

**Archived Documents for  
Essex Planning Board Public Hearing and Meeting  
April 17, 2024**

PDF includes posted agenda, meeting minutes, and supporting documents for the Public Hearing and Meeting.

The minutes for this Public Hearing and Meeting were approved May 1, 2024.

A hard copy is available for viewing in the Planning Board office.

## TOWN OF ESSEX PLANNING BOARD AGENDA — WEDNESDAY, APRIL 17, 2024

The Public Hearing and Public Meeting of the Planning Board will be held at the Essex Town Hall, 3<sup>rd</sup> Floor Auditorium, 30 Martin Street at 7:00 PM

Remote access will be available through the following Zoom link:

Join Zoom Meeting

<https://us06web.zoom.us/j/84928884797>

Meeting ID: 849 2888 4797

One tap mobile

+13052241968,,84928884797# US

+13092053325,,84928884797# US

Please note that while an option for remote attendance is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast or its quality, unless otherwise required by law. Members of the public with particular interest in any specific item on this agenda should make plans for in-person versus virtual attendance accordingly. At this time remote participation is not available, only remote observation.

This regular meeting of the Planning Board includes the required public hearing for the Zoning Bylaw articles that the Planning Board is bringing to Annual Town Meeting (ATM) on May 6, 2024.

### **PUBLIC HEARING**

- Open hearing
- Chairman statement
- Sequential review of each Zoning Bylaw article included in ATM warrant (Articles 14-20)
  - Description of the article
  - Planning Board questions and comments
  - Public questions and comments
- Close Public Hearing

### **BOARD DISCUSSION AND VOTE ON WARRANT ARTICLES**

#### **BOARD DISCUSSION** (as time permits)

- Options and ideas for public outreach during next steps of Bylaw update work
- Review of wrap up with MAPC and final documents

#### **BOARD REVIEW OF MEETING MINUTES**

- Minutes of April 3, 2024
- Review of additional prior meeting minutes

### **MEETING TO ADJOURN**

*The Agenda Items listed are those items which were reasonably anticipated by the Chair to be discussed at the meeting. Not all items may be discussed, and other items not listed may also be brought up for discussion to the extent permitted by law.*

*The next regular meeting of the Town of Essex Planning Board will be held at 7:00pm on Wednesday, May 1, 2024 at the Essex Town Hall, 2<sup>ND</sup> Floor Meeting Room, 30 Martin Street, Essex, MA.*

## Town of Essex Planning Board Meeting and Public Hearing Minutes – April 17, 2024

The Public Meeting and Public Hearing were held in the Town Hall 3rd floor auditorium. Public access for listening and/or observing was available through Zoom.

### **ATTENDANCE:**

**In-person Board members:** Chairman Lisa O'Donnell, Shelly Bradbury, Matt Greco, Jud Lane, Peter Levasseur

**Absent Board members:** Simone Early, Jay Tetzloff

**Administrative Assistant:** Theresa Whitman

**In-person Town officials and Board guests:** Ruth Pereen, Selectman Chair; Brendhan Zubricki, Town Administrator

**Remote Town officials and Board guests:** Peter Phippen, Selectman; Valerie Massard, Town Planner

**CALL TO ORDER/OPEN PUBLIC HEARING:** The meeting was called to order by Chairman Lisa O'Donnell at 7:03, at which time a motion to open the Public Hearing was made by Shelly Bradbury, seconded by Jud Lane, and approved unanimously by all members present.

**PUBLIC HEARING:** Lisa outlined the expectations for the hearing in her Chairman Statement. A sequential review of each Zoning Bylaw article proposed for consideration at the upcoming Annual Town Meeting (ATM) to be held May 6, 2024 was then made as follows:

**Article 14:** Lisa explained the content of and context for the article. No questions or comments from Board members or the public.

**Article 15:** Lisa explained the content of and context for the article, and Town Planner Valerie Massard added additional context. No questions or comments from Board members or the public.

**Article 16:** Lisa explained the content of and context for the article, and Town Planner Valerie Massard added additional context. No questions or comments from Board members. Questions from members of the public went as follows:

- ***Gordon Thompson, 119 Western Avenue:*** Mr. Thompson asked the Board to clarify the strikethrough versus bold language from Article 15. Lisa clarified that the strikethrough indicates language proposed for removal from the Bylaw, while language in bold indicates additions to the Bylaw. Mr. Thompson asked for confirmation then that the only thing being removed from Article 15 is the line shown in strikethrough, and Lisa confirmed this as correct.
- ***Mark Lynch, 16 County Road:*** Regarding Article 16, Mr. Lynch noted that point the proposed 6-4.1.3.b includes the phrase, for each district. He asked for confirmation that no new districts were being proposed at this time, and for clarification regarding what districts currently exist. Lisa confirmed that no new districts are being proposed at this time, and clarified that the Town currently has the Central Conomo Point District, Southern Conomo Point District, and Essex Downtown Zoning District, and that all properties not included in one of those are considered part of the General Use District. Mr. Lynch asked for confirmation that this Bylaw would apply to new zoning districts if passed in the future, and Lisa confirmed that as correct.

**Article 17:** Lisa explained the content of and context for the article. No questions or comments from Board members. Questions from members of the public went as follows:

- **Mark Lynch, 16 County Road:** Mr. Lynch asked what triggers the requirement for a Special Permit. Lisa responded that any use listed in the Bylaw section 6-4.3 requires a Special Permit, as well as projects within the Wetlands Resource Protection Overlay District. Mr. Lynch noted that the proposed Evaluation and Decision Criteria (6-4.3.1.4) language is very subjective and asked about the rationale for including it, as well as whether this language is typical and/or widely used. Lisa agreed that yes, the criteria are subjective, as the Special Permit process is designed that way intentionally to limit adverse effects of specific uses. She noted that the language was taken from other towns' Bylaws and is typical of what other towns use, and that recourse is available through the Zoning Board of Appeals. Mr. Lynch asked if this language expands the Special Permit process in place today. Lisa responded that it clarifies rather than expands, noting that the proposed Bylaw language lets applicants and community members know up front what considerations may be used when the Planning Board writes a Special Permit decision. Mr. Lynch emphasized that this is an important point to note.

**Article 18:** Lisa explained the content of and context for the article, and Shelly Bradbury added additional context. Shelly noted an inconsistency in style between 6-4.3.2.5.3.A.2.c and 6-4.3.2.5.3.A.2.d. Town Administrator Brendhan that this could be addressed within the motion at ATM. No questions or comments from the public.

**Article 19:** Lisa explained the content of and context for the article. No questions or comments from Board members or the public.

**Article 20:** Lisa explained the content of and context for the article. No questions or comments from Board members or the public.

Town Administrator Brendhan Zubricki suggested that online observers be allowed to participate in the Public Hearing. Lisa invited questions and comments from online participants. Hearing none, Shelly moved to close the Public Hearing. The motion was seconded by Jud Lane, approved unanimously, and the Public Hearing closed at 7:52pm.

**BOARD VOTE ON ARTICLES:** Lisa asked Board members for any further comments or questions. Hearing none, votes were taken on each article individually as follows:

A motion to support putting forth Article 14 at the upcoming ATM was made by Shelly Bradbury, seconded by Jud Lane, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O'Donnell – yes

A motion to support putting forth Article 15 at the upcoming ATM was made by Shelly Bradbury, seconded by Jud Lane, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

A motion to support putting forth Article 16 at the upcoming ATM was made by Shelly Bradbury, seconded by Matt Greco, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

A motion to support putting forth Article 17 at the upcoming ATM was made by Peter Levasseur, seconded by Shelly Bradbury, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

A motion to support putting forth Article 18 at the upcoming ATM was made by Shelly Bradbury, seconded by Peter Levasseur, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

A motion to support putting forth Article 19 at the upcoming ATM was made by Peter Levasseur, seconded by Matt Greco, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

A motion to support putting forth Article 20 at the upcoming ATM was made by Peter Levasseur, seconded by Shelly Bradbury, and approved by roll call vote of all members present as follows:

Peter Levasseur – yes  
Jud Lane – yes  
Shelly Bradbury – yes  
Matt Greco – yes  
Lisa O’Donnell – yes

**BOARD DISCUSSION:**

- **Options and ideas for public outreach during next steps of Bylaw update work** – Lisa noted that this will be an agenda item for discussion at the Planning Board’s May 1, 2024 meeting. Town Planner Valerie Massard offered to compile outreach ideas and recommendations for the Board to consider at that meeting (e.g., outreach timeline). Lisa asked if she could send it to Administrative Assistant Theresa Whitman in advance to be distributed with meeting materials, and Valerie agreed.
- **Review of wrap up with Metropolitan Area Planning Council (MAPC) and final documents** – Lisa shared that the MAPC wrap up meeting did take place on April 9, 2024, with herself, Vice-chairman Simone Early, Board of Selectman Chairman Ruth Pereen, and Town Administrator Brendhan Zubricki in attendance on behalf of the Town. Shelly asked if MAPC’s final report had been received. Lisa reported that it had recently been received and would be forwarded to Board members in time for further discussion at the May 1, 2024 meeting.

**BOARD REVIEW OF MEETING MINUTES:** Minutes of the April 3, 2024 Public Meeting were provided for review in advance and at the meeting. Lisa noted that she had not had a chance to review the minutes thoroughly and would like to follow up on one item before approving. Shelly noted concern with the use of the title Building Inspector rather than Building Commissioner. Lisa pointed out that this title is codified in the Town Bylaw and that if we wish to change it, we need to do so there. Shelly noted the lack of title and full name for Building Inspector Bill Sanborn in the discussion of Article 14. Theresa pointed out that his full name and title were included the first time he was referenced in the body of the minutes, as has been past practice for participants included in the list of attendees. It was noted that there is no clear style directive for minutes, and Theresa offered to look into options for the Board to consider. The Board agreed to revisit approval of the April 3, 2024 minutes at the May 1, 2024 meeting.

**ADJOURN:**

A motion to adjourn was made by Shelly Bradbury, seconded by Jud Lane, and approved unanimously by all Board members present. The meeting adjourned at 8:07pm.

**Reference Documents:** 2024 Annual Town Meeting Warrant

2024

Commonwealth of Massachusetts  
Town of Essex

Warrant for Annual Town Meeting

Essex, ss:

To either of the Constables of the Town of Essex;

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, of the Annual Town Election to bring to ballot for the following officers:

- One Board of Assessors member for one year
- One Board of Assessors member for three years
- One Board of Selectmen member for three years
- One Board of Health member for three years
- One Regional School Committee member for three years
- One Board of Library Trustees member for two years
- One Board of Library Trustees member for three years
- One Housing Authority member for five years
- Two Planning Board members for five years

AND, to do this by vote on one ballot. The polls will be open on Monday, May 13, 2024 at 7:00 o'clock A.M. and will close at 8:00 o'clock P.M. at the Essex Public Safety Facility, 11 John Wise Avenue, Essex.

AND, you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, to meet in said Essex at the Essex Elementary School, 12 Story Street, on Monday, May 6, 2024 at 6:45 p.m. and there and then to act on the following Articles, viz:

ARTICLE 1

To see if the Town will vote to determine the manner of electing or choosing all other Town Officers usually elected or chosen at the Annual Town Meeting and take any appropriate action to elect such officers.

ARTICLE 2

To hear and receive the Reports of the Town Officials and Committees, and also to consider and receive any Reports contained in the Annual Town Report; or take any other action relating thereto.

### ARTICLE 3

To see if the Town will amend or revise the Wage and Salary scale for fiscal year 2025 in accordance with the recommendations of the Personnel Board Report, a copy of which is on file in the Town Clerk's office and on the Town's website at <https://www.essexma.org>, and is incorporated herein by reference; or take any other action relating thereto.

### ARTICLE 4

To see if the Town will vote to fix the salary and compensation of each of the elected officers of the Town as required by Massachusetts General Law Chapter 41, Section 108, as amended, for fiscal year 2025 in accordance with the recommendations of the Personnel Board Report, a copy of which is on file in the Town Clerk's office and on the Town's website at <https://www.essexma.org>, and is incorporated herein by reference; or take any other action relating thereto.

### ARTICLE 5

To see if the Town will vote to transfer from the Town Septic Betterment Fund a sum of money for the purpose of making necessary payments to the Massachusetts Clean Water Trust during fiscal year 2025 in accordance with the terms of repayment for Community Septic Management Program loan funds; or take any other action relating thereto.

### ARTICLE 6

To hear and act upon the Report of the Finance Committee and to vote to raise and appropriate or transfer from available funds a sum of money for the Town charges and expenditures for the ensuing year, and to authorize the Finance Committee to permit budget line item transfers within a department from salary lines to salary lines and from expense lines to expense lines; or take any other action relating thereto.

### ARTICLE 7

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Sewer Enterprise Fund for the remainder of fiscal year 2024; or take any other action relating thereto.

### ARTICLE 8

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Sewer Enterprise Fund for fiscal year 2025, and to authorize the Finance Committee to permit budget line item transfers within a department from salary lines to salary lines and from expense lines to expense lines; or take any other action relating thereto.

## ARTICLE 9

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Water Enterprise Fund for the remainder of fiscal year 2024; or take any other action relating thereto.

## ARTICLE 10

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purpose of funding the Water Enterprise Fund for fiscal year 2025, and to authorize the Finance Committee to permit budget line item transfers within a department from salary lines to salary lines and from expense lines to expense lines; or take any other action relating thereto.

## ARTICLE 11

To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to pay the Town's share of the operating and capital costs of the Essex North Shore Agricultural and Technical School District for the fiscal year commencing July 1, 2024; or take any other action relating thereto.

## ARTICLE 12

To see if the Town will vote to approve the Gross Operating and Maintenance Budget of the Manchester-Essex Regional School District, and raise and appropriate or transfer from available funds a sum of money for the Town's assessment from the District - said sum to be calculated solely in accordance with the "Agreement Between the Towns of Essex and Manchester-by-the-Sea, Massachusetts with Respect to the Formation of a Regional School District", as most recently amended, by invoking and approving the provision found in paragraph four of Massachusetts General Laws chapter 71, section 16B allowing District members "to reallocate the sum of their required local contributions to the district in accordance with the regional agreement", for the fiscal year beginning July first, two thousand twenty-four; or take any other action relating thereto.

## ARTICLE 13

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money, which represents its apportioned share of the Essex Elementary School feasibility study, authorized by the Manchester Essex Regional School District (MERSD), for the purpose of paying costs of the Essex Elementary School feasibility study, for the school currently located at 12 Story St, Essex, MA 01929, and further described in two separate deeds recorded in a) Book 4203 on Page 399, and b) in Book 4216 on Page 501 and shown together on a plot plan in Plan Book 86, Plan 88 in the Essex South Registry of Deeds and depicted on Map 129, Lot 5 of the Town of Essex Assessors' maps, and for which the District may be eligible for a school construction grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended at the direction of MERSD Essex Elementary School Building Committee. The MSBA's grant program is a non-entitlement, discretionary program based on need, as

determined by the MSBA, and any Study costs the District incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the District and its member municipalities. Any grant that the District may receive from the MSBA for the Study shall be as set forth in the Feasibility Study Agreement that may be executed between the District and the MSBA; or take any other action relating thereto.

ARTICLE 14

To see if the Town will vote to amend Section 6-3.3.3.7 of the Town’s Zoning Bylaws, Dimensional and Density Regulations, to require that all buildings have a minimum front yard setback of seven (7) feet, as shown below, with additions shown in **bold** and deletions shown in ~~strikethrough~~; or take any other action relating thereto.

6-3.3.3.7: Dimensional and Density Regulations

**Table 1:**

Principal Buildings	Residential Single and Two Family	Residential Multi-Family	Business	Motel and Hotel	Industrial, Class A	Industrial, Class B	Mixed- Use
Minimum Lot Area (sq. ft.)	10000 sq ft	10000 sq ft	10000 sq ft	90,000 sq ft	Not permitted	10000 sq ft	10000 sq ft
Minimum Lot Frontage (feet)	75 ft	75 ft	75 ft	200 ft		75 ft	75 ft
Minimum Lot Depth (feet)	100 ft	100 ft	100 ft			100 ft	100 ft
Minimum Front Yard, All Buildings	<del>0-25 ft</del> <b>7-25 ft</b> Note #1	50 ft	<del>0-25 ft</del> <b>7-25 ft</b> Note #1	100 ft		50 ft (>10,000 sq ft)	<del>0-25 ft</del> <b>7-25 ft</b> Note #1
Minimum Lot Width (feet)	75 ft	75 ft	75 ft			75 ft	75 ft
Minimum Side Yard	6 ft Note #2	30 ft	6 ft Note #2	50 ft		30 ft	6 ft Note #2
Minimum Rear Yard	30 ft	30 ft	30 ft	100 ft		30 ft	30 ft
Maximum Building	35 ft Note #3	35 ft	35 ft Note #3			35 ft Note #3	35 ft Note #3

Height feet							
Maximum Lot Coverage ; Structures	50 % Note #4, 5	50 % Note #4,5	50% Note #4,5	50% Note #4,5		50 % Note #4,5	50% Note #4,5
As of Right with Site Plan Review/ Special Permit	As of Right with Site Plan Review	3-4 units As of Right; 5 or more units with Special Permit	As of Right with Site Plan Review	Special Permit		As of Right with Site Plan Review	As of Right with Site Plan Review; 4 or more residential units with Special permit
Accessory Buildings / Structures:							
Residential and Mixed use only							
Prohibited in front yard							
Max number per Lot				2 (Two)			
Max Height				15 feet			
Minimum Side yard				5 feet			
Minimum Rear Yard				5 feet			

Note #1:

If the adjacent buildings are setback at a distance other than the minimum front yard requirement of 0-ft, but not more than 25 feet, infill buildings shall match the setback from the front lot line of the immediately adjacent buildings. If the setbacks do not match, the infill building may match one or the other, or an average of the two adjacent building setbacks, but in no instance shall any building have a front yard setback of **less than 7 or** more than 25 feet.

ARTICLE 15

To see if the Town will vote to amend Section 6-1.3 of the Town’s Zoning Bylaws, Purpose & Intent, by adding more detailed information concerning purposes and intent to be furthered by the Town’s Zoning Bylaws, as shown below, with additions shown in **bold** and deletions shown in ~~strikethrough~~; or take any other action relating thereto.

6-1.3: Purpose & Intent

~~This chapter is enacted in accordance with the provisions of Chapter 40A, Massachusetts General Laws, for the purpose of promoting the health, safety, and welfare of the inhabitants of the town.~~

**The purpose and intent of this Bylaw is to manage growth, development and change in the Town to ensure the appropriate use of land, encouraging those qualities which distinguish**

**Essex as a desirable community for year-round and seasonal residency, commerce, tourism and recreation including:**

- a. Protection of health, welfare and quality of life for all residents and visitors;**
- b. Safety from fire, flood, panic and other dangers;**
- c. Provisions of adequate light, clean air, adequate public and private water supply, drainage, effective sewage and solid waste disposal, transportation and parking, schools, parks and open spaces, public access to waterways, and other public service provisions;**
- d. Consideration of the recommendations in planning documents prepared by Town departments or committees or other local agencies, including the Strategic Plan, the Open Space Plan, the Municipal Vulnerability Plan, the Hazard Mitigation Plan, and any others that may be developed in the future;**
- e. Consideration of housing for persons of all income levels;**
- f. Prevention of overcrowding of land, undue concentration of population, traffic congestion, blight and pollution of the environment;**
- g. Preservation of the value of land and buildings;**
- h. Protection of natural resources, particularly waterfront areas, wetlands, marshes, ponds or lakes, rivers and tidal estuaries, and wooded upland areas;**
- i. Consideration of the Town's location and infrastructure to ensure a sustainable community with provisions to address and adapt to climate change;**
- j. Preservation for the citizens of their right to their customary means of earning a living; and**
- k. Preservation for present and future inhabitants of Essex of the natural, architectural and historic assets of the Town.**

**This is done pursuant to the provisions of Massachusetts General Laws (MGL), Chapter 40A, §§1-17, inclusive, and all additions and amendments thereto.**

## ARTICLE 16

To see if the Town will vote to amend the Town's Zoning Bylaws, by adding a new Section 6-4.1.3, Limitations on Permitted Uses, as shown below; or take any other action relating thereto.

### **6-4.1.3: Limitations on Permitted Uses**

- a. Unless listed in this section (6-4 in its entirety including Permitted Uses and Special Permit Uses) or exempt under MGL, other uses are prohibited.**
- b. No building or other structure shall be erected and no building, structure or land shall be used for any purpose or in any manner other than as regulated and as permitted and as set forth herein for each district.**

## ARTICLE 17

To see if the Town will vote to Amend Section 6-4.3 of the Town's Zoning Bylaw, Uses Requiring Special Permit, by changing the title to "Special Permit Uses", by adding a new General Provisions Section and by renumbering all existing sections, as shown below, with additions shown in **bold** and deletions shown in ~~strike through~~; or take any other action relating thereto.

### 6-4.3: ~~USES REQUIRING SPECIAL PERMIT~~ **SPECIAL PERMIT USES**

#### 6-4.3.1 ~~Airport~~ **General Provisions**

##### **6-4.3.1.1 – Authority**

**Special Permits for uses identified in 6-4.3.2 may be granted by the Planning Board acting as the Special Permit Granting Authority (SPGA) (Section 6-10.6) in accordance with 6-4.3, and in accordance with Massachusetts General Laws Chapter 40A, §§9, 9A, 9B and 11.**

##### **6-4.3.1.2 – Application & Procedures**

**An application for a Special Permit shall be filed in accordance with the Rules and Regulations of the SPGA, established outside this Bylaw for the purposes of administration.**

##### **6-4.3.1.3 – Fees**

**The SPGA in its Rules and Regulations may adopt reasonable administrative fees, including those associated with holding a Public Hearing, and technical review fees, as also set forth in the Rules and Regulations.**

##### **6-4.3.1.4 – Evaluation and Decision Criteria**

**Special permits shall be granted by the SPGA, unless otherwise specified herein, only on its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in the Bylaw, the determination may include consideration of each of the following criteria:**

#### **1. General**

- a. The proposed use shall be in harmony with the general purpose and intent of the Zoning Bylaw.**
- b. The proposed use shall not adversely affect the neighborhood.**
- c. The specific site is an appropriate location for the proposed use.**
- d. Adequate and appropriate facilities shall be provided for the proposed use.**
- e. The proposed use shall ensure the preservation, enhancement or creation of existing and proposed scenic viewsheds for the enjoyment of the general public.**

**2. Infrastructure & Services**

- a. There shall be no nuisance or serious hazard to vehicles or pedestrians created by the proposed use.
- b. The specific site shall have adequate public sewage and water facilities or suitable soil conditions for on-lot sewerage and water systems.
- c. The site shall have reasonable access to any and all other utilities and services that are required for such use.

**3. Environmental Considerations**

- a. The proposed use shall have minimal negative impacts on the natural environment.
- b. The proposed use shall consider vulnerability to floods and flood damage and the effects of climate change and projections for sea level rise.

**4. Fiscal Considerations**

- a. The proposed use may consider potential fiscal and economic impact (positive and negative), particularly including the impact on Town services, infrastructure needs, tax base and potential employment.

**6-4.3.1.5 – Conditions**

Special Permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the SPGA may deem necessary, to serve the purposes of this Bylaw.

**6-4.3.1.6 – Rules and Regulations**

The SPGA shall maintain and update Rules and Regulations outside of this Bylaw that address administrative procedures, including but not limited to, application requirements, fees, and recording requirements. These Rules and Regulations shall be instated and updated at the discretion of the SPGA with a two-thirds vote of the full sitting SPGA.

**6-4.3.2 ~~Recreational facilities for other than home use~~ Uses Requiring a Special Permit**

Upon approval of the ~~planning board~~ **Special Permit Granting Authority** the following may be allowed:

**6-4.3.2.1: ~~6-4.3.1:~~ Airport**

**6-4.3.2.2: ~~6-4.3.2:~~ Recreational facilities for other than home use.**

**6-4.3.2.3: ~~6-4.3.3:~~ Private Schools**

**6-4.3.2.4: ~~6-4.3.4:~~ Public utility installations**

**6-4.3.2.5:** ~~6-4.3.5:~~ Radio, Telecommunications, Cellular and Television Facilities

*\*Warrant Note – See Article 18 for Substantive Changes to this Section*

**6-4.3.2.6:** ~~6-4.3.6:~~ Trucking terminals

**6-4.3.2.7:** ~~6-4.3.7:~~ Private hospitals

**6-4.3.2.8:** ~~6-4.3.8:~~ Nursing homes

**6-4.3.2.9:** ~~6-4.3.9:~~ Scientific Research and/or Development

*\*Warrant Note – The existing text of this section is not being changed. For information about the existing text please refer to the current bylaw on the Town’s website.*

**6-4.3.2.10:** ~~6-4.3.10:~~ Three-family conversion

*\*Warrant Note – The existing text of this section is not being changed. For information about the existing text please refer to the current bylaw on the Town’s website.*

**6-4.3.2.11:** ~~6-4.3.11:~~ Multi-family dwelling and/or apartment land use

*\*Warrant Note – The existing text of this section is not being changed. For information about the existing text please refer to the current bylaw on the Town’s website.*

**6-4.3.2.12:** ~~6-4.3.12:~~ Wind Energy Conversion Systems (WECS)

*\*Warrant Note – The existing text of this section is not being changed. For information about the existing text please refer to the current bylaw on the Town’s website.*

**6-4.3.2.13:** ~~6-4.3.13:~~ Marijuana Establishments

*\*Warrant Note – The existing text of this section is not being changed. For information about the existing text please refer to the current bylaw on the Town’s website.*

## ARTICLE 18

To see if the Town will vote to amend Section 6-4.3.5 of the Town’s Zoning Bylaws, Radio, Telecommunications, Cellular and Television Facilities (to be renumbered as 6-4.3.2.5 as shown in Article 17), as shown below, with additions shown in **bold** and deletions shown in ~~strikethrough~~; or take any other action relating thereto.

#### 6-4.3.2: Radio, Telecommunications, Cellular and Television Facilities

Installations of radio, telecommunications, cellular and television facilities, including free standing tower type structures, shall be permitted subject to the following requirements, and such other conditions as the special permit granting authority may impose under G.L.c.40A and this By Law.

- a. ~~Citizen band radio, VHF, UHF, and short wave (ham) radio towers for private or municipal use are excluded from the provisions of this section. Any change from such excluded use to a use not excluded by this section shall require a special permit.~~
- b. ~~Only freestanding monopole towers (hereinafter referred to as "Towers") shall be allowed. No guyed Towers shall be permitted.~~
- c. ~~No Tower shall be located closer than two (2) miles from any other Tower.~~
- d. ~~No Tower shall exceed one hundred fifty (150) feet in height, as measured from the ground level at the base of the Tower, or ten (10) feet below the FAA height which requires permanent lighting, whichever height is lower.~~
- e. ~~Towers shall be set back from the front, rear and side property lines a distance equal to at least one hundred twenty five (125) percent of the height of the Tower.~~
- f. ~~Towers shall be set back at least one hundred fifty (150) feet from the boundary of all wetlands, water bodies or areas designated under "Wetlands District Delineation" of this chapter.~~
- g. ~~All Towers shall be located a minimum of five hundred (500) feet from the nearest residential structure. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.~~
- h. ~~Accessory buildings shall be set back from the front, rear and side property lines a minimum of fifty (50) feet. Accessory buildings shall be of a common design and color. A maximum of ten (10) accessory buildings, each limited to four hundred (400) square feet in area and a maximum of ten (10) feet in height may be permitted per Tower. Multiple buildings shall be connected by a common wall.~~
- i. ~~Lighting shall be limited to that needed for maintenance and emergencies.~~
- j. ~~Where feasible, Towers shall be located within established wooded areas, with a minimum radius of at least one hundred fifty (150) feet measured from the base of the Tower to the edge of the woods. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure.~~
- k. ~~All Towers and accessory buildings shall be removed by the record owner of the real property upon which it is located, within ninety (90) days of the abandonment or discontinuance of the specially permitted use.~~
- l. ~~Each provision of this section shall be constructed so that if any provision is held invalid for any reason, the remaining sections shall continue in full force and effect.~~

#### 6-4.3.2.5: Personal Wireless Service Facilities (PWSF)

##### 6-4.3.2.5.1: Purpose and Intent

The Federal Telecommunications Act of 1996, 47 U.S.C. §332 (c) (7) preserves the authority of municipalities to regulate the placement, construction and modification of personal wireless service facilities (PWSFs) but provides that municipalities shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless service facilities.

The purpose of this By-law is to comply with the Federal Telecommunications Act of 1996 by establishing predictable and balanced regulations of PWSFs that:

- A. Preserve the character and appearance of Essex while allowing adequate telecommunications services.
- B. Protect the scenic, historic, environmental, natural and man-made resources of Essex.
- C. Provide standards and requirements for regulation, placement, appearance, camouflaging, construction, monitoring, design, modification and removal of Telecommunications Facilities.
- D. Provide a procedural basis for action within a reasonable period of time on requests for authorization to place, construct, operate or modify or remove Telecommunications Facilities.
- E. Locate towers and/or antennas in a manner that protects property values, as well as the general safety, welfare, and quality of life of the citizens of and all those who visit this community.
- F. Minimize the total number and height of Towers throughout Essex.
- G. Locate Towers and Telecommunications Facilities so that they do not have negative impacts, such as, but not limited to, attractive nuisance, noise, light and falling objects.
- H. Require owners of Towers and Telecommunications Facilities to design and site them so as to minimize and mitigate the adverse visual effects of the Towers and Facilities.
- I. Encourage Tower sharing and the clustering of Telecommunications Facilities, where possible, consistent with safety and aesthetic considerations.

#### **6-4.3.2.5.2: Definitions & Applicability**

##### **6-4.3.2.5.2.A: Definitions**

As used in this Section 6.4.3.2.5, the terms listed below shall have the following meanings:

**Antenna:** A transmitter device designed to transmit and/or receive radio frequency signals.

**Base Station-** The primary sending and receiving site in a wireless telecommunications network. More than one Base Station and/or more than one variety of Telecommunications Providers can be located on a single Tower or structure.

**Camouflaged Facility** - A telecommunications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure is considered "camouflaged".

**Co-location:** The use of a single mount on the ground by more than one carrier or the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communication purposes.

**Distributed Antenna System (DAS):** A multiple antenna system including antennas and control boxes typically installed on utility poles interconnected via cable or fibers belonging to the access point/base station dispersed across a coverage area.

**Elevation:** The measurement of height above mean sea level.

**Eligible Facilities Request:** Any request for modification of an existing PWSF that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.

**Monopole:** A single self-supporting Tower, tubular in design, enclosing cables within the tubular structure and designed so it does not require braces or guy wires for support and stability. The type of mount that is self-supporting with a single shaft of wood, steel or concrete and mounts for panel antennas.

**Mount:** The structure or surface upon which antennas are mounted, including mounts located on the ground, the roof or side of a building, or on a structure other than a building.

**Personal Wireless Service Device:** A portable, fixed, or mobile Personal Wireless Service communications device, such as, without limitation, a car phone, cell phone, personal digital assistant, or smart phone used by a subscriber or remote user to connect to a Carrier's Personal Wireless Service network.

**Personal Wireless Service Facility ("PWSF," or Wireless Communications Facility):** A facility for the provision of personal wireless services, as defined by the Telecommunications Act including all equipment, Towers, buildings and locations of equipment (real estate) with which a wireless communications provider transmits and receives the waves that carry its services. This facility may be owned and permitted by the provider or another owner or entity.

**Radio Frequency Interference (RFI):** A type of electromagnetic interference (EMI) causing unwanted signals (noise) in other circuits, either through radiation or conduction – interferes with information transportation and data transfers.

**Radio Frequency Radiation (RFR):** The emissions from PWSFs.

**Repeater:** A small receiver/relay transmitter designed to provide service to areas which are not able to receive adequate coverage from a base station or primary station in a wireless communications network.

**Scenic View:** A scenic view is a wide angle or panoramic field of sight and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen traveling along a roadway, waterway, or path, and may be to a faraway object or a nearby object.

**Service Coverage:** Service Coverage refers to a geographic area where a remote user of a properly installed and operated Personal Wireless Service Device compatible with a Carrier's Personal Wireless Services network (a "Compatible User Service Device") has a high probability of being able to connect to and communicate with such network with a reasonable quality of service ("QoS"). There are various measures of QoS, including without limitation, received signal strength, various signal to noise and signal to interference ratio metrics, call reliability (as indicated by dropped call ratios, blocked calls and the like), and bit error rates.

**Significant Gap -** A Coverage Gap in a carrier's wireless service network within a specific geographic area shall be considered to be a "Significant Gap" if such specific identified geographic area is so large in physical size and/or affects or is predicted to affect such a large number of remote users of Compatible User Service Devices as to fairly and reasonably be considered "significant" as opposed to merely being a small "dead spot" or a location for which the lack of adequate coverage results inherently from geological or other environmental or naturally occurring conditions, such that the proposed PWSF would be unlikely to render coverage adequate. In determining whether or not a particular Carrier's Coverage Gap is significant, a relatively small or modest geographic area may be considered a "Significant Gap" if such geographic area is densely populated or is frequently used by a large number of persons for active recreational or similar purposes who are, or are predicted to be, remote users of Compatible User Service Devices, and/or such geographic area straddles one or more public highways or commuter rail lines regularly traveled, or predicted to be traveled, by remote users of Compatible User Service Devices, while a larger geographic area may be considered not to be a "Significant Gap" if such geographic area does not straddle any public highways or rail lines and/or is sparsely populated. Whether or not a Significant Gap exists is to be determined separately for each Carrier's Personal Wireless Services network.

**Site -** For Towers other than Towers in the public rights-of-way, the boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the site, and, for other Eligible Support Structures, further restricted to that area in proximity to the structure and to other Transmission Equipment already deployed on the ground.

**Small Wireless Facilities:** A Small Wireless Facility is a facility as defined in 47 C.F.R. § 1.6002(1), as such may be amended from time to time.

**Substantial Change:** A modification of a Preexisting Tower or Antenna if it meets any of the following criteria:

- a. For towers other than towers in the public rights of way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- b. For towers other than towers in the public rights of way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- c. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- d. It entails any excavation or deployment outside the current site;
- e. It would defeat the concealment elements of the eligible support structure; or
- f. It does not comply with conditions associated with the siting of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

**Wireless Communication Tower (or Tower):** Any structure that is: (a) greater than 15 feet in height mounted on the ground or on another structure; and (b) equipped for antenna(s) and/or to provide wireless communications services.

**Wireless Communications Provider:** An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

**Wireless Services: Commercial mobile services, unlicensed wireless exchange access services, including cellular services, personal communications services, specialized mobile radio services, and paging services.**

**6-4.3.2.5.2.B: Applicability**

**1. Special Permit Requirements**

**No PWSF shall be erected, constructed, installed or operated without obtaining a Special Permit from the SPGA. No PWSF shall be erected or installed except in full compliance with the provisions of this full section: 6-4.3.2.5. A special permit is required for**

- a. New tower construction (or Substantial Change of a preexisting tower), and**
- b. New wireless communications facilities (or Substantial Change of a preexisting facility) to be mounted on a tower or structure, and**
- c. Distributed Antenna Systems (DAS, or small wireless facilities).**

**2. Modifications to existing facilities and existing special permits**

**Notwithstanding anything contained in the Zoning Bylaw to the contrary, an Eligible Facilities Request that does not Substantially Change the physical dimensions of the facility shall be allowed by right (subject to issuance of a building permit) provided the following procedures are adhered to. Any Applicant seeking a determination that an Eligible Facilities Request does not Substantially Change the dimensions of the facility shall submit an Application along with written documentation sufficient to support its claim to the Building Inspector.**

**3. Any alteration of or addition to a previously approved PWSF that does not satisfy Paragraph 6-4.3.2.5.2.B.2, above, shall require an additional special permit. Such alterations and additions may include, but are not limited to, the following:**

- a. A change in the number of buildings or facilities permitted on the site;**
- b. An addition or change of any external equipment or an increase in the height of the tower, including profile of additional antennas, not specified in the original Application; or**
- c. Co-location of new equipment.**

**4. Exemptions:**

**The following types of communications facilities are exempt from this section, provided that any change from such excluded use to a use not excluded by this section shall require a special permit:**

- a. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that: (a) the tower is not used or licensed for any commercial purpose; (b) the tower has a cost or replacement value of less than \$10,000.00; and (c) the tower must be removed if**

the use is discontinued for one year. Recommended that the top of the pole be reserved.

- b. Citizen band radio, and short-wave (ham) radio towers for private or municipal use are excluded from the provisions of this section.

### 6-4.3.2.5.3: Location & Siting

#### 6-4.3.2.5.3.A: Requirements for Location of PWSF

##### 1. Preferred Location

- a. The siting of PWSF's shall be located in areas with the following order of preference:
  - i. Town owned land located outside of a residential area;
  - ii. Land located in Industrial areas;
  - iii. Land located in Commercial areas; and
- b. Any Application for a PWSF on land located in the categories or areas enumerated in this subparagraph 6-5.3.2.5.3.A.1.a shall be accompanied by a written explanation containing the following information: (1) a list identifying each of the foregoing categories or areas with higher preference that lack land available to serve as a feasible alternative location for the PWSF; (2) a list of each of the locations evaluated and/or considered in such higher-ranking categories and areas; (3) a summary of the bases upon which the Applicant concluded that such evaluated/considered locations do not constitute feasible alternative locations; and (4) relevant supporting documentation to substantiate such conclusions.
- c. Property consideration. An Applicant shall demonstrate that all municipally owned property in the geographic area was considered.

##### 2. Co-location Requirements

An Application for a new (non-co-located) Tower shall not be approved unless the Planning Board finds that the wireless communications facility planned for the proposed Tower cannot be accommodated on an existing or approved Tower or structure due to one of the following reasons:

- a. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
- b. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts and such interference cannot be prevented at a reasonable cost.

- c. **The proposed antennas and equipment, along or together with existing facilities, equipment, or antennas, would create radio frequency interference (RFI) in violation of federal standards or requirements.**
  - d. **The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create RFR in violation of federal standards or requirements.**
  - e. **Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function, or are too far from the area of needed coverage to function reasonably, as documented by a qualified engineer (consultant) licensed to practice in the Commonwealth of Massachusetts.**
  - f. **Aesthetic considerations make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.**
  - g. **There is no existing or approved tower in the area in which coverage is sought.**
  - h. **Other unforeseen specific reasons make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.**
3. **No Tower shall be located closer than two (2) miles from any other Tower.**
4. **All Towers shall be located a minimum of six hundred (600) feet from the nearest residential structure or 1000 feet to any school property including playgrounds and athletic fields. This paragraph shall not apply to radio, telecommunications, cellular, Personal Communications Services (PCS) and television facilities, located inside an existing structure where the Wireless Communications Facilities are Camouflaged.**
5. **Where feasible, Towers shall be located within established wooded areas, with a minimum radius of at least one hundred twenty (150) feet measured from the base of the Tower to the edge of the woods. This paragraph shall not apply to radio, telecommunications, cellular, PCS and television facilities, located inside an existing structure where the facilities are Camouflaged.**
6. **Protection of scenic character: Proposed PWSFs shall not unreasonably interfere with any scenic views, paying particular attention to such views from the downtown business area, public parks, natural scenic vistas or historic buildings or districts. Towers shall, when possible, be sited off ridgelines and where their visual impact is least detrimental to scenic views and areas. In determining whether the proposed tower will have an undue adverse impact on the scenic beauty of a ridge or hillside, the Planning Board shall consider, among other things, the following:**

- a. The period of time during which the proposed tower will be viewed by the traveling public on a public highway, public trail, or public body of water;
- b. The frequency of the view of the proposed tower by the traveling public;
- c. The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
- d. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
- e. The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
- f. The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point; and
- g. The sensitivity or unique value of the particular view affected by the proposed tower.

**7. Distributed Antenna System (DAS)**

All Small Wireless Facilities located outside of a Right of Way shall require a special permit from the Planning Board. In reviewing an application for a Small Wireless Facilities Special Permit, the Planning Board shall consider, and make findings and impose any needed conditions with respect to, the following factors, criteria and requirements:

- a. The visual and aesthetic impact of the Small Wireless Facility on the abutting neighborhoods and streets and the impact on existing vistas and natural resources;
- b. Whether the proposed site is an appropriate location for the Small Wireless Facility;
- c. Whether the proposed use of the Small Wireless Facility would adversely affect the neighborhood;
- d. Whether adequate and appropriate facilities will be provided for the proper operation of the proposed Small Wireless Facility; and
- e. Whether the proposed use of the Small Wireless Facility is in harmony with the general purpose and intent of this Zoning By-law.
- f. Antennas installed on utility poles as part of a DAS should not exceed ten feet in height beyond the highest point of such utility pole or sign — unless the Planning Board determines that deviation from this guideline is in the public interest and will not result in a substantially greater impact to abutters.

**6-4.3.2.5.3.B: Requirements for Siting of a PWSF**

- 1. No Tower shall exceed a maximum height of one hundred fifty (150) feet, as measured by the grade prior to preconstruction from the ground level at the base of the Tower, or ten (10) feet below the Federal Aviation Administration (FAA) height which requires permanent lighting, whichever height is lower. In areas where there is no tree canopy, the maximum height

of a tower shall not exceed one- hundred-twenty (120) feet above finished grade of the ground elevation. Such finished grade shall not be distorted above the pre-existent natural grade as a way to achieve additional height. In areas where there is significant tree canopy, the maximum height of a tower shall not exceed twenty (10) feet above the average height of the natural pre-existent tree canopy within a one-hundred fifty (150) foot radius of the tower.

2. Towers shall be set back from the front, rear and side property lines a distance equal to at least one hundred twenty-five (125) percent of the height of the Tower.
3. Towers shall be set back at least one hundred fifty (150) feet from the boundary of all wetlands resource areas, as defined under state law and the Town's bylaws, including without limitation certified vernal pools, water bodies and others.
4. Accessory buildings shall be set back from the front, rear and side property lines a minimum of fifty (50) feet. Accessory buildings shall be of a common design and color. A maximum of six (6) accessory buildings, each limited to two hundred forty (240) square feet in area and a maximum of ten (10) feet in height may be permitted per Tower.
5. Distance of repeaters. No repeater shall be located less than 25 feet nor more than 70 feet above ground.
6. Landscaping and screening. The base of the tower as well as the building accessory to the tower shall be screened from view by a suitable 6 foot vegetation screen that is consistent with existing vegetation. The planted or existing vegetative screen shall be maintained. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.
7. Height limitations. In order to protect public safety and to preserve the scenic, rural character and appearance of Essex, antennas and all related facilities shall not exceed 150 feet.
8. Fencing and signage; insurance. The area around the tower shall be completely fenced for security to a height of eight feet and gated. Use of multiple strands of barbed wire is required. A painted sign no greater than two square feet stating the name of the facility's owner and a twenty-four-hour emergency number shall be posted on the entry gate. In addition, "No Trespassing" and any other mandated warning signs shall be posted and maintained at the site. No commercial signs or lettering shall be placed on a

tower. The tower must be equipped with an antilimbing device. The wireless communications facility owner shall maintain adequate insurance on all wireless communications facilities.

9. **Utilities.** All utilities must be routed underground via conduit from a public road to the site where feasible.
10. **Access road.** Vehicle access to the site shall be required and shall conform to all Planning Board and Department of Public Works guidelines and be at least 20 feet wide. A sturdy, posted, swinging, lockable gate must be installed which is more than 15 feet wide and less than 30 feet off the public road upon which said access is situated, A Knox box or keys shall be provided to the police and fire department for municipal access. The surface at finish grade must be approved by the Director of Public Works. Easements shall be provided to the Town of Essex for access and removal in the case of facility/tower abandonment.

**6-4.3.2.5.3.C: Requirements for the Built Facility of a PWSF**

1. **Only freestanding monopole Towers shall be allowed to be erected as new Towers, with internally or closely ("flush") mounted antenna panels (with appropriate allowance for antenna tilting to meet coverage objectives consistent with minimizing adverse visual impact of the antennas), unless such mounting would compromise irreconcilably the potential for co-location. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are prohibited. To the maximum extent practicable, PWSFs shall conceal equipment, cables, and antennas within architectural surfaces that are ordinary and consistent with the context of the PWSFs Essex environs, such as steeples, concealed-antenna monopoles, flagpoles, smokestacks, faux chimneys, and cupolas.**
2. **Lighting shall be limited to that needed for maintenance and emergencies, and security lighting.**
3. **Lighting, bulk, height, glare. All wireless communications facilities, including Towers and antennas, shall be designed and constructed so as to minimize the visual impact of the height and mass of said tower. Materials utilized for the exterior of any structure shall be of a type, color, and style so as to minimize glare and blend into the environment. Towers shall not be artificially illuminated.**
4. **Transmitter building. Facilities buildings shall be built to accommodate all anticipated tenants on a tower.**

**6-4.3.2.5.4: Regulations & Standards**

**The following regulations and/or standards shall be met for all PWSFs.**

#### **6-4.3.2.5.4.A: Planning & Permitting**

- 1. Co-location. PWSFs shall be designed to accommodate the maximum number of users technologically practicable. Shared use of freestanding, building mounted, or indoor PWSFs by commercial carriers is required unless such shared use is shown to be not technologically practicable. The intent of this requirement is to reduce the number of separate Towers required to ensure adequate coverage within the Town and avoid significant gaps in coverage.**
- 2. An engineering and environmental assessment impact shall be undertaken as well as FAA notice of determination of no hazard of flight zone shall be submitted with any Application.**
- 3. The SPGA may require the Applicant to fly or raise a three-foot-diameter brightly colored balloon or use a crane at the maximum height of the proposed facility at a location within 50 horizontal feet of the center of the proposed facility. The Applicant shall provide photographs of the balloon test taken from at least four vantage points previously designated by the Planning Board. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the Applicant at 7 and 14 days in advance of the first test date shall be published in a newspaper of general circulation in the city or town. The Applicant shall inform the Special Permit Granting Authority and any abutting property owners, in writing, of the dates and times of the test at least 14 days in advance. This test shall occur for at least four consecutive hours sometime between 9:00 a.m. and 5:00 p.m. of the dates chosen.**
- 4. The top of the proposed antenna facility shall be made available to the Town for municipal public safety antenna use at no charge to the Town.**

#### **6-4.3.2.5.4.B: Operation & Maintenance**

- 1. Compliance with Federal and State Regulations. All PWSFs shall be erected, installed, maintained and used in compliance with all applicable federal and state laws, rules and regulations, including without limitation radio frequency emission regulations as set forth in Section 704 of the 1996 Federal Telecommunications Act – including any updates if they have occurred. All PWSFs and their transmissions and associated activities must comply in all respects with the current standards of the American National Standards Institute (ANSI) and the National Council for Radiation Protection (NCRP), whichever are stricter, if and to the extent adopted by the Federal Communications Commission (FCC).**
- 2. All owners and operators of land used in whole or in part for a PWSF and all owners and operators of such PWSF shall, as a continuing condition of installing, constructing, erecting and using a PWSF, permit other public utilities or FCC-licensed commercial entities seeking to operate a PWSF to**

**install, erect, mount and use compatible Wireless Communications Facility equipment and fixtures on the equipment mounting structure on reasonable commercial terms; provided, however, that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing PWSF, and provided that there are no structural or other physical limitations that make it impracticable to accommodate the proposed additional PWSF or equipment/fixtures.**

- 3. Within thirty days of initial operation of the approved PWSF, the Applicant shall hire and pay for an Independent Consultant to monitor the background levels of Electromagnetic Frequency Radiation (EMF) emissions from the proposed facility site and/or repeater locations. The Independent Consultant shall use Monitoring Protocol. A report of monitoring results shall be prepared by the Independent Consultant and submitted to the Planning Board and the Board of Health. If the monitoring of the facility site reveals that the site exceeds the current Federal or State standards, then the owners of all facilities using the site shall be so notified. The owner(s) shall submit to the Planning Board and the Building Inspector a plan for reduction of emissions to a level that complies with the Federal or State standards within ten business days of notification of non-compliance. That plan shall reduce emissions to the standard within fifteen (15) days of initial notification.**
- 4. Annual certification must be provided to the Planning Board and Building Commissioner which demonstrates continuing compliance with the standards, rules and regulations of the Federal Communications Commission, Federal Aviation Administration, National Institute of Standards and Technology, Massachusetts Aeronautics Commission, Massachusetts Department of Public Health, and other applicable federal, state and local laws. The Town of Essex may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times. The Town may allocate to the Applicant any reasonable expenses incurred or authorized by it in retaining independent engineers to perform these evaluations.**
- 5. Any equipment permitted for a PWSFs may be replaced with equal or similar brands or models and may be upgraded to newer or technically superior brands or models so long as there is no change in the monopole design or increase in signal strength, and if a building permit is required, upon the issuance of a building permit. Upon request of the Building Commissioner, made not more frequently than once per year, each carrier shall provide updated specifications as to its equipment on the monopole.**
- 6. Inspection report is required every five years or sooner if requested by Building Inspector.**

7. **Emergency power.** Emergency power shall emit no more than 10 decibels over ambient noise level at all property lines.
8. **Noise.** Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.

**6-4.3.2.5.4.C: Abandonment & Removal**

1. **Abandonment of a PWSF:** The owner of a PWSF shall annually, no later than January 15, file a written declaration with the Planning Board certifying the continuing safe operation of the PWSF in accordance with this Zoning By-law and other applicable law. Any PWSF for which the PWSF owner fails to so file such certification shall be deemed abandoned. In addition, any PWSF that is not operational for a continuous period of twelve (12) months shall be considered abandoned, and the PWSF shall be removed by the owner of the PWSF, and the site restored to its original condition, within ninety (90) days of such abandonment. If such PWSF is not removed within ninety (90) days, such PWSF shall be deemed to be in violation of this zoning bylaw and the Building Commissioner may begin proceedings to enforce and/or cause removal. If there are two or more users of a single PWSF, then this provision shall not become effective until all users cease using the PWSF. In the event that the owner of the PWSF fails to timely remove an abandoned PWSF, the Town may proceed in removing the PWSF at the expense of the owner of the property.
2. **All Towers and accessory buildings shall be removed by the record owner of the real property upon which it is located, within ninety (90) days of the abandonment or discontinuance of the specially permitted use.**

**6-4.3.2.5.5: Other Conditions & Criteria**

1. **Each provision of this section shall be constructed so that if any provision is held invalid for any reason, the remaining sections shall continue in full force and effect.**

ARTICLE 19

To see if the Town will vote to Amend Section 6-4.3 of the Town's Zoning Bylaws, relating to uses allowed by Special Permit, to add a new Section 6-4.3.2.14, Adult Entertainment Uses, as shown below; or take any other action relating thereto.

**6-4.3.2.14: Adult Entertainment Uses**

**A. Purpose & Intent**

**This section is enacted pursuant to MGL Chapter 40A, §9A with the intent and purpose of regulating and limiting the location of Adult Entertainment Uses so as to**

protect the health, safety, and general welfare of the present and future inhabitants of the Town of Essex.

The provisions of this section of the Bylaw have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to sexually oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matter or materials may have to sell, distribute, or exhibit such matter or materials. Neither is it the intent or effect of this section to legalize the distribution of obscene matter or materials.

## **B. Definitions and Applicability**

- 1. MGL Chapter 40A, §9A allows a municipality to issue and control special permits for the uses defined therein.**
- 2. The term “Adult Entertainment Uses” used in this Bylaw is intended to cover uses listed in MGL Chapter 40A, §9A, with applicable definitions also provided in MGL Chapter 272, §31.**
- 3. No Special Permit for Adult Entertainment Uses shall be issued to any person convicted of violating the provisions of MGL Chapter 119, §63 or MGL Chapter 272, §28.**
- 4. If any section, subsection, sentence, clause, phrase, or any portion of this Bylaw section (6-4.3.2.14 in its entirety) is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw section.**

## **C. Location & Siting**

No Adult Entertainment Use shall be located within the following distances measured from adjacent properties or parcels with the following uses. The distances specified below shall be measured by a straight line from the nearest property line of the premises on which the Adult Entertainment Use is to be the located to the nearest property line of the uses listed below:

- 1. Five hundred (500) feet from any residential use;**
- 2. One thousand (1000) feet from a public or private school, including nursery schools, kindergartens, primary and secondary schools;**
- 3. One thousand (1000) feet from any church or other religious facility;**

4. **Five hundred (500) feet from any public park or recreation area or any principal or accessory private recreations facility use, or area where youths commonly gather;**
5. **One thousand (1000) feet from any group day care center, family day care center, library, nursing home or hospital;**
6. **Five hundred (500) feet from any retail, restaurant or cabaret use whose principal business falls under MGL Chapter 138, §12 (on-premises liquor licenses) or any establishment that dispenses marijuana.**

**Any Adult Entertainment Use may not be allowed with a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza or mall.**

**These same distances shall be applied to the same uses in adjacent municipalities which also have enacted Zoning regulations around Adult Entertainment Uses (or as similarly worded).**

#### **D. Regulations & Standards**

1. **Parking: The Adult Entertainment Use shall comply with all off-street parking requirements of Section 6-6.3: Off-Street Parking and Loading. In addition, all parking shall be in the side or front yards. All parking areas shall be illuminated, and all lighting shall be contained on the property and shall not be directed away from the property (up or out).**
2. **Signs: The Adult Entertainment Use shall comply with all sign requirements of Section 6-6.5: Signs. In addition, signs for the proposed use and all associated advertising signs shall not be located within fifty (50) feet of a public or private way and must be set back a minimum of fifty (50) linear feet from all property lines. Further, no sign shall rotate or move, be illuminated or contain reflective, fluorescent or neon components. No temporary signs shall be permitted.**
3. **Displays & Views: No Adult Entertainment Use shall display pictures or any other depictions of content in windows or on the façade of the building. All building openings and entrances shall be located, covered or screened in such a manner as to prevent a view into the interior of the building from any area open to the public.**
4. **Lights & Noise: No Adult Entertainment Use may have flashing lights visible to the exterior of the building. The building shall be designed so that noise from any proposed entertainment is not audible outside the building (0 decibels).**
5. **Additional Application Requirements: In addition to the application requirements for a Special Permit, set forth in the Rules & Regulations of**

the Essex Planning Board, the following additional information is required for an Adult Entertainment Use:

- a. Site Plan showing that all the above standards have been met and indicating distances from the property line where this use will be located to the property lines of all uses listed in section C above;
- b. Name and address of the legal owner of the property;
- c. The number of employees;
- d. Proposed security precautions;
- e. The physical layout of the premises;
- f. The nature of the proposed business.

**E. Other Conditions**

In addition to the conditions specified here, at its discretion, the SPGA may impose additional conditions as it finds reasonably appropriate and necessary to safeguard the neighborhood or otherwise serve the purposes of this Section, including, but not limited to the following:

1. Screening buffers or planting strips, fences or walls;
2. Limitations on the methods and/or times of operation;
3. Regulation of number and locations of driveways or other traffic features;
4. Off-street parking.

ARTICLE 20

To see if the Town will vote to Amend Section 6-4.3 of the Town's Zoning Bylaws, relating to uses allowed by Special Permit, by adding the new uses that will be allowed by Special Permit as shown below; or take any other action relating thereto.

**6-4.3.2.15: Commercial Shooting Ranges**

**6-4.3.2.16: Commercial Self-Storage Facilities**

**6-4.3.2.17: Drive-thru or Drive-in Establishments**

**6-4.3.2.18: Event Venue / Retreat Center / Function Facility**

**6-4.3.2.19: Free-Standing Solar Arrays**

**6-4.3.2.20: Outdoor/Indoor Heavy Equipment – Sales or Storage**

**6-4.3.2.21: Composting Facility (indoor/outdoor)**

**6-4.3.2.22: Sporting Venue (indoor/outdoor)**

## ARTICLE 21

To see if the Town will vote to revise the fee for a transfer station sticker from \$150 to some other amount for those under the age of 65, and/or from \$75 to some other amount for those 65 years of age and older, and/or from \$0 to some other amount for a second sticker within a given household; and further, to revise the fee for the purchase of a “small” trash bag (15-gallon) from \$2.50 to some other amount and the fee for the purchase of a “large” trash bag (33-gallon) from \$4.75 to some other amount; all to be incorporated into the Town’s pay-as-you-throw solid waste disposal program; said fees to be effective for stickers and bags purchased for the period beginning July 1, 2024; or take any other action relating thereto.

## ARTICLE 22

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to be used for the improvement of the Centennial Grove or anything incidental or related thereto; or take any other action relating thereto.

## ARTICLE 23

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the construction and outfitting of a fiber optic municipal area network extension between the Water Filtration Plant and the Centennial Grove and for the installation of wired and wireless devices at the Centennial Grove to facilitate electronic communication and security monitoring at the Centennial Grove, including design, installation, purchase of equipment and supplies, upgrade of the video server at the police station as necessary, and anything incidental or related thereto; or take any other action relating thereto.

## ARTICLE 24

To see if the Town will vote to appropriate or reserve from the Community Preservation Fund, including fiscal year 2025 estimated annual revenues, a sum or sums of money for Community Preservation projects or purposes, including, acquisition, creation and preservation of open space; acquisition, creation, preservation, rehabilitation, and restoration of land for recreational use; acquisition, preservation, rehabilitation, and restoration of historic resources; acquisition, creation, preservation and support of community housing (including a possible appropriation or transfer to the Essex Affordable Housing Trust); and for the rehabilitation and restoration of open space or community housing acquired under the Community Preservation Act; all as may be recommended by the Community Preservation Committee; or take any other action relating thereto.

## ARTICLE 25

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purchase of Automatic External Defibrillators (AEDs) and anything incidental or related thereto; or take any other action relating thereto.

ARTICLE 26

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the purchase of replacement tasers for the Police Department and anything incidental or related thereto; or take any other action relating thereto.

ARTICLE 27

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase and equip a heavy duty utility pickup truck with crane for use in the Water and Wastewater Departments, and anything incidental or related thereto; and further, to authorize the Board of Selectmen to dispose of the truck that this new truck is replacing by sale or trade, and to effectuate the purposes of this vote; or take any other action relating thereto.

ARTICLE 28

To see if the Town will vote to transfer from available funds a sum of money to be used to defray operational expenses of the various Town departments for the remainder of fiscal year 2024; or take any other action relating thereto.

ARTICLE 29

To see if the Town will vote to transfer from available funds a sum of money to be used to replenish the Finance Committee's Reserve Fund for the remainder of fiscal year 2024; or take any other action relating thereto.

ARTICLE 30

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the payment of unpaid bills from past fiscal years; or take any other action relating thereto.

ARTICLE 31

TOWN OF ESSEX, MASSACHUSETTS a PETITION TO SUPPORT THE ESSEX RIVER RACE. MARCH 2024

TO SEE IF THE TOWN WILL ALLOW THE CONTINUATION OF THE ANNUAL "ESSEX RIVER RACE", AN EVENT TYPICALLY HELD IN MID MAY AND UTILIZING THE ESSEX TOWN RAMP ACCESS POINT AND OTHER SUPPORT WHICH CAN FACILITATE THE SAFE AND EFFECTIVE CONDUCT OF THE EVENT OR ACT ON ANYTHING RELATIVE THERETO.

Description: This article is intended to correct the current restriction of non resident access to the Town Boat Ramp which has caused the cancellation of a nearly 40 year old tradition of Essex hosting a human powered watercraft race, being organized by the Cape Ann Rowing

Club, a 501c3 non profit local charity. The Essex River Race typically would draw 200 – 300 participants to Essex and bring positive recognition to the community and business activity to its establishments.

And you are hereby directed to serve this Warrant by posting attested copies; one at the Post Office, one at the Town Hall, and one at the Essex Elementary School, in said Essex, seven days at least before the time for holding said meeting.

Given under our hand this 25<sup>th</sup> day of March, two thousand twenty-four.

---

Ruth R. Preen, Chairman

---

Peter D. Phippen

---

Alva Ingaharro

BOARD OF SELECTMEN  
TOWN OF ESSEX

Return of the Warrant:

Date: \_\_\_\_\_

I have served this warrant by posting attested copies thereof – one at the Post Office; one at the Town Hall; and, one at the Essex Elementary School in said Essex; at least seven days before the time for holding said meeting.

---

Constable