

P.S. As I am 99 years young
I'm not sure if
have things correct. T.Y.
Mary

262 So. Main St.
Hopedale, Ma.
01747
23 Aug. 23

As the select Board of Hopedale, Ma.
today I had the occasion to
visit the Phillip Butkus Memorial Park
I was shocked to see the advertising
placards displayed the length of the
fence up front. Never in my life
have I ever seen such a display
in a town owned park.

Is the town of Hopedale that
short of money that it has to
resort to that kind of advertising?

I'll bet there is no such
display in the middle of town
in the town park.

Just stating my feelings on
my visit to Phillip Butkus Memorial
Park.

Very Truly Yours,
Mary M. Phillips



**Trial Court of Massachusetts
Land Court Department**

DOCKET NUMBER

COURT USE ONLY

CIVIL COVER SHEET

(For use in all Land Court case types except tax foreclosures, mortgage foreclosures under the Servicemembers Civil Relief Act, and all cases related to original and subsequent registration under G. L. c. 185, §1)

CASE NAME

Rosenfeld Concrete Corp.
v.
Town of Hopedale

LOCUS ADDRESS/DESCRIPTION

75 Plain Street

CITY/TOWN

Hopedale

PART I – TYPE OF ACTION

Using the list below, place the **Number “1”** next to the main cause of action asserted in your complaint.

Place an **“X”** next to each other cause of action asserted in your complaint.

Is this complaint verified? Yes No

Any related cases (open or closed) filed in the Land Court Department? Yes No

Case No(s). _____

	ZAC	Appeal from Zoning/Planning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
X	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C
	MAD	Determine Fiduciary Authority G. L. c. 240, § 27

	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 19
	CNC	Certiorari G. L. c. 249, § 4
	MAN	Mandamus G. L. c. 249, § 5
	TRE	Trespass to Real Estate Involving Title G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other

SIGNATURE OF SELF-REPRESENTED PLAINTIFF

DATE

PART II – UNIFORM COUNSEL CERTIFICATE (SJC RULE 1:18)

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

SIGNATURE OF ATTORNEY

BBO NUMBER

DATE

567927

09/21/2022

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT

WORCESTER, SS

DOCKET NO. _____

ROSENFELD CONCRETE CORP.,

Plaintiff

v.

THE TOWN OF HOPEDALE,

Defendant

COMPLAINT AND PRAYER FOR DECLARATORY JUDGMENT
G.L. C. 240, §14A

1. The Plaintiff Rosenfeld Concrete Corp. is a Massachusetts Corporation with a usual address of P.O. Box 9187, 100 North Washington Street, Second Floor, Boston, Massachusetts 02114 (“Rosenfeld”).
2. The Defendant Town of Hopedale is a Massachusetts municipal corporation with a usual address of 78 Hopedale Street, Hopedale Massachusetts 01747 (the “Town” or “Hopedale”).
3. Rosenfeld owns a certain 144 acre parcel located at 75 Plain Street, which is also described as parcel 28 on Hopedale Assessors’ Map 22 (the “Property”).
4. The Property has been historically used as a cement manufacturing facility.
5. The Property is located within the Town’s Light Industrial Zoning District.
6. The Property is also located in the Town’s Groundwater Protection Overlay District (“GWPD”). The Town’s GWPD Bylaw is attached hereto as Exhibit A.

7. Warehouses are allowed as a matter of right in the Light Industrial District (see excerpt from the use table in the Town's Zoning Bylaw, attached hereto as Exhibit B), subject to Site Plan Approval.
8. The proposed warehouse was the subject of a comprehensive Site Plan review from the Hopedale Planning Board pursuant to the Hopedale Zoning Bylaws. The review considered a range of issues, from environmental, to engineering, to traffic, to noise to protection of the ground water. Site Plan Approval was issued with respect to the Warehouse on May 11, 2022.
9. Issues pertaining to ground water protection were also reviewed by the Hopedale Conservation Commission and Hopedale Board of Health, both of which approved the proposed warehouse project.

COUNT ONE

PRAYER FOR DECLARATION OF APPLICABILITY OF PROVISIONS OF THE GWPD
BYLAW

10. Under Section 17.2 of the GWPD Bylaw, proposed uses that are allowed in the underlying district are allowed in the GWPD, subject to the additional requirements, restrictions and performance standards under GWPD Bylaw.
11. The proposed warehouse is not an “[e]nlargement or alteration of existing uses that do not conform to the Groundwater Protection District”, which would require a Special Permit under Section 17.6(c)(1) of the GWPD Bylaw. Such provision would apply to the enlargement or alteration of the pre-existing concrete operation and does not apply to newly proposed conforming uses, such as the warehouse.

12. The proposed warehouse project, at full build-out, will require a Special Permit from the Hopedale Zoning Board of Appeals under Section 17.6(c)(6) of the GWPD Bylaw in that more than 15% of the Property will be rendered impervious.
13. However, phase one of the warehouse, as contemplated by a phasing plan approved by the Hopedale Planning Board on September 7, 2022, will not render more than 15% of the Property impervious and, accordingly, will not require a Special Permit under Section 17.6(c)(6) of the GWPD Bylaw.
14. Upon the application to the Zoning Board of Appeals under Section 17.6(c)(6) as aforesaid, the Zoning Board's review is confined to the specialized criteria under the GWPD Bylaw for elements of the project relating to impervious cover, and the Zoning Board may not review the warehouse project as a whole under the more generalized special permit criteria under Section 10.6 of the Zoning Bylaws (Exhibit C hereto).

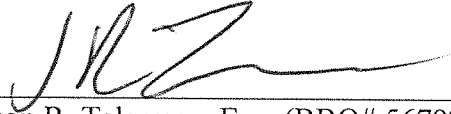
WHEREFORE, for the foregoing reasons, Rosenfeld requests that this honorable Court adjudge and declare as follows:

- a. The proposed warehouse is a by-right use in the Light Industrial and GWPD Districts.
- b. The proposed warehouse is not an enlargement or alteration of a pre-existing use, as described in Section 17.6(c)(1) of the GWPD Bylaw.
- c. Phase 1 of the warehouse project, if not exceeding 15% impervious coverage, does not require a special permit under Section 17.6(c)(6) of the GWPD Bylaw.
- d. The warehouse project, as a whole, will require a special permit under Section 17.6(c)(6) of the GWPD Bylaw if it exceeds 15% of impervious cover.

- e. Special Permit review of the warehouse project under the GWPD Bylaw is limited to the criteria under said Bylaw.

ROSENFELD CONCRETE CORP.

By its Attorneys,



Jason R. Talerman, Esq. (BBO# 567927)

Matthew D. Provencher, Esq. (BBO No. 694114)

Mead, Talerman & Costa, LLC

730 Main Street, Suite 1F

Millis, MA 02054

508-376-8400

jay@mtclawyers.com

Dated: September 22, 2022

EXHIBIT A

SECTION 17: GROUND WATER PROTECTION DISTRICT

17.1 PURPOSE OF DISTRICT:

The purpose of this Groundwater Protection District is:

- 17.1(a)** to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and business of the Town of Hopedale.
- 17.1(b)** to preserve and protect existing and potential sources of drinking water supplies;
- 17.1(c)** to conserve the natural resources the Town and
- 17.1(d)** to prevent temporary and permanent contamination of the environment

17.2 SCOPE OF AUTHORITY:

The Groundwater Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in one portion of the underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the requirements of this district. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

17.3 DEFINITIONS: For the purpose of this section, the following words and phrases shall have the following meanings:

Aquifer: Geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

Groundwater Protection District: The zoning districts defined to overlay other zoning districts in the Town of Hopedale. The Groundwater Protection District may include specifically designated recharge areas.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II or Zone III.

Toxic or Hazardous Materials: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Hopedale. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under the Massachusetts General Laws (MGL) Chapter 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use, and Ch XXIII, section 1 & 2, Town of Hopedale Town By-Laws.

17.4 ESTABLISHMENT AND DELINEATION OF GROUNDWATER

PROTECTION DISTRICT: For the purpose of this district, there are hereby established within the Town certain groundwater protection areas, consisting of aquifers or recharge areas which are delineated on a map. This map is at a scale of 1 inch to 1,000 feet and is entitled “Groundwater Protection District, Town of Hopedale”, dated ??????. This map is hereby made a part of the town zoning and is on file in the Office of the Town Clerk.

17.5 DISTRICT BOUNDARY DISPUTES: If the location of the District boundary is relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for all or part of the cost of the investigation.

17.6 USE REGULATIONS: In the Groundwater Protection District the following regulations shall apply:

17.6(a) Permitted Uses:

The following uses are permitted within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- (1) Conservation of soil, water, plants, and wildlife;
- (2) Outdoor recreation, nature study, boating, fishing, and hunting where otherwise permitted;
- (3) Foot, bicycle and/or horse paths, and bridges;
- (4) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- (5) Maintenance, repair, and enlargement of any existing structure, subject to Section 17.6(b) (Prohibited Uses) and Section 17.6(c) (Uses and Activities Requiring a Special Permit);
- (6) Residential development, subject to Section 17.6(b) (Prohibited Uses) and Section 17.6(c) (Uses and Activities Requiring a Special Permit);
- (7) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 17.6(b) (Prohibited Uses), and Section 17.6(c) (Uses and Activities Requiring a Special Permit);
- (8) Construction, maintenance, repair, and enlargement of water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

Underground storage tanks related to these activities are not categorically permitted.

17.6(b) Prohibited Uses:

The following uses are prohibited:

- (1) Landfills and open dumps as defined in 310 CMR 19.006;
- (2) Storage of liquid petroleum products, except the following:
 - (i) Normal household use, outdoor maintenance, and heating of a structure;
 - (ii) Waste oil retention facilities required by statute, rule or regulation;
 - (iii) Emergency generators required by statute, rule or regulation;
 - (iv) Treatment works approved under 314 CMR 5.00 for treatment of ground or surface water;

provided that such storage, listed in items (i) through (iv), above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity;

- (3) Land filling of sludge or septage as defined in 310 CMR 32.05;
- (4) Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- (5) Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more one hundred and ten (110) gallons of sewage per quarter ($\frac{1}{4}$) acre under one (1) ownership per day, or four hundred and forty (440) gallons of sewage on any one (1) acre under one (1) ownership per day, whichever is greater, provided that:
 - (i) The replacement or repair of a system, which will not result in an increase in design capacity over the original design, or the design capacity of 310 CMR 15.00, whichever is greater, shall be exempted;

- (ii)** In cluster subdivisions the total sewage flow allowed shall be calculated based on the number of percable lots in the entire parcel;
- (6)** Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- (7)** Storage of animal manure unless covered or contained in accordance with the specifications of the United States Soil Conservation Service;
- (8)** Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within six (6) feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
- (9)** Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.000, except the following:
 - (i)** Very small quantity generators as defined under 310 CMR 30.000;
 - (ii)** Household hazardous waste centers and events under 310 CMR 30.390;
 - (iii)** Waste oil retention facilities required by MGL Chapter 21, Section 52A;
 - (iv)** Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- (10)** Automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
- (11)** Treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:

- (i) The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - (ii) The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
 - (iii) Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater;
 - (iv) Sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality;
- (12) Storage of hazardous materials, as defined in MGL Chapter 21E, unless in a free standing container within a building or above ground with adequate secondary containment adequate to contain a spill the size of the container's total storage capacity;
- (13) Industrial and commercial uses which discharge process waste water on-site;
- (14) Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
- (15) Storage of commercial fertilizers, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;
- (16) The use of septic system cleaners which contain toxic or hazardous chemicals;

17.6(c) Uses and Activities Requiring a Special Permit:

The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- (1) Enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
- (2) The application of pesticides, including herbicides, insecticides, fungicides, and rodenticides for non-domestic or nonagricultural uses in accordance with state and federal standards. The special permit shall be granted if such standards are met. If applicable, the applicant should provide documentation of compliance with a Yearly Operating Plan (YOP) for vegetation management operations under 333 CMR 11.00 or a Department of Food and Agriculture approved Pesticide Management Plan or Integrated Pest Management (IPM) program under 333 CMR 12.00;
- (3) The application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition and sedimentation;
- (4) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section 17.6(b) (Prohibited Uses). Such activities shall require a special permit to prevent contamination of groundwater;
- (5) The construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;
- (6) Any use that will render impervious more than fifteen (15) percent or two thousand and five hundred (2,500) square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar systems covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For

all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

17.7 PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT:

- 17.7(a)** The Special Permit Authority, under this by-law shall be the Zoning Board of Appeals. Such special permit shall be granted if the SPGA determines, in conjunction with Board of Health, the Conservation Commission, Department of Public Works, and Planning Board that the intent of this by-law, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document basis for any departures from the recommendations of the other town boards or agencies in its decision.
- 17.7(b)** Upon receipt of the special permit application, the SPGA shall transmit one (1) copy to the Planning Board, Board of Health, the Conservation Commission, and Department of Public Works for their written recommendations. Failure to respond in writing within thirty-five (35) days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.
- 17.7(c)** The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 17.6 (USE REGULATIONS) of this by-law, and any regulations or guidelines adopted by the SPGA.

The proposal use must:

- (1) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Groundwater Protection District, and
- (2) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

- 17.7(d)** The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality,
- 17.7(e)** The applicant shall file four (4) copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
- (1)** A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
 - (2)** For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
 - (i)** 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 clean-up procedures;
 - (ii)** Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - (iii)** Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification, number from the Massachusetts Department of Environmental Protection.
 - (3)** Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

- 17.7(f)** The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within sixty-five (65) days after the filing of the application and after the review by the Town Boards, Departments, and Commissions.

Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties in interest" as defined in MGL Chapter 40A, Section 11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within ninety (90) days following the closing of the public hearing. Failure of the SPGA to act within ninety (90) days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said MGL Chapter 40A, Section 11.

- 17.7(g)** Written notice of any violations of this Ordinance shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, Conservation Commission, Department of Public Works, and Water Department. The cost of containment, clean up, or other action of compliance shall be borne by the owner and operator of the premises.

For situations that require remedial action to prevent adverse impact to the water resources within the Groundwater Protection District, the Town of Hopedale, the Building Inspector, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Hopedale, the Building Inspector, the Board of Health, or any of their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

17.8 SEVERABILITY:

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

EXHIBIT B

Use key: Y → Permitted, Y* → Use permitted after Site Plan Review by Planning Board, N → Prohibited, SP → Special Permit, SP* → Special Permit Only (Planning Board is special permit granting Authority)

11.4 Industrial

USE	District *														
	RA	RA-1	RA-2	RB	RC	HMF	RP-1	GB	GB-A	C	I	LI	REC	T	CEM
Textile and paper mills; iron, steel and metal foundries; concrete manufacturing and washed sand and gravel plants; sale and storage of concrete products, sand, gravel and loam, borrow and clay fill	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Bio-technology research and manufacturing	N	N	N	N	N	N	N	N	N	N	SP	SP	N	N	N
Warehouses	N	N	N	N	N	N	N	SP	Y	Y	Y	Y	N	N	N
All forms of manufacturing, storage and assembly not specifically mentioned above	N	N	N	N	N	N	N	N	N	N	SP	N	N	N	N

EXHIBIT C

any public or private street or way and owners of land within three hundred (300) feet of the property line as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another, city or town, and the Planning Board of every abutting city or town. The required publications and notices shall contain the name of the petitioner, a description of the area or premises, street address or other adequate identification of the location of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of the action or relief desired.

- 10.5(d) Voting:** A vote of at least four (4) members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official or to grant a variance. The decision of the Board shall be made within one hundred (100) days of the date of the filing of an appeal or petition. This required time limit for a public hearing or decision may be extended by written agreement between the petitioner and the Board. A copy of this agreement shall be filed with the Town Clerk. Failure of the Board to act within one hundred (100) days, or extended time, if applicable, shall be deemed to be grant of the appeal or petition sought, subject to an applicable judicial appeal.
- 10.5(e) Filing of Decision:** The Board of Appeals shall keep a detailed record of its proceedings, the votes of its members, and the reason for its decision, copies of all of which shall be filed with the Town Clerk within fourteen (14) days. The Board shall mail notice of the decision to the petitioner or appellant, to the Parties in Interest as defined in Section 10.5(c), and to every person present at the public hearing who requested such a notice.

10.6 SPECIAL PERMITS:

- 10.6(a) Submission Requirements:** Each application for a special permit shall be filed by the applicant with the Town Clerk. A copy of the application including the date and time of filing, certified by the Town Clerk, shall be filed forthwith by the applicant with the Special Permit Granting Authority (SPGA). All applications shall comply with the rules adopted by the SPGA relative to the procedures for submission and approval of special permits.
- 10.6(b) Notices, Public Hearings and Votes:** The SPGA shall hold a public hearing within sixty-five (65) days after the filing of an application with the Board. Notice of this hearing shall be given by publication and posting and by mailing to all Parties in Interest according to the

procedures specified in Section 10.5(c). The Board shall act within ninety (90) days following this hearing. Failure by the Board to take final action on a special permit application within ninety (90) days following the close of the public hearing shall be deemed to be a grant of the special permit; the required time limits for a public hearing and decision may be extended by written agreement between the applicant and Board. A copy of such agreement shall be filed with the Town Clerk. Granting of a special permit shall require a favorable vote of at least four (4) members of the Board of Appeals or four (4) members of the Planning Board, as the case may be.

10.6(c) Lapse of Special Permit: The rights authorized by a special permit shall lapse two (2) years from the date of the grant of the special permit if a substantial use has not commenced except for good cause, or in the case of a permit for construction, if construction has not begun by such date except for good cause.

10.6(d) Special Permit Criteria: The SPGA may not grant a special permit unless all of the requirements of this by-law are met, and unless the SPGA concludes, based on the information submitted at the public hearing, that all of the following criteria are met:

- (1) The use will not have detrimental effects which outweigh its benefits to the neighborhood, Town or zoning district in which it is located;
- (2) The use is consistent, insofar as practicable, with the Town's Master Plan officially adopted by the Planning Board;
- (3) The use will not materially endanger or be hazardous to the public health and safety;
- (4) Sufficient off-street parking exists or will be provided to serve the use;
- (5) The use can be adequately served by municipal water and sewer systems and other necessary utilities, or the SPGA is satisfied that the proposed alternatives will comply with all applicable regulations; proposed septic systems shall comply with Title 5 of the State Environmental Code or more stringent regulations adopted by the Board of Health;

- (6) The use will not result in a substantial increase of volume or rate of surface water runoff to neighboring properties and streets;
- (7) The use will not result in contamination of the ground water supply, a well, stream, pond, watercourse or wetland;
- (8) The use will not create undue traffic congestion or unduly impair pedestrian safety.

10.6(e) Special Permit Conditions: The SPGA may impose conditions, safeguards and limitations on time and use as may be appropriate for the protection of the neighborhood, the Town, and the natural environment. These conditions may include, but are not limited to:

- setbacks greater than the minimum required by this by-law;
- screening and buffering from adjacent property;
- limitations on the size, method and time of operation;
- regulation of the number and location of driveways or other traffic features;
- off-street parking and loading; or
- other special features beyond the minimum required by this by-law. Such conditions shall be imposed in writing on the special permit. The applicant may be required to post a bond or other security in an amount satisfactory to the SPGA for compliance with said conditions.

10.6(f) Filing the Decision: The SPGA shall file the decision with the Town Clerk within ninety (90) days following the close of the public hearing and shall follow the notification procedures in Section 10.5(e).

10.7 INVALIDITY:

The invalidity of any paragraph or provisions of this by-law shall not serve to invalidate the other paragraphs or provisions thereof. If any paragraph, or provision, is determined to be invalid, the most restrictive use or provision that would be valid or is valid shall apply.