



CITY OF BEACON, NEW YORK
ONE MUNICIPAL PLAZA
BEACON, NY 12508

Mayor Randy Casale

Councilmember Lee Kyriacou, At Large

Councilmember George Mansfield, At Large

Councilmember Terry Nelson, Ward 1

Councilmember John E. Rembert, Ward 2

Councilmember Jodi M. McCredo, Ward 3

Councilmember Amber J. Grant, Ward 4

City Administrator Anthony Ruggiero

March 19, 2018
7:00 PM
City Council Agenda

Call to Order

Pledge of Allegiance

Roll Call

Public Comment:

Each speaker may have one opportunity to speak up to three minutes on any subject matter other than those which are the topic of a public hearing tonight. Please sign in at the podium. This segment will last no longer than thirty minutes, with speakers recognized in the order they appear on the sign-in sheet. A second public comment opportunity will be provided later in the meeting for those who do not get to speak during this first segment.

Public Hearings:

- Public Hearing to receive public comment on a proposed Local Law to amend Chapter 223 of the Code of the City of Beacon concerning the Central Main Street District (CMS); Amendments to the City of Beacon Comprehensive Plan update involving changes to the Central Main Street (CMS), Central Business (CB), Off-Street Parking (PB), R1-5, RD-4, Local Business (LB), General Business (GB), Light Industrial (LI) and Waterfront Park (WP); and Proposed Local Law to amend the Zoning Map of the City of Beacon
- Public Hearing to receive public comment on a proposed Local Law to amend Chapter 134 and Chapter 223, Section 24.7 of the Code of the City of Beacon concerning Historic Preservation

Reports:

- Council Member Amber J. Grant
- Council Member John E. Rembert
- Council Member Lee Kyriacou
- Council Member George Mansfield
- Council Member Jodi M. McCredo
- Council Member Terry Nelson
- City Administrator, Anthony Ruggiero
- County Legislators
- Mayor Randy Casale

Local Laws and Resolutions:

1. Resolution to appoint Manuel Galarza as Groundskeeper/Cleaner in the City of Beacon Highway Department

2. Resolution to adopt a local law to amend Chapter 134 and Chapter 223, Section 24.7 of the Code of the City of Beacon concerning Historic Preservation.
3. Resolution authorizing the Beacon City Council to enter into an agreement with agreement with the Energy Improvement Corporation in connection with the City of Beacon's participation in the Energize NY Benefit Finance Program
4. Resolution to authorize renewal of Farmers Market Contract
5. Resolution to Authorize renewal of Flea Market Contract
6. Resolution Authorizing Easement Agreements Regarding the West End Lofts Project on Wolcott Avenue
7. Resolution authorizing a temporary easement with Central Hudson and Gas and Electric Corporation at 52 Pumphouse Road
8. Resolution authorizing the sale of 23-28 Creek Drive in City of Beacon
9. Resolution to schedule a public hearing on April 16, 2018 to receive public comment on a Special Use Permit application for 307 multi-family dwelling units for the Edgewater project
10. Resolution to schedule a public hearing on April 16, 2018 to receive public comment on a proposed local law for the Calculation of Lot Area per Dwelling Unit

Approval of Minutes:

- Approval of Minutes from March 5, 2018

2nd Opportunity for Public Comments:

Each speaker may have one opportunity to speak up to three minutes on any subject matter other than those which are the topic of a public hearing tonight. This segment will last no longer than thirty minutes. Those who spoke at the first public comment segment are not permitted to speak again.

Executive Session:

1. Executive Session: Personnel

Adjournment:

City of Beacon Council Agenda
3/19/2018

Title:

Public Hearing to receive public comment on a proposed Local Law to amend Chapter 223 of the Code of the City of Beacon concerning the Central Main Street District (CMS); Amendments to the City of Beacon Comprehensive Plan update involving changes to the Central Main Street (CMS), Central Business (CB), Off-Street Parking (PB), R1-5, RD-4, Local Business (LB), General Business (GB), Light Industrial (LI) and Waterfront Park (WP); and Proposed Local Law to amend the Zoning Map of the City of Beacon

Subject:

Background:

ATTACHMENTS:

Description	Type
CMS Draft LL	Backup Material
Comp Plan Amendments	Backup Material
Zoning Map Changes	Backup Material

LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

LOCAL LAW AMENDING CHAPTER 223
OF THE CODE OF THE CITY OF BEACON

A LOCAL LAW to amend Chapter 223 of
the Code of the City of Beacon
regarding the Central Main District.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 223 of the City Code, Article IVD entitled “Central Main Street (CMS) District,” is hereby amended as follows:

Chapter 223. Zoning - Article IVD. Central Main Street (CMS) District

§ 223-41.16 Purpose.

The purpose of this Article IVD is to preserve the traditional character of Main Street, particularly for buildings in the Historic District and Landmark Overlay (HDLO) zone, while also increasing the vitality, attractiveness, and marketability of Main Street, and the Central Business District by providing more flexibility of land use while maintaining and enhancing urban form as recommended in the City of Beacon Comprehensive Plan Update adopted on ~~December 17, 2007~~ April 3, 2017. This article promotes a vibrant, economically successful, and environmentally sustainable Main Street with a pedestrian-oriented public realm and mixed uses. ~~This article is also intended to provide a simplified and streamlined review process that facilitates redevelopment in accordance with its provisions and the intent of the Comprehensive Plan. See Figure 18-15: Main Street Infill Strategies Illustrative Sketch Plan, [1] adapted from the Appendix to the Comprehensive Plan.~~

~~[1] Editor's Note: See § 223-41.18L.~~

§ 223-41.17 Applicability and boundaries.

The provisions of this article apply to the area shown as the Central Main Street District (CMS) on the City of Beacon Zoning Map, ~~a portion of which is annexed hereto to amend said Zoning Map.~~ [1] All new uses of land and structures and changed uses of land and structures shall comply with this article. Existing nonconforming uses may continue as provided in § 223-10, Nonconforming uses and structures, except as may be otherwise provided in this article. Any existing conforming building that is destroyed by fire or casualty to an extent of more than 50% may be rebuilt on the same footprint and with the same dimensions and may be extended at the same height along its frontage. Any existing building that does not satisfy the minimum building height requirements in the district may continue, but any future expansion must conform to this chapter ~~and may be expanded at the same height, provided that it is in conformity with all other dimensional requirements in the district.~~ In case of any conflict between this article and other provisions of this Zoning Chapter, this article shall control. In order to encourage mixed uses, more than one permitted use shall be allowed on any lot or parcel, subject to all approval criteria contained herein.

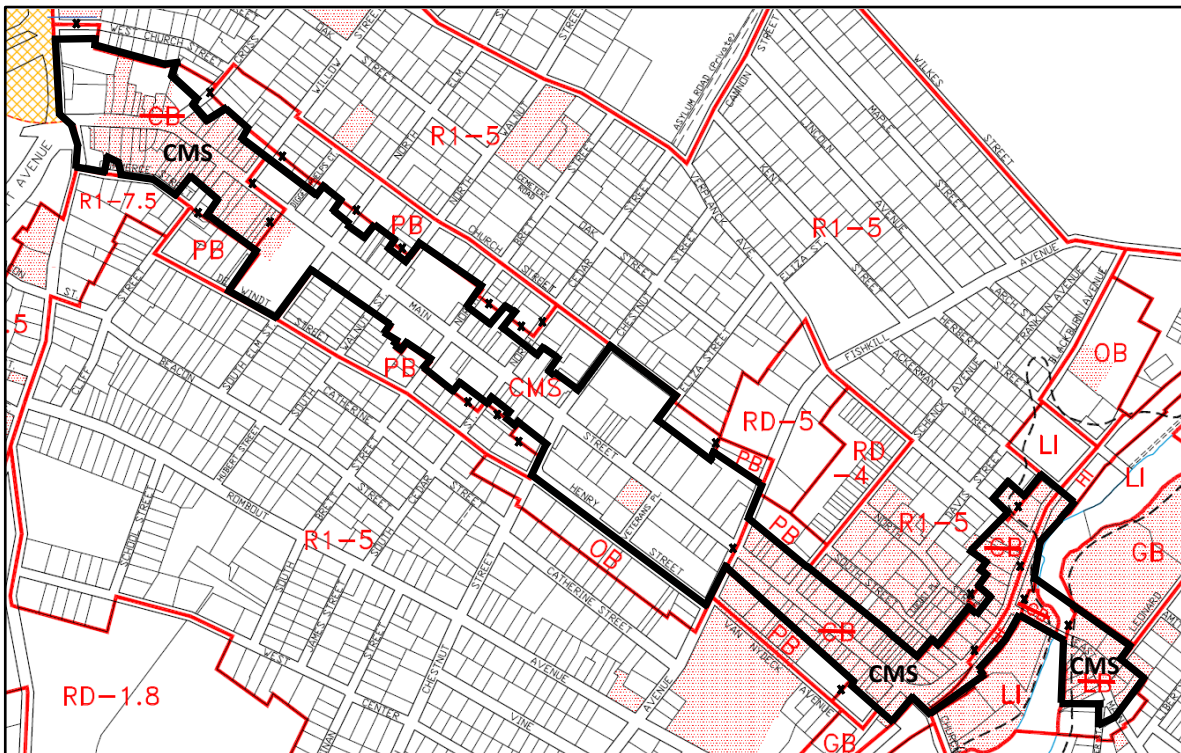


Figure 17-1: Central Main Street Zone Map

[1] Editor's Note: The Zoning Map is on file in the City offices.

§ 223-41.18 Regulations.

A. Uses by right. The uses listed below are permitted by right in the CMS district, in the manner and under the conditions specified below. Unless otherwise indicated in this § 223-41.18, all such uses require site plan review, ~~to be conducted in an expedited fashion pursuant to Subsection H below.~~ Site plan review shall not be required for a change of use in an existing building where the new use is allowed by right, the building will not be expanded, and the minimum number of off-street parking spaces required for the new use in § 223-41.18 G(2) is not more than 25% greater than the requirement for the existing use in § 223-26F herein.

- (1) Apartments, provided that for parcels fronting on Main Street or East Main Street they may ~~shall~~ only be located on upper stories or at least ~~35~~ 50 feet behind the facade in the rear portion of a ground floor, ~~along Main Street.~~ The ~~limitations on~~ nonconforming residential uses on Main Street in § 223-10H shall not apply in the CMS District.
- (2) One-family, two-family, attached, and multifamily dwellings, provided that ~~they do not have ground floor frontage on Main Street~~ for parcels fronting on Main Street or East Main Street such uses are not permitted on the ground floor in the first 50 feet from the facade.
- (3) Hotel, subject to § 223-20, inn, or bed-and-breakfast establishment, subject to § 223-24.4.
- (4) Offices of any kind, including professional, medical, ~~or~~ business, and banks or other financial institutions.
- (5) Artist studio.
- (6) Art gallery.
- (7) Restaurant, coffee house, brew pub, and other establishments that serve food with or without alcoholic beverages, and are not a bar.

- (8) Food preparation business.
- (9) Retail and personal services.
- (10) Funeral home.
- (11) Off-street parking lot facilities, provided that ~~it is~~ they are set back at least 40 feet from the Main Street or East Main Street property line and screened from the main street by buildings and/or landscaping.
- (12) Public garage, as defined in this Chapter, without motor vehicle repair, vehicle sales, or fuel sales, provided that it is set back at least 40 feet and screened from the main street by buildings and/or landscaping. ~~[See "Parking" in F(1).]~~
- (13) School, public or not-for-profit educational institution, trade or vocational school, job placement or training program, continuing education program or instructional school such as karate school, dance school or studio, language school or vehicular driving school.
- (14) Indoor commercial recreation.
- (15) Park, plaza, green, community garden, and other forms of outdoor plant cultivation.
- (16) Artist live/work space subject to § 223-24.3, provided that they may only be located on upper stories or at least ~~35~~ 50 feet behind the facade, in the rear portion of a ground floor, along Main Street or East Main Street, unless the space in the ~~35~~ 50 feet behind the façade is used for the retail sale of the artist's wares.
- (17) Theater, museum, library, concert hall and other music venues, and other similar kinds of cultural facilities.
- (18) ~~Schools and other public or nonprofit educational institutions~~ Auction gallery.
- (19) Wireless telecommunications services facilities, provided that they are mounted on a building and do not increase its height by more than 15 feet above applicable height limits and consistent with § 223-24.5.
- (20) Buildings, structures and uses owned or operated by the City of Beacon or any department or agency thereof.
- (21) Spa, health club, gym, yoga and pilates studio, and similar kinds of fitness centers.
- (22) Microbrewery or microdistillery which has a retail or tasting room component of at least 200 square feet of floor area.
- (23) Retail sales from a truck or trailer, subject to § 223-26.3.
- (24) Workshop for the making or repair of clocks, watches, jewelry, musical instruments or similar ~~items~~ artisan workshops, ~~having a total floor area of not more than 800 square feet and~~ having a retail component of at least 200 square feet.
- (25) Tattoo parlor, subject to 223-26.2.
- (26) Club, civic or fraternal, subject to § 223-24.2, provided that for parcels fronting on Main Street or East Main Street such uses are not permitted on the ground floor in the first 50 feet from the facade.

B. Uses by special permit.

- (1) The following uses are allowed by special permit from the ~~Planning Board~~ City Council, upon a finding that the proposed use is consistent with the City of Beacon Comprehensive Plan Update, will enhance the architectural character of the street and will benefit the urban, pedestrian-friendly qualities of Main Street and East Main Street, and that the conditions and standards in § 223-18 B(1)(a) through (d) have been met:
 - ~~(a) Any new project with over 10,000 square feet in building footprint area.~~

~~(b) A five-story building or tower of one additional story on a four-story building, provided that it complies with Subsection D(7) below and that the Planning Board finds that there are no substantial detrimental effects on parking, traffic, shadows, or specific views designated as important by the City Council. A five-story building with a setback of at least 15 feet behind the facade above the fourth story may be permitted on the north side of Main Street where it can call attention to a significant intersection. Corner locations are deemed most appropriate for such buildings, but they may be permitted elsewhere on the north side if they are compatible with the scale of the block on which they are located, and contribute architecturally to the block face. A five-story building will only be permitted if at least 15% of its residential units, and not less than five residential units, are designated as below market rate housing pursuant to Article IVB and/or at least 15% of the property's street level lot area adjacent to Main Street is available for public uses such as an outdoor dining area for a restaurant, pocket park or plaza.~~

(a) A public garage, as defined in this chapter, containing facilities used for repair of motor vehicles, but not for the sale of motor fuel. Such repair facilities shall ~~be located in the interior of a block and not front on or~~ be visible from ~~any public street Main Street or East Main Street except for a sign not larger than 24 square feet in area.~~

(b) A bar in which the primary product is alcoholic beverages and food service is incidental. Any establishment that serves alcoholic beverages and is open later than 1:00 a.m. on any night shall be presumed to be a bar for purposes of this section.

~~(c) Artist live/work space in accordance with § 223-24.3~~ Cigar and other lawful smoking establishments.

(2) In considering the appropriateness of the proposed use, the ~~Planning Board~~ City Council shall consider impacts on shadows, traffic, and parking and may impose traffic and parking mitigation measures. When making a decision on a special permit, the ~~Planning Board~~ City Council shall follow the ~~procedures~~ regulations in § 223-41.18 ~~1(2)~~ of this chapter.

C. Accessory uses. The following are permitted accessory uses in the CMS District:

- (1) Any accessory building or use customarily incident to a permitted use, except outside storage.
- (2) Signs, in accordance with the provisions of § 223-15, as applicable.
- (3) Off-street parking areas, in accordance with § 223-41.18G.
- (4) Exterior lighting, in accordance with the provisions of § 223-41.18 L(13).
- (5) Home occupation, subject to 223-17.1.
- (6) Roof garden.
- (7) Greenhouse

D. Prohibited uses. Uses not listed in Subsection A or B above and the following specific uses are prohibited in the CMS District:

- (1) Gasoline filling stations.
- (2) Drive-through facilities, stand-alone or used in connection with any other use.

E. Dimensional regulations. All new construction or enlargement of existing structures in the CMS District shall be subject to the following minimum and maximum dimensional regulations. These may be modified as provided in Subsection J(15).

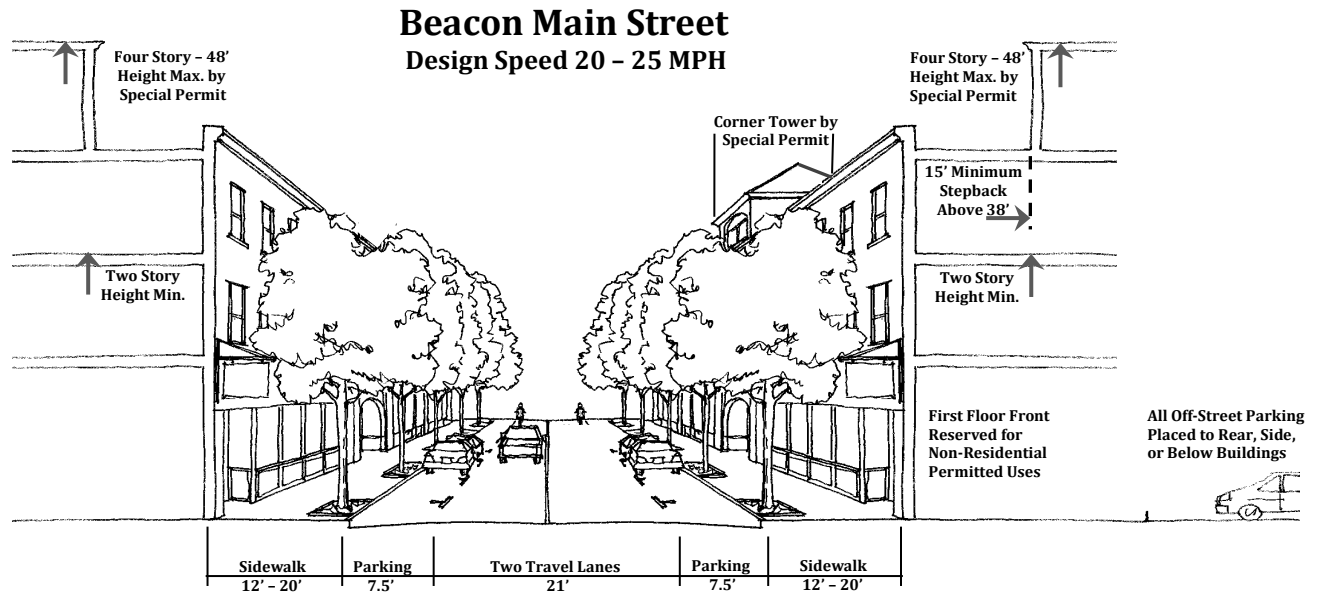


Figure 18-1: Central Main Street Zoning Requirements Illustrative View

- (1) ~~Front setback on Main Street:~~ minimum zero, maximum 10 feet, except that a larger maximum may be allowed if the area in front of a building has no parking spaces and is landscaped and used in a manner that enhances the street life ~~on Main Street~~ by such means as pocket parks or plazas, fountains, outdoor dining, public art, and outdoor display of items for sale on the premises. Such outdoor space shall be landscaped with plant materials as appropriate to the use, in a configuration approved by the Planning Board.
- (2) ~~Front setback on other streets:~~ minimum zero, maximum 25 feet. If surrounding buildings have a larger setback, the setback line may be placed in a location that harmonizes with the prevailing setbacks, provided that there is no parking in the front yard other than on a driveway accessing a rear garage.
- (2) Corner buildings: Corner buildings shall be treated as having frontage on both streets and front yard setbacks shall apply to both, as appropriate to the street. ~~Corner buildings with frontage on Main Street shall wrap around corners and maintain a consistent setback line along the side.~~
- (3) Side setbacks: minimum of zero ~~on Main Street,~~ minimum of 10 feet on side streets. The minimum side setback ~~on Main Street~~ may be increased by the Planning Board to allow light and air to continue to penetrate an existing building that has side windows or to allow future development of an abutting parcel to the permitted building height.
- (4) Rear setbacks: minimum 25 feet for parcels 100 feet deep or more and minimum 10 feet for parcels under 100 feet deep, except that if the rear yard is voluntarily dedicated to the City of Beacon as all or part of a public parking lot or parking structure, the minimum setback shall be 10 feet with landscaping to screen adjacent uses.
- (5) Minimum frontage occupancy on Main Street or East Main Street: 100% for buildings with a shared side wall and 80% for detached buildings. Frontage occupancy is the percentage of the lot width which must be occupied by either a front building facade or structures that screen parking, located within the area between the minimum and maximum front setback. The purpose of this requirement is to maintain a sense of enclosure of the street. This requirement may be reduced by the Planning Board a) to the extent necessary to allow light and air into an adjacent building that has side windows; b) allow future development of an abutting parcel to the permitted building height; or c) if the applicant provides a suitably surfaced and lighted pedestrian passageway between ~~Main the~~ street and parking areas, public open spaces, or other streets, located behind the building.

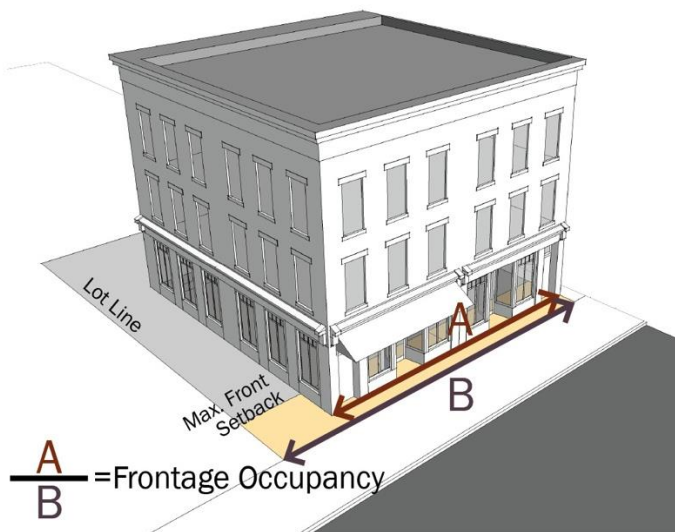


Figure 18-2: Frontage Occupancy

- (6) Building height for a building fronting on Main Street: minimum two stories, maximum ~~four~~ three stories and 38 feet, as determined from the average street front level. Stories built below the grade of the street shall not be counted toward building height. The second story of a two-story building shall be built in a manner that allows actual occupancy for one or more permitted uses and does not create the mere appearance of a second story. Chimneys, vent pipes, mechanical systems, elevator shafts, antennas, wireless communications facilities, roof gardens, ~~and~~ fences, greenhouses, solar collectors, wind energy systems, and other rooftop accessory structures may project up to 15 feet above the maximum permitted height. With the exception of roof gardens and solar collectors, such projections may occupy no more than 20% of the roof area and must be set back at least 15 feet from the ~~front~~ edge of the roof along any street frontage.
- (7) A special permit may be granted ~~pursuant to Subsection B above~~ by the Planning Board for a ~~five~~ fourth story building ~~on the north side of Main Street. with a setback of at least 15 feet behind the facade along any street frontage. A 15-foot building setback above 38 feet shall also be required for any side of a four-story building within 40 feet of a lot line abutting another zoning district.~~ A special permit may also be granted for a four-story tower without a setback at a corner ~~on the south side of Main Street~~ facing an intersection and occupying no more than 25 % feet of the ~~roof area corner frontage~~ of the building. ~~For any building over three stories on the south side of Main Street or four stories on the north side, a setback of at least 15 feet behind the facade shall be required for the top story, except for corner towers allowed by special permit.~~

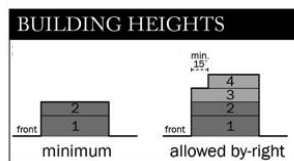
For proposed buildings on CMS parcels in or abutting the Historic District and Landmark Overlay Zone, any fourth story shall require a special permit by the City Council. The City Council may reduce a permitted building height to be no more than six feet higher than an existing building on an adjoining HDLO parcel for a distance of 30 feet along the frontage from the historic structure. All special permits in the CMS district shall require a finding that there are no substantial detrimental effects on shadows, parking, traffic, or specific views adopted as important by the City Council or in the Comprehensive Plan Update, that the new building will be compatible with the historic character of adjacent buildings, and that the conditions and standards in § 223-18 B(1)(a) through (d) have been met.

Building height for a building not fronting on Main Street or East Main Street: maximum three stories and 35 feet. Chimneys, vent pipes, roof gardens and fences, greenhouses, solar collectors, wind energy systems, and other rooftop accessory structures may project up to eight feet above the maximum height, provided that, with the exception of roof gardens and solar collectors, they occupy no more than 15% of the roof area and are set back at least 15 feet from the front edge of the roof.

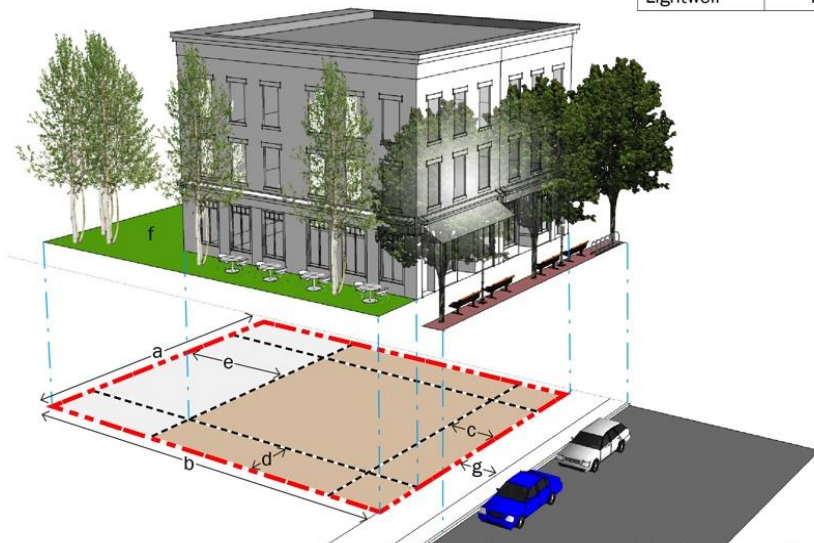
- (8) Building depth: corner buildings shall not extend along a side street more than 150 feet from the Main Street or East Main Street frontage, unless the rear building height is reduced to two stories.
- (9) Lot area and lot width: There are no minimum lot area or lot width requirements.

- (10) Lot depth: Minimum lot depth is 75 feet, except that on any lot in which the area behind a building is voluntarily dedicated to the City and accepted by the City Council for ~~as~~ public parking, there shall be no minimum depth requirement.
- (11) Floor area ratio: There is no maximum floor area ratio.
- (12) Landscaped area: ~~For lots fronting on Main Street, a~~ A minimum of 10% of the lot shall be landscaped with trees, shrubs, or grass in locations approved by the Planning Board that enhance the streetscape, ~~or provide a landscaped interior rear yard or courtyard, and are found to be consistent with the intent of the CMS District. This requirement shall be reduced to 5% if the landscaped area is accessible to the public. For lots not fronting on Main Street, a minimum of 15% of the lot shall be landscaped with trees and shrubs.~~ These requirements may be waived for lots of 5,000 square feet or less.
- (13) ~~Lots that front on Main Street~~ Dimensional standards.

LOT STANDARDS			
		Min.	Max.
	Lot Area	--	--
(a)	Lot Width	--	--
(b)	Lot Depth	75'	--
	F.A.R.	--	--
(c)	Front Setback	0'	10'
(d)	Side Setback	0'	--
(e)	Rear Setback	25'	--
(f)	Landscaped Area	10%	--
	Frontage Occupancy, detached building	80%	--
	Frontage Occupancy, buildings w/shared side wall	100%	--
(g)	Pedestrian Clearway	8'	--



FRONTAGE TYPES	
	Allowed
Storefront	yes
Forecourt	yes
Stoop	no
Porch	no
Lightwell	no



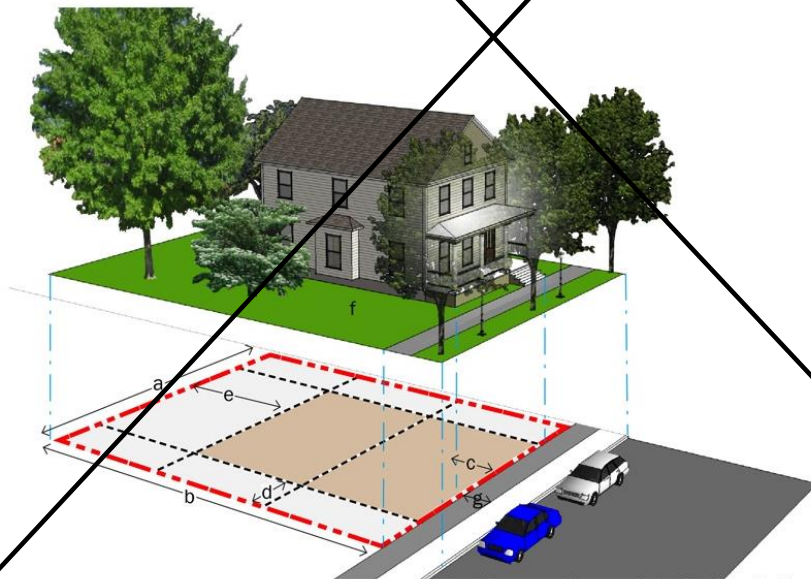
See text for exceptions and clarifications to Figure 18.3. Rear setback 10 feet for lots less than 100 feet deep.

Figure 18.3: ~~Lots that Front on Main Street~~ Dimensional Standards

(15) Lots that do not front on Main Street.

LOT STANDARDS			
		Min.	Max.
	Lot Area	--	--
(a)	Lot Width	--	--
(b)	Lot Depth	75'	--
	F.A.R.	--	--
(c)	Front Setback	0'	25'
(d)	Side Setback	10'	--
(e)	Rear Setback	25'	--
(f)	Landscaped Area	15%	--
	Frontage Occupancy, detached building	--	--
	Frontage Occupancy, buildings w/shared side wall	--	--
(g)	Pedestrian Clearway	8'	--

BUILDING HEIGHTS	
<div><div>3</div><div>2</div><div>1</div></div>	<div>35' max.</div>
allowed by-right	



~~See text for exceptions and clarifications to Figure 18-4~~

Figure 18-4: Lots That Do Not Front on Main Street or East Main Street

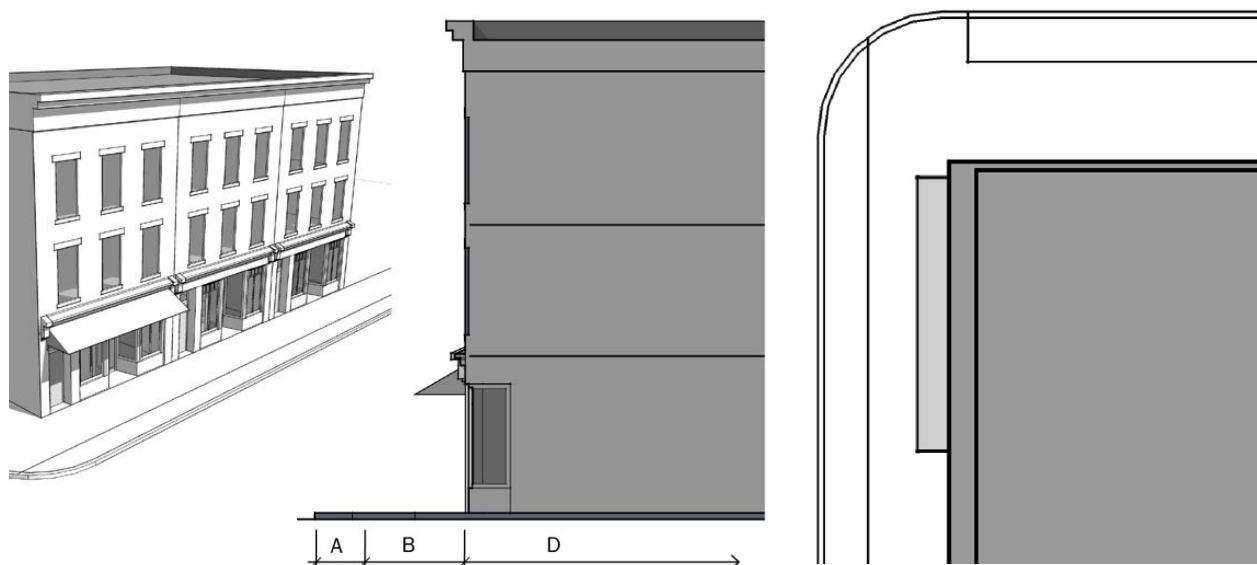
F. Frontage types.

(1) For new buildings, ~~along Main Street~~, only the following building frontage types are permitted:

- (a) Storefront.
- (b) Forecourt.

(2) ~~On other streets, there is no prescribed building or frontage type, except that no private garage may be located less than 20 feet behind the front facade of a building.~~

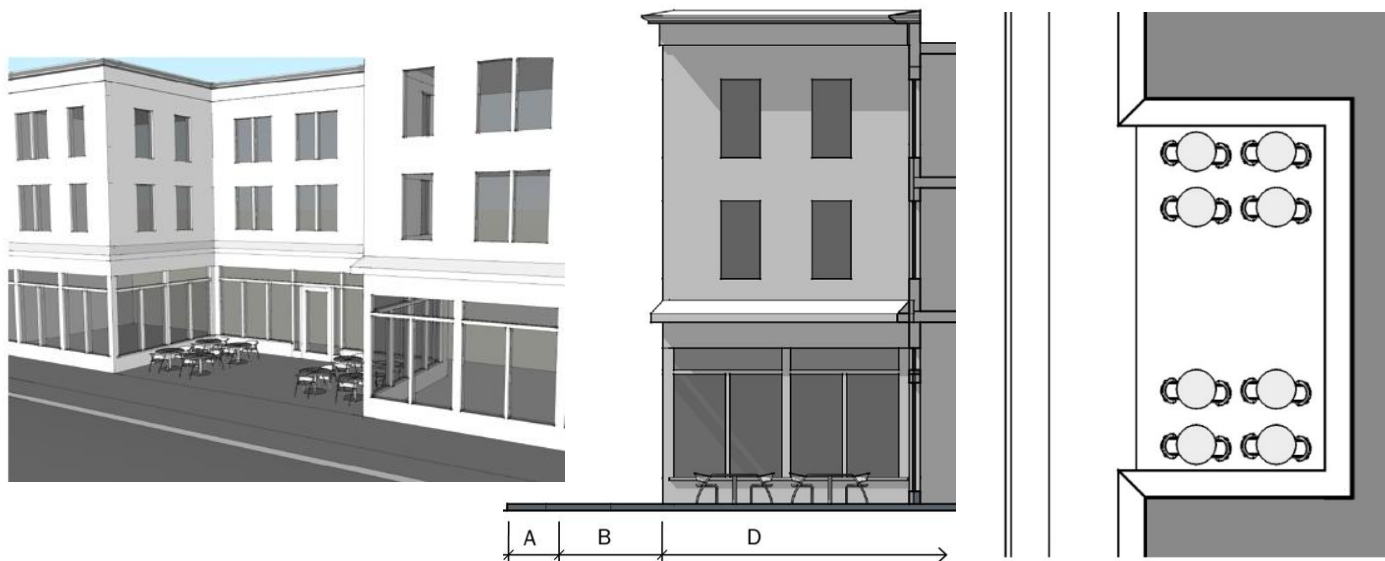
(2) Storefront frontage type: a frontage type where the building facade is placed at or close to the right-of-way line, with the entrance at sidewalk grade. This building frontage type is conventional for retail use. It is characterized by a high percentage of glazing on the first floor, a prominent entrance, and often an awning. Recessed doors ~~on storefronts~~ are ~~acceptable~~ typically used to avoid doors opening into the sidewalk.



See Figure 18-7 for key to letters

Figure 18-4: Illustrative View, Section View, and Plan View of Storefront Frontage Type

- (3) Forecourt frontage type. A forecourt is a semi-public exterior space whose back and sides are surrounded by a building and whose front opens to a thoroughfare — forming a court. The court is suitable for gardens, gathering space, and outdoor dining.



See Figure 18-7 for key to letters

Figure 18-5: Illustrative View, Section View, and Plan View of Forecourt Frontage Type

G. Parking location and quantity.

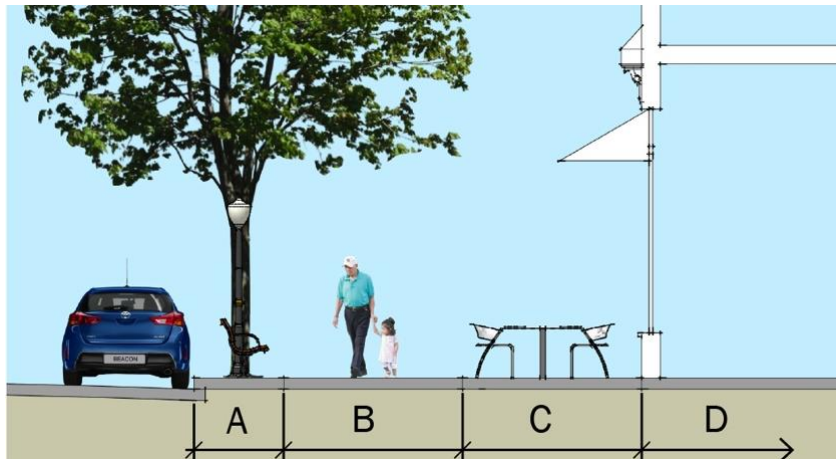
- (1) All off-street parking for buildings that have Main Street frontage shall be located behind, ~~underneath~~ under the ground floor, or to the side of a building. If on the side, the parking area shall be located at least 40 feet from the Main Street or East Main Street property line and be screened by a low brick or stone wall, hedge, ornamental fence, and/or other landscaping that maintains the continuity of the street wall in compliance with frontage occupancy requirements, and that screens parked cars from view from the street. A public garage ~~on a lot with Main Street frontage~~ shall have a storefront "liner building" at least 40 feet deep and one story high between the parking structure and the main street, but may have a zero-foot setback on the upper floors of the parking structure (over the storefront) and along any street that intersects the main street. Parking areas fronting on side streets shall have a minimum setback of five feet in which ornamental and/or buffer landscaping is planted.

- (2) The minimum quantity of required on-site parking spaces shall be as follows:
- (a) Residential: one space per unit.
 - (b) Office and nonretail commercial: ~~2.5~~ two spaces per 1,000 square feet of floor area.
 - (c) Retail commercial and personal services: ~~three~~ two spaces per 1,000 square feet of floor area.
 - (d) Other uses: as determined to be appropriate by the Planning Board in the course of site plan review, or in the case of a new use where site plan review is not required under § 223-41.18 A, as determined by the Building Inspector in consultation with the City Planner.
- (3) The requirements in Subsection G(2) above may be modified by the Planning Board, in its discretion, based upon information submitted by the applicant or otherwise made available in the public record, demonstrating one or more of the following:
- (a) That the projected operational characteristics of the proposed use require a different amount of parking.
 - (b) That adequate shared parking, contractually obligated for the duration of the proposed use, is available within 500 feet of the site and within the CMS or PB Districts.
 - (c) That the applicant has provided sufficient bicycle parking to reduce anticipated vehicular travel demand.
 - (d) That there is sufficient public parking available within 800 feet of the site and within the CMS or PB Districts to meet foreseeable parking needs of the proposed use and surrounding uses for the duration of the proposed use.
 - (e) That the applicant will voluntarily dedicate land for public parking on site or will acquire land by purchase or long-term lease (for the duration of the proposed use) within 800 feet of the site and within the CMS or PB Districts and voluntarily dedicate such land to the City for public parking.
 - (f) That a professional parking study of the proposed use and the surrounding area demonstrates that a different amount of parking would be appropriate for the use in its particular location and/or that existing and/or proposed off-site parking is sufficient.
- (4) For lots of 8,000 square feet or less, where the provision of on-site parking is infeasible, the Planning Board may waive all parking requirements, provided that the total floor area of the building is no greater than 5,000 square feet.
- (5) Section 223-26B of this Chapter shall apply in the CMS District.

H. Streetscape improvements.

- (1) Within the building transition zone, the Planning Board may require the lot owner to provide planters, trees, shrubs, or other landscaping to enhance the appearance of the streetscape. Ornamental fencing four feet or less in height may be provided to separate privately owned space from public space. Chain link, vinyl, and solid fencing shall be prohibited. For commercial uses, display areas, and outdoor dining and seating areas may be provided.
- (2) A pedestrian clearway, at least eight feet wide, with unobstructed space for pedestrian activity shall be provided along the sidewalk, unless site conditions require a narrower clearway. Within the street transition zone, if space permits, lot owners may ~~plant trees and~~ place benches, tables, and outdoor seating areas with the approval of the Department of Public Works. The Planning Board ~~may~~ shall require the planting of street trees on average 30 feet to 40 feet apart as a condition of site plan approval, whenever street and sidewalk conditions permit.

- (3) The Planning Board may require the placement of bicycle racks of an approved design within the street transition and building transition zones. ~~Each bicycle rack holding two bicycles may be used to reduce the required parking by one parking space.~~ The Planning Board may require any building containing 5,000 square feet or more of floor area to provide one bicycle rack or equivalent indoor bicycle parking space for every 2,000 square feet of floor area.
- (4) The Planning Board may require that an applicant constructing a building greater than 10,000 square feet in floor area pay for the provision of related street improvements to improve pedestrian and/or bicycle safety.



A = Street Transition Zone
 B = Pedestrian Clearway
 C = Building Transition Zone
 D = Building Frontage

Figure 18-6: Parts of the Streetscape

1. Site plan review/special permit procedures and criteria:

- (1) In order to ensure an expedited review of site plans, this article contains a streamlined site plan review procedure for ~~any proposed building project of 10,000 square feet or less in footprint area, as follows:~~
 - (a) ~~The applicant shall meet with the Building Inspector, who shall provide a site plan application and instruction sheet describing the requirements for site plan approval and who may recommend that the applicant have a preapplication meeting with the Planning Board to determine application submission requirements.~~
 - (b) ~~The applicant shall prepare a site plan with sufficient information for the Planning Board to determine whether or not it complies with the provisions of this article.~~
 - (c) ~~If no special permit is required, the applicant shall then meet with the Planning Board to discuss the proposal. No public hearing will be required, unless the Planning Board determines that the proposal may have substantial detrimental effects or may cause public controversy.~~
 - (d) ~~Within 45 days after such meeting, or if there is a public hearing, within 45 days after the closing of the public hearing, the Planning Board shall issue an approval, approval with modifications, or denial of the application, stating the reasons for any modifications or denial. The Planning Board shall also issue a required schedule for initiation and completion of the project. Such approval shall lapse within two years if the applicant does not diligently pursue construction of the project, unless the applicant requests an extension, which may only be granted for good cause by the Planning Board.~~
- (2) ~~For projects with over 10,000 square feet in building footprint area, or that otherwise require a special permit, the applicant shall follow the procedures in §§ 223-18 and 223-25, except that the Planning Board shall take the place of the City Council in § 223-18. Such applications shall comply with those sections to the extent that such sections do not contain standards that conflict with this article. In case of a conflict, this article shall control.~~
- (3) ~~The Planning Board may require a performance guarantee for the construction of public improvements in connection with any project of 10,000 square feet or more in floor area.~~

~~(4) After completion of construction of new buildings, the applicant shall submit as-built plans to the Building Inspector showing the exact location of all site alterations and construction.~~

I. Site plan and special permit amendments. For any proposed change to an approved site plan, the applicant shall meet with the Building Inspector who shall make a determination as to whether or not the proposed change is significant. If the Building Inspector determines that the change is significant (e.g., a change in dimensions of more than 10% shall be presumed to be significant), the application shall be referred to the Planning Board for an amendment to the site plan or special permit, as appropriate. If the Building Inspector determines that the change is not significant and otherwise complies with applicable requirements, the Building Inspector is authorized to issue a building permit without further review.

~~K. Compliance with below market rate housing requirements. All applications involving residential development shall comply with Article IVB of this Chapter (Affordable Workforce Housing).~~

J. Design standards.

(1) Because of the design standards in this section, the architectural review provisions of Chapter 86 shall not apply within the CMS District. In addition to the preceding sections of this article, all new buildings or substantial alterations of existing buildings shall comply with the following design requirements. These design standards are intended to promote the following purposes:

- (a) Preserve and enhance the unique character and general public welfare of the City of Beacon;
- (b) Promote pedestrian access and activity, as well as a general sense of area security;
- (c) Restore and maintain the role of streets as civic and social spaces, framed by active uses;
- (d) Encourage economic development and a convenient mix of uses and services; and
- (e) Support a sense of design context that appropriately relates historic buildings, general facade and window patterns, and traditional streetscapes in the area to new redevelopment efforts, while still allowing ~~contemporary~~ architectural flexibility.

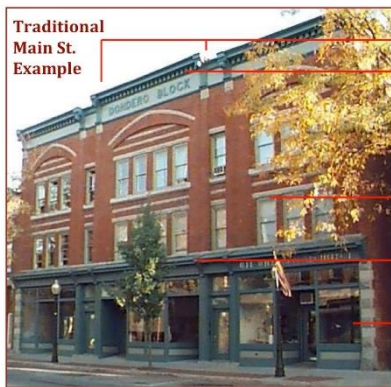
(2) Key Terms: Standards using the verb "shall" are required; "should" is used when the standard is to be applied unless the Planning Board finds a strong justification for an alternative solution in an unusual and specific circumstance; and "may" means that the "standard" is an optional guideline that is encouraged but not required.

(3) Proposed new buildings should be compatible with nearby historic-quality buildings along Main Street. References to the existing context should include scale, type and texture of materials, roof and cornice forms, spacing and proportion of windows and doors, signs, and street-front fixtures. Building exteriors in or directly adjoining the Historic District and Landmark Overlay sections of the CMS District shall reinforce historic patterns and neighboring buildings with an emphasis on continuity and compatibility, not contrast, but new construction may still be distinguishable in architectural details, most evident in window construction and interiors.

(4) Buildings should have a top-floor cornice feature and first-floor architectural articulation, such as a storefront with a secondary cornice or an architecturally emphasized entrance doorway, to accent the central body of the building.

(5) Architectural features and windows ~~should~~ shall be continued on all sides of the building that are clearly visible from a street or public parking area, avoiding any blank walls, except in cases of existing walls or potential common property walls. Larger buildings shall incorporate significant breaks in the facades and rooflines at intervals of no more than 35 feet.

- (6) Building elements that provide additional architectural interest, such as balconies, bay windows, open porches, and cornices, may encroach up to four feet ~~beyond the front lot line~~ above the sidewalk, if the bottom of the encroaching building elements is at least 12 feet above grade.
- (7) Metal, glass or canvas-type awnings and canopies or projecting signs are encouraged and may encroach up to six feet ~~into the front setback and~~ over the sidewalk above seven feet. Vinyl awnings are discouraged unless the applicant can demonstrate to the Planning Board's satisfaction that the finish and design of such awning are of high quality, aesthetically pleasing and meet the intended standards of the district, ~~as determined by said Board~~.
- (8) Buildings shall have a front entrance door facing the primary street and connected to the sidewalk. Front entrance doors for commercial buildings and retail storefronts shall be active and provide main access during business hours.
- (9) Primary individual window proportions shall be greater in height than in width, but the Planning Board may allow exceptions for storefront, transom, and specialty windows. Mirrored, reflective, or tinted glass, all-glass walls, and exterior roll-down security gates shall not be permitted. Any shutters shall match the size of the window opening, and appear functional, and be attached to the window frame.
- (10) Commercial buildings shall have at least 70% glass on the first-floor facades, located between two feet and 10 feet above the sidewalk. ~~Residential buildings shall~~ Main Street or East Main Street buildings should have at least 30% glass on the ~~first floor~~ upper floor facades.
- (11) Finish building materials should be wood, brick, traditional cement-based stucco, stone, smooth cast stone, ~~or smooth-finished~~ fiber-cement siding, or other materials deemed acceptable by the ~~Planning Board~~ approving body. Vinyl, aluminum or sheet metal siding or sheet trim, exposed concrete blocks or concrete walls, plywood or other similar prefabricated panels, unpainted or unstained lumber, synthetic rough-cut stone, ~~or synthetic~~ brick, ~~or synthetic~~ stucco, exterior insulation and finishing system (EIFS), ~~or direct-applied finish system (DAFS)~~, and chain link, plastic, or vinyl fencing shall not be permitted.
- (12) Materials and colors should complement historic buildings on the block. Fluorescent, neon, metallic, or other intentionally garish colors, as well as stripes, dots, or other incompatible patterns, shall be prohibited.
- (13) Lighting fixtures shall be a maximum of 15 feet in height, except pole lights in rear parking lots shall be a maximum of 20 feet high. Lighting shall be energy efficient, have full spectrum color quality, and, except for short-term event lighting, shall prevent any lighting above ~~60 watts~~ 500 lumens that directly projects above the horizontal level into the night sky with full cut-off fixtures.
- (14) Mechanical equipment and refuse containers shall be concealed from public view by approved architectural or landscaping elements and shall be located to the rear of the site. Window or projecting air conditioners shall not be permitted on the front façade of new buildings or additions.
- (15) The Planning Board may waive setback requirements for landmark civic buildings, including government buildings, schools, libraries, or places of worship, and for pedestrian-oriented places, such as public greens or plazas and outdoor eating areas.
- (16) The following Figure 18-8 provides annotated photographs to illustrate design standards in this section:



**Traditional
Main St.
Example**

- Façade and roof line breaks at intervals of no more than 35'
- Top floor cornice feature
- Bay windows, balconies and open porches may encroach up to 4' over the sidewalk
- Primary window proportions greater in height than in width
- Secondary storefront cornice or first floor articulation
- Commercial first floor facing Main Street

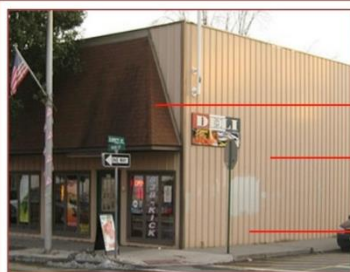
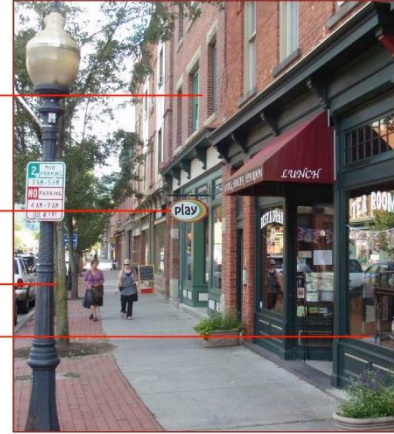


**More Modern
Example**

Design Standards Consistent Examples



- Wood, brick, stucco, stone, or fiber-cement siding and trim recommended
- Metal, glass, or canvas-type awnings and canopies or projecting signs may encroach up to 6 feet over the sidewalk above 7 feet
- Street trees planted on average 30' - 40' apart
- Commercial buildings shall have at least 70% glass on first floor facades between 2' and 10' above the sidewalk



Design Standards Inconsistent Examples

- Two-story minimum required, allowing second floor occupancy
- Architectural features and windows should be continued on all sides, avoiding any blank walls
- Vinyl, aluminum, or sheet metal siding or sheet trim shall not be permitted



- Buildings should have a top floor cornice feature
- Primary window proportions shall be greater in height than in width
- Commercial buildings shall have at least 70% glass on the first floor facade



Vinyl awnings are discouraged, but metal, glass, and canvas-type awnings are encouraged



Design Standards Consistent Examples

- Wood, brick, stucco, stone, or fiber-cement siding and trim recommended
- Bay windows, balconies and open porches may encroach up to 4' into the setback
- Required landscaping between the sidewalk and building to enhance the streetscape



- In the Linkage District, a step-back of at least 15' behind the façade above the third story
- Primary window proportions greater in height than in width
- Secondary cornice or first floor articulation
- Residential buildings shall have at least 30% glass on first floor facades



- Top floor cornice feature
- Façade and roof line breaks at intervals of no more than 35'
- Street trees planted on average 30' - 40' apart
- Metal, glass, or canvas-type awnings and canopies may encroach up to 6 feet over the sidewalk above 7 feet

K. Main Street infill strategies illustrative sketch plan. This sketch plan provides one possible set of design solutions for infill Development with parking to the rear, which was included in the 2017 Comprehensive Plan Update as an illustration of planning principles for the Central Main Street District. The Plan also recommended the provision of periodic pocket parks or plazas and transit shuttle stops to be coordinated with new development projects and civic uses (see pages 61-67).



Figure 18-8: Central Main Street Infill Strategies and Illustrative Sketch Plan

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, the Chapter 223 of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. This local law shall become effective immediately upon filing with the Office of the Secretary of State.

- 4.4 Encourage the improvement of the streetscape along Main Street, such as encouraging businesses and owners to provide high quality landscaping, signage and facade treatments. The City should also explore funding opportunities for street improvements, including street trees, street benches, sheltered bus stops, bicycle racks, restrooms, information kiosks and public art displays. Existing street trees should be protected and maintained under the direction of a certified arborist.
- 4.5 Encourage the infill development of sites along Main Street to create new public spaces/pocket parks. Areas discussed in Section 4.2 include the Dutchess County Building and Veterans Place.
- 4.6 Change the zoning of areas on East and West Main Street to ~~reflect density allowed in Central Main Street district.~~ **include the design standards in the CMS district.**
- ~~4.7 Extend Central Main Street District north along Route 9D to Verplanck Avenue.~~

B. Artist Community

Cultivate the growing artist community so that it remains a part of the economic vitality of the City.

- 4.8 Encourage local and regional economic development organizations to study and provide direction regarding potential institutions or other strategies to attract and retain artists, art-related entrepreneurs, and potential consumers of their products and services.
- 4.9 Encourage creation of artist live/work spaces. Study the effect of Section 223-24.3 on the development of these spaces, and consider revising procedures which currently require the renewal of the special permit for artist live work space every two years. The City should consider the alternative of requiring renewal upon change of ownership or tenancy.
- 4.10 Support and nurture existing organizations that promote the development of Beacon's artist community.

C. Route 52

Maintain existing retail and service mix in the Route 52 business district while improving the character of the area through pedestrian amenities such as sidewalks and street trees, and improved architectural design.

- 4.11 Require property owners in this business district to provide sidewalks, street trees, and improved architectural design during site plan review.

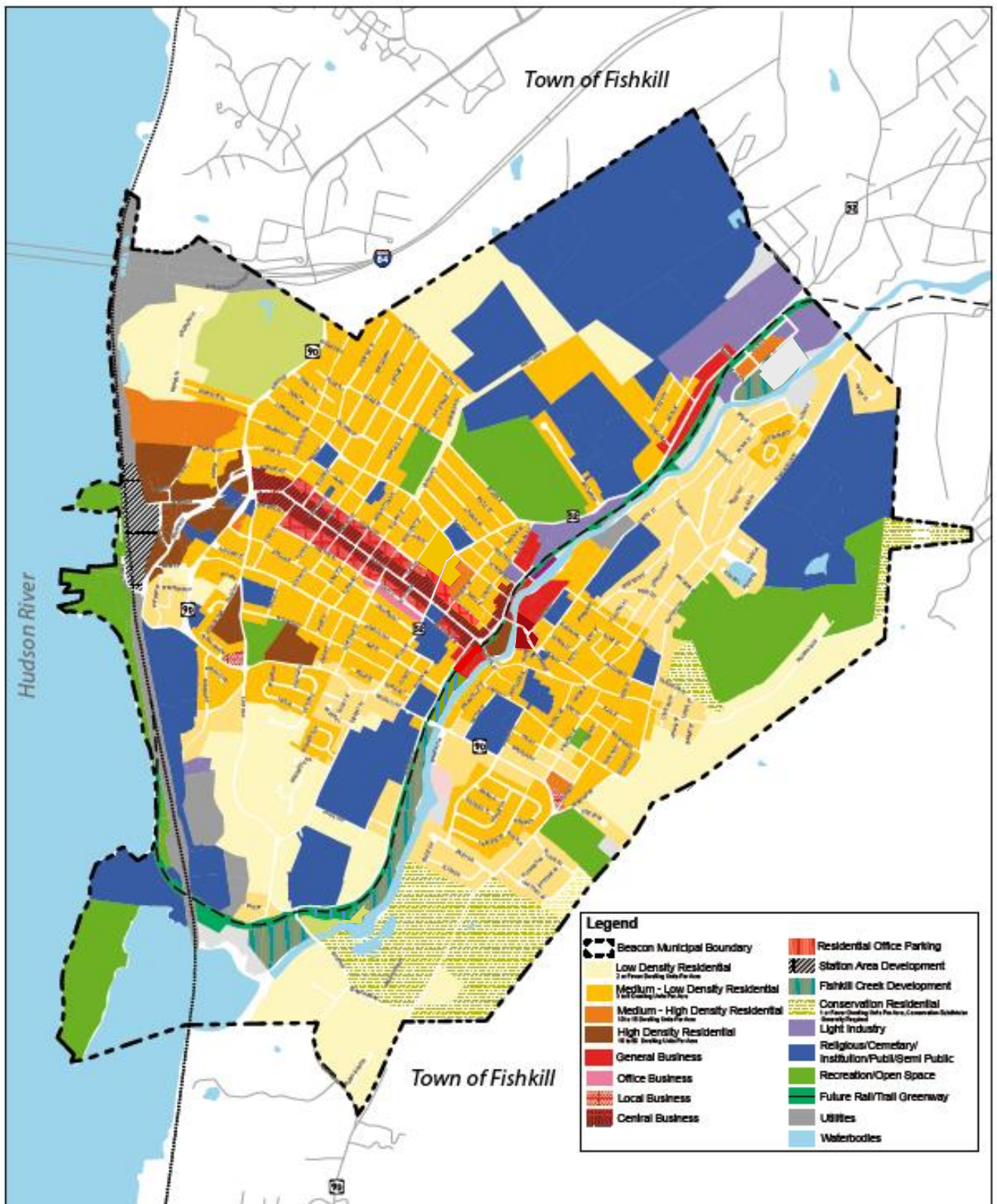


FIGURE 11-1: FUTURE LAND USE MAP

acre are generally found east of Fishkill Creek near Wolcott Avenue, or between Washington Avenue and Liberty Street. Densities of 5 to 8 dwellings per acre are generally found in neighborhoods north, south, and east of Main Street.

Recommendation

No changes from the previous Plan or from existing zoning are proposed for this land use category, except for three individual parcels along Fishkill Avenue (see Figure 12-1).

Residential – Medium-High Density

This category calls for 10 to 15 dwelling units per acre, which corresponds to areas in the City such as the townhouses on Schenck Avenue in the RD-4 Zoning District and the Tompkins Terrace Apartments and the Colonial Springs developments south of the golf course and north of the train station in the RD-3 Zoning District.

Recommendation

No changes from the previous Plan or from existing zoning are proposed for this land use category.

Residential – High Density

This category calls for 16 to 50 dwelling units per acre, which involves housing types such as apartment buildings and condominiums. Developed areas representing housing densities of this type are the Central Business District, which allows up to 29 dwelling units per acre, and the Forrestal Heights and Davies Terrace neighborhoods, which are in the RD-1.8 Zoning District (which allows 24 dwelling units per acre), and a redevelopment of an industrial site at one East Main Street. Properties in the Linkage Zone are also categorized as high density residential. The district allows 2-4 floor apartment buildings. The Linkage District does not regulate development through density limits. The code provides form-based design criteria that encourage buildings that increase the “vitality, attractiveness and marketability of the part of the City lying between Main Street and the Metro North Train Station.”

Recommendation

No changes from the previous Plan or from existing zoning are proposed for this land use category.

- East Main & Leonard Streets
- South & Wolcott Avenues
- Beekman & River Streets

Although the Dia:Beacon is also in the Local Business Zoning District, and is proposed to remain so, it is identified on the Land Use Plan Map as Institutional.

Recommendation

~~No changes from the previous Plan or from existing zoning are proposed for this land use category.~~ The historic section of the Local Business District in the Fountain Square area on East Main Street should be converted to the Central Main Street District to provide more specific architectural and design standards. Four Fountain Square area parcels not in the Historic District Overlay should be changed from LB to the adjacent R1-5 district (see Figure 12-1).

Central Business

The purpose of this category is to allow for the continued commercial vitality and mixed uses of area along Main Street, which is the Central Business District in the City. This area corresponds with the Central Business Zoning District. In 2013, the City Council rezoned a large portion of downtown into the Central Main Street (CMS) District. This area is identified as Central Main Street II. The CMS encourages infill development by raising development potential and lowering parking requirements.

Recommendation

~~The Plan supports the extension of the urban form of Main Street to Route 52 between Main Street and Verplanck Avenue. It is recommended that this stretch be rezoned to CMS. It is also recommended that the CMS district be extended to the upper and lower sections of Main Street that are currently zoned CB. With this change, the entirety of Main Street would have the same zoning district. The City may wish to rename the CMS district to represent that the zone covers the entire corridor and not just the central area. When extending CMS standards to the existing CB district, heights of Historic Overlay Zone parcels should be limited to what is currently allowed.~~

As noted in Chapter 3 and 9, the Main Street corridor should be planned in greater detail, with an overall strategy of identifying activity centers based on the types of activities that have developed in each area, identifying the types of activities to be encouraged in each center, the major amenities serving each center (such as small parks, parking facilities), and illustrations of the activity centers with sketch plans.

Gas stations are no longer a permitted use within the CB and CMS Districts. Gas stations should be encouraged to relocate to other locations outside of the Main Street area. Pre-existing non-conforming gas stations seeking building permits or other such approvals should be required to comply with architectural and design standards established specifically for gas stations.

Residential/Office/Parking

The purpose of this district is primarily to allow parking as a principal use on a lot in order to support the development of the Central Business District. The district is located to the north and south of the Central Business District, extending from the District boundary to Church Street on the north and DeWindt Street on the south.

Recommendation

~~No changes from the previous Plan or from existing zoning are proposed for this land use category.~~ The changes recommended for this district are to convert one parcel along Fishkill Avenue from RD-5 to the PB District and all or parts of eight parcels along the south side of South Street from R1-5 to PB to provide a transitional area between Main Street and the adjacent residential districts (see Figure 12-1).

General Business

The General Business category occurs between Conklin Street and State Street on Fishkill Avenue. The General Business District allows a broad range business uses, including residential uses.

Recommendation

~~No changes from the previous Plan or from existing zoning are proposed for this land use category.~~ The adjacent section of the HI rail right-of-way between Churchill Street and 850 feet north of Wolcott Avenue should be merged into the adjacent GB District (see Figure 12-1).

Light Industry

Industrial areas are generally found on scattered sites along the Fishkill Creek, most commonly on the west side of the Creek. There is a light industrial area adjacent to the train station, which is the location of MTA's commuter parking lot and maintenance shed (within the former Dorel Hat Factory). Two large underutilized properties between Fishkill Avenue and Fishkill Creek on the north end of the City are available for future industrial uses. Although the City has lost many industrial businesses in the past, the remaining industries are important to the tax base of the City, and they provide an important source of employment for many residents.

Recommendations

The Plan proposes to revise the regulation of industrial areas so that all active industrial sites will be within a Light Industrial Zoning District tailored to fit the operational criteria of these existing businesses. It is recommended that the light industrial zone adjacent to the train station allow uses that are not discordant with the adjacent land uses proposed for the station area (WD District). This area should not allow auto body shops, repair shops, or adult uses. Alternatively, the City may consider rezoning the station area LI zone to LB, with the provision that retail be limited to accessory uses within 1,000 feet of the station platform so that stores and shops do not compete with other retail areas including Main Street.

Section 12: Zoning and Implementation Plan

12.1. Zoning Recommendations

Based on the recommended land uses described above, this section provides a list of zoning recommendations that the City can pursue as it moves forward with implementation of the overall Comprehensive Plan. Upon adoption of this Plan, the City Council would be empowered to undertake specific zoning amendments to the City's Zoning Code in support of the land uses described in this Future Land Use Plan. Amendments to the Zoning Code would include site specific changes to the City's Official Zoning Map and corresponding text changes to the Zoning Code. The courts of the State of New York have consistently upheld the principle that "zoning should be based on a well-reasoned plan." Any future zoning amendments undertaken in support of this Plan are subject to the requirements of and compliance with the State Environmental Quality Review Act [6 NYCRR Part 617 (SEQR)].

Description of Proposed Zoning Recommendations

A series of zoning map and text amendments are needed to implement the land use proposals outlined in the Future Land Use Map. Depending on available funding for undertaking amendments to the Zoning Code and Zoning Map, the proposed zoning amendments could be undertaken in a series of steps or as one comprehensive set of text and map changes. The following presents a discussion of recommended zoning changes needed in order to implement the future land uses described in Section 11.1. A list of zoning recommendations is included in Table 12-1 and Figure 12.1.

Table 12-1: Proposed Zoning Changes

Area ID	Description	Existing Zoning	Proposed Zoning
1a	Rezone Long Dock Park to WP (see Section 10.0)	WD	WP
2a/2b	Rezone two areas east of station to WD (see Sec. 10.0)	WP, LB, LI	WD
3	<u>Rezone two parcels on Rt. 52 to R1-5</u>	<u>RD-5</u>	<u>R1-5</u>
4a/4b	Rezone <u>Main Street CB and Fountain Square</u> to CMS	CB, <u>LB</u>	CMS
5	Rezone southern Groverville Mills property to FCD	LI	FCD
6	Rezone <u>section of HI rail right-of-way to CB and GB</u>	<u>HI</u>	<u>CB, GB</u>
7	Rezone former DPW Garage to FCD	LI	FCD
8	Rezone section of HI rail right-of-way to FCD	HI	FCD
9	Rezone LI District to LB or restrict uses in LI	LI	LB or modified LI
<u>10</u>	<u>Rezone parcels on Rt. 52 and South St. to PB</u>	<u>RD-5, R1-5</u>	<u>PB</u>
11	Rezone parcel along Fishkill Creek to WP	FCD	WP
<u>12</u>	<u>Rezone parcels not facing main streets to adjacent zones</u>	<u>CB, CMS</u>	<u>R1-5, PB, R1-7.5</u>

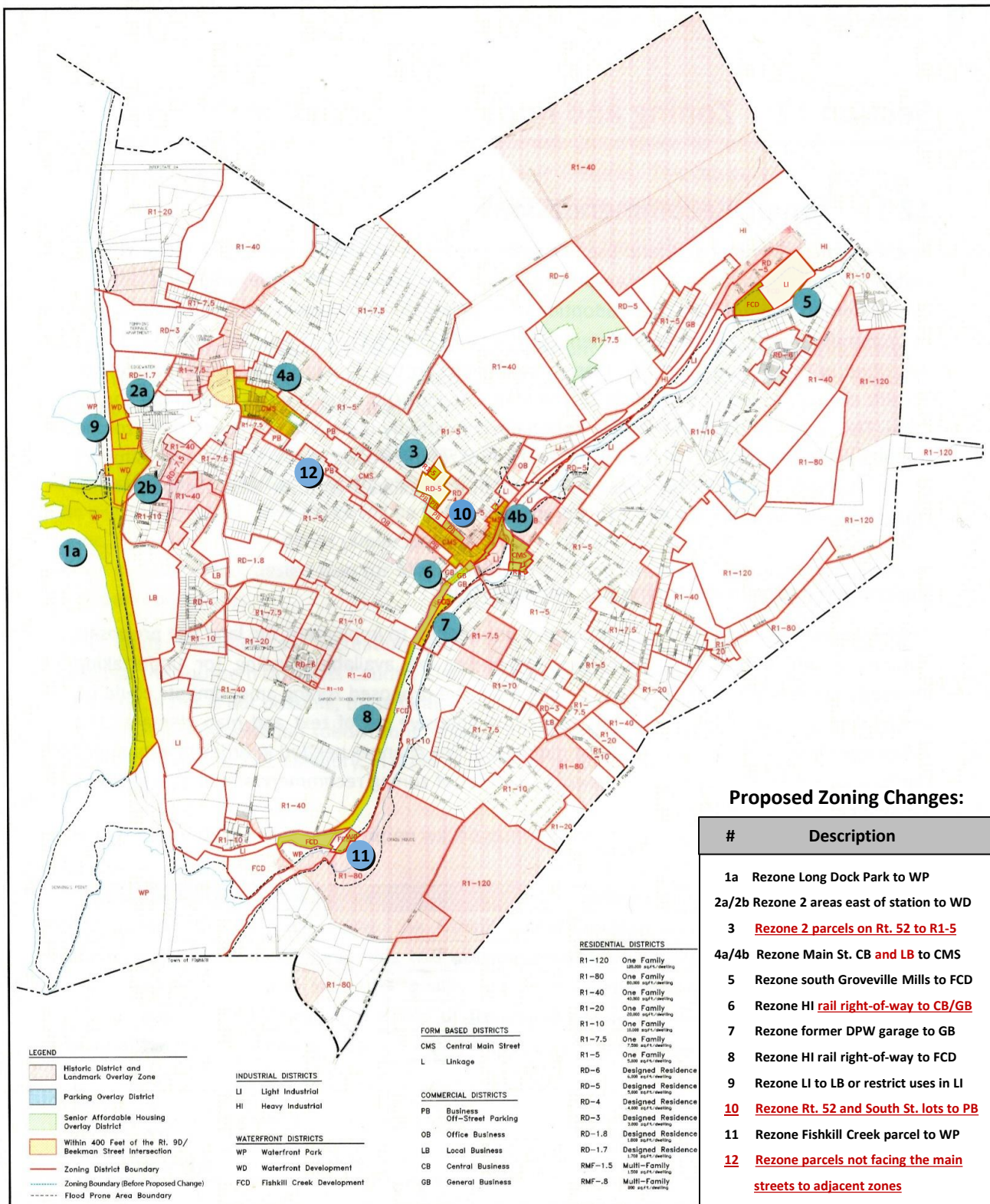


FIGURE 12-1: PROPOSED ZONING CHANGES

LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

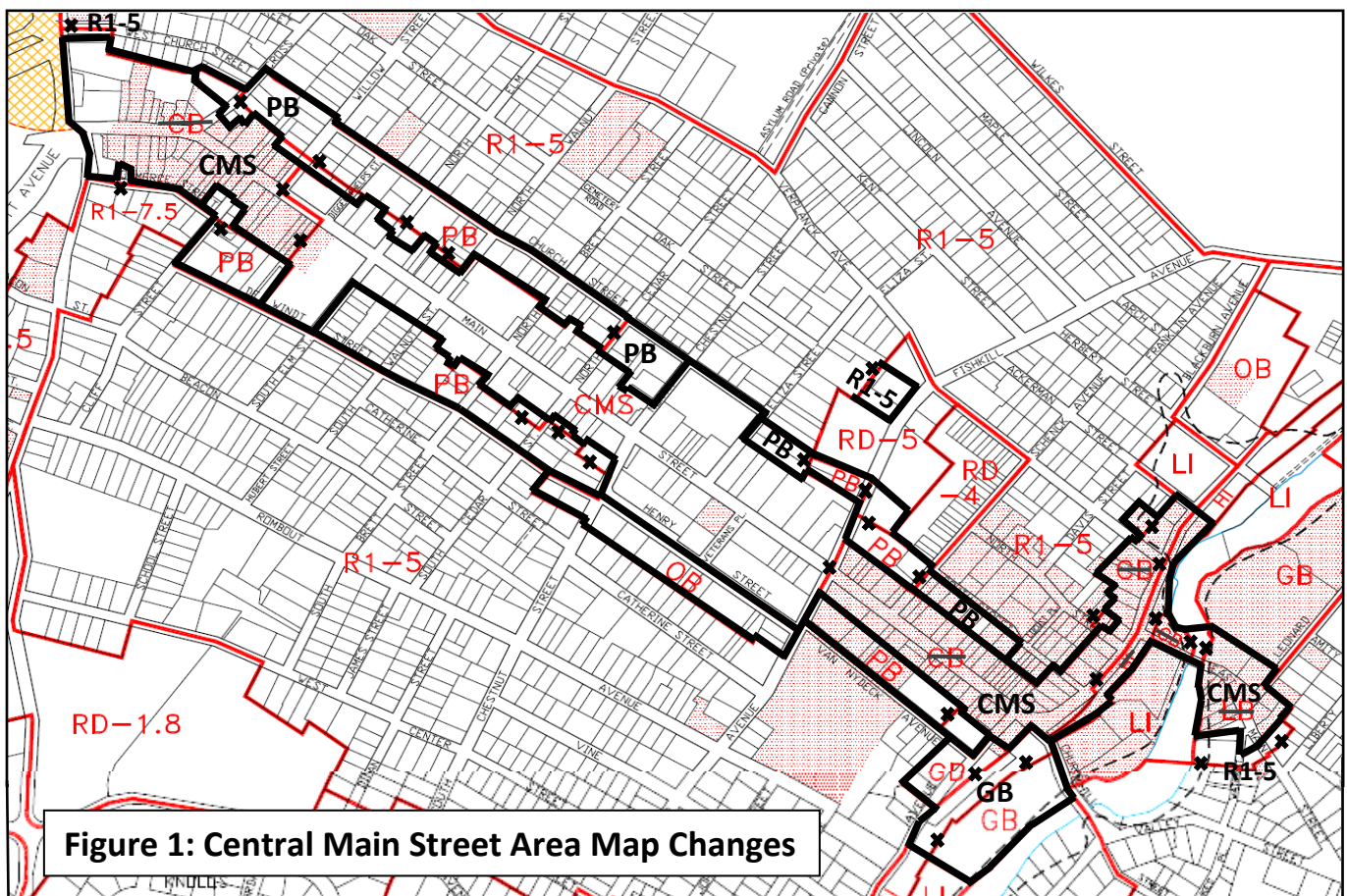
LOCAL LAW AMENDING THE ZONING MAP OF
THE CITY OF BEACON

A LOCAL LAW to amend the Zoning
Map of the City of Beacon.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Intent. The City Council believes that it is reasonable and appropriate to rezone certain areas in the central downtown business area in a manner that is not inconsistent with the City's Comprehensive Plan and provides for more efficient zoning boundaries. This local law is determined to be an exercise of the police powers of the City to protect the public health, safety and welfare of its residents.

Section 2. The zoning of the parcels is hereby changed from the Existing Zoning District to the New Zoning District as shown in Figure 1: *[Individual parcel details will be added after City Council consensus on the map.]*



City of Beacon Council Agenda
3/19/2018

Title:

Public Hearing to receive public comment on a proposed Local Law to amend Chapter 134 and Chapter 223, Section 24.7 of the Code of the City of Beacon concerning Historic Preservation

Subject:

Background:

ATTACHMENTS:

Description	Type
LL Historic Preservation	Local Law
CF Ltr Historic Pres	Cover Memo/Letter

DRAFT LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO AMEND
CHAPTER 134 AND CHAPTER 223, SECTION 24.7 OF THE CODE OF
THE
CITY OF BEACON

A LOCAL LAW to
amend Chapter 134
and Chapter 223,
Section 24.7 of the
Code of the City of
Beacon concerning
Historic Preservation.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 134 of the Code of the City of Beacon entitled “Historic Preservation” is hereby amended as follows:

§ 134-1. Purpose.

There exist within the City of Beacon landmarks, structures, buildings and districts of special historic significance which, by reason of their antiquity or uniqueness of architectural construction or design, are of particular significance to the heritage of the City, county, state or nation.

§ 134-2. Historic District.

- A. A Historic District and Landmark Overlay Zone (HDLO) is hereby established for the purposes of encouraging the protection, enhancement, perpetuation and use of buildings and structures and appurtenant vistas having special historical or aesthetic value which represent or reflect elements of the City's cultural, social, economic, political and architectural history.
- B. For the purposes of this chapter, the landmarks and the boundaries of such zone are established as shown on a map entitled "Historic District and Landmark Overlay

Map," which is hereby incorporated as a part of this chapter and is attached hereto as Exhibit A.

§ 134-3. Definitions.

Unless specifically defined below, words or phrases in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application.

ALTERATION

Any act or process that changes one or more of the exterior architectural features of a structure, including but not limited to the erection, construction, restoration, renovation, reconstruction, demolition, moving or removal of any structure.

CERTIFICATE OF APPROPRIATENESS

A certificate issued by the Planning Board indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure within an historic district.

CERTIFICATE OF ECONOMIC HARDSHIP

A certificate issued by the Zoning Board of Appeals authorizing an alteration, construction, removal or demolition even though a certificate of appropriateness has previously been denied.

CONSTRUCTION

The act of making an addition to an existing structure or the erection of a new principal or accessory structure on a lot or parcel.

DEMOLITION

Any act or process that destroys in part or in whole a landmark or a structure within an historic district.

EXTERIOR ARCHITECTURAL FEATURES

The design and general arrangement of the exterior of a structure open to view from a public way, public property or any part of any public building, including the kind and texture of building materials and number, proportion, type and spacing of windows, doors, walls, roofs, murals, projections and signs. This term shall also include all earthworks, sidewalks, driveways, fences, trees, landscaping and other features visible from a public way, public property or any part of any public building.

HISTORIC DISTRICT

An area designated as an "historic district" by action of the City Council in enacting this chapter and which contains within definable geographic boundaries one or more landmarks and which may have within its boundaries other properties or structures that, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the landmark or landmarks located within the historic district.

LANDMARK

A property or structure designated as a "landmark" by action of the City Council in enacting this chapter that is worthy of rehabilitation, restoration and preservation because of its historic and/or architectural significance to the City of Beacon.

OWNER OF RECORD

The person, corporation or other legal entity issued as owner of a parcel according to the records of the Dutchess County Clerk.

REPAIR

Any change that is not construction, removal or alteration.

STRUCTURE

Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but without limiting the generality of the foregoing, buildings, fences, gazebos, walls, sidewalks, signs, billboards, backstops for tennis courts, radio and television antennae, including supporting towers, and swimming pools.

§ 134-46. Designation of landmarks or historic districts.

- A. The City Council may act upon its own initiative or upon petition from the owner of a proposed landmark, site, structure or property, the Planning Board, or historic preservation committee, to consider designation of a historic district or historic landmark, site, structure or property. All designated historic districts and landmarks shall be included in the HDLO. The City Council hereby designates the individual properties as landmarks as shown on the accompanying Historic District and Landmark Overlay Map because they:
- B. The City Council shall, upon investigation as it deems necessary, make a determination as to whether a proposed district or landmark meets one or more of the following criteria:
 - (1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the City, county, state or nation;

- (2) ~~Are~~ Is identified with historic personages or with important events in national, state or local history;
- (3) ~~Embody the distinguishing characteristics of an architectural style;~~ Embodies distinguishing characteristics of an architectural-type specimen, inherently valuable for a study of a period, style, method of construction or of indigenous materials or craftsmanship;
- (4) ~~Are~~ Is the work of a designer whose work has significantly influenced an age; or
- (5) ~~Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.~~
- (5) Qualifies for inclusion on the State or National Registers of Historic Places.

~~B. The City Council hereby designates the group of properties shown on the attached map as a historic district because they:~~

- ~~(1) Contain properties which meet one or more of the criteria for designation of a landmark; and~~
- ~~(2) By reason of possessing such qualities, constitute a distinct section of the City.~~

B. Notice of a proposed designation shall be sent by certified mail or personal delivery ~~regular mail~~ to the owner of the property proposed for designation, describing the property proposed and announcing a public hearing by the City Council to consider the designation. Once the City Council has issued notice of a proposed designation, no building permits shall be issued by the Building Inspector until the Council has made its decision.

C. Notice of the public hearing shall be given by publication in a newspaper of general circulation in the City of Beacon at least fourteen (14) calendar days prior to the date of such hearing.

D. The City Council shall hold a public hearing prior to designation of any landmark or historic district. The City Council, owners and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural or cultural importance of the proposed landmark or historic district. The record may also contain reports, public comments or other evidence offered outside of the hearing.

E. In determining whether or not to designate a new historic landmark, the City Council shall consider the factors listed in § 134-6.B and any testimony or evidence presented during the public hearing.

- F. The City Council shall make a decision within sixty (60) days of the conclusion of the hearing. If the City Council fails to act within sixty (60) days, or fails to extend the period in which to act, the designation shall be deemed to have been denied. A super majority vote of five (5) Council members is necessary to designate a new historic landmark if the property owner objects to such designation.
- G. The City Council shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the property owner, the City Clerk, the Planning Board, the Zoning Board, and the offices of the Dutchess County Clerk for recordation.
- H. A list of designated properties shall be maintained on file with the City Clerk and shown on the City of Beacon Zoning Map.

§ 134-~~5~~⁴². Uses permitted by special permit.

Section 223-24.7 of Chapter 223, Zoning, of the City Code, enumerates the uses which may be permitted by special permit, issued by the City Council, in the Historic District and Landmark Overlay Zone, and the process by which such uses may be permitted.

§ 134-~~6~~⁴ Certificate of appropriateness.

No person shall carry out any exterior alteration of a landmark or property within an historic district without first obtaining a certificate of appropriateness from the Planning Board or a certificate of economic hardship from the Zoning Board. No certificate of appropriateness is needed for changes to interior spaces, unless they are open to the public, to architectural features that are not visible from a public street or way, public property, or public building, or for the installation of a temporary sign as described in § 223-15F of the Zoning Ordinance of the City of Beacon if located in a nonresidential district. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within an historic district which does not involve a change in design, material or outward appearance.

§ 134-~~7~~⁵ Criteria for approval of a certificate of appropriateness or special permit in the HDLO.

- A. Historic districts are living entities that have typically grown and accommodated change through multiple time periods. HDLO buildings are recognized as models for how to design high-quality, enduring structures that have gained in public appreciation over time, thereby serving as excellent examples for sustainable development. In reviewing an HDLO application and plans, the City Council or Planning Board shall give consideration to:

- (1) The historic or architectural value or significance of the structure and its relation to the historic character of the surrounding area.

- (2) The relationship of the exterior architectural features of such structure to the rest of the structure and to the surrounding area.
 - (3) The ~~general~~ compatibility of exterior design in terms of scale, arrangement, texture and materials proposed, roof and cornice forms, spacing and proportion of windows and doors, exterior architectural details, signs, and street-front fixtures.
- B. In applying the principle of compatibility, the City Council or Planning Board shall consider use the following factors standards for new structures, additions, or alterations in the HDLO:
- (1) The ~~general~~ design, character, and appropriateness to the property of the proposed alteration or new construction.
 - (a) Construction shall build on the historic context with applications required to demonstrate aspects of inspiration or similarities to adjacent HDLO structures or historic buildings in the surrounding area.
 - (b) Compatibility does not imply historic reproduction, but new architecture shall also not arbitrarily impose contrasting materials, scales, colors, or design features.
 - (c) The intent is to reinforce and extend the traditional patterns of the HDLO district, but new structures may still be distinguishable in up-to-date technologies and details, most evident in window construction and interiors.
 - (d) Exterior accessory elements, such as signs, lighting fixtures, and landscaping, shall emphasize continuity with adjacent HDLO properties and the historic characteristics of the sidewalk and streetscape.
 - (e) Parking shall be placed towards the rear of the property in an unobtrusive location with adequate screening from public views.
 - (2) The scale and height of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood.
 - (a) Any addition that is deemed necessary to an historic structure shall be placed toward the rear, or at least recessed, so that character-defining features are not damaged or obscured and so that the historic structure remains more prominent than the subsidiary addition.
 - (b) The height of any new building facades in the HDLO shall reflect the typical heights of adjacent historic structures.

- (c) Larger buildings or additions shall incorporate significant breaks in the facades and rooflines, generally at intervals of no more than 35 feet.
- (3) ~~Texture and materials~~ Architectural and site elements and their relation to similar features of other properties in the ~~neighborhood~~ HDLO.
- (a) It is not appropriate to disrupt the relationship between an historic building and its front yard or landscape, including screening historic properties from traditional street views by high walls or hedges.
- (b) Historic storefronts, porches, cornices, window and door surrounds, or similar architectural features shall not be enclosed, obscured, or removed so that the character of the structure is substantially changed.
- (c) Deteriorated building features shall be repaired rather than being replaced and, if not repairable, shall be replicated in design, materials, and other historic qualities.
- (d) New buildings in the HDLO shall have a top-floor cornice feature and first-floor architectural articulation, such as an architecturally emphasized entrance doorway or porch, to accent the central body of the building.
- (e) Architectural features and windows shall be continued on all sides that are clearly visible from a street or public parking area, avoiding any blank walls, except in cases of existing walls or potential common property walls.
- (f) New HDLO buildings shall have a front entrance door facing the primary street and connected to the sidewalk.
- (g) Primary individual window proportions shall be greater in height than width, but the approving body may allow exceptions for storefront, transom, and specialty windows. Mirrored, reflective, or tinted glass and all-glass walls, except greenhouses, shall not be permitted. Any shutters shall match the size of the window opening and appear functional.
- (h) Finish building materials should be wood, brick, traditional cement-based stucco, stone, smooth cast stone, smooth-finished fiber-cement siding, or other materials deemed acceptable by the approving body. Vinyl, aluminum or sheet metal siding or sheet trim, exposed concrete blocks or concrete walls, plywood or other similar prefabricated panels, unpainted or unstained lumber, synthetic rough-cut stone, synthetic brick, synthetic stucco, exterior insulation and finishing system (EIFS), direct-applied finish system (DAFS), and chain link, plastic, or vinyl fencing shall not be permitted.

- (i) Materials and colors should complement historic buildings on the block. Fluorescent, neon, metallic, or other intentionally garish colors, as well as stripes, dots, or other incompatible patterns, shall be prohibited.
- (j) Mechanical equipment and refuse containers shall be concealed from public view by approved architectural or landscaping elements and shall be located to the rear of the site. Window or projecting air conditioners shall not be permitted on the front façade of new buildings or additions.

§ 134-8.7. Certificate of appropriateness application procedure.

- A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Planning Board. The application shall include:
 - (1) The name, address and telephone number of the applicant.
 - (2) ~~Sketches or other~~ Scaled drawings showing the proposed changes.
 - (3) Descriptions or samples of materials to be used.
 - (4) {Where the proposal includes signs or lettering,} a scaled drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, if any, and a plan showing the sign's location on the property.
 - (5) Any other information which the Planning Board may deem necessary in order to visualize the proposed work.
- B. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Planning Board. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the City of Beacon.
- C. The applicant may consult with the Planning Board or its designated agent prior to submitting an application.
- D. Where site plan review or subdivision approval is also required for the application, the certificate of appropriateness procedure shall be conducted simultaneously with such review by the Planning Board.
- E. The Planning Board shall approve, deny or approve the permit with modifications within 45 days from receipt of the completed application. The Planning Board may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Notice of the public hearing shall be provided by the applicant in the same manner as required in § 223-

61.2.B. Failure by the Planning Board to take action within the prescribed period of time shall constitute approval.

- F. All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's Office for public inspection. The Planning Board's decision shall state the reasons for denying or modifying any application.

§ 134-2 ~~8.~~ Hardship criteria and application procedure.

- A. An applicant whose certificate of appropriateness ~~for a proposed demolition~~ has been denied may apply ~~for relief~~ to the Zoning Board of Appeals for a certificate of economic hardship to obtain relief from the requirements of this chapter. Upon receipt of an application for relief, the Zoning Board shall, within 45 calendar days thereafter, hold a public hearing. Notice of the public hearing shall be provided by the applicant in the same manner as required in § 223-61.2.B. on the grounds of hardship. In order to prove the existence of hardship, the applicant must establish that:
- B. At the public hearing, the Zoning Board may hear testimony and entertain the submission of written evidence from the applicant and/or the public.
- C. To obtain a certificate of economic hardship, the applicant must prove the existence of economic hardship by establishing that:
- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and
 - (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- ~~B. The applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief to the Zoning Board of Appeals on the ground of hardship.~~
- D. The Zoning Board shall take into consideration the economic feasibility of alternatives to removal, alteration or demolition of a landmark or portion thereof, and balance the interest of the public in preserving the historic landmark or building, or portion thereof, and the interest of the owner in removing, altering or demolishing the landmark or portion thereof.
- E. ~~€.~~ The Zoning Board shall make a decision within 30 days of the conclusion of the hearing on the application. The Board's decision shall be in writing and shall state the reasons for granting or denying the hardship application. ~~The Zoning Board's review of said hardship application shall be in accordance with the procedures set forth in § 223-~~

~~55C of Chapter 223, Zoning.~~ Failure by the Zoning Board of Appeals to take action within the prescribed period of time shall constitute approval of the application.

- F. All decisions of the Zoning Board of Appeals shall be in writing. A copy shall be sent to the applicant, and a copy shall be filed with the City Clerk. The Board's decision shall state the reasons for approving or denying the application. If the Zoning Board of Appeals approves the application, the Board shall issue a certificate of economic hardship.

§ 134-~~10~~ 9. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Building Inspector to inspect periodically any such work to assure compliance. In the event that work is found that is not performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Planning Board, the Building Inspector shall issue a stop-work order, and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

§ 134-~~11~~ 40. Penalties for offenses.

- A. Failure to comply with any of the provisions of this local law shall be deemed a violation, and the violation is subject to the penalties provided in § 223-53 of Chapter 223, Zoning.
- B. The City Council is also authorized to institute any and all actions required to enforce this chapter. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 134-~~12~~ 44. Fees.

- A. Each application for a certificate of appropriateness shall be accompanied by a fee, in an amount set by the City Council, payable to the City Clerk.
- B. The applicant may be charged a fee by the Planning Board for the actual cost of preparation and publication of each public notice of hearing on the application. Said fees shall also be fixed from time to time by resolution of the City Council.

§ 134-13. Assessment abatement.

Any person who is granted a certificate of appropriateness and performs the work detailed in the application submitted to the Planning Board will not be subject to an increase in assessment for the subject property as a result of the improvements made to the buildings and structures on said property. This clause does not apply to applicants who also receive a special permit as set forth in § 223-18 of Chapter 223, Zoning.

~~§ 134-14. Additional areas:~~

In accordance with § 134-6, the following landmarks, properties and/or historic districts are added:

~~A. Properties added 5-17-1999 by L.L. No. 1999:~~

Parcel I.D.	Location	Owner Name
6054-13-126252	250 Howland Avenue	University Settlement Camp Society of New York
6054-17-047180	300 Howland Avenue	Craig House
6054-17-025161	310 Howland Avenue	Stephen Fleming and Donna Landstreet
6054-17-075135	330 Howland Avenue	Scenic Hudson
A portion of 6054-14-259407 as shown on map^H	150 Howland Avenue	Beacon Hills Development Corporation

~~B. The following landmarks and districts are hereby added to the Historic District and Landmark Overlay Zone. The attached map, entitled Proposed Additions to Historic District and Landmark Overlay Zone, and dated May 12, 2006, shows the respective location of each of the following:~~

- ~~(1) Gateway to Mt. Beacon Park (Mount Beacon Incline Property; on National Register).~~
- ~~(2) Peter Dubois House, 36 Slocum Road; on National Register.~~
- ~~(3) Old Matteawan State Hospital buildings and grounds.~~
- ~~(4) Fountain Square (East Main Street), including Leonard Street (Alice Judson House, Dr. Jennings/Leonard House, Catholic Church).~~
- ~~(5) Byrnesville Cemetery, South Avenue (purported burial ground of Roger Brett).~~
- ~~(6) H. W. Sargent's "Wodenethe": two gatchouses, South Avenue and Wodenethe Drive.~~
- ~~(7) Methodist Cemetery, North Walnut Street.~~
- ~~(8) Old stone houses (2), Overlook Avenue near Stone Street (houses date back to late 18th Century).~~
- ~~(9) Old Tioronda Hat Shop and Madam Brett Park (site of original Brett mill), South Avenue, dates to 1879.~~

- (10) — ~~Peter Schenck House, adjoining Tallix property, Blackburn Avenue — Schenck Estate.~~
- (11) — ~~Russell Avenue, from First Street to Union Street, cluster of historic homes; 1st Highland Hospital; Mayor Russell's House; Ticehurst Home dates to 1840s (excluding 40 Russell Avenue).~~
- (12) — ~~Calvert Vaux House, South Avenue.~~
- (13) — ~~Chrystie House, South Avenue.~~
- (14) — ~~1 East Main.~~
- (15) — ~~10 East Main~~
- (16) — ~~South Street (excluding 32 South Street).~~
- (17) — ~~North Street (excluding 19 North Street).~~
- (18) — ~~St. Joachim's Church and Old Cemetery.~~
- (19) — ~~St. John's Church.~~
- (20) — ~~AME Zion Church, Academy Street.~~
- (21) — ~~Springfield Baptist Church, Mattie Cooper Street Square.~~
- (22) — ~~Fairview Cemetery. Washington Avenue.~~
- (23) — ~~Northwest corner of Teller and Rombout Avenues, 2nd Empire brick home.~~

~~C. Property added May 17, 2010, by L.L. No. 5 of 2010:~~

Parcel I.D.	Location	Owner Name
130200-6054-21-065896	211 Fishkill Avenue	Beacon School District

SECTION 2. Chapter 223, Section 24.7, Subsection D of the Code of the City of Beacon is hereby amended as follows

§ 223-24.7 Uses permitted by special permit in the Historic District and Landmark Overlay Zone

...

D. Findings

- (1) The City Council must make the following findings before special permit approval is granted:
 - (a) Any exterior restoration shall maintain the architectural and historic integrity of the structure. Any new construction shall be compatible with neighboring structures.
 - (b) The proposed use is compatible with the neighborhood, and activities permitted within the structure can be adequately buffered from any surrounding residential homes.
 - (c) The resulting traffic generation will not overburden existing roads, and adequate parking can be provided without unduly destroying the landscape or the setting of the structure.
 - (d) The proposed use is appropriate to the structure, will aid in the preservation of the structure and will not result in undue alterations or enlargement of the structure.
- (2) These standards shall be in addition to the general special permit standards set forth in ~~§ 223-18 of this chapter~~ and the standards set forth in §.134-7.

Section 3. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 134 and Chapter 223 of the City of Beacon are otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 4. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 5. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is

hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 6. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.



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Jennifer Van Tuyl
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March 18, 2018

Hon. Randy Casale, Mayor
and Members of the City Council
City of Beacon City Hall
1 Municipal Plaza
Beacon, New York 12508

Re: comments on proposed HDLO law

Dear Mayor Casale and Members of the City Council,

On behalf our client Beacon HIP Lofts, 39 Front Street, Beacon, New York, Tax Parcel ID: 6055-04-590165, I make the following comments on the proposed amendments to the HDLO Law.

Our client supports the provisions that facilitate the inclusion of additional properties in the HDLO. Section 134-4 (E) contains a reference to section 134-6.B. It is unclear what section is being referred to, since most of the section numbers are changing. There is no section 134-6.B in the proposed Local Law. If the reference is to 134-6.B in the existing law, that section refers to only two criteria, so it might make more sense to simply list them.

However, there is reason to be cautious in enacting the amendments, which can put single family homeowners and other small property owners to great expense in conforming to architectural standards, and can prevent other landowners from carrying out projects which are wholly compliant with zoning, and have been found worthy by the State Historic Preservation Office, by architectural historians, and by City agencies such as the Planning and Zoning Board.

My client writes this letter because he is concerned that a possible interpretation of this law would prevent him from being issued a Certificate of Appropriateness for his proposed building 16 improvements at Beacon HIP Lofts, the former Groveville Mills. This project has already received a SEQR Negative Declaration. It has received an affirmative letter of compatibility from the State Historic Preservation Office. It was found to be in keeping with historic compatibility standards for historic additions by an architectural historian at Hartgen Associates. The Planning Board unanimously recommended to the ZBA that a height variance be issued. And the ZBA granted a height variance, finding that the proposed height of the building did not create any harmful effect on the neighborhood or historic setting. All reviewing agencies have found the proposal historically sensitive and worthy. The closest, most affected, neighboring property owner

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appeared before the Zoning Board of Appeals to express his strong support for the proposed project, including the height of building 16. In addition to the benefits of the project by virtue of its appearance, the proposal would eliminate a commercial laundry that uses almost 26,000 gpd.

The Council should make sure that this law does not have unintended consequences by stopping a project as worthy as this one, or even creating the possibility that something similar would happen in the future. Other likely unintended consequences include discouraging a creative design solution that all parties believe is the best one, because no variation or “variance” is allowed.

Fundamental problems with the law:

It is critical that the Council realize that this law allows no variances (except, perhaps, insofar as it is incorporated in special permit standards in zoning.¹) It is no solace to a landowner to be told that, “you can always apply for a ‘Certificate of Hardship’ from the ZBA.” The law as written makes it virtually impossible to obtain a Certificate of Hardship. The standards are even more difficult than those for a use variance. Beyond that, the certificate of hardship standards force a landowner suffering economic hardship to wait, potentially for years, while he tries to sell his property to someone who might “preserve” it, though that standard itself is very vague as applied to the 134-7.B standards. It will be harder and harder to transfer property under a regime of unforgiving and inflexible laws.

The law as drafted is a zoning law in thin disguise. Though placed outside the zoning law, it imposes standards relating to height, a basic zoning bulk standard. The law as drafted appears to be one that attempt to deprive a landowner of his/her fundamental right to seek an area variance relating to bulk standards, by simply placing the requirement in an ostensibly “non-zoning” section of the code. This would not pass constitutional muster and violates the preemptive land use regulations of the General City Law.

The issue of height should be dealt with only in the zoning law, and the Council should reconsider the standards for a certificate of hardship. Without limiting the generality of the foregoing, the Council should consider adding a more reasonable standard for certificates of hardship for modifications of the design requirements in section 134-7.B. The standards for a certificate of hardship as they are now written appear to apply solely to proposed demolition of an historic structure.

¹ The law may ultimately be deemed a zoning law even if the Council places the regulations in a chapter outside zoning.



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In addition to addressing these fundamental problems, we ask the Council to address the following more specific comments.

It is inappropriate to incorporate the architectural/historic appropriateness criteria into special permit standards:

We are concerned about the incorporation of a very complicated and somewhat subjective set of criteria as criteria of a special permit, in addition to being criteria for a certificate of appropriateness. The standards for architectural appropriateness are fundamentally different from zoning standards, and it may not be wise to mix the two concepts. Such a mixture would appear to effectively incorporate the appropriateness standards into zoning, thus making it possible to actually obtain a variance from the standards. (See above discussion as to the legality of such an effort) Moreover, it appears to violate the principle of zoning that standards must be uniform within districts. Under the existing law, the Council has very broad discretion in determining special permit applications, so this amendment does not seem necessary to grant the Council any additional authority on special permits. Finally, the incorporation of these standards as special permit standards will often result in two different boards, the Council and the Planning Board, applying the same set of criteria, possibly with different results. This does not make sense.

If the Council determines to incorporate the section B standards into special permit standards, the law should at least clarify that these standards only apply to special permits under section 223-24.7.

If the Council nonetheless determines to apply these standards to special permits, it should clarify that the section B criteria apply only to special permits under section 223-24.7, i.e. those special permits for which one is eligible only because the subject property is within the HDLO.

134-7 Criteria for approval of a certificate of appropriateness or special permit under section 223-24.7 for properties in the HDLO.

This seems to be the clear purpose and intent, as set forth in section 2 of the law on page 13-14.

The standards in section 134-7.B should be reconsidered in light of the differing settings in the City of Beacon:

The law was obviously drafted with the CMS district in mind, i.e. a densely settled streetscape, with established patterns of development, and buildings very close to each other. But other areas of the city, such as old factory buildings along the Fishkill Creek, either in the LI or FCD Districts, present different circumstances. These settings are much more open, viewing points to these properties are much more distant, and each property tends to be unique, rather than part of a

C&F: 3694108.2



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consistent streetscape. In some cases, a single parcel is in the HDLO as a Landmark which is inherently of a different character than surrounding lands, and a Landmark might be significantly larger and more massive than the surrounding buildings. In that case, setting the height for adjoining buildings based upon those of the Landmark does not necessarily lead to the right result. Each setting is unique and the section B standards should not be applied in the same way. Our client's property at the former Groveville Mills is one such unique setting.

The Council should consider adopting a separate set of standards for the CMS to address the unique concerns of that area. In the alternative, some of the proposed 134-7.B standards should be applicable only in the CMS district.

Specific suggestions on the Section B Criteria that incorporate the above comments (new language shown as redlines):

Section (1) (e): Parking shall where possible² be placed towards the rear of the property in an unobtrusive location with adequate screening from public views, unless another location provides better screening.³

Section (2) (a): Any addition ~~that is deemed necessary~~ to an historic structure ~~shall~~ should⁴ be so placed on the property⁵ ~~toward the rear~~, or at least recessed, so that character-defining features of the historic structure are not damaged or obscured

Section (2) (b)⁶ Any addition to an historic structure should⁷ be designed so that the addition is subsidiary to the main historic structure and so that the historic structure remains more prominent than the ~~subsidiary~~ addition.

² This change is also being recommended by the Planning Board. Changes recommended by the Planning Board are shown in black line. The "should" standard is defined in the CMS Law, section K.2, and the definition should be repeated in the HDLO law, or incorporated by reference.

³ The rear of the property may not always be the location that provides the best screening.

⁴ Change recommended by the Planning Board.

⁵ Depending on the lot size, shape, and surrounding properties, the rear of the lot is not necessarily the best location.

⁶ This comment proposes separating the current section (2) (a) into two separate sections, since lot location and subsidiarity are two separate issues.

⁷ Change recommended by the Planning Board.



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Section (2) (c) Buildings in the CMS District that are also in the HDLO are subject to the additional standard that the height of any new building facades in the HDLO ~~shall~~ should⁸ reflect the typical heights of adjacent historic structures.

Section (2) (d) Larger buildings or additions shall incorporate significant breaks in the facades and rooflines, generally at intervals of no more than 35 feet.

Additional clarification:

Page 6, section A, line 5: It is unclear what “an HDLO application” is and the term is not defined. The section should read, “In reviewing an application for a Certificate of Appropriateness and the plans relating thereto, the”

Conclusion:

We thank the Council for considering these comments. We all share the interest of encouraging the best possible built environment in Beacon.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "JL Van Tuyl", written in a cursive, flowing style.

Jennifer L. Van Tuyl

⁸ Change recommended by the Planning Board.

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to appoint Manuel Galarza as Groundskeeper/Cleaner in the City of Beacon Highway Department

Subject:

Background:

ATTACHMENTS:

Description

Reso Galarza appointment

Type

Resolution

CITY OF BEACON
CITY COUNCIL

Resolution No. _____ of 2018

RESOLUTION APPOINTING GROUNDSKEEPER/CLEANER

Approve the appointment of Manuel Galarza as Groundskeeper/Cleaner in the Highway Department effective March 26, 2018.

Resolution No. _____ of 2018		Date: <u>2018</u>					
<input type="checkbox"/> Amendments		<input type="checkbox"/> 2/3 Required					
<input type="checkbox"/> Not on roll call.		<input type="checkbox"/> On roll call <input type="checkbox"/> 3/4 Required					
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy Casale					
Motion Carried							

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to adopt a local law to amend Chapter 134 and Chapter 223, Section 24.7 of the Code of the City of Beacon concerning Historic Preservation.

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso_Historic Pres	Resolution
LL Historic Preservation	Local Law
COB_PB_Memo_Hx overlay	Cover Memo/Letter



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. _ OF 2018**

**A RESOLUTION TO ADOPT A LOCAL LAW TO AMEND CHAPTER 134 AND CHAPTER 223,
SECTION 24.7 OF THE CODE OF THE CITY OF BEACON HISTORIC PRESERVATION.**

BE IT RESOLVED, That the City Council of the City of Beacon hereby adopts a local law to amend Chapter 134 and Chapter 223, Section 24.7 of the Code of the City of Beacon Historic Preservation.

Resolution No. _____ of 2018 Date: <u>2018</u>							
<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Amendments <input type="checkbox"/> Not on roll call <input type="checkbox"/> On roll call</div><div><input type="checkbox"/> 2/3 Required <input type="checkbox"/> 3/4 Required</div></div>							
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy J. Casale					
Motion Carried							

DRAFT LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO AMEND
CHAPTER 134 AND CHAPTER 223, SECTION 24.7 OF THE CODE OF
THE
CITY OF BEACON

A LOCAL LAW to
amend Chapter 134
and Chapter 223,
Section 24.7 of the
Code of the City of
Beacon Historic
Preservation.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 134 of the Code of the City of Beacon entitled “Historic Preservation” is hereby amended as follows:

§ 134-1. Purpose.

There exist within the City of Beacon landmarks, structures, buildings and districts of special historic significance which, by reason of their antiquity or uniqueness of architectural construction or design, are of particular significance to the heritage of the City, county, state or nation.

§ 134-2. Historic District.

- A. A Historic District and Landmark Overlay Zone (HDLO) is hereby established for the purposes of encouraging the protection, enhancement, perpetuation and use of buildings and structures and appurtenant vistas having special historical or aesthetic value which represent or reflect elements of the City's cultural, social, economic, political and architectural history.
- B. For the purposes of this chapter, the landmarks and the boundaries of such zone are established as shown on a map entitled "Historic District and Landmark Overlay

Map," which is hereby incorporated as a part of this chapter and is attached hereto as Exhibit A.

§ 134-3. Definitions.

Unless specifically defined below, words or phrases in this chapter shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this chapter its most reasonable application.

ALTERATION

Any act or process that changes one or more of the exterior architectural features of a structure, including but not limited to the erection, construction, restoration, renovation, reconstruction, demolition, moving or removal of any structure.

CERTIFICATE OF APPROPRIATENESS

A certificate issued by the Planning Board indicating its approval of plans for alteration, construction, removal or demolition of a landmark or of a structure within an historic district.

CERTIFICATE OF ECONOMIC HARDSHIP

A certificate issued by the Zoning Board of Appeals authorizing an alteration, construction, removal or demolition even though a certificate of appropriateness has previously been denied.

CONSTRUCTION

The act of making an addition to an existing structure or the erection of a new principal or accessory structure on a lot or parcel.

DEMOLITION

Any act or process that destroys in part or in whole a landmark or a structure within an historic district.

EXTERIOR ARCHITECTURAL FEATURES

The design and general arrangement of the exterior of a structure open to view from a public way, public property or any part of any public building, including the kind and texture of building materials and number, proportion, type and spacing of windows, doors, walls, roofs, murals, projections and signs. This term shall also include all earthworks, sidewalks, driveways, fences, trees, landscaping and other features visible from a public way, public property or any part of any public building.

HISTORIC DISTRICT

An area designated as an "historic district" by action of the City Council in enacting this chapter and which contains within definable geographic boundaries one or more landmarks and which may have within its boundaries other properties or structures that, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the landmark or landmarks located within the historic district.

LANDMARK

A property or structure designated as a "landmark" by action of the City Council in enacting this chapter that is worthy of rehabilitation, restoration and preservation because of its historic and/or architectural significance to the City of Beacon.

OWNER OF RECORD

The person, corporation or other legal entity issued as owner of a parcel according to the records of the Dutchess County Clerk.

REPAIR

Any change that is not construction, removal or alteration.

STRUCTURE

Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but without limiting the generality of the foregoing, buildings, fences, gazebos, walls, sidewalks, signs, billboards, backstops for tennis courts, radio and television antennae, including supporting towers, and swimming pools.

§ 134-46. Designation of landmarks or historic districts.

- A. The City Council may act upon its own initiative or upon petition from the owner of a proposed landmark, site, structure or property, the Planning Board, or historic preservation committee, to consider designation of a historic district or historic landmark, site, structure or property. All designated historic districts and landmarks shall be included in the HDLO. The City Council hereby designates the individual properties as landmarks as shown on the accompanying Historic District and Landmark Overlay Map because they:
- B. The City Council shall, upon investigation as it deems necessary, make a determination as to whether a proposed district or landmark meets one or more of the following criteria:
 - (1) Possesses special character or historic or aesthetic interest or value as part of the cultural, political, economic or social history of the City, county, state or nation;

- (2) ~~Are~~ Is identified with historic personages or with important events in national, state or local history;
- (3) ~~Embody the distinguishing characteristics of an architectural style;~~ Embodies distinguishing characteristics of an architectural-type specimen, inherently valuable for a study of a period, style, method of construction or of indigenous materials or craftsmanship;
- (4) ~~Are~~ Is the work of a designer whose work has significantly influenced an age; or
- (5) ~~Because of unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood.~~
- (5) Qualifies for inclusion on the State or National Registers of Historic Places.

~~B. The City Council hereby designates the group of properties shown on the attached map as a historic district because they:~~

- ~~(1) Contain properties which meet one or more of the criteria for designation of a landmark; and~~
- ~~(2) By reason of possessing such qualities, constitute a distinct section of the City.~~

B. Notice of a proposed designation shall be sent by certified mail or personal delivery ~~regular mail~~ to the owner of the property proposed for designation, describing the property proposed and announcing a public hearing by the City Council to consider the designation. Once the City Council has issued notice of a proposed designation, no building permits shall be issued by the Building Inspector until the Council has made its decision.

C. Notice of the public hearing shall be given by publication in a newspaper of general circulation in the City of Beacon at least fourteen (14) calendar days prior to the date of such hearing.

D. The City Council shall hold a public hearing prior to designation of any landmark or historic district. The City Council, owners and any interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural or cultural importance of the proposed landmark or historic district. The record may also contain reports, public comments or other evidence offered outside of the hearing.

E. In determining whether or not to designate a new historic landmark, the City Council shall consider the factors listed in § 134-6.B and any testimony or evidence presented during the public hearing.

- F. The City Council shall make a decision within sixty (60) days of the conclusion of the hearing. If the City Council fails to act within sixty (60) days, or fails to extend the period in which to act, the designation shall be deemed to have been denied. A super majority vote of five (5) Council members is necessary to designate a new historic landmark if the property owner objects to such designation.
- G. The City Council shall forward notice of each property designated as a landmark and the boundaries of each designated historic district to the property owner, the City Clerk, the Planning Board, the Zoning Board, and the offices of the Dutchess County Clerk for recordation.
- H. A list of designated properties shall be maintained on file with the City Clerk and shown on the City of Beacon Zoning Map.

§ 134-~~5~~⁴². Uses permitted by special permit.

Section 223-24.7 of Chapter 223, Zoning, of the City Code, enumerates the uses which may be permitted by special permit, issued by the City Council, in the Historic District and Landmark Overlay Zone, and the process by which such uses may be permitted.

§ 134-~~6~~⁴ Certificate of appropriateness.

No person shall carry out any exterior alteration of a landmark or property within an historic district without first obtaining a certificate of appropriateness from the Planning Board or a certificate of economic hardship from the Zoning Board. No certificate of appropriateness is needed for changes to interior spaces, unless they are open to the public, to architectural features that are not visible from a public street or way, public property, or public building, or for the installation of a temporary sign as described in § 223-15F of the Zoning Ordinance of the City of Beacon if located in a nonresidential district. Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within an historic district which does not involve a change in design, material or outward appearance.

§ 134-~~7~~⁵ Criteria for approval of a certificate of appropriateness or special permit in the HDLO.

- A. Historic districts are living entities that have typically grown and accommodated change through multiple time periods. HDLO buildings are recognized as models for how to design high-quality, enduring structures that have gained in public appreciation over time, thereby serving as excellent examples for sustainable development. In reviewing an HDLO application and plans, the City Council or Planning Board shall give consideration to:

- (1) The historic or architectural value or significance of the structure and its relation to the historic character of the surrounding area.

- (2) The relationship of the exterior architectural features of such structure to the rest of the structure and to the surrounding area.
 - (3) The ~~general~~ compatibility of exterior design in terms of scale, arrangement, texture and materials proposed, roof and cornice forms, spacing and proportion of windows and doors, exterior architectural details, signs, and street-front fixtures.
- B. In applying the principle of compatibility, the City Council or Planning Board shall consider use the following factors standards for new structures, additions, or alterations in the HDLO:
- (1) The ~~general~~ design, character, and appropriateness to the property of the proposed alteration or new construction.
 - (a) Construction shall build on the historic context with applications required to demonstrate aspects of inspiration or similarities to adjacent HDLO structures or historic buildings in the surrounding area.
 - (b) Compatibility does not imply historic reproduction, but new architecture shall also not arbitrarily impose contrasting materials, scales, colors, or design features.
 - (c) The intent is to reinforce and extend the traditional patterns of the HDLO district, but new structures may still be distinguishable in up-to-date technologies and details, most evident in window construction and interiors.
 - (d) Exterior accessory elements, such as signs, lighting fixtures, and landscaping, shall emphasize continuity with adjacent HDLO properties and the historic characteristics of the sidewalk and streetscape.
 - (e) Parking shall be placed towards the rear of the property in an unobtrusive location with adequate screening from public views.
 - (2) The scale and height of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood.
 - (a) Any addition that is deemed necessary to an historic structure shall be placed toward the rear, or at least recessed, so that character-defining features are not damaged or obscured and so that the historic structure remains more prominent than the subsidiary addition.
 - (b) The height of any new building facades in the HDLO shall reflect the typical heights of adjacent historic structures.

- (c) Larger buildings or additions shall incorporate significant breaks in the facades and rooflines, generally at intervals of no more than 35 feet.
- (3) ~~Texture and materials~~ Architectural and site elements and their relation to similar features of other properties in the ~~neighborhood~~ HDLO.
 - (a) It is not appropriate to disrupt the relationship between an historic building and its front yard or landscape, including screening historic properties from traditional street views by high walls or hedges.
 - (b) Historic storefronts, porches, cornices, window and door surrounds, or similar architectural features shall not be enclosed, obscured, or removed so that the character of the structure is substantially changed.
 - (c) Deteriorated building features shall be repaired rather than being replaced and, if not repairable, shall be replicated in design, materials, and other historic qualities.
 - (d) New buildings in the HDLO shall have a top-floor cornice feature and first-floor architectural articulation, such as an architecturally emphasized entrance doorway or porch, to accent the central body of the building.
 - (e) Architectural features and windows shall be continued on all sides that are clearly visible from a street or public parking area, avoiding any blank walls, except in cases of existing walls or potential common property walls.
 - (f) New HDLO buildings shall have a front entrance door facing the primary street and connected to the sidewalk.
 - (g) Primary individual window proportions shall be greater in height than width, but the approving body may allow exceptions for storefront, transom, and specialty windows. Mirrored, reflective, or tinted glass and all-glass walls, except greenhouses, shall not be permitted. Any shutters shall match the size of the window opening and appear functional.
 - (h) Finish building materials should be wood, brick, traditional cement-based stucco, stone, smooth cast stone, smooth-finished fiber-cement siding, or other materials deemed acceptable by the approving body. Vinyl, aluminum or sheet metal siding or sheet trim, exposed concrete blocks or concrete walls, plywood or other similar prefabricated panels, unpainted or unstained lumber, synthetic rough-cut stone, synthetic brick, synthetic stucco, exterior insulation and finishing system (EIFS), direct-applied finish system (DAFS), and chain link, plastic, or vinyl fencing shall not be permitted.

- (i) Materials and colors should complement historic buildings on the block. Fluorescent, neon, metallic, or other intentionally garish colors, as well as stripes, dots, or other incompatible patterns, shall be prohibited.
- (j) Mechanical equipment and refuse containers shall be concealed from public view by approved architectural or landscaping elements and shall be located to the rear of the site. Window or projecting air conditioners shall not be permitted on the front façade of new buildings or additions.

§ 134-8.7. Certificate of appropriateness application procedure.

- A. Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application for such a certificate with the Planning Board. The application shall include:
 - (1) The name, address and telephone number of the applicant.
 - (2) ~~Sketches or other~~ Scaled drawings showing the proposed changes.
 - (3) Descriptions or samples of materials to be used.
 - (4) {Where the proposal includes signs or lettering,} a scaled drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, if any, and a plan showing the sign's location on the property.
 - (5) Any other information which the Planning Board may deem necessary in order to visualize the proposed work.
- B. No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Planning Board. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the City of Beacon.
- C. The applicant may consult with the Planning Board or its designated agent prior to submitting an application.
- D. Where site plan review or subdivision approval is also required for the application, the certificate of appropriateness procedure shall be conducted simultaneously with such review by the Planning Board.
- E. The Planning Board shall approve, deny or approve the permit with modifications within 45 days from receipt of the completed application. The Planning Board may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Notice of the public hearing shall be provided by the applicant in the same manner as required in § 223-

61.2.B. Failure by the Planning Board to take action within the prescribed period of time shall constitute approval.

- F. All decisions of the Planning Board shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's Office for public inspection. The Planning Board's decision shall state the reasons for denying or modifying any application.

§ 134-2 ~~8.~~ Hardship criteria and application procedure.

- A. An applicant whose certificate of appropriateness ~~for a proposed demolition~~ has been denied may apply ~~for relief~~ to the Zoning Board of Appeals for a certificate of economic hardship to obtain relief from the requirements of this chapter. Upon receipt of an application for relief, the Zoning Board shall, within 45 calendar days thereafter, hold a public hearing. Notice of the public hearing shall be provided by the applicant in the same manner as required in § 223-61.2.B. on the grounds of hardship. In order to prove the existence of hardship, the applicant must establish that:
- B. At the public hearing, the Zoning Board may hear testimony and entertain the submission of written evidence from the applicant and/or the public.
- C. To obtain a certificate of economic hardship, the applicant must prove the existence of economic hardship by establishing that:
- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and
 - (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- ~~B. The applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief to the Zoning Board of Appeals on the ground of hardship.~~
- D. The Zoning Board shall take into consideration the economic feasibility of alternatives to removal, alteration or demolition of a landmark or portion thereof, and balance the interest of the public in preserving the historic landmark or building, or portion thereof, and the interest of the owner in removing, altering or demolishing the landmark or portion thereof.
- E. ~~€.~~ The Zoning Board shall make a decision within 30 days of the conclusion of the hearing on the application. The Board's decision shall be in writing and shall state the reasons for granting or denying the hardship application. ~~The Zoning Board's review of said hardship application shall be in accordance with the procedures set forth in § 223-~~

~~55C of Chapter 223, Zoning.~~ Failure by the Zoning Board of Appeals to take action within the prescribed period of time shall constitute approval of the application.

- F. All decisions of the Zoning Board of Appeals shall be in writing. A copy shall be sent to the applicant, and a copy shall be filed with the City Clerk. The Board's decision shall state the reasons for approving or denying the application. If the Zoning Board of Appeals approves the application, the Board shall issue a certificate of economic hardship.

§ 134-~~10~~ 9. Enforcement.

All work performed pursuant to a certificate of appropriateness issued under this chapter shall conform to any requirements included therein. It shall be the duty of the Building Inspector to inspect periodically any such work to assure compliance. In the event that work is found that is not performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Planning Board, the Building Inspector shall issue a stop-work order, and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.

§ 134-~~11~~ 40. Penalties for offenses.

- A. Failure to comply with any of the provisions of this local law shall be deemed a violation, and the violation is subject to the penalties provided in § 223-53 of Chapter 223, Zoning.
- B. The City Council is also authorized to institute any and all actions required to enforce this chapter. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

§ 134-~~12~~ 44. Fees.

- A. Each application for a certificate of appropriateness shall be accompanied by a fee, in an amount set by the City Council, payable to the City Clerk.
- B. The applicant may be charged a fee by the Planning Board for the actual cost of preparation and publication of each public notice of hearing on the application. Said fees shall also be fixed from time to time by resolution of the City Council.

§ 134-13. Assessment abatement.

Any person who is granted a certificate of appropriateness and performs the work detailed in the application submitted to the Planning Board will not be subject to an increase in assessment for the subject property as a result of the improvements made to the buildings and structures on said property. This clause does not apply to applicants who also receive a special permit as set forth in § 223-18 of Chapter 223, Zoning.

~~§ 134-14. Additional areas:~~

In accordance with § 134-6, the following landmarks, properties and/or historic districts are added:

~~A. Properties added 5-17-1999 by L.L. No. 1999:~~

Parcel I.D.	Location	Owner Name
6054-13-126252	250 Howland Avenue	University Settlement Camp Society of New York
6054-17-047180	300 Howland Avenue	Craig House
6054-17-025161	310 Howland Avenue	Stephen Fleming and Donna Landstreet
6054-17-075135	330 Howland Avenue	Scenic Hudson
A portion of 6054-14-259407 as shown on map^H	150 Howland Avenue	Beacon Hills Development Corporation

~~B. The following landmarks and districts are hereby added to the Historic District and Landmark Overlay Zone. The attached map, entitled Proposed Additions to Historic District and Landmark Overlay Zone, and dated May 12, 2006, shows the respective location of each of the following:~~

- ~~(1) Gateway to Mt. Beacon Park (Mount Beacon Incline Property; on National Register).~~
- ~~(2) Peter Dubois House, 36 Slocum Road; on National Register.~~
- ~~(3) Old Matteawan State Hospital buildings and grounds.~~
- ~~(4) Fountain Square (East Main Street), including Leonard Street (Alice Judson House, Dr. Jennings/Leonard House, Catholic Church).~~
- ~~(5) Byrnesville Cemetery, South Avenue (purported burial ground of Roger Brett).~~
- ~~(6) H. W. Sargent's "Wodenethe": two gatchouses, South Avenue and Wodenethe Drive.~~
- ~~(7) Methodist Cemetery, North Walnut Street.~~
- ~~(8) Old stone houses (2), Overlook Avenue near Stone Street (houses date back to late 18th Century).~~
- ~~(9) Old Tioronda Hat Shop and Madam Brett Park (site of original Brett mill), South Avenue, dates to 1879.~~

- (10) — ~~Peter Schenck House, adjoining Tallix property, Blackburn Avenue — Schenck Estate.~~
- (11) — ~~Russell Avenue, from First Street to Union Street, cluster of historic homes; 1st Highland Hospital; Mayor Russell's House; Ticehurst Home dates to 1840s (excluding 40 Russell Avenue).~~
- (12) — ~~Calvert Vaux House, South Avenue.~~
- (13) — ~~Chrystie House, South Avenue.~~
- (14) — ~~1 East Main.~~
- (15) — ~~10 East Main~~
- (16) — ~~South Street (excluding 32 South Street).~~
- (17) — ~~North Street (excluding 19 North Street).~~
- (18) — ~~St. Joachim's Church and Old Cemetery.~~
- (19) — ~~St. John's Church.~~
- (20) — ~~AME Zion Church, Academy Street.~~
- (21) — ~~Springfield Baptist Church, Mattie Cooper Street Square.~~
- (22) — ~~Fairview Cemetery. Washington Avenue.~~
- (23) — ~~Northwest corner of Teller and Rombout Avenues, 2nd Empire brick home.~~

~~C. Property added May 17, 2010, by L.L. No. 5 of 2010:~~

Parcel I.D.	Location	Owner Name
130200-6054-21-065896	211 Fishkill Avenue	Beacon School District

SECTION 2. Chapter 223, Section 24.7, Subsection D of the Code of the City of Beacon is hereby amended as follows

§ 223-24.7 Uses permitted by special permit in the Historic District and Landmark Overlay Zone

...

D. Findings

- (1) The City Council must make the following findings before special permit approval is granted:
 - (a) Any exterior restoration shall maintain the architectural and historic integrity of the structure. Any new construction shall be compatible with neighboring structures.
 - (b) The proposed use is compatible with the neighborhood, and activities permitted within the structure can be adequately buffered from any surrounding residential homes.
 - (c) The resulting traffic generation will not overburden existing roads, and adequate parking can be provided without unduly destroying the landscape or the setting of the structure.
 - (d) The proposed use is appropriate to the structure, will aid in the preservation of the structure and will not result in undue alterations or enlargement of the structure.
- (2) These standards shall be in addition to the general special permit standards set forth in § 223-18 of this chapter and the standards set forth in §.134-7.

Section 3. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 134 and Chapter 223 of the City of Beacon are otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 4. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 5. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is

hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 6. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.



Memorandum

Planning Board

TO: Mayor Randy Casale and City Council Members

FROM: Planning Board Chairman Gunn and Planning Board Members

RE: City Council Request to Review Proposed Local Law to Amend Chapters 134 and 223 of the City Code – Historic Preservation

DATE: March 14, 2018

As requested the Planning Board reviewed the proposed local law to amend Chapters 134 and 223 of the Code of the City of Beacon regarding Historic Preservation at its March 13, 2018 meeting. A lengthy review and discussion of the proposed law took place with the City Planner, City Attorney and Building Inspector Tim Dexter. After careful consideration members voted unanimously to recommend the following revisions to the local law:

- 1. Add the following to Section 134-7 of the local law regarding “Criteria for approval of a certificate of appropriateness or special permit in the HDLO”:**
Standards using the verb "shall" are required; "should" is used when the standard is to be applied unless the Planning Board finds a strong justification for an alternative solution in an unusual and specific circumstance; and "may" means that the "standard" is an optional guideline that is encouraged but not required.
- 2. Revise Section 134-8.E of the local law to strike the last sentence, as set forth below:**
The Planning Board shall approve, deny or approve the permit with modifications within 45 days from receipt of the completed application. The Planning Board may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Notice of the public hearing shall be provided by the applicant in the same manner as required in § 223-61.2.B. ~~Failure by the Planning Board to take action within the prescribed period of time shall constitute approval.~~
- 3. Revise Section 134-9.E of the local law to strike the last sentence, as set forth below:**
The Zoning Board shall make a decision within 30 days of the conclusion of the hearing on the application. The Board's decision shall be in writing and shall state the reasons for granting or denying the hardship application. ~~The Zoning Board's review of said hardship application shall be in accordance with the procedures set forth in § 223-55C of Chapter~~

~~223, Zoning. Failure by the Zoning Board of Appeals to take action within the prescribed period of time shall constitute approval of the application.~~

4. The Planning Board is concerned about the absence of any flexibility in the application of some of the criteria, particularly where there is no ability for an applicant to seek a waiver or variance from the criteria. Therefore, the Planning Board recommended revising Section 134-7.B of the local law to change “shall” to “should,” as set forth below (revisions are indicated in bold, italicized text):

- (1) The ~~general~~ design, character, and appropriateness to the property of the proposed alteration or new construction.
 - (a) Construction shall build on the historic context with applications required to demonstrate aspects of inspiration or similarities to adjacent HDLO structures or historic buildings in the surrounding area.
 - (b) Compatibility does not imply historic reproduction, but new architecture shall also not arbitrarily impose contrasting materials, scales, colors, or design features.
 - (c) The intent is to reinforce and extend the traditional patterns of the HDLO district, but new structures may still be distinguishable in up-to-date technologies and details, most evident in window construction and interiors.
 - (d) Exterior accessory elements, such as signs, lighting fixtures, and landscaping, shall emphasize continuity with adjacent HDLO properties and the historic characteristics of the sidewalk and streetscape.
 - (e) ***Where possible, parking shall be placed towards the rear of the property in an unobtrusive location with adequate screening from public views.***
- (2) The scale and height of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood.
 - (a) Any addition that is deemed necessary to an historic structure ***shall should*** be placed toward the rear, or at least recessed, so that character-defining features are not damaged or obscured and so that the historic structure remains more prominent than the subsidiary addition.
 - (b) The height of any new building facades in the HDLO ***shall should*** reflect the typical heights of adjacent historic structures.
 - (c) Larger buildings or additions ***shall should*** incorporate significant breaks in the facades and rooflines, generally at intervals of no more than 35 feet.
- (3) ~~Texture and materials~~ Architectural and site elements and their relation to similar features of other properties in the ~~neighborhood~~ HDLO.
 - (a) It is not appropriate to disrupt the relationship between an historic building and its front yard or landscape, including screening historic properties from traditional street views by high walls or hedges.
 - (b) Historic storefronts, porches, cornices, window and door surrounds, or similar architectural features ***shall should*** not be enclosed, obscured, or removed so that the character of the structure is substantially changed.
 - (c) Deteriorated building features ***shall should*** be repaired rather than being replaced and, if not repairable, ***shall should*** be replicated in design, materials, and other historic qualities.

- (d) New buildings in the HDLO ~~shall~~ *should* have a top-floor cornice feature and first-floor architectural articulation, such as an architecturally emphasized entrance doorway or porch, to accent the central body of the building.
- (e) Architectural features and windows shall be continued on all sides that are clearly visible from a street or public parking area, avoiding any blank walls, except in cases of existing walls or potential common property walls.
- (f) New HDLO buildings shall have a front entrance door facing the primary street and connected to the sidewalk.
- (g) Primary individual window proportions shall be greater in height than width, but the approving body may allow exceptions for storefront, transom, and specialty windows. Mirrored, reflective, or tinted glass and all-glass walls, except greenhouses, shall not be permitted. Any shutters shall match the size of the window opening and appear functional.
- (h) Finish building materials should be wood, brick, traditional cement-based stucco, stone, smooth cast stone, smooth-finished fiber-cement siding, or other materials deemed acceptable by the approving body. Vinyl, aluminum or sheet metal siding or sheet trim, exposed concrete blocks or concrete walls, plywood or other similar prefabricated panels, unpainted or unstained lumber, synthetic rough-cut stone, synthetic brick, synthetic stucco, exterior insulation and finishing system (EIFS), direct-applied finish system (DAFS), and chain link, plastic, or vinyl fencing shall not be permitted.
- (i) Materials and colors should complement historic buildings on the block. Fluorescent, neon, metallic, or other intentionally garish colors, as well as stripes, dots, or other incompatible patterns, shall be prohibited.
- (j) Mechanical equipment and refuse containers shall be concealed from public view by approved architectural or landscaping elements and shall be located to the rear of the site. Window or projecting air conditioners shall not be permitted on the front façade of new buildings or additions.

If you have any questions, please feel free to contact me.

City of Beacon Council Agenda
3/19/2018

Title:

Resolution authorizing the Beacon City Council to enter into an agreement with agreement with the Energy Improvement Corporation in connection with the City of Beacon's participation in the Energize NY Benefit Finance Program

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso Energize NY	Cover Memo/Letter
Energize NY Benefit Finance Program Agreement	Agreement



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. ___ OF 2018**

**A RESOLUTION TO ENTER INTO AN AGREEMENT WITH THE ENERGY IMPROVEMENT
CORPORATION IN CONNECTION WITH THE CITY OF BEACON'S PARTICIPATION IN THE
ENERGIZE NY BENEFIT FINANCE PROGRAM**

BE IT RESOLVED, that the Beacon City Council hereby enters into an agreement with the Energy Improvement Corporation ("EIC") in connection with the City of Beacon's participation in the Energize NY Benefit Finance Program.

Resolution No. _____ of 2018								Date: <u>2018</u>	
<input type="checkbox"/> Amendments								<input type="checkbox"/> 2/3 Required	
<input type="checkbox"/> Not on roll call								<input type="checkbox"/> 3/4 Required	
<input type="checkbox"/> On roll call									
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent		
		Terry Nelson							
		Jodi McCredo							
		George Mansfield							
		Lee Kyriacou							
		John Rembert							
		Amber Grant							
		Mayor Randy J. Casale							
Motion Carried									

ENERGY IMPROVEMENT CORPORATION
AMENDED MUNICIPAL AGREEMENT

This Agreement made as of this ___ day of March, 2018 (the “Agreement”), by and between the City of Beacon (the “Municipality”) and the Energy Improvement Corporation (“EIC”) (both the Municipality and EIC may hereinafter be referred to individually as a “Party” and collectively as the “Parties”), sets forth the duties and obligations of each Party in connection with the Municipality’s participation in the Energize NY Benefit Finance Program (the “Program”).

WHEREAS, EIC is a local development corporation duly formed under Section 1411 of the Not-For-Profit Corporation Law of the State of New York, for the purpose of promoting, facilitating and financing energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems (as such terms are defined in Section 119-ff of the General Municipal Law of the State of New York) (collectively, the “Energy Improvements”) on properties within its Participating Municipalities (as defined below), thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government; and

WHEREAS, Participating Municipalities are those municipalities within the State of New York that have: (1) established by local law, pursuant to Municipal Home Rule Law and Article 5-L of the General Municipal Law of the State of New York, a sustainable energy loan program for the provision of financing to the owners of real property located within the Participating Municipality for Energy Improvements, (2) by virtue of signing this Agreement with EIC and pursuant to Article 5-G of the New York State General Municipal Law, authorizes EIC to act on behalf of the Participating Municipality and other Participating Municipalities to carry out the Program through which, among other things, financing is provided to property owners within such Participating Municipality, and (3) satisfied the minimum criteria established by EIC to admit new Participating Municipalities; and

WHEREAS, the Municipality previously executed the EIC Municipal Agreement on July 6, 2015 and the Municipality adopted Local Law No. 5-2015 on July 6, 2015, and has adopted the amended Local Law 6- 2018 on March 5, 2018 pursuant to Article 5-L of the General Municipal Law of the State of New York, which Local Law also authorized EIC to act on its behalf in carrying out its Program; and

WHEREAS, EIC and the Municipality now desire to enter into this Amended Municipal Agreement to reflect amendments to the Program.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Duties of EIC

It is understood by the Parties that EIC will be responsible for the performance of the following duties:

- a) The development of finance products for the financing of Energy Improvements (each a “Product”) that will further the purposes of the local laws adopted by the Participating Municipalities and of EIC, which Products shall be submitted to the governing Board of EIC for its consideration and review.
- b) The establishment of one or more Products that, among other things, provide financing to property owners within such Participating Municipality in order to promote, facilitate and finance energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems. EIC has currently established two Products, the Energize NY PACE Finance 1.0 (ENY PACE 1.0) and the Energize NY PACE Finance 2.0 (ENY PACE 2.0), which are described in Attachments 1 and 2.
- c) Receive and review applications submitted by property owners within the Municipality for financing of Energy Improvements (“Property Owner(s)”), and the approval or disapproval of such applications in accordance with underwriting procedures and requirements established by EIC.
- d) Review the applications, energy assessments and scopes of work prepared for and by the Property Owners to establish the amount of each financing to be approved pursuant to the requirements of the Products. The governing Board of EIC reserves the right to reject an application for financing for any reason.
- e) Execute finance agreements (the “Energize NY Finance Agreements” or “Finance Agreements”) by and between EIC (on behalf of the Municipality) and the Property Owners for financing of Energy Improvements. The Finance Agreements shall set forth the terms and conditions for the disbursement and repayment of financing and the duties and obligations of each Property Owner and EIC with respect to the acquisition, construction and installation of Energy Improvements. Upon execution of the Finance Agreement by the Property Owner and EIC, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property.” Copies of all executed Finance Agreements for all Benefited Properties within the Municipality shall be provided to the Municipality by EIC.
- f) Receive and review the certificates of completion submitted by the Property Owners of Benefited Properties (or the contractor hired by the owner of a Benefited Property) during or following installation or construction of Energy Improvements on such Benefited Property, and disburse funds to the Property Owner of the Benefited Property or his/her/its agent upon approval of such certificates in accordance with the terms of the Finance Agreement and the applicable Product.

- g) Deliver to the Municipality an annual report (the “Annual Report”) three months prior to when municipal taxes are due which shall contain information related to each Benefited Property within the Municipality through the end of the immediately preceding calendar year, including:
- i. A list of each newly approved Benefited Property for which the Property Owner or previous Property Owner of the Benefited Property executed a Finance Agreement within the annual time period covered by such report (for which a charge shall be added by the Municipality to its tax rolls in accordance with Paragraph 2b below). All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
 - ii. A list of each existing Benefited Property for which the Property Owner or previous Property Owner of such Benefited Property executed a Finance Agreement. All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
 - iii. A list of each Benefited Property within the Municipality where all obligations under the Finance Agreement have been satisfied or paid in full during the calendar year including the satisfaction date and a copy of the notice of satisfaction;
 - iv. For each Benefited Property (including each newly approved Benefited Property) for which payments remain due under the Financing Agreement:
 - a. the date of the Finance Agreement,
 - b. the original principal amount of the financing,
 - c. the total principal balance and accrued interest outstanding, and
 - d. the annual payment due to EIC (which shall include principal and accrued interest) associated with such Benefited Property.
 - v. the total annual payment due to EIC from all Benefited Properties in the Municipality (which shall include principal and accrued interest), which amount shall be paid by the Municipality within thirty (30) days of the date upon which payment is due to be made to the Municipality as payment of the municipal tax bill in accordance with Paragraph 2(c) and the balance of any delinquent charge payment reported by the Municipality during the term of the Financing Agreement pursuant to Paragraph 2(d) and;
 - vi. All other information EIC may deem to be relevant to each Benefited Property within the Municipality.

- f) Create accounts (the “EIC Trust Accounts”) to be held by a trustee under the applicable trust indenture authorized by EIC for the purpose of accepting payments from the Municipality made in accordance with Paragraph 2(d) below, and create a separate account (the “EIC Program Administration Fund Account”) to receive the transfer of those funds deposited within the EIC Trust Accounts that constitute payment of EIC administrative fees;
- g) Provide customer service by telephone to the Municipality during the hours of 9:00 a.m. through 5:00 p.m. Monday through Friday, Eastern Standard Time, excluding state and federal holidays;
- h) Upon EIC’s receipt of payment in full under a particular Finance Agreement, send a letter of satisfaction by email to the Municipality notifying it that such Property Owner or subsequent owner of the Benefited Property has satisfied his/her/its obligations under the terms of the Finance Agreement;

2. Duties of the Municipality

It is understood by the Parties that the Municipality will be responsible for the performance of the following duties:

- a) Maintain copies received from EIC of each Finance Agreement for a Benefited Property throughout the term of the Finance Agreement relating to such Benefited Property, which shall be maintained until all obligations of the owner of such Benefited Property that are set forth in the Finance Agreement have been satisfied.
- b) Within thirty (30) days of receipt of the Annual Report, add a charge to its tax rolls for each newly approved Benefited Property listed therein, and include such charge in the next ensuing tax levy so that such charge shall be included on and due in the same manner and at the same time and in the same installments as the municipal taxes on real property are due within the Municipality and shall become delinquent at the same times, shall bear the same penalties and interest after delinquency, and shall be subject to the same provisions for redemption and sale as the general municipal taxes on real property of the Municipality.
- c) Within thirty (30) days of the date payment of municipal taxes is due to be made to the Municipality, including the charge pursuant to a Finance Agreement, remit payment to the EIC Trust Accounts in the amount equaling the total annual payments due to EIC from each Benefited Property within the Municipality, regardless of whether the Municipality actually has received such payments from the owner of the Benefited Property. Failure by the Municipality to deliver payments to EIC shall be considered an event of default hereunder.
- d) Deliver to EIC an annual delinquency report (the “Delinquency Report”) no later than (90) days after the due date for the municipal taxes, including the charge, which shall: (i) list each Benefited Property that is delinquent in charge payments

owed for such Benefited Property, (ii) provide the amount owed to the Municipality by the owner of such Benefited Property (including penalties and interest on delinquent charge payments), and (iii) outline the steps taken or to be taken and progress made in recovering delinquent charge payments from the owner of such Benefited Property.

- e) Make all reasonable efforts to assist EIC in carrying out the Program within the Municipality.

3. Alternative Products and Modifications

- a) A Municipality that became a Participating Municipality prior to March 1, 2018 may choose to participate in either ENY PACE 1.0 or ENY PACE 2.0 through written notice to EIC of its election. Until such time as the Municipality provides written notice of its choice to participate in ENY PACE 2.0, it shall be deemed to have chosen to remain in ENY PACE 1.0 and financings within the Municipality will be made only under the terms of PACE 1.0. Municipalities that become Participating Municipalities after March 1, 2018 shall participate in PACE 2.0 only. Should EIC develop new Products in the future, participation in the offering of such Products shall be subject to the eligibility and other requirements of any such new Product, and require written notice from the Municipality that it wishes to participate in such Product.
- b) The Municipality may at any time modify the Program by limiting the types of properties which may receive financing for Energy Improvements and/or the amount of financing available within the Municipality and, if the Municipality is offering PACE 2.0, whether construction financing shall be permitted in the Municipality. The Municipality shall provide written notice to EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

4. Non – Payment

- a) Failure of the Municipality to deliver payments to EIC within thirty (30) days of when due to the Municipality, shall be considered an event of default and EIC shall be entitled to pursue any one or more of the remedies set forth below.
- b) No Participating Municipality shall be responsible for the deficient payment of another Participating Municipality.

5. Terms of Membership

The Municipality understands and agrees that membership in EIC is at the discretion of the Board of Directors of EIC and is conditional upon satisfying the membership criteria established by the EIC Board, as may be amended from time to time at the sole discretion of the Board, as well as compliance with the terms of the By-Laws of EIC.

If the Municipality participates in PACE 1.0 and its bond credit rating drops below “A” as rated by Standard and Poors and/or “A2” as rated by Moodys and/or “A” by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality. If the Municipality participates in PACE 2.0 and its bond credit rating drops below “BBB-“ as rated by Standard and Poors and/or “Baa3” as rated by Moodys and/or “BBB-” by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality, unless a capital provider to EIC agrees to provide credit to financings in that Municipality.

6. Reserve Funds and Permanent Loss

- a) EIC maintains one or more reserve funds (each a “Reserve Fund”, collectively, the “Reserve Funds”) to protect and compensate EIC, Participating Municipalities, lenders of funds to EIC, and other third parties approved by EIC against potential losses, including without limitation losses suffered by a Participating Municipality resulting from defaulted charge payments only in the event of a Permanent Loss (defined below) with respect to a Benefited Property under ENY PACE 1.0. Certain Reserve Funds may be restricted in that they may only be used in conjunction with financings made to properties located within one or more designated Participating Municipalities. Reserve Funds designated for ENY PACE 1.0 and ENY PACE 2.0 shall be held separate and apart from each other and any reserves established for ENY PACE 1.0 and ENY PACE 2.0 may contain additional restrictions regarding their purposes and uses as required by the applicable Products and indenture. Additional Reserve Funds may be established in the future in connection with new Products implemented by EIC. All Reserve Funds will be held at a bank or trust company located and authorized to do business in New York State and if applicable, held by the trustee under the applicable indenture. Reserve Funds will be invested in accordance with the investment guidelines approved by EIC (the “Investment Guidelines”) as may be amended from time to time.
- b) EIC reserves the right to refuse to make a financing to a property located within the Municipality in the event EIC determines, in its sole discretion, that there are inadequate reserve funds.
- c) A loss shall not be deemed a permanent loss until the Participating Municipality has exhausted all remedies at law in an effort to collect the defaulted charge payments, including but not limited to the redemption and sale of the Benefited Property where the proceeds are not sufficient to recover all amounts paid by the Municipality to EIC after the proceeds of such sale have been proportionately applied to all amounts owed to the Municipality at the time of such sale as a result of the non-payment of taxes (“Permanent Loss”) . In order to collect from the Reserve Fund in the event of a Permanent Loss, the Municipality must provide EIC with all documentation as may be reasonably requested by EIC to document such Permanent Loss and must not be in default to EIC, including having made all payments to EIC when due.

7. Remedies Upon Default

Should the Municipality default in any of its obligations hereunder, including but not limited to failure to make payments to EIC as required hereunder, EIC shall be entitled to any remedy it may have at law and as set forth below. EIC may utilize any one or all of these remedies at EIC's sole discretion:

- a) If the Municipality fails to make a required payment to EIC and the Municipality collects penalties or interest from the Property Owner for late payment, the Municipality shall pay to EIC all such penalties or interest attributable to the charge collected by the Municipality on behalf of EIC.
- b) EIC shall have the right to discontinue providing any new financings to Properties located within the Municipality.
- c) EIC may suspend the Municipality's membership in EIC.

This Agreement does not create a debt of the Municipality and the payments by the Municipality payable hereunder are contractual obligations of the Municipality that are subject to and dependent upon appropriations being made from time to time by the Municipality for such purpose and the performance by EIC of its obligations hereunder. The Municipality agrees that its failure to appropriate funds sufficient to make payments due hereunder shall constitute a default under this Agreement.

8. Formation; Authority

Each Party represents and warrants to the other that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third party is required for either Party's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of each Party has been and is duly authorized to bind his/her respective Party.

9 No Violation or Litigation

The performance by each Party of its respective obligations contained in this Agreement will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant or security instrument or any law, regulation or ordinance by which the Party is bound. There is no litigation, action, proceeding, investigation or other dispute pending or threatened against either Party which may impair its ability to perform its respective duties and obligations hereunder.

10. Notices

Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be delivered electronically and in writing by certified

mail, return receipt requested as follows:

EIC:
Mark Thielking
Executive Director
Energy Improvement Corporation
425 Cherry Street
Bedford Hills, NY 10507
E-mail: mark@energizeny.org

Kim Kowlaski
Secretary
Energy Improvement Corporation
425 Cherry Street
Bedford Hills, NY 10507
secretary@energizeny.org

With a copy to:

James Staudt, Esq.
McCullough, Goldberger & Staudt, LLP
1311 Mamaroneck Avenue, Suite 340
White Plains, NY. 10605
E-mail: jstaudt@mgslawyers.com

MUNICIPALITY: CITY OF BEACON
Randy Casale
Mayor
City of Beacon
1 Municipal Plaza
Beacon, NY 12508
mayor@cityofbeacon.org

Anthony Ruggiero
City Administrator
City of Beacon
1 Municipal Plaza
Beacon, NY 12508
aruggiero@cityofbeacon.org

With a copy to:

Nicholas Ward-Willis
Keane & Beane, P.C.
445 Hamilton Avenue
White Plains, NY 10601

nward-willis@kblaw.com

Either Party hereto may change its address for purposes of this paragraph by providing written notice to the other party in the manner provided above.

11. Governing Law.

This Agreement shall be construed and governed in accordance with the laws of the State of New York. Any legal action to be brought under this Agreement must be instituted in State or Federal Courts having jurisdiction located in Westchester County, New York.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

Date: _____, 20__

Energy Improvement Corporation

By: _____
PRINT NAME:

Date: _____, 20__

Municipality Name: _____

By: _____
PRINT NAME:

ATTACHMENT 1

EIC MUNICIPAL AGREEMENT - Attachment 1	ENERGIZE NY PACE 1.0 PRODUCT DESCRIPTION
MAXIMUM AMOUNT OF FINANCING AVAILABLE	10% of Appraised Value
MINIMUM FINANCE AMOUNT	\$5,000
LENGTH OF FINANCING TERM	Minimum term of 5 years and Maximum term of 20 Years
ELIGIBLE MUNICIPALITIES	Municipalities with a Credit Rating Above "A"
ELIGIBLE PROJECTS	Energy efficiency and renewable energy projects that comply with NYSEDA and investor owned utility programs including certain Remote Net Meter Projects
ELIGIBLE PROPERTIES	Existing buildings owned by an entity, other than an individual, including substantial renovations and new construction in the case of renewable energy projects
ELIGIBLE PROPERTY OWNERS	Not in bankruptcy; current on mortgage and property taxes for the past three years
LOAN TO VALUE (LTV) LIMITATION	Property's total amount of land secured loans is less than or equal to 90%, including the requested PACE financing
ANNUAL CASH FLOW REQUIREMENT	Estimated Annual Savings must be greater than estimated Annual Finance Charge
COST EFFECTIVENESS/SIR TEST	Estimated Savings must be greater than total cost of improvements
EIC MEMBER OBLIGATED TO PAY DURING DELINQUENCY	Yes
ABILITY TO ADD PACE TAX CHARGE TO BILL DURING CONSTRUCTION	No
MUNICIPAL RESERVE POOLS	Yes
LINK TO ENERGIZE NY PACE 1.0 UNDERWRITING STANDARDS	http://energizeny.org/images/uploads/ENY_PACE_1dot0_Standards.pdf

ATTACHMENT 2

EIC MUNICIPAL AGREEMENT - Attachment 2	ENERGIZE NY PACE 2.0 PRODUCT DESCRIPTION
MAXIMUM AMOUNT OF FINANCING AVAILABLE	35% of the property's appraised value
MINIMUM FINANCE AMOUNT	\$10,000
LENGTH OF FINANCING TERM	Minimum term of 5 years and Maximum term of 20 Years
ELIGIBLE MUNICIPALITIES	Municipalities with a Credit Rating Above Investment Grade, provided that municipalities rated A or better will have access to reserve pools that are separate from those for Below A rated municipalities
ELIGIBLE PROJECTS	Energy efficiency and renewable energy projects, including remote net metering, that comply with NYSERDA and investor owned utility programs or otherwise meet NYSERDA's Commercial PACE Guidelines; renewable energy projects on new construction and substantial renovations are eligible
ELIGIBLE PROPERTIES	Existing buildings owned by an entity, other than an individual, including new construction and substantial renovations in the case of renewable energy projects
ELIGIBLE PROPERTY OWNERS	Not in bankruptcy; current on mortgage and property taxes for the past three years
LOAN TO VALUE (LTV) LIMITATION	Property's total amount of land secured loans is less than or equal to 90%, including the requested PACE financing
ANNUAL CASH FLOW REQUIREMENT	No
COST EFFECTIVENESS/SIR TEST	Yes, must satisfy NYSERDA's cost effectiveness test, where the cumulative estimated savings must exceed the total cost of the project
EIC MEMBER OBLIGATED TO PAY DURING DELINQUENCY	Yes
ABILITY TO ADD PACE TAX CHARGE TO BILL DURING CONSTRUCTION	Yes
MUNICIPAL RESERVE POOLS	Yes
Link to NYSERDA C-PACE Guidelines	https://www.nysenda.ny.gov/cpace-guidelines
Link to Energize NY PACE 2.0 Underwriting Standards	http://energizeny.org/images/uploads/ENY_PACE_2dot0_Standards.pdf

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to authorize renewal of Farmers Market Contract

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso Farmers Market	Resolution
Farmers Market Agreement	Agreement



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. ____ OF 2018**

**RESOLUTION APPROVING THE CITY OF BEACON'S FARMERS MARKET
AND THE EXECUTION OF CERTAIN AGREEMENTS**

WHEREAS, CGF is interested in renewing their license to operate the City of Beacon Farmers Market for 2018 Veterans Place.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Beacon hereby approves the City of Beacon Farmers Market for the year 2018 and authorizes the execution of a renewed License Agreement with CGF.

Resolution No. _____ of 2018								Date: <u>2018</u>	
<input type="checkbox"/> Amendments								<input type="checkbox"/> 2/3 Required	
<input type="checkbox"/> Not on roll call								<input type="checkbox"/> 3/4 Required	
<input type="checkbox"/> On roll call									
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent		
		Terry Nelson							
		Jodi McCredo							
		George Mansfield							
		Lee Kyriacou							
		John Rembert							
		Amber Grant							
		Mayor Randy J. Casale							
Motion Carried									

City of Beacon Farmers Market License Agreement

This Agreement made as of the ____ day of March, 2018, by and between the City of Beacon (the “City”), a New York municipal corporation with offices at 1 Municipal Plaza, Beacon, New York 12508 (“City”), and Common Ground Farm, Inc. (“CGF”), a New York domestic not-for-profit corporation with offices at P.O. Box 443, Beacon, NY 12508.

WHEREAS, this Agreement sets forth the rights and obligations of the parties in connection with the operation of the Farmers Market.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is agreed as follows:

1. Grant of License. The City hereby grants CGF a license (“License”) to operate the Farmers Market and its related activities and events within the City of Beacon at the location and times specified below.

2. Term of License. The term (“Term”) of this Agreement shall be from April 22, 2018 to November 18, 2018, excluding Sunday, September 30, 2018 for Spirit of Beacon Day(or October 7, 2018 if the September 30th date is rained out) and the Sunday of the Beacon Car Show and any other dates upon reasonable notice.

3. Location of Market. CGF shall operate the Farmers Market at Veterans Place between Main Street and Henry Street on Sundays from 8:00am to 4:00 pm only, including setting up and breaking down.

4. Operation of Market. CGF shall promote and advertise the Market. CGF shall operate and manage the Market in accordance with the CGF’s Rules and Regulations, subject to any and all Federal, State and local laws having jurisdiction over CGF and the Farmers Market. A copy of the current rules and regulations is attached as Exhibit “A” to this Agreement, and CGF shall provide the City with updated rules and regulations as they are amended from time to time. CGF shall be solely responsible for the coordination and management of farmers, producers, and vendors. All Farmers Market participants (i.e. vendors, farmers, etc.) shall complete an indemnification agreement in favor of the City of Beacon in the form annexed hereto as Exhibit “B”. The sidewalk shall be kept clear to allow access to the loading door of the Towne Crier Café.

5. Additional Activities Permitted. CGF and the vendors may not provide music of any type, whether live, recorded, amplified or of any other type. Cooking demonstrations shall be permitted, provided propane tanks are properly secured and not left open to the public and are otherwise in compliance with all applicable laws, rules and regulations. Wine and beer tasting is permitted by vendors selling wine at Farmers Market where said vendors possess all required licenses. No open consumption of alcoholic beverages is otherwise permitted. CGF may also provide activities of interest to children.

6. Products Sold. CGF shall permit its vendors to sell only those products that are pre-approved by CGF, or its designee. No food shall be cooked or prepared and served to the public by any vendor not located in the City of Beacon. Except that the following vendors may continue to cook or prepare food to serve to the public for the term of their Vendor Agreement: Farmers & Chefs and Nana's Homemade. If these vendors are removed from the Farmers Market, they must be replaced with local businesses.

7. Prohibited Sales From Vehicles. There shall be no sales from the surfaces of pick-up trucks, trailers or other vehicles. All products must be sold from a stationary stall.

8. Cancellations. The City reserves the right to suspend this License on any given scheduled market day when snow fall, hurricane, or other severe weather event renders the Licensed Area unsafe or unsuitable for use by the Farmers Market and the City cannot make the Licensed Area safe or suitable in time for use on the scheduled market day or the City needs the licensed area for a public purpose. The City shall incur no liability to the Farmers Market, its agents, vendors, invitees or employees, by exercising its right pursuant to this paragraph.

9. License Fee. A fee of \$100.00 per month that the Market is operated, without being pro-rated, shall be paid on July 1st and November 1st.

10. Personnel and Equipment.

(a) A Market Manager, or a designated representative of CGF will be present and supervising the Farmers Market, its vendors and activities during all hours of operation. CGF shall provide all necessary equipment to operate the Farmers Market.

(b) Farmers Market participants shall be required to provide their own means of trash removal and shall not use any City receptacles for disposal of garbage or recyclables generated from their operation at the Farmers Market.

(c) CGF shall install a portable toilet near the Farmer's Market at CGF's expense. The location of the portable toilet shall not block access to the market or to parking. The portable toilet shall be maintained in a sanitary and operable condition at all times. CGF shall also provide appropriate signage directing individuals to the portable toilet. The City may, at any time, require CGF to move or perform maintenance on the portable toilet.

(d) CGF acknowledges and represents that all personal property and equipment used for and in connection with the Farmers Market is owned or leased by CGF or its vendors. CGF shall defend, indemnify and hold the City harmless against any and all claims or causes of action made by any person or entity, arising out of, or resulting from the use of or rights to such personal property or equipment.

11. Farmer's Market Committee. CGF shall maintain a Farmer's Market Committee and provide the City's Recreation Director with the name, phone number and e-mail addresses of the Committee members.

12. Insurance and Indemnity.

(a) CGF will provide the City with evidence of all necessary insurance, as of the date hereof, which will include, at a minimum, General Liability Insurance in the sum of One Million and 00/100 (\$1,000,000.00) Dollars each occurrence and Two Million and 00/100 (\$2,000,000.00) Dollars annual aggregate. The City shall be named as an Additional Insured on said policies.

(e) If CGF hires any employees during the term of this Agreement, it shall obtain statutorily required Workmen's Compensation Insurance.

(f) CGF and the Market Manager shall defend, indemnify and hold the City harmless against any and all claims or causes of action made by any person, arising out of, or resulting from the operation of the Farmers Market or arising out of any other alleged conduct of the CGF or its vendors in connection with the Farmers Market.

(g) CGF shall cause the Market Manager to provide the City Clerk with (i) the original indemnification agreements obtained from each vendor; and (ii) copies of all certificates of insurance provided by each vendor to CGF, which shall name the City as additional insured.

13. Conduct of CGF. CGF and the Market Manager and their employees and vendors will at all times conduct business in a courteous and hospitable manner during operation of the Farmers Market.

14. Modifications and Notices.

(a) Wherever in this Agreement notices are required to be delivered by one party to the other, then the same shall be in writing by first-class mail or personal delivery and addressed to the City at City Hall at 1 Municipal Plaza, Beacon, New York 12508, and to CGF at the address set forth above. Any modifications to this Agreement are required to be in writing and executed by both parties. This Agreement contains the entire understanding between the parties.

(b) The emergency contacts for CGF are: Ben Giardullo, 845-219-8572, bgiardullo@gmail.com and Sara Sylvester, 516-526-3187, market@commongroundfarm.org.

15. Agreement Non-assignable. The License granted hereunder and this Agreement, and the obligations and privileges conferred on CGF in this Agreement are not assignable by CGF without the City's prior written consent.

16. Authorities. CGF will secure all necessary permits, licenses and certificates from the appropriate regulatory agencies, including the City and the Dutchess County Department of Health, if any are required, and shall maintain compliance with all local, federal and state laws ("Government Approvals"). CGF will furnish all necessary documentation to the City, upon request, demonstrating compliance by it or its vendors with Government Approvals. CGF will keep accurate records of its enforcement of the Rules and Regulations, and acknowledges the right of the City to review its

records for purposes of assuring continued compliance with Government Approvals, the Rules and Regulations, and the terms of this Agreement. All such records shall be made available for review by the City upon the City's request upon reasonable notice.

17. Maintenance. CGF will keep the License Area in a clean and orderly condition at all times and will leave the License Area in broom clean condition and will remove all of its equipment by 4 p.m. of each Sunday during the Term. Street closure barricades will be put up at 8:00 a.m. and removed by 4:00 p.m.

18. Relocation. The City shall have the right to relocate the Market upon thirty (30) days written notice to CGF if conflicts arise and/or the City receives complaints connected to the location of the Market at Veterans Place.

19. Breach of Agreement.

(a) In the event that CGF fails to pay any fees due the City under this Agreement or otherwise breaches any of the terms of this Agreement, or if the Licensed Area is needed for a public purpose, then and in said event, and upon five (5) business days written notice to CGF, the City may terminate this Agreement. The parties acknowledge that this Agreement is not a lease agreement and that the relationship between the parties is not a landlord/tenant relationship. The parties acknowledge that this Agreement is a license agreement between the parties which may be terminated pursuant to the terms herein.

(b) Further, upon such a breach and written notice as specified above, the City may, without further notice, peaceably re-enter the Licensed Area and dispossess CGF and remove its effects and hold the Licensed Area as if this Agreement had not been made. If CGF shall default prior to the commencement of any renewal of this Agreement, the City may cancel and terminate such renewal immediately by written notice.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

COMMON GROUND FARM, INC.

CITY OF BEACON

By: _____

By: _____

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

On the ____ day of _____, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

On the ____ day of _____, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, and the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

EXHIBIT B

HOLD HARMLESS AND INDEMNITY AGREEMENT

For Use by Individual Vendors:

_____ (“Indemnitor”) hereby agrees, in exchange for permission to participate in the Common Ground Farm, Inc.’s Farmers Market (“Market”) located in Beacon Market, to defend, indemnify and hold the City of Beacon and its employees, officers and agents (the “City”) harmless from any and all claims, liabilities, suits, proceedings, actions, costs and expenses, including attorney’s fees, of whatever name or nature as the same may relate, arising from Indemnitor’s participation in the Market. Said indemnification and defense by Indemnitor to the City apply to any claim, liability, suit, proceeding and action in which the City may be named as a party, and notwithstanding that Indemnitor may deem said claim, liability, suit, proceeding or action frivolous or without merit.

Signature

Name

Date

For Use by Participating Business Entities:

_____ (“Indemnitor”), through its designated agent, _____, and in exchange for permission to participate in the Common Ground Farm, Inc.’s Farmers Market (“Market”) located in Beacon, hereby agrees to defend, indemnify and hold the City of Beacon and its employees, officers and agents (the “City”) harmless from any and all claims, liabilities, suits, proceedings, actions, costs and expenses, including attorney’s fees, arising from Indemnitor’s participation, or the participation of Indemnitor’s employees or agents, in the Market. Said indemnification and defense by Indemnitor of the City shall apply to any claim, liability, suit, proceeding and action in which the City may be named as a party, notwithstanding that Indemnitor may deem said claim, liability, suit, proceeding or action frivolous or without merit. By affixing their signature hereto, the undersigned hereby represents that he or she is designated agent of Indemnitor, authorized to enter into and bind Indemnitor to this agreement.

Vendor Name

By:

Agent Signature

Date

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to Authorize renewal of Flea Market Contract

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso Flea Market	Resolution
Flea Market Agreement	Agreement



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. ____ OF 2018**

**RESOLUTION TO APPROVE A LICENSE AGREEMENT BETWEEN THE CITY OF BEACON AND
THINGS YOU LOVE EVENTS, LLC.**

WHEREAS, the City Council approves the execution of the License Agreement between the City of Beacon and Things You Love Events, LLC regarding the use of certain real property known as the Henry Street Parking Lot #1, located at the intersection of Henry Street and South Chestnut Street, Beacon, New York, as a flea market, on certain limited dates and with certain terms and conditions;

NOW, THEREFORE BE IT RESOLVED, that the Mayor of the City of Beacon or the City Administrator is authorized to execute said License Agreement with Things You Love Events, LLC and any documents consistent therewith.

Resolution No. _____ of 2018								Date: <u>2018</u>	
<input type="checkbox"/> Amendments								<input type="checkbox"/> 2/3 Required	
<input type="checkbox"/> Not on roll call								<input type="checkbox"/> 3/4 Required	
<input type="checkbox"/> On roll call									
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent		
		Terry Nelson							
		Jodi McCredo							
		George Mansfield							
		Lee Kyriacou							
		John Rembert							
		Amber Grant							
		Mayor Randy J. Casale							
Motion Carried									

LICENSE AGREEMENT

This LICENSE AGREEMENT (the “Agreement”), is made and entered into as of March ___, 2018, between the City of Beacon, a municipal corporation, duly organized and existing under the laws of the State of New York, having its principal office at One Municipal Center, Beacon, New York 12508 (hereinafter “Licensor” or the “City”) and Things You Love Events, LLC, duly organized and existing under the laws of the State of New York, having its principal place of business at 35 North Elm Street, Beacon, New York 12508 (hereinafter “Licensee”).

RECITALS

A. The City is the owner of certain real property known as the Henry Street Parking Lot #1, located at the intersection of Henry Street and South Chestnut Street, Beacon, New York (the “Property”).

B. Licensee has requested a license to enter upon and use the Property for the purpose of operating a flea market on the Property on Sundays during the months April through November, from 7:00 a.m. to 4:00 p.m.

C. Licensor is willing to grant the requested permission subject to and upon the following terms and conditions:

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) **GRANT**: Subject to the terms and conditions of this Agreement and upon representation from Licensor that it is the owner of the Property the Licensor hereby grants to Licensee a non-exclusive license (the “License”) to enter upon and use the Property solely for the purpose of the Permitted Use as defined in Paragraph Four (4) below.

(2) **TERM**: Subject to the terms of this Agreement, the term of the License shall commence upon the date of execution of this Agreement by the parties hereto and continue until November 30, 2018. The Property shall not be used by Licensee on the Spirit of Beacon day. The City further reserves the right, upon two (2) weeks prior notice, to make the Property unavailable for Licensee’s use in the event it is required for use by the City for a City event or a third party event the City has authorized to use the Property. Either party, without cause, may terminate this Agreement on thirty (30) days written notice.

(3) **FEE:** In exchange for and as consideration for this License, Licensee agrees to pay to Licensors the sum of Two Hundred and Twenty (\$220.00) Dollars for each day the flea market operates on the Property, beginning April 2, 2018, through the date of the expiration or termination of this Agreement. To the extent the flea market is unable to operate because of inclement weather or due to the actions of the City, or the Licensee advises the City in writing via e-mail to the City Administrator by 5:00 p.m. the Friday before the anticipated use, Licensee shall not be required to pay a fee for the week in question. The fee shall be payable monthly and payment shall be due on the fifteenth day of each month commencing on April 15, 2018.

(4) **PERMITTED USE:** The License granted hereunder shall be solely for the Permitted Use described in sections 4(a) through 4(i) herein. Use of the Property by Licensee for anything other than the Permitted Use shall be deemed a breach of this License Agreement. The following is permitted under this Agreement:

- a. The Licensee shall operate a flea market on the Property;
- b. The layout for the operation of the flea market, including the location of entrances and exits and proposed locations for vendors, is set forth on Exhibit "A" attached hereto;
- c. Walk-in spaces on the Property as set forth in Exhibit "A" shall be reserved for Beacon residents until 7:30 a.m. on Sunday morning;
- d. A portable toilet shall be installed on the Property by Licensee from the period April 1 through November 30, in the location set forth on Exhibit "A", and Licensee shall be responsible for installing and maintaining the portable toilet;
- e. The Property will be closed off with barriers installed by Licensee starting at 8:00 p.m. on Saturdays before the day the flea market is to operate. Licensee is responsible for the installation and removal of all barriers and must permit vehicles located on the Property prior to 8:00 p.m. to vacate the Property at all times. In the event the flea market anticipates it is not going to operate on any Sunday between April 1 and November 30, Licensee shall not install any barriers the previous Saturday. Notwithstanding the provisions in Paragraph Three (3) above, if barriers are installed on the previous Saturday, and the flea market is unable to operate on Sunday for any reason not caused by the City, the Licensee shall remain responsible for the payment of the required fee.
- f. A sign shall be posted at Licensee's sole cost and expense notifying persons using the Property for parking that the parking lot will be closed on Saturday starting at 8:00 p.m. until Sunday at 4:00 p.m. from April 1 to November 30. Licensee shall use its best efforts to

have owners remove vehicles from the Property starting Saturday evening before the flea market is scheduled to operate. The City shall have no obligation to ensure that vehicles are removed from the Property. Any vehicles remaining on the Property after 8:00 p.m. on a Saturday shall be roped off in a manner to protect them from damage and a notice placed on the car with a phone number for the owner to call in the event the owner wishes to remove the vehicle. Licensee shall cooperate with the car owner so the car may leave the Property.

- g. During the period the flea market is in operation, the entrance into the Property from South Chestnut Street and the Southeast exit from the Property onto Henry Street will remain open. The Southwest exit onto Henry Street shall be closed during the operation of the flea market;
- h. The Licensee shall maintain four to six trash barrels distributed throughout the Property during the operation of the flea market. All trash barrels shall be maintained by Licensee and emptied and removed each Sunday at the time the flea market operations conclude;
- i. The Licensee shall offer at least one stall to the City of Beacon School District during any week the flea market is in operation, at no charge; and
- j. No food or beverage vendors will be allowed to operate on the Property.
- k. The installation, at Licensor's discretion, during the term of this Agreement, at Licensee's cost, of the following signs (to be provided by Licensee) within the public right of way in the following locations: (i) Two signs back to back at Teller and Henry on an existing aluminum lamp pole; (ii) One sign on an existing pole on Wolcott and Teller; (iii) Two signs on opposite sides of Wolcott, approaching Main Street, on existing posts.

(5) **MAINTENANCE:** The Licensee shall be responsible for maintaining the Property at all times the Property is being used for the Permitted Use. Licensee shall ensure that the Property is clean, that all garbage is disposed of properly and that all vendor's equipment and barriers are removed by 4:00 p.m. each Sunday following the operation of the flea market.

(6) **SUPERVISION:** Licensee shall be responsible for and take all precautions for the protection of all persons and of real and personal property using the Property for the Permitted Use.

(7) **HOURS OF OPERATION:** The Permitted Use shall be allowed from April 1 through November 30, on Sundays during the hours 8:00 a.m. to 4:00 p.m., weather permitting. Vendors may arrive at the Property at 7:00 a.m. on the day the flea market is to operate. The Property shall be closed to vehicle parking beginning at 8:00 p.m. Saturday the evening before the flea market is to operate.

(8) **NON-ASSIGNABILITY:** It is expressly understood between the Parties herein that this License does not run with the Property, is not coupled with any other interest, is not assignable, and may be terminated by Licensor at any time for a breach of this Agreement, or without cause on thirty (30) day notice as set forth in Paragraph Two (2) above. This Agreement shall not be Recorded.

(9) **INSURANCE:** Throughout the term of this Agreement, Licensee shall obtain and maintain, at Licensee's sole cost and expense, and keep in force for the benefit of Licensee, with Licensor named as an additional insured, insurance policies providing the following coverage:

A comprehensive policy of general public liability insurance, protecting and indemnifying Licensor and Licensee against any and all liabilities and claims for damages to persons or property occasioned on or about any part of the Property, and all other areas adjacent to the Property, with such policy to be in the minimum amount of One Million Dollars (\$1,000,000.00) combined single limit per occurrence with an aggregate of Two Million Dollars (\$2,000,000.00), for personal injury and property damage;

All insurance policies required to be procured and maintained hereunder shall (i) be issued by financially responsible insurance companies acceptable to Licensor; (ii) be written as primary policy coverage and not contributing with or in excess of any coverage which Licensor may carry; (iii) insure and name Licensor as an additional insured; and (iv) contain an express waiver of any right of subrogation by the insurance company against Licensor and/or its agents and employees. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Licensee (or its invitees arising under or out of this Agreement). On or before the execution of this Agreement by the parties herein, Licensee shall deliver to Licensor certificates of insurance evidencing all of the coverages required hereunder. Each insurance policy (and any renewal or extension thereof) required to be carried hereunder shall provide that, unless Licensor shall first have been given thirty (30) days prior written notice, (i) such insurance policy shall not be canceled and shall continue in full force and effect; (ii) the insurance carrier shall not, for any reason whatsoever, fail to renew such insurance policy; and (iii) no material changes may be made in such insurance policy (which changes shall also require Licensor's prior written approval).

Licensee shall not do or permit to be done any act or thing upon the Property that will invalidate or be in conflict with any insurance policies covering the same. Licensee shall

promptly comply with all insurance underwriters, rules, orders, regulations, or requirements relating to such insurance policies, and shall not do or permit anything to be done in or about the Property which shall increase the rate of insurance on the Property.

(10) **INDEMNIFICATION:** Licensee shall defend, indemnify, protect, and hold harmless Licensor and its respective elected officials, officers, employees, agents, contractors, subcontractors or legal representatives, (the "Licensor Parties") from and against any and all claims, actions, suits, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, that: (i) arise from or are in any way connected with the License granted hereunder for the Property or any portion thereof or any of Licensee's activities on the Property, unless caused by the acts or omissions of Licensor; (ii) arise from or are in any way connected with any act or omission of Licensee or Licensee's invitees; (iii) result from any default of this Agreement or any provision hereof by Licensee; (iv) result from the presence of Licensee's or the Licensee's invitees' property or equipment on the Property; or (v) result from injury to any person or property or loss of life sustained in or about the Property caused by or arising out of Licensee or Licensee's acts or omissions, all regardless of whether such claims are asserted or incurred before, during, or after the term of this Agreement. Licensee's obligations under this paragraph shall survive the revocation or termination of this Agreement.

(11) **WAIVER OF RESPONSIBILITY:** Neither Licensor nor the Licensor Parties shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to persons or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the Property, or any part of the Property, including, without limitation, claims for loss, theft or damage, resulting from any cause whatsoever, except for willful misconduct by Licensor. To the maximum extent permitted by law, Licensee shall use and occupy the Property and such other portions of the Property as Licensee is herein given the right to use, at Licensee's own risk.

(12) **VACATION OF PREMISES:** Upon termination of this Agreement, Licensee shall promptly (i) refrain from accessing and/or using the Property, and (ii) return the Property to its original condition prior to the Permitted Use. Licensee shall repair any damage to the Property caused by Licensee's use thereof.

(13) **GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the state in which the Property is located and shall not be modified, altered, or amended except in writing as agreed to by the parties hereto.

(14) **NOTICES:** All notices or other communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service, all to the following addresses:

If to Licensor: City of Beacon
One Municipal Plaza
Beacon, New York 12508

Attention: City Administrator

With a Copy to: Keane & Beane, P.C.
445 Hamilton Avenue, 15th Floor
White Plains, New York 10601
Attention: Nicholas Ward-Willis, Esq.

If to Licensee: Things You Love Events, LLC
35 North Elm Street
Beacon, New York 12508

Attention:

Each party shall have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

(15) **COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first written above.

**THINGS YOU LOVE EVENTS,
LLC**

CITY OF BEACON

By: _____
Emma Dewing

Title: _____

By: _____
Anthony Ruggiero

City Administrator

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

On the __ day of _____ in the year 2018 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual
taking acknowledgement

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

On the __ day of _____ in the year 2018 before me, the undersigned, personally appeared Anthony Ruggiero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and Office of individual
taking acknowledgement

EXHIBIT A

Property

City of Beacon Council Agenda
3/19/2018

Title:

Resolution Authorizing Easement Agreements Regarding the West End Lofts Project on Wolcott Avenue

Subject:

Background:

ATTACHMENTS:

Description	Type
Resolution Authorizing WEL Easement Agreements	Resolution
WEL_ped walkway depiction	Backup Material
WEL_Easement and Maint Agreement	Agreement
WEL_ped agreement	Agreement
WEL_Stormwater easement agreement	Agreement
WEL_Temp_Construction_Easement_Agmt	Agreement

CITY OF BEACON

CITY COUNCIL

Resolution No. _____ of 2018

**RESOLUTION AUTHORIZING EASEMENT AGREEMENTS REGARDING
THE WEST END LOFTS PROJECT ON WOLCOTT AVENUE**

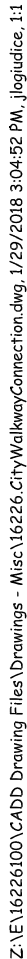
WHEREAS, Kearney Realty & Development Group, contract-vendee of property located at on Wolcott Avenue, Beacon New York (Tax Map Parcel Nos. 5954-26-688931 and p/o 5954-26-708967)(the “Property”), has obtained Site Plan and Subdivision approval from the City of Beacon Planning Board for land development activity at the Property pursuant to certain drawings and plans generally entitled “West End Lofts,” Sheets 1-14, dated March 28, 2017, last revised January 30, 2018, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. and “Preliminary Plat prepared for West End Lofts,” dated January 30, 2017, last revised January 30, 2018, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. (the “Project”); and

WHEREAS, the Project consists of the construction of three 3-4 story buildings containing a total of 98 apartments (50 affordable artist lofts, 22 below market rate units, and 26 market rate units); and

WHEREAS, the following Easement Agreements between the City and Kearney Realty & Development Group are proposed in furtherance of the Project:

1. Stormwater Control Facility Maintenance Agreement and Easement
2. Easement and Maintenance Agreement (Utilities, Drainage and Sewer)
3. Temporary Construction and Access Easement Agreement
4. Pedestrian Walkway Easement and Maintenance Agreement.

NOW THEREFORE, BE IT RESOLVED THAT, the City Council hereby authorizes the Mayor and/or City Administrator to sign the Easement Agreements listed above in form and substance substantially similar to that reviewed by the City Council on March 19, 2018, together with all documents as may be necessary for the recording of such Agreements, subject to review and approval by the City Attorney and review of metes and bounds descriptions by the City Engineer.



N/F
LEWIS TOMPKINS HOSE C
TM#: 5954-26-715

**EASEMENT AND MAINTENANCE AGREEMENT
(UTILITIES, DRAINAGE & SEWER)**

THIS EASEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) is made as of the _____ day of March, 2018, by and among **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.**, a New York corporation having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the “Grantor”), and the **CITY OF BEACON**, a municipal corporation, having its principal office located at 1 Municipal Plaza, Beacon, New York 12508 (the “Grantee” or the “City”). Grantor and Grantee may individually be referred to herein as a “party” and collectively, as the “parties”.

WITNESSETH:

WHEREAS, the Grantor is the record owner of a +/-1.162 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, more particularly described on Exhibit “A” attached hereto (the “Premises”), and shown and designated as “Proposed Lot 2” on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled “West End Lofts”, filed in the Office of the Dutchess County Clerk on _____, 2018, as Filed Map No. _____ (the “Subdivision Map”); and

WHEREAS, the parties desire to establish certain utility, drainage and sewer easements for the benefit of the Grantee that are necessary or desirable, and to set forth certain other agreements relating to these easements on the terms and conditions are set forth herein.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), and in further consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agrees as follows:

1. Permanent Sewer Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns forever, a permanent 20-foot wide easement for the construction, installation, repair, replacement, maintenance and operation of sewer facilities, as designated and shown on the Subdivision Map as “Proposed 20 Foot Wide Sewer Easement in favor of the City of Beacon”, and as more particularly described in Exhibit “B” attached hereto and made a part hereof (the “Sewer Easement”).

2. Permanent Utility Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns forever, a permanent 30-foot wide utility easement for the construction, installation, repair, replacement, maintenance and operation of public utilities, as designated and shown on the Subdivision Map as “Proposed 30 Foot Wide Utility Easement in favor of the City of Beacon”, and as more particularly described in Exhibit “C” attached hereto and made a part hereof (the “Utility Easement”).

3. Drainage Easement. Grantor hereby grants and conveys to the Grantee, its successors or assigns forever, a non-exclusive permanent 20-foot wide easement for the construction, installation, repair, replacement, maintenance and operation of such lines, pipes, mains, cleanouts, stormwater detention basin and other necessary or incidental appurtenances

thereto, as designated and shown as “Proposed 20 Foot wide Drainage Easement in favor of the City of Beacon” on the Subdivision Map, and as more particularly described in Exhibit “D” attached hereto and made a part hereof (the “Drainage Easement”). In the event that the Grantee shall fail to construct, properly maintain, repair or operate the Drainage Easement, the Grantor may undertake such efforts and expenses necessary and appropriate to ensure the proper functioning and operation of the Drainage Easement, after which the Grantor shall have the right to seek reimbursement from the Grantee for all necessary and related expenses incurred.

4. Compliance. All work caused to be performed pursuant to this Agreement shall be performed in accordance with all required permits, applicable laws and governmental regulations. At the conclusion of all such work, all disturbed areas shall be restored to as good a condition as such areas were found in, or as reasonably close to such condition as possible depending upon the circumstances, including the replacement of all surface and subsurface areas, including, but not limited to, pavement, sod, grass, shrubs and trees.

5. Insurance. Grantee and Grantor shall each furnish to the other a certificate of insurance evidencing commercial general liability coverage of at least \$1,000,000.00 combined single limit per occurrence, and not less than \$2,000,000.00 general aggregate coverage for bodily injury and property damage, naming the other party hereto as an additional insured. Grantee and Grantor shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming the other party hereto as an additional insured which shall also be evidenced on the certificate of insurance. For so long as this Agreement shall remain in effect, the Grantee and Grantor shall maintain such insurance coverage, adjusted on every ten (10) year anniversary of the date hereof (each, an “Adjustment Date”) based on the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; all items, not seasonally adjusted, 1982-1984=100 reference base, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U used for such adjustments shall be the CPI-U last officially published prior to the last day of the month immediately preceding the Adjustment Date, as applicable, whether such CPI-U has been published on a quarterly, semi-annual, annual, monthly or other basis.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties and their respective personal representative.s, successors and assigns. This Agreement may not be amended or modified except by a written instrument signed by each of the parties, or their successors in interest, and consented to in writing by the holder(s) of any mortgage(s) encumbering the Premises. This Agreement may be executed in counterparts, all of which when taken together shall constitute an entire Agreement.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first written above.

GRANTOR:

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continue on following page.

GRANTEE:

CITY OF BEACON

By: _____
Name:
Title:

STATE OF NEW YORK)
)
COUNTY OF _____) SS.:

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Record & Return:

**Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.**

**Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess**

EXHIBIT A

Premises

Beginning at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north. thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands the following bearings and distances:

S 27°05'43" W a distance of 128.53';

S 06°28'35" W a distance of 56.01';

S 35°00'00" E a distance of 34.67' and

S 82°17'55" E a distance of 88.68' to a point

thence through lands of the grantor herein S 53°41'50" W a distance of; 220.31' and N 58°46'49" W a distance of 36.99' to an angle point in Lot 1 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along same N 35°00'00" W a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

thence along same N 47°03'30" W a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears S 35°56'48" E;

thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

thence continuing along said southeasterly line of Beekman Street as currently laid out N 41°47'18" E a distance of 81.95' and N 38°09'31" E a distance of 63.67' to the point and place of beginning.

Containing 50,602 square feet or 1.162 acres being the same more or less.

EXHIBIT B
Sewer Easement
[to be provided]

EXHIBIT C

Utility Easement

Beginning at a point in the southeasterly line of Beekman Street as presently laid out, at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north;

thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands S 27°05'43" W a distance of 34.20' to a point;

thence through lands of the grantor herein S 88°24'31" W a distance of 108.50' to a point in said southeasterly line of Beekman Street;

thence along same N 38°09'31" E a distance of 39.02' to the point and place of beginning

EXHIBIT D

Drainage Easement

Beginning at a point on a curve in the southeasterly line of Beekman Street as presently laid out, located the following courses and distances from a point in said southerly line of Beekman Street at the intersection of the division line between lands of the Grantor herein, formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north:

S 38°09'31" W a distance of 63.67',

S 41°47'18" W a distance of 81.95' to a point of curve;

thence along a curve to the right having a radius of 493.37', a central angle of 05°29'34" an arc length of 47.30;

thence from said point of beginning through lands of the Grantor herein the following bearings and distances:

S 42°48'31" E a distance of 64.68';

N 59°43'03" E a distance of 85.19' and

N 76°25'49" E a distance of 49.38' to a point in the line of lands conveyed from the Grantor herein to the City of Beacon;

thence along said lands S 06°28'35" W a distance of 21.29' to a point;

thence through lands of the Grantor herein the following bearings and distances:

S 76°25'49" W a distance of 39.15'

S 59°43'03" W a distance of 98.30' and

N 42°48'31" W a distance of 81.16' to a point on a curve in said southeasterly line of Beekman Street, through which point a radial bears S 40°23'44" E;

thence along a curve to the left having a radius of 493.37', a central angle of 02°19'24", an arc length of 20.01' to the point and place of beginning

**PEDESTRIAN WALKWAY EASEMENT
AND MAINTENANCE AGREEMENT**

THIS PEDESTRIAN WALKWAY EASEMENT AND MAINTENANCE AGREEMENT (the "Agreement") is made as of the ____ day of March, 2018, by and among **WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having an address c/o Hudson River Housing, Inc., 313 Mill Street, Poughkeepsie, New York 12601 (the "HDFC"), **WEST END LOFTS LIMITED PARTNERSHIP**, a New York limited partnership having an address c/o The Kearney Realty & Development Group Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the "Partnership" and together with the HDFC and their respective successors and assigns, the "Lot 1 Owner"), **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.**, a New York corporation having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the "Lot 2 Owner" and together with the Lot 1 Owner and their respective successors and assigns, the "Grantor"), and the **CITY OF BEACON**, a municipal corporation, having its principal office located at 1 Municipal Plaza, Beacon, New York 12508 (the "Grantee" or the "City"). Grantor and Grantee may individually be referred to herein as a "party" and collectively, as the "parties".

WITNESSETH:

WHEREAS, the Lot 1 Owner is the record and beneficial owner of a +/-1.929 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as "Proposed Lot 1" ("Lot 1") on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled "West End Lofts", filed in the Office of the Dutchess County Clerk on _____, 2018, as Filed Map No. _____ (the "Subdivision Map), and more particularly described on Schedule "A" attached hereto, upon which it intends to construct a seventy-three (73) unit affordable housing project (the "Affordable Project"); and

WHEREAS, the Lot 2 Owner is the fee owner of a +/-1.162 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as "Proposed Lot 2" on the Subdivision Map and more particularly described on Schedule "B" attached hereto ("Lot 2" and together with Lot 1, the "Premises"), upon which it intends to construct a twenty-five (25) unit market rate housing project (together with the Affordable Project, the "Apartment Complex"); and

WHEREAS, Grantor wishes to grant to Grantee, and Grantee wishes to accept, an easement and right-of-way for pedestrian ingress and egress only on, over, across and through the portion of the Premises depicted on the map attached hereto as Schedule "C-1" and described on Schedule "C-2", including the proposed improvements shown thereon (the "Easement Area"); notwithstanding the foregoing, the parties hereto understand and agree that the metes and bounds description attached as Schedule "C-2" hereto reflects the best estimate of the surveyor at the time of this Agreement, and an amendment to this Agreement replacing Schedule "C-2" with an updated metes and bounds description based on the as-built survey of the Premises will be filed following the completion of construction;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and in further consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agrees as follows:

1. Grant of Easement. The Grantor hereby grants and releases unto the Grantee a public easement and right of way, for the people of the City of Beacon, its visitors, employees and the general public, for the limited purposes of pedestrian ingress and egress only on, over, across and through the Easement Area (the “Easement”). The pedestrian walkway shall be illuminated by lighting fixtures and equipment to be designated by the Building Inspector after consultation with the Grantor whose consent shall not be unreasonably withheld if the means of illumination do not adversely impact the Apartment Complex.

2. Prohibited Use/Access. Uses permitted pursuant to this Easement shall be limited to pedestrian ingress and egress on, over, across and through the Easement Area only (the “Permitted Use”). Uses other than the Permitted Use shall be prohibited. Prohibited uses of the Easement Area shall include, without limitation, the following: (i) loitering; (ii) use or riding of bicycles or skateboards; (iii) dumping or storage of any items including but not limited to trash, cigarettes, ashes, waste, sewage, garbage or other refuse, hazardous, toxic or offensive materials; (iv) the consumption of alcohol or carrying of open containers thereupon; (v) the use of illegal substances or any illegal conduct thereupon; and (vi) engaging in any conduct in violation of any federal, state or local law or regulation.

3. Grantor Covenants. The Grantor covenants that:

(a) Grantor shall not construct any improvements in the Easement Area other than what is shown on the approved plans entitled “West End Lofts”, prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., approved by the City of Beacon Planning Board on February 14, 2018, and on file in the City of Beacon Building Department (with the exception of (i) any amendments to the plans that may be required by the New York State Housing Trust Fund Corporation, or amendments made by the City Planning Board at the request of property owner, and (ii) field changes authorized by the City Building Inspector), or otherwise obstruct or interfere with the Grantee’s rights conferred herein; provided, however, that Grantor shall have the right, in its sole discretion, to widen or otherwise modify the pedestrian walkway (including the Easement Area) without Grantee’s consent, subject to the issuance of all applicable permits from the City of Beacon, so long as the Permitted Use is not materially adversely affected and amendments to the Site Plan shall remain subject to all applicable requirements of the Code of the City of Beacon.

(b) Grantor shall at its sole cost and expense repair and maintain the Easement Area so that it can be utilized for the Permitted Use, including snow removal, resurfacing, lighting infrastructure and other improvements necessary to keep the walkway in good repair and available to the public at all times.

4. Grantee Covenants. The Grantee covenants that:

(a) Grantee shall not use, except in the performance of Grantee’s governmental duties, or permit the public to use, the Easement Area for any purpose other than the Permitted Use.

(b) Grantee shall not use, or permit the public to use, any portion of the Premises outside of the Easement Area for any purpose whatsoever, including, without limitation, parking.

(c) Grantee shall not obstruct the Easement Area or in any way block access by residents of the Apartment Complex or the building located, or to be located, on Lot 2 as shown on the Subdivision Map, except in the performance of Grantee's governmental duties.

(d) In the event it is determined that use of the Easement Area by the public is causing disturbances to, or safety concerns for, the residents of the Apartment Complex, Grantee agrees to work with Grantor to remedy such disturbances and/or safety issues.

5. Indemnification. Grantee releases and also shall defend, indemnify and hold Grantor harmless, from and against all claims, damages, demands, losses, expenses, fines, causes of action, lawsuits, judgments or any other liabilities (including all reasonable attorneys' fees, consequential and punitive damages) for personal injuries and/or property damages arising out of, or resulting from, any use of the Easement Area or from Grantee's breach of any of the covenants contained herein, to the extent not caused by Grantor's negligence or willful misconduct. The duty to defend and indemnify shall be limited to available liability coverage of the City for the claim for which the City's insurer agrees to defend and indemnify the City. The City shall have no duty to defend or indemnify claims excluded by standard insurance endorsements, such as intentional torts. Limitations on defense shall not be triggered by disclaimer due to late notice by the City to the insurer or by cancellation of liability insurance coverage due to fault of the City including, but not limited to non-payment of premiums.

6. Insurance. Grantee and Grantor shall each furnish to the other a certificate of insurance evidencing commercial general liability coverage (including coverage of the City's contractual defense and indemnity set forth in Section 5) of at least \$1,000,000.00 combined single limit per occurrence, and not less than \$2,000,000.00 general aggregate coverage for bodily injury and property damage, naming the other party hereto as an additional insured. Grantee and Grantor shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming the other party hereto as an additional insured which shall also be evidenced on the certificate of insurance. For so long as this Agreement shall remain in effect, the Grantee and Grantor shall maintain such insurance coverage, adjusted on every ten (10) year anniversary of the date hereof (each, an "Adjustment Date") based on the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; all items, not seasonally adjusted, 1982-1984=100 reference base, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U used for such adjustments shall be the CPI-U last officially published prior to the last day of the month immediately preceding the Adjustment Date, as applicable, whether such CPI-U has been published on a quarterly, semi-annual, annual, monthly or other basis.

7. Run with the Land. This Easement granted herein shall run with the land and shall be binding upon the Grantor and the Grantee and their respective successors, heirs and assigns.

8. Non-Exclusive; Noninterference.

(a) Subject to the terms and conditions hereof, the Easement granted herein shall be non-exclusive.

(b) Notwithstanding anything herein contained to the contrary, for clarification, the Easement granted herein does not confer any rights with respect to ingress and egress from, over, across or through the residential buildings located or to be located on the Premises, or any other portions of the Premises located outside the Easement Area.

9. Notices.

(a) Any notice, approval, consent, bill, statement or other communication required or permitted to be given, answered or made by either party hereto to the other shall be in writing and shall be deemed to have been properly given or sent if provided to the parties, at their respective addresses recited in the opening paragraph of this Agreement, either by hand delivery or overnight express mail, or by registered or certified mail with the postage prepaid.

(b) Each party may designate a different address to which any notice, demand, request or communication may hereafter be so given, served or sent, by notice to the other party. Each notice, demand, request or communication to be delivered to the Grantor or the Grantee, in the manner aforesaid, shall be deemed sufficiently given, served or sent for all purposes hereunder at the time such notice, demand, request or communication is mailed or hand delivered as described in paragraph (a) above.

10. Severability. If any portion or portions of this Agreement is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

11. Headings. The headings used in these provisions are for convenience only and shall not be used in interpreting these provisions.

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto as to the matters set forth herein and may not be changed, modified, altered or in any way amended, except by agreement amongst the parties (their successors and/or assigns) in a duly acknowledged writing and recorded in the office of the Dutchess County Clerk.

13. Non-Waiver. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

14. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which, when so executed and delivered by all parties, shall be an original, but all such counterparts shall together constitute one and the same instrument.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws principles thereof. Disputes shall be venued in Supreme Court, Dutchess County. The parties waive any right to trial by jury.

Signature pages follow.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first written above.

GRANTOR:

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

WEST END LOFTS LIMITED PARTNERSHIP

By: West End Lofts Associates, LLC, its Managing General Partner

By: _____
Kenneth Kearney, Manager

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of March in the year 2018, before me, the undersigned, personally appeared Kenneth Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continued on next page.

WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.

By: _____
Christa Hines, Treasurer

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of March, in the year 2018, before me, the undersigned, personally appeared Christa Hines, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

GRANTEE:

THE CITY OF BEACON

By: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of March in the year 2018, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Record & Return:

**Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.**

**Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess**

Schedule A

Lot 1

Beginning at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out at the intersection of the division line between lands of Grantee herein on the south and lands of the City of Beacon on the north, said point being located S 51°15'26" E a distance of 89.60' from the most easterly corner of Lot 2 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along said line of Wolcott Avenue the following bearings and distances:

S 42°01'30" W a distance of 143.00';

S 44°14'19" W a distance of 133.01' and

S 42°17'27" W a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

thence along same N 50°07'23" W a distance of 198.84' to a point in the line of Lot 1 as shown on said filed map no. 9899;

thence along the line of said Lot 1 of filed map no. 9899 N 41°16'37" E a distance of 235.87' to point;

thence through lands of the grantor herein S 58°46'49" E a distance of 36.99' and N 53°41'50" E a distance of 220.31' to the line of other lands of the Grantor herein being the easterly line of the herein described parcel;

thence along said lands S 82°17'55" E a distance of 75.86' and S 51°15'26" E a distance of 64.50' to the point and place of beginning

Containing 84,047 square feet or 1.929 acres being the same more or less

Schedule B

Lot 2

Beginning at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north. thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands the following bearings and distances:

S 27°05'43" W a distance of 128.53';

S 06°28'35" W a distance of 56.01';

S 35°00'00" E a distance of 34.67' and

S 82°17'55" E a distance of 88.68' to a point

thence through lands of the grantor herein S 53°41'50" W a distance of; 220.31' and N 58°46'49" W a distance of 36.99' to an angle point in Lot 1 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along same N 35°00'00" W a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

thence along same N 47°03'30" W a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears S 35°56'48" E;

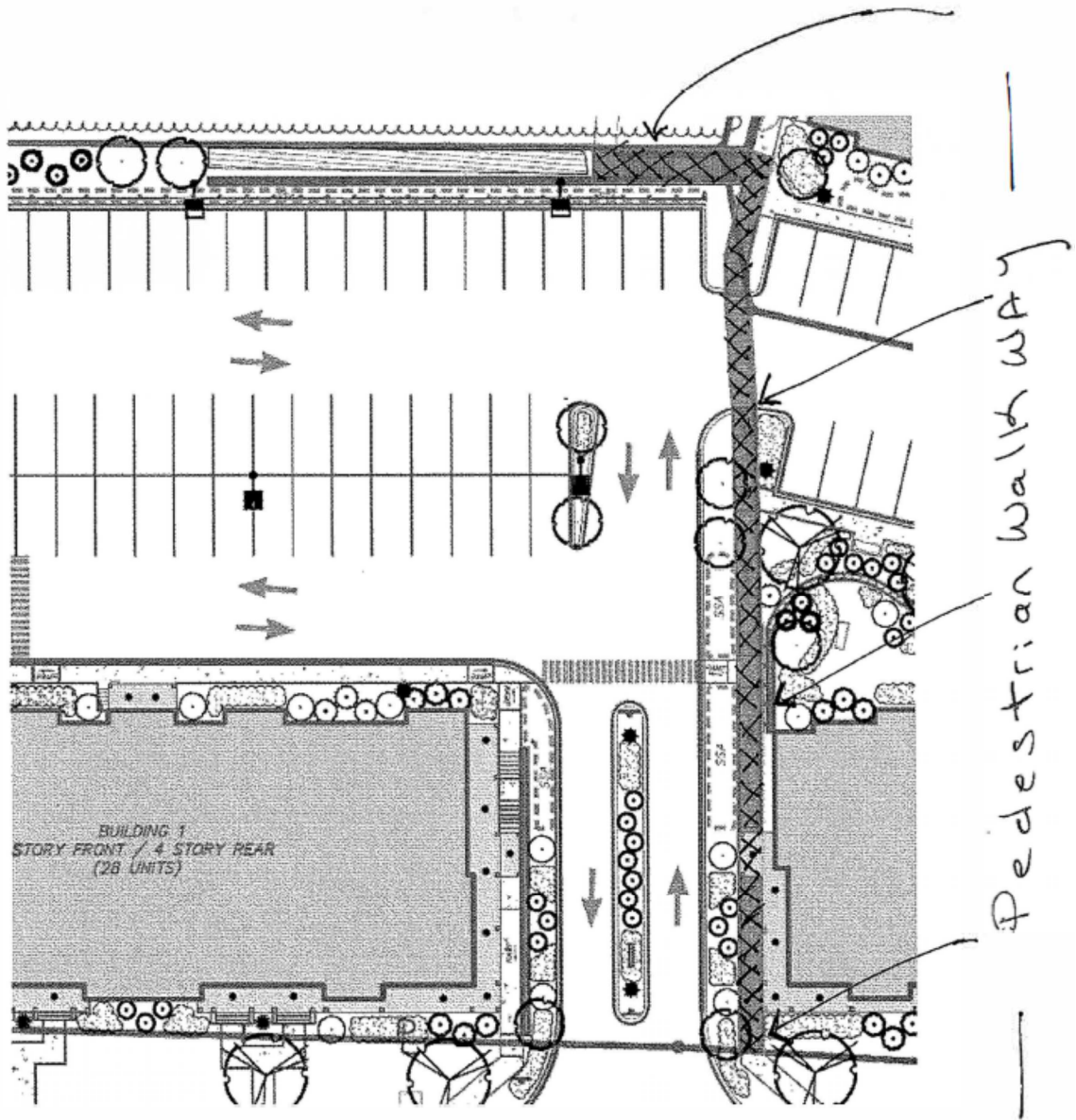
thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

thence continuing along said southeasterly line of Beekman Street as currently laid out N 41°47'18" E a distance of 81.95' and N 38°09'31" E a distance of 63.67' to the point and place of beginning.

Containing 50,602 square feet or 1.162 acres being the same more or less.

Schedule C-1

Easement Area Depiction



Schedule C-2

Easement Area Metes and Bounds Description

[To be provided]

**STORMWATER CONTROL FACILITY
MAINTENANCE AGREEMENT AND EASEMENT**

WHEREAS, the **CITY OF BEACON** (“Municipality”), **WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.** (the “HDFC”), **WEST END LOFTS LIMITED PARTNERSHIP** (collectively with the HDFC, the “Lot 1 Owner”), and **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.** (together with the Lot 1 Owner, the “Facility Owner”) desire to enter into this agreement (the “Agreement”), dated this ____ day of March, 2018, to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for certain real property located on Wolcott Avenue in the City of Beacon, shown and designated as “Proposed Lot 1” and “Proposed Lot 2” on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled “West End Lofts”, filed in the Office of the Dutchess County Clerk on _____, 2018, as Filed Map No. _____ (the “Subdivision Map”), and further described by metes and bounds in Schedule A annexed hereto (the “Premises”); and

WHEREAS, this Agreement is provided in connection with a residential development project known as “West End Lofts”, which received Subdivision and Site Plan approval from the City of Beacon Planning Board on February 14, 2018, based on plans entitled (a) “Preliminary Plat prepared for West End Lofts”, dated January 30, 2017 and last revised January 30, 2018, and (b) “West End Lofts”, Sheets 1-15, dated January 31, 2017 last revised January 31, 2018, each prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. and on file at the City of Beacon Building Department (“Approved Project Plans”), which Approved Project Plans include certain stormwater management facilities and stormwater control measures (collectively, the “Facility”) required to be constructed and maintained in accordance with the Approved Project Plans and the approved Stormwater Pollution Prevention Plan (“SWPPP”) dated July 25, 2017; and

WHEREAS, the Municipality and the Facility Owner desire that the Facility be built in accordance with the Approved Project Plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the Facility;

NOW, THEREFORE, IN WITNESS WHEREOF, the Municipality and the Facility Owner agree as follows:

1. This Agreement binds the Municipality and the Facility Owner, its successors and assigns, to the maintenance provisions depicted in the Approved Project Plans and described in Section 5.2 and Appendix G of the SWPPP, which are included in Schedule B of this Agreement.
2. The Facility Owner shall maintain, clean, repair, and replace the Facility and keep the Facility in continuous operation in accordance with the in the Approved Project Plans and the SWPPP as necessary to ensure optimum performance of the stormwater control measures to design specifications. The stormwater control measures shall include, if applicable, but shall not be limited to, the following items located at the Premises: drainage ditches, swales, dry wells,

infiltrators, drop inlets, pipes, culverts, soil absorption devices, detention ponds and retention ponds. The maintenance schedule of the SWPPP is included in Schedule B of this Agreement.

3. The Facility Owner hereby grants unto the Municipality, its successors and assigns a perpetual easement and right-of-way to enter upon the Premises in order to access the Facility at reasonable times and in a reasonable manner for periodic inspection by the Municipality to ensure that the Facility is maintained in proper working condition and meets the design standards established by the SWPPP. Notwithstanding the foregoing, it is expressly understood that the area encompassed such easement is exclusive of the areas occupied by the buildings located or to be located on the Premises.

4. The Facility Owner shall be responsible for all expenses related to the maintenance of the Facility and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities, as applicable, except as otherwise set forth hereinafter.

5. The Facility Owner shall provide for the periodic inspection of the Facility in accordance with the SWPPP, and shall have the facilities inspected on a yearly basis by a Professional Engineer licensed by the State of New York, to determine the condition and integrity of the stormwater control measures. The inspecting professional shall prepare and submit to the Municipality within 30 days of the inspection but not later than June 1 of each year, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.

6. The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the Facility except in accordance with written approval of the Municipality which approval shall not be unreasonably withheld, delayed or conditioned.

7. The Facility Owner shall promptly undertake necessary repairs and replacement of the Facility at the direction of the Municipality or in accordance with the recommendations of the inspecting professional.

8. The Facility Owner hereby covenants that it is seized of the Premises in fee simple and has full authority to execute this Agreement; shall do nothing in the Premises which would prevent, impede or disturb the full use and intended purpose of this Agreement; and shall execute and deliver any further documents reasonably necessary to assure the benefits of this Agreement to the Municipality.

9. This Agreement shall not confer unto the Municipality any duty or obligation to repair or maintain the Facility. Further, the Municipality's acceptance of any rights pursuant to this Agreement shall not be deemed as the acceptance of any duty or obligation to repair or maintain the Facility, except that any damage to the Facility caused by the Municipality's negligence during inspections or otherwise shall be restored, repaired or otherwise remedied by the Municipality at the Municipality's sole cost.

10. This Agreement shall be recorded in the Office of the County Clerk, County of Dutchess as a condition of final site plan approval and as a condition to the issuance of a building permit.

11. If ever the Municipality determines that the Facility Owner has failed to construct or maintain the Facility in accordance with the Approved Project Plan or SWPPP, or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality shall provide the Facility Owner with written notice via certified mail, return receipt requested, specifying such failure. Copies of any written notices to the Facility Owner shall be contemporaneously provided to the Fee Owner, if different from the Facility Owner, via certified mail, return receipt requested. The written notice shall provide that the Facility Owner has fifteen (15) days to cure any defect and/or failure specified therein. In the event the failure cannot be cured within fifteen (15) days, the Facility Owner shall advise the Municipality as to same in writing within fifteen (15) days of receipt of the Municipality's notice to cure. The Facility Owner shall be afforded the opportunity to request a reasonable time frame to cure said failure/defect if the Facility Owner so desires. If the Facility Owner fails to provide written notice requesting an extension of time to cure a failure/defect and the Facility Owner does not cure said failure/defect, the Municipality is authorized to undertake such steps as are reasonably necessary for the preservation, continuation or maintenance of the Facility and to affix the expenses thereof as a lien against the Premises.

12. In the event the Municipality exercises its rights hereunder, it shall return the Premises to a reasonably similar condition as it existed prior to the exercise of such rights.

13. All notice and demands shall be made in writing and delivered by certified mail, return receipt requested, with postage pre-paid thereon, addressed as follows:

City of Beacon:

City Administrator
City Hall
1 Municipal Plaza
Beacon, New York 12508

Facility Owner:

The Kearney Realty & Development Group Inc.
34 Clayton Boulevard, Suite A
Baldwin Place, New York 10505
Attn: Kenneth Kearney

With a copy to:

Keane & Beane, P.C.
445 Hamilton Avenue, Ste 1500
White Plains, New York 10601
Attn: Nicholas M. Ward-Willis, Esq.

With a copy to:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Melissa M. Beskid, Esq.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

Signature pages follow.

IN WITNESS WHEREOF, the Facility Owner and the Municipality have each executed this Agreement as of the date first herein above set forth.

CITY OF BEACON

By: _____
Name:
Title:

STATE OF NEW YORK)
)
COUNTY OF _____) SS.:

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continue on next page.

By: _____
Kenneth Kearney, President

By: West End Lofts Associates, LLC, its Managing General Partner

By: Kenneth Kearney, Manager

STATE OF NEW YORK)
)
) SS.:
COUNTY OF ALBANY)

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continue on next page.

WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.

By: _____
Christa Hines, Treasurer

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of March, in the year 2018, before me, the undersigned, personally appeared Christa Hines, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Record & Return:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.

Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess

Schedule A

Description of Premises

Beginning at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north. thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'30" E a distance of 99.97'; to lands of the City of Beacon;

thence said lands the following bearings and distances:

S 27°05'43" W a distance of 128.53';

S 06°28'35" W a distance of 56.01';

S 35°00'00" E a distance of 34.67'

S 82°17'55" E a distance of 164.54' and

S 51°15'26" E a distance of 64.50' to a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out

thence along said line of Wolcott Avenue the following bearings and distances:

S 42°01'30" W a distance of 143.00';

S 44°14'19" W a distance of 133.01' and

S 42°17'27" W a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

thence along same N 50°07'23" W a distance of 198.84' to a point in the line of Lot 1 as shown on said filed map no. 9899;

thence along the line of said Lot 1 of filed map no. 9899 N 41°16'37" E a distance of 235.87' and N 35°00'00" W a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

thence along same N 47°03'30" W a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears S 35°56'48" E;

thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

thence continuing along said southeasterly line of Beekman Street as currently laid out N 41°47'18" E a distance of 81.95' and N 38°09'31" E a distance of 63.67' to the point and place of beginning.

Containing 134,649 square feet or 3.091 acres being the same more or less.

Schedule B

SWPPP Maintenance Provisions

TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT (the “Agreement”) is made as of this ____ day of March, 2018, by and among the **CITY OF BEACON**, a municipal corporation, having its principal office located at 1 Municipal Plaza, Beacon, New York 12508 (the “Grantor”), **WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having an address c/o Hudson River Housing, Inc., 313 Mill Street, Poughkeepsie, New York 12601 (the “HDFC”), **WEST END LOFTS LIMITED PARTNERSHIP**, a New York limited partnership having an address c/o The Kearney Realty & Development Group Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the “Partnership” and collectively with the HDFC, the “Lot 1 Owner”), and **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.**, a New York corporation having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the “Lot 2 Owner” and together with the Lot 1 Owner and their respective successors and assigns, the “Grantee”). Grantor and Grantee may individually be referred to herein as a “party” and collectively, as the “parties”.

WITNESSETH:

WHEREAS, the Grantor is the owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, more particularly described on Exhibit “A” attached hereto (the “City Parcel”), and shown and designated as “n/f City of Beacon (City Hall Parcel) on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled “West End Lofts”, filed in the Office of the Dutchess County Clerk on _____, 2018, as Filed Map No. _____ (the “Subdivision Map”); and

WHEREAS, the Lot 1 Owner is the record and beneficial owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, shown and designated as “Proposed Lot 1” on the Subdivision Map, and more particularly described in Exhibit “B” attached hereto; and

WHEREAS, the Lot 2 Owner is the owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, shown and designated as “Proposed Lot 2” on the Subdivision Map, and more particularly described in Exhibit “C” attached hereto; and

WHEREAS, the Grantor desires to grant and convey to the Grantee and the Grantee desires to accept from the Grantor (i) a temporary right of way and access easement, together with a temporary construction easement allowing for the construction of certain improvements on Lot 1 and Lot 2 along the lot line with the City Parcel, and (ii) a temporary right of way and access easement for the purpose of relocating a memorial tree on the City Parcel;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and in further consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agrees as follows:

1. Construction Easement. Grantor hereby grants and conveys unto Grantee (including, for such purposes, Grantee and its successors, assigns, tenants, invitees, licensees, guests, agents, affiliates, representatives, employees and contractors) a non-exclusive temporary access and construction easement for the purpose of constructing certain improvements on Lot 1 and Lot 2 along the lot line with the City Parcel, as designated and shown on the Subdivision Map as “Proposed Temporary Construction Easement”, and as more particularly described in Exhibit “D” attached hereto and made a part hereof (the “Construction Easement”).

2. Tree Relocation Easement. Grantor hereby grants and conveys unto Grantee (including, for such purposes, Grantee and its successors, assigns, tenants, invitees, licensees, guests, agents, affiliates, representatives, employees and contractors) a temporary access easement upon, across, over and under the City Parcel for the purpose of the attempted relocation of a memorial tree from its current location to its new proposed location as depicted on the map attached hereto as Exhibit “E” (the “Tree Relocation Easement” and together with the Construction Easement, the “Easements”). Notwithstanding the foregoing, the parties hereto agree that, if the attempt to relocate the memorial tree is not successful for any reason whatsoever, the Grantee shall have no liability hereunder for such failure.

3. Term. The term of the Easements shall commence as of the date hereof and shall end on the later of (i) the date on which the City of Beacon has issued temporary certificates of occupancy for the improvements approved by the Planning Board of the City of Beacon to be constructed on Lot 1 and Lot 2, commonly known as “West End Lofts”, and (ii) the date the memorial tree has been relocated or the relocation plan abandoned.

4. Compliance. All work caused to be performed pursuant to this Agreement shall be performed in accordance with all required permits, applicable laws and governmental regulations. At the conclusion of all such work, Grantee shall restore, at its sole cost and expense, all disturbed areas to as good a condition as such areas were found in, or as reasonably close to such condition as possible depending upon the circumstances, including the replacement of all surface and subsurface areas, including, but not limited to, pavement, sod, grass, shrubs and trees. Said restoration shall be to the reasonable satisfaction of the City Engineer. Any dispute as to such restoration shall be submitted to arbitration pursuant to the Rules of the American Arbitration Association.

5. Insurance. Grantee shall furnish Grantor with a certificate of insurance evidencing commercial general liability coverage of at least \$1,000,000.00 combined single limit per occurrence, and not less than \$2,000,000.00 general aggregate coverage for bodily injury and property damage, naming the Grantor as an additional insured. Grantee shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming Grantor as an additional insured which shall also be evidenced on the certificate of insurance.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties and their respective personal representatives, successors and assigns. This Agreement may not be amended or modified except by a written instrument signed by each of the parties, or their successors in interest, and consented to in writing by the holder(s) of any

mortgage(s) encumbering the Premises. This Agreement may be executed in counterparts, all of which when taken together shall constitute an entire Agreement.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GRANTOR:

CITY OF BEACON

By: _____
Name:
Title:

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continue on following page.

GRANTEE:

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

WEST END LOFTS LIMITED PARTNERSHIP

By: West End Lofts Associates, LLC, its Managing General Partner

By: _____
Kenneth Kearney, Manager

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

On the ____ day of March, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Signatures continue on following page.

WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.

By: _____
Christa Hines, Treasurer

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the ____ day of March, in the year 2018, before me, the undersigned, personally appeared Christa Hines, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public – State of New York

Record & Return:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.

Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess

EXHIBIT A
CITY PARCEL

[to be provided]

EXHIBIT B

LOT 1

Beginning at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out at the intersection of the division line between lands of Grantee herein on the south and lands of the City of Beacon on the north, said point being located S 51°15'26" E a distance of 89.60' from the most easterly corner of Lot 2 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along said line of Wolcott Avenue the following bearings and distances:

S 42°01'30" W a distance of 143.00';

S 44°14'19" W a distance of 133.01' and

S 42°17'27" W a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

thence along same N 50°07'23" W a distance of 198.84' to a point in the line of Lot 1 as shown on said filed map no. 9899;

thence along the line of said Lot 1 of filed map no. 9899 N 41°16'37" E a distance of 235.87' to point;

thence through lands of the grantor herein S 58°46'49" E a distance of 36.99' and N 53°41'50" E a distance of 220.31' to the line of other lands of the Grantor herein being the easterly line of the herein described parcel;

thence along said lands S 82°17'55" E a distance of 75.86' and S 51°15'26" E a distance of 64.50' to the point and place of beginning

Containing 84,047 square feet or 1.929 acres being the same more or less

EXHIBIT C

LOT 2

Beginning at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north. thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands the following bearings and distances:

S 27°05'43" W a distance of 128.53';

S 06°28'35" W a distance of 56.01';

S 35°00'00" E a distance of 34.67' and

S 82°17'55" E a distance of 88.68' to a point

thence through lands of the grantor herein S 53°41'50" W a distance of; 220.31' and N 58°46'49" W a distance of 36.99' to an angle point in Lot 1 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along same N 35°00'00" W a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

thence along same N 47°03'30" W a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears S 35°56'48" E;

thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

thence continuing along said southeasterly line of Beekman Street as currently laid out N 41°47'18" E a distance of 81.95' and N 38°09'31" E a distance of 63.67' to the point and place of beginning.

Containing 50,602 square feet or 1.162 acres being the same more or less.

EXHIBIT D
TEMPORARY CONSTRUCTION EASEMENT

Beginning at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out at the intersection of the division line between lands of the Grantee herein on the south and lands of the City of Beacon on the north, said point being located S 51°15'26" E a distance of 89.60' from the most easterly corner of Lot 2 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

Thence along said division line the following bearings and distances:

N 51°15'26" W a distance of 64.50';

N 82°17'55" W a distance of 164.54';

N 35°00'00" W a distance of 34.67' and

N 06°28'35" E a distance of 16.40' to a point;

thence through lands of the Grantor herein S 35°00'00" E a distance of 40.65'; and S 82°17'55" E a distance of 246.50' to a point in said northwesterly line of Wolcott Avenue;

thence along same S 40°41'22" W a distance of 17.53' and S 42°01'30" W a distance of 37.00' to the point and place of beginning

EXHIBIT E
PROPOSED TREE RELOCATION

[to be provided]

City of Beacon Council Agenda
3/19/2018

Title:

Resolution authorizing a temporary easement with Central Hudson and Gas and Electric Corporation at 52 Pumphouse Road

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso COB DOT easement	Resolution

**CITY OF BEACON
CITY COUNCIL**

Resolution No. _____ of 2018

**RESOLUTION AUTHORIZING A TEMPORARY EASEMENT AGREEMENT WITH CENTRAL
HUDSON GAS & ELECTRIC CORPORATION AT 52 PUMP HOUSE ROAD**

WHEREAS, the City of Beacon owns the property located at 52 Pump House Road, Fishkill, New York (Tax Map Parcel No. 6155-00-517517) (the "Easement Area"), and Central Hudson Gas & Electric Corporation ("Central Hudson") has requested a temporary easement permitting Central Hudson to gain access to said property for specified public utility use in, upon, over and under the Easement Area during the time that NYSDOT is performing repairs to the adjacent Interstate 84 bridge; and

NOW THEREFORE, BE IT RESOLVED THAT, the City Council hereby authorizes the Mayor and/or City Administrator to sign the Temporary Easement Agreement for said purpose, along with all documents as may be necessary for the recording of such Agreement, subject to review and approval by the City Attorney.

Resolution No. _____ of 2018		Date: <u>2018</u>					
<input type="checkbox"/> Amendments		<input type="checkbox"/> On roll call		<input type="checkbox"/> 2/3 Required			
<input type="checkbox"/> Not on roll call.				<input type="checkbox"/> 3/4 Required			
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy Casale					
Motion Carried							

City of Beacon Council Agenda
3/19/2018

Title:

Resolution authorizing the sale of 23-28 Creek Drive in City of Beacon

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso Sale Creek Dr	Resolution
Creek Drive Purchase and Sale Agreement	Agreement
EAF Creek Drive	Backup Material
Neg Dec Creek Dr	Backup Material

**CITY OF BEACON
CITY COUNCIL**

Resolution No. _____ of 2018

RESOLUTION AUTHORIZING SALE OF 23-28 CREEK DRIVE IN THE CITY OF BEACON

WHEREAS, there exists a parcel of land located at 23-28 Creek Drive (parcel identification grid number 130200-6054-37-037625) in the City of Beacon, Dutchess County, New York (the “**Property**”); and

WHEREAS, the Property was obtained by the City of Beacon (the “**City**”) pursuant to a deed recorded at the Dutchess County Clerk’s Office and was previously used as the City’s highway garage; and

WHEREAS, the Property is not needed by the City for any municipal purpose; and

WHEREAS, the Beacon City Council (the “**City Council**”) has the authority pursuant to General City Laws § 20 to sell and convey real property, when not needed for City purposes; and

WHEREAS, pursuant to Section 1.07 of the City Charter, the City Council may by resolution vote to sell City property upon such terms and conditions as the City Council may deem proper; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council, in accordance with Article 8 of the State Environmental Conservation Law and 6 NYCRR Part 617 and upon review of the EAF and all other materials prepared for this unlisted action, hereby adopts the attached Negative Declaration; and

BE IT FURTHER RESOLVED, the City Council hereby declares that the Property is not needed for municipal purposes; and

BE IT FURTHER RESOLVED, the City Council approves of the sale of the Property to 23-28 Creek Drive, LLC, a New York limited liability company or its assign(s) (the “**Purchaser**”) for a sales price of One Hundred Fifty Thousand (\$150,000) Dollars plus improvements made to the Property by Purchaser, including, but not limited to, the construction and maintenance of the Greenway Trail through the Property, replacement of certain City pipes located on the Property, creating a park open to the public with no less than \$100,000 spent on landscaping, lighting, benches, grading and construction of retaining walls and demolishing the existing buildings located on the Property, in accordance with the terms of the Purchase and Sale Agreement, subject to review and approval by the City Attorney; and

BE IT FURTHER RESOLVED, that the Mayor and/or City Administrator are authorized to sign any and all documents, necessary to effectuate the purpose of this Resolution.

Resolution No. _____ of 2018		Date: <u>2018</u>					
<input type="checkbox"/> Amendments		<input type="checkbox"/> On roll call		<input type="checkbox"/> 2/3 Required			
<input type="checkbox"/> Not on roll call.				<input type="checkbox"/> 3/4 Required			
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy Casale					
Motion Carried							

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the _____ day of March, 2018, by and between the CITY OF BEACON, a municipal corporation with its principal offices at One Municipal Plaza, Beacon, New York 12508 ("Seller" or "City"), and 23-28 CREEK DRIVE, LLC, a New York limited liability company with offices at 11 Creek Drive, Suite 102A, Beacon, New York 12508 ("Purchaser").

Purchaser agrees to purchase and Seller agrees to sell the property described below upon the following terms and conditions:

1) **PROPERTY DESCRIPTION.** The property which is the subject of this Agreement is the land, together with all buildings and improvements located thereon, commonly known as 23-28 Creek Drive, Beacon, New York and referred to as Parcel Grid Identification #130200-6054-37-037625, and as more particularly described in "Schedule A" annexed hereto and made a part hereof (the "Premises"), together with: (i) all of Seller's interest, if any, in and to any and all rights of ingress and egress to and from the Premises; (ii) all of Seller's interest, if any, in and to any and all easements or rights of way now or hereafter affecting or appurtenant to the Premises and any rights Seller has to use the same; (iii) intentionally omitted (iv) all right, title and interest of Seller, if any, in and to all strips and gores and alleys adjoining the Premises; and (v) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. The Premises, together with items (i) to (v) above are herein collectively called the "Property".

2) **PRICE: AMOUNT AND HOW IT WILL BE PAID.** The purchase price for the Property shall be One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Purchase Price"). Consideration for the purchase shall also include the items of work listed in Paragraphs 4, 7, 8, 9, 11, 12 and 17 of Schedule B. Upon Purchaser's execution of this Agreement, Purchaser shall submit a check for Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the "Downpayment") made payable to "Keane & Beane, P.C., as escrow agent". At the time of Closing (as hereafter defined), Purchaser shall pay to Seller One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00) by cash, certified or official bank check or wire transfer(s) of immediately available funds.

3) **CLOSING DATE:** The settlement of the obligations of Seller and

Purchaser to each other under this Agreement, including transfer of title and payment of the Purchase Price (the "Closing"), shall be completed at the offices of Keane & Beane, P.C., 200 Westage Business Ctr., Ste. 120, Fishkill, New York, or at such other place as mutually agreed to between Seller and Purchaser, at 10:00 A.M. on the date set forth in Schedule B – Terms and Conditions of Sale in Section I, Paragraph 16 (the "Closing Date").

4) **PERMITTED EXCEPTIONS.** The Property is sold and shall be conveyed subject to the following (collectively, the "Permitted Exceptions"):

(a) Zoning and subdivision laws and regulations, and landmark, historic, or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the Property or their use;

(b) Real estate taxes that are a lien, but are not yet due and payable provided Purchaser shall have no liability for any real estate taxes assessed against the Property for any period prior to Purchaser's acquisition of the Property;

(c) Any and all state of facts, easements and legends shown on any filed map or which an accurate survey of the Property would disclose, provided the same do not render title to the Property unmarketable and/or uninsurable at standard title rates or premiums.

(d) Any and all recorded covenants, restrictions, easements, reservations, limitations, burdens, conditions and rights-of-way encumbering the Property, provided the same (i) do not render title to the Property unmarketable and/or uninsurable at standard title rates or premiums, (ii) are not violated by existing improvements and/or current uses of the Property, (iii) do not contain any outstanding options, rights of first refusal, or purchase rights, or require any affirmative acts or monetary payments (including any mortgages filed against the Property), and (iv) do not contain any provision whereby a future violation will result in a forfeiture or reversion of title.

(e) De minimis (one foot or less) encroachments of retaining walls, hedges and fences, and de minimis variations (one foot or less) between record lines and retaining walls, hedges and fences; and

(f) Terms and Conditions of Sale annexed hereto as Schedule "B" and made a part hereof.

5) **PURCHASER'S POSSESSION OF PROPERTY.** (a) Purchaser shall have sole and exclusive possession of the Property from and after the Closing Date.

(b) Prior to Closing, Seller grants to Purchaser and the adjacent property owner, Weber Projects III, LLC ("Adjacent Owner") a revocable license agreement for the Property solely for the purpose of (i) the Adjacent Owner to store manufactured building materials being used in connection with construction by Adjacent Owner of the building located at 9 Creek Drive, (ii) Adjacent Owner to exclusively store soil excavated from 9 Creek Drive to be used for construction of the park required by paragraph 3 of Schedule B, and (iii) use of the office space within the building on the Property for office type use. Neither the Adjacent Owner nor the Purchaser shall access or use the garage on the Property and shall not store anywhere on the Property, any gravel or the like or any liquids or hazardous materials. Should either party terminate this Agreement, within seventy-two (72) hours, Purchaser and Adjacent Owner shall vacate the Property, remove all of its personal property and restore the Property to its prior condition. Purchaser and Adjacent Owner agree to indemnify, defend and hold Seller harmless from any claims arising out of the grant of the revocable license agreement.

6) **DOWNPAYMENT IN ESCROW.** (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at Sterling National Bank, located at 40 Church Street, White Plains, New York 10601, until Closing or the termination of this Agreement, whichever occurs sooner, and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Taxpayer Identification Numbers of the parties shall be furnished to Escrowee within five business days upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 28) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Agreement or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the Interest thereon with the clerk of a court in the county in which the Property is located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this Agreement.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of provisions of this paragraph by signing in the place indicated on the signature page of this Agreement.

(f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

7) CONDITIONS TO CLOSING. This Agreement and Purchaser's obligation to purchase the Property are expressly subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The delivery by Seller to Purchaser of a Quit Claim Deed, in a form reasonably acceptable to the Title Company (as herein defined), duly executed and acknowledged in proper form for recording so as to convey fee simple title to the Property.

(b) The delivery by Seller to Purchaser of evidence reasonably satisfactory to Purchaser and Purchaser's title insurance company that Seller has the legal power, right and authority to consummate the sale and conveyance of the Property to the Purchaser.

(c) The delivery by Seller to Purchaser of the Property and all buildings and improvements comprising a part thereof in the condition stated in Section IV of Schedule B, together with all keys in the possession of the Seller to locks located

on the Property.

(d) The delivery by Seller to Purchaser of a certificate stating that all of Seller's representations and warranties made in this Agreement remain true and correct as of the date of Closing.

(e) The delivery by Seller of Seller's executed counterparts of: (i) the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax (Form TP-584), (ii) the State of New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217), and (iii) any other real estate transfer tax documents required in connection with the transfer contemplated herein.

(f) The delivery by Seller of a signed and acknowledged title affidavit in a form reasonably acceptable to Purchaser's Title Company (as hereinafter defined).

(g) The delivery by Purchaser to Seller of the cash, certified or official bank check(s) or wire transfer(s) required hereunder in the payment of the Purchase Price payable at the Closing.

8) **INSURABLE TITLE/OBJECTIONS TO TITLE.** (a) Seller shall give and Purchaser shall accept any such fee simple title as any reputable title company selected by Purchaser and reasonably acceptable to Seller ("Title Company") will be willing to approve and insure at standard title rates or premiums, in the amount of the Purchase Price, in accordance with the standard form of ALTA policy approved by the New York State Insurance Department ("Title Commitment"), subject only to the aforementioned Permitted Exceptions.

(b) Provided that this Agreement is not terminated in accordance with the provisions of paragraph 12A (g) below, Purchaser agrees that no later than ten (10) days following the expiration of the Environmental Due Diligence Period (as hereinafter defined), Purchaser shall request from the Title Company a title report and commitment for an owner's title insurance policy (the "Title Report") and a survey of the Property (the "Survey"). Seller's counsel shall be given copies of the Title Report, Survey, searches and amendments thereto within three (3) business days from the date on which Purchaser receives copies of the same. Purchaser agrees that, prior to the date which is twenty (20) days following Purchaser's receipt of the Title Report and/or the Survey (the "Title Objection Date"), it will notify Seller's counsel in writing in what respects, if any, Purchaser deems Seller's title not to be that required by this Agreement as of the date of

such notice (i.e. title defects other than Permitted Exceptions) or state of facts shown on the Survey which are objectionable. In the event Purchaser fails to deliver such notice prior to the Title Objection Date, Purchaser shall be deemed to have waived its right to object any matters disclosed in the Title Report. Purchaser further agrees that, prior to the date which is fourteen (14) days after the date of receiving any updates or revisions to the Title Report or Survey (the "Amended Title Objection Date"), it will notify Seller's counsel in writing in what respects, if any, Purchaser deems Seller's title not to be that required by this Agreement as of the date of such notice or state of facts shown on the Survey which are objectionable. In the event Purchaser fails to deliver such notice prior to the Amended Title Objection Date, Purchaser shall be deemed to have waived its right to object to the same.

(c) Seller shall be obligated to discharge the following Title Objections provided such objections were notified to Seller's counsel in the manner set forth in Paragraph 8(b): (i) any Title Objection that constitutes a mortgage encumbering the Property; (ii) any Title Objection that constitutes a mechanic's lien of record; and (c) any Title Objection that can be cured solely by the payment of a liquidated sum of money not to exceed \$3,000.00 in the aggregate. If Seller is unable by the date set forth herein for Closing to arrange for the Title Company to agree to omit from the Title Report any Title Objections, then Seller may adjourn the Closing for a reasonable period of time not in excess of sixty (60) days in order to attempt to do so. Except as set forth above, in no event, however, shall Seller be required to bring any action or institute any proceeding, or otherwise to incur any costs or expenses, in order to arrange for the Title Company to agree to omit any Title Objections or otherwise to cause title to the Property to be in accordance with the terms of this Agreement on the date set forth herein for Closing, except as set forth in Paragraph 8 (d) below. If the Title Company shall not have agreed to omit any Title Objections by the date set forth herein for Closing and shall not have agreed to provide a Title Commitment, then Purchaser may elect to the following: (i) if the Title Objection can be satisfied solely with the payment of a liquidated sum of money not to exceed \$3,000.00 in the aggregate, Purchaser shall have the right, but not the obligation, to pay such sums to remove the Title Objection and offset such amounts against the Purchase Price; (ii) consummate the transaction contemplated hereby without regard to such Title Objections (in which event, the Purchase Price shall not be adjusted because of such Title Objections and such Title Objections shall become Permitted Exceptions); or (iii) terminate this Agreement by written notice delivered to Seller, such termination shall be effective as of the giving of such notice and Purchaser shall be entitled to the return of the Downpayment with any accrued interest thereon, if any, and, thereafter, neither party shall have any further obligations to the other hereunder, except as expressly provided to the contrary herein.

(d) If the Title Report discloses judgments, bankruptcies or other returns against persons or entities having names the same as, or similar to, that of Seller, Seller shall deliver to Purchaser an affidavit showing that such judgments, bankruptcies or other returns are not against Seller.

(e) Unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two (2) days following the date scheduled for Closing, and any other liens and encumbrances which Seller is obligated to pay and discharge, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser at least two (2) business days prior to the date scheduled for Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record.

9) **PLANS/SURVEYS/APPRAISALS/REPORTS.** Within ten (10) days of the date of this Agreement, to the extent in Seller's actual possession, Seller agrees to provide Purchaser with copies of any and all plans, surveys, appraisals and reports regarding the Property.

10) **RECORDING COSTS, MORTGAGE TAX, TRANSFER TAX AND CLOSING ADJUSTMENTS.** Purchaser will pay for continuation of all tax and title searches to and including the date of Closing, and, pursuant to New York State Tax Law §1405 for any real property transfer taxes. Purchaser will pay for recording the deed and mortgage recording tax, if any. Rent payments, if any, fuel oil on the Property, if any, water charges, if any, sewer charges, if any, or assessments, if any, and current taxes, if any, computed on a fiscal year basis, excluding any delinquent items, interest and penalties, will be prorated and adjusted between Seller and Purchaser as of the Closing Date.

11) **RISK OF LOSS.** Risk of loss or damage to the Property by fire or other casualty until Closing shall be assumed by Seller. If material damage to the Property by fire or such other casualty occurs prior to Closing, Purchaser may terminate this Agreement without any further liability to Seller and Seller shall refund the Downpayment to Purchaser within five (5) business days of such termination.

12) **CONDITION OF PROPERTY.** If Purchaser does not terminate this Agreement pursuant to Paragraph 12A (g) below, Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Property and of all other property included in this sale, including the environmental conditions of the Property, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this Agreement based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Property or the other property included in the sale, given or made by Seller or its representatives unless expressly stated in this Agreement, and shall accept the same "as is" in their present condition and state of repair and environmental condition, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing, without any reduction in the purchase price or claim of any kind for any

change in such condition by reason thereof subsequent to the date of this Agreement. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable written notice to Seller, to inspect the Property prior to Closing.

12A) ENVIRONMENTAL DUE DILIGENCE. Subject to the terms and conditions of this Paragraph 12A, Purchaser, and its agents, contractors, and representatives, shall have the privilege, opportunity and right during a period commencing on the date that a fully executed copy of this Agreement is delivered to the Purchaser's attorney and expiring at 5:00 p.m. on the date which is six (6) weeks thereafter (the "Environmental Due Diligence Period"), of entering upon the Property, subject to Paragraph 12A (c) below, in order to inspect, examine, study, test, and perform all environmental due diligence investigation, studies, tests, and analysis that Purchaser deems prudent and advisable (collectively, the "Environmental Studies"). Purchaser shall be responsible for all costs incurred during the Environmental Due Diligence Period and prior to Closing. The Environmental Studies under this Paragraph 12A may include a Phase I environmental audit of the Property and a Phase II study of the Property. Seller agrees to cooperate with Purchaser in all reasonable ways in connection with Purchaser's environmental investigation of the Property including, without limitation, furnishing to Purchaser any and all documents and reports relating to the environmental condition of the Property, as Purchaser may reasonably request to the extent in Seller's custody or control.

(a) Purchaser shall inform Seller's designated representative at least two (2) business days prior to any planned access of the Property for the purpose of conducting Environmental Studies. Such notice ("Access Notice"), which shall be in writing, shall identify the specific persons and entities planning to access the Property and the specific activities that each such person or entity plans to perform thereon.

(b) If the Closing does not occur for any reason, Purchaser agrees to promptly return to Seller any reports or other materials furnished by Seller and any copies thereof made by Purchaser or its agents or representatives.

(c) Purchaser and its agents or representatives hereby agree to keep confidential any information regarding the Property obtained in the course of conducting the Environmental Studies and agrees further not to disclose any such information to any other person or entity, without Seller's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(d) Purchaser and/or its agents and representatives or contractors performing any of the Environmental Studies, shall maintain during the Environmental Due Diligence Period comprehensive general liability insurance and contractor's pollution liability insurance in the amount of no less than \$1,000,000 per occurrence and Seller shall be named an additional insured thereon. Purchaser shall provide to Seller prior to entry on the Property a certificate of insurance evidencing such insurance coverage.

(e) Purchaser does and shall hereby indemnify and hold harmless Seller, its agents, successors and assigns, against all losses, liabilities, obligations, claims, damages, penalties, fines, actual costs and expenses (including, without limitation, attorneys' and consultants' fees) and costs of litigation, suits, judgments, liens, and encumbrances, including third party claims, arising from the acts or omissions of Purchaser, its agents, employees, contractors/subcontractors, licensees, invitees and/or representatives, or any or all of them, under this Paragraph 12A, whenever made or incurred, and this indemnity shall survive Closing, or any other termination of this Agreement.

(f) Purchaser shall, at its sole cost and expense, promptly, after all Environmental Studies are conducted, repair any damage caused to the Property and/or Seller's personal property by reason of the Environmental Studies and restore the Property to its condition immediately prior to such damage.

(g) Purchaser agrees to provide to Seller upon Seller's written request therefor, copies of all environmental reports, audits, sampling data, analytical data and other documents, reports or correspondence resulting from the Environmental Studies, specifically including any Phase II environmental report.

(h) Purchaser shall be responsible at its sole cost for any recognized environmental condition related to the Property (and not the Buildings) set forth in the Environmental Studies that costs Fifty Thousand (\$50,000.00) Dollars or less. In the event that the results of the Environmental Studies establish there are recognized environmental conditions related to the Property (and not the Buildings) which require remediation costs that two (2) qualified environmental consultants provide written estimates will exceed Fifty Thousand (\$50,000) Dollars, Purchaser in Purchaser's sole and absolute discretion, shall have the right to terminate this Agreement, on or before the last day of the Environmental Due Diligence Period, by giving written notice ("Purchaser's Notice") to Seller, which Purchaser's Notice Seller must receive on or before 5:00 P.M. on the last day of the Environmental Due Diligence Period, whereupon this Agreement shall be deemed terminated and thereafter neither party shall have any further rights, obligations or liabilities hereunder, except that the Downpayment and any interest earned thereon shall be promptly refunded to Purchaser. Purchaser's failure to give to Seller on or before 5:00 P.M. on the last day of the Environmental Due Diligence Period (time being of the essence) written notice of its election to terminate this Agreement under the terms of this Paragraph 12A, shall be deemed a waiver by Purchaser of its right to terminate under this Paragraph 12A. Notwithstanding anything in this Agreement to the contrary, Purchaser's Notice pursuant to this Paragraph 12A may be given by Purchaser or Purchaser's counsel by email to Seller's counsel at: nward-willis@kblaw.com at or prior to 5:00 P.M. on the last day of the Environmental Due Diligence Period. Seller acknowledges that Purchaser has offered two separate conceptual development plans and uses for the Property, designated as Option A ("Option A") and Option B ("Option B"), as both set forth on Page 12 in Purchaser's RFP Response (as defined in Schedule B). Seller acknowledges that in the event that the selection of Option B either reduces or eliminates the need for any required remediation at the Property, Purchaser will select and move forward with Option B.

13) **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Seller represents, warrants and covenants to Purchaser, based on the actual knowledge of Seller as of the date hereof and as of the date of Closing, as follows:

(a) Requisite Action. Seller is the sole owner of the Property and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Seller has obtained all requisite municipal authorization necessary to enter into this Agreement and to consummate the transactions contemplated hereunder.

(b) Validity. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, except to the extent that enforceability thereof may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of contracts and creditor's rights generally and to general principles of equity.

(c) Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor referenced herein, conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note or other evidence of indebtedness or any contract or lease to which Seller is a party.

(d) Leases. There are no leases with respect to the Property.

(e) Service Contracts. To Seller's actual knowledge, there are no service contracts in respect of the Property.

(f) The Seller is not liable, or bound in any matter, by express or implied warranties, guarantees, promises, statements or representations pertaining to the Property, the condition thereof or any other matter whatsoever, made or furnished by any real estate broker, agent, employee, servant or other person representing or purporting to represent Seller, unless such warranties, guaranties, promises, statements or representations are expressly or specifically set forth herein.

Seller shall fully disclose to Purchaser, promptly upon Seller's becoming aware of its occurrence and at least two (2) business days prior to Closing, any change in facts or

circumstances of which Seller becomes aware prior to the Closing that may affect the representations and warranties set forth above.

14) **DEFAULTS AND REMEDIES.** If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty. If Seller defaults hereunder, Purchaser may either (i) terminate this Agreement by written notice to Seller, in which event the Downpayment and accrued interest thereon, if any, shall be promptly returned to Purchaser, or (ii) commence an action for specific performance of Seller's obligations under this Agreement.

15) **RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY.** If more than one person signs this Agreement as Purchaser, each person shall be responsible for keeping the promises made by Purchaser in this Agreement. This Agreement may not be assigned by Purchaser and any purported assignment of this Agreement by Purchaser shall be void ab initio. Notwithstanding the foregoing, this Purchase and Sale Agreement may be assigned by Purchaser with the prior written consent of Seller in each instance to an entity in which Rodney Weber shall own no less than 51% of the stock or membership interests in such entity. Any permitted assignment hereunder shall be by written instrument, signed by the assignee, which provides for the assumption by the assignee of all of Purchaser's obligations hereunder, provided that Purchaser shall nonetheless remain fully responsible to Seller for the due performance of all of Purchaser's obligations hereunder.

16) **ENTIRE AGREEMENT.** This Agreement when signed by both Purchaser and Seller will be the record of the complete Agreement between the Purchaser and Seller concerning the purchase and sale of the Property. No verbal agreements or promises will be binding.

17) **FURTHER DOCUMENTS.** Each party to this Agreement agrees to execute, acknowledge and deliver or cause to be delivered, such other deeds, assignments, affidavits, certificates and other instruments and documents as may be reasonably necessary and required by the other party from time to time to confirm and carry out the intent and purpose of this Agreement and the performance of each party's obligations under the terms of this Agreement, in such form as shall be reasonably satisfactory to counsel for both parties.

18) **HEADINGS.** Headings in this Agreement are for convenience of reference only and in no way define, limit or describe the scope of this Agreement and shall not be used to interpret or construe this Agreement or any of its provisions.

19) **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

20) **INTEGRATION.** All prior understandings, agreements, representations and warranties, oral or written, between Purchaser and Seller are merged in this Agreement which Agreement completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement.

21) **INTERPRETATION.** This Agreement shall be interpreted and construed according to its fair meaning and neither for nor against any party hereto irrespective of which party caused the same to be drafted. Each of the parties acknowledges that it has been or has had the opportunity to be represented by an attorney in connection with the preparation and execution of this Agreement.

22) **GOVERNING LAW; VENUE.** This Agreement shall be interpreted, construed and enforced in accordance with and governed by the internal laws of the State of New York without reference to the principles of conflicts of laws. Each party hereby irrevocably consents to the exclusive jurisdiction of the courts of the County of Dutchess and State of New York for all purposes in connection with any action, suit or proceeding which arises out of or relates to this Agreement. To the fullest extent it may effectively do so under applicable law, each party hereby irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection which it may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in any such court and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

23) **AMENDMENTS.** This Agreement may not be modified or amended, nor may any of its provisions be waived except by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, or waiver is sought, and then such modification, amendment, or waiver shall be effective only in the specific instance and for the specific purpose for which given.

24) **FURTHER ASSURANCES.** Each party hereto shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other party in order to carry out the intent and purpose of this Agreement. This paragraph shall survive the Closing under this Agreement.

25) **SUCCESSORS AND ASSIGNS.** Subject to the terms and conditions hereof, the covenants, agreements, terms, provisions and conditions contained in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective distributees, legal representatives, successors and assigns.

26) **COUNTERPARTS.** This Agreement may be executed by the parties individually in several separate counterparts, each of which shall be deemed an original, and all of the said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement is intended to be enforceable when executed and delivered by facsimile or by e-mail.

27) **SEVERABILITY.** If any term, covenant or condition of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the extent permitted by the law.

28) **NOTICES.** Any notice given hereunder shall be in writing and shall be served in person, via facsimile (subject to printout of confirmation of receipt), via email, by nationally recognized overnight express delivery service, or by United States certified mail, with postage prepaid, properly addressed and directed to a party's attorney at the following address:

If to Seller:

Nicholas M. Ward-Willis, Esq.
Keane & Beane, P.C.
445 Hamilton Avenue, Suite 1500
White Plains, New York 10601
Telephone: (914) 946-4777
Facsimile: (914) 946-6868
Email: nward-willis@kblaw.com

If to Purchaser:

Taylor M. Palmer, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Telephone: (914) 761-1300
Facsimile: (914) 761-5372
Email: tpalmer@cuddyfeder.com

29) **BROKER.** Seller and Purchaser each represent and warrant to the other that it has not dealt with any real estate broker in connection with this sale. Seller and

Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach of their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this Agreement.

30) Purchaser and Seller expressly authorize their respective attorneys to act on their behalf and bind the respective parties to any stipulations as to extensions, adjournments or changes in any time periods in this Agreement, including, but not limited to, the Closing Date.

31) Neither this Agreement nor a memorandum thereof may be recorded by Purchaser. Breach of this provision by Purchaser shall constitute a default hereunder.

32) See Terms and Conditions of Sale, attached hereto as Schedule "B" and made a part hereof.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representative to execute this Agreement as of the date first above set forth.

CITY OF BEACON

23-28 CREEK DRIVE, LLC

By: _____
Name: Anthony Ruggiero
Title: City Administrator

By: _____
Name: Rodney Weber
Title: Member/Manager

ADJACENT OWNER (paragraph 5)

Weber Projects III, LLC

By: _____
Name:
Title:

ESCROWEE:

Keane & Beane, P.C.

By: _____
Nicholas M. Ward-Willis, Esq., a partner

Schedule A – Property Description

Schedule B – Terms and Conditions of Sale

I. Redevelopment and Transfer Conditions

1. Purchaser acknowledges that Seller makes no representations that the Property meets local, County or Federal ordinances, regulations or laws governing development of property commercially, industrially or otherwise. All permits, empowerments, permissions and grants necessary for the sale and/or development of the Property are at the Purchaser's sole risk, cost and responsibility.
2. Provided that this Agreement is not terminated in accordance with the provisions of paragraph 12A(g) above, so as to facilitate compliance with this Agreement and the City's intent for redevelopment of the Property, Purchaser and its design team shall meet within thirty (30) days following the expiration of the Environmental Due Diligence Period, with a representative of the City Planner, Building Inspector and the City Attorney (the "Initial Project Meeting") to review the proposed redevelopment project based on Purchaser's RFP response proposal ("Purchaser's RFP Response") (a copy of which is attached hereto as Schedule C) and prior to its submission of any land use application to the City. . Purchaser agrees to make reasonable modifications to the Project in response to comments received from City officials at the Initial Project Meeting. The proposed redevelopment project based on Purchaser's RFP response proposal as modified by further discussions between the City and Purchaser shall hereinafter be referred to as the "Project". If (i) the Purchaser and the City officials are unable to come to agreement on the Project during the Initial Project Meeting and/or during any subsequent meeting prior to Purchaser's submission of any land use application , or (ii) Purchaser's submission to the Zoning Board of Appeals, and/or the Planning Board is denied or fails to receive approval within the time periods required by this Agreement, then Purchaser shall have the right, upon written notice to Seller, to terminate this Agreement whereupon the Downpayment and any interest earned thereon, if any, shall be immediately returned to Purchaser. Purchaser acknowledges that approval of the Project shall require Purchaser to modify the land use approvals obtained for the adjacent property located at 9 Creek Drive, Beacon, New York (the "Adjacent Property"), specifically regarding the building shown as "4 Story Building 16 Apartments" and the Greenway Trail located south of bend in the trail located south of the building identified as "3 Story Building 6 Apartments" as shown on the Site Plan generally entitled "Special Use Permit Application – Lot 1, 3 Churchill Street (A/K/A 9-11 Creek Drive)" prepared by Aryeh Siegel, Architect, dated January 25, 2015, last revised August 25, 2015 (the "2015 Site Plan"), which 2015 Site Plan was approved by the City of Beacon Planning Board by Resolution dated September 9, 2015, signed by the Planning Board Chairman dated September 23, 2015. Purchaser agrees to make a joint submission to the Zoning Board of

Appeals, if required, and the Planning Board, together with the owner(s) of the Adjacent Property, which owner(s) include Rodney Weber and Weber Projects III, LLC, as may be necessary in order to modify or amend the 2015 Site Plan and the subdivision plat consisting of two (2) sheets entitled “3 Churchill Street (AKA 9-11 Creek Drive)” prepared by TEC Land Surveying, P.C., dated February 25, 2014, last revised July 28, 2014, filed in the Dutchess County Clerk’s Office as Filed Map Number 12519, (the “Subdivision Plat”) to be consistent with the Project.

3. The Project shall include a park open to the public (which park shall be open at such times and subject to such rules as applies to City parks) and to be maintained in perpetuity by Purchaser, its successors and assigns, consisting of a trail, benches, lighting, construction of retaining walls and landscaping (the “Park”) costing no less than One Hundred Thousand (\$100,000) Dollars to construct (which \$100,000 shall be inclusive of the cost to construct the Greenway Trail as required in paragraph 4, below), and the design of the Park must be reasonably satisfactory to the Planning Board.
4. The City acknowledges that the existence of the Park on the Property as part of the Project will be factored in when determining the tax assessment for the Project upon completion of the Project.
5. The City will assume liability for injuries/death occurring on the Park not due to the fault of Purchaser or any subsequent owner of the Property, as it would if the Park were located on property owned solely by the City.
6. The Project shall include construction of a Greenway Trail open to the public and connecting to the Southwest to the trail in the Park described in paragraph 3, above, and connecting to the Northeast to the Greenway Trail on the adjacent Northeastern parcel (the “Greenway Trail”).
7. Purchaser acknowledges that (i) construction and maintenance of the Greenway Trail and Park, and (ii) maintenance of the Park are considered partial consideration for the purchase of the Property. The Greenway Trail and Park shall be maintained in accordance with the Greenway Trail and Park easement agreement in a form annexed hereto as Schedule D, subject to further modifications by the Planning Board, which will be signed at Closing. Purchaser’s obligation to maintain the Park in perpetuity and to a condition to the reasonable satisfaction of the City and consistent with the maintenance of the Greenway Trail, shall be incorporated into the language of the deed and binding upon all subsequent owners of the Property.
8. Purchaser shall construct two (2) parking spaces within 200 feet of the entrance to the Park designated for handicap use and both of which shall be reserved for patrons of the Park during normal Park operating hours.

9. The construction of the trail in the Park and a Greenway Trail on the Property shall be in accordance with the recommendations of the Fishkill Creek Greenway & Heritage Trail Master Plan.
10. The Project shall include plans for removal and installation of one main sanitary sewer pipeline on the Property in a location and form to be determined by the City Engineer in his reasonable discretion. Any storm water facilities located on this Property will be terminated.
11. The Project shall include Purchaser's demolition and removal, at its sole cost and expense, of all buildings, structures (above and below ground) from the Property.
12. Intentionally omitted.
13. Within forty-five (45) days of the expiration of the Environmental Due Diligence Period, if this Agreement is not terminated pursuant to paragraph 12A(h) above, a complete application, including all applicable fees, for any zoning variance for the maximum building height; total number of stories; as well as maximum dwelling unit size (3,000 sq. ft.) necessary for the Project (the "Variance") shall be made to the Zoning Board of Appeals. Purchaser shall diligently pursue the Variance and take all reasonable actions necessary to obtain the Variance. The zoning change and the Variance shall be referred to herein as the "Zoning Approvals".
14. Within forty-five (45) days of the issuance of the Variance(s) a complete application for the site plan approval and subdivision approval, including all applicable fees (the "Site Plan Approval"), for redevelopment of the Property substantially in accordance with the Project shall be made to the Planning Board. Purchaser shall diligently pursue the Site Plan Approval and take all reasonable actions necessary to obtain the Site Plan Approval.
15. Purchaser shall submit a complete Building Permit application, including all applicable fees, for the Project within one-hundred (120) days of issuance of the Site Plan Approval. Purchaser shall diligently pursue such application and take all reasonable actions necessary to obtain such Building Permit.
16. Purchaser acknowledges that construction and maintenance of the Greenway Trail and Park are considered partial consideration for the purchase of the Property and the recreation fee due to the City shall not be reduced due to the construction and maintenance of the Greenway Trail and Park.
17. This Agreement is contingent upon, and the Property shall not be conveyed to Purchaser, until such time as the Purchaser has, and by no later than fifteen (15) months after the expiration of the Environmental Due Diligence Period, (a) obtained any Zoning Approvals necessary, (b) obtained the Site Plan Approval

and (c) obtained a Building Permit for the Project. The Closing shall occur on a date mutually agreeable to the parties which date shall be on or before thirty (30) days after the Building Permit for the Project is issued by the City. If the Zoning Approvals, Site Plan Approval and Building Permit are not obtained within sixteen (16) months of the Contract Date despite a diligent effort by Purchaser, then either Purchaser or Seller may cancel this Agreement and Escrowee shall return the Downpayment to Purchaser together with any interest earned thereon, if any, whereupon this Agreement shall be deemed null and void, without further force or effect.

18. On the Closing Date and simultaneously with the Seller's delivery of the Deed, Purchaser shall provide Seller with (a) a copy of a signed contract with a construction manager for construction of the Project; and (b) a copy of a signed contract with a contractor for construction of the Project; and (c) evidence that Purchaser has an unconditional construction loan commitment letter in an amount sufficient to construct the Project and proof that the construction loan closing has been scheduled. The closing of Purchaser's construction financing shall occur simultaneously with and on the Closing Date for this Agreement, at the office of Purchaser's lender or Seller, in its sole discretion, may elect to close in escrow.
19. Within fourteen (14) days of conveyance of title to the Property, the Property shall be secured and the Property shall comply with Sections 107.2, 302, 303 and 307 of the Property Maintenance Code of the State of New York and Chapter 92 of the City of Beacon Code.
20. Purchaser shall commence construction within sixty (60) days of Closing.
21. Purchaser must diligently pursue construction and obtain any and all Certificates of Occupancy for the complete Project within eighteen (18) months after issuance of a Building Permit of the Project.
22. Prior to the issuance of any Certificate of Occupancy for the Project, the following conditions shall be fulfilled: (i) Purchaser shall construct the Greenway Trail on the Property; and (ii) Purchaser shall enter into an agreement with the City and any other necessary parties whereby the maintenance of the Greenway Trail on the Property shall be performed by the person(s), entity(ies), or organization(s) responsible under the rules and regulations for the complete greenway trail of which the Greenway Trail to be constructed hereunder shall be a part.
23. Any requests for an extension of time frames set forth in Paragraphs 1 through 20 above shall be subject to the approval of the City Council, in its sole discretion, which consent shall not be unreasonably withheld, conditioned or delayed provided that Purchaser has been diligently and in good faith proceeding toward completion of the Project.

24. The Parties agree that the dates set forth in paragraphs 18, 19 and 20 of these Terms and Conditions of Sale are subject to Unavoidable Delays (as hereinafter defined) and the dates set forth in such paragraphs shall be extended for the period of Unavoidable Delay provided Purchaser promptly advises the City in writing of the Unavoidable Delay and sets forth a date by which it anticipates such Unavoidable Delay will be resolved and provides a written update every thirty (30) days and proceeds with those portions of the Project not affected by the Unavoidable Delay. Any Unavoidable Delay is subject to the City's reasonable approval, which approval shall not be unreasonably withheld, conditioned, or delayed. "Unavoidable Delays" shall mean delays due to fire, casualty, labor trouble, inclement weather conditions, natural disaster, civil unrest; unforeseen site conditions or other unforeseen conditions, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond Purchaser's reasonable control.
25. The Seller selected Purchaser on the basis of the Purchaser's assurance that the Property would be developed in the manner, and within the timeframes, described herein so that the Property will be utilized for the benefit of the City of Beacon and its residents and visitors. Therefore, except as permitted below, the Purchaser shall neither be permitted to sell nor transfer the Property until five (5) years following the issuance of the last Certificate of Occupancy for the Project and nor shall Rodney Weber sell, transfer or dilute more than 49% of his membership interests in the Purchaser until after expiration of this five (5) year period. At the time of signing of this Agreement, Purchaser is owned 100% by Rodney Weber. Notwithstanding the foregoing, (i) sales and/or transfers of individual condominium units in a building constructed on the Property shall not be subject to the restrictions on sales or transfers of the Property as contained in this paragraph 23, and (ii) Seller recognizes the rights of mortgage lenders under applicable mortgages to foreclose on the Property, subject to the deed restrictions set forth herein. The deed shall contain language to this effect.

II. Restrictions on Use of the Property

26. The Property is being sold upon the condition that all or any part thereof shall not be used as a used car lot, junkyard or for any other dangerous, noxious or offensive purpose or establishment whatsoever. The deed shall contain language to this effect.
27. All improvements must be made in compliance with the Building Code and Zoning Ordinances of the City of Beacon and all other applicable codes, rules, and standards.
28. Except as otherwise permitted in paragraph 5(b) of this Agreement, the Property must be kept free from all accumulation of construction debris and materials at all

times, except for the staging of construction materials pursuant to a duly issued building permit.

III. Possibility of Reverter

29. Seller selected Purchaser on the basis of Purchaser's assurance that the Property would be developed in the manner, and within the timeframes, described herein so that the Property will be utilized for the benefit of the City of Beacon and its residents and visitors. Seller hereby retains a possibility of reverter in the Property for the purpose of assuring compliance with the Conditions of Sale set forth herein. The Terms and Conditions of Sale are covenants that shall run with the land and be binding to the fullest extent permitted by law and in equity. These Terms and Conditions of Sale shall inure to the benefit of the City of Beacon and shall be enforceable against Purchaser and its successors and assigns. This possibility of reverter shall be set forth in the deed and shall be binding upon any successor owner of the Property until such time as all post-Closing conditions have been satisfied. If the post-Closing Terms and Conditions of Sale are not satisfied within the specified times outlined herein (as such specified times may be extended), the Property shall revert to Seller, free and clear of any and all claims, encumbrances or other liens as set forth below. Notwithstanding the foregoing, however, Seller agrees to fully subordinate its possibility of reverter rights to any first or second mortgage secured against the Property if such subordination is required by Purchaser's lender to allow Purchaser to obtain financing for the construction of the Project.
- i. If Purchaser fails to comply with any of the post-Closing conditions set forth in these Terms and Conditions of Sale, Seller shall provide Purchaser a written Notice of Failure to Comply (the "Notice") with Terms and Conditions of Sale. Purchaser shall have forty-five (45) days after receipt of such Notice to comply; provided, however, that if any such failure to comply cannot be cured within such forty-five (45) day period, Mortgagor shall be afforded up to an additional forty-five (45) days to cure such failure to comply provided Purchaser shall have commenced such cure within such initial forty-five (45) day period and shall thereafter diligently continue to cure such failure to comply;
 - ii. If Purchaser has failed to correct the condition that is set forth in the Notice by the end of thirty (30) days or as such time as may be extended as set forth in (i) above or in writing by Seller, the City Council and Seller shall at its regularly scheduled meeting, adopt a Resolution declaring Purchaser to be in default.
 - iii. Seller shall send a certified copy of such Resolution to Purchaser. Purchaser agrees that upon receipt of a certified copy of the Resolution adopted by the City Council declaring Purchaser to be in default of these

post-Closing Terms and Conditions of Sale, Purchaser shall, within ten (10) days, execute a deed conveying the Property to the Seller at no cost.

- iv. In the event Purchaser fails to execute such deed, Seller shall have the right to commence an action in Supreme Court, Dutchess County compelling Purchaser to execute the deed and convey the Property to the Seller. Purchaser shall be responsible for all reasonable legal fees and expenses incurred by the Seller in preparing the Notice, Resolution and costs associated with any litigation.
- v. Upon issuance of all permanent Certificates of Occupancy for the Property conforming to the complete Project, the conditions set forth in these Terms and Conditions of Sale shall have been deemed fulfilled (aside from the restriction on using all or any part of the Property as a used car lot, junkyard or for any other dangerous, noxious or offensive purpose or establishment whatsoever, which restriction shall continue to remain in effect) and the possibility of reverter set forth herein and on the deed shall automatically terminate and be of no further force and effect.

IV. Condition of Property

- 30. **All lands and premises are sold in an “AS IS” condition.** The City has performed NO inspections to verify any of the land or premises that are being sold in an “AS IS” condition. At Closing, the Premises shall be delivered free of all tenancies and other possessory rights.
- 31. The Property will be delivered at Closing free of all personal property.

V. Miscellaneous Matters

- 32. Except as specifically provided for in the Conditions of Sale, the City of Beacon makes no representation and gives no warranties as to the environmental conditions of the aforesaid structure(s), lands and premises (the Property).
 - a. For the purposes of these conditions, “Environmental Laws” mean Federal, State and local laws and regulations, common law, orders, and permits governing the protection of the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. as amended (CERCLA); the Resource Conservation and Recovery Act, as amended 42 U.S.C. 6901, et seq.; the Clean Water Act, 33 U.S.C. 1251, et seq.; the Clean Air Act, 42, U.S.C. 7401, et seq.; The Toxic Substance Control Act, 15 U.S.C. 300f through 300j; Et seq. and any amendments thereto together with any other similar laws regulating the environment existing at the time of coming into existence in the future.

- b. Purchaser acknowledges that it is taking the Property subject to all environmental conditions existing at the Property, whether known or unknown.
 - c. Unless this Agreement is terminated pursuant to paragraph 12A(h), paragraph 2 or paragraph 17 of this Schedule B, Purchaser agrees to indemnify, defend, and hold harmless the City of Beacon from all liability for any claims relating to any contamination, or violations of any Environmental Laws, as defined above relating to conditions known or unknown regardless of whether existing prior to or following Closing, including reasonable attorneys' fees.
 - d. The representations and warranties contained in this paragraph shall survive Closing.
33. All sales shall be final and without recourse, and in no event shall the Seller be liable for any defects in title for any cause whatsoever. Except as set forth in paragraph 14 of the Agreement, no claim, demand or suit of any nature shall exist in favor of the Purchaser, his/her heirs, successors or assigns, against the Seller arising from this sale. This paragraph shall survive the Closing.
34. At the time of Closing, Purchaser shall coordinate with the Tax Assessor, at Purchaser's sole cost and expense, to restore the Property to the tax roll. In the event that the Property is not presently on the Assessment Roll and assessed real property taxes, Purchaser agrees to pay at Closing its proportionate share of city, county and school taxes from the date of Closing in an amount equal to that which it would have been apportioned if the Property were on the Assessment Roll. If the Property is not listed on the Assessment Roll (or will not be listed when the Assessment Roll is next published), Purchaser shall make no objection to the Property being restored to the Assessment Roll and the Property being assessed omitted taxes from the date of Closing and forward, which shall be Purchaser's obligation to pay. In no event shall the Seller be responsible for the payment of any property taxes.
35. In accordance with NYS Tax Law §1405, Purchaser shall be responsible for paying the New York State real estate transfer tax.
36. All of the terms, obligations and conditions set forth in paragraphs 1 to 35 shall survive the Closing.

Schedule C - Purchaser's RFP Response

Schedule D – EASEMENT AGREEMENT

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
City of Beacon			
Name of Action or Project: Sale of 23-28 Creek Drive			
Project Location (describe, and attach a location map): 23-28 Creek Drive, Beacon, New York			
Brief Description of Proposed Action: Sale of property currently used as the City's garage.			
Name of Applicant or Sponsor: City of Beacon		Telephone: 845-838-5009	
		E-Mail: administrator@cityofbeacon.org	
Address: 1 Municipal Plaza			
City/PO: Beacon		State: NY	Zip Code: 12508
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			YES
			X
2. Does the proposed action require a permit, approval or funding from any other governmental Agency?			NO
If Yes, list agency(s) name and permit or approval:			YES
			X
3.a. Total acreage of the site of the proposed action?			
b. Total acreage to be physically disturbed? (a) 2.582 acres			
c. Total acreage (project site and any contiguous properties) owned (b) 0.00 acres			
or controlled by the applicant or project sponsor? (c) 2.582 acres			
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
		X	
		X	
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
			X
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
		X	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
		X	
			X
			X
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
			X
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing potable water: _____	NO	YES	
			X
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____	NO	YES	
			X
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES	
		X	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
		X	
		X	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
		X	
16. Is the project site located in the 100 year flood plain?	NO	YES	
		X	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____	NO	YES	
		X	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
	X	
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
	X	
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
	X	
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>City of Beacon</u>		Date: December __, 2017
Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
2. Will the proposed action result in a change in the use or intensity of use of land?	X	
3. Will the proposed action impair the character or quality of the existing community?	X	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	X	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
7. Will the proposed action impact existing: a. public / private water supplies?	X	
b. public / private wastewater treatment utilities?	X	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	X	
11. Will the proposed action create a hazard to environmental resources or human health?	X	

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

City of Beacon City Council

Name of Lead Agency

Anthony Ruggiero

Print or Type Name of Responsible Officer in Lead Agency

Signature of Responsible Officer in Lead Agency

December, 2017

Date

City Administrator

Title of Responsible Officer

Signature of Preparer (if different from Responsible Officer)

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Project Number: _____

Date: December , 2017

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The City of Beacon City Council, has determined that the Proposed Action described below will not have a significant adverse effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Sale of improved land located at 23-28 Creek Drive

SEQR Status:

Type I _____

Unlisted X

Conditioned Negative Declaration:

Yes _____

No X

Description of Action:

Sale of improved land located at 23-28 Creek Drive, currently containing the City's Department of Public Works facility.

Location: 23-28 Creek Drive, Beacon, NY

Reasons Supporting This Determination:

COULD THE PROPOSED ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING:

1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? **The proposed action will not result in any significant adverse impacts to air quality, surface or ground water quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or cause flooding problems.**
2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources, or community or neighborhood character? **The proposed action will not result in any significant adverse impacts to aesthetic, agricultural, archaeological, historic, or other natural or cultural resources, or community or neighborhood character.**
3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? **The proposed action will not result in any significant adverse impacts to vegetation, fauna, fish, shellfish or wildlife species, significant habitat, or threatened or endangered species.**
4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? **The proposed action will not result in any significant adverse impacts to officially adopted plans or goals.**
5. Growth, subsequent development, or related activities likely to be induced by the proposed action? **The proposed action will not induce growth, subsequent development, or related activities.**
6. Long term, short term, cumulative, or other effects not identified in #1 through #5 above? **The proposed action will not result in significant adverse long-term, short-term, cumulative or other effects.**
7. Other impacts (including changes in use of either quantity or type of energy)? **None.**

Involved Agency:**For Further Information:**

Contact Person: Anthony Ruggiero, City Administrator

Address: City of Beacon
One Municipal Plaza
Beacon, NY 12508

Telephone Number: (845) 838-5009 Fax (845) 838-5012

For Unlisted Actions, a copy of this notice has been filed with:

The City of Beacon

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to schedule a public hearing on April 16, 2018 to receive public comment on a Special Use Permit application for 307 multi-family dwelling units for the Edgewater project

Subject:

Background:

ATTACHMENTS:

Description	Type
Reso_PH_Edgewater	Resolution



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. _ OF 2018**

**RESOLUTION TO SCHEDULE A PUBLIC HEARING FOR APRIL 16, 2018 TO RECEIVE PUBLIC
COMMENT ON A SPECIAL USE PERMIT APPLICATION FOR 307 MULTI-FAMILY
DWELLING UNITS FOR THE EDGEWATER PROJECT**

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Beacon hereby schedules a public hearing to receive public comment on a Special Use Permit application for 307 multi-family dwelling units for the Edgewater project.

Resolution No. _____ of 2018								Date: <u>2018</u>	
<input type="checkbox"/> Amendments								<input type="checkbox"/> 2/3 Required	
<input type="checkbox"/> Not on roll call								<input type="checkbox"/> 3/4 Required	
<input type="checkbox"/> On roll call									
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent		
		Terry Nelson							
		Jodi McCredo							
		George Mansfield							
		Lee Kyriacou							
		John Rembert							
		Amber Grant							
		Mayor Randy J. Casale							
Motion Carried									

City of Beacon Council Agenda
3/19/2018

Title:

Resolution to schedule a public hearing on April 16, 2018 to receive public comment on a proposed local law for the Calculation of Lot Area per Dwelling Unit

Subject:

Background:

ATTACHMENTS:

Description	Type
Resolution_to_schedule_PH_Calc of Lot Area	Resolution
Calc of Lot Area Draft LL	Backup Material



**CITY OF BEACON
CITY COUNCIL
RESOLUTION NO. _ OF 2018**

**RESOLUTION TO SCHEDULE A PUBLIC HEARING FOR APRIL 16, 2018 TO RECEIVE PUBLIC
COMMENT ON A PROPOSED LOCAL LAW FOR THE CALCULATION OF LOT PER AREA
DWELLING UNIT**

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Beacon hereby schedules a public hearing to receive public comment on a proposed Local Law to for the calculation of lot per area dwelling unit.

Resolution No. _____ of 2018 Date: <u>2018</u>							
<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Amendments <input type="checkbox"/> Not on roll call <input type="checkbox"/> On roll call</div><div><input type="checkbox"/> 2/3 Required <input type="checkbox"/> 3/4 Required</div></div>							
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Terry Nelson					
		Jodi McCredo					
		George Mansfield					
		Lee Kyriacou					
		John Rembert					
		Amber Grant					
		Mayor Randy J. Casale					
Motion Carried							

DRAFT LOCAL LAW NO. ____ OF 2018

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO AMEND
CHAPTER 223 OF THE CODE OF THE
CITY OF BEACON

A LOCAL LAW to amend Chapter 223, concerning calculation of the Lot Area per Dwelling Unit in the R1, RD, and Fishkill Creek Development Districts.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 223, Attachment 1 of the Code of the City of Beacon entitled “§ 223-17C, Schedule of Regulations For Residential Districts” is hereby amended to add the following footnote “q” after “Lot Area per Dwelling Unit” and in the attached “Notes” list:

q. For all R1, RD, and Fishkill Creek Development zoning districts involving a parcel over 3 acres, the lot area per dwelling unit calculation shall first deduct any lot area covered by surface water, within a federal regulatory floodway, within a state or federally regulated wetland, or within an area of very steep slopes of 25 percent or more as defined in § 223-63.

Section 2. Chapter 223 of the City Code, Article IVC entitled “Fishkill Creek Development District” § 223-41.14B is hereby amended as follows:

B. Development Potential. Maximum number of dwelling units per acre of lot area, after deducting on all parcels over three acres any lot area with very steep slopes ~~over 20% of 25 percent or more as defined in § 223-63~~, covered by surface water, within a federal regulatory floodway, or within a state or federally regulated wetland: 11. Additionally, a minimum of 25 percent of the total development’s floor area shall be permitted nonresidential uses other than dwelling units or artist live/work spaces, which must be built out before or concurrently with the residential development of the site. Less nonresidential square footage may be granted by the City Council for the voluntary and guaranteed inclusion in the project of desirable environmental, transportation, or other substantial public benefits which would not otherwise be required of the project, as determined at the sole discretion of the City Council as part of the concept plan approval.

Section 3. Chapter 223 of the City Code, Article VI entitled “§ 223-63, Definitions” is hereby amended as follows:

VERY STEEP SLOPE

An area of land with a gradient of 25% or more extending over a contiguous land area of at least 10,000 square feet ~~horizontal length of at least 100 feet and extending over a horizontal width of at least 100 feet.~~ [Added 3-1-2004 by L.L. No. 2-2004]

Section 4. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 223 of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 5. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 6. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.

City of Beacon Council Agenda
3/19/2018

Title:

Approval of Minutes from March 5, 2018

Subject:

Background:

ATTACHMENTS:

Description

Minutes_March_5_2018

Type

Minutes

Regular Meeting

These minutes are for the regular meeting of the Beacon City Council, held in the Municipal Center at One Municipal Plaza on March 5, 2018 at 7:00 PM. Please note that the video recording of this meeting is available at www.cityofbeacon.org.

Council Members Present:

Lee Kyriacou, At Large
Terry Nelson, Ward One
John Rembert, Ward Two
Jodi McCredo, Ward Three
Amber Grant, Ward Four
Randy Casale, Mayor

Also Present:

Anthony Ruggiero, City Administrator
Nick Ward-Willis, City Attorney

Council Members Absent/Excused:

George Mansfield, At Large

A moment of silence was observed for those who serve and have served in the United States military.

First Opportunity for Public Comments: Each speaker may have one opportunity to speak up to three minutes on any subject matter other than those, which are the topic of a public hearing tonight.

Speakers:

Lou Amoroso
Anna West
Gary Joseph
April Farley
Samantha Britton

Public Hearings:

- **Public Hearing to receive public comment on a proposed Local Law to amend Chapter 204 of Code of the City of Beacon, concerning Tree Preservation and Tree Removal**
 - Councilmember Rembert motioned to close Public Hearing, Councilmember Nelson seconded
 - All in favor, motion passed
- **Public Hearing to receive public comment on a proposed Local Law to amend Chapter 106, Article I of Code of the City of Beacon to amend the Sustainable Energy Loan Program in the City of Beacon**
 - Councilmember McCredi motioned to close Public Hearing, Councilmember Rembert seconded

- All in favor, motion passed

Council Member Reports:

Amber Grant: Thanked Sammy Britton and shared that she and Councilmember McCredo have begun to research options for dealing with the opioid issue in Beacon and would like to further discuss with Council.

John Rembert: No report.

Lee Kyriacou: Shared drawing from Tioranda Bridge and read description from book referring to the historic bridge.

George Mansfield: Excused.

Jodi McCredo: Thanked Sammy Britton for her persistence. Thanked the Beacon School District, Dr. Lindahl and the City of Beacon for their response to the threats at school.

Terry Nelson: Thanked the Mayor, City Administrator and Chief of Police for dealing with the traffic situation on Mackin Avenue.

Mayor Randy Casale: Announced the upcoming Special Meeting on March 14 to hear the Water Supply Presentation. Announced reappointment of John Urbanak to the Beacon Housing Authority. Shared that the Farmers Market and Flea Market contracts would be discussed at the next Workshop meeting on March 12. Commended Chief Junjulas and the Beacon Police Department for the excellent way they responded to the school threat.

Anthony Ruggiero: Announced the Beacon Ambulance Corps' "Stop the Bleed" Saturday March 31st - an all day event with information available on their website.

Resolutions, Ordinances and Local Laws:

1. **Resolution to appoint Sergeant Thomas Figlia to Provisional Lieutenant in the City of Beacon Police Department**
 - * Motion by Councilmember McCredo, second by Councilmember Rembert
 - * 6-0, (Councilmember Mansfield excused) motion carried
2. **Resolution to appoint Jason Walden to Permanent Sergeant in the City of Beacon Police Department**
 - * Motion by Councilmember Nelson, second by Councilmember McCredo
 - * 6-0, (Councilmember Mansfield excused) motion carried
3. **Resolution to adopt a local law to amend Chapter 199 to add Article XII, concerning the tax assessment of converted condominium units within the City of Beacon**
 - * Motion by Councilmember Nelson, second by Councilmember Kyriacou
 - * 6-0, (Councilmember Mansfield excused) motion carried
4. **Resolution to adopt an agreement to exempt West End Lofts Housing Development from**

real property taxes to the extent authorized by Section 577 of the PHFL and approve a proposed PILOT Agreement between and among the City of Beacon, the Partnership and the HDFC

- * Motion by Councilmember Nelson, second by Councilmember Grant

- * 6-0, (Councilmember Mansfield excused) motion carried

5. Resolution to adopt a local law to amend Chapter 106, Article I of the Code of the City of Beacon to amend the Sustainable Energy Loan Program in the City of Beacon

- * Motion by Councilmember McCredo, second by Councilmember Nelson

- * 6-0, (Councilmember Mansfield excused) motion carried

6. Resolution to adopt a local law to amend Chapter 204 of the Code of the City of Beacon, concerning Tree Preservation and Removal

- * Motion by Councilmember Kyriacou to amend language of the local law, second by Councilmember Nelson

- * All in favor, motion carried

- * Motion by Councilmember McCredo to adopt amended local law concerning Tree Preservation and Removal, second by Councilmember Rembert

- * 6-0, (Councilmember Mansfield excused) motion carried

7. Resolution to adopt National Day of Action

- * Motion by Councilmember McCredo, second by Councilmember Nelson

- * 6-0, (Councilmember Mansfield excused) motion carried

Approval of Minutes

Minutes from February 5 and February 20, 2018

- * Motion by Councilmember Grant, second by Councilmember Rembert

- * All in favor, motion carried

Second Opportunity for Public Comments: Each speaker may have one opportunity to speak for up to three minutes on any subject matter on which the Council can take action.

Speakers: none

Adjournment:

- * Motion by Councilmember Rembert, second by Councilmember Grant

- * All in favor, motion carried

Next Meeting: March 19, 2018 at 7:00 PM

City of Beacon Council Agenda
3/19/2018

Title:

Executive Session: Personnel

Subject:

Background: