

# Town of New Salem

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## Zoning Bylaw

12/3/12

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## **ADOPTION AND AMENDMENT DATES**

	Adopted by Town Meeting	Approved by Attorney General
Original By-law	February 3, 1969	April 9, 1969
Amendments (3)	March 4, 1974	April 5, 1974
Amendment	April 14, 1975	June 23, 1975
Amendments	April 10, 1978	June 27, 1978
Amendment	November 30, 1981	April 7, 1982
Amendment	October 14, 1986	November 25, 1986
Amendment	May 11, 1987	September 10 1987
Amendment	January 11, 1999	February 12, 1999
Amendment	May 11, 1999	August 2, 1999
Amendment	May 23, 2005	September, 2005
Amendment	June 11, 2007	August 29, 2007
Amendment	November 8, 2010	August 4, 2011
Amendment	May 9, 2011	September 24, 2013
Amendment	December 3, 2012	February 24, 2014

## **SECTION 1 – PURPOSE**

To protect the health and safety and general welfare of the inhabitants of New Salem; to secure the proper growth of the town by encouraging the most appropriate use of the land; to stabilize the value of the land; to maintain the beauty of town; to reduce the hazard of fire by regulating the location and use of buildings; in accordance with the General Laws of the Commonwealth of Massachusetts, Chapter 40A, and any amendments thereof.

## **SECTION 1A – PLANNING BOARD ASSOCIATE MEMBER**

Per M.G.L. chapter 40A, Section 9, the New Salem Planning Board, as it is a Special Permit granting authority, shall have up to one associate member, who shall sit, when necessary, on the Board for the purpose of acting on Special Permit applications. This position will be filled by appointment by the Selectboard, and the term shall be for up to two (2) years.

## **SECTION 2 – PRESENTLY EXISTING USES PERMITTED**

This by-law shall not apply to an existing building or structures, nor to the continuation of the existing lawful use of any buildings or structures, nor to any land or premises or part thereof to the extent of the use existing at the time of adoption of this by-law.

## **SECTION 3 – ZONING DISTRICTS**

The entire area of the Town of New Salem is hereby designated as a “Primarily Residential-Agricultural District”

## **SECTION 4 – DEFINITIONS**

In this by-law the following terms unless a contrary meaning is required by the context or is specifically prescribed shall have the following meanings:

1. **ACCESSORY APARTMENT**: A separate housekeeping unit, complete with its own means of egress, sleeping, cooking, and sanitary facilities, that is substantially contained within the structure of a single family dwelling, but functions as a separate dwelling unit.
2. **ACCESSORY USE**: The use of a building or premises for a purpose customarily incidental to the main or principal use.
3. **ALTERATION**: A change in external form, shape or size of a building or structure which involves land use.
4. **BUILDING**: Any roofed structure, permanently located on the land, used for housing or enclosing persons, animals or material.

5. BUILDING (PRINCIPAL): A building in which is conducted the principal use of the lot on which it is situated.
6. BUILDING (NON-CONFORMING): Any lawful use of a building existing on the effective date of the adoption of this by-law, but not conforming to it.
7. CLUB: An association of persons which is the owner, lessee, or occupant of an establishment operated solely for a recreational, social, fraternal, religious, political or athletic purpose, whose activities are confined to the members and guests and are not open to the general public. This includes the establishment so operated. Where appropriate this definition shall apply to camps organized on a similar basis.
8. DWELLING: Any house or building, or portion thereof, which is occupied in whole, or in part, as the home, residence, boarding or sleeping place of one or more persons.
9. FAMILY: One or more persons living as a unit.
10. FARM: A tract of land devoted primarily to agriculture. Includes necessary personnel, structures, buildings, vehicles and equipment but not residential, or commercial structures other than those directly related to farm operation.
11. GARAGE (PRIVATE): a building used for the storage of one or more automotive vehicles, owned or used by the owner or tenant of the premises, and not exceeding two additional vehicles (not commercial) owned or used by others. A private garage is considered an accessory building.
12. GARAGE (PUBLIC): a building, not a private garage, used for the repair, servicing, or storage of automotive vehicles.
13. HEIGHT (BUILDING): The vertical measurement of a building from the mean level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, excluding chimneys, antennas, water tanks, silos and similar structures.
14. JUNK CAR: A discarded motor vehicle.
15. JUNK YARD: Land or structures used commercially for collecting, storing or selling wastes paper, rags, scrap metal, or discarded material; or for collecting, dismantling, storing, salvaging or selling inoperative machinery, vehicles, or parts thereof.
16. JUNK YARD (MOTOR VEHICLE): (1) Sometimes called an auto graveyard. (2) Any business or place of storage or deposit, whether in

connection with another business or not, where four or more junk cars or parts thereof are displayed to public view.

17. KENNEL: Keeping of five or more dogs one or more years old.
18. LINE (FRONT LOT): The front lot line is the line separating the lot from the street line. See also, definition of “Street Line”.
19. LINE (REAR LOT): The lot line opposite and most distant from the front lot line.
20. LINE (SIDE LOT): Any lot line not a front or rear lot line.
21. LOT (BUILDING): A tract of land under separate ownership, which is or can be occupied by a principal building and the structures and areas accessory to it, having frontage on a street and defined by measurements and/or boundaries in a deed or plan.
22. LOT FRONTAGE: The length of the front lot line.
23. LOT LINE: A division line between adjoining properties, or a division line between individual lots.
24. MOBILE HOME OR TRAILER: A vehicle used or intended to be used for human habitation whether designed to be drawn by a motor vehicle or self-propelled. If the unit is jacked or blocked up so as to be immobile it shall nevertheless be considered a mobile home or trailer.
25. NON-CONFORMING USE: the use of a building or land that does not agree with the provisions of this by-law or subsequent amendments thereto.
26. OPEN AIR USED CAR LOT: Any lot on which there or more used cars are displayed for sale.
27. SET-BACK: the distance from the front lot line to the nearest point of a building.
28. SPECIAL PERMIT: An authorization or permit granted by the Planning Board for any of the uses which require a special permit as listed in 5B and else where in this by-law, when it shall be found that the use involved will not be detrimental to the neighborhood and Town, and subject to appropriate conditions and safeguards if deemed necessary.
29. STREET: A thoroughfare used as a public right of way for general access.
30. STREET LINE: The dividing line between a street and a lot, and in the case of a public way, the street line established by the public authority in

laying out the way upon which the lot abuts. If the street line cannot be established, it shall be considered to be a line parallel with and twenty-five feet distant from the centerline of the street.

31. **STRUCTURE**: A combination of materials assembled at a fixed location to give support or shelter or for other purposes. Included are buildings, frameworks, sheds, platforms, towers, and similar objects.
32. **TRAILER VILLAGE OR COURT**: Any lot, parcel or tract of land upon which two or more trailers, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodation.
33. **VARIANCE**: An authorization granted by the Board of Appeals to modify a permitted use when special physical conditions affect such use and where a literal enforcement of this by-law would involve substantial hardship to the owner, provided also that such authorization shall not take away from the intent or purpose of the by-law. See also Section 8, paragraph 4b, "Variances".
34. **YARD (FRONT)**: The space across the full width of a lot and extending from the front line of the building located on such lot to the street line of such lot.
35. **YARD (REAR)**: The space across the full width of the lot and extending from the rear foundation line of the building located on such lot to the rear line of such lot.
36. **YARD (SIDE)**: The space extending from the front yard to the rear yard between a building and the adjacent side line of the lot on which said building is located.

## **SECTION 5 – LAND USES**

**LAND USES**: Except as provided in the section on Non-conforming Uses, and elsewhere in this by-law, no building or structure shall be constructed, and no building, structure or land or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as "permitted" or set forth as "permissible by Special Permit" and so authorized.

## **SECTION 5A – PERMITTED USES**

1. Detached one-family dwelling
2. Religious, educational, municipal

3. Rental of rooms and/or furnishing of board for not more than four persons in a dwelling regularly used for a residence.
4. Farm or nursery including the display and sale of natural products principally raised in the town, and the raising of stock and poultry. See Section 5B for pigs and fur-bearing animals.
5. Lumbering and sawmill operation on one site for a maximum period of one year.
6. Cemetery
7. Public Utility provided there is no open storage yard in conjunction therewith.
8. a. Home occupations and accessory uses incidental to a permitted main use on the same premises, including but not limited to the following:
  - (1) Antique or gift shop, art studio, dressmaker, hairdresser, handicraft, insurance or real estate broker, milliner, musical instruction.
  - (2) Professional offices
  - (3) Use of premises or a building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other artisan, providing that no manufacturing or business requiring substantially continuous employment shall be carried on
- b. A home occupation shall not be interpreted to include those uses which require a Special Permit from the Planning Board as listed in Section 5B.
- c. The home occupation must conform to the following conditions:
  1. The occupation must be carried on wholly within the building or other structure accessory thereto, provided that no more than 25% of the floor area of the residence is used for the purpose above.
  2. Not more than two persons outside the family may be employed in the home occupation.
  3. Adequate off-street parking must be provided.



## **SECTION 5B – USE BY SPECIAL PERMIT**

A special Permit shall only be issued following a public hearing held within sixty-five days after filing of an application with the Planning Board, a copy of which shall forthwith be given to the Town Clerk by the issuance, plus such time as is required to pursue or await the determination of an appeal filed under the provisions of Section 17 of Chapter 40A of the General Laws, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun within one year except for good cause.

Special Permits will not be given if the granting thereof would create traffic, parking, noise, odor, air or water pollution, or to the problems considered by the Planning Board to be detrimental to the general welfare, health or safety of the Town.

The following uses may be permitted by the Planning Board in accordance with the provisions of Section 5B and 8 of this by-law, and in the manner prescribed in Chapter 40A of the General Laws of the Commonwealth of Massachusetts, provided that such use is beneficial to the Town of New Salem and that such use is not detrimental to abutters.

1. Golf Course, Aviation Field, Tenting and Camping, Riding School, Ski Area, Ice Skating or Hockey Rink, Tennis Court, Athletic Field, and other similar outdoor facilities.
2. Playhouse or Indoor Theater.
3. Bowling and Roller Skating
4. Private Club not conducted for profit
5. Hospital, Sanatorium, Convalescent Home
6. Stores (Food, Clothing, Hardware, and similar)
7. Conversion of a one-family dwelling existing at the time of the adoption of this by-law into a two-family dwelling.
8. Public Garage, Service Station, Car Wash, Franchised Automobile Dealer with sales facilities.
9. Fuel Dealer, including storage structures.
10. Motel, Restaurant, Barber Shop
11. Laundry, Laundromat, Dry Cleaner.
12. Professional Building, Bank
13. Mortuary

14. Veterinarian and/or Kennels.
15. Repair Shop (Furniture, Shoe, Clock and similar)
16. The raising of pigs or fur-bearing animals on less than five acres.
17. Commercial poultry raising on less than five acres.
18. Lumbering or Sawmill Operations exceeding one year on one site.
19. Soil, Sand, Gravel or Loam Removal. (See Section 7C).
20. Radio, Television Stations.
21. Home or accessory use involving the preparation and sale of food.
22. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.
23. Other uses which are not prohibited uses and which meet the general criteria at the beginning of this Section 5B.
24. A driveway (or similar right-of-way) used to provide vehicular access to lots other than the lot on which the driveway is located.
25. Accessory Apartment [See Section 5B(3)]

## **SECTION 5B(2) – WIRELESS TELECOMMUNICATIONS FACILITIES AND TOWERS**

### **1. PURPOSE**

In addition to all purposes listed in Section 1 of the Zoning Bylaw, the purpose of this section is to:

- a. Protect scenic, historic, environmental, natural and manmade resources from adverse visual, aesthetic and safety effects, and from damage or loss.
- b. Provide standards for the placement, construction, design, modification, monitoring, and removal of wireless telecommunications facilities and towers to the extent permitted by state and federal law; and
- c. Minimize the number and height of such facilities and towers by encouraging shared use, clustering, and technological designs that reduce or eliminate the need for new and/or taller structures.

### **2. DEFINITIONS**

In this section, the following words have the meanings shown:

- a. Antenna Support Structure: any building or structure other than a Tower that can be used for the location for Wireless Telecommunications Facilities.
- b. Applicant: Any Person applying for a special permit to construct, erect, install, operate or substantially modify a Tower, Facility and/or Antenna Support Structure, or such Person's agent, representative or successor in interest. A "carrier" within the meaning of the Telecommunications Act of 1996 shall be an Applicant or co-Applicant.
- c. Application: The process of submission, consideration, and action on an Applicant's request for a special permit to construct, erect, install, operate or substantially modify a Tower, Antenna Support Structure and/or Wireless Telecommunications Facility; and the forms, documents and information presented to the town in the course of said request. The Application includes verbal representation made by and on behalf of the Applicant to the Planning Board. The basic Application form shall be in the form attached hereto and incorporated herein, if any, which may be changed from time to time by the Planning Board without Town Meeting approval.
- d. Engineer: An engineer specializing in an area appropriate to the work performed or the certification tendered and licensed by the appropriate authority or otherwise qualified.
- e. Owner: Any Person with fee title or a leasehold of seven years or more of land where a Tower or Facility is proposed or located, or such Person's agent, representative or successor in interest.

- f. Person: Any natural person, business or other entity, whether private or public, for profit or not for profit.
- g. Stealth Tower/Facility: A Tower or Wireless Telecommunications Facility designed to enhance its compatibility with adjacent land, including but not limited to, architecturally screened roof-mounted antennas and Towers designed to look like light poles, trees, etc.
- h. Substantial Modification: With regard to an existing Tower or Facility, and increase in power input or output, number of channels, number of antennas, height, any change in the dimensions or appearance of a Tower; or any other extension or alteration of structure or use that may be substantially more detrimental to the neighborhood than the existing use or structure.
- i. Wireless Telecommunications Facilities (“Facilities”): any cables, wires, lines, wave guides, antennas, and other equipment or facilities associated with the transmission or reception of wireless communications which a Person seeks to locate or has installed on or near a Tower or Antenna Support Structure.
- j. Tower: A self-supporting lattice, guyed, or monopole structure constructed from grade, which supports or is intended to support Facilities.

### 3. EXEMPTIONS

- a. The Planning Board (“the Board”) may waive strict compliance with this bylaw for police, fire, ambulance and other emergency dispatch services as permitted by Chapter 40A, section 9.
- b. Federally-licensed amateur radio operators’ equipment shall be exempt from the terms of this section.

### 4. GENERAL

- a. Special Permit Required: No tower or Facility shall be erected, constructed, installed or operated within the town, including but not limited to the mounting of such a Facility on an existing Tower or other structure, unless the Board has issued a special permit therefore. Substantial Modification of any existing Tower or Facility shall also require a special permit, whether the Tower or Facility is a prior nonconforming structure/use or a structure or use existing by grant of a special permit.

- b. Consultants: Upon receipt of an application for a special permit for the construction, installation, operation or modification of a Tower or Facility, or at any time thereafter, the Board may retain a consultant or consultants as appropriate to review such application and/or to inspect, monitor compliance, and advise the Board. In any instance where the Board retains such consultant(s), the Applicant shall be responsible for all changes of such consultant(s); and the Applicant's signature on an Application for such permit shall constitute the Applicant's agreement to pay such charges, and to grant the town 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.
- c. Prohibited Sites: To preserve and protect local historic, scenic, and environmental resources, no Tower or Facility shall be constructed, erected or installed (1) within 1500 feet of the boundaries of the New Salem Common Historic District as defined by the state and National Registers of Historic Places (map attached); or within 1500 feet of the boundaries of the proposed North New Salem Historic District (map attached); or (2) within 500 feet from any historic site listed or eligible to be listed, as defined by the Massachusetts Historical Commission Guidelines for the Identification of Historic and Archaeological Resources in Massachusetts, on the state or federal Register of Historic Places; or within 500 feet from any known archaeological site, as defined by the above-referenced Guidelines or as listed by the Massachusetts Historical commission; or within the scenic viewshed located behind Fay Field (the "Scenic Overlook")(map and description attached); or within any Wetland or Vernal Pool, as defined by state or federal law; or within any state or federally designated Rare or Endangered Wildlife or rare Plant Species habitat.
- d. Shared Use: Proposed Towers shall be designed with the possibility of co-location of one or more other Person's Facilities in mind, so long as such design furthers the goals of this bylaw; except that Stealth designs may be exempt upon the Board's determination that such exemption furthers the purposes of this bylaw.
- e. Height: In the event that the Applicant seeks a permit for a Tower of a height more than one hundred feet (30.5 meters) or an antenna to be mounted on an Antenna Support Structure resulting in a height more than twenty feet (6 meters) above the highest point of the Structure, he must provide documentation from an Engineer showing that the additional height is necessary (1) to avoid construction of another Tower, or (2) to allow the carrier to provide adequate coverage. Tower height shall be measured from grade, and shall include the Tower itself, its base pad, and any attached Facilities that extend more than twenty-five feet (6 meters) over the top of the Tower.
- f. Setback: Towers shall be set back at least twice the height of the Tower from all lot boundaries and from the nearer side line of existing public or private roads. Setback requirements may be modified if such modification would reduce the Tower's visual impact or further other goals of this bylaw, so long as safety is not compromised. If more than one lot is to be used for siting a Tower and/or Facility, then for purposes of this section all such lots shall be regarded as merged and their interior boundary lines disregarded.

- g. Distance from Housing, etc: No Tower shall be constructed, erected or installed less than 800 feet (244 meters) from any existing house, or from any site for which a building permit for a house has been issued, except that this distance may be modified if such modification would reduce the Tower's visual impact or further other goals of this bylaw, so long as safety is not compromised, but such modification shall not be such as to allow the construction, erection or installation of a Tower less than 500 feet (152 meters) from a house or house building site. No Tower shall be constructed, erected or installed less than 1500 feet (457 meters) from any school, licensed day-care facility, public playground or sports field, out of concern for "attractive nuisance" issues.
- h. Structural Requirements: All Towers must be designed and certified by an Engineer to be structurally sound and in compliance with applicable building and/or structural codes.
- i. Lights: towers shall not be artificially lighted except as required by the Federal Aviation Administration. Where so required, the Applicant shall request dual mode lighting from the FAA and use only this lighting is allowed.
- j. Exterior Finish: Where the exterior finish of a Tower is not controlled by FAA requirements, such finish shall be designed to lessen the Tower's visual impact as far as possible.
- k. Security: All Towers and Facilities shall be secured by permanent fencing. A sign no greater than two square feet in size clearly showing the name of the Tower/Facility owner and a 24-hour emergency telephone contact number shall be posted adjacent to the entry.
- l. Landscaping: Landscaping and clearing of existing vegetation on Tower and Facility sites shall be carried out so as to minimize the visual impact of Towers and Facilities, prevent erosion, and preserve existing vegetation to the greatest extent possible.
- m. Signs: No advertising or other signage shall be permitted on Towers or Facilities. Other signage on the site shall be governed by this bylaw at Section 7F. The sign required by subsection k, above, shall be deemed to be an "Allowed On-Premises Sign" per Section 7F(2) and shall not be included in calculations of total sign area under Section 7F.
- n. Maintenance: The Applicant shall insure that Towers, Facilities, and related equipment are installed and maintained in compliance with the National Electric Safety Code and all FCC, FAA and other applicable federal, state and local regulations and maintained in good condition, order and repair and in compliance with such codes and regulations.
- o. Emissions Standards Compliance: Facilities shall maintain compliance with current RF emission standards of the FCC Guidelines. The Applicant shall provide to the Board proof of compliance in the form of a certified copy of the FCC-required RF emissions report or its equivalent within 60 days of commencing use of a Tower or Facility and annual thereafter. In addition, the Board may commission a consultant, pursuant to subsection 4(b) herein, to measure and report cumulative effective RF emissions at the Applicant's expense, both before and after operations begin.

- p. **Inspection and Certification:** All Towers and Facilities shall be certified by an Engineer to be structurally sound and in compliance with all applicable codes. For monopole Towers, such certification shall be submitted by the Applicant with an Application and every five years thereafter to the Board. For Lattice or guyed Towers, such certification shall be submitted by the Applicant with the Application and every two years thereafter. Applicants may be required to submit more frequent certifications should there be grounds to believe that the structural or electrical integrity of the Tower is impaired. The Board and its agents, representatives, independent contractors and employees shall have authority to enter onto the property where a Tower is located to inspect the Tower and Facilities whenever deemed necessary for furtherance of the purposes of this bylaw.
- q. **Insurance:** The Applicant shall maintain liability insurance providing, in the opinion of the Board, sufficient coverage for property damage, bodily injury, damage from interference, etc., throughout the life of the permit, and annual proof of such coverage shall be filed with the Board and the Town Clerk.
- r. **Preferred Location:** If feasible, Facilities shall be located on existing structured, including but not limited to buildings, water towers, telecommunications Towers, utility poles and towers. Where such location is not feasible, Towers and Facilities shall be clustered if possible. Towers and Facilities shall be located in areas not adjacent to housing and regularly-occupied buildings rather than in densely-populated areas if possible. The Applicant shall have the burden of proving that such locations are not feasible, and of locating and designing the proposed Tower and/or Facility so that it shall be camouflaged to the greatest extent possible.
- s. **Discontinuance and Abandonment:** In the event that the use of a Tower or Facility is to be discontinued, the Applicant shall provide written notice to the board as soon as possible with the date when the use is to be discontinued. Use of a Tower or Facility shall also be deemed to be discontinued at the end of the last day that the special permit allowing such use remains in effect, unless a new permit allows continued use. A Tower that has not been used by and carrier for the transmission or reception of signals for 365 consecutive days shall be deemed to be abandoned. The Applicant shall dismantle and remove the Tower and related Facilities or Facility within 120 days of the actual discontinuance of its use or the Board's determination that the Tower has been abandoned. To secure this obligation, the Applicant shall post a bond in a sum determined by the Board to be sufficient to cover the anticipated cost of removal prior to the granting of a permit hereunder. In the event that a Tower or Facility is not removed as required herein, the town may, at its option, remove the Tower or Facility or take legal action to force the Applicant to remove the Tower. In either case, the town may recover its costs, including but not limited to removal costs, collection costs and legal fees, from the Applicant. The town will take no such action until 120 days after notifying the Owner and Applicant of its intent to do so by certified mail at their last known addresses.

## 5. APPLICATION

An Application for a special permit hereunder shall be submitted upon an approval from if such a form is promulgated by the Board, and shall include:

- a. The name, address and telephone number of the Applicant. If the Applicant is not a natural person, then its address shall include a regular place of business or agent for service of process in Massachusetts, or the name and address of a trustee or managing partner as appropriate. If the Applicant is not the Owner of the proposed site, the name, address and telephone number of the Owner, evidence of the Owner's consent to the Application, and a copy of the lease, license, or other agreement between the Applicant and Owner.
- b. The address, Registry of Deeds or Land Court book and page, and assessor's map reference to the proposed site.
- c. A registered surveyor's plan of the proposed site showing its boundaries, the proposed or actual site of the Tower and related structures, including security fence and gate, all structures existing on the site, all public and private ways abutting the site, all houses within 800 feet (244 meters) of the proposed or actual Tower, and all schools, licensed daycare facilities, public playgrounds and sports fields within 1500 feet (457 meters) of the proposed or actual Tower.
- d. Written certification from the town building inspector that no building permits have been granted for houses within 800 feet (244 meters) of the proposed Tower.
- e. A description of the design of the proposed Tower and/or Facility with technical specifications, drawings, structural elevation plans, and simulation showing the proposed site as it would appear with the proposed Tower and/or Facility.
- f. An explanation of the need for the Tower and/or Facility and of the choice of design as they relate to the needs of the carrier(s) for adequate coverage and to the goals of this bylaw, including but not limited to those set out at subsections 1(a), (b), 4(d), (e), (i) and (j);
- g. The estimated useful life of the proposed Tower and/or Facility;
- h. The estimated cost of dismantling, removing and disposing of the proposed Tower and/or Facility;
- i. The location of all existing Towers and usable Antenna Support Structures within one mile of the proposed site, with the names and addresses of their owners;
- j. Where the Application is for the construction of a new Tower, the affidavit of an authorized representative of the Applicant attesting to the fact that the Applicant made diligent but unsuccessful attempts to co-locate Applicant's Facility at the locations identified in (i), above, and/or the certification of an Engineer that such co-location is not feasible, with a statement of reasons;



- k. Certification by an Engineer that the proposed Tower and/or Facility will not interfere with public safety communications and the existing transmission and reception of radio, television, and other communications services in the area;
- l. Certification by an Engineer that the proposed Tower and/or Facility and/or installation meets all applicable codes and standards, including but not limited to those set out herein at 4(h), (i), and (j), and that any new Tower is suitable for co-location of Facilities;
- m. Certification by an Engineer that the proposed Tower and/or Facility creates no hazard by reason of proximity to flammable, volatile, explosive, hazardous or corrosive material;
- n. An Engineer's report setting forth the proposed power density of the Facility and demonstrating how FCC standards for RF emissions are met (where the proposed is for co-location, said report shall include the effects of existing as well as proposed Facilities);
- o. A landscaping plan in accordance with subsection 4(l);
- p. A description of fencing to be installed per subsection 4(k)
- q. Description of any hazardous materials, oil, diesel or gasoline to be used or stored on the site, including anticipated amounts, with plans for storage and containment;
- r. Any submissions made to the FCC, FAA, EPA or other agency concerning the proposed site, with the agency's responses, including but not limited to approvals and permits;
- s. A copy of the insurance policy and declarations page which will provide the coverage required by subsection 4(q) in the event that a permit is granted.

Failure to provide the required materials and information shall be grounds for denial of the Application. The Board may require additional or supplemental information at its discretion, and the Applicant's failure to timely provide such information shall also be grounds for denial of the Application.

**APPLICATION FOR SPECIAL PERMIT UNDER  
NEW SALEM ZONING BYLAW, SECTION 5B (2)  
For Wireless Telecommunications Facilities and Towers**

Please refer to Section 5B(2) and provide the information requested herein accord with its requirements. Failure to provide all information and materials called for will result in the rejection of your application.

PART I: 5B(2) (5) (a) Applicant, address, telephone:

Owner, address, telephone:

Copy of lease or other agreement or Owner's consent to Application must be attached or included with application.

Brief description of the proposed use:

PART II: 5B(2) (5) (b) Street address, Registry of Deeds or Land Court book/page, and assessor's map reference for the site:

PART III 5B (2) (5) (b) through (s): All information and materials required by these subsections must be submitted herewith on separate sheets, clearly labeled with the number of the applicable subsection.

PART IV: Names and addresses of all parties in interest, as defined in G. L. c. 40A, section 11, shall be provided on a separate sheet and certified by the assessors in the following form: "The Board of Assessors hereby certifies that the above list, with noted corrections if any, identifies all parties in interest to the attached application." This certification shall be dated.

PART V: Application fee of \$80 bycheck or money order payable to the Town of New Salem must be included.

APPLICANT'S SIGNATURE CONSTITUTES AGREEMENT TO BIND APPLICANT AND APPLICANT'S SUCCESSORS IN INTEREST TO ALL TERMS OF THE NEW SALEM ZONING BYLAW AND ANY CONDITIONS IMPOSED BY PERMIT.

Appeal to the Board of Selectmen from the Board's selection of consultant is available as per M.G.L. c. 44, section 53G.

Signature: \_\_\_\_\_

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

## **SECTION 5B(3) – ACCESSORY APARTMENT**

A Special Permit may be granted for an Accessory Apartment by the standard Special Permit procedure in this Zoning By-law with the following additional requirements:

### **1. PURPOSE**

The purpose of this Accessory Apartment section is to allow for alternative housing choices while preserving the existing, single family residential character of the Town.

### **2. APPLICATION**

In addition to the standard application for a Special Permit under this Zoning By-law, the application for an Accessory Apartment Special Permit shall include:

- a. a plot plan, showing the location of the house, the proposed accessory apartment, the sewage treatment system, the water supply well, the parking spaces and the egress from the apartment.
- b. elevation drawings sufficient to show the appearance of the building in which the apartment will be located from all sides.
- c. a notarized certification by the owner that one of the two dwelling units shall be occupied by an owner of the building. (See e in CONDITIONS below.)
- d. a written statement from the New Salem Board of Health that the proposed Accessory Apartment can be created in accordance with all applicable state and local public health regulations regarding occupancy, water supply and sewage treatment.

### **3. GENERAL CONDITIONS**

The following general conditions shall apply to Special Permits for Accessory Apartments. The Planning Board may waive any of the requirements herein to the extent that they interfere with necessary accommodations for disabled persons. The Planning Board may also attach other specific conditions to a Special Permit.

- a. The apartment will be a separate housekeeping unit that functions as a separate unit from the single-family dwelling and has its own means of egress.
- b. Only one Accessory Apartment may exist within a single-family house.
- c. In single family dwellings constructed after June 11, 2007, the Accessory Apartment shall not exceed 700 square feet of gross floor area.
- d. In single family dwellings in existence on June 11, 2007, the Accessory Apartment shall not exceed 35% of the gross floor area of the entire structure, or 700 square feet, whichever is greater.
- e. An owner of the dwelling in which the Accessory Apartment is located shall occupy at least one of the dwelling units in the building. The owner must occupy the

structure full-time for a minimum of 18 months during every 24-month period. When no owner is present, the unit that the owner ordinarily occupies shall not be rented.

- f. The Accessory Apartment shall be designed so that the appearance of the building remains that of a single-family residence. Any Accessory Apartment entrances shall be visually minimized such as by placing them on the side or rear of the building.
- g. Unless otherwise required by the Massachusetts State Building Code, any new exterior stairs needed to provide primary or secondary means of egress for the Accessory Apartment shall be located on the side or rear of the building.
- h. There must be adequate off-street parking for the Accessory Apartment.
- i. The Accessory Apartment shall be clearly a subordinate part of the single-family dwelling. Any construction to create an Accessory Apartment shall not increase the gross floor area of the existing building by more than 20%.
- j. The construction of any Accessory Apartment must be in conformity with State Building Code requirements.
- k. The existing water supply and sewage treatment system must be adequate to serve the proposed alteration to the existing dwelling in accordance with the requirements of Title 5 of the State Environmental Code, 310 CMR 15.000 and amendments thereto, and the regulations of the New Salem Board of Health.
- l. An Accessory Apartment shall be subject to the same setback requirements as a principal building.
- m. New owners of buildings with existing Accessory Apartments who wish to continue such use shall, within 30 days of purchase, submit a notarized certification to the Building Inspector that they have read and understand the provisions of this section and that they are in conformance with it.

## **SECTION 5C – PROHIBITED USES**

Any business or occupation is prohibited which will be detrimental, offensive or tend to reduce property values by reason of unsightliness, dirt, odor, fumes, smoke, gas sewerage, refuse, noise, excessive vibration, danger from fire or explosion.

Specifically prohibited are:

1. Junk Yards.
2. Junk Yards (Motor Vehicle).
3. Trailer Villages or Courts.
4. Open Air Used Car Lots.
5. Drive-in Motion Picture Theaters.
6. Junk cars which are stored in such a manner as to be in sight of the public highway and abutting property owners.
7. In order to protect the public health, safety and welfare, no land within the Town of New Salem may be used for the collection, treatment, storage, burial, incineration or disposal of radioactive wastes, including but not limited to low level radioactive wastes.
8. A single driveway (or similar right-of-way) providing vehicular access to more than two rear dwelling lots (except a public way or way approved in a sub-division plan).

## **SECTION 6 – SPACE REQUIREMENT – DIMENSIONS**

1. Every lot for dwelling purposes shall contain not more than one dwelling structure together with accessory buildings. An Accessory Apartment by Special Permit is not to be considered a separate dwelling structure. The following minimum requirements for lot frontage and area and open spaces adjacent to buildings shall be required.

- a. STANDARD LOT

- 1) LOT AREA: 2 acre (87120 square feet)

- 2) LOT FRONTAGE: Two hundred (200) feet on (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in this town, having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby.

- 3) FRONT YARD: Thirty-five (35) feet between any building and the front lot line.

- 4) SIDE YARD: Twenty (20) feet between any principal building and the side lot line.

- 5) REAR YARD: Thirty-five (35) feet between any principal building and the rear lot line.

- b. REAR LOT: An individual parcel of land may have as little as fifty (50) feet of frontage on a street provided that all of the following conditions are met:
  - i. The area of the lot is at least four acres
  - ii. The lot includes a strip of land at least fifty (50) feet in width by which it is connected to a way which is defined in Section 6, 1a2, above. This fifty (50) foot access strip must be physically suitable for year round vehicular access.
  - iii. The principle building must be one hundred (100) feet or more from every lot line.

2. THE MAXIMUM HEIGHT shall be two and a half stories or thirty-five (35) feet, excluding chimneys, vents, ornamental spires, etc.
3. ACCESSORY BUILDINGS attached to the principal buildings are subject to the same minimum front and side yard clearances applicable to the principal buildings. A rear or back yard may contain detached or accessory buildings covering no more than 40% of the back yard. Such building in the back or rear yard may be located as close as ten (10) feet to a side or rear lot line.

## **SECTION 7 – GENERAL REGULATIONS**

### **SECTION 7A – NON-CONFORMING USES**

1. The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this by-law may be continued, although such use does not conform with the provisions of this by-law.
2. An existing non-conforming use shall not be changed to any other non-conforming use.
3. An existing non-conforming structure or use may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.
4. A non-conforming use which has been discontinued for two years or more shall not be re-established and all future use shall conform to this by-law.
5. A non-conforming use which has been changed to a more restricted or conforming use shall not revert to its previous use.
6. A non-conforming use which has been damaged or destroyed by fire or other accidental cause may be repaired or rebuilt and used as before provided such restoration is carried out within two years and does not exceed the size of the original non-conforming use.
7. On lots of less than the required area which have been recorded by plan or deed or assessed as a separate parcel before the date of adoption of this by-law, a minimum area of 5000 square feet and a minimum frontage of 50 feet shall apply, unless this parcel prior to the time of adoption of this by-law adjoined other land of the same owner available for use in connection with such parcel. Any lot on which more than one house existed at that time may be divided and sold to separate owners.
8. A non-conforming use may be continued by a new owner subject to the provisions of this section.

### **SECTION 7B – GENERAL PROVISIONS FOR NEW BUILDINGS**

1. Occupancy of Dwelling During Construction: A dwelling may be occupied by the owner and his family during the construction thereof, providing said dwelling conforms to this by-law or amendments thereto, within two (2) years from the date construction commenced.
2. A Temporary Dwelling: on the premises may be occupied by the owner and his family during construction of a permanent residence, providing the construction starts within six (6) months of the date of issue of the building permit and conforms to this by-law or amendments thereto within two (2) years from the date construction is commenced.

## **SECTION 7C – EARTH REMOVAL**

1. The removal for sale of sod, loam, clay, sand, gravel, except when incidental to, and in connection with, the construction of a structure, or incidental to the grading and developing of contiguous property, shall be permitted only by written permission of the Planning Board, after a public hearing. The Board in each instance shall impose such conditions as will protect the neighborhood and Town against permanent and temporary hazards, because of conditions which may be left after operations are completed or because of the methods of handling such materials at the site or of transporting such materials through the Town.

## **SECTION 7D – TRAILERS/MOBILE HOMES**

1. Trailers and mobile homes, designed or used for human occupation shall not be kept within the boundaries of the Town of New Salem unless they are in bona fide storage or unless they are being used for temporary camping shelters. Such use for camping shelters shall not exceed fourteen (14) consecutive days for a total of sixty (60) days in any calendar year.
2. This prohibition does not apply to Temporary Dwellings as established in Section 7B (General Provisions for New Buildings), wherein a temporary dwelling on the premises may be occupied by the owner and his family during the construction of a permanent residence.

## **SECTION 7E – CORNER CLEARANCE OR VIEW OBSTRUCTIONS**

1. No wall or other structure shall be erected, and no hedge, tree or other obstruction exceeding a vertical height of 3 ½ feet from the road level shall be maintained on a lot which may cause danger to traffic on a public street by obscuring the view.

## **SECTION 7F – SIGNS**

### **1. DEFINITIONS FOR SIGNS**

**SIGN:** Any permanent or temporary device, billboard, placard, painting, drawing, poster, letter, word, banner, pennant, insignia, trade flag, or representation used as, or in the nature of, an advertisement, announcement or direction which is visible from the road.

**SIGN, AREA OF:** The area of a sign shall be considered to be the same as the area of the smallest rectangle which encompasses all the letters, designs or symbols together with the background, but excluding support structure. Two signs back to back shall be considered one sign.

**ON-PREMISES SIGNS:** Signs which are located on the same property where the business or activity they refer to is located.



OFF-PREMISES SIGNS: All signs which are not on-premises signs.

## 2. ALLOWED ON-PREMISES SIGNS

Types of signs described under this heading are allowed without the need to obtain a special permit. They must be on-premises and are subject to the restrictions included for each type. Signs inside windows may be used in addition to other signs provided that they are not larger than twenty-five percent (25%) of the window area.

### a. TEMPORARY SIGNS

Temporary signs are not to exceed twenty-four (24) square feet per sign nor a total of thirty-two (32) square feet for each of the seven types of signs listed immediately below. Temporary signs may be used in addition to other signs.

- (1) PUBLIC EVENT SIGNS: for an event sponsored by a non-profit organization and open to the public. Remove within 15 days of the event.
- (2) TAG SALE SIGNS: Allowed only during the period that the sale is in progress.
- (3) SEASONAL PRODUCE SALE SIGNS: Limited to a period of not more than three months in a calendar year.
- (4) REAL ESTATE SALE SIGNS: Remove within 15 days after the sale is completed.
- (5) CONTRACTORS SIGNS: Remove within 15 days after the work is completed.
- (6) TRAFFIC CONTROL SIGNS for special events. Remove at the end of the event.
- (7) POLITICAL SIGNS AND SIGNS REQUIRED BY LAW: Remove within 15 days after the election or legal requirement.

### b. PERMANENT SIGNS

Signs under this heading may be in addition to other signs.

- (1) DRIVEWAY SIGNS: A driveway entrance or exit may be indicated by the use of not more than two signs of not more than two (2) square feet.
- (2) USE RESTRICTION SIGNS: No hunting, Safety Zone, No Trespassing, No Swimming, No Fruit Picking, Keep Out, Beware of Dog, Posted, etc. Each sign is not to exceed two (2) square feet.
- (3) FAMILY RESIDENCE: Each family residing on the premises may have one sign not exceeding an area of two (2) square feet, indicating the name of the owner or occupant. A name on a mailbox or a street number for identification shall not be considered a sign.
- (4) BUSINESS ACCESS SIGNS: Open, Closed, hours, Men, Women, Parking, etc. and signs required by law. Each sign is not to exceed two (2) square feet.

- (5) PUBLIC BUILDING AND NATURAL AND HISTORIC SITE:  
Each sign is not to exceed twenty-four (24) square feet nor a total of thirty-two (32) square feet.
- (6) ACCESSORY USE SIGNS: An accessory use or home occupation, described in Section 5A-8, may be indicated by either one or two signs. A single sign shall not exceed an area of six (6) square feet. If two signs are used the area of each shall not exceed four (4) square feet and they must be at least twenty-five (25) feet apart. If more than one accessory use is at a single location, each accessory use may have signs described in this paragraph, except that the total number of signs for all uses together at one location is limited to four.
- (7) AGRICULTURAL USE SIGNS: Agricultural uses may have the same signs with the same conditions as described in Section 7F, 4 below without a special permit.

### 3. OFF-PREMISES SIGNS

Off-premises signs must comply with Massachusetts Outdoor Advertising Board and Department of Public Works regulations.

### 4. SPECIAL PERMIT SIGNS

Stores or other uses as shown under Section 5B (USE BY SPECIAL PERMIT) may advertise goods sold or services rendered on the premises by either one or two signs (in addition to allowed signs) provided that the Planning Board has granted a Special Permit for the sign or signs. A single sign shall not exceed an area of twenty-four (24) square feet. If two signs are used, each is not to exceed sixteen (16) square feet and they must be at least fifty (50) feet apart.

### 5. PROHIBITED SIGNS

The types of signs or conditions under this heading are prohibited uses.

- a. Flashing, animated, noise making or intermittently illuminated signs.
- b. Companion signs, advertising successively or repetitively.
- c. Signs with mirror-like parts that appear glittering in daylight. (Signs that appear illuminated by retro-reflection of headlights at night are not prohibited)
- d. Neon or gas-filled tube-type signs.
- e. Streamers, “Whirligigs” or other similar advertising devices.
- f. Any signs attached to a utility pole, tree fence, rock or stone wall except historic and memorial markers or signs posted by the owner to define or regulate use of his land, such as “No Trespassing” and “No Hunting”.

- g. Billboards or other “off-premises” signs or devices, except as may be permitted in other parts of this section.
- h. Signs any part of which is more than twenty (20) feet from the ground.
- i. Permanent lighting which outlines any part of a building or structure, such as a gable roof, side wall or corner, except holiday lighting in use for a period no longer than four (4) weeks in any calendar year.
- j. Unshielded sign or building lights, including floodlights, which result in high intensity light shining onto any street or adjoining property.

#### 6. MAINTENANCE OF SIGNS

Any sign which is unsafe or unsightly shall be repaired and made safe, or be removed by the owner, lessor, agent, or occupant of the building, land or property upon which it is located.

### **SECTION 7G – OPEN SPACE DESIGN**

#### 1. PURPOSE AND APPLICABILITY

- a. Purpose: The primary purpose of this Section is to preserve the natural resources of New Salem as identified in the community development plan, especially large contiguous blocks of forested back-land that must be maintained as large-acreage holdings in order to remain economically viable for commercial forestry. This is necessary for the continuation of forestry as a significant resource-based local agricultural activity and for the protection of the Town’s water resources and other unique environmental assets. This section is also intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design. The Town wishes to encourage the use of Open Space Design because it results in the preservation of contiguous open space and important environmental resources, while allowing design flexibility. Open Space Design reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, hilltops, and historically significant areas.
- b. Applicability: To encourage this type of development, Open Space Design projects are allowed by-right, subject only to the requirements of this section and the Subdivision Rules and Regulations (Subdivision Regulations). An Open Space Design (also referred to herein as a “project”) may be proposed anywhere in New Salem. All subdivisions shall comply with the Open Space Design provisions of this Section 7G, unless the Planning Board allows a development that deviates from the requirements herein by special permit. Such deviations may be approved if the applicant demonstrates that the proposed alternative development configuration provides adequate protection of the site’s

environmental resources and fulfills the purposes of this section as well as or better than an Open Space Design. If the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of an Open Space Design plan, the Planning Board shall deny the special permit for the deviation and require that the applicant submit a plan that complies with the requirements for an Open Space Design.

- c. Non-Subdivision Applications: An Open Space Design that does not require approval as a subdivision is allowed by right under this section, but first subject to site plan review by the Planning Board under Section 11A of this zoning bylaw. In order to encourage small projects to follow Open Space Design principles, there is no minimum parcel size or number of lots required for an Open Space Design.
- d. Consolidated Special Permits: If the proposed Open Space Design also involves proposed deviations, one or more common driveways, density bonuses, transfer of development rights, and/or any other use that requires a special permit, the proceedings for all such special permits shall, insofar as practicable, occur in one consolidated special permit proceeding before the Planning Board.
- e. Exemptions: The provisions of 1(b), above apply only to subdivisions of land as defined in Section 81L of Chapter 41 of the General Laws, and not to construction of homes or businesses on individual lots existing as such prior to May 9, 2011 or to lots created at any time through the “Approval Not Required” process described in Section V of the Subdivision Regulations with frontage on public ways existing as such as of May 9, 2011.

## 2. DEVELOPMENT IMPACT STATEMENT AND CONSERVATION ANALYSIS

- a. In order to enable the Planning Board to determine whether or not a proposed Open Space Design (or development by special permit that deviates from the requirements for Open Space Design) satisfies the purposes and standards of this section, an applicant must present sufficient information on the environmental and open space resources for the Planning Board to make such determination. The required information shall be provided in the form of a Development Impact Statement, including a “conservation analysis” as described in Section XII(F) of the Subdivision Regulations. In the case of an Open Space Design that is not a subdivision, and that is presented as a site plan review application, the applicant shall not be required to submit a full Development Impact Statement; however, the Planning Board may require the submission of all or part of a conservation analysis as described in said Section XII(F) of the Subdivision Regulations.
- b. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the conservation resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve and where development may be most appropriately located.

- c. The Planning Board, in consultation with the Conservation Commission and Open Space Committee, if any, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the “conservation findings”). The Planning Board may deny any application that does not include sufficient information to make conservation findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the conservation analysis and findings.
- d. The Planning Board’s conservation findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The conservation findings shall describe the land to be permanently preserved by a conservation restriction or other means, any structures, uses, or activities reserved from the terms of the conservation restriction, and management guidelines for such land, if appropriate. The conservation findings shall also indicate preferred locations for development if the Open Space Design is denied based upon such findings.

### 3. MINIMUM PRESERVED OPEN SPACE

The Plan shall show that at least 80% of the total acreage of the project will be preserved by a conservation restriction or other means, the configuration of which shall be based upon the conservation findings.

### 4. ALLOWABLE RESIDENTIAL UNITS

- a. The maximum number of residential units in an Open Space Design is calculated by a formula based upon the net acreage of the project. This formula is intended to take into account site-specific development limitations that make some land less developable than other land. This calculation involves two steps, calculating the net acreage and dividing by the base density.
- b. Net Acreage Calculation
  - (1). The factors named below are included in this subsection for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw. To determine net acreage, subtract from the gross acreage of the project the total acreage of:
    - i. one-half of land with slopes of 20% or greater (2000 square feet or more of contiguous sloped area at least 10 feet in width);

- ii. all lakes and ponds, areas within 200 feet of a surface water or tributary to the Quabbin Reservoir that are subject to the Watershed Protection Act Regulations (350 CMR 11.00), and land subject to easements or restrictions prohibiting development;
- iii. all FEMA 100-year floodplains; and
- iv. all freshwater wetlands as defined in Section 40 of Chapter 131 of the General Laws, as delineated by an accredited wetlands specialist and approved by the New Salem Conservation Commission.

(2). Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook “Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act” (1995). The complete form shall be submitted including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form. If detailed vegetative assessments are not required by the Handbook for a particular site, the reasons must be noted on the Field Data Form. At the Planning Board’s discretion, any of the information described above may be taken from current geographic information systems data available from the Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources including delineations registered by the use of global positioning systems.

c. Unit Count Calculation

To determine the base number of allowable residential dwelling units on the site, divide the net acreage by the base density divisor of 5. Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

d. Density Bonuses

(1) The unit count determined in 4(c), may be increased through density bonuses designed to advance important goals of the New Salem community development plan. Density bonuses are given by special permit at the discretion of the Planning Board based upon the expected public benefit. They are calculated by first determining the allowable unit count under 4(c) without rounding fractional units up or down, and then multiplying that number by 100% plus the percentages that follow. The resulting fractional units, if any, shall be rounded up or down as in 4(c).

(2) If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as access to an important natural area or a trail system): a maximum of 10% over the allowable unit count in 4(c).

(3) If the applicant permanently restricts ownership and occupancy of units allowed by 4(c) as affordable housing, herein defined as housing units that are eligible for inclusion in the Town's "Subsidized Housing Inventory" for the purposes of Chapter 40B of the General Laws, and makes a binding commitment to construct such affordable residences: a maximum of 25%. For every unit included in the allowable unit count under 4(c) that is built and dedicated as an affordable unit, two bonus market rate units may be permitted, up to the maximum of 25% over the allowable unit count in 4(c).

(4) If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% over the allowable unit count in 4(c) per additional 5% of the parcel preserved as open space.

e. Density Transfer (Transfer of Development Rights)

(1) Procedure: The Town of New Salem encourages flexibility in the location and layout of development, within the overall density standards of this Zoning Bylaw. The Town therefore will permit residential density to be transferred from one parcel (the "sending parcel") to another (the "receiving parcel") which shall be an Open Space Design project under this Section 7G only. The process of density transfer is as follows:

(i) All density transfers require a special permit from the Planning Board.

(ii) The special permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.

(iii) The special permit application shall show a proposed Open Space Design plan for the receiving parcel (subdivision or site plan) as well as a base unit count calculation prepared according to the provisions of 4(c). For the sending parcel, the applicant may calculate the allowable number of units eligible to transfer by either:

(a) calculating the net acreage pursuant to 4(b) and dividing by 15; or

(b) dividing the total (gross) project area by 25.

(iv) Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

(v) Sending parcels existing as such on May 9, 2011 may have development rights calculated by either method iii (a) or (b), above at the applicant's election. Sending parcels which have been modified by lot line changes since May 9, 2011 must employ method iii (a). The density calculation

for the sending parcel shall not include any of the density bonuses available under Subsection 4(d), above.

- (vi) In reviewing an application for density transfer, the Planning Board shall first determine the base number of allowable residential units permitted on the receiving parcel using all of the relevant standards in 5(c) and any density bonuses sought under 5(d). The Planning Board shall then determine the number of residential units available to transfer from the sending parcel(s) pursuant to (iii) (a) or (b), above.
- (vii) The Planning Board may then grant a special permit allowing the transfer to the receiving parcel of some or all of the allowable residential units from the sending parcel(s).
- (viii) As a condition of approval of the density transfer, a conservation restriction on the sending parcel(s) satisfying the requirements of Section 7, below shall be executed and recorded in the Registry of Deeds. The conservation restriction shall require that the total area of land used in the calculation required under (iii) (a) or (b), above be permanently restricted. (For example, if development rights to build five units are transferred and the calculation is according to (iii) (b), above at least 125 acres of the sending parcel must be permanently restricted.). Those portions of the sending parcel(s) not required to be subject to the conservation restriction may be used in accordance with this zoning bylaw.

## (2) Findings Required

The Planning Board shall not approve any residential density transfer unless it finds all of the following.

- (i) All requirements for the granting of a special permit have been satisfied.
- (ii) The addition of the transferred units to the receiving parcel will not increase the maximum allowable unit count under 4(c) by more than 25%, and will not adversely affect the area surrounding the receiving parcel.
- (iii) The density transfer will benefit the Town by protecting a substantial area of developable land with conservation value on the sending parcel(s) in a manner that furthers the purposes of this section.
- (iv) The density transfer will be consistent with the community development plan.



f. Maximum Density Bonus and/or Density Transfer

The density bonuses and transfers of development rights allowed in 4(d) and 4(e), above may be combined to result in a total increase not exceeding 25% of the unit count established in 4(c). Density bonuses and/or transfers may only be exercised if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health.

5. TYPES OF RESIDENTIAL DEVELOPMENT

The allowable residential dwelling units may be developed as single-family, or any other housing types otherwise allowed by this zoning by-law, provided that all applicable requirements for the land use district are satisfied and that the number of dwelling units does not exceed the allowable unit count in 4(f). The subdivision approval and approvals for any other allowed housing types proposed shall be fulfilled concurrently in one proceeding to the extent practical. Accessory apartments shall be permitted in Open Space Designs, and shall not be counted toward the total allowable unit count. Such apartments shall comply with the requirements of Section 5B(3) of this zoning bylaw.

6. DIMENSIONAL AND DESIGN REQUIREMENTS

a. Minimum Lot Sizes in Open Space Designs

The limiting factor on lot size in Open Space Designs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size as otherwise required in this zoning bylaw for zoning purposes. This does not affect the powers of the Board of Health to require areas on a lot for the disposal of sewage and the protection of water supply.

b. Setbacks, Road Frontage, and Road Requirements

There shall be setback requirements as otherwise required in this zoning bylaw. In the case of adjoining property that is not a part of the Open Space Design, the setback requirements from such property lines shall be as otherwise required in this zoning by-law. There shall be no numerical requirements for road frontage as otherwise required in this zoning bylaw in an Open Space Design, provided that each lot has legally and practically adequate vehicular access to a public way or a way approved under the Subdivision Regulations across either its own frontage or via a shared driveway approved under Section 5B of this zoning bylaw. All dwellings must comply with applicable Board of Health requirements. The Planning Board may modify the applicable road construction requirements for new roads within an Open Space Design as provided in the Subdivision Regulations, if it finds that such modifications will be consistent with the purposes of this Section 7G and the community development plan.

c. Arrangement of Lots

(1) Lots shall be located and arranged in a manner that protects: views from roads and other publicly accessible points; farmland; wildlife habitat; large harvestable forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources, while facilitating pedestrian circulation. Generally, residential lots shall be located the minimum feasible distance from existing public roadways while allowing for adequate visual screening from such roadways. The Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of lots.

(2) Lot, roadway, and shared driveway layouts, land alterations, and placement of structures shall follow applicable portions of the Rural Siting Principles in Section 7H of this zoning bylaw and any design guidelines for Open Space Design which may be adopted by the Planning Board.

7. PERMANENT OPEN SPACE

a. Open space set aside in an Open Space Design or as a condition of any special permit or site plan review shall be permanently preserved from development. The Planning Board may not require such open space land to be accessible to the public unless a density bonus is allowed under 4(d)(2). Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such land, based upon the conservation findings of the Planning Board. Individual or shared water wells may be located upon the open space land if so allowed in the conservation findings of the Planning Board.

b. Permanent Preservation of Open Space Land

All land required to be set aside as open space in connection with any Open Space Design shall be so noted on any approved plans and shall be protected by a permanent Conservation Restriction, herein defined as a permanent restriction in the title to land of the type described in G.L. Chapter 184, Sections 31–33, to be held by the Town of New Salem Conservation Commission, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under Chapter 184, Section 31 of the General laws, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. As used in this zoning bylaw “Conservation Restriction” also includes an Agricultural Preservation Restriction, a Watershed Preservation Restriction, or a Preservation Restriction as defined in G.L. Chapter 184, Section 31. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development. The restriction may permit, but the Planning Board may not require public access or access by residents of the development to the protected open space land.

c. Ownership of Open Space Land

(1) The fee interest in the protected open space land, at the applicant's discretion, may be held: in private ownership; common ownership by a homeowner's association (HOA); by the town or state governments with their consent; by a non-profit organization; or in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.

(2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(i) The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.

(ii) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(iii) The HOA must be responsible for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways used by all members.

(iv) Property owners must pay their pro rata share of the costs in (2) (ii) and (iii), above, and the assessment levied by the HOA must be able to become a lien on the property.

(v) The HOA must be able to adjust the assessment to meet changed needs.

(vi) The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

(vii) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

(viii) Town Counsel shall find that the HOA documents presented satisfy the conditions in (2) (i-vii), above, and such other conditions as the Planning Board shall deem necessary.

d. Maintenance Standards

(1) Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.

(2) If the Select Board finds that the provisions of (d)(1), above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the actual costs of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

## **SECTION 7H – RURAL SITING PRINCIPLES**

### **1. STANDARDS FOR LAND DEVELOPMENT**

The following standards shall apply to the siting of all uses and structures that are in Open Space Designs or subject to site plan or special permit approval. They are recommended but not required for the siting of individual residences on existing lots where no site plan or special permit review is required.

- a. Wherever feasible, retain and reuse existing old farm/woods roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls or where an existing road is aligned in a way that disrupts drainage or accelerates erosion.)
- b. Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.
- c. Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems, leach fields, and wells may be located in fields, however.
- d. Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner historically found in the Town. If vegetative buffers are used, a minimum depth of 50 feet of mixed ground-covers, shrubs, and trees should be provided. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.

- e. Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.
- f. Site buildings so that they do not protrude above treetops and crest lines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.
- g. Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.
- h. Where feasible, site buildings and other areas to be developed in a manner that does not block trails or paths that have traditionally provided access to back land. This provision shall not be construed to create any public access rights that do not otherwise exist.

## **SECTION 8 – ADMINISTRATION**

- 1. Enforcement: This by-law shall be enforced by the Inspector of Buildings or an agent appointed by him; and upon any well-founded information as to a violation, the said Inspector of Buildings shall take immediate steps to enforce this by-law.
- 2. Penalties: Any person violating any of the provisions of this by-law may be fined not more than twenty dollars (\$20.00) per day for each day of violation commencing ten (10) days following date of registered mailing of written notice from the Inspector of Buildings.
- 3. Permit: No building or structure shall be erected without a permit granted by the Inspector of Buildings. Applications for building permits shall contain reasonable information on forms provided by the Inspector of Buildings. Construction or operations under a building or Special Permit shall conform to any subsequent amendment of this by-law unless the use or construction is commenced within a period of six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
  - a. A building permit shall become void unless construction is commenced within six (6) months of the date of issue and completed within two (2) years of the date of issue.
  - b. Buildings in Course of Construction: Nothing herein contained shall require any change in plans of construction, size and use of building, structure or part

thereof, which shall have a foundation built upon the date of the adoption of this by-law.

4. Board of Appeals: There is hereby established a Board of Appeals of three (3) members and two (2) associate members to be appointed by the Selectmen, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this by-law in the manner prescribed in Chapter 40A of the General Laws. They shall be appointed for terms of one, two and three years, the term of one member expiring each year. Thereafter, appointments are to be for three (3) years. Vacancies shall be filled by the Selectmen for the balance of any unexpired term. No member shall act in any case in which he may have a personal or financial interest, an associate member to be designated in such cases by the Chairman of the Board of Appeals. The Board of Appeals shall have the following powers:
  - a. Appeals: To hear and decide an appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A, General Laws, or by any officer or Board of the Town, or by any person aggrieved by any order or decision of other administrative official in violation of any provision of Chapter 40A, General Law, or of this by-law.
  - b. Variances: To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of this by-law where, owing to circumstances relating to the soil conditions, shape or topography of such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions to this by-law would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of this by-law, but not otherwise. If the rights authorized by a variance are not exercised within one year of the date of the granting of such variance, the variance shall lapse.

## **SECTION 9 – AMENDMENT**

1. This by-law may be amended from time to time at an annual or special Town Meeting in accord with the provision of Section 5 of Chapter 40A.

## **SECTION 10 – VALIDITY**

1. The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

## **SECTION 11: SPECIAL REGULATIONS**

### **SECTION 11A: SITE PLAN REVIEW**

Site Plan Review is required for all uses as provided in this bylaw and as described in this Section.

#### **1. Purpose**

The purpose of Site Plan Review is to ensure that new development is designed in a manner which reasonably protects the environmental resources and scenic qualities of the neighborhood and the Town. Site Plan Review addresses the layout and development of structures, parking, pedestrian facilities, access roads, and other site features and considers the concerns listed below. As a result of this process, a modification of the development proposal may be required to maximize benefits and minimize impacts. The Planning Board is responsible for Site Plan Review.

The areas of concern are:

- a. The balance of rights of land owners to use their land, with the corresponding right of abutting and neighboring land owners to live without undue disturbance from noise, traffic, lighting, signage, smoke, fumes, dust, odor, glare, or storm water run-off;
- b. The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- c. The adequacy of methods to store, handle or dispose of wastes, including hazardous materials, to protect air, groundwater and surface water from pollution;
- d. The protection of historical and natural environmental features on the site under review and in adjacent areas; and
- e. The adequacy of stormwater management systems to address non-point source pollution.

#### **2. Projects Requiring Site Plan Review**

Site Plan review by the Planning Board is required for the following:

- a. The subdivision of land resulting in the creation of two (2) or more building lots excluding ANR lots (Approval Not Required).
- b. The installation of ground mounted or roof mounted solar electric installations generating more than 10kW or occupying one (1) or more acres.
- c. Non-residential or non-agricultural uses that create 5,000 square feet or more of enclosed floor area, require 10 or more parking spaces, or result in a parking area of 2,000 square feet or greater.
- d. Non-subdivision open space design projects under Saction 7G(1)(c) of this zoning bylaw.

For these uses, no permit for construction, reconstruction or occupancy shall be given by the Building Inspector except in conformity with a Site Plan approved by the Planning Board.

### 3. Procedure

Prior to the submission of an application for Site Plan Review, the applicant is encouraged to meet with the Planning Board at a public meeting to discuss the proposed development in general terms. While there are no formal pre-application requirements, the applicant is encouraged to prepare sufficient preliminary site drawings to inform the Planning Board of the proposed development.

- a.** An applicant for Site Plan Review shall submit a Site Plan in accordance with this section to the Town Clerk. The Town Clerk shall forthwith transmit a copy of the application to the Planning Board. The Town Clerk shall indicate the date on which the Site Plan was received and transmit a copy of the dated application to the applicant. The date of receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed with the Planning Board. It shall be the responsibility of the applicant to furnish all supporting documentation with the application and the dated copy received from the Town Clerk does not absolve the applicant from this responsibility.
- b.** The Planning Board shall obtain with each submission a deposit sufficient to cover any expenses connected with the public hearing and review of the plans. The Planning Board has the right to retain a Registered Professional Engineer or other qualified professionals including attorneys, scientists, etc. to advise the Planning Board on any or all aspects of the site plan. The costs of this engineering study will be borne by the applicant.
- c.** The Town Clerk shall transmit to the Conservation Commission, Board of Health, Historical Commission, Building Inspector, Fire Department and other Boards as deemed necessary (e.g. Energy Committee for solar electric generating installations), copies of the site plan documents. The Boards have up to forty-five (45) days to submit recommendations in writing to the Planning Board concerning the items outlined below. Failure of any Board to report within the allotted time shall be interpreted as non-opposition to the submitted site plan.
  - (i)** The adequacy of the data and procedure used by the applicant to determine the impacts of the proposed development;
  - (ii)** The expected impacts of the proposed development; and
  - (iii)** The recommended conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development.
- d.** The Planning Board shall hold a public hearing in accordance with Section 11 of M.G.L. Chapter 40A within sixty-five (65) days of the receipt of an application and shall take final action within ninety (90) days from the time of hearing. The Planning Board's final



decision in writing shall consist of one of the following actions based on a simple majority vote:

- (i) Approval of the site plan based upon determination that the proposed plan will constitute a suitable development and is in compliance with the standards set forth in this Bylaw;
- (ii) Approval of the site plan subject to any conditions, modifications, or restrictions as required by the Board which will ensure that the project meets the standards set forth in these Zoning Bylaws; or
- (iii) Denial of the site plan based upon specific findings such as a determination that there was insufficient information submitted with the proposal to adequately review it or that the project is inconsistent with the requirements of these Zoning Bylaws.

#### **4. Submission Requirements**

A site plan shall be prepared by a registered Professional Engineer, Landscape Architect, or Architect at a scale of 1 inch equals 20 feet, on standard 24" x 36" sheets, with continuation on 8 1/2" x 11" sheets as necessary for narrative. The site plan shall include all data, detail and supporting information as outlined in Appendix A. The Planning Board may waive one or more requirements for submittal as outlined in Appendix A upon written request by the applicant if the small scale or simplicity of the projects warrants such a waiver. Such determination to waive one or more of the requirements shall be in the sole discretion of the Planning Board. Seven (7) copies of the site plan and all supporting documentation shall be provided to the Town Clerk at the time of application.

#### **5. Standards for Review**

The Planning Board shall review the site plan and supporting data taking into consideration the reasonable fulfillment of the following objectives:

- a. Conformance with the provisions of the Bylaw of the Town, the General Laws of Massachusetts, and all applicable rules and regulations of State and Federal agencies.
- b. Protection of Town resources and abutting properties by minimizing any undue disturbance from noise, traffic, lighting, hazardous materials, signage, smoke, fumes, dust, odor, glare, or storm water run-off.
- c. Convenience and safety of vehicular and pedestrian movement within the site and in relationship to adjoining roads, parking areas, sidewalks and properties. Adequacy and arrangement of pedestrian traffic access and circulation, pedestrian walkways, control of intersections with vehicular traffic and overall pedestrian safety and convenience.
- d. Adequacy of the methods to dispose of sewage and refuse and the protection from pollution of surface and ground water. This includes minimizing the erosion of soil both during and

after construction.

- e. Existing and future demands of the project should not exceed the ability of the Town to provide adequate services or infrastructure.
- f. Provisions for adequate parking, lighting, internal traffic circulation, and off-street loading and unloading of vehicles incidental to the normal operation of the establishment.
- g. Integration of the proposed site plan development into the existing landscape through design features such as vegetative buffers, and retention of open space and agricultural land.
- h. Provision for the inclusion of long-term affordable housing for low and moderate income households (also meeting affordability requirements as described in Massachusetts General Laws Chapter 40B) at a rate equal to 10% of the total number of homes to be built.
- i. Minimization of the area over which existing vegetation is to be removed. Where tree removal is required, special attention is to be given to the planting of replacement trees.
- j. The setback, area, placement of parking, architectural style, signage, and landscaping of the development with preference given to native species, and how these features protect and reflect the surrounding historic and scenic landscape.
- k. The potential impact on surface or ground water supplies from any materials, hazardous or otherwise, stored, used or generated on the site and steps taken to protect these resources.
- l. Provision for adequate drainage and stormwater management to prevent flooding and to protect surface and ground water from pollutants.
- m. Location of dwellings to provide a solar and wind orientation which encourages energy conservation.
- n. Provision for minimizing light pollution including the use of full cut-off fixtures.
- o. Adequacy of fire and emergency plans and ease of access for emergency service vehicles and personnel.

## **6. Enforcement**

- a. The Planning Board may require the posting of a bond to assure compliance with the plan and stated conditions to its approval, and the Town or Building Inspector may suspend any permit or license when work is not performed as required.
- b. Site Plan approval issued under this section shall lapse within one (1) year if a substantial use thereof has not commenced, except for good cause. This time limit shall be extended to include the time required to pursue and await determination of a judicial appeal pursuant to Chapter 40A of the General Laws.

## APPENDIX A

### SITE PLAN CONTENTS

1. Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;
2. Name(s) and address(es) of the owner(s) of the land, the developer (if applicable), and/or their designee;
3. Name, title, and address of person(s) who prepared the plan;
4. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;
5. All existing lot lines, easements and rights of way;
6. Location of all proposed new lot lines;
7. Location and use of buildings and structures within 300 feet of the site;
8. Location and use of all existing and proposed buildings and structures, including approximate height and floor area;
9. Location of areas subject to Wetland Protection Act, M.G.L. c. 131, section 40; the Watershed Protection Act, M.G.L. c. 92, section 107A; and public drinking water supply recharge areas on site and within 300 feet of the property line, and the location on site of any Priority Habitat Areas mapped by the Natural Heritage and Endangered Species program;
10. The location and a description of all proposed septic systems, sewer connections, water supplies, storm drainage systems, utilities and other waste-disposal methods;
11. Location and date of all registered "perc" and "deep hole" tests on the site;
12. Existing and proposed topography at a two-foot contour intervals for the proposed grading and landscape plan;
13. U.S.G.S. topography for the site and within 300 feet of the property line;
14. Location of proposed public and private ways on the site;
15. Location and size of proposed parking and loading areas, driveways, walkways, access and egress points to the public way;
16. The location and a description of proposed open space or recreation areas;
17. The location of existing permanently protected open space on the site or on abutting properties;
18. Size and location of existing and proposed sign(s);
19. Location, type of fixture, and height of any proposed lighting;
20. Surface drainage strategy that prevents increased drainage off-site or pollution;
21. Existing vegetation that will be left undisturbed and proposed landscape features, including the location and a description of screening, fencing and plantings using non-invasive species with a preference given to native species;
22. Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, and screen objectionable features from neighbors and roadways;
23. A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
24. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures;

25. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
26. Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site and adequate circulation within the site.
27. Noise levels expected to occur at the boundary of the property.
28. In the case of a non-subdivision application for an open space design project under Section 7G(1)(c) of this zoning bylaw, a conservation analysis under Section XII(F) of the Subdivision Rules and Regulations.

## **SECTION 11B: SOLAR ELECTRIC OVERLAY DISTRICT**

### **1. Purpose**

The purpose of this bylaw is to facilitate the creation of new large-scale ground-mounted solar electric installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar electric installations greater than 10 kW and up to 1MW that occupy no more than 2 acres of land. Any installation larger than 1MW or occupying more than 2 acres of land on one or more adjacent parcels in common ownership including those separated by a roadway shall require a Special Permit in accordance with the Zoning Bylaws of the Town of New Salem.

#### **a. Applicability**

This section applies to large-scale ground-mounted solar electric installations greater than 10 kW and up to 1MW that occupy no more than 2 acres of land proposed to be constructed in New Salem. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Such facilities located in the Solar Electric Overlay District are allowed As-of-Right but are subject to Site Plan Review and Design and Performance Standards (see Section 11A Site Plan Review and Section 11B.9). Smaller scale (10 kW or less) ground or building mounted solar electric installations which are an accessory structure to an existing residential or non-residential use do not need to comply with this section but require a building permit and must comply with the other provisions of New Salem's zoning bylaws such as setback requirements.

### **2. Definitions**

**As-of-Right Siting:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

**Building Inspector:** The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

**Building Permit:** A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar electric installations.

**Designated Location:** The Solar Electric Overlay District(s) as designated by the Town of New Salem are shown on the Official Zoning map dated October 1, 2010, in accordance with Massachusetts General Laws Chapter 40A. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the New Salem Town Clerk.

**Large-Scale Ground-Mounted Solar Electric Installation:** A solar electric system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 10 kW and up to 1MW and which does not occupy more than 2 acres of land.

**On-Site Solar Electric Installation:** A solar electric installation that is constructed at a location where other uses of the underlying property occur.

**Rated Nameplate Capacity:** The maximum rated output of electric power production of the Electric system in Alternating Current (AC) or Direct Current (DC).

**Site Plan Review:** Review by the Planning Board to determine conformance with local zoning ordinances or bylaws.

**Site Plan Review Authority:** For purposes of this bylaw, the Planning Board is the Site Plan Review Authority.

**Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels.

**Zoning Enforcement Authority:** The Building Inspector is charged with enforcing the zoning ordinances or bylaws.

### **3. General Requirements for all Large Scale Solar Power Generation Installations**

The following requirements are common to all solar electric installations to be sited in designated locations.

#### **a. Compliance with Laws, Ordinances and Regulations**

The construction and operation of all large-scale solar electric installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar electric installation shall be constructed in accordance with the State Building Code.

**b. Building Permit and Building Inspection**

No large scale solar electric installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

**c. Fees**

The application for a building permit for a large scale solar electric installation must be accompanied by the fee required for a building permit.

**4. Site Plan Review**

Large-Scale Ground-Mounted Solar Electric Installations shall undergo Site Plan Review (see Section 11A) by the Planning Board prior to construction, installation or modification as provided in this section.

**a. General**

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

**b. Required Documents**

The project proponent shall provide the following documents in addition to or in coordination with those required for Site Plan Review:

**(1) A site plan showing:**

- i.** Property lines and physical features, including roads and topography, for the project site;
- ii.** Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures including their height;
- iii.** Locations of wetlands, Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP)
- iv.** Locations of Floodplains or inundation areas for moderate or high hazard dams;
- v.** Locations of Priority Heritage landscapes and local or National Historic Districts;
- vi.** A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate;
- vii.** Blueprints or drawings of the solar electric installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- viii.** One or three line electrical diagram detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- ix.** Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.;
- x.** Name, address, and contact information for proposed system installer;
- xi.** Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

- xii. The name, contact information and signature of any agents representing the project proponent; and
- (2) Documentation of actual or prospective access and control of the project site;
- (3) An operation and maintenance plan (see also Section 11B.6);
- (4) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (5) Proof of liability insurance; and
- (6) Description of financial surety that satisfies Section 11B.12.c.

## **5. Site Control**

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar electric installation.

## **6. Operation & Maintenance Plan**

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar electric installation, which shall include measures for maintaining safe access to the installation, storm water and vegetation controls, as well as general procedures for operational maintenance of the installation.

## **7. Utility Notification**

No large-scale, ground-mounted solar electric installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar electric installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

## **8. Dimension and Density Requirements**

### **a. Setbacks**

For large-scale ground-mounted solar electric installations, front, side and rear setbacks shall be as follows:

- (i) Front yard: The front yard depth shall not be less than 100 feet.
- (ii) Side yard. Each side yard shall have a depth of at least 100 feet.
- (iii) Rear yard. The rear yard depth shall not be less than 100 feet.

The buffer areas should not be included in the 2 acre maximum calculation for By-Right solar electric installations (see Section 11B.1.).

### **b. Appurtenant Structures**

All appurtenant structures to large-scale ground-mounted solar electric installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, and setbacks as specified in Section 11B.8.a., open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures

should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

## **9. Design and Performance Standards**

### **a. Lighting**

Lighting of solar electric installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar electric installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

### **b. Signage**

Signs on large-scale ground-mounted solar electric installations shall comply with a municipality's sign bylaw. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar electric installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar electric installation.

### **c. Utility Connections**

Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar electric installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

### **d. Roads**

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

### **e. Control of Vegetation**

Herbicides may not be used to control vegetation at the solar electric installation. Mowing or the use of pervious pavers or geotextile materials underneath the solar array are possible alternatives.

### **f. Hazardous Materials**

Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar electric equipment then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.



**g. Noise**

Sound or noise levels may not exceed 50 dBA, at the boundary of the property.

**h. Height of Structures**

The height of any structure associated with a Large-Scale Ground-Mounted Solar Electric Installation shall not exceed 45 feet.

**10. Safety and Environmental Standards**

**a. Emergency Services**

The large scale solar electric installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar electric installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

**b. Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar electric installation or otherwise prescribed by applicable laws, regulations, and bylaws.

**11. Monitoring, Maintenance and Reporting**

**a. Solar Electric Installation Conditions**

The large-scale ground-mounted solar electric installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the solar electric installation and any access road(s).

**b. Modifications**

All material modifications to a solar electric installation made after issuance of the required building permit shall require approval by the Planning Board.

**c. Annual Reporting**

The owner or operator of the installation shall submit an Annual Report which certifies compliance with the requirements of this bylaw and their approved site plan including control of vegetation, noise standards, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Inspector, Board of Health and Conservation Commission (if Wetlands Permit was issued) no later than 45 days after the end of the calendar year.

## **12. Abandonment or Decommissioning**

### **a. Removal Requirements**

Any large-scale ground-mounted solar electric installation which has reached the end of its useful life or has been abandoned consistent with Section 11B.12.b. of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (i) Physical removal of all large-scale ground-mounted solar electric installations, structures, equipment, security barriers and transmission lines from the site.
- (ii) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (iii) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

### **b. Abandonment**

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar electric installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large-scale ground-mounted solar electric installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

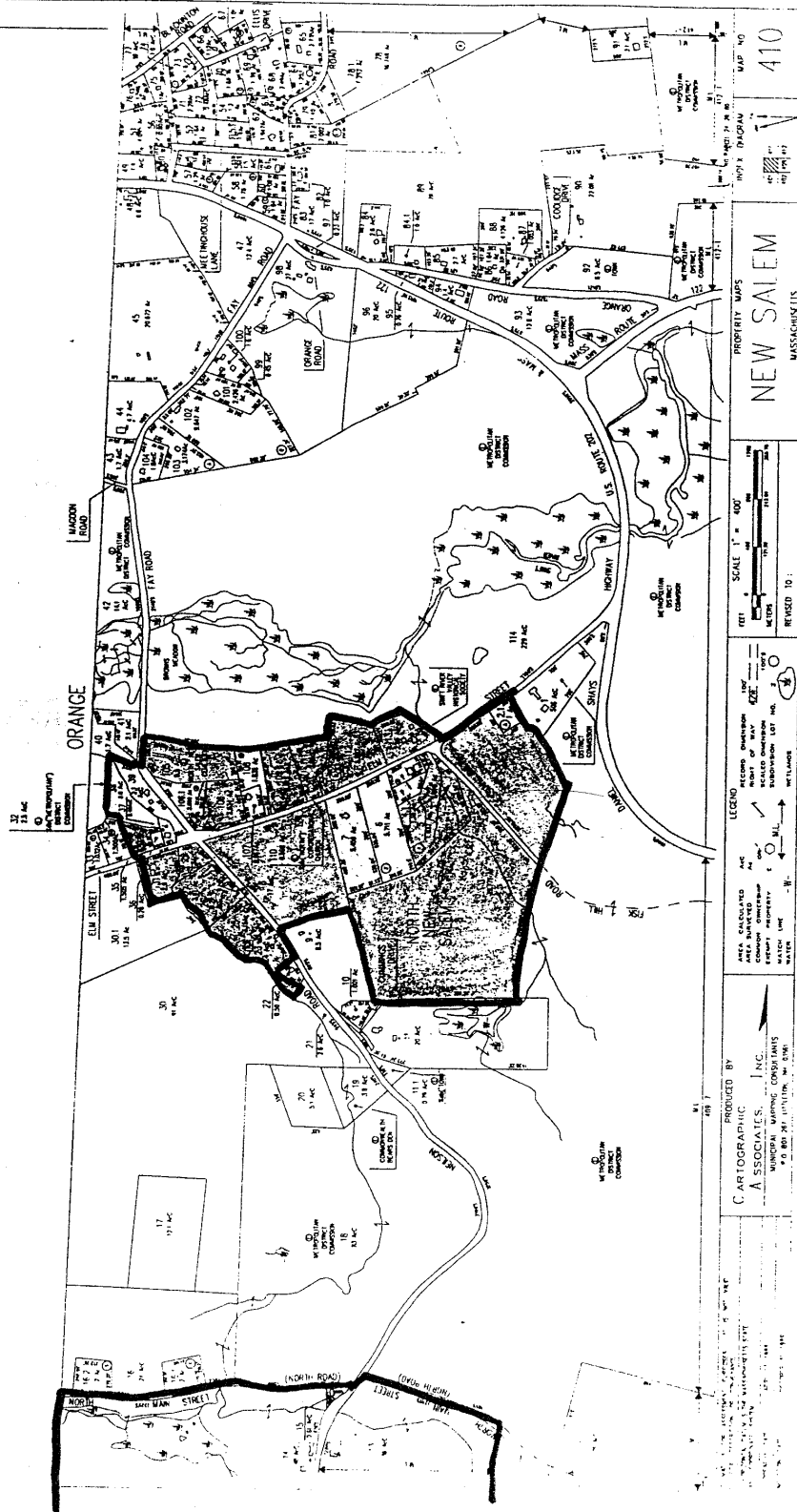
### **c. Financial Surety**

Proponents of large-scale ground-mounted solar electric projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent and the Town. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

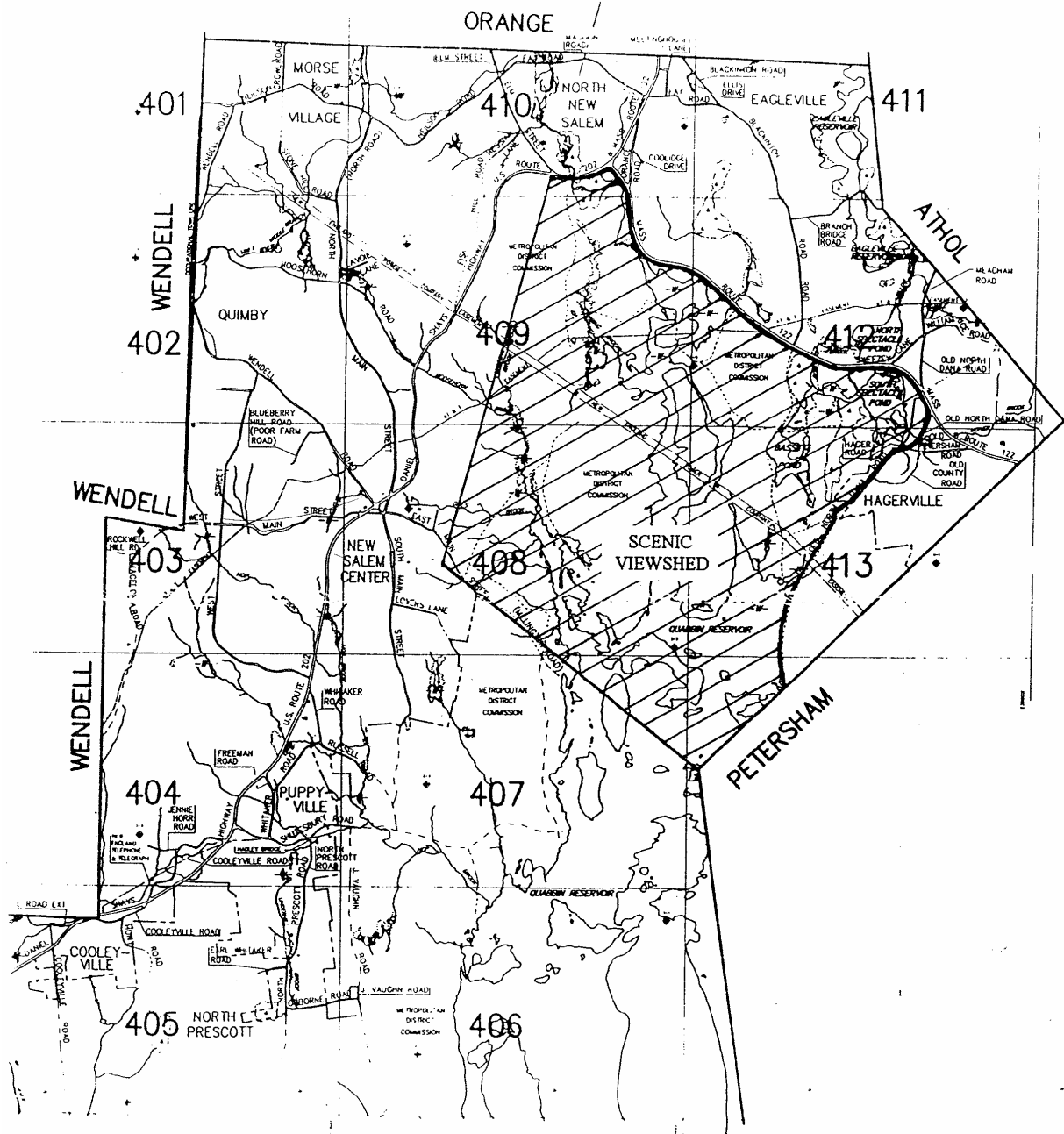
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Proposed North New Salem Historic District  
and  
Proposed Morse Village Historic District  
(see also Map 401)







<p>PRODUCED BY APHIC ATES, INC. MAPPING CONSULTANTS LITTLETON, NH 03561</p>	<p>LEGEND</p> <p>401 1" = 400' SCALE MAP</p> <p>--- METROPOLITAN DISTRICT COMMISSION BOUNDARY</p> <p>• 1" = 200' APPROXIMATE CENTER OF PHOTO ENLARGEMENT</p> <p>--- COORDINATE VALUE IN MASSACHUSETTS STATE PLANE COORDINATE SYSTEM</p>	<p>SCALE</p> <p>FEET 0 1000 2000 3000 4000</p> <p>METERS 0 100 200 300 400</p> <p>REVISED TO January 1, 1997</p>	<p>PROPERTY MAPS</p> <p><b>NEW SALE</b></p> <p>MASSACHUSETTS</p>
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