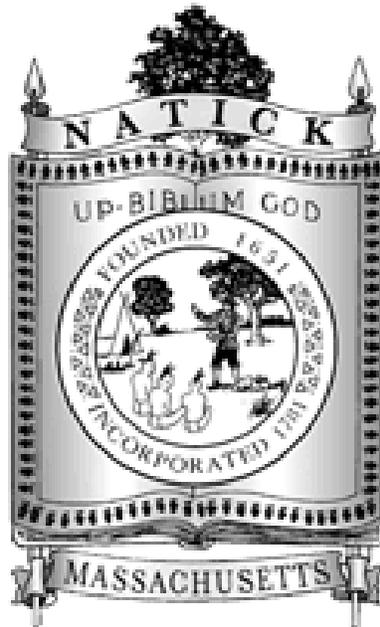


Town of Natick

2016 Special Town Meeting #2



Recommendations of the Natick Finance Committee

November 1, 2016 – Natick High School – Natick, MA



**Finance Committee
Town of Natick, Massachusetts
October 26, 2016**

2016 Special Town Meeting #2

Greetings to all Town Meeting Members and Citizens of Natick,

This report contains the Natick Finance Committee recommendations and detailed write-ups for articles appearing on the warrant for 2016 Special Town Meeting #2. The Finance Committee has issued this supplemental and more complete report with detailed information on points discussed and material considered as part of the Finance Committee's process. This recommendation book is being mailed to Town Meeting members because Town Meeting will not be in session on Thursday October 27, 2016 in order to allow the book to be provided on the table before Town Meeting.

Under the Town's Charter and By-Laws, the Finance Committee is required to "consider all matters of business included within the articles of any warrant for a Town Meeting, and shall, after due consideration, report thereon, in print, its recommendation as to each article" (Natick By-Laws, Chapter 23, Section 4). In accordance with the Town of Natick By-Laws, this report and these recommendations are respectfully submitted for your consideration. This warrant contains a variety of financial and non-financial articles for your consideration.

The Finance Committee has completed due consideration of all matters of business within the 12 articles of the 2016 Special Town Meeting #2 Warrant. To fulfill its responsibilities under Article 23 of the By Laws, the Finance Committee met a total of 4 times on the following dates: October 6th, October 13th, October 17th and October 24th. The Finance Committee considered Articles 2 and 3 on Monday October 24, 2016.

With the exception of Articles 6 and 12, all articles on the warrant for 2016 Special Town Meeting #2 required consultation with and advice from Town Counsel pertaining to scope of the articles and/or the scope and effect of various proposed motions. Some of these matters are still open. A summary of the issues involved is included in the detailed write-up of individual articles in this recommendation book.

The schedule for hearing articles in the Special Town Meeting #2 warrant was very compressed. Because of the need to rehear various matters on the 2016 Fall Town Meeting warrant, the Finance committee could not begin hearing the articles on the Special Town Meeting warrant until October 6, 2016. The Finance Committee could not get a quorum for meetings on Saturday October 8, 2016 (Columbus Day weekend) or Saturday October 15, 2016. Town Hall was closed on Monday October 10, 2016 for Columbus Day. Tuesday and Wednesday October 11th and 12th were the Yom Kippur religious observance when the Finance Committee declined to schedule

meetings. The Finance Committee could not conduct a full meeting on Tuesday October 18, 2016 because of 2016 Fall Annual Town Meeting. No meeting rooms were available for Wednesday October 19, 2016. The production deadline for printing the original recommendation book was Friday October 21, 2016 in order for books to be mailed to and received by Town Meeting members seven days before the Special Town Meeting begins.

Town Meeting members may note that certain recommendations of the Finance Committee were made by a vote of 7 members. In August and September, two members resigned leaving the Finance Committee with 13 members of which 7 is a majority. All recommendations with only 7 votes were made after the second of these resignations.

In reaching its recommendations the Finance Committee has considered the information and comments presented from all of the article sponsors, Town department heads, Town Administration, Town Boards and Commissions, and the public at large. This Recommendation Book contains is the result of a large group effort. Many volunteers, especially the thirteen members of the Finance Committee as well as members of other committees and boards and Town staff, worked diligently to help bring all this information to Town Meeting. A number of meetings lasted late into the night and again required a considerable amount of effort and commitment on the part of committee members, Town officials, citizen petitioners, other volunteers, families, and friends that should not go unrecognized.

We would like to express our thanks and appreciation for all of the hard work and dedication contributed by all of the Town officials, members of boards, committees and departments, as well as many concerned citizens, for their cooperation, participation, and openness during our public hearings.

Information relating to the Finance Committee may be found on the Town's public website, at <http://www.natickma.gov/finance-committee>. Any questions or comments about the Finance Committee may also be submitted to us via a link on that web page.

Respectfully Submitted;

Paul Griesmer
Chairperson

Patrick Hayes, Vice Chair
Bruce Evans, Secretary
Craig Leiner
Ed Shooshanian

David Coffey
Cathi Collins
Michael Linehan
Rich Sidney

John Ciccariello
David Gallo
Jerry Pierce
Linda Wollschlager

ARTICLE 1
Middlesex Garage Feasibility Analysis
(Town Administrator)

To see if the Town will vote to raise and appropriate, or otherwise provide, a sum of money for a Feasibility Analysis regarding development of a parking garage on essentially the same footprint as the former so-called Middlesex Garage, located generally between Middlesex Avenue, North Main Street, Summer Street and Spring Street; said Feasibility Analysis to include but not be limited to (1) review, analysis and utilization of information and recommendations from previously completed relevant studies; (2) performance of necessary tests (e.g. soil borings) to determine site suitability for a multi-level parking garage; (3) analysis of advantages and disadvantages of including commercial lease space within said garage; and (4) development of conceptual design(s) and associated projected costs, said designs to be in compliance with local zoning and other applicable regulations or identify variances necessary to achieve compliance; or otherwise act thereon.

PURPOSE OF ARTICLE

To appropriate funds for a feasibility analysis of a town owned garage on Middlesex Avenue.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 9 - 0 - 0 on October 6, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 1 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from the Chairman of the Board of Selectmen and the town administration who presented the article. The following information was noted.

- The Town's efforts to create parking garage solutions through Requests For Information (RFI's) for leases of and development on Middlesex Avenue and South Avenue have not been successful
- Responses to these RFI's required construction of a large number of apartments and buildings as tall as seven stories.
- The RFI responses were reported as providing insufficient parking for the Town.
- Both the Middlesex Avenue and South Avenue sites are located in the Downtown Mixed Use (DMU) zoning district.
- The scope of this article is Middlesex Avenue only.
- However, the responses to RFI's at both sites are part of the reason the above article was filed.

- The purpose of the article is to proceed with a feasibility analysis of a municipally owned parking garage at the Middlesex Avenue site.
- The feasibility analysis would utilize existing information and reconcile the conflicting parking demand studies the Town has received for a garage.
- These various studies have indicated needs ranging from no garage to a garage with 200 or 300 or 400 or more spaces.
- The feasibility study would also focus on the capacity of the Middlesex Avenue site and the extent of utilization with various design and size alternatives for a garage.
- The Chairman of the Board of Selectmen indicated that a citizen committee of individuals with professional backgrounds would be appointed by the Board of Selectmen to work with an outside consultant and the Community Development office in performing a thorough and professional feasibility analysis that would include cost estimates for consideration by a future Town Meeting.
- The Board of Selectmen have yet to consider or commit to this approach which several Finance Committee members felt was an important condition to supporting this article.
- The article, as filed, contains a provision that all alternatives analyzed would need to be consistent with zoning or to identify necessary variances that would be required to complete a garage.
- The DMU has a height restriction of 50 feet (40 feet for any development abutting or across the street from a residential zone and 60 feet if an existing building on the same side of the street has a height greater than or equal to 60 feet).
- The DMU also has a 60% lot coverage limitation.
- Variances from these dimensional restrictions could theoretically be obtained if a hardship were demonstrated.
- Hardships need to be caused by either lot configuration, soil condition or lot topography problems which might prove difficult to demonstrate under the circumstances.
- Town Counsel advised that development of public parking garage is not a permitted use in the DMU. (The DMU only allows for commercial parking lots i.e. surface lots.)
- Town Counsel also advised that the former upper level deck at the Middlesex Avenue site that was removed circa 2005/2006 was a pre existing non-conforming use that has been abandoned for more than two years and cannot be revived.
- Because the article provides for the feasibility analysis to “include but not be limited to” a list of items, Town Counsel advised that a motion under Article 1 could be made within the scope of the article for the analysis to identify what zoning changes might need to be made in order to allow a public parking garage.
- The Finance Committee noted during discussion that the Middlesex garage deck was removed over 10 years ago and was a major piece of Town infrastructure that was never replaced.
- Efforts over the ten year period to have developers build parking for the Town in return for leased land have proved unsuccessful.
- This article would provide funds for evaluating the feasibility of several garage alternatives ranging from replacement of the previous parking deck to the construction of additional spaces.
- Any construction funds would need to be approved by a future Town Meeting.

- The Finance Committee recommends Favorable Action as provided in the voted recommended motion below.

MOTION: (Requires majority vote)

“Move that the Town vote to appropriate \$200,000 from free cash, to be expended under the direction of the Board of Selectmen, for a Feasibility Analysis regarding development of a parking garage on essentially the same footprint as the former so-called Middlesex Garage, located generally between Middlesex Avenue, North Main Street, Summer Street and Spring Street; said Feasibility Analysis to include but not be limited to (1) review, analysis and utilization of information and recommendations from previously completed relevant studies; (2) performance of necessary tests (e.g. soil borings) to determine site suitability for a multi-level parking garage; (3) analysis of advantages and disadvantages of including commercial space with said garage; and (4) development of alternative conceptual design(s) and associated projected costs and (5) related identification of zoning or other regulatory relief that would be necessary to develop a parking garage on the subject parcel(s).”

ARTICLE 2
Appropriate Funds for the Design and Development of the
Cochituate Rail Trail
(Board of Selectmen)

To see if the Town will vote to appropriate a sum of money to fund design and development of the Cochituate Rail Trail, or otherwise act thereon.

PURPOSE OF ARTICLE

To appropriate funds for design and development of the Cochituate Rail Trail.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 11 - 0 - 0 on October 24, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 2 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 24, 2016. The Finance Committee heard from the Chairman of the Cochituate Rail Trail (CRT) Advisory Committee who presented the article. The following information was noted.

- The proponents are seeking an appropriation of \$50,000 from Math Works mitigation funds to supplement available funds continue to design work on the CRT.
- Completion of the 25% design is expected in December or January at which point a public hearing on the design can be held in conjunction with Mass DOT.

MOTION: (Requires majority vote)

“Move that the Town vote to appropriate the sum of \$50,000 to be expended under the direction of the Board of Selectmen for design and related services for the proposed Cochituate Rail Trail, and that the amount of \$50,000 be raised from the MathWorks Mitigation Fund.”

ARTICLE 3
Acquisition of the CSX Saxonville Branch
(Board of Selectmen)

To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, or otherwise, for general municipal purposes, including without limitation recreational and non-motorized transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map 41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail, a plan for which is on file with the office of the Natick Community and Economic Development Department, and further, to see what sum of money the Town will vote to appropriate and raise, borrow, or otherwise provide for the purposes of this article; and, further, to authorize the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this article, and to take all action necessary or appropriate to accomplish the purposes of this article; or otherwise act thereon.

PURPOSE OF ARTICLE

To appropriate funds to acquire the Saxonville Branch Railroad right of way for the purpose of the Cochituate Rail Trail.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

On October 13, 2016, the Finance Committee held an initial public hearing on Article 3. The Finance Committee postponed further consideration of Article 3 until Monday October 24, 2016. By vote of 9 - 2 - 0 on October 24, 2016, the Finance Committee recommends Favorable Action on the subject matter of Article 3 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 13, 2016 and October 24, 2016. The Finance Committee also attended the Board of Selectmen's meeting on October 24, 2016 on this article. The Finance Committee heard from the Chairman of the Cochituate Rail Trail (CRT) Advisory Committee who presented the article and from many members of the public. The following information was noted. The Finance Committee previously heard and Town Meeting voted a similar article (also called Article 3) of 2016 Special Town Meeting #1 in the spring.

- The Finance Committee heard extensive information regarding Article 3.

- For the convenience of Town Meeting members the information is organized in various categories as outlined below.

Benefits of the Cochituate Rail Trail

- The benefits of the CRT as an amenity to the town are well known.
- Upon completion, the CRT will provide a bicycle and pedestrian recreational trail from downtown to the Natick Mall and Rt. 30 area connecting to trail in Framingham.
- Rail trails are popular and highly utilized recreational amenities in many places in the Commonwealth.
- The CRT is a long awaited project.
- The sponsors reported that the acquisition is also an opportunity to obtain the \$7,797,860 million of state and Federal money on the Transportation Improvement Plan (TIP) as described later below.
- The sponsors summarized other potential benefits of the CRT as follows:
 - Providing a healthy, safe connection to major employment, residential, transportation and recreational points in Natick
 - Contributing to Natick Center revitalization; serve the workforce at Natick Labs, MathWorks, General Growth, TJX and many other employers
 - Complementing the pending redesign and construction of the Natick Center MBTA Station, Regional Transit service and the Complete Streets initiatives that are making our streets and walkways safer and more convenient
 - Encouraging safe mobility for people on bikes, walking, wheelchairs and other non-motorized uses in a congested area of town
 - Providing an active sustainable and non-polluting transportation alternative consistent with MassDOT's strategy
 - Promoting public health by encouraging access to the outdoors, both by use of the CRT and by connecting people to a state park and Navy Yard Field, which is planned for redesign
- Longer term, the CRT could connect Natick with an emerging regional trail network through future connections to the Bruce Freeman Rail Trail (Framingham to Lowell) and the Mass Central Rail Trail (Boston to Western Massachusetts).

Problems with the Scope of the Warrant Article

- The vote under Article 3 of 2016 Special Town Meeting #1 overwhelmingly supported the appropriation of \$2.5 million from the FAR Bonus Stabilization Fund for the acquisition of the CRT land from CSX.
- Town Meeting voted with the understanding that state appropriations and gifts would provide the remaining balance of \$3,845,825 toward the total purchase price of \$6,345,825.
- The vote of Town Meeting had three clear conditions on both the appropriation and expenditure of the \$2.5 million as follows: "said fund shall be expended only if
 - 1) sufficient additional funds from grants, gifts and/or state appropriations are available to acquire said land;

- 2) a future Natick Town Meeting votes to authorize expenditure of the \$2,500,000 in FAR Bonus Stabilization Fund monies under the direction of the Board of Selectmen in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended; and
- 3) funding for construction of the proposed Cochituate Rail Trail is in the Transportation Improvement Plan by the Boston Metropolitan Planning Organization at the date of the closing for acquisition of said land.”
- The Finance Committee was recently informed that state money is now not available for the acquisition despite statements and expectations to the contrary last spring and that fundraising from private gifts has resulted in \$6,000 to date.
- State funds for acquisition were apparently part of a voted state appropriation that is not being released.
- The town has received no written explanation from the state on the failure to release the appropriated funds and has received no answer to its written request.
- The Finance Committee received an opinion from Town Counsel that the scope of the current article does not allow the first condition to be modified or eliminated and does not allow the previous vote of Town Meeting to be rescinded.
- The appropriation under Article 3 of 2016 Special Town Meeting #1 is effectively impounded until an appropriately worded article is placed on a future Town Meeting warrant with regard to the \$2.5 million.
- The previously appropriated \$2.5 million cannot be used for the current article.

Significantly Increased Cost to the Town

- A recent change to the Purchase and Sale Agreement (P&S) removed a small triangle of land and resulted in cash purchase price being reduced to \$6,071,000.
- The lack of state funding for the acquisition and the \$6,000 of private donations to date create a situation where the cash acquisition cost to the Town is greatly increased from \$2,500,000 to \$6,065,000.
- The deadline for closing on the rail trail under the P&S remains December 1, 2016.
- Given the deadlines under the P&S, Town Meeting faces a decision on whether a) to appropriate sufficient funds and acquire the rail trail land or b) to vote against funding and lose the opportunity to buy the trail corridor.
- The sponsors have indicated that little prospect exists for renegotiating either the price or a new P&S with CSX.
- The revision to the P&S also provides “Buyer agrees in good faith to provide Seller, within ten (10) years of Closing Date, consideration acceptable to the Seller of promotional, sponsorship, recognition or similar goods or services in connection to the intended use of the Premises as a recreational trail, of a value no less than \$275,000; said valuation determined by equivalent promotional, sponsorship, recognition or similar goods or services on the Premises; provided, however, that said non-cash consideration is non-transferable other than to Seller’s successor in interest, if any.”

Changes to Route 30 Design Involving the CRT

- The sponsors reported that the turning lanes for a newly proposed TJX project have affected the design plans and construction costs for the rail trail's crossing of Rt. 30
- Certain additional costs might be incurred and certain land parcels acquired or swapped.
- The Community Development Director could not attend the Finance Committee meeting but reported to the Chair of the Finance Committee that such increased costs were not likely to exceed \$100,000 and could be accommodated within the 20% contingency of the \$7.7 million overall construction budget

Status of Federal and State Funding for Construction

- The sponsors and the Town Administration have indicated that Federal and State funding for the construction of the rail trail are presently included on the published (TIP) for FY 2018
- Although no specific guarantee exists that the funds will be provided, the sponsors indicated that projects are not likely to be removed from the TIP once it is published.

Legal Information

- Town Counsel told the Finance Committee that any claims of reversionary interests (i.e. claims in original deeds or other documents providing for railroad land to go back to original pre railroad owners) would be precluded by Federal Rail Banking statutes.
- Town Counsel also told the Finance Committee that an examination of the original deed and other documents indicated no other potential claims arising from deeds or easements.
- The sponsors and Town Counsel informed the Finance Committee that the assumption of all environmental liability in paragraph 13.5 of the P&S is a typical requirement of CSX on their sales of property for rail trails and recreational purposes.
- The Finance Committee has asked Town Counsel to check the environmental indemnity provisions of the P&S for the Conservation Commission's acquisition of Mechanic Street in 2007 and be prepared to answer questions from Town Meeting members.
- Language from the P&S agreements for CSX's 2012 sale to Boston Scientific, 2012 sale to Sherborn and 2015 sale to Holliston could not be obtained by Finance Committee members.
- The P&S is provided as an appendix to the Finance Committee recommendation book.
- The provisions of paragraph 13.5 can be found on pages 1 and 2 of the First Amendment to the P&S.
- These First Amendment to the P&S can be found on the last three pages of the appendix and supersede pages 9 and 10 of the P&S.

Environmental Information and Obligations

- Environmental engineers from Stantec performed sample environmental tests and issued a report dated May 27, 2016 on the environmental testing results.
- This report was performed consistent with and for the purposes in ASTM 1527 -13

- ASTM 1527 – 13 is a professional standard for the purpose establishing defenses under the so called “innocent landowner” provisions of CERCLA.
- The innocent landowner defense essentially provides that a buyer of contaminated property that has been tested in accordance with ASTM 1537 cannot be found liable for environmental claims by the EPA.
- Stantec representatives confirmed to the Finance Committee that the purpose of their May 27, 2016 report was limited to a) determining liability under MGL 21 E and b) establishing a basis for the innocent landowner defense.
- The May 27, 2016 report identified 2 of 67 samples where lead concentrations exceeded the RCS -1 Reportable Condition standard of 200 parts per million (ppm) and 33 of 67 samples where arsenic exceed the RCS-1 standard of 20 ppm.
- Category RCS-1 means the category of criteria listed in 310 CMR 40.1600 applicable to soil samples obtained at or within 500 feet of a residential dwelling, a residentially-zoned property, school, playground, recreational area or park; or within the geographic boundaries of a groundwater resource area categorized as RCGW-1.
- In 11 of the 67 samples, the arsenic level exceeded 40 ppm which was described as “the applicable imminent hazard concentration”.
- Stantec subsequently attended a Finance Committee meeting and clarified the term “imminent hazard” in this context as described later below.
- Stantec also reported that the contaminants found were typical of former rail lines and were not subject to reporting to the Massachusetts Department of Environmental Protection (MADEP) regulations.
- Stantec also reported that “human exposure to contaminated soils at the Property during pre construction, construction and post construction activities must be limited in accordance with the MADEP’s guidance document titled *Best Management Practices for Controlling Exposure to Soil during Development or Rail Trails.*”
- The May 27, 2016 Stantec report contains numerous caveats and limitations in a nine paragraphs in Section 2.3 Exceptions and Limiting Conditions of their report.
- Town Counsel advised that paragraph 13.5 of the First Amendment to the Purchase and Sale Agreement (P&S) makes the Town liable for any and all environmental claims, cleanup or damages whether past, present or future and that the Town indemnifies (i.e. insures) CSX for any and all such claims.
- Stantec reported to the Finance Committee that it had not been provided or read the P&S or paragraph 13.5 and did not design or conduct its testing for the purposes of paragraph 13.5 of the P&S.
- The innocent landowner defense does not apply to claims made against CSX and reimbursed by the Town under the indemnity.
- The Deputy Town Administrator advised that the Town received a quote of \$35,000 per year for up to \$3,000,000 of environmental insurance and \$75,000 per year for up to \$5,000,000 in environmental insurance.
- These insurance quotes were obtained on the basis on the May 27, 2016 Stantec report and were provided before the supplemental report discussed below.
- The insurance quotes can be interpreted in at least a few different ways. .

- On one hand, these quotes demonstrate that the rail trail can be insured to certain levels against environmental claims and as such indicate that environmental concerns are not that great on the part of insurance companies.
- On the other hand, these insurance quotes, especially if valued at a multiple in perpetuity of 20 to 25 times, indicate the potential value of the indemnity that the Town is providing to CSX.
- The insurance quotes were reportedly based on the May 27, 2016 report and not on both Stantec reports.
- The potential for environmental exposure was evaluated further by Stantec in a report dated October 3, 2016 which reported the results if supplemental tests at 25 key locations on the rail trail corridor.
- These locations include 1) an area near former factory site, 2) the area adjacent to an occupied commercial building and the Modera apartments at Rt. 27 and Washington Avenue and 3) the area next to Navy Yard Field (home plate and third base.)
- The supplemental report found that 11 of 25 samples had arsenic above the RCS -1 level of 20 ppm and that 6 of these samples had arsenic levels above 40 ppm. Two samples revealed levels of 102 and 111 ppm.
- These levels were found on test sites immediately adjacent to the Modera project and a nearby commercial building whose tenants park on the tested area and the area immediately behind home plate and the third base line at Navy Yard.
- The supplemental tests found 4 of 25 locations where lead levels exceed the RCS -1 level of 200 ppm.
- These four samples had lead levels of 614,912, 407 and 1,230 ppm on the rail line in the general area near Navy Yard field
- MADEP regulations, 310 CMR 40, defines “Imminent Hazard means a hazard which would pose a significant risk of harm to health, safety, public welfare or the environment if it were present for even a short period of time, as further described in 310 CMR 40.0950.”
- Stantec’s supplemental report describe arsenic levels representatives explained that levels above 40 ppm “could pose an imminent hazard unless access is restricted”.
- Stantec’s representatives attend two Finance Committee meetings.
- As the first meeting a Stantec representative indicate it would be a problem for people to come in contact with areas above RCS-1 levels.
- Base on this testimony, the Finance committee asked the Board of Health to review the Stantec reports and advise the Town. This advice has not yet been received.
- The Finance Committee also arranged for a representative of Stantec to attend the second meeting and discuss environmental concerns of the committee in more depth.
- Stantec’s representative explained to the Finance Committee that intermittent or periodic contact from walking on contaminated areas would not constitute a danger whereas digging in such soil or driving trail bikes would.
- The Stantec representative explained that in this context of limited or intermittent contact there would not be an imminent hazard.
- The Finance Committee asked the Stantec for a supplemental letter report to this effect because their reports contain statements to the effect that their findings are limited only to their written report.

- The Finance Committee requested s that the Board of Selectmen arrange for both the additional written report and for Stantec’s representative to attend Town meeting and answer any member questions.
- Town Meeting members can obtain and review the both Stantec reports on the Town’s website at <http://www.natickma.gov/1329/Environmental-Site-Assessment> on the Cochituate Rail Trail Advisory Committee webpage.

Financing Plan Proposed by Town Administration and Board of Selectmen

- The Town Administration and Board of Selectmen by 3-2 vote are requesting that \$3,100,000 of the remaining balance of \$3,124,897 in the FAR Stabilization fund be appropriated along with \$2,965,000 in borrowing to fund the purchase of the rail trail.
- \$6,000 would come from gifts received.
- The Town Administration and the Board of Selectmen spent considerable time discussing whether any ‘taxpayer’ funds would be used with two Selectmen opposed to the use of borrowing in this regard.
- The Finance Committee notes that both the FAR funds and any funds borrowed or from a free cash source are taxpayers funds. The FAR Bonus monies are rather not ‘tax levy’ funds.
- To reduce the use of borrowing, the Town Administrator and the majority of the board of Selectmen plan to ask 2017 Spring Town Meeting to rescind the stranded \$2.5 million appropriation and use \$1.5 million of this \$2.5 million to repay short term bonds.
- Bonding would also be reduced to the extent of any additional gifts received which the Town Administrator and the Chair of the Board of Selectmen believe will be approximately \$1.5 million for the purpose of helping to buy the rail trail.
- The financing plan would return \$1.0 million to the FAR Stabilization Fund which would then have a balance of \$1,024,897.
- The financing plan proposed by the Town Administrator and the Board of Selectmen would involve a future town meeting warrant article and would result in an overall amount of \$4.6 million of the once available \$5.6 million in the FAR Stabilization Fund being used for the rail trail.
- If additional gifts were received in the amount of \$1.5 million to fund the acquisition, no borrowed funds would be used on a permanent basis.
- If no additional gifts are received for this purpose, then \$1,465,000 would be permanently borrowed.
- Some Finance Committee members were supportive of the concept of minimizing or avoiding the use of any tax levy funds and of using FAR monies to repay debt.
- Other members questioned the ability to use FAR funds in this manner as discussed in a separate section below.

Alternative Financing Plan

- An alternative financing plan could consist of all of the currently stranded \$2.5 million going back to the FAR Stabilization fund so that a healthy balance is maintained in this fund for another open space acquisition.

- The alternative would require either some delay to certain other project (s) in the Town’s capital plan or potential elimination a project.
- The increased use of FAR funds from \$2.5 million to \$3.1 million is viewed by some Finance Committee members as an increased contribution toward the rail trail that could be part of a larger plan but that an increase in FAR funds from \$2.5 million to \$4.6 million results in the effective elimination of future open space acquisitions that will otherwise become housing subdivisions with attendant tax levy costs of students in schools and demands for other town services.
- These costs are often greater than the tax revenue form such residential development.
- The Finance Committee notes that no formal or even informal analysis was prepared by the Town Administration of the majority of the Board of Selectmen comparing the cost to the tax levy of permanent borrowing to the costs of subdivisions not prevented by a greater FAR fund balance.
- The Finance Committee notes that at an initial interest rate cost of 2.5% for a 20 year bond, \$1,500,000 of permanent borrowing has an initial year cost of approximately \$112,500 and an average yearly cost of \$56,250 over a 20 year period.
- Some Finance Committee members noted that the remaining balance of \$1.0 million could make the rail trail the last significant open space acquisition of the Town and that \$1.0 million is grossly insufficient to acquire further meaningful open space.
- Some members expressed opposition to \$4.6 million and debated changing the vote from support to opposition if the sponsor’s continue to advocate for their financing plan.

Findings from the Conservation Fund Study Committee that Pertain to Financing Plans

- The Conservation Fund Study Committee conducted an extensive analysis of the FAR monies and the legal parameters regarding these funds.
- As reported to a previous Town Meeting, two competing statutes exist within the MGL regarding these FAR monies
- Chapter 40 A Section 9 permits open space public benefit amenities to obtained from developers who receive extra density provided that such provisions are in a town’s zoning bylaw.
- The Town’s zoning by law contains such provisions and specifies that such monies must be used for “**additional** parks and open space”.
- The zoning bylaw does not allow such funds to be used for “**existing**” parks and open space.
- If the Town buys the rail trail in December 2016, the CRT will be an existing property as of 2017 Spring Town Meeting.
- Chapter 44 Section 53 provides that all funds received by a town shall be deposited in the town treasury and subject to town meeting appropriation unless such funds are specifically exempt by statute.
- The MGL have no specific exemption for FAR Bonus funds.
- Section 53 says “*All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district*”

treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof.”

- This section does not specifically say that Town Meeting can use fund for any purpose and does not say that funds received lose their underlying character or restriction from their source.
- As reported to a previous Town Meeting, the use of FAR Bonus funds in a manner inconsistent with the Zoning By Law creates two risks for the Town.
- The first is that developers who paid such FAR Bonus Funds as an express requirement of the zoning by law could sue to have monies refunded if such funds were used for other than the express requirements of the Zoning By Law.
- The other risk is that future developers could argue that no future FAR monies can be required since the Town has taken them and used them in a manner inconsistent with the Zoning By Law.
- A previous Town Meeting decided to create the FAR Bonus Stabilization Fund to keep these funds separate to track their use.
- Over a decade ago and before the FAR monies were even received and incorrectly moved into the Conservation Commission fund, the town rejected the suggestion that the Mall FAR money be used to repay golf course debt because of the provisions of the zoning bylaw.

Observations Regarding Inflow and Infiltration (I&I) Funds

- Town Meeting members may recall that the Town Meeting regularly transfers sewer connection fees from Water and Sewer Retained Earnings to the I&I Stabilization Fund
- These transfers are made 1) because the sewer connection fees are imposed and collected for I&I purposes and 2) the Town risks lawsuits from developers to recover these sewer connection fees if they are used in a manner inconsistent with the purpose for which they were collected.
- The strategy for the I&I funds is motivated in part because of actual litigation filed in Saugus that alleged such fees were a) an illegal tax and b) not used for the purpose for which they were taken.
- The Saugus case is a possible, partial precedent for the potential use of FAR funds in a manner not consistent with the Zoning By Law provisions under which the FAR Bonus funds were obtained.

Decision Before Town Meeting

- Town Meeting has only one decision to make on this article and that is whether or not to appropriate \$6,065,000 for the acquisition of the rail trail.
- This amount could be funded as proposed or could use an increased amount of borrowing as advocated by two Finance Committee members or could use some other available source or combination of sources.
- A future Town Meeting will make the decision on the disposition of the currently stranded \$2.5 million

- However, Town meeting members should be aware of the overall financial plan and questions on the ability to use FAR Bonus funds to repay debt to the extent these factors might influence their decision.
- In particular, Town Meeting members may note that the future disposition of the currently stranded \$2.5 million will be determined by a 2/3's vote of Town Meeting
- The disposition of these funds can, in a certain sense, be controlled by 1/3 plus one of Town Meeting
- There is no way to determine or to know at this Town Meeting what 2/3's or 1/3 plus one of a future Town Meeting might do with regard to the \$2.5 million and no way to know how much of any authorized borrowing will or will not be subject to long term borrowing.
- The only matter that can be determined at this Town Meeting is the appropriation of available funds (of which the \$2.5 million is not a part) and/or the authorization of borrowing.
- Town Meeting members should note that the current article requires a 2/3's vote regardless of the funding sources used because MGL Chapter 40 Section 14 provides that an appropriation for the acquisition of real property be approved by a 2/3's vote.
- A future town meeting might vote simply to rescind the \$2.5 million appropriation from 2016 Special Town Meeting #1 which would automatically return the money to the FAR Bonus or vote to rescind and then re-appropriate all or some of the \$ 2.5 million to repay debt.

Nine members voted in favor of the motion below but expressed conflicting opinions on the appropriateness and desirability of the financing plan proposed by the sponsors and the town administration. These members generally felt that the 2nd presentation by a Stantec representative indicated that environmental liabilities should be understood in the context of that 2nd presentation and look forward to receiving confirmation of such testimony in the requested written addition to the previous Stantec reports. Some members of the Finance Committee believes that neither financing plan should be approved rather Town Meeting should walk away from the deal, return the previously appropriated \$2.5 million to the FAR Bonus Stabilization Fund in the spring (thereby returning the FAR Bonus Stabilization Fund balance to \$5.6 million), and avoid incurring any potential environmental liability inherent in this purchase.

Finance Committee members considered motions for 1) Favorable Action with \$3.1 from FAR Stabilization and \$2,965,000 from borrowing, 2) Favorable Action with all \$ 6,065,000 from borrowing and 3) No Action. The motions were votes in the order made with the first motion receiving a 9 -2-0 vote which made it the recommendation of the Finance Committee.

MOTION: (Requires two thirds vote)

“Move to appropriate the sum of \$6,065,000 to acquire, for recreational and non-motorized transportation purposes, land known as the Saxonville Branch line and adjoining parcels, owned now or formerly by CSX Transportation, Inc., and shown on Natick Assessors Map 41, Lot RR1; Map 17, Lots 13, 14, 18 and 19; Map 26, Lots 40A and 116A; Map 35, Lot 296; and Map 43, Lots 413A and 413B; which land shall be used for the proposed Cochituate Rail Trail; which acquisition is subject to provisions of the so-called federal railbanking statute, 16 U.S.C. 1247(d); to be expended under the direction of the Board of Selectmen in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended; provided that funding for construction of the proposed Cochituate Rail Trail is in the Transportation Improvement Plan by the Boston Metropolitan Planning Organization at the date of the closing for acquisition of said land, and that the amount of \$6,065,000 shall be raised from the following sources:

FAR Bonus Stabilization Fund	\$3,100,000
Borrowing	<u>\$2,965,000</u>
Total Appropriation	\$6,065,000;

and, further,

1) that the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$2,965,000 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$2,965,000 in principal amount and that the Town Administrator with the approval of the Board of Selectmen is authorized to take any action necessary to carry out this program; and further,

2) that the amount of said borrowing shall be reduced and/or repaid in full or in part by any grants or donations received in support of the Cochituate Rail Trail acquisition and, further,

3) that the Board of Selectmen is hereby authorized to expend for the purposes of this article, in accordance with the terms of the applicable purchase and sale agreement with CSX Transportation, Inc., as amended, the total sum of \$6,071,000, including appropriations under this Article and \$6,000 in donations received to date.”

ARTICLE 4
Amend the Natick Zoning By-Law to Create a
Transitional Overlay Option Plan (TOOP)
(Arthur B. Fair III, et al)

To see if the Town will vote to amend the Zoning By Laws of the Town of Natick, by adding thereto, a new section, that would create and establish a zoning overlay district to be known as the Transitional Overlay Option Plan (TOOP) for the purpose of allowing a transitional redevelopment of properties located along the Major Arterial Roadways of the Town, or act on anything relating thereto.

PURPOSE OF ARTICLE

To create a zoning overlay district.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

After considering several motions at the Finance Committee meeting on October 13, 2016, the Finance Committee has no recommendation with regard to the subject matter of Article 4.

A motion for Indefinite Postponement failed to get a recommendation by a vote of 6-5-0. A motion for Referral to the Planning Board and the sponsors failed to get a recommendation by a vote of 4-7-0. A motion for Referral to the Planning Board alone failed to get a recommendation by a vote 6-5-0. No other motions were made.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 13, 2016. The Finance Committee heard from one of the citizen petitioners and an attorney for a developer who presented the article and from a number of citizens. The following information was noted.

- The Finance committee received advice from Town Counsel and from the Moderator that the scope of the article was very limited.
- As filed, the article does not mention or include any provisions for use, dimensional or intensity regulations, definitions, special requirements or special permit provisions.
- The Finance Committee was advised that the article would allow a motion for the creation of a district and the creation of a purpose section of a proposed new bylaw section.
- The sponsors were informed in advance of the scope considerations and presented a detailed proposed bylaw which addressed use type, dimensional and intensity regulations, new definitions, and special permit provisions in addition to its own new purpose section and using an existing purpose section (Section 108 Affordable Housing)

- Consistent with the requirements of the Town's By Laws to hear all matters of business included within the warrant of any town meeting, the Finance Committee focused its hearing on the in scope matters of business and not out of scope matters.
- The Finance Committee heard from a number of citizens and neighbors who expressed opposition to the article.
- The sponsors planned on discussing the scope boundaries with Town Counsel to persuade Town Counsel to change his opinion
- The Finance Committee was subsequently informed that the sponsors do not intend to pursue the article at Special Town Meeting #2.

MOTION:

None

ARTICLE 5

Include Certain Parcels of Land Located on the Southerly Side of East Central Street, the Easterly Side of Lincoln Street, the Easterly and Westerly Side of Wilson Street and the Westerly Side of Grant Street in the Transitional Overlay Option Plan (TOOP) (Arthur B. Fair III, et al)

To see if the Town will vote to designate those parcels of land, located on the southerly side of East Central Street, the easterly of Lincoln Street, the easterly and westerly side of Wilson Street and the westerly side of Grant Street and being on shown on Assessors Map 44, as Lots 180, 181, 182, 195, 196, 197, 198, 216 and 217, and depicted on the attached plan entitled “Transitional Overlay Option Plan – For Reference”, dated August 15, 2016, or however they shall be otherwise bounded and described, as a Transitional Overlay Option Plan (TOOP) District in accordance with the Natick Zoning By-laws, or act on anything related thereto.

PURPOSE OF ARTICLE

To designate certain parcels to be part of a Transitional Overlay Option Plan zone.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 11 -0 - 0 on October 13, 2016, the Finance Committee recommends *No Action* with regard to the subject matter of Article 5 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 1, 2016. The Finance Committee heard from a citizen petitioner and an attorney for a developer who presented the article and from a number of citizens including a resident whose property was included in the scope of the article. The following information was noted.

- The warrant article filed by the citizen petitioners makes reference to “the attached plan entitled “Transitional Overlay Option Plan – For Reference”, dated August 15, 2016”
- The warrant article signed and filed by the citizen petitioners included this plan
- However, the warrant formalized, published and posted in the various precincts did not include the attached plan
- The plan shows essentially the same information as the tax maps
- Town Counsel advised that a motion could be made which included the tax map references but could not be made which included reference to this plan.
- The scope problems with Article 4 made it impractical to designate properties to be included in a district contemplated by Article 4.
- The Finance Committee voted to recommend No Action on Article 5 because of the fundamental scope problems with Article 4.

MOTION: (Requires majority vote)

“Move that the Town take No Action with regard to the subject matter of Article 5.”

ARTICLE 6
Appropriation of Insurance Proceeds - Camp Arrowhead
(Town Administrator)

To see if the Town will vote to raise and appropriate, transfer and appropriate from available funds, or otherwise provide, the sum of one hundred eighty-seven thousand one hundred ninety-three dollars and eighty-two cents (\$187,193.82), or such other amount, for the purpose of design, repair, construction, reconstruction, restoration and/or replacement of real property and/or personal property held or owned by the Town, including, without limitation, any buildings, furniture, fixtures, and equipment, for which design, repair, construction, reconstruction, restoration and/or replacement are necessitated, and any costs incidental and related thereto, as a result of a fire at Camp Arrowhead, located at 1055 Worcester Road, in Natick, which occurred on or about July 28, 2016, said amounts listed above that have been received as insurance proceeds to the benefit of the Town as a result of said fire, or to take any other action relative thereto.

PURPOSE OF ARTICLE

To appropriate insurance proceeds to the replacement of damaged buildings.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 9 - 0 - 0 on October 6, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 6 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from the Town Administration who presented the article. The following information was noted.

- The Town has received insurance proceeds for the damages to buildings at Camp Arrowhead.
- The administration would like to use the funds to rebuild the damaged buildings.
- The Town's insurance policy provides for full replacement cost.
- The amount received is the undisputed amount of the claim.
- Additional proceeds might be received if the cost exceeds the current proceeds.

MOTION: (Requires majority vote)

“Move that the Town vote to appropriate from insurance proceeds, the sum of one hundred eighty-seven thousand one hundred ninety-three dollars and eighty-two cents (\$187,193.82) for the purpose of design, repair, construction, reconstruction, restoration and/or replacement of real property and/or personal property held or owned by the Town, including, without limitation, any buildings, furniture, fixtures, and equipment, for which design, repair, reconstruction, restoration and/or replacement are necessitated, and any costs incidental and related thereto, as a result of a fire at Camp Arrowhead, located at 1055 Worcester Road, in Natick, which occurred on or about July 28, 2016, said amounts listed above that have been received as insurance proceeds to the benefit of the Town as a result of said fire.”

ARTICLE 7
Amend Zoning By-Laws: SPGA Designation – Industrial I & II
(Wesley Potter et al.)

To see if the Town will vote to amend the Zoning Bylaws to change the Special Permit Granting Authority (SPGA) designation in the Industrial I and Industrial II zones.; or otherwise act thereon.

Purpose

The purpose of this article is to consolidate the functions of Special Permits and Site Plans with the Planning Board on industrial lots so as to end the current practice of these functions being split with the Zoning Board of Appeals by criteria of use, location, and size

Motion substantially as follows:

It is moved that the Zoning By-laws be amended as follows:

In Section VI-DD, 2.a), following “Regional Center Mixed-Use Overlay District” insert:

“Industrial I (In-I)
Industrial II (In-II)”

In Section VI-DD, 2.b), delete:

“Industrial I (In-I), and Industrial II (In-II)”

PURPOSE OF ARTICLE

To change the special permit granting authority for the Industrial I and Industrial II zones.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 8 - 0 - 0 on October 17, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 7 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 17, 2016. The Finance Committee heard from the citizen petitioners who presented the article. The following information was noted.

- The article apparently originated from neighborhood opposition to a proposed project on Tech Circle.
- However, the article itself addresses a much different and broader topic.

- The Zoning By Law currently provides that if site plan reviews are required for development in the I-I, I-II and C-II zones that any such special permits are administered by either the Zoning Board of Appeals (ZBA) or the Planning Board depending upon the size of the development.
- Site plan reviews for construction of new or rehabbed floor space less than 150,000 square feet or development of lots less than 150,000 sq. ft. are administered by the ZBA.
- The actual wording for the ZBA regarding land parcels is “or the development of a parcel of land having such area limitation”.
- Site plan reviews for construction of new or rehabbed floor space greater than 150,000 square feet or development of lots greater than 150,000 sq. ft. are administered by the Planning Board.
- The actual wording for the Planning Board regarding land parcels is “or the development of a parcel of land having such area limitation”.
- Finance Committee members noted that the language for land parcels is identical and that only in context does it appear that the “area limitation” is “more than “ for the Planning Board’s responsibility; notwithstanding that “more than” doesn’t appear to make sense as a “limitation”.
- The actual wording for the Planning Board is “ 2) The Planning Board shall act as the SPGA for all such review procedures involving more than 150,000 sq. ft. of new or rehab construction floor space, or the development of a parcel of land having such area limitation, or when a combination of use , as described on the Use Regulation Schedule, is sought.”
- The actual wording for the ZBA is “1) The Board of Appeals shall act as the SPGA for all such review procedures involving less than 150,000 sq. ft. of new or rehab construction floor space, or the development of a parcel of land having such area limitation.”
- Finance Committee members noted that the divided responsibility can result in inconsistent application of the special permit review process being conducted by different boards
- Members felt that consolidating the special permit review process with one board would provide consistent process for all applicants
- Consolidating all reviews would also eliminate ambiguity and conflict in the by law.
- Interestingly, no board is specified if the project is 150,000 sq. ft.
- Finance Committee members had concerns about possible conflicts over jurisdiction and or permitting authority could result where a new building was less than 150,000 sq. ft. and the land parcel was greater than 150,000 sq. ft.
- The building size would place jurisdiction and permitting authority with the ZBA.
- The land parcel size would place jurisdiction and permitting authority with the Planning Board.
- Town Counsel was asked to review the current wording in this regard.
- (This Tech Circle project reportedly involves building a 6,750 sq. ft. 8 bay garage and a parking lot on a 5 acre parcel over 217,800 sq. ft. in size.)
- Two Finance Committee members also noted that the current wording in the by law allows for proposals to be potentially manipulated in size above or below 150,000 sq. ft . to allow a developer to select which board might review their project.

- Overall, the Finance Committee believes that the Site Plan Review process should be consolidated with the Planning Board who has more experience in this regard.
- The article does not address the divided responsibility with regard to the C II zoning district.
- The article only changes the two paragraphs that precede 1) and 2) above
- Paragraph a) currently begins
 - “ All uses other than Uses No. 1, 3, 5, 8, 9, 17, 18, 46, 47 and 48, permitted or allowed in the following Zoning Districts shall be subject to the Site Plan Review Procedures described herein, to be administered by the Planning Board, acting as the SPGA.”
 - A list of 17 districts including the various Overlay Districts in town follows.
 - The proposed motion would add In – I and In - II to this list immediately after Regional Center Mixed-Use Overlay District
- Paragraph b) currently reads
 - “b) All uses, other than Uses No. 46, 47, 48 and 54 which are permitted or allowed under the Use Regulation Schedule in the Commercial II (C-II), Industrial I (In-I) and Industrial II (I –II) zoning districts, shall be subject to the Site Plan Review procedure described herein with the following SPGA designations:”
- The proposed motion would remove In –I and In- II from paragraph b)
- Town Counsel was asked how a positive vote under this article would affect any currently proposed projects but has not provided an answer at this time.

MOTION: (Requires two thirds vote)

“Move that the Town vote to amend the Zoning By-laws follows:

In Section VI-DD, 2.a), following “Regional Center Mixed-Use Overlay District” insert:

“Industrial I (In-I)

Industrial II (In-II)”

And

In Section VI-DD, 2.b), delete:

“Industrial I (In-I), and Industrial II (In-II)”

ARTICLE 8
Amend Zoning By-Laws: Motor Vehicles
(Mary Collins et al.)

To see if the Town will vote to amend the Zoning Bylaws to add a new use of "Motor Vehicle Storage or Detailing"; or otherwise act thereon.

Purpose

The purpose of this article is to allow, by special permit, the storage, transit, modification, or preparation of motor vehicles for sale or re-sale.

Motion substantially as follows:

It is moved that the Zoning Bylaws be amended by adding a new use “Motor Vehicle Storage or Detailing” as follows:

In Section 200 – DEFINITIONS insert:

“Motor Vehicle Storage or Detailing: A facility or lot, either within a structure or in the open, for the storage, transit, modification, or preparation of motor vehicles for sale or re-sale”

In Section III-A.2 Use Regulations Schedule insert:

	BUSINESS USES	RG	RM	RS	PCD	SH	AP	DM	CII	INI	INII	D	H
<u>23B.</u>	Motor Vehicle Storage or Detailing	O	O	O	O	O	O	(*)	O	A	O	O	O

PURPOSE OF ARTICLE

To add a new use definition to the Zoning By Law and to specify the districts in which that use is allowed and prohibited.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 8 - 0 - 0 on October 17 , 2016, the Finance Committee recommends *Indefinite Postponement* with regard to the subject matter of Article 8 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 17, 2016. The Finance Committee heard from the citizen petitioners who presented the article. The following information was noted.

- The citizens sponsors are seeking a negative vote on this article
- The goal is to place Town Meeting on record as opposing a use that is being sought at Tech Circle in an effort to prevent such use
- Finance Committee members expressed uncertainty that a negative vote would accomplish the sponsor's objective.
- Reasons for a negative vote might vary from Town Meeting not liking the way the definition is worded to not liking the proposed schedule of allowing uses in some zones where Town Meeting might think the use to be inappropriate or the prohibition in a zone where Town Meeting thought the use would be appropriate.
- A reason for a negative vote might also be that Town Meeting disapproves of the type of use in the project to which the sponsors are opposed.
- The Finance Committee also noted that the proposed use at Tech Circle might or might not be a combination of existing uses in the Zoning By Law which are not part of the article's scope.
- The Finance Committee heard the sponsors and noted that some of the filed proposed uses – such as “off street parking” for several hundred cars - for Tech Circle might not be allowable in the In- I zone
- The Finance Committee noted that both the applicant and the neighbors have retained legal counsel and that their dispute is not the business of Town Meeting
- The Finance Committee asked Town Counsel to be prepared to explain to Town Meeting members the possible effects of a negative vote and the effect of a negative vote on the Tech Circle project as filed with the ZBA to the extent such information is relevant to Town Meeting's decision.
- Finance Committee members noted that the proposed definition and the prohibition of this use in the C-II zone which includes much of Rt. 9 where auto businesses are located
- Members also noted that the C-II district is the underlying zone for certain overlay zones.
- Some of these overlay zones use the permissions or prohibitions of the underlying zone.
- Members expressed concern about unintended consequences for these businesses.
- The Finance Committee discussed that the issues involved with the new proposed definition, existing definitions in the zoning bylaw and the potential town wide effects of the proposal should be evaluated by the Planning Board before coming back to Town Meeting
- The Finance Committee voted to recommend Indefinite Postponement to place the matter exclusively with the Planning Board.

MOTION: (Requires majority vote)

“Move that the Town vote to Postpone Indefinitely the subject matter of Article 8”.

ARTICLE 9
Amend Zoning By-Laws: Remove Ambiguous Wording from Section 323.3
(John Ciccariello et al)

To see if the Town will vote to amend the Zoning Bylaws to remove wording from Section 323.3; or otherwise act thereon.

Purpose

The purpose of this article is to clarify allowed uses in the Highway Overlay District by removing ambiguous language from Section 323.3 Certain Multi-family Residential Uses.

Motion:

Move that the Zoning Bylaws be amended as follows:

In Section III – USE REGULATIONS, Section 323.3 Certain Multi-family Residential Uses, delete the words “, and similar multi-family development”

so that the section reads: "In the RC district, hotels, motels, assisted living facilities may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326. ..."

PURPOSE OF ARTICLE

To delete specific language in the Highway Overlay District section of the Zoning ByLaw.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 9 - 0 - 0 on October 6, 2016, the Finance Committee recommends ***Favorable Action*** with regard to the subject matter of Article 9 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from a citizen sponsor who presented the article. The following information was noted.

- The existing wording in the Zoning By Law contains a somewhat vague and ambiguous phrase “ and similar multi family developments”.
- Section 323.3 of the Highway Overlay District currently begins:
 - "In the RC district, hotels, motels, assisted living facilities, and similar multi family development may be allowed by Special Permit granted by the Planning

Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326.

- Hotels and Motels are distinctly defined in the Zoning By –Law in a manner for short term or even overnight occupancy in manner that does not suggest or include multi family housing
- Dwelling Multi Family is defined as a residential building such as apartment houses or town houses.
- Assisted Living is defined as a type of senior or elderly housing that is subject to specific CMR regulations.
- In this context, the meaning of the words “ similar multi family developments” is ambiguous and unclear at best and out of place at worst.
- The sponsors presented a copy of a letter recently issued by the Community Development office in response to and in agreement with a lawyer for a developer who had presented an analysis that a type of age restricted senior housing was similar to assisted living
- The lawyer letter presented a 20 point comparison of an Assisted Living Facility to a “Proposed Senior Housing” facility.
- The 20 point comparison consisted of basic building features such wood frame construction, covered parking, climate controlled elevators, fitness center, club room, communal kitchen, art and media center, pool, patio and fire pit, walking paths, gardens, on site programs tailored to providing a active [?], on site concierge, housekeeping and linen services all of which apply to a high end condominium project for virtually any adult age. (The word ‘active’ is not followed by anything in the letter.)
- Only one point of comparison addresses “supportive care and assistance 24/7”
- This point applied only to Assisted Living.
- All other points were claimed by the developer’s lawyer to apply to both.
- No mention was made of the Assisted Living activities clearly listed in the Zoning bylaw definition such as assistance with personal care activities of daily living and self medication, assistance related to bathing, dressing, grooming, ambulation, eating, toileting and *similar tasks* (emphasis added)
- No mention was made of services as may be specified in 651 CMR 12 which has expansive definitions of assisted living and is included in our Zoning By Law definition.
- While the analysis might be regarded as fine by some and exceptionally thin by others, the ambiguity in the by law is clear.
- Finance Committee members asked what the standard is for “similar” and the ability of the Town to require that the proposed senior housing facility in fact be a senior housing facility
- Because the Town has no specific provision for to require or to regulate either 55 and over housing or 62 and over housing, the town appears to lack the ability to require the development to be in fact senior housing.
- The Finance Committee notes that these are the only to age ‘discriminated’ forms of housing allowed by Federal regulation as discussed more in write-up of subsequent articles
- A decision on maintaining the development as senior housing would appear possibly to be optional for the developer.
- The Finance Committee did not receive the guidance from Town Counsel in this regard

- Additional concerns were raised about the construction of housing units for which no affordable housing requirement could be established or enforced
- The sponsors noted that the developers proposal is reportedly 165 multi family units which would be 100% market rate and which could adversely affect the Town's 40 B status
- The Finance Committee asked whether the Community Development office had consulted with Town Counsel before agreeing with an outside attorney but has not received an answer to date.
- The Finance Committee believes that the ambiguity should be eliminated and the Town should vote either specifically to authorize or specifically not to authorize senior housing as a permitted use in the RC Overlay District as is contemplated in subsequent articles.
- The Finance Committee believes that substantive zoning provisions of the Zoning By Law that apply to major projects should be determined by Town Meeting and not the Building Inspector or Community Development Director.
- The Finance Committee recommends that Town Meeting eliminate any possible ambiguity in the Zoning By Law.

MOTION: (Requires two thirds vote)

“Move that the Town vote to amend the Zoning Bylaws as follows:

In Section III – USE REGULATIONS, Section 323.3 Certain Multi-family Residential Uses, delete the words “, and similar multi-family development” in the first sentence

so that the sentence reads:

“In the RC district, hotels, motels, assisted living facilities may be allowed by Special Permit granted by the Planning Board, subject to all requirements of the underlying district(s), and modified by the dimensional and other intensity regulations of Sections 324 and 326.”

ARTICLE 10
Amend Zoning By-Laws: 55 Years of Age Amenity Housing
(John Ciccariello et al)

To see if the Town will vote to amend the Zoning Bylaws to add a new use “55 Years of Age Amenity Housing” in the Highway Overlay Districts; or otherwise act thereon.

Purpose

The purpose of this article is to clarify allowed uses in the Highway Overlay District and add a new use for 55 Years of Age Amenity Housing.

Motion substantially as follows:

Move that the Zoning Bylaws be amended as follows:

-In Section 200 Definitions, add a new definition:

55 Years of Age Amenity Housing: Dwelling unit(s) for persons of over 55 years in age being two bedrooms or less with parking and climate-controlled elevators. Such housing to offer: a fitness and wellness center; great room/club room, communal kitchen, arts/media/theater space; pool, patio and fire pit, walking paths, and gardens. Further; such facility to offer on-site events and programs managed by an activity director to provide an active environment; on site concierge service to coordinate laundry services, house-keeping and transportation. But no requirement for all-day supportive care and assistance.

-In Section III – USE REGULATIONS amend section 323.3 Certain Multi-family Residential Uses:

Following “In the RC district, hotels, motels, assisted living facilities,” insert the words “55 Years of Age Amenity Housing,” so that the section would read “In the RC district, hotels, motels, assisted living facilities, 55 Years of Age Amenity Housing, ...”

PURPOSE OF ARTICLE

To add a new use in the Highway Overlay District.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 9 - 0 - 0 on October 6, 2016, the Finance Committee recommends *No Action* with regard to the subject matter of Article 10 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from a citizen sponsor who presented the article. The following information was noted.

- The following information was provided from Federal Department of Housing and Urban Development.
- “The Fair Housing Act (FH Act) protects all residents from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status (families with children under the age of 18 living with parents or legal guardians; pregnant women and people trying to get custody of children under 18).”
- “The "Housing for Older Persons" Exemption: The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. “
- “In order to qualify for the "housing for older persons" exemption, a facility or community must prove that its housing is:
 - Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
 - Intended for, and solely occupied by persons 62 years of age or older; or
 - Intended and operated for occupancy by persons 55 years of age or older.”
- “In order to qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:
 - At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
 - The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
 - The facility or community must comply with HUD's regulatory requirements for age verification of residents.”
- Because of the requirement that only 80% of the units have a person who is 55 and over, 20% of the units could be offered to anyone
- The Finance Committee has concerns about this article as a solution to the ambiguity in the current zoning bylaw
- The Finance Committee recommends No Action with regard to this article.

MOTION: (Requires majority vote)

“Move that the Town vote to take No Action with regard to the subject matter of Article 10.”

ARTICLE 11
Amend Zoning By-Laws: Elderly Family Residence
(John Ciccariello et al)

To see if the Town will vote to amend the Zoning Bylaws to add a new use “Elderly Family Residence” in the Highway Overlay Districts; or otherwise act thereon.

Purpose

The purpose of this article is to clarify allowed uses in the Highway Overlay District and add a new use for Elderly Family Residence.

Motion substantially as follows:

Move that the Zoning Bylaws be amended as follows:

-In Section 200 Definitions, add a new definition:

“Elderly Family Residence: Dwelling unit(s) for a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides. (ref. 24 CFR 5.403)”

-In Section III – USE REGULATIONS, amend section 323.3 Certain Multi-family Residential Uses as follows:

Following “In the RC district, hotels, motels, assisted living facilities,” insert the words “Elderly Family Residence*,” so that the section would read “In the RC district, hotels, motels, assisted living facilities, Elderly Family Residence*,”

-In Section III – USE REGULATIONS, amend section 323.3 Certain Multi-family Residential Uses to add a footnote:

“(* Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the Elderly Family Residence do not affect the Town’s Subsidized Housing Inventory (SHI) as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD), at least 10% of the Elderly Family Residences shall be certified as qualifying for the Town’s SHI.)”

PURPOSE OF ARTICLE

To add a new use to the Highway Overlay section of the Zoning ByLaw.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 9 - 0 - 0 on October 6, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 11 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from a citizen sponsor who presented the article. The following information was noted.

- The following information was provided from Federal Department of Housing and Urban Development.
- “The Fair Housing Act (FH Act) protects all residents from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status (families with children under the age of 18 living with parents or legal guardians; pregnant women and people trying to get custody of children under 18).”
- “The "Housing for Older Persons" Exemption: The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. “
- “In order to qualify for the "housing for older persons" exemption, a facility or community must prove that its housing is:
 - Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
 - Intended for, and solely occupied by persons 62 years of age or older; or
 - Intended and operated for occupancy by persons 55 years of age or older.”
- “In order to qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:
 - At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
 - The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
 - The facility or community must comply with HUD's regulatory requirements for age verification of residents.”
- Because the requirement can be solely for persons 62 years of age or older, the Finance Committee recommends this approach as a solution to the ambiguity in the zoning by law.
- The Finance Committee does note that the proposed definition is taken from a 1937 Federal regulation for Section 8 Housing.
- Although the zoning bylaw change does not involve any Section 8 housing, the Finance Committee has asked Town Counsel whether the definition can be used outside of the

Section 8 context to avoid age discrimination or whether any compatible definition can be used consistent with the HUD guidelines quoted above.

- The Finance Committee has not yet received Town Counsel's guidance.
- In reliance on the HUD guidelines quoted above, the Finance Committee voted to recommend Favorable Action

MOTION: (Requires two thirds vote)

“Move that the Town vote to amend the Zoning Bylaws as follows:

-In Section 200 Definitions, add a new definition:

“Elderly Family Residence: Dwelling unit(s) for a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides. (ref. 24 CFR 5.403)”

-In Section III – USE REGULATIONS, amend the first sentence of section 323.3 Certain Multi-family Residential Uses as follows:

In the first sentence, following “In the RC district, hotels, motels, assisted living facilities,” insert the words “, Elderly Family Residence*” so that the first sentence of the section would begin “In the RC district, hotels, motels, assisted living facilities, Elderly Family Residence*”

-In Section III – USE REGULATIONS, amend section 323.3 Certain Multi-family Residential Uses to add a footnote:

*** Affordability Requirements: Unless a determination has been made satisfactory to the SPGA that the living units of the Elderly Family Residence do not affect the Town's Subsidized Housing Inventory (SHI) as maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD), at least 10% of the Elderly Family Residences shall be certified as qualifying for the Town's SHI.”**

ARTICLE 12
Supplement FY 2017 Funding for the Bacon Free Library
(Cathleen Collins, et al)

To see what sum of money the Town will vote to raise and appropriate, or transfer from available funds, for the maintenance and operation of the Bacon Free Library for Fiscal Year 2017 (July 1, 2016 through June 30, 2017); or otherwise act thereon.

PURPOSE OF ARTICLE

To appropriate funds to supplement the Bacon Free Library budget for FY 2017.

FINANCE COMMITTEE RECOMMENDATION, DISCUSSION AND INFORMATION

Recommendation:

By a vote of 8 - 0 - 1 on October 6, 2016, the Finance Committee recommends *Favorable Action* with regard to the subject matter of Article 12 as presented in the voted recommended motion below.

Discussion and Information:

The Finance Committee held a public hearing for this article on October 6, 2016. The Finance Committee heard from citizen sponsor who presented the article. The following information was noted.

- The article was sponsored to provide additional funds for the Bacon Free Library that would have been proposed at Spring Town Meeting if information had been more timely provided on the availability of increased funds
- The Finance Committee obtained the advice of Town Counsel that a separate warrant article was required for the Bacon Free Library
- The question was created by a request from the Town Administrator to seek additional funds for the Bacon Free Library under the Omnibus Budget Article of Fall Annual Town Meeting
- The Finance Committee asked the question as to whether the scope of the Omnibus budget article (which is and had been to appropriate funds for the operations for the government of the Town) would permit funding for the Bacon Free Library or for that matter the Morse Institute Library.
- The question focused on whether these libraries, which are almost universally regarded as a key part of the town (not just merely a part of the town), are technically part of the government given that each library is registered with the Secretary of State as a private charitable corporation
- Town Meeting members may note the Anti-Aid amendment to the State Constitution specifically permits funding of public libraries

- Town Counsel advised that given the past practice of the Town and the wording of the Omnibus Budget article on the warrant for 2016 Fall annual Town Meeting and previous town meetings that a separate warrant article was presently required.
- The Finance Committee recommends that the appropriation be voted for \$5,000 as provided in the motion below because this money would have been recommended in the Spring had all information been known in time.
- The Finance Committee was also informed by Town Counsel that in the future, the Omnibus Budget warrant article could be worded more broadly for example “to appropriate funds for the operation of the government of the Town of Natick and for the Morse Institute and Bacon Free Libraries”
- Such wording would eliminate the need for separate library budget warrant articles and allow all operating budgets to be considered under the omnibus budget article.
- Some Finance Committee members have wondered why separate warrant articles have always appeared and thought the answer should be shared with Town Meeting.

MOTION: (Requires majority vote)

“Move that the Town appropriate from free cash the sum of \$5,000 to be expended under the authority of the Bacon Free Library Maintenance Committee to supplement the appropriation of the 2017 Bacon Free Library budget, originally voted by the 2016 Spring Annual Town Meeting under Article 11, for the purchase of books & periodicals.”

Appendix:

Purchase and Sale Agreement with CSX

Board of Selectmen Recommendations

Planning Board Recommendations



6737 Southpoint Drive So.
(S/C J915)
Jacksonville, FL 32216
(904) 279-3822
Telefax (904) 245-4521
Jennifer_Bryan@CSX.com

Jennifer L. Bryan
Transaction Specialist

VIA ELECTRONIC and UPS 2nd DAY MAIL/mwhite@natickma.org

February 17, 2016

Ms. Martha L. White, Town Administrator
Natick Town Hall
13 East Central Street
Natick, MA 01760

**Re: Town of Natick, MA/CSX Transportation, Inc.
2016-0022/JLB**

Dear Ms. White:

We are pleased to advise that CSX Transportation, Inc. has accepted Town of Natick's offer to purchase approximately 21.94 acres of land at Framingham, Middlesex County, Massachusetts for the consideration of \$6,345,825.00. Enclosed for your records is a fully executed counterpart of the Purchase Sale Agreement dated February 16, 2016.

According to Section 8, of said agreement, a survey of the sale premises should be obtained within 30 days of CSX Transportation, Inc.'s notice of acceptance of the Purchase Sale Agreement. Please refer to the attached Survey Guidelines for assistance when requesting the type of survey required under this agreement. Please arrange to have the survey sent to my attention for review and approval by our Engineering Department. Upon our approval a draft deed will be prepared and forwarded to you for review. It would be appreciated if the legal description could be forwarded via e-mail to the address referred above for insertion in the deed.

In accordance with the Purchase Sale Agreement, we look forward to closing this sale as soon as possible. Your continued cooperation is requested to this end.

Sincerely,



Jennifer L. Bryan

Enclosures

cc: Matt Coffing

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, hereinafter called the "Agreement", made and entered into by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose address is c/o CSX Real Property, Inc. - J915, 6737 Southpoint Drive South, Jacksonville, Florida 32216-6177, hereinafter called the "Seller", and THE TOWN OF NATICK, MASSACHUSETTS, Massachusetts municipality, whose address is 13 East Central Street, Natick, Massachusetts 01760, hereinafter called the "Buyer", provides:

1. **PURCHASE AND SALE:** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Buyer agrees to buy the Premises, as hereinafter defined, pursuant to and in accordance with the terms and conditions of this Agreement. Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the land or property rights shown or identified on Exhibit "A", attached hereto and made a part hereof, hereinafter called the "Premises". The Premises is located in Natick, County of Middlesex, Commonwealth of Massachusetts, and contains 21.94 acres, more or less.

2. **PRICE:**

2.1 The purchase price for the Premises is SIX MILLION, THREE HUNDRED FORTY-FIVE THOUSAND, EIGHT HUNDRED TWENTY-FIVE AND NO/100 U.S. DOLLARS (\$6,345,825.00) (hereinafter the "Purchase Price").

3. **DEPOSIT:**

3.1 INTENTIONALLY OMITTED

4. **OFFER, ACCEPTANCE, CONTRACT:**

4.1 Until accepted by Seller, Buyer's offer to purchase the Premises (hereinafter the "Offer") as evidenced by its execution and delivery of this Agreement shall be a firm offer for a period of sixty (60) days from the date of this Agreement. Seller's acceptance of the Offer is to be evidenced by its execution of this Agreement. Failure of Seller to accept the Buyer's Offer and execute this Agreement within the above-mentioned period shall render the Offer null and void.

4.2 This Agreement, when accepted by Seller, shall constitute a contract and the entire agreement between the parties hereto, and they shall not be bound by any terms, oral or written conditions, statements or representations not contained herein or attached hereto.

4.3 Neither the Buyer's Offer nor, upon its execution by all parties, this Agreement may be changed, altered or modified except by an instrument in writing signed by Buyer and Seller.

4.4 The Buyer's Offer and this Agreement shall be executed in duplicate, each of which may be treated as an original.

5. **CONTINGENCIES:**

5.1 This Agreement is contingent upon the following events, if any:

- (a) Sections 8, 10, 13 and 14 herein, and,
- (b) Seller's receipt and approval of the Environmental Assessment at a minimum in conformance with Seller's Minimum Sampling Requirements, attached hereto as Exhibit B.

- (c) Seller's receipt and approval of Buyer's Soil Management Plan and Capping Plan as outlined in Exhibit B.
- (d) Seller being successful in acquiring authority from the Surface Transportation Board (STB) to abandon railroad operations over the premises;
- (e) Buyer must continue to file a Notice Of Interim Trail Use (NITU) request with the STB until Closing.
- (f) The transaction as described in this instrument is contingent upon an appropriation by Natick Town Meeting, which together with additional funding and/or appropriation(s), total a sufficient sum to fund the entire amount of the Purchase Price. Should Buyer fail to fund the entire amount of the Purchase Price, this Agreement shall be terminated upon written notice from the Buyer to the Seller, shall be considered null and void, and shall trigger no further right, duty, or obligation for, by, or on behalf of either party, except as provided herein.

5.2 The contingencies listed in Section 5.1 above must be satisfied or complied on or before November 1, 2016 (the "Contingency Date"). If the contingencies listed in Section 5.1 are not satisfied or complied with by the Contingency Date, Buyer may, at Buyer's sole option, elect to terminate this Agreement by written notice to Seller given on or before the Contingency Date. If this Agreement is so terminated, Buyer shall furnish Seller with a copy of all materials and information (including but not limited to any engineering reports, studies, maps, site characterizations and/or zoning related materials) developed by Buyer during the term of this Agreement relating to the potential use or the physical condition of the Premises. If written notice to terminate is not given by Buyer to Seller on or before the Contingency Date, the option to terminate and the contingencies other than 5.1 (a), (b), (c), (d) and (e) which must be met, shall be deemed waived, and Buyer and Seller will proceed to Closing in accordance with the remaining terms of this Agreement.

6. DEED:

6.1 As early as practicable after execution of this Agreement by all parties, Seller will prepare and submit to Buyer, for Buyer's comments, a form of deed in conformance with the terms of this Agreement to convey the Premises to Buyer. Buyer shall have a period of thirty (30) calendar days after receipt of said deed to examine same and notify Seller of any comments. If no comments are received within the thirty (30) day period, Buyer shall be deemed to have approved the deed in the form submitted. Seller shall have no obligation to modify the deed to conform to Buyer's comments if the deed otherwise conforms to the terms of this Agreement. If Seller elects not to modify the deed to conform to Buyer's comments Buyer shall have the right to terminate this Agreement upon written notice to Seller. In that event this Agreement shall be void and without recourse to the parties.

6.2 The conveyance shall be by quitclaim deed conveying all of Seller's right, title and interest in the Premises, if any, but shall be expressly subject to: all existing roads, fiber optic facilities, public utilities; all matters of record; any applicable zoning ordinances and subdivision regulations and laws; taxes and assessments, both general and special, which become due and payable after the date of conveyance for a period of time after the date of recording of the deed and which Buyer assumes and agrees to pay all matters that would be revealed by a survey meeting applicable State minimum technical requirements or by an inspection of the Premises; the items or matters identified in Section 10.1 of this Agreement; and all existing occupancies, encroachments, ways and servitudes, howsoever created and which are recorded or unrecorded with the Middlesex South Registry of Deeds or the Middlesex South Registry District of the Land Court, except to the extent that any such occupancy, encroachment, way or servitude arises out of the act of the Seller or any of its affiliates, or any of their officers, employees, agents, or representatives.

See Section 7.2

The provisions of this Section 6.2 shall survive Closing.

6.3 The deed shall contain one or more restrictive covenants, reading substantially as follows, to run with title to the Premises, and to be binding upon Buyer, Buyer's heirs, legal representatives and assigns, or corporate

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successors and assigns, or anyone claiming title to or holding the Premises through Buyer:

Grantee acknowledges that the Premises conveyed hereunder has been historically used for railroad industrial operations and is being conveyed for use only as a recreational trail. Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not use the Premises for any purpose other than a recreational trail and that the Premises will not be used for (a) any residential purpose of any kind or nature (residential use shall be defined broadly to include, without limitation, any use of the Premises by individuals or families for purposes of personal living, dwelling, or overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailers, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind), (b) any public or private school, day care, or any organized long-term or short-term child care of any kind, or (c) any agricultural purpose that results in, or could potentially result in, the human consumption of crops or livestock raised on the property (agricultural purpose shall be defined broadly to include, without limitation, activities such as food crop production, dairy farming, livestock breeding and keeping, and cultivation of grazing land that would ultimately produce, or lead to the production of, a product that could be consumed by a human). By acceptance of this deed, Grantee further covenants that it, its successors, heirs, legal representatives or assigns shall not use the groundwater underneath the Premises for human consumption, irrigation, or other purposes.

FREIGHT RESTRICTION: Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns, shall not use the Premises, or any portion thereof, for railroad freight service, nor to support the offering or performance of railroad freight service, by any carrier other than Grantor, its successors and/or assigns.

Grantee and Grantor agree and acknowledge the covenants and easements contained in this Deed shall be covenants "in gross" and easements "in gross" which shall remain binding on Grantee, its successors, heirs, legal representatives and assigns regardless of whether Grantor continues to own property adjacent to the Premises. Grantee acknowledges Grantor will continue to have a substantial interest in enforcement of the said covenants and easements whether or not Grantor retains title to property adjacent to the Premises.

6.4 Seller shall except and reserve unto itself as Grantor, its successors and assigns, the following easements, rights and interests:

RESERVING unto Grantor, its successors and assigns, an indefinite number of exclusive perpetual utility easements, hereinafter "the Reserved Utility Easements", under the entire width and length of the Premises for future construction, maintenance, operation, use, replacement, relocation, renewal and removal of utilities, which shall include but not be limited to water lines, sewer lines, natural gas lines, electric, telephone, fiber optic communications systems and petroleum products pipelines consisting of cables, lines, pipes or facilities beneath the surface of the Premises and all ancillary equipment or facilities (both underground and surface), and the right to attach same to existing bridges on the Premises, and such surface rights as may be necessary to accomplish the same; TOGETHER with unrestricted access over the Premises to reach the Reserved Utility Easements and with the further right to assign the Reserved Utility Easements, in whole or in part, and to lease, license or to permit third parties to use the Reserved Utility Easements provided that the exercise of such rights does not unreasonably interfere with the safe and efficient use of the Premises for the location and operation of a recreational trail.

6.6 The deed shall contain the following clause:

RESERVING unto Grantor, its successors and assigns, a perpetual exclusive easement, hereinafter the "Occupancy Easement", in, over, under and along those portions of the Premises encumbered by existing occupancies of every type and nature, if recorded with the Middlesex South District Registry of Deeds or the Middlesex South Registry District of the Land Court, together with the right to maintain, operate, use, replace, relocate, renew and remove such occupancies, TOGETHER WITH the further right to assign the Occupancy Easement, and/or the rights reserved pursuant thereto, in whole or in part, and to lease, license or permit third parties to use the Occupancy

Easement and/or the rights reserved pursuant thereto; provided that the exercise of such rights does not materially or unreasonably interfere with the safe and efficient use of the Premises, or any improvements thereon, by Grantee.

FURTHER RESERVING unto Grantor, its successors and assigns, a perpetual exclusive utility easement, hereinafter "the Utility Easement", in, over, under and along the entirety of the Premises for future construction, maintenance, operation, use, replacement, relocation, renewal and removal of utilities including, but not limited to, water, sewer, natural gas, electricity, telephone, internet, fiber optics, communications systems and systems for the transmission of petroleum-based and other liquid and gaseous products, consisting of cables, wires, lines, pipes or other facilities beneath the surface of the Premises and all ancillary equipment and facilities (both underground and surface), and the rights to attach the same to existing bridges or poles on the Premises, and such surface rights as are reasonably necessary to accomplish the same, TOGETHER WITH the further right to assign the Utility Easement, and/or the rights reserved pursuant thereto, in whole or in part, and to lease, license or permit third parties to use the Utility Easement and/or the rights reserved pursuant thereto; PROVIDED that the exercise of such rights does not materially and unreasonably interfere with the safe and efficient use of the Premises, or any improvements thereon, by Grantee.

PROVIDED, that Grantee, its successors and assigns shall not disturb any existing facilities located within the Occupancy Easement or any facilities subsequently placed within the Utility Easement reserved hereunder, nor cause or permit any interference with the enjoyment or use of the rights, interests and privileges created under the Occupancy Easement or the Utility Easement, EXCEPT that Grantee (or any third party claiming through Grantee) may, with the prior written approval of Grantor or its successors or assigns, as the case may be, and the owner of the occupancy in question, which such approval may not be unreasonably withheld, relocate such occupancy within the Premises at the sole risk, cost and expense of Grantee or its successors or assigns, as the case may be.

EXCEPTION: FIBER OPTIC EASEMENT – All right, title and interest in and to fiber occupancies on the Premises were reserved unto Consolidated Rail Corporation in deed dated June 1, 1999, recorded among the Public Records of Middlesex County, Commonwealth of Massachusetts in Deed Book 30898, Page 25.

7. TITLE SEARCH, INSURANCE:

7.1 Buyer has the option of arranging and paying for such examination of title or title insurance on the Premises as Buyer may desire, at Buyer's sole cost.

7.2 Seller shall convey to the Buyer good, record and marketable title to the Premises, relative to the proposed use of the Premises as a recreational trail, which is acceptable to the Buyer. In the event that the Seller is unable to do so, Buyer shall have the right to terminate the Agreement upon written notice to Seller. In that event this Agreement shall be void and without recourse to the parties.

7.3 Irrespective of whether Buyer obtains a title examination or insurance, Buyer shall, if Buyer closes on the Premises, accept the Premises in its AS-IS, WHERE-IS, WITH ALL FAULTS condition. The provisions of this Section shall survive Closing.

8. SURVEY:

8.1 Immediately upon notice of Seller's acceptance of this Agreement, Buyer shall obtain a survey of the Premises conforming to applicable State minimum technical requirements at Buyer's expense.

8.2 Within thirty (30) days of the Execution Date, Buyer shall furnish Seller with a metes and bounds description of the Premises in electronic format, and three (3) prints of a survey plat acceptable to Seller and to the Recorder of Deeds for the County or City in which the Premises is located, certified to Buyer and Seller, for use by Seller in preparation of the deed and other papers. If Seller does not accept Buyer's Offer by executing this

Agreement, Seller shall reimburse Buyer for the cost of the survey, and Buyer shall thereupon assign all rights therein and copies thereof to Seller.

9. CLOSING: Closing hereunder shall be held on December 1, 2016. Seller and Buyer agree that the Closing may occur via delivery of funds and closing documents or at such other place as may be mutually agreeable to Seller and Buyer. The time and date for Closing may be extended only by Seller in writing, time expressly being of the essence in this Agreement.

10. POSSESSION: Buyer shall obtain possession of the Premises at Closing, subject to the limitations, terms and conditions of Section 6 of this Agreement, and such other leases, licenses, easements, occupancies or other limitations which are identified by Section 10.1, or which are discovered by Seller during the term of this Agreement (which may not necessarily be stated in the deed), unless canceled by Seller or otherwise terminated (whether by notice, expiration, nonrenewal or any other reason) prior to Closing.

10.1 Seller believes that the Premises is currently subject to the following leases, licenses, easements, occupancies and/or limitations (which may or may not be of record):

- (i) Leases
 - (a) Lease Agreement dated 05/01/1942 with Natick Public Works Department
- (ii) Licenses
 - (a) Wireline Crossing Agreement dated 08/01/1947 with NStar Electric Company
 - (b) Pipeline Agreement dated 08/01/1962 with Campanelli Investment
 - (c) Fiber Agreement dated 11/28/2000 with BECO COM LLC
 - (d) Wireline Agreement dated 12/31/1936 with Verizon New England, Inc.
 - (e) Wireline Agreement dated 12/31/1937 with NStar Electric Company
 - (f) Wireline Agreement dated 12/31/1938 with NStar Electric Company
 - (g) Pipeline Agreement dated 12/01/1936 with Town of Natick
 - (h) Pipe Agreement dated 04/02/1928 with Town of Natick
 - (i) Pipeline Agreement dated 09/20/1955 with Carling Brewing
 - (j) Wireline Crossing Agreement dated 05/13/1958 with NStar Electric Company
 - (k) Wireline Crossing Agreement dated 06/30/1958 with NStar Electric Company
 - (l) Wireline Crossing Agreement dated 07/21/1961 with NStar Electric Company
 - (m) Wireline Agreement dated 02/07/1962 with NStar Electric Company
 - (n) Wireline Crossing Agreement dated 02/12/1968 with Verizon New England, Inc.
 - (o) Wireline Crossing Agreement dated 07/21/1973 with NStar Electric Company
 - (p) Wireline Crossing Agreement dated 11/05/1973 with NStar Electric Company
 - (q) Sewer Pipeline Agreement dated 11/19/1973 with Town of Natick Department of Public Works
 - (r) Wireline Crossing Agreement dated 05/12/1980 with NStar Electric Company
 - (s) Wireline Crossing Agreement dated 06/23/1993 with Verizon New England, Inc.
 - (t) Gas Pipeline Agreement dated 07/01/1926 with NStar Gas Co
 - (u) Gas Pipeline Agreement dated 04/27/1953 with NStar Gas Co
 - (v) Gas Pipeline Agreement dated 12/13/1994 with NStar Gas Co
 - (w) Wireline Crossing Agreement dated 09/19/1995 with MCIMetro Access Transmission Services LLC
 - (x) Pipeline Agreement dated 03/26/2014 with Daly-Natick, LLC
 - (y) Pipeline Agreement dated 06/25/2014 with MCREf Natick Development LLC
 - (z) Pipeline Agreement dated 04/20/2000 with Town of Natick
- (iii) Other Occupancies or Limitations
 - (a) Sidetrack Agreement dated 07/30/1965 with Chrysler
 - (b) Roadway Overpass Agreement dated 11/01/1976 with Commonwealth of Mass.

- (iv) Easements
 - (a) Pipeline Easement dated 04/20/2000 with Town of Natick
 - (b) Wireline Easement dated 12/31/1936 with Verizon New England, Inc.

During the term of this Agreement, Seller will research its archives for, and shall advise Buyer if Seller discovers, any additional leases, licenses, easements, occupancies and limitations affecting the Premises. Likewise, during the term of this Agreement, should leases or licenses listed in (i) or (ii) above be determined to cover a continuing Seller obligation, said lease or license will be retained by Seller, after notice to Buyer. As to any items set forth in Section 10.1(i) and (ii), above, and any items discovered as a consequence of such research; including without limitation those items contained in any contract report(s) submitted by Seller to Buyer:

- a.) Seller may elect, in its sole discretion, to either cancel or otherwise terminate such items or, pursuant to Section 10.3, to assign or to partially assign, if such item is applicable to an area greater than the Premises, to the Buyer at Closing, and
- b.) the Buyer shall have the right to terminate this Agreement upon written notice to the Seller, and this Agreement shall be void and without recourse to the parties hereto.

Seller shall cancel or terminate, at or prior to Closing the following:

- (a) Lease Agreement dated 05/01/1942 with Natick Public Works Department
- (b) Pipeline Agreement dated 12/01/1936 with Town of Natick
- (c) Pipe Agreement dated 04/02/1928 with Town of Natick
- (d) Sewer Pipeline Agreement dated 11/19/1973 with Town of Natick Department of Public Works
- (e) Pipeline Agreement dated 04/20/2000 with Town of Natick
- (f) Sidetrack Agreement dated 07/30/1965 with Chrysler

10.2 INTENTIONALLY OMITTED

10.3 At Closing, Seller shall assign to Buyer, and Buyer shall assume, Seller's right, title and interest in all items identified by Section 10.1, or which are subsequently discovered by Seller, unless canceled or otherwise terminated, at or prior to Closing. However, if such item is applicable to an area greater than the Premises, the Buyer shall be included as party to a partial assignment of the item(s), which may be executed after Closing.

10.4 If, prior to Closing, all or any portion of the Premises is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact promptly after obtaining knowledge thereof and either Buyer or Seller shall have the right to terminate this Agreement by giving notice to the other not later than twenty-one (21) days after the giving of Seller's notice. If neither Seller nor Buyer elects to terminate this Agreement as aforesaid, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Closing the rights of Seller to the awards, if any, for the taking, and Buyer shall be entitled to receive and keep all awards for the taking of the Premises or such portion thereof.

10.5 If this conveyance involves sale of any buildings or structures on the Premises, Seller shall have no duty to insure Buyer's interest or to amend or alter Seller's existing insurance policy(ies), if any, to reflect Buyer's interest. Upon recording by the Buyer of the Deed to the Premises from the Seller, the risk of damage to or destruction of the buildings or structures shall be borne by Buyer until Closing or other termination of this Agreement. This provision shall survive Closing or termination.

11. ANNUAL TAXES; RENTS; LIENS; CHARGES:

11.1 All annual or periodic taxes or assessments on the Premises, both general and special, shall be

prorated as of the Closing. Any proration shall be based on the taxes assessed against the Seller in the year of the delivery of possession to or entry by Buyer and shall allow the maximum discount permitted by law. If current taxes assessed against the Seller are not available at the time of Closing, Buyer and Seller agree to prorate taxes based upon the latest tax information available to the parties and equitably adjust the proration when taxes for the year of entry or possession become available.

11.2 Any certified governmental assessments or liens for improvements on the Premises which are due and payable at the time of Closing shall be paid in full by Seller, and any pending liens or assessments for improvements not yet due and payable at Closing shall be thereafter paid in full by Buyer.

11.3 Any rents and license fees (individually in excess of \$1,000.00 prorated amount on annual rental) accruing to the Premises shall be prorated at Closing, with rents and fees prior to the date of Closing retained by Seller.

12. TAXES ON TRANSFER; CLOSING COSTS:

12.1 Seller shall pay all transfer taxes, however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Agreement, the conveyance of the Premises or necessary to record the deed.

12.2 Buyer shall be solely responsible for and shall pay any reassessments or taxes generated by reclassification of the Premises resulting from conveyance of the Premises, provided that such reassessment or tax relates to a period of time after recording by the Buyer of the Deed to the Premises from the Seller.

12.3 If any state or local governmental authority requires, presently or in the future, the payment of any sales, use or similar tax upon the sale, acquisition, use or disposition of any portion of the Premises, (whether under statute, regulation or rule), Seller assumes all responsibility for and shall pay the same, directly to said authority, and shall hold Buyer harmless from such tax(es) and any interest or penalty thereon, so long as same tax is attributable to the Premises prior to the Closing. Buyer shall cooperate (at no expense to Buyer) with Seller in the prosecution of any claim for refund, rebate or abatement of said tax(es).

12.4 Seller shall pay the cost of recording any release of Seller's mortgage(s) or lien(s). In the event Buyer finances any portion of the Purchase Price (whether through third parties or from Seller), Buyer shall pay all costs thereof, including recordation, intangible taxes, etc.

12.5 Buyer represents and warrants that neither it nor its officers, directors or controlling owners are acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; that neither it nor its officers, directors or controlling owners are engaged in this transaction, directly or indirectly, on behalf of, or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation; and that neither it nor its officers, directors or controlling owners are in violation of Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto."

12.6 The Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, requires that every purchaser of U.S. real property must, unless an exemption applies, deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price. The primary exemptions which might be applicable are: (a) Seller provides Buyer with an affidavit under penalty or perjury, that Seller is not a "foreign person", as defined in FIRPTA, or (b) Seller provides Buyer with a "qualifying statement", as defined in FIRPTA, issued by the Internal Revenue Service.

Seller and Buyer agree to execute and deliver as appropriate any instrument, affidavit and statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder. Buyer and Seller shall each indemnify and hold harmless the other, to the extent allowed under applicable laws, with respect to any financial loss caused by the indemnifying party's failure to fulfill its obligations under this Paragraph.

13. BUYER'S RIGHT OF ENTRY, ENVIRONMENTAL AND OTHER INSPECTIONS:

13.1 Subject to and upon compliance with the terms of this Section 13, during the term of this Agreement, Buyer and/or its agents may be permitted to access the Premises, subject to the rights of any tenant, licensee, utility or other third party occupying any portion of the Premises, in order to make surveys, make measurements, conduct environmental or engineering tests (including drilling and coring for preconstruction soil analysis), and to make such physical inspections and analyses thereof as Buyer shall deem necessary; PROVIDED, however, that Buyer, and/or its agents, hereby assumes all risks of such entry and agrees to defend, indemnify and save Seller harmless, to the extent allowable under applicable laws, from and against any claim, cost or expense resulting from any damage to or destruction of any property (including the Premises or any improvements thereon) and any injury to or death of any person(s), arising from the acts or omissions of Buyer and/or its agents in the exercise of this right-of-entry. Buyer agrees to do no act which would encumber title to the Premises in exercising this right-of-entry. Any drilling and coring holes shall be filled upon completion of testing. All investigation-derived waste, including without limitation drilling waste, ground water and cuttings, shall be promptly handled, characterized and disposed of properly and in accordance with all local, State and Federal requirements, all at Buyer's sole cost.

13.2 Buyer shall give Seller ten (10) days prior written notice of any entry onto the Premises under this Section 13 and provide Seller with a schedule and scope of work for each of the activities Buyer proposes to undertake during such entry. Upon receipt of the foregoing, Seller reserves the right, in Seller's sole discretion, to terminate this Agreement upon written notice to Buyer or if Seller permits the testing, Seller reserves the right to monitor and approve all procedures in the conduct of any environmental assessments, tests, studies, measurements or analyses performed by or for Buyer in, on, to or with respect to the Premises. Buyer agrees to test the Premises in conformation with the Minimum Sampling Requirements set forth in Exhibit B, attached hereto and made a part hereof. Buyer shall, to the extent permitted by law, provide in any contract or bids for site assessment or environmental inspections of the Premises a "confidentiality, to the extent permitted by law, clause", limiting disclosure of the results and any report only to Buyer (or to Seller, upon request), and an "insurance clause," requiring the company selected by the Buyer to perform the work to produce a certificate of insurance naming the Seller and Buyer as additional insured with the following coverage and limits:

- General Liability (CGL) insurance with coverage of not less than ONE MILLION DOLLARS (\$1,000,000) and TWO MILLION DOLLARS (\$2,000,000) in the aggregate per occurrence for bodily injury and property damage.
- In addition to the above-described CGL insurance, if Buyer will undertake, or cause to be undertaken, any construction or demolition activity within fifty (50) feet of any Seller track or any Seller bridge, trestle or tunnel, then Buyer shall also purchase, or cause to be purchased, a policy of Railroad Protective Liability (RPL) insurance, naming Seller as the insured, with coverage of not less than FIVE MILLION DOLLARS (\$5,000,000) Combined Single Limit per occurrence, with an aggregate of TEN MILLION DOLLARS (\$10,000,000). Such policy must be written on ISO/RIMA form of Railroad Protective Insurance – Insurance Services Offices Form No. CG 00 35, including Pollution Exclusion Amendment CG 28 31. At Seller's option, in lieu of purchasing RPL insurance (but not CGL insurance), Buyer may pay Seller a Construction Risk Fee, currently THREE THOUSAND DOLLARS (\$3,000), and thereby be relieved of any obligation to purchase said RPL insurance.

- Worker's Compensation Insurance as required by the state in which the Work is to be performed. This policy shall include Employers' Liability Insurance with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Unless prohibited by law, such insurance shall waive subrogation against Seller.
- Automobile Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering all owned, non-owned and hired vehicles.

Buyer shall also keep Seller fully apprised of the progress of, and procedures followed with respect to, all such environmental work; and fully cooperate with all reasonable requests of Seller in undertaking and carrying out such work. If requested by Seller, Buyer shall prepare split samples (which may then be separately tested at Seller's sole option and cost) for delivery to Seller and shall deliver to Seller, at no cost to Seller, within five (5) days after receipt, copies of all results, assessments, reports and studies, whether of an environmental nature or otherwise, resulting from any tests or inspections conducted by Buyer pursuant to this Section 13 or otherwise in accordance with this Agreement. At or before Closing, Buyer shall provide Seller a reliance letter from Buyer's consultant, in form and substance reasonably acceptable to Seller, granting Seller the right to rely on the environmental data and reports generated as part of buyer's environmental due diligence, including without limitation, any Phase I and Phase II Environmental Site Assessment Reports. The reliance letter shall not impose any additional limitations or restrictions on Seller's reliance on said data and reports except as may be specified within the report documents themselves.

13.3 Buyer acknowledges that Seller makes no guarantee, representation or warranty regarding the physical or environmental condition of the Premises, and Seller expressly disclaims any and all obligation and liability to Buyer regarding any defects which may exist with respect to the condition of the Premises.

13.4 If environmental contamination of the Premises is revealed by the studies and tests conducted by Buyer pursuant to this Section 13, in an amount and/or concentration beyond the minimum acceptable levels established by current applicable governmental authorities, or, if Buyer is unwilling to accept the environmental condition of the Premises as a result of such tests or assessments, Seller's and Buyer's sole and exclusive remedy shall be to terminate this Agreement. Under no circumstances shall Seller be required to correct, remedy or cure any condition or environmental contamination of the Premises, which Buyer's tests and studies may reveal, as a condition to Closing or other performance hereunder.

13.5 Provided that neither Seller nor Buyer elects to terminate this Agreement as provided herein, or fails to terminate after receipt of test results, Buyer shall take the Premises "as is" at Closing; assumes all risks associated with the environmental condition of the Premises, except to the extent caused by the act or omission of Seller or any of its officers, employees, boards, commissions, committees, agents or representatives; and releases all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition. To the extent permitted by law, Buyer expressly assumes all obligations, liability and responsibility for physical and/or environmental conditions of the Premises, and agrees to defend, protect, indemnify and hold Seller harmless from any and all loss, damages, suits, penalties, costs, liability, and/or expenses (including, but not limited to reasonable investigative and/or legal expenses, remediation and/or removal costs), arising out of any claim(s), present, past or future, for (a) loss or damage to any property, including the Premises (b) injuries to or death of any person(s), (c) contamination of or adverse effects upon the environment (air, ground or water), or (d) any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from presence or existence of any hazardous material, hazardous substance, hazardous waste, pollutant or contaminant (including petroleum products) in, on or under the Premises or any migration, escape or leakage of such materials, substances, wastes, pollutants or contaminants therefrom caused by the act or omission of Buyer or any of its officers, employees, boards, commissions, committees, agents or representatives. Buyer acknowledges that the provisions of this Section are deemed to be additional consideration to Seller and the condition of the Premises has been considered as part of

the Purchase Price.

13.6 INTENTIONALLY OMITTED

13.7 INTENTIONALLY OMITTED

13.8 The Buyer's Environmental Assessment, Soil Management Plan and Capping Plan shall be completed on or prior to the Contingency Date.

13.9 The provisions of this Article 13 shall survive Closing or termination of this Agreement.

14. SUBDIVISION APPROVAL; ZONING:

14.1 Any subdivision approval needed to complete the transaction herein contemplated shall be obtained by Buyer at Buyer's sole risk, cost, and expense. Seller shall cooperate with Buyer in obtaining said approval, to the extent necessary or required.

14.2 Seller makes no guarantee or warranty that any subdivision approval will be granted and assumes no obligation or liability for any costs or expenses if same is not approved.

14.3 Costs and expenses shall include all fees, costs and expenses, including reasonable attorneys' fees, of obtaining subdivision plats, or filing same with the applicable governmental body(ies), or recordation thereof, including attorneys' fees, and all other related and/or associated items.

14.4 Seller makes no guarantee, warranty or representation as to the permissibility of any use(s) contemplated by Buyer under existing zoning of the Premises or as to any ability to secure any rezoning for Buyer's use.

15. BROKER'S FEES: The Buyer and the Seller each represent and warrant to the other that neither has introduced into this transaction any person, firm or corporation who is entitled to compensation for services as a broker, agent or finder. Seller shall be under no obligation to pay or be responsible for any broker's or finder's fees, commissions or charges in connection with handling this transaction, or Closing, unless such broker, agent or finder has provided services to Seller.

16. ASSIGNMENT, LIMITS, SURVIVAL:

16.1 (a) This Agreement may not be assigned by Buyer without the prior written consent of Seller, which shall not be unreasonably withheld, provided that if Buyer wishes to cause the Premises to be conveyed directly from Seller to a third party through an exchange of like-kind real estate on escrow terms qualifying under Section 1031 of the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder, Seller shall, at Buyer's expense, cooperate in accomplishing Buyer's objective.

(b) Buyer hereby agrees that closing on the disposition of the transfer of the Premises pursuant to this Agreement may be structured by Seller to qualify as part of an exchange of like-kind property under Section 1031 of the Internal Revenue Code of 1986, as amended, and Treasury Regulations promulgated thereunder (a "like-kind exchange"). Accordingly, Seller shall have the right to assign its rights and interests hereunder to a qualified intermediary or qualified escrow agent, an exchange accommodation titleholder, or such other person as may be necessary to qualify the transaction as a like-kind exchange. Buyer agrees to cooperate with Seller in executing such documents as may be reasonably necessary to implement a like-kind exchange, including, but not limited to, making the proceeds check payable as directed by Seller.

16.2 As limited above, this Agreement shall be binding upon the parties, their successors and permitted assigns, or upon their heirs, legal representatives and permitted assigns, as the case may be.

16.3 Any provision calling for obligations continuing after Closing or termination of this Agreement shall survive delivery of the deed and not be deemed merged into or replaced by any deed, whether or not the deed so states.

17. DEFAULT:

17.1 In the event of a default by Buyer under this Agreement, Seller's sole and exclusive remedy shall be to terminate this Agreement by delivery of written notice to Buyer. Seller irrevocably waives any and all right to pursue specific performance of this Agreement or any other legal or equitable remedy otherwise available to Seller for the Buyer's default under this Agreement.

17.2 In the event of a default by Seller under this Agreement, Buyer's sole and exclusive remedy shall be to terminate this Agreement by delivery of written notice to Seller and to receive reimbursement for any reasonable third-party expenses incurred by Buyer pursuant to this Agreement, not to exceed \$25,000, as agreed-upon liquidated damages in full settlement of any and all claims arising under or in any way related to the Seller's default under this Agreement. Buyer irrevocably waives any and all right to pursue specific performance of this Agreement or any other legal or equitable remedy otherwise available to Buyer for the Seller's default under this Agreement.

17.3 Upon the termination of this Agreement pursuant to this Article 17, Buyer and Seller shall be relieved of all obligations under Agreement, including the duty to close, other than (a) any liability for breach of any of the provisions of Section 13 shall remain as obligations of Buyer and (b) Buyer shall furnish Seller with a copy of all materials and information (including but not limited to any engineering reports, studies, maps, site characterizations and/or zoning related materials) developed by Buyer during the term of this Agreement relating to the potential use or the physical condition of the Premises.

17.4 "Default" shall include not only the failure to make prompt payment of any sums when due under this Agreement, but also the failure to fully and timely perform any other acts required of Seller or Buyer under this Agreement.

18. NOTICES:

18.1 Notice under this Agreement shall be in writing and sent by Registered or Certified Mail, Return Receipt Requested, or by courier, express or overnight delivery, and by confirmed e-mail.

18.2 The date such notice shall be deemed to have been given shall be the business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight ("next day delivery") service, or the third business day after the date of the postmark on the envelope if mailed, whichever occurs first.

18.3 Notices to Seller shall be sent to:

CSX Transportation, Inc.
C/o CSX Real Property, Inc. - J915
6737 Southpoint Drive South
Jacksonville, FL 32216-6177

Attn: Jennifer Bryan (Transaction Specialist)
E-mail: Jennifer_Bryan@csx.com
Phone: 904-279-3822

Notices to Buyer shall be sent to:

Martha L. White, Town Administrator
Natick Town Hall
13 East Central Street
Natick, MA 01760
Email: mwhite@natickma.org
Phone: 508-647-6410

18.4 Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section.

19. RULES OF CONSTRUCTION:

19.1 In this Agreement, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

19.2 All references herein to particular articles, sections, subsections or clauses are references to articles, sections, subsections or clauses of this Agreement.

19.3 The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

19.4 Each party hereto and its counsel have had the opportunity to review and revise (or request revisions of) this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto or amendments hereof.

19.5 This Agreement shall be governed and construed in accordance with the laws of the state in which the Premises is located, without regard to conflict of law rule.

20. TIME OF ESSENCE: Time shall be considered of the essence both to the Buyer and the Seller for all activities undertaken or required pursuant to this Agreement.

21. TRAIL USE:

If the STB imposes Notice of Intended Trail Use, ("NITU"), conditions on the Premises, the following shall constitute the Interim Trail Use Agreement:

21.1 By Decision and Notice of Interim Trail Use or Abandonment served July 7, 2006, in STB Docket No. AB55 (Sub.-No.670X), the Surface Transportation Board ("STB") imposed a 180-day period for Buyer to negotiate an interim trail use/rail banking agreement with Seller for the Premises.

21.2 Buyer agrees that upon acceptance of a quitclaim deed conveying the Premises to Buyer pursuant to the STB's aforementioned order, Buyer or its designee or assignee shall assume full responsibility for management of the Premises; Buyer shall be responsible for any and all taxes that may be levied or assessed against the Premises after Closing which relate to a period of time after recording by Buyer of the Deed to the Premises from Seller; and

Buyer shall assume full responsibility for and will indemnify Seller against any potential legal liability arising out of transfer or use of the Premises pursuant to this Agreement, to the extent allowable under applicable law. The provisions of this paragraph shall survive the Closing or termination of this Agreement.

21.3 Buyer acknowledges that the Premises remains subject to the jurisdiction of the STB for purposes of reactivating rail service. As an inducement to Buyer to enter into this Agreement, and in the event action is taken to reactivate rail service on the Premises, Seller agrees to compensate Buyer, or assist Buyer as follows:

A.) In the event the STB, or any other entity of the United States Government compels Seller, its successors or assigns, to reactivate rail service on the Premises, or in the event Seller, its successors or assigns, voluntarily takes steps to reactivate rail service on the Premises by seeking to vacate the Notice of Interim Trail Use (the "NITU"), and if the STB approves the vacation of the NITU and reactivation of rail service requiring conveyance of the Premises by the Interim Trail Manager to the Seller, then, in such event, Seller, its successors or assigns, shall pay to the Interim Trail Manager at the time of reactivation a sum equivalent to the Purchase Price as adjusted by the same percentage of increase reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor" ("CPI"). The amount to be paid by Seller to the Interim Trail Manager shall be calculated in accordance with the following:

$(\text{Current Price Index}^*/\text{Base Price Index}^{**}) \times \text{Purchase Price} = \text{Amount paid to Interim Trail Manager}$

* Effective average annual CPI for the most recent year ending prior to reactivation.

** Effective average annual CPI for the year of Closing.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the adjustment shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Seller and the Interim Trail Manager.

In the event that rail service is reactivated and reimbursement is required by Seller as set out herein, Buyer shall re-convey the Premises together with all improvements located thereon to Seller

In this context, the term "Interim Trail Manager" shall mean the Town of Natick, Massachusetts.

B.) In the event a party other than Seller, its successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB in consideration of its decision to reactivate requires a letter of concurrence to be provided by Seller, its successors or assigns, supporting the vacation of the NITU and reactivation of rail service by such third party, then Seller, its successors or assigns, covenants and agrees that it shall withhold such letter of concurrence until it has received a letter from the Interim Trail Manager stating the Interim Trail Manager's support for reactivation of rail service and vacation of the NITU, and that the Interim Trail Manager has reached a satisfactory agreement with such third party petitioning for reactivation of rail service for the depreciated value of trail related improvements and compensation for transfer and conveyance of the Premises, provided that such compensation shall not be greater than the fair market value of the Premises at that time.

21.4 This Agreement shall be deemed to be the interim trail use agreement between Buyer and Seller for purposes of 16 U.S.C. 1247(d) and all STB orders relating to same pertaining to the Premises.

21.5 The provisions of this paragraph shall survive Closing, termination of this Agreement and/or acceptance of the deed by Buyer.

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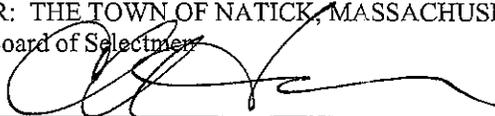
Trail PSA-Page 14
Revised June 2, 2015
SITE ID: MA-017-0999502
PIN: 25017 0013
M. Coffing / 07-23-2015

SIGNATURE PAGE TO FOLLOW

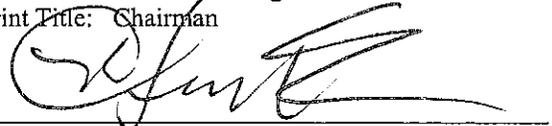
IN WITNESS WHEREOF, the Buyer has caused this Agreement to be signed the 21st day of December, 2015, in duplicate, each of which shall be considered an original.

WITNESS(ES):

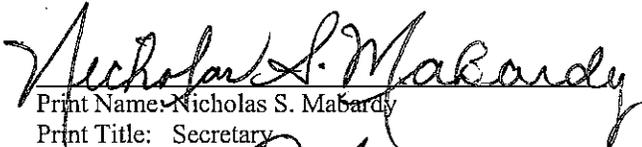
BUYER: THE TOWN OF NATICK, MASSACHUSETTS
by its Board of Selectmen



Print Name: Charles M. Hughes
Print Title: Chairman



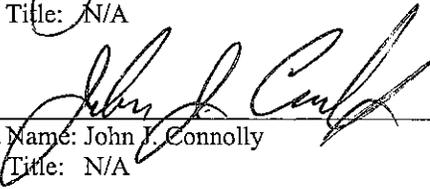
Print Name: Richard P. Jennett, Jr.
Print Title: Vice Chairman



Print Name: Nicholas S. Mabardy
Print Title: Secretary



Print Name: Joshua Ostroff
Print Title: N/A

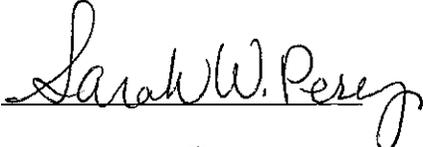


Print Name: John J. Connolly
Print Title: N/A

NOTICE OF SELLER'S ACCEPTANCE

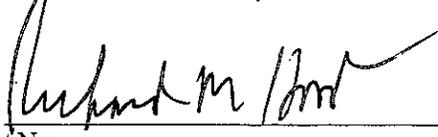
Buyer's Offer to purchase the Premises is accepted by Seller this 16th day of February, 2016.

WITNESS(ES):





CSX TRANSPORTATION, INC.

By: 

Print Name: _____
Print Title: **Richard M. Hood**
President - CSX Real Property, Inc.
Signing on behalf of CSX Transportation, Inc.

Exhibit A

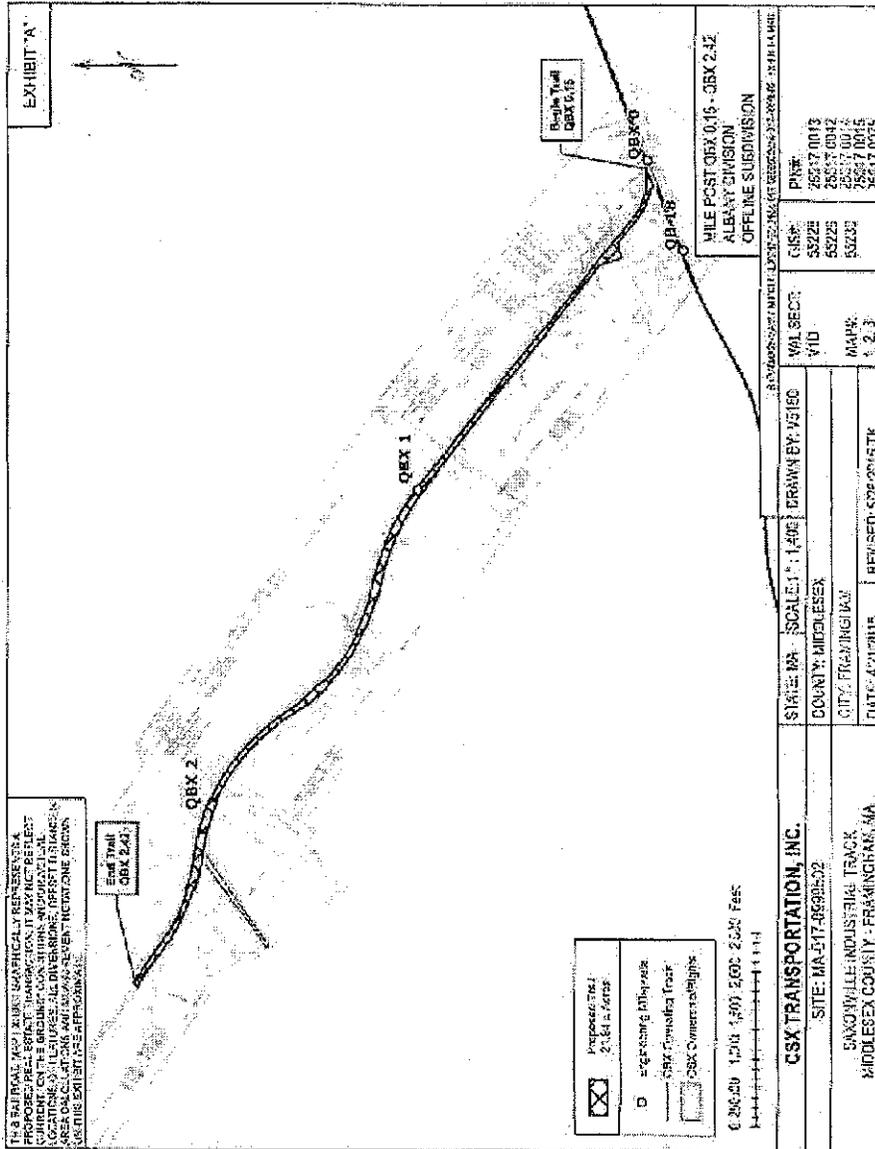


Exhibit B
Minimum Sampling, Soil Management, and Capping Requirements
For Rails-to-Trails Conversion of Rail Corridors

Buyer Agrees to:

I. Sampling

Surface soils should be sampled as follows (please see attachments for typical sampling layout schematics):

- a. Adjacent to any existing or former buildings, bridges, signals, etc.
- b. At former switch or rail-to-rail crossings, collect a minimum of 3 composite samples. One composite sample should be obtained at the switch or crossing location, with additional composite samples obtained at 50-foot intervals in either direction along the corridor as illustrated in Figure 1. Each composite sample should consist of 5 specimens (i.e., each composite sample will consist of 5 discrete samples that are mixed together and analyzed as a single sample).

c. Along the remaining rail corridor:

- For corridor less than 0.5-mile long, collect a minimum of 10 composite samples.
- For corridor 0.5 – 0.75 miles long, collect 15 composite samples.
- For corridor 0.75 miles to 1 mile long, collect 20 composite samples. Space the sampling points evenly down corridor, i.e., 20 samples in one mile is one sample about every 250 feet.
- For corridors greater than 1 mile in length, the number of evenly spaced samples to be collected should be calculated as follows:

$$\text{Number of Composite Samples} = 20 + 5x$$

Where x = total corridor length in excess of 1 mile

As an example, given a 4-mile length of corridor, the number of samples to be collected would equal $20+5*3$ or 35 composite samples, which would be spaced approximately every 600 feet.

Each composite sample collected along the corridor should consist of 5 specimens. An illustration of the composite sample configuration for a rail corridor is provided in Figure 2.

- d. Samples should be collected from the upper 6 inches of soil taking into consideration State standards concerning direct exposure.
- e. Samples should be analyzed for arsenic (SW 846 Method 6010B), lead (SW 846 Method 6010B) and PAH (SW 846 Method 8270C SIM). If the corridor was utilized for electric rail, the samples should also be analyzed for PCB's using SW 846 Method 8082, Method 608 or appropriate state test method.

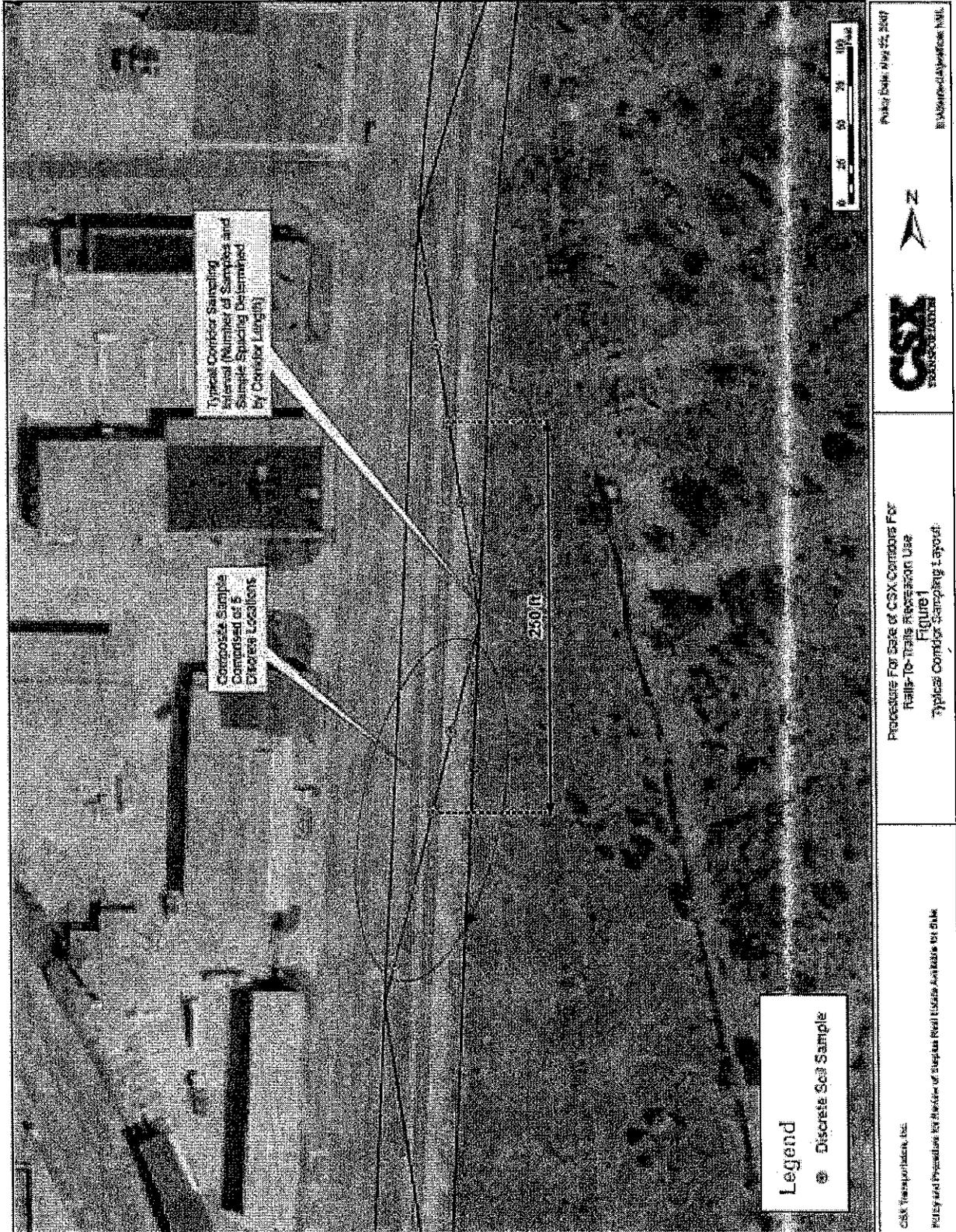
II. Soil Management Plan

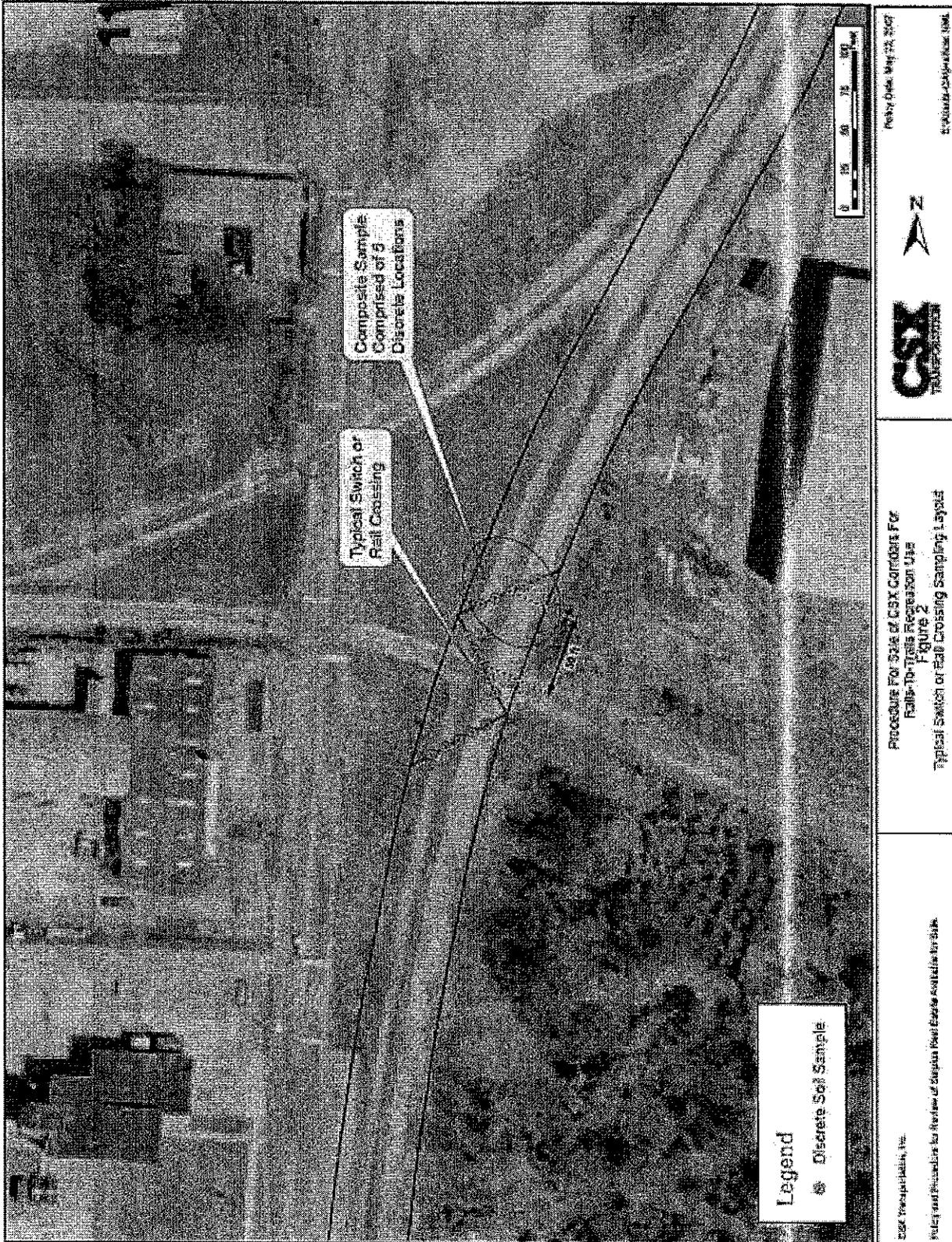
The purchase sale agreement shall require buyer to provide a written soil management plan defining procedures for monitoring the corridor to ensure potential exposure pathways are controlled to reduce risk of exposure to the public to acceptable levels. This plan shall include at a minimum:

- A site plan clearly showing “capped” vs. “un-capped” areas of the corridor
- A detailed description of the cap thickness and method of construction (i.e. soil, concrete, asphalt, etc.);
- A detailed description of methods and procedures to be utilized to prevent users from accessing uncapped areas of the corridor and potentially contacting site soils. This section should include a discussion of signage or other methods to be utilized to communicate to the public the past industrial use of the corridor and the potential for impacted soils to be present;
- Defined procedures for the testing and management of soil that is excavated as part of a construction project on the property, such as culvert or underground utility installation;
- A discussion of inspection and reporting procedures to document (at least annually) the condition of the cap and to reaffirm that un-capped areas of the site are not being accessed or utilized by the public. The annual inspection report should identify any deficiencies in the cap and document any changes (including updated site plans) or repairs made to the cap during the inspection period, and any other corrective actions warranted to protect the public from exposure to site soils.

III. Capping

The rail bed, defined as extending from opposite toes-of-slope of the ballast field, if present, or a minimum of 7 feet on either side of the centerline of the former track, shall be graded and capped with pavement or other suitable material to prevent contact with the surface soil. This cap should have a minimum thickness of one to two feet. Actual cap design should be developed on a project-specific basis taking into account specific requirements of State and Local environmental regulation.





First Amendment to Purchase and Sale Agreement
Between
CSX Transportation, Inc. as Seller and The Town of Natick, Massachusetts as Buyer

The Purchase and Sale Agreement between CSX Transportation, Inc. as Seller and the Town of Natick, Massachusetts by its Board of Selectmen as Buyer, signed on behalf of the Seller on February , 2016, and signed on behalf of the Buyer on December 21, 2015, is hereby amended as follows.

1. Paragraph 2.1 shall be deleted in its entirety and replaced with the following text:
 - 2.1 Seller desires to assist in improving the general welfare of the citizens living in Natick, Massachusetts. Therefore, the purchase price of the Premises is SIX MILLION, THREE HUNDRED FORTY-FIVE THOUSAND, EIGHT HUNDRED TWENTY-FIVE AND NO/100 U.S. DOLLARS (\$6,345,825.00), hereinafter the "Purchase Price"; Seller intending to make a charitable donation to Buyer of the fair market value of the Premises in excess of the Purchase Price.

2. The first sentence of Section 13.5 shall be deleted and replaced with the following text:

Provided that neither Seller nor Buyer elects to terminate this Agreement as provided herein, or fails to terminate after receipt of test results, Buyer shall take the Premises "as is" at closing; assuming all risks associated with the environmental condition of the Premises, regardless of the cause or date of origin of such condition, and releasing all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition.

As amended, Section 13.5 shall read:

13.5 Provided that neither Seller nor Buyer elects to terminate this Agreement as provided herein, or fails to terminate after receipt of test results, Buyer shall take the Premises "as is" at Closing; assuming all risks associated with the environmental condition of the Premises, regardless of the cause or date of origin of such condition; and releasing all rights or claims against Seller relating to such condition or for any costs of remediation or cure of any environmental condition. To the extent permitted by law, Buyer expressly assumes all obligations, liability and responsibility for physical and/or environmental conditions of the Premises, and agrees to defend, protect, indemnify and hold Seller harmless from any and all loss, damages, suits, penalties, costs, liability, and/or expenses (including, but not limited to reasonable investigative and/or legal expenses, remediation and/or removal costs), arising out of any claim(s), present, past or future, for (a) loss or damage to any

First Amendment to Purchase and Sale Agreement
Between
CSX Transportation, Inc. as Seller and The Town of Natick, Massachusetts as Buyer

property, including the Premises (b) injuries to or death of any person(s), (c) contamination of or adverse effects upon the environment (air, ground or water), or (d) any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from presence or existence of any hazardous material, hazardous substance, hazardous waste, pollutant or contaminant (including petroleum products) in, on or under the Premises or any migration, escape or leakage of such materials, substances, wastes, pollutants or contaminants therefrom caused by the act or omission of Buyer or any of its officers, employees, boards, commissions, committees, agents or representatives. Buyer acknowledges that the provisions of this Section are deemed to be additional consideration to Seller and the condition of the Premises has been considered as part of the Purchase Price.

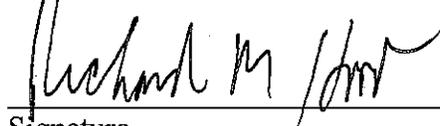
3. The following text shall be inserted as new Paragraph 22:
 - 22.1 Seller believes that the Purchase Price is less than the fair market value of the Premises, and Seller, being interested in assisting in the general welfare of the citizens living in Natick, Massachusetts, desires to make a charitable donation to Buyer of the difference between the Purchase Price and the fair market value. Buyer will provide Seller with any documentation required by the United States Internal Revenue Service (IRS) to substantiate the donation to Buyer and the tax exempt status of Buyer, including Buyer's execution of IRS Form 8283 for land and the Letter of Acknowledgment, attached hereto as Exhibit "C", at Closing or thereafter as needed.
 - 22.2 Provisions of this Section shall survive Closing, and/or delivery of the deed, whether or not the deed so states, there being neither express nor implied merger hereof into said deed.

First Amendment to Purchase and Sale Agreement
Between
CSX Transportation, Inc. as Seller and The Town of Natick, Massachusetts as Buyer

Except as modified herein the provisions of said Purchase and Sale Agreement shall remain in full force and effect.

SELLER
CSX TRANSPORTATION, INC.

by:



Signature

Richard M. Hood
President - CSX Real Property, Inc.
Signing on behalf of CSX Transportation, Inc.

Printed Name

Printed Title

February 16, 2016
Date

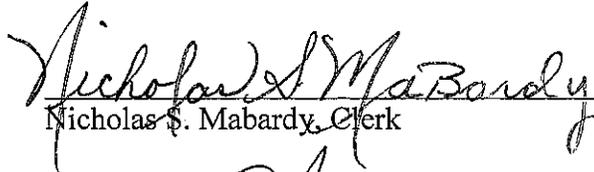
BUYER:
THE TOWN OF NATICK, MASSACHUSETTS
by its Board of Selectmen



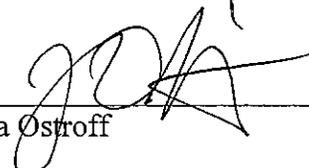
Charles M. Hughes Chairman



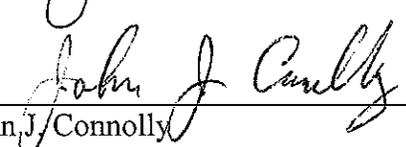
Richard P. Jennett, Jr., Vice Chairman



Nicholas S. Mabardy, Clerk



Joshua Ostroff



John J. Connolly

2/1/16
Date



Town of Natick
Special Town Meeting #2
Board of Selectmen Recommendations

<u>Art No</u>	<u>Agenda</u>	<u>Action</u>
1	10/17/2016	Favorable Action 5-0-0
2	10/24/2016	Favorable Action 4-1-0
3	10/24/2016	Favorable Action 3-2-0
4	10/24/2016	Referral to Planning Board 5-0-0
5	10/24/2016	Referral to Planning Board 5-0-0
6	10/17/2016	Favorable Action 5-0-0
7	Postponed to 11/2/16	
8	Postponed to 11/2/16	
9	Postponed to 11/2/16	
10	Postponed to 11/2/16	
11	Postponed to 11/2/16	
12	10/17/2016	Favorable Action 5-0-0



**TOWN OF NATICK
PLANNING BOARD
13 EAST CENTRAL STREET
NATICK, MASSACHUSETTS
01760**

**PLANNING BOARD REPORT
SPECIAL TOWN MEETING II**

October 24, 2016

In accordance with Article 40, Section 6 of the By-Laws of the Town of Natick, the Planning Board provides herein its report on warrant article recommendations per Section 3-11(b) of the Charter.

The Planning Board held public hearings per M.G.L. c.40A s. 5 for Warrant Articles 4, 5, 7, 8, 9, 10, and 11 at its meeting of October 19, 2016. The Board took up Warrant Articles 2 and 3 as posted agenda items at its public meeting of October 19, 2016.

**Articles 2 & 3 Appropriate Funds for the Design and Development of the
Cochituate Rail Trail / Acquisition of the CSX Saxonville Branch**

At its meeting October 19, 2016, there was not a final form of motion for the Planning Board to consider. The Board notes, for Town Meeting's information, the following:

-The parcels of land described in Article 3 may be eligible for consideration by the Planning Board as Public Benefit Amenities (subject to the conditions of Section 328.2) to satisfy the requirements of "Floor Area Ratio" (FAR) for projects which exceed the permissible densities on their parcels.

-When the Planning Board accepts a FAR Public Benefit Amenity in the form of funds-in-lieu-of-land, those monies are premised in the Bylaw on a valuation of land within a range of density from .32 to .40 (as a ratio of constructed floor area to land area). That presumed range of land valuation per acquirable acre (receiving land) is \$278,784 to \$348,480. The price for the acquisition cost of Article 3 parcels (land, title, survey, appraisal, etc.), based on reports, is \$295,875.64 per acre.

FLOOR AREA RATIO (FAR) valuation range of PUBLIC BENEFIT AMENITY receiving land and presumptive valuation of sending parcel.									
One incremental Sq. Ft. of construction at a FAR of	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Land area (Sq.Ft.) required per incremental construction Sq. Ft.	0.32	0.33	0.34	0.35	0.36	0.37	0.38	0.39	0.4
ZBL \$20.00 / incremental Sq. Ft. of construction	3.1250	3.0303	2.9412	2.8571	2.7778	2.7027	2.6316	2.5641	2.5000
\$ / Sq. Ft. for Public Benefit Amenity	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00	\$20.00
Square feet per Acre	\$6.40	\$6.60	\$6.80	\$7.00	\$7.20	\$7.40	\$7.60	\$7.80	\$8.00
Imputed \$/acre for Public Benefit Amenity receiving land	43,560	43,560	43,560	43,560	43,560	43,560	43,560	43,560	43,560
	\$278,784	\$287,496	\$296,208	\$304,920	\$313,632	\$322,344	\$331,056	\$339,768	\$348,480

Article 4 Amend the Natick Zoning Bylaws to Create a Transitional Overlay Option Plan (TOOP)

At its meeting of October 19, 2016, the Planning Board voted to recommend **referral to the Planning Board** on the subject matter of Article 4. Vote 5-0-0.

-At the time of the Planning Board hearing there was not a motion within the scope of Article 4 for consideration. The complexity and implications of the subject matter requires substantial review and study.

Article 5 Include Certain Parcels of Land Located on the Southerly Side of East Central Street, the Easterly Side of Lincoln Street, the Easterly and Westerly Side of Wilson Street and the Westerly Side of Grant Street in the Transitional Overlay Option Plan (TOOP).

At its meeting of October 19, 2016, the Planning Board voted to recommend **referral to the Planning Board** on the subject matter of Article 4. Vote 5-0-0.

- Article 5 sought to place specific lands into an overlay district as contemplated by Article 4.

Article 7 Amend Zoning Bylaws: SPGA Designation- Industrial I & II

At its meeting of October 19, 2016, the Planning Board voted to recommend **favorable action** on Article 7. Vote 4-1-0 [Aye –Evans, Glater, Munnich, Nottonson; Nay – Myer]

-The purpose of Article 7 is to consolidate the functions of Special Permits and Site Plans with the Planning Board on industrial lots and to end the current practice of these functions being split with the Zoning Board of Appeals by criteria of use, location, and size. Whereas previously there was a clear delineation of responsibility by SPGA, the addition of uses and overlay districts requiring the Planning Board to act as SPGA has removed that distinction. This has resulted in a scattering of oversight, even of adjacent properties, and a challenge for attributing cases for applicants and staff.

Article 8 Amend Zoning Bylaws: “Motor Vehicle Storage or Detailing”

At its meeting of October 19, 2016, the Planning Board voted to recommend **referral to the Planning Board** on the subject matter of Article 8. Vote 5-0-0.

-Article 8 would create a new use for the storage, transit, modification, or preparation of motor vehicles for sale or re-sale and allow it by special permit in the Industrial I zones. Such a change would have implications on the implied purposes of both job creation and tax revenue potential of industrial land.

Special note with regard to Articles 9, 10, and 11: The Planning Board recommends that Article 11 be taken-up before Article 9.

Article 9: Amend Zoning Bylaws: Remove ambiguous wording from Section 323.3

At its meeting of October 19, 2016, the Planning Board voted to recommend favorable action on Article 9. Vote 3-2-0 [Aye –Evans, Glater, Munnich; Nay – Myer, Nottonson, (Wadsworth)].

-Article 9 seeks to delete the words “and similar multi-family development” from Section III – USE REGULATIONS, Section 323.3 Certain Multi-family Residential Uses. Considered by the Board was the potential for such ambiguous language to allow unintended development to occur with defined and undefined consequences. Also represented was the utility of having flexibility within the bylaws to allow creative development.

Article 10: Amend Zoning Bylaws: 55 Years of Age Amenity Housing

At its meeting of October 19, 2016, the Planning Board voted to recommend **referral to the Planning Board** on the subject matter of Article 10. Vote 5-0-0.

-Article 10 would add a new definition for age 55 and over housing and would enable that use in in the Regional Center overlay district. Noted was that such 55+ age distinction is reliant on Federal regulation and that such housing could only restrict 80% of the units by age. There were questions as to how such housing would actually aid in creating housing for an ageing population as well as concerns as to a single project placing the Town into non-compliance under Chapter 40B.

Article 11: Amend Zoning Bylaws: Elderly Family Residence

At its meeting of October 19, 2016, the Planning Board voted to recommend **favorable action** on Article 11. Vote 5-0-0

-Article 11 permits the “immediate” development of housing for individuals 62 years of age or over who may not necessarily need the supportive services of Assisted Living. Federal regulations for 62+ housing differ from the 55+, not only in initial age, but also in that the 62+ regulations require 100% of the units to have an occupant aged 62+; versus the 55+ with automatic allowances for 20% of the units to have no age restrictions. For both regulatory and demographic reasons the 62+ model has a significantly lower incidence of school age population which results in both lower pressure on the Town’s schools, while also enabling a type of housing that would not be inflated in price because of “bidding-wars” with families seeking to get into the school system. This proposal includes affordability provisions to prevent adverse consequences under Chapter 40B.

