



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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October 15, 2021

Barbara J. Hancock, Town Clerk  
Town of Deerfield  
8 Conway Street  
Deerfield, MA 01373

**Re: Deerfield Annual Town Meeting of June 12, 2021 -- Case # 10207  
Warrant Articles # 18, 19, 20, 21, and 22 (Zoning)  
Warrant Articles # 14 and 15 (General)**

Dear Ms. Hancock:

**Articles 18, 19, 20, 21, and 22** - We approve these Articles from the June 12, 2021 Deerfield Annual Town Meeting. Our comments on Articles 18, 19 and 20 are detailed below.<sup>1</sup>

Articles 18-20 amend several sections of the Town's zoning by-laws, "Formula-Based Business," including adding definitions for "Façade," "Formula Based Business," and "Standardized."

**I. Attorney General's Standard of Review of Zoning By-laws**

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

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<sup>1</sup> On September 16, 2021, by agreement with Town Counsel in accordance with G.L. c. 40, § 32, we extended our deadline for review of Articles 18-22 for 30-days until October 15, 2021, and approved Articles 14 and 15.

Articles 18-20, as amendments to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

## II. Analysis of Articles in Light of Cumberland Farms Decision

There are no appellate level judicial decisions addressing the validity of formula business by-laws. However, in Cumberland Farms, Inc. v. Jacob, 2015 WL 5824402 \* 7 (2015), the Land Court held that the Town of Wellfleet's formula business by-law was invalid because it regulated ownership, not use, and included vague standards that would result in arbitrary and capricious decision making.<sup>2</sup>

As part of a challenge to a special permit denial, Cumberland Farms challenged Wellfleet's formula business by-law as inconsistent with G.L. c. 40A, § 4. Wellfleet's formula business by-law required businesses that met the by-law's definition of "Business, Formula"<sup>3</sup> to obtain a special permit from the Planning Board. The by-law imposed additional standards and criteria that a formula business was required to satisfy to obtain a special permit, including that the business

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<sup>2</sup> Cumberland Farms' attempts to gain approval to operate at the site in Wellfleet was the subject of a further appeal on other grounds. See Cumberland Farms, Inc. v. Board of Appeals of Wellfleet, 90 Mass. App. Ct. 1118 (2016).

<sup>3</sup> Business, Formula was defined in the Wellfleet by-law as:

[a] retail trade business which does or is required by contractual or other arrangement or as a franchise to maintain any of the following features:  
Standardized (formula) array of merchandise, exterior trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols, designs, and/or architecture, façade that identifies the business as one (1) of twenty five (25) or more other businesses worldwide.

would not substantially alter or detract from the established character of the location and that the use “[would] be operated in a non-obtrusive manner to preserve the location’s community character.” Id. at \* 6.

In holding that the Wellfleet’s formula business by-law was invalid because it violated G.L. 40A, § 4’s uniformity requirements, the court stated that zoning must deal with land use “[w]ithout regard to ownership of the property involved or who may be the operator of the use.” Id. \*5 *citing* CHR Gen., Inc. v. City of Newton, 367 Mass. 351, 356 (1982). General Laws Chapter 40A, Section 4, provides that any zoning by-law that divides the town into districts shall be uniform within the district for each class or kind of structures or uses permitted. A zoning by-law must be applied uniformly to all property located within a particular district, and all owners of properties in that district must be subjected to the same restrictions for the common benefit of all. SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 108 (1984), *citing* Everpure Ice Manufacturing Co. v. Board of Appeals of the City of Lawrence, 324 Mass. 433, 439 (1949).

The Cumberland Farms court concluded that Wellfleet had failed to provide any evidence that formula businesses created greater or different adverse impacts to the Town than other businesses that did not meet the formula business definition. Id. at \* 5. While the court acknowledged that the standards and criteria in the by-law were properly the subject of zoning, it nevertheless held that the by-law was invalid because it did not apply to non-formula businesses “doing precisely the same things, in precisely same location, in precisely the same way.” Id. \* 6. As part of its reasoning, the Land Court provided the following illustration:

“Wellfleet Convenience Mart” and a Cumberland Farms convenience store, both carrying the identical inventory and operating in the identical way - with only the Cumberland Farms required to make the numerous showings necessary for the formula business special permit before it can open its doors. Id. at \*6.

In addition to invalidating the by-law because it was inconsistent with G.L. c.40A, § 4, the court concluded that certain provisions of the by-law that sought to address the aesthetic concerns of formula businesses were so vague that they would lead to arbitrary and capricious decision making. Id. at \* 7.

In reaching its conclusion that Wellfleet’s by- law was inconsistent with state law, the Land Court relied on the evidentiary record before it and determined that Wellfleet had not presented any evidence to justify the differential treatment of formula businesses and non-formula businesses. A full evidentiary record is not available to the Attorney General as part of her review of town by-laws pursuant to G.L. c. 40, § 32. The Attorney General’s review of a by-law is based primarily if not exclusively on the materials that G.L. c. 40, § 32, requires a town to submit: “a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by- law have been complied with.” Based on the materials before us, we cannot conclude whether Deerfield could present sufficient evidence to warrant treating formula businesses differently from non-formula businesses, if the by-law were to be challenged in court. That determination is best left for a court, which, if a case were properly initiated, would be better equipped to find the facts on a fuller factual record. Because we cannot conclude that the amendments adopted under Articles 18 through 20 pertaining to formula businesses are clearly inconsistent with state law, we approve them.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Margaret J. Hurley*

By: Margaret J. Hurley  
Chief, Central Massachusetts Division  
Director, Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4402

cc: Town Counsel Lisa Mead

Date: October 18, 2021

On this date, I have posted copies of bylaw amendment(s) Articles 18, 19, 20, 21, and 22 passed at the June 12, 2021 Annual Town Meeting and approved by the Attorney General of Massachusetts on October 15, 2021, at the following five public places in Town: Deerfield Town Offices, South Deerfield Post Office, Old Deerfield Post Office, Tilton Library, and the Deerfield Convenience Store.

Any claims of invalidity by reason of any defect in the procedure of a zoning adoption or amendment may only be made within ninety days of this posting, according to MGL C40 S32. Copies of this by-law may be examined at the Town Clerk's Office, 8 Conway St, South Deerfield and on the Town's website, [www.deerfieldma.us](http://www.deerfieldma.us), under Town Bylaws and listed under New Laws.

  
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Barbara J Hancock, Town Clerk



I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield hereby verify that the following vote was taken at the Annual Town Meeting held on Saturday, June 12, 2021 on the baseball field at the Frontier Regional School on 113 North Main Street, in the Village of South Deerfield.

**ARTICLE 18 Zoning Bylaw Change – Formula Based Business (FBB) Definitions**

Voted to amend the Town of Deerfield Zoning Bylaws, c.179, Article VI, to add the following three definitions:

**FAÇADE:** The exterior front of a building and any other exterior building faces that are visible from a street or public, residential, or commercial space. Such front or faces shall include roofs, awnings, or other building projections or appurtenances.

**FORMULA BASED BUSINESS:** A type of retail sales establishment (not including consumer services), or a restaurant, tavern, bar, or other food service establishment which is under common ownership or control or is a franchise and is one (1) of ten (10) or more other businesses or establishments worldwide maintaining any of the following features (1-6):

	FORMULA BASED FOOD SERVICE	FORMULA BASED RETAIL
1	Standardized menu	Standardized array of merchandise with 50% or more of in-stock merchandise bearing uniform markings.
2	Trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of goods from one party from those of others, on products or as part of the store design.  Such as on cups, napkins, bags, boxes, wrappers, straws, store signs, or advertising devices.	Trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of goods from one party from those of others, on products or as part of the store design.  Such as merchandise labels, bags, boxes, signs or advertising devices.
3	Standardized décor and color scheme	Standardized décor and color scheme used



	used throughout the interior of the establishment.	throughout the interior of the establishment.
4	A standardized façade.	A standardized façade.
5	Standardized décor and color scheme used throughout the exterior of the establishment.	Standardized décor and color scheme used throughout the exterior of the establishment.
6	Standardized signage.	Standardized signage.

STANDARDIZED: Substantially the same, not necessarily identical.

Motion carried by 2/3rds, so declared the Moderator

A true copy,

Attest: Barbara J. Hancock  
Barbara J. Hancock, Town Clerk



I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield hereby verify that the following vote was taken at the Annual Town Meeting held on Saturday, June 12, 2021 on the baseball field at the Frontier Regional School on 113 North Main Street, in the Village of South Deerfield.

**ARTICLE 19 Zoning Bylaw Change – Formula-based Business (FBB)**

Voted to amend the Deerfield Zoning Bylaws c.179, §2200 by adding the following footnote after existing footnote 10:

<sup>11</sup> Within all C-I and all C-II Commercial zoning districts excepting the most northerly C-II district, Formula Based Businesses that conform to definitional elements 4, 5, or 6 herein are prohibited.

Motion carried by 2/3rds, so declared the Moderator

A true copy

Attest:

  
Barbara J. Hancock, Town Clerk





I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield hereby verify that the following vote was taken at the Annual Town Meeting held on Saturday, June 12, 2021 on the baseball field at the Frontier Regional School on 113 North Main Street, in the Village of South Deerfield.

**ARTICLE 20 Zoning Bylaw Change – Formula-based Business (FBB)**

Voted to amend the Deerfield Zoning Bylaws c.179, §2200, by adding a notation of footnote 11 to the following listed commercial uses within the C-I and C-II districts:

“Retail sales or rental with or without display outdoors – Building 4,000 sq. ft. or less of enclosed floor area”

“Retail sales or rental with or without display outdoors – Building greater than 4,000 sq. ft. up to 30,000 sq. ft. of enclosed floor area”

“Retail sales or rental with or without display outdoors – Building greater than 30,000 sq. ft. up to 60,000 sq. ft. of enclosed floor area”

“Restaurant, not including fast-food or drive-in restaurant”

Motion carried by 2/3rds, so declared the Moderator

A true copy,

Attest: Barbara J. Hancock  
Barbara J. Hancock, Town Clerk





I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield hereby verify that the following vote was taken at the Annual Town Meeting held on Saturday, June 12, 2021 on the baseball field at the Frontier Regional School on 113 North Main Street, in the Village of South Deerfield.

### **ARTICLE 21 Zoning Bylaw Change – Solar Energy Systems**

Voted to amend the Deerfield Zoning Bylaws c.179 §3800 Solar Electric Installations by amending this section by making modifications as follows:

#### **3800. SOLAR ENERGY SYSTEMS.**

3810. Purpose. The purpose of this bylaw is to facilitate the creation or expansion Solar Energy Systems by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

3820. Definitions. The words and phrases below shall be defined, for purposes of this bylaw, Section 3800, as follows:

**Active Solar Energy System:** Systems that convert the sun's energy to electricity or heat, including: photovoltaic solar technology, which directly converts sunlight into electricity using panels made of semiconductor cells; and solar thermal technology, which captures the sun's heat.

**As-of-Right Siting -** As-of-right siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to Site Plan Review to determine conformance with the provisions hereof and with the provisions of the Deerfield Zoning Bylaw, as may be applicable. As-of-right siting of Large-Scale Ground-Mounted Energy Systems shall be permitted where specified by the Use Regulation Schedule, Section 2230.

**Large-Scale Ground-Mounted Solar Energy System:** An Active Ground-mounted Solar Energy System that occupies more than 5 acres of surface area. Large solar energy systems are utility-scale solar energy conversion systems with many ground-mounted solar arrays in rows, and associated control or conversion electronics or energy storage components, that produce utility power to offsite customers.

**Medium-Scale Ground-Mounted Solar Energy System:** An Active Ground-mounted Solar Energy System that occupies more than 10,000 square feet of surface area, but no more than 5 acres of surface area. Medium solar energy systems are defined as private on-site or utility-scale solar energy conversion systems with many ground-mounted solar arrays in rows, and associated control or conversion electronics or energy storage components, that produce utility power to onsite and offsite customers.



**Passive Solar Energy System:** A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

**Roof-Mounted Solar Energy System:** An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

**Small-Scale Ground-Mounted Solar Energy System:** single residential or small business-scale solar energy conversion systems consisting of ground-mounted solar arrays, or other solar energy fixtures, and associated control or conversion electronics or energy storage components, occupying no more than 10,000 square feet of surface area.

**Solar Canopies:** Elevated structures that host solar panels and provide shade. These overhead solar panel installations are typically installed in parking lots or other paved areas.

### 3830. General Requirements.

3831. **Compliance with Laws, Bylaws, and Regulations.** The construction and operation of all Solar Energy Systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part thereof shall be constructed in accordance with the Massachusetts State Building Code (*See MGL c. 143, § 1 et seq.*).

3832. **Building Permit and Building Inspection.** No Solar Energy System shall be constructed, installed or modified as provided in this Section 3800 without first obtaining a building permit.

3833. **Fees.** *Medium-Scale and Large-Scale Solar Energy Systems* shall be permitted only upon payment of the fee(s) required for the issuance of a building permit and as required in connection with Site Plan Review or the issuance of a Special Permit hereunder.

3834. **Independent Consultants.** Upon submission of an application for Site Plan Review and/or a Special Permit, the Planning Board is authorized to engage outside consultants to peer review the application, pursuant to G.L. c. 44, § 53G, whose services shall be paid for by the applicant.

3835. **Permit Granting Authority.** The Planning Board shall serve as Site Plan Review Authority and Special Permit Granting Authority under this Section 3800.

3836. **Specified Solar Systems Permitted As of Right.** As specified in the Use Regulation Schedule, Section 2230, Small-scale Ground-Mounted Solar Energy Systems, Roof-Mounted Solar Energy Systems, Municipal Solar Energy Systems, Solar Canopies and Passive Solar Energy Systems shall be permitted as of right.

3837. **Site Location of Solar Energy Systems.** Utility scale Solar Energy Systems are encouraged to locate on existing building rooftops, rather than on ground-mounted locations. Ground-mounted systems shall minimize impacts on forestland and farmland in active production.



3840. Site Plan Review. *Medium-Scale and Large-Scale Solar Energy Systems* shall undergo Site Plan Review by the Planning Board, in accordance with Section 5400, prior to construction, installation or modification thereof, and shall further meet the requirements of this Section 3800.

3841. General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

3842. Required Documents. The project applicant shall provide the following documents in addition to or in coordination with those required under Section 5400.

a. Site Plan. A Site Plan showing:

- (i) Property lines and physical features, including roads and topography, for the project site.
- (ii) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, fencing, screening vegetation and structures, including their height.
- (iii) Locations of wetlands and Priority Habitat Areas as defined by the Natural Heritage & Endangered Species Program (NHESP).
- (iv) Locations of floodplains or inundation areas for moderate or high hazard dams.
- (v) Locations of local or National Historic Districts.
- (vi) Water provision, including fire protection measures.
- (vii) Stormwater drainage, including means of ultimate disposal and calculations, in compliance with the Town's Stormwater Bylaw, being Chapter 155 of the Deerfield General Bylaws, and any regulations adopted pursuant thereto.
- (viii) Existing trees 10" caliper or better and existing tree/shrub masses; proposed planting, landscaping, and screening.
- (ix) Identification of the site of the proposed installation by street address, if any, and the name(s) of the street(s) and way(s) nearest thereto.
- (x) Map and lot number(s) for the site, available from the Assessor's office.
- (xi) Zoning district designation(s) for the parcel(s) of land comprising the project site.

b. Blueprints. Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing:

- (i) The proposed layout of the system and any potential shading from nearby structures.
- (ii) One or three line electrical diagram detailing the Solar Energy System, associated components, and electrical interconnection methods, with all Massachusetts and National Electrical Code compliant disconnects and overcurrent devices.



c. General Documentation. The following information shall also be provided:

(i) A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate.

(ii) Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.

(iii) Name, address, and contact information for proposed system installer.

(iv) Name, address, phone number and signature of the project applicant, as well as all co-applicants or property owners, if any.

(v) The name, contact information and signature of any agents representing the project applicant.

(vi) Certified list of abutters.

(vii) Any and all presentation board(s) and/or full-sized plan(s) utilized by the applicant at meeting(s) of the Site Plan Review Authority, provided in a format no larger than 24" x 36".

d. Site Control. The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed Solar Energy System.

e. Operation and Maintenance Plan. The project applicant shall submit a plan for the operation and maintenance of the Solar Energy System, which shall include measures for maintaining safe access to the installation, stormwater management (consistent with DEP's Stormwater Regulations and the Town of Deerfield's Stormwater Regulations (11) and vegetation controls, as well as general procedures for operational maintenance of the installation.

11 Editor's Note: See Ch. 155, Stormwater.

f. Insurance. The project applicant shall provide proof of liability insurance in an amount sufficient to cover loss or damage to person(s) and structure(s) occasioned by the construction, use or failure of the Solar Energy System.

g. Financial Surety. Applicants for Medium-Scale and Large-Scale Solar Energy Systems shall provide a form of surety, either through an escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the site to its natural preexisting condition, in an amount and form determined to be reasonable by the Site Plan Review Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. The project applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.



h. Utility Notification. No Medium-Scale and Large-Scale Solar Energy Systems shall be constructed until evidence has been given that the utility company that operates the electrical grid where the installation is to be located has permitted the energy system. Off-grid systems shall be exempt from this requirement.

3843. Conditions. In addition to those considerations specified in Section 5460, Medium-Scale and Large-Scale Solar Energy Systems shall be designed so as to:

a. minimize visual impacts through proper lighting, landscaping and screening of the Solar Energy System and appurtenant structure(s), if any;

b. minimize environmental impacts by avoiding land clearing and fragmentation of open space, preserving natural habitat and limiting the use of and providing for the containment of hazardous materials, and by satisfying applicable noise standards;

c. minimize safety impacts through compliance with applicable dimensional requirements, design of the site so as to prevent unauthorized access and development of an emergency response plan; and

d. ensure compliance with all applicable local, state and federal statutes, regulations, codes, bylaws, rules and standards.

3850. Special Permit. Where required by Section 2230 Use Regulations, a special permit may be granted by the Planning Board for the construction, installation or modification of a Large-Scale Solar Energy Systems, in accordance with Section 5300.

3851. Consolidation with Site Plan Review. Consistent with Section 5423, the Planning Board, as both the Site Plan Review Authority and the Special Permit Granting Authority, shall consolidate site plan review into the special permit procedures required hereunder, and the timetable for decision shall conform thereto.

3852. Criteria. A Special Permit may be granted upon written determination by the Planning Board that the benefits of the proposed use outweigh its detrimental impacts on the Town and the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. In addition to the criteria specified in Section 5320 or elsewhere in the Deerfield Zoning Bylaw, such determination shall include consideration of the following:

a. the use is in harmony with the purpose and intent of this Section 3800;

b. the use will be sited, designed and operated in a manner that appropriately addresses the impacts to the neighborhood and the community, including visual impacts, environmental impacts and impacts to public health, safety and welfare;

c. no nuisance is expected to be created by the use; and



d adequate and appropriate facilities will be provided for the proper operation of the Solar Energy System.

e. the use minimizes impacts on forestland and farmland in active production.

3860. Dimensional Requirements.

3861. Setback Requirements. For all Medium-Scale and Large-Scale Solar Energy Systems, minimum setbacks shall be as follows: For all Small-Scale Solar Energy Systems, the dimensional requirements shall be as shown in Section 2320. Table of Dimensional Requirements. Acreage and generating capacity thresholds apply in the aggregate to new facilities and expansions of existing facilities. For expansions, the acreage and output generation of the existing facility would be added to those of the proposed expansion to determine the overall size and generating capacity. Required setback areas shall not be counted toward a facility's total acreage.

3862. Height of Structures. The height of any structure associated with Medium-Scale and Large-Scale Solar Energy Systems shall not exceed 35 feet, including the full extended height of any tracking system, except for roof-mounted solar energy systems.

Table of Dimensional Requirements for Medium-Scale and Large-Scale Solar Energy Systems

Dimensional Requirement	RA	CVRD	C-I	C-II	I	PI	EPD
FRONT SETBACK (feet)	50	50	50	50	40	50	50
REAR YARD (feet)	50	50	50	50	25	50	50
SIDE YARD (feet)	50	50	50	50	25	50	50
PERIMETER SETBACK (feet)	-	-	-	-	100	-	-
MAXIMUM HEIGHT (feet)	35*	35*	35*	35*	35*	35*	35*

\*Note: See also Section 3853.

3852. Dimensional Requirements for Appurtenant Structures. All appurtenant structures to Medium-Scale and Large-Scale Solar Energy Systems shall be subject to reasonable regulations concerning lot area, parking, and building coverage, as per the Deerfield Zoning Bylaw. All such appurtenant structures, including but not limited to equipment shelters, storage facilities, transformers, substations, batteries and other electrical storage, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.



3853. Exemption from Maximum Height Limits. Roof-mounted solar energy systems shall be exempt from the maximum building height requirements in Section 2320. Table of Dimensional Requirements, and in the Table of Dimensional Requirements for Medium-scale and Large-scale Solar Energy Systems is Section 3862.

3854. Exemption from Lot Coverage Requirements. Small-scale solar energy systems shall be exempt for the Maximum Lot Coverage requirements in Section 2320. Table of Dimensional Requirements.

3870. Design and Performance Standards.

3871. Lighting. Lighting of Solar Energy Systems and appurtenant structures shall be consistent with the Deerfield Zoning Bylaw, and all other applicable local, state and federal laws. Lighting of the installation, including appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be shielded from abutting properties. All lighting shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

3872. Signage. Signs on all Medium-Scale and Large-Scale Solar Energy Systems shall comply with Section 3200 of the Deerfield Zoning Bylaw. Sufficient signage shall be provided, in accordance with said Section, to identify the owner of the facility and provide a 24-hour emergency contact phone number. Solar Energy Systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the such installation.

3873. Utility Connections. Electrical transformers or other utility interconnections shall be constructed as required by the utility provider and may be above ground if necessary; provided, however, that reasonable efforts shall be made to place all utility connections underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider.

3874. Roads. Access roads shall be constructed to minimize grading, removal of stone walls or street trees and minimize impacts to environmental or historic resources.

3875. Control of Vegetation. Herbicides may not be used to control vegetation at the Solar Energy System. Mowing or the use of pervious pavers or geotextile materials underneath the solar array is a possible alternative.

3876. Hazardous Materials. If hazardous materials are to be used or generated on site, provision shall be made for the storage thereof in accordance with all requirements of the Department of Environmental Protection (DEP), including but not limited to the storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment and for full containment of such materials in the event of a release. An enclosed containment area, designed to contain at least 110% of the volume of the hazardous materials used, generated or stored on the site, may be required.



3877. Noise. Noise generated by Medium-Scale and Large-Scale Solar Energy Systems and associated equipment and machinery shall conform to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10. A source of sound will be considered in violation of said regulations if the source:

- a. increases the broadband sound level by more than 10 db(A) above ambient; or
- b. produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more.

Said criteria are measured both at the property line and at the nearest inhabited residence.

"Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours, unless established by other means with the consent of the DEP. Noise shall further comply with Section 3700 of the Deerfield Zoning Bylaw.

3878. Landscaping, Screening and Reflections.

- a. Any fencing or other structure(s) erected to prevent unauthorized access to the Solar Energy System, as well as any appurtenant structures, shall be screened using landscaping or other means so as to minimize their visual impact.
- b. Medium-Scale and Large-Scale Solar Energy Systems, including batteries and storage facilities, shall be screened by preserving existing vegetation, or using landscaping or other means, so as to minimize their visual impact along the street frontage, and adjacent to any pre-existing abutting residential or commercial uses.
- c. Medium-Scale and Large-Scale Solar Energy Systems shall be designed and/or oriented to minimize reflections that may cause a nuisance to adjacent residential or commercial uses.

3880. Safety and Environmental Standards.

3881. Emergency Services. The Solar Energy System owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief, Highway Superintendent, and Emergency Management Director. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the Solar Energy System shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

3882. Access. All Medium-Scale and Large-Scale Solar Energy Systems shall be designed so as to prevent unauthorized access (e.g. by fencing, by locked access).

3883. Land Clearing, Soil Erosion and Habitat Impacts. All Medium-Scale and Large-Scale Solar Energy Systems shall be designed to minimize land clearing and fragmentation of open space areas, and shall be located so as to avoid significant negative impacts on rare or protected species in the vicinity. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation



and maintenance of the Solar Energy System or as otherwise prescribed by applicable laws or regulations.

3884. Wetlands. All Medium-Scale and Large-Scale Solar Energy Systems shall be located in a manner consistent with applicable state and local wetlands regulations.

3890. Monitoring, Maintenance and Reporting.

3891. Solar Energy System Conditions. The Solar Energy System owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the Solar Energy System and any access road(s).

3892. Modifications. All material modifications to a Solar Energy System made after issuance of the required building permit shall require approval by the Permit Granting Authority, if applicable.

3893. Commissioning Report. Prior to placement of a Solar Energy System into operation, the owner or operator thereof shall submit a commissioning report demonstrating that said Installation has been adequately tested and that it functioned as designed prior to start-up. The report shall be submitted to the Select Board at least thirty (30) days prior to activation of the facility.

3894. Annual Reporting. The owner or operator of the Solar Energy System shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan (see [Section 3842.c](#)), the requirements of this Section 3800 and the approved site plan, including but not limited to continued control of vegetation, compliance with noise standards, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Commissioner, Board of Health and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.

3895. Abandonment or Decommissioning.

38951. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale ground-mounted solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Permit Granting Authority.

38952. Removal Requirements. Any Medium-Scale and Large-Scale Solar Energy System which has reached the end of its useful life or has been abandoned consistent *with Section 38952* shall be removed. The owner or operator shall physically remove the installation no later than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board, if



applicable, by certified mail, of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of all components of the Solar Energy System, including but not limited to structures, equipment, security barriers, and on-site transmission lines. Associated off-site utility interconnections shall also be removed if no longer needed.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. Restoration of the site to its natural preexisting condition, including stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

38953. Decommissioning by the Town. If the owner or operator of a Medium-Scale and Large-Scale Solar Energy System fails to remove such installation in accordance with the requirements of this Section 3895 within 150 days of discontinued operations or abandonment, the Town may enter the property and physically remove the installation at the owner's expense, drawing from the escrow account or upon the bond or other financial surety provided by the applicant pursuant to Section 3842.g.

38954. Financial Surety. For any Medium-Scale and Large-Scale Solar Energy System. prior to commencing operation, the applicant shall provide a form of financial surety, through a cash deposit, surety bond, or tripartite agreement (Financial Surety), in an amount determined to be adequate by the Planning Board to cover cost of CSPI removal and site restoration. The following procedures shall be followed:

- a. Decommissioning Cost Estimation. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include an escalator for calculating increased removal costs due to inflation. Salvage for solar panels may be included for other components of the installation at the discretion of the Planning Board.
- b. The Financial Surety shall be maintained by the developer for the lifespan of the facility, with annual certification notices from the surety company or bank for surety bonds submitted to the Planning Board. Such surety is not required for municipal facilities.
- c. A cash deposit [of a minimum amount of \$100,000 per MW (DC) of installed system capacity] shall be held by the Town Treasurer pursuant to M.G.L. Chapter 44, Section 53 ½.

#### OTHER AMENDMENTS

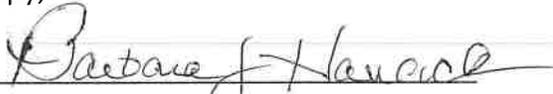
2230. Use Regulation Schedule.



Principal Use	RA	CVRD	C-I	C-II	I	PI	EPD
Small-Scale Ground-Mounted Solar Energy System	Y	Y	Y	Y	Y	Y	Y
Medium Scale Ground-Mounted Solar Energy System	Y**	Y**	Y**	Y**	Y**	Y**	Y**
Large-Scale Ground-Mounted Solar Energy System	SP	SP	SP	N	SP	N	N
Roof-mounted Solar Energy System	Y	Y	Y	Y	Y	Y	Y
Passive Solar Energy System	Y	Y	Y	Y	Y	Y	Y
Solar Canopies	Y	Y	Y	Y	Y	Y	Y
Municipal Solar Energy Systems	Y	Y	Y	Y	Y	Y	Y

Motion carried by 2/3rds, so declared the Moderator

A true copy,

Attest:   
Barbara J. Hancock, Town Clerk





I, Barbara J. Hancock, duly appointed and qualified Clerk of the Town of Deerfield hereby verify that the following vote was taken at the Annual Town Meeting held on Saturday, June 12, 2021 on the baseball field at the Frontier Regional School on 113 North Main Street, in the Village of South Deerfield.

**ARTICLE 22 Zoning Bylaw – Site Plan Review**

Voted to amend the Deerfield Zoning Bylaws Deerfield Zoning Bylaws, c.179, §5400 Site Plan Review, by amending this section as follows:

**5400. SITE PLAN REVIEW**

5410. Applicability. The following types of activities and uses require site plan review by the

Planning Board: [Amended 4-26-2010 ATM, Art. 1; 4-25-2011 ATM, Art. 7; 4-30-2012 ATM,

Art 7; 4-30-2018 ATM, Art. 27]

5411. For a municipal, institutional, commercial, industrial, or multi-family structure: 1) a

change of use; or 2) construction, exterior alteration, or exterior expansion that will

cumulatively add more than 600 square feet over a three-year period;

5412. Construction or expansion of a parking lot for a municipal, institutional, commercial,

industrial, or multi-family structure which results in a cumulative total of 10 or more parking spaces or 2,000 square feet of parking area;

5413. Grading, clearing, or other land development activity EXCEPT for the following:

landscaping on a lot with an existing dwelling, clearing necessary for percolation and other

site tests, or work in conjunction with an approved subdivision plan or earth removal permit.



5414. Outdoor storage, sales or display associated with any retail use:
5415. Construction or expansion of a Large-Scale Ground-Mounted Solar Electric installation or a Medium Scale Ground Mounted Solar Electric Installation.
5416. Flexible Developments as authorized in Section 3500;
5417. Planned Unit Developments as authorized in Section 4800;
5418. Marijuana Establishments as authorized in Section 4660;
5419. Any use listed in Section 2230, Use Regulation Schedule, or in other sections of this  
bylaw as requiring Site Plan Review.
5420. Green Development Performance Standards. All uses requiring Site Plan Review in Section 5410 shall also demonstrate compliance to the Planning Board with the Green Development Performance Standards herein, before a Building Permit may be issued. Applicants shall, to the maximum extent practicable, meet the standards for:
- (a) Limits to Site Disturbance (see Section 5481);
  - (b) Tree Preservation (see Section 5482);
  - (c) Orientation of Buildings for Solar Access (see Section 5483);
  - (d) Landscaping and Water Reduction (see Section 5484);
  - (e) Protection and Buffering of Land in Agricultural Use (see Section 5485);
  - (f) Parking and Trip Reduction (see Section 5486);
  - (g) Pedestrian and Bicycle Access (see Section 5487);
  - (h) Storage of Hazardous Materials (see Section 5488);
  - (i) Light Pollution Reduction (see Section 5489);
  - (j) Collection and Storage of Recyclables (see Section 54891);
  - (k) Construction Waste Management and Topsoil Recovery (see Section 54892);
5430. Definitions



**Best Management Practices (BMPs):** Practices that have been determined to be the most effective and practicable means of preventing or reducing undesirable environmental impacts.

**Blue Roof:** A blue roof is a roof design that is explicitly intended to store rainfall or other precipitation, through a detention stormwater management practice that provides temporary storage and slow release of rainwater on a rooftop.

**Complete Streets:** Streets that are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities.

**Conditioned Square Footage:** A building's room area that is heated in the winter and/or air conditioned in the summer.

**Critical Root Zone (CRZ):** The critical root zone (also known as essential root zone) is the portion of a tree's root system that is the minimum necessary to maintain the stability and vitality of the tree. It can be calculated by using the following formula: tree trunk diameter at breast height X 2, then convert to feet. For example, for a tree with a trunk diameter of 10 inches, the critical root zone would have a diameter of 20 feet.

**Drip Line:** The circle that could be drawn on the soil around a tree directly under the tips of its outermost branches. Rainwater tends to drip from the tree at this point.

**Floor Area Ratio:** The ratio of the gross floor area of buildings on a certain location to the size of the land of that location.

**Green Roof:** A green roof or living roof is a roof of a building that is partially or completely covered with vegetation and a growing medium, planted over a waterproofing membrane. It may also include additional layers such as a root barrier and drainage and irrigation systems.

**Gross Floor Area:** The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings. The "floor area" of a building shall include basement floor area when more than one-half of the basement height is above the established curb level or above the finished lot grade level where curb level has not been established, elevator shafts and stairwells at each floor, floor space used for mechanical equipment — except equipment, open or enclosed, located on the roof — penthouses, attic space having headroom of seven feet, ten inches or more, interior balconies and mezzanines, and enclosed porches, and floor area devoted to accessory uses.

**Infiltration:** The downward movement of water from the surface to the subsoil.



**Land in Agricultural Use:** Land used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, on land parcels of five acres or more.

**Low Impact Development (LID):** A set of approaches that seeks to mimic a site's pre-development hydrology by using design techniques that infiltrate, filter, store, evaporate and detain runoff close to its source. Instead of conveying, managing and/or treating stormwater in large, end-of-pipe facilities, LID utilizes small-scale, decentralized practices that infiltrate, treat, evaporate, and transpire rain water and snow melt. These practices include bioretention areas, grassed swales, rain gardens, reduced impervious areas, preservation of open space, increased development density, smaller lot sizes, reconfiguration of lots, green street and parking designs, and alternative structural stormwater treatment methods.

**"Parties in Interest"** shall include: the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town.

**Pre-development:** The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Planning Board. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**Recharge:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

**Specimen Trees:** Trees that are of large diameter in excess of 24 inches measured at a height of 4.5 feet, have historic significance or are part of an historic site, are designated as a champion tree by town, state or federal government, are a rare, threatened or endangered species, or have exceptional beauty in canopy or shape.

5440. Procedures. [Amended 4-25-2011 ATM, Art. 7; 4-30-2012 ATM, Art 7]

5441. Application. Prior to the commencement of any activity set forth in Section 5410, the project proponent shall obtain site plan approval from the Planning Board. Applicants for site plan approval shall submit an original and nine (9) hard copies of the site plan review application to the Town Clerk on behalf of the Planning Board for review at a regularly scheduled meeting along with an electronic copy, on compact disk, USB drive or similar medium containing a



Standard Digital File (SDF) as defined by Version 2.0 of the MassGIS Standard for Digital Plan Submittals to Municipalities (October 2007) and a copy of the original CADD file in PDF format plus accompanying documents in PDF format.

5442. Distribution of the Application. Within three business (3) days thereafter, administrative staff shall distribute copies of the site plan to the Board of Health, Director of Public Works, Police Chief, Fire Chief, the Building Inspector, Conservation Commission, and Selectboard for their advisory review and comments. Said boards and officials shall have fourteen (14) days from the receipt of the site plan to make a written recommendation to the Planning Board. Failure to respond or provide comments within fourteen (14) days shall be deemed to constitute no objection to the application.

5443. Application Fee. An application for site plan approval shall be accompanied by a fee, as set forth in the Planning Board's Rules and Regulations.

5444. Pre-submittal Meeting. Prior to filing an application for Site Plan review, all applicants for Site Plan Review shall meet with the Building Commissioner and town administration to discuss the application. In addition, Applicants are encouraged to meet informally with the Planning Board prior to submission of a formal application for Site Plan Review.

5445. Hearing Process, Time Limits and Decision. The Planning Board shall hold a public hearing, for which notice has been given as required in the Massachusetts Zoning Act, MGL Chapter 40a, on any application for Site Plan Review within 35 days from the date of filing of a complete application. The decision of the Planning Board, with such conditions as may be deemed appropriate, shall be made within 90 days of the application filing date. The time limits for a public hearing and action may be extended by written agreement between the petitioner and the Planning Board. The decision of the Planning Board shall be upon a majority of those present and shall be in writing.

5446. Public Hearing. Public Hearings are required for all Site Plans filed. The applicant shall obtain a list of abutters, and all "parties in interest" as defined herein and in G.L. c. 40A, s. 11, from the Deerfield Assessor's Office, and shall attach the list to the application when filed. At least fourteen (14) days prior to the day of the Public Hearing, written notices shall be sent by the administrative staff by certified mail at the applicant's expense to the parties in interest. Legal notice of the public hearing shall be published at the applicant's expense in a newspaper of general circulation in the town in each of two (2) successive weeks, the first publication to appear not less than fourteen (14) days prior to the day of the Public Hearing. Notice of the Public Hearing shall also be posted in a conspicuous place in Town Hall for a period of not less than fourteen (14) days before the day of such hearing.



5447. Fees: An application for site plan approval shall be accompanied by a fee, as set forth in the Planning Board's Rules and Regulations.

5448. Consolidation of Procedures. Where the Planning Board serves as the special permit granting authority, it shall consolidate site plan review into the special permit procedures and the timetable for decision shall conform thereto.

5449. Site Plan Contents and Submittals. The Application requirements in section 5440 above shall include the following:

5450. Plan Specifications. Plans subject to this section shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1" = 40'.: [Amended 4-30-2012 ATM, Art 7] and shall include the following:

- a. All boundary line information pertaining to the land sufficient to permit location of same on ground with existing and proposed topography at 2 foot contour intervals and the location of wetlands, streams, waterbodies, drainage swales, areas subject to flooding and unique natural features;
- b. Existing and proposed buildings and structures, including fences, loading areas, accessory buildings, signs, waste disposal areas, and storage areas, with proposed building elevations as renderings; utilities and snow disposal methods;
- c. Water provision, including fire protection measures;
- d. Sanitary sewerage;
- e. Storm drainage, including means of ultimate disposal and calculations to support maintenance of the requirements in the Planning Board's Subdivision Rules and Regulations. Projects must comply with the Deerfield general bylaws, Chapter 155, (Stormwater) and Planning Board stormwater regulations.



f. Parking, walkways, driveways, and other access and egress provisions. A detailed Traffic Impact Statement is required in each case where a proposed new building, use or project will contain more than 4,000 square feet, or will include one of the following uses which generates high volumes of trips: motor vehicle service station or bank. The Traffic Impact Statement shall contain:

- (1) A description of estimated daily (including peak season) and peak-hour vehicle trips to be generated by the site and traffic flow patterns for vehicles, bicycles and pedestrians showing adequate access to and from the site and adequate circulation within the site.
- (2) Traffic flow patterns at the site including entrances and egresses, loading and unloading areas, and curb cuts on site and within one hundred feet of the site;
- (3) A detailed assessment of the traffic safety impacts of the proposed project or use on the carrying capacity of any adjacent highway or road, including the projected number of motor vehicle trips to enter or depart from the site estimated for daily hour and peak hour traffic levels, road capacities, and impacts on intersections;
- (4) A plan to minimize traffic and safety impacts through such means as physical design and layout concepts, staggered employee work schedules, promoting use of public transit or carpooling, or other appropriate means;
- (5) An interior traffic and pedestrian circulation plan designed to minimize conflicts with safety problems.

g. Existing and proposed exterior lighting in accordance with the Light Pollution Reduction standards set forth in Section 5499;

h. Plans shall include a Tree Inventory and Landscaping Plan that identifies significant groups of trees or individual specimen trees (including species, size and health), within the area proposed to be disturbed by the development, prepared by an Arborist, Landscape Architect, Ecologist, or other qualified professional. The plan shall identify existing trees 6" caliper or larger at breast height (4.5 feet above ground) and existing tree/shrub masses; proposed planting, landscaping, and screening. It shall also:

- (1) Note any wooded environmentally sensitive areas, such as floodplains, stream corridors, steep slopes, rare species habitat or wetland buffer zones;
- (2) Indicate whether each tree or grouping of trees are recommended for preservation, transplant, or removal;



- (3) Describe provisions for the protection, maintenance and management of trees to be preserved, including the location of protective fencing, and replacement of any trees moved or lost during construction. Show that project grading changes, structures, construction work zones, and areas for storing construction materials and debris will not occur within the drip line or critical root zone of any trees or groups of trees designated for protection;
  - (4) Identify the location, condition, and species for all larger individual trees with a circumference at breast height (4.5 feet above ground) of 25 inches or greater.
- i. The location, dimensions, height, color, illumination and characteristics of existing and proposed signs;
  - j. A table containing the following information:
    - (1) Maximum area of building to be used for sales offices, business, industrial or other uses;
    - (2) Maximum number of employees, where applicable;
    - (3) Maximum seating capacity, where applicable;
    - (4) Number of parking spaces existing or required for the intended uses.
  - k. An illustration of the location and a description of proposed open space or recreation areas.
  - l. A plan for the control of erosion, dust and silt, both during and after construction, temporary and permanent erosion control, and protection of water bodies is required. The plan must conform to the most recent version of the Massachusetts Erosion and Sedimentation Control Guidelines by the Massachusetts Executive Office of Energy and Environmental Affairs.
  - m. Compliance with all applicable provisions of this Zoning By-Law;
  - n. Certified list of abutters;
  - o. Application fees and inspection fees, as set forth in the rules and regulations of the  
Planning Board.

5451. Assessment of Impacts. During the hearing process, the Planning Board may require further or additional assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental



factors. The Planning Board may require that such assessments be prepared by qualified experts at the applicant's expense. [Amended 4-25-2011 ATM, Art. 9; 4-30-2012 ATM, Art 7]

5452. Lack of Complete Application. Any application submitted which fails to include the required materials shall not be accepted until the application is complete.

5460. Waiver of Technical Compliance. The Planning Board may, in its sole discretion, upon written request of the applicant, waive any of the technical requirements of this Section where the project involves relatively simple development plans.

5470. Criteria for Approval. Site Plan approval requires a majority vote of the Planning Board and shall be granted upon determination by the Planning Board that the following conditions have been satisfied. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to ensure that the following conditions have been satisfied. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. (Editor's Note: See Ch. 264, Subdivision of Land) New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

5471. Minimize the volume of cut and fill, the number of removed trees 6" caliper or

larger, (at 4.5 feet above the ground) the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

5472. Maximize pedestrian and vehicular safety both on the site and egressing from it;

5473. Minimize obstruction of scenic views from publicly accessible locations;



5474. Minimize visual intrusion by controlling the visibility of parking, storage, or other

outdoor service areas viewed from public ways or premises residentially used or zoned;

5475. Minimize glare from headlights through plantings or other screening;

5476. Minimize lighting intrusion through use of such devices as cut-off luminaires confining direct rays to the site;

5477. Minimize unreasonable departure from the character and scale of building in the

vicinity, as viewed from public ways.

5478. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

5479. Maximize employment of the Green Development Performance Standards (see Section 5480);

54795. Achieve compliance with the provisions of this Zoning By-Law, including parking and landscaping.

5480. Green Development Performance Standards

The Planning Board shall review and evaluate whether the Site Development Plan maximizes consistency with the following Green Development Performance Standards.

5481. Limits to Site Disturbance

- (a) Applicants shall demonstrate that they will minimize land clearing, alteration of natural topography and features, destruction of vegetation, soil compaction, destruction of wildlife habitat, prevent pollution of water resources, damage to root systems and associated environmental impacts, in order to preserve open space and undisturbed land.



- (b) The site design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage channels on the site.
- (c) The site design shall minimize and balance cut and fill, to reduce total land disturbance and minimize the importing or exporting of earth materials from the site.
- (d) To the maximum extent feasible, the site design shall protect hilltops and scenic views. Placement of buildings, structures, or parking facilities shall minimize negative impacts to the site's scenic qualities and shall blend with the natural landscape. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to reflect the natural terrain.
- (e) Sites shall be designed to avoid impacts to rare and endangered species and wildlife habitat on a site, including Biomap Core Habitat and Priority Habitat areas, and to maintain contiguous forested areas.
- (f) Sites shall be designed to prevent impacts to aquifer recharge areas and water supply reservoir watershed areas for public drinking water supplies;
- (g) Limit-of-work controls (also known as perimeter controls or development envelopes) for structures, driveways, parking, wastewater disposal, lawn areas, utility work, and any grading associated with the development shall be installed and maintained to establish the disturbance limits of clearing and grading activities.
- (h) Efforts to minimize the clearing and grading on a site associated with construction activities shall be employed, such as parking of construction vehicles, offices/trailers, and stockpiling of equipment/materials in areas already planned for permanent structures, and not in areas of protected trees, wetlands, and/or their vegetated buffers.
- (i) The extent of a site exposed at any one time shall be limited through phasing of construction operations. Timely re-vegetation of disturbed areas shall occur immediately after grading is complete.
- (j) Except on urban and infill sites where higher density development has been determined to be desirable, clearing of vegetation and alteration of topography should be limited to 35% of the site for residential uses, or 40% of the site for commercial, industrial or institutional uses. Native vegetation shall be planted in disturbed areas as needed to enhance or restore wildlife habitat.



- (a) The Planning Board shall review and evaluate whether the Site Development Plan maximizes:
  - (1) Preservation of open space and trees on the site
  - (2) Retention of existing stands of trees, trees at the site perimeter, contiguous vegetation with adjacent sites, and specimen trees
- (b) Forested areas should be preserved if they are located in areas also including:
  - (1) Wetlands, waterbodies and their buffers; or
  - (2) Critical wildlife habitat areas; or
  - (3) Slopes over 25 percent; or
- (c) Trees with a circumference of 60 inches at breast height (4.5 feet above ground), or a diameter of 19 inches, shall be preserved. The entire area within the dripline and critical root zone of preserved trees, including understory vegetation, shall be retained in an undisturbed state.
- (d) Any trees, identified for preservation in Section 5522c above, that are removed or lost during construction shall be replaced. Replacement tree shall be native tree species, and shall be species that promote forest diversity and carbon sequestration, for example, sugar maple, red oak, beech, red maple, white ash and birch. For each tree over 19 inches in diameter that is removed or lost, a replacement tree with a diameter of at least 4 inches shall be planted on the site.
- (e) Transplanting methods that maximize plant survival shall be used.
- (f) Prior to clearing, excavation, grading or other construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing (i.e. orange construction fencing) or other measures. All trees on adjacent properties whose drip lines extend into the project site shall also be protected. Barriers shall be constructed outside the dripline and critical root zone of all vegetation to be protected.
- (g) Materials shall not be stored within the drip line of trees to be protected.
- (h) Additional Best Management Practices shall be used to protect trees during construction (i.e. pruning, soil aeration, trunk wrapping, root pruning, watering).
- (i) All protective measures shall be maintained until all construction work is completed, the site is cleaned up, and final approval is given by the Building Inspector.



#### 5483. Orientation of Buildings for Solar Access

- (a) The Planning Board shall review and evaluate whether the Site Development Plan is compatible with the following design guidelines, to the extent feasible based on lot configuration and size:
  - (1) Building orientation takes advantage of passive solar heat gain in the winter by orienting buildings with the longest axis running east-west. The long axis of a building should face within 10 degrees of due south if possible, and not more than 30 degrees off of due south.

#### 5484. Landscaping and Water Reduction

- (a) The Planning Board shall review and evaluate whether the Site Development Plan has environmentally sensitive landscaping features, including:
  - (1) Maximum use of native plants and landscaping with low maintenance requirements, and that require little or no irrigation.
  - (2) Minimized use of potable water for landscape irrigation, including installing high-efficiency irrigation systems, using mulch to prevent water evaporation, irrigating with captured rainwater, and reusing building grey water, where feasible.
  - (3) Incorporation of Low Impact Development practices for stormwater management, in conformity with Deerfield bylaws, Chapter 155, Stormwater, and Planning Board stormwater regulations. (See Town of Deerfield "Best Development Practices Guide").

#### 5485. Protection and Buffering of Land in Agricultural Use

- (a) Applicants shall, to the extent feasible, avoid development of land in agricultural use, using the following practices:
  - (1) Select development sites that reduce impacts to land in active agricultural use;
  - (2) If the development will take place on land in agricultural use, minimize impacts through cluster design or other open space preservation techniques.
  - (3) If the development site is adjacent to land in agricultural use, the site plan shall:
    - Provide screening by installing landscaped buffers at property lines that abut land in agricultural use;



- Prevent stormwater runoff from impermeable surfaces from entering adjacent land in agricultural use.

#### 5486. Parking and Trip Reduction

(a) The Planning Board shall review and evaluate whether the Site Development Plan meets the following standards to reduce parking and personal vehicle trips, and to support walking, cycling, and use of alternative transportation:

(1) Parking:

- a. The site design shall reserve parking spaces for electric vehicles, compact cars, low emission vehicles, and/or carpools and vanpools. To the extent feasible, set aside 10% of all parking spaces for carpools and fuel efficient vehicles. Locate these spaces in preferred locations nearest to buildings.
- b. Through the Site Plan Approval process, the Planning Board may reduce parking requirements, based on information that demonstrates the proposed use will have reduced parking demand. Applicants may estimate parking demand based on the type of use involved, its location, and other relevant considerations.

(2) Trip Reduction:

- a. Designate and clearly mark areas for carpool and vanpool drop off/pick up and parking.
- b. Encourage use of mass transit, where available, by designating areas for bus stops or shuttle services, and/or through other measures.
- c. Reduce on-site driving through efficient design of roads and parking areas.

#### 5487. Pedestrian and Bicycle Access

a. Applicants shall demonstrate that the development will, to the extent feasible, provide accessibility for pedestrians and bicycle use within the development and from the development to adjacent properties, including:

- (1) Sidewalks are required in all residential subdivisions, and for all commercial, industrial and civic uses.
- (2) Bicycle racks and other bicycle amenities are encouraged in all developments.
- (3) Linkages to town-wide or regional bicycle/pedestrian pathways are encouraged in all developments.



- (4) Bicycle and pedestrian pathways are encouraged for improved internal circulation within large developments, and should be linked to adjacent properties, pathways, sidewalks and transit stops wherever feasible.
- (5) Within commercial, civic and office developments larger than 50,000 square feet, provide secure bicycle racks or other bicycle storage, shower and changing rooms. For multifamily residential buildings, provide covered bicycle storage facilities for 15% or more of all building occupants.
- (6) When developing new roads, provide safe and convenient routes for bicyclists, pedestrians and vehicles. Refer to "Complete Streets" principles when designing new roads. Provide a Site Circulation Map that shows vehicle, pedestrian and bicycle routes within the site.

#### 5488. Storage of Hazardous Materials

- a. Applicants shall describe and locate all hazardous materials that will be stored on site.
- b. All hazardous materials that are stored on site must be stored to prevent releases to the environment, in accordance with the regulations of the U.S. Environmental Protection Agency, the Uniform Fire Code (UFC) and the International Fire Code (IFC).

#### 5489. Light Pollution Reduction

- a. Applicants shall demonstrate that the development will, to the extent feasible, minimize light pollution, including glare and light trespass, while maintaining safety, visibility and security of individuals and property. The Planning Board shall review and evaluate whether the Site Development Plan meets the following standards to reduce light pollution:
  - (1) All outdoor lighting shall have full cutoff fixtures. Cutoffs shall shield bulbs from visibility.
  - (2) General site lighting shall focus light downwards in order to prevent light from going upwards or reaching off-site areas. The horizontal plane of the bottom of lamp fixtures shall not exceed 90 degrees. No up lighting is allowed: parking, security and aesthetic lighting shall shine downward.
  - (3) Spotlights used to illuminate buildings, signs or specific site features shall be targeted on such objects so as to prevent direct up lighting. Cutoffs shall limit lighting to a 45 degree angle above the horizontal plane.



- (4) Upward search or spotlighting of the sky for entertainment or advertising purposes is prohibited.
- (5) Lighting shall be shielded to prevent direct glare and light trespass and shall be contained to the target area to the extent feasible.
- (6) Color temperature of any outdoor light source shall not exceed 3500 Kelvin.
- (7) All nonessential lighting, including display, parking and sign lighting, shall be automatically turned off after business hours, leaving only the lighting necessary for site security.
- (8) For each interior light, the design should prevent strong intensity light from exiting through windows. Alternatively, employ automatic controls to ensure that interior lights are shut off after dark when there are no building occupants.
- (9) The Site Development Plan shall specify the lowest lighting power densities necessary to meet the minimum requirements of each lighting task.
- (10) No light standard shall be taller than fourteen (14) feet in height.
- (11) Signs should be illuminated from the top. Internal illumination is not permitted.
- (12) Energy-efficient lamps should be used for all outdoor applications.

#### 54891. Collection and Storage of Recyclables

Applicants shall demonstrate that the development will, to the extent feasible, facilitate reduction of waste by building occupants by providing an easily accessible area(s) that serves the entire building(s) that is dedicated to collection and storage of paper, cardboard, glass, plastics, metals and organics for recycling.

#### 54892. Construction Waste Management and Topsoil Recovery

Applicants shall demonstrate that the development will, to the extent feasible, minimize construction waste and loss of topsoil resulting from demolition, construction and land disturbance activities.

- a. To the greatest extent feasible, recycle or salvage non-hazardous construction and demolition debris, including waste cardboard, metal, brick, acoustical tile, concrete, plastic, clean wood, glass, gypsum wall-board, carpet and insulation.



- b. Provide details on construction waste management and topsoil recovery, including identification of all materials that will be diverted from final disposal for reuse on site, charitable donation, and recycling.
- c. To the extent feasible, preserve and re-apply at least 6" of the site's topsoil and at least 12" of the site's subsoil to replicate pre-existing conditions.

5490. Lapse. Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

5491. Regulations. The Planning Board may adopt and from time to time amend reasonable

regulations for the administration of these Site Plan guidelines.

5492. Appeal. An appeal of a Site Plan Review Decision by the Planning Board shall be filed in a court of competent jurisdiction in accordance with M.G.L. Chapter 40A, Section 17. [Added 4-30-2012 ATM, Art 7]

5495. Incentivized Green Performance Standards Special Permit

In addition to Site Plan Review, an applicant may submit a separate application for a Special Permit to the Planning Board, which shall be the Special Permit Granting Authority for Incentivized Green Performance Standards, demonstrating that the development plan incorporates any of the green development practices listed in 5561 below, or other enhanced green development practices as approved by the Planning Board, in exchange for the incentives described in 5562 below.

54951. Eligible Green Development Practices. Eligible green development practices include:

- a. Installation of a green roof;
- b. Installation of permeable pavement in parking areas or driveways;
- c. Permanent protection of additional open space, farmland and wildlife habitat area on the contiguous site, beyond applicable minimum zoning requirements;
- d. Restoration and permanent protection of previously destroyed or disturbed wildlife habitat on the contiguous site;
- f. Creation public park and/or community garden space on lands which are permanently dedicated to the town;



g. Installation of rain gardens and/or tree box filters to capture and infiltrate stormwater;

h. Installation of rooftop solar panels.

54952. Eligible Incentives. The applicant may select the best incentive option(s) for their project:

- a. Additional lot coverage or floor area;
- b. Partial waiver of parking space requirements.
- c. Increase in building height limits.
- d. Reduction in frontage requirements.

5496. Dimensional and Density Regulations

- a. Each Green Performance Standard is equivalent to one of the incentives shown in the Table of Exchange Standards for Green Performance Standards, found below in this section.
- b. The maximum limits on density, lot coverage, and parking reductions permitted to be developed by Special Permit in the Receiving District shall be determined by reference to the Table of Exchange Standards for Green Performance Standards found below in this section.

Table of Exchange Standards for Green Performance Standards

Green Performance Standard	Incentive	Notes
One acre of protected land on the contiguous site, beyond applicable zoning requirements;	Reduction of 20 parking spaces;	1) The Planning Board may reduce the minimum parking requirements in the Zoning Bylaw for off-street parking area. The Planning Board may reduce this requirement for off-street parking area to a minimum of 75% of the required parking. To obtain this waiver, the applicant shall demonstrate that sufficient parking will be available to the development (i.e. through shared parking, use of on-street parking, reduced vehicle use, timing, etc.).  2) The maximum increase in building height shall be ten feet.
or	or	
One acre of permeable pavement;	An increase of 5 feet in building height;	
or	or	
2000 s.f. of installed green or blue roof;	2000 s.f. of additional floor area;	
Or	Or	
2000 s.f. of installed rooftop solar panels	A reduction of 10% in the required frontage	



<p>or</p> <p>One acre restored and protected wildlife habitat area on the contiguous site;</p> <p>Or</p> <p>One acre of public park and/or community garden space on lands which are permanently dedicated to the town</p> <p>Or</p> <p>Installation of a rain garden, bio-retention area or other Low Impact Development practice for retaining stormwater on-site</p> <p>equals:</p>	<p>subject to the following (see notes):</p>	<p>3) The maximum increase in floor area shall be 2000 s.f.</p>
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5497. Special Permit Process for Green Performance Incentives

- a. The applicant proposing a green performance incentive exchange shall make application to the Planning Board for a Special Permit. The application shall clearly illustrate, on the Site Development Plan, the proposed green development practice to be employed in the proposed project, and shall describe the proposed incentive requested in exchange for the green development practice.
- b. Prior to final approval of a Special Permit, applicants proposing to protect additional open space shall tender to the Planning Board a valid instrument granting to the Town a permanent Conservation Restriction or Agricultural Preservation Restriction in accordance with G.L. c. 184 sec. 32 for the proposed protected land. No occupancy permit shall issue until the proposed restriction is approved by the Commonwealth, the Selectboard and the Planning Board and is recorded in the Franklin County Registry of Deeds.
- c. Upon advice of the Town Counsel that the Conservation Restriction or Agricultural Preservation Restriction document is valid and sufficient, the Selectboard shall consider authorizing Conservation Commission acceptance of the Conservation Restriction or Agricultural Preservation Restriction. If the Special Permit application is valid and sufficient, the Conservation Commission, acting on behalf of the Town, shall accept the



Conservation Restriction or Agricultural Preservation Restriction for approval by the appropriate state agency, and for recording in the County Registry of Deeds.

5498. Special Permit Criteria

- a. The Planning Board shall not grant any special permit for Green Performance Incentives unless it finds the following criteria, in lieu of those provided for in Section 5300 of the Zoning Bylaw, are met:
  - (1) The proposed use is in harmony with the purposes of this bylaw.
  - (2) The proposed use meets all of the procedural, dimensional and density requirements of this bylaw.
  - (3) The proposal meets or exceeds the standards set forth in this section 5560.

Motion carried by 2/3rds, so declared the Moderator

A true copy,

Attest: Barbara J. Hancock  
Barbara J. Hancock, Town Clerk