



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2023 NOV 21 PM 6:00

CITY OF MARLBOROUGH

City Council Agenda

Monday, November 27, 2023

8:00 PM

This meeting of the City Council will be held in City Council Chambers, City Hall, 140 Main Street. **PUBLIC ATTENDANCE IS PERMITTED.** This meeting will be televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34), or you can view the meeting using the link under the Meeting Videos tab on the city website (www.marlbrough-ma.gov).

1. Minutes, City Council Meeting, November 13, 2023.
2. PUBLIC HEARING on the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, Order No. 23-1009005.
3. Communication from the Mayor re: Gift Acceptance in the amount of \$1,000.00 from the Marlborough Foundation, awarded to the Council on Aging to be used for assisting our seniors with food insecurity issues.
4. Communication from the Mayor, re: Grant Acceptance in the amount of \$175,734.00 from the Massachusetts Department of Energy Resources through the Green Communities Program, awarded to the City of Marlborough to be used to make energy improvements at the Recreation Building and Marlborough High School.
5. Communication from the Mayor, re: Grant Acceptance in the amount of \$3,020,536.00 from the Executive Office of Housing and Livable Communities, awarded to the City of Marlborough to be used to support the continued redevelopment of French Hill by funding the third and final phase of infrastructure improvements of Lincoln Street.
6. Communication from City Solicitor, Jason Grossfield, re: Request for Executive Session to discuss litigation strategy relative to JW Capital Partners, LLC, and Marlborough TOTG LLC v. City of Marlborough (Land Court No. 23 MISC 000199).
7. Communication from Assistant City Solicitor, Jeremy McManus, re: on the Application for Special Permit from Attorney Brian Falk, on behalf of Somar Landscape, Inc., to construct and operate a Landscaper's Yard at the Airport Industrial Park, 59 Airport Boulevard, Unit 16, in proper legal form, Order No. 23-1008965C.
8. Communication from the Planning Board, re: Neutral Recommendation on the Proposed Amendment to City Code, Chapter 650 "Zoning" by adding a new section to create the "Sasseville Way Residential Overlay District" (SWROD), Order No. 23-1008941.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

9. Communication from the Planning Board, re: Favorable Recommendation on the Proposed Amendment to City Code Chapter 650 "Zoning" to add a new section to create the "Red Spring Road Overlay District" (RSROD), Order No. 23-1008951.
10. Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole (25-25) on Hayes Memorial Drive beginning at a point approximately 350' north/northwest of the centerline of the intersection of Nickerson Road for new commercial service at 1000 Nickerson Road.
11. Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole on Simarano Drive beginning at a point approximately 50' southeast of the centerline of the intersection of Simarano Drive and Bay Drive installing a midspan pole between pole 10 and pole 8-50 and install a 900 KVAR on it.
12. Communication from property owner, re: Opposition to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts", Order No. 23-1008964.
13. Minutes of Boards, Commissions and Committees:
 - a) School Committee, October 10, 2023, October 17, 2023 & October 24, 2023.
 - b) Conservation Commission, November 2, 2023.
 - c) Cultural Council, September 6, 2023.
 - d) Historical Commission, September 21, 2023.

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Public Services Committee

14. **Order No. 22-1008553: Communication from the Planning Board re: Howes Landing Subdivision, recommending acceptance of GIKAS LANE as a PUBLIC WAY.**

Recommendation of the Public Services Committee is to FILE.

On motion by Councilor Irish, seconded by Brown, the committee voted to file the Planning Board's letter recommending acceptance of Gikas Lane as public way. Vote 3-0.

15. **Order No. 22-1008691: Communication from Assistant Solicitor Jeremy McManus re: Howes Landing Subdivision and the acceptance of GIKAS LANE as a Public Way, with Historical Documentation.**

Recommendation of the Public Services Committee is to APPROVE.

On motion by Councilor Brown, seconded by Irish, the committee voted to recommend approval of the proposed order of acceptance for Gikas Lane and municipal easements in Howe's Landing subdivision in proper form from the Assistant Solicitor in his communication dated September 28, 2022. Vote 3-0.

From Urban Affairs Committee

16. **Order No. 23-1008965C: Application for Special Permit from Attorney Brian Falk, on behalf of Somar Landscape, Inc., to construct and operate a Landscaper's Yard at the Airport Industrial Park, 59 Airport Boulevard, Unit 16.**

Recommendation of the Urban Affairs Committee is to APPROVE.

Councilor Doucette moved to recommend approval of the draft Grant of Decision and the Conditions for Somar Landscaping; motion was seconded and approved 5-0.

Councilors-at-Large

Mark A. Oram
 Michael H. Ossing
 Samantha Perlman
 Kathleen D. Robey

**Ward Councilors**

Ward 1 – Laura J. Wagner
 Ward 2 – David Doucette
 Ward 3 – J. Christian Dumais
 Ward 4 – Teona C. Brown
 Ward 5 – John J. Irish
 Ward 6 – Sean A. Navin
 Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

**CITY OF MARLBOROUGH
 CITY COUNCIL
 MEETING MINUTES
 MONDAY, NOVEMBER 13, 2023**

The regular meeting of the City Council was held on Monday, November 13, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Perlman & Robey. City Councilors Absent: Wagner. Meeting adjourned at 8:18 PM.

Council President Ossing expressed his sorrow in the passing of Colleen M. Kerrigan, wife of City Clerk Steven Kerrigan and a moment of silence was observed in her memory.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, OCTOBER 23, 2023, **FILE**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Council President Ossing, re: Notice of Reappointment of Michael Ossing as a member of the OPEB Board of Trustees pursuant to Order No. 13-1005335C, **FILE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$60,000.00 from the Executive Office for Administration and Finance, awarded to the Human Resources Department to be used to conduct a formal wage and classification plan; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$8,700.00 from the Executive Office for Administration and Finance, awarded to the Human Resources Department to be used to conduct an organizational review and analysis of current processes and procedures of the Human Resources Department; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$59,840.00 from the Executive Office of Public Safety and Security, awarded to the Police Department to be used for traffic enforcement measures focusing on impaired driving, speeding, distracted driving, and seatbelt safety; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$16,906.00 from the US Justice Department, Office of Justice Programs, awarded to the Police Department to be used to replace outdated equipment; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$1,350,000.00 from the Executive Office of Housing and Livable Communities, awarded to the Community Development Authority to be used for infrastructure upgrades and reconstruction of Winthrop Street that includes ADA compatibility; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$1,115,294.00 which moves funds from Meals Tax Revenue account to fund FY24 bond payments associated with Parks & Recreation improvements, **APPROVED**; adopted.

CITY OF MARLBOROUGH
BUDGET TRANSFERS -

DEPT:		Auditor		FISCAL YEAR:		2024			
FROM ACCOUNT:				TO ACCOUNT:					
Available							Available		
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
<u>\$1,380,261.58</u>	<u>\$1,115,294.00</u>	<u>27000</u>	<u>33086</u>	<u>Fund Bal-Parks & Fields Capital</u>	<u>\$1,115,294.00</u>	<u>19910009</u>	<u>49715</u>	<u>Transfer-Meal Local Option</u>	<u>\$0.00</u>
Reason:		<u>Local options meals tax funding FY24 bond payments associated with parks & fields as per the FY24 budget process</u>							
\$1,115,294.00		Total		\$1,115,294.00		Total			

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Proposed Tax Increment Financing (TIF) Agreement with Sartorius, a global biopharmaceutical company with plans to create the Sartorius North American Center for Bioprocess Solutions at 200 Donald J. Lynch Boulevard (Map 26, Parcel 9), referred to the **FINANCE COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Ordinance Amendment to Chapter 650 "Zoning" of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), **FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the City Council President send a letter to the Commonwealth of Massachusetts, Division of Banks, re: License Application of Ventura Enterprises, LLC d/b/a Change Your Check to operate a check cashing business at 147 Main Street, asking them to deny the license **APPROVED**; adopted.

Councilor Dumais Recused

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY NOVEMBER 27, 2023**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from resident, re: Opposition to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts", **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) School Committee, September 26, 2023.
- b) Commission on Disabilities, May 1, 2023.
- c) Conservation Commission, October 19, 2023.
- d) Planning Board, September 11, 2023 & September 18, 2023.
- e) Traffic Commission, July 26, 2023 & September 27, 2023.
- f) Zoning Board of Appeals, October 19, 2023.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

ORDERED: That the following CLAIMS, referred to the **LEGAL DEPARTMENT**; adopted.

- a) Michael Winske & Bethany Weart, 22 Kane Drive, other property damage and/or personal injury.

Councilor Landers reported the following out of the Public Services Committee:

**City Council Public Services Committee
November 6, 2023
Minutes and Report**

This meeting convened at 7:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting members present: Chair Landers, Councilor Irish and Councilor Brown.

Others present: Councilors Wagner, Dumais, Robey, Navin, Oram and Doucette.

Reports of Committee Continued:

Order No. 22-1008553: Communication from the Planning Board re: Howes Landing Subdivision, recommending acceptance of GIKAS LANE as a PUBLIC WAY.

Order No. 22-1008691: Communication from Asst. Solicitor Jeremy McManus re: Howes Landing Subdivision and the acceptance of GIKAS LANE as a public way, w/historical documentation.

Ward Councilor Navin supported acceptance indicating he visited the street and found the conditions are better than many other streets in the city.

Chair Landers read into the record 3/16/22 letter from the Planning Board recommending acceptance of Gikas Lane, 7 in favor; none opposed.

Chair Landers read into the record input from City Engineer DiPersio dated 11/6/23, indicating the road was paved five years ago and since that time the pavement has sustained some surface cracking. In 2022, the Engineering Division did an inspection of the roadway and commented to the Planning Board that pavement cracking was the only outstanding issue with the roadway and that acceptance could be recommended. As of this writing, the crack sealing remains the only outstanding issue. If the roadway is accepted as a public way, it will be added to the city's crack seal list for 2024.

Chair Landers read into the record the Mayor's letter, dated 4/11/22, recommending councilors take time to visit the road to review and inspect before formal acceptance is considered. The road currently has multiple cracks that need to be sealed prior to its approval. It was noted that councilors visited the street to inspect the conditions per the Mayor's suggestion.

On motion by Councilor Irish, seconded by Brown, the committee voted to file the Planning Board's letter recommending acceptance of Gikas Lane as public way. Vote 3-0

On motion by Councilor Brown, seconded by Irish, the committee voted to recommend approval of the proposed order of acceptance for Gikas Lane and municipal easements in Howe's Landing subdivision in proper form from Asst. Solicitor in his communication dated 9/28/22.

On motion made by Councilor Irish, seconded Chair, the meeting adjourned at 7:49 PM.

Councilor Robey reported the following out of the Urban Affairs Committee:

**City Council Urban Affairs Committee
November 6, 2023
Minutes and Report**

Urban Affairs & Housing Committee voting members present: Chairman Katie Robey, Councilor Doucette, Councilor Landers, Councilor Navin, and Councilor Wagner.

Also present were Councilors Brown, Dumais, Irish, and Oram. Absent were Councilors Perlman and Ossing.

Order No. 23-1008965: Communication from Attorney Falk on behalf of Somar Landscape, Inc. to construct and operate a Landscaper's Yard at Airport Industrial Park, 59 Airport Boulevard.

Reports of Committee Continued:

The chair opened the meeting by letting committee members know of two changes made to the draft Decision on a special permit—one in finding of Facts #5, changing “... “Proposed Site Plan of Use Area #16 Airport Boulevard” by Connorstone Engineering, with the last revision date of October 17, 2023” to read October 13, 2023 and “Proposed Landscape Plan of Use Area #16 Airport Boulevard” by Connorstone Engineering, with the last revision date of October 17, 2023” to read “...Engineering, dated October 17, 2023.”

Attorney Falk reviewed the draft Decision stating it was similar to one used for another landscaper at the same site. The chair read through the Conditions listed in the draft mentioning at #3 Site Plan Review, that she had failed to mention the input from department heads who had all said they had no issue except Building Commissioner who had noted they reserve right for future comments. No one had questions on the Conditions, Councilor Doucette commented this was a good use of the area which is designed for this type of business.

Councilor Doucette moved to recommend approval of the draft Grant of Decision and the Conditions for Somar Landscaping; motion was seconded and approved 5-0. The chair will ask for a suspension of rules at the Nov. 13 council meeting to have this referred to solicitor to be put in proper form.

The chair then took up the next item on agenda—

Order No. 23-1008941: Communication from Attorney Gemma Cashman on behalf of Trammel Crow Company re: Proposed Amendment to City Code, Chapter 650 “Zoning” by adding a new section to create the “Sasseville Way Residential Zoning Overlay District.”

The chair stated that she would like to have this meeting focus on the zoning changes and not on the proposed development as there were changes that would be discussed at next Planning Board Meeting. Attorney Michael J. Flannery from Goulston & Storrs introduced himself and passed out copies of a presentation outlining changes to the draft. The screen in council chambers wasn’t available so he read through the changes to zoning and copies were given to share among public in attendance. The chair noted these changes had been discussed at the last Planning Board meeting and stated one of her concerns is the building by right.

Because the committee is still waiting on a recommendation from the Planning board, this was tabled in committee and added to the Nov. 15 agenda pending a recommendation. If no recommendation is given at the Nov 13th Planning board meeting this will remain tabled in committee until a later date in Nov.

With no further business, Councilor Doucette moved to adjourn; the motion carried 5-0. The meeting adjourned at 8:33 PM.

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the City Clerk is directed to advertise the Tax Classification Public Hearing scheduled for Monday, December 4, 2023, **APPROVED**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Application for Special Permit from Attorney Brian Falk, on behalf of Somar Landscape, Inc., to construct and operate a Landscaper's Yard at the Airport Industrial Park, 59 Airport Boulevard, Unit 16, referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE NOVEMBER 27, 2023, COUNCIL MEETING**; adopted.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

ORDERED: That the City Council for the City of Marlborough hereby accepts from the Marlborough Community Development Authority, an operating agency and an urban renewal agency within the meaning of MGL Chapter 121B, an economic development and industrial corporation within the meaning of MGL Chapter 121C, and a housing authority within the meaning of MGL Chapter 121B, created by Chapter 327 of the Acts of 1979, as amended by Chapter 380 of the Acts of 2004 and Chapter 395 of the Acts of 2008, having an address at 250 Main Street, Marlborough, Massachusetts 01752 (the "Grantor"), in substantially the form as attached hereto in the Grant of Easement, a permanent easement over a certain portion of the Grantor's parcel of land located at Bolton Street Extension, Marlborough, Massachusetts, which parcel of land is shown on the Assessor's Map of the City of Marlborough as Map 70, Parcel 216.

APPROVED; adopted.

Councilor Landers Recused.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

ORDERED: That the City Council for the City of Marlborough hereby accepts from the Marlborough Historical Society, Inc., with an address of 377 Elm Street, Marlborough, MA 01752, a gift of tangible personal property pursuant to MGL Chapter 44, § 53A1/2, specifically a sculpture of Marlborough historical figure Samuel Boyd, and the Mayor is authorized to execute a donation agreement, in substantially the form as attached hereto, on behalf of the City, **APPROVED**; adopted.

Councilor Landers Recused.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 8:18 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 13, 2023

ORDERED:

That there being no objection thereto set **MONDAY NOVEMBER 27, 2023**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, be and is herewith referred to the **PUBLIC SERVICES COMMITTEE**.

ADOPTED

ORDER NO. 23-1009005



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2023 NOV 21 AM 8:59

City of Marlborough
Office of the Mayor

Arthur G. Vigeant
MAYOR

Patricia Bernard
CHIEF OF STAFF

140 Main Street
Marlborough, Massachusetts 01752
508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlbrough-ma.gov

Jailyn Bratica
EXECUTIVE ADMINISTRATOR

November 21, 2023

Council President Michael Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Gift acceptance from the Marlborough Foundation for the Council on Aging

Honorable President Ossing and Councilors,

Enclosed for your acceptance is a gift in the amount of \$1,000.00 from the Marlborough Foundation for the Council on Aging.

This funding will assist our seniors with food insecurity.

I would like to thank the Marlborough Foundation for supporting our senior population.

Thank you in advance for your consideration.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosures



City of Marlborough
Council on Aging and Senior Center

40 New Street
 Marlborough, Massachusetts 01752
 Telephone (508) 485-6492 Facsimile (508) 460-3726

Patricia A. Pope
 EXECUTIVE DIRECTOR

November 3, 2023



Mayor Arthur Vigeant
 City Hall
 140 Main Street
 Marlborough, MA 01752

Re: Gift from the Marlborough Foundation

Dear Mayor Vigeant,

I am pleased to submit to you a gift in the amount of \$1000.00 to the Council on Aging from the Marlborough Foundation. I would like to thank the Marlborough Foundation for this very generous gift. Once approved by the City Council, we will use the money to help alleviate some of the food insecurity issues being felt by our seniors in need.

As always, I am available should you or the Councilors have any questions,

Sincerely,

Patricia A. Pope
 Executive Director

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: Council on Aging DATE: 3-Nov-23

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Patricia Pope

NAME OF GRANT: Gift

GRANTOR: Marlborough Foundatoin

GRANT AMOUNT: \$1,000.00

GRANT PERIOD: n/a

SCOPE OF GRANT/
ITEMS FUNDED Funds will be used for Food Insecurity

IS A POSITION BEING
CREATED: No

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? No

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS
TO BE USED:

ANY OTHER EXPOSURE TO CITY?

No

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: as soon as possible

**DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER
LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL**



City of Marlborough
Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2023 NOV 21 AM 8:58

Arthur G. Vigeant
MAYOR

Patricia Bernard
CHIEF OF STAFF

140 Main Street
Marlborough, Massachusetts 01752
508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlborough-ma.gov

Jailyn Bratica
EXECUTIVE ADMINISTRATOR

November 21, 2023

Council President Michael Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: DOER Green Communities grant acceptance

Honorable President Ossing and Councilors,

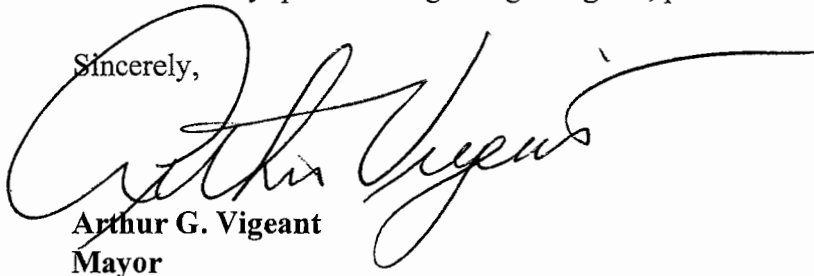
Enclosed for your acceptance is a grant in the amount of \$175,734.00 through the Green Communities Program from the Massachusetts Department of Energy Resources.

This funding will allow the city to make energy improvements at the Recreation Building and the Marlborough Public High School as outlined in Conservation Officer Priscilla Ryder's letter enclosed. The Green Communities program provides financial incentives that support energy efficiency and renewable energy projects at the local level.

I would like to thank the Commonwealth's Department of Energy Resources for their continued support.

If there are any questions regarding this grant, please contact Priscilla Ryder.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosures



City of Marlborough

Conservation Commission

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

November 16, 2023

Arthur Vigeant, Mayor
140 Main St. City Hall
Marlborough, MA 01752

RE: DOER Green Communities Competitive Grant Award 2023

Dear Mayor Vigeant,

The City of Marlborough, through the Green Communities program has been awarded a 2023 Green Communities Competitive Grant of \$175,734. This funding will allow the city to continue to improve on energy efficiency measures to reduce energy use and carbon emissions and save on energy costs. This grant will be used to make four energy efficiency improvements at the High School and Recreation Department as follows:

- \$801, Recreation Dept. 239 Concord — Weatherization
- \$61,790, Recreation Dept. 239 Concord — Heat pump system
- \$56,757, High School — BMS Controls
- \$56,386, High School — HVAC Controls Upgrade

We are excited to be able to make these improvements. Please let me know if you have any questions.

Sincerely,

Priscilla Ryder
Conservation/ Sustainability Officer

Cc: Diane Smith
Robert Quinn



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENERGY RESOURCES
100 CAMBRIDGE ST., 9th FLOOR
BOSTON, MA 02114
Telephone: 617-626-7300

Maura T. Healey
Governor

Rebecca L. Tepper
Secretary

Kimberley Driscoll
Lt. Governor

Elizabeth Mahony
Commissioner

September 27, 2023

Arthur G. Vigeant, Mayor
City of Marlborough
140 Main Street
Marlborough, MA 01752

Dear Mayor Vigeant:

I am pleased to inform you that the Department of Energy Resources (DOER) Green Communities Division has approved an award of **\$175,734** for the following projects proposed in the City of Marlborough's Green Communities Competitive Grant application.

List of projects funded:

- \$801, Recreation Dept. 239 Concord — Weatherization
- \$56,757, High School — BMS Controls
- \$61,790, Recreation Dept. 239 Concord — Heat pump system
- \$56,386, High School — HVAC Controls Upgrade

The Division reviewed Marlborough's grant application and has determined these are viable projects that meet the eligibility requirements of our Competitive Grant program. **Please note that, due to the competitive nature of this grant program, the use of these funds is restricted to the specifically-approved projects listed above.**

Jane Pfister, Green Communities Grant Coordinator, will follow up with the contact listed in your competitive grant application to discuss next steps, including coordination of the grant contract process. The Green Communities Division looks forward to working with the City of Marlborough on your grant projects. We congratulate you on your grant award and applaud your efforts to create a cleaner energy future for your community and the Commonwealth as a whole.

Please do not hesitate to contact me at 617-823-4029 or by email at Joanne.Bissetta@mass.gov with any questions you may have regarding your grant award.

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: Conservation/Sustainability DATE: 11/16/23

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Priscilla Ryder

NAME OF GRANT: Green Communities Competitive Grant

GRANTOR: Massachusetts Department of Energy Resources

GRANT AMOUNT: \$172,734

GRANT PERIOD: Nov. 9, 2023– Sept. 30, 2025

SCOPE OF GRANT/
ITEMS FUNDED Energy management improvements at Recreation Building 239 Concord Rd. and High School

IS A POSITION BEING
CREATED: No

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? N/A

ARE MATCHING CITY
FUNDS REQUIRED? None (\$42,307 will be paid through utility incentives)

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS TO BE USED:

ANY OTHER EXPOSURE TO CITY?

None

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL? As soon as possible

DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT



I.COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



4-5

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the **Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services** or the **Commonwealth IT Terms and Conditions** which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

CONTRACTOR LEGAL NAME: City of Marlborough (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Department of Energy Resources MMARS Department Code: ENE1000	
Legal Address: (W-9, W-4): 140 Main Street, Marlborough MA 01752		Business Mailing Address: 100 Cambridge Street, 9 th floor, Boston, MA 02114	
Contract Manager: Arthur G. Vigeant	Phone: 508-460-3770	Billing Address (if different):	
E-Mail: mayor@marlborough-ma.gov	Fax: 508-460-3698	Contract Manager: Jane Pfister	Phone: 617-626-7300
Contractor Vendor Code: VC6000192111		E-Mail: jane.pfister@mass.gov	Fax:
Vendor Code Address ID (e.g., "AD001"): AD 001 (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s): CT ENE 2024ENEP01MARLCP0113	
		RFR/Procurement or Other ID Number: PON-ENE-2023-018	
<input checked="" type="checkbox"/> NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> Department Procurement (includes all Grants - <u>815 CMR 2.00</u>) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		<input type="checkbox"/> CONTRACT AMENDMENT Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20____. Enter Amendment Amount: \$ _____ (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services <input type="checkbox"/> Commonwealth IT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under <u>815 CMR 9.00</u> . <input type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or <u>new</u> total if Contract is being amended). \$ <u>175,734</u>			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle ___ statutory/legal or Ready Payments (<u>M.G.L. c. 29, § 23A</u>); ___ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: This is a contract to award a grant to the City of Marlborough for fiscal years 2024-2026 under the Green Communities Competitive Grant Program in the amount of One Hundred Seventy Five Thousand Seven Hundred Thirty Four Dollars and No Cents (\$175,734.00). The grant is intended to fund energy conservation measures, weatherization, BMS controls, heat pump system, and HVAC controls upgrade, in municipal facilities including High School and Recreation Dept., to be provided for the benefit of, and subject to the direction and oversight of, the Grantee as detailed in Attachment C.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and <u>no</u> obligations have been incurred <u>prior</u> to the Effective Date. <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date LATER than the Effective Date below and <u>no</u> obligations have been incurred <u>prior</u> to the Effective Date. <input type="checkbox"/> 3. were incurred as of _____, 20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>September 30, 2025</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____ Date: <u>10/31/23</u> (Signature and Date Must Be Captured At Time of Signature) Print Name: <u>Arthur G. Vigeant</u> Print Title: <u>Mayor</u>		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: _____ Date: <u>11/9/23</u> (Signature and Date Must Be Captured At Time of Signature) Print Name: <u>Susannah Hatch</u> Print Title: <u>Chief of Staff</u>	

BACKGROUND

1. The DOER has selected the Grantee to receive Green Communities grant funds for projects described in the Grantee’s response to the PON.
2. The DOER approves the expenditure of funds as described in Attachment D (Budget) for the work planned and described in Attachment C (Scope of Grant Award).
3. The Grantee agrees to complete the projects described in the Scope of Grant Award (collectively referred to as “the Project”).

This agreement (Agreement) incorporates and makes part hereof certain attachments and forms which have been provided and accepted by the parties as part to this Agreement. Copies of such agreed upon attachments and forms are attached hereto set forth in their entirety and made part of this Agreement by reference:

THE COMMONWEALTH STANDARD CONTRACT FORM

BACKGROUND

ATTACHMENT A: GREEN COMMUNITIES COMPETITIVE GRANT APPLICATION
MATERIALS

ATTACHMENT B: GRANTEE RESPONSE

ATTACHMENT C: SCOPE OF GRANT AWARD

ATTACHMENT D: BUDGET

THE COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT ATTACHMENTS

1. COMMONWEALTH TERMS AND CONDITIONS
2. GRANTEE AUTHORIZED SIGNATORY LISTING
3. W-9 FORM
4. EFT

ATTACHMENT A – Green Communities Competitive Grant Application Materials

The Program Opportunity Notice (PON) was provided to the municipality via Commbuys, the Commonwealth's procurement website.

DOER PON-ENE-2023-018 2023 Green Communities Competitive Grant Program

Bid # **BD-23-1041-ENE01-ENE01-85720**

ATTACHMENT B – Grantee Response

(All documents listed below are available to DOER fiscal staff at:

<https://massdoer.imeetcentral.com/greencommunities/dbapp=7ary4jojv3xnh83ficwf09s252274943&ac=h&view=1184652>

1. Grantee submission narrative – Marlborough efficiency narrative.docx
2. Grantee grant table submitted – Marlborough 2 grant table corrected.xlsx
3. Grantee certification of application submitted – Marlborough certification of application mayors signature.pdf

Response included additional files:

- high school audit 6-27-22.pdf
- high school central plant proposal 5-5-23.docx
- central plant bms marlborough high school custom 5-5-23.pdf
- central plant fx pca catalog page 1900818.pdf
- central plant marlborough hs custom project memorandum 5-5-23.docx
- handv marlborough hs 2022 ma prescriptive bms form.pdf
- handv marlborough hs 2023 prescriptive bms calculator final v15.pdf
- ghiloni park workshop proposal 4-5-23.docx
- ghiloni park workshop hp electrification memorandum 5-5-23.docx
- heat pump m submittal mxz sm48namhz en.pdf
- 14429637 marlborough hs bms custom central plant pre approval letter.pdf
- 14419118 marlborough hs bms prescriptive pre approval letter.pdf
- 14419118 marlborough hs ems mrd.pdf
- 14430040 ghiloni workshop mrd.pdf
- 14429637 hs mrd.pdf
- 14430040 workshop pre approval letter.pdf
- 14455828 ghiloni park dpw heat pump commitment letter.pdf
- 9789 dpw barn hp calculations.xlsx
- ghiloni park workshop power summary.pdf
- hs central plant point list.pdf
- hs handv unit point list.pdf

ATTACHMENT C – SCOPE OF GRANT AWARD

**COMMONWEALTH OF MASSACHUSETTS
SCOPE OF GRANT AWARD AGREEMENT**

**By and Between
Department of Energy Resources
and
City of Marlborough**

SCOPE OF GRANT AWARD

1. Overview

The purpose of this contract is to award a grant to the City of Marlborough (Grantee) for a maximum obligation amount not to exceed One Hundred Seventy Five Thousand Seven Hundred Thirty Four Dollars and No Cents (\$175,734.00) to fund energy conservation measures in municipal facilities including High School and Recreation Dept., as more particularly described in Attachment B (Project). In connection with the above referenced grant, the Grantee requested one hundred seventy five thousand seven hundred thirty four dollars and no cents (\$175,734.00) in public funding out of two hundred eighteen thousand forty one dollars and no cents (\$218,041.00) in total project costs for energy conservation measures listed in attachment B. The energy conservation measures funded are weatherization, BMS controls, heat pump system, and HVAC controls upgrade.

The Grantee is responsible for informing the Department of Energy Resources (DOER) of all eligible expenses and Project deliverables as compared to the original proposal as set forth in Attachment B.

Note that no changes in Project scope can occur or proceed without the prior written authorization from the DOER.

2. Contingencies

The Grantee shall provide to the DOER's satisfaction, the required information as stated below as applicable to the Project(s), as soon as the information becomes available.

1. Documentation that the municipality has met, teleconferenced, or had an email exchange with its gas and/or electric public utility representatives regarding the availability of utility incentives for any eligible energy conservation or efficiency measures.

2. Documentation of having **applied for all gas and electric rebates** provided for eligible energy conservation or efficiency measures. The Grantee is required to have documentation from utilities regarding rebates before selection and installation of products.

3. Procurement

All procurement contracts and subcontracts entered into by public agencies and governmental bodies shall be governed by and in accordance with Massachusetts General Laws. Where applicable, such procurements, contracts and subcontracts shall be governed by the all provisions of either M.G.L. c.25A, § 11C or §11I, M.G.L. c.30B, or M.G.L c.149. All designer selection for building projects shall be governed by M.G.L. c.7, §§38A1/2 - O.

4. Program Schedule

The following are milestones to ensure timely completion of the Project(s). If the Grantee is unable to meet these milestones Grantee shall promptly contact the DOER.

- (1) Complete construction of the Project (s) – August 1, 2025

(2) End of grant period – September 30, 2025

5. Disbursement of Funds

Initial Disbursement: Twenty five percent (25%) of the award in the amount of forty three thousand nine hundred thirty three dollars and fifty cents (\$43,933.50) will be disbursed by the DOER subsequent to the execution of this grant agreement and upon the DOER's agreement that contingency number one as stated under Section Two Contingencies of this Scope of Grant Award has been fully satisfied.

Second Disbursement: Fifty percent (50%) of the award in the amount of eighty seven thousand eight hundred sixty seven dollars and no cents (\$87,867.00), shall be disbursed upon verification by the DOER that twenty-five percent (25%) of the grant funds have been expended and that contingency number two as stated in Section Two Contingencies of this Scope of Contract Award has been fully satisfied and that all reporting requirements have been met. Reporting requirements will include submittal by the Grantee to the DOER of detailed dated invoices of Grantee's costs incurred to date.

Final Disbursement: Twenty five percent (25%) of the award in the amount of forty three thousand nine hundred thirty three dollars and fifty cents (\$43,933.50), shall be disbursed after a site visit by the DOER, a review of the detailed invoices of the Project(s) and any other requested documentation and verification by the DOER that the Project(s) are complete, that one hundred percent (100%) of grant funds have been expended, evidence of approved utility incentives have been provided, and that all reporting requirements and requests by the DOER have been met, including submittal and approval of the Final Report.

Funds shall not be used for the reimbursement of any work related to this Project(s) performed before the contract Effective Date.

6. Grantee Warrants to Keep Facility Open

For Project(s) involving services or construction at facility(s) owned by or under the control of the Grantee, the Grantee hereby warrants and certifies that the facility (s) for which grant funds are designated will remain open and in service for at least five (5) years following completion of proposed project(s).

7. Separate Accounts

The Grantee shall at all times conduct its business and affairs in such a manner that any and all ledger accounts and records pertaining to the receipt and expenditure of the DOER funds under this Agreement shall be kept separate and distinct from all ledger accounts and records of the Grantee relative to any other enterprise which the Grantee has engaged in, developed, or administered.

8. Unused Funds

Any funds undisbursed or uncommitted by the Grantee after September 30, 2025, shall be promptly returned to the DOER within sixty (60) days.

9. Administrative Costs

Grantee's administrative costs shall not exceed ten percent (10%) of the maximum obligation contract amount of One Hundred Seventy Five Thousand Seven Hundred Thirty Four Dollars and No Cents (\$175,734.00).

10. Publicity

The municipality will coordinate with the DOER on all publicity regarding this Project(s).

11. Reporting and Other Required Documentation

- A. Should Grantee engage a third party to manage administrative functions of the program and rely on the internal controls of that third party, the third party shall provide the results of an internal controls audit annually according to the provisions Statements of Auditing Standards No. 70 to the DOER and Grantee.
- B. Grantee shall have a program to combat fraud, waste and abuse of funds and shall incorporate into its program guidance provided by the Office of the State Comptroller.
- C. **Quarterly reports:** The Grantee shall be required to file progress and financial reports once every quarter, unless specifically exempted in writing by the DOER. Quarterly reports are due by 5PM four (4) days after the completion of each of the following quarters:
 - a. July 1 – Sept 30
 - b. Oct 1 – Dec 30
 - c. Jan 1 – Mar 30
 - d. Apr 1 – June 30

Quarterly reports shall include:

- a. The progress and status of activities performed in relation to the Scope of Grant Award including an explanation of any delays or obstacles encountered in meeting the performance schedule as well as a description of efforts taken to resolve delays; and
 - b. The actual costs incurred to date by the Project, breaking down all costs in such manner as the DOER may prescribe.
- D. **Final report:** The final report shall be submitted within two (2) months after completion of the final project receiving funding, and shall include a summary of the projects completed, including project locations and capacity. All quarterly and final reports above shall be submitted to:

Jane Pfister
Green Communities Grant Coordinator
jane.pfister@mass.gov

NOTE: If the services funded by this Agreement are solicited pursuant to M.G.L. Ch. 25A § 11C or § 11I, then the Grantee shall also comply with the monitoring and reporting requirements set forth in the DOER's regulations at 225 C.M.R. 10.00, 19.00 or other applicable regulations. For solar PV systems, registration with and reporting to the Massachusetts Clean Energy Center Production Tracking System (PTS) is required.

- E. **Ownership of Reports and Other Required Documentation:** The deliverables shall be owned by the Commonwealth of Massachusetts and treated as public documents. Following the completion of the contract both the Commonwealth of Massachusetts and the Grantee retain the right to make further use of the deliverables.

VI. ATTACHMENT D - BUDGETCheck one: ☒ Initial Budget☐ Budget/Account Amendment. Maximum Obligation before this Amendment:

PRIOR MMARS DOCUMENT ID: _____ (for reference - if applicable)

CURRENT DOC ID: _____

[See Instructions for Additional Guidance on completion. Insert as many additional lines as necessary.]

A	B	C	D	E	F	G	H	I
Budget Fiscal Year	Account	Object Class	Activity / Function Codes	Initial Amount / or Amount Prior to Amendment	Indicate Add or Reduce +/-	Amendment Amount	Enter "YES" if Amount is a prior FY budget reduction or a current FY "Carry-in" authorization for Federal Funds	New Amount After Amendment
FY24	2000-0113	P01	GNCO-COMP	\$175,732.00				
FY25	2000-0113	P01	GNCO-COMP	\$ 1.00				
FY26	2000-0113	P01	GNCO-COMP	\$ 1.00				

FISCAL YEAR SUBTOTALS AND TOTAL MAXIMUM OBLIGATION FOR DURATION OF CONTRACTFISCAL YEAR: 2024 SUBTOTAL (or New Subtotal if Fiscal Year Subtotal being amended) \$175,732.00FISCAL YEAR: 2025 SUBTOTAL (or New Subtotal if Fiscal Year Subtotal being amended) \$ 1.00FISCAL YEAR: 2026 SUBTOTAL (or New Subtotal if Fiscal Year Subtotal being amended) \$ 1.00

FISCAL YEAR: SUBTOTAL (or New Subtotal if Fiscal Year Subtotal being amended)

TOTAL MAXIMUM OBLIGATION FOR DURATION OF CONTRACT **\$175,734.00**



City of Marlborough
Office of the Mayor

RECEIVED
 CITY CLERK'S OFFICE
 CITY OF MARLBOROUGH

NOV 21 AM 8:59
Arthur G. Vigeant
 MAYOR

Patricia M. Bernard
 CHIEF OF STAFF

140 Main Street
 Marlborough, Massachusetts 01752
 508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlborough-ma.gov

Jailyn Bratica
 EXECUTIVE ADMINISTRATOR

November 21, 2023

Council President Michael Ossing
 Marlborough City Council
 140 Main Street
 Marlborough, MA 01752

Re: HousingWorks Infrastructure Program grant acceptance

Honorable President Ossing and Councilors,

Enclosed for your acceptance is an FY24 HousingWorks Infrastructure Program grant in the amount of \$3,020,536.00 from the Executive Office of Housing and Livable Communities, Executive Office of Economic Development and MassDevelopment.

This grant will support a continued effort on redeveloping the French Hill community by funding the third and final phase of infrastructure improvements for the remaining section of Lincoln Street.

I would like to take this opportunity to thank the Healey/Driscoll Administration for their continued support, and the Marlborough Economic Development Corp and Engineering department on their efforts in seeking this vital funding.

If you have any questions, please contact Executive Director Meredith Harris.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosures



Commonwealth of Massachusetts
**EXECUTIVE OFFICE OF HOUSING &
 LIVABLE COMMUNITIES**

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

September 25, 2023

The Honorable Arthur Vigeant
 City of Marlborough
 91 Main Street
 Marlborough, MA 01752

Dear Mayor Vigeant:

RE: Marlborough 0590 Application

Thank you for submitting this application to the FY2024 Community One Stop for Growth, a platform where the Executive Office of Housing and Livable Communities (EOHLC), Executive Office of Economic Development (EOED), and Massachusetts Development Finance Agency (MassDevelopment) worked together to evaluate all eligible applications and recommended the most ready and highest-impact projects for a grant. This application from City of Marlborough was reviewed by the program(s) that could best serve the project's funding needs.

On behalf of the Healey-Driscoll Administration, I am pleased to inform you that a grant in the amount of **\$3,020,536** from the **HousingWorks Infrastructure Program** has been approved to support your project.

This award is contingent the execution of a grant contract between the City of Marlborough and EOHLC and the satisfaction of its special conditions and requirements. We will send an Adobe Sign contract (must be e-signed) to the Municipal CEO and contact person identified in your application, and an invitation to an online training related to grant administration and contract guidance. Please do not proceed with grant activities until the contract is fully executed. If you have any questions, please contact Filipe Zamborlini, Community Assistance Unit Manager at Filipe.Zamborlini@mass.gov.

Finally, please note that public announcement of this award is embargoed until the Administration has had the opportunity to formally announce it through a local event and/or media release. Please refrain from sharing or publicizing news about this award outside of your organization until it is officially announced.

Congratulations once again. We look forward to working with you to address the City of Marlborough's housing and community development needs.

Sincerely,

Edward M. Augustus, Jr.
 Secretary, EOHLC

CITY OF MARLBOROUGH NOTICE OF GRANT AWARD

DEPARTMENT: DPW DATE: 11/21/2023

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Meredith Harris/Ted Scott

NAME OF GRANT: FY24 Community One Stop for Growth

GRANTOR: EOHLC, EOED, & MassDevelopment

GRANT AMOUNT: \$3,020,536

GRANT PERIOD: 11/15/23-6/30/27

SCOPE OF GRANT/ Lincoln Street Reconstruction - Phase 3
ITEMS FUNDED Targeted infrastructure improvements along Lincoln St. from Highland St. to Bolton St.

IS A POSITION BEING
CREATED: No

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? No

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS TO
BE USED:

ANY OTHER EXPOSURE TO CITY?
No

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: 12/4/2023

DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER
LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL
FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



5-4

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions and Contractor Certifications](#), the [Commonwealth Terms and Conditions for Human and Social Services](#) or the [Commonwealth IT Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

CONTRACTOR LEGAL NAME: City of Marlborough (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Executive Office of Housing and Livable Communities MMARS Department Code: OCD	
Legal Address: (W-9, W-4): 140 Main St, Marlborough, MA 01752		Business Mailing Address: 100 Cambridge Street, Suite 300 Boston, MA 02114	
Contract Manager: Arthur Vigeant	Phone: (508) 460-3770	Billing Address (if different): Same	
E-Mail: mayor@marlborough-ma.gov	Fax:	Contract Manager: Julissa Tavarez	Phone: 617-573-1407
Contractor Vendor Code: VC6000192111		E-Mail: Julissa.tavarez@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD 001 (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s): SCOD321024330000306 RFR/Procurement or Other ID Number: DHCDOneStop2024	
<input checked="" type="checkbox"/> NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		<input type="checkbox"/> CONTRACT AMENDMENT Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20____. Enter Amendment Amount: \$ _____ (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services <input type="checkbox"/> Commonwealth IT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00 . <input type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or <u>new</u> total if Contract is being amended). <u>\$3,020,536</u>			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle ___ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); ___ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Lincoln will complete phase 3 of the Lincoln Street Reconstruction Project and make targeted improvements along Lincoln Street from Highland Street to Bolton Street to unlock new residential growth and private investment in this EJ area.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and <u>no</u> obligations have been incurred <u>prior</u> to the Effective Date. <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date <u>LATER</u> than the Effective Date below and <u>no</u> obligations have been incurred <u>prior</u> to the Effective Date. <input type="checkbox"/> 3. were incurred as of _____, 20____, a date <u>PRIOR</u> to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>6/30, 2027</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: <u>Arthur Vigeant</u> (Nov 14, 2023 13:31 EST) Date: Nov 14, 2023 (Signature and Date Must Be Captured At Time of Signature) Print Name: Arthur Vigeant Print Title: Mayor/Chair		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: <u>Caroline "Chris" Kluchman</u> Date: Nov 15, 2023 (Signature and Date Must Be Captured At Time of Signature) Print Name: Caroline "Chris" Kluchman Print Title: Acting Director	

**ATTACHMENT A SCOPE OF SERVICES AND
ADDITIONAL TERMS & CONDITIONS**

FY 2024 HousingWorks Infrastructure Program Contract

I. CONTRACT

The Contractor is responsible for accessing and reviewing the contents of the documents referenced below, as compliance with each is a binding component of this Contract:

- A.** This Attachment A is attached to and made a part of the COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT FORM. THE COMMONWEALTH TERMS AND CONDITIONS and the Contractor's Budget, as approved by the Executive Office of Housing and Livable Communities ("EOHLC" or the "Executive Office") are attached hereto as Exhibits.
- B.** This Attachment A incorporates by reference the HousingWorks Infrastructure Program Application as applicable.
- C.** This Attachment A, all attached Exhibits and other Attachments, and all documents incorporated by reference herein, are referred to, collectively, as the Contract.
- D.** This Contract represents the entire agreement between the Contractor and EOHLC, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Contract.
- E.** If any term or condition of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

II. SCOPE OF SERVICES AND COMPLIANCE WITH LAWS

The HousingWorks Infrastructure Program provides funding to municipalities and other public instrumentalities for a variety of activities related to design, construction, building, rehabilitation, repair, and other improvements to infrastructure related to housing, and projects that support housing development, preservation, or rehabilitation.

The Contractor shall use this contract funding to provide services in accordance with the terms of the attached Budget, the terms of this Contract, and any subsequent Contract amendments. **ALL EXPENSES MUST BE INCURRED ON OR BEFORE JUNE 30TH OF THE FISCAL YEAR IN WHICH THEY OCCUR (FY 2024 – YEAR 1; FY 2025 – YEAR 2; FY 2026 – YEAR 3; FY 2027 – YEAR 4).** Any later change in services and activities to be provided by Contractor shall be made only with the prior approval of EOHLC, in accordance with Section III.C. below.

The Contractor shall carry out these activities in conformance with all applicable federal and state laws and requirements, including without limitation, statutes, rules, regulations, administrative and executive orders, ordinances, and codes, as they may be issued and amended, and this Contract shall in no way relieve the Contractor from the full force of any laws, rules, regulations and orders, or requirements.

EOHLC reserves the right to issue future administrative guidance. The Contractor shall comply with all applicable guidelines, information memoranda, list serves, or other guidance EOHLC may issue, amend, or supplement from time to time.

III. ADDITIONAL TERMS AND CONDITIONS

A. Compliance with Certain Laws, Rules, Regulations, and Guidelines

1. . In addition to any other requirements of the Contract, the Contractor, by accepting any or all of such Grant Funds, shall:
 - i. Timely commence the Project, and diligently pursue the Project to completion, in accordance with the grant funds drawdowns set out in Article III.B.3
 - ii. Ensure compliance, including but not limited to any and all applicable local, state and federal rules, regulations and laws.
 - iii. Submit regular and complete requests for reimbursement, on a form provided by EOHLC that includes supporting invoices and documentation, pursuant to Article III.C.
 - iv. Submit timely and complete quarterly reports, on a form provided by EOHLC that includes updates and/or changes to the Project.
 - v. Submit timely and complete reimbursement requests, with appropriate supporting documentation.
 - vi. Cooperate fully and promptly with any other request for information that the grant administrator may make.
 - vii. Ensure that all representations made in the Contract by the Contractor remain true and correct.
 - viii. Ensure that construction begins on this Project in accordance with the grant funds drawdowns set out in Article III.B.3

B. Reporting Responsibilities of the Contractor

1. The Contractor, and any entity under subcontract, having costs chargeable to Contract funds shall maintain Contract records in accordance with Section 7 of the Commonwealth Terms and Conditions including without limitation, a record of planned activities, a record of activities carried out, and an explanation of any changes in program activities.
2. The Contractor shall comply with all records and reporting requirements set forth in this Contract.

3. The Contractor shall submit to EOHLC in writing a schedule of the Contractor's estimated drawdowns of grant funds per each quarter of the duration of the grant. This proposed schedule must be submitted no later than 30 days following execution of this Contract.
4. The Contractor shall submit written quarterly progress reports to EOHLC in compliance with the following deadlines and requirements using a form provided by EOHLC. Progress reports shall be submitted on or before the 15th day of the month following the last month of the quarter, except in instances when the due date shall fall on a weekend or holiday where reports would be due the following full business day after the deadline. **EOHLC may delay reimbursement to the Contractor if the Contractor consistently fails to submit timely progress reports or other documents required under this Contract.** Any such action by EOHLC shall be preceded by written notification of the intent to delay such reimbursement, which may be done electronically, and allow for the Contractor to make reasonable written explanation regarding the occurrence, and the remedy of the issue. Failure by the Contractor to reply to EOHLC's written notification or to comply with specific instructions from EOHLC shall be treated as a breach herein and under Section 4 of the Commonwealth Terms and Conditions. EOHLC further reserves the right to consider past performance under the HousingWorks Infrastructure Program when evaluating an applicant's initial submission. Consistent failure to submit progress reports or to comply with the provisions of this Contract may negatively impact future awards of this grant.

Progress report deadlines are as follows:

FY24		
Q3	Period: 1/1/2024 to 3/31/2024	Due: 4/15/2024
Q4	Period: 4/1/2024 to 6/30/2024	Due: 7/15/2024
FY25		
Q1	Period: 7/1/2024 to 9/30/2024	Due: 10/15/2024
Q2	Period: 10/1/2024 to 12/31/2024	Due: 1/15/2025
Q3	Period: 1/1/2025 to 3/31/2025	Due: 4/15/2025
Q4	Period: 4/1/2025 to 6/30/2025	Due: 7/15/2025
FY26		
Q1	Period: 7/1/2025 to 9/30/2025	Due: 10/15/2025
Q2	Period: 10/1/2025 to 12/31/2025	Due: 1/15/2026
Q3	Period: 1/1/2026 to 3/31/2026	Due: 4/15/2026
Q4	Period: 4/1/2026 to 6/30/2026	Due: 7/15/2026
FY27		
Q1	Period: 7/1/2026 to 9/30/2026	Due: 10/15/2026
Q2	Period: 10/1/2026 to 12/31/2026	Due: 1/15/2027
Q3	Period: 1/1/2027 to 3/31/2027	Due: 4/15/2027
Q4	Period: 4/1/2027 to 6/30/2027	Due: 7/15/2027

5. The Contractor shall continually assess its performance of the Contract-supported activities to ensure that the performance objectives outlined in the

Contract are achieved. This includes, but is not limited to, the Contractor's monitoring that applicable schedules are met and performance objectives are achieved in accordance with the activities delineated in the Contract. The Contractor shall promptly inform EOHLC in writing, which may be done electronically, of the following conditions which may affect its deliverable objectives and performance as soon as they become known:

- a. Problems, delays, or adverse conditions which will materially affect the Contractor's ability to attain deliverable objectives. This disclosure shall be accompanied by a statement of any actions taken or contemplated by the Contractor, and any assistance needed from EOHLC to resolve the situation. Failure by the Contractor to communicate promptly or to respond promptly to communications from EOHLC may result in the denial by EOHLC of any budget or schedule change requests by the Contractor, as provided in Section III.D.
 - b. Favorable developments or events which will enable the Contractor to meet the deliverable Contract objectives sooner than anticipated or at less cost than originally projected.
6. The Contractor shall submit all progress reports electronically to EOHLC's assigned program representative at the following address:

Filipe Zamborlini
Manager, Community Assistance Unit
filipe.zamborlini@mass.gov
 7. EOHLC shall advise the Contractor within thirty (30) days of receiving any report if it is not acceptable to EOHLC. The Contractor shall submit an acceptable report upon receipt of such advice from EOHLC.
 8. The Contractor, and any entity under subcontract having costs chargeable to Contract funds, shall maintain Contract records in accordance with Section 7 of the Commonwealth Terms and Conditions, including, without limitation, a record of planned activities, a record of activities carried out, and an explanation of any changes in program activities.
 9. Within five business days of receipt, the Contractor shall provide EOHLC with copies of any and all exception reports and written communications of an audit or review of the Contractor and any written final reports of such audits or reviews that the Contractor receives during the Contract term from the state Office of the Inspector General (OIG) and/or the Office of the State Auditor. Such reports or communications may be provided electronically.
 10. Within five business days of being served with any pleading in a legal action filed with a court or administrative agency related to this Contract or which may affect the Contractor's ability to perform its obligations hereunder, the

Contractor shall notify EOHLC of such action and deliver copies of such pleadings to EOHLC. Such reports or communications may be provided electronically.

11. The Contractor will submit any other reports or information requested by EOHLC by the due date specified in EOHLC's request. The Contractor shall promptly make available to EOHLC or to an auditor or contractor approved by EOHLC such material information regarding the Contractor's activities as may be requested by EOHLC.

C. Payment Mechanism and Fiscal Obligations

EOHLC agrees to provide payment for the services described under this Contract, pursuant to the following payment mechanism:

1. Cost Reimbursement. The Contractor shall submit to EOHLC written requests for cost reimbursement on EOHLC's HousingWorks Infrastructure Program Grant Invoice form (HousingWorks Infrastructure Program Invoice), or other such form as EOHLC may specify.

Only requests for cost reimbursement for authorized capital expenses, pursuant to the capital funds from the state's capital budget, that are completed within the dates of service of an invoice, and that take place within the length of the contract, are authorized for reimbursement.

2. HousingWorks Infrastructure Program Invoices should be submitted **no more than** once a month and should include the range of the dates of service being submitted for reimbursement.
3. All payments are contingent upon receipt of the availability of funds, authorization by the Executive Office of Administration and Finance and the Massachusetts Comptroller, and the provisions of the Commonwealth Terms and Conditions. In accordance with 815 CMR 2.00 and state finance law, EOHLC is under no legal obligation to compensate the Contractor, or to obtain additional funding, for any costs or other commitments which are outside the scope of the executed Contract and which have not been approved by EOHLC.
4. In no event shall the sum of any and all payment by reimbursement exceed the maximum amount payable to the Contractor hereunder. Requests for payment by cost reimbursement will be honored and funds will be released based on submission by the Contractor, with review and acceptance by EOHLC, of required data and reports as detailed in this Contract, the availability of funds, and the Contractor's satisfactory compliance with the terms of this Contract.

Each request for payment by cost reimbursement must be made on the HousingWorks Infrastructure Program Invoice. By submitting the

HousingWorks Infrastructure Program Invoice, the Contractor represents that in accordance with the Contract, including the Contractor's Budget as approved by EOHLC, articles have been furnished, services have been rendered, or obligations have been incurred by a person authorized to incur such obligations.

EOHLC's fiscal representative will provide additional billing instructions, if necessary, to the Contractor via email.

When submitted electronically, the HousingWorks Infrastructure Program Invoice should be attached to the email submission in one email attachment. Any other documents, such as vendor invoices, should be submitted as separate attachments.

In addition to the HousingWorks Infrastructure Program Invoice, requests for payment by cost reimbursement shall also contain sufficient detail, supporting records, and documentation to support payment. Records to substantiate the Contractor's claims hereunder may include, without limitation, payroll records, accounting records, and purchase orders that are sufficient to document the Contractor's program and financial activities under this Contract.

The request for cost reimbursement shall be submitted electronically to the attention of:

Brett Morton
Fiscal Representative
brett.morton2@mass.gov

with a copy to:

Filipe Zamborlini
Manager, Community Assistance Unit
filipe.zamborlini@mass.gov

5. All requests for cost reimbursement must be submitted on or before July 15, 2024, if expenses were incurred in FY 2024 – Year 1; on or before July 15, 2025, if expenses were incurred in FY 2025 – Year 2; on or before July 15, 2026, if expenses were incurred in FY 2026 – Year 3; on or before July 15, 2027, if expenses were incurred in FY 2027 – Year 4. Failure to do so may result in delayed reimbursement or denial of the request.
6. The Contractor shall submit the final HousingWorks Infrastructure Program Invoice on or before July 15, 2027. With the submission of the final HousingWorks Infrastructure Program Invoice, the Contractor shall return to EOHLC any unexpended funds that are reflected in the final reconciliation, subject to Section III.C above.

D. Budget or Schedule Changes

1. Any subsequent change in the services and activities to be provided by the Contractor in accordance with the attached Budget, including, but not limited to, extensions of time, requires prior written approval from EOHLC's assigned program representative listed in Section III.B.6. **Requests for any amendments or extensions shall be reviewed on a case-by-case basis by EOHLC, and may be approved or denied by EOHLC at its discretion. Consideration shall only be extended to grantees who are in adherence with the requirements of this Contract. Requests to amend or extend the end date of the Contract must be received by EOHLC on or before January 31, 2027.**
2. Budget Amendments. The Contractor may transfer funds among the line items in the Budget, only with the written permission of EOHLC. No amendment to the Contract shall be required for such change. The Contractor shall submit a request for such change electronically to EOHLC's representatives, listed in Section III.B.6 at least 30 days prior to requesting reimbursement funds under such change. If EOHLC does not respond within 30 days of receipt of the requested change, it will be deemed to have approved of the change.

E. Signage, Acknowledgment, Publicity, and Logos

1. Signage. The Contractor may erect or post a sign at a location where Contract funds have been used indicating that financing is being or has been provided in part by EOHLC as part of the HousingWorks Infrastructure Program, subject to compliance with the zoning by-laws or ordinances of the municipality in which the sign is to be erected or posted. The sign shall include the following statement: "Funds for this Project have been provided by a HousingWorks Infrastructure Program Grant provided by the Massachusetts Executive Office of Housing and Livable Communities."
2. Acknowledgment. If Contract funds are expended by the Contractor on the preparation or production of a brochure or other publication, the brochure or publication shall include the following statement: "This publication was funded by a HousingWorks Infrastructure Program Grant provided by the Massachusetts Executive Office of Housing and Livable Communities."
3. Publicity; Other Materials. The Contractor may disseminate, publish, or reproduce documents produced in whole or in part pursuant to this Contract, provided that the Contractor furnishes to EOHLC copies of any such documents thirty (30) days prior to publication, and provided that such documents include the acknowledgment required under Section III.E.2. The Contractor may copyright any books, publications, or other copyrightable materials produced under this Contract, provided that the

Contractor shall provide to the Commonwealth as appropriate an irrevocable, nonexclusive royalty-free right to reproduce, publish, or otherwise use or authorize others to use the copyrighted material.

4. Logos. If the Contractor wishes to include a Department logo on any signage or other materials produced in accordance with this section, it may contact EOHLC's assigned program representative, listed in Section III.B.6, for the appropriate copy of a logo.
5. Submission to EOHLC. Any sign, publication, or other material produced in accordance with this section must be submitted in advance to EOHLC's assigned program representative, listed in Section III.B.6, no later than thirty (30) days before posting or distribution. If EOHLC does not respond within thirty (30) days of receipt of the material, it will be deemed to have approved of the material.

EOHLC reserves the right to require that the Contractor provide to EOHLC photographs, video, or other media and/or documentation, if applicable, or copies of such materials, of any project financed in part by EOHLC under the HousingWorks Infrastructure Program.

F. Audit or Financial Review

EOHLC reserves the right under this Contract to secure its own independent audit or financial review of the Contractor's (or Subcontractor, if applicable) records if, in its sole discretion, EOHLC determines that it is necessary for any reason.

G. Monitoring

EOHLC may monitor the Contractor's (or Subcontractor, if applicable) compliance with the Contract. The Contractor shall allow EOHLC and its representatives access to all of its books and records pertaining to this Contract.

H. Conflict of Interest, Licensure, and Debarment

1. The Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Contractor's obligations hereunder.
2. The Contractor shall not knowingly employ or compensate any employee of the Commonwealth during the term of this Contract, unless such arrangement is permitted under the provisions of M.G.L. c. 268A. Employment of former Commonwealth employees shall also be in compliance with the provisions of M.G.L. c. 268A.
3. The Contractor represents and warrants that as of the effective date, it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and

other authorizations required by law to perform its obligations hereunder. The Contractor shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform activities under this Contract, without reimbursement by the Commonwealth or other adjustment in Contract funds. Further, the Contractor warrants that all employees, agents, and subcontractors performing services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities.

4. The Contractor certifies that the Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency. The Contractor agrees to immediately notify EOHLC if the Contractor becomes suspended or debarred, or if any licenses, certifications, approvals, insurance, permits, or any such similar requirement necessary for the Contractor to properly perform become revoked, withdrawn, or non-renewed during the Contract period.

I. Enforcement, Suspension, and Termination

1. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Contractor and EOHLC, and not to any third party.
2. EOHLC may use increased or additional monitoring and reporting as part of its enforcement actions.
3. This Contract may be terminated pursuant to Sections 4 and 5 of the Commonwealth Terms and Conditions.
4. EOHLC may provide the Contractor with written notice to decrease or cease Contract activity. Effective upon receipt of notice from EOHLC, or a later date specified therein, the Contractor agrees to decrease, suspend, and/or terminate Contract activity in conformance with the terms of such notice.
5. Upon the termination or expiration of this Contract, the Contractor shall continue to cooperate with all audit, records, and monitoring requirements.
6. Within a maximum of 90 days following the date of expiration or termination of this Contract, the Contractor shall submit all reports and data required by this Contract.

J. Non-Discrimination In The Provision of Services

The Contractor shall not deny services or otherwise discriminate in the delivery of services because of race, color, religion, disability, sex, sexual orientation, gender identity, familial status or children, marital status, age, national origin, ancestry,

genetic information, receipt of federal, state, or local public assistance or housing subsidies, veteran/military status, or because of any other basis prohibited by law. The Contractor agrees to comply with all applicable federal and state statutes, rules and regulations and administrative and Executive Orders prohibiting discrimination, including without limitation, the Americans with Disabilities Act, as amended (42 U.S.C. §§ 12101 et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.), the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), M.G.L. c. 151B, M.G.L. c. 272 §§ 92A, 98, and 98A, M.G.L. c. 111 § 199A, 42 U.S.C. 9918 (c) and 45 C.F.R. 80.

K. Confidentiality

1. The Contractor certifies that it has established sufficient internal policies to carry out its obligations hereunder.
2. The Contractor shall keep all state records and information, wherever obtained, confidential at all times and comply with all state and federal laws concerning the confidentiality of information. The Contractor shall hold all personal data relating to Contract-supported personnel and applicants or recipients of Contract-supported programs and activities in accordance with Section 6 of the Commonwealth Terms and Conditions, the Standard Contract Form and its Instructions and Contractor Certifications, and all applicable Federal and state privacy and confidentiality laws and regulations, including M.G.L. c. 66A, "Massachusetts Fair Information Practices Act;" M.G.L. c. 93H, Security Breaches; 801 CMR 3.00: Privacy and Confidentiality, and 201 CMR 17.00: Standards for the Protection of Personal Information of Residents of the Commonwealth.
3. Pursuant to the Standard Contract Form and its Instructions and Contractor Certifications and the Commonwealth Terms and Conditions, the Contractor certifies that the Contractor has reviewed and shall comply with all information security programs, plans, guidelines, standards and policies that apply to the work to be performed under this Contract, that the Contractor shall communicate these provisions to and enforce them against its subcontractors, and that the Contractor shall implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access as part of this Contract, from unauthorized access, destruction, use, modification, disclosure, or loss.
4. The Contractor shall notify its agents, employees, subgrantees, and assignees who may come into contact with state records and confidential information that each is subject to the confidentiality requirements set forth herein.
5. The Contractor shall deliver to EOHLC, within 14 days of a written request by EOHLC following termination of this Contract, such personal data

relating to this Contract as EOHLC may request; provided, that the Contractor may keep copies of any personal data delivered to EOHLC; and provided further, that for the purposes of this sentence, the term, “personal data”, shall not include the Contractor’s personnel records.

L. Fraud, Waste, and Abuse

The Contractor shall maintain and use systems and procedures to prevent, detect, and correct fraud, waste, and abuse in activities funded under this Contract.

Attachment B Budget

FY2024 HousingWorks Infrastructure Program Grant

Name of Contractor Include name of Subcontractor if applicable	Project Manager Name, phone and email <i>Include name and contact information of person preparing report if different from project manager</i>
City of Marlborough	Name: Meredith Harris Phone: (508) 229-2010 Email: mharris@marlboroughedc.com

Project Name
Lincoln Street Reconstruction Phase 3
Project Description <i>Brief Summary of Project</i>
Lincoln will complete phase 3 of the Lincoln Street Reconstruction Project and make targeted improvements along Lincoln Street from Highland Street to Bolton Street to unlock new residential growth and private investment in this EJ area.

Project Tasks	Cost by Task
Pre-Construction (Design, Engineering, Permitting, Bidding, etc)	\$-
Construction (Including Demolition)	\$3,020,536.00
Construction Admin	\$-
Contingency	\$-
Other/Miscellaneous	\$-
TOTAL	\$3,020,536.00

(add additional rows as necessary)

rev. 10/2023



5-17

Blanket Bid BD-23-1100-EED01-EED01-83413

General Items Address Accounting Routing Attachments(3) Notes Bidders Questions Amendments Q & A Reminders **Summary**

Header Information

Bid Number:	BD-23-1100-EED01-EED01-83413	Description:	Community One Stop for Growth - Status: FY2024 Round
Purchaser:	Juan Vega	Minor Status:	
Organization:	Executive Office of Housing and Economic Development		
Fiscal Year:	23	Department:	EED01 - Economic Development
Show On Web:	Yes	Allow Electronic Quote:	Yes
Bid Opening Date:	06/03/2023 12:00:00 AM	Available Date:	01/20/2023 12:00:00 AM
Bid Type:	Open Bid	Informal Bid:	No
Estimated Cost:	\$0.00		
Alternate ID:		Purchase Method:	Blanket
Blanket/Contract Begin Date:	07/01/2023 12:00:00 AM	Blanket/Contract End Date:	06/30/2024 12:00:00 AM
Info Contact:		Bulletin Desc:	The Community One Stop for Growth is a single application portal and collaborative review process for community and economic development grant programs that make targeted investments based on a Development Continuum. Single- and multi-year grants awards will be made from various programs through EOHED, DHCD, and/or MassDevelopment via the One Stop Full Application. Expressions of Interest accepted through March 17, 2023. For the most up to date program information, visit www.mass.gov/onestop .
U N S P S C Code Certified Required:	No	Acknowledge inclusion required:	No
Subcontractor Info:		Quote Notification:	No
Date Last Updated:	01/19/2023 08:54:32 AM	User Last Updated:	Juan Vega
Ship-to Address:	Robin Pezzone 1 Ashburton Place-Room 2101 Boston, MA 02108 US Email: robin.pezzone@state.ma.us Phone: (617)788-3627	Bill-to Address:	Robin Pezzone 1 Ashburton Place-Room 2101 Boston, MA 02108 US Email: robin.pezzone@state.ma.us Phone: (617)788-3627
Solicitation Enabled:	No	Rolling Enrollment Enabled:	<input type="checkbox"/>
Invoice Method:	Three Way Match	Open Enrollment Enabled:	<input type="checkbox"/>
SBPP (Small Business Purchasing Program) Eligible?:	NO		
See SBPP requirements and exceptions at www.mass.gov/sbpp :			
Procurement Type:	Grant Opportunity		
		Hour of Acknowledge inclusion:	
		Item Single Award Only:	
		Print Format:	
		Allow vendors to submit multiple quotes:	
		Close Q&A For Vendor Date:	

Attachments

Files:

- FY24 One Stop Notice of Funding Availability (NOFA)
- FY24 Expression of Interest Template
- FY24 One Stop Full Application Template

Forms:

Required Quote Attachments

Current Org: Executive Office of Housing and Economic Development



Item Information

Item # 2: The Community One Stop for Growth is a single application portal and collaborative review process for community and economic development grant programs based on a Development Continuum. Single- and multi-year grants awards will be made from various programs through EOHD, DHCD, and/or MassDevelopment Expressions of Interest accepted through March 17, 2023. For the most up to date program information, visit www.mass.gov/onestop.

UNSPSC Code: 00-00-00
Grant Opportunity

Disable Pricing On Quote	Qty	Unit Cost	UOM	Total Discount Amt.	Tax Rate
No	1.0	\$0.00	EA - Each		\$0.00
Manufacturer:	Brand:		Model:		
Make:	Packaging:				
Product Length:	Product Width:		Product Height:		Product
UPC/ISBN:	SKU:				
Tags:	URL:				

Account Code

There is no item accounting available for this item.

Item Attachments: **FY24 One Stop Notice of Funding Availability (NOFA), One Stop - Expression of Interest Template , One Stop - Full Application Template**

Pre-Bid Approval Path:

Approval Path - BIDS - (All Bids)

Delete	Order Sequence	Approver	Alternate Approver	Level	Date Requested	Date	Action	Comments
	1	Spencer Gurley-Green	Emmanuel Gyaase	1	01/19/2023 08:40 AM	01/19/2023 08:52 AM	Approved (Emmanuel Gyaase)	
	2	Spencer Gurley-Green	Emmanuel Gyaase	2	01/19/2023 08:52 AM	01/19/2023 08:52 AM	Approved (Emmanuel Gyaase)	

Cancel Bid

Clone Bid

Print

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MASS_MASS_AWS_PROD_BUYSPEED_2_bso

FORM 1.

1.1. Primary Location:

Marlborough

Please save the form after selecting Primary Location.

EOHED Region	<i>Central Mass</i>	MassDOT District	<i>District 3</i>	Rural or Small Town	<i>N/A</i>
MDFA Regional Office	<i>Central</i>	Gateway City	<i>N/A</i>	Housing Choice	<i>Yes - HC</i>
Regional Planning Agency	<i>Metropolitan Area Planning Council</i>	MVP Community	<i>Yes - MVP</i>	MBTA Community	<i>Yes - MBTA</i>

1.2. Organization Type

☒ Public Entity

☒ Municipality

Public Housing Authority

Redevelopment Authority

Regional Planning Agency

Quasi-Governmental Agency (i.e. Economic Development Industrial Corporation, etc.)

Water or Sewer District

Non-Public Entity

1.3. Applicant Organization Name:

Marlborough Economic Development Corporation

1.4. Applicant Organization Legal Address:

91 Main Street, Suite 204

1.5. City/Town:

1.6. State:

1.7. Zip Code:

Marlborough

Massachusetts

01752

1.8. CEO Name:

1.9 CEO Title:

Arthur Vigeant

Mayor

1.10. CEO Tel.:

1.11. CEO Email:

(508) 460-3770

mayor@marlborough-ma.gov

1.12. Project Contact Name

Meredith Harris

1.13. Project Contact Title

Executive Director

1.14. Contact Tel.:

1.15. Contact Email

(508) 229-2010

mharris@marlboroughedc.com

1.16. Organization Description – Describe your organization's structure, including staff capacity, and economic development goals.

Marlborough's Economic Development Corporation (MEDC) is the state chartered economic development arm of the City of Marlborough and represents a public-private partnership for planning. MEDC works with municipal and private investors to foster economic development, job growth, community revitalization and company expansion in the city. Working with numerous state and regional planning organizations, MEDC strives to attract large-scale investment from industries such as life sciences, biotech, advanced manufacturing, and high technology. By increasing Marlborough's commercial tax revenue, MEDC ultimately works towards stabilizing the city's residential tax base, thus guaranteeing the future stability of the city and a higher quality of life for all Marlborough residents. MEDC's goals and objectives are based on Marlborough's award-winning Economic Development Master Plan "Building The New Marlborough Economy." Marlborough has been working to implement the Master Plan over the last decade and has seen a significant growth by clearly identifying opportunities, leveraging assets within the city and by implementing change to position the community for continued success. As we look toward the future Marlborough is prioritizing growth and development in areas of the city that would unlock mixed-use development in the city's Downtown Village District/Neighborhood Business District and Wayside District, and strengthen the life science, advanced manufacturing and high technology sectors within the industrial/commercial areas of the community.

1.17. Is this a joint application between two or more municipalities (and/or entities), which will entail a formal arrangement for a shared scope of work and allocation of funds?

Yes

☒ No

MBTA Community Questions

1.19. Chose the option below that best reflects your municipality's compliance status with the Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (MGL c. 40A). Has your municipality:

Submitted an Action Plan to DHCD and NOT YET received a letter confirming Interim Compliance

☒ Submitted an Action Plan to DHCD and HAVE received a letter confirming Interim Compliance

Received a determination of District Compliance from DHCD or

Have not submitted an Action Plan nor application for District Compliance to DHCD in accordance with the Guidelines for Multi-family Zoning Districts

1.19.a. Does the community anticipate any changes to its approved Section 3A Action Plan that may result in delays to the plan's schedule of more than 180 days?

Yes

☒ No



City of Marlborough

Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2023 NOV 21 AM 11:52

JASON D. GROSSFIELD
CITY SOLICITOR

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

November 21, 2023

Michael H. Ossing, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: JW Capital Partners, LLC and Marlborough TOTG LLC v. Marlborough City Council
(Land Court No. 23 MISC 000199) - Request to Enter Executive Session

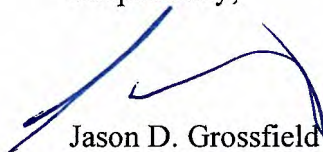
Dear Honorable President Ossing and Councilors:

I respectfully request that this Honorable City Council convene in Executive Session. The purpose of the session is to discuss strategy with respect to the above-referenced litigation as an open meeting may have a detrimental effect on the litigating position of the City Council.

Enclosed please find a proposed order, to be conducted by roll call vote, in order to enter into executive session. The open meeting law requires that the public body chair declare that an open meeting may have a detrimental effect on the litigating position of the public body. The order must specify whether the City Council will or will not re-convene in open session after the executive session.

Please contact me if you have any questions or concerns.

Respectfully,


Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor

ORDERED:

Moved that the Marlborough City Council meet in executive session under Purpose 3 of the Open Meeting Law, MGL c. 30A, s. 21(a)(3), to “discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body” regarding the pending matter, *JW Capital Partners, LLC and Marlborough TOTG LLC v. Marlborough City Council* (Land Court No. 23 MISC 000199), as the chair hereby declares that discussion in an open session may have a detrimental effect on the City and the City Council’s litigating position.

The City Council will [or will not] re-convene in open session after the executive session.

Be and is herewith APPROVED.



City of Marlborough

Legal Department

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

JASON D. GROSSFIELD
CITY SOLICITOR

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

2023 NOV 20 AM 10:49

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

November 20, 2023

Michael H. Ossing, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: City Council Order No. 23-1008965
Special Permit Decision, 59 Airport Boulevard, Unit 16, Marlborough

Dear Honorable President Ossing and Councilors:

In accordance with Chapter 650-57C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed findings on the above-referenced special permit application. Enclosed is a copy of the proposed decision. I certify that it is in proper legal form.

Please contact me if you have any questions or concerns.

Respectfully,

Jeremy P. McManus
Assistant City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor
Jason D. Grossfield, City Solicitor
Tin Htway, Building Commissioner

_____, 2023

**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. #23-1008965A

Application of:
Somar Landscape Inc.

Locus:
59 Airport Boulevard, Unit 16, Marlborough, MA
Parcel 52-1-16 on Assessors Map 73

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Somar Landscape Inc., with a mailing address of P.O. Box 5602, Marlborough, MA, as provided in the DECISION and subject to the Findings of Fact and Conditions contained therein.

Decision date: _____, 2023

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the [] day of [], 2023.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

A TRUE COPY
ATTEST:

City Clerk

ORDERED:**IN CITY COUNCIL**

DECISION ON A SPECIAL PERMIT

Application of:
Somar Landscape Inc.

Locus:
59 Airport Boulevard, Unit 16, Marlborough, MA
Parcel 52-1-16 on Assessors Map 73

**DECISION ON A SPECIAL PERMIT
ORDER NO. 23-1008965A**

The City Council of the City of Marlborough hereby GRANTS the Application for a Special Permit to Somar Landscape Inc. (the "Applicant") for a landscape contractor's yard at 59 Airport Boulevard, Unit 16, in the Limited Industrial Zoning District, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, Somar Landscape Inc., is a Massachusetts corporation with an address of P.O. Box 5602, Marlborough, MA 01752.
2. The Applicant is the prospective owner of the property located at 59 Airport Boulevard, Unit 16, being shown as Parcel 52-1-16 on Assessors Map 73 (the "Site").
3. In accordance with Article V, Section 650-17 and Section 650-18(A)(48), of the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance"), the Applicant proposes a landscape contractor's yard at the Site (the "Use"). As shown on the Plans referenced in paragraph 5 below, the Use consists of a building, accessory parking, outdoor storage areas, and landscaped areas.
4. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an Application for a Special Permit ("Application") for the Use.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a site plan entitled "Proposed Site Plan of Use Area #16 Airport Boulevard in Marlborough, MA" by Connorstone Engineering, with the last revision date of October 13, 2023, and a landscaping plan entitled "Proposed Landscape Plan of Use Area #16 Airport

Boulevard” by Connorstone Engineering, dated October 17, 2023 (collectively the “Plans”) attached hereto as **“Attachment A.”**

6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.

7. The Site is located in the Limited Industrial Zoning District.

8. The Site has an area of 30,000 square feet +/- as shown on the Plans.

9. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.

10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, October 23, 2023. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on October 23, 2023.

11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.

12. At the public hearing, one member of the public spoke in favor of the Use and no members of the public spoke in opposition to the Use.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.

B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit for a landscape contractor’s yard at 59 Airport Boulevard, Unit 16, as

shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.

2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no final occupancy permit shall be issued until the Applicant has complied with all conditions, provided, however, that subsequent to the issuance of this Special Permit and Site Plan Approval, the Site Plan Review Committee may authorize the phasing of site and building work depending upon weather conditions and other factors. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.

3. Modification of Plans. Notwithstanding conditions #1 and #2 above, the City Council or the Site Plan Review Committee may approve engineering changes to the Plans, so long as said changes do not change the Use as approved herein, or materially increase the impervious area of the Use, reduce the green area, alter traffic flow, or increase the size of the building, all as shown on the Plans.

4. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

5. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns, shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan and the approved erosion control plan. The Applicant, its successors and/or assigns, shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

6. Fencing. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the Applicant shall install solid fencing to screen areas of the Site used for the storage of vehicles, equipment, and materials from the street and adjacent properties, and shall maintain the fencing in good repair. The fencing shall comply with the requirements of all applicable City Ordinances.

7. Outdoor Storage Areas. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the outdoor storage of vehicles, equipment, and materials shall be located on impervious and otherwise dust-free surfaces. Materials shall be stored with sufficient protections to avoid damage to landscaped areas and to avoid interference with the proper functioning of stormwater infrastructure. Lawn areas shall be separated from adjacent parking/storage areas with curbing and barriers to prevent the use of lawn areas for materials or vehicle storage. The bulk storage of bark mulch at the Site shall be subject to fire safety conditions approved through the Site Plan Review process. The Site shall not be used to store grass clippings or similar debris.

8. Indoor Storage Areas. Building areas used to store vehicles, equipment, and materials indoors shall be equipped with floor drainage systems designed to prevent fuel, oil, and other hazardous materials from entering the stormwater or sewer systems, approved through the Site Plan Review process.

9. Vehicle Repairs and Maintenance. The Site may not be used for major repairs of vehicles and equipment, but minor maintenance of vehicles and equipment which are exclusively operated as part of the Use may be performed indoors only, subject to Condition 10.

10. Noise and Air Quality. The Applicant, its successors and/or assigns, shall comply with the City's Noise Ordinance and shall comply with all state and federal requirements governing air quality and emissions.

11. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties, with a lighting plan for the Site to be reviewed and further conditioned during the Site Plan Review process. Exterior lighting at the Site shall be shut off outside of operating hours, except for lighting necessary for security and emergency access.

12. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.

13. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: ____ - **Nay:** ____ - **Absent** - ____

Yea: _____, _____, _____, _____, _____, _____, _____,

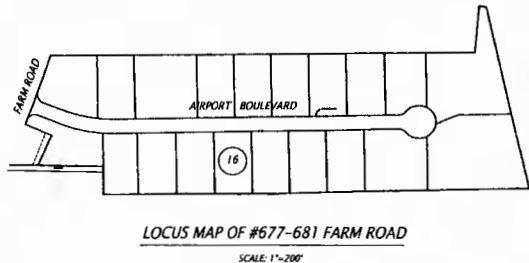
Nay: _____, _____,

Absent: _____, _____,

Signed by City Council President
Michael H. Ossing

ADOPTED
In City Council
Order No. 23-1008965A

Attachment A



GENERAL NOTES:

- EXISTING BOUNDARY LINES AND TOPOGRAPHY IS BASED UPON PLANS PREPARED BY CONTROL POINT ASSOCIATES, INC. DATED 11/15/2014. ALL ELEVATIONS SHOWN ARE BASED UPON DATUM: ELEVATIONS ARE BASED UPON MGSN 1060 1986 DATUM.
2. THE PARCEL IS SHOWN ON ASSESSORS MAP 73, PARCELS 52 AND MAP 83, PARCELS 14813.
3. EXISTING UTILITY LINES SHOWN ON THIS DRAWING ARE FROM AVAILABLE INFORMATION AND ARE APPROXIMATE LOCATIONS. THE ENGINEER DOES NOT GUARANTEE THE ACCURACY OF THAT ALL UTILITIES AND SUBURFACE STRUCTURES ARE SHOWN. THE CONTRACTOR SHALL VERIFY SIZE, LOCATION AND DEPTH OF ALL UTILITIES. THE UTILITIES TO BE REMOVED, SHALL BE REMOVED PRIOR TO THE START OF CONSTRUCTION. ALL UTILITIES, INCLUDING ANY SECOND DATA SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS BEFORE DIGGING, AND TOWN OFM FOR ALL UTILITIES PRIOR TO EXCAVATION. TEST PITS SHALL BE UTILIZED FOR UTILITY CONNECTIONS.

CONSTRUCTION NOTES:

1. ANY MAJOR MODIFICATIONS (AS DETERMINED BY THE CITY ENGINEERS) TO THE INFORMATION SHOWN ON THE APPROVED SITE PLAN SHALL BE SUBMITTED TO THE CITY ENGINEERS FOR A MAJOR PLAN REVISION FOR APPROVAL PRIOR TO THE WORK BEING DONE.
2. WHEN AN EXISTING UTILITY IS FOUND TO CONFLICT WITH THE PROPOSED WORK, THE LOCATION, ELEVATION, AND SIZE OF THE UTILITY SHALL BE DETERMINED BY THE CONTRACTOR AND THE CITY ENGINEERS. THIS INFORMATION FURNISHED TO THE ENGINEER FOR RESOLUTION OF THE CONFLICT.
3. UTILITIES AND CONSTRUCTION PRACTICES SHALL BE IN CONFORMANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS, THE LATEST EDITION OF THE STANDARDS AND SPECIFICATIONS FOR HIGHWAYS (CONSTRUCTION STANDARDS) AND THE AMERICAN STANDARDS SPECIFICATIONS FOR HIGHWAYS (MAINTENANCE STANDARDS).
4. THE WATER SYSTEM SHALL BE INSTALLED IN COMPLIANCE WITH THE TOWN OF WASHINGTONBORO OFFICE WATER SUPPLY RULES AND REGULATIONS.
5. ALL ELECTRICAL, PLUMBING, AND MECHANICAL WORK SHALL BE ACCORDING TO BE OBTAINED BY THE CONTRACTOR WITH RELEVANT INSPECTIONS TO BE CONDUCTED BY THE CITY ENGINEERS AND THE TOWN OF WASHINGTONBORO. SPARKED CONNECTIONS, AND SPARKED CONNECTIONS SHALL BE CONDUCTED WITH THE MINIMUM ALLOWABLE ARCHITECTURAL DISTANCE PRIOR TO CONSTRUCTION.
6. THE SEWER SYSTEM SHALL BE INSTALLED IN COMPLIANCE WITH THE TOWN OF WASHINGTONBORO OFFICE SEWERAGE AND SANITATION RULES AND REGULATIONS. CONNECTIONS SHALL BE MADE IN ACCORDANCE WITH APPLICABLE PERMITS OBTAINED BY THE CONTRACTOR FROM THE TOWN OF WASHINGTONBORO. PERMITS AWARDED AT THE PROPOSED BUILDING SHALL BE CONFORMED WITH THE MINIMUM ALLOWABLE ARCHITECTURAL DISTANCE PRIOR TO CONSTRUCTION.
7. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR, TO KEEP ACCURATE AS-BUILT MEASUREMENTS / RECORDS OF ALL UNDERGROUND UTILITIES.
8. THE LAYOUT AND INSTALLATION OF ELECTRIC, GAS, TELEPHONE AND CABLE UTILITIES, CONNECTIONS AND SERVICES SHALL, IN ACCORDANCE WITH THE TOWN OF WASHINGTONBORO OFFICE ELECTRICAL, GAS, TELEPHONE AND CABLE RULES AND REGULATIONS.
9. THE CONTRACTOR SHALL UTILIZE ALL MEASUREMENTS AND MATERIALS NECESSARY TO INSURE THE SAFETY OF ALL PERSONS AND PROPERTIES. ALL CONSTRUCTION SHALL CONFORM TO CURRENT LOCAL PERMITS.
10. A STREET OPENING PERMIT SHALL BE OBTAINED FROM THE CITY ENGINEERS PRIOR TO THE COMMENCEMENT OF ANY WORK IN THE PUBLIC WAY. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO COORDINATE HIS WORK WITH THE APPROPRIATE HOUSING & UTILITY DEPARTMENT.

SYMBOLS & ABBREVIATIONS LEGEND

- | | |
|--|-------------------------------|
| | PROF. FLOOR LINE/AVAILABLE |
| | EXISTING SENEY LINE/AVAILABLE |
| | EXISTING BROW LINE/AVAILABLE |
| | CATION BASIN |
| | PLATED END |
| | HEAD WALL |
| | HYDRANT |
| | GAS LINE/AVAIL. |
| | WATER LINE/AVAIL. |
| | TELEPHONE LINE/AVAILABLE |
| | ELECTRIC LINE/AVAILABLE |
| | OVERHEAD TRANSFORMER |
| | OVERHEAD WIRE |
| | FINISH GRADE CONTOUR |
| | MAJOR CONTOUR |
| | MAJOR CONTOUR |
| | UTILITY POLE |
| | SIGN |
| | CHAIN LINE / FENCE |
| | CONCRETE CURB |
| | VERTICAL CURVE (CLUB) |
| | SLOPED GRAVITE CURB |
| | UNDESIGNED GRAVITE CURB |
| | HOODED CUP CORD BURN |
| | FRET LINE |
| | STONE WALL |
| | METALLIC WALL |
| | REPAIR |
| | HIGH DENSITY POLYETHYLENE |

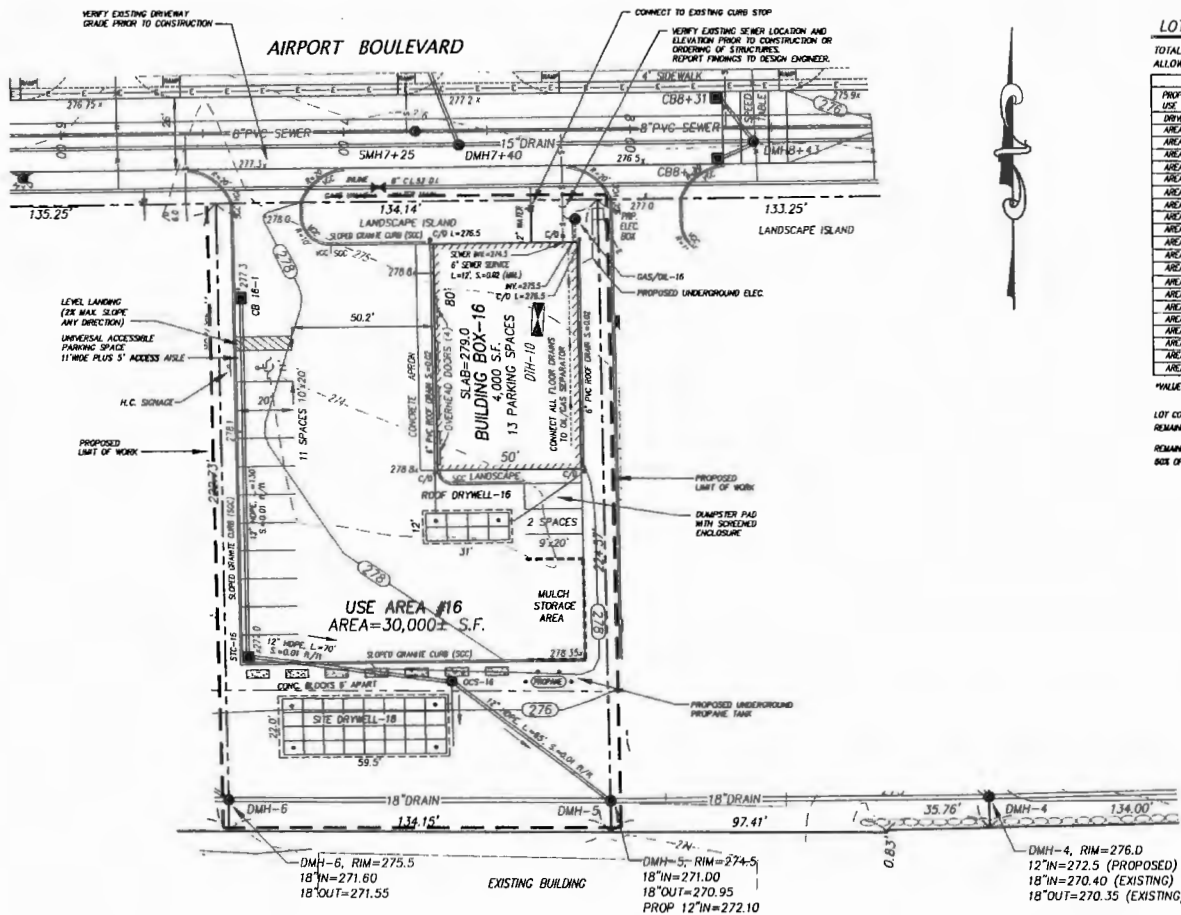
ZONING : LIMITED INDUSTRIAL "U"

LOT REQUIREMENTS	REQUIRED
AREA	2 ACRES
FRONTAGE	200 FEET
FRONT YARD	50 FEET
SIDE YARD	50 FEET
REAR YARD	50 FEET

084-20 (2-15-19)		
0-12"	Ap	LOAMY SAND 10MR1/2
12-26"	Bw	LOAMY SAND 10MR5/8
26-36"	C1	FINE SAND 2.5X3/4
36-136"	C2	GRS. S&G 2.5X5/8
NO WATER, NO ROOTS NO REFLUC		

COORDINATION WITH PLANS BY OTHERS:

17. ANY CONFLICT BETWEEN THESE PLANS AND PLANS BY OTHERS SHALL BE REPORTED TO THE ENGINEER AND OWNER IMMEDIATELY.



DRAINAGE TABULATION

1	SIZE DRYWALL-16	ROOF DRYWALL-16
77.3	32 CURTIC CHAMBERS	8 CURTIC CHAMBERS
1-274.3	(MODEL 330240)	(MODEL 330240)
	50-522241'S STONE BED	31-57241'S STONE BED
	BOTTOM STONE-261.0	BOTTOM STONE-172.0
OPFOR 4500	BOTTOM CHAMBERS-269.5	BOTTOM CHAMBERS-272.5
77.0	12" W=271.0	2-8" W=274.5
1-272.75	FOUR CLEANOUTS TO GRADE	TWO CLEANOUTS TO GRADE
		EXISTING DRAIN
		12"W=272.0 (PROPOSED)
12" W=271.0 (TO DRYWALL)		12"W=271.00 (EXISTING)**
12" W=272.75		18"OUT=270.5 (EXISTING)*
		*HONEY INVERT FOR 10' CONSTRUCTION

SEWER TABULATION

GAS/DK-16
RM=278.3
6" IN=275.3
6" OUT=274.95

* VERIFY EXISTING SEWER LOCATION AND ELEVATION PRIOR TO ANY CONSTRUCTION OR ORDERING OF STRUCTURES. REPORT FINDINGS TO DESIGN ENGINEER.

**CONFIRM UTILITY CONNECTION SIZE, LOCATION, AND ELEVATION WITH THE ARCHITECTURAL DRAWINGS PRIOR TO CONSTRUCTION. ANY CONFLICTS SHALL BE REPORTED TO THE OWNER AND ENGINEER.

PARKING TABULATION:

REQUIRED PARKING 3 SPACES/1,000 S.F.
4,000 S.F. / 1,000 x 3 = 12 SPACES REQUIRED
PARKING PROVIDED = 13 SPACES PROPOSED

APPROVED
SITE PLAN REVIEW COMMITTEE

DATE: _____

GRAPHIC SCALE: 1"=20'



LOT COVERAGE TABULATION

TOTAL LOT AREA = 818,282± S.F.
ALLOWED LOT COVERAGE = 490,969 (60%)

APPROVED SITE PLANS		
PROPOSED USE AREA DEVELOPMENT	AREA	APPROVED CONTRACT
AREA #1	70,109 S.F.	56,450 S.F. (74.8%)
AREA #2	30,000 S.F.	18,150 S.F. (60.5%)
AREA #3	30,000 S.F.	17,722 S.F. (59.1%)
AREA #4	30,000 S.F.	17,122 S.F. (57.1%)
AREA #5	30,000 S.F.	17,122 S.F. (57.1%)
AREA #6	30,000 S.F.	16,875 S.F. (56.2%)
AREA #7	30,000 S.F.	15,875 S.F. (52.9%)
AREA #8	30,000 S.F.	15,875 S.F. (52.9%)
AREA #9	46,543 S.F.	22,745 S.F. (48.9%)
AREA #10	30,000 S.F.	17,944 S.F. (59.8%)
AREA #11	30,000 S.F.	17,944 S.F. (59.8%)
AREA #12	30,000 S.F.	16,944 S.F. (56.5%)
AREA #13	30,000 S.F.	16,944 S.F. (56.5%)
AREA #14	30,000 S.F.	15,944 S.F. (53.1%)
AREA #15	30,000 S.F.	15,944 S.F. (53.1%)
AREA #16	30,000 S.F.	14,944 S.F. (49.8%)
AREA #17	30,000 S.F.	14,944 S.F. (49.8%)
AREA #18	30,000 S.F.	13,944 S.F. (46.5%)
AREA #19	32,007 S.F.	16,577 S.F. (51.8%)

*VALUES CURRENT THROUGH 10/12/2023

LOT COVERAGE OF APPROVED AREAS = 323,080 S.F.

REMAINING LOT COVERAGE ALLOWED = 167,889 S.F.

REMAINING USE AREAS = 271,533 S.F.

BOX OF REMAINING USE AREAS = 162,919 S.F.



PREPARED FOR:
CAPITAL GROUP PROPERTIES
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

OWNER:
MARLBOROUGH INDUSTRIAL, LLC
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

MAP 71, PARCEL 52 & MAP 85, PARCELS 14&15

CONNORSTONE

**CONCORDSTONE
ENGINEERING INC.**
CIVIL ENGINEERS AND LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01523

PROPOSED SITE PLAN

OF
USE AREA #16
AIRPORT BOULEVARD
IN
MARLBOROUGH, MA

10/13/23	MISC. EDITS PER CLIENT
----------	------------------------

9/5/2023	REVISED SITE LAYOUT
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REVISED:	DESCRIPTION:
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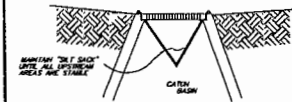
DRAWN BY: REM CHECK BY: VC	DATE: 10/10/2011 TIME: 10:00 AM
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DATE: APRIL 6, 2022

SCALE: 1" = 20'	SHEET 1 OF 3
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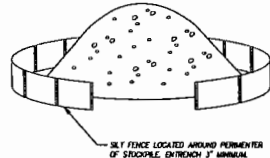
EROSION AND SEDIMENTATION CONTROL NOTES:

1. ALL EROSION CONTROL MEASURES SHALL BE IN PLACE PRIOR TO CONSTRUCTION.
2. EROSION CONTROL SHALL CONFORM TO THE CITY OF MARLBOROUGH REQUIREMENTS AS CONTAINED IN THE SITE PLAN APPROVAL CONDITIONS.
3. PRIOR TO INITIATING CONSTRUCTION, ALL SEDIMENTATION AND EROSION CONTROL MEASURES SHALL BE INSTALLED AS SHOWN ON THE PLANS AND DETAIL DRAWINGS.
4. THIS PLAN SPECIFIES THE MINIMUM REQUIRED SEDIMENTATION AND EROSION CONTROLS. THE CONTRACTOR SHALL EMPLOY ADDITIONAL SEDIMENTATION AND EROSION CONTROL MEASURES AS INVESTIGATED BY THE CONTRACTOR OR AS DIRECTED BY THE ENGINEER. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL NEARBY RESIDENTS AND CONTROL SEDIMENT TRANSPORT FROM THE CONSTRUCTION SITE. THE CONTRACTOR SHALL STOP WORK AND INSTALL ADDITIONAL SEDIMENTATION CONTROL DEVICES IMMEDIATELY TO PREVENT FURTHER SEDIMENTATION.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ALL TEMPORARY AND PERMANENT SEDIMENTATION AND EROSION CONTROLS UNTIL WORK IS COMPLETE AND ALL AREAS HAVE BEEN PERMANENTLY STABILIZED AT WHICH TIME THE CONTRACTOR IS RESPONSIBLE FOR REMOVAL OF ALL SEDIMENTATION AND EROSION CONTROL MEASURES.
6. THE CONTRACTOR SHALL REPORT SEDIMENTATION AND EROSION CONTROL ON A DAILY BASIS AND IMMEDIATELY AFTER EACH RAINFALL. REPORTS SHALL BE MADE BY THE END OF THE WORKING DAY. ACCUMULATED SEDIMENT SHALL BE REMOVED AND DISPOSED OF BY THE CONTRACTOR WHEN THE VOLUME REACHES 1/4 TO 1/2 THE HEIGHT OF THE BALE OR SEDIMENT BUMP, OR AS DIRECTED BY THE LOCAL AUTHORITIES.
7. SOIL STOCKPILES SHALL BE STABILIZED TO PREVENT EROSION, AND A PERIMETER SEDIMENT CONTROL SYSTEM SHALL BE INSTALLED. FENCING SHALL BE INSTALLED AROUND STOCKPILES IN EXCESS OF 10 FEET IN HEIGHT.
8. DISTURBED AREAS SHALL BE STABILIZED BY COVERING AND SEEDING, OR BY ANOTHER APPROVED METHOD, AS SOON AS POSSIBLE AFTER THE PROPOSED GRADE HAS BEEN MET. DISTURBED AREAS WITH SLOPES 2:1 OR GREATER SHALL BE COVERED WITH LOAM AND STABILIZED WITH GRASS SEED. IF FINAL GRADING DOES NOT OCCUR DURING THE GROWING SEASON, THESE AREAS SHALL BE MULCHED WITH WOOD SHAVINGS.
9. DE-WORKING OPERATIONS, IF REQUIRED, SHALL DISCHARGE OVER STABILIZED AREAS, AND ALL DISCHARGE MATERIAL IS TO PASS THROUGH SEDIMENTATION CONTROL DEVICES TO PREVENT IMPACTS UPON WATER BODIES, NEARBY VEGETATION, DRAINAGE SYSTEMS AND ADJACENT PROPERTIES. AT A MINIMUM ALL DISCHARGES SHALL BE INTERCEPTED BY RAY BALE CORRAL AND RAY BALE CHECK DAMS SPACED 10' APART.
10. STATED RAY BALES AND SILT FENCE SHALL BE INSTALLED ALONG THE EDGE OF PROPOSED DEVELOPMENT OF AS INDICATED ON THE PLANS. PERSONNEL MAY BALES AND SILT FENCE SHALL BE LOCATED AT CONDITIONS MAINTAINED, AND IN SOME AREAS NATURAL/SILT FENCING STRUCTURES MAY HAVE TO BE UNLATCHED AT REGULAR INTERVALS UPON ONSET OF WEATHER.
11. STREET SWEEEPING IN THE VICINITY OF THE PROJECT AREA SHALL BE PERFORMED AS NEEDED UNTIL THE PROJECT LIMITS HAVE BEEN STABILIZED. ALL SEDIMENT TRACKED ONTO PUBLIC RIGHT-OF-WAYS SHALL BE SWEEPED AT THE END OF EACH WORKING DAY.
12. ALL EXISTING AND PROPOSED DRAINAGE SYSTEMS, WHICH MAY RECEIVE STORM WATER FLOW FROM DISTURBED AREAS, SHALL BE PROVIDED WITH SILT PROTECTION (CATCH BASIN, MOTIVATOR, UNWASHED) - HOOD. SOIL OR APPROVED EQUIVALENT. THE CONTRACTOR SHALL MAINTAIN THESE DEVICES FOR THE MANUFACTURER'S RECOMMENDATIONS UNTIL ALL WORK IS COMPLETE AND ALL AREAS HAVE BEEN PERMANENTLY STABILIZED.
13. DUST CONTROL MEASURES SHALL BE IMPLEMENTED AND MAINTAINED PROPERLY. IMPROVED DRY WEATHER FENCING UNTIL ALL DISTURBED AREAS HAVE BEEN PERMANENTLY STABILIZED. MEASURES FOR DUST CONTROL SHALL INCLUDE BUT NOT BE LIMITED TO: WATER SPRINKLING AND/OR OTHER MEASURES APPROVED BY THE CONTRACTOR.
14. ALL VEHICLES SHALL ENTER AND EXIT THE SITE VIA THE STABILIZED CONSTRUCTION ENTRANCE/EXIT OF 3/4" x 1/2" RAY UNWASHED STONE TO A DEPTH OF 10' FOR THE FIRST 50 FEET FROM EXISTING PAVED SURFACES. IF THE SITE CONDITIONS ARE SUCH THAT THE GRAVEL DOES NOT MAINTAIN THE MAINTENANCE OF THE ROAD AND STORM, THIS THE STONE SHALL BE MOVED BEYOND AND REPLACED WITH GRAVEL. MAINTENANCE ALL WATER USED FOR THE WORKING SHALL BE COLLECTED AND TREATED PRIOR TO ENTERING THE DRAINAGE SYSTEM. THE CONTRACTOR SHALL PROTECT THE CONSTRUCTION ENTRANCE/EXIT DAILY AND AFTER EACH USE.
15. EQUIPMENT SHALL NOT BE PARKED WITHIN NEARLINES.



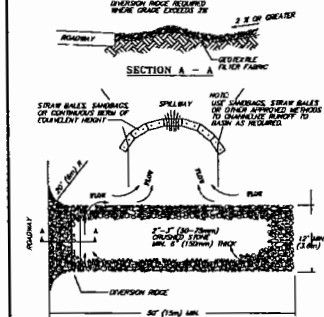
- NOTES:
1. SILT SACKS ARE TO BE INSPECTED DAILY DURING CONSTRUCTION AND REPLACED IF ANY RAINFALL EXCEEDS 1/4" IN 24 HOURS.
 2. IF SILT SACKS ARE MORE THAN 1/2 FULL, THEY SHALL BE REPLACED IMMEDIATELY. CAPTURED SILT SHALL BE RETURNED ON SITE AND REUSED.
 3. SILT SACKS SHALL REMAIN IN PLACE UNTIL ALL WEATHERING IN IMMEDIATE VICINITY IS FULLY ESTABLISHED.

SILT SACK OR EQUAL,
SEDIMENT CONTAINMENT SYSTEM
NOT TO SCALE



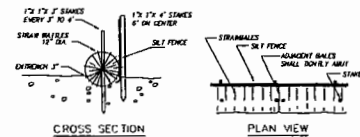
- NOTES:
1. SOIL STOCKPILES SUBJECT TO EROSION SHALL BE STOCKPILED OVERNIGHT WITHIN 100 FEET OF A NEARLINE UNLESS COVERED.
 2. STOCKPILES SHALL BE LOCATED ON DRY STABLE AREAS.
 3. STOCKPILES TO REMAIN FOR EXTENDED PERIODS SHALL BE STABILIZED WITH A TEMPORARY SEED MIXTURE.
 4. PROPOSED SAFETY FENCING AROUND STOCKPILES OVER 10' IN HEIGHT OR EXCEEDING 100 FEET IN LENGTH SHALL BE INSTALLED.

SOIL STOCKPILE DETAIL
NOT TO SCALE



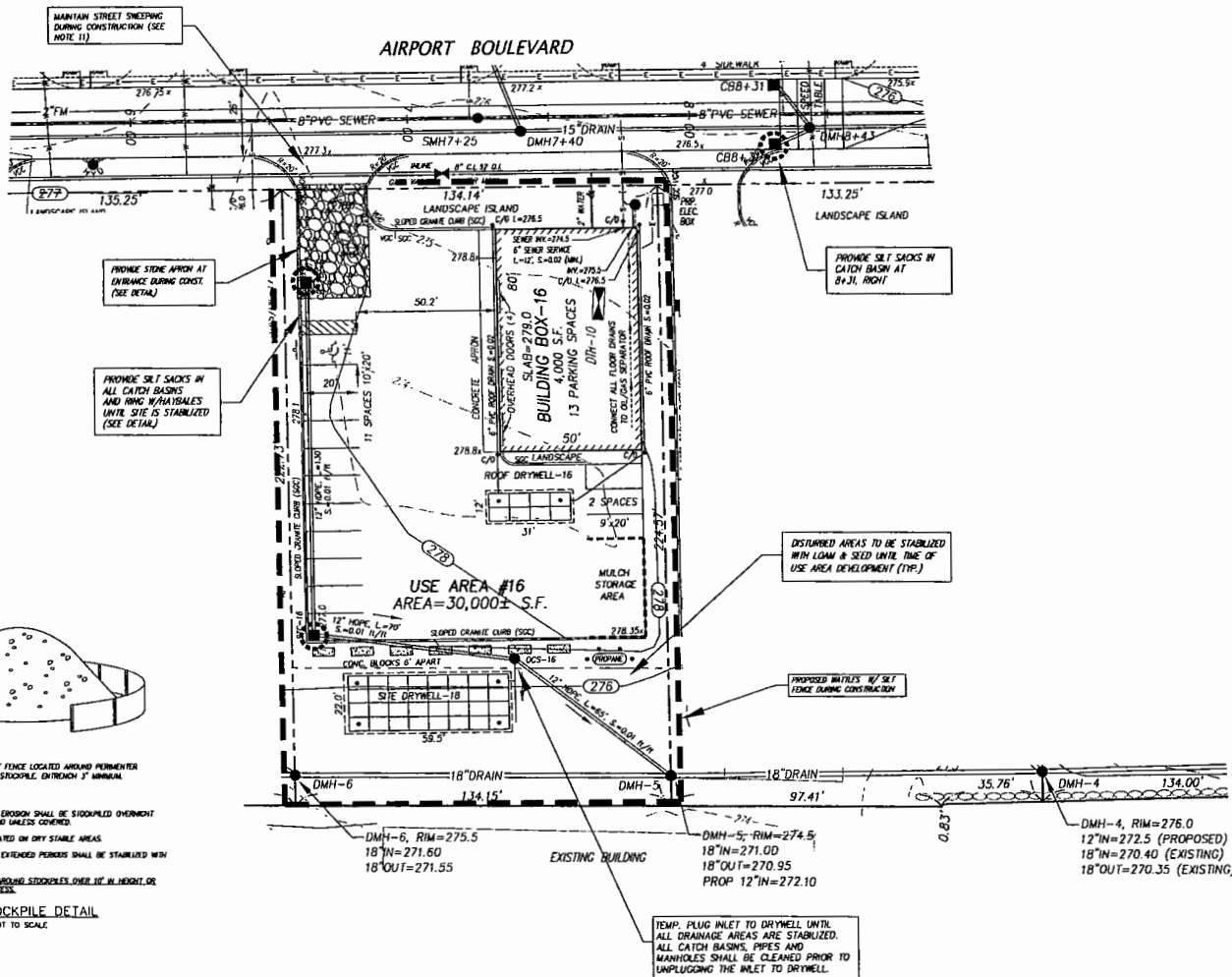
- NOTES:
1. THE ENTRANCE SHALL BE MAINTAINED AS A CONSTRUCTION ONLY WILL PRESENT. BEFORE OR DURING OF TEMPORARY GRAVEL PLACEMENT, THE ENTRANCE SHALL BE MAINTAINED AS A CONSTRUCTION ONLY WILL PRESENT. BEFORE OR DURING OF TEMPORARY GRAVEL PLACEMENT, THE ENTRANCE SHALL BE MAINTAINED AS A CONSTRUCTION ONLY WILL PRESENT.
 2. IF NECESSARY, BAILES SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.
 3. WHEN WEATHERING IS RECOVERED, IT SHALL BE DONE ON THE AREA STABILIZED IN THE PREVIOUS STEP. THE GRAVEL SHALL BE REPLACED AS DIRECTED BY THE LOCAL AUTHORITY.

TEMPORARY GRAVEL
CONSTRUCTION
ENTRANCE/EXIT
NOT TO SCALE



- CROSS SECTION
1. STRAW HULL INSTALLATION REQUIRES THE PLACEMENT AND SECURE STAKING OF THE HULL IN A TRENCH 3" DEEP. RAINFALL MUST NOT BE ALLOWED TO RUN UNDER OR AROUND HULL.
 2. INSTALLATION SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.

EROSION BARRIER
NOT TO SCALE



APPROVED
SITE PLAN REVIEW COMMITTEE

DATE: _____

PREPARED FOR:
CAPITAL GROUP PROPERTIES
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

OWNER:
MARLBOROUGH INDUSTRIAL, LLC
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

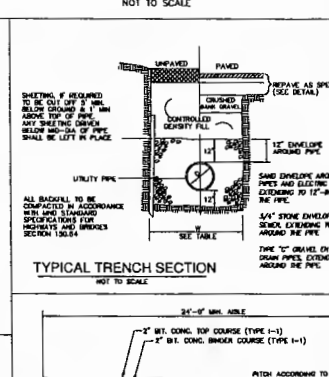
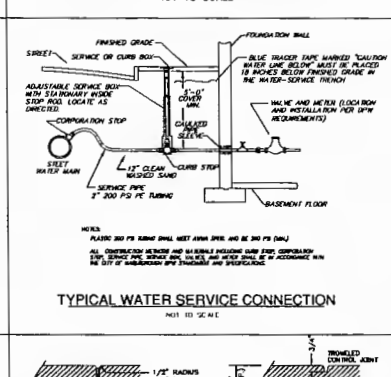
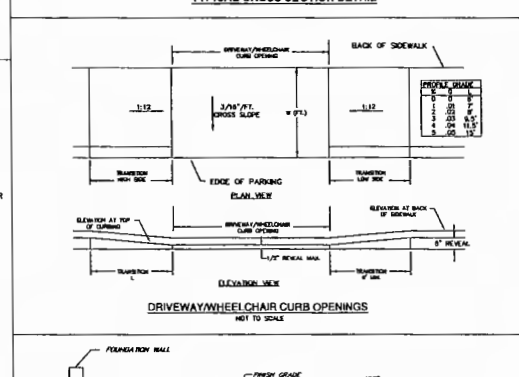
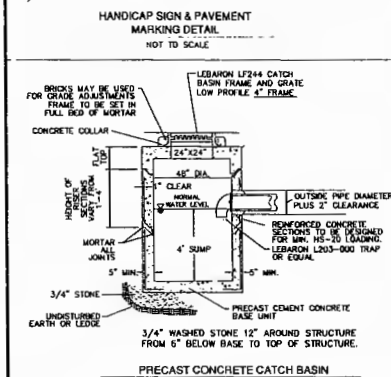
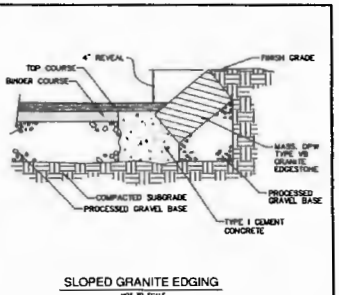
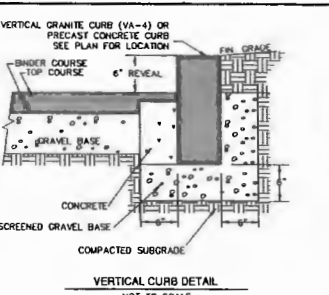
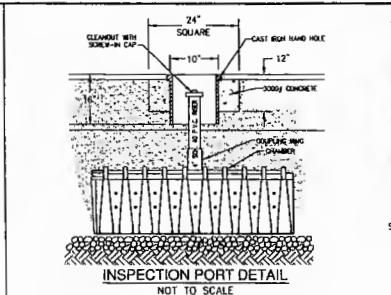
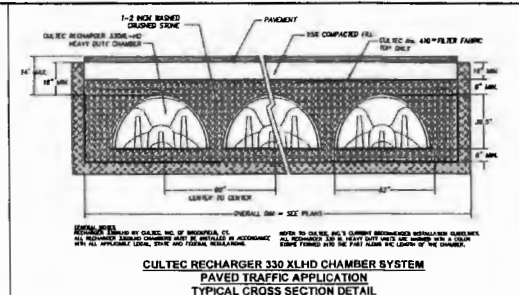
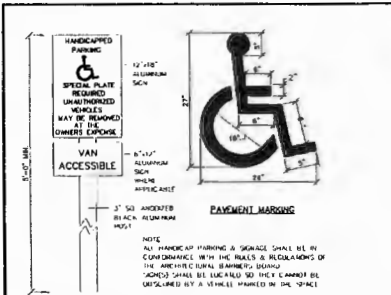
MAP 25, PARCELS 32 & 33, MAP 15, PARCELS 14&15

CONNORSTONE
ENGINEERING INC.
CIVIL ENGINEERS AND LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
PHONE: 508-393-9227 FAX: 508-393-5242

EROSION CONTROL PLAN
OF
USE AREA #16
AIRPORT BOULEVARD
IN
MARLBOROUGH, MA

10/13/23 MISC. COMMENTS FOR CLIENT
9/5/2023 REVISED SITE LAYOUT
REVISED: DISCUSSION:
DRAWN BY: REM CHECK BY: MC
DATE: APRIL 6, 2022
SCALE: 1"=20' SHEET 2 OF 3



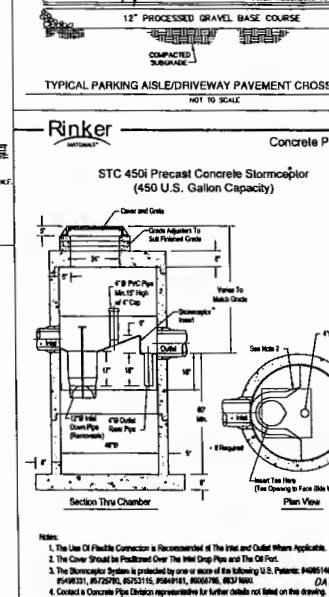
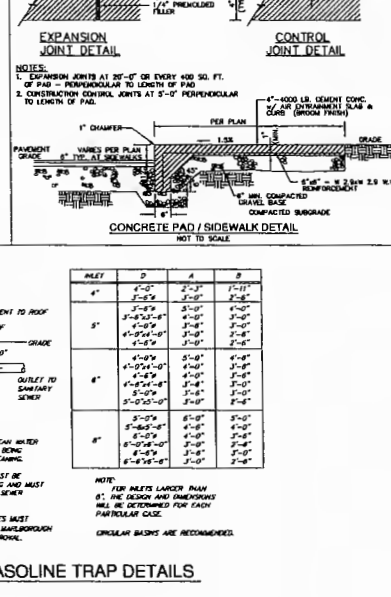
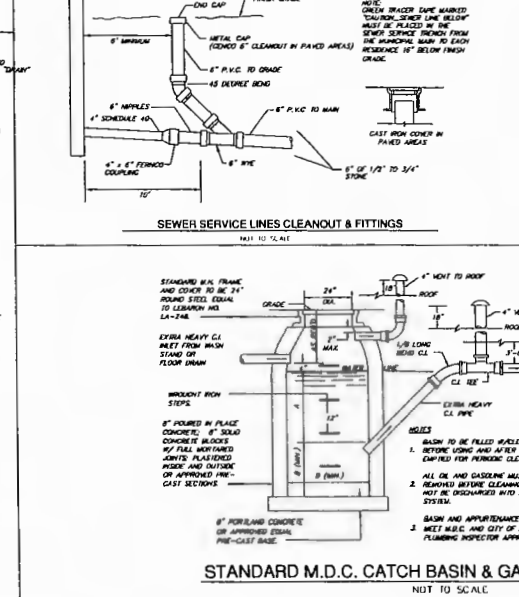
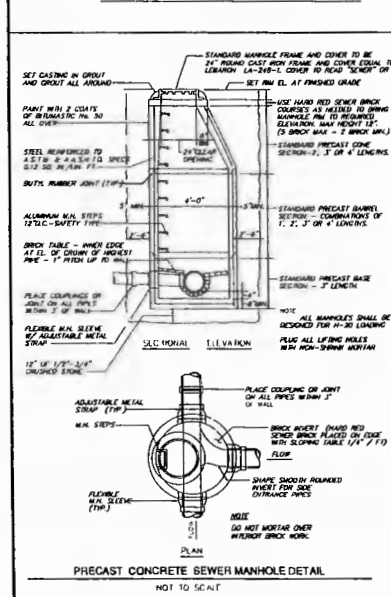


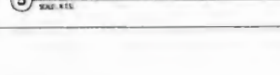
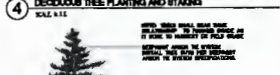
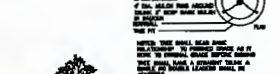
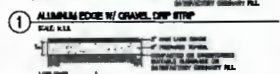
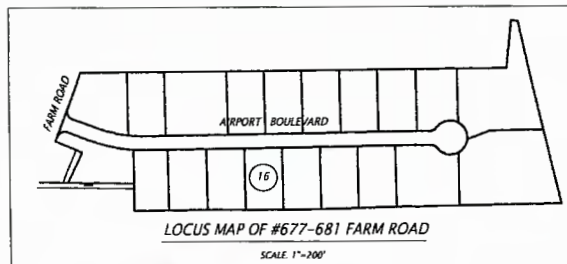
1. TRENCH WIDTH (W)
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 3. DIAMETER OF PIPE
 4. UNBULKED
 5. BULKED
 6. W
 7. SHOTED
 8. TO 12"
 9. 3"
 10. 4"
 11. 14" TO 24"
 12. 4"
 13. 5"
 14. 25" TO 36"
 15. 9"
 16. 6"

17. LAND BLADE
 18. CONTACT
 19. ROCK AROUND
 20. PIPE AROUND
 21. TO 12"
 22. 17"-INCHES
 23. HELDPE AROUND
 24. INS TO 12"

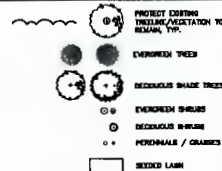
25. APPROVED
 26. SITE PLAN REVIEW COMMITTEE

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GRAPHIC LEGEND



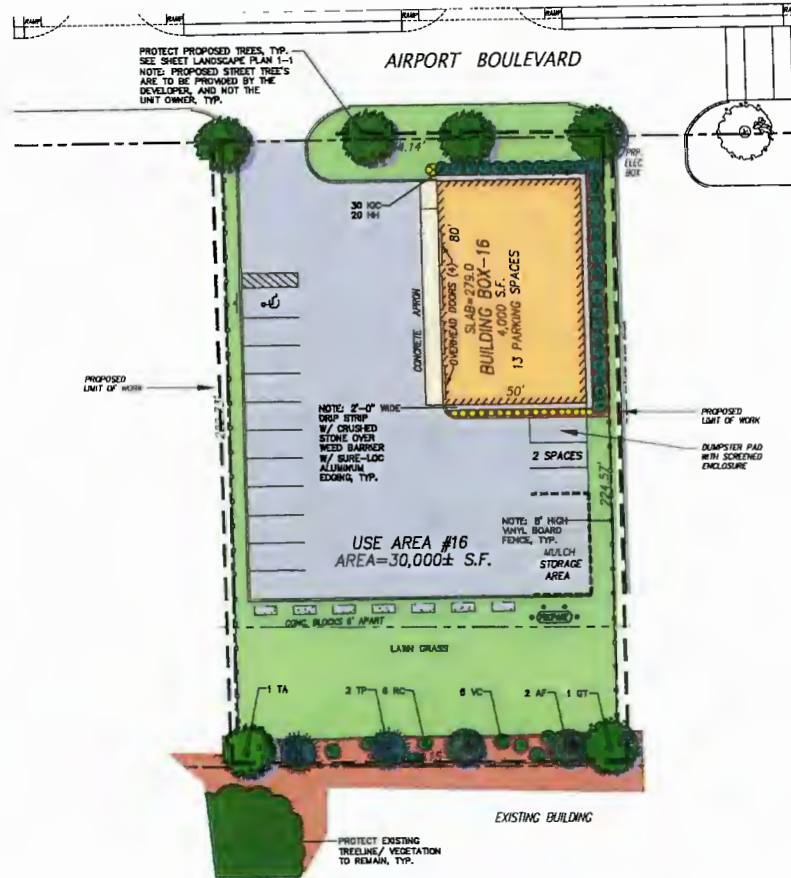
LOT 16 PLANT MATERIAL LIST -- 677-681 FARM ROAD, MARLBOROUGH, MA.						
PLT.	SYC.	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
EVERGREENS						
AF	2	ARISEA FRAGRANS	FRAGRANT RH	E-F	BAR	NATURAL BRUSH, UNBARKED
AF	2	ARISEA FRAGRANS	FRAGRANT RH	E-F	BAR	NATURAL BRUSH, UNBARKED
DECIDUOUS AND ORNAMENTAL TREES						
AL	1	ALNUS INCANA	WHITE ALN	2-1 1/2"	BAR	IF NEW BRANCHES
AL	1	ALNUS INCANA	WHITE ALN	2-1 1/2"	BAR	IF NEW BRANCHES
SHRUBS						
RD	3	REDONDIUM VIBRANS	ROUND BROOMHEATH	1/2-3"	BAR	
RD	3	REDONDIUM VIBRANS	ROUND BROOMHEATH	1/2-3"	BAR	
RD	30	LAG. ARABIS COMPACTA	COMPACT HEATH	1/2-2 1/2"	BAR	
PERENNIALS						
RD	1	REDONDIUM VIBRANS	ROUND BROOMHEATH	1/2-3"	BAR	

GENERAL NOTES:

- [illegible]

LANDSCAPE NOTES:

- LOAD DEPTHS SHALL BE AS FOLLOWS:
- A. LAWN AREAS -- 8" ROLLED HYDRONICS
LAWN GRASS
(VALLEY GREEN SEED, LTD. WILMINGTON, MA.)
LANDSCAPE/UTILITY MIXTURE FOR SUN/SHADE:
ENCHANTED PERNENNIAL HYDRONICS
CREEPING RED FESCUE
GOLDENBROS KENTUCKY BLUEGRASS
 - B. PLANT BEDS -- 1'-0" LOAD DEPTH IN THE PLANTED AREA WITH 2" MULCH
 - C. ISOLATED PLANTED ISLANDS -- 1' - 0" LOAD DEPTH



APPROVED
SITE PLAN REVIEW COMMITTEE

DATE: _____



PREPARED FOR:
CAPITAL GROUP PROPERTIES
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

OWNER:
MARLBOROUGH INDUSTRIAL, LLC
259 TURNPIKE ROAD, SUITE 100
SOUTHBOROUGH, MA

MAP 72, PARCEL 32 & MAP 85, PARCELS 14&15

**CONNORSTONE
ENGINEERING INC.**
CIVIL ENGINEERS AND LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
PHONE: 508-393-9727 FAX: 508-393-5241

WILLIAM FLEMING ASSOCIATES
INCORPORATED
LANDSCAPE ARCHITECTS

PROPOSED LANDSCAPE PLAN
OF
USE AREA #16
AIRPORT BOULEVARD
IN
MARLBOROUGH, MA

REVISED	DESCRIPTION
DRAWN BY WFT	CHECK BY JT
DATE OCTOBER 17, 2023	
SCALE: 1" = 20'	SHEET 1 OF 1



City of Marlborough Planning Board

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2023 NOV 21 PM 3: 15

8-1
PLANNING BOARD

Sean N. Fay, Chair
Barbara L. Fenby
James Fortin
Patrick Hughes
Dillon LaForce
George LaVenture
Christopher Russ

Katlyn LeBold, Administrator
(508) 624-6910 x33200
klebold@marlborough-ma.gov

November 14, 2023

Council President Michael Ossing
Marlborough City Council
140 Main St.
Marlborough, MA 01752

RE: Council Order 23-1008941 Proposed Zoning Amendment to Chapter 650, to add a new section 39A to create the Sasseville Way Residential Overlay District (SWROD)

Honorable President Ossing and Councilors:

At its regularly scheduled meeting on 11/13/2023, the Board took the following action regarding the above-referenced Council Order:

On a motion by Mr. Russ, seconded by Dr. Fenby, the Board voted to send a neutral recommendation to the City Council on the above referenced Proposed Zoning Amendment. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

The Board provided the following reasons in reaching its recommendation:

- The developer established that the proposed Zoning Amendment is more consistent with the character of surrounding neighborhood than the existing limited industrial zoning;
- In the Planning Board's opinion, the developer established the proposed Zoning Amendment would impact the Blaiswood Avenue neighborhood and the Assabet River Rail Trail users less than a commercial development, but argued the proposed development could negatively impact its abutters (height of buildings in close proximity to a single-family neighborhood and potential impacts to Fort Meadow Reservoir);
- The developer did not establish the proposed Zoning Amendment would provide the City with a type of housing that is not already available in the City, however it would benefit the City by preventing a commercial development, which could severely impact a sensitive environmental area. The proposed Zoning Amendment would give the City an additional opportunity to reduce the overall impact through the special permit process.

If the City Council sees fit to approve the Zoning Amendment, the Planning Board suggests the following items be considered:

- Implement additional safety protocols for the Assabet River Rail Trail crossing;
- Review the Blaiswood Avenue neighborhood impact;
- Review the Fort Meadow Reservoir impact;
- Conduct building height studies in relationship to adjacent neighborhoods;
- Explore options to reduce impervious surface;
- Increase the number of affordable housing units or consider reducing the cost of the affordable housing units;
- Consider making the runoff temperature and sediment monitoring data public record;
- Further defining the language within the proposed zoning amendment and addressing the Board's comments.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a circle containing the initials 'KL'.

Sean N. Fay
Chairperson

cc: City Clerk
Day Pitney, LLP

PLANNING BOARD

Sean N. Fay, Chair
Barbara L. Fenby
James Fortin
Patrick Hughes
Dillon LaForce
George LaVenture
Christopher Russ



City of Marlborough
Planning Board

RECEIVED
 CITY CLERK'S OFFICE
 CITY OF MARLBOROUGH
 2023 NOV 21 PM 3:15

Katlyn LeBold, Administrator
(508) 624-6910 x33200
klebold@marlborough-ma.gov

November 14, 2023

Council President Michael Ossing
 Marlborough City Council
 140 Main St.
 Marlborough, MA 01752

RE: Council Order 23-1008951 Proposed Zoning Amendment to Chapter 650, to add a new section to create the Red Spring Road Overlay District (RSROD)

Honorable President Ossing and Councilors:

At its regularly scheduled meeting on 11/13/2023, the Board took the following action regarding the above-referenced Council Order:

On a motion by Mr. Russ, seconded by Dr. Fenby, the Board voted to send a favorable recommendation to the City Council on the above referenced Proposed Zoning Amendment. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0. Abstained: Fenby

The Board provided the following reasons in reaching its recommendation:

- The developer established that the proposed Zoning Amendment is consistent with the character of the existing neighborhood and that the Zoning Amendment would allow homeowners to better maintain the existing neighborhood;
- In the Planning Board's opinion, approval of the Zoning Amendment would not be overly burdensome to the neighbors.

If the City Council sees fit to approve the Zoning Amendment, the Planning Board suggests the following:

- Add language to define lot frontage:
 - For lots created prior to (date TBD) required lot frontage is equal to 51.42' (the existing frontage, or round up to 52.0'), instead of zero;
 - For lots created on or after (date TBD) required lot frontage is equal to 120.0', instead of zero.
- Add language to define lot setback:
 - For lots created prior to (date TBD) all structures to be set back min. 15.0' from the RSR district boundary line;
 - For new structures on lots created prior to (Date TBD) all structures to be setback min 30' from the RSR district boundary line
- Add language requiring any new lots created after (Date TBD) to conform with the of the current A2 zoning;
- Remove language allowing the boat club use, keeping the current boat club as "pre-existing, non-conforming";
- Add language limiting the number of structures within each exclusive use area to one single family house, one garage (non-habitable) and one shed (non-habitable) and specifically exclude bunk houses;

- Add language limiting the number of dwelling units to 29 for the entire parcel, consistent with the stated opposition to further development around the reservoir by the residents of Red Spring Road during the Sasseville Road public hearing;
- Secure an agreement giving the City the right of first refusal for the 10-acre undeveloped parcel for conservation purposes.

Sincerely,



Sean N. Fay
Chairperson

cc: City Clerk
Brian Falk, Mirick, O'Connell, DeMallie & Lougee, LLP

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

Questions contact – Dana Larson #508-482-1243
PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS

2023 NOV 14 PM 2:35

To the City Council
Of Marlborough, Massachusetts

Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England, Inc requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Hayes Memorial Drive - Install one JO Pole on Hayes Memorial Drive. Beginning at a point approximately 350 feet North/Northwest of the centerline of the intersection of Nickerson Drive. Installing new Pole 25-25 for new commercial service at 1000 Nickerson Drive.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked – Hayes Memorial Drive- Marlborough, Massachusetts.

No.# 30825853

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a
NATIONAL GRID *Hellon Lopes*
BY _____
Engineering Department

VERIZON NEW ENGLAND, INC.
BY *Albert E. Bessette Jr.*
Manager / Right of Way

Dated: October 11, 2023

Questions contact – Dana Larson #508-482-1243

ORDER FOR JOINT OR IDENTICAL POLE LOCATIONS

To the City Council
Marlborough, Massachusetts

Notice having been given and public hearing held, as provided by law,
IT IS HEREBY ORDERED: that Massachusetts Electric Company d/b/a NATIONAL GRID and VERIZON NEW ENGLAND INC. (formerly known as NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY) be and they are hereby granted joint or identical locations for and permission to erect and maintain poles and wires to be placed thereon, together with such sustaining and protecting fixtures as said Companies may deem necessary, in the public way or ways hereinafter referred to, as requested in petition of said Companies dated the 11th day of October 2023.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonable straight, and shall be set substantially at the points indicated upon the plan marked – Hayes Memorial Drive- Marlborough, Massachusetts.

No.# 30825853

Filed with this order:

There may be attached to said poles by Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England Inc. such wires, cables, and fixtures as needed in their business and all of said wires and cables shall be placed at a height of not less than twenty (20) feet from the ground.

The following are the public ways or part of ways along which the poles above referred to may be erected, and the number of poles which may be erected thereon under this order:

Hayes Memorial Drive - Install one JO Pole on Hayes Memorial Drive. Beginning at a point approximately 350 feet North/Northwest of the centerline of the intersection of Nickerson Drive. Installing new Pole 25-25 for new commercial service at 1000 Nickerson Drive.

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the
Of the City/Town of _____, Massachusetts held on the _____ day of _____ 20 ____.

City/Town Clerk.

Massachusetts 20 ____
Received and entered in the records of location orders of the City/Town of _____
Book _____ Page _____

Attest:

City/Town Clerk

I hereby certify that on _____ 20 ____, at _____ o'clock, M
At _____ a public hearing was held on the petition of
Massachusetts Electric Company d/b/a NATIONAL GRID and VERIZON NEW ENGLAND,
INC. for permission to erect the poles, wires, and fixtures described in the order herewith recorded,
and that we mailed at least seven days before said hearing a written notice of the time and place of
said hearing to each of the owners of real estate (as determined by the last preceding assessment
for taxation) along the ways or parts of ways upon which the Company is permitted to erect
Poles, wires, and fixtures under said order. And that thereupon said order was duly adopted.

City/Town Clerk.

.....
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.....
.....

Board or Council of Town or City, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of the location order and certificate of
hearing with notice adopted by the _____ of the City of _____
Massachusetts, on the _____ day of 20 ____ and recorded with the records of location orders
of the said City, Book _____, and Page _____. This certified copy is made under the
provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

City/Town Clerk



Hayes Memorial Dr



P26

P25-5

P25-25

P25

Install new pole 25-25 for
new second service to 1000
Nickerson Dr

LEGEND		City of Marlborough		DATE: 8/28/23
 Existing Pole	 Proposed Pole	Town Petition		DESIGNER: D.LARSON
		Hayes Memorial Dr Marlborough, MA		WR—30825853
		Exhibit 'A' not to scale. The said facilities to be established by and upon the installation and erection of the facilities thereof.		
		Nationalgrid		

DALEY FREDERICK M JR TR
C/O AUTOMATIC SPECIALTIES
422 NORTHBORO RD CENTRAL
MARLBOROUGH, MA 01752

KARALIS DINO TR
SPARTE II REALTY TRUST
160 EDGELL RD
FRAMINGHAM, MA 01701

DALEY FREDERICK M JR TR
MARLTON REALTY TRUST
105 BARTLETT ST
MARLBOROUGH, MA 01752

LEITE RODRIGO GRAZINA BAN
ANNA PAOLA GONCALVES GRAZ
475 NORTHBORO RD WEST #4
MARLBOROUGH, MA 01752

ALLAN SUSAN P
477 NORTHBORO RD WEST #4
MARLBOROUGH, MA 01752

DUBEAU MICHAEL R
DENISE B CHAMPAGNE
475 NORTHBORO RD WEST #1
MARLBOROUGH, MA 01752

LYNCH WILLIAM C
477 NORTHBORO RD WEST #8
MARLBOROUGH, MA 01752

ALVARENGA ALEXANDRE NUNES
ANA NUNES
479 NORTHBORO RD WEST #2
MARLBOROUGH, MA 01752

FAGAN ANDREW
481 NORTHBORO RD WEST #1
MARLBOROUGH, MA 01752

MADDEN ROY W
MARIANNE T MADDEN
479 NORTHBORO RD WEST #3
MARLBOROUGH, MA 01752

ANTKOWIAK TED J
DANUTA ANTKOWIAK
273 WEST ST
NORTHBOROUGH, MA 01532

GEP X MARLBOROUGH LLC
C/O GREYSTAR REAL ESTATE
750 BERING DR SUITE 300
HOUSTON, TX 77057

MEGANATHAN VIJAY
475 NORTHBORO RD WEST #6
MARLBOROUGH, MA 01752

BERRIOS JORGE
ZOREBEL BERRIOS
479 NORTHBORO RD WEST #4
MARLBOROUGH, MA 01752

GERAGHTY JAMES M
KIMBERLY BROWN
21 CENTURY MILL RD
BOLTON, MA 01740

MONESTIME PHILIPPE LOUIS
MONESTIME ANITA W
475 NORTHBORO RD WEST #3
MARLBOROUGH, MA 01752

BORGES NEUEMIR ALVES
479 NORTHBORO RD WEST #5
MARLBOROUGH, MA 01752

GODDARD ADAM P
481 NORTHBORO RD WEST #4
MARLBOROUGH, MA 01752

MURPHY BRIAN EDWARD
475 NORTHBORO RD WEST #2
MARLBOROUGH, MA 01752

CHINNA DEVENDRA NAIK SUGA
477 NORTHBORO RD WEST #3
MARLBOROUGH, MA 01752

GUTIERREZ ARTURO J TR
JOHN A CATALDO TR
200 WHEELER RD
BURLINGTON, MA 01803

NAKANWAGI ANNE
SAMALIE MATOVUMN
477 NORTHBORO RD WEST #5
MARLBOROUGH, MA 01752

COLLINS KAITLYN
ANASTASIA COLLINS
475 NORTHBORO RD WEST #5
MARLBOROUGH, MA 01752

GYURCSIK FORREST
CHARLOTTE COLE
479 NORTHBORO RD WEST #7
MARLBOROUGH, MA 01752

NERIS MARIA S
REBECCA N REZENDE
477 NORTHBORO RD WEST #6
MARLBOROUGH, MA 01752

Contact Town For Info

K S WYMAN REALTY LLC
C/O SCOTT WYMAN
432 NORTHBORO RD CENTRAL
MARLBOROUGH, MA 01752

NORMANDY NICKERSON ROAD L
C/O NORMANDY RE PTRS JOSE
53 MAPLE ST
MORRISTOWN, NJ 07960

OFLC DEVELOPMENT LLC
515 NORTHBORO RD WEST
MARLBOROUGH, MA 01752

VIETH MICHAEL L
DONNA M VIETH
481 NORTHBORO RD WEST #5
MARLBOROUGH, MA 01752

OFLC PROPERTIES LLC
515 NORTHBORO RD WEST
MARLBOROUGH, MA 01752

OFLC REAL ESTATE LLC
515 NORTHBORO RD WEST
MARLBOROUGH, MA 01752

PATEL DHIRENKUMAR
479 NORTHBORO RD WEST #1
MARLBOROUGH, MA 01752

PAUL RONALD R
URDUJA PAUL
479 NORTHBORO RD WEST #6
MARLBOROUGH, MA 01752

PICKFORD ASHLEY E
481 NORTHBORO RD WEST #3
MARLBOROUGH, MA 01752

ROSSI TIZIANA
477 NORTHBORO RD WEST #1
MARLBOROUGH, MA 01752

SEYMOUR LOIS A TR
496 BOSTON POST RD WEST R
496 BOSTON POST RD WEST
MARLBOROUGH, MA 01752

STEWART GERALDINE
481 NORTHBORO RD WEST #2
MARLBOROUGH, MA 01752

TALLMAN CHANDRA
477 NORTHBORO RD WEST #9
MARLBOROUGH, MA 01752

Questions contact – Rumamah Himat #617-405-1791
PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS

To the City Council
 Of Marlborough, Massachusetts

Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England, Inc requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Simarano Drive - Install one JO Pole on Simarano Drive. Beginning at a point approximately 50 feet Southeast of the centerline of the intersection of Simarano Drive and Bay Drive. Installing a midspan pole between Pole 10 and Pole 8-50 and install a 900 KVAR on it.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked – Simarano Drive - Marlborough, Massachusetts.

No.# 30853087

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a

NATIONAL GRID *Hellon Lopes*

BY _____

Engineering Department

VERIZON NEW ENGLAND, INC.

BY _____

Manager / Right of Way

Albert E. Bessette Jr.

Dated: October 9, 2023

Questions contact – Rummah Himat #617-405-1791

ORDER FOR JOINT OR IDENTICAL POLE LOCATIONS

To the City Council
Marlborough, Massachusetts

Notice having been given and public hearing held, as provided by law,
IT IS HEREBY ORDERED: that Massachusetts Electric Company d/b/a NATIONAL GRID and VERIZON NEW ENGLAND INC. (formerly known as NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY) be and they are hereby granted joint or identical locations for and permission to erect and maintain poles and wires to be placed thereon, together with such sustaining and protecting fixtures as said Companies may deem necessary, in the public way or ways hereinafter referred to, as requested in petition of said Companies dated the 9th day of October 2023.

All construction under this order shall be in accordance with the following conditions:
Poles shall be of sound timber, and reasonable straight, and shall be set substantially at the points indicated upon the plan marked – Simarano Drive - Marlborough, Massachusetts.

No.# 30853087

Filed with this order:

There may be attached to said poles by Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England Inc. such wires, cables, and fixtures as needed in their business and all of said wires and cables shall be placed at a height of not less than twenty (20) feet from the ground.

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Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the
Of the City/Town of _____, Massachusetts held on the _____ day of _____ 20 ____.

Massachusetts
Received and entered in the records of location orders of the City/Town of _____
Book _____ Page _____
City/Town Clerk. _____ 20 ____.

Attest:
City/Town Clerk

I hereby certify that on _____ 20 ____, at _____ o'clock, M
At _____ a public hearing was held on the petition of
Massachusetts Electric Company d/b/a NATIONAL GRID and VERIZON NEW ENGLAND,
INC. for permission to erect the poles, wires, and fixtures described in the order herewith recorded,
and that we mailed at least seven days before said hearing a written notice of the time and place of
said hearing to each of the owners of real estate (as determined by the last preceding assessment
for taxation) along the ways or parts of ways upon which the Company is permitted to erect
Poles, wires, and fixtures under said order. And that thereupon said order was duly adopted.

City/Town Clerk.

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Board or Council of Town or City, Massachusetts

CERTIFICATE

I hereby certify that the foregoing is a true copy of the location order and certificate of
hearing with notice adopted by the _____ of the City of
Massachusetts, on the _____ day of 20 ____ and recorded with the records of location orders
of the said City, Book _____, and Page _____. This certified copy is made under the
provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:
City/Town Clerk

Exhibit "A" - Not to Scale
The exact location of
said facilities to be
established by and upon
the installation and
erection of the facilities
thereof.



Legend



MID SPAN POLE (POLE 9)



EXISTING POLES (POLE 10 & POLE 8.50)

INSTALL A MID SPAN POLE
BETWEEN POLE 8-50 AND POLE 10

closet add: 215 Simarano Dr, Marlborough
WR# 30853087

Date: 9/28/2023
Designer: HIMATR
WR: 30853087

nationalgrid

257 SIMARANO LLC
336 BAKER AVE
CONCORD, MA 01742

ATLANTIC-MARLBORO REALTY
205 NEWBURY ST
ATTN ATLANTIC MGMT CORP
FRAMINGHAM, MA 01701

AVALON MARLBOROUGH LLC
ATTN AVALONBAY COMMUNITIES
INC
4040 WILSON BLVD SUITE 1000
ARLINGTON, VA 22203

BH GRP TCAM OWNER II LLC

BOSTON, MA 02110

BH GRP TCAM OWNER II LLC
ONE FEDERAL ST SUITE 1810
BOSTON, MA 02110

BH GRP TCAM OWNER LLC
1 FEDERAL STREET STE 1810
BOSTON, MA 02110

BH GRP TCAM OWNER LLC
C/O GREATLAND REALTY PTRS
LLC
100 CAMPUS DR #1
MARLBOROUGH, MA 01752

IPG PHOTONICS CORPORATION
50 OLD WEBSTER RD
OXFORD, MA 01540

LURIE FRIEDMAN LLPONE MCKINLEY SQUARE
BOSTON, MA 02109**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH****2023 NOV 17 PM 3: 27**

HARLEY C. RACER

617-367-1970
hracer@luriefriedman.com

November 17, 2023

By Email and U.S. MailJason D. Grossfield
City Solicitor
City of Marlborough
City Hall, 4th FloorSean N. Fay, Chair
Marlborough Planning Board
135 Neil Street
2nd Floor
Marlborough, MA 01752Michael H. Ossing, President
Marlborough City Council
140 Main Street
2nd Floor
Marlborough, MA 01752Re: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22
"Retirement Community Overlay Districts" and the Public Hearing on
November 27, 2023

Dear Mr. Grossfield, Mr. Fay and Mr. Ossing:

This firm represents Hillside School ("Hillside") at 404 Robin Hill St., Marlborough in relation to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B on Robin Hill Street ("Zoning Amendment"). I write following the Planning Board's Public Hearing on the Zoning Amendment held on November 13, 2023 and in advance of the continuation of that hearing scheduled for November 27, 2023. It is my understanding that the Planning Board has asked for the City Solicitor to address the issue raised in my letter dated November 8, 2023. This letter addresses only the legal issues and not the other problems with the Zoning Amendment outlined in my November 8, 2023 letter.

As discussed at the November 13 hearing and further explained below, the Zoning Amendment was not properly initiated and any action on it would be a nullity under the state statute and Marlborough Ordinance because: (1) the proponent, Pulte Homes of New England LLC ("Pulte") is a prospective buyer and not an individual landowner to be affected by the

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Jason D. Grossfield
 Sean N. Fay
 Michael H. Ossing
 November 17, 2023
 Page 2

Zoning Amendment; (2) neither Pulte Homes nor the current landowner, Denali Belle, LLC are individuals for purposes of the state statute and Marlborough Ordinance; and (3) the Zoning Amendment would affect districts throughout the City of Marlborough other than the district of the proposed project. For these reasons, the Zoning Amendment must be withdrawn and not considered.

Should the Planning Board move forward with consideration, due to the legal defects and the issues that were raised by members of the public at the November 13 hearing, the Planning Board should give the Zoning Amendment a **“Negative Recommendation”**.

1. **The Zoning Amendment was initiated in violation of state and local law by Pulte, a non-landowner and mere prospective buyer of the parcels to be affected and must be withdrawn.**

As set forth in my letter dated November 8, 2023, the Zoning Amendment is legally defective because it was initiated by a non-landowner, Pulte, the prospective buyer of the parcels targeted for inclusion in the Retirement Overlay District. It is beyond dispute that Pulte is the sole proponent of the Zoning Amendment. Massachusetts General Law c. 40A, §5 and Marlborough Ordinance § 650-60 (both attached here as **Exhibit A**) are clear that a zoning amendment may **only** be initiated by “an individual owning land” to be affected by the amendment, ten registered voters in the City or the Planning Board.

Because Pulte is not the landowner, it is a violation of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60 for the Planning Board and the City Council to even consider the Zoning Amendment, much less act upon it. Indeed, any action on the Zoning Amendment would be invalid. See Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass. App. Ct. 1108 (2022) (because the proponent “did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual” and the amendment was invalid) (attached as **Exhibit B**).

2. **The Zoning Amendment was initiated in violation of state and local law because neither Pulte Homes nor the current landowner, Denali Belle, LLC is an “individual” for purposes of the state statute and Marlborough Ordinance and must be withdrawn.**

Even if the current landowner, Denali Belle, LLC, had initiated the Zoning Amendment – which is not the case – because Denali Belle is an LLC, it is not an **“individual”** and it would still run afoul of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60. The Zoning Amendment statute is strictly construed and enforced. Indeed, “the legislature mandated a rule of strict compliance by the plain language, [Zoning] ordinances or by-laws may be adopted ... **but only in the manner ... provided**”. Bellingham, 101 Mass. App. Ct. 1108 (quoting Canton v. Bruno, 361 Mass. 598, 603 (1972)) (emphasis in original). See also <https://www.mbmlc.com/zoning->

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Jason D. Grossfield
 Sean N. Fay
 Michael H. Ossing
 November 17, 2023
 Page 3

[storage-massachusetts.html](#) (“The lesson to be learned from the Bellingham matter is that, when seeking to amend a municipality’s zoning ordinances or bylaws, one must be sure that the requirements of G.L. c. 40A § 5, first para. are strictly adhered to.”).

Accordingly, because an LLC is not an “individual”, Denali Belle, LLC cannot legally initiate a zoning change. See, e.g., Phone Recovery Services, LLC v. Verizon of New England, Inc., 480 Mass. 224 (2018) (interpreting the Legislature’s use of the word “individual” in the False Claims Statute to mean a “natural person”). In Phone Recovery, the SJC considered the word “individual” as compared to “person” and categorically determined that an LLC is not an “individual”. The Zoning Enabling Act also uses both “individual” and “person” separately, distinctly and advisedly. Under the c. 40A, §5 only “individuals owning land” can initiate zoning changes but under §17 “any person aggrieved” can appeal an action of the board or appeals or special permit granting body. See also Harvard Square Def. Fund, Inc. v. Plan. Bd. of Cambridge, 27 Mass. App. Ct. 491, 491–93 (1989). In Harvard Square, the Appeals Court distinguished between individuals and corporate property owners for standing purposes under §17, reading “individuals and corporate property owners” as two classes within the broader term “person”.

This makes sense as a matter of public policy. The Zoning Amendment, as well any other zoning changes, can only be initiated by those classes of persons specifically authorized by the Legislature in c. 40A, § 5 and the Ordinance, namely individuals owning affected land, ten registered voters or the Planning Board because the purpose of this provision is “to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board.” Bellingham, *supra* (emphasis in original). It is not a heavy lift to first acquire the support of ten registered voters – if the proposed changes are truly a benefit to and supported by citizens of the City.

The fact that past rezoning applications may have used similar authorization letters for a putative purchaser to pursue rezoning in advance of acquiring title is irrelevant. Where, here, neither the owner nor the purchaser is an “individual owning land in the affected area”, the instant petition is not allowed by statute or Marlborough Ordinance.

3. The Zoning Amendment is invalid because it would affect districts throughout the City of Marlborough other than the district of the proposed project and must be withdrawn.

Furthermore, even if Denali Belle, LLC were an “individual” and initiated the Zoning Amendment, the Zoning Amendment would still be in violation of M.G.L. c. 40A, §5 because it proposes changes that affect the entire city and to districts other than the district where the proponent owns land. The opinion attached as Exhibit C from the Cambridge City Solicitor to Cambridge City Manager, dated October 16, 2023, on a city-wide proposed zoning change is instructive here. In Cambridge, the individual property owner filed a petition that would

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Jason D. Grossfield
 Sean N. Fay
 Michael H. Ossing
 November 17, 2023
 Page 4

similarly affect multiple zoning districts and was city-wide in scope.¹ Relying on Bellingham, the Cambridge City Solicitor advised that “pursuant to G.L. c. 40A, §5, an individual property owner cannot initiate a zoning amendment that would affect a zoning district in which the individual property owner has no property interest . . . In the future, the City Council can accept resident initiated zoning petitions from an individual property owner owning land in the district that would be affected by the proposed zoning change, or by ten registered voters in the City.”

Due to the legal defects detailed above, the Planning Board and the City Council should withdraw the Zoning Amendment and not consider it any further. Any action on the Zoning Amendment would be in violation of c. 40A, §5 and would be an unnecessary use of City, proponent and opponent resources.

Please circulate this letter amongst all members of the Planning Board and the City Council in advance of the hearing scheduled for November 27, 2023.

Very truly yours,

/s/Harley C. Racer
 Harley C. Racer

Encl.

cc: Edward Chase
 Brian Falk, Esq.

¹ In the Cambridge matter, the individual landowner was the trustee of a trust owning the land. Whether a trustee is an “individual” for purposes of the c. 40A, §5 was not raised in Cambridge and, at any rate, this Board and the Marlborough City Solicitor need not reach the issue of whether a trustee is an individual because here it is clear as a matter of law that an LLC is not an individual.

Exhibit A

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VII. Cities, Towns and Districts (Ch. 39-49a)

Chapter 40A. Zoning (Refs & Annos)

M.G.L.A. 40A § 5

§ 5. Adoption or change of zoning ordinances or by-laws; procedure

Effective: May 30, 2023

Currentness

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to [section ten of chapter thirty-nine](#), by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

<[Second paragraph effective until May 30, 2023. For text effective May 30, 2023, see below.]>

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

<[Second paragraph as amended by 2023, 7, Sec. 154 effective May 30, 2023. See 2023, 7, Sec. 298. For text effective until May 30, 2023, see above.]>

§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the executive office of housing and livable communities, the regional planning agency, if any, and to the planning board of each abutting city and town. The executive office of housing and livable communities, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by [section forty of chapter one hundred and thirty-one](#) or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to [section forty of chapter one hundred and thirty-one](#).

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development;

§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5

(2) an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to [section 9](#); (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to [section 9](#);

(3) zoning ordinances or by-laws or amendments thereto that: (a) provide for TDR zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or (b) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with [section 3 of chapter 40R](#).

Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote.

If, in a city or town with a council of fewer than 25 members, there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by [section thirty-two of chapter forty](#), he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to [section thirty-two of chapter forty](#). If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to [section thirty-two of chapter forty](#), the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in [sections thirty-two and thirty-two A of chapter forty](#) and notice specifying the court, parties, invalidity

§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5

claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

Credits

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, §§ 3B, 3C; St.1984, c. 189, § 47; St.1987, c. 685, § 3; St.1991, c. 515, §§ 1, 2; St.1996, c. 258, § 16; St.1998, c. 161, § 255; St.2008, c. 451, § 45, eff. June 30, 2009; St.2020, c. 358, § 19, eff. Jan. 14, 2021; St.2023, c. 7, § 154, eff. May 30, 2023.

Notes of Decisions (132)

M.G.L.A. 40A § 5, MA ST 40A § 5

Current through Chapter 25 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

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§ 650-60. Amendments.

This chapter may be amended from time to time at a City Council meeting. An amendment may be initiated by the submission to the City Council of a proposed change by the City Council, the Board of Appeals, an individual owning land in the City to be affected by the amendment, 10 registered voters in the City, the Planning Board and the Metropolitan Area Planning Council. Within 14 days of the receipt of a proposed change, the City Council shall submit it to the Planning Board. A public hearing shall be held by the Planning Board within 65 days after the proposed change is submitted to the Board.

Exhibit B

190 N.E.3d 1089

101 Mass.App.Ct. 1108
Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass.

App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale.

Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

Appeals Court of Massachusetts.

BELLINGHAM MASSACHUSETTS

SELF STORAGE, LLC, & others¹

v.

TOWN OF BELLINGHAM & others.²

21-P-870

I

Entered: June 9, 2022.

By the Court (Kinder, Sacks & D'Angelo, JJ.³)

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

*1 Defendant town of Bellingham (town) appeals from a Land Court judgment declaring, on cross motions for summary judgment, the town's 2019 zoning bylaw and zoning map amendment (collectively, zoning amendment) invalid because they were improperly adopted pursuant to G. L. c. 40A, § 5. Because the amendment was initiated by a town resident who was not statutorily authorized to initiate it, the zoning amendment was invalid. We therefore affirm.⁴

Background. We summarize the undisputed material facts. The town has adopted zoning bylaws dividing it into various districts. Two such districts are the suburban and industrial

districts. The plaintiff and interveners own property in the affected area, which had been in an industrial district prior to the zoning amendment.

In January 2019 the defendant, Arturo G. Paturzo, a resident of Bellingham, filed a petition to rezone the parcels owned by the plaintiff and interveners from industrial to suburban and to amend the town's zoning map to reflect the change. Paturzo did not own any of the parcels identified in the zoning amendment that would be affected by the proposed change. The town's planning department coordinator contacted Paturzo and advised him of the requisite steps needed prior to the public hearing. Paturzo submitted a signed statement identifying himself as the proponent of the amendment and confirming that he would comply with all the requirements and pay for all the associated costs.

On April 25, 2019, the planning board held a public meeting to discuss the proposed zoning amendment and unanimously voted to recommend it at the upcoming annual town meeting. There was no opposition to the zoning amendment and no owner of any of the affected properties spoke at, or even attended, the hearing. On May 22, 2019, at the annual town meeting, the town approved the zoning amendment.⁵

Discussion. Summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. See Community Nat'l Bank v. Dawes, 369 Mass. 550, 553 (1976). "We review a decision to grant summary judgment de novo." Boazova v. Safety Ins. Co., 462 Mass. 346, 350 (2012). On cross motions for summary judgment, we view "the evidence ... in the light most favorable to the party against whom judgment is to enter" (quotation omitted). Eaton v. Federal Nat'l Mtge. Ass'n, 93 Mass. App. Ct. 216, 218 (2018).

*2 This case presents a question of statutory interpretation, which we likewise review de novo. Water Dep't of Fairhaven v. Department of Env'tl. Protection, 455 Mass. 740, 744 (2010). "Where the words are 'plain and unambiguous' in their meaning, we view them as 'conclusive as to legislative intent.'" Id., quoting Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 839 (1986).

General Laws c. 40A, § 5, sets forth the statutory process by which the town may adopt or amend its zoning bylaw and zoning map and provides, in relevant part, as follows (emphasis added):

“Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the ... board of selectmen of a proposed zoning ordinance or by-law by a ... board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter.”

“[T]he legislature mandated a rule of strict compliance by the plain language, [Zoning] ordinances or by-laws may be adopted ... but only in the manner ... provided” (quotation omitted). Canton v. Bruno, 361 Mass. 598, 603 (1972). In interpreting similar language in a statutory predecessor to G. L. c. 40A, § 5, the Supreme Judicial Court recognized that “a court will consider ‘whether an asserted minor noncompliance in fact is significantly inconsistent with, or prejudicial to, the apparent legislative objectives of the prescribed procedures [for adopting zoning by-laws].’ ” Id. at 604, quoting Hallenborg v. Town Clerk of Billerica, 360 Mass. 513, 517 (1971).

But just as in Canton, where the court could not say “that there was no important legislative purpose in the statutory provision concerning the manner of selecting a special zoning board,” Canton, 361 Mass. at 604, here we cannot reasonably say there is no important legislative purpose served by the statutory language governing the manner in which zoning amendments can be initiated. By incorporating the requirements of G. L. c. 39, § 10, G. L. c. 40A, § 5, effectively requires, in most instances, ten registered voters

to initiate an amendment. The purpose of this provision may be to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board. Cf. Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 556 (2012) (requirement that candidates for office file nomination papers signed by specified number of registered voters ensures that such candidates have “some modicum of support” before their names may be printed on ballot [quotation omitted]). In any event, permitting a single citizen with no property interest in the affected district to initiate a zoning amendment would be contrary to the clear language of the statute. Cf. Capezzuto v. State Ballot Law Comm'n, 407 Mass. 949, 954-956 (1990) (where only nine valid signatures appeared on petition for proposed state law, rather than required ten, proposal could not proceed); Putnam v. Bessom, 291 Mass. 217, 220 (1935) (petition with fewer than requisite 200 signatures of registered voters could not be basis for calling town meeting).⁶

*3 General Laws c. 40A, § 5, is explicit regarding who may initiate a zoning amendment. Here, although the planning board expressed support for the zoning amendment, the amendment was initiated by Paturzo.⁷ Because Paturzo did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual. Accordingly, we discern no error in the judge's decision.

Judgment affirmed.

All Citations

101 Mass.App.Ct. 1108, 190 N.E.3d 1089 (Table), 2022 WL 2069244

Footnotes

- 1 Interveners Paul D. Doherty, as trustee of D&D Realty Trust, and J. Day Enterprises, LLC.
- 2 Arturo G. Paturzo. The plaintiff also identified Shirley A. French, as trustee of Gray Wall Realty Trust; Maple Tree Properties, LLC; and Bernon Land Trust, LLC, as “parties-in-interest.” Neither Paturzo nor the “parties-in-interest” participated in this appeal.
- 3 The panelists are listed in order of seniority.
- 4 Neither the town, interveners, nor other parties in interest appealed from so much of the judgment as declared that the zoning amendment was not invalid because of any failure of notice pursuant to the statute or the town's procedural rules. Accordingly, we express no view upon those questions.
- 5 In their briefing the appellees reference a subsequent town meeting held on November 17, 2021, attach documents related to that meeting, and argue that we should take judicial notice as support for their arguments. The town moved to

strike those portions of the appellees' brief and addendum. Because we are "limited to what is contained in the record of proceedings below," [Police Comm'r of Boston v. Robinson](#), 47 Mass. App. Ct. 767, 770 (1999), we allow the town's motion and decline to consider any reference or materials related to the 2021 Fall Special Town Meeting in reaching our decision.

- 6 The town's reliance on [Hickey v. Zoning Bd. of Appeals of Dennis](#), 93 Mass. App. Ct. 390 (2018), is misplaced. That decision announced no general principle that strict compliance with zoning laws is not required. Its recognition that actual notice may sometimes suffice even where formal notice has not been given in no way suggests that a single registered voter may exercise the power that [G. L. c. 40A, § 5](#), reserves for ten such voters.
- 7 The uncontested record shows that Paturzo prepared and delivered the petition for rezoning to the town; that the planning board contacted Paturzo to advise him of the steps he needed to take in preparation for the public hearing related to the amendment; and that the planning board identified Paturzo as the amendment's "petitioner" on the town meeting warrant, and again on the form provided to the Attorney General's office in connection with a statutorily required request for approval of the amendment.

End of Document

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Exhibit C

Megan B. Bayer
Acting City Solicitor

Elliott J. Veloso
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai
Sean M. McKendry
Diane O. Pires
Kate M. Kleimola
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carillo-Rhoads

Public Records Access Officer
Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

October 16, 2023

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Response to Awaiting Report No. 23-23 re: legal opinion which clarifies the state law on zoning petition signature requirements to ensure clarity and lawful deliberation in the future

Dear Mr. Huang:

I am writing in response to Awaiting Report No. 23-23 which requests a legal opinion which clarifies the state law on petition signature requirements to ensure clarity and lawful deliberation in the future (the "Council Order"). This Council Order arose out of a resident zoning petition filed by Douglas Brown, a property owner, on January 4, 2023 (the "Brown Petition"). The Brown Petition was filed by an individual property owner but was citywide in scope, and would have affected multiple zoning districts and almost every residential parcel in the City. On February 13, 2023, the Law Department issued an opinion to the Council that stated that:

"[i]t appears that Mr. Brown is a trustee for a trust that owns 35 Standish Street, which is in a Residence B Zoning District. However, the amendments are not limited to affecting Mr. Brown's property or the district in which his property is located. A single citizen cannot initiate a zoning amendment that would affect a zoning district in which the single citizen has no property interest. Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass. App. Ct. 1108 (2022) (unreported). Accordingly, the Brown Petition cannot be initiated by an individual landowner. It may be permissible as a zoning petition filed by ten registered voters, but that was not the case here."

Therefore, the Law Department opined that the City Council should rescind the vote to refer that petition to the Planning Board and Ordinance Committee because the vote was defective as a matter of law.

The Council Order states that “[d]iscussion in the City Council over the [February 13, 2023] legal opinion resulted in confusion about the legal right of a single individual property owner to file zoning petitions which may come up for future petitions” and therefore requested this opinion. Specifically, the Council Order requests clarification concerning the applicability of Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass.App.Ct. 1108 (2022) to the facts presented by the filing of the Brown Petition. The Council Order also cites to and links to Land Court decision, which is a 1992 case from the Town of Shrewsbury, Davolio v. Town of Shrewsbury, 1992 WL 12151913 (Land Ct. 1992). The Council Order states that case “appears to confirm and affirm the right of a single individual property owner affected by the decision to file a zoning petition.”

As discussed below, our opinion that an individual landowner cannot initiate a zoning amendment that would affect a zoning district in which the individual landowner has no property interest has not changed and is in keeping with state law. The law allows an individual landowner the ability to initiate a zoning petition that would affect that landowner’s property, but requires ten registered voters to initiate the process to make zoning changes to other zoning districts or other specific properties. The intent is that an individual landowner can have a role in shaping the zoning that applies to their property, but there needs to be the support of at least ten community members to initiate changes to the zoning applicable elsewhere in the city. The cases cited in the Council Order either support this standard or are distinguishable.

As stated in the February 13, 2023 Council Order response, Mr. Brown is a trustee for a trust that owns a property located in a Residence B Zoning District. The proposed Brown Petition would have affected all Residence A-1, A-2 and B Districts. As such, the proposed Brown Petition was not limited to the Residence B Zoning District. In Bellingham, the Appeals Court found that the zoning petition at issue in the case was not proper because the petitioner did not own any of the parcels included in the zoning amendment.¹ The Bellingham case holds that “permitting a single citizen with no property interest in the affected district to initiate a zoning amendment would be contrary to the clear language of the statute.” Thus, while Mr. Brown may be able to bring a zoning petition that affects only the Residence B Zoning District, he cannot bring a petition that would also affect Residence A-1 and A-2 Zoning Districts. The Brown Petition was therefore invalid under state law.

Likewise, the Davolio case is distinguishable from the Brown Petition because the petitioner in Davolio owned property in the zoning district that was the subject of the rezoning. In

¹ The Council Order cites to Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham by linking to the Land Court decision in that case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)). However, the Land Court decision cited was appealed to the Appeals Court. Where a case has been appealed, and an appellate level decision has been issued, the appellate level decision is controlling in the case. While a court can look at a trial court decision as persuasive authority, it is not precedent. Notwithstanding, the Land Court decision in the Bellingham case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)) found that “as a matter of law, strict compliance with G.L. c. 40A, §5, first para., is required, that strict compliance did not occur here [because the petitioner did not own land in the districts that would be affected by the proposed change], and that the failure to comply was ‘significantly inconsistent with, or prejudicial to, the apparent legislative objectives of the prescribed procedures.’” Therefore, the Land Court decision also found that there was a requirement that a petitioner own land in the affected district.

the Davolio case, the defendants Spag's Supply Inc. and C.J. & S., Inc., the real estate holding company for Spag's, owned a number of parcels in the Town of Shrewsbury. By virtue of several town meeting votes, the defendants acquired from the town an additional parcel in the town's commercial-business zoning district, rezoned another parcel to be in the commercial-business zoning district, and altered the provisions of what was allowed in the commercial-business zoning district. The Land Court found that the defendants "are affected by Article 11 and apparently also by Article 12 [the two town meeting warrant articles that sought to alter the provisions of what was allowed in the commercial-business zoning district], although its relation to the Spag's proposal was not made clear." Accordingly, the Land Court found that the defendants owned land to be affected by the zoning change, although the Land Court did not specify if that was by virtue of Spag's Supply Inc. and C.J. & S., Inc. acquiring the parcel in the commercial-business zoning district from the town, rezoning another parcel that it owned to be in the commercial-business zoning district, or by owning other property that was in the commercial-business zoning district. In any event, the Land Court found that Spag's Supply Inc. and C.J. & S., Inc. had an ownership interest in a property in the commercial-business district and therefore could properly file a zoning petition to amend the commercial-business district.

The two cases cited above stand for the proposition that, pursuant to G.L. c. 40A, §5, an individual property owner cannot initiate a zoning amendment that would affect a zoning district in which the individual property owner has no property interest. As such, the Brown Petition was not permissible because it affected Residence A-1, A-2 and B zoning districts, and Mr. Brown is only an owner of land in a Residence B Zoning District. In the future, the City Council can accept resident initiated zoning petitions from an individual property owner owning land in the district that would be affected by the proposed zoning change, or by ten registered voters in the City. A citywide petition affecting multiple zoning districts would require ten registered voters to submit the petition, unless an individual property owner owned property in all affected districts.

Very truly yours,



Megan B. Bayer
Acting City Solicitor

LURIE FRIEDMAN LLP

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HARLEY C. RACER

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November 8, 2023

By Email and U.S. Mail

Sean N. Fay, Chair
Marlborough Planning Board
135 Neil Street
2nd Floor
Marlborough, MA 01752

Michael H. Ossing, President
Marlborough City Council
140 Main Street
2nd Floor
Marlborough, MA 01752

Re: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22
"Retirement Community Overlay Districts" and the Public Hearing on
November 13, 2023

Dear Mr. Fay and Mr. Ossing:

This firm represents Hillside School ("Hillside") at 404 Robin Hill St., Marlborough in relation to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 'Retirement Community Overlay Districts' to include Map 39, Parcels 5 and 26B on Robin Hill Street ("Zoning Amendment"). We write to express our serious concerns with the Zoning Amendment and to bring to the attention of the Planning Board and the City Council procedural defects which would render it a nullity as well as the citywide implications that this major rewrite of Marlborough's Ordinances would have. The Planning Board and the City Council must remove the Zoning Amendment from their respective agendas unless and until the legal defect – initiation by a nonlandowning corporate entity – is cured. Short of that, any public hearing on the Zoning Amendment must be continued in order for the citizens of Marlborough and all relevant Boards, Committees and Departments to review the major changes to the City's laws being requested and to determine if these changes are in the best interests of the City of Marlborough and its citizens.

- 1. The Zoning Amendment is legally defective because it was initiated by a non-landowner corporate entity in violation of state and local law.**

The Zoning Amendment is legally defective because it was initiated by non-landowner, Pulte Homes of New England LLC ("Pulte"), the prospective buyer of the parcels targeted for

LURIE FRIEDMAN LLP

Sean N. Fay
 Michael H. Ossing
 November 8, 2023
 Page 2

the Retirement Overlay District. See Brian Falk letter dated September 7, 2023, attached as **Exhibit 1**. Mr. Falk states that he represents Pulte, the prospective buyer, not the landowner. The governing statute is clear:

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, **by an individual owning land to be affected by change or adoption**, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter.

M.G.L. c. 40A, §5 (emphasis added). Marlborough Ordinance § 650-60 tracks the statute: “This chapter may be amended from time to time at a City Council meeting. **An amendment may be initiated by the submission to the City Council** of a proposed change by . . . **an individual owning land in the City to be affected by the amendment**, 10 registered voters in the City, the Planning Board and the Metropolitan Area Planning Council.” (emphasis added).

Pulte does not own the land in the City to be affected. Mr. Falk’s Letter references a “letter of authorization” to claim that “the owner of this land requests” the Zoning Amendment. However, the letter of authorization does not authorize Mr. Falk to request the Zoning Amendment on behalf of the landowner. Rather, the landowner, Denali Belle, LLC, “authorizes Mirick O’Connell, **on behalf of Pulte Homes of New England, LLC**, to submit” the Zoning Amendment, not on behalf of the current landowner. See Letter of Authorization, attached as **Exhibit 2** (emphasis added).

If there were any doubt as to who the proponent is, that doubt was removed at the City Council’s hearing on October 23, 2023 where Mr. Falk stated that he was appearing “on behalf of Pulte Homes of New England” and then in response to a question from a Councilor on potential uses of the site, Mr. Falk repeated that he is “representing Pulte, a potential buyer of this site” and he “can’t speak to the current owner and what other options they may have” but that “the property is certainly for sale”. See video of October 23, 2023 City Council hearing, at timestamps 0:11:04 and 1:15:50, <https://play.champds.com/marlboroughma/event/690>. Pulte Vice-President, Mark Mastroianni, then made clear that the Pulte’s acquisition is conditional, saying that if Pulte cannot build this proposed project, the seller may take other options, and “it wouldn’t be Pulte Homes developing”. Id. at timestamp 1:25:30

Because Pulte is not the landowner, it is a violation of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60 for the Planning Board and the City Council to even consider the Zoning Amendment, much less act upon it. Indeed, any action on the Zoning Amendment would be invalid. See Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101

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Sean N. Fay
Michael H. Ossing
November 8, 2023
Page 3

Mass. App. Ct. 1108 (2022) (because the proponent “did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual” and the amendment was invalid). Moreover, because the current landowner is not an “individual” but a corporate entity, Denali Belle, LLC, this Zoning Amendment could only be initiated through the provision in the statute and the Ordinance which provides that ten registered voters of Marlborough can initiate such a change, because the purpose of this provision is “to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board.” Id. (emphasis in original).

Accordingly, the Zoning Amendment is not properly before the Planning Board or the City Council and must be removed from the November 13, 2023 Agenda.

2. The Zoning Amendment is a complete re-write of Marlborough’s Ordinance by a developer, not based on any study, survey or City need.

If the Planning Board and/or the City Council make the ill-advised decision to consider the Zoning Amendment despite the fatal legal defects, it must continue any hearing and delay any action on the Zoning Amendment to provide time for the citizens of Marlborough and the various City Boards, Committees and Departments to review, digest and comment on the major changes proposed.

The Zoning Amendment’s changes would have long-lasting and far-reaching implications for the entire City. To be clear, Pulte is not simply requesting a special permit or a variance or approval for a project. Pulte is asking the City for a entire revision of the City’s laws. The Zoning Amendment would cause drastic changes to the number, size, scope and location of retirement communities throughout Marlborough. These changes would apply to the entire City, not just to Robin Hill Street. Just some of the proposed changes if the Zoning Amendment passed are as follows:

- Retirement Community developments could be large scale combinations – a mix of townhouses, multifamily apartments and various amenities – throughout the entire City. Currently, the only permissible new retirement community developments that can be added to the Zoning Map are townhouse neighborhoods.
- Multifamily developments and mixed detached/multifamily developments could be located in any Limited Industrial (“LI”) District or Industrial (“I”) District whereas now the only location for a multifamily development is the one already existing near the Fitchburg Street intersection with Route 85/290 Connector Road. This would allow massive developments – mini-cities – including multiple four-story apartment buildings, dozens of town homes, four story clubhouses any number of amenities, which could include a pharmacy, chapel, theater, library,

LURIE FRIEDMAN LLP

Sean N. Fay
 Michael H. Ossing
 November 8, 2023
 Page 4

gift shop, convenience store, beauty salon, barbershop, banking services, offices, third-party vendor services and recreation facilities in any LI or I district in the City. See Exhibit 3 comparing the current permissible location of a Retirement Community Overlay – Multifamily to the area that would be permissible under the Zoning Amendment.

- Multifamily developments and mixed detached/multifamily developments could be constructed within 100 feet of any non-municipal road, i.e. interstates and state highways. Currently, multifamily developments are prohibited within 100 feet of all public roads.
- Multifamily buildings could be four stories high with no limit on total building height. Currently, the multifamily buildings are limited to three stories and subject to other height limitations.
- It would also increase the number of units per acre permissible in a retirement community and increase the total area per multifamily unit in a retirement community.
- It would improperly empower the City Council to make changes to the Zoning Map Overlay, add any conditions and allow any variances for retirement community development – all powers that the City Council does not currently hold.

These significant changes should not be considered when not initiated by the proper bodies and in response to actual City need. There has been no study, no survey and no expert report by any City body or agent to suggest that these changes are in any way warranted, desirable, necessary or even beneficial to the City and its citizens. In fact, it is clear that these changes would be bad for the City. The City's laws cannot be written ad-hoc by national developers for their own pet project and for their own benefit with no consideration for the effect on the City.¹

3. The Zoning Amendment is bad for the Robin Hill Street Community.

The Zoning Amendment would clear more than 28 acres of currently undeveloped wooded land to be converted to a massive complex of over 60 buildings, including a clubhouse

¹ While the effect would be widespread, the open recognition that the singular objective of the Zoning Amendment is to benefit Pulte, the potential buyer, confirms that this is illegal "spot zoning". Spot zoning occurs "where one lot or a small area has been singled out for treatment less onerous than that imposed upon nearby, indistinguishable properties." W.R. Grace & Co.-Conn. v. City Council of Cambridge, 56 Mass. App. Ct. 559, 569 (Mass. App. Ct. 2002) ("It is unlawful to invoke the zoning power solely to confer an economic benefit (or impose an economic detriment) upon the owner of a comparatively small area within a zoning district when the remaining parcels of that district are treated differently").

LURIE FRIEDMAN LLP

Sean N. Fay
Michael H. Ossing
November 8, 2023
Page 5

and an unknown number of amenities, wedged between the narrow road of Robin Hill Street and I-290 – a development which is not permissible under the current zoning ordinances.

This would have a significant impact on the community and would be, in effect, a mini-city on Robin Hill St., including multiple four story apartment buildings, dozens of town homes, a four story clubhouse any number of amenities, which could include a pharmacy, chapel, theater, library, gift shop, convenience store, beauty salon, barbershop, banking services, offices, third-party vendor services and recreation facilities. This would be a major increase in congestion, development and traffic on this small street, a significant loss of trees and open space and is completely out of character with the current area. Hillside School and surrounding neighbors are strongly opposed to this drastic change, which is out of character for the area.

There has been no traffic or safety study to determine if the narrow Robin Hill Street could even support such a massive development. The Planning Board and City Council should not permit such a drastic change in this area before it has conducted careful review and study of its impact.

4. Wetland impacts of the Zoning Amendment should be understood and considered first.

At the City Council's hearing on October 23, 2023, Pulte conceded that the development plans presented were in the early stages and that any potential development would change for a variety of reasons, including, notably the presence of wetland resources on site. The wetland resources on the site have not been fully identified or analyzed but a preliminary review of MassGIS data identifies wetland resources on several areas of the parcel, including in an area currently designed for an access road to the easternmost part of the development.

Additionally, the development is designed for an area near and in the vicinity of the Millham Reservoir and the North Branch Brook – areas owned by the City for drinking water purposes. In fact, immediately across the street and on the south side of Robin Hill Road are signs noting that this land is owned and managed by the City for water protection purposes.

The proposed project would remove acres of forest and replace it with as yet an undetermined amount of impervious surface – a major contributor to stormwater pollution and across the street from lands set aside for water resource protection.

Before proceeding with such a dramatic change, particularly since Pulte's acquisition of the site is contingent on its plans, there should be an opportunity to consider the possible impacts of this project, and especially in light of important community goals, including watershed protection.

LURIE FRIEDMAN LLP

Sean N. Fay
Michael H. Ossing
November 8, 2023
Page 6

5. **The Zoning Amendment would need a two-thirds majority at City Council to pass.**

Finally, Mr. Falk claims that this Zoning Amendment would require only a simple majority to pass City Council rather than a two-thirds majority. See Ex. 1. This is incorrect. Pursuant to M.G.L. c. 40A, §5, all zoning amendments require a two-thirds vote with limited exceptions. Mr. Falk relies on exception subsection (2)(a) that provides allows a simple majority for “an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location”. First of all, the Zoning Amendment would do more than amend the ordinance to allow a special permit for multi-family uses, i.e. changing the Zoning Map to add two parcels to the Retirement Community Overlay District, empower the City Council to make further changes to the Overlay District Zoning Map, and change the size and number of units permissible in the Retirement Community developments.

But the assertion that the simple majority exception is effective because the subject parcels on Robin Hill Street are in an “eligible location” is misleading. “Eligible location” is defined in M.G.L. c. 40A, § 1A as:

areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.

The parcels are not in an area of concentrated development nor do they meet any of the other criteria. The area is bounded by I-290 to the north - without any access to I-290; to the west by Hillside School’s large undeveloped, wooded property; to the south by the narrow Robin Hill Street and to the west by a river. It stretches to credulity to suggest that it is “close to Donald Lynch Boulevard” and developments near it. Furthermore, the Zoning Amendment, as discussed, is not limited to the parcels at Robin Hill Street, but would be citywide. The entire City is certainly not an “eligible location”. Accordingly, if the City Council ever votes on the Zoning Amendment, it would require a two-thirds vote. If there is any uncertainty the Planning Board and/or City Council should request an advisory opinion on whether the citywide Zoning Amendment qualifies as an eligible location from the Office of Economic Development at <https://www.mass.gov/forms/request-an-advisory-opinion-on-ch40a-eligible-locations>.

Please circulate this letter amongst all members of the Planning Board and the City Council in advance of the hearing scheduled for October 23, 2023. Please also confirm that Zoning Amendment will be removed from the Agenda by close of business October 23, 2023. If the matter is not pulled before the Planning Board hearing, I intend to appear at the hearing alongside my client to speak in opposition to the Zoning Amendment.

LURIE FRIEDMAN LLP

Sean N. Fay
Michael H. Ossing
November 8, 2023
Page 7

Very truly yours,

/s/Harley C. Racer
Harley C. Racer

cc: Jason Grossfield, Esq., City Solicitor
Jeremy McManus, Asst. City Solicitor
Traffic Commission
Conservation Commission

EXHIBIT 1

10

MIRICK O'CONNELL RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
ATTORNEYS AT LAW 2023 SEP -7 AM 11:21

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

September 7, 2023

BY HAND DELIVERY

Councilor Michael Ossing, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: Proposed Zoning Amendment: Retirement Community Overlay District

Dear Councilor Ossing:

I represent Pulte Homes of New England LLC, the prospective buyer of approximately 28 acres of land off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B, located in the Limited Industrial Zoning District.

As noted in the enclosed letter of authorization, the owner of this land requests, in accordance with M.G.L. c. 40A, Sec. 5, that the City Council consider amending the Marlborough Zoning Map so that the Retirement Community Overlay District is superimposed over this land, and consider amending the Retirement Community Overlay District to accommodate an over 55 community combining both townhouse and multifamily components, for a new condominium ownership neighborhood.

Pulte is excited about the opportunity to bring a unique over 55 community to Marlborough on land that, while zoned Limited Industrial, would be better utilized as a low-impact residential neighborhood. This new neighborhood would provide opportunities for residents to downsize in Marlborough yet continue to be homeowners, enjoying convenient access to Donald Lynch Boulevard, Route 290, and Route 495.

If this zoning amendment is approved by the City Council, Pulte would then seek a special permit from the City Council to authorize the use and site plan approval from the Site Plan Review Committee to address site design details.

Based upon recent amendments to M.G.L. c. 40A, Sec. 5, we believe this zoning amendment may be approved by simple majority vote of the City Council rather than a two-thirds vote. Under M.G.L. c. 40A, Sec. 5, the following zoning amendments may be approved by simple majority vote:

(Client Matter 20298/00001/A8441702.DOCX)

MIRICK, O'CONNELL, DEMALLIE & LONGER, LLP
WORCESTER | WESTBOROUGH | BOSTON
www.mirickoconnell.com

MIRICK O'CONNELL

Marlborough City Council
September 7, 2023
Page 2

“an amendment to a zoning ordinance ... to allow by special permit: (a) multi-family housing ... in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family ... development pursuant to section 9;”

The term “eligible location” is defined in M.G.L. c. 40A, Sec. 1A as:

“areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.”

The proposed zoning amendment would allow, by special permit, multifamily housing on land close to Donald Lynch Boulevard, which is an area of concentrated development, and located in close proximity to Route 290 and Route 495. Further, the proposed zoning amendment would allow, by special permit, an increase in the permissible density of population or intensity of multifamily uses in the Retirement Community Overlay District. Therefore, we believe the zoning amendment qualifies for a reduced quantum of vote under M.G.L. c. 40A, Sec. 5.

Please refer this matter to the Planning Board and take the appropriate steps for review by the City Council.

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client

EXHIBIT 2

August 28, 2023

Councilor Michael Ossing, President
Marlborough City Council
City Hall
Marlborough, MA 01752

RE: Robin Hill Street Project

Dear Councilor Ossing:

Please be advised that the undersigned is the owner of parcels located off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B. The undersigned hereby authorizes Mirick O'Connell, on behalf of Pulte Homes of New England LLC, to submit to the City of Marlborough proposed zoning amendments and any land use applications necessary for Pulte Homes of New England LLC to seek approval for a retirement community at the property.

Thank you for your time and attention to this matter.

Denali Belle LLC

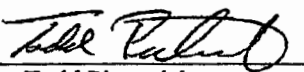
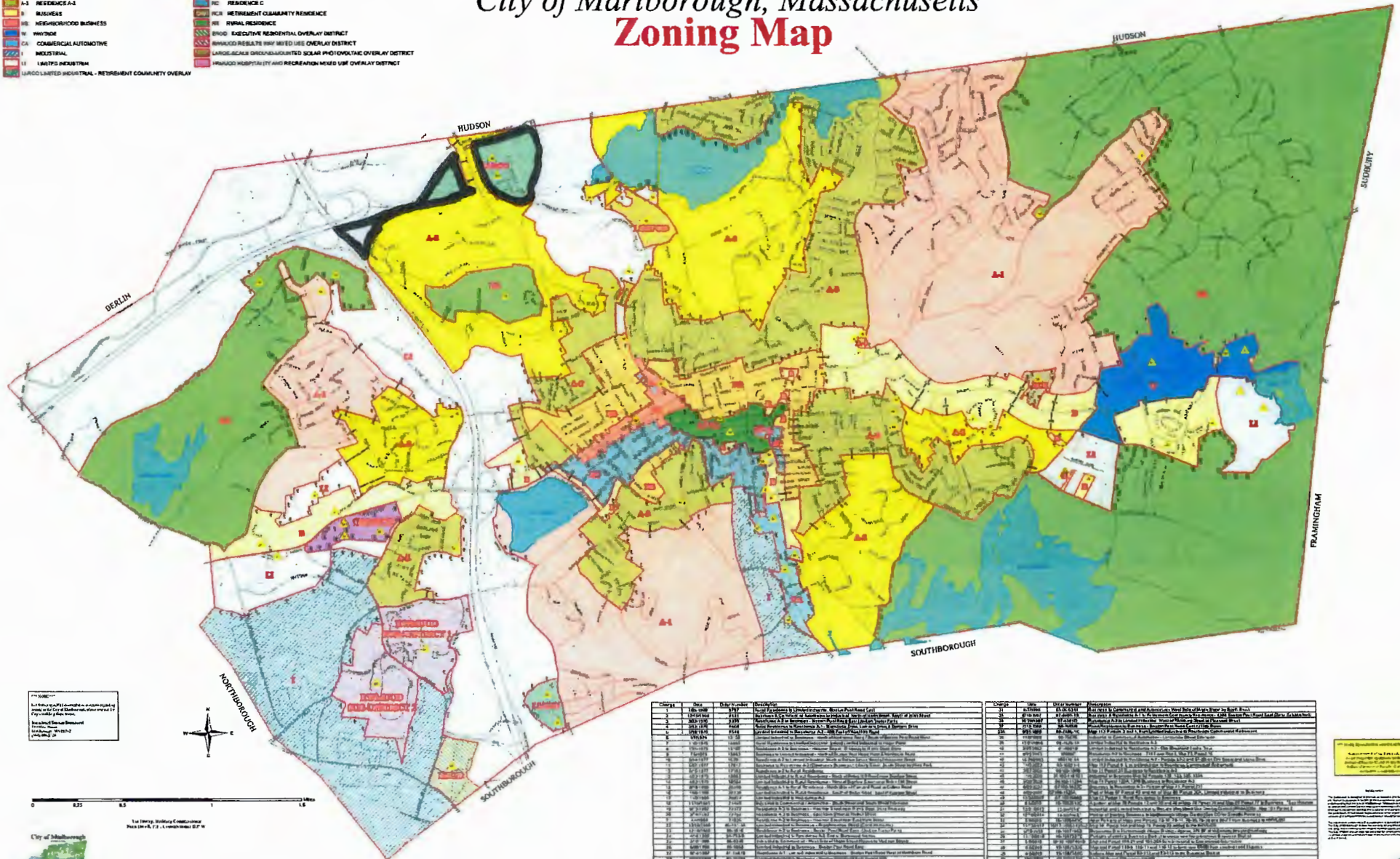
By: 
Name: Todd Pietrasiak
Title: Manager

EXHIBIT 3

12-32

[illegible]

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SALES PROMOTION is a type of marketing communication that encourages consumers to purchase a product or service. It is a short-term incentive designed to stimulate demand and increase sales. Common examples include discounts, coupons, rebates, and contests.

bio-ethics

The *bioethics* is designed to provide an historical perspective on the ethical issues that have arisen in the development of biotechnology. It is a journal of the American Society for Human Genetics, and is published by the American Society for Human Genetics, 11 Dupont Circle, N.W., Washington, D.C. 20036. The journal is published quarterly, and is available to members of the American Society for Human Genetics. The journal is published by the American Society for Human Genetics, 11 Dupont Circle, N.W., Washington, D.C. 20036. The journal is published quarterly, and is available to members of the American Society for Human Genetics.

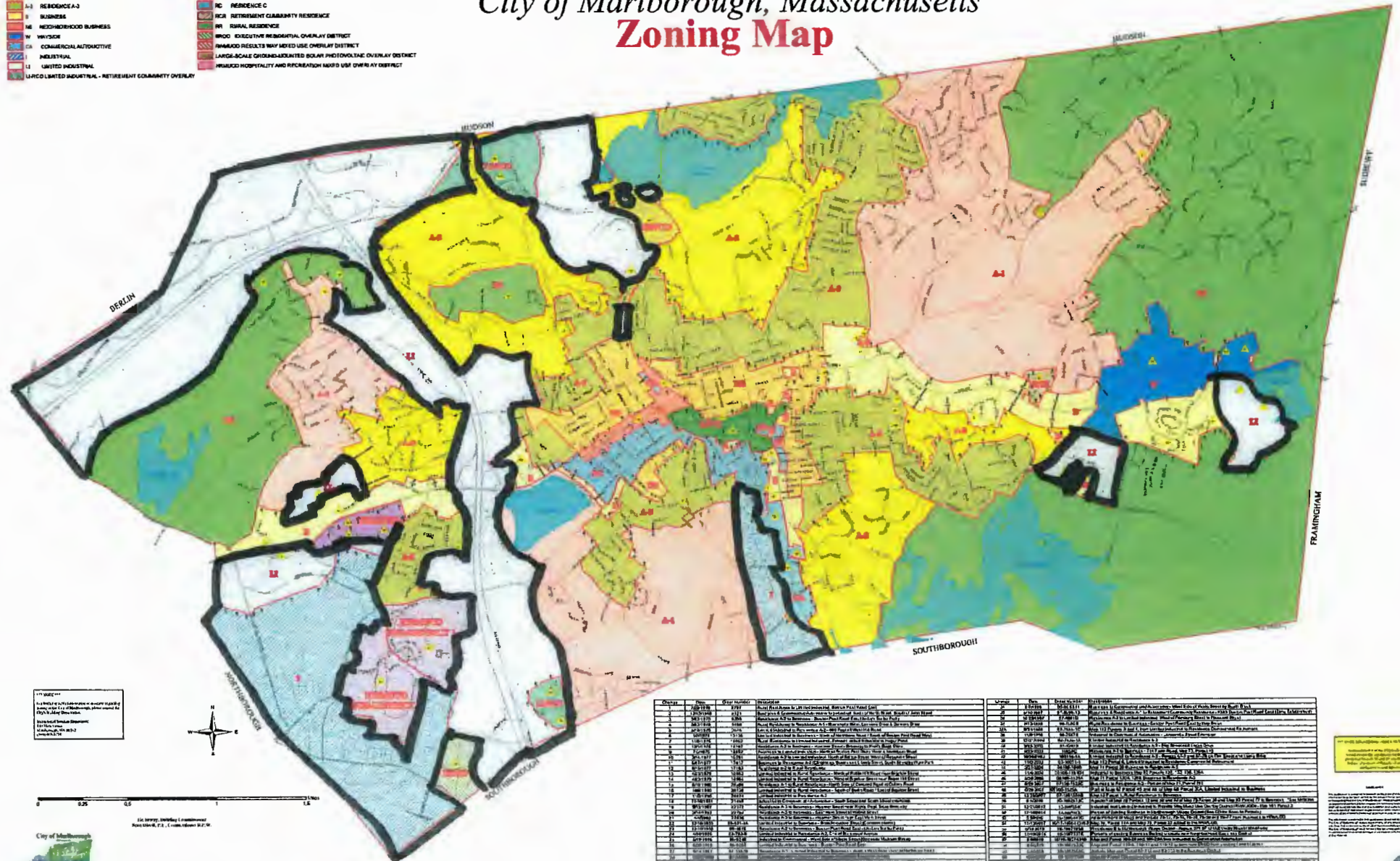


Zoning Amendment RLO-MF

12-33

City of Marlborough, Massachusetts Zoning Map

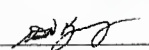
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- RESIDENCE A-2
- RESIDENCE A-3
- BUSINESS
- NEIGHBORHOOD BUSINESS
- W/ WORKSHOP
- COMMERCIAL/AUTOMOTIVE
- INDUSTRIAL
- LIMITED INDUSTRIAL
- LARGE LIMITED INDUSTRIAL - RETIREMENT COMMUNITY OVERLAY
- MA/ MARLBOROUGH VILLAGE DISTRICT
- RD RESIDENCE B
- RC RESIDENCE C
- RCR RETIREMENT COMMUNITY RESIDENCE
- RR RURAL RESIDENCE
- RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT
- RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT
- RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT
- RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT



Address	Area	Order Number	Description	Version	Date	Notes/Comments
1000 Main St	MA/	1000	MA/ MARLBOROUGH VILLAGE DISTRICT	1.0	12/33	MA/ MARLBOROUGH VILLAGE DISTRICT
1000 Main St	RD	1000	RD RESIDENCE B	1.0	12/33	RD RESIDENCE B
1000 Main St	RC	1000	RC RESIDENCE C	1.0	12/33	RC RESIDENCE C
1000 Main St	RCR	1000	RCR RETIREMENT COMMUNITY RESIDENCE	1.0	12/33	RCR RETIREMENT COMMUNITY RESIDENCE
1000 Main St	RR	1000	RR RURAL RESIDENCE	1.0	12/33	RR RURAL RESIDENCE
1000 Main St	RMOD	1000	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT	1.0	12/33	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT
1000 Main St	RLMOD	1000	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT	1.0	12/33	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT
1000 Main St	MA/	1000	MA/ MARLBOROUGH VILLAGE DISTRICT	1.0	12/33	MA/ MARLBOROUGH VILLAGE DISTRICT
1000 Main St	RD	1000	RD RESIDENCE B	1.0	12/33	RD RESIDENCE B
1000 Main St	RC	1000	RC RESIDENCE C	1.0	12/33	RC RESIDENCE C
1000 Main St	RCR	1000	RCR RETIREMENT COMMUNITY RESIDENCE	1.0	12/33	RCR RETIREMENT COMMUNITY RESIDENCE
1000 Main St	RR	1000	RR RURAL RESIDENCE	1.0	12/33	RR RURAL RESIDENCE
1000 Main St	RMOD	1000	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT	1.0	12/33	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT
1000 Main St	RLMOD	1000	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT	1.0	12/33	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT
1000 Main St	MA/	1000	MA/ MARLBOROUGH VILLAGE DISTRICT	1.0	12/33	MA/ MARLBOROUGH VILLAGE DISTRICT
1000 Main St	RD	1000	RD RESIDENCE B	1.0	12/33	RD RESIDENCE B
1000 Main St	RC	1000	RC RESIDENCE C	1.0	12/33	RC RESIDENCE C
1000 Main St	RCR	1000	RCR RETIREMENT COMMUNITY RESIDENCE	1.0	12/33	RCR RETIREMENT COMMUNITY RESIDENCE
1000 Main St	RR	1000	RR RURAL RESIDENCE	1.0	12/33	RR RURAL RESIDENCE
1000 Main St	RMOD	1000	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT	1.0	12/33	RMOD EDUCATIVE RECREATIONAL OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD RECREATION/MODIFIED USE OVERLAY DISTRICT
1000 Main St	RLMOD	1000	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT	1.0	12/33	RLMOD LARGE-SCALE CHURCH/ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT
1000 Main St	RMHMOD	1000	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT	1.0	12/33	RMHMOD HOSPITALITY AND RECREATION MODIFIED USE OVERLAY DISTRICT



Map Current as of September 1, 2023

Attest: 
Steven W. Korgan, City Clerk



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CITY OF MARLBOROUGH

2023 NOV 15 AM 9:07



Marlborough Public Schools

School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509

Call to Order

October 10, 2023

1. Chairman Vigeant called the regular meeting of the Marlborough School Committee to order at 7:30 p.m. at 17 Washington Street, Marlborough, MA. Members present included Michelle Bodin-Hettinger, Daniel Caruso, Earl Geary, Katherine Hennessy, Heidi Matthews, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Tom Lafleur. MEA Representative Elton Thomas and Student Advisory Representative Risha Khanderia were also present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Chairman Vigeant led the Pledge of Allegiance.

3. Presentation

A. MHS Advisory Committee

The sophomore class representative, Atul Modur, discussed the continuation of the accelerated math program into high school. Atul went into depth about the impact of this program, and senior class representative, Risha Khanderia, chimed in with her perspective as well.

The junior class representative, Katalina Cartes Guzman, brought up the need for a driver's education program at MHS. Katalina mentioned the various benefits this program for high school students.

The freshman class representative, Taylor Cronis, spoke about freshman orientation. She mentioned that only about 70 students attended this event. Taylor offered suggestions for strengthening the orientation moving forward.

The other freshmen class representative, Tayla Stempson, highlighted the various fall sports. She discussed some of the issues with Arbiter Live, the platform used for posting team schedules and competition results.

4. **Committee Discussion/Directives:** None.

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Marlborough Public Schools

School Committee
 District Education Center
 25 Union Street, Marlborough, MA 01752
 (508) 460-3509

5. Communications: None.

6. Superintendent's Report:

Superintendent Murphy shared the updated district enrollment data as of October 6, 2023, which is outlined in her report. The district does not have the capacity to add additional classrooms in the elementary schools, which have growing enrollment numbers.

Superintendent Murphy has included a draft of her goals for the committee's review and comments. These goals will be voted on at the following scheduled meeting.

A. Assistant Superintendent of Student Services & Equity Report

Mrs. O'Brien, the Assistant Superintendent of Student Services and Equity, outlined the October 1st MPS data report that will be shared to DESE. This data is included in her report. Mrs. O'Brien highlighted some key findings over the past four years.

7. Acceptance of Minutes:

A. Minutes of the September 26, 2023 School Committee Meeting

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve these minutes.

Motion passed 7-0-0.

8. Public Comment: None.

It should be noted that members of the public may provide comment via email before the meeting to superintendent@mps-edu.org. Public comment is a time for your comments to be heard by the committee; it is not a question-and-answer session.

9. Action Items/Reports

A. New England Innovation Academy

Mrs. Murphy shared that New England Innovation Academy is seeking to receive a letter of final approval for their school so they can be recognized by the MA DESE.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to accept New England Innovation Academy as a private school in Marlborough.

Motion passed 7-0-0.

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School Committee
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B. Acceptance of Donations and Gifts

Marie Esther Health Center. MPS received \$250.00 from the Marie Esther Health Center.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 7-0-0.

United Brethren of Free Masons. The Richer School Connections Program received \$300.00 from the United Brethren of Free Masons.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 7-0-0.

O'Connor Studios. Richer School received \$1,135.98 from O'Connor Studios.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 7-0-0.

10. Reports of School Committee Sub-Committees: None.

11. Members' Forum:

Mrs. Matthews has reviewed and signed the warrant.

12. Adjournment:

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to adjourn at 8:32 p.m.

Motion passed 7-0-0.

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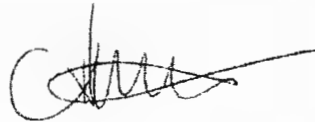
It is the policy of the Marlborough Public Schools not to discriminate on the basis of race, gender, religion, national origin, color, homelessness, sexual orientation, gender identity, age or disability in its education programs, services, activities or employment practices.



Marlborough Public Schools

School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
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Respectfully submitted,



Heidi Matthews
Secretary, Marlborough School Committee

HM/jm
Approved 11/14/2023

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2023 NOV 15 AM 9:07

Marlborough Public Schools

School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509

Call to Order

October 17, 2023

1. Michelle Bodin-Hettinger called the special meeting of the Marlborough School Committee to order at 6:15 p.m. at 17 Washington Street, Marlborough, MA. Members present included Michelle Bodin-Hettinger, Daniel Caruso, Earl Geary, Katherine Hennessy, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Tom Lafleur. Student Advisory Representative Risha Khanderia was also present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Ryan Sweeney, an Eagle Scout Candidate from Troop 41, led the Pledge of Allegiance.

3. Presentation

A. Welcome Akiruno visitors

Superintendent Murphy welcomed Heather Roach, the advisor for the Akiruno exchange program, along with all the individuals involved in this exchange program.

B. Akiruno trip

MPS student Christopher Smith spoke about his experience in the exchange program. The principal representing Akiruno spoke about his trip to Marlborough with his students. Multiple Akiruno city officials, the Vice President of the Akiruno International Youth Club, and a host family member spoke about this experience as well.

Ms. Roach played a compilation video that highlighted the eight Whitcomb students' recent trip to Akiruno. She then introduced the Whitcomb students and the Akiruno students that they are hosting.

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School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509

4. Adjournment:

Motion made by Mrs. Hennessy seconded by Mrs. Bodin-Hettinger to adjourn at 6:36 p.m.
Motion passed 5-0-0.

Respectfully submitted,

Heidi Matthews
Secretary, Marlborough School Committee

HM/jm

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2023 NOV 15 AM 9:07

Marlborough Public Schools

School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509

Call to Order

October 24, 2023

1. Michelle Bodin-Hettinger called the regular meeting of the Marlborough School Committee to order at 7:30 p.m. at 17 Washington Street, Marlborough, MA. Members present included Daniel Caruso, Earl Geary, Katherine Hennessy, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Tom Lafleur. MEA Representative Elton Thomas and Student Advisory Representative Risha Khanderia were also present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Michelle Bodin-Hettinger led the Pledge of Allegiance.
3. **Presentation:** None
4. **Committee Discussion/Directives:** None.
5. **Communications:** None.
6. **Superintendent's Report:**
Superintendent Murphy shared that she is requesting approval from the School Committee for her FY24 Superintendent Goals.
Superintendent Murphy thanked the Whitcomb School Akiruno Faculty Advisor Ms. Roach, Mrs. Barnum, and the chaperones that helped make the Akiruno student and chaperone visits a success.
The Superintendent mentioned that the Whitcomb School implemented Yondr Pouches last week. Students keep their phones on their person, but the pouch prevents them from using their devices throughout the school day.

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A. Assistant Superintendent of Teaching & Learning

Dr. Skaza, the Assistant Superintendent of Teaching and Learning, reported that as of this month, there are less Marlborough students being homeschooled than there was in the previous school year.

Dr. Skaza congratulated MHS students on their AP Scholar Awards. The full list of students and their respective awards are in his report.

B. Director of Finance & Operations Report

Mr. Lafleur, the Director of Finance and Operations, reported on the potential rise in special education private school tuition from the Operational Services Division at the State's Executive Office for Administration and Finance.

Mr. Lafleur stressed the importance and benefits of participation in MPS food services. The district aims for 75% of students to participate in school lunch.

Mr. Lafleur spoke about the bus transportation issues that remain in the city due to a lack of drivers. There continues to be delays and coverage needs for routes. MPS communicates daily with NRT at 6:00am to be able to communicate delays to families as early as possible. The HR department at MPS is helping NRT recruit drivers.

7. Acceptance of Minutes: None.

8. Public Comment: None.

It should be noted that members of the public may provide comment via email before the meeting to superintendent@mps-edu.org. Public comment is a time for your comments to be heard by the committee; it is not a question-and-answer session.

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9. Action Items/Reports

A. 2025 Music Festival

Mr. Rosenthal requested approval for the MHS Music Festival trip to Hershey Park, PA from May 2nd, 2025 through May 4th, 2025.

Motion made by Mrs. Hennessy, seconded by Mrs. Bodin-Hettinger to approve the 2025 Music Festival trip.

Motion passed 5-0-0.

B. FY24 Operating Budget Transfers

Mr. Lafleur outlined various budget transfers in the attached document.

Motion made by Mrs. Hennessy seconded by Mrs. Bodin-Hettinger to approve the operating budget transfers.

Motion passed 5-0-0.

C. FY24 Superintendent Goals

Superintendent Murphy shared her FY24 Superintendent goals.

Motion made by Mrs. Ryan, seconded by Mrs. Bodin-Hettinger to approve the FY24 Superintendent Goals as presented.

Motion passed 5-0-0.

D. Acceptance of Donations and Gifts

Shaw's Supermarket. Richer Elementary School received \$28.00 from Shaw's Supermarket.

Motion made by Mrs. Ryan, seconded by Mrs. Bodin-Hettinger to approve this donation.

Motion passed 5-0-0.

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10. Reports of School Committee Sub-Committees: None.

11. Members' Forum:

Mrs. Bodin-Hettinger, Superintendent Murphy, Mr. Thomas, and Risha Khanderia spoke about the Yondr Pouches.

Mr. Caruso discussed his experience at the MHS Reality Fair.

Mrs. Ryan highlighted the Horribles Parade on Thursday night and final regular season football game at MHS on Friday night.

12. Adjournment:

Motion made by Mrs. Hennessy, seconded by Mrs. Bodin-Hettinger to adjourn at 8:03 p.m.

Motion passed 5-0-0.

Respectfully submitted,

Heidi Matthews
 Secretary, Marlborough School Committee

HM/jm
 Approved 11/14/2023

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Approved November 16, 2023

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CITY OF MARLBOROUGH

2023 NOV 21 PM 2:09

Conservation Commission**Minutes****November 2, 2023 - 7:00 PM****140 Main St. – Marlborough City Hall – 3rd Floor (Memorial Hall)**

Members Present: Edward Clancy-Chairman, Allan White, William Dunbar, John Skarin, Karin Paquin, Dennis Demers, Dave Williams; Priscilla Ryder-Conservation officer was also present.

Members Absent: None

The hearing was recorded using Microsoft Teams

Approval of Minutes: The minutes of October 19, 2023, were reviewed and on a motion by Mr. White and second by Mr. Clancy, the Commission voted unanimously to approved 7-0.

Public hearings**Request for Determination of Applicability**

- Request for Determination of Applicability
28 Littlefield Ln. – LeAnn Neal Reilly, homeowner
Install whole-house natural-gas generator near wetlands. Ms. Ryder presented the plans and explained that this is the same property that installed a pool and implemented Buffer Zone restoration. Ms. Reilly explained that she wants to put the generator against the house. Although it is in the Buffer Zone it is already in a used area. Ms. Ryder says she has no concerns with this proposal. Construction will involve the construction of a 2'x4' pad. Mr. Dunbar asked where the excess soil was going to be placed. Ms. Reilly did not know but it was agreed that it could be used in her garden, just not dumped into the wetland. The gas meter is near the generator. A motion was made by Mr. Skarin, Seconded by Mr. White for a Negative Determination. The motion was approved 7-0 to issue.
- Request for Determination of Applicability – Continued from October 19th meeting.
846-850 Boston Post Rd. – David Cowell, of Hancock Associates.
Proposal to remove trees behind building near wetlands. Mr. Cowell presented a new planting plan which added 5 flowering dogwood and 7 box elders for the 7 large trees they propose to remove. Additional screening from the road has already been determined to be vinyl screening fence when in front of the planning board. Ms. Ryder pointed out that City Council & Site Plan may require roadside planting. Mr. Clancy expressed concern that the proposed trees are small even in maturity when the trees taken down are so large. The stumps will be ground but the roots will not be removed helping with stabilization. In addition, a native seed mix will be planted for additional ground cover. The Commission discussed the tree variety and number and required in the end that a new planting plan shall include: 8 Dogwoods, 10 Chokeberry, 10 Mountain Laurel, 10 Boxelders and 10 Service Berry, along with the native seed mix for ground cover. It was agreed that the 7 mature Trees can be removed now so long as planting is done by May 1, 2024, as planting season has passed. A motion was made by Mr. White, seconded by Mr. Clancy for a Negative Determination with Conditions as noted. The motion was approved 7-0.

Approved November 16, 2023

Notice of Intent

- 110-116 Boston Post Rd. – Michael Beyranevand – Continued from October 19th meeting. Proposes to replace existing failing retaining wall supporting a parking lot and repave the parking lot. Work near wetlands. Continued to November 16th while waiting for comments from City Engineer.

Abbreviated Notice of Resource Area Delineation

- Sasseville Way – Sharon Sullivan
Review & Verify Wetland Resource areas delineated on the property. Ms. Ryder explained that Andrea Kendell of LEC Inc. flagged the wetland but was not able to attend tonight. She did provide dates she is available for a site visit. Chairman Clancy noted that the hearing was opened however no testimony was heard, the purpose of this hearing was to schedule a site walk. Ms. Ryder explained that she has already walked the site with the delineator and that there is some drainage via an abandoned road that needs to be examined as well as some land that does remain fairly wet but not big enough to be recognized as a wetland. The site visit was scheduled for Monday, November 13th at 9:00am.

Certificate of Compliance

- DEP 212-1252 Certificate of Compliance – 309 Stevens St.
Ms. Ryder attended a site visit in which she determined that all looks good. Metal signs delineating the 30-foot buffer were installed and look good. Mr. Clancy asked if any plans to continue constructing another lot are being considered and Ms. Ryder noted that the way the lots are divided and the wetland proximity, no additional lots off Stevens St. can fit. A motion was made by Mr. Skarin, seconded by Mr. White to issue a full Certificate of Compliance. The motion was approved 7-0.
- DEP 212-1249 Certificate of Compliance – 630 & 686 Forest St.
David Cowell of Hancock Associates explained that this was the location where a culvert failure occurred, and an enforcement order was issued. The site is now stable and disturbed area now has vegetative cover. The restoration area has been monitored for over a year and doing well. Photos were shown from just after the planting was done and photos from now showing the vast improvements. Recent issues with Purple Loosestrife which they did remove but will likely still return. Mr. Williams asked about a potential hole he noticed during his site visit. As Mr. Cowell wasn't familiar with it, Mr. Williams said he could mark it the following day. Mr. Dunbar also asked about the silt/ sludge that was sent downstream and if that was ever examined. Mr. Cowell said this was taken care of quite a while ago and it was cleaned up out of the stream, Ms. Ryder and Ms. Paquin confirmed they had inspected this cleanup. The pond downstream was inspected and was determined to be cleaned due to a wall operating as a sediment trap. Karin Paquin also brought up the wetland restoration and after reviewing photos the restoration has been shown to be progressing well. A motion was made by Mr. Skarin, seconded by Mr. Clancy to issue a full Certificate of Compliance. The motion passed 7-0 to issue.

Discussion

- 541 Pleasant St. – Violation Update. David Cowell presented his response to the Enforcement Order he was hired to help remediate. A wetland delineation was done as well as a survey of the

Approved November 16, 2023

affected 35' no disturb zone. A map displaying the area of alteration displayed a dark green area which is what work was done in the 35' no disturb zone which will be restored, and areas in red which are out of jurisdiction and will be left alone. It was explained that Mr. Cowell's client took down the trees due to their proximity to the house and damage they were causing. He took far more trees in order to install a pool in the future. Mr. Cowell proposed that the green area is restored with trees, and the red area be restored with shrubs. He also speculated as to whether an NOI would be needed to move forward. Mr. Clancy said that the proposed area for the pool is very wet, he does not think a pool could be installed at that location. The cut trees were primarily Red Maple and White Pine. Ms. Ryder pointed out that the wetland lines were different from Sue McArthur's lines which several members had walked a few years ago. Some history of this violation was discussed. Mr. Cowell explained that he is happy to return to the location and walk the area and examine the flags. Mr. Dunbar asked about what saplings have sprouted and whether they can be identified. Mr. Cowell explained that the primary species sprouting are not beneficial. He feels as though it would be beneficial to save some but remove most of the existing species and develop a restoration plan around that. Mr. Dunbar pointed out that many large Oaks and Birch were taken down. Ms. Ryder explained more history on the property, that the property owner was told not to clean up the woody debris as this might mean no planting would be needed. The owner disregarded this and cleared the area resulting in no resprouting. A proposal was made for the Commission to attend another site visit to examine the wetland lines. This property violation precedes covid. A site walk was set for 9:00am on Wednesday, November 8th.

- Dennis Demers requested to reaffirm that the Commission is not in favor of the Sasseville Way project. The letter submitted to City Council will not be changed. A motion was made by Mr. Demers, seconded by Mr. Clancy to not change the letter previously submitted to City Council. The motion was approved 7-0.

Correspondence/Other Business- None

Next Conservation Commission meetings- Nov. 16, and Dec. 7, 2023,

Adjournment- There being no further business on a motion by Mr. White, seconded by Mr. Skarin, the Commission voted unanimously to adjourn the meeting at 7:58 PM.

Respectfully submitted,

Priscilla Ryder
Conservation/Sustainability Officer

PR/ag



Massachusetts Cultural Council

Marlborough Cultural Council Meeting Minutes

RECEIVED
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2023 NOV 16 AM 11:19

Date: Wednesday, September 6, 2023 at 6:30 PM

Location: Marlborough City Hall, Memorial Hall on 3rd floor

After approve, email as Word doc to:

skerrigan@marlborough-ma.gov

wchu@marlborough-ma.gov

imcintyre@marlborough-ma.gov

mpeltier@marlborough-ma.gov

Members Present:

Mary Avery	Andrea Bibi
Harmony Larson	Marcia Waldman
Amanda Mayo	

Members Absent:

Kathy Oliver Jones	Jagruti Seemungal
Beatrice "Bea" Mullony	

I. Call to Order at 6:36pm.

II. Review of Minutes

- July meeting minutes approved. Andrea made a motion to approve, Marcia seconded. Approved unanimously.

III. Updates on Current Grantees & Council Operations

- Received Boys & Girls Club Summer Brain Gain info.
- Richer School PTO has had turnover and has kept MCC posted.

IV. Reports from Workgroups

- **Mayor's Mural Project** -
 - Community painting party took place on Saturday. Seemed to be a success.
- **Buddy Letter** - No update.
- **Grantee reception** -
 - Marcia shared the new reception planning document with the MCC.
 - Mary will send a reminder this week to grantees.

- Need to decide at our next meeting how to distribute citations for grantees who can't attend.

V. Review of Items for Future Discussion

- Alana and Jamie from Marlborough Makers shared info about the Marlborough Walks (decorated boots) public art concept.
 - Businesses could sponsor a boot and work with an artist to commission a design.
 - Prioritize foot traffic and walkability
 - Another way to approach it is to have a black tie event and auction off the boots then artists each get an equal share
 - Sponsorship would be approx. \$1,500 per boot: \$500 to cover the cost of boot, artists should get at least \$500 (plus shipping, plus installation - depending on whether the sculptures will be fixed or mobile)
 - City could post a map to draw attention to landmarks
 - Could tie in with the existing Museum in the Streets
 - Call for artists, including concept sketches; match businesses with artists; final approval of each design needed.
 - MEDC is interested in finding business sponsors
 - MCC encouraged Alana and Jamie to apply for a grant
- Labor Day Parade - MCC was not able to participate as judges this year.
- Food Truck & Arts Festival - sidewalk chalk, make sign & purchase pop up
- Next meeting: October 9, 6:30pm. (non-voting meeting on Zoom or elsewhere.)

VI. Adjournment. 8:06pm.

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2023 NOV 13 AM 11:16

MARLBOROUGH HISTORICAL COMMISSION

MEETING MINUTES
September 21, 2023
CITY HALL, 140 MAIN STREET
COUNCIL COMMITTEE MEETING ROOM, 7:00PM

Board Members: Meeting comes to order 7:03PM

Brendan Downey, Chair – Present
Sarah Hough, Vice Chair – Present
Stephanie Ferrecchia – Present
Kathleen Newton – Present
Adrian Gilbert, Secretary – Present

1. *Motion put forth and seconded to approve July 20, 2023 minutes. Motion passes 5 - 0*

Brendan Downey, Chair - Aye
Sarah Hough - Aye
Stephanie Ferrecchia - Aye
Kathleen Newton - Aye
Adrian Gilbert – Aye

2. *Correspondence & Communications*

- A. *Brendan Downey, Chair provided printout of Massachusetts Historical Commission Fiscal Year 2024 Survey and Planning Grant cycle.*
- B. *487 Lincoln St., Cozy Café, brass commemorative plaque. As a condition of occupancy, the City Council requires a brass plaque commemorating the history of the structure. Kathleen Newton will reach out to Brooke D'Amore for information concerning details to be included on plaque.*
- C. *475 Elm St., Jacob & Thomas Rice House. Brendan Downey has been in contact with owner who desires State Preservation Designation for the property, but currently has the house listed for sale. Brendan explained that both time and an attorney are required for such a procedure since this would be an addendum to the sale document. Sarah Hough suggested that as a commission we step aside when a current home owner desires to list a historical structure and sell the property at the same time.*
- D. *Marlborough resident reached out to Brendan Downey concerning the preservation of a "Veteran's Board". However, Brendan has not been able to make contact with this person since the initial communication.*

3. *Current Business*

- A. *Signage Program updates. No city generated email address will be available for the Historical Commission, and the mailing address was finalized as Historical Commission, 140 Main St., Marlborough, MA 01752.*
Motion put forth and seconded to approve Signage Program Form with above stated corrections.
Motion passes 5 – 0

Brendan Downey, Chair - Aye
Sarah Hough - Aye
Stephanie Ferrecchia - Aye
Kathleen Newton - Aye
Adrian Gilbert – Aye

B. Preservation Guidebook

Motion put forth and seconded to approve previously reviewed, by members of the commission, guidebook as is and with the understanding that corrections, alterations, and additions can and will be made in the future.

Motion passes 5 – 0

Brendan Downey, Chair - Aye

Sarah Hough - Aye

Stephanie Ferrecchia - Aye

Kathleen Newton - Aye

Adrian Gilbert – Aye

C. Website Optimization. Discussion tabled due to time constraints Topic to be revisited at next meeting.

4. New Business

A. Reminder that the new Marlborough Library Grand Opening is October 2, 2023

B. Motion to Adjourn meeting, 8:07PM. Motion passes 5 - 0

Brendan Downey, Chair - Aye

Sarah Hough - Aye

Stephanie Ferrecchia - Aye

Kathleen Newton - Aye

Adrian Gilbert – Aye

Respectfully Submitted,

Adrian Gilbert, Secretary

Marlborough Historical Commission

