



# TOWN OF WEST NEWBURY

Board of Selectmen

Monday, May 4, 2020 @ 4:00pm  
381 Main Street, Town Office Building  
[www.wnewbury.org](http://www.wnewbury.org)

RECEIVED  
TOWN CLERK  
WEST NEWBURY, MA  
2020 APR 30 PM 3:22

## AGENDA

*Executive Session:* 4:00pm by remote participation

MGL. Ch. 30A §21(a) 6: To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the Board (*31 Dole Place*)

MGL Ch. 30A §21 (a) 7 to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements (*review of Counsel opinion on zoning*)

**Open Session:** 4:30pm by remote participation

Review of Town Meeting Articles for recommendations.

Board of Selectmen Meeting  
Mon, May 4, 2020 4:30 PM - 5:15 PM (EDT)

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# Town of West Newbury

381 Main Street

West Newbury, Massachusetts 01985

Angus Jennings, Town Manager

978-363-1100, Ext. 111 Fax 978-363-1826

[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)

TO: Board of Selectmen  
FROM: Angus Jennings, Town Manager  
DATE: May 1, 2020  
RE: Town Meeting warrant articles

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The Board has not yet voted its positions on the following warrant articles:

- Page School playground (STM #2)
- Snow & Ice deficit (STM #4)
- Mill Pond tables/benches (STM #6)
- Proposed zoning bylaw amendments (ATM #24)

In the interest of getting the Board's recommendations into the Finance Committee booklet, the Board will be asked to vote its position on these articles at Monday's BOS meeting. Both the STM and ATM warrants, as posted, are enclosed. The Finance Committee will meet at 6pm on Monday.

The complete Page playground CPC application, which you have seen previously, is on the CPC website at <https://www.wnewbury.org/community-preservation-committee>

One question to the Board regarding the Snow & Ice deficit:

- The actual deficit exceeds the \$61,087 amount in the posted STM warrant, due to some invoices that came in and were paid from last week's warrant (and a small expense reflected on the current week payroll). The adjusted Snow & Ice deficit is \$64,562 (so, \$3,475 above the warrant).
- A couple of options exist:
  - o Propose a motion on Town Meeting floor for an amount greater than stated in the posted warrant. Mike McCarron has advised that this would be lawful, if found by the Town Moderator to be within the scope of the posted article, although it's my understanding that this would depart from past precedent.
  - o Alternatively, DPW could transfer some of the incurred expenses to be paid from a different expense account, so as to reduce the deficit in the Snow & Ice line to the amount in the warrant. If so, and if this becomes problematic for the DPW budget, a line item transfer could be sought.

The Board's position on the Mill Pond tables/benches has been clear, but was not actually voted.

Please note that the Planning Board zoning language has changed slightly since your previous review; enclosed correspondence summarizes the Board's removal of certain language intended to guide the Building Department in determining whether the traffic impact of the home business is appropriate.

## Town Manager

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**From:** Michael McCarron  
**Sent:** Wednesday, April 29, 2020 3:39 PM  
**To:** Town Accountant; Town Manager; DPW Director; Finance Admin  
**Subject:** RE: Snow and Ice update

As a general rule, we have maintained the policy that the sum listed in the warrant is a limit. But in a pinch, we do have flexibility. For example, under our bylaws, Town Meeting Time is our guide: it states:

“When the article refers to specific amounts or measurements, unqualified by each words as “not in excess of,” the general rules are more difficult to apply. Theoretically, in these cases the figures should be incidental to the subject matter of he article and should not limit the amounts our measurements that may be voted. Thus, where the warrant for the town meeting stated that an appropriations of \$15,000.00 for the construction of a dock would be brought up for consideration, a vote appropriating \$20,000 was upheld by the court “The warrant here sufficiently apprised the electors of the fact that the subject of the construction of a dock at the expense of the town would be brought up for consideration. That was the primary question. The amount of money which should be appropriated for the project if it were approved was a mere incident.” *“Capone v. Nunes, 85 R.I. 392, 132 A.2d 80 (1957) Town Meeting Time p. 68*

Other authorities, however, such as the Massachusetts Association of Town Finance Committee has advocated that the amount does constitutes a limit. One obvious point is that if the amount in the motion is so at variance with the stated amount in the Article, then it would be beyond the scope (such as instead of \$10,000 the motion was for \$100,000), The Moderator has the authority to make this determination.

There is precedent for West Newbury Town Meeting exceeding the Article amount. In the vote on Article 10 of the Annual Town Meeting held on June 8, 1982 (Third Session), the Town voted to appropriate \$31,778.00, when the Article originally listed \$20,000) (part of the incentive was that the Town was going to be reimbursed these funds from Chapter 90 funds). Then Town Counsel ruled that Town Meeting “could do as they wished” The funds were approved. One point that was made here was that the Finance Committee booklet contained the higher sum, so it was argued that the Town was warned of the sum to be considered.

In summation, if the Town Moderator would rule that the motion was in order (which could be determined ahead of time) and with the FinCom putting it in its booklet, then Town Meeting could vote as it wished.

By the way, the only appeal of voting the higher sum would be a ten taxpayer action.

*Michael P. McCarron*  
Town Clerk  
Town of West Newbury  
381 Main Street  
West Newbury, MA 01985  
Tel 978-363-1100 ext 110

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**From:** Town Accountant <townaccountant@wnewbury.org>  
**Sent:** Wednesday, April 29, 2020 2:38 PM  
**To:** Town Manager <townmanager@wnewbury.org>; DPW Director <dpwdirector@wnewbury.org>; Finance Admin

**TOWN OF WEST NEWBURY  
COMMONWEALTH OF MASSACHUSETTS  
WARRANT – SPECIAL TOWN MEETING  
MONDAY, JUNE 1, 2020 @ 7pm**

Essex, ss.

To any of the Constables of the Town of West Newbury:

In the name of the Commonwealth, you are hereby required to notify and warn all the inhabitants of the Town of West Newbury, who are qualified to vote in the elections and Town affairs, to meet at the Town Annex, 379 Main Street, at 7:00 p.m. on Monday, June 1, 2020 to act upon or take any other action relative to all of the following articles.

**ARTICLE 1.** To hear and act upon the reports of Town officers and committees.

**ARTICLE 2.** To see if the Town will vote to transfer from Community Preservation Act funds the sum of \$462,857.00 from the Undesignated Fund Balance, to support reconstruction of and accessibility improvements to the Page School playground, in conformity with the applications submitted, or take any other action relative thereto. *By request of the Community Preservation Committee.*

**ARTICLE 3.** To see if the Town will vote to transfer from available funds the sum of \$49,150 to fund improvements and repairs to the Council on Aging facility, Public Safety Complex, old DPW garage (on Page School site), and the 1910 Building; and for any unforeseen emergency repairs to Town facilities. *By request of the DPW Director.*

**ARTICLE 4.** To see if the Town will vote to transfer from available funds the sum of \$61,087 to fund the fiscal year 2020 snow and ice deficit. *By request of the DPW Director.*

**ARTICLE 5.** To see if the Town will vote to transfer from available funds the sum of \$3,800 to pay for salaries and expenses pertaining to the operation of early voting for the 2020 State Primary Election and November Presidential Election with any sums remaining by the end of fiscal year 2021 to be returned to the Town. *By request of the Town Clerk.*

**ARTICLE 6.** To see if the Town will vote to transfer from available funds the sum of \$14,000 to install picnic tables and benches at the Mill Pond dock area. *By request of the Town Manager.*

**ARTICLE 7.** To see if the Town will vote to transfer from available funds the sum of \$8,048 for the Town share of expenses for the grant-supported installation of electric vehicle charging stations at Page School and 1910 Building. *By request of the Board of Selectmen.*

**ARTICLE 8.** To see if the Town will vote to transfer from available funds the sum of \$16,443 to fund the Essex Agricultural and Technical High School FY20 budget deficit. *By request of the Town Manager.*

**ARTICLE 9.** To see if the Town will vote to transfer from available funds the sum of \$20,247.44 to fund underbilled but incurred National Grid expenses related to the Public Safety Complex. *By request of the Town Manager.*

You are hereby directed to serve this warrant by posting attested copies thereof at least 14 days before the date of the Special Town Meeting, as provided within the Town Bylaws.

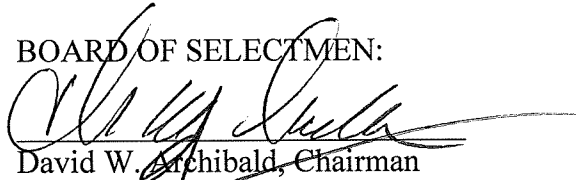
LOCATIONS TO POST WARRANT:

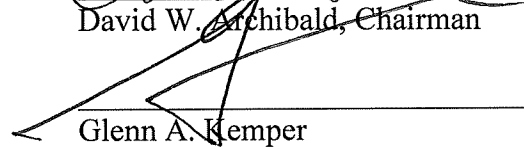
Town Hall  
1910 Town Office Building  
G.A.R. Memorial Library  
Post Office  
Laurel Grange


Hereof fail not to make due return of this warrant with your doings thereon at the time and place of holding said meeting.

Given under our hands this 28 day of April, 2020.

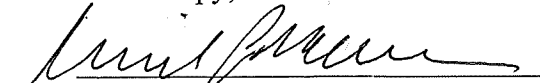
BOARD OF SELECTMEN:

  
David W. Archibald, Chairman

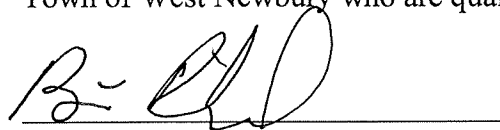
  
Glenn A. Kemper

  
Richard G. Parker

A true copy, Attested:

  
Michael P. McCarron, Town Clerk

Pursuant to the above warrant to me directed, I hereby notify and warn all the inhabitants of the Town of West Newbury who are qualified to vote to meet at said time and place.

  
Constable, Brian Richard

4-28-20  
Date of Posting

**TOWN OF WEST NEWBURY  
COMMONWEALTH OF MASSACHUSETTS  
WARRANT -- ANNUAL TOWN MEETING  
MONDAY, JUNE 1, 2020 @ 7pm**

Essex, ss.

To any of the Constables of the Town of West Newbury:

In the name of the Commonwealth, you are hereby required to notify and warn all the inhabitants of the Town of West Newbury, who are qualified to vote in the elections and Town affairs, to meet at the Town Annex, 379 Main Street, at 7:00 p.m. on Monday, June 1, 2020 to act upon or take any other action relative to all but the first of the following articles.

Also, to meet at the Town Annex, 379 Main Street on Wednesday, June 3, 2020 to act on Article 1 which calls for the election of Town Officials. Polls will be open at 7:00 a.m. and will close at 8:00 p.m.

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**GENERAL GOVERNMENT MATTERS**

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**ARTICLE 1.** To give their votes to the election of the following offices:

<u>Office:</u>	<u>Term:</u>
Selectman (1)	For Three Years
Board of Health (1)	For Three Years
Board of Health (1)	For Two Years
Planning Board (1)	For Five Years
Housing Authority (1)	For Five Years
Housing Authority (1)	For One Year
Trustees of the Public Library (3)	For Three Years
Trustees of the Public Library (1)	For One Year
Assessor (1)	For Three Years
School Committee (1)	For Three Years
Water Commissioner (1)	For Three Years
Park and Recreation Commissioner (1)	For Three Years
Park and Recreation Commissioner (1)	For One Year
Constable (1)	For Three Years
Constable (1)	For Two Years

**ARTICLE 2.** To hear and act upon the reports of Town officers and committees.

**ARTICLE 3.** To determine what sums of money the Town will raise and appropriate for defraying the expenses of the Town for the ensuing fiscal year and for the payment of Town debt. *By request of the Board of Selectmen.*

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WATER ENTERPRISE FUND

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**ARTICLE 4.** In accordance with the provisions of Chapter 38 of the Acts of 1936, to see what instructions, rules and regulations the Town may wish to impose on the Board of Water Commissioners. *By request of the Board of Water Commissioners.*

**ARTICLE 5.** To see if the Town will vote to appropriate, in anticipation of Water Department revenue, the sum of \$861,446 of which \$205,579 for salaries and wages which include \$1,700 for Water Commissioners' stipends; \$27,141 for insurances; \$379,896 for expenses; \$176,920 for debt service; \$20,000 for extraordinary and unforeseen expenses; and \$51,910 for indirect costs. *By request of the Board of Water Commissioners.*

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APPROPRIATIONS

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**ARTICLE 6.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$68,750 for the Pension Liability Stabilization Fund, or take any other action related thereto. *By request of the Board of Selectmen.*

**ARTICLE 7.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$5,000 for the Other Post-Employment Benefits (OPEB) Stabilization Fund, or take any other action related thereto. *By request of the Board of Selectmen.*

**ARTICLE 8.** To see if the Town will vote to raise and appropriate the sum of \$328,600 to be placed in the special purpose municipal stabilization fund established pursuant to Massachusetts General Laws (M.G.L.) Chapter 40 Section 5B (the School Stabilization Fund) in order to fund capital expenditures for school related building projects, or take any other action related thereto. *By request of the Board of Selectmen.*

**ARTICLE 9.** To see if the Town will vote to transfer the sum of \$652,340 from the School Stabilization Fund to offset the property tax impact of a Prop. 2½ override and pay the Town share of debt service associated with the building of the new Middle/High School. *By request of the Board of Selectmen.*

**ARTICLE 10.** To see if the Town will vote to transfer the sum of \$21,965.20 from the Septic Loan Revolving Account for the repayment of debt service. *By request of the Board of Health.*

**ARTICLE 11.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$300,000 into the Capital Stabilization Fund, or take any other action related thereto. *By request of the Board of Selectmen.*

**ARTICLE 12.** To see if the Town will vote to allocate and/or reserve from the Community Preservation Fund annual revenues, the amounts recommended by the Community Preservation Committee for committee administrative expenses, community preservation projects and other expenses in Fiscal Year 2021, with each item to be considered a separate appropriation, or take any other action thereto. *By request of the Community Preservation Committee.*

- Appropriate \$21,620 from FY 2021 estimated revenues for Committee Administrative Expenses.
- Reserve \$43,240 from FY 2021 estimated revenues for Community Housing Reserve.
- Reserve \$43,240 from FY 2021 estimated revenues for Historic Resources Reserve.
- Reserve \$43,240 from FY 2021 estimated revenues for Open Space & Recreation Reserve.
- Reserve \$281,060 from FY 2021 estimated revenues for Budgeted Reserve.

**ARTICLE 13.** To see if the Town will vote to transfer from Community Preservation Act funds, in accordance with the provisions of M.G.L. Chapter 44B, the sum of \$175,000.00 with \$148,308.41 from the Open Space and Recreation Fund Balance, and \$26,691.50 from the Undesignated Fund Balance, in conformity with the applications submitted, to purchase a conservation restriction in conjunction with the Essex County Greenbelt Association, the Town of West Newbury Conservation Commission, and the Open Space Committee on three parcels of land containing approximately 38 acres of land, located off Middle Street and as shown on Assessors' Map R-27 as Parcels 28, 28A and 29. Said lots are also described in the deeds recorded with the Southern Essex District Registry of Deeds in Book 6703, Page 590, and Book 6547, Page 419. Said conservation restriction is to be conveyed to the Town of West Newbury; said purchase to be subject to approval of the conservation restriction by all involved parties, and that the Board of Selectmen is to be authorized to execute, acknowledge and deliver all grants, agreements and such other instruments, including but not limited to the conservation restriction, in accordance with Massachusetts General Laws Chapter 184 or any other applicable statute or regulation, as may be necessary on behalf of the Town of West Newbury to effectuate the purchase of said conservation restriction; or take any other action relative thereto. *By request of the Community Preservation Committee.*

**ARTICLE 14.** To see if the Town will vote to transfer from Community Preservation Act funds, Historic Resources Reserve, the sum of \$85,000 for the payment of debt service and related borrowing costs authorized at the November 4, 2019 Special Town Meeting associated with the Preservation and Restoration of the Soldiers & Sailors Memorial Building. *By request of the Board of Selectmen.*



**ARTICLE 15.** To see if the Town will raise and appropriate and/or transfer from available funds the sum of \$229,020 to purchase a new dump truck with plow and spreader to replace a 2008 International dump truck with same or comparable equipment, and to dispose of the existing dump truck in accordance with Town policy for disposition of surplus property. *By request of the DPW Director.*

**ARTICLE 16.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$304,000 to replace and improve the fire alarm system in the Page School. *By request of the DPW Director and Fire Chief.*

**ARTICLE 17.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$40,000 to replace failing sections of concrete flooring throughout the Page School. *By request of the DPW Director.*

**ARTICLE 18.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$19,000 to replace the police cruiser radios and portable radios. *By request of the Police Chief.*

**ARTICLE 19.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$4,000 for Fire Department emergency equipment – ice/water rescue suits. *By request of the Fire Chief.*

**ARTICLE 20.** To see if the Town will vote to raise and appropriate and/or transfer from available funds the sum of \$7,500 for Fire Department emergency equipment – (2) 20” Dual Power Fans. *By request of the Fire Chief.*

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**BY-LAWS – OTHERS**

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**ARTICLE 21.** To see if the Town will vote to accept an exemption of real estate to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans pursuant to M.G.L. Ch. 59, Section 5, Clause 22H, such exemption to be available for tax years commencing July 1, 2020. *By request of the Board of Assessors.*

**ARTICLE 22.** To see if the Town will vote to amend Section VI of the Town Bylaws, Animal By-Law in order to establish a new Disposal of Waste section, to establish requirements related to the disposal and removal of dog waste, including the establishment and enforcement of fines for violations, and other related amendments. *By request of the Board of Selectmen.*

**ARTICLE 23.** To see if the Town will vote to limit the total amount that may be expended from each revolving fund established pursuant to Section XL of the Bylaws of the Town of West Newbury, to wit:

- Section 5.1 Summer Recreation Revolving Fund \$ 44,350
- Section 5.2 GAR Library Fines and Penalties Revolving Fund \$ 10,000
- Section 5.3 Police Vehicle Revolving Fund \$ 20,000
- Section 5.4 Pipestave/Mill Pond Care and Maintenance Revolving Fund \$ 5,000

*By request of the Board of Selectmen.*

**ARTICLE 24.** To see if the Town will vote to amend Section 5.A.2.c. of the West Newbury Zoning Bylaw regarding accessory uses permitted in the Residence A, B, & C Districts, including the keeping of pets and animals for use of the resident premises, and professional home office and customary home occupations.

And further to amend Section 5.A.3. of the West Newbury Zoning Bylaw regarding uses permitted in the Residence A, B & C Districts with a Special Permit, which would modernize terms for old age homes and bring this section into compliance with M.G.L. Ch. 40A, Section 3.

And further to amend regulations for “Congregate Housing” in Sections 2 and 5.A.3.i. of the West Newbury Zoning Bylaw, which would clarify provisions and eliminate unnecessary restrictions.

And further to amend Section 5.B.1.e.i of the West Newbury Zoning Bylaw, regarding outdoor business-related storage and display as an accessory use permitted in the Business District subject to a site plan approved by the Planning Board.

And further to amend Section 5.B.2. of the West Newbury Zoning Bylaw, regarding uses permitted in the Business District upon a special permit granted by the Planning Board, which would bring this section into compliance with M.G.L. Ch. 40B, Section 3 and clarify provisions related to residential units located in the same buildings as commercial enterprises.

And further to amend Sections 2, 5.A.2.c.iii., 5.A.3.d., and 5.B.2.d. of the West Newbury Zoning Bylaw, which would consolidate and clarify terms used to describe properties having rooms for rent, and define the terms of stay for long-term and short-term rental properties.

*By request of the Planning Board.*

You are hereby directed to serve this warrant by posting attested copies thereof at least 14 days before the date of the Annual Town Meeting, as provided within the Town Bylaws.

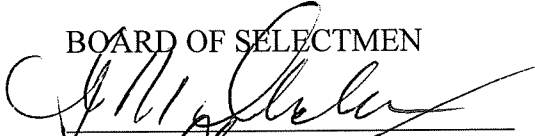
LOCATIONS TO POST WARRANT:

Town Hall  
1910 Town Office Building  
G.A.R. Memorial Library  
Post Office  
Laurel Grange


Hereof fail not to make due return of this warrant with your doings thereon at the time and place of holding said meeting.

Given under our hands this 28 day of April, 2020.

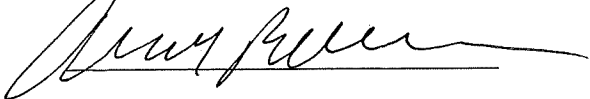
BOARD OF SELECTMEN

  
\_\_\_\_\_  
David W. Archibald, Chairman

  
\_\_\_\_\_  
Glenn A. Kemper


  
\_\_\_\_\_  
Richard Parker

A true copy, attested:

  
\_\_\_\_\_

Michael P. McCarron, Town Clerk

Pursuant to the above warrant to me directed, I hereby notify and warn all the inhabitants of the Town of West Newbury who are qualified to vote to meet at said time and place.

  
\_\_\_\_\_  
Constable, Brian Richard

4-28-20  
\_\_\_\_\_  
Date of Posting

# Page School Playground Accessibility Project

## Process to date

- ... Parent outreach to Town Manager, spring 2019
- ... On petition to Senator Tarr and Representative Mirra, secured \$20,000 Commonwealth budget earmark to improve accessibility
- ... At Town Manager direction, Building Inspector prepared written ADA evaluation in August 2019
- ... Meetings were held with BOS, CPC, Parks & Rec Comm re anticipated proposal to improve playground; designer and vendor input was sought; Town/School/Parents' working group formed
- ... CPC proposal brought forward January 2020
- ... CPC determined proposal to be eligible use of funds; continued consideration of funding proposal
- ... Tonight's meeting to consider revised proposal, modified to reflect Committee input at January meeting

# Existing Playground



# Existing Playground



# Existing Swings





## Known Issues

- ..Existing playground not ADA Compliant
- ..No provisions for stormwater management; due to flooding and ice
- ..Playground effectively unusable an est. 4+ months per school year
- ..Limited funding in Pentucket operating budget for Page School maintenance
- ..Per Regional Agreement, Pentucket handles maintenance; town responsible for capital improvements

Revised  
Conceptual  
Design by  
O'Brien & Sons

- ..New playground would be ADA Accessible
- ..Drainage issues would be fixed
- ..Would provide a more updated design for all children to enjoy

## Total Est. Cost \$462,857

- Includes est. cost of site work and engineering
- 6,100 Square Feet
- Height of tallest structure lowered to 8 feet and removed enclosed slide
- Removed swing set and small freestanding structure



lvs  
landscape  
structures

PAGE SCHOOL  
MEO20067 • 01.23.2020

O'BRIEN  
& SONS  
ELEMENTS FOR A GREAT OUTDOORS

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*ls*  
landscape  
structures

PAGE SCHOOL

MEO20067 • 01.23.2020

**O'BRIEN & SONS**  
ELEMENTS FOR A GREAT OUTDOORS

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# At the Page Playground I would love...

by Page School Students



At the Page Playground

I would love ... swings,

that are not broken.

Y

G-2



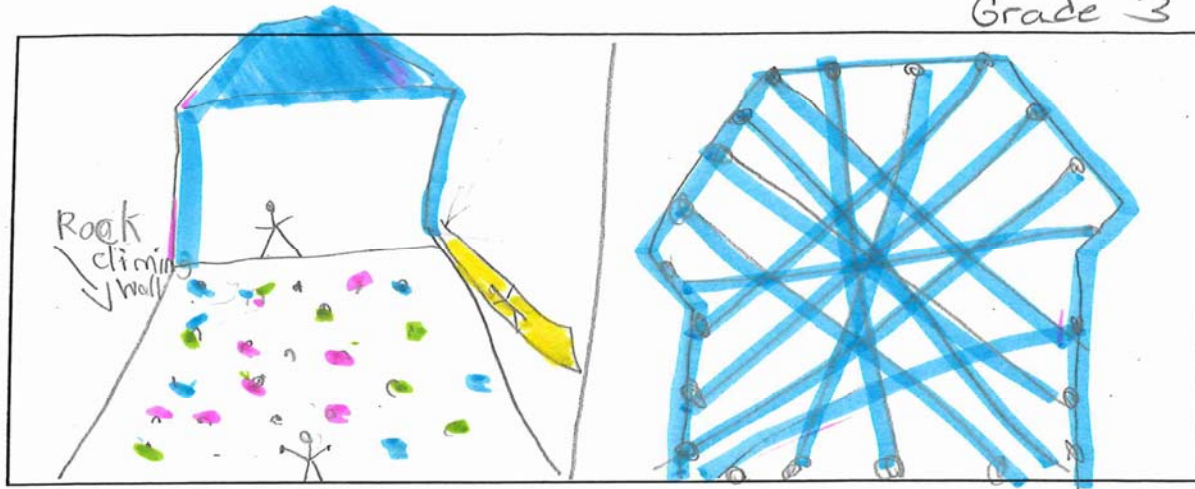
At the Page Playground

I would love ... maybe

more swings, and maybe

another swing a rock wall.

Grade 3



At the Page Playground

I would love ... a huge

cargonet and a actual rock

climbing wall with a slide on the top  
that goes down the back.



Grade: 4



At the Page Playground

I would love ... to have

a ramp for wheel chairs and

crutches.

Grade: 5



At the Page Playground

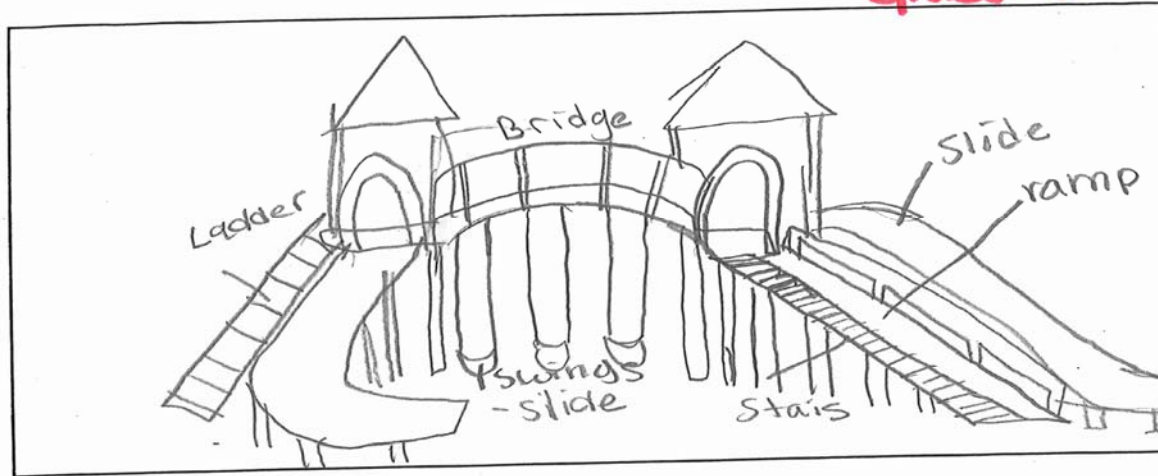
I would love ... a ramp

and a slide for kids

who have disabilities.

Also a small zipline!

Grade: 6



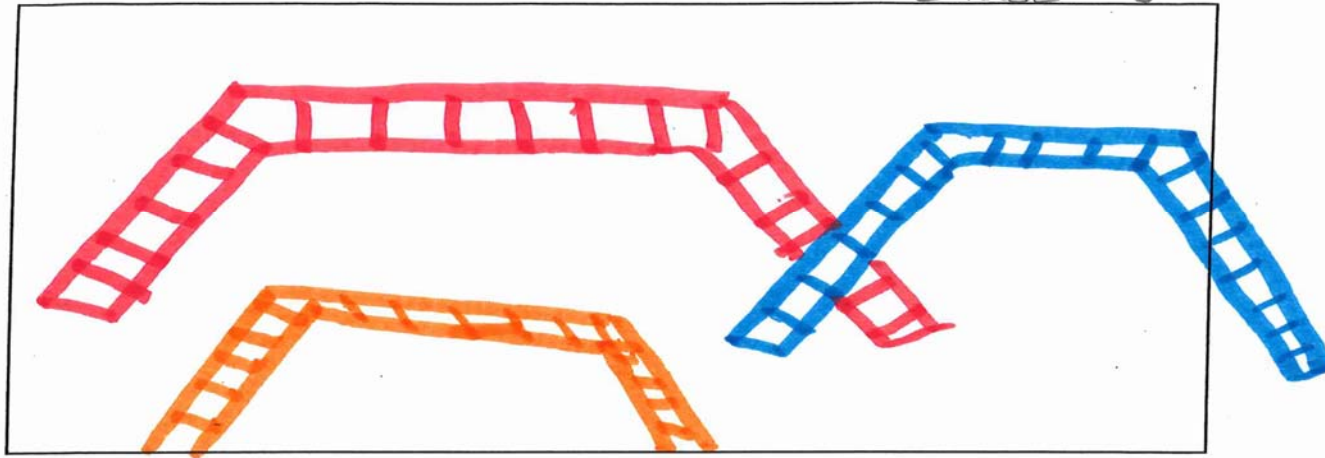
At the Page Playground

I would love ... A ramp for

Disabled people and new

slides that prevent water

Grade 6



At the Page Playground

I would love ... To get

3 different size monkey bars so  
every-body can use them from Pre-k  
- 6 grade.

## Explored Further Cost Reductions

- ... Costed out mix of poured-in-place with bark mulch
- ... Would reduce cost ~\$31,000
- ... Not proposed based on consensus view it would create maintenance challenges and compromise long-term durability



## Next Steps

- ...With CPC endorsement, would go to April 27, 2020 Special Town Meeting for voter approval (or not)
- ...Fundraising campaign anticipated to run concurrently to solicit donations to the Page School Gift Account
- ...With Town Meeting approval, vendor selection and contract execution
- ...Finalize design and equipment selection, order equipment and schedule work
- ...Project schedule conservatively estimates completion late fall 2020; however, goal is to complete site work in late summer/early fall 2020

Thank You for your  
consideration!

## ARTICLE REQUEST FORM

**ARTICLE:** *Request \$14,000 in funds to replace two picnic tables and two benches at the Mill Pond dock area*

**AMOUNT REQUESTED:** \$14,000

**CONTACT PERSON:** Town Manager

**PHONE NUMBER:** (978) 363-1100

**Date:** 1/31/20

**Why should the Town make this purchase? What needs will be met? Who will benefit?**

*The existing two benches and two picnic table at the Mill Pond dock area have reached the end of their useful life. This recreational furniture is in such poor condition that DPW had to remove one of the picnic tables last year due to public safety concerns. In fact, the other three pieces of equipment should also be removed within the next 6-12 months for the same reason. The Mill Pond Committee would like to propose replacing this equipment with two new benches and two new ADA compliant picnic tables. The estimated cost including installation is \$14,000. The installation will include a concrete base for proper mounting and ADA compliance and all work will be done by DPW staff.*

**What factors affect the timing of this purchase?**

*The existing recreational furniture should be removed by the end of this year (if not sooner) due to public safety concerns. Once these have been removed there would be no seating in this heavy recreational use area.*

**When should this Article be sunsetted - how long will the project take?**

*Recommended sunset date of June 30, 2021*

**What ancillary costs do you anticipate? (Maintenance, Insurance, Training, etc.)**

*None*

**Does this Article involve improvement, preservation or creation of tangible Town-owned assets and projects which 1) have useful life of at least five years; 2) cost over \$20,000 and or 3) for which the Town is authorized to borrow funds? If so, please confirm that this item is on the Capital Improvements Committee Schedule for future capital investments.**

**Please attach additional pages or other supporting documentation.**





## Town Manager

---

**From:** Leah Zambarnardi  
**Sent:** Monday, April 27, 2020 1:54 PM  
**To:** [REDACTED]  
**Subject:** RE: Question and please forward to Brian Murphey  
**Attachments:** ProposedZoningArticlesRev4-21-20.docx

Hello Forbes,

As promised, please find the proposed Zoning Articles with tweaks made by the Planning Board at its 4/21/20 meeting.

As a side, Angus, you will see that we have stuck with the Board's 4/21 vote on the changes. I talked with Brian about your email from 4/22 and we think its best to stay with the 4/21 vote and defer the discussion on this to the fall. Brian said that he appreciates your input for the future discussion.

Leah J. Zambarnardi, AICP  
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Planning Office Hours: Monday, Tuesday and Thursday from 9:30 a.m. to 2:30 p.m.

It has been determined by the Commonwealth of Massachusetts Office of the Secretary of State that emails are a public record. Please keep this in mind when writing or responding to this email.

-----Original Message-----

From: [REDACTED]  
Sent: Tuesday, April 14, 2020 10:37 AM  
To: Leah Zambarnardi <lzambarnardi@wnewbury.org>  
Subject: Re: Question and please forward to Brian Murphey

We can wait until after the 4/21 meeting. Please try to let me know as soon as possible after though - that will be getting close to the deadline.

Best,

Forbes

On Apr 14, 2020, at 10:05 AM, Leah Zambarnardi <lzambarnardi@wnewbury.org> wrote:

Ok, I understand about holding off on the rationale part.

What is the latest that we can let you know? Would you be able to wait until after the Planning Board's meeting on 4/21? I ask because at the Selectmen's meeting last night, Town Counsel and the Town Manager had some last minute questions that might result in a change or two. The Planning Board would like to discuss the questions and have consensus on whether changes should be made. Does waiting until next week fall within your timeframe?

- Note: - Insertions are **underlined/bold/italics**.  
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## PROPOSED ZONING ARTICLES

- I. Amend Section 5.A.2.c. regarding accessory uses permitted in the Residence A, B, & C Districts, as follows:
- a. Delete subsection 5.A.2.c.ii.c. in its entirety, regarding the keeping of pets and animals for use of the resident premises, as follows:
- e) ~~Animals shall be cared for in accord with all rules and regulations that the Board of Health may from time to time promulgate pertaining to the keeping of animals, following a posted public hearing. Rationale: This is regulated by the Board of Health.~~
- b. Amend subsection 5.A.2.c.iv. regarding professional office and customary home occupation, as follows:
- 1) Add the word “home” between the words “Professional office”, so it appears as:
- “iv) Professional **home** office or customary home occupation, provided that.” *Rationale: Clarifies that the section refers to a professional home office, not a professional office as the principal use.*
- 2) Add new subsection 5.A.2.c.iv.g, as follows:
- “g) All parking required to service the occupation is provided off-street, and not within a required front yard”.** *Rationale: Provides parking guidelines for professional home offices and customary home occupations.*
- II. Amend Section 5.A.3. regarding uses permitted in the Residence A, B & C Districts with a Special Permit, as follows:
- a. Amend Section 5.A.3.h. by deleting the terms “convalescent homes, old age homes, sanitariums” and inserting in their place the term, “rehabilitation facilities”, as follows:
- “h. Nursing homes, ~~convalescent homes, old age homes, sanitariums~~ rehabilitation facilities, hospitals.” *Rationale: The proposal would modernize these terms.*
- b. Amend Section 5.A.3.j. by deleting the terms, “Non-profit schools, kindergartens, nursery school, children centers”, and replacing them with the terms, “For profit”, as follows:
- “j. ~~Non-profit schools, kindergartens, nursery schools, children centers,~~ **For profit** arts, crafts and dramatic schools, dancing and music schools.” *Rationale: The provisions regarding non-profit schools, kindergartens, nursery schools and child centers are in*

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*violation MGL Ch. 40A, s.3. Clarifies that the other schools mentioned are for profit, so as not to be in violation of said law.*

III. Amend regulations for “Congregate Housing” to clarify provisions and to eliminate unnecessary restrictions, as follows:

- a. Amend the definition for “Congregate Housing” in Section 2 of the Zoning Bylaw by removing the word “nonprofit” from the first line and by adding the terms “and persons with disabilities” after the terms “elderly persons” in the first line, as follows:

**“Congregate Housing. A ~~nonprofit~~ group living arrangement for elderly persons *and persons with disabilities* who cannot easily maintain their own housing, financially or otherwise, but who do not need nursing home care. The persons living together may care for themselves or may have some support services.”** *Rationale: Limiting the development group to non-profit charitable organizations is overly restrictive and might prevent projects that are beneficial to the Town. The proposal adds persons with disabilities to be in line with the State’s definition of Congregate Housing.*

- b. Amend Section 5.A.3.i. regarding uses permitted in the Residence A, B & C Districts with a special permit, by refining the requirements for congregare housing by: 1. replacing the terms “one-half (1/2) again” with “150%” (section 5.A.3.i.i); 2. combining subsection 5.A.3.i.i. with Section 5.A.3.i.; and, deleting subsections 5.A.3.i.ii. through vi. as follows:

“i. Congregate housing for the elderly **and persons with disabilities**, and shared elderly housing ~~providing~~ **provided** that: i) ~~In~~ **in addition to the requirements of Section 6.A, the lot shall contain at least one half (1/2) again 150% of the required lot area for the District in which it is located.**

*Rationale: Adds persons with disabilities to be in line with the State’s definition of Congregate Housing. Clarifies the confusing lot area requirement.*

~~ii. There shall be no more than twelve (12) persons per unit and no more than two (2) persons per bedroom.~~

*Rationale: This provision unnecessarily restricts a project. Persons per unit and per bedroom are regulated by other authorities (State, Board of Health).*

~~iii) All required licenses and permits from the Commonwealth and the Board of Health have been obtained.~~ *Rationale: Requirements of these authorities stand in and of themselves.*

~~iv) The use is served by municipal water.~~ *Rationale: This provision unnecessarily restricts a project. Other authorities (Water Department, Board of Health, DEP) regulate access to drinking water.*

~~v) Off street parking is provided in the side or rear yards.~~

*Rationale: This provision unnecessarily restricts a project.*

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- vi) ~~Off street loading, if any, is in the rear of the structure.”~~  
*Rationale: This provision unnecessarily restricts a project.*

IV. Amend Section 5.B.1.e.i, regarding outdoor storage and display as an accessory use permitted in the Business District subject to a site plan approved by the Planning Board, as follows:

“e. Accessory buildings and uses provided that:

- i) Outdoor **business-related** storage and display ~~that is conducted~~ **located** in the rear and/or side yard, ~~and such storage or display is~~ **shall be** screened from view of **abutting residential** dwellings ~~in abutting Residence A, B or C Districts~~ with shrubs or a fence of at least four (4) feet in height.  
*Rationale: Clarifies that this regulation applies to business related storage only. Further, the regulation currently only requires screening for dwellings in abutting residential districts, whereas any abutting residential dwelling should be screened from outdoor business-related storage and display, regardless of Zoning District.*

V. Amend Section 5.B.2., regarding uses permitted in the Business District upon a special permit granted by the Planning Board, as follows:

- a. Delete subsection 5.B.2.e. regarding Child Care Centers in its entirety and re-letter the subsequent subsection, as follows:

~~“e. Child Care Center. A child care facility for more than six children may be permitted in the Business District by a special permit from the Planning Board, provided that the lot area used for facilities at least 60,000 square feet, that the facility provides service for no more than twenty (20) children, and that a safe and fenced yard/outdoor play area is provided having at least 10,000 square feet.~~

**f.e.** Residential units ...”

*Rationale: The existing subsection “e.” is in violation of GL Ch. 40A, s.3.*

- b. Amend new subsection 5.B.2.e. (formerly subsection f.) regarding residential units located in the same buildings as commercial enterprises, by deleting the terms “, provided that they be in compliance with other local regulations, including Board of Health” and by adding the terms “by the Planning Board” to the end, as follows:

“f. Residential units located in the same buildings as commercial enterprises, ~~provided that they be in compliance with other local regulations, including Board of Health.~~ Visual elements, density, and parking shall be part of the special permit review **by the Planning Board.**”

*Rationale: Other local regulations such as those of the Board of Health stand in and of themselves. This revision also clarifies that the Planning Board, and not another entity, is the Special Permit Granting Authority reviewing “visual elements, density and parking”.*

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VI. Amend the following Zoning Bylaw Sections regarding properties having rooms for rent as follows:

- a. Revise the definition of “Bed and Breakfast” by changing the duration of stay from “15 days” to “less than 14 consecutive nights” as follows:

“Bed and Breakfast. A house, or portion thereof, where up to four lodging rooms, with meals, are provided providing that the maximum duration of any tenant shall ***be less than 14 consecutive nights*** ~~not exceed 15 days~~. The operator shall live on the premises, or in an adjacent premises immediately abutting the residence with the bed and breakfast facility.”

- b. Add new definition of “Short Term Paying Guest” as follows:

“Short Term Paying Guest”: A person who rents a room in a hotel or bed & breakfast for less than 14 consecutive nights.”

*Rationale for a. & b.: Properties having rooms for rent are differentiated in the Zoning Bylaw by the duration of stay. However, the actual number of days in the stay are not well defined. Hotels (Including Inns, Motels, Tourist Homes and Lodging Houses) are intended for temporary occupancy, though the duration of stay is not stated. Bed and Breakfast rooms have a maximum occupancy duration of 15 days. Boarding Houses (Including Rooming Houses) are not open to short term paying guests, which presumes guests are staying for an extended period of time. The Town’s “Short Term Rentals Bylaw” (Chapter XXXIX) requires that short term paying guests stay for a duration of less than 14 consecutive nights. The proposal seeks to define the length of stay using terms consistent with the “Short Term Rentals” Bylaw.*

- c. Revise the definition of “Boarding House” as follows:

“Boarding House: A building or premises, other than a hotel, ~~inn, motel, tourist house or lodging house~~ or bed & breakfast, for not more than four (4) persons, provided that the ***principal*** use is ~~house is also occupied~~ as a private residence, where rooms are let and where meals may be regularly served by prearrangement for compensation; not open to ***short term paying guests***. ~~transients; in contrast to hotels, restaurants, and tourist homes, open to transients;~~ *Rationale: Clarifies that the boarding house is only allowed by right in a residential district as an accessory use and that the primary use must be a dwelling. Added the definition content from Section 5.A.2.c.iii regarding number of persons (see XI.3. below). Stating that a Boarding House is not a hotel, restaurant, or tourist home two times is redundant and not necessary.*

- d. Revise the definition of “Hotel” as follows:

“Hotel”; ~~(Inn, Motel, Tourist Home or Lodging House).~~ A building, or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of three (3) or more

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~~persons~~ **short term paying guests** who are lodged, with or without meals, and in which major provision for cooking may be made in a central kitchen but may not be in the individual rooms or suites. *Rationale: Each of these terms (Inn, Motel, Tourist Home, Lodging House) are defined in Section 2. as "Hotel". They are one and the same in the Zoning Bylaw. These terms create unnecessary confusion. One common term, "Hotel" should be used. Also, the duration of stay is clarified by adding the terms "short term paying guest".*

e. Delete the definitions of "Motel", "Tourist Home", "Lodging House", and "Inn" in Section 2. "Definitions". *Rationale: Each of these terms are defined in Section 2. as "Hotel", as noted in "d" above.*

f. Delete the definition of "Rooming House" in Section 2. "Definitions".

*Rationale: The definition of "Rooming House" in Section 2. is "Boarding House", therefore use of the term is unnecessary.*

g. Revise Section 5.A.2.c.iii) regarding permitted accessory uses in the Res A, B, & C Districts as follows:

~~"iii. Boarding house or rooming house for not more than four (4) persons, provided that the house is also occupied as a private residence."~~

*Rationale: A boarding house and a rooming house are the same, as defined in the Zoning Bylaw. The definition of rooming house is proposed to be deleted, as noted above. This is the only instance in the Zoning Bylaw where a boarding house is allowed, therefore the occupancy requirements should more appropriately appear in the definition for "boarding house".*

h. Revise Section 5.A.3.d. regarding uses permitted in the Res A, B, & C Districts with a Special Permit, as follows:

~~"d. Restaurant or Inn~~ **Hotel**" *Rationale: A Hotel and an Inn are the same, as defined in the Zoning Bylaw. Further, the definition of Inn is proposed to be deleted, as noted above.*

i. Revise Section 5.B.2.d. regarding uses permitted in the Business District with a Special Permit, as follows:

~~"d. Motels and~~ **Hotels**" *Rationale: A Hotel and a Motel are the same, as defined in the Zoning Bylaw. Further, the definition of Motel is proposed to be deleted, as noted above.*

## Town Manager

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**From:** Town Manager  
**Sent:** Wednesday, April 22, 2020 7:08 PM  
**To:** Leah Zambarnardi  
**Cc:** Sam Joslin (building.inspector@wnewbury.org); Michael McCarron  
**Subject:** RE: Review of proposed zoning amendments

Leah,

To follow up on last Monday's BOS mtg and last night's PB discussion, this is to provide further detail re my suggested revision to one aspect of the proposed zoning bylaw amendments.

My concern is that the proposed language at Sec. 5.A.2.c.iv.g could provide a basis for someone to contest a proposed (or operating) home-office if there is any non-residential traffic generated by the business; as written, I think the language is too absolute. (Sam for your reference the proposed additional language follows):

**“g) Traffic generated by the use does not exceed that of which is normally expected in a residential neighborhood, and all parking required to service the occupation is provided off-street, and not within a required front yard”.**

This could put Sam as zoning enforcement officer in a tough spot if someone were to contend that a home office generates some number of commercial deliveries (FedEx, courier) that would not be “normally expected in a residential neighborhood.” Like I said last night, if we're going to allow home offices, let's allow home offices.

I understand that the PB last night voted to remove this language from the proposed amendments, but this was not my intent; I do think a traffic threshold is important.

When I was in Hampden the Town Planner led a comprehensive zoning reform effort, and the end result includes much that I consider best practices. The overall Sec. 4.10 Use of Residence for Business Purposes (ordinance online [here](#) the relevant section beginning on pg. 4-38) is the best example I've seen of this type of zoning (keeping in mind that the policy intent in Hampden was overtly pro-business, and this was part of an intentional effort to expand opportunities for home-based businesses... in other words, I'm not suggesting the entire section would meet West Newbury's objectives).

The language at Sec. 4.10.5.5. does, however, bear reference in this regard:

The business shall not generate traffic that is inconsistent with the traffic associated with a residential use, either in quantity or type.

I think this language provides both the permit granting authority and the zoning enforcement officer more opportunity for reasonable discretion, and I think the same language here in West Newbury would be a plus.

Please review this suggestion – and Sam, please share your thoughts as well – and once we have something that seems to work well at a staff level I hope you'll bring this back to the PB for further consideration. I do not think that jettisoning the initial proposed language altogether is the best outcome.

Thanks,  
Angus

Angus Jennings, Town Manager  
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