section V-J",
- inserting in two places in the table, after the phrase "Natick Housing Authority" the phrase "or other appropriate public agency, as determined by the SPGA",
- replacing the words "Income Eligible Households" in the table with the words "Eligible Households, consistent with the provisions of Section V-J",
- replacing the words "be used for Affordable Housing" in the table with the words "the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J",
- replacing the words "the construction costs of the particular units" in paragraph b) with "Total Development Costs of the units"
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph b) with the words "Eligible Households",
- replacing the words "Affordable Housing Units" following "development as" in the seventh paragraph with the words "Affordable Dwelling Units, consistent with the provisions of Section V-J" and
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph c) with the words "Eligible Households" and, in the same paragraph, replacing the words "Income Eligible Household" with "Eligible Household"

so that Section III-A.6. A.3 now reads:

> "3- Affordable Dwelling Units shall be provided in any one of the following alternatives, consistent with the provisions of Section V-J of this bylaw and subject to approval of the Planning Board:
>
> A) By Donation to the Natick Housing Authority or other appropriate public agency, as determined by the SPGA ……A minimum of 15%, consistent with the provisions of Section V-J *

B) By Sale to the Natick Housing Authority or other appropriate public agency, as determined by the SPGA .....A minimum of 15%, consistent with the provisions of Section V-J *

C) By sale directly to Eligible Households .....A minimum of 15%, consistent with the provisions of Section V-J *

D) By cash payment to the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J .....**

Notes: * = % of total units in development, rounded up to the next whole number

** = Amount is determined by professional valuation methods as the equivalent value to the units which otherwise would have been provided within the development as Affordable Dwelling Units, consistent with the provisions of Section V-J.

a) Units to be donated to the Natick Housing Authority are subject to the approval of the Natick Housing Authority, and of the applicable federal or state funding agency.

b) Units set aside for sale to the Natick Housing Authority shall be offered at prices which do not exceed the greater of: (i) Total Development Costs of the units, or (ii) the current acquisition cost limits for the particular units under applicable state or federal financing programs. If the Natick Housing Authority is unable to purchase the set-aside units at the time of completion, the units shall be offered for sale to Eligible Households.

c) Units set aside for sale directly to Eligible Households shall be offered only to those households which qualify or meet the definition of Eligible Household.";

and in Section III-A.6. A.4 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by adding after the words "moderate income households" in the second sentence the words ", consistent with the provisions of Section V-J of this bylaw.", and removing the third, fourth and fifth sentences, so that Section III-A.6. A.4 now reads:

"4- Each affordable unit created in accordance with this section shall have limitations governing its resale. Such limitations shall have as their purpose to preserve the long-term affordability of the unit and to ensure its continued availability to low or moderate income households, consistent with the provisions of Section V-J of this bylaw. Such restrictions may also provide that the Natick Housing Authority shall have a prior right of purchase at the price determined according to the restriction for a period of thirty (30) days after the unit is placed on sale. Notice of any proposed sale shall be given to the Planning Board and to the Natick Housing Authority.";

and in Section III-A.6. A.5 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) of the Natick Zoning By-Laws by replacing in the first sentence the words "for a period of six (6) months from the date of first offering for sale, be offered on a 50%-50% basis," with the words ", consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw.", and

removing the second, third and fourth sentences of this section, so that Section III-A.6. A.5 now reads:

> "5- Affordable Units to be offered for sale under the IHOP provisions shall be offered to residents of the Town of Natick and to persons employed within the Town of Natick, consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw.";

and in Section III-A.6. A.6 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by replacing the words "Affordable Housing Units" in each instance where the term appears in the section with the words "Affordable Dwelling Units", and replacing the term "Affordable Housing" with "Affordable Dwelling Units", so that Section III-A.6. now reads:

> "6- In addition to any requirements under Site Plan Review, the Special Permit, or Subdivision approval, an applicant must submit a development plan acceptable to the Planning Board plan indicating how the parcel could be developed under the underlying zoning (i.e. a baseline plan). Any bonus granted shall be calculated from the baseline plan. The development plan showing the bonus units shall also indicate the proposed Affordable Dwelling Units, which must be dispersed throughout the parcel to ensure a mix of market-rate and Affordable Dwelling Units. Affordable Dwelling Units shall have an exterior appearance that is compatible with, and to the extent that is possible, indistinguishable from the market rate units in the development. Affordable Dwelling Units shall contain at least two (2) bedrooms and shall be suitable as to design for family occupancy. The owners of Affordable Dwelling Units shall have all of the rights and privileges accorded to market rate owners regarding any amenities within the development.";

and in Section III-A.6. B.1 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – PURPOSE by replacing the words "Income Eligible Households as defined in 760 CMR 56" in each instance where the term appears in the section with the words "Eligible Households", and inserting after the words "in a manner consistent with" in the first sentence the words "both the provisions of Section V-J and" so that Section III-A.6. A.6 now reads:

> "1. PURPOSE
>
> The purpose of this Housing Overlay Option Plan is to create overlay districts in selected areas of the Town in order to enhance the public welfare by increasing the production of dwelling units affordable to Eligible Households in a manner consistent with both the provisions of Section V-J and the character of the downtown area. In order to encourage utilization of the Town's remaining developable land in a manner consistent with local housing policies and needs, new housing developments in the HOOP Districts are required to contain a proportion of dwelling units affordable to Eligible Households.";

and in Section III-A.6. B.8 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – AFFORDABILITY by replacing the words "The Planning Board shall adopt rules and regulations

regarding" in the second sentence with the words "The provisions of Section V-J of this bylaw shall govern" and by replacing the words "Affordable Housing Units" in each instance they occur with the words "Affordable Dwelling Units", and by adding after the words "employees of the Town of Natick" the words "consistent with the provisions of Section V-J" and by replacing the words "permitted under the Massachusetts General Laws and as approved by the SPGA" with the words ", consistent with the provisions of Section V-J", so that Section III-A.6. A.6 now reads:

"8. AFFORDABILITY

a) Affordability shall be determined in accordance with the definition of Affordable Housing found in Section 200. The provisions of Section V-J of this bylaw shall govern the sale or rental of all Affordable Dwelling Units. Unless otherwise regulated by a Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the Affordable Dwelling Units shall be initially offered to residents and/or employees of the Town of Natick consistent with the provisions of Section V-J. Residency and employment in Natick shall be established through Town Clerk certification.

b) All Affordable Dwelling Units shall be maintained as such in perpetuity, by the use of appropriate restrictions in deeds, lease provisions or other mechanisms, consistent with the provisions of Section V-J.";

and, in Section III-D.1.d USE REGULATIONS FOR LC DISTRICTS, PERMITTED USES, by replacing the words "provided however that at least ten percent (10%) of the total number of units are Affordable Housing Units;" with the words "subject to and consistent with the provisions of Section V-J of this by-law.", so that subsection III-D.1.d now reads:

"d. Multi-family building types for not less than three (3) dwelling units but not more than six (6) dwelling units building, such as: apartment houses and/or town houses, with no more than six (6) dwelling units per acre; subject to and consistent with the provisions of Section V-J of this by-law.";

and, in Section III.E.2.b.1 DOWNTOWN MIXED USE DISTRICT, USES ALLOWED BY SPECIAL PERMIT ONLY, by replacing the phrase "ii) for projects with 3 to 6 total units at least 10% of the units are Affordable Housing Units; for projects that are 7 to 20 total units, at least 15% of the units are Affordable Housing Units; and, for projects that are 21 or more total units, at least 20% of the units are Affordable Housing Units;" with the phrase " ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and", so that Section III.E.2.b.1 now reads:

"1. Multi-family dwellings, provided that:

i) the Special Permit Granting Authority specifically determines that adequate provision has been made for off-street parking;

ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and

iii) the total number of multi-family units shall not exceed the number computed by taking the:

a. Gross Land Area of the parcel times the Maximum Percentage Building Coverage

b. multiplied by the number of floors in the building

c. multiplied by the portion of the Gross Floor Area attributable to residential uses in the building

d. divided by the Gross Floor Area in the building, and

e. divided by 2,500

And, in Section "III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS" replace in its entirety the paragraph entitled "AFFORDABILITY" before the Subsection Title "III-1.F TOWN HOUSE CLUSTER DEVELOPMENT", with the words "AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall comply with the provisions of Section V-J.", so that subsection III-F now reads:

"III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS

AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall be subject to and consistent with the provisions of Section V-J of this by-law.";

and, in Section III-5. F.6 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-NUMBER OF DWELLING UNITS by replacing the words "At least ten percent (10%) of this total number of dwelling units shall be Affordable Housing Units as defined in Section 200 herein." in the second sentence with the words ", subject to and consistent with the provisions of Section V-J of this by-law.", so the sentence now reads:

"The maximum number of dwelling units allowed in a CCD shall equal the "Net Usable Land Area" within the parcel divided by 15,000 square feet then rounded to the nearest whole number, subject to and consistent with the provisions of Section V-J of this by-law.";

and, by replacing Section III-5.F.10 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-AFFORDABILITY, in its entirety and replacing it with the words:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to Eligible Households, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.", so that III-5.F.10.a now reads:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to Eligible Households, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.";

and, by replacing Section III-I.2.6 INDEPENDENT SENIOR LIVING OVERLAY OPTION PLAN - AFFORDABILITY REQUIREMENTS, in its entirety with the following: "AFFORDABILITY REQUIREMENTS: The Applicant shall make provision for affordable housing by complying with all the requirements of Section V-J. The provisions of this section may be satisfied, at the option of the Applicant, by providing for the maintenance and monitoring of a 10% affordability requirement of the total units in an ISLF instead of the designation and restriction of particular specific units within an ISLF if such ISLF is composed entirely of rental units.", so that the Section now reads:

"2.6 AFFORDABILITY REQUIREMENTS: The Applicant shall make provisions for affordable housing by complying with all the requirements of Section V-J. The provisions of this section may be satisfied, at the option of the Applicant, by providing for the maintenance and monitoring of a 10% affordability requirement of the total units in an ISLF instead of the designation and restriction of particular specific units within an ISLF if such ISLF is composed entirely of rental units."

and, in the first sentence of Section III-I.1.8 ASSISTED LIVING RESIDENCES - AFFORDABILITY REQUIREMENTS, by replacing the phrase "the Applicant shall make a one-time payment to the Affordable Housing Trust Fund of Natick in an amount equal to a formula of $75 multiplied by the total number of square feet of area in living units in the ALR. This payment shall be required notwithstanding the fact that the Town may have reached an exemption level of production of affordable units in any year." with the phrase "the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law.", so that the Section now reads:

> "8. Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the ALR do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 and as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD), the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law."

and, in Section III-J.3 – Historic Preservation-Permitted Uses, by inserting the phrase ", subject to and consistent with the provisions of Section V-J:" after "the following additional uses" and deleting in its entirety the paragraph that begins "Provided however that for any project", so that the subsection now reads:

> "3. Permitted Uses. Any use permitted as a matter of right or under a special permit in the District as set forth in the Table of Use Regulations may be undertaken on a parcel to which this Section III-J is to be applied; however, the SPGA may grant a special permit to allow the following additional uses, subject to and consistent with the provisions of Section V-J:
>
> 1. Town Houses;
>
> 2. Apartment House;
>
> 3. Home Occupation/Customary Home Occupation

and, in Section 323.3 HIGHWAY OVERLAY DISTRICTS - Certain Multifamily Residential Uses, by replacing "assisting living facilities" with "Assisted Living Residences" in the first line of the first paragraph; by replacing the word "Unless" that appears after the phrase "*Affordability Requirements:" in the first line of third paragraph with "All development in a Highway Overlay District shall be subject to and consistent with the provisions of Section V-J unless"; and deleting the phrase "the assisted living facilities," in the third line of the third paragraph; and deleting all language following "(DHCD)"; and replacing the comma following ("DHCD") with a period; so that subsection 323.3 Certain Multi-family Residential Uses now reads:

> "In the RC district, hotels, motels, Assisted Living Residences*, Elderly Family Residences* may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326. Combinations of such residential and non-residential uses may also be allowed in the RC district, subject to the requirements of each individual use as set forth elsewhere in this Bylaw.
>
> The provisions of Section 323.1.9, and not this section, shall be applicable to a mixed-use development, including the residential component, in a Regional Center Mixed-Use Development.

* Affordability Requirements: All development in a Highway Overlay District shall be subject to and consistent with the provisions of Section V-J unless a determination has been made satisfactory to the SPGA that living units of Assisted Living Residences and Elderly Family Residence do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD)."

and, in Section VI-DD.2.A.a.1 SPECIAL PERMIT PROCEDURES AND SITE PLAN REVIEW-SPECIAL PERMITS, by inserting "Inclusionary Housing Special Permit (IHSP)" at the end of the list of districts and programs for which the Planning Board acts as Special Permit Granting Authority.

and in Section V-E WAIVERS AND MODIFICATIONS Section V-E.1.d - Purpose and Applicability, by replacing the word "or" as it appears after "1.f, 1.g" with a comma; and by adding ", or 1.i" after "1.h"; so that V-E.1.d now reads

d. Notwithstanding anything else in this zoning by law to the contrary, no waiver and/or modification may be granted unless either i) specifically exempted in 1.e, 1.f, 1.g, 1h, or 1.i below or ii) specifically complying with V-E 2, 3 and 4 below or allowed below in connection with grants of allowable bonus density or intensity." ; and

In Section V-E.1 - Purpose and Applicability, by adding a new section as follows:

"i. This section shall not apply to Section V-J.4.B Density Bonus where necessary to permit any additional unregulated units granted under this section to be constructed on the locus site."

Motion D:

MOVE to amend the Natick Zoning Bylaws by inserting a new section entitled "Section V-J. Inclusionary Affordable Housing Requirements" after "Section V-I. Outdoor Lighting", so that Section V-J now reads:

"**SECTION V-J INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS**

V-J.1 Purpose and Intent

In addition to the purpose and intent set forth in Section 100 and Section 108 of the Natick Zoning Bylaw, the purpose of this bylaw is to encourage development of new housing that is affordable to eligible households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-23 and 760 CMR 56 or other affordable housing programs developed by federal, state, county and local governments so that the affordable dwelling units that result from this bylaw can be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Commonwealth's Department of Housing and Community Development (DHCD).

V-J.2 Applicability of Mandatory Provision of Affordable Units

A. Pursuant to G.L. Chapter 40A, sect. 9, the inclusionary affordable housing requirements of this section for the mandatory provision of affordable units shall apply to the following:

   1. Any Residential Project, including Phased or Segmented Housing Developments, that results in a net increase of two (2) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and

   2. Any Residential Project involving subdivision of land for development of two (2) or more dwelling units under an IHSP; and

   3. Any Residential Project that includes two (2) or more assisted living units and accompanying services, unless a determination has been made satisfactory to the SPGA that such living units do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Massachusetts Department of Housing and Community Development (DHCD).

V-J.3 Special Permit

The development of any Residential Project set forth in Section V-J.2 shall require the grant of an Inclusionary Housing Special Permit (IHSP) from the Planning Board as the Special Permit Granting Authority (SPGA). If the development of a Residential Project is allowed As-of-Right, the Applicant may elect to develop said Project under an IHSP according to the provisions of Section V-J.4.B. A Special Permit may be granted if the proposal meets the requirements of this bylaw and Section VI-DD.2.A.

Since it is the intent of this bylaw to prohibit the subdivision of land or phasing of development to avoid the requirements of this section, it shall be presumed that land held in common ownership at the time this bylaw is approved shall be included for the purposes of calculating the number of affordable units to be provided. It shall also be presumed that phased developments of land held in common ownership shall be considered in its totality rather than as separate projects. These presumptions are rebuttable only upon credible evidence to the contrary. Further, if the SPGA determines that an applicant has established surrogate or subsidiary entities to avoid the requirements of this Section, a special permit shall be denied.

V-J.4 Mandatory Provision of Affordable Units

A. As a condition of approval for a Special Permit, the Applicant shall contribute to the local stock of affordable units in accordance with the following requirements and as illustrated in Table V-J.4:

   1. At least fifteen (15) percent of the units in a Residential Project on a division of land or multiple unit development subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable dwelling units in any one or combination of methods provided for below:

      a) constructed or rehabilitated on the locus subject to the Inclusionary Housing Special Permit (IHSP) (see Section V-J.5) in Residential Projects with six (6) or more net new dwelling units; or

      b) constructed or rehabilitated on a locus different than the one subject to the IHSP (see Section V-J.6) in Residential Projects with six (6) or more net new dwelling units; or

      c) an equivalent fee-in-lieu of units may be made (see Section V-J.7); or

      d) An applicant may offer, and the SPGA may accept, provision of buildable land in fee simple, on or off-site, that the SPGA in its sole discretion determines is suitable for the construction of affordable dwelling units.

   2. At least twenty (20) percent of the units in a Residential Project on a division of land or multiple unit development with thirty (30) or more units in the Downtown Mixed Use

district subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable dwelling units in any one or combination of methods provided for above in V-J.4.A.1.

3. As a condition of approval for an Inclusionary Housing Special Permit, the SPGA may specify to an Applicant the combination of requirements described in Section V-J.4.A.1 to be used to satisfy compliance with the mandatory provision of affordable units. The applicant may offer, and the SPGA may accept, any combination of the requirements described in Section V-J.4.A.1 (a) - (d) provided that in no event shall the total number of units or the value of land provided be less than the equivalent number or value of Affordable Dwelling Units required by this bylaw. Non-acceptance of an offer by the SPGA does not release the Applicant from compliance with all provisions of this bylaw. The value of any combination of the Section V-J.4.A.1 (a) - (d) requirements provided by an applicant shall always be equal to or greater than the Total Development Cost of affordable units required by this bylaw. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question, prepared by a Massachusetts-certified appraiser and dated within six (6) months of the application, as well as other data relevant to the determination of equivalent value. Affordable Dwelling Units produced on-site, off-site, of contributed through fees-in-lieu or buildable land may consist of a mix of housing types, except as provided for below:

    a) In Residential Projects, including Phased and Segmented Developments, comprising six (6) or more single-family dwellings, only Section V-J.4.A.1 requirements (c) and (d) may be offered by the applicant and accepted by the SPGA. For such single-family Residential Projects, the value of Section V-J.4.A.1 requirement (c) offered by the applicant shall equal 100% of the Total Development Cost of affordable units required by this bylaw, while the value of Section V-J.4.A.1 requirement (d) offered by the applicant shall equal 110% of the Total Development Cost of affordable units required by this bylaw.

    b) In Residential Projects, including Phased and Segmented Developments, which result in a net increase of two (2) to five (5) dwelling units, in lieu of the requirements of Section V-J.4.A.1 a), b) or d), the Applicant shall contribute funds to the Natick Affordable Housing Trust. Such funds shall be used to assist households to occupy Affordable Dwelling Units in Natick, including the construction, purchase, or rehabilitation of such units consistent with this section in lieu of the Applicant constructing and offering affordable units within the locus of the proposed development or at an off-site locus, consistent with Section V-J.4.A.1.

Table V-J.4 Mandatory Provision of Affordable Units, by Residential Project Type

Residential Project, type:	**Methods for fulfilling Mandatory Provision of Affordable Units, Section V-J.4.A.1**
Multi-family dwellings, or mix of single- , two- , or multi-family dwellings ***(Projects with 6 or more units)*** *Section V-J4.A.1*	a) Provision of Affordable unit(s), on site b) Provision of Affordable unit(s), off-site* c) Provision of fee-in-lieu of units payment d) Provision of buildable land **at 110% of value of on-site unit*
Single-family dwellings only ***(Projects with 6 or more units)*** *Section V-J4.A.3 (a)*	c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single- , two- , or multi-family dwellings ***(Projects with 2-5 units)*** *Section V-J4.A.3 (b)*	c) Provision of fee-in-lieu of units payment

4. As a condition for the granting of an Inclusionary Housing Special Permit (IHSP), all affordable dwelling units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the SPGA. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development, shall ensure that affordable units are affordable in perpetuity, and shall ensure that affordable units can be counted toward the Natick Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section V-J.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the SPGA and the Building Commissioner.

B. Density Bonus. For Residential Projects consisting entirely of single or two-family homes, or any other Residential Projects that are allowed As-of-Right in the zoning district underlying their location, that yield an increase of two (2) to five (5) net new dwelling units the SPGA may allow the addition of one (1) unregulated Dwelling Unit in return for fee-in-lieu payment as part of compliance with the IHSP process outlined in Section V-J.4.A.1. For Residential Projects consisting entirely of single or two-family homes, or that are allowed By-Right in the zoning district underlying their location, that yield an increase of six (6) or more net new dwelling units the SPGA may allow the addition of two (2) additional Dwelling Units for each Affordable Dwelling Unit provided as part of compliance with the IHSP process outlined in Section V-J.4.A.1. In order to accommodate those additional unregulated units on site, the SPGA may modify minimum lot sizes and any other intensity or density regulations, except height, normally required in

Section IV.B in the applicable zoning district, to a maximum cumulative increase of 35% or, calculated separately, a maximum cumulative decrease of 35%. These shall be calculated according to the provisions of Section V-E.3, to accommodate up to two (2) additional Unregulated Dwelling Unit(s) on a site for each one (1) Affordable Dwelling Unit in compliance with the Inclusionary Housing Special Permit process in Section V-J.4.A, provided that the Floor Area Ratio of all units in the subject Residential Project not exceed 250% of the Maximum Lot Coverage permitted in the applicable zoning district under Section IV.B. The SPGA may place conditions on the number of bedrooms and other characteristics of additional Unregulated Dwelling Units permitted as part of compliance with the provisions outlined in Section V-J.4.A.

Example 1: An Applicant can build a Residential Project on a subdivision with five homes (As-of-Right) in an RSA zone. Under V-J.4.B, that Applicant could request an IHSP, under which they could build six homes (the original 5 unregulated units + 1 additional unregulated unit) and make a payment to the Natick Affordable Housing Trust as specified in Section V-J.7. The Floor Area Ratio (FAR) of each of these six units, as well as the units in total, could not exceed 0.625 (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

Example 2: An Applicant can build a Residential Project on a subdivision with ten two-family homes with twenty dwellings (As-of-Right) in an RG zone. Under V-J.4.B, the Applicant could request an IHSP, which would require three (3) dwellings designated as Affordable Units, but would allow a total of twenty-six units (23 unregulated units + 3 affordable units) to be developed on the site. Alternatively, at the discretion of the SPGA, the Applicant makes some combination of off-site units, payment to the Natick Affordable Housing Trust, or a grant of buildable land, as specified in Sections V-J.6.A, V-J.7, and V-J.4.A.4, respectively in place of providing the three (3) affordable units on-site. The Floor Area Ratio (FAR) of each of these 26 units, as well as the units in total, could not exceed 0.625. (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

V-J.5 Provisions Applicable to Affordable Dwelling Units On- and Off-Site

A. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be distributed proportionately within the development so as not to be in less desirable locations than unregulated units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the unregulated units.

B. Minimum design and construction standards for affordable units. All affordable units constructed or rehabilitated under this bylaw shall comply with the *Design and Construction Standards for Local Initiative Units* specified by the Department of

Housing and Community Development in the *Guidelines for the Local Initiative Program*. Affordable dwelling units shall be integrated with the rest of the development, shall be proportionately distributed in terms of unit size/type and shall be comparable in exterior design, appearance, construction, and quality of materials with other units. Interior features of affordable units shall contain, at a minimum, complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, a microwave oven, and access to laundry facilities. The interior finishes and features of affordable units may differ from those of market-rate units, provided that such finishes and features are durable, of good quality and consistent with current standards for new housing. The Planning Board reserves the right to consult with the Building Commissioner to verify the durability and quality of interior finishes proposed by the applicant and to require changes to better achieve comparability of units. All affordable dwelling units shall have an equivalent level of accessibility as that of the market-rate units.

C. Timing of construction or provision of affordable units or land. Affordable dwelling units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit (% Complete)	**Affordable Housing Unit** (% Required)
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

D. Pricing of Affordable Units. The household size figure used to calculate the Initial Sales Price or Rent of an Affordable Unit shall equal the number of bedrooms in each Affordable Unit plus one (1).

E. Local Preference. Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered for 180 days in the following priority, to:

1. Persons who currently reside within the Town of Natick;
2. Persons who are employed by the Town of Natick;
3. Persons who are employed by businesses located within the Town of Natick;

F. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its Housing Production Plan to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include

a description of the lottery or other process to be used for selecting buyers or tenants.

G. Condominiums. Condominium documentation shall provide the owners of the Affordable Units with full and equal rights to all services and privileges associated with condominium ownership. Condominium fees shall be included in the calculation of Initial Sales Price in Section V-J.8.

H. Legal Review. All legal documents, including but not limited to: affordable housing deed riders, affordability restrictions, leases, condominium documents and/or homeowner's agreements shall be subject to peer legal review by the SPGA, to be paid in full by the Applicant.

V-J.6 Provision of Affordable Dwelling Units Off-Site:

A. An applicant subject to this bylaw may develop, construct or otherwise provide affordable units offsite, valued at one hundred and ten percent (110%) of those required by Section V-J.4 and meeting all quality criteria outlined in Section V-J.5.B. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location, housing type and character of the off-site units to be provided must be approved by the SPGA as an integral element of the Inclusionary Housing Special Permit review and approval process.

B. If the applicant's proposal involves existing dwelling units, the special permit application must demonstrate to the SPGA's satisfaction that the following conditions have or will be met prior to the issuance of any building permits for the Residential Project.

1. Evidence that the applicant owns or will own the premises
2. The dwelling unit(s) has/have no violations of the State Building Code or Article II of the State Sanitary Code
3. The dwelling units(s) has/have no lead paint hazards
4. The dwelling unit(s) is/are/will be vacant
5. No Eligible Households will be displaced permanently
6. No existing affordable dwelling units will be eliminated.

C. Approved off-site units shall also comply with the same project schedule, affordability provisions and marketing plan requirements that apply to the Residential Project units.

V-J.7 Calculation of Fees-in-Lieu-of Affordable Dwelling Units

Calculation of fee-in-lieu-of units. For the purposes of this bylaw the fee-in-lieu of the construction or provision of affordable units shall be determined as a per-unit cost for all units in the Residential Project, calculated as: 0.125 x Initial Sales Price of an Affordable Dwelling Unit of identical size (in terms of average number of bedrooms), and shall be payable on the same schedule set forth in Section V-J.5.C and in full prior to issuance of a final occupancy permit. The SPGA shall annually review the acceptable value of the fee in-lieu-of units according to maximum income levels promulgated by the Commonwealth's Department of Housing and Community Development.

Example 3: An Applicant proposes a Residential Project with four (4) two-bedroom single-family homes under an Inclusionary Housing Special Permit. Under V-J.4.A.3 (b), the Applicant would be required to pay a fee to the Natick Affordable Housing Trust equal to (4 dwellings x 0.125 x Initial Sales Price for an Affordable two-bedroom Dwelling Unit) as specified in Section V.J.4.A.3 (b)

The SPGA may reduce the applicable fee-in-lieu-of unit(s) charge by up to fifty percent (50%) for each dwelling in a housing development with initial rents or sale prices that are affordable to households earning 81-120% of Median Income, calculated according to standards promulgated by the Department of Housing and Community Development (DHCD), and in compliance with the household size provisions of Section V-J.5.D of this bylaw.

V-J.8 Maximum Incomes and Selling Prices: Initial Sale

A. To ensure that only eligible households purchase affordable dwelling units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Department of Housing and Community Development (DHCD), and as may be revised from time to time.

B. The maximum housing cost for affordable units created under this bylaw is as established by the Department of Housing and Community Development (DHCD), as specified in the guidelines for the Local Initiative Program, or as revised by the Town.

V-J.9 Preservation of Affordability; Restrictions on Resale

A. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section V-J.4.A.4). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property recorded at the Registry of Deeds and shall be in force in perpetuity. The terms "Base Income Number," Resale Price Multiplier," "Resale Fee," "Approved Capital Improvements," and "Maximum Resale Price" are as defined in the MassHousing 40B Affordability Monitoring Handbook.

1. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the sum of

   i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, PLUS

   ii) the Resale Fee and any necessary marketing expenses (including the broker's fees) as may have been approved by the Monitoring Agent, PLUS

   iii) Approved Capital Improvements, if any, made with the consent of the Town and Department of Housing and Community Development (DHCD).

   In no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Household could obtain mortgage financing (such purchase price as determined by the Monitoring Agent using the same methodology used by DHCD for its Local Initiative Program or similar comprehensive permit program). The Maximum Resale Price shall not be less than the purchase price paid for the Property by the owner unless the Owner agrees to accept a lower price.

2. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town of Natick, consistent with model riders prepared by the Department of Housing and Community Development (DHCD), granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located within 90 days of receiving notification.

3. The SPGA shall require, as a condition for an Inclusionary Housing Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section V-J.9.A.2 above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction has been recorded.

V-J.10 Periodic Review of Inclusionary Housing Requirements

In conjunction with the five-year update of the Town's Housing Production Plan, the Natick Affordable Housing Trust shall evaluate the Inclusionary Affordable Housing Requirements. Such evaluation shall include a report provided to the Board of Selectmen and the Planning Board reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing projects and all housing in Natick. The Natick Affordable Housing Trust shall also prepare an annual report to the Planning Board on the Inclusionary Housing Program.

V-J.11 Conflict with Other Bylaws

The provisions of this section shall be considered supplemental to existing zoning bylaws except for the provisions of Section III-A.6.C (Smart Growth Overlay (SGO)). To the extent that a conflict exists between this section and others, the more restrictive bylaws or provisions therein shall apply.

V-J.12 Severability:

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

Motion A:

MOVE to amend **Section 200 - DEFINITIONS** of the Natick Zoning Bylaws replacing the existing definition of 'Affordable Housing Units' with the following:

> "Affordable **Dwelling Units**: Dwelling units which meet all the requirements of Affordable Housing. Affordable rental units shall be priced such that the rent (including utilities) shall not exceed 30% of the income of a household at 70% of Median Income. Affordable homeownership units shall be priced such that the annual debt service on a mortgage plus taxes, insurance, and condominium fees (assuming a 5% down payment) shall not exceed 30% of the income of a household earning 70% of Median Income."

and by inserting new definitions for 'Buildable Land', 'Eligible Household', 'Fee-in-lieu-of Units', 'Initial Rent of an Affordable Dwelling Unit', 'Initial Sales Price of an Affordable Dwelling Unit', 'Median Income', 'Phased or Segmented Housing Development', 'Residential Project', 'Residential Project (2-5 units)', 'Residential Project (6 or more units)' and 'Total Development Cost' as follows:

> "**Buildable Land**: A parcel or parcels of property for which a building permit may be obtained to construct one or more dwelling units under the provisions of the Natick Zoning Bylaw. "
>
> "**Eligible Household**: For affordable rental units, a household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. For affordable ownership units, a household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. "
>
> "**Fee-in-lieu-of units**: The fee paid to the Natick Affordable Housing Trust in-lieu of the construction or provision of affordable units in Residential Projects with two (2) to five (5) dwelling units, determined as a percentage of the Initial Sales Price of an Affordable Dwelling of identical size to the average number of bedrooms in dwellings proposed for the Residential Project. "
>
> "**Initial Rent of an Affordable Dwelling Unit**: The initial rent of an Affordable Unit shall be determined to ensure that monthly rent payments and all utility charges shall not exceed thirty percent (30%) of seventy percent (70%) of monthly Median Income. "
>
> " **Initial Sales Price of an Affordable Dwelling Unit**: The initial sales price of an Affordable Unit shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, calculated according to standards of the Local Initiative Program or other program

administered or authorized by the Department of Housing and Community Development), condominium or related fees, property insurance, mortgage insurance (if required), real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of seventy percent (70%) of monthly Median Income. "

" **Median Income**: The income set forth in or calculated according to regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard as determined by the Massachusetts Department of Housing and Community Development. "

"**Phased or Segmented Housing Development**: A Residential Project containing dwellings on one lot, or two or more adjoining lots in common ownership or common control for which special permits or building permits are granted within a period of ten years from the first date of approval for any special or building permits for the Housing Project. "

"**Residential Project**: Development projects with residential uses (including developments with a mix of residential and non-residential uses) subject to the requirements of Natick's Inclusionary Zoning Bylaw. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C. "

"**Residential Project (2-5 units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with two (2), three (3), four (4) or five (5) dwelling units. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C."

"**Residential Project (6 or more units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with six (6) or more dwelling units. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C. "

"**Total Development Cost**: The sum of all costs for site acquisition, relocation, design, engineering, environmental testing and remediation, demolition, construction and equipment, interest, and carrying charges necessary to produce the required number of complete, habitable Affordable Dwelling Units required by this bylaw."

"**Unregulated Dwelling Units**: Dwelling units that do not meet all the requirements of Affordable Housing, either for rental or homeownership."

Motion B:

Replace, eliminate, or modify the following sections within the Natick Zoning Bylaw that relate to minimum affordable housing requirements, affordability requirements, affordable housing provisions, and/or other affordable provisions/requirements (either local or related to 760 CMR 56) through the following:

MOVE to amend the definition of 'Residential Use 4.*' in Section III-A.2 – USE REGULATIONS SCHEDULE of the Natick Zoning By-Laws, by replacing the words "provided that at least 10% of the total number of dwelling units, or such greater percentage as may be specified elsewhere in this By-Law are Affordable Dwelling Units." with "subject to and compliant with the provisions of Section V-J.", replacing the word "Housing Units" with "Dwelling Units" and replacing the word "A" with" P+" in the columns respectively entitled "RM" and "PCD", so that the pertinent portion of Section III-A.2 – USE REGULATIONS SCHEDULE now reads:

RESIDENTIAL USE	*RG*	*RM*	*RS*	*PCD*	*SH*	*AP*	*DM*	*CII*	*INI*	*INII*	*H*
4. Multiple family building types for not less than three (3)* dwelling units *in any one building, such as: apartment houses and/or town houses,* subject to and compliant with the provisions of Section V-J.	***O***	**P+**	***O*****	**P+**	***A***	***O***	***(*)***	***O***	***O***	***O***	***O***

Motion C:

MOVE to amend the Natick Zoning By-Laws, as follows:

In Section III-A.6.A.3 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP), by:

- replacing the words “Affordable Housing Units” in the first paragraph with the words “Affordable Dwelling Units”,
- inserting, after the word “alternatives,” in the first paragraph, the words “consistent with the provisions of Section V-J of this bylaw and”
- replacing the figure “10%” in the table with “15%, consistent with the provisions of Section V-J”,
- replacing the words “Income Eligible Households” in the table with the words “Eligible Households, consistent with the provisions of Section V-J”,
- replacing the words “be used for Affordable Housing” in the table with the words “the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J”,
- replacing the words “Income Eligible Households as defined in 760 CMR 56” in paragraph b) with the words “Eligible Households”,
- replacing the words “Affordable Housing Units” following “development as” in the seventh paragraph with the words “Affordable Dwelling Units, consistent with the provisions of Section V-J” and
- replacing the words “Income Eligible Households as defined in 760 CMR 56” in paragraph c) with the words “Eligible Households”

so that Section III-A.6. A.3 now reads:

“3- Provided that additional units are granted by the Planning Board under the foregoing provision then Affordable Dwelling Units shall be provided in any one of the following alternatives, subject to approval of the Planning Board:

A) By Donation to the Natick Housing Authority…….A minimum of 15%, consistent with the provisions of Section V-J *

B) B) By Sale to the Natick Housing Authority .....A minimum of 15%, consistent with the provisions of Section V-J *

C) By sale directly to Eligible Households *.....A minimum of* 15%, consistent with the provisions of Section V-J *

D) By cash payment to the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J *.....* **

*Notes: * = % of total units in development, rounded up to the next whole number*

*** = Amount is determined by professional valuation methods as the equivalent value to the units which otherwise would have been provided within the development as* Affordable Dwelling Units, consistent with the provisions of Section V-J.

a) Units to be donated to the Natick Housing Authority are subject to the approval of the Natick Housing Authority, and of the applicable federal or state funding agency.

b) Units set aside for sale to the Natick Housing Authority shall be offered at prices which do not exceed the greater of: (i) the construction costs of the particular units, or (ii) the current acquisition cost limits for the particular units under applicable state or federal financing programs. If the Natick Housing Authority is unable to purchase the set-aside units at the time of completion, the units shall be offered for sale to Eligible Households.

c) Units set aside for sale directly to Eligible Households *shall be offered only to those households which qualify or meet the definition of* Eligible Household*.";*

and in Section III-A.6. A.4 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by adding after the words "moderate income households" in the second sentence the words ", consistent with the provisions of Section V-J of this bylaw.", and removing the third, fourth and fifth sentences, so that Section III-A.6. A.4 now reads:

"4- Each affordable unit created in accordance with this section shall have limitations governing its resale. Such limitations shall have as their purpose to preserve the long-term affordability of the unit and to ensure its continued availability to low or moderate income households, consistent with the provisions of Section V-J of this bylaw*. Such restrictions may also provide that the Natick Housing Authority shall have a prior right of purchase at the price determined according to the restriction for a period of thirty (30) days after the unit is placed on sale. Notice of any proposed sale shall be given to the Planning Board and to the Natick Housing Authority.";*

and in Section III-A.6. A.5 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) of the Natick Zoning By-Laws by replacing in the first sentence the words "for a period of six (6) months from the date of first offering for sale, be offered on a 50%-50% basis," with the words ", consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw.", and removing the second, third and fourth sentences of this section, so that Section III-A.6. A.5 now reads:

"5- Affordable Units to be offered for sale under the IHOP provisions shall be offered to residents of the Town of Natick and to persons employed within the Town of Natick, consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw*.";*

and in Section III-A.6. A.6 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by replacing the words "Affordable Housing Units" in each instance where the term appears in the section with the words "Affordable Dwelling Units", and replacing the term "Affordable Housing" with "Affordable Dwelling Units", so that Section III-A.6. A.6 now reads:

> *"6- In addition to any requirements under Site Plan Review, the Special Permit, or Subdivision approval, an applicant must submit a development plan acceptable to the Planning Board plan indicating how the parcel could be developed under the underlying zoning (i.e. a baseline plan). Any bonus granted shall be calculated from the baseline plan. The development plan showing the bonus units shall also indicate the proposed* Affordable Dwelling Units*, which must be dispersed throughout the parcel to ensure a mix of market-rate and* Affordable Dwelling Units*.* Affordable Dwelling Units *shall have an exterior appearance that is compatible with, and to the extent that is possible, indistinguishable from the market rate units in the development. Affordable Housing Units shall contain at least two (2) bedrooms and shall be suitable as to design for family occupancy. The owners of* Affordable Dwelling Units *shall have all of the rights and privileges accorded to market rate owners regarding any amenities within the development.";*

and in Section III-A.6. B.1 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – PURPOSE by replacing the words "Income Eligible Households as defined in 760 CMR 56" in each instance where the term appears in the section with the words "Eligible Households", and inserting after the words "in a manner consistent with" in the first sentence the words "both the provisions of Section V-J and" so that Section III-A.6. A.6 now reads:

> *"1. PURPOSE*
>
> *The purpose of this Housing Overlay Option Plan is to create overlay districts in selected areas of the Town in order to enhance the public welfare by increasing the production of dwelling units affordable to Eligible Households in a manner consistent with* both the provisions of Section V-J and *the character of the downtown area. In order to encourage utilization of the Town's remaining developable land in a manner consistent with local housing policies and needs, new housing developments in the HOOP Districts are required to contain a proportion of dwelling units affordable to Eligible Households.";*

and in Section III-A.6. B.8 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – AFFORDABILITY by replacing the words "The Planning Board shall adopt rules and regulations regarding" in the second sentence with the words "The provisions of Section V-J of this bylaw shall govern" and by replacing the words "Affordable Housing Units" in each instance they occur with the words "Affordable Dwelling Units", by adding after the

words “employees of the Town of Natick” the words “consistent with the provisions of Section V-J” and by replacing the words “permitted under the Massachusetts General Laws and as approved by the SPGA” with the words “, consistent with the provisions of Section V-J”, so that Section III-A.6. A.6 now reads:

“8. AFFORDABILITY

a) Affordability shall be determined in accordance with the definition of Affordable Housing found in Section 200. The provisions of Section V-J of this bylaw shall govern *the sale or rental of all* Affordable Dwelling Units*. Unless otherwise regulated by a Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the* Affordable Dwelling Units *shall be initially offered to residents and/or employees of the Town of Natick* consistent with the provisions of Section V-J*. Residency and employment in Natick shall be established through Town Clerk certification.*

b) All Affordable Dwelling Units *shall be maintained as such in perpetuity, by the use of appropriate restrictions in deeds, lease provisions or other mechanisms,* consistent with the provisions of Section V-J*.”;*

and, in Section III-D.1.d USE REGULATIONS FOR LC DISTRICTS, PERMITTED USES, by replacing the words “provided however that at least ten percent (10%) of the total number of units are Affordable Housing Units;” with the words “subject to and consistent with the provisions of Section V-J of this by-law.”, so that subsection III-D.1.d now reads:

“d. Multi-family building types for not less than three (3) dwelling units but not more than six (6) dwelling units building, such as: apartment houses and/or town houses, with no more than six (6) dwelling units per acre; subject to and consistent with the provisions of Section V-J of this by-law.*”;*

and, in Section III.E.2.b.1 DOWNTOWN MIXED USE DISTRICT, USES ALLOWED BY SPECIAL PERMIT ONLY, by replacing the phrase “ii) for projects with 3 to 6 total units at least 10% of the units are Affordable Housing Units; for projects that are 7 to 20 total units, at least 15% of the units are Affordable Housing Units; and, for projects that are 21 or more total units, at least 20% of the units are Affordable Housing Units;” with the phrase “ ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and”, so that Section III.E.2.b.1 now reads:

“1. Multi-family dwellings, provided that:

i) the Special Permit Granting Authority specifically determines that adequate provision has been made for off-street parking;

ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and

iii) the total number of multi-family units shall not exceed the number computed by taking the:

a. Gross Land Area of the parcel times the Maximum Percentage Building Coverage

b. multiplied by the number of floors in the building

c. multiplied by the portion of the Gross Floor Area attributable to residential uses in the building

d. divided by the Gross Floor Area in the building, and

e. divided by 2,500

And, in Section "III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS" replace in its entirety the paragraph entitled "AFFORDABILITY" before the Subsection Title "III-1.F TOWN HOUSE CLUSTER DEVELOPMENT", with the words "AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall comply with the provisions of Section V-J.", so that subsection III-F now reads:

"III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS

AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall be subject to and consistent with the provisions of Section V-J of this by-law.*";*

and, in Section III-5. F.6 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-NUMBER OF DWELLING UNITS by replacing the words "At least ten percent (10%) of this total number of dwelling units shall be Affordable Housing Units as defined in Section 200 herein." in the second sentence with the words ", subject to and consistent with the provisions of Section V-J of this by-law.", so the sentence now reads,

"*The maximum number of dwelling units allowed in a CCD shall equal the "Net Usable Land Area" within the parcel divided by 15,000 square feet then rounded to the nearest whole number*, subject to and consistent with the provisions of Section V-J of this by-law.";

and, by replacing Section III-5.F.10 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-AFFORDABILITY, in its entirety and replacing it with the words:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.", so that III-5.F.10.a now reads:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.";

and, by replacing Section III-I.2.6 INDEPENDENT SENIOR LIVING OVERLAY OPTION PLAN - AFFORDABILITY REQUIREMENTS, in its entirety with the phrase "AFFORDABILITY REQUIREMENTS: The Applicant shall make provision for affordable housing by complying with all the requirements of Section V-J.", so that the Section now reads:

"2.6 AFFORDABILITY REQUIREMENTS: The Applicant shall make provisions for affordable housing by complying with all the requirements of Section V-J."

and, in the first sentence of Section III-I.8 ASSISTED LIVING RESIDENCES - AFFORDABILITY REQUIREMENTS, by replacing the phrase "the Applicant shall make a one-time payment to the Affordable Housing Trust Fund of Natick in an amount equal to a formula of $75 multiplied by the total number of square feet of area in living units in the ALR. This payment shall be required notwithstanding the fact that the Town may have reached an exemption level of production of affordable units in any year." with the phrase "the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law.", so that the Section now reads:

"*8. Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the ALR do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 and as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD),* the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law."

and, in Section III-J.3 – Historic Preservation-Permitted Uses, by inserting the phrase ", subject to and consistent the provisions of Section V-J:" after "the following additional uses" so that the subsection now reads:

"3. Permitted Uses. Any use permitted as a matter of right or under a special permit in the District as set forth in the Table of Use Regulations may be undertaken on a parcel to which this Section III-J is to be applied; however, the SPGA may grant a special permit to allow the following additional uses, subject to and consistent the provisions of Section V-J*:*

1. Town Houses;

2. Apartment House;

3. Home Occupation/Customary Home Occupation

And, in Section 323.3 HIGHWAY OVERLAY DISTRICTS - Certain Multifamily Residential Uses, by inserting after the phrase "* Affordability Requirements" in the third paragraph the words " All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J," so that subsection 323.3 Certain Multi-family Residential Uses now reads:

"In the RC district, hotels, motels, assisted living facilities, Elderly Family Residences* may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326. Combinations of such residential and non-residential uses may also be allowed in the RC district, subject to the requirements of each individual use as set forth elsewhere in this Bylaw.*

The provisions of Section 323.1.9, and not this section, shall be applicable to a mixed-use development, including the residential component, in a Regional Center Mixed-Use Development.

** Affordability Requirements:* All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J*, unless a determination has been made satisfactory to the SPGA that living units of the assisted*

living facilities, Assisted Living Residences and Elderly Family Residence do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD."

And, in Section V-E.3 WAIVERS AND MODIFICATIONS – Limitations and Restrictions, by inserting after the phrase "sky exposure plane" in the first paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J."; by inserting after the phrase "considered separately" in the second paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J." and by inserting after the phrase "and/or waived" in the sixth paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.", so that subsection V-E.3 Limitations and Restrictions now reads:

3. Limitations and Restrictions

a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure, or sky-exposure plane, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

f. Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

Motion D:

MOVE to amend the Natick Zoning Bylaws by inserting a new section entitled "Section V-J. Inclusionary Affordable Housing Requirements" after "Section V-I. Outdoor Lighting", so that Section V now reads:

"**SECTION V-J INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS**

V-J.1 Purpose and Intent:

The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-23 and 760 CMR 56 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Commonwealth's Department of Housing and Community Development (DHCD). Definitions for Affordable Dwelling Unit and Eligible Household can be found in the Definitions Section.

V-J.2 Applicability of Mandatory Provision of Affordable Units

A. In all zoning districts and overlay districts, the inclusionary affordable housing requirements of this section for the mandatory provision of affordable units shall apply to the following uses, consistent with the requirements set forth in G. L. c. 40B sect. 20-23 and 760 CMR 56:

1. Any Residential Project, including Phased or Segmented Housing Developments, that results in a net increase of two (2) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
2. Any Residential Project involving subdivision of land for development of two (2) or more dwelling units; and
3. Any life care facility development (including Assisted Living Residences and Elderly Family Residences) that includes two (2) or more assisted living units and accompanying services, unless a determination has been made satisfactory to the SPGA that living units of the life care facility do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Massachusetts Department of Housing and Community Development (DHCD).

V-J.3 Special Permit:

The development of any Residential Project set forth in Section V-J.2 (above) shall require the grant of a Inclusionary Housing Special Permit from the designated Special Permit Granting Authority (SPGA) for the zoning district in which the Residential Project is located. If the development of a Residential Project set forth in Section V-J.2 is allowed By-Right in the zoning district in which the Project is located, the Applicant may elect to develop said Project under an Inclusionary Housing Special Permit according to the provisions of Section V-J.4.B. A Special Permit may be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special Permit shall be as defined in Section VI of the Town's zoning bylaw.

V-J.4 Mandatory Provision of Affordable Units:

A. As a condition of approval for a Special Permit, the Applicant shall contribute to the local stock of affordable units in accordance with the following requirements:

1. At least fifteen (15) percent of the units in a Residential Project on a division of land or multiple unit development subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable housing units in any one or combination of methods provided for below:

   a) constructed or rehabilitated on the locus subject to the Inclusionary Housing Special Permit (see Section V-J.5) in Residential Projects with six (6) or more net new dwelling units; or

   b) constructed or rehabilitated on a locus different than the one subject to the Inclusionary Housing Special Permit (see Section V-J.6) in Residential Projects with six (6) or more net new dwelling units; or

   c) an equivalent fee-in-lieu of units may be made (see Section V-J.7); or

   d) An applicant may offer, and the SPGA may accept, provision of buildable land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units.

2. At least twenty (20) percent of the units in a Residential Project on a division of land or multiple unit development with thirty (30) or more units in the Downtown Mixed Use district subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable housing units in any one or combination of methods provided for above in V-J.4.A.1.

3. As a condition of approval for an Inclusionary Housing Special Permit, the SPGA may specify to an Applicant the combination of requirements described in Section V-J.4.A.1 to be used to satisfy compliance with the mandatory provision of affordable units. The

applicant may offer, and the SPGA may accept, any combination of the requirements described in Section V-J.4.A.1 (a) - (d) provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of Affordable Dwelling Units required by this bylaw. Non-acceptance of an offer by the SPGA does not release the Applicant from compliance with all provisions of this bylaw. The value of any combination of the Section V-J.4.A.1 (a) - (d) requirements provided by an applicant shall always be equal to or greater than the Total Development Cost of affordable units required by this bylaw. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value. Affordable Dwelling Units developed under a combination of requirements described in Section V-J.4.A.1 (a) - (d) may consist of a mix of housing types, except as provided for below:

a) In Residential Projects consisting entirely of single-family dwellings, only Section V-J.4.A.1 requirements (c) and (d) may be offered by the applicant and accepted by the SPGA. For such single-family Residential Projects, the value of Section V-J.4.A.1 requirement (c) offered by the applicant shall equal 100% of the Total Development Cost of affordable units required by this bylaw, while the value of Section V-J.4.A.1 requirement (d) offered by the applicant shall equal 110% of the Total Development Cost of affordable units required by this bylaw.

b) In Residential Projects, including Phased and Segmented Developments, which result in a net increase of two (2) to five (5) dwelling units, in lieu of the requirements of Section V-J.4.A.1 a), b) or d), the Applicant shall contribute funds to the Natick Affordable Housing Trust to be used for assisting households to occupy Affordable Dwelling Units in Natick in lieu of the Applicant constructing and offering affordable units within the locus of the proposed development or at an off-site locus, consistent Section V-J.4.A.1 requirements (c) and consistent with G. L. c. 40B sect. 20-23 and 760 CMR 56.

Table V-J.4 Mandatory Provision of Affordable Units, by Residential Project Type

Residential Project, type:	**Methods for fulfilling Mandatory Provision of Affordable Units, Section V-J.4.A.1**
Multi-family dwellings, or mix of single and multi-family dwellings ***(Projects with 6 or more units)*** *Section V-J4.A.1*	a) Provision of Affordable unit(s), on site b) Provision of Affordable unit(s), off-site c) Provision of fee-in-lieu of units payment d) Provision of buildable land

Single-family dwellings only ***(Projects with 6 or more units)*** *Section V-J4.A.3 (a)*	c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single family dwellings or multi-family dwellings ***(Projects with 2-5 units)*** *Section V-J4.A.3 (b)*	c) Provision of fee-in-lieu of units payment

4. As a condition for the granting of an Inclusionary Housing Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the SPGA. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development, shall ensure that affordable units are affordable in perpetuity, and shall ensure that affordable units can be counted toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section V-J.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the SPGA and the Inspector of Buildings.

B. Density Bonus. For Residential Projects consisting entirely of single or two-family homes, or any other Residential Projects that are allowed By-Right in the zoning district underlying their location, that yield an increase of two (2) to five (5) net new dwelling units the SPGA may allow the addition of one (1) Unregulated Dwelling Unit as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.A.1. For Residential Projects consisting entirely of single or two-family homes, or that are allowed By-Right in the zoning district underlying their location, that yield an increase of six (6) or more net new dwelling units the SPGA may allow the addition of two (2) Unregulated Dwelling Units for each Affordable Dwelling Unit provided as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.A.1. The SPGA may modify minimum lot sizes and any other intensity or density regulations, except height, normally required in Section IV.B in the applicable zoning district, to a maximum increase or decrease of 35% on a cumulative basis, calculated according to the provisions of Section V-E.3, to accommodate up to two (2) additional Unregulated Dwelling Unit(s) on a lot for each one (1) Affordable Dwelling Unit in compliance with the Inclusionary Housing Special Permit process in Section V-J.4.A, provided that the Floor Area Ratio of all such units in the subject Residential Project not exceed 250% of the Maximum Lot Coverage permitted in the applicable zoning district under Section IV.B. The SPGA may place conditions on the number of bedrooms and other characteristics of additional Unregulated Dwelling Units permitted as part of compliance with the provisions outlined in Section V-J.4.A.

Example 1: An Applicant can build a Residential Project on a subdivision with five homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, under which they could build six homes (the original 5 units + 1 bonus unit) and make a payment to the Natick Affordable Housing Trust as specified in Section V.J.7. The Floor Area Ratio (FAR) of each of these six units could not exceed 0.625 (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

Example 2: An Applicant can build a Residential Project on a subdivision with twenty homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, which would require three (3) homes designated as Affordable Dwellings, but would allow a total of twenty-six homes (20 units + 6 bonus units) to be developed on the site. The Floor Area Ratio (FAR) of each of these 26 units could not exceed 0.625. (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

V-J.5 Provisions Applicable to Affordable Housing Units On- and Off-Site:

A. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated proportionately within the development so as not to be in less desirable locations than unregulated units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the unregulated units.

B. Minimum design and construction standards for affordable units. All affordable units constructed or rehabilitated under this bylaw shall comply with the Design and Construction standards for Local Initiative Units specified by the Department of Housing and Community Development in the guidelines for the Local Initiative Program. Affordable housing units shall be integrated with the rest of the development, shall be proportionately distributed in terms of unit size/type and shall be compatible in exterior design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall contain, at a minimum, complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities.

C. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit (% Complete)	**Affordable Housing Unit** (% Required)
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

D. Pricing of Affordable Units. The household size figure used to calculate the Initial Sales Price or Rent of an Affordable Unit shall be equal the number of bedrooms in each Affordable Unit plus one (1).

E. Local Preference. Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered, in the following priority, to:

1. Persons who currently reside within the Town of Natick;
2. Persons whose spouse, son, daughter, father, mother, brother, or sister currently reside in the Town of Natick;
3. Persons who are employed by the Town of Natick or by businesses located within the Town of Natick;

F. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

G. Condominiums. Condominium documentation shall provide the owners of the Affordable Units with full and equal rights to all services and privileges associated with condominium ownership.

H. Legal Review. All legal documents, including but not limited to: affordable housing deed riders, affordability restrictions, leases, condominium documents and/or homeowner's agreements shall be subject to peer legal review by the SPGA, to be paid in full by the Applicant.

V-J.6 Provision of Affordable Housing Units Off-Site:

A. An applicant subject to this bylaw may develop, construct or otherwise provide affordable units offsite, equivalent to those required by Section V-J.4 and meeting all quality criteria outlined in Section V-J.5. B. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location, housing type and character of the off-site units to be provided shall be approved by the SPGA as an integral element of the Inclusionary Housing Special Permit review and approval process.

V-J.7 Calculation of Fees-in-Lieu-of Affordable Housing Units:

A. Calculation of fee-in-lieu-of units. For the purposes of this bylaw the fee-in-lieu of the construction or provision of affordable units shall be determined as a per-unit cost calculated as: 0.125 x Initial Sales Price of an Affordable Dwelling Unit of identical size (in terms of average number of bedrooms), calculated according to the provisions of Section V-J.8, and shall be payable in full prior to issuance of a final occupancy permit. The SPGA may annually adjust the acceptable value of the fee in-lieu-of units according to maximum income levels established by the Commonwealth's Department of Housing and Community Development.

Example 3: An Applicant proposes a Residential Project with four two-bedroom homes under an Inclusionary Housing Special Permit. Under V-J.4A.2.b, the Applicant would be required to pay a fee to the Natick Affordable Housing Trust equal to (4 dwellings x 0.125 x Initial Sales Price for an Affordable two-bedroom Dwelling Unit) as specified in Section V.J.4.A.2 (b)

1. The SPGA may reduce the applicable fee-in-lieu-of unit(s) charge by up to fifty percent (50%) for each dwelling in a housing development with initial rents or sale prices that are affordable to households earning 81-120% of Median Income, calculated according to standards of the Department of Housing and Community Development (DHCD), and in compliance with the household size provisions of Section V-J.5.D of this bylaw.
2. Schedule of fees-in-lieu-of-unit(s) payments. Fees-in-lieu-of-unit(s) payments shall be made according to the schedule set forth in Section V-J.5.C, above.

V-J.8 Maximum Incomes and Selling Prices: Initial Sale:

A. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Department of Housing and Community Development (DHCD), and as may be revised from time to time.

B. The maximum housing cost for affordable units created under this bylaw is as established by the Department of Housing and Community Development (DHCD), as specified in the guidelines for the Local Initiative Program, or as revised by the Town.

V-J.9 Preservation of Affordability; Restrictions on Resale:

A. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section V-J.4.A.4). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

1. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section V-J.9.A, above.
2. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town of Natick, consistent with model riders prepared by the Department of Housing and Community Development (DHCD), granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.
3. The SPGA shall require, as a condition for Inclusionary Housing Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section V-J.9.A.2 above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

V-J.10 Conflict with Other Bylaws/Ordinances:

The provisions of this section shall be considered to supersede existing zoning bylaws/ordinances except for the Smart Growth Overlay (SGO) district. To the extent that a conflict exists between this section and others, this section, or provisions therein, shall apply.

V-J.11 Severability:

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

Motion A:

MOVE to amend **Section 200 - DEFINITIONS** of the Natick Zoning Bylaws replacing the existing definition of 'Affordable Housing Units' with the following:

> "Affordable **Dwelling Units**: Dwelling units which meet all the requirements of Affordable Housing. Affordable rental units shall be priced such that the rent (including utilities) shall not exceed 30% of the income of a household at 70% of Median Income. Affordable homeownership units shall be priced such that the annual debt service on a mortgage plus taxes, insurance, and condominium fees (assuming a 5% down payment) shall not exceed 30% of the income of a household earning 70% of Median Income."

and by inserting new definitions for 'Buildable Land', 'Eligible Household', 'Fee-in-lieu-of Units', 'Initial Rent of an Affordable Dwelling Unit', 'Initial Sales Price of an Affordable Dwelling Unit', 'Median Income', 'Phased or Segmented Housing Development', 'Residential Project', 'Residential Project (2-5 units)', 'Residential Project (6 or more units)' and 'Total Development Cost' as follows:

> "**Buildable Land**: A parcel or parcels of property for which a building permit may be obtained to construct one or more dwelling units under the provisions of the Natick Zoning Bylaw. "
>
> "**Eligible Household**: For affordable rental units, a household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. For affordable ownership units, a household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. "
>
> "**Fee-in-lieu-of units**: The fee paid to the Natick Affordable Housing Trust in-lieu of the construction or provision of affordable units in Residential Projects with two (2) to five (5) dwelling units, determined as a percentage of the Initial Sales Price of an Affordable Dwelling of identical size to the average number of bedrooms in dwellings proposed for the Residential Project. "
>
> "**Initial Rent of an Affordable Dwelling Unit**: The initial rent of an Affordable Unit shall be determined to ensure that monthly rent payments and all utility charges shall not exceed thirty percent (30%) of seventy percent (70%) of monthly Median Income. "
>
> " **Initial Sales Price of an Affordable Dwelling Unit**: The initial sales price of an Affordable Unit shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, calculated according to standards of the Local Initiative Program or other program

administered or authorized by the Department of Housing and Community Development), condominium or related fees, property insurance, mortgage insurance (if required), real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of seventy percent (70%) of monthly Median Income. "

" **Median Income**: The income set forth in or calculated according to regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard as determined by the Massachusetts Department of Housing and Community Development. "

"**Phased or Segmented Housing Development**: A Residential Project containing dwellings on one lot, or two or more adjoining lots in common ownership or common control for which special permits or building permits are granted within a period of ten years from the first date of approval for any special or building permits for the Housing Project. "

"**Residential Project**: Development projects with residential uses (including developments with a mix of residential and non-residential uses) subject to the requirements of Natick's Inclusionary Zoning Bylaw. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C. "

"**Residential Project (2-5 units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with two (2), three (3), four (4) or five (5) dwelling units. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C."

"**Residential Project (6 or more units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with six (6) or more dwelling units. This definition does not apply to dwellings developed in a Smart Growth Overlay (SGO) district under the provisions of Section III-A.6.C. "

"**Total Development Cost**: The sum of all costs for site acquisition, relocation, design, engineering, environmental testing and remediation, demolition, construction and equipment, interest, and carrying charges necessary to produce the required number of complete, habitable Affordable Dwelling Units required by this bylaw."

"**Unregulated Dwelling Units**: Dwelling units that do not meet all the requirements of Affordable Housing, either for rental or homeownership."

Motion B:

Replace, eliminate, or modify the following sections within the Natick Zoning Bylaw that relate to minimum affordable housing requirements, affordability requirements, affordable housing provisions, and/or other affordable provisions/requirements (either local or related to 760 CMR 56) through the following:

MOVE to amend the definition of 'Residential Use 4.*' in Section III-A.2 – USE REGULATIONS SCHEDULE of the Natick Zoning By-Laws, by replacing the words "provided that at least 10% of the total number of dwelling units, or such greater percentage as may be specified elsewhere in this By-Law are Affordable Dwelling Units." with "subject to and compliant with the provisions of Section V-J.", replacing the word "Housing Units" with "Dwelling Units" and replacing the word "A" with" P+" in the columns respectively entitled "RM" and "PCD", so that the pertinent portion of Section III-A.2 – USE REGULATIONS SCHEDULE now reads:

RESIDENTIAL USE	*RG*	*RM*	*RS*	*PCD*	*SH*	*AP*	*DM*	*CII*	*INI*	*INII*	*H*
4. Multiple family building types for not less than three (3)* dwelling units *in any one building, such as: apartment houses and/or town houses,* subject to and compliant with the provisions of Section V-J.	***O***	**P+**	***O*****	**P+**	***A***	***O***	***(*)***	***O***	***O***	***O***	***O***

Motion C:

MOVE to amend the Natick Zoning By-Laws, as follows:

In Section III-A.6.A.3 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP), by:

- replacing the words "Affordable Housing Units" in the first paragraph with the words "Affordable Dwelling Units",
- inserting, after the word "alternatives," in the first paragraph, the words "consistent with the provisions of Section V-J of this bylaw and"
- replacing the figure "10%" in the table with "15%, consistent with the provisions of Section V-J",
- replacing the words "Income Eligible Households" in the table with the words "Eligible Households, consistent with the provisions of Section V-J",
- replacing the words "be used for Affordable Housing" in the table with the words "the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J",
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph b) with the words "Eligible Households",
- replacing the words "Affordable Housing Units" following "development as" in the seventh paragraph with the words "Affordable Dwelling Units, consistent with the provisions of Section V-J" and
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph c) with the words "Eligible Households"

so that Section III-A.6. A.3 now reads:

"3- Provided that additional units are granted by the Planning Board under the foregoing provision then Affordable Dwelling Units shall be provided in any one of the following alternatives, subject to approval of the Planning Board:

A) By Donation to the Natick Housing Authority…….A minimum of 15%, consistent with the provisions of Section V-J *

B) B) By Sale to the Natick Housing Authority .....A minimum of 15%, consistent with the provisions of Section V-J *

C) By sale directly to Eligible Households *.....A minimum of* 15%, consistent with the provisions of Section V-J *

D) By cash payment to the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J *.....* **

*Notes: * = % of total units in development, rounded up to the next whole number*

*** = Amount is determined by professional valuation methods as the equivalent value to the units which otherwise would have been provided within the development as* Affordable Dwelling Units, consistent with the provisions of Section V-J*.*

a) Units to be donated to the Natick Housing Authority are subject to the approval of the Natick Housing Authority, and of the applicable federal or state funding agency.

b) Units set aside for sale to the Natick Housing Authority shall be offered at prices which do not exceed the greater of: (i) the construction costs of the particular units, or (ii) the current acquisition cost limits for the particular units under applicable state or federal financing programs. If the Natick Housing Authority is unable to purchase the set-aside units at the time of completion, the units shall be offered for sale to Eligible Households*.*

c) Units set aside for sale directly to Eligible Households *shall be offered only to those households which qualify or meet the definition of* Eligible Household*.";*

and in Section III-A.6. A.4 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by adding after the words "moderate income households" in the second sentence the words ", consistent with the provisions of Section V-J of this bylaw.", and removing the third, fourth and fifth sentences, so that Section III-A.6. A.4 now reads:

"4- Each affordable unit created in accordance with this section shall have limitations governing its resale. Such limitations shall have as their purpose to preserve the long-term affordability of the unit and to ensure its continued availability to low or moderate income households, consistent with the provisions of Section V-J of this bylaw*. Such restrictions may also provide that the Natick Housing Authority shall have a prior right of purchase at the price determined according to the restriction for a period of thirty (30) days after the unit is placed on sale. Notice of any proposed sale shall be given to the Planning Board and to the Natick Housing Authority.";*

and in Section III-A.6. A.5 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) of the Natick Zoning By-Laws by replacing in the first sentence the words "for a period of six (6) months from the date of first offering for sale, be offered on a 50%-50% basis," with the words ", consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw.", and removing the second, third and fourth sentences of this section, so that Section III-A.6. A.5 now reads:

"5- Affordable Units to be offered for sale under the IHOP provisions shall be offered to residents of the Town of Natick and to persons employed within the Town of Natick, consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw*.";*

and in Section III-A.6. A.6 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by replacing the words "Affordable Housing Units" in each instance where the term appears in the section with the words "Affordable Dwelling Units", and replacing the term "Affordable Housing" with "Affordable Dwelling Units", so that Section III-A.6. A.6 now reads:

> *"6- In addition to any requirements under Site Plan Review, the Special Permit, or Subdivision approval, an applicant must submit a development plan acceptable to the Planning Board plan indicating how the parcel could be developed under the underlying zoning (i.e. a baseline plan). Any bonus granted shall be calculated from the baseline plan. The development plan showing the bonus units shall also indicate the proposed* Affordable Dwelling Units*, which must be dispersed throughout the parcel to ensure a mix of market-rate and* Affordable Dwelling Units*.* Affordable Dwelling Units *shall have an exterior appearance that is compatible with, and to the extent that is possible, indistinguishable from the market rate units in the development. Affordable Housing Units shall contain at least two (2) bedrooms and shall be suitable as to design for family occupancy. The owners of* Affordable Dwelling Units *shall have all of the rights and privileges accorded to market rate owners regarding any amenities within the development.";*

and in Section III-A.6. B.1 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – PURPOSE by replacing the words "Income Eligible Households as defined in 760 CMR 56" in each instance where the term appears in the section with the words "Eligible Households", and inserting after the words "in a manner consistent with" in the first sentence the words "both the provisions of Section V-J and" so that Section III-A.6. A.6 now reads:

> *"1. PURPOSE*
>
> *The purpose of this Housing Overlay Option Plan is to create overlay districts in selected areas of the Town in order to enhance the public welfare by increasing the production of dwelling units affordable to Eligible Households in a manner consistent with* both the provisions of Section V-J and *the character of the downtown area. In order to encourage utilization of the Town's remaining developable land in a manner consistent with local housing policies and needs, new housing developments in the HOOP Districts are required to contain a proportion of dwelling units affordable to Eligible Households.";*

and in Section III-A.6. B.8 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – AFFORDABILITY by replacing the words "The Planning Board shall adopt rules and regulations regarding" in the second sentence with the words "The provisions of Section V-J of this bylaw shall govern" and by replacing the words "Affordable Housing Units" in each instance they occur with the words "Affordable Dwelling Units", by adding after the

words "employees of the Town of Natick" the words "consistent with the provisions of Section V-J" and by replacing the words "permitted under the Massachusetts General Laws and as approved by the SPGA" with the words ", consistent with the provisions of Section V-J", so that Section III-A.6. A.6 now reads:

"8. AFFORDABILITY

a) Affordability shall be determined in accordance with the definition of Affordable Housing found in Section 200. The provisions of Section V-J of this bylaw shall govern *the sale or rental of all* Affordable Dwelling Units*. Unless otherwise regulated by a Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the* Affordable Dwelling Units *shall be initially offered to residents and/or employees of the Town of Natick* consistent with the provisions of Section V-J*. Residency and employment in Natick shall be established through Town Clerk certification.*

b) All Affordable Dwelling Units *shall be maintained as such in perpetuity, by the use of appropriate restrictions in deeds, lease provisions or other mechanisms,* consistent with the provisions of Section V-J*.";*

and, in Section III-D.1.d USE REGULATIONS FOR LC DISTRICTS, PERMITTED USES, by replacing the words "provided however that at least ten percent (10%) of the total number of units are Affordable Housing Units;" with the words "subject to and consistent with the provisions of Section V-J of this by-law.", so that subsection III-D.1.d now reads:

"d. Multi-family building types for not less than three (3) dwelling units but not more than six (6) dwelling units building, such as: apartment houses and/or town houses, with no more than six (6) dwelling units per acre; subject to and consistent with the provisions of Section V-J of this by-law.*";*

and, in Section III.E.2.b.1 DOWNTOWN MIXED USE DISTRICT, USES ALLOWED BY SPECIAL PERMIT ONLY, by replacing the phrase "ii) for projects with 3 to 6 total units at least 10% of the units are Affordable Housing Units; for projects that are 7 to 20 total units, at least 15% of the units are Affordable Housing Units; and, for projects that are 21 or more total units, at least 20% of the units are Affordable Housing Units;" with the phrase " ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and", so that Section III.E.2.b.1 now reads:

"1. Multi-family dwellings, provided that:

i) the Special Permit Granting Authority specifically determines that adequate provision has been made for off-street parking;

ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and

iii) the total number of multi-family units shall not exceed the number computed by taking the:

a. Gross Land Area of the parcel times the Maximum Percentage Building Coverage

b. multiplied by the number of floors in the building

c. multiplied by the portion of the Gross Floor Area attributable to residential uses in the building

d. divided by the Gross Floor Area in the building, and

e. divided by 2,500

And, in Section "III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS" replace in its entirety the paragraph entitled "AFFORDABILITY" before the Subsection Title "III-1.F TOWN HOUSE CLUSTER DEVELOPMENT", with the words "AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall comply with the provisions of Section V-J.", so that subsection III-F now reads:

"III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS

AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall be subject to and consistent with the provisions of Section V-J of this by-law.*";*

and, in Section III-5. F.6 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-NUMBER OF DWELLING UNITS by replacing the words "At least ten percent (10%) of this total number of dwelling units shall be Affordable Housing Units as defined in Section 200 herein." in the second sentence with the words ", subject to and consistent with the provisions of Section V-J of this by-law.", so the sentence now reads,

"*The maximum number of dwelling units allowed in a CCD shall equal the "Net Usable Land Area" within the parcel divided by 15,000 square feet then rounded to the nearest whole number*, subject to and consistent with the provisions of Section V-J of this by-law.";

and, by replacing Section III-5.F.10 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-AFFORDABILITY, in its entirety and replacing it with the words:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.", so that III-5.F.10.a now reads:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.";

and, by replacing Section III-I.2.6 INDEPENDENT SENIOR LIVING OVERLAY OPTION PLAN - AFFORDABILITY REQUIREMENTS, in its entirety with the phrase "AFFORDABILITY REQUIREMENTS: The Applicant shall make provision for affordable housing by complying with all the requirements of Section V-J.", so that the Section now reads:

"2.6 AFFORDABILITY REQUIREMENTS: The Applicant shall make provisions for affordable housing by complying with all the requirements of Section V-J."

and, in the first sentence of Section III-I.8 ASSISTED LIVING RESIDENCES - AFFORDABILITY REQUIREMENTS, by replacing the phrase "the Applicant shall make a one-time payment to the Affordable Housing Trust Fund of Natick in an amount equal to a formula of $75 multiplied by the total number of square feet of area in living units in the ALR. This payment shall be required notwithstanding the fact that the Town may have reached an exemption level of production of affordable units in any year." with the phrase "the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law.", so that the Section now reads:

"*8. Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the ALR do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 and as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD),* the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law."

and, in Section III-J.3 – Historic Preservation-Permitted Uses, by inserting the phrase ", subject to and consistent the provisions of Section V-J:" after "the following additional uses" so that the subsection now reads:

"3. Permitted Uses. Any use permitted as a matter of right or under a special permit in the District as set forth in the Table of Use Regulations may be undertaken on a parcel to which this Section III-J is to be applied; however, the SPGA may grant a special permit to allow the following additional uses, subject to and consistent the provisions of Section V-J*:*

1. Town Houses;

2. Apartment House;

3. Home Occupation/Customary Home Occupation

And, in Section 323.3 HIGHWAY OVERLAY DISTRICTS - Certain Multifamily Residential Uses, by inserting after the phrase "* Affordability Requirements" in the third paragraph the words " All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J," so that subsection 323.3 Certain Multi-family Residential Uses now reads:

"In the RC district, hotels, motels, assisted living facilities, Elderly Family Residences* may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326. Combinations of such residential and non-residential uses may also be allowed in the RC district, subject to the requirements of each individual use as set forth elsewhere in this Bylaw.*

The provisions of Section 323.1.9, and not this section, shall be applicable to a mixed-use development, including the residential component, in a Regional Center Mixed-Use Development.

** Affordability Requirements:* All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J*, unless a determination has been made satisfactory to the SPGA that living units of the assisted*

living facilities, Assisted Living Residences and Elderly Family Residence do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD."

And, in Section V-E.3 WAIVERS AND MODIFICATIONS – Limitations and Restrictions, by inserting after the phrase "sky exposure plane" in the first paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J."; by inserting after the phrase "considered separately" in the second paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J." and by inserting after the phrase "and/or waived" in the sixth paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.", so that subsection V-E.3 Limitations and Restrictions now reads:

3. Limitations and Restrictions

a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure, or sky-exposure plane, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

f. Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

Motion D:

MOVE to amend the Natick Zoning Bylaws by inserting a new section entitled "Section V-J. Inclusionary Affordable Housing Requirements" after "Section V-I. Outdoor Lighting", so that Section V now reads:

"SECTION V-J INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS

V-J.1 Purpose and Intent:

The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-23 and 760 CMR 56 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Commonwealth's Department of Housing and Community Development (DHCD). Definitions for Affordable Dwelling Unit and Eligible Household can be found in the Definitions Section.

V-J.2 Applicability of Mandatory Provision of Affordable Units

A. In all zoning districts and overlay districts, the inclusionary affordable housing requirements of this section for the mandatory provision of affordable units shall apply to the following uses, consistent with the requirements set forth in G. L. c. 40B sect. 20-23 and 760 CMR 56:

1. Any Residential Project, including Phased or Segmented Housing Developments, that results in a net increase of two (2) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
2. Any Residential Project involving subdivision of land for development of two (2) or more dwelling units; and
3. Any life care facility development (including Assisted Living Residences and Elderly Family Residences) that includes two (2) or more assisted living units and accompanying services, unless a determination has been made satisfactory to the SPGA that living units of the life care facility do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Massachusetts Department of Housing and Community Development (DHCD).

V-J.3 Special Permit:

The development of any Residential Project set forth in Section V-J.2 (above) shall require the grant of a Inclusionary Housing Special Permit from the designated Special Permit Granting Authority (SPGA) for the zoning district in which the Residential Project is located. If the development of a Residential Project set forth in Section V-J.2 is allowed By-Right in the zoning district in which the Project is located, the Applicant may elect to develop said Project under an Inclusionary Housing Special Permit according to the provisions of Section V-J.4.B. A Special Permit may be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special Permit shall be as defined in Section VI of the Town's zoning bylaw.

V-J.4 Mandatory Provision of Affordable Units:

A. As a condition of approval for a Special Permit, the Applicant shall contribute to the local stock of affordable units in accordance with the following requirements:

1. At least fifteen (15) percent of the units in a Residential Project on a division of land or multiple unit development subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable housing units in any one or combination of methods provided for below:

   a) constructed or rehabilitated on the locus subject to the Inclusionary Housing Special Permit (see Section V-J.5) in Residential Projects with six (6) or more net new dwelling units; or

   b) constructed or rehabilitated on a locus different than the one subject to the Inclusionary Housing Special Permit (see Section V-J.6) in Residential Projects with six (6) or more net new dwelling units; or

   c) an equivalent fee-in-lieu of units may be made (see Section V-J.7); or

   d) An applicant may offer, and the SPGA may accept, provision of buildable land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units.

2. At least twenty (20) percent of the units in a Residential Project on a division of land or multiple unit development with thirty (30) or more units in the Downtown Mixed Use district subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable housing units in any one or combination of methods provided for above in V-J.4.A.1.

3. As a condition of approval for an Inclusionary Housing Special Permit, the SPGA may specify to an Applicant the combination of requirements described in Section V-J.4.A.1 to be used to satisfy compliance with the mandatory provision of affordable units. The

applicant may offer, and the SPGA may accept, any combination of the requirements described in Section V-J.4.A.1 (a) - (d) provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of Affordable Dwelling Units required by this bylaw. Non-acceptance of an offer by the SPGA does not release the Applicant from compliance with all provisions of this bylaw. The value of any combination of the Section V-J.4.A.1 (a) - (d) requirements provided by an applicant shall always be equal to or greater than the Total Development Cost of affordable units required by this bylaw. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value. Affordable Dwelling Units developed under a combination of requirements described in Section V-J.4.A.1 (a) - (d) may consist of a mix of housing types, except as provided for below:

a) In Residential Projects consisting entirely of single-family dwellings, only Section V-J.4.A.1 requirements (c) and (d) may be offered by the applicant and accepted by the SPGA. For such single-family Residential Projects, the value of Section V-J.4.A.1 requirement (c) offered by the applicant shall equal 100% of the Total Development Cost of affordable units required by this bylaw, while the value of Section V-J.4.A.1 requirement (d) offered by the applicant shall equal 110% of the Total Development Cost of affordable units required by this bylaw.

b) In Residential Projects, including Phased and Segmented Developments, which result in a net increase of two (2) to five (5) dwelling units, in lieu of the requirements of Section V-J.4.A.1 a), b) or d), the Applicant shall contribute funds to the Natick Affordable Housing Trust to be used for assisting households to occupy Affordable Dwelling Units in Natick in lieu of the Applicant constructing and offering affordable units within the locus of the proposed development or at an off-site locus, consistent Section V-J.4.A.1 requirements (c) and consistent with G. L. c. 40B sect. 20-23 and 760 CMR 56.

Table V-J.4 Mandatory Provision of Affordable Units, by Residential Project Type

Residential Project, type:	**Methods for fulfilling Mandatory Provision of Affordable Units, Section V-J.4.A.1**
Multi-family dwellings, or mix of single and multi-family dwellings ***(Projects with 6 or more units)*** *Section V-J4.A.1*	a) Provision of Affordable unit(s), on site b) Provision of Affordable unit(s), off-site c) Provision of fee-in-lieu of units payment d) Provision of buildable land

Single-family dwellings only ***(Projects with 6 or more units)*** *Section V-J4.A.3 (a)*	c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single family dwellings or multi-family dwellings ***(Projects with 2-5 units)*** *Section V-J4.A.3 (b)*	c) Provision of fee-in-lieu of units payment

4. As a condition for the granting of an Inclusionary Housing Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the SPGA. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development, shall ensure that affordable units are affordable in perpetuity, and shall ensure that affordable units can be counted toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section V-J.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the SPGA and the Inspector of Buildings.

B. Density Bonus. For Residential Projects consisting entirely of single or two-family homes, or any other Residential Projects that are allowed By-Right in the zoning district underlying their location, that yield an increase of two (2) to five (5) net new dwelling units the SPGA may allow the addition of one (1) Unregulated Dwelling Unit as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.A.1. For Residential Projects consisting entirely of single or two-family homes, or that are allowed By-Right in the zoning district underlying their location, that yield an increase of six (6) or more net new dwelling units the SPGA may allow the addition of two (2) Unregulated Dwelling Units for each Affordable Dwelling Unit provided as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.A.1. The SPGA may modify minimum lot sizes and any other intensity or density regulations, except height, normally required in Section IV.B in the applicable zoning district, to a maximum increase or decrease of 35% on a cumulative basis, calculated according to the provisions of Section V-E.3, to accommodate up to two (2) additional Unregulated Dwelling Unit(s) on a lot for each one (1) Affordable Dwelling Unit in compliance with the Inclusionary Housing Special Permit process in Section V-J.4.A, provided that the Floor Area Ratio of all such units in the subject Residential Project not exceed 250% of the Maximum Lot Coverage permitted in the applicable zoning district under Section IV.B. The SPGA may place conditions on the number of bedrooms and other characteristics of additional Unregulated Dwelling Units permitted as part of compliance with the provisions outlined in Section V-J.4.A.

Example 1: An Applicant can build a Residential Project on a subdivision with five homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, under which they could build six homes (the original 5 units + 1 bonus unit) and make a payment to the Natick Affordable Housing Trust as specified in Section V.J.7. The Floor Area Ratio (FAR) of each of these six units could not exceed 0.625 (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

Example 2: An Applicant can build a Residential Project on a subdivision with twenty homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, which would require three (3) homes designated as Affordable Dwellings, but would allow a total of twenty-six homes (20 units + 6 bonus units) to be developed on the site. The Floor Area Ratio (FAR) of each of these 26 units could not exceed 0.625. (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

V-J.5 Provisions Applicable to Affordable Housing Units On- and Off-Site:

A. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated proportionately within the development so as not to be in less desirable locations than unregulated units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the unregulated units.

B. Minimum design and construction standards for affordable units. All affordable units constructed or rehabilitated under this bylaw shall comply with the Design and Construction standards for Local Initiative Units specified by the Department of Housing and Community Development in the guidelines for the Local Initiative Program. Affordable housing units shall be integrated with the rest of the development, shall be proportionately distributed in terms of unit size/type and shall be compatible in exterior design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall contain, at a minimum, complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities.

C. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit (% Complete)	**Affordable Housing Unit** (% Required)
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

D. Pricing of Affordable Units. The household size figure used to calculate the Initial Sales Price or Rent of an Affordable Unit shall be equal the number of bedrooms in each Affordable Unit plus one (1).

E. Local Preference. Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered, in the following priority, to:

1. Persons who currently reside within the Town of Natick;
2. Persons whose spouse, son, daughter, father, mother, brother, or sister currently reside in the Town of Natick;
3. Persons who are employed by the Town of Natick or by businesses located within the Town of Natick;

F. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

G. Condominiums. Condominium documentation shall provide the owners of the Affordable Units with full and equal rights to all services and privileges associated with condominium ownership.

H. Legal Review. All legal documents, including but not limited to: affordable housing deed riders, affordability restrictions, leases, condominium documents and/or homeowner's agreements shall be subject to peer legal review by the SPGA, to be paid in full by the Applicant.

V-J.6 Provision of Affordable Housing Units Off-Site:

A. ~~As an alternative to the requirements of Section V-J.5,~~ An applicant subject to this bylaw may develop, construct or otherwise provide affordable units offsite, equivalent to those required by Section V-J.4 and meeting all quality criteria outlined in Section V-J.5. B. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location, housing type and character of the off-site units to be provided shall be approved by the SPGA as an integral element of the Inclusionary Housing Special Permit review and approval process.

V-J.7 Calculation of Fees-in-Lieu-of Affordable Housing Units:

A. Calculation of fee-in-lieu-of units. For the purposes of this bylaw the fee-in-lieu of the construction or provision of affordable units shall be determined as a per-unit cost calculated as: 0.125 x Initial Sales Price of an Affordable Dwelling Unit of identical size (in terms of average number of bedrooms), calculated according to the provisions of Section V-J.8, and shall be payable in full prior to issuance of a final occupancy permit. The SPGA may annually adjust the acceptable value of the fee in-lieu-of units according to maximum income levels established by the Commonwealth's Department of Housing and Community Development.

Example 3: An Applicant proposes a Residential Project with four two-bedroom homes under an Inclusionary Housing Special Permit. Under V-J.4A.2.b, the Applicant would be required to pay a fee to the Natick Affordable Housing Trust equal to (4 dwellings x 0.125 x Initial Sales Price for an Affordable two-bedroom Dwelling Unit) as specified in Section V.J.4.A.2 (b)

1. The SPGA may reduce the applicable fee-in-lieu-of unit(s) charge by up to fifty percent (50%) for each dwelling in a housing development with initial rents or sale prices that are affordable to households earning 81-120% of Median Income, calculated according to standards of the Department of Housing and Community Development (DHCD), and in compliance with the household size provisions of Section V-J.5.D of this bylaw.
2. Schedule of fees-in-lieu-of-unit(s) payments. Fees-in-lieu-of-unit(s) payments shall be made according to the schedule set forth in Section V-J.5.C, above.

V-J.8 Maximum Incomes and Selling Prices: Initial Sale:

A. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Department of Housing and Community Development (DHCD), and as may be revised from time to time.

B. The maximum housing cost for affordable units created under this bylaw is as established by the Department of Housing and Community Development (DHCD), as specified in the guidelines for the Local Initiative Program, or as revised by the Town.

V-J.9 Preservation of Affordability; Restrictions on Resale:

A. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section V-J.4.A.4). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

1. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section V-J.9.A, above.

2. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town of Natick, consistent with model riders prepared by the Department of Housing and Community Development (DHCD), granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

3. The SPGA shall require, as a condition for Inclusionary Housing Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section V-J.9.A.2 above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

V-J.10 Conflict with Other Bylaws/Ordinances:

The provisions of this section shall be considered to supersede existing zoning bylaws/ordinances except for the Smart Growth Overlay (SGO) district. To the extent that a conflict exists between this section and others, this section, or provisions therein, shall apply.

V-J.11 Severability:

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

Inclusionary Zoning Bylaw

Introduction

This model bylaw provides a menu of options for crafting inclusionary zoning bylaws that respond directly to local housing demands and real estate financial conditions. The zoning structure begins as a mandatory inclusionary zoning provision, then offers a series of optional exemptions to affordable housing development that mitigate hardships associated with affordable housing development. Section 04.2 includes a variety of incentives that can be used spur affordable housing development and mitigate the costs borne by developers. Commentary below specific provisions details the development implications of each exemption and incentive. Municipalities should carefully consider the development consequences of each of these policy choices in order to assemble zoning bylaws that respond directly to local economies. However, note that previous studies, [http://www.mhp.net/vision/zoning.php], indicate that mandatory provisions combined with strong incentives are most effective in promoting affordable housing development.

01.0 Purpose and Intent: The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw/ordinance be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development. Definitions for affordable housing unit and eligible household can be found in the Definitions Section.

02.0 Applicability

1. In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

(a) Any project that results in a net increase of [ten (10)] or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and

COMMENT: *The number of units required to trigger the applicability of the inclusionary zoning provisions should reflect local real estate development demands. In built-out communities, inclusionary zoning could apply to developments with fewer units. For example, Brookline's affordable housing requirements apply when six new residential units are proposed. Other Massachusetts communities, including Boston and Cambridge bylaws specify ten (10) as the threshold number of new units required to trigger the application inclusionary zoning bylaws. The Cape Cod Commission regulations specify 30 units, but encourage the member towns to specify a 10-unit minimum.*

(b) Any subdivision of land for development of ten (10) or more dwelling units; and

COMMENT: *It is recommended that the Town adopt a companion regulation to prevent intentional segmentation of projects designed to avoid the requirements of this bylaw (e.g. subdividing one large tract into two smaller tracts, each of which will contain fewer than 10 units or phasing a development such that each phase will contain fewer than 10 units). This "anti-segmentation" bylaw can specify that parcels held in common ownership as of the passage of this bylaw cannot later defeat the requirements of this regulation by segmenting the development. Note that the division of land trigger is accomplished by either filing a plan for the subdivision of land or the filing of a so-called approval not required plan.*

(c) Any life care facility development that includes ten (10) or more assisted living units and accompanying services.

COMMENT: *It is recommended that the Town review zoning definitions for life care facilities to ensure coordination between sections.*

03.0 Special Permit: The development of any project set forth in Section 02.0 (above) shall require the grant of a Special Permit from the Board of Appeals or other designated Special Permit Granting Authority (SPGA). A Special Permit shall be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special permit shall be as defined in Section _____ of the Town's zoning bylaw.

04.0 Mandatory Provision of Affordable Units:

1. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable unit in accordance with the following requirements:

(a) At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

(1) constructed or rehabilitated on the locus subject to the Special Permit (see Section 05.0); or

(2) constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 06.0); or

(3) an equivalent fees-in-lieu of payment may be made (see Section 07.0); or

(4) An applicant may offer, and the SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw/ordinance,

that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

(b) The applicant may offer, and the SPGA may accept, any combination of the Section 04.1(a)(1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

COMMENT: *The provisions above establish the minimum number of, and methods for, provision of affordable units. Note that the applicant has four choices for providing affordable units. First, they may construct or rehabilitate units on the site subject to the Special Permit. Second, they may construct or rehabilitate units at a different site than the one subject to the Special Permit. Third, they may offer fees-in-lieu of the construction of affordable housing units, more fully discussed in Section 07. Fourth, they may offer, and the SPGA may accept, land on- or off-site for the purposes of constructing affordable units, perhaps by the Town or a non-profit entity or a subsequent developer. Finally, the applicant may propose and the SPGA may accept any combination of options one through four.*

(c) As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 0.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings.

COMMENT: *Regulatory agreements are an essential component to any affordable housing development as they are the primary vehicle for recording these restrictions in a manner recognized by the Commonwealth. The content of agreements will vary depending on a variety of factors including: the type of housing (rental or ownership), the method of property transferal, the income limits, the town's housing administrative structure, etc. Sample restrictions can often be found attached to approved Plan Production Plans (http://www.mass.gov/dhcd/components/SCP/PProd/plans.htm).*

2. To facilitate the objectives of this Section 04.0, modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may accept, subject to the conditions below:

(a) FAR Bonus. The FAR normally permitted in the applicable zoning district for residential uses may be increased by up to thirty (30) percent for the inclusion of affordable units in accordance with Section 04.1 (above), and at least fifty (50) percent of the additional FAR should be allocated to the affordable units. In a mixed use

development, the increased FAR may be applied to the entire lot, however any gross floor area increase resulting from increased FAR shall be occupied only by residential uses, exclusive of any hotel or motel use.

(b) Density Bonus. The SPGA may allow the addition of two market rate units for each affordable unit provided as part of compliance with the Special Permit. The minimum lot area per dwelling unit normally required in the applicable zoning district may be reduced by that amount necessary to permit up to two (2) additional market rate units on the lot for each one affordable unit required in Section 04.1 (above).

COMMENT: *The provisions above provide a baseline density bonus of two market rate units for every one affordable unit provided by an applicant. This density bonus will likely cover the cost to the developer of providing each required affordable unit. These provisions may also make the adoption of mandatory inclusionary zoning more politically feasible. Communities may choose to omit this provision in favor of offering density bonuses for affordable units above and beyond the baseline requirement of 10%. However, the two different approaches may be used together as in this model bylaw. The following provision (04.2(c)) illustrates how density bonuses can be provided for affordable units beyond the baseline 10%.*

(c) Voluntary Inclusionary Housing Bonus. New affordable housing development that is not subject to Section 02.0 and exceeds the requirements specified in Section 04.1(a) may receive the same benefits specified in Sections 04.2(a) and 04.2(b) when the development is approved by the SPGA. The net increase in housing units shall not exceed [fifty percent 50%] of the original property yield before any density bonuses were applied.

COMMENT: *Where communities are willing to allow density increases for associated with affordable units provided above and beyond the baseline 10%, the important issue to address is what the overall "cap" will be for the density bonus. The model uses a net 50% over the property yield as a potential cap for density increase, but communities could consider higher increases depending on the existing minimum lot size and the goals of their Comprehensive Plan.*

05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:

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

2. Minimum design and construction standards for affordable units. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

COMMENT: *The provisions above provide general guidelines meant to ensure that the affordable housing is well integrated with and visually indistinguishable from market rate housing. These goals can be strengthened by specifying site plan and building material standards.*

Market-rate Unit (% Complete)	**Affordable Housing Unit** (% Required)
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

COMMENT: *The table above establishes the required schedule for completion of affordable units in conjunction with the completion of market rate units. For example, a 100-lot subdivision requires 10 affordable units. Assume all 10 affordable units are to be constructed on-site. Upon completion of the 31st market rate unit, the developer must construct at least 1 affordable unit (10% of 10). After completion of the 50th unit, the applicant must have constructed at least 3 affordable units (30% of 10), and so on. Towns are free to adjust this schedule, but should bear in mind that a minimum number of market rate units are often needed to create sufficient cash flow to make the overall project work. To that end, it is recommended that the initial affordable unit requirement not be triggered until at least one-third of the market units are constructed.*

4. Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

COMMENT: *A marketing plan is considered essential to the success of affordable housing development in many parts of Massachusetts. Issues of how the units are advertised, how qualified applicants are sought and determined, and methods for reducing delays for qualified applicants are key to the use of this bylaw/ordinance. As an option, the responsibilities under this provision could be transferred to a local housing partnership or authority.*

06.0 Provision of Affordable Housing Units Off-Site:

1. As an alternative to the requirements of Section 05.0, an applicant subject to the bylaw/ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 04.0 off-site. All requirements of this bylaw/ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the SPGA as an integral element of the Special Permit review and approval process.

COMMENT: *Allowing off-site provision of affordable units gives flexibility to developers and allows municipalities to more carefully control the siting of new affordable housing development. Towns should add review criteria for the approval of off-site locations to ensure that new affordable housing development promotes the goal of creating mixed-income neighborhoods and encourages development or conversion of affordable units near areas with municipal services or access to public transportation may. Relegating the provision of the affordable units to undesirable portions of the community does little to promote the purposes of this bylaw/ ordinance. Furthermore, towns and cities with more economically segregated neighborhoods should consider striking this provision from the bylaws to ensure that each new residential development built in any neighborhood contains some affordable housing.*

07.0 Fees-in-Lieu-of Affordable Housing Unit Provision:

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

COMMENT: *This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees-in-lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed.*

Municipalities that significantly lack affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.

(b) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to the schedule set forth in Section 05.3, above.

COMMENT: *This section establishes the fee-in-lieu of payments schedule to coincide with the schedule for provision of units established by Section 05.3. For example, a 50-lot subdivision requires five affordable units. An applicant choosing to make fee-in-lieu of payments would be required to pay $5X (5 units @ $X per unit). The payment schedule would require 10 percent of the $5X after the 16th market rate unit was built, and $100,000 after the 38th market rate unit was built and so on, according to the schedule noted in Section 05.3.*

(c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 07.1 shall be used only for purposes of providing affordable housing for low or moderate income households. Using these contributions and donations, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or affordable units within larger developments.

08.0 Maximum Incomes and Selling Prices: Initial Sale:

1. To ensure that only eligible households purchase affordable housing units, the purchaser of a affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.

2. The maximum housing cost for affordable units created under this bylaw is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program or as revised by the Town.

COMMENT: *The Department of Housing and Community Development publishes maximum income, selling prices and monthly rent ceilings for occupants of affordable income housing units (Department of Housing and Community Development, Local Initiative Program, July 1996). Individual towns are free to adjust these numbers to accommodate local needs and concerns; however, it is recommended that the Department's guidelines be reviewed prior to setting local ceilings. These provisions may be more appropriately handled by the local housing partnerships rather than the developer.*

09.0 Preservation of Affordability; Restrictions on Resale:

1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 0.4.1(c)). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

(a) Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 9.1, above.

COMMENT: *For example, if a unit appraised for $100,000 is sold for $75,000 as a result of this bylaw, it has sold for 75 percent of its appraised value. If the appraised value of the unit at the time of proposed resale is $150,000, the unit may be sold for no more than $112,500--75 percent of the appraised value of $150,000.*

(b) Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) The SPGA shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 10.1(b), above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

COMMENT: *This Section provides language to ensure that the affordable housing units remain affordable by restricting re-sales in perpetuity and by granting the Town a right of first refusal to purchase the dwelling unit should a qualified purchaser, beyond the initial purchaser, not be found. The restrictions on resale are designed to encourage the homeowner to maintain and improve the property while at the same time ensure that if and when sold, the new qualified buyer is able to enjoy the same discount between sale price and appraised value. It is important to emphasize that the restrictions on resale do not block, in any way, the property owner from realizing a profit on the resale of the dwelling unit. Rather, as noted, the resale restriction passes on the initial discounted rate enjoyed by the initial buyer to the new, qualified buyer.*

10.0 Conflict with Other Bylaws/Ordinances: The provisions of this bylaw/ordinance shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw/ordinance and others, the more restrictive bylaw/ordinance, or provisions therein, shall apply.

COMMENT: *This provision establishes that where a conflict exists between this bylaw/ordinance and an existing (or future) bylaw/ordinance, the more restrictive provisions of either would apply. For example, this bylaw/ordinance requires a Special Permit for the division of land into ten or more lots, whereas that requirement may not currently exist in existing town bylaws/ordinances. Section 10.0 states that the more restrictive provision applies during a conflict, thus the Special Permit requirements of this bylaw/ordinance would supersede (overrule) the provisions of existing bylaws/ordinances.*

11.0 Severability: If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

COMMENT: *This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.*

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article #	Date Form Completed: 9/5/2018
Article Title: Inclusionary Affordable Housing Requirements	
Sponsor Name: Natick Planning Board	Email: tfields@natickma.org

Question	Question
1	Provide the article motion exactly as it is intended to be voted on by the Finance Committee.
Response	Please see attached Motions A - D.
2	At a summary level and very clearly, what is proposed purpose and objective of this Warrant Article and the required Motion?
Response	Promote the construction of affordable housing through a comprehensive inclusionary housing zoning by-law amendment that will preserve and enhance the affordability of Natick's housing stock.
3	What does the sponsor gain from a positive action by Town Meeting on the motion?
Response	Insertion of a comprehensive zoning by-law amendment mandating inclusionary requirements for affordable housing in residential development projects.
4	Describe with some specificity how the sponsor envisions how: the benefits will be realized; the problem will be solved; the community at large will gain value in the outcome through the accompanied motion?
Response	Spur construction of affordable housing compliant with 760 CMR 56 and eligible for inclusion in the Commonwealth's Subsidized Housing Inventory in residential projects with two or more "net new" dwelling units. This will help preserve Natick's compliance with the statutory minima "safe harbor" under MGL Ch. 40B and 760 CMR 56 and increase the number of dwellings affordable to households earning 80% or less of the Boston Area Median Income.

5	How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive plan, and community values as well as relevant state laws and regulations
Response	Except for the affordable housing changes, the proposed changes have no direct effects on the Town's financial or capital plans. The affordable housing changes, overdue as they are, would actually help the town financially by increasing the chances that the Town passes the next 10% Safe Harbor test to be measured as of the 2020 Decennial U.S. Census. If the Town fails to meet the 10% threshold for Affordable Housing, Natick would be subject to additional 40B projects resulting in increased density, need for services, school resources and traffic, etc. Provision of housing affordable across a broad spectrum of income-levels has been a strong desire expressed by respondents to opinion surveys conducted during the Natick 2030 Master Planning process throughout 2017. The Planning Board strongly believe that the above proposals do not inhibit development of residential property but rather establish much needed balance in housing affordability throughout town.
6	Have you considered and assessed, qualified and quantified the various impacts to the community such as: • Town infrastructure (traffic, parking, etc.) • Neighbors (noise, traffic, etc.); • Environment and green issues (energy conservation, pollution, trash, encouraging walking and biking, etc.);
Response	The proposals re: Inclusionary Requirements of Affordable Housing make it more likely that the Town can continue to meet the MGL 40B 10% "Safe Harbor" threshold and preserve its ability to reject 40B projects and that individuals of varied economic status can continue to call Natick 'home'
7	Who are the critical participants in executing the effort envisioned by the article motion? To this point what efforts have been made to involve those participants who may be accountable, responsible, consulted or just advised/informed on the impacts of executing the motion?
Response	The critical participants are the members of the Planning Board, Affordable Housing Trust and representative Town Meeting, who will ultimately vote to adopt the proposed changes.

8	What steps and communication has the sponsor attempted to assure that: • Interested parties were notified in a timely way and had a chance to participate in the process, that • Appropriate town Boards & Committees were consulted • Required public hearings were held
Response	The sponsor (Planning Board) is following the required process for zoning changes. The Board has convened an Inclusionary Zoning Working Group that has held multiple public meetings with CED staff from December through June of 2018 on modifying the Commonwealth's Model Inclusionary Zoning By-law into a zoning by-law amendment for Natick. The Board is reviewed and approved the proposed amendment as required on 7/25/18.
9	Why is it required for the Town of Natick AND for the sponsor(s)?
Response	These changes are needed to preserve and enhance the affordability of Natick's housing stock, and preserve its ability to control residential development. Outside of those concerns, the sponsors have nothing to benefit from this.
10	Since submitting the article petition have you identified issues that weren't initially considered in the development of the proposal?
Response	Appropriate changes should be made in the future to address affordable housing requirements and shifting housing market dynamics.
11	What are other towns and communities in the Metro West area, or the Commonwealth of MA doing similar to what your motion seeks to accomplish
Response	The proposed changes are based on the Commonwealth's Model Inclusionary Zoning By-law compiled by the Department of Housing and Community Development, which administers the MGL 40B process under 760 CMR 56.
12	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences.

Response	Under current housing development trends, the town is projected to fall out of the 10% Affordable Housing Safe Harbor under MBL 40B after the 2020 US Census. This will prevent the Town from rejecting inappropriate 40B residential proposals and limit its ability to mitigate impacts of such projects.

Motion A:

MOVE to amend **Section 200 - DEFINITIONS** of the Natick Zoning Bylaws replacing the existing definition of 'Affordable Housing Units' with the following:

> "Affordable **Dwelling Units**: Dwelling units which meet all the requirements of Affordable Housing. Affordable rental units shall be priced such that the rent (including utilities) shall not exceed 30% of the income of a household at 70% of Median Income. Affordable homeownership units shall be priced such that the annual debt service on a mortgage plus taxes, insurance, and condominium fees (assuming a 5% down payment) shall not exceed 30% of the income of a household at 70% of Median Income."

and by inserting new definitions for 'Buildable Land', 'Eligible Household', 'Fee-in-lieu-of Units', 'Initial Rent of an Affordable Dwelling Unit', 'Initial Sales Price of an Affordable Dwelling Unit', 'Median Income', 'Phased or Segmented Housing Development', 'Residential Project', 'Residential Project (2-5 units)', 'Residential Project (6 or more units)' and 'Total Development Cost' as follows:

> "**Buildable Land**: A parcel or parcels of property for which a building permit may be obtained to construct one or more dwelling units under the provisions of the Natick Zoning Bylaw. "
>
> "**Eligible Household**: For affordable rental units, a household whose total income does not exceed 80% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. For affordable ownership units, a household whose total income does not exceed 70% of the Median Income, adjusted for household size, consistent with the requirements of 760 CMR 56. "
>
> "**Fee-in-lieu-of units**: The fee paid to the Natick Affordable Housing Trust in-lieu of the construction or provision of affordable units in Residential Projects with two (2) to five (5) dwelling units, determined as a percentage of the Initial Sales Price of an Affordable Dwelling of identical size to the average number of bedrooms in dwellings proposed for the Residential Project. "
>
> "**Initial Rent of an Affordable Dwelling Unit**: The initial rent of an Affordable Unit shall be determined to ensure that monthly rent payments and all utility charges shall not exceed thirty percent (30%) of seventy percent (80%) of monthly Median Income. "
>
> " **Initial Sales Price of an Affordable Dwelling Unit**: The initial sales price of an Affordable Unit shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates,

calculated according to standards of the Local Initiative Program or other program administered or authorized by the Department of Housing and Community Development), condominium or related fees, property insurance, mortgage insurance (if required), real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of seventy percent (70%) of monthly Median Income. "

" **Median Income**: The income set forth in or calculated according to regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard as determined by the Massachusetts Department of Housing and Community Development. "

"**Phased or Segmented Housing Development**: A Residential Project containing dwellings on one lot, or two or more adjoining lots in common ownership or common control for which special permits or building permits are granted within a period of ten years from the first date of approval for any special or building permits for the Housing Project. "

"**Residential Project**: Development projects with residential uses (including developments with a mix of residential and non-residential uses) subject to the requirements of Natick's Inclusionary Zoning Bylaw. "

"**Residential Project (2-5 units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with two (2), three (3), four (4) or five (5) dwelling units. "

"**Residential Project (6 or more units)**: Residential Uses 1, 2, 3, 4 or 5 listed in Table III-A.2 with six (6) or more dwelling units. "

"**Total Development Cost**: The sum of all costs for site acquisition, relocation, design, engineering, environmental testing and remediation, demolition, construction and equipment, interest, and carrying charges necessary to produce the required number of complete, habitable Affordable Dwelling Units required by this bylaw."

"**Unregulated Dwelling Units**: Dwelling units that do not meet all the requirements of Affordable Housing, either for rental or homeownership."

Motion B:

Replace, eliminate, or modify the following sections within the Natick Zoning Bylaw that relate to minimum affordable housing requirements, affordability requirements, affordable housing provisions, and/or other affordable provisions/requirements (either local or related to 760 CMR 56) through the following:

MOVE to amend the definition of 'Residential Use 4.*' in Section III-A.2 – USE REGULATIONS SCHEDULE of the Natick Zoning By-Laws, by replacing the words "provided that at least 10% of the total number of dwelling units, or such greater percentage as may be specified elsewhere in this By-Law are Affordable Dwelling Units." with "subject to and compliant with the provisions of Section V-J.", replacing the word "Housing Units" with "Dwelling Units" and replacing the word "A" with"P+", so that the pertinent portion of Section III-A.2 – USE REGULATIONS SCHEDULE now reads:

RESIDENTIAL USE	*RG*	*RM*	*RS*	*PCD*	*SH*	*AP*	*DM*	*CII*	*INI*	*INII*	*H*
4. Multiple family building types for not less than three (3)* dwelling units *in any one building, such as: apartment houses and/or town houses,* subject to and compliant with the provisions of Section V-J.	***O***	**P+**	***O*****	***P+***	***A***	***O***	***(*)***	***O***	***O***	***O***	***O***

Motion C:

MOVE to amend the Natick Zoning By-Laws, as follows:

In Section III-A.6.A.3 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP), by:

- replacing the words "Affordable Housing Units" in the first paragraph with the words "Affordable Dwelling Units",
- inserting, after the word "alternatives," in the first paragraph, the words "consistent with the provisions of Section V-J of this bylaw and"
- replacing the figure "10%" in the table with "15%, consistent with the provisions of Section V-J",

- replacing the words "Income Eligible Households" in the table with the words "Eligible Households, consistent with the provisions of Section V-J",
- replacing the words "be used for Affordable Housing" in the table with the words "the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J",
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph b) with the words "Eligible Households",
- replacing the words "Affordable Housing Units" following "development as" in the seventh paragraph with the words "Affordable Dwelling Units, consistent with the provisions of Section V-J" and
- replacing the words "Income Eligible Households as defined in 760 CMR 56" in paragraph c) with the words "Eligible Households"

so that Section III-A.6. A.3 now reads:

"3- Provided that additional units are granted by the Planning Board under the foregoing provision then Affordable Dwelling Units shall be provided in any one of the following alternatives, subject to approval of the Planning Board:

A) By Donation to the Natick Housing Authority……A minimum of 15%, consistent with the provisions of Section V-J *

B) B) By Sale to the Natick Housing Authority .....A minimum of 15%, consistent with the provisions of Section V-J *

C) By sale directly to Eligible Households *.....A minimum of* 15%, consistent with the provisions of Section V-J *

D) By cash payment to the Natick Affordable Housing Trust for Affordable Housing, consistent with the provisions of Section V-J *.....*.**

*Notes: * = % of total units in development, rounded up to the next whole number*

*** = Amount is determined by professional valuation methods as the equivalent value to the units which otherwise would have been provided within the development as* Affordable Dwelling Units, consistent with the provisions of Section V-J.

a) Units to be donated to the Natick Housing Authority are subject to the approval of the Natick Housing Authority, and of the applicable federal or state funding agency.

b) Units set aside for sale to the Natick Housing Authority shall be offered at prices which do not exceed the greater of: (i) the construction costs of the particular units, or (ii) the current acquisition cost limits for the particular units under applicable state or federal financing programs. If the Natick Housing Authority is unable to purchase the set-aside units at the time of completion, the units shall be offered for sale to Eligible Households.

c) Units set aside for sale directly to Eligible Households *shall be offered only to those households which qualify or meet the definition of* Eligible Household*.";*

and in Section III-A.6. A.4 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by adding after the words "moderate income households" in the second sentence the words ", consistent with the provisions of Section V-J of this bylaw.", and removing the third, fourth and fifth sentences, so that Section III-A.6. A.4 now reads:

"4- Each affordable unit created in accordance with this section shall have limitations governing its resale. Such limitations shall have as their purpose to preserve the long-term affordability of the unit and to ensure its continued availability to low or moderate income households, consistent with the provisions of Section V-J of this bylaw*. Such restrictions may also provide that the Natick Housing Authority shall have a prior right of purchase at the price determined according to the restriction for a period of thirty (30) days after the unit is placed on sale. Notice of any proposed sale shall be given to the Planning Board and to the Natick Housing Authority.";*

and in Section III-A.6. A.5 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) of the Natick Zoning By-Laws by replacing in the first sentence the words "for a period of six (6) months from the date of first offering for sale, be offered on a 50%-50% basis," with the words ", consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw.", and removing the second, third and fourth sentences of this section, so that Section III-A.6. A.5 now reads:

"5- Affordable Units to be offered for sale under the IHOP provisions shall be offered to residents of the Town of Natick and to persons employed within the Town of Natick, consistent with the provisions of Section V-J, and particularly V-J.5.E, of this bylaw*.";*

and in Section III-A.6. A.6 – INCLUSIONARY HOUSING OPTION PROGRAM (IHOP) by replacing the words "Affordable Housing Units" in each instance where the term appears in the section with the words "Affordable Dwelling Units", and replacing the term "Affordable Housing" with "Affordable Dwelling Units", so that Section III-A.6. A.6 now reads:

"6- In addition to any requirements under Site Plan Review, the Special Permit, or Subdivision approval, an applicant must submit a development plan acceptable to the Planning Board plan indicating how the parcel could be developed under the underlying zoning (i.e. a baseline plan). Any bonus granted shall be calculated from the baseline plan. The development plan showing the bonus units shall also indicate the proposed Affordable Dwelling Units*, which must be dispersed throughout the parcel to ensure a mix of market-rate and* Affordable Dwelling Units*.* Affordable Dwelling Units *shall*

have an exterior appearance that is compatible with, and to the extent that is possible, indistinguishable from the market rate units in the development. Affordable Housing Units shall contain at least two (2) bedrooms and shall be suitable as to design for family occupancy. The owners of Affordable Dwelling Units *shall have all of the rights and privileges accorded to market rate owners regarding any amenities within the development.";*

and in Section III-A.6. B.1 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – PURPOSE by replacing the words "Income Eligible Households as defined in 760 CMR 56" in each instance where the term appears in the section with the words "Eligible Households", and inserting after the words "in a manner consistent with" in the first sentence the words "both the provisions of Section V-J and" so that Section III-A.6. A.6 now reads:

"1. PURPOSE

The purpose of this Housing Overlay Option Plan is to create overlay districts in selected areas of the Town in order to enhance the public welfare by increasing the production of dwelling units affordable to Eligible Households in a manner consistent with both the provisions of Section V-J and *the character of the downtown area. In order to encourage utilization of the Town's remaining developable land in a manner consistent with local housing policies and needs, new housing developments in the HOOP Districts are required to contain a proportion of dwelling units affordable to Eligible Households.";*

and in Section III-A.6. B.8 –HOUSING OVERLAY OPTION PROGRAM (HOOP) – AFFORDABILITY by replacing the words "The Planning Board shall adopt rules and regulations regarding" in the second sentence with the words "The provisions of Section V-J of this bylaw shall govern" and by replacing the words "Affordable Housing Units" in each instance they occur with the words "Affordable Dwelling Units", by adding after the words "employees of the Town of Natick" the words "consistent with the provisions of Section V-J" and by replacing the words "permitted under the Massachusetts General Laws and as approved by the SPGA" with the words ", consistent with the provisions of Section V-J", so that Section III-A.6. A.6 now reads:

"8. AFFORDABILITY

a) Affordability shall be determined in accordance with the definition of Affordable Housing found in Section 200. The provisions of Section V-J of this bylaw shall govern *the sale or rental of all* Affordable Dwelling Units*. Unless otherwise regulated by a Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the* Affordable Dwelling Units *shall be initially offered to residents and/or employees of the Town of Natick* consistent with the provisions of Section V-

J. *Residency and employment in Natick shall be established through Town Clerk certification.*

b) All Affordable Dwelling Units *shall be maintained as such in perpetuity, by the use of appropriate restrictions in deeds, lease provisions or other mechanisms,* consistent with the provisions of Section V-J.*";*

and, in Section III-D.1.d USE REGULATIONS FOR LC DISTRICTS, PERMITTED USES, by replacing the words "provided however that at least ten percent (10%) of the total number of units are Affordable Housing Units;" with the words "subject to and consistent with the provisions of Section V-J of this by-law.", so that subsection III-D.1.d now reads:

"d. Multi-family building types for not less than three (3) dwelling units but not more than six (6) dwelling units building, such as: apartment houses and/or town houses, with no more than six (6) dwelling units per acre; subject to and consistent with the provisions of Section V-J of this by-law.*";*

and, in Section III.E.2.b.1 DOWNTOWN MIXED USE DISTRICT, USES ALLOWED BY SPECIAL PERMIT ONLY, by replacing the phrase "ii) for projects with 3 to 6 total units at least 10% of the units are Affordable Housing Units; for projects that are 7 to 20 total units, at least 15% of the units are Affordable Housing Units; and, for projects that are 21 or more total units, at least 20% of the units are Affordable Housing Units;" with the phrase " ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and", so that Section III.E.2.b.1 now reads:

"1. Multi-family dwellings, provided that:

i) the Special Permit Granting Authority specifically determines that adequate provision has been made for off-street parking;

ii) all provisions of Section V-J are met to the satisfaction of the Special Permit Granting Authority; and

iii) the total number of multi-family units shall not exceed the number computed by taking the:

a. Gross Land Area of the parcel times the Maximum Percentage Building Coverage

b. multiplied by the number of floors in the building

c. multiplied by the portion of the Gross Floor Area attributable to residential uses in the building

d. divided by the Gross Floor Area in the building, and

e. divided by 2,500

And, in Section "III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS" replace in its entirety the paragraph entitled "AFFORDABILITY" before the Subsection Title "III-1.F TOWN HOUSE CLUSTER DEVELOPMENT", with the words "AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall comply with the provisions of Section V-J.", so that subsection III-F now reads:

"III-F CLUSTER DEVELOPMENT ALLOWED IN CERTAIN DISTRICTS

AFFORDABILITY - Notwithstanding anything to the contrary, any Special Permit granted in accordance with this Section shall be subject to and consistent with the provisions of Section V-J of this by-law.*";*

and, in Section III-5. F.6 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-NUMBER OF DWELLING UNITS by replacing the words "At least ten percent (10%) of this total number of dwelling units shall be Affordable Housing Units as defined in Section 200 herein." in the second sentence with the words ", subject to and consistent with the provisions of Section V-J of this by-law.", so the sentence now reads,

"*The maximum number of dwelling units allowed in a CCD shall equal the "Net Usable Land Area" within the parcel divided by 15,000 square feet then rounded to the nearest whole number*, subject to and consistent with the provisions of Section V-J of this by-law.";

and, by replacing Section III-5.F.10 COMPREHENSIVE CLUSTER DEVELOPMENT OPTION-AFFORDABILITY, in its entirety and replacing it with the words:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.", so that III-5.F.10.a now reads:

"10. AFFORDABILITY

It is mandatory that a percentage of dwelling units in a CCD be sold, rented, or leased at prices and rates that are affordable to low- and moderate-income individuals, subject to and consistent with the provisions of Section V-J:

a. Affordable Housing shall be determined in accordance with the definition of Affordable Housing found in Section 200. All Affordable Dwelling Units that are built shall be subject to and consistent with the provisions of Section V-J.";

and, by replacing Section III-I.2.6 INDEPENDENT SENIOR LIVING OVERLAY OPTION PLAN - AFFORDABILITY REQUIREMENTS, in its entirety with the phrase "AFFORDABILITY REQUIREMENTS: The Applicant shall make provision for affordable housing by complying with all the requirements of Section V-J.", so that the Section now reads:

"2.6 AFFORDABILITY REQUIREMENTS: The Applicant shall make provisions for affordable housing by complying with all the requirements of Section V-J."

and, in the first sentence of Section III-I.8 ASSISTED LIVING RESIDENCES - AFFORDABILITY REQUIREMENTS, by replacing the phrase "the Applicant shall make a one-time payment to the Affordable Housing Trust Fund of Natick in an amount equal to a formula of $75 multiplied by the total number of square feet of area in living units in the ALR. This payment shall be required notwithstanding the fact that the Town may have reached an exemption level of production of affordable units in any year." with the phrase "the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law.", so that the Section now reads:

"*8. Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the ALR do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 and as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD),* the Applicant shall be subject to and comply with all provisions of Section V-J of this by-law."

and, in Section III-J.3 – Historic Preservation-Permitted Uses, by inserting the phrase ", subject to and consistent the provisions of Section V-J:" after "the following additional uses" so that the subsection now reads:

"3. Permitted Uses. Any use permitted as a matter of right or under a special permit in the District as set forth in the Table of Use Regulations may be undertaken on a parcel to which this Section III-J is to be applied; however, the SPGA may grant a special

permit to allow the following additional uses, subject to and consistent the provisions of Section V-J*:*

1. Town Houses;

2. Apartment House;

3. Home Occupation/Customary Home Occupation

And, in Section 323.3 HIGHWAY OVERLAY DISTRICTS - Certain Multifamily Residential Uses, by inserting after the phrase "* Affordability Requirements" in the third paragraph the words " All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J," so that subsection 323.3 Certain Multi-family Residential Uses now reads:

"In the RC district, hotels, motels, assisted living facilities, Elderly Family Residences* may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326. Combinations of such residential and non-residential uses may also be allowed in the RC district, subject to the requirements of each individual use as set forth elsewhere in this Bylaw.*

The provisions of Section 323.1.9, and not this section, shall be applicable to a mixed-use development, including the residential component, in a Regional Center Mixed-Use Development.

* *Affordability Requirements:* All development in a Highway Overlay District, shall be subject to and consistent with the provisions of Section V-J*, unless a determination has been made satisfactory to the SPGA that living units of the assisted living facilities, Assisted Living Residences and Elderly Family Residence do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD."*

And, in Section V-E.3 WAIVERS AND MODIFICATIONS – Limitations and Restrictions, by inserting after the phrase "sky exposure plane" in the first paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J."; by inserting after the phrase "considered separately" in the second paragraph the words ", except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J." and by inserting after the phrase "and/or waived" in the sixth paragraph the words ", except for the provision of

dwelling units required and/or allowed under with the requirements of Section V-J.", so that subsection V-E.3 Limitations and Restrictions now reads:

3. Limitations and Restrictions

a. No increase greater than 10% shall be allowed in any of the following regulatory factors: height, building coverage, lot coverage, number of units, any density measure, or sky-exposure plane, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

b. No decrease of more than 10% shall be granted in any of the following regulatory factors: open space requirement, landscape surface ratio, front yard setback, rear yard setback or side yard setbacks. Side yard setbacks shall each be measured and considered separately, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

f. Modifications and or waivers granted in order to allow a grant of additional density or intensity in compliance with i) Section 9 of MGL Chapter 40 A and ii) specific authorizations in other sections of this zoning by law shall not be subject to these strict limitations and restrictions above. However, any regulatory factor that is modified or waived in order to accommodate a grant of additional density or intensity shall not be further modified or waived to exceed the limitations and restrictions above. If any regulatory factor exceeds the above limitations and restrictions in connection with a grant of additional density or intensity, such regulatory factor shall not be further modified and/or waived, except for the provision of dwelling units required and/or allowed under with the requirements of Section V-J.

Motion D:

MOVE to amend the Natick Zoning Bylaws by inserting a new section entitled "Section V-J. Inclusionary Affordable Housing Requirements" after "Section V-I. Outdoor Lighting", so that Section V now reads:

"**SECTION V-J INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS**

V-J.1 Purpose and Intent:

The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and 760 CMR 56 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Commonwealth's Department of Housing and Community Development (DHCD). Definitions for Affordable Dwelling Unit and Eligible Household can be found in the Definitions Section.

V-J.2 Applicability of Mandatory Provision of Affordable Units

A. In all zoning districts and overlay districts, the inclusionary affordable housing requirements of this section for the mandatory provision of affordable units shall apply to the following uses, consistent with the requirements set forth in G. L. c. 40B sect. 20-24 and 760 CMR 56:

1. Any Residential Project, including Phased or Segmented Housing Developments, that results in a net increase of two (2) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
2. Any Residential Project involving subdivision of land for development of two (2) or more dwelling units; and
3. Any life care facility development (including Assisted Living Residences and Elderly Family Residences) that includes two (2) or more assisted living units and accompanying services, unless a determination has been made satisfactory to the SPGA that living units of the life care facility do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Massachusetts Department of Housing and Community Development (DHCD).

V-J.3 Special Permit:

The development of any Residential Project set forth in Section V-J.2 (above) shall require the grant of a Inclusionary Housing Special Permit from the designated Special Permit Granting Authority (SPGA) for the zoning district in which the Residential Project is located. If the development of a Residential Project set forth in Section V-J.2 is allowed By-Right in the zoning district in which the Project is located, the Applicant may elect to develop said Project under an Inclusionary Housing Special Permit according to the provisions of Section J.4.B. A Special Permit may be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special Permit shall be as defined in Section VI of the Town's zoning bylaw.

V-J.4 Mandatory Provision of Affordable Units:

A. As a condition of approval for a Special Permit, the Applicant shall contribute to the local stock of affordable units in accordance with the following requirements:

1. At least fifteen (15) percent of the units in a Residential Project on a division of land or multiple unit development subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable housing units in any one or combination of methods provided for below:

   a) constructed or rehabilitated on the locus subject to the Inclusionary Housing Special Permit (see Section V-J.5) in Residential Projects with six (6) or more net new dwelling units; or

   b) constructed or rehabilitated on a locus different than the one subject to the Inclusionary Housing Special Permit (see Section V-J.6) in Residential Projects with six (6) or more net new dwelling units; or

   c) an equivalent fee-in-lieu of units may be made (see Section V-J.7); or

   d) An applicant may offer, and the SPGA may accept, provision of buildable land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units.

2. As a condition of approval for an Inclusionary Housing Special Permit, the SPGA may specify to an Applicant the combination of requirements described in Section V-J.4.A.1 to be used to satisfy compliance with the mandatory provision of affordable units. The applicant may offer, and the SPGA may accept, any combination of the requirements described in Section V-J.4.A.1 (a) - (d) provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of Affordable Dwelling Units required by this bylaw. Non-acceptance of an offer by the SPGA does not release the Applicant from compliance with all provisions of this bylaw. The value of any combination of the Section V-J.4.A.1 (a) - (d) requirements provided by an applicant shall always be equal to or greater than the Total Development Cost of

affordable units required by this bylaw. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value. Affordable Dwelling Units developed under a combination of requirements described in Section V-J.4.A.1 (a) - (d) may consist of a mix of housing types, except as provided for below:

a) In Residential Projects consisting entirely of single-family dwellings, only Section V-J.4.A.1 requirements (c) and (d) may be offered by the applicant and accepted by the SPGA. For such single-family Residential Projects, the value of Section V-J.4.A.1 requirement (c) offered by the applicant shall equal 100% of the Total Development Cost of affordable units required by this bylaw, while the value of Section V-J.4.A.1 requirement (d) offered by the applicant shall equal 110% of the Total Development Cost of affordable units required by this bylaw.

b) In Residential Projects, including Phased and Segmented Developments, which result in a net increase of two (2) to five (5) dwelling units, in lieu of the requirements of Section V-J.4.A.1 a), b) or d), the Applicant shall contribute funds to the Natick Affordable Housing Trust to be used for assisting households to occupy Affordable Dwelling Units in Natick in lieu of the Applicant constructing and offering affordable units within the locus of the proposed development or at an off-site locus, consistent Section V-J.4.A.1 requirements (c) and consistent with G. L. c. 40B sect. 20-24 and 760 CMR 56.

Table V-J.4 Mandatory Provision of Affordable Units, by Residential Project Type

Residential Project, type:	**Methods for fulfilling Mandatory Provision of Affordable Units, Section V-J.4.A.1**
Multi-family dwellings, or mix of single and multi-family dwellings ***(Projects with 6 or more units)*** *Section V-J4.A.1*	a) Provision of Affordable unit(s), on site b) Provision of Affordable unit(s), off-site c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single-family dwellings only ***(Projects with 6 or more units)*** *Section V-J4.A.2 (a)*	c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single or multi-family dwellings ***(Projects with 2-5 units)*** *Section V-J4.A.2 (b)*	c) Provision of fee-in-lieu of units payment

3. As a condition for the granting of an Inclusionary Housing Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory

agreement in a form acceptable to the SPGA. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section V-J.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the SPGA and the Inspector of Buildings.

B. Density Bonus. For Residential Projects consisting entirely of single or two-family homes, or any other Residential Projects that are allowed By-Right in the zoning district underlying their location, that yield an increase of two (2) to five (5) net new dwelling units the SPGA may allow the addition of one (1) Unregulated Dwelling Unit as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.2. For Residential Projects consisting entirely of single or two-family homes, or that are allowed By-Right in the zoning district underlying their location, that yield an increase of six (6) or more net new dwelling units the SPGA may allow the addition of two (2) Unregulated Dwelling Units for each Affordable Dwelling Unit provided as part of compliance with the Inclusionary Housing Special Permit process outlined in Section V-J.4.1. The SPGA may modify minimum lot sizes and any other intensity or density regulations, except height, normally required in Section IV.B in the applicable zoning district, to a maximum increase or decrease of 35% on a cumulative basis, calculated according to the provisions of Section V-E.3, to accommodate up to two (2) additional Unregulated Dwelling Unit(s) on a lot for each one Affordable Dwelling Unit provided as part of compliance with the Inclusionary Housing Special Permit process in Section V-J.4.A. The SPGA may place conditions on the number of bedrooms and other characteristics of additional Unregulated Dwelling Units permitted as part of compliance with the provisions outlined in Section V-J.4.A.

Example 1: An Applicant can build a Residential Project on a subdivision with five homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, under which they could build six homes (the original 5 units + 1 bonus unit) and make a payment to the Natick Affordable Housing Trust as specified in Section V.J.7.

Example 2: An Applicant can build a Residential Project on a subdivision with twenty homes by-right in an RSA zone. Under V-J.4B, that Applicant could request an Inclusionary Housing Special Permit, which would require three (3) homes designated as Affordable Dwellings, but would allow a total of twenty-six homes (20 units + 6 bonus units) to be developed on the site.

V-J.5 Provisions Applicable to Affordable Housing Units On- and Off-Site:

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

B. Minimum design and construction standards for affordable units. Affordable housing units shall be integrated with the rest of the development and shall be compatible in exterior design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall comply with the requirements for Local Initiative Units as specified by the Department of Housing and Community Development in the guidelines for the Local Initiative Program.

C. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

D. Pricing of Affordable Units. The household size figure used to calculate the Initial Sales Price or Rent of an Affordable Unit shall be equal the number of bedrooms in each Affordable Unit plus one (1).

E. Local Preference. Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered, in the following priority, to:

1. Persons who currently reside within the Town of Natick;
2. Persons whose spouse, son, daughter, father, mother, brother, or sister currently reside in the Town of Natick;
3. Persons who are employed by the Town of Natick or by businesses located within the Town of Natick;

F. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

G. Condominiums. Condominium documentation shall provide the owners of the Affordable Units with full and equal rights to all services and privileges associated with condominium ownership.

H. Legal Review. All legal documents, including but not limited to: affordable housing deed riders, affordability restrictions, leases, condominium documents and/or homeowner's

agreements shall be subject to peer legal review by the SPGA, to be paid in full by the Applicant.

V-J.6 Provision of Affordable Housing Units Off-Site:

A. As an alternative to the requirements of Section V-J.5, an applicant subject to this bylaw may develop, construct or otherwise provide affordable units offsite, equivalent to those required by Section V-J.4 and meeting all quality criteria outlined in Section V-J.5. B. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location, housing type and character of the off-site units to be provided shall be approved by the SPGA as an integral element of the Inclusionary Housing Special Permit review and approval process.

V-J.7 Calculation of Fees-in-Lieu-of Affordable Housing Units:

A. Calculation of fee-in-lieu-of units. For the purposes of this bylaw the fee-in-lieu of the construction or provision of affordable units shall be determined as a per-unit cost calculated as: 0.125 x Initial Sales Price of an Affordable Dwelling Unit of identical size (in terms of average number of bedrooms), calculated according to the provisions of Section V-J.8, and shall be payable in full prior to issuance of a final occupancy permit. The SPGA may annually adjust the acceptable value of the fee in-lieu-of units according to maximum income levels established by the Commonwealth's Department of Housing and Community Development.

Example 3: An Applicant proposes a Residential Project with four two-bedroom homes under an Inclusionary Housing Special Permit. Under V-J.4A.2.b, the Applicant would be required to pay a fee to the Natick Affordable Housing Trust equal to (4 dwellings x 0.125 x Initial Sales Price for an Affordable two-bedroom Dwelling Unit) as specified in Section V.J.4.A.2 (b)

1. The SPGA may reduce the applicable fee-in-lieu-of unit(s) charge by up to fifty percent (50%) for each dwelling in a housing development with initial rents or sale prices that are affordable to households earning 81-120% of Median Income, calculated according to standards of the Department of Housing and Community Development (DHCD), and in compliance with the household size provisions of Section V-J.5.D of this bylaw.
2. Schedule of fees-in-lieu-of-unit(s) payments. Fees-in-lieu-of-unit(s) payments shall be made according to the schedule set forth in Section V-J.5.C, above.

V-J.8 Maximum Incomes and Selling Prices: Initial Sale:

A. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Department of Housing and Community Development (DHCD), and as may be revised from time to time.

B. The maximum housing cost for affordable units created under this bylaw is as established by the Department of Housing and Community Development (DHCD), Local Initiative Program or as revised by the Town.

V-J.9 Preservation of Affordability; Restrictions on Resale:

A. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section V-J.4.A.3). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

1. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section V-J.9.A, above.

2. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town of Natick, consistent with model riders prepared by the Department of Housing and Community Development (DHCD), granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

3. The SPGA shall require, as a condition for Inclusionary Housing Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section V-J.9.A.2 above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

V-J.10 Conflict with Other Bylaws/Ordinances:

The provisions of this section shall be considered to supersede existing zoning bylaws/ordinances except for the Smart Growth Overlay (SGO) district. To the extent that a conflict exists between this section and others, this section, or provisions therein, shall apply.

V-J.11 Severability:

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