

2021

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, to meet in said Essex at the Essex Elementary School, 12 Story Street, on Saturday, May 15, 2021 at 1:00 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 2022 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 2022 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 2022 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 2021; 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 2022; 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 2021; 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 2022; or take any other action relating thereto.

## ARTICLE 11

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-one; or take any other action relating thereto.

#### ARTICLE 12

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, 2021; or take any other action relating thereto.

## ARTICLE 13

To see if the Town will vote to amend Chapter VI of the Town's Zoning Bylaws by adding new section, 6-15, titled "Essex Downtown Zoning District", as set forth below; or take any other action relating thereto.

### **6-15 Essex Downtown Zoning District.**

#### **6-15.1. Purpose:**

The purpose of the Essex Downtown Zoning District is to facilitate reduced dimensional requirements for the area designated and provide as matter of right the ability to have mixed use, Business and Residential, subject to the requirements below, while minimizing disruption to the existing building configurations.

#### **6-15.2. Establishment:**

Essex Downtown Zoning District is a zoning district shown in Section 6-15.8. The Essex Downtown Zoning District is subject to all provisions of Chapter VI of the Essex bylaws except as specifically defined below.

#### **6-15.3. Definitions:**

In addition to the definitions set forth in Section 6-2.2 of the Zoning By-Law, the following definitions shall apply only in the Essex Downtown Zoning District:

1. Mixed-Use – a single structure featuring non-residential on the first floor and one or more residential units on any other floor.
2. Impervious Surface Coverage – The percentage of the lot area covered by impervious surface.

#### **6-15.4. Permitted Principal Uses:**

1. Residential – Single and Two Family
2. Residential – Dwelling Units and Apartments (as a part of mixed-use)
3. Business--
4. Mixed-Use: Two or more permitted principal uses occupying the same land or building, each of which is independent of and unrelated to the other. (As of Right with Site Plan Review/Special Permit)
5. Motel and Hotel (with Special Permit)
6. Industrial – Class B
7. Municipal: Park and Recreational - Municipal uses, including but not limited to, parks, playgrounds, off-street parking facilities and public recreational areas, are permitted (As of Right with Site Plan Review/Special Permit).
8. Storage – Storage buildings or structures are permitted and are restricted to non-commercial storage uses of any type.

**6-15.5 Table of Dimensional Requirements**

Table 1:

<b>Principal Buildings</b>	<b>Residential Single and Two Family</b>	<b>Residential Multi-Family</b>	<b>Business</b>	<b>Motel and Hotel</b>	<b>Industrial, Class A</b>	<b>Industrial, Class B</b>	<b>Mixed-Use</b>
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	0-25 ft Note #1	50 ft	0-25 ft Note #1	100 ft		50 ft (>10,000 sq ft)	0-25 ft 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 Height feet	35 ft Note #3	35 ft	35 ft Note #3			35 ft Note #3	35 ft Note #3
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

<b>Accessory Buildings / Structures:</b>	
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 more than 25 feet.

**Note #2**

If a side yard includes a driveway or parking space, the Minimum Side Yard dimension shall be increased from 6 ft. to 14 ft., consistent with 6-6 Off-Street Parking and Loading requirements.

**Note #3**

Maximum Building Height for new Mixed-Use development 40 ft., Approval of greater than 35 ft. subject to Special Permit.

**Note #4**

Lots larger than 60,000 sq. ft. will be required to maintain Maximum Lot Coverage of structures at the current standard of 25%.

**Note #5**

Max. Lot Coverage: Structures and impervious surfaces allowed to 75% of area, lots larger than 60,000 sq. ft. allowed up to 50% of area.

**6-15-5. Parking Requirements:**

- A. Parking requirements will be subject to the requirements of 6-6, except for Mixed use residential which will require 1 parking spot for each bedroom and 6-6 required parking for the Business use created.

**6-15.6. Permitted Accessory Structures:**

- A. Accessory Buildings or Structures – Accessory Buildings or Structures are permitted as of right, subject to the following limitations:
  - a. a maximum of two Accessory Buildings and/or Structures per lot;
  - b. maximum permitted height of 15 feet.
  - c. minimum side or rear yard setback of 5 feet.
  - d. Allowed on Residential and Mixed-Use lots only
  - e. Prohibited from Front Yard

### **6-15.7 Regulation of Nonconforming Lots, Structures:**

Reconstruction, alterations, extensions and/or additions to such nonconforming lots and structures are subject to the following:

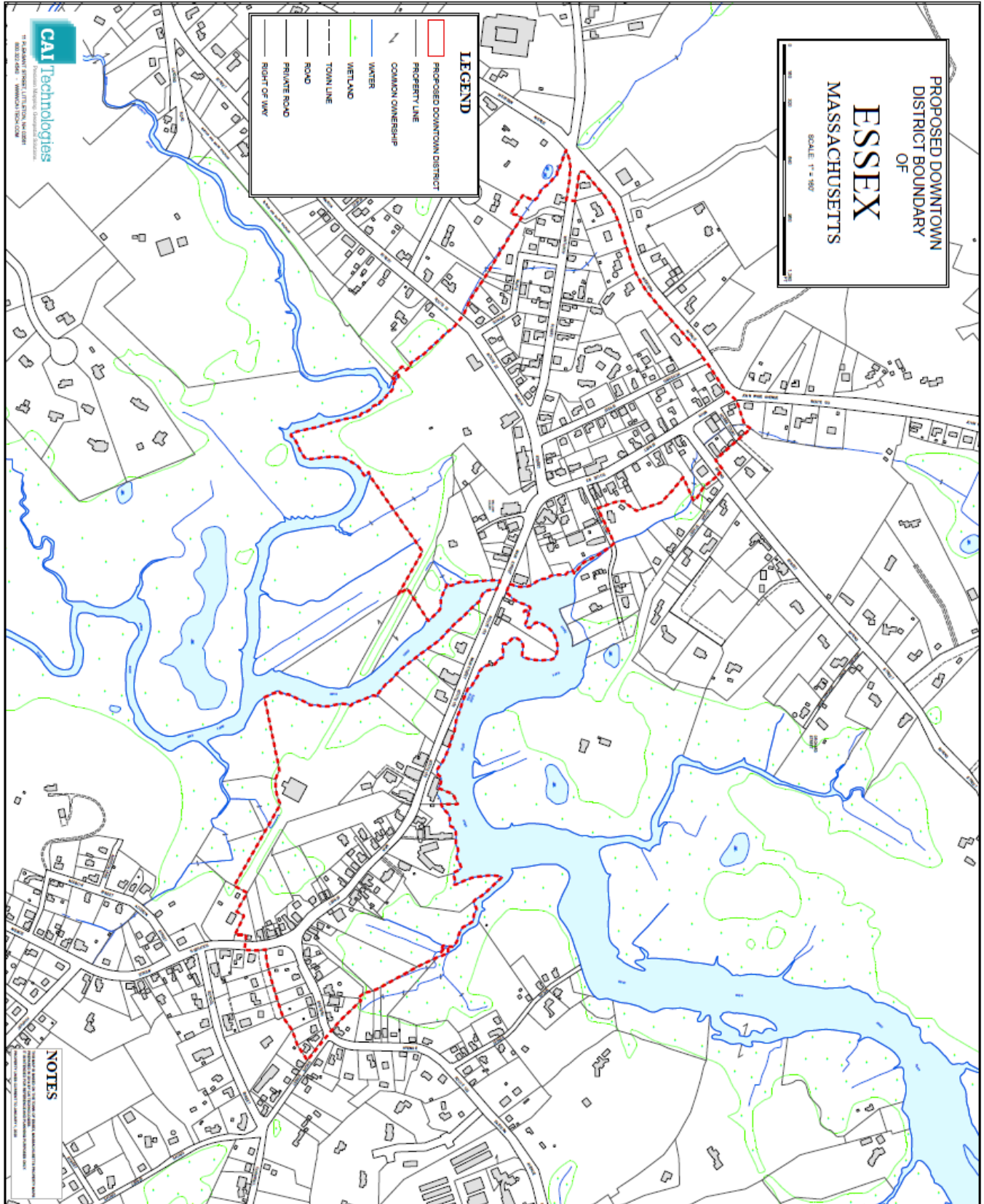
**A. Special Permit Changes:**

- i. Any reconstruction, alteration, extension or addition to an existing residential structure that increases or intensifies an existing nonconformity, but does not create a new nonconformity, may be allowed by the Planning Board by a Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or addition is not substantially more detrimental to the neighborhood than the existing structure.
- ii. For an existing non-residential structure on a conforming lot, any reconstruction, alteration, extension or addition that complies with the dimensional requirements in Table 1 may be allowed by the Planning Board by a special permit, provided that the Planning Board finds that such reconstruction, alteration, extension or addition is not substantially more detrimental to the neighborhood than the existing structure.

**B. Variance Changes:**

- i. Any reconstruction, alteration, extension or addition to an existing residential structure that creates a new nonconformity shall require a variance from the Board of Appeals.
- ii. Any reconstruction, alteration, extension or addition to an existing non-residential structure on a non-conforming lot, and any such reconstruction, alteration, extension or addition to an existing non-residential structure on a conforming lot that does not comply with the dimensional requirements in Table 1, shall require a variance from the Board of Appeals.

### 6-15.8 Map of Essex Downtown Zoning District





## ARTICLE 14

To see if the Town will vote to amend Chapter VI of the Town's Zoning Bylaws by adding a new section titled "Temporary Moratorium on Business and Industrial Conversions", as set forth below, and to authorize the Town Clerk to assign such numbering as is appropriate to bring said bylaw into conformance with the existing codification; or take any other action relating thereto.

### **Temporary Moratorium on Business and Industrial Conversions**

No building permit shall be issued for any work and no use shall be made of land that results in a change in use from residential, open space, or vacant lot to Business, Industrial A, or Industrial B use on any land located in the Town of Essex for a period of two years from the effective date of this bylaw; provided, however, that this bylaw shall not apply in the newly-created Essex Downtown Zoning District, to any work in connection with adding a home occupation to a new or existing residential use, or to any change in use from an existing business or industrial use to another type of business or industrial use. During the moratorium period, the Planning Board, Board of Selectmen and other Town officials shall review and address the impacts of current, impending and potential business and industrial developments and they shall develop a plan to mitigate future impacts of such developments on the general health, safety, welfare and quality of life of the residents of the Town of Essex, which may include but not be limited to the presentation of suggested bylaw amendments to a future town meeting.

The purpose of this bylaw is to temporarily slow the rate of business and industrial development in the Town so that there can be an opportunity to study the impacts of such development and determine how to best address it in the future. The Town of Essex is relatively unique insofar as it does not have traditional zoning districts such as residential, business, agricultural, or industrial and it does not have a use table in its zoning bylaws. While the Town has primarily been a rural residential community, in recent years there has been more interest in bringing business and industrial enterprises to the Town. While Town officials are in favor of growing the Town's business and industrial base, new business and industrial enterprises are not always in harmony with existing residential uses. This has led to an increase in complaints concerning noise, traffic and other impacts from such uses in residential neighborhoods. Given the rate at which such new business and industrial development has been occurring, time is needed to study the issue and determine whether there should be amendments to the Town's zoning bylaws to address these and other issues.

## ARTICLE 15

To see if the Town will vote to amend the zoning by-laws of the Town of Essex Zoning by deleting in its entirety and identifying as "Repealed" Subsection 6-3.4.5, and adding as a new Section 6-16 the following text, or take any other action relating thereto:

### **6-16 Personal Wireless Service Facilities (PWSF)**

**6-16.1 PURPOSE:** 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. Ensure that PWSFs are sited, designed, constructed and screened in a manner that is sensitive to the aesthetic and visual resources of the Town of Essex and surrounding communities;
- b. Minimize the adverse impacts of PWSFs on adjacent properties and residential neighborhoods;
- c. Preserve the character of the Town of Essex and its scenic, historic, and natural resources, with particular focus on any regions within Essex that are designated an Area of Critical Environmental Concern (ACEC);
- d. Encourage the most appropriate use of the land, and guide sound development of PWSFs while promoting the health, safety and general welfare of the Town;
- e. Protect the public and the public welfare against the adverse impact of such facilities; and
- f. Protect the value of real property in the Town of Essex

**6-16.2 DEFINITIONS:** As used in this Section 6.15, the below-enumerated defined terms shall have the following meanings:

**Above Ground Level (AGL):** A measurement of height from the highest point of the natural grade of a site to the highest point of a structure.

**Antenna:** The surface from which wireless radio signals are sent and received by a PWSF.

**Camouflaged:** A PWSF that is disguised by, part of, or placed within a structure is considered “camouflaged”.

**Carrier:** A company that provides wireless services.

**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.

**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.

**Equipment Shelter:** An enclosed structure at the base of the mount within which are housed radio frequency equipment, batteries and electrical equipment.

**Fall Zone:** The area on the ground within a prescribed radius of a PWSF within which there is a hazard from falling debris or collapsing material.

**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):** A facility for the provision of personal wireless services, as defined by the Telecommunications Act.

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

**Security Barrier:** A locked, impenetrable wall, fence or berm that seals an area from unauthorized entry.

**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. For purposes of this Subsection 6-16, there shall be the presumption that Service Coverage shall be deemed to exist within a specific geographic area if the predicted or measured received signal power on a standards-compliant Personal Wireless Services Device placed outdoors within such geographic area is highly likely to be -90 dB m or greater, unless the Carrier in question demonstrates, by clear and convincing evidence prepared by qualified radio frequency engineer or other qualified professional, that higher signal strengths or alternative QoS metrics are required to enable such Carrier to provide Service Coverage within the specific geographic area in question.

**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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) 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.

**Personal Wireless Service Facility (“PWSF,” or Wireless Communications Facility”):** 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.

**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.

### **6-16.3 SPECIAL PERMIT REQUIRED; REVIEW CRITERIA; EXEMPTIONS**

#### **6-16.3.1 Special Permit Requirement**

a. No PWSF shall be erected, constructed, installed or operated without first obtaining a special permit from the Planning Board. A special permit is required for new tower construction (or Substantial Change of a preexisting tower) and for all new wireless communications facilities (or Substantial Change of a preexisting facility) to be mounted on a tower or structure.

b. Promptly upon filing, completed applications for special permits under this Subsection 6-16 (a completed special permit application hereunder shall be referred to as an “Application,” and a party by or on behalf of whom an application is submitted shall be referred to herein as an “Applicant”) shall be transmitted for review to the Board of Health and Conservation Commission, which bodies shall submit their written recommendations within 30 days of the filing of the Application.

c. A public hearing shall be opened within forty-five (45) days of the filing of the Application; provided that the Planning Board shall take action on an Application in accordance with any applicable deadlines set forth under federal and state law, unless such times are extended by written agreement with the Applicant.

### **6-16.3.2 Personal Wireless Service Facilities General Requirements**

- a. The following performance standards and general requirements shall apply to all PWSFs:
  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. 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 FCC.
  2. The siting of PWSF's shall be located in areas with the following order of preference:
    - a. Town owned land;
    - b. Land located in Industrial zoning districts;
    - c. Land located in Commercial zoning districts; and
    - d. Land located in residential zoning districts.

Any Application for a PWSF on land located in the categories or zoning districts enumerated in this subparagraph 6-16.3.2.a.2 shall be accompanied by a written explanation containing the following information: (i) a list identifying each of the foregoing categories or zoning districts 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 districts; (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.,

### **6-16.3.3 Co-location requirements**

- a. 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:
  1. 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.

2. 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.
3. The proposed antennas and equipment, along or together with existing facilities, equipment, or antennas, would create RFI in violation of federal standards or requirements.
4. The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create RFR in violation of federal standards or requirements.
5. 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.
6. Aesthetic considerations make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.
7. There is no existing or approved tower in the area in which coverage is sought.
8. Other unforeseen specific reasons make it unreasonable to locate the planned wireless communications equipment upon an existing or approved tower or building.

#### **6-16.3.4 Modifications to existing facilities and existing special permits**

- a. 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 Commissioner. The Building Commissioner shall review and respond to such a request within sixty (60) days of the filing of the Application, provided that this time for response may be tolled where the Applicant has failed to satisfactorily support its claim and additional documentation is requested in writing by the Building Commissioner.
- b. Any alteration of or addition to a previously approved PWSF that does not satisfy Section A, above, shall require an additional special permit. Such alterations and additions may include, but are not limited to, the following:

1. A change in the number of buildings or facilities permitted on the site;
2. Changes in technology used by the wireless communications facility;
3. 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;
4. Change in ownership; or
5. Co-location of new equipment.

#### **6-16.3.5 Additional Requirements and Certain Limited Exemptions**

- a. 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.
- b. No Tower shall be located closer than two (2) miles from any other Tower.
- c. No Tower shall exceed one hundred twenty (120) 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.
- d. 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.
- e. 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.
- f. 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 where the Wireless Communications Facilities are Camouflaged.



- g. 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.
- h. Lighting shall be limited to that needed for maintenance and emergencies.
- i. Where feasible, Towers shall be located within established wooded areas, with a minimum radius of at least one hundred twenty (120) 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.
- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. Removal of Abandoned 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 appropriate enforcement authority 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 PWSF.

- o. 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.
- p. 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:
  - 1. 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;
  - 2. The frequency of the view of the proposed tower by the traveling public;
  - 3. The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
  - 4. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
  - 5. The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
  - 6. 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
  - 7. The sensitivity or unique value of the particular view affected by the proposed tower.
- q. The Planning Board may require the Applicant to fly or raise a three-foot-diameter balloon 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.

- r. 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.
- s. Transmitter building. Facilities buildings shall be built to accommodate all anticipated tenants on a tower.
- t. 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 vegetation screen that is consistent with existing vegetation. A 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.
- u. 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 120 feet.
- v. 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 anticlimbing device. The wireless communications facility owner shall maintain adequate insurance on all wireless communications facilities.
- w. Utilities. All utilities must be routed underground via conduit from a public road to the site where feasible.
- x. Access road. Vehicle access to the site shall be required and shall conform to all Conservation Commission guidelines and be at least 18 feet wide. A sturdy, posted, swinging, lockable gate must be installed which is more than 15 feet and less than 30 feet off the public road upon which said access is situated, A Knox box or keys shall be provided to a designated Town official for municipal access. 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.

- y. Emergency power. Emergency power shall emit no more than 50 decibels over ambient noise level at all property lines.
- z. Noise. Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.
- aa. Property consideration. An Applicant shall demonstrate that all municipally owned property in the geographic area was considered.
- bb. Distance of tower or repeaters. No repeater shall be located less than 25 feet nor more than 70 feet above ground. No tower or personal wireless service facility, with the exception of repeaters, shall be located within any of the following prohibited areas:
  - 1. On or within 100 feet horizontally of any Massachusetts or federally regulated wetland resource area;
  - 2. A Massachusetts certified vernal pool;
  - 3. Within 200 feet of any existing permanently occupied residential dwelling; or
  - 4. Within 200 feet of an existing property line unless incorporated within an existing building, tower, or steeple.
- cc. Documentation. Engineering and environmental assessment impact as well as FAA notice of determination of no hazard of flight zone shall be submitted with any Application.
- dd. 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:
  - 1. 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.
  - 2. Facilities used by the Town of Essex for the purpose of public safety.
  - 3. Citizen band radio, and short-wave (ham) radio towers for private or municipal use are excluded from the provisions of this section.
- ee. No PWSF shall be erected or installed except in full compliance with the provisions of this Subsection 6-16.

### 6-16.3.6 Special Permit Application Process

- a. All Applications shall be made and filed on the appropriate Application form provided by the Planning Board. For an Application to be considered complete, it shall comply with the Rules and Regulations Governing Granting of Special Permits, and shall also provide nine copies of the following information, along with all other information required pursuant to this Section 6-16:
  1. A visual impact analysis shall be conducted from all historical or scenic sites within one (1) mile of the proposed facility. The visual impact analysis shall include a color photograph or accurate rendition of the proposed Tower with its antenna and/or panels. A rendition shall also be prepared providing eight (8) view lines in a one (1) mile radius from the site, shown beginning at true north and continuing clockwise at forty-five (45) degree intervals.
  2. A description of the Tower and the technical, economic and other reasons for the proposed location, height and design. Construction drawings for the proposed facility shall be evaluated, approved and stamped by a Massachusetts-registered professional engineer, hired by the Town of Essex or the Essex Planning Board and paid for by the Applicant.
  3. Confirmation that the monopole complies with all applicable Federal and State standards, including, but not limited to, the Federal Aviation Administration, Federal Communications Commission, Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
  4. A description of the capacity of the Tower, including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations.
  5. Written documentation that the Applicant has examined all wireless facility sites in the Town of Essex and abutting towns within five miles of any boundary of the Town to determine whether those existing sites can be used to provide "Adequate Coverage", as defined above, and/or capacity to the Town of Essex. The documentation shall include, for each facility site listed, the exact location (in longitude and latitude), ground elevation, height of the facility, output frequency, number of channels, power input, and maximum output per channel. Potential adjustments to these sites, including changes in antenna type, orientation, gain, and height or power output, shall be specified.
  6. The documentation shall also analyze the feasibility of utilizing outdoor distributed antenna systems (oDAS) repeaters, in conjunction with all facility sites in Essex and abutting towns, to provide adequate coverage and/or capacity to the Town of Essex. [For purposes of this section, repeaters shall mean a small receiver/relay transmitter of not more than twenty (20) watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.] Radial plots of all

potential repeaters and/or facility sites, as they exist and as adjusted, shall also be provided.

7. No later than fourteen (14) days prior to the public hearing on the Application, the Applicant shall arrange to locate a crane, or an alternative temporary structure approved by the Planning Board, at the site in a manner that replicates the exact height and location of the proposed Tower. The crane or structure shall remain in position for no less than three (3) days, for at least twelve hours per day. The dates and location of the siting shall be advertised in a newspaper of general circulation in the Town at least fourteen (14) days before the siting, and notice shall be sent to owners of abutting property and abutters thereto.
8. The Applicant shall submit a radio frequency coverage analysis utilizing data from a licensed wireless carrier proposing to use the antenna structure. The analysis must identify existing coverage with the site parameters used and a separate analysis with the addition of the proposed antenna structure. The coverage from the proposed structure must depict coverage in twenty foot height increments starting from the top of the structure down.
9. The Applicant shall provide proof that at the proposed site the Applicant will be in compliance with all FCC regulations, standards, and requirements, and includes a statement that the Applicant commits to continue to maintain compliance with all FCC regulations, standards, and requirements regarding both radiofrequency interference (RFI) and radiofrequency radiation (RFR). 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.
10. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete environmental assessment (EA) draft or final report describing the probable impacts of the proposed facility shall be submitted to the Planning Board.
11. A report from qualified and licensed professional engineers (consultants) that:
  - (a) Describes the facility height, design, and elevation not to exceed 120 feet.
  - (b) Documents the height above grade for all proposed mounting positions for antennas to be co-located on a wireless communications tower or facility and the minimum separation distances between antennas.
  - (c) Describes the Tower's proposed capacity, including the number, height, and type(s) of antennas that the Applicant expects the Tower to accommodate.

(d) Documents steps the Applicant will take to avoid interference with any established public safety wireless communications, and includes both an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies.

(e) Describes existing and proposed coverage. In the case of new tower proposals, the Applicant shall demonstrate that existing wireless communications facility sites and other existing structures within Essex, in abutting municipalities, and within a ten-mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the Town of Essex.

(f) Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a detailed computer-generated "actual received level" propagation model that describes coverage of the existing and proposed facilities.

(g) Describes the output frequency, number of channels and power output per channel for each proposed antenna.

(h) Includes a written five-year plan for use of the proposed wireless communications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town of Essex.

(i) Demonstrates the tower's compliance with the municipality's setbacks for towers and support structures.

12. The Applicant and/or its successors shall provide and maintain a financial surety bond, in a form and amount acceptable to the Planning Board, to cover the costs of removal of the proposed PWSF and the remediation of the landscape, should the PWSF be deemed abandoned. Such surety bond shall not limit the Applicant's financial liability to the Town for the removal of the PWSF. The bond amount shall at all time remain subject to the Planning Board's review and modification, in its sole discretion. The Applicant or PWSF owner shall, at the Planning Board's request and in any event no later than therefrom, provide the Planning Board with any requested adjusted surety bond. The Applicant's signature on the Application shall constitute the Applicant's agreement to indemnify, defend, and hold harmless the Town and Planning Board in connection with any claims arising from the Town's removal of the proposed PWSF upon abandonment of same.

13. The Applicant's signature on the Application shall constitute the Applicant's agreement to pay any and all consultant charges arising out of the Planning Board's exercise of any rights under this Subsection 6-16. These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: telecommunications engineering; civil engineering; structural engineering; land use planning; and/or landscape architecture. The Town of Essex reserves all assignable rights

in contract against the Applicant, including the right to interest, legal fees, and costs of collection, in the event that the Applicant fails to make timely payment. In addition to the above, the Planning Board may impose additional conditions as needed to minimize any adverse impacts of the proposed PWSF.

### **6-16.3.7 Special Permit Review Process**

In addition to all other requirements set forth in this Subsection 6-16, the following requirements, conditions of approval or, conversely, bases for denial, shall apply to Applications:

- a. At the Planning Board's request, the Applicant shall examine all potential alternative sites within the Town that may be available for proposed personal wireless service facilities.
- b. In connection with its review of an Application, the Planning Board may hire independent consultants, at the Applicant's expense, to help it determine whether the Application satisfies all requirements of this Subsection.
- c. Review Criteria. The Town's Planning Board shall review any Application in accordance with the following criteria:
  1. In determining whether to issue a special permit, the Planning Board shall consider and make findings with respect to the following criteria, factors and requirements, in addition to those provided elsewhere in this Section 6-16:
    - (a) whether there exists a significant gap in coverage;
    - (b) whether the proposed PWSF is necessary to provide adequate service to the public;
    - (c) whether there exist feasible alternative locations for the proposed PWSF;
    - (d) the height of the proposed PWSF;
    - (e) the nature of uses adjacent and nearby properties;
    - (f) surrounding topography;
    - (g) surrounding tree coverage and foliage;
    - (h) the visual and aesthetic impact of the facility on the abutting neighborhoods and streets and the impact on existing vistas and natural resources;
    - (i) whether the proposed site is an appropriate location for such a use, structure or condition;
    - (j) whether the proposed use of the PWSF would adversely affect the neighborhood;



- (k) whether adequate and appropriate facilities will be provided for the proper operation of the proposed PWSF; and
  - (l) whether the proposed use of the PWSF is in harmony with the general purpose and intent of this Zoning By-law.
2. The Special Permit under this Section 6-16 shall not be issued unless the Planning Board makes the following findings:
- (a) That a Significant Gap exists in the coverage area of the proposed PWSF, which Significant Gap is not necessarily equivalent to the lack of the Applicant's stated coverage objectives;
  - (b) That there are no viable alternatives involving one or more PWSFs to serve the significant gap;
  - (c) That not granting a Special Permit for the proposed PWSF (including conditions, if any) would effectively prohibit the provision of PWS;
  - (d) That not granting a Special Permit for the proposed PWSF (including conditions, if any) would unreasonably discriminate among providers of functionally equivalent services;
  - (e) That, in addition to any findings in this Section, the Planning Board has made any other findings that are necessary to grant approval under local, state and federal law, including without limitation findings required to grant a special permit;
  - (f) That the visual, economic and aesthetic impacts of the PWSF on the community will be minimal;
  - (g) That the proposed PWSF must be located at the proposed site due to technical, topographical or other unique circumstances;
  - (h) That the Application satisfies all other required criteria for special permits generally pursuant to the Town of Essex Zoning By-laws;
  - (i) That the Planning Board's issuance of the requested Special Permit is properly supported by the findings required under Subsection 6-16.3.7.b.1 hereof.
  - (j) That the proposed PWSF will be in harmony with the general purpose and intent of the Town of Essex Zoning By-law, and that it will not adversely affect the neighborhood, the zoning district or the Town to such an extent as to outweigh the beneficial effects of said use;

- (k) That the proposed PWSF is designed in the most community-compatible method practicable and is either necessary to provide service to a Significant Gap or otherwise desirable and in the public interest to provide improved wireless communications services in the Town;
- (l) That the proposed PWSF is sited and designed to be suitably screened;
- (m) That the proposed PWSF is colored so that it will, as much as possible, blend with or be compatible with its surroundings; and
- (n) That the proposed PWSF complies with all applicable requirements of the Town of Essex General and Zoning By-laws.

**6-16.3.8 Monitoring and Evaluation of Personal Wireless Service Facility Compliance**

- a. Within thirty days of initial operation of the approved PWSF, the Applicant shall pay for an Independent Consultant hired by the Town 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.
- b. Annual certification must be provided to the Town 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.
- c. 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 in the Planned Wireless Communications Services District.

### 6-16.3.9 Small Wireless Facilities Special Permit

- a. 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:
  1. 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;
  2. Whether the proposed site is an appropriate location for the Small Wireless Facility;
  3. Whether the proposed use of the Small Wireless Facility would adversely affect the neighborhood;
  4. Whether adequate and appropriate facilities will be provided for the proper operation of the proposed Small Wireless Facility; and
  5. Whether the proposed use of the Small Wireless Facility is in harmony with the general purpose and intent of this Zoning By-law.

## ARTICLE 16

To see if the Town will vote to amend Section 7-8 of Chapter VII of the Town's the General Bylaws by titled "Stormwater By-Law; Illicit Connections And Discharges To The Essex Storm Drain System (Municipal Separate Storm Sewer System (MS4))", as set forth below; or take any other action relating thereto.

1. Amend the Title to Section 7-8 by deleting the existing title and replacing it with the words "Stormwater Management Bylaw";
2. Amend Section 7-8.3(1) by deleting the existing definitions of "Illicit Connection" and "Illegal Discharge" and replacing them with the following:

**Illicit Connection** – No person shall construct, use, allow, maintain or continue any surface or subsurface drain or conveyance which allows an illicit discharge (defined below) into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this Bylaw.

**Illicit Discharge:** No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), onto an impervious surface directly connected to the MS4, or directly or indirectly into a watercourse or into the waters of the Commonwealth.

3. Amend Section 7-8.3(4) by adding the following new subsection **h** as follows:
  - h. Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.
4. Amend Section 7-8.3(5) by adding the following new subsection **g** as follows:
  - g. Discharge for which advanced written approval is received from the Department of Public Works as necessary to protect public health, safety, welfare or the environment.
5. Add a new Section 7-8.9, as follows:

## **7.8.9 STORMWATER MANAGEMENT AND LAND DISTURBANCE**

### **7.8.9.1. Definitions:**

**ALTERATION OF DRAINAGE CHARACTERISTICS:** Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined or discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

**BOARD** – Board of Public Works.

**DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use, usually involving construction.

**EROSION AND SEDIMENTATION CONTROL PLAN:** A document containing narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbing activities.

**LAND DISTURBANCE PERMIT:** A permit issued by the Board or its designee pursuant to this bylaw and any regulations enacted pursuant thereto prior to commencement of Land Disturbing Activity or Redevelopment.

**LAND-DISTURBING ACTIVITY:** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment.

STORMWATER MANAGEMENT PLAN: A plan required as part of the application for a Land Disturbance Permit.

**7.8.9.2. Applicability:** No person may undertake a Land Disturbance Activity, including clearing, grading, excavation, Alteration of Drainage Characteristics, Development or Redevelopment that will disturb equal to or greater than one (1) acre of land without first obtaining a Land Disturbance Permit approved the Board or its designee.

Any person who performs a Land Disturbing Activity, or that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and/or Operations and Maintenance Plan, or any regulations issued by the Board shall be in violation of this Bylaw.

**7.8.9.3. Approval and/or Permit:** Land Disturbance Permit must be obtained prior to the commencement of Land Disturbing Activity, Development or Redevelopment subject to the requirements of this bylaw. An applicant seeking an approval and/or permit shall file an appropriate application with the Department of Public Works in a form and containing information as specified in regulations adopted by the Board of Public Works.

**7.8.9.4. Consent to Entry onto Property:** To the extent permitted by law, an applicant consents to entry of Department of Public Works or its authorized agents in or on the site at reasonable times to verify the information in the application and/or to inspect for compliance with review or permit conditions.

**7.8.9.5. Interaction with Other Laws:** This bylaw is intended to further the objectives of and to act in concert with any applicable federal, state or local laws concerning storm water discharges in the Town of Essex, including but not limited to the requirements of the United States Environmental Protection Agency's most recent General Permit for MS4s, as may be amended from time-to-time and nothing in this bylaw is intended to limit or restrict the authority of any board, commission or officer of the Town to act in accordance with any federal, state and local laws within their jurisdiction, and in the event of a conflict, the more stringent requirements will control.

**7.8.9.6. Surety:** The Board of Public Works may require the applicant to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by the Board of Public Works and be in an amount deemed sufficient by the Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Board may release part of the bond as each phase is completed in compliance with the permit.

**7.8.9.7. Final Reports:** Upon completion of the work, the applicant shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sedimentation Control (CPESC), certifying that all Best Management Practices (BMPs), erosion and sedimentation control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved Erosion and Sediment Control Plan and Stormwater Management Plan. The Board of Public Works may require ongoing reporting to ensure long-term compliance, including, but not limited to, appropriate operation and maintenance of stormwater BMPs.

6. Add a new Section 7-8.10, as follows:

**7.8.10 REGULATIONS**

The Board of Public Works may enact, and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, once in each of two successive weeks and on the Town’s website, the first publication being at least 14 days prior to the hearing date. Failure of the Board of Public Works to create such rules, regulations or guidance shall not have the effect of suspending or invalidating this Bylaw.

ARTICLE 17

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to design, and/or engineer, and/or construct repairs, upgrades, improvements and/or replacements to any aspect of the municipal water system, and anything incidental or related thereto; or take any other action relating thereto.

ARTICLE 18

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to design, and/or engineer and/or construct repairs, upgrades, improvements and/or replacements to any aspect of the municipal sewer system and anything incidental or related thereto; or take any other action relating thereto.

## ARTICLE 19

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to purchase and to fully equip two police cruisers, for use by the Police Department; and to authorize the Board of Selectmen to dispose of the vehicles to be replaced by the new cruisers by sale or trade and to take other action as necessary to effectuate the purposes of this vote; or take any other action relating thereto.

## ARTICLE 20

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to be used as a match to a State or other grant for study, design, permitting, and implementation of measures that will improve environmental quality in Chebacco Lake, the Alewife Brook, and associated watershed areas, including but not limited to water quality and wildlife conservation, or anything incidental or related thereto; or take any other action relating thereto.

## ARTICLE 21

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money to be used as a match to a State grant program for the design and/or construction of renovations and improvements to the Conomo Point seawall system, or anything incidental or related thereto; or take any other action relating thereto.

## ARTICLE 22

To see if the Town will vote to appropriate or reserve from the Community Preservation Fund, including fiscal year 2022 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; 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 23

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 2021; or take any other action relating thereto.

## ARTICLE 24

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 2021; 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 payment of unpaid bills from past fiscal years; or take any other action relating thereto.

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 22<sup>nd</sup> day of March, two thousand twenty-one.

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Ruth R. Pereen, Chairman

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Peter D. Phippen

---

Guy D. Bradford

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.

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Constable