

ADJOURNED MEETINGS

It is anticipated that if an adjourned meeting is necessary to complete action on this warrant, it will be held on Thursday, November 19, 2009, subject to Special Town Meeting approval.

If you have any questions about the Articles, please attend the Warrant Hearing on Monday, November 9, 2009, at 7:30 P.M. at the Town Building. You may also call the Town Administrator's office at (508) 358-7755 before Special Town Meeting.

NOTICE REGARDING MOTIONS

This warrant for Wayland Special Town Meeting is issued by the Board of Selectmen and is served upon all residents by mail and by posting at the Town Building, the Wayland Public Library, the Cochituate Fire Station or the Cochituate Post Office, and at Happy Hollow School. It contains the agenda of subjects to be acted upon; i.e., the articles.

By state law, no action at the special town meeting is valid unless the subject matter is contained in the warrant. This requirement means only that the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action that the meeting will take upon those subjects. A valid motion may differ from the underlying article, but it must be within the scope of that article.

QUANTUM OF VOTE

The quantum of vote is specified in the warrant for each article.

For those articles involving appropriations which are anticipated to be provided by taxation or from available funds or transferred funds previously appropriated for another purpose, a majority vote is required for approval of a main motion thereunder. For articles which are anticipated to be funded by borrowing, a two-thirds vote is required.

Certain articles request the action of Town Meeting under its general legislative powers (i.e., to hear and accept reports, to appoint a committee, to adopt a resolution or "sense of the meeting" vote, etc.), and in such cases no particular statute is referenced. Town Counsel has advised that, as a matter of common law precedent in Massachusetts, such matters are decided by a majority vote.

NO SMOKING NOTICE

Voters are reminded that no smoking is permitted on school grounds.

COMMONWEALTH OF MASSACHUSETTS

*Middlesex, ss.**Town of Wayland****** WARRANT *****

To any of the Constables of the Town of Wayland, Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to notify all residents of the Town of Wayland who shall be qualified to vote in accordance with the provisions of Massachusetts General Laws, Chapter 51, Section 1, to come to their respective polling places (Precincts 1 and 4 in the Gymnasium of the Town Building and Precincts 2 and 3 in the Gymnasium of the Middle School) on:

TUESDAY, NOVEMBER 17, 2009, BETWEEN 7:00 A.M. and 8:00 P.M.

to vote "Yes" or "No" upon the following question:

"Shall the Town of Wayland be allowed to exempt from the provisions of Proposition two-and-one-half, so called, the amounts required to pay for the bond issued in order to expand and modernize Wayland High School?"

You are also required to notify all such residents of Wayland to meet in the High School Field House on

WEDNESDAY, NOVEMBER 18, 2009, AT 7:30 P.M.

to act on the following Articles:

ARTICLE 1: INCREASE DEMAND CHARGE FOR DELINQUENT TAXES*Sponsored by: Board of Selectmen**Estimated Cost: Nominal*

To determine whether the Town will vote to charge for each written demand issued by the Town Treasurer-Collector a fee of \$30.00 or such greater amount as authorized by state law to be added to and collected as part of the tax, as authorized by Massachusetts General Laws Chapter 60, Section 15, effective January 1, 2010.

FINANCE COMMITTEE COMMENTS: Passage of this article allows the Town Treasurer-Collector to raise the fee for each written demand of delinquent taxes from \$5 to \$30. It would also allow this rate to automatically change in the future as the State increases the amount as authorized by MGL Chapter 60, section 15. The Massachusetts Department of Revenue has determined that town meeting approval is needed because it is not a license fee or charge for services; it is a statutory penalty. Also, the Massachusetts Department of Revenue requires that the demand fee be the same for all types of taxes (meaning that the town may not differentiate on excise vs. real estate tax demand charges).

Prior to issuing a demand charge, the Treasurer-Collector issues a bill for taxes due. A demand notice is sent after 30 days of non-payment on excise and water bills and after May 1st for non-payment of all real estate tax billings. Only one demand notice is sent and only one demand charge is incurred; then, the account is sent to collection (excise) or to tax title collection (real estate, water). Surrounding towns have demand charges that range from \$5 to \$30; many towns at the \$5 level have also suggested increases for their own town meetings this spring.

This same article was discussed at Annual Town Meeting in April 2009 and was passed with an amendment that the demand charge would be increased from \$5 to \$30 if the amount owed was over \$100. The Massachusetts Department of Revenue ruled that this amendment was inconsistent with state law and the work of town meeting on this article was voided. The ruling stated that only one level of demand charge may be assigned by the town regardless of the amount due.

ARGUMENTS IN FAVOR: The present \$5 fee has not been increased since 1989 and increasing it to \$30 brings it to the level allowed by the State. While the present penalty may cover the cost (personnel, overhead, materials, printing and mailing) of processing a written demand for delinquent taxes, increasing the penalty may encourage residents to pay on a more timely basis and better supports the costs incurred by the Town.

The cost to create and send a demand notice is the same regardless of the amount of tax past due. In fairness, the cost of collection and processing should be borne by the individual delinquent taxpayer and not paid by the Town (and therefore all taxpayers).

Further, residents have a basic responsibility to pay their taxes on time, and payment plans are available to taxpayers.

In the future, the demand charge will stay at levels permitted by the State. This will reduce the time needed at Town Meeting to approve fee changes which are primarily housekeeping in nature.

ARGUMENTS OPPOSED: The penalty is applied to all delinquent taxes, both property and excise, and is applied regardless of the amount of delinquency. It could be argued that the Town is adding additional burden to the delinquent taxpayers, and it could add a \$30 penalty to a taxpayer with a small outstanding tax. Also, the demand charge may not be sufficient reason for the taxpayer to pay late taxes.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 7-0.

QUANTUM OF VOTE: Majority.

See M.G.L. Chapter 60, Section 15, at Appendix B. For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us.

ARTICLE 2: WAYLAND HIGH SCHOOL EXPANSION AND MODERNIZATION

Sponsored by: Board of Selectmen and School Committee

Estimated cost: \$70,800,000.00

To determine whether the Town will vote a.) to appropriate the sum of \$70,800,000.00 to be expended under the direction of the High School Building Committee for design, construction and other related expenses to expand and modernize Wayland High School, 264 Old Connecticut Path, Wayland, Massachusetts 01778, which school facility shall have an anticipated useful life as an education facility for the instruction of school children of at least 50 years, and for which the Town may be eligible for a school construction grant from the Massachusetts School Building Authority ("MSBA"); b.) to determine whether such appropriation shall be provided by taxation, by transfer from unappropriated funds, by transfer of funds already appropriated for another purpose, by borrowing under M.G.L. Chapter 44, or any other enabling authority, or otherwise, provided that any appropriation hereunder shall be subject to and contingent upon an affirmative vote of the Town to exempt the amounts required for the payment of interest and principal on said borrowing from the

limitations on taxes imposed by M.G.L. Chapter 59, Section 21C (Proposition 2 1/2); c.) that the amount of borrowing authorized pursuant to this vote shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the Town of Wayland and the MSBA; provided further that any grant that the Town may receive from the MSBA for said project shall not exceed the lesser of (1) forty percent (40%) of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA; d.) to acknowledge that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any project costs the Town incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the Town; and e.) to authorize the School Committee to enter into all necessary and appropriate agreements for the design, construction and other related expenses to expand and modernize said Wayland High School, including but not limited to a project funding agreement and a project scope and budget agreement with the MSBA, which agreements with the MSBA may include a provision requiring the Town to indemnify the MSBA for losses associated with the Town's performance of its obligations and exercise of its rights under such agreements.

FINANCE COMMITTEE COMMENTS: Since 2001, various Wayland School Committee (WSC) appointed committees have been working to determine the most cost-efficient solution for the facility needs at Wayland High School (WHS). The current High School Building Committee (HSBC), formed in 2003, has been actively working with the Massachusetts School Building Authority (MSBA) since it resumed its grant program in 2006. In 2007, the MSBA agreed that action was needed and invited Wayland to proceed with its next step, Feasibility Study and Schematic Design. The HSBC hired HMFH Architects (HMFH) and KV Associates (KVA) to develop an educational program specification, evaluate various approaches including renovation of existing buildings, and work closely with the MSBA to choose a preferred option. Schematic designs and a budget for the preferred option were presented to the MSBA at their September 30, 2009 Board Meeting. The MSBA approved the preferred option and agreed to contribute up to \$25 million toward approved project costs.

The Town of Wayland now has 120 days to approve the project and proceed or forgo this grant. Passing this article will allow the Town to proceed with contracting with the MSBA to construct the proposed high school facility with up to a \$25 million grant.

**The motion under this article requests the remaining funds for the high school project; it also allows the School Committee and the Board of Selectmen to enter into agreement with the MSBA to obtain the offered \$25 million grant. The article requests the net amount of the \$70.8 million project (\$69,715,188), after costs for phases already completed and appropriated are subtracted, as shown in the chart below and further explained in this write-up and appendix.

Summary	<u>Total</u>	<u>MSBA Grant</u>	<u>Wayland's Share</u>
Total Project Budget	\$70,800,000	\$25,000,000	\$45,800,000
Feasibility and Schematic Design Phase	<u>(1,084,812)*</u>	<u>(433,925)</u>	<u>(650,887)</u>
Remaining Phases	<u>\$69,715,188</u>	<u>\$24,566,075</u>	<u>\$45,149,113</u>

* Total reflects three prior Town Meeting appropriations (2004 for \$355,000, 2007 for \$300,000 and 2009 for \$726,000).

Background:

The HSBC addressed three major facility issues at Wayland High School:

Facility Age and Condition —WHS was opened in 1960 and last renovated in 1991. The building now requires significant upgrading, including health and safety code upgrades, a septic treatment plant, access for the disabled, and modernization for areas and building systems at or near the end of their expected life. The size and layout of science and other rooms are not suited for current educational norms including technology and utilities, teaching techniques, storage, equipment, and hazardous waste disposal. The Division of Occupational Health and Safety (OSHA) and the Department of Environmental Protection have both cited the school's failure to meet current standards.

Changing Educational Standards—Building utilization has changed considerably in the past 50 years due to more rigorous college requirements, greater participation in academics and co curricular activities, technology, and changing legal requirements. In its 2005 accreditation review, NEASC (New England Association of Schools and Colleges) cited WHS for numerous health, safety and educational facility shortcomings. The district is now required to submit special annual reports on the progress towards correcting these facility deficiencies.

Enrollment Projection --Enrollment grew 18% between 2002 and 2007 to 919 students, although it has declined nearly 40% from the peak of ~1,300 students in the mid-1970s. Current enrollment is 903 students and MSBA/HSBC 10-year projections are between 800-900 students. After analyzing Wayland's enrollment history and short-term projections and preparing long-term projections of their own, the MSBA instructed Wayland to design for 900 students. It should be noted, however, that changes in State educational guidelines (e.g., designation of space for special education) as well as updated MSBA regulations for school capacity based on total square footage of the facility make it difficult to compare today's educational structure with that of the 1970s. Based on these regulations, Wayland High School today has a capacity of ~700 students versus the current enrollment of 903. This follows from the fact that not a single classroom in the current facility meets the MSBA guidelines for size.

There were 4 steps the HSBC followed working with the MSBA, development of the Educational Program Specification, Feasibility, Schematic Design and Project Budget.

1. Educational Program Specification: This past spring, the HSBC conducted an Educational Planning and Visioning effort that involved over 60 teachers, administrators, design professionals, students and community volunteers. They developed a vision for the types and locations of spaces with the flexibility to support collaborative learning and future educational methods and trends. Based on this vision, the HSBC then prepared a detailed Educational Program Specification that spells out the size and type of educational spaces needed at the school.

The requested space was carefully scrutinized, cut back to a minimum based on educational priorities, compared to the existing facility, and evaluated against current MSBA standards. Early on, the HSBC determined (and the MSBA agreed) that it would be more cost effective to renovate the existing Field House rather than build new athletic space according to the MSBA guidelines. The MSBA approved the Educational Program Specification in June, 2009.

2. Feasibility: The next step in the feasibility process with the MSBA was to analyze construction options, then select a preferred option and proceed with schematic design of this one option. The HSBC developed four options using different approaches: 1) all renovation, 2) part new/part

renovation, 3) new construction of a single building, and 4) new construction of two buildings. All options satisfied the educational specification; all also assumed renovation of the Field House. The HSBC then analyzed the relative cost differences for each option. The HSBC also considered such factors as fit with the educational plan and vision, quality, durability and green qualities/energy efficiency of the spaces, and the levels of disruption to students, staff and residents and risk during construction.

Both renovation schemes proved more expensive than new construction. This is because renovation takes longer, requires moving and more temporary space, is more complex and labor-intensive, and is riskier because there are more unknowns. New construction provides a better fit to the educational program, results in higher quality spaces, should be more durable, “greener” and energy efficient, and is less disruptive to students, staff and residents. The HSBC unanimously chose new construction of two buildings, despite the 1% additional cost over the single building option. The two building option better fits the concepts of the Educational Planning and Visioning effort with its outdoor courtyard space and fewer interior classrooms. It is also more efficient in square footage and offers more flexibility on the site. In July 2009, the MSBA Board agreed with the preferred option and approved moving to Schematic Design.

3. Schematic Design: The new design includes a 100,000 sq. ft. Classroom Building organized along clusters of small learning communities with a central library and media center. There is also a 54,000 sq. ft. Commons Building that contains the dining commons, administration and guidance offices, music and arts classrooms, a fitness room, and a multi-use auditorium. The existing 38,000 sq. ft. Field House will be renovated with new locker rooms, new roof, elevator for accessibility, upgrades to systems (plumbing, sprinkler, electrical, seismic, heating, ventilation), and exterior work. A site plan is shown in Appendix E.

All of the work products and documentation from the Feasibility Study and Schematic Design phase, as well as the prior studies and phases of the high school project, are available on the HSBC website: www.waylandschoolcommittee.org/whs/hsbc/index.htm.

4. Project Budget: The HSBC based the proposed project budget for the preferred option on two detailed cost estimates that include inflation and contingency. Certain items included in the total project budget amount and listed below are not eligible for the State grant. The budget summarized below was submitted to the MSBA and approved at their September 30, 2009 Board meeting. Wayland will receive a grant of up to \$25 million for this project, provided voters approve it at this Special Town Meeting. The budget is summarized below:

Project Budget

Administration	\$1,960,000
Architecture & Engineering	\$5,640,000
Construction	\$56,440,000
Furnishings & Equipment	\$2,160,000
Miscellaneous	\$650,000
Owner's Contingency	<u>\$3,950,000</u>
Total Project Budget	\$70,800,000

Ineligible for MSBA Reimbursement

Waste Water Treatment	(\$3,139,000)
Site Improvements	(\$3,107,000)
Additional Contingency	(\$1,106,000)

Asbestos Abatement	(\$248,000)
Miscellaneous	(\$700,000)
Total Ineligible for MSBA Reimbursement	(\$8,300,000)
 Total Grant Eligible Costs	 \$62,500,000
Total Reimbursement (40%)	\$25,000,000

It is important to understand the previous appropriations approved by Town Meeting and their net impact on the November 2009 request. A chart showing the appropriations and footing to the net Town cost is shown in Appendix C, and a summary project chart is shown below.

Summary	Total	MSBA Grant	Wayland's Share
Total Project Budget	\$70,800,000	\$25,000,000	\$45,800,000
Feasibility and Schematic Design Phase	(1,084,812)*	(433,925)	(650,887)
Remaining Phases	\$69,715,188	\$24,566,075	\$45,149,113

* Total reflects three prior Town Meeting appropriations (2004 for \$355,000, 2007 for \$300,000 and 2009 for \$726,000).

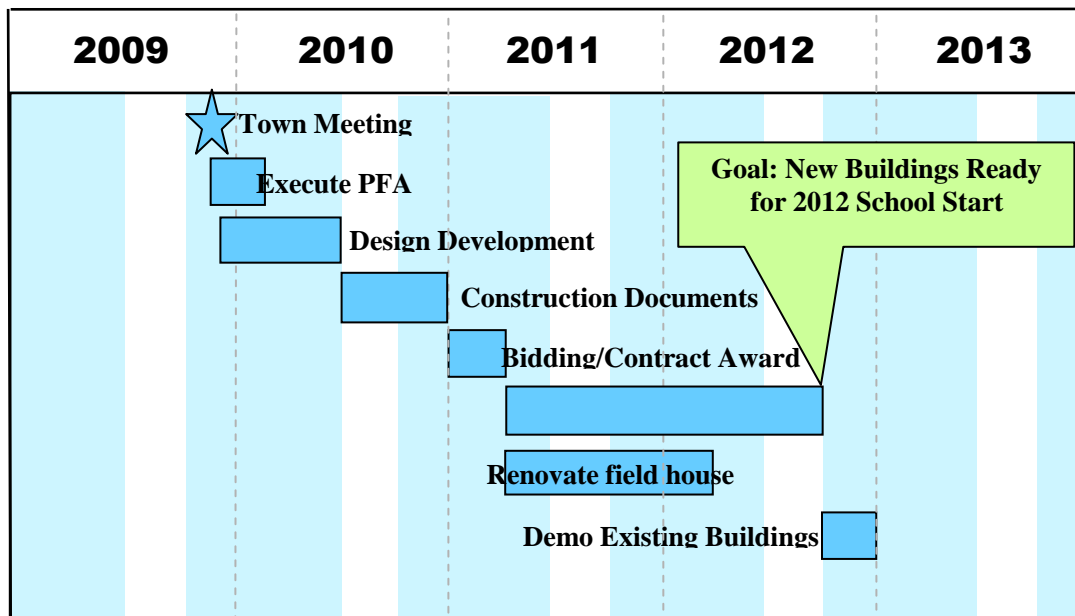
Financial Considerations/Tax Impact: The funds for the recently completed Feasibility and Schematic Design Phase were appropriated at prior Town Meetings, making the net appropriation for this article \$45,149,113. The Town can finance this debt over a maximum of 25 years. The current assumption is to issue three rounds of bond financing over (calendar) years 2011-2013. Given current and projected interest rates, we have assumed a composite 3.5% rate for the bonds. The estimated tax impact is shown in Appendix D with supporting data tables and assumption bases. Although the issuing interest rates and exact principal amounts are not fixed at this time, we have used the estimated composite interest rate and debt principal amounts and timelines to approximate the household impact.

Assuming the variables noted above and using the current tax rate as a basis, the Finance Committee estimates that the average annual household property tax rate increase over the life of these bonds (2011-2037) will be 4.54% over the 2009 tax bill, or \$74 per \$100,000 of assessed home value. In other words, a house assessed at \$650,000 would see an average yearly increase in tax of \$483. It should be noted that this incremental tax impact would not be equal across all years. During the periods of construction and bond issuance (2011-2012) the increase is more modest at \$46 per \$100,000 value or a 2.79% tax rate increase over the 2009 tax bill; the 5-year period post construction when bonds are fully issued (2013-2017) would see the largest increase of \$98 per \$100,000 of value, or 5.98% over the 2009 tax bill, and the increased levy and rate would then gradually decline through 2037.

Next Steps: If this article is approved, the next step will be to execute a Project Funding Agreement with the MSBA. The current design team, HMFH and KVA, is expected to remain in place and will continue to create the architectural drawings and specifications needed to obtain construction bids. Public input will be welcomed during this process. The HSBC will also proceed with site testing and permit applications, such as for the new wastewater treatment plant that will be required.

The project is anticipated to be bid in early 2011, with construction beginning in the spring. The Field House renovation is planned for completion by the spring of 2012. The new buildings should be ready

for students at the start of the 2012-2013 school year. The new parking lots and other site work should be completed at the end of calendar 2012.



If this article is not approved, it is likely that a series of smaller and more substantial maintenance repairs, upgrades, and modular classroom additions which have been deferred over the past several years would result. This is not without financial risk, however, as the cumulative cost of these investments could reach a level which would then require the entire facility would have to be ADA (Americans with Disability Act) code-compliant. At this level, the total cost of bringing the entire facility to compliance would be similar to the cost of the new facility proposed in this article.

The facility renovation – referred to as the “stop gap” – was dropped from consideration as the resulting facility would neither meet the educational specifications nor the MSBA guidelines. There is no current project plan regarding these deferred maintenance or stop-gap projects, and analyses of the applicable codes as well as discussions with permitting authorities have not been undertaken. Based on the assessed value of the property, it is likely however that certain code requirements would have to be met if the value of the deferred investments were to meet or exceed \$14 million over a 36-month period. (Note: for more documentation regarding the deferred maintenance projects as well as the full stop gap analysis prepared by the HSBC and KVA, visit the HSBC website at www.waylandschoolcommittee.org/whs/hsbc/index.htm).

Further, Wayland would need to restart the process and resubmit a new design for MSBA consideration, or attempt to adjust the current one. In either case, Wayland would only be eligible for future State reimbursement at a maximum rate of 31%, would have to adhere to MSBA guidelines for any new or adjusted facility designs, and would begin the multi-year review process over again.

Project Funding Agreement: This article also allows the School Committee to enter into a project funding agreement with the MSBA and any other agreements that may be required to complete this project. Town meeting approval is required to enter into this agreement because it may include language asking the Town to indemnify the MSBA for losses associated with the Town’s performance

of its obligations and exercise of its rights under such agreement. The Town approved a similar article in April 2009 with Special Town Meeting Article 5 allowing the School Committee to sign the Feasibility Study Agreement with the MSBA.

ARGUMENTS IN FAVOR: The State agrees with Wayland that there is a need to modernize and expand the high school to address the inadequate and deteriorating conditions. These deficiencies have been well documented by three Wayland study committees, NEASC, the State Division of Occupational Safety and the Department of Environmental Protection. Failure to proceed could threaten our accreditation, cause problems with other agencies, further compromise the quality of the educational program at Wayland High School, and risk the health and safety of students and staff. Regulatory agencies will eventually require Wayland to take action to address these problems.

The State agrees with the proposed solution and has awarded Wayland an MSBA grant of up to \$25 million. If the project is not approved, Wayland will forgo this MSBA grant. A future, alternative project might be reconsidered by the MSBA, but the grant would be significantly reduced and if issued, would be based on no more than 31% of applicable design and construction costs rather than the 40% approved in September. Wayland would start the grant process over again, with more than 100 projects already in the MSBA funding “pipeline” — many of which would be further along in the approval process. The availability of future funding is uncertain, with MSBA revenues continuing to fall below expectations (future MSBA revenues are derived from State sales tax revenues). When assessing the current proposal relative to the alternative options of the stop gap option or deferred maintenance (resulting from a ‘no’ vote) we found that the estimated total project costs are comparable, resulting in similar tax impacts without the benefit of new buildings which better meet educational needs. Proceeding with this project represents the most cost-efficient and best long term investment for the town in regards to the high school facility.

It should be noted that the MSBA has the approved funding for this and several other projects already reserved (it was collected through State sales tax proceeds in prior years). Also, a major difference in the MSBA funding reimbursement now as compared to prior projects is that the reimbursement is on a “pay-as-you-go” basis, as opposed to reimbursement after project completion. This alleviates the need for towns to float short term borrowing to pay for construction costs while they await State reimbursement.

When the alternative options are viewed from a financial perspective, the question becomes one of the value of such a significant investment. It is clear that even in the scenario of a “no” vote, significant funds would need to be invested in the current high school facility for basic maintenance as well as correcting current features that violate State building codes. It is the potential exposure of the corrective actions that could cause these short-term “fixes” to become a large-scale investment in bringing the entire facility into compliance with ADA and other regulations, and the costs would be without the grant the MSBA has already awarded to the proposed design. Further, these funds would be spent without the end benefit of new buildings and spaces that fit the educational needs of Wayland’s program.

Although it is a major investment for the Town, the timing is right to pursue this project. Construction costs and debt financing rates are historically low due to the current economic downturn. Moving forward with the project now will afford us the best opportunity to take advantage of these market conditions. Further, the MSBA grant that Wayland was awarded has a reimbursement rate of 40%. All future MSBA reimbursement grants will have a maximum of 31%. In terms of the construction costs of the project proposed in this article, this difference in reimbursement rates alone equates to at least an additional ~\$5.6 million that the town would have to expend.

This project is needed to provide a healthy and safe environment for students and staff, and to maintain the high quality educational program at the High School. Education is an important value in our community and we should continue to invest in our school system. When children are well educated and productively occupied during and after school, all members of the community benefit.

ARGUMENTS OPPOSED: Some Wayland residents may not be able to afford the tax increase that a project of this size requires, particularly in light of the current economic situation. Wayland already has one of the highest residential tax rates in the State and the incremental effect from this project will only increase that. Absent any offsetting cuts in operating expenses or capital appropriations, this project may make Wayland unaffordable to many of its current long-term residents.

It may be possible to delay action on the high school facility for some time. The regulatory consequences may not be immediate and could take many years to be enforced. Therefore, it may be possible to assume smaller, incremental projects to address immediate and emergency needs as they arise, even if the cost is ultimately greater. However, it is important to note that these repairs would also increase residential taxes.

In addition, funding this project may make other large and deserving capital projects needed by the Town more difficult to support for many years.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Majority – see Massachusetts General Laws Chapter 40, Section 5, and Chapter 44, Section 33B. For borrowing, two-thirds – see Massachusetts General Laws Chapter 44, Section 7.

For more information about this article, contact Louis Jurist, Chair, School Committee, at (508) 358-5686, or Lea Anderson, Chair, High School Building Committee, at (508) 358-2667, or go to the High School Building Committee website, www.waylandschoolcommittee.org/whs/hsbc/index.htm. Also see Appendices C, D, E and F.

ARTICLE 3: AMEND ZONING BYLAWS RE: AFFORDABLE HOUSING IN MUOD

Sponsored by: Board of Selectmen

Estimated Cost: Nominal

To determine whether the Town will vote to amend Chapter 198 of the Code of the Town of Wayland, the Zoning Bylaw of the Town, by making the following revision to §198-2309.11.1 thereof:

[Key to revisions; ~~striketrough~~ = deletions; underlining = additions]

2309.11.1 In lieu of Article 22 of the Town's Zoning Bylaw (the "Inclusion of Affordable Housing" bylaw), the following standards shall apply in the MUOD. At least ~~25%~~ 12% of the dwelling units shall be affordable units. The term "affordable unit" shall mean a dwelling unit reserved in perpetuity for rental or ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for rental or ownership units set forth in 760 CMR 45.03(4), as amended from time to time, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory. Affordable units shall be subject to the following conditions:

FINANCE COMMITTEE COMMENTS: This article is asking the Town to amend the affordable housing component of the Mixed Used Overlay District (MUOD) from 25% of the total residences as affordable housing to 12% affordable. The Spring 2006 Special Town Meeting (held within the Annual Town Meeting) approved the creation of the MUOD for the Town Center. As approved, the zoning required that 25% of the proposed 100 residences be affordable, equating to 25 units. The current proposal reduces the number of affordable units to 12, which would be apartment rentals over the retail component of the Town Center. Approval of this article only changes the number of affordable units. If Town Meeting does not approve this article, the current MUOD continues in force. A no vote does not overturn or revoke the MUOD as approved in 2006.

As part of the Town's original agreement to establish the MUOD in 2006, the Town and Developer (Twenty Wayland) entered into a Development Agreement which included financial consideration in the form of financial gifts or payments towards infrastructure and other site improvements.

This past summer, the Developer approached the Selectmen to request changes to the zoning and Development Agreement to ensure the viability and continuance of the Town Center project. Delays in the permitting process, which have exceeded both Town and Developer expectations and have exceeded timeframes typical for this size and type of project, have resulted in the Developer incurring significantly higher interest, engineering and legal costs. In addition, due to the severity of the economic crisis, rental rates, market value of condominiums and cap rates have dramatically declined versus original estimates. Combined, the Developer concluded that the project was no longer viable unless the Town agreed to reduce the affordable housing component to zero, allowing the Developer to realize market value for those units (vs. the affordable sale price, which would be approximately 25% of market value), and to reduce payments to the Town required under the Development Agreement. After considerable negotiations with the Selectmen, the Developer has agreed to include 12 affordable rental units and to contribute to a Wayland Municipal Affordable Housing Trust an amount equal to 1.5% of the sale price of the residences, with a minimum payment of \$537,240 and a maximum payment of \$1,122,000. In addition, the consideration in the Development Agreement will generally continue, however the timing of the municipal gifts will be deferred and tied to development milestones or tied to sale of residences (see discussion below re: changes to the Development Agreement).

The changes to Development Agreement are not subject to Town Meeting vote. However, these changes, as enumerated below, and the change in the proposed zoning should be viewed together as a "package" negotiated between the Selectmen and the Developer subject to the zoning change being approved by Town Meeting. Except as described below, all other provisions of the original Development Agreement remain in effect. (See original Development Agreement at Appendix G.) The changed provisions include the following:

- **Municipal Gift:** the original gift was \$3,030,000 of which \$230,000 has been paid and the balance originally due 90 days following the issuance of the first building permit. Under the amendment, the balance of \$2,800,000 will be paid as follows: \$500,000 payable with the issuance of the first certificate of occupancy to Phase 2 of the retail component; \$40,000 on the sale of each residential unit until the gift is fully paid, subject to a guaranteed payment of \$250,000 within three years of the payment of the \$500,000.
- **Bicycle Trail Gift** of \$250,000 which was to be paid upon the issuance of the first building permit will now be paid following the issuance of a certificate of occupancy for 50% of the gross floor area of Phase 2 of the retail component.
- **Municipal parking gift** of \$120,000 which was to be paid upon the issuance of the first building permit will now be paid with the certificate of occupancy of 50% of the gross floor area of Phase 2

of the retail component.

- Payment to the Wayland Municipal Affordable Housing Trust: As part of the amendment this provision has been added whereby the Developer will donate 1.5% of the gross sale price of each residential unit sold subject to: i) a minimum of \$6,105 per unit; ii) a maximum of \$12,750 per unit; iii) a minimum aggregate donation of \$537,240; and iv) a maximum donation of \$1,122,000. The donation to be made to the Wayland Municipal Affordable Trust Fund.
- The Development Agreement which was set to expire in March 2011 has been extended to March 2014. This extension continues the Developer's commitment to pay real estate taxes during the demolition and construction phases on the property as if the original building existed and the present assessment is maintained as a minimum (tax payment valued at \$260,000 per year).

The Developer currently contemplates beginning all site work and Phase 1 of the retail, which is 100,000 square feet, as soon as the project is permitted. The balance of 77,000 square feet will be built in Phase 2, which includes the balance of the retail and the 12 affordable apartment rentals, and will be started within 2 years of the start of Phase 1. The residential component can begin at any time after permitting. The Master Special Permit requires this phase begin within one year of the retail phases but does allow for the developer to request up to 5 one-year extensions due to market conditions or permitting issues.

The Finance Committee, at the request of the Selectmen and as part of its own due diligence process, updated its financial impact analysis of this project. A copy of the FINCOM's presentation to the Selectmen and separately at the Planning Board's Public Hearing on this article is included as Appendix I in this warrant and included on the Town's website:

<http://www.wayland.ma.us/accounting/Town%20Center%20Update%20Fall%202009%20STM.pdf>

Using current market data, FINCOM's analysis concludes that the project, once fully built and residences sold, could generate incremental new taxes (after all additional municipal costs, such as public safety, education and DPW) of \$672,000 per year.

FINCOM's Estimates

Tax Revenue:	\$1,390,000
New Municipal Expenses	<u>458,000</u>
Net Revenue	\$ 932,000
Taxes currently paid by Developer	<u>260,000</u>
Net New Taxes	\$ 672,000

ARGUMENTS IN FAVOR: At the Spring 2006 Special Town Meeting over 1,700 attendees voted for the MUOD and the creation of the Town Center. It was clear from this overwhelming vote that residents of the town see the overall community benefits from a town center.

The incremental taxes of \$672,000 are significant and needed revenues for the town. The additional revenue, for example, can help minimize the impact of the debt service required to pay for a new high school or to minimize other financial challenges. Developing this property helps achieve one of the long term goals of the Finance Committee which is to maximize revenue from commercially zoned parcels. The financial impact analysis was based on current economic conditions. As the economy improves there is a strong probability that values will be much greater than projected and that tax revenues will exceed the \$672,000.

There continues to be an affordable housing component albeit only 12% vs. 25%. The affordable housing units will be built in Phase 2 of the retail component which is earlier than previous anticipated. In addition, the donation of between \$537,000 and \$1,122,000 to an Affordable Housing Trust will allow the affordable housing advocates to build or buy other affordable units in town. This provision is in keeping with the spirit and intent of the inclusionary zoning bylaw adopted at a subsequent town meeting which provides for 16.7% affordable units within new residential subdivisions of six units or more. The bylaw allows for creation of affordable housing units outside of the new subdivision if it is determined to be in the best interest of the town to do so. In this case, it is likely that the contribution to the housing trust fund will allow for the creation of more than 5 additional housing units needed to meet the intent of the inclusionary zoning bylaw.

The changes to the Development Agreement only change the payment schedule. The remaining Municipal Gift of \$2.8 million (of which \$750,000 is guaranteed), the gift for the Bicycle Path, and the gift for the Municipal parking, will be paid during the build out of the project. These gifts represent significant benefit to the town.

A viable Town Center will enhance the value and ultimate development of the adjacent Wayland Commons, which should contribute additional tax dollars to the town.

Without making these zoning changes there is a strong probability that the town center project will not be built, and that there will be a loss of tax revenues.

The Wayland Housing Authority has voted to support this article. The Planning Board also recommends approval.

ARGUMENTS OPPOSED: The reduction of the number of affordable housing is too significant and should not be permitted.

The inclusion of the units above the retail as opposed to units within the residences might be viewed as a negative and cause the affordable component to not be successful.

Although not part of the article, the changes to the Development Agreement, as far as timing and guarantee of payments, are too great a risk for the Town to absorb. Also the timing of the gifts might cause the town to be out of pocket fulfilling some of its obligations in completing the Town Center build and permitting process.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Two-thirds – see Massachusetts General Laws Chapter 40A, Section 5.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us. See Appendices G, H, I, and N.

ARTICLE 4: ESTABLISH MUNICIPAL AFFORDABLE HOUSING TRUST FUND*Proposed by: Board of Selectmen**Estimated Cost: Nominal*

To determine whether the Town will vote to accept the provisions of Massachusetts General Laws Chapter 44, Section 55C to establish a trust to be known as the Municipal Affordable Housing Trust Fund.

FINANCE COMMITTEE COMMENTS: This article proposes to establish the Wayland Affordable Housing Trust Fund ("The Trust"). This article should be viewed in context of Article 3, Amend Zoning Bylaws re: Affordable Housing MUOD. Under Article 3, the Town Center Developer has agreed to provide a donation to an affordable housing trust to allow the development of future affordable housing in Wayland. This article would establish the entity where such donations, as well as other donations, could be deposited, managed and expended.

Massachusetts General Laws Chapter 44, Section 55C allows municipalities to establish a trust for the creation and preservation of affordable housing that benefits low and moderate income households. Under this law, the Trust would be a separate legal entity and not be part of the Town government. Although separate from the Town, the trustees (the law requires a minimum of 5), are appointed by the Selectmen and one of the Trustees must be a Selectmen, The Trustees shall serve for a term not to exceed 2 years and are designated as public agents, as defined by the state. Also, even though not part of the Town, several provisions of municipal law that apply to Town boards apply to the Trust, such as the Open Meeting Law and that Town Meeting is responsible for establishing or dissolving the Trust. The Trust may use town functions for handling many of the administrative functions of the Trust. For example, the Treasurer could manage the funds, although they must be segregated from Town funds. Or the Town Accountant may provide accounting services to the Trust, although the Trust must have its own set of books and be separately audited as an independent entity. The major benefit of the Trust, is that it would allow the trustees the ability to make decisions about the use of funds without requesting Town Meeting approval. For example, if a property becomes available, the Trustees, acting on their own, could acquire the property. Any expenditure can only be done in accordance with the objectives of the Trust, which would be for the development and maintenance of affordable housing in Wayland.

By establishing the Trust, there would be a mechanism for future gifts to be made directly into a single entity. Community Preservation money that has been allocated to affordable housing could be transferred into the Trust. Of course transfer of money from the CPC requires Town Meeting approval. But once in the Trust, the expenditures would be made by the Trustees only. The Selectmen have not decided who will be appointed as Trustees.

ARGUMENTS IN FAVOR: Establishing the Trust would provide a mechanism for the management and expenditure of the donations made by the Town Center Developer and to ensure that the funds are used for the creation of additional affordable housing.

Establishing the Trust under MGL Chapter 44, Section 55C would set up a separate entity outside the Town's structure and would allow the trustees to act independently of Town Meeting. This would give the Trust the maximum flexibility to take advantage of acquisition decisions as they arise without waiting for a town meeting.

Establishing this Trust could allow for future donations, including those linked to new development, to be made into this entity and provide a central fund for the development of all affordable housing in Wayland. Currently there are a number of different accounts that have been created over the years which could also be consolidated into the Trust. Also, monies set aside by the CPC could be

contributed directly to the Trust. These transfers would require Town Meeting approval to get the funds into the Trust.

ARGUMENTS OPPOSED: The Trust would be a separate entity and not part of the Town's governance. As such, decisions to acquire properties and the use of funds are totally at the discretion of the trustees and outside the control of the Town.

The trustees are appointed by the Selectmen and one Selectman must be one of the trustees. It could be argued that this gives too much authority to the Selectmen.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Majority – see Massachusetts General Laws Chapter 44, Section 55C(a).

See M.G.L. Chapter 44, Section 55C, at Appendix J. For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us.

ARTICLE 5: ACCEPT LOCAL OPTION MEALS EXCISE TAX

Proposed by: Board of Selectmen

Estimated Cost: Nominal

To determine whether the Town will vote to accept the provisions of Massachusetts General Laws Chapter 64L, Section 2(a) to impose a local meals excise tax.

FINANCE COMMITTEE COMMENTS: Included in the Massachusetts FY2010 budget is a provision (MGL 64L) which allows cities and towns to impose a local sales tax of 0.75 percent (0.0075) on the sale of restaurant meals originating within the city or town. If approved by the Town at this Special Town meeting, the tax can be implemented as soon as January 1st, 2010, or later if the Town so chooses.

The DOR published estimated meals tax revenue assumptions for each municipality. Mass DOR's estimate for Wayland for a fiscal year is approximately \$260,000. This estimate is based on 2007 meals tax return data. A second estimate based on U.S. Census department data on restaurant sales is ~\$70,000. Each estimate has its limitations and can only be used as an estimate. It must be stressed that actual meals tax revenue (if enacted) may be materially different from these estimates.

Since mid-August, when DOR issued instructions on implementation of the tax, through October 17, 2009, 35 cities and towns in Massachusetts have adopted this provision. Many communities will not consider the issue until Annual Town Meetings are held in the spring.

The following examples provide some context to the expected impact on consumers and the revenue to be collected from this excise tax.

A \$40 dinner meal at a local restaurant will increase the cost of the meal to the consumer by \$0.30 (30 cents) and generate a like amount of revenue for the Town.

A \$2.70 latte from a local coffee shop will increase the cost of the latte to the consumer by \$0.02 (2 cents) and generate a like amount of revenue for the Town.

If approved, the Board of Selectmen will verify the restaurants or other establishments (vendors) that

serve meals in Wayland and submit this list to the Massachusetts Department of Revenue (DOR). The DOR will take this list and then notify the vendors of their obligation to collect and pay the tax to the state coincident with the collection and remittance of its 6.25% sales tax collections. The state will remit back to the Town on a quarterly basis the local excise tax revenue after certifying the accuracy of the remittance (certification will be done based on the sales tax remitted).

For FY 2010, if enacted at Special Town Meeting with an effective date of January 1, 2010, Wayland would receive 5 months of revenue (January and February revenue would be remitted to the Town on or about March 31st and March, April and May revenue would be remitted on or about June 30th).

There are approximately 40-50 restaurants and other business establishments in Wayland that would be impacted by this article.

ARGUMENTS IN FAVOR: Wayland should be looking for ways to lessen the property tax burden on town residents. The Local Option Meals Excise tax was passed by the Legislature to give cities and towns an additional revenue source to supplement existing revenue sources and offset declines in local aid. The meals excise tax will generate somewhere between \$70,000 and \$260,000 of additional revenue annually for the Town. Using the midpoint of the range (\$165,000), and assuming an effective date of January 1, 2010, 5 months of this revenue (~\$70,000) would go into the Town's free cash because it was not included in the FY 2010 budget. This additional revenue would offset reductions in state aid. The meals excise tax lessens the property tax burden on Wayland residents since non-residents purchasing meals and beverages in Wayland restaurants pay the meals excise tax. The incremental cost to the consumer is small enough that there is not sufficient economic incentive for consumers to choose a different restaurant or coffee shop solely because one town charges the excise tax and one does not. Decisions on where and what to eat are made based on quality of food and service, not on incremental taxes. Businesses already have the infrastructure in place to collect the tax and remit it to the state.

ARGUMENTS OPPOSED: Some would say that a tax is a tax no matter how it is packaged. While today's rate of 0.75% is small, once in place it will likely never go away, and it will likely only go up. The projected revenue is not large enough to justify the imposition of a new tax vehicle.

Small businesses will have an incremental administrative burden for which they receive no benefit.

Consumption taxes when raised high enough will discourage consumption. Should the tax grow, Wayland restaurants would be at a slight competitive disadvantage to those in adjacent towns that do not have the local meals excise tax. Wayland should be focusing on economic incentives to promote commerce in the town to grow our tax base and not pass the Local Option Meals Excise tax.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 5-2.

QUANTUM OF VOTE: Majority - see Massachusetts General Laws Chapter 64L, Section 2(a)

For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us.

ARTICLE 6: ADOPT SEX OFFENDER RESIDENCY RESTRICTION BYLAW*Sponsored by: Board of Selectmen**Estimated Cost: Nominal*

To determine whether the Town will vote to amend the Code of the Town of Wayland, by adding thereto a new chapter designated "Chapter 140; Registered Sex Offenders Restrictions" as follows:

CHAPTER 140**REGISTERED SEX OFFENDERS RESTRICTIONS****§ 140-1 Determinations and Intent.**

- A. It is the intent of this Bylaw to protect the Town's compelling interest in promoting and protecting the public health, safety and welfare of the inhabitants of the Town of Wayland by creating areas around locales where children, the elderly and disabled persons regularly congregate and wherein certain sex offenders are prohibited from entering and establishing temporary or permanent residence.
- B. It is hereby determined that this Bylaw is the most narrowly crafted means of restricting to the fullest extent possible the opportunity for Registered Sex Offenders to approach or interact with children, the elderly, and disabled persons, where such persons routinely and naturally congregate and that the protection of the health and safety of our children, elderly, and disabled persons is a compelling public and governmental interest.
- C. This Bylaw is intended to create a civil non-punitive regulatory scheme in order to protect children, the elderly, and disabled persons to the greatest extent possible under the circumstances of public welfare protection and not as a punitive measure of any kind.
- D. Registered Sex Offenders pose a clear threat to the children, the elderly, and disabled persons, as vulnerable groups residing in or visiting the Town, because Registered Sex Offenders are more likely than any other type of offender to re-offend by committing another sexual offense. The Town desires to impose safety precautions in furthering the public purpose of protecting the children, the elderly and disabled persons. The purpose of this Bylaw is to mitigate the potential risk of harm to children, the elderly, and disabled persons of the Town of Wayland by restricting the ability for Registered Sex Offenders to be in contact with unsuspecting children, the elderly, or disabled persons in locations that are primarily utilized by such children, the elderly, or disabled persons, that is the grounds of public and private schools for children, centers or facilities that provide day care or children's services, parks, other recreational facilities, elderly housing facilities, or facilities for the disabled. The Town desires to impose location restrictions to such offenders.

§ 140-2 Definitions

The following words, terms, and phrases when utilized in this Chapter shall have the meanings ascribed to them in this section, except where the context clearly describes a different meaning:

1. **"Registered Sex Offender"** for the purpose of this chapter shall mean: (a) any person who is designated as a sexually violent predator pursuant to Chapter 6, §178K(2)(c) of the Massachusetts General Laws and who is required to register as a Sex Offender pursuant to the guidelines of the Sex Offender Registry Board; (b) any person who is required to register as a Sex Offender pursuant to Chapter 6, §178C of the Massachusetts General Laws so long as s/he

finally classified as a Level 3 offender pursuant to the guidelines of the Sex Offender Registry; and (c) any person who is required to register as a Sex Offender pursuant to Chapter 6, §178C of the Massachusetts General laws, so long as s/he is finally classified as a Level 2 offender pursuant to the guidelines of the Sex Offender Registry and who has committed a Sex Offense against a Child as defined in Chapter 6, §178C of the Massachusetts General Laws, an Elder, and/or Mentally Impaired Person.

2. **“Sex Offender” and “Sex Offense”** shall have the same meaning as provided for in M.G.L. Chapter 6, §178C.
3. **“Child” or “Children”** shall mean persons under eighteen (18) years of age.
4. **“Disabled Person”** shall mean a person who is mentally retarded, as defined by section one of chapter one hundred and twenty-three B of the Massachusetts General Laws, or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his or her daily living needs
5. **“Elder” or “Elderly”** shall mean persons over sixty (60) years of age.
6. **“Park”** any public land designated for active or passive recreational or athletic use by the Town of Wayland, the Commonwealth of Massachusetts or other governmental subdivision, and located within the Town of Wayland.
7. **“School”** any public or private educational facility that provides services to children in grades kindergarten -12.
8. **“Recreational Facility”** includes, but is not limited to, a playground, a forest preserve, conservation area, jogging trail or running track, hiking trail, beach, wading pool, soccer field, baseball field, football field, basketball court or hockey rink, dance or gymnastic studio, whether publicly or privately owned to which the public has a right of access as an invitee and which is located within the Town of Wayland.
9. **“Day Care Center”** any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.
10. **“Elderly Housing Facility”** a building or buildings on the same lot containing four or more dwelling units restricted to occupancy by households having one or more members fifty-five years of age or older.

11. **“Permanent Residence”** a place where a person lives, abides, lodges, or resides for 14 or more consecutive days.
12. **“Temporary Residence”** a place where a person lives, abides, lodges, or resides for a period of less than 14 consecutive days or 14 days in the aggregate during any calendar year, which is not the person’s permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person’s Permanent Residence; but “Temporary Residence” shall not include residence at a hospital or other healthcare or medical facility for less than 14 consecutive days or 14 days in the aggregate during any calendar year.
13. **“Establishing a Residence”** to set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or by means of purchasing real property or entering into a lease or rental agreement for real property.
14. **“Bylaw”** Chapter 140 of the Code of the Town of Wayland.

§140-3 Sexual Offender Residence Prohibition, Restrictions, Penalties.

- A. *Prohibition.* A Registered Sex Offender is prohibited from establishing a Permanent Residence or Temporary Residence within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility.
- B. *Evidentiary Matters Measurement.* For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the outer property line of the Permanent or Temporary Residence to the nearest outer property line of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility.
- C. *Exceptions.* A Registered Sex Offender residing within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility does not commit a violation of this section if any of the following apply:
 1. The Registered Sex Offender established the Permanent Residence prior to the effective date of this Bylaw, and
 - a. Permanent Residence was established by purchasing the real property where the residence is established, as long as the Registered Sex Offender continues to reside in, and does not move to another restricted location in Wayland different from, the Permanent Residence established prior to the effective date of this Bylaw, or
 - b. Permanent Residence was established through a valid arm’s length, fixed-term, written lease or rental agreement, executed prior to the effective date of this Bylaw, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Wayland different from, the Permanent Residence established prior to the effective date of this Bylaw, or
 - c. Permanent Residence was established through a verbal lease or rental agreement at the will of the landlord, as long as the Registered Sex Offender continues to reside within, and does not move to another restricted location in Wayland different from, the Permanent Residence established prior to the effective date of this Bylaw.

2. The Registered Sex Offender is a minor living with his or her parent(s) or legal guardian(s) which parent(s) or legal guardian(s) has (have) established a Permanent Residence in accordance with §140-3.
 3. The School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility within one thousand (1,000) feet of the Registered Sex Offender's Permanent Residence was opened after the Registered Sex Offender established the Permanent Residence.
- D. *Forfeiture of Exception.* If, either after the effective date of this bylaw or after a new School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility opens, a complaint or an indictment is issued by a court against a Registered Sex Offender otherwise enjoying an exception under subsection C and a judgment enters, that such Sex Offender has committed another Sex Offense, he/she will immediately forfeit that exception and be required to comply with this section.
- E. *Notice to Move.* A Registered Sex Offender who resides on a permanent or temporary basis within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the Registered Sex Offender's non-compliance with this Bylaw, move from said location to a new location, but said location may not be within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility. Furthermore, it shall be a violation each day that a Registered Sex Offender shall move from one location in the Town to another that is within one thousand (1,000) feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility.
- F. *Penalties.* Any violation of this section shall be enforced by non-criminal disposition pursuant to M.G.L c. 40, §21D as follows:
1. First Offense by Registered Sex Offender: Non-criminal fine of \$150.00 and notification to offender that he/she has thirty (30) days to move.
 2. Subsequent Offense by Registered Sex Offender: Non-criminal fine of \$300.00 and notification to offender's parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the Sex Offender has violated this Bylaw.

For purpose of this section, notice shall be deemed to be sufficient and proper if the person is served by registered mail, return receipt requested, or receives in hand service or service by a Constable, Sheriff or other person authorized to serve civil process within the Commonwealth of Massachusetts or other service as a court of competent jurisdiction may allow.

§140-4 Additional Exceptions

1. A Registered Sex Offender residing within 1,000 feet of any School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility does not commit a violation of §140-3 if any of the following apply:
 - A. The person established the Permanent Residence and reported and registered the residence as required by the provisions of M.G.L. Chapter 6, §§178C through 178P before the effective date of this Bylaw.

- B. The person was a minor when he/she committed the offense and was not convicted as an adult.
- C. The School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility within 1,000 feet of the Permanent Residence was established after the person established the Permanent Residence and reported and registered the residence pursuant to the Sex Offender Registry Law.
- D. The person is incarcerated in any facility owned, maintained and/or operated by the Town of Wayland.
- E. The person is admitted to and or subject to an order of commitment at a public or private facility for the care and treatment of mentally retarded person subject to guardianship pursuant to M.G.L. Chapter 123.
- F. The person is a mentally ill person subject to guardianship pursuant to M.G.L. Chapter 201, §6 or a mentally retarded person subject to guardianship pursuant to M.G.L. Chapter 201, §6A, residing with his or her guardian or residing within a group residence that is professionally staffed and supervised 24 hours a day.

§140-5 Safety Zones

A. Prohibitions.

1. A Registered Sex Offender is prohibited from entering upon the premise of a School or Day Care Center unless previously authorized specifically in writing by the School Administration or Day Care Center owner.
2. A Registered Sex Offender is prohibited from entering upon the premises of an Elderly Housing Facility or Facility for the Mentally Impaired unless previously authorized in writing by the on-site manager of the Elderly Housing Facility or Facility for the Mentally Impaired.
3. A Registered Sex Offender is prohibited from entering upon the premises of a Park or any Recreational Facility.
4. A Registered Sex Offender is prohibited after having received notice from the Wayland Police Department that he/she is within five hundred (500) feet of a School, Day Care Center, Park, other Recreational Facility, Facility for the Mentally Impaired or Elderly Housing Facility, from remaining in said area or from returning thereto. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the Registered Sex Offender to the outer property lines of the School, Day Care Center, Park, other Recreational Facility, Elderly Housing Facility, or Facility for the Mentally Impaired.

B. Exceptions.

1. The prohibitions in this §140-5 shall not be construed or enforced so as to prohibit a Registered Sex Offender from exercising his or her right to vote in any federal, state, or municipal election, or from attending any religious service.
2. The prohibitions in this §140-5 do not apply to a Registered Sex Offender's place of residence when such residence is excepted under §140-3C and §140-4.

C. Penalties. Any violation of this section may be enforced by non-criminal disposition pursuant to M.G.L. Chapter 40, §21D, resulting in: (1) a non-criminal fine of \$150.00 for a first violation; and (2) a non-criminal fine of \$300.00 for each additional violation of this section. A Registered Sex Offender commits a separate offense for each and every violation of this section.

§140-6 Enforcement

- A. The Wayland Police Department shall be charged and empowered with the enforcement of this chapter.
- B. A written list describing the prohibited areas defined in this Bylaw inclusive of School Bus Stops, as well as a map depicting the residency restriction areas and a map depicting the safety zones, shall be created by the Town and maintained by the Wayland Police Department. The Town shall review both the list and the maps no less than annually for changes. The list, the maps and a copy of this Bylaw will be available to the public at the Wayland Police Department and Wayland Town Clerk's Office, and on the Town of Wayland's website.

§140-7 Severability

If any clause, sentence, paragraph, subdivision, section or other part of this Bylaw shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this Bylaw, and it shall be construed to have been the legislative intent to enact this Bylaw without such unconstitutional or invalid parts therein.

FINANCE COMMITTEE COMMENTS: Massachusetts requires convicted sex offenders to register where they work or reside. The Massachusetts Sex Offender Registry Board and the local police keep the name, description, picture, fingerprints and other information on each offender. This information is verified annually and information on Level 2 and 3 sex offenders can be accessed by the public. The state does not outline any preventative measures to protect communities from possible repeat offenses; this is left to individual communities to determine their own requirements.

This article follows the example set by other communities in restricting convicted sex offenders from approaching or interacting with children, the elderly and the disabled. It does this by prohibiting registered sex offenders from residing within 1,000 feet of any school, day care center, park, recreational facility, facility for the elderly, or facility for the physically or mentally impaired. Violators are given written notice and must move to a new location within 30 days of receipt of the notice. Exceptions are granted to individuals who have resided within the prohibited area before the effective date of the Bylaw, along with certain other conditions. Should a sex offender violate this Bylaw, the Town will enforce a non-criminal fine of \$150 and a notification to move within 30 days. A second offense draws a \$300 fine and notification to the offender's parole officer. The Wayland Police Department is charged with enforcing this Bylaw.

A second part of the article prohibits convicted sex offenders from entering or remaining at a school, day care center, facility for the elderly, facility for the physically or mentally impaired, park, or recreational facility. After receiving notice from the Wayland Police Department that the sex offender is within 500 feet of the places listed above, the offender must leave that spot and not return. An exception is made for those who have written permission to be there from the relevant authority.

A map showing areas prohibited for residency by this article will be displayed at Special Town Meeting. A list of the sex offender residence prohibitions and restrictions are at Appendix K attached to this warrant.

ARGUMENTS IN FAVOR: A similar article has been vetted with the Massachusetts Attorney General and closely follows the lead of other communities such as Southborough. At the time of this writing 20 Massachusetts communities had enacted sex offender bylaws. It is an effective way of preventing known and convicted Level 2 and 3 sex offenders, who are deemed most likely to re-offend, from approaching or intermingling with our most vulnerable citizens. There have been no challenges to these types of laws, with the exception of Lynn, where the bylaw prohibits sex offenders to reside. As with all new Bylaws, if this article is approved, it will be reviewed by the Massachusetts Attorney General before it takes effect.

ARGUMENTS OPPOSED: Some people argue that this law would impose a double punishment on sex offenders who have already been punished for their crime(s). Furthermore, by excluding certain areas, this Bylaw would by default define where sex offenders could reside. This could have a negative impact on property values of these neighborhoods.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Majority – see Massachusetts General Laws Chapter 40, Section 21.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us. Also see Appendix K, Sex Offender Residence Prohibitions and Restrictions.

ARTICLE 7: ACKNOWLEDGE RECEIPT OF REPORT

Proposed by: Board of Selectmen

Estimated Cost: Nominal

To determine whether the Town will vote to acknowledge receipt of a report from the Board of Selectmen entitled “Report and Recommendations to Town Meeting Regarding Annual Town Meeting Article, Recognizing Citizens for Extensive Service to the Town,” in accordance with the request of the 2009 Annual Town Meeting .

FINANCE COMMITTEE COMMENTS: This is a standard article that allows one or more reports commissioned by the Town to be received.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 7-0.

QUANTUM OF VOTE: Majority.

For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us. The text of the Board of Selectmen report appears at Appendix L.

ARTICLE 8: ROUTE 30-27 INTERSECTION LAND ACQUISITION

Sponsored by: Board of Selectmen and Board of Public Works

Estimated Cost: Nominal

To determine whether the Town will vote to:

- a.) authorize the Board of Selectmen, with the approval of Town Counsel as to form, to acquire by purchase, gift, eminent domain or otherwise, the fee or any lesser interest in the parcel of land

located at the northeast corner of the Route 30-27 Intersection containing 557 square feet, more or less, being a part of the land described in a deed recorded with the Middlesex South Registry of Deeds in Book 48964, Page 201 and shown as "Proposed Lot B" on a plan entitled "Plan of Land in the Town of Wayland, Massachusetts", dated July 17, 2009, prepared by Control Point Associates, Inc., a copy of which plan is on file in the Office of the Town Clerk;

- b.) appropriate \$1.00 to be expended by the Board of Selectmen for the acquisition of said parcel of land; and
- c.) determine whether said appropriation shall be provided by taxation, transfer from unappropriated available funds, transfer from available funds appropriated for other purposes, by borrowing, or otherwise.

FINANCE COMMITTEE COMMENTS: This article pertains to the land on the northeast corner of the intersection of Route 30 (Commonwealth Road) and Route 27 (Main Street) containing approximately 557 square feet. The land is currently owned by CMI Opportunities, LLC, and is shown on the map in Appendix M. The Route 30-27 intersection has long been identified for improvement, and this article accomplishes the first of four easements or purchases to allow redesign of the intersection. The Department of Public Works (DPW) is working with the owners to complete the other three easements and hopes to present them at Annual Town Meeting in the spring.

The intersection is not currently on the state list for approved projects, and it is likely to be a few years before it is returned to that status. In the meantime, the DPW's goal is to complete both the land purchase/easements at the four intersections and the design elements so that when future state or federal monies become available, the Town is ready to act.

The redesign of the intersection will include widening the area with turning lanes, reconstruction of the sidewalks, changing pedestrian walk signals and adding new bike lanes. The intersection has been identified as a hazardous intersection and the design will address noted safety issues. The design of the intersection will be discussed in public DPW meetings and follow standard town approval processes.

The multiple sections of the article a-c (above) are to handle the various legal and procedural steps in the process of transferring land:

- a.) Allows the Board of Selectmen to acquire the new site as defined
- b.) Gives permission to appropriate \$1.00 to be expended by the Board of Selectmen for the acquisition, and
- c.) Determines the source of funding.

The Board of Public Works voted 5 to 0 to support this article at its October 13, 2009 meeting.

ARGUMENTS IN FAVOR: Passage of this article allows the Town to take a real interest in one of four parcels of land needed to implement improvements to the Routes 30-27 intersection.

The State and Town agree that the intersection needs to be improved to eliminate identified safety issues. This article is the first step in that process.

ARGUMENTS OPPOSED: No one offered opposition to this article at the Finance Committee STM article hearing, and the boards involved are not aware of any arguments opposed.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Two thirds – see Massachusetts General Laws Chapter 40, Section 14.

For more information about this article, contact Fred Turkington, Town Administrator, at (508) 358-3620, or email fturkington@wayland.ma.us. See map at Appendix M.

ARTICLE 9: AMEND ZONING BYLAWS RE: RENEWABLE OR ALTERNATIVE ENERGY RESEARCH AND DEVELOPMENT ACTIVITIES

Sponsored by: Planning Board

Estimated Cost: Nominal

To determine whether the Town will vote to amend Chapter 198 of the Code of the Town of Wayland, the Zoning Bylaw of the Town, by making the following amendments thereto:

1. Insert the following new definition in §198-803.4. “Renewable or Alternative Energy Research and Development Facilities: Facilities used primarily for research, development and/or testing of innovative renewable or alternative energy information, concepts, methods, process, materials or products. This can include the design, development, and testing of biological resources from land, forest and aquatic environments, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. The accessory development, fabrication, and light manufacturing of prototypes or specialized machinery and devices integral to research or testing may be associated with these uses.”; and
2. Insert the following new section in Table of Permitted Principal Uses by Districts:

Uses	Single Residence	Roadside Business	Business A	Business B	Light Manufacturing	Limited Commercial	Site Plan Approval
42A. Renewable or Alternative Energy Research and Development Facilities not exceeding 15,000 square feet	No	No	No	No	Yes	Yes	Yes

FINANCE COMMITTEE COMMENTS: This article amends the Town’s Zoning Bylaw by defining renewable and alternative energy and development facilities, and laying out their permitted uses. The purpose of the article is to encourage green energy companies to locate in Wayland and speed the process of approval. It also allows the town to qualify for certain state funding.

The Massachusetts Department of Energy and Natural Resources through the Green Communities Act has set aside funds for grants for energy feasibility studies. To qualify for green consulting services and to be eligible for grants totaling up to \$10 million statewide annually, communities are required to submit a letter from a chief local official committing to meet Green Community benchmarks. To receive official designation a city or town must adopt a local zoning bylaw or ordinance that allows “as of right siting” of renewable energy facilities.

The sites in Wayland which pertain to this bylaw are currently zoned limited commercial and light manufacturing, and this amendment would allow renewable or alternative energy use within these zones. The applicable facilities may not exceed 15,000 square feet. The bylaw does not permit windmills or bio-mass facilities. The zoning change does not require a site plan or a special permit. Therefore, the facilities would be allowed to be developed by right as an expedited permit (designated as a “yes” under the Site Approval column on the Table of Permitted Principle Uses chart on the article). A map showing the areas designated as limited commercial or light manufacturing is attached to this warrant as Appendix N and will be presented at Special Town Meeting.

ARGUMENTS IN FAVOR: Wayland already has some green technology firms located here. This article would make the town more attractive for other companies to come to Wayland, thus increasing our commercial base and related tax revenues. If funds are granted through the Green Communities Act, they could be used to help make certain municipal buildings more energy efficient, thus lowering their cost of operation.

ARGUMENTS OPPOSED: Some consider the “as of right” designation too broad. It is possible that some businesses may be unaware of existing and applicable restrictions when locating to Wayland under this bylaw.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Two-thirds – see Massachusetts General Laws Chapter 40A, Section 5.

CONSISTENCY WITH LAW: It is the opinion of Town Counsel that the foregoing bylaw amendment is consistent with federal and Massachusetts law.

For more information about this article, contact Sarkis Sarkisian, Town Planner, at (508) 358-3778, or email ssarkisian@wayland.ma.us. See Planning Board Report at Appendix N.

ARTICLE 10: PRESERVATION OF TOWN OF WAYLAND’S HISTORIC DOCUMENTS

*Proposed by: Board of Selectmen, Historical Commission,
and Community Preservation Committee*

Estimated Cost: \$10,000.00

To determine whether the Town will vote to appropriate a sum of money for a general preservation planning assessment of the preservation and conservation needs of the historical collections held by the Town to be conducted by a firm specializing in this work; and to determine whether such appropriation shall be provided by taxation, by transfer from unappropriated funds, by transfer of funds already appropriated for another purpose, by borrowing, or otherwise.

FINANCE COMMITTEE COMMENTS: The Community Preservation Act (CPA) became law on December 13, 2000 and enabled communities to levy a property tax surcharge on real property for the purpose of creating a community preservation fund and to qualify for state matching funds. This property tax surcharge is calculated/based upon a homeowner’s tax payments and not upon assessed valuation. The Town has established a Community Preservation Committee (CPC) to make recommendations on how the money shall be spent. Any spending recommendations made by the CPC must be ratified by Town Meeting.

The Town of Wayland approved adoption of the CPA and a CPA surcharge in the amount of 1.5% of annual tax payments during the April 2001 Town Meeting. Each fiscal year, upon recommendations of the CPC, Wayland must set aside for future spending, the following share of annual Community Preservation Fund revenues: 10% for open space, 10% for historic resources and 10% for community housing. The remainder of the funds are considered uncommitted until Town Meeting votes to appropriate funds for a specific initiative. As of June 2009, the Wayland CPA fund had a balance of:

Open Space	\$1,895,548
Historic Resources	599,076 ⁽¹⁾
Community Housing	105,000
Committed	189,410
<u>Uncommitted</u>	<u>2,885,818</u>
Total	\$5,674,852

This article requests an appropriation of \$10,000 from the Wayland CPA fund that has been already set aside for historic resources purposes ⁽¹⁾, for consulting services to assess records currently in storage at the Town Building, to review current record handling procedures and to identify actions necessary to ensure long-term preservation of Wayland's historic town records (e.g. photographic materials, rare books, maps, birth and death records, architectural drawings).

The Community Preservation Committee voted 6-0 in favor of this warrant article (one member was absent at the meeting when the vote was taken).

ARGUMENTS IN FAVOR: This initiative, championed by Wayland's Town Clerk, begins to address a concern that the Town's records and historic collections need preservation, including both physical presentation and electronic image capture if appropriate. This project can also serve as a helpful long-term model and test case to expand and enhance the preservation efforts of the Town's other historic documents and artifacts, currently cared for by the Library, Historical Society and other entities

The Historic Commission obtained a quote from the Northeast Document Conservation Center (NEDCC) for a phase I review of the Town's records. Northeast Document Conservation Center would survey the Town's records and prepare a formal report summarizing which town materials have the greatest need for conservation. Should there be a need for records preservation, additional funding will be requested to prepare a more detailed phase II review of the specific records and historic collections to be preserved, with the goal of developing a detailed budget for a phase III conservation treatment. The focus of this project is limited to the Town records maintained at the Town Building. Other town records may be incorporated at a later date.

Under phase I, NEDCC or another vendor selected by the Historic Commission would examine building conditions, storage and handling procedures, disaster preparedness and town policies that impact preservation. A formal report would be prepared by the consultant identifying potential hazards to the collection from the environment, or from storage or handling. It will also identify actions necessary to ensure long-term preservation of collections (such as improving storage enclosures and fire protection, for example). The report will also prioritize the needs of the collections and identify steps necessary to achieve preservation.

There are government grants available for long-term historic preservation initiatives, but the granting organizations often require surveys or assessments as part of the submission request to the granting agency. A phase I report to be funded under this article will allow Wayland to seek alternative funding sources for later phases of this preservation effort.

The use of CPC funds to maintain the town historical records meets the spirit and intent of the Community Preservation Act.

ARGUMENTS OPPOSED: The Finance Committee is unaware of any opposition to this article.

RECOMMENDATION: The Finance Committee recommends approval. Vote: 6-0.

QUANTUM OF VOTE: Majority – see Massachusetts General Laws Chapter 40, Section 5, and Chapter 44, Section 33B. For borrowing, two-thirds – see Massachusetts General Laws Chapter 44, Sections 7.

For more information about this article, contact Jerome Heller, Chairman of the Community Preservation Committee, at heller.j@comcast.net.

APPENDIX A

THE MODERATOR'S RULES AND REGULATIONS GOVERNING WAYLAND'S TOWN MEETINGS

The following information may help you to participate fully in Wayland's town meetings, which have been held each year since 1639:

I. The Warrant

This booklet, which includes the Warrant for Wayland's Town Meeting, was compiled by the Selectmen and served upon all residents by mail and by posting on the Town's signboards, at the Town Building, the Library at Wayland Center, the Cochituate Fire Station or the Cochituate Post Office and the Happy Hollow School. It contains the agenda of the subjects to be acted upon (articles), including the omnibus budget proposed, if this is an annual meeting, the report and recommendations of the Finance Committee upon each article and additional information concerning the finances and administration of the Town to help us formulate our votes.

No action of this Town Meeting will be valid unless it shall have been taken under an article set forth in the Warrant.

Each article will be considered in the order in which it appears on the Warrant, unless the meeting shall have voted to do otherwise by a two-thirds vote.

II. The Voters

A. All residents of Wayland, who have been duly registered as voters, are urged to attend, participate, debate and vote at all annual and special town meetings subject to laws of the Commonwealth of Massachusetts, the Bylaws of the Town and these rules and regulations.

B. The Town Administrator, Assistant Town Administrator, Police Chief, Fire Chief, Finance Director, Director of Public Works and Superintendent of Schools have the right to attend and sit on the floor of town meetings, but they shall not be considered in determining the presence of a quorum.

C. All other persons, including members of the press, may attend and observe Wayland's town meetings so long as they remain seated in the special section reserved for non-residents, unless the Moderator shall have authorized them to sit among the registered voters. And see paragraph IV.B.3 below.

D. A registered voter may bring his or her child(ren) to sit among the voters so long as the child(ren) sit(s) quietly beside his or her parent at all times.

III. The Moderator

The Moderator is elected by ballot for a three year term at the annual election of town officers to preside at all Town meetings during his or her term of office and is authorized by state law to regulate the proceedings, decide all questions of order and make public declaration of all votes, subject to the Bylaws that Wayland has enacted to regulate the proceedings of town meetings. All rulings of the Moderator are final.

IV. The Meeting

A. The Call to Order

1. The Moderator will call each session of town meeting to order at 7:30 p.m., or as soon thereafter as the Town Clerk has determined that a quorum of one hundred registered voters has been checked into the hall.

2. The Moderator will announce the number of each article about to be considered and invite a motion thereunder; the Moderator will omit the reading of the articles, unless a MAJORITY of the meeting shall vote otherwise.

B. To Address the Town Meeting

1. No person may address a town meeting until and unless he or she shall have been recognized by the Moderator. All persons shall, at the request of the Moderator, be silent.

2. All persons, who wish to be recognized, shall approach one of the three microphones placed at the front of the room, which most closely reflects the purpose for which they seek recognition:

a. The Procedural Microphone (in the middle) will be available to those who have been recognized by the Moderator and wish to offer:

- 1) The main motion under the article being considered and a presentation in support thereof;
- 2) The principal presentation in opposition to the main motion. See paragraph IV.C.2.a below;
- 3) An amendment to a main motion;
- 4) A question seeking information or guidance from the Moderator as to procedure, including a point of order;
- 5) An answer to a question seeking information; and
- 6) A point of order or procedural motion, such as:
 - a) a motion to terminate debate;
 - b) a motion challenging the Moderator's declaration of a vote;
 - c) a motion questioning the presence of a quorum; and
 - d) a motion to adjourn.

b. The "Pro" Microphone will be available to those persons recognized by the Moderator who wish to speak in support of a motion on the floor.

c. The "Con" Microphone will be available to those persons recognized by the Moderator who wish to speak in opposition to a motion on the floor.

The Moderator will normally recognize those persons, who are standing behind or seated near each microphone in a single file, in the order of their entry into that file, alternating between the Pro and the Con mikes; but reserves the right to recognize any person at any time, including a person who has not approached a mike, a person who is handicapped or a person who has risen to a point of order. Any person whose remarks are not consistent with the purpose of the microphone that he has been permitted to use, shall yield the floor upon request of the Moderator.

3. The Town Administrator, Assistant Town Administrator, Police Chief, Fire Chief, Finance Director, Director of Public Works and Superintendent of Schools have the right to answer questions, but they do not have the right to vote unless they are registered voters of the Town.

4. If a person, who has not registered to vote, seeks permission to address the meeting, the Moderator will ask whether there are any objections. If there are any, he will immediately call for a voice vote. If the majority shall vote to hear the non-resident, the Moderator will give him/her the floor.

C. The Debate

1. When you have been recognized by the Moderator, address the Chair as follows: "Mr. Moderator, I am (Name) of (Street Address)." Then proceed as follows:

- a. "I move that . . .";
- b. "May I ask you . . ."; or
"May I ask through you (then state the question which you want a board, official, or previous speaker to answer);
- c. "I rise to a point of order"; or

2. Once you have been recognized, you may offer any motion, amendment, argument, comment, suggestion or question relevant to the article then under consideration, unless the Moderator shall have authorized debate or invited comments upon subjects not listed in the Warrant; but

- a. Any person who wishes to offer the principal presentation in support of the main motion under an article, must so notify the Moderator and complete the same within ten minutes, or less, and yield the floor. A light will warn you to conclude your remarks and yield the floor during the following minute.
- b. Any person wishing to offer a presentation in opposition to the main motion under an article must so notify the Moderator and complete the same within the time used by the proponent, or within three minutes, whichever is longer, and yield the floor. The same one minute warning light will warn you to conclude your remarks.
- c. All other persons who wish to address the Town Meeting shall, when recognized, complete their remarks in three minutes, or less, and yield the floor. The same one minute warning light will be turned on when you have used up the first two minutes.
- d. You may be interrupted only by a question of privilege, a point of order, a request that you speak more distinctly or by the Moderator.
- e. When you have completed your motion, question, or remarks, you relinquish your claim to the floor; and you must yield the floor upon request of the Moderator.

3. If you have a question concerning the legality or propriety of the proceedings, you may approach the Procedural Microphone and address the Moderator without waiting to be recognized, saying: "Mr. Moderator, I rise to a point of order." When you have been recognized, you must state the reason for your point, which may include that a motion is beyond the scope of the article under consideration, that the person who has the floor is not addressing the merits of the motion or that a quorum is not present. The Moderator will then rule on the point and his ruling is final.

4. If you wish to offer a motion within the scope of the article under consideration, follow the procedure outlined under paragraph IV. B and C above.

- a. If your motion is the main motion, you must then declare that it is identical word-for-word with the substantive portion of the article printed in the warrant which is then under consideration, or describe all of the substantive differences in wording between the article and the motion; otherwise the Moderator will permit no debate or action upon your motion.
- b. If you plan to offer a main motion that contains more than twenty-five words and differs significantly from the article printed in the Warrant, you must first print and distribute a copy thereof to those attending the session of town meeting at which said motion is presented.
- c. No motion or amendment of a motion that exceeds ten words in length will be accepted, unless it shall have been offered to the Moderator in writing.
- d. A motion that is not identical word-for-word with the substantive portion of the article printed in the warrant then under consideration will not be accepted, unless the Moderator shall determine that said motion is within the scope of the article; i.e., that it does not change the substantial character of the proposal described in that article or would not further restrict, if passed, the liberties of the residents of Wayland than the proposal set forth in the article.
- e. The Moderator will accept no motion proposing a layout, taking, purchase, sale, lease or rezoning of land, unless the article under which the motion is offered contains a running description of the land in question, a description by metes and bounds or a reference to a plan suitable for recording that is available for public inspection at the office of the Town Clerk, the Town Surveyor, the Planning Board or another place to which the public has access during normal business hours.
- f. The Moderator will accept no motion to appropriate and/or expend a sum of money, which exceeds the estimated cost set forth in the article then under consideration by fifteen (15%) percent, except for motions under the omnibus budget article and motions under a supplementary budget article that contemplates the appropriation of additional money for the current fiscal year to augment moneys previously appropriated and proposes to fund such appropriations by transfer from unappropriated funds, funds appropriated for another purpose or from funds received by the Town as grants or gifts.
- g. The Moderator may rule on your motion, even if no one has risen to challenge that motion by way of a point of order.

5. You will not be recognized to speak on the merits of a motion if you have already spoken three times on its merits, but you may be recognized to answer a question put by another or to raise a procedural issue with respect to that motion.

6. Wayland's practice with respect to some common subsidiary motions is generally as follows:

- a. You may amend a motion by moving to add and/or delete words to and/or from the main motion or by substituting a new motion therefor; but the Moderator permits no more than two amendments to a main motion *at a time*. A motion to amend is debatable and requires only a MAJORITY vote, even though the main motion may require a TWO-THIRDS vote.
- b. You may move to refer a matter for further study, if your motion identifies the official or committee who shall conduct such study, how it shall report, when and to whom. In the event that you wish to establish a new committee for this purpose, the motion must specify the number of members who shall serve and who shall appoint them. A motion to refer is debatable and may be amended and requires a MAJORITY vote.
- c. You may move to advance or postpone consideration of an article listed in the Warrant. Such a motion is debatable, may be amended and requires a TWO-THIRDS vote.
- d. You may move to lay an article on the table ("table"). Such a motion is NOT debatable or amendable and requires a TWO-THIRDS vote. A motion to remove such article from the table is also NOT debatable or amendable and requires a TWO-THIRDS vote.
- e. You may ask the Meeting to take no action under an article by moving "that the article be passed over." Such a motion may be deemed a substitute for the main motion, is debatable, may not be amended, requires a MAJORITY vote and serves to dispose of the article under consideration.

7. Upon the expiration of sixty minutes after the main motion under any article shall have been seconded, the Moderator will terminate debate thereon, unless the Town Meeting shall have voted to extend the time available for further debate. The time needed to count the vote(s) upon the motion(s) under the article will not be included in the sixty minutes. The aforesaid sixty minute limit does not apply to debate under the omnibus budget article.

8. Although the Moderator has absolute authority to regulate the proceedings at town meetings, debate under a motion can be terminated by a TWO-THIRDS vote of the Town Meeting. Therefore, if you believe that debate under a motion has gone on long enough, approach the Procedural Microphone, and, when you have been recognized, "move the previous question". If your motion receives a second, the Moderator will ask if anyone, who has not spoken to the motion under consideration, wishes to be recognized. If no one expresses such a wish by raising his or her hand, the Moderator will immediately terminate debate and take a vote upon your motion without permitting any amendment or debate; but if one or more persons, who have not spoken to said motion, raise their hand, the Moderator may, but need not, defer the termination of debate for a reasonable time to permit both sides of the issue to be heard. If a motion to terminate debate carries by a TWO-THIRDS vote, the Moderator will put the previous motion under consideration to a vote without further debate; but if said motion does not carry by a TWO-THIRDS vote, the Moderator will permit debate to continue.

9. If you wish to adjourn a session of the Town Meeting before all of the articles have been disposed of, you must specify the date and time when the Meeting shall resume. Such motion may be made at any time, is debatable, may be amended and requires a MAJORITY vote.

10. If an article of the Warrant has once been acted upon and disposed of, a motion to return to the article may be made at any time if the person offering the motion discloses significant new information to the Meeting concerning said article, which had not been disclosed or made available to the Meeting when the motion under that article was debated; provided, however, that debate and action on said motion shall be deferred until all other articles shall have been disposed of and shall occur in the numerical order of each such article. In any event, a motion to reconsider is debatable, may not be amended and requires a TWO-THIRDS vote, unless it shall have been made before the article has been disposed of; in which event it requires a vote equal to the quantum of the vote that was required to pass the motion under the article to be reconsidered. If such motion carries, the Moderator will ask whether there is a new motion under the article to be reconsidered.

D. The Vote

Before calling for a vote, the Moderator will usually repeat the motion under consideration (as the same may have been amended), unless it is substantially identical to the article:

1. The Moderator will then ask all those in favor to say, "Aye". He will then invite those opposed to say, "No". If the Moderator is in doubt as to whether the motion has carried, he or she may call for another voice vote; or may ask those in favor to stand, before he asks those opposed to stand. Sometimes, the Moderator will reverse this procedure before declaring the vote.

2. If the Moderator is still in doubt, or if seven or more voters have immediately questioned his declaration of such vote, he will call for the tellers to help him take a standing counted vote -- two tellers for each section of the hall so that they may check each other's results. The Moderator will then repeat the motion and say, "All those in favor will rise and remain standing until counted." When the count has been completed, the Moderator will ask those who are opposed to stand and be counted. As soon as each team of tellers has agreed upon the count in their section, they will be asked to report their portion of the vote from the Procedural Microphone. When all of the tellers have reported, the Moderator will declare the vote and his declaration is final.

3. In the event that the law requires a vote of TWO-THIRDS or more to carry a motion, the Moderator will normally ask whether there is unanimous support for the motion; but if there is not such support, he will take a standing counted vote.

4. If a TWO-THIRDS vote is required to carry a subsidiary or procedural motion, such as a motion to terminate debate ("move the previous question"), the Moderator need not take a count, even though the voice vote upon such motion was not unanimous, if the Moderator shall have perceived that more than TWO-THIRDS of the voters voted in the affirmative. The Moderator shall then declare that such motion has carried and the Clerk shall record such declaration together with a note that there was "a scattering of nos."

5. In the event that there is a large number of voters in the hall *and the Town Clerk shall have provided ballots and ballot counting machines (ballot machines) for the occasion*, the Moderator may designate one or more such machines to receive "yes" votes and a number of machines to receive "no" votes and arrange to have them placed near the "pro" and "con" microphones respectively. The Moderator will then announce the color of the ballot that will be cast upon the main motion and direct the attention of the voters to the location of the pro and con machines. The voters will then rise and proceed row-by-row to the machine of their choice. A Teller will stamp the back of each voter's hand upon arrival at the ballot machine and hand him or her a ballot, which the voter will then deposit in the ballot machine. In order to assure the security of all ballots:

- a. No one will be allowed to vote without a ballot, which bears the color announced by the Moderator.
- b. No one will be permitted to cast a ballot if his or her hand does not bear the stamp of a Teller.

During the course of the aforesaid proceedings, the Moderator may ask for the consent of the meeting (a two-thirds [2/3] vote is required) to proceed to consideration of another Article. When he is ready to declare the vote, the Moderator will ask for the consent of the meeting to return to the Article (a 2/3 vote is required) under which the ballot shall have been taken.

When all of the ballots shall have been cast, the Tellers will extract from each ballot machine the tape that shows the number of votes cast in favor and the number of votes cast in opposition to the motion and hand the same to the Moderator. The Moderator will declare the vote upon disposition of the Article then under debate. The declaration of the Moderator is final.”

6. In the event that a majority shall have voted that the vote on a particular motion shall be by secret ballot, the Moderator will ask the Tellers to come forward and take their places at the ballot boxes that will be placed at the front of the Hall by the Town Clerk. The Moderator will then announce the color of the ballot that will be cast upon the main motion and direct the attention of each section of voters to their respective ballot box. The voters will then rise and proceed row-by-row to their box, tear their ballots into two parts, deposit one half in the box, the other half in the discard box and return to their seat. In order to assure the security of all secret ballots:

- a. No one will be allowed to vote without a ballot which bears the color announced by the Moderator.
- b. No one will be permitted to cast a ballot until he or she shall have discarded the other half of the ballot into the discard box in the custody of the Teller.
- c. No one will be permitted to leave the hall until after the meeting has adjourned, unless he or she shall have turned all of the ballots that have not actually been used during a vote to the Checkers at the door.

When all of the ballots shall have been cast, the Tellers will open the ballot boxes and count the ballots at the tables situated at the front of the Hall in front of the podium.

The Moderator will then ask for the consent of the meeting (a two-thirds [2/3] vote is required) to proceed to consideration of another Article. When the Tellers have completed their count, they shall report their count to the Moderator, the Moderator will declare the vote upon disposition of the Article then under debate. The declaration of the Moderator is final.

The Moderator will then ask for the consent of the meeting to return to the Article (a 2/3 vote is required) under which the secret ballot has been taken.

7. In the event that a majority shall have voted that the vote on a particular motion shall be by secret ballot *and the Town Clerk shall have provided ballots and ballot counting machines (ballot machines) for the occasion*, the Moderator may, in the alternative, ask the Tellers to come forward and take their places at the ballot counting machines (ballot machines), which shall have been placed in voting booths by the Town Clerk at the front of the hall behind the Moderator. The Moderator will then announce the color of the ballot that will be cast upon the main motion and direct the attention of each section of voters to their respective ballot machine. The voters will then rise and proceed row-by-row to their respective machine. A Teller will stamp the back of each voter’s hand upon arrival at the ballot machine and hand him or her a ballot, which the voter will then mark in the privacy of the voting booth and deposit in the ballot machine. In order to assure the security of all secret ballots:

- a. No one will be allowed to vote without a ballot, which bears the color announced by the Moderator.
- b. No one will be permitted to cast a ballot if his or her hand does not bear the stamp of a Teller.

During the course of the aforesaid proceedings, the Moderator may ask for the consent of the meeting (a two-thirds [2/3] vote is required) to proceed to consideration of another Article. When he is ready to declare the vote, the Moderator will ask for the consent of the meeting to return to the Article (a 2/3 vote is required) under which the ballot shall have been taken.

When all of the ballots shall have been cast, the Tellers will extract from each ballot machine the tape that shows the number of votes cast in favor and the number of votes cast in opposition to the motion and hand the same to the Moderator. The Moderator will declare the vote upon disposition of the Article then under debate. The declaration of the Moderator is final.”

E. Adjournment

1. Each session of a Town Meeting shall be adjourned by the Moderator (a) at 10:30 p.m., or as soon thereafter as the Meeting has disposed of the article then under consideration or postponed action thereunder, or (b) voted to adjourn at a different time.

2. No motion to dissolve the Town Meeting (to adjourn *sine die*) is in order until every article shall have been duly considered, acted upon and declared as disposed of.

V. Questions

In the event that you have a question concerning the conduct of the meeting or the status of any motion being considered, you are invited to approach the Procedural Microphone and to address your question to the Moderator as soon as you have been recognized.

VI. MISCELLANEOUS RULES

The Moderator has determined that the Field House at Wayland High School and all other venues that may be used to conduct Wayland’s town meetings are polling places within the meaning of G.L. c. 54, sec. 65 because, among other things, the voters in town meeting assembled elect a number of town officers there each year.

Accordingly, no person shall be allowed to collect signatures upon petitions, referendum petitions or nomination papers nor may any person post, exhibit, circulate or distribute any poster, card, placard, handbill, broadside, picture, graphic, circular or other document intended to inform and/or influence the action of any voter within one hundred fifty feet of the Field House including the interior thereof.

Residents of the Town of Wayland may, nevertheless, with the prior permission of the Moderator, place and/or post documents intended and designed to inform and influence the action of voters at town meetings on the tables and wooden walls located behind and on either side of the tables occupied by the checkers at the entrance of the Field House and each other venue where town meetings are conducted, so long as said documents are germane to any of the articles set forth in the warrant.

The Selectmen, the Chief of Police and the Chief of the Fire Department and other town officers and employees may also be permitted by the Moderator to post and place documents pertaining to the safety of the public in the aforesaid locations.

Thank you for joining us tonight to do the Town’s business.

C. Peter R. Gossels, Moderator
August 31, 2009

APPENDIX B
The General Laws of Massachusetts

PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE IX. TAXATION

CHAPTER 60. COLLECTION OF LOCAL TAXES

FEES

Chapter 60: Section 15. Fees of collector

Section 15. The following interest, charges and fees, and no other, when accrued, shall severally be added to the amount of the tax and collected as a part thereof:--

1. For interest, as provided by law;
[Clause 2 of first paragraph effective until July 1, 2008. For text effective July 1, 2008, see below.]
2. For each written demand provided for by law, five dollars;
[Clause 2 of first paragraph as amended by 2008, 182, Sec. 15 effective July 1, 2008. See 2008, 182, Sec. 121. For text effective until July 1, 2008, see above.]
2. For each written demand provided for by law, not more than \$30;
3. For preparing advertisement of sale or taking, \$10 for each parcel of real estate included in the advertisement and the necessary legal fees for search of title;
4. For advertisement of sale or taking in newspaper, the cost thereof;
5. For posting notices of sale or taking, \$5 for each parcel or real estate included in the notice;
6. For affidavit, \$10 for each parcel of land included therein;
7. For recording affidavit, the cost thereof;
8. For preparing deed or instrument of taking, \$10;
9. For the issuance and delivery of a warrant to an officer, \$10;
10. For notice by mail or other means to the delinquent that warrant to collect has been issued, \$12;
11. For exhibiting a warrant to collect or delivering a copy thereof to the delinquent or his representative or leaving it at his last and usual place of abode or of business, and without distraint or arrest, \$17.
12. For distraining goods of the delinquent, \$10 and the necessary cost thereof;
13. For the custody and safekeeping of the distrained goods of the delinquent, the cost thereof, for a period not exceeding seven days, together with the expense of parking, storage, labor and towing or teaming, and other necessary expenses;
14. For selling goods distrained, the cost thereof;
15. For arresting the body, the necessary costs of the arresting officer and the cost of the travel, at the rate of \$.30 per mile, from the office of the collector to the place where the arrest is made;
16. For custody of the body arrested, if payment of the delinquent tax is not made forthwith, \$10, and in addition thereto travel at the rate of \$.30 per mile from the place of arrest to the jail or, if payment is made before commitment to jail, for the distance from the place where the arrest is made to the place where payment is made;
17. For service of demand and notice under section fifty-three, if served in the manner required by law for the service of subpoenas on witnesses in civil cases, the cost thereof, but not more than \$40;
18. For the mailing of each written demand or notice by registered mail, the cost thereof.
19. For the recording of the instrument of taking under section 54, the cost thereof.

The collector shall account to the town treasurer for all interest, charges and fees collected by him; but the town shall reimburse or credit him for all expenses incurred by him hereunder, including all lawful charges and fees paid or credited by him for collecting taxes.

The collector may, in his discretion, waive such interest, charges and fees when the total amount thereof is \$15 or less.

<p style="text-align: center;">APPENDIX C</p> <p style="text-align: center;">Financial Data, High School Project</p>
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Appropriation History - High School Project

		Full	
Prior Appropriation Summary:		Appropriation	Available Funds
2004	Preliminary Design	\$ 355,000	\$ 45,000
2004	Preliminary Design		13,812
2007	Appropriation-Art 6 of 07ATM	300,000	300,000
2009	Appropriation-Art 7 of 09ATM	726,000	726,000
		<u>\$ 1,381,000</u>	<u>\$ 1,084,812</u> (a)
Estimated Total Project Cost			\$ 70,800,000
Less: Previous Appropriation (a)			<u>(1,084,812)</u>
2009	<i>Appropriation Request - 09STM</i>		<i>\$ 69,715,188</i> (b)
Estimated Total Project Cost			\$ 70,800,000
Less: Ineligible Items (listed above in 'Project Costs')			<u>(8,300,000)</u>
Grant-Eligible Project Cost			<i>\$ 62,500,000</i> (c)
MSBA Full Grant (40% of Grant-Eligible Amount)			\$ 25,000,000
Portion for previous appropriation (40% of (a))			<u>(433,925)</u>
Remaning MSBA Grant for 09STM Appropriation			<u>\$ 24,566,075</u>
2009 STM 11-09 Approp			\$ 69,715,188
Less: Remaining MSBA Grant			<u>(24,566,075)</u>
2009	<i>Net Town Cost for Appropriation Request</i>		<i>\$ 45,149,113</i>

APPENDIX D**Summary Tax Impact Chart: Wayland High School Project**

Debt Exclusion Recommendation from Finance Committee to Board of Selectmen
Note that “Annual % Impact” is based on the current tax rate

Wayland High School
Modernization and Expansion Project
Incremental Property Tax Impact Metrics ¹

	Avg. Annual % Impact on Tax Rate ²	Avg. Annual Per \$100K of Home Value	Avg. Annual Per Average Home Value @ \$650K
During Construction Period (FY 2011 to FY2012)	2.79%	\$46	\$296
Greatest One-Year Impact (FY2013)	6.22%	\$102	\$661
5 Yrs Following Full Bond Issuance (FY 2013 to FY2017)	5.98%	\$98	\$636
Over The Life of the Bonds (FY2011 to FY2037)	4.54%	\$74	\$483

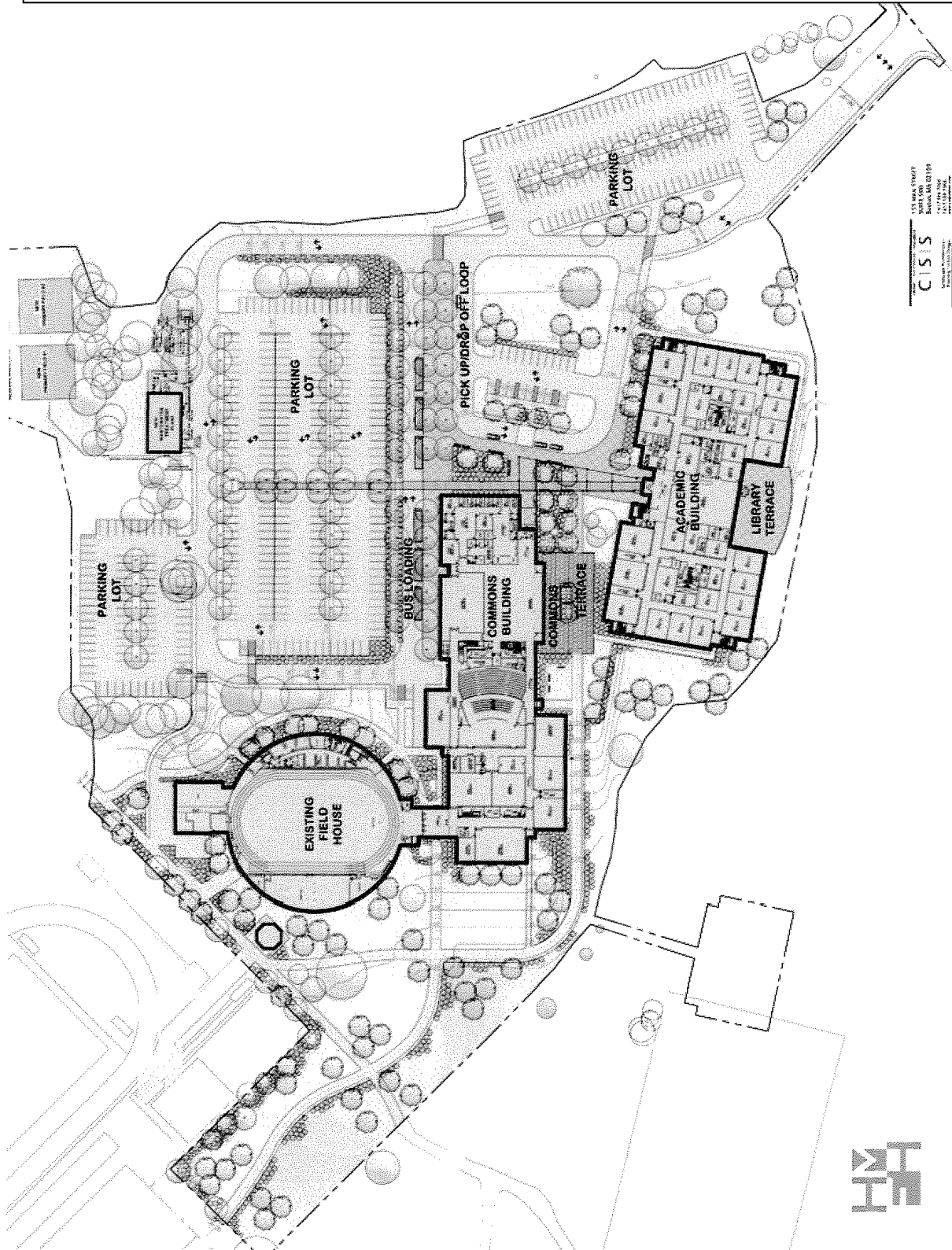
Footnotes:

1. Long-term bonds will be issued annually during construction at an estimated composite interest rate of 3.5%. These bonds will be repaid or amortized over 25 years. Model assumes \$10M issued in FY11, \$20M issued in FY12 and \$15.15M issued in FY13 totaling \$45.15M in bonds.
2. FY09 tax rate is \$16.37 per \$1,000 of assessed value.
3. The Community Preservation Assessment (CPA) surcharge of 1.5% on property tax amounts is not included above.

Looking at the same from a mill rate (per \$1000) basis, the increase to the current \$16.37 tax rate is projected as follows:

2011-2037: .074
 2011-2012: .046
 2013-2017: .098

APPENDIX E
Wayland High School Site Plan



APPENDIX F
Report of the High School Building Committee
November 2009

This update describes the work of the High School Building Committee (HSBC) during the past six months, since the Annual Town Meeting on April 13, 2009. It also reviews the steps taken with the Massachusetts School Building Authority (MSBA) since the lifting of the moratorium on state funding in 2007.

The work of the past year is documented in the 2009 Feasibility Study (Supplement to 2004 Preliminary Design Report) and the Visioning and Educational Specifications Report. The work of the HSBC in prior years is summarized in the Report of the HSBC published in the January 2005 Special Town Meeting Warrant and the more extensive 2004 Preliminary Design Report. All reports are available on the HSBC web site (www.waylandschoolcommittee.org/whs/hsbc/index.htm) and at the Wayland Public Library.

Over the past six months, the HSBC met 18 times for a total of 86 meetings since January 2004. These most recent meetings focused on the required steps leading to the Project Scope and Budget Agreement with MSBA. Specifically, the HSBC:

- Executed a Feasibility Study Agreement with MSBA in April, 2009
- Developed ed specs and resolved space differences with MSBA
- Developed alternative design approaches including renovation, new construction and a combination of new construction/renovation
- Selected a preferred option of new construction of two buildings on the existing parking lots with a renovated field house
- Received approval from the MSBA Board of Directors in July 2009 to move ahead to Schematic Design of the preferred option
- Developed two independent detailed cost estimates of the preferred option
- Reconciled the cost estimates and presented them to MSBA
- Completed the Feasibility Study/Schematic Design
- Negotiated a Project Scope and Budget Agreement with MSBA
- Received approval from MSBA Board of Directors in September 2009 for a \$70.8 million budget (including current phase) and reimbursement of up to \$25 million (total new cost to the Town of \$45.1 million)

Massachusetts School Building Authority (MSBA) – MSBA regulations define a five-phase process, with guidelines that clearly define the school’s components, their sizes, and their characteristics for which the state will provide reimbursement. The state and local community work together at every step of the new process. The five phases are: identify the problem, validate the problem, evaluate potential solutions, confirm a solution, and implement the agreed upon solution. Wayland will proceed to this last step, if the town supports moving ahead on Nov. 17 and 18.

Identify the Problem (Statement of Interest) – The Wayland School Committee and Board of Selectmen submitted a Statement of Interest (SOI) to the Massachusetts School Building Authority in August, 2006. The SOI was the first step in the application process for state funding. Communities were asked to document deficiencies under eight statutory criteria: health and safety, existing severe overcrowding, loss of accreditation, prevention of future severe overcrowding, energy conservation and decreased energy costs, short term enrollment growth, replacement of obsolete buildings, and transition from court ordered racial balance districts to walk-to districts. Wayland documented deficiencies in seven of the eight statutory criteria.

Validate the Problem - The MSBA visited Wayland High School three times during 2007.

Enrollment Site Visit and Review – In June, 2007, MSBA consultants toured Wayland High School to

see firsthand the conditions of overcrowding. They were shown many spaces that have been converted from a previous use, such as a staff dining room converted to a student cafeteria annex, reference centers converted to classrooms, a furnace room converted to a health classroom, and TEC (The Education Collaborative) space converted to classrooms. They were also shown many significantly undersized classrooms, science labs, modular science building, auditorium, and locker rooms relative to current MSBA standards.

Facilities and Maintenance Assessment – In June, 2007, Joseph Buckley, P.E., Chief Engineer for the MSBA, and ten other architects and engineers came to Wayland to begin a three day study of all five schools as part of the Facilities and Maintenance Assessment. Wayland was one of 18 towns in a pilot program for the assessment.

Senior Site Review – In August, 2007, Enrique Zuniga, Director of Quality Assurance for MSBA, Joseph Miele, Senior Architect from STV, and Donald Corrie, Director of Design from STV visited Wayland High School for the Senior Site Review. The MSBA engaged STV to provide an additional, independent analysis of the assessments done by MSBA.

Evaluate Potential Solutions - The Massachusetts School Building Authority (MSBA) at its Board of Directors meeting in November, 2007, invited Wayland High School to move forward to the Feasibility Study phase of applying for state funding.

The MSBA has defined a rolling capital pipeline of \$2.5 billion spread over five years. The MSBA is introducing projects into this pipeline as they are deemed ready. MSBA Executive Director, Katherine Craven, confirmed the commitment of \$2.5 billion with a guaranteed funding floor through 2009. The fall-off in sales tax revenue associated with the current recession will significantly affect funds available for projects coming into the funding pipeline beyond 2009. Projects already approved, as is Wayland High School, are assured of funding availability. The MSBA will work with towns to agree on fiscally responsible facilities.

In February 2008, the MSBA laid out the next steps for Wayland as follows:

1. Submit the Initial Compliance Certification (submitted in February, 2008)
2. Form a School Building Committee (submitted paperwork in March, 2008)
3. Complete an enrollment questionnaire (completed in April, 2008)
4. Complete an enrollment projection working with the MSBA consultant (completed in January, 2009; MSBA and Wayland agreed on a design enrollment of 900)
5. Procure an Owner's Project Manager subject to approval by the MSBA (KV Associates approved by MSBA in January, 2009)
6. Procure a Feasibility Designer through the MSBA's Designer Selection Panel (HMFH approved by MSBA in April, 2009)
7. Execute a Feasibility Study Agreement with the MSBA detailing scope, schedule, milestones and cost-sharing parameters of the Feasibility Study/Schematic Design (Signed agreement in April, 2009)
8. Establish Project Scope and Budget Agreement including schedule, price, and MSBA participation (Approved by MSBA in September, 2009)
9. Conduct a local vote on project (November, 2009)
10. Execute Project Funding Agreement (projected for November, 2009)

Feasibility Study/Schematic Design

The Feasibility Study was completed in late June 2009 and approved by the MSBA Board of Directors on July 29, 2009. The Wayland School Committee engaged educational facilities planner, Dr. Frank Locker, to work with approximately 60 Wayland citizens of various ages, and teachers, administrators, and staff to plan for the future of Wayland High School. This three-month-long effort resulted in an updated educational specification as required by the MSBA. The revised ed spec, enrollment design number, MSBA regulations, and updated cost estimates were all considered in analyzing options for modernizing Wayland High School. The HSBC and

MSBA looked at a variety of renovation and new construction options and came to agreement on a preferred option: a single phase project of new construction of two buildings on the existing parking lots with a renovated field house.

The Schematic Design of the preferred option was completed in September 2009 and approved by the MSBA Board of Directors on September 30, 2009. It comprises a 100,000 square foot Classroom Building with library/media center and a 54,000 square foot Commons Building with dining, administration and guidance, music and art classrooms, and auditorium. The existing field house renovation will include new roof, locker rooms, elevator, and upgrades for plumbing, electrical, heating, ventilation, and seismic systems.

Project Scope and Funding Agreement

The MSBA has approved the budget of \$70.8 million and committed up to \$25 million or 40% of reimbursable expenses for the Wayland High School Project. The Wayland School Committee has submitted a warrant article authorizing the expenditure of these funds as required by MSBA within 120 days of Board approval (Sept. 30, 2009) or January 28, 2010.

The net additional cost to the taxpayers, after taking into account the \$25 million grant and the funds already appropriated for the previous phase, is \$45,149,113. The Finance Committee has assumed borrowing to meet the project schedule and a 25-year term. The estimated annual payments peak just after the project is completed and decrease over the term. For the average-priced home (currently \$650k), the maximum annual cost is \$661 and the mean over the term is \$483/year.

Next Steps – If the voters approve the debt exclusion and warrant article, the HSBC and MSBA will continue their work. The next step of design development will take about eight months. During this time, the HSBC will work through the permitting process with state and town regulatory agencies and departments. The HSBC will study the construction options and move forward with hiring a construction manager, developing construction documents, bidding the project, awarding contracts, and breaking ground planned for no later than Spring of 2011 with planned completion by the end of 2012.

It has been the intention of the HSBC to generate a plan for Wayland High School that will be widely supported by the taxpayers of Wayland. We thank the taxpayers for their support of the schools over the years.

Respectfully submitted,

Lea T. Anderson, HSBC Chairman

High School Building Committee Members

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Jennifer Steel	508-652-1952	jsteel@FraminghamMA.gov

APPENDIX G
Memorandum of Agreement, Twenty Wayland LLC

MEMORANDUM OF AGREEMENT

This Agreement, dated as of March 28, 2006, is entered into by and between the Town of Wayland, a Massachusetts municipal corporation, acting by and through its Board of Selectmen (“Wayland”) and Twenty Wayland, LLC, a Massachusetts limited liability company (the “Developer”), with a principal place of business located at 45 Broad Street, Boston, MA 02109.

RECITALS

The Developer has asked Wayland to consider amending the Wayland Zoning Bylaw (“Zoning Bylaw”) by adopting Article 23 “Mixed Use Overlay District” (“MUOD Amendment”), a copy of which is attached as **Exhibit A**, at a Special Town Meeting to be held May 3, 2006, including all adjourned sessions thereof, (“Special Town Meeting”) and to include in the Mixed Use Overlay District (“MUOD”) a parcel of land consisting of approximately 56.5 acres, more or less, (the “Property”) owned by Developer and more particularly shown on the plan attached hereto as **Exhibit B** and incorporated by reference. Wayland has called such Special Town Meeting and included said Article 23 in the Special Town Meeting Warrant as Special Town Meeting Warrant Article 2. The adoption of the MUOD Amendment and the inclusion of the Property within the MUOD would enable the Developer to apply to the Wayland Planning Board (“Planning Board”) for special permits and Site Plan Approvals required under the proposed amendment to the Zoning Bylaw for development of an MUP on the Property (the “Development”).

AGREEMENT

Now, therefore, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Wayland and Developer agree that, if, and only if, the MUOD Amendment is adopted at the Special Town Meeting in the form attached hereto as Exhibit A, without modification which materially affects Developer’s rights as set forth herein and Developer applies for and is issued a building permit in accordance with a Master Special Permit granted by the Planning Board for an MUP (“MUP”) as described in the MUOD Amendment, then Wayland and Developer shall each perform the actions as set forth herein; provided, however, that with respect to the actions described in Sections B(1), B(2), and B(3), Developer shall perform its obligation regardless of the action of such Special Town Meeting, or the status of any building permit application; furthermore, with regard to the actions described in Sections B(4), B(5), B(6) and J(1) Developer shall perform its obligation at the time of the application for Concept Plan approval, Master Special Permit and Site Plan approval and when the Master Special Permit becomes effective, respectively. If Developer proceeds to develop a mixed-use project on the Property under any modified version of the MUOD Amendment or any other provision of the Zoning Bylaw adopted after the date of this Agreement which allows a mixed use project to be constructed on the Property within five (5) years after the date of this Agreement, Developer shall perform its obligations under this Agreement, except where modified by express written agreement of Wayland and Developer.

A. CONSERVATION RESTRICTION AND EASEMENT AND WETLANDS

1. Developer will execute, acknowledge and record a perpetual Conservation Restriction and Easement on a portion of the Property consisting of at least 10 acres (which may or may not be contiguous) subject to Developer’s retained rights (i) to install, maintain, repair, and replace pedestrian and bicycle walkways and trails, and underground utility wires, lines, pipes, and conduits for all purposes necessary for development, maintenance, and operation of an MUP and (ii) to construct any improvements required under any permit for construction of an MUP. The holder of the Conservation Restriction and Easement shall be the Sudbury Valley Trustees, Inc., a Massachusetts non-profit corporation, or another entity designated by Wayland, which may be

the Wayland Conservation Commission. Developer and the Holder will execute, acknowledge and submit the Conservation Restriction and Easement to the Massachusetts Executive Office of Environmental Affairs for approval and execution. In addition to the other remedies available to the holder of the Conservation Restriction and Easement for enforcement and violations thereof, the Developer, its heirs, successors, and assigns shall be liable to Wayland for civil fines of \$300.00 per day. Each day that any such violation occurs or continues shall constitute a separate offense. Prior to taking any action to enforce any violation of the Conservation Restriction and Easement, the holder thereof shall send or deliver a written notice describing the violation to the Developer, who shall cure any such violation within thirty (30) days after receipt of such notice. The exact configuration of the Land which will be encumbered by the Conservation Restriction and Easement shall be determined as part of the Master Special Permit process described in the MUOD Amendment.

2. Prior to filing an application for the Master Special Permit, the Developer shall file with the Wayland Conservation Commission an Abbreviated Notice of Resource Area Delineation ("ANRAD") seeking a determination of the existence and location of resource areas subject to protection under M.G.L. c. 131, §40 (the Wetland Protection Act), 310 C.M.R. 10.00, et seq. and Wayland's Wetlands and Water Resource Protection Bylaw on the Property. The location of all such resource areas determined pursuant to said ANRAD shall be shown on the plans filed with the Master Special Permit application.

3. At the time that the Master Special Permit becomes effective, Developer agrees to deposit with the Wayland Treasurer the amount of \$35,000.00, as a gift pursuant to M.G.L. c. 44, §53A, to be used for the improvement, management and maintenance of the Town-owned conservation land abutting the Property known as "Cow Common".

B. ENGAGEMENT OF CONSULTANTS; REIMBURSEMENT FOR COSTS

1. Payment of Consultants during the Rezoning Process. Within 30 days after the Attorney General approves the MUOD Amendment, Developer agrees to replenish the existing escrow account(s) in the office of the Wayland Treasurer in an amount sufficient to pay for all documented costs of Wayland's consultants in the rezoning process up to and including the conclusion of the Special Town Meeting at which the MUOD Amendment is considered up to an aggregate maximum of \$30,000.00 for these and the costs under paragraphs (2) and (3) of this Section B.

2. Payment of Legal Counsel during the Rezoning Process. Within 30 days after the Attorney General approves the MUOD Amendment, Developer agrees to replenish the existing escrow account(s) in the office of the Wayland Treasurer in an amount sufficient to pay for all documented costs of Wayland's special legal counsel and/or Town Counsel in the rezoning process and in the preparation of this Agreement up to and including the conclusion of the Special Town Meeting at which the MUOD Amendment is considered up to an aggregate maximum of \$30,000.00 for these and the costs under paragraphs (1) and (3) of this Section B.

3. Payment for Special Town Meeting. All documented costs incurred by Wayland associated with conducting the Special Town Meeting shall be paid by Developer provided that the MUOD Amendment has been approved by Attorney General. Within 30 days of receipt of an itemized invoice for such costs, Developer shall reimburse Wayland for such costs, up to an aggregate maximum of \$30,000.00 for these and the costs under paragraphs (1) and (2) of this Section B.

4. Payment for Review of Concept Plan. At the time of the submittal of the Concept Plan required by the MUOD Amendment, Developer shall deposit with the Wayland Treasurer the amount of \$10,000.00, (the "Concept Plan Escrow Account") which shall be used pursuant to M.G.L.c. 44, §53G by the Planning Board to engage a landscape architect, architect, and/or urban designer to provide technical assistance during the review of the Concept Plan. The Concept Plan Escrow Account shall be replenished by Developer at the request of the Planning Board when the balance falls to \$2,500.00. Such person shall assist the Planning Board in evaluating the Developer's Concept Plan and in determining whether such Concept Plan is consistent with the MUOD Amendment.

5. Payment for Review of Plans and Documents Accompanying the Application for a Master Special Permit. At the time of the submittal of the application for the Master Special Permit required by the MUOD Amendment, Developer shall deposit with the Wayland Treasurer the amount of \$25,000.00, (the "Special Permit Escrow Account") which shall be used pursuant to M.G.L.c. 44, §53G by the Planning Board and any boards, committees or officials whose input or recommendations are sought pursuant to the MUOD Amendment by the Planning Board relative to said application to engage a landscape architect, architect, urban designer, civil engineer, traffic engineer, attorney, and other reasonably necessary consultants to provide technical assistance during the review of said application, except for a Licensed Site Professional. The Special Permit Escrow Account shall be replenished by Developer at the request of the Planning Board when the balance therein falls to \$5,000.00.

6. Payment for Review of Plans and Documents Accompanying the Application for Site Plan Review Phase I or Phase II. At the time of the submittal of the application for site plan review (Phase I or Phase II) required by the MUOD Amendment, Developer shall deposit with the Wayland Treasurer the amount of \$15,000.00, (the "Site Plan Escrow Account") which shall be used pursuant to M.G.L. c. 44, §53G by the Planning Board to engage a landscape architect, architect, urban designer, civil engineer, traffic engineer, attorney, and other reasonably necessary consultants to provide technical assistance during the review of said application, except for a License Site Professional. The Site Plan Escrow Account shall be replenished by Developer at the request of the Planning Board when the balance falls to \$3,000.00.

7. Payment for Review of Plans and Documents Before and during Construction. At the time the Developer submits its first application for a building permit with respect to an MUP, Developer shall deposit with the Wayland Treasurer a gift the amount of \$150,000.00, (the "Construction Escrow Account") which shall be used pursuant to M.G.L. c. 44, § 53A by Wayland to engage a landscape architect, architect, code consultant, building inspector, civil engineer, wastewater engineer, conservation consultant, traffic engineer, attorney, fire protection engineer, structural engineer, and other reasonably necessary consultants to provide technical assistance and inspections before and during the construction of an MUP, except for a Licensed Site Professional. Such account shall be used to pay for reasonably necessary outside consultant costs and expenses associated with document or plan review and inspections required by the Planning Board, Building Commissioner, Board of Selectmen, Board of Road Commissioners, Fire Department, Police Department, and Board of Health to review building permit applications and to conduct conformance review during and following the completion of construction in connection with the development of an MUP.

8. Management and Allocation of Escrow Accounts.

a. With respect to the escrow accounts anticipated in Sections B(4), B(5), B(6), and B(7), in the event that actual costs for a specific budgeted item are not expended, at the time such escrow account is terminated, any funds allocated for such costs which remain in an escrow account must be used to replenish other required escrows before requesting additional funding from Developer.

b. Wayland agrees that prior to engaging any consultant or incurring any costs which will be paid for by Developer, Wayland will: (i) consult with Developer; (ii) provide a budget for the anticipated consultant contract; (iii) not incur any such cost, or enter into any such contract, without prior notice to Developer; and (iv) upon request from Developer, provide a periodic accounting for each of the specific escrow accounts referenced in this section. Nothing herein shall be construed as granting Developer any rights not provided in M.G.L. c. 44, § 53G to contest or challenge consultants selected by Wayland or any of its boards, committees or officials.

c. Upon final payment of invoices for the various costs and consultant fees required of Developer pursuant to this Section, Wayland will provide a final accounting of all such expenses and payments, pursuant to statute. Unless Developer objects to such reconciliation within 30 days following receipt of same, the reconciliation will be deemed acceptable to both Wayland and Developer. Wayland will provide Developer a release from any further obligations with respect to the payments required from Developer under this Section. Any funds remaining in any escrow account at that time will be disposed of in accordance with the provisions of Section J (2) below.

C. MUNICIPAL WATER SUPPLY

1. Prior to the issuance of any certificate of occupancy, Developer shall cause the existing eight inch (8") diameter on-site water mains on the Property to be abandoned, cut and capped. Such water lines shall be replaced with water lines or other lines acceptable to the Wayland Board of Water Commissioners and the Wayland Fire Department.

2. All fire service lines, domestic water lines and lateral connections from the new water main to the individual buildings within the MUP shall comply with the requirements of both the Wayland Board of Water Commissioners and the Wayland Fire Department.

D. MUNICIPAL SEWER FACILITY

1. Definitions - For purposes of this section D the following definitions shall apply:

- a. **"EPA"** - United States Environmental Protection Agency.
- b. **"New Plant"** - The new wastewater treatment, collection, and disposal systems, all as permitted and built pursuant to this Section, to the extent located on the Property or on the parcel of land presently owned by Wayland, together with any appurtenant easements held or to be held by Wayland..
- c. **"New Plant Permits"** - All local, state and federal approvals and permits required for construction of the New Plant, as well as all approvals and permits necessary to allow the Developer, WWMDC, or Wayland to connect to the New Plant.
- d. **"Assessment Study"** - A study to be conducted by Developer's consultants (who shall be reasonably acceptable to Wayland) within thirty (30) days after the Attorney General approves the MUOD Amendment, to be shared with the WWMDC, to assess the necessity of replacing the Plant with the New Plant or upgrading the Plant.
- e. **"MDEP"** - Massachusetts Department of Environmental Protection.
- f. **"Plant"** - The existing wastewater treatment, collection and disposal systems, to the extent located on the Property or on the parcel of land presently owned by Wayland, together with any appurtenant easements presently held by Wayland.
- g. **"Wayland"** - shall mean the Wayland Board of Selectmen or the WWMDC if designated by the Wayland Board of Selectmen.
- h. **"WWMDC"** - the Wayland Wastewater Management District Commission.

2. All studies, assessments, investigations, design, permit applications, wastewater capacity allocations and construction on any component of the Plant or the New Plant and amendments to the MOA are subject to review and approval by the WWMDC, except as otherwise provided in this Section D.

3. Developer and Wayland hereby acknowledge and confirm that each has certain rights and obligations under a August 30, 1999 Memorandum of Agreement by and between Wayland and WWMDC and Wayland Business Center, LLC (Developer's predecessor in interest), as modified by a Supplemental Agreement dated September 24, 1999 (collectively the "MOA"), including, without limitation, regarding gallons per day of maximum daily design flow (as defined in 310 CMR 15.000) of 20,000 for Wayland and WWMDC and 45,000 for Developer.

4. Developer will initially conduct the Assessment Study to assess the necessity of replacing the Plant with the New Plant or upgrading the Plant, based on public health and environmental considerations and legal requirements of EPA and MDEP. Wayland and WWMDC shall, as a precondition of Developer's obligation to conduct the Assessment Study, provide a license or other authorization to allow Developer and its consultants access to the Plant and any records relating to the design, construction or operation thereof. Upon completion of the Assessment Study, Developer will provide WWMDC and Wayland with a technical memorandum describing the study and its conclusions and recommendations. Developer will review the recommendations with WWMDC and Wayland to enable them to determine whether to proceed toward developing the New Plant.

5. Wayland and Developer agree that the WWMDC will undertake the responsibility of permitting,

designing, and constructing the New Plant or any upgrade of the Plant.

6. Wayland and WWMD C may choose not to proceed with design, permitting or construction of the New Plant, even if the Assessment Study so recommends, but Wayland and WWMD C shall in such event indemnify Developer from any cost or loss that arises from this choice.

7. If Wayland or WWMD C elects or is ordered to undertake design, permitting and construction of the New Plant or any upgrade of the Plant, then Wayland will prepare all applications necessary to obtain the New Plant Permits, in consultation with Developer. WWMD C and/or Wayland, as applicant, will execute these applications, which will then be submitted to the appropriate agencies. Once the necessary permits are obtained, then Wayland or WWMD C will proceed with construction of the New Plant or upgrade of the Plant.

8. Notwithstanding anything set forth in this Section D, Developer will be allowed to proceed with construction and occupancy of an MUP pursuant to a Master Special Permit and all other required approvals, prior to Wayland's or the WWMD C's completing construction of the New Plant, provided construction and occupancy of the MUP does not materially and unreasonably interfere with construction of the New Plant.

9. Ownership of the land under the New Plant shall be conveyed to Wayland, to be placed in the custody of the WWMD C, in fee simple immediately before construction is commenced, provided Wayland simultaneously conveys ownership of the land under the Plant to Developer, in fee simple, subject to the provisions of M.G.L. c. 40, §§ 3 and 15A and M.G.L. c. 30B. In recognition of the necessity for Wayland Town Meeting approval for such a land exchange, the Developer and Wayland agree to execute a License Agreement effecting the land exchange, with a mutual termination clause, which shall remain in effect until such Town Meeting Approval can be obtained. Developer recognizes that a New Plant may reasonably require a larger parcel than the parcel on which the Plant is now located. If the assessment study recommends a New Plant, then Developer agrees to license and/or convey a parcel up to fifty percent (50%) larger than the size of the current parcel of land on which the Plant is located.

10. Developer can be charged any connection, betterment, improvement, or similar fees by Wayland or WWMD C, but only as authorized pursuant to Massachusetts general or special law ("Developer's Share"). In addition, pursuant to its offer, Developer hereby agrees to make a gift to Wayland pursuant to M.G.L. c. 44, §53A, within 90 days after construction of the New Plant or upgrade to the Plant is completed, subject to the following terms and conditions:

- a. The amount of this gift shall be equal to seven percent (7%) the total construction cost of the New Plant or upgrade to the Plant but shall not exceed \$175,000.00; and
- b. The Assessment Study recommends the construction of the New Plant or upgrade to the Plant.

11. Nothing in this Agreement shall be construed as limiting the Developer's and the WWMD C's rights to enter into a separate and independent agreement modifying the MOA to provide for the construction of a new wastewater treatment, collection, and disposal system on the Property or on the parcel of land presently owned by Wayland with a capacity which is greater than the current capacity of the Plant.

E. TRAFFIC IMPROVEMENTS

1. Developer shall pay for planning, permitting, and design, and shall install and construct at its sole expense, such off-site traffic improvements and mitigation as may be required by Massachusetts Highway Department ("MHD") with respect to U.S. Route 20, Boston Post Road (the "MHD Traffic Improvements"). Developer agrees to pursue the approval by the MHD for the MHD Traffic Improvements and Wayland agrees that it will reasonably cooperate with Developer in its efforts to obtain MHD approval, including the execution of any documents required therewith. At least 14 days prior to the submittal of any design for such traffic improvements to MHD, Developer shall provide copies of the proposed design to the Town of Wayland Board of Road Commissioners ("BORC") for their review. Developer shall obtain approval from the MHD for the MHD Traffic Improvements and substantially complete construction of the MHD Traffic Improvements prior to

the issuance of the first certificate of occupancy for the construction of any building on the Property which is part of the MUP.

2. Developer shall pay for planning, permitting, and design, and shall install and construct at its sole expense such off-site traffic improvements and mitigation as may be required by BORC with respect to Route 27 (Old Sudbury Road), Route 126 (Concord Road) and the intersection of Routes 20, 27 and 126, except to the extent under the jurisdiction of MHD, (the "BORC Traffic Improvements") in accordance with the design plans, methods and means of construction and the Town Way Physical Alteration Permit approved by the BORC. Any contractor hired or engaged by the Developer to construct the BORC Traffic Improvement shall be pre-qualified by the Commonwealth of Massachusetts in accordance with procedures established to pre-qualify such contractors to perform construction work on highways owned by the Commonwealth. The BORC's designated representative shall be given reasonable prior notice of all pre-construction and construction work meetings relative to the BORC Traffic Improvements and shall have the right to attend and participate in all such meetings and periodically inspect the work. Construction of the BORC Traffic Improvements shall be completed as required in the construction phasing schedules established by BORC, or MHD, or as established during the MEPA permitting process (if applicable) and as approved by the BORC prior to the issuance of the first certificate of occupancy for any building constructed in the MUP. The BORC's approval of the BORC Traffic Improvements shall not be unreasonably withheld or delayed. Traffic control equipment provided as part of the BORC Traffic Improvements shall be as per BORC specifications, including, without limitation, ornamental, post-mounted signal poles painted as prescribed by BORC; and shall include control preemption equipment for emergency vehicles.

3. During the Planning Board's review of the Master Special Permit, Developer shall be required to perform new traffic analyses, including, but not limited to, quantifying the number of trips expected to use cut-through routes along Bow Road, Glezen Lane, Moore Road, Training Field Road, Claypit Hill Road, Plain Road, Millbrook Road, Glen Road, and Pelham Island Road considering travel time assessments between the proposed primary route and the established neighborhood streets. After the issuance of the first certificate of occupancy for any building constructed on the Property as part of the MUP, Developer agrees to donate to Wayland the sum of \$75,000.00 in accordance with M.G.L. c. 44, § 53A, to be expended by the BORC for analyses, studies, planning, permitting, design, installation and construction such off-site traffic improvements and mitigation as may be required by BORC with respect to said roads (the "Neighborhood Roads Traffic Improvements"). If said funds are not expended by Wayland for the Neighborhood Roads Traffic Improvements within five years after final completion of the MUP, any remaining funds may be expended by Wayland for general municipal purposes.

4. Developer shall construct and maintain streets and parking areas within the MUP, except for the Municipal Parcel as defined in Section K below, at its sole cost and expense, it being the intention that all such streets and parking areas shall remain privately owned. Developer's obligations to construct a parking area within the Parking Parcel are set forth in Section K below.

5. It is anticipated by and between the parties that some MHD Traffic Improvements and BORC Traffic Improvements may not be completed prior to the issuance of a certificate of occupancy for any building constructed as part of an MUP on the Property. To the extent that for any reason the MHD Traffic Improvements or the BORC Traffic Improvements are not completed prior to Developer's application for a certificate of occupancy, Developer agrees that the Planning Board may require, as a condition for the issuance of any such certificate of occupancy, security for such incomplete work in the manner provided for securing construction of ways and the installation of municipal services set forth in M.G.L.c. 41, §81U, paragraphs (1) and (2). The amount of such security shall be determined by Wayland, through the Planning Board, after consultation with Developer and shall be sufficient to cover the design and construction of any such incomplete work whether required under the Master Special Permit, any BORC permit, or any MHD permit. Wayland agrees that any incomplete work secured pursuant to the provisions of this Section relative to the BORC Traffic Improvements shall be deemed complete for the purpose of approval of any certificate of occupancy.

6. Prior to the issuance of any certificate of occupancy for a building in an MUP, Developer agrees to donate to Wayland the sum of \$30,000.00 in accordance with M.G.L. c. 44, §53A, to be expended by the BORC for the maintenance and replacement of traffic lights and associated equipment and signs installed and constructed as part of the MHD Traffic Improvements, the BORC Traffic Improvements and the Neighborhood Roads Traffic Improvements.

7. Developer shall be allowed to construct any improvements or utility connections as may be required within public ways, provided road opening or curb cut permits, and waivers from any road or street opening moratorium are obtained from all appropriate agencies, commissions, or boards.

8. To the extent authorized by vote of a town meeting where necessary, Wayland agrees to secure and grant, at no cost to the Developer, all temporary construction easements or licenses on any land owned or controlled by Wayland that may be necessary to allow construction of the MHD Traffic Improvements and/or the BORC Traffic Improvements. Additionally, to the extent authorized by vote of a town meeting where necessary, Wayland agrees to secure all temporary construction easements on any other land that may be necessary to allow construction of the MHD Traffic Improvements and/or the BORC Traffic Improvements, provided that Developer will indemnify Wayland against all costs (including, without limitation, appraisals, engineering, surveying, legal, court costs and landowner compensation and/or damage awards and interest thereon) incurred by Wayland in securing such temporary construction easements.

9. In the event that the Master Special Permit includes a condition restricting access to the Property from Route 27 to residential vehicles and emergency access vehicles only, Developer agrees that it will not appeal the imposition of such condition and if the MUP is built, will comply with such condition.

10. In the event that the Wayland Conservation Commission or MDEP requires replication of wetlands to compensate for any land used for any required widenings or other work associated with the MHD Traffic Improvements or the BORC Traffic Improvements, Wayland agrees to grant a license to Developer for any such replication on a reasonable area of Town-owned land designated by Wayland, provided that such replication does not materially interfere with Wayland's use of such Town-owned land.

F. DESIGN

1. Aggregate Limits. Developer's application for Concept Plan review, for a Master Special Permit, and for Phase I and Phase II Site Plan Approval pursuant to the MUOD Amendment shall propose an MUP consisting of a combination of retail, office, municipal, service establishments and uses in buildings and a setting designed in a traditional, small New England village style with multiple non-residential uses and a mix of buildings containing single or multiple establishments with the following aggregate limits:

a. The residential component of the MUP shall contain not more than 167,500 square feet of Gross Floor Area. There shall be not more than 100 dwelling units of which 25% shall be affordable units, as defined and set forth in the MUOD Amendment, with no more than 200 bedrooms in the aggregate. Not more than 15 dwelling units shall contain three bedrooms. No dwelling unit shall contain more than three bedrooms. In the event that Developer creates a condominium or condominiums pursuant to the provisions of M.G.L. c. 183A for the residential component of the MUP, the master deed(s) shall incorporate said limitations on Gross Floor Area, number of dwelling units and number of bedrooms. In any event, prior to the issuance of the first certificate of occupancy for any such dwelling unit, Developer shall execute and deliver to Wayland, in a form reasonably acceptable to Town Counsel, a perpetual covenant or restriction running with the Property and running to the benefit of the adjoining Town-owned land known as "Cow Common" which contains, at a minimum, said limitation on number of bedrooms. In the MUP, Developer shall not apply for or obtain a comprehensive permit pursuant to the provisions of M.G.L. c. 40B to permit the construction of a greater number of dwelling units or dwelling units with a greater number of bedrooms;

b. The non-residential component of the MUP, exclusive of municipal uses and any uses related to the wastewater treatment facility, shall contain not more than 165,000 square feet of Gross Floor Area, with

not more than 156,750 square feet Gross Floor Area dedicated to retail uses and not more than 10,000 square feet Gross Floor Area dedicated to office uses.; and

c. 40,000 square feet of Gross Floor Area for municipal purposes.

2. Developer shall install all utilities serving the MUP underground, including, but not limited to, water, sewer, gas, electric, and cable.

3. In designing its Concept Plan, and any plans submitted with an application for a Master Special Permit, Developer will use reasonable efforts to cooperate with the developer of the “Wayland Commons” affordable housing M.G.L. c. 40B development, to coordinate site development, utilities and landscaping plans and to develop complementary building designs for their respective developments in a manner which is complementary of and appropriate to the existing Town Center.

4. Developer shall cooperate with Wayland and take all reasonable actions required so that the MUP or any part thereof, separately, or in conjunction with adjoining property may qualify for approval as a smart growth zoning district under the provisions of M.G.L. c. 40R, provided that such actions do not unreasonably delay or adversely impact the MUP.

5. No application for Concept Plan review shall be submitted to the Planning Board pursuant to the MUOD Amendment until at least ninety (90) days have elapsed after the MUOD Amendment has been adopted by the Special Town Meeting. No Master Special Permit application or application for any special permit pursuant to the MUOD Amendment shall be submitted to the Planning Board or filed with the Town Clerk until at least ninety (90) days have elapsed after the Developer has filed an application for Concept Plan review.

G. SITE CONTAMINATION AND REMEDIATION

1. Developer’s Obligation. Developer shall not be obligated to proceed with any submittal or application for approval of an MUP, or subsequently for construction of such an MUP, until Developer has received any and all permits, approvals, waivers, and clearances to construct the proposed MUP, within the aggregate limits set forth in Section F above, from Raytheon Company and MDEP, including, without limitation, release or modification by Raytheon Company and MDEP of the Activity Use Limitation (“AUL”) (collectively the “Raytheon Approvals”) restricting the development of residential uses and open space on the Property. In the event that Developer does not receive the Raytheon Approvals, in form and substance satisfactory to Developer, then at Developer’s option, Developer may terminate this Agreement in which case any obligation of the Developer under this Agreement, with the exception of the obligations described in Sections B(1), B(2) and B(3), and the obligations with respect to consulting fees incurred pursuant to Sections B(4), B(5), and B(6) prior to such termination, shall terminate.

2. Identification and Disposition of AUL. Developer shall identify any AUL on the Property on all relevant plans submitted with applications for Concept Plan, Master Special Permit, and Site Plan Approval. Developer shall advise the Planning Board, Wayland Board of Health, and Wayland Board of Selectmen, in writing, of the disposition of any AUL currently encumbering the Property and other terms of any site remediation agreement negotiated with Raytheon Corporation.

3. Site Development. Developer’s site development activities shall not impinge upon planned, ongoing and potential new site contamination investigations, assessments and soil and groundwater remediation activities.

H. MUOD SITE SERVICES

Developer shall be solely responsible for the maintenance and operation, including but not limited to refuse and trash removal, snow removal, road and sidewalk maintenance, lighting, landscape maintenance and

similar activities of the MUP to be built on the Property, including any town common, but excluding the Municipal Parcel and Parking Parcel, both as defined in Section K below.

I. PUBLIC SAFETY

1. Developer shall prepare and submit detailed fire suppression and detection plans for review by an independent fire protection engineer selected by the Wayland Fire Department, The cost of this review shall be paid by the Developer through an escrow account, as set forth in Section B(7) of this Agreement.

2. Each building built as part of an MUP shall contain an alarm for smoke or fire detection connected to the Wayland Fire Department via wireless technology.

3. Developer shall provide a Security Plan for review and approval by the Chief of Police, prior to implementation. To the extent permissible under law, for security reasons, such plan shall not be considered a public document.

4. Developer shall be responsible for site security during and following construction. The Developer shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Property, as well as during particularly busy periods when the development has been completed and is in operation, such as holiday shopping seasons.

5. Pursuant to its offer, Developer shall donate \$50,000.00 to Wayland to be held in a gift account in accordance with M.G.L. c. 44, § 53A and used by Wayland for the purchase and installation of a wireless municipal fire alarm system to serve buildings located on the Property and Town-owned buildings, including public school buildings. Said funds will be so donated when the Master Special Permit becomes effective.

J. FINANCIAL GIFTS AND CONSULTANT REVIEW FEES

1. Pursuant to Developer's offer, Developer shall donate to Wayland, Three Million Thirty Thousand (\$3,030,000.00) Dollars as a gift pursuant to M.G.L.c. 44, §53A (the "Financial Gift"), of which amount Two Hundred Thousand (\$230,000.00) Dollars shall be contributed when the Master Special Permit becomes effective and the balance shall be contributed within 90 days following the issuance of the first building permit for a building in an MUP. Wayland will use the Financial Gift to mitigate impacts of the MUP, to complete certain public improvements, and for other valid public purposes, therefore, the Developer shall not be required to (i) construct any sidewalks outside the boundaries of the Property or (ii) conduct any periodic traffic monitoring, except as required under the terms of Section E above and Section J 3 below. It is agreed that funding for such off site improvements are included in the Financial Gift.

2. Wayland and Developer agree that a reasonable budget for the consultant reviews funded by Developer pursuant to Section B, paragraphs (4) through (7) is approximately \$400,000.00 In the event that actual costs are less than \$400,000.00, Developer will donate the difference between \$400,000.00 and such actual costs to Wayland pursuant to M.G.L.c. 44, §53A, as a gift, and which Developer shall not otherwise be obligated to pay. Wayland shall spend such funds to mitigate impacts of the MUP or any other valid public purposes in accordance with statute.

3. Pursuant to its offer, Developer will, following issuance of the first building permit for construction of a building in an MUP on the Property, donate the sum of \$250,000.00 pursuant to M.G.L.c. 44, §53A to fund Wayland's efforts to acquire in fee or by easement or license rights for, and to develop or improve a bicycle trail along the existing MBTA easement, adjacent to the Property, from Route 20 to Route 27, for use by the public. Any funds remaining in the account established for said gift at the completion of said bicycle trail may be used for the planning, design and construction of an historic railroad interpretive site within or along said portion of the MBTA easement. If Wayland does not acquire the necessary land, rights or license for and to develop or improve said bicycle trail within twenty four (24) months following issuance of the first building permit for construction of a building in an MUP on the Property, the unexpended balance of said gift of \$250,000.00 will

be returned to Developer, after which Wayland will grant any licenses required for, and use best efforts to facilitate Developer's development or improvement of said bicycle trail.

K. LAND AND EASEMENTS DONATION

1. Developer shall provide a 99 year ground lease, with an option to renew in favor of Wayland, or shall grant Wayland a fee interest in a parcel of land, for the sum of one dollar (\$1.00), for a municipal "pad" (the "Municipal Parcel"), together with land proximate to the Municipal Parcel sufficient for construction of a parking lot for 100 vehicles (the "Parking Parcel"), as well as any appurtenant green space, for use by Wayland as a public municipal facility, and shall construct all utility connections up to the leasehold or ownership property line, and shall grant such permanent utility easements (which shall include the right to connect to existing utilities and/or construct and install utilities therein) on, over, across, through and under the Property, in locations determined by Developer in Developer's sole discretion, necessary for Wayland to build and operate a municipal building. Developer shall not be obligated to extend utilities onto the Municipal Parcel or the Parking Parcel, but only to extend those utilities otherwise serving the MUP to stubs at the boundary of the Municipal Parcel or the Parking Parcel. The total land area of the Municipal Parcel, Parking Parcel and appurtenant green space shall be approximately 70,000 square feet. Additionally, Developer shall grant to Wayland, for the sum of one dollar (\$1.00), permanent access and egress easements for pedestrian and vehicular traffic over roads, ways and walkways of the MUP to allow reasonable public access to the Municipal Parcel and Parking Parcel and appurtenant green space and to allow reasonable access by authorized Wayland officials, employees, agents and contractors to the land subject to the Conservation Restriction and Easement described in Section A above. Wayland's acquisition of said leasehold or fee interest and easements (except for the Conservation Restriction and Easement) is subject to town meeting authorization. Wayland shall not use the Municipal Parcel for the storage of municipal public works vehicles or equipment or deicing materials or other uses inconsistent with the uses allowed under the MUOD Amendment. Wayland shall, at its sole cost and expense, maintain the Municipal Parcel, Parking Parcel and appurtenant green space. In the event that Wayland fails to maintain either the Municipal Parcel or the Parking Parcel or the appurtenant green space the Developer may, at its election, following notice to Wayland, enter onto and maintain such parcels. Any such entry and/or maintenance shall be at Developer's sole cost and risk and by doing so Developer agrees to release and indemnify Wayland from any and all liability arising from Developer's entry onto the parcels and the maintenance work performed thereon. Except as set forth in the immediately preceding sentence, such entry and/or maintenance shall not create any obligation of Developer with respect to the maintenance of such parcels.

2. Wayland may, within forty-five (45) days following notice from Developer that Developer has received a Master Special Permit, notify Developer of its election to require Developer to construct a parking lot ("Parking Lot Election Notice") with up to 100 parking spaces on the Parking Parcel. Such notice shall include complete construction specifications which shall not exceed the parking design criteria set forth in the Zoning Bylaw. Developer shall then be obligated to construct such parking lot no later than one year following the issuance of the first certificate of occupancy for a building within the MUP. If Wayland does not send a Parking Lot Election Notice, as specified above, Developer shall at the same time it contributes the Financial Gift donate, pursuant to M.G.L.c. 44, §53A, \$120,000.00 to Wayland to assist Wayland with costs of future construction of such parking lot and Developer will have no obligation to construct such parking lot.

3. (a) the Developer shall notify Wayland of Wayland's option to require the Developer to design, permit and build an on-site septic system ("Septic System") in compliance with Title 5 (310 CMR 15.000) of the State Environmental Code, with a capacity of 3000 GPD to service the Municipal Parcel; and

(b) Wayland shall, within 90 days following receipt of such notice, either direct Developer to proceed with such design, permitting and construction, or notify Developer that Wayland will not accept a Septic System, in which case Developer will transfer to Wayland 3,000 GPD from Developer's existing 45,000 GPD capacity in the Plant.

4. Developer's obligations under this Section, except as otherwise provided with respect to the parking

lot construction, shall be completed on or before issuance of the first certificate of occupancy for any building in the MUP unless Wayland elects to defer connection to the Plant or New Plant, or construction of the on site Septic System until a later date, in which event Developer shall, at Developer's election, either deposit money or negotiable securities, or post a bond, as security for completion of such work. The amount of such security shall be determined by Wayland after consultation with Developer and shall be sufficient to either provide for future connection to the Plant or New Plant, or for design, permit and construction of the Septic System.

5. Developer and Wayland shall use their best efforts to investigate the feasibility of locating and constructing a skating pond on the Property. In the event that Developer has an ownership interest in, operates or maintains any such skating pond, Wayland agrees to enter into an indemnification agreement with the Developer.

L. SUPPLEMENTAL TAX AGREEMENT

1. Developer understands that Wayland supports adoption by Special Town Meeting of the MUOD Amendment, in part, because the proposed MUP will generate significant real property and personal property tax revenue not otherwise anticipated by the current permitted use of the Property. In order to assure Wayland of the continuation of real property tax revenue to Wayland in an amount proportional to the tax revenue anticipated from an MUP, in the event that an MUP is built on the Property and any building or land within the MUP is sold to an entity or organization that is exempt from paying local real estate property taxes, (and such organization converts such building or land to an exempt purpose), Developer will enter into a Supplemental Agreement with Wayland, in the form attached as Exhibit C. The Supplemental Agreement (a) shall be recorded as set forth therein with the Middlesex South District Registry of Deeds; (b) shall bind subsequent owners of the Property; and (c) shall terminate ninety-nine (99) years after the execution thereof. This Section shall not apply to any sale or transfer of any land subject to the Conservation Restriction and Easement referenced in Section A, to a tax exempt entity.

2. In the event that the Developer's demolition and removal of the existing building(s) on the Property results in a reduction in the assessed value of the Property in any fiscal year, Developer shall pay to Wayland an amount calculated by multiplying the tax rate for the then current fiscal year by the assessed value of said building (s) in the most recent fiscal year in which property taxes were assessed on said building(s) (the "PILOT"). In any fiscal year that any such PILOT is payable, payment thereof shall be received by Wayland when property tax payments are ordinarily due. From and after the time that property taxes have been assessed on buildings and improvements constructed as part of the MUP (the "New Building Taxes"), Developer's annual payment obligation shall be the greater of the PILOT or the New Building Taxes, until such time as the New Building Taxes exceed the PILOT for two consecutive fiscal years, after which Developer's obligations under this paragraph 2 and paragraph 3 of this Section L shall cease.

3. When and if the MUOD Amendment is approved by the Attorney General, Developer shall withdraw its petition to the Appellate Tax Board appealing the Wayland Board of Assessors denial of its application for an abatement of the property taxes assessed on the Property for Fiscal Year 2006 and consents to an assessed value on the Property for property tax purposes of not less than \$23,422,800.00 for Fiscal Year 2006 and each fiscal year thereafter, except as hereinafter provided. In the event that the Planning Board does not issue an MSP for an MUP on the Property by January 31, 2009, then Developer may contest the assessed value of the Property for Fiscal Year 2010 and any fiscal year thereafter in which an MSP for an MUP has not been issued by July 1st.

M. MISCELLANEOUS PROVISIONS

1. Cell Tower Prohibition. Developer agrees that it will not allow siting of a wireless communications tower or any wireless antennas, receivers, transmitters, or the like, with the exception such equipment owned or leased by tenants for the operation of their businesses, within any MUP constructed within the MUOD. Nothing in this paragraph shall be construed as prohibiting municipal public safety wireless

communications or short range wireless computer or intercomputer communications.

2. Invalidity. Wayland and Developer agree that if the Town's adoption of the proposed zoning amendment is determined to be invalid, illegal, or unconstitutional by the Attorney General of the Commonwealth of Massachusetts or by a court of competent jurisdiction prior to the performing of the actions described herein, then the provisions of this Memorandum and each of the agreements and documents referenced herein shall be null and void; provided, however, that the provisions of Sections B(1), B(2), and B(3) shall survive any such determination and shall continue to be in full force and effect.

3. Compliance; Master Special Permit. Developer agrees that the master special permit process shall include the submission of evidence, to the satisfaction of the Planning Board, of compliance with the terms of this Agreement.

4. Other Regulatory Approvals. At the time of filing, Developer shall send or deliver to the Planning Board a copy of all applications and supporting materials (studies, plans, etc.) for approvals by federal, state and regional regulatory authorities (including but not limited to EPA, MHD, MDEP and MEPA) necessary for the development of the MUP.

5. Intent to Bind Successors, Heirs and Assigns. The foregoing obligations shall run with the Property, and shall be binding upon and inure to the benefit and burden of Developer, its heirs, successors, and assigns. A notice thereof in the form attached hereto as **Exhibit D** shall be executed by Developer and recorded with said Registry of Deeds and registered with the Land Registration Office at said Registry of Deeds upon approval of the MUOD Amendment by the Attorney General, without modification.

6. Effect; Amendment. This Agreement shall not take effect until approved and executed by the Board of Selectmen of the Town of Wayland. Upon such approval, this Agreement shall not be amended in any material respect except by a further approval of the Board of Selectmen.

7. Required Notices. Unless otherwise specified in this Agreement, any notice to be given under this Agreement shall be in writing and signed by the party (or the party's attorney) and shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) two business days after the date mailed, if mailed by registered or certified mail, all charges prepaid, in either event addressed as follows:

in the case of the Town, to:

Wayland Board of Selectmen
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778-2614
Attn: Frederic E. Turkington, Jr. (Town Administrator)
FAX 508-358-3627

with copy to Town Counsel:

Mark J. Lanza, Esq.
9 Damonmill Square
Concord, MA 01742
FAX 978-369-9916

and in the case of the Developer to:

Twenty Wayland, LLC
c/o KGI Properties, LLC

45 Broad Street, 4th Floor
Boston, MA 02109
Attn: Charles R. Irving, III
FAX 617-357-9900

with a copy to:

Dean F. Stratouly
c/o The Congress Group, Inc.
33 Arch Street
Boston, MA 02110
Tel No. (617) 897-7200
Fax No. (617) 789-77201

and a copy to:

Adam N. Weisenberg, Esq.
Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Tel. No. (617) 570-1473
Fax No. (617) 227-8591

By such notice, either party (or such party's attorney) may specify a new address, which thereafter shall be used for subsequent notices.

8. Default and Notice.

a. **By Developer.** If Developer shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Developer (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Wayland shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Wayland; or (iii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. Wayland agrees that if, within ten (10) days after Developer's receipt of a notice of a claim of default, Developer shall give notice to Wayland that Developer contests the same, then Wayland shall not have the right to exercise any of the foregoing rights in respect thereto until such claim shall have been finally adjudicated in such contest. Developer agrees to diligently prosecute any such contest and if such adjudication is in favor of Developer, then Developer shall be reimbursed its reasonable legal fees and other expenses in prosecuting such contest by Wayland; if such matter is determined adversely to Developer, Developer shall have thirty (30) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto, Developer shall reimburse Wayland its reasonable legal fees and other expenses in defending any such contest.

b. **By Wayland.** If Wayland shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Wayland (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Developer shall have the right to (i) terminate this Development Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance.

9. Effective Date of Agreement. This Development Agreement shall be effective as of the date it shall be executed by both Developer and Wayland.

10. Dispute Resolution. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, Wayland and the Developer agree that such disputes shall be first subject

to nonbinding arbitration or mediation, for a period not longer than ninety (90) days.


11. Applicable Law; Construction.

a. This Development Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Massachusetts.

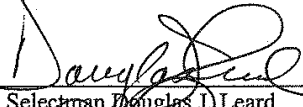
b. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

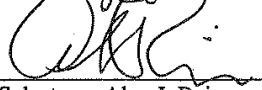
Executed under seal as of the date first above written.

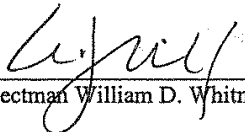
Town of Wayland

By: 
Selectman Michael L. Tichnor, Chair

By: 
Selectman Joseph F. Nolan, Vice Chair

By: 
Selectman Douglas J. Leard

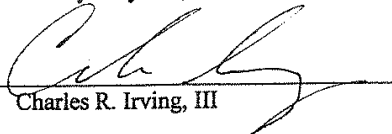
By: 
Selectman Alan J. Reiss

By: 
Selectman William D. Whitney

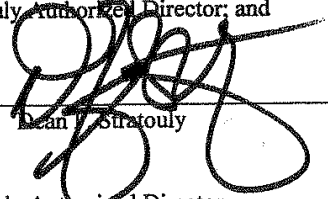
Approved as to form:


Mark J. Lanza, Town Counsel

Twenty Wayland, LLC

By: 
Charles R. Irving, III

Its Duly Authorized Director; and

By: 
Dean J. Stratouly

Its Duly Authorized Director

EXHIBIT A

Chapter 198, Article 23 of the Code of the Town of Wayland

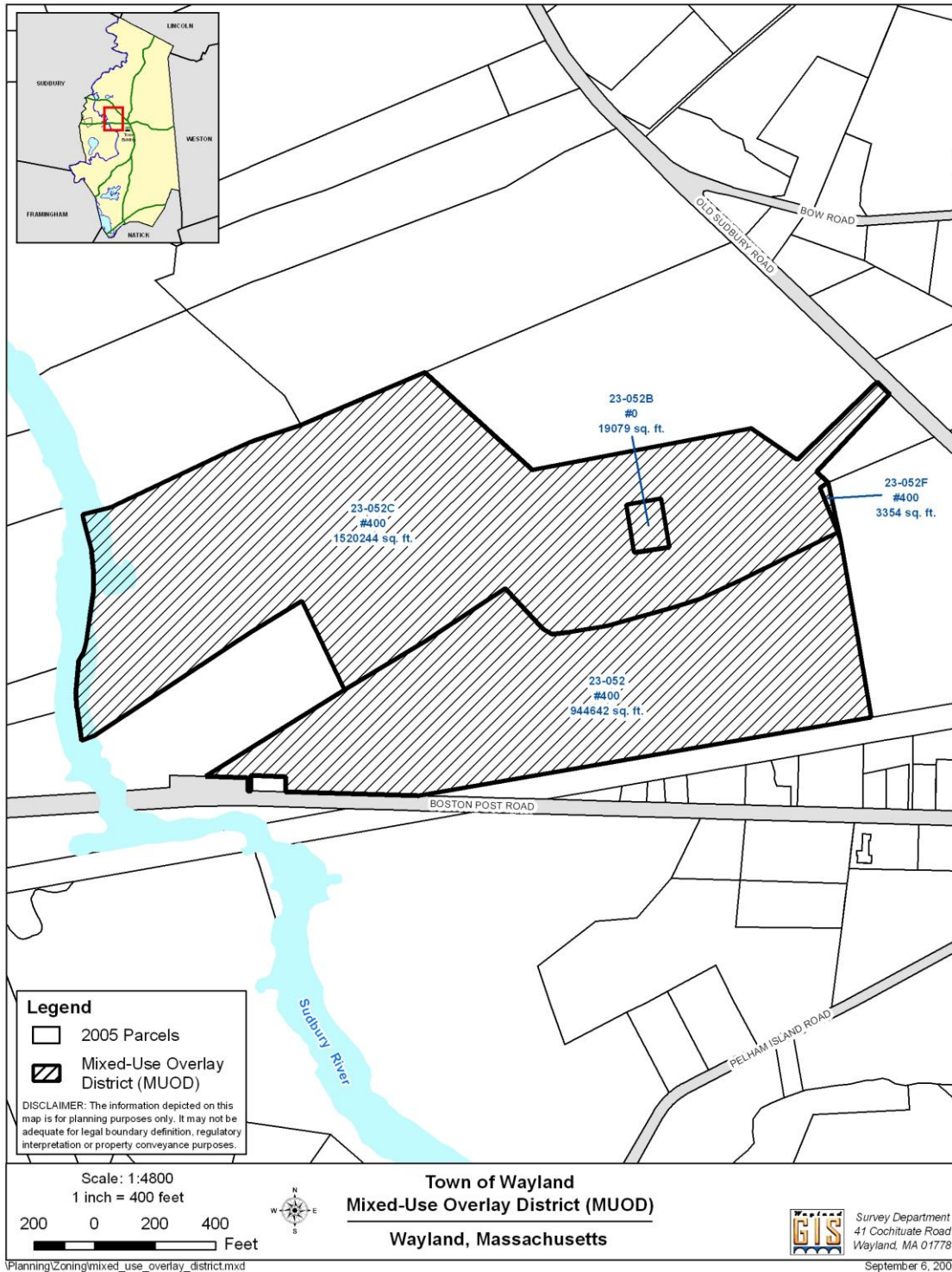
EXHIBIT B

EXHIBIT C**SUPPLEMENTAL TAX AGREEMENT FOR PAYMENT IN LIEU OF TAXES**

THIS AGREEMENT made this 20th day of October, 2009, is entered into by and between the Town of Wayland, a Massachusetts municipal corporation, acting by and through its Board of Selectmen ("Wayland"), with a principal place of business at 41 Cochituate Road, Wayland, Massachusetts 01778 and Twenty Wayland, LLC, a Massachusetts limited liability company (the "Developer"), with a principal place of business located at 260 Boston Post Road-Suite 9, Wayland, Massachusetts 01778.

WHEREAS, Developer is the owner of the land with the buildings and other improvements thereon known and numbered as 400-440 Boston Post Road, Wayland, Massachusetts and described in a deed recorded with the Middlesex South Registry of Deeds in Book 45981, Page 177 (unregistered land) and in Certificate of Title No. 234881 registered in Registration Book 1307, Page 76 (registered land) in the Land Registration Office at said Registry of Deeds (the "Property"); and

WHEREAS, Wayland and the Developer have entered into a entered into and executed a memorandum of agreement dated March 28, 2006, as modified by Amendment No. 1 to said agreement dated October 20, 2009, relative to the development of a mixed-use project on the Property ("the Agreement") and;

WHEREAS, Section L. 1 of the Agreement requires the Developer to enter into a supplemental tax agreement with Wayland for the payment of a service charge in lieu of taxes (the "PILOT") only in the event that a mixed-use project is built on the Property and any building or land within the mixed-use project is sold to an entity or organization that is exempt from paying local real estate property taxes, (and such organization converts such building or land to an exempt purpose); and

WHEREAS, Wayland and the Developer wish to set forth the terms and conditions for the PILOT; and

WHEREAS, Wayland and the Developer hereby agree to the PILOT, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing mutual promises and other good and valuable consideration, the sufficiency of which is hereby acknowledged the parties agree as follows:

1. **PILOT Formula.** The Developer hereby agrees, only in the event a mixed-use project is built on the Property and any building or land within the mixed-use project is sold to an entity or organization that is exempt from paying local real estate property taxes, (and such organization converts such building or land to an exempt purpose), to pay to Wayland a PILOT related to the Property pursuant to the following formula:

In the event that a mixed-use project is built on the Property and any building or land within the mixed-use project is sold to an entity or organization that is exempt from paying local real estate taxes ("Tax Exempt Owner"), (and such organization converts such building or land to an exempt purpose), the Developer, and its successor(s) or assign(s) shall pay to Wayland an amount calculated by multiplying the tax rate for the then current fiscal year by the assessed value of said building (s) and/or land in the most recent fiscal year in which property taxes were assessed on said building(s) and/or land. Said formula shall be recalculated on a year to year basis and applied to the Tax Exempt Owner and any of its property tax-exempt successors and assigns, if any.

The parties hereto specifically agree that the PILOT shall not apply to or be assessed against any transfer or sale to a tax exempt entity of any portion of the Property that is or becomes subject to a Conservation Restriction and Easement described in Section A of the Agreement.

2. **Payment of PILOT.** The PILOT shall be assessed annually and payable in four quarterly installments at the same time and in the same manner as property taxes. The status of the PILOT shall be reflected on any municipal lien certificate issued by the Wayland Tax Collector.

3. **Waiver of Objections.** The Developer, for itself and its successors and assigns hereby waives any objection that it may have to the payment of the PILOT on the basis that similar charitable organizations and uses may not be required to make such payments, or may be assessed such payments in a dissimilar manner to the Developer or its successors and assigns. Said waiver is an express term of this Agreement and is part of the consideration bargained for by Wayland and the Developer for the development of a mixed-use project on the Property. Notwithstanding the foregoing, except as specifically set forth in the Agreement, the Developer, its successors and/or assigns does not waive its right to appeal the assessed value of the building and/or land set by the Town.

4. **Entire Agreement.** This Agreement is the entire Agreement between the parties regarding the subject matter hereof.

5. **Amendment.** This Agreement shall only be amended or modified by a writing executed by both parties hereto.

6. **Term.** This Agreement shall terminate ninety-nine (99) years after the execution hereof, unless otherwise terminated. An affidavit certifying that the Developer has not proceeded with a mixed use project on the Property on or before March 28, 2014 or that the Agreement has otherwise been terminated, signed by any one member of the Board of Selectmen, shall be conclusive evidence that the Agreement and this Supplemental Tax Agreement have terminated and shall no longer bind and encumber the Property.

7. **Intent to Bind Successors, Heirs and Assigns.** The foregoing obligations shall run with the Property, and shall be binding upon and inure to the benefit and burden of Developer, its heirs, successors, and assigns.

8. **Recording.** This Agreement shall be recorded with the Middlesex South Registry of Deeds and in the Land Registration Office at said Registry of Deeds in the chain of title to the Property.

9. **Enforcement.** This Agreement may only be enforced by the parties hereto or their successors or assigns and no third party shall have standing to enforce the terms of this Agreement.

Executed under seal as of this 20th day of October, 2009.

Town of Wayland

Twenty Wayland LLC

[SIGNATURES AND NOTARY PAGE INTENTIONALLY OMITTED]

EXHIBIT D**NOTICE OF AGREEMENT RUNNING WITH THE LAND**

Notice is hereby given that the undersigned owner of the land with the buildings and other improvements thereon known and numbered as 400-440 Boston Post Road, Wayland, Massachusetts and described in a deed recorded with the Middlesex South Registry of Deeds in Book 45981, Page 177 (unregistered land) and in Certificate of Title No. 234881 registered in Registration Book 1307, Page 76 (registered land) in the Land Registration Office at said Registry of Deeds (the "Property") has entered into and executed an memorandum of agreement with the Town of Wayland, Massachusetts dated March 28, 2006, as modified by Amendment No. 1 to said agreement dated October 20, 2009, relative to the development of a mixed-use project on the Property, a copy of which agreement, as amended ("the Agreement"), is on file in the Office of the Town Clerk of the Town of Wayland at 41 Cochituate Road, Wayland, Massachusetts 01778. Pursuant to Section M. 5 of the Agreement, if the landowner proceeds to develop a mixed-use project on the Property on or before March 28, 2014, the landowner's obligations set forth the Agreement shall run with the Property, and shall be binding on and inure to the benefit and burden of the landowner, its heirs, successors and assigns.

In the event the Developer does not proceed with a mixed-use project on the Property on or before March 28, 2014 or the Agreement is otherwise terminated, the Town of Wayland shall provide the Developer, its successors and/or assigns, upon request, with notice of such expiration or termination, in form and substance sufficient for recording. An affidavit certifying that the Developer has not proceeded with a mixed-use project on the Property on or before March 28, 2014 or that the Agreement has otherwise been terminated, signed by any one member of the Board of Selectmen, shall be conclusive evidence that the Agreement has terminated and shall no longer bind and encumber the Property.

Executed under seal on this 21st day of October, 2009.

Town of Wayland.

Twenty Wayland LLC

[SIGNATURES AND NOTARY PAGE INTENTIONALLY OMITTED]

APPENDIX H
AMENDMENT TO THE DEVELOPMENT AGREEMENT

AMENDMENT NO. 1

TO:

MEMORANDUM OF AGREEMENT

BETWEEN

THE TOWN OF WAYLAND AND TWENTY WAYLAND, LLC DATED MARCH 28, 2006

The foregoing agreement dated as of March 28, 2006, entered into by and between the Town of Wayland, acting by and through its Board of Selectmen ("Wayland") and Twenty Wayland, LLC (the "Developer") relative to the development of a mixed-use project on the property shown on Exhibit B to said agreement is hereby amended and modified as follows:

1. By striking word and number "five (5)" from the last sentence of the third paragraph of said agreement entitled "AGREEMENT" and replacing them with "eight (8)" and adding to the end of said paragraph: "For purposes of this Agreement, the Developer shall be deemed to have proceeded with the development of a mixed-use project on the Property upon the first occurrence of (i) the commencement of site work relative to infrastructure or structures in a mixed-use project on the Property; or (ii) the commencement of demolition of any on-site structures in connection with a mixed-use project on the Property; or (iii) the commencement of construction pursuant to the first building permit issued for an on-site structure in a mixed-use project on the Property; or (iv) the commencement of construction of any off-site improvements and/or mitigation in relation to a mixed-use project on the Property. Wayland and Developer agree that Developer shall not be deemed to have proceeded with the development of a mixed-use project upon commencement of site work relative to infrastructure or structures, demolition of any on-site structures, construction pursuant to a building permit for an office building or other use, other than a mixed-use project use, as is permitted by the Zoning Bylaws, or off-site traffic improvements or mitigation made in connection with office use or other use, other than a mixed-use project use, as permitted by the

Zoning Bylaws on the Property, unless such office use or other use of the Property is part of a mixed-use project." so that the last two sentences of said paragraph read as follows:

"If Developer proceeds to develop a mixed-use project on the Property under any modified version of the MUOD Amendment or any other provision of the Zoning Bylaw adopted after the date of this Agreement which allows a mixed-use project to be constructed on the Property within eight (8) years after the date of this Agreement, Developer shall perform its obligations under this Agreement, except where modified by express written agreement of Wayland and Developer. For purposes of this Agreement, the Developer shall be deemed to have proceeded with the development of a mixed-use project on the Property upon the first occurrence of (i) the commencement of site work relative to infrastructure or structures in a mixed-use project on the Property; or (ii) the commencement of demolition of any on-site structures in connection with a mixed-use project on the Property; or (iii) the commencement of construction pursuant to the first building permit issued for an on-site structure in a mixed-use project on the Property; or (iv) the commencement of construction of any off-site improvements and/or mitigation in relation to a mixed-use project on the Property. Wayland and Developer agree that Developer shall not be deemed to have proceeded with the development of a mixed-use project if Developer commences site work relative to infrastructure or structures, demolition of any on-site structures, construction pursuant to a building permit for an office building or other use, other than a mixed-use project use, as is permitted by the Zoning Bylaws, or off-site traffic improvements or mitigation made in connection with office use or other use, other than a mixed-use project use, as permitted by the Zoning Bylaws on the Property, unless such office use or other use of the Property is part of a mixed-use project."

By adding to Section F. 1. b.: "Phase I of said non-residential component shall be considered the first 100,000 square feet Gross Floor Area constructed on the Property and dedicated to retail and office uses. Phase II of said non-residential component shall be considered all building space constructed on the Property and dedicated to retail and office uses after said Phase I."

and by adjusting the gross floor areas set forth therein so that they reflect the amendments to the MUOD Amendment adopted at the Special Town Meeting held on November 12, 2008 so that said Section F. 1. b. reads as follows:

2. "b. The non-residential component of the MUP, exclusive of municipal uses and any uses related to the wastewater treatment facility, shall contain not more than 177,000 square feet of Gross Floor Area, with not more than 156,750 square feet Gross Floor Area dedicated to retail uses and not more than 22,000 square feet Gross Floor Area dedicated to office uses. Phase I of said non-residential component shall be considered the first 100,000 square feet of Gross Floor Area constructed on the Property and dedicated to retail and office uses. Phase II of said non-residential component shall be considered all building space constructed on the Property and dedicated to retail and office uses after said Phase I.; and"
3. If, and only if, an amendment to the MUOD Amendment, a copy of which is attached hereto as Exhibit A, is adopted at a Special Town Meeting to be held on November 18, 2009, including all adjourned sessions thereof, and approved by the Attorney General, without modification which materially affects the Developer's rights, by striking "25%" from the first sentence of Section F. 1. a. and replacing it with "12" and inserting "The residential portion of the MUP shall include two separate residential components, the non-affordable dwelling units which shall consist of 88 market rate condominium units ("Market Rate Units") and affordable housing units which shall consist of 12 affordable housing rental units to be constructed as set forth below ("Affordable Units"). The Market Rate Units combined with the Affordable Units shall not exceed the aggregate limits set forth herein. The Developer agrees to designate the 12 apartments to be constructed above building space dedicated to retail or office uses during Phase II of the non-residential component of the MUP as affordable rental units which (upon the completion of said units) shall satisfy the Developer's obligation with regard to affordable housing units required hereunder. The Developer agrees to enter into a contractual agreement with the Wayland Housing Authority ("WHA") for monitoring services concerning compliance with affordable housing

guidelines and regulations relative to said units, provided that the fees charged by the WHA for such services do not exceed the fees charged by other organizations for such services in the greater Boston area at the time such services are provided." after the second sentence in Section F. 1. a. of said agreement and by adjusting the gross floor areas set forth therein so that they reflect the amendments to the MUOD Amendment adopted at the Special Town Meeting held on November 12, 2008 so that Section F. 1. a. reads as follows:

"a. The residential component of the MUP shall contain not more than 155,500 square feet of Gross Floor Area. There shall be not more than 100 dwelling units of which 12 shall be affordable apartment units, as defined and set forth in the MUOD Amendment, with no more than 200 bedrooms in the aggregate. The residential portion of the MUP shall include two separate residential components, the non-affordable dwelling units which shall consist of 88 market rate condominium units ("Market Rate Units") and affordable housing units which shall consist of 12 affordable housing rental units to be constructed as set forth below ("Affordable Units"). The Market Rate Units combined with the Affordable Units shall not exceed the aggregate limits set forth herein. The Developer agrees to designate the 12 apartments to be constructed above building space dedicated to retail or office uses during Phase II of the non-residential component of the MUP as affordable rental units, which (upon the completion of said units) shall satisfy the Developer's obligation with regard to the affordable units required hereunder. The Developer also agrees to enter into a contractual agreement with the Wayland Housing Authority ("WHA") for monitoring services concerning compliance with affordable housing guidelines and regulations relative to said units, provided that the fees charged by the WHA for such services do not exceed the fees charged by other organizations for such services in the greater Boston area at the time such services are provided. Not more than 15 dwelling units shall contain three bedrooms. No dwelling unit shall contain more than three bedrooms. In the event that Developer creates a condominium or condominiums pursuant to the provisions of M.G.L. c. 183A for the residential component of the

MUP, the master deed(s) shall incorporate said limitations on Gross Floor Area, number of dwelling units and number of bedrooms. In any event, prior to the issuance of the first certificate of occupancy for any such dwelling unit, Developer shall execute and deliver to Wayland, in a form reasonably acceptable to Town Counsel, a perpetual covenant or restriction running with the Property and running to the benefit of the adjoining Town-owned land known as "Cow Common" which contains, at a minimum, said limitation on number of bedrooms. In the MUP, Developer shall not apply for or obtain a comprehensive permit pursuant to the provisions of M.G.L. c. 40B to permit the construction of a greater number of dwelling units or dwelling units with a greater number of bedrooms;"

4. By striking the words "within 90 days following the issuance of the first building permit for a building in an MUP" from the first sentence of Section J. 1. of said agreement and replacing it with "as follows: (i) \$500,000.00 within 60 days of the issuance of the first certificate of occupancy during Phase II of the non-residential component of the MUP; and (ii) \$40,000.00 within 30 days of the closing of the sale of each residential unit until all of said balance is received, provided that at least \$250,000.00 shall be received within three (3) years of said \$500,000.00 payment." so that the first sentence of Section J. 1 reads as follows:

"1. Pursuant to Developer's offer, Developer shall donate to Wayland, Three Million Thirty Thousand (\$3,030,000.00) Dollars as a gift pursuant to M.G.L. c. 44, §53A (the "Financial Gift"), of which amount Two Hundred Thousand (\$230,000.00) Dollars shall be contributed when the Master Special Permit becomes effective and the balance shall be contributed as follows: (i) \$500,000.00 within 60 days of the issuance of the first certificate of occupancy during Phase II of the non-residential component of the MUP; and (ii) \$40,000.00 within 30 days of the closing of the sale of each of the non-affordable 88 residential dwelling units until all of said balance is received, provided that at least \$250,000.00 of said balance shall be received within three (3) years of said \$500,000.00 payment."

5. By striking the words "the first building permit for construction of a building in an" from the first and third (last) sentences of Section J. 3. of said agreement and replacing them with "a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the" so that Section J. 3. of said agreement reads as follows:

"3. Pursuant to its offer, Developer will, following issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP on the Property, donate the sum of \$250,000.00 pursuant to M.G.L. c. 44, §53A to fund Wayland's efforts to acquire in fee or by easement or license rights for, and to develop or improve a bicycle trail along the existing MBTA easement, adjacent to the Property, from Route 20 to Route 27, for use by the public. Any funds remaining in the account established for said gift at the completion of said bicycle trail may be used for the planning, design and construction of an historic railroad interpretive site within or along said portion of the MBTA easement. If Wayland does not acquire the necessary land, rights or license for and to develop or improve said bicycle trail within twenty four (24) months following issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP on the Property, the unexpended balance of said gift of \$250,000.00 will be returned to Developer, after which Wayland will grant any licenses required for, and use best efforts to facilitate Developer's development or improvement of said bicycle trail."

6. By striking the words "at the same time it contributes the Financial Gift" from the last sentence of Section K. 2. of said agreement and replacing them with "upon the issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP" so that Section K. 2. of said agreement reads as follows:

"2. Wayland may, within forty-five (45) days following notice from Developer that Developer has received a Master Special Permit, notify Developer of its election to require Developer to construct a parking lot ("Parking Lot Election Notice") with up to 100 parking spaces on

the Parking Parcel. Such notice shall include complete construction specifications which shall not exceed the parking design criteria set forth in the Zoning Bylaw. Developer shall then be obligated to construct such parking lot no later than one year following the issuance of the first certificate of occupancy for a building within the MUP. If Wayland does not send a Parking Lot Election Notice, as specified above, Developer shall, upon the issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP, donate pursuant to M.G.L. c. 44§, 53A, \$120,000.00 to Wayland to assist Wayland with costs of future construction of such parking lot and Developer will have no obligation to construct such parking lot."

7. By adding the following new paragraph to Section J:

"4. Pursuant to Developer's offer, if, and only if, an amendment to the MUOD Amendment, a copy of which is attached hereto as Exhibit A, is adopted at a Special Town Meeting to be held on November 18, 2009, including all adjourned sessions thereof, and approved by the Attorney General, without modification which materially affects the Developer's rights, Developer shall, within 30 days of the closing of the sale of each of the non-affordable 88 residential dwelling units, donate to Wayland 1.5% of the gross sale price of each such unit, subject to (i) a minimum donation of \$6,105.00 per unit; (ii) a maximum donation of \$12,750.00 per unit; (iii) a minimum aggregate donation of \$537,240.00; and (iv) a maximum aggregate donation of \$1,122,000.00. Said funds shall be deposited in Wayland's Municipal Affordable Housing Trust Fund established pursuant to M.G.L. c. 44, §55C."; and

8. By changing Section M. 7 of the Agreement to have any notice to be given under the Agreement in case of the Developer to Twenty Wayland, LLC, 10 Memorial Boulevard, 9th floor, Providence, RI 02903, Attn: Anthony J. DeLuca, Fax (401)273-9648 with a copy to Twenty Wayland, LLC to 260 Boston Post Road, Suite 9, Wayland, Massachusetts 01778, Attn Charles R. Irving, III, Fax (617)357-9990 and deleting from Section M. 7 of said agreement the requirement that a copy of any required notice under said agreement be delivered or mailed to Dean F. Stratouly c/o The Congress Group, Inc. and Adam N. Weisenberg, Esq. Goodwin Procter, LLP.

This instrument, executed in multiple counterparts,

is to be construed as a Massachusetts contract, is to take effect as a sealed instrument.

In all other respects, the foregoing agreement is hereby ratified and confirmed.

Executed under seal as of this 20th day of October, 2009.

Town of Wayland

Twenty Wayland LLC

[SIGNATURES AND NOTARY PAGE INTENTIONALLY OMITTED]

EXHIBIT A

ARTICLE 9: AMEND ZONING BYLAWS RE: AFFORDABLE HOUSING IN MUOD

Sponsored by: Board of Selectmen

To determine whether the Town will vote to amend Chapter 198 of the Code of the Town of Wayland, the Zoning Bylaw of the Town, by making the following amendment to §198-2309.11.1 thereof:

[Key to revisions; ~~striketrough~~ = deletions; underlining = additions]

2309.11.1 In lieu of Article 22 of the Town's Zoning Bylaw (the "Inclusion of Affordable Housing" bylaw), the following standards shall apply in the MUOD. At least ~~25%~~ 12% of the dwelling units shall be affordable units. The term "affordable unit" shall mean a dwelling unit reserved in perpetuity for rental or ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for rental or ownership units set forth in 760 CMR 45.03(4), as amended from time to time, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory. Affordable units shall be subject to the following conditions:

APPENDIX I
Finance Committee Analysis – Town Center Update

Town Center Update

Finance Committee Analysis

October 13, 2009

WHAT TOWN MEETING IS BEING ASKED TO APPROVE

- Background:
 - In Spring 2006, Special Town Meeting approved the zoning for Mixed Use Overlay District (MUOD) for the Town Center.
 - Zoning included that 25% of the housing be affordable. This equated to 22 affordable condominiums and 3 affordable one-bedroom apartment rentals.
- STM 2009 vote:
 - *The Town is being asked to **reduce the affordable requirement to 12% of housing or 12 affordable rentals.***

*(In addition, as part of a package of changes, and as included in an amendment to the Development Agreement, the **Developer has agreed to contribute** to an Affordable Housing Trust Fund an amount equal to 1.5% of the sale price of each of the 88 residences, subject to **a minimum payment of \$537,240 and a maximum of \$1,122,000.**)*
- *The Article is NOT to:*
 - *Overturn the MUOD.*
 - *Even if this vote fails the MUOD zoning is still in force.*
- *What does approval mean:*
 - *Affordable housing component is reduced from 25 to 12 affordable rentals, which will be built in phase 2 of the retail component.*
 - *Developer contribution of between \$537,240 and \$1,122,000 to an Affordable Housing Trust Fund.*
 - *Potential for additional real estate taxes on the value of the 22 units which will now be sold at market rates. Additional taxes estimated at \$136,000 to \$180,000 annually.*

CHANGES TO THE DEVELOPMENT AGREEMENT

- The TwentyWayland and the Selectmen have verbally agreed to changes to the Development Agreement. These changes are being drafted into a formal amendment and are not subject to Town Meeting Approval.

Original Agreement		Proposed Changes
Municipal Gift	<ul style="list-style-type: none"> \$2,800,000 (note: original total gift was \$3,030,000 of which \$230,000 has been paid.) Balance paid 90 days following the issuance of the first building permit 	<ul style="list-style-type: none"> \$2,800,000 payable: <ol style="list-style-type: none"> \$500,000 payable with issuance of 1st building permit to phase 2 of the retail component. \$40,000 on the sale of each residential unit until gift is fully paid, subject to a guaranteed payment of \$250,000 within 3 years of the initial payment.
Bicycle trail gift	\$250,000 payable with first building permit	\$250,000 payable with certificate of occupancy of 50% of the square footage of the 2 nd phase of the retail component
Municipal parking	\$120,000 payable 90 days after the issuance of the first building permit	\$120,000 payable with certificate of occupancy of 50% of the square footage of the 2 nd phase of the retail component
Affordable Housing Component (subject to STM accepting the zoning change)	<ul style="list-style-type: none"> 25% of housing to be affordable (25 units) 	<ul style="list-style-type: none"> 12% of housing. Equates to 12 affordable rental units to be built in phase 2 of the retail component, plus: 1.5% of the sale price of each of the 88 non affordable residences, subject to a minimum of \$6,105 and a maximum payment of \$12,750 for a total minimum of \$537,240 and a maximum payment of \$1,122,000.
Expiration of Development Agreement	<ul style="list-style-type: none"> Original agreement expires March 2011 	<ul style="list-style-type: none"> Extended 3 years to June 2014. This also extends the current payment of real estate taxes during the development period – approximately \$260,000 per year.

WHY THIS CHANGE IS BEING PROPOSED

- Delays in completing the permitting process, now about twice as long as reasonably could be expected for a mixed-use project of this size and scope, have resulted in significantly higher interest, engineering and legal costs that have impacted viability of the project.
- The economic downturn and the impact on rental rates, condo market values and cap rates have also impacted the viability of the project.
- To improve the project's viability, the developer is asking:
 - Current zoning has 22 condos as affordable. This represents a loss of approximately \$11.4 million to the developer. By modifying the zoning, the developer can recoup this value, less the contribution to the Affordable Housing Trust.
 - Requires the deferment of payments to the town, some guaranteed and some tied to condo sales.

DEVELOPMENT STAGING AS PLANNED BY THE DEVELOPER AND CONTEMPLATED IN THE MASTER SPECIAL PERMIT (MSP)

- Initial Development – Retail: total component 177,000 square feet.
 - Phase 1: will be Grocery Store (Stop and Shop) 45,000 sq. ft. and 55,000 square foot of other retail. Will be started as soon as permitted.
 - Phase 2: 77,000 sq. ft of other retail and 12 affordable rentals. Must be started within 2 years of starting phase 1.
- Development of 88 two bedroom condos will start after retail. MSP requires residential construction to begin within 1 year of retail phases, but allows up to 5, one-year deferrals if requested by the developer due to market conditions or permitting issues.

NET INCREMENTAL REVENUE ESTIMATES

	Current Project Estimates	
	Developer's Market Estimates	FINCOM's Market Estimates
Tax Revenue	\$ 2,064,000	\$ 1,390,000
Expenses	\$ 458,000	\$ 458,000
Net Revenue	\$ 1,606,000	\$ 932,000
Taxes currently being paid	\$ 260,000	\$ 260,000
Net New taxes	\$ 1,346,000	\$ 672,000

Assumptions:

Retail rental rates

(blended)

\$33 / sq ft

\$24 / sq ft

a \$27.63 to \$33.80

Occupancy

100%

90%

b 92.7 to 96.1%

Cap Rate

8.50%

9.50%

c 7.42 to 8.55%

Market value of

condos

\$699,000

\$509,000

d 2 BR condo sales in Wayland

Market Data:

- a) Source: Retail market rates from CoStar Retail Mkt survey for Route 128 West equal. Average of \$28.30 with a range of \$27.63 to \$33.80
- b) Source: Retail market rates from CoStar Retail Mkt survey for Route 128 West equal. Average of 92.7 to 96.1%
- c) based on CoStar Retail Market Survey of Retail Building sales for the 12 months ending March 2009. Range of between 7.42% and 8.55%.
- d) based on Wayland 2 BR condo sales in past 11 months.

NET INCREMENTAL REVENUE ESTIMATES

	Current Project Estimate's		2006 Estimates	
	<u>Developer's Market Estimates</u>	<u>FINCOM's Market Estimates</u>	<u>Consultant's</u>	<u>FINCOM's</u>
Tax Revenue	\$ 2,064,000	\$ 1,390,000	\$ 1,190,100	\$ 1,525,100
Expenses	\$ 458,000	\$ 458,000	\$ 479,990	\$ 479,990
Net Revenue	\$ 1,606,000	\$ 932,000	\$ 710,110	\$ 1,045,110
Taxes currently paid	\$ 260,000	\$ 260,000	\$ 260,000	\$ 260,000
Net New Taxes	\$ 1,346,000	\$ 672,000	\$ 450,110	\$ 785,110

Difference in Expenses in Current Projections vs. 2006 Estimates relate to the number of school age children. Original design contemplated some 3-bedroom residences whereas the current designs are only 2-bedroom. This results in less school age children and less education expense.

WHY IT IS IMPORTANT THAT TOWN CENTER PROJECT CONTINUE

- Tax Revenue at completion estimated at between \$672,000 and \$1,346,000.
 - This could fund between 20% and 43% of the new High School debt service.
- Gift of over \$3 million at completion of project.
- Gift for bike path and municipal parking.
- 12 Affordable units and between \$537,000 and \$1,122,000 to Affordable Housing Trust
- Municipal pad for future Municipal use.
- Viable Town Center will enhance the value and ultimate development of Wayland Commons (adjacent property), which will contribute additional tax dollars.
- 1,750 attendees of the 2006 Annual Town Meeting (80% of those attended) voted in favor of the Town Center.

WHAT IF TOWN CENTER PROJECT DOESN'T HAPPEN?

Alternatives:	Impact/Possibility:	Financial Impact:
No Development	Property continues to deteriorate	Tax revenue well below \$100,000 annually
Commercial / Office development	In current market no potential tenants and market rental rates make viability unlikely	Tax revenue well below \$100,000 annually
40B development	Possible, but not in this economic environment.	2006 analysis shows that town expenses to support a 40B would double (from number of children attending the schools) while tax revenues essentially the same.

APPENDIX J
The General Laws of Massachusetts

PART I. ADMINISTRATION OF THE GOVERNMENT**TITLE VII. CITIES, TOWNS AND DISTRICTS****CHAPTER 44. MUNICIPAL FINANCE****MISCELLANEOUS PROVISIONS****Chapter 44: Section 55C. Municipal Affordable Housing Trust Fund**

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or bylaw, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or bylaw or any general or special law or any other source, including money from chapter 44B;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to

amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or bylaw, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

APPENDIX K

Sex Offender Residence Prohibition and Restrictions

SCHOOLS

Claypit Hill School	86 Claypit Hill Road
Goddard School	367 Commonwealth Road
Happy Hallow School	63 Pequot Road
Loker School	49 Loker Street
Wayland High School	264 Old Connecticut Path
Wayland Middle School	201 Main Street

Day Care Centers

Bright Horizons	321 Commonwealth Road
Community Nursery School	5 Damon Street
Congregation Or Atid	97 Concord Road
J.C.C. Preschool	141 Boston Post Road
Little Lamb Nursery School	6 Loker Street
Post Road Montessori	50 Cochituate Road
The Children's Way	41 Cochituate Road
TLC 2	169 Rice Road
Wayland Creative Preschool	50 Cochituate Road

Parks & Recreational Facilities

Alpine Field	12 Alpine Road
Boy Scout House	25 Parkland Drive
Bucyk Field & Town Building	41 Cochituate Road
Cochituate Field	32 West Plain Street
Cochituate State Park	Commonwealth Road
Hamlen Woods	100 Rice Road
Hannah Williams Playground	73 Main Street
Loker Recreation Area	Commonwealth Road
Riverview Field	42 Riverview Field
Wayland Swim & Tennis	228 Glezen Lane
Wayland Town Beach	Parkland Road Extension
Wayland Town Library	5 Concord Road
Wayland Town Pool	258 Old Connecticut Path
West Suburban Y.M.C.A (Camp Chickami)	139 Boston Post Road

Elderly Housing

Bent Park Elderly Housing	12 Bent Avenue
Cochituate Village Apartments	106 Main Street
Parmenter Health Services	266 Cochituate Road
Sunrise Assisted Living	285 Commonwealth Road
Traditions of Wayland	10 Green Way
Wayland Nursing and Rehabilitation	188 Commonwealth Road

Conservation and Wildlife Refuge Areas

Castle Hill
Cow Common
Dudley Brook
Great Meadows National Wildlife Refuge
Greenways
Hamlen Woods
Heard Farm
Loker
Lower Mill Brook
Lower Snake Brook
Pine Brook
Pod Meadow
Rowan Hill
Sedge Meadow
Timber Lane
Trout Brook
Turkey Hill
Upper Mill Brook
Wayland Hills

APPENDIX L
ACKNOWLEDGE RECEIPT OF REPORT

BOARD OF SELECTMEN
REPORT AND RECOMMENDATIONS TO TOWN MEETING
REGARDING ANNUAL TOWN MEETING ARTICLE - RECOGNIZING CITIZENS FOR
EXTENSIVE SERVICE TO THE TOWN

REQUEST OF TOWN MEETING

At the 2009 Annual Town Meeting, citizens directed the Board of Selectmen to further study the practice of recognizing citizens for extensive service to the Town historically considered in one of the initial articles at ATM. The intent of the motion as explained by the primary speaker was to have the selectmen report to the next Town Meeting on issues raised by the awards proposed by the Public Ceremonies Committee: (1) to consider the appropriateness of naming an award given Wayland's long-standing tradition of refraining from "naming opportunities"; (2) to consider whether criteria should be established in order for one to qualify for award recognition; and (3) to consider whether a process should be established in order to give citizens an opportunity to nominate individuals for consideration for awards.

The Board of Selectmen on June 1, 2009 received public comment from interested residents and heard from citizens familiar with the history and intent of the article, including Town Moderator C. Peter R. Gossels, former Selectman Marcy Crowley, and members of the Public Ceremonies Committee. Members also reviewed Town Meeting Warrants and minutes, as well as Board of Selectmen meeting minutes and board policies, to better understand both the intent of those who began the tradition of inserting an article recognizing citizens for extensive service to the town and the practice over the years. Selectmen submitted individual findings and recommendations that were discussed on June 22, 2009; a draft consensus report was discussed on July 20, 2009 and approved on August 31, 2009.

FINDINGS

1. Annual Town Meeting is a very appropriate venue for recognizing citizens - elected or appointed - and employees for extensive service to the town. It is extremely important that the town show its appreciation to volunteers and employees for their dedication and time to the town, whether this appreciation is recognized at ATM or other forums.
2. In general, residents are being asked at ATM to vote to approve a specific motion under an Article presented in the Warrant. As soon as you ask for a vote, you are asking residents to form an opinion, to make a judgment on that specific motion. Therefore, in order to avoid potential controversy and to show appreciation for service to the town on a consensus basis, it is essential that any standards for recognition be objective, not subjective. The basis for recognition at ATM should be founded on quantitative criteria, not qualitative judgments. Historically, the intent of the Article is to show appreciation for long term service, not to debate the worthiness of the recipients.
3. Based upon discussions with former selectmen and residents and upon review of documents back to 1991, it has been determined that the original intent of the Article was to recognize residents for extensive service to the town based upon such objective/qualitative criteria - 25 years of service. Through the years, the article was also used to recognize employees who have retired after many years of service to the town, although not always 25 years of service. It was also expanded to recognize all those who had served the town and had passed away during the previous year.
4. Starting in 2002, the Public Ceremonies Committee has offered its own motion to give an award under this Article, and until this year, one could argue that they used objective standards -- typically years of

service -- as a key criterion for their award. Recipients of PCC award given for community service and contributions making Wayland a better place during this period were: George K. Lewis for 46 years of service on a variety of committees and positions in 2002; Louise G. Brown, former Library Director and trustee with 37 years of service in 2003; Mabel Reid-Wallace, long-time director of the METCO program in 2004; no award given by PCC in 2005; the Wayland Beautification Committee in 2006; all Wayland volunteers in 2007; and Patrick Conaway, long-time educator in the Wayland schools in 2008.

5. However, in 2009, the PCC named the award for noted nineteenth-century Wayland resident Lydia Maria Child, citing her advocacy for equal rights for native Americans, Afro-Americans and women and her fights against all forms of oppression, especially religious intolerance. Citizens at Town Meeting questioned the naming of the award by the PCC. The proposed Lydia Maria Child Award for Community Service does not carry with it a set of objective criteria on which to base the award.

The PCC, in a handout at town meeting, noted it was “difficult to articulate precisely what the award represents” and that “the award is intended to make us feel good for the efforts that were taken and the results achieved.” A reading of the dictionary definition of the word “watchdogs” and the clear connotation associated with the phrase “watchdogs in the public interest” prompted many to question why the initial community service award was awarded to citizens for their “controversial critiques and polarizing stands.” Citizens questioned the lack of consistent, objective criteria for choosing the recipient each year and the lack of public input into the process of nominating and selecting honorees.

RECOMMENDATIONS

1. That the Board of Selectmen continue to sponsor an Article – Recognizing Citizens for Extensive Service to the Town at Annual Town Meeting, but that the text of the Article include greater specificity to reflect the intent of the selectmen to recognize volunteers and employees for long term service to the town. Three motions would be appropriate under the scope of this revised Article:
 - a. Recognition of volunteers - appointed or elected - for 25 years of service (service need not be consecutive).
 - b. Recognition of town employees who have retired since the previous Annual Town Meeting or intend to retire prior to June 30th that follows Annual Town Meeting, subject to a minimum of 20 years of service.
 - c. Observe a moment of silence in memory of elected/appointed volunteers or employees who have passed away during the past year, provided he/she has completed at least 10 years of service, except provided there shall be no service requirement for an employee who dies while in service of the town.
2. The Board of Selectmen will clarify through an amendment to the Selectmen’s Policy and Procedures Manual the existing policy guideline for recognition of volunteers and employees consistent with recommendation 1., above.
3. Town boards, committees and commissions should be strongly encouraged to identify opportunities to thank and show appreciation to residents who volunteer their time to serve our community. Recognition should be for activities and work within the specific jurisdiction of the committee, with presentations given at committee meetings or events convened specifically for recognition. As an example, the Ken Moon Conservation Award, presented at the discretion of the Conservation Commission, is “bestowed upon a Wayland resident who best exemplifies the ethic of conservation work through action. The honor is given to a citizen who has worked tirelessly either to protect Wayland’s open spaces and water resources and/or maintain their legacy.” It is our recommendation that if an award is to be given on a recurring basis, the committee should develop objective criteria as the basis for the award and a process for nominating and selecting recipients for the award.
4. As a general policy proposition, the Board of Selectmen will not place in the Warrant for Town

Meeting any article conferring individual recognition to be given out at Town Meeting. If there was to be an exception to this general policy, a compelling reason for presenting the award at Town Meeting rather than at another forum should be made to the selectmen before the Warrant is approved.

5. The Public Ceremonies Committee (PCC) does an outstanding job fulfilling their duties and responsibilities as they have been charged under the provisions of Article 38 as approved at 1994 Annual Town Meeting (see below). The PCC is encouraged to seek additional opportunities to promote community spirit and to sponsor civic celebrations. It would be appropriate for the PCC, as all other town boards, to recognize citizens for their service to Wayland. But, the PCC, as with all other committees, should confine conferring any award to one specifically related to their duties and responsibilities. In this case, make an award for contributions to public celebrations and ceremonies. Consistent with the general policy proposition articulated in recommendation 3., above, any award to be presented should take place at a committee meeting or other event specifically scheduled for conferring the award, not at Town Meeting.
6. We believe that the PCC is not charged with the duty or responsibility of giving any community service awards based upon the clear language of Article 38 approved at the 1994 Annual Town Meeting. While the language of the article inserted by prior boards of selectmen allows for any citizen or group to offer a motion to recognize citizens for extensive service, presentation of *awards* should not have been permitted under the article.
7. Further, the PCC is commended for educating citizens on the legacy of Lydia Maria Child. It would be very appropriate for the Town to establish a committee charged with finding some appropriate means to honor Lydia Maria Child, perhaps through a symposium or educational forum. This effort is outside the scope of the duties and responsibilities of the Public Ceremonies Committee.
8. The Board of Selectmen recommends that the tradition of maintaining a book of commemoration of those individuals recognized for extensive service to the town be continued, updating those recipients since the last update. The book should be proudly displayed in a prominent location at either the Town Building or the Wayland Public Library.

Annual Town Meeting, April 1994

ARTICLE 38: RECONSTITUTE THE PUBLIC CEREMONIES COMMITTEE

Proposed by: Board of Selectmen

To determine whether the Town will vote to establish a committee to be known as the Public Ceremonies Committee for the purpose of overseeing public ceremonies including the Memorial Day Parade and other ceremonies and occasions as they deem appropriate. The Public Ceremonies Committee shall consist of five persons serving terms of three years each to be appointed by the Moderator who shall also have the power to fill vacancies for the remainder of any unexpired term. In the initial appointment of members, the Moderator shall appoint persons for terms of one, two and three years, so that at the end of their initial terms, all terms thereafter shall be staggered so that no more than two persons' terms expire each year. Said Committee shall report annually to the Town Meeting.

MOTION: Dennis Berry moved and was duly seconded that the Town establish a committee to be known as the Public Ceremonies Committee as in the words of the Article.

AMENDMENT TO MAIN MOTION: Milton Bailey moved and was duly seconded that the words "three of whom shall be veterans belonging to National Veterans Organizations" after the words "Public Ceremonies Committee shall consist of five persons."

VOTED ON AMENDMENT: MOTION NOT CARRIED

VOTED ON MAIN MOTION: UNANIMOUSLY IN FAVOR

[illegible]

APPENDIX N
PLANNING BOARD REPORTS
FOR 2009 SPECIAL TOWN MEETING

ARTICLE 3: TOWN CENTER MIXED USE OVERLAY DISTRICT (MUOD)

The purpose of the zoning article is to lower the affordable housing component from 25 % to 12% for the Mixed-Use Overlay District approved for the Town Center area at Town Meeting in May 2006. The Planning Board issued the Master Special Permit (MSP) in January of 2008. The 12% or 12 units would consist of rentals above retail previously approved by the Wayland Planning Board. All of the units would count towards the Town's subsidized inventory list. The Developer has also agreed to contribute 1.5% of the sale price of each of the 88 residences to the Housing Trust Fund. The amount of funds generated from the sales would be a minimum of \$537,240 and a maximum of \$1,122,000. The applicant is still required to obtain all necessary permits as required under the current zoning.

ARGUMENTS IN FAVOR: Improves the project's viability and keeps the development moving forward and does not impact the goal of the Town Center.

12% of the units are affordable and will increase the Town of Wayland's subsidized affordable housing units. The 12 units will allow the town to make significant progress toward reaching our affordable housing objectives.

12 Affordable units above the retail become available in phase II of development. These units would immediately count towards the Town's subsidized housing inventory list.

The 12 Affordable units, together with the Housing funds, keep it consistent with the Town of Wayland's Affordable Inclusionary Zoning Bylaw at 16.7%

ARGUMENTS OPPOSED: The original approval was for 25% or 25 units, all of which would have counted towards the Town of Wayland's affordable housing stock.

The proposed Zoning change will slow the Town's progress toward achieving the State's mandate of 10% affordable housing. Currently, the Town is at 4.59%.

The 12 Affordable units will be above the retail and will not be dispersed throughout the development as approved in the Master Special Permit.

PLANNING BOARD RECOMMENDATION: The Planning Board voted to recommend approval by a vote of 3 to 0.

ARTICLE 9: RENEWABLE AND ALTERNATIVE ENERGY

This article amends the Town's Zoning Bylaw by defining renewable and alternative energy and development facilities, laying out their permitted uses and expediting approval for proposed facilities by allowing these uses. The purpose of the article is to encourage green energy companies to locate in Wayland and streamline the process of approval. The article proposes that such uses be allowed in the Limited Commercial and Light Manufacturing Zones. The facilities may not exceed 15,000 square feet. All environmental permits would still be required and reviewed by the various boards (Conservation Commission) and aquifer approvals are still required.

By implementing this zoning, the Town of Wayland would then be eligible to receive energy grants from the state. The Massachusetts Department of Energy and Natural Resources through the Green Communities Act has set aside \$10 million for grants state- wide for energy feasibility studies. Approving this article will help attract desirable light commercial activities and it will improve the Town's chances of being awarded state grants.

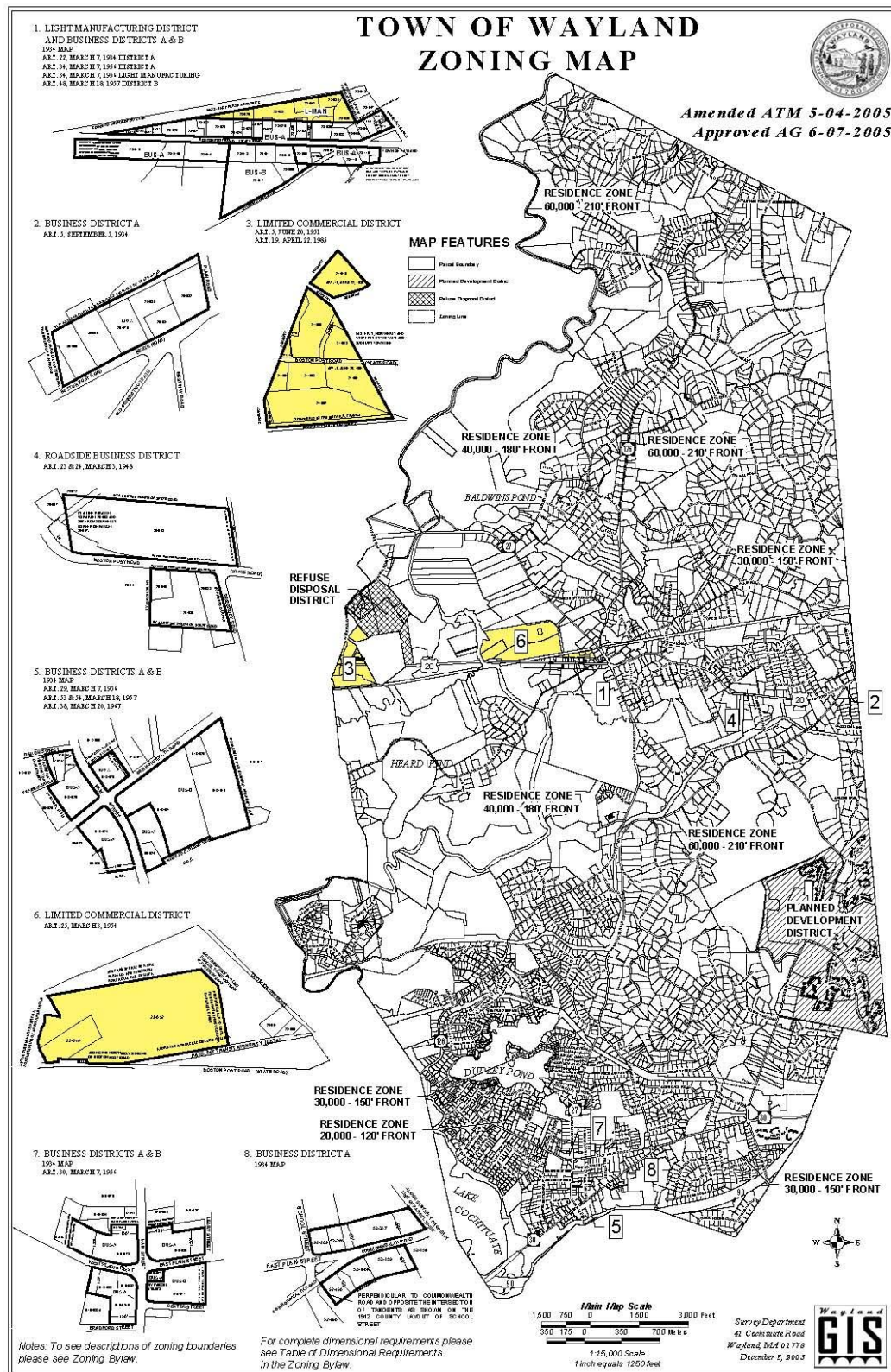
ARGUMENTS IN FAVOR: Wayland already has some green technology firms located here. This article would make the Town more attractive for other companies to come to Wayland, thus increasing our commercial base and related tax revenues. If funds are granted through the Green Communities Act, they could be used to help make certain municipal buildings more energy efficient, thus lowering their cost of operation.

ARGUMENTS OPPOSED: The zoning change does not require site plan review or a special permit. Therefore, the facilities would be allowed to be developed by right as an expedited permit.

PLANNING BOARD RECOMMENDATION: The Planning Board voted to recommend approval by a vote of 3 to 0.

[See Map on Next Page]

Map of renewable and alternative energy zones



★ ★ ★ ★ ★ ★ ★ ★

You are required to serve this Warrant by posting copies thereof, attested by you, at the Town Building, at the Public Library in Wayland Center, at the Cochituate Fire Station or the Cochituate Post Office, and at the Happy Hollow School, and by mailing or delivering a copy thereof addressed to each residence in the Town fourteen (14) days, at least, before the time appointed for the Special Town Meeting.

Hereof, fail not and deliver this Warrant with your return thereon to the Town Clerk on or before November 3, 2009.

Given under our hands and seals this 2nd day of November, 2009.

Joseph F. Nolan, Chair
Steven J. Correia, Vice Chair
Thomas J. Fay
Susan W. Pope
Michael L. Tichnor

Selectmen of the Town of Wayland

John Bladon
Paul Grasso
David J. Gutschenritter
Cherry C. Karlson
Robert L. Lentz
Sam H. Peper, Chair
Richard M. Stack, Vice Chair

Finance Committee