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CITY OF MARLBOROUGH

2023 NOV 30 PM 12:55

CITY OF MARLBOROUGH
City Council Agenda

Monday, December 4, 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.marlborough-ma.gov).

1. Minutes, City Council Meeting, November 27, 2023.
2. PUBLIC HEARING on the 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, Order No. 23-1009015.
3. PUBLIC HEARING on the 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, Order No. 23-1009016.
4. TAX CLASSIFICATION PUBLIC HEARING with the Board of Assessors to determine the percentage of the local tax levy to be borne by each class of property for Fiscal Year 2024, Order No. 23-1009008.
5. Communication from the Mayor, re: FY 2024 Tax Classification Hearing Information and Tax Levy Offset Transfer Requests totaling \$616,179.15.
6. Communication from the Mayor, re: Gift Acceptance in the amount of \$2,000.00 from the Mobile Home Village Association, awarded to the Council on Aging to be used to purchase new equipment and games for the card room at the Senior Center.
7. Communication from the Mayor, re: Transfer Request in the amount of \$2,000,000.00 from Undesignated Fund (Free Cash) to Richer School Feasibility Study Fund to be used for the feasibility study phase of the MA School Building Authority's (MSBA) process.
8. Communication from the Mayor, re: Reappointment of Christopher J. Firicano as City Collector/Assistant Finance Director for a two-year term to expire on November 23, 2025.
9. 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).
10. Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to Chapter 650 "Zoning" of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), in proper legal form, Order No. 22/23-1008721.

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.

11. Communication from the Planning Board, re: Negative Recommendation on the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B located on Robin Hill Street, Order No. 23-1008964.
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. Communication from residents, re: Opposition to Proposed Amendment to City Code, Chapter 650 "Zoning" by adding a new section to create the "Sasseville Way Residential Overlay District", Order No. 23-1008941.
14. Minutes of Boards, Commissions and Committees:
 - a) Planning Board, October 2, 2023 & October 23, 2023.
15. CLAIMS:
 - a) Estate of Anna Gleason, 6 Gleason Street Ext., other property damage and/or personal injury.

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Urban Affaris Committee

16. **Order No. 22/23-1008721K: Proposed Amendment to Chapter 650, Zoning, relative to Definitions, Affordable Housing, and Marlborough Village District (MV) Zoning.**

Recommendation of the Urban Affairs Committee is to APPROVE as amended.

Councilor Doucette moved to recommend approval of the order as amended, it was seconded and carried 4-0 with 1 absent. The Chair will report this out on Nov. 27th, ask for a suspension to refer to Solicitor to put in proper form for the Dec. 4th meeting for a vote to meet the deadline.

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.

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Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

**CITY OF MARLBOROUGH
CITY COUNCIL
MEETING MINUTES
MONDAY, NOVEMBER 27, 2023**

The regular meeting of the City Council was held on Monday, November 27, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, & Perlman. City Councilors Absent: Robey. Meeting adjourned at 8:40 PM.

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

ORDERED: That the Minutes of the City Council meeting, NOVEMBER 13, 2023, **FILE;** adopted.

That the 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, **CONTINUED UNTIL DECEMBER 4, 2023, AT 8:00 PM;** adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Councilors Absent: Robey.

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 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; 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 \$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; 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 \$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; adopted.

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

ORDERED: That the 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), **MOVED TO THE END OF AGENDA & FILE**; adopted.

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

ORDERED: That the 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, **MOVED TO ITEM #16**; adopted.

That the 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, all were heard who wish to be heard, hearing closed at 8:10 PM; adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Councilors Absent: Robey.

Suspension of the Rules requested – Motion by Councilor Landers to remove from the Public Services Committee, Order No. 23-1009005 – granted.

Suspension of the Rules requested – granted.

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

ORDERED: That 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, **APPROVED WITH THE FOLLOWING CONDITIONS**; adopted.

1. The location shall be marked out for approval by the Engineering Division prior to the work.
2. Any disturbance of the public sidewalk or other structures in the public way shall be repaired upon completion to the satisfaction of the Department of Public Works.

STANDARD CONDITIONS

1. Any necessary easements are to be obtained from affected property owners.

2. A street opening permit must be applied for by the proposed contractor performing the work.
3. The contractor performing the work must obtain a street opening bond with the City of Marlborough.
4. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
5. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.
6. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
7. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
8. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
9. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
10. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.

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

ORDERED: That the 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, **FILE**; adopted.

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

ORDERED: That the 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, **FILE**; adopted.

Councilor Oram Recused.

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

ORDERED: That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the 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, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

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

ORDERED: That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the 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, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

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

ORDERED: That the Communication from property owner, 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, 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.

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
November 20, 2023
Minutes and Report**

This meeting convened at 7:00 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Voting Members Present: Chair Irish, Councilors Dumais, Oram and Brown.

Voting Members Absent: Councilor Perlman

Non-Voting Members Present: Councilors Ossing, Landers and Navin.

Mayor Vigeant, MEDC Director Meredith Harris, Maurice Phelan (Sartorius) and Bob Pace (Benchmark Strategies).

Order No. 23-1009003: Communication from Mayor Vigeant together with proposed City Council Resolution and Tax Increment Financing (TIF) Agreement with Sartorius, a global biopharmaceutical company at 200 Donald Lynch Boulevard (Map 26, Parcel 9).

Chair Irish read the Mayor's letter addressing the tax-increment financing (TIF) agreement with Sartorius Stedim North America, Inc. with two locations in Marlboro at 150 Locke Drive and 450 Donald Lynch Boulevard. Sartorius plans to invest \$100 million to build out a portion of the building at 200 Donald Lynch Boulevard that will bring 120 new full-time jobs by 2025. Sartorius is seeking a local only TIF incentive that will help them unlock credits with the Mass Life Science Center. Sartorius stated that the two existing locations will remain along with a warehouse on Elm Street. The 120 new jobs are not being relocated from the existing locations in Marlboro.

On a motion by Councilor Oram, seconded by Chair, the committee voted to recommend approval of the Tax Increment Financing (TIF) Agreement and the proposed City Council Resolution as submitted by Mayor Vigeant, under Suspension of the Rules on November 27, 2023. Vote 4-0

Motion made and seconded to adjourn; meeting adjourned at 7:26 PM

Reports of Committee Continued:

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

**City Council Urban Affairs Committee
November 15, 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).

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

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

The first item on the agenda was:

Order No. 23-1008721H: 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."

This meeting is continued from November 30, 2023. Present for petitioner were Attorney William Pezzoni, Day Pitney; Attorney Michael Flannery, Goulston & Storrs; Mark Shraiberg, VP Development Management, Trammell Crow Co.; Patrick Sullivan, Senior Associate, Trammell Crow Co.; and Carolyn Hewitt, Senior VP Trammell Crow Co.

The chair explained there was no screen available in Council Chambers but Councilors were sent a document and copies were provided with some given to audience members. Attorney Flannery went through some of the changes proposed from initial submission to now. Proposed changes include:

- A special permit would be required when developing on the site
- Maximum square footage for business use would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a consumer service establishment complementary to other principal uses would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a restaurant serving food indoor/out, a café wit/without table service or a brew pub would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a consumer service establishment complementary to other principal uses would be reduced from 10,000 SF to 8,000 SF
- Affordable dwelling units would increase from 10% to 12%
- Building height on non-habitable structures would be measured to the average height between the
- Plate and ridge of a gable, hip or gambrel roof
- Minimum front and side yard set would change from 50 feet to exception of minimum front yard setback of 25 feet for business uses
- Combined lot coverage would be reduced from 50% to 45%
- Maximum residential density would change from 15 units per acre to 13 units per acre

Reports of Committee Continued:

The Chair then went through the items relevant to this meeting including a draft transcript of the Council's Public Hearing on September 18, 2023; a letter from the Conservation Commission with their comments, concerns, and recommendations; a letter from David Mark, President of the Assabet River Rail Trail; the minutes of Planning Board Public Hearing on October 23rd, continued to November were included in the November 13th meeting packet; a copy of the Planning Board's recommendation; a copy of a letter from Timothy Nelson on behalf of Boston Scientific supporting approval of the zoning and the proposed housing development; a Fiscal Analysis and Traffic Management Study; a memo from Day Pitney explaining why they believe this zoning amendment only requires 6 votes instead of the normal 8 (the Solicitor has been copied and will give a ruling) a second memo from Day Pitney in support of the proposed Sasseville Way Residential Overlay District describing design changes and rezoning language modifications; answers to questions asked at the Planning Board's October 23rd meeting; a color-coded document delineating their proposed changes to the zoning document; and a communication from City Engineer DiPersio with comments from himself, Priscilla Ryder, Conservation, and Building Commissioner Htway on behalf of the Site Plan Review Committee. The chair asked Solicitor Grossfield if he had a chance to review the question that came up with the Planning Board as to whether we had a proper petitioner initiate the zoning amendment. He is reviewing and will let us know as this goes through review.

The chair then began going through the document with the changes highlighted and incorporating questions/comments from Site Plan Review Committee (SPRC).

One comment from SPRC was to review whether the city would be better served with a residential-only overlay, another whether the proposed density of 13 units per acre was appropriate for the site; this will be a matter for later discussion.

There was a recommendation that Site Plan Review Committee be the approval granting authority for site plan with Council as special permit granting authority; this was agreed to by committee with the changes to be made by solicitor working with petitioner's attorneys.

Section D1 which lists uses permitted by right would be reviewed by solicitor for redundancy. Section D (1) (c) any business use less than 8,000 SF is limited to following lists in (iii) health, sports and fitness clubs and Section D2 lists health, sports and fitness clubs and related facilities as accessory to a multifamily dwelling use. It was clarified that the former is a public facility with the latter a private facility.

Councilor Navin moved to strike the public facility described in (D (1) (c) (iii); it was seconded and carried 4-0.

Section E Affordable housing was discussed with issue being that current code requires 15% with some buyout allowed.

Councilor Doucette moved to allow the petitioner's change from 10% to 12% to stand; it was seconded, and the vote failed 2-2. The language would be changed to 15%.

In F Dimensional requirements, SPRC recommendation was to change the minimum acreage to be developed as the overlay district from 20 to 23; consensus of the committee was to make the change.

Reports of Committee Continued:

In Section F (3) minimum side and rear yard, SPRC recommended adding new language at end, “, and except that the minimum yard measurement shall be no less than 200 feet from any existing improved single-family lot; and the 200-foot riverfront area, as defined by the Wetlands Protection Act and verified by the Marlborough Conservation Commission, shall remain unchanged.” The petitioner had issues with this but agreed to adding “unless approved in the special permit” at the end of the new proposed language. They then discussed the first part with the 200 feet from any improved single-family lot; this recommendation was held for final decision until next meeting when members of SPRC could attend and discuss.

As we went through the document, it was agreed that the solicitor would work with the petitioner to amend language that mentions City Council as Site Plan Review.

In Section K Application (3) language would be added that a balloon test would be done concurrent with a public hearing associated with a special permit.

In L Amendments, the number of votes to amend will be determined by the solicitor’s ruling on number of votes to approve the special permit.

The chair then reviewed the recommendation from the Planning Board which was a neutral recommendation approved 7-0. They included their reasons for the decision as well as items to be considered by the Council. There was consensus that the items would be more fit to discuss at Special Permit time.

It was agreed to keep this in committee for discussion at the November 30th meeting that is scheduled, the Solicitor and the petitioner will go through the language with changes we agreed to, so that we can have a draft final document to review at that meeting. That document would also be on the December 4th City Council meeting agenda, a suspension of rules would be required to vote that evening so that we can meet the deadline imposed under MGL Chapter 40A.

The second item on the agenda was:

Order No. 23-1008721H: Proposed Amendment to Chapter 650, Zoning, relative to Definitions, Affordable Housing, and Marlborough Village District (MV) Zoning.

The Chair read the Planning Board's letter with their favorable recommendation approved by a vote of 5-0 with 2 members absent. The letter also included some recommendations which were discussed but no motions were made to amend the draft zoning.

The Chair proposed an amendment to include language that is in the Wayside Zoning District, "Facade step back. A step back in the facade of a building shall occur at the upper floor(s) for all buildings above three stories in height. For example, the fourth story of a four-story building shall be recessed from the lower three stories of the primary facade with a step back. Five feet shall be the minimum step back." She suggested it go in 650-34 Marlboro Village District, Section D Design standards, 2A Building scale as a new #4. It would be added between Section VI and VII or where the solicitor feels it fits best. **Councilor Navin moved to add the language; it was seconded and carried 4-0.**

Councilor Doucette moved to recommend approval of the order as amended, it was seconded and carried 4-0 with 1 absent. The Chair will report this out on Nov. 27th, ask for a suspension to refer to Solicitor to put in proper form for the Dec. 4th meeting for a vote to meet the deadline.

Reports of Committee Continued:

Councilor Doucette moved to adjourn, it was seconded and carried 4-0. Meeting adjourned at 9:55 PM.

Suspension of the Rules requested – granted.

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

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Proposed Tax Increment Financing (TIF) Agreement with Sartorius Stedim North America, Inc., Inc., in proper legal form, **FILE**; adopted.

Suspension of the Rules requested – granted.

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

ORDERED:

RESOLUTION

WHEREAS, the City Council of the City of Marlborough desires a beneficial economic use creating jobs for local residents, expanding business within the City, and developing a healthy robust economy and stronger tax base for Map 26, Parcel 9 on the Marlborough Assessor's Map; and

WHEREAS, the City Council of the City of Marlborough intends to use tax increment financing as an economic development tool created by the Massachusetts Economic Development Incentive Program based on the ability of the City of Marlborough, in accordance with needs and community benefits of a specific project, that are reasonably proportional to the economic development incentives from State and local government and the resulting economic development benefits;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Marlborough that the following activities which are necessary to pursue a Certified Project designation be authorized:

1. The City Council of the City of Marlborough hereby approves the submission of the EDIP Local Incentive-Only application, contingent on approval by the Mayor, and requests that the Massachusetts Economic Assistance Coordinating Council approve Sartorius Stedim North America, Inc.'s application for an EDIP Local Incentive-Only Certified Project; and further, that:
 - a. The project is consistent with the City of Marlborough's economic development objectives and is likely to increase employment opportunities for Marlborough residents;
 - b. The project will not overburden the City of Marlborough's infrastructure and utilities;
 - c. The project as described in the proposal has a strong likelihood that it will cause a significant influx or growth in business activity, will create a significant number of jobs, and will contribute significantly to the resiliency of the Marlborough economy; and
 - d. The City Council approves Sartorius Stedim North America, Inc.'s request that the project be designated by the Massachusetts Economic Assistance Coordinating Council as an EDIP Local Incentive-Only Certified Project for five (5) years.

2. The City Council of the City of Marlborough agrees to authorize the use of tax increment financing, authorizes the Mayor to enter into a tax increment financing agreement with Sartorius Stedim North America, Inc. and Minardi Metrowest Properties, LLC, and authorizes submission of the tax increment financing agreement (attached hereto) to the Massachusetts Economic Assistance Coordinating Council.

APPROVED; adopted.

Suspension of the Rules requested – granted.

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

ORDERED: That the Proposed Zoning Ordinance Amendment to Chapter 650 “Zoning” of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE DECEMBER 4, 2023, COUNCIL MEETING;** adopted.

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

ORDERED: That the Communication from the Planning Board re: Howes Landing Subdivision, recommending acceptance of Gikas Lane as a Public Way, **FILE;** adopted.

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

ORDERED: WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require:

that GIKAS LANE be accepted as a public way

from Hudson Street at Station 0+00 to its terminus at Station 4+98.67

and that the appurtenant easements be accepted as municipal easements,

as shown on plans thereof and as hereinafter described:

DESCRIPTION

Plan entitled, “Acceptance Plan of Land in Marlborough, MA”, Owner: Howe’s Landing Developers, LLC, 1818 Worcester Road, Suite 200, Framingham, MA 01701, Dated March 12, 2019, Prepared by: Colonial Engineering, Inc., 11 Awl Street, Medway, MA, Scale: 1”=40’, which plan is to be recorded herewith.

Title to the roadways shown as Gikas Lane on said plan, and title to all the municipal easements shown on said plan as:

Drainage/Flowage Easements:

- Drainage/Flowage Easement, over Lot 7, containing 3,442 square feet
- Drainage/Flowage Easement, over Lot 7, containing 2,499 square feet
- Drainage/Flowage Easement, over Lot 8, containing 5,390 square feet
- Drainage/Flowage Easement, over Lot 9, containing 900 square feet
- Drainage/Flowage Easement, over Lot 10, containing 6,862 square feet

Landscape Easements:

- 20 ft. wide Landscape Easement, over Lot #1*,
- 20 ft. wide Landscape Easement, over Lot #2*,
- 20 ft. wide Landscape Easement, over Lot #3*,
- 20 ft. wide Landscape Easement, over Lot #4,
- 20 ft. wide Landscape Easement, over Lot #5,
- 20 ft. wide Landscape Easement, over Lot #6,
- 20 ft. wide Landscape Easement, over Lot #7*,
- 20 ft. wide Landscape Easement, over Lot #8*,
- 20 ft. wide Landscape Easement, over Lot #9*,
- 20 ft. wide Landscape Easement, over Lot #10*.

*A 20 ft. wide private utility (forced sewer) easement also exists within the Landscape Easement has been granted to the City of Marlborough in a quitclaim deed from Howe's Landing Developers, LLC, a Massachusetts limited liability company with a principal place of business at 1818 Worcester Road, Suite 200, Framingham, MA 01701, said deed to be recorded in substantially the same form herewith at the Middlesex County (South District) Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

GIKAS LANE be accepted as a public way, and its appurtenant easements be accepted as municipal easements, in the City of Marlborough.

APPROVED; adopted.

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

ORDERED: That the 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, **FILE;** adopted.

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

ORDERED:

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

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 Post Office 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: 10 – Nay: 0 – Absent – 1

Yea: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Absent: Robey.

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

ORDERED 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 not re-convene in open session after the Executive Session.

APPROVED; adopted.

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 8:40 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 27, 2023

ORDERED:

That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the 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, be and is herewith referred to the **PUBLIC SERVICES COMMITTEE**.

ADOPTED

ORDER NO. 23-1009015



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 27, 2023

ORDERED:

That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the 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, be and is herewith referred to the **PUBLIC SERVICES COMMITTEE**.

ADOPTED

ORDER NO. 23-1009016



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 13, 2023

ORDERED:

Suspension of the Rules requested – granted.

That the City Clerk is directed to advertise the Tax Classification Public Hearing scheduled for Monday, December 4, 2023, be and is herewith **APPROVED**.

ADOPTED

ORDER NO. 23-1009008



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2023 NOV 30 AM 11:25

City of Marlborough
Office of the Mayor

Arthur G. Vigeant
MAYOR

Patricia M. Bernard
CHIEF OF STAFF

Jailyn Bratica
EXECUTIVE ADMINISTRATOR

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

December 4, 2023

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

RE: Tax Classification Hearing/Annual Transfer Requests to reduce FY24 Tax Levy

Honorable President Ossing & Councilors:

Enclosed for your information is a recommendation that I am supporting from the Board of Assessor's and a corresponding draft motion for the Fiscal Year 2024 Tax Classification Hearing. The enclosed documentation was prepared by Principal Assessor John Valade to assist the City Council in their review of key factors before voting to set the tax rate for this fiscal year. Please note the following highlights:

- CIP Shift Factor: 1.44
- Residential Shift Factor: 0.8346
- Residential Property Valuation: 72.67%
- Commercial, Industrial, Personal Valuation: 27.33%

I am also submitting the regular annual transfer requests totaling \$616,179.15:

- 1) Transfer in the amount of \$51,600.00 from Sale of Graves to reduce FY24 tax levy
- 2) Transfer in the amount of \$564,579.15 from the Overlay Reserve to reduce FY24 tax levy

Pending approval of the shift factor, the average single-family home in Marlborough will see an estimated **property tax reduction of \$189.00**. *Marlborough continues to have the lowest average tax bill in the region dating back to 2012.*

I would like to thank our team: Principal Assessor John Valade, Auditor Diane Smith, Comptroller David Williams, and the Board of Assessors for their efforts and note that they will be available to address any questions.

Sincerely,

Arthur G. Vigeant
Arthur G. Vigeant
Mayor

Enclosures

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor's Office

FISCAL YEAR: 2024

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code Object

Account Description:

Amount

Org Code Object

Account Description:

Available
Balance

\$564,579.15

\$564,579.15

10000 32200

Overlay Reserve

\$564,579.15

To reduce FY24 Tax Levy

\$0.00

Reason:

Excess overlay from FY20 to reduce FY24 tax levy

\$564,579.15

Total

\$564,579.15

Total

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor's Office

FISCAL YEAR: 2024

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code Object

Account Description:

Amount

Org Code Object

Account Description:

Available
Balance

\$51,600.00

\$51,600.00

27000 33020

Sale of Graves

\$51,600.00

To reduce FY24 Tax Levy

\$0.00

Reason:

Sale of Graves revenue from FY23 to reduce FY24 tax levy

\$51,600.00

Total

\$51,600.00

Total

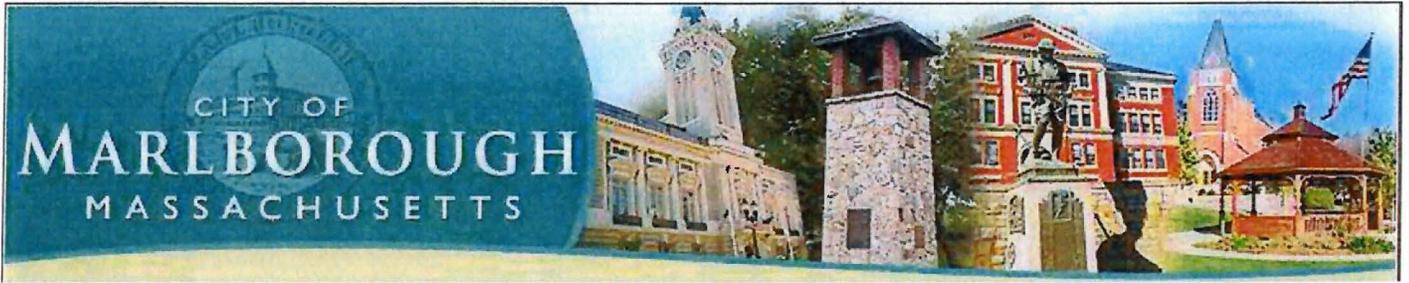
ORDERED:

The Marlborough City Council votes in accordance with M.G.L. Ch. 40, Sec. 56, as amended, the percentage of local tax levy which will be borne by each class of real and personal property, relative to setting the Fiscal Year 2024 tax rates and set the Residential Factor at 0.8346 with a corresponding CIP shift of 1.44 pending approval of the City's annual tax recap by the Massachusetts Department of Revenue.

ADOPTED

In City Council
Order No. 23-
Adopted

Approved by the Mayor
Arthur G. Vigeant
Date:



Fiscal Year 2024
Tax Classification Hearing

December 4, 2023

Marlborough Board of Assessors

Jonathan Steinberg – Chair

Ellen Silverstein – Member

John H. Valade – Member (Principal Assessor)



City of Marlborough
Office of the Assessors
140 Main Street
Marlborough, Massachusetts 01752
TDD (508) 460-3610
Phone: (508) 460-3779

FISCAL YEAR 2024

ANNUAL TAX CLASSIFICATION REPORT

City Council

Michael H. Ossing
Kathleen D. Robey
Mark A. Oram
Samantha Perlman
Laura J. Wagner
David Doucette
J. Christian Dumais
Teona C. Brown
John J. Irish
Sean A. Navin
Donald R. Landers, Sr.

Board of Assessors

Jonathan Steinberg, Chair
Ellen Silverstein
John H. Valade

Principal Assessor

John H. Valade

Mayor

Arthur Vigeant

Comptroller/Treasurer

David Williams

City Auditor

Diane Smith

CLASSIFICATION HEARING: DECEMBER 4, 2023

Terminology

The following are definitions of terms frequently used in the discussion of tax rates.

Levy: The tax levy (or levy) is the amount of property taxes to be raised. The total amount of the approved budget less revenues from other sources like motor vehicle excise, municipal fees, and state aid is the amount to be raised from property taxation. In Marlborough, the levy to be raised is reported to the Assessors by the Finance Director. The fiscal year 2024 levy is \$104,418,302.

New Growth Revenue: Property taxes derived from newly taxable properties like new construction, additions, renovations, subdivisions, and personal property. The New Growth for fiscal year 2024 is \$3,096,410.

Levy Limit: Also referred to as the “maximum allowable levy”, the levy limit is calculated by adding 2.5 percent of the previous year’s levy limit plus new growth revenue, and Proposition 2 ½ voted overrides and debt exclusions. The fiscal year 2024 levy limit is \$169,237,471.

Levy Ceiling: The levy ceiling is 2.5 percent of the full value of the city. Based on the Marlborough aggregate valuation of \$8,511,706,102, the city cannot levy taxes more than \$212,792,653.

Excess Levy Capacity: Excess levy capacity is the difference between the actual property tax levy and the levy limit. Marlborough’s tax levy is well below the limit permitted under Proposition 2 ½.

The Fiscal Year 2024 Levy Limit and amount to be raised.

The following is a calculation of Marlborough’s levy limit for fiscal year 2024.

Fiscal year 2023 levy limit	\$162,088,840
Amended FY2023 Growth	-0-
Levy increase allowed under Prop. 2 ½	4,052,221
New growth revenue	3,096,410
Proposition 2 ½ overrides	-0-
Fiscal year 2024 levy limit	169,237,471
Levy ceiling	212,792,653
Levy to be raised	\$104,418,302
Excess levy capacity	\$64,819,169

Valuations by Class before Tax Shift

<u>Major Property Class</u>	<u>Valuation</u>	<u>Percent</u>	<u>Res vs CIP%</u>
Residential	\$6,185,771,878	72.6737	72.6737
Commercial	1,215,362,923	14.2787	
Industrial	738,021,451	8.6707	27.3263
Personal Property	372,549,850	4.3769	
TOTAL	\$8,511,706,102	100.0000	

Board of Assessors Recommendation

After considering the valuations of Marlborough's residential and commercial property, and after examining the current fiscal strength of the city, the Board of Assessors recommends the adoption of a Commercial/Industrial/Personal Property (CIP) shift factor of 1.44, resulting in a residential tax rate of \$10.24 and a CIP tax rate of \$17.67.

Tax Rates

Based on the above shift factor, the Board of Assessors has calculated the following tax rates needed to raise the tax levy:

<u>Property Class</u>	<u>FY2023</u>	<u>FY2024</u>
Residential	\$11.54	\$10.24
Commercial	\$20.32	\$17.67
Industrial	\$20.32	\$17.67
Personal Property	\$20.32	\$17.67

Note that these rates are estimates only and may change upon Department of Revenue review. Were Marlborough not to shift taxes, the uniform tax rate for all properties would be \$12.27 per \$1,000 valuation.

Tax Impacts

Marlborough's single-family homeowners are benefitting from increased property values. Price appreciation in the year leading up to fiscal year 2024 (calendar year 2022) ran about 8.75 percent. Other residential property classes, including condominiums and small multi-family properties, have also experienced market appreciation. This increase in property values has been captured in revised assessed valuations that will appear in January's tax bills.

It is recommended that the CIP shift factor be decreased from 1.45 to 1.44 to minimize a tax increase borne by the residential class and continue to decrease the gap between the residential and CIP tax rates. Certain classes of property saw a more significant increase, specifically residential and rental properties, due to demand and general market conditions in calendar year 2022. Average commercial values increased minimally by 0.11%, while the average industrial valuation increased by 8.86%. This is primarily due to an increase in demand for these types of properties and a slight increase in expansion and new development of these classes.

Examples of Average Tax Changes:

<u>Property Type</u>	<u>FY24 Value</u>	<u>Avg. Tax</u>	<u>FY23 Value</u>	<u>Avg. Tax</u>	<u>Avg. Tax Change</u>	<u>% Change</u>
Single-Family Homes	\$553,439	\$5,667	\$507,475	\$5,856	-\$189	-3.23%
Condominiums	\$316,218	\$3,238	\$278,324	\$3,212	\$26	0.81%
2-Family Homes	\$529,410	\$5,421	\$486,114	\$5,610	-\$189	-3.37%
3-Family Homes	\$592,605	\$6,068	\$537,810	\$6,206	-\$138	-2.22%
Commercial	\$2,256,660	\$39,875	\$2,255,291	\$45,828	-\$5,953	-12.99%
Industrial	\$2,794,576	\$49,380	\$2,596,212	\$52,755	-\$3,375	-6.40%

Recommendations

The Board of Assessors recommends that the City Council adopt a Fiscal Year 2024 residential shift factor of 0.8346 with a corresponding CIP shift of 1.44, producing a residential tax rate of \$10.24 and CIP tax rate of \$17.67. Final tax rates are subject to Department of Revenue approval.

Voting a Tax Shift Factor

The Marlborough City Council votes in accordance with M.G.L., Ch. 40, Sec. 56, as amended, the percentage of local tax levy which will be borne by each class of real and personal property, relative to setting the Fiscal Year 2024 tax rates, and sets the Residential Factor at 0.8346 with a corresponding CIP shift of 1.44, pending approval of the City’s annual tax recap by the Massachusetts Department of Revenue.

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

NOV 30 AM 11:25
Arthur G. Vigeant
MAYOR



City of Marlborough Office of the Mayor

Patricia M. Bernard
CHIEF OF STAFF

Faelyn Bratica
EXECUTIVE ADMINISTRATOR

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

November 30, 2023

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

RE: Gift acceptance for the Council on Aging

Honorable President Ossing & Councilors:

Enclosed for your approval is a gift acceptance in the amount of \$2,000.00 from the Mobile Home Village Association that will be expended on new equipment and games for the card room.

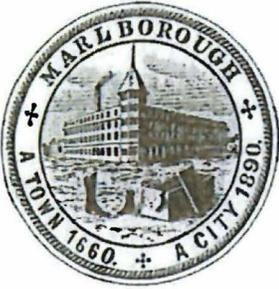
I'd like to thank the Mobile Home Village Association for their generosity.

If you have any questions, please contact COA Executive Director Trish Pope.

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 27, 2023

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

Re: Gift from the Mobile Home Village Association

Dear Mayor Vigeant,

I am pleased to submit to you a gift in the amount of \$2000.00 to the Council on Aging from the Mobile Home Village Association. I would like to thank the residents of the Mobile Home Village Association for this very generous gift. Once approved by the City Council, we will use the money to enhance the card room with new equipment, games and seat cushions. Many members of the Mobile Home Village Association participate in the various card games at the Senior Center.

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: 27-Nov-23

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Patricia Pope

NAME OF GRANT: Mobil Home Village Association

GRANTOR: Mobil Home Village Association

GRANT AMOUNT: \$2,000

GRANT PERIOD: open

SCOPE OF GRANT/
ITEMS FUNDED Gift from the Mobil Home Village Association
Funds will be used purchase additional equipment and seat cushions for
the card/game room.

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? 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**



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
MAY 30 AM 11:25

City of Marlborough
Office of the Mayor

Arthur G. Vigeant
MAYOR

Patricia M. Bernard
CHIEF OF STAFF

Failyn Bratica
EXECUTIVE ADMINISTRATOR

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

December 4, 2023

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

RE: Richer Elementary School Feasibility Study Appropriation and Transfer

Honorable President Ossing & Councilors:

Enclosed for your approval is an order to appropriate \$2 million to be spent for the Feasibility Study phase of the Massachusetts School Building Authority's (MSBA) process for the Raymond C. Richer Elementary School project which the School Committee voted in support of moving forward. In addition to the draft language a transfer request in the amount of \$2 million from Free Cash. The MSBA will reimburse the City for approximately 70.37% of all eligible costs incurred during the Feasibility Study.

As some of you may recall, the vote is required by the MSBA as part of the Eligibility Period and is a prerequisite to moving forward in the MSBA process. If the City does not appropriate funds for the Feasibility Study, it will no longer remain in the MSBA pipeline for a project at the Richer Elementary School.

In 2016, we went through the Feasibility Study for Richer School and at that time, MSBA believed the school did not have the space to efficiently accommodate the increased enrollment and a larger location would be warranted. We reorganized our schools and grades, and successfully used the MSBA process to build the Goodnow Brothers Elementary School that came in under budget and was opened in 2020.

In June 2023, the MSBA voted to authorize the City into Eligibility Period for the second time. The 270-day Eligibility Period formalizes and streamlines the beginning of the MSBA's grant approval process and determination of financial and community readiness for this project.

During the Feasibility Study process, the City will conduct procurements to hire an Owner's Project Manager and a Designer. Once the professional team has been formed, they will begin to study the various options for the Richer Elementary School. This includes analyzing a major repair of and addition to the existing building, identifying potential sites, testing those sites for suitability for construction, and designing the school project to the Schematic Design level of detail.

At the conclusion of the Feasibility Study phase, the City will return to the MSBA Board for approval of the entire project and to the City Council for approval to fund the full cost of the project.

The City's Legal Department and the MSBA have reviewed the attached vote language to ensure that it conforms to all requirements. Any changes to the vote language must be approved by the MSBA's Legal Department.

If you have any questions or comments, please contact the school's Finance Director Thomas LaFleur.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arthur G. Vigeant", with a long, sweeping flourish extending to the right.

Arthur G. Vigeant
Mayor

Enclosures

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2024

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$9,602,846.40</u>	<u>\$2,000,000.00</u>	<u>10000</u>	<u>35900</u>	<u>Undesignated Fund</u>	<u>\$2,000,000.00</u>	<u>19300006</u>	<u>52690</u>	<u>Feasibility Study-Richer</u>	<u>\$0.00</u>
	Reason:	<u>Feasibility study for Richer School</u>							
	Reason:								
	Reason:								
	Reason:								
	\$2,000,000.00	Total			\$2,000,000.00	Total			

Department Head signature:

Auditor signature:

Comptroller Treasurer

Handwritten signatures in blue ink for Department Head, Auditor, and Comptroller Treasurer.

ORDERED:

That the City of Marlborough appropriate the amount of two-million (\$2,000,000.00) dollars for the purpose of paying costs of the feasibility study for the Raymond C. Richer Elementary School, 80 Foley Road, Marlborough, MA, including the payment of all costs incidental or related thereto, and for which the City of Marlborough may be eligible for a grant from the Massachusetts School Building Authority ("MSBA"), said amount to be expended under the direction of the School Building Committee. To meet this appropriation the City Council hereby approves the transfer of said amount from the Undesignated Fund Account into the Feasibility Study – Richer Account. The City of Marlborough acknowledges that the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any costs the City of Marlborough incurs in excess of any grant approved by and received from the MSBA shall be the sole responsibility of the City of Marlborough.

ADOPTED

In City Council
Order No. 23-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

Eligibility Period Schedule of Deliverables

City of Marlborough Richer Elementary School

MSBA Board of Directors Meeting – December 21, 2022

Eligibility Period Commences – June 1, 2023			
MODULE ONE - Eligibility Period			
Deliverable	Days	Due Date and Status	
Initial Compliance Certification	30	✓	June 30, 2023 Required Submitted 06/07/23
School Building Committee	60	✓	July 31, 2023 Required Submitted 7/20/23 Waiting for one more name from Mayor Vigeant
Educational Profile Questionnaire	90	✓	August 30, 2023 Required Submitted 06/27/23
Online Enrollment Projection	90	✓	August 30, 2023 Required Submitted 8/29 Only waiting for building permits data from Tin Htway. Ready otherwise
Enrollment/Certification Executed	180		November 28, 2023 Required Requires online enrollment projection to be submitted first.
Maintenance and Capital Planning Information	180	✓	November 28, 2023 Required Submitted 10/24 Deputy DPW Commissioner Rob Quinn will assist with this
Local Vote Authorization	270		February 26, 2024 Required Recommended action w/ Mayor Vigeant prior to December 31st, 2023
Feasibility Study Agreement	270		February 26, 2024 Required Recommended action w/ Mayor Vigeant prior to December 31st, 2023
Eligibility Period Concludes – February 26, 2024			

Note: If the District has concerns about meeting any of the following deadlines, please let the MSBA know by June 1, 2023. The MSBA will require districts that are unable to complete the preliminary requirements within the timeframes noted for each to withdraw its SOI and reapply when the District has the financial and community support required.



RECEIVED
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NOV 30 AM 11:25

City of Marlborough
Office of the Mayor

Arthur G. Vigeant
MAYOR

Patricia M. Bernard
CHIEF OF STAFF

Jailyn Bratica
EXECUTIVE ADMINISTRATOR

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

November 30, 2023

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

Re: Reappointment of City Tax Collector

Honorable President Ossing and Councilors,

I am submitting for your approval the reappointment of Christopher Firicano as City Collector/Assistant Finance Director for a two-year term to expire on November 23, 2025.

I am not waiting until January since Mr. Firicano's reappointment is required to maintain his surety bond, a requirement under M.G.L. Ch. 41 § 39A.

Over the course of the last two years, Mr. Firicano has managed this department with the utmost professionalism and dedication while providing the public with accurate and timely information. This is a vital role in our collection process, and he recently was tasked with single-handedly running the department due to staff shortages and paid time off which is no easy task.

Thank you in advance for your consideration.

Sincerely,

Arthur G. Vigeant
Mayor



City of Marlborough Legal Department

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2023 NOV 30 AM 11:57

JASON D. GROSSFIELD
CITY SOLICITOR

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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

LEGAL@MARLBOROUGH-MA.GOV

November 30, 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

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01901

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

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10-1

RECEIVED
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CITY OF MARLBOROUGH

JASON D. GROSSFIELD
CITY SOLICITOR

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

November 29, 2023

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

Re: Order No. 23-1008721 - Proposed Zoning Ordinance Amendments re: Definitions; Affordable Housing; Marlborough Village District (MV)

Dear Honorable President Ossing and Councilors:

In connection with the above-referenced item, enclosed please find the proposed ordinance amendment, as referred to this office and discussed at the Urban Affairs Committee's November 15, 2023 meeting. I have reviewed the proposed amendments and placed them in proper legal form.

I note the following regarding Parts X and XI: The amendment contemplates a maximum number of on-site parking spaces that may be subject to payment-in-lieu: 20% of the required spaces. With the amendment in Part X, when seeking to calculate that figure, the minimum amount of required parking for a mixed-use development's retail, restaurant, or other business uses is not set in Section 650-34 and appears to be determined at the time of permitting. It may be advisable to consider how the required number of spaces would be determined.

Please contact me if you have any questions or concerns.

Respectfully,

Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor
Tin Htway, Building Commissioner

ORDERED:

THAT, PURSUANT TO SECTION 5 OF CHAPTER 40A OF THE GENERAL LAWS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 650 OF THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

I. By amending Chapter 650 (Zoning), Section 650-5 (Definitions; word usage), Subsection B, by inserting a new definition for “Area Median Income (AMI)” and “Eligible Household”, and amending the existing definition for “Mixed Use”, to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

AREA MEDIAN INCOME (AMI)

The Housing Area Median Family Income set forth in or calculated from regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined annually for the Metropolitan Statistical Area that includes the City of Marlborough and adjusted for family size.

ELIGIBLE HOUSEHOLD

A household whose gross household income does not exceed the corresponding percentage of AMI specified in Section 650-26.

MIXED USE

(1) A combination of permitted (Y) or special permit (SP) residential/business uses as listed in §650-17, Table of Use Regulations, for a particular zoning district, located on the same lot and arranged vertically in multiple stories of a structure or horizontally adjacent to one another in one or more buildings.

~~(2) The To achieve a mix of residential to business uses, such as retail or restaurant, uses shall be that is balanced and compatible, and shall contribute to a vibrant downtown atmosphere, including a combination of ground floor street front uses, such as retail or restaurant.~~

~~(3) Gground floors of buildings fronting streets or public accessways shall be reserved for restricted to nonresidential public business/commercial uses, except as specified below:~~

Dwelling units shall be allowed on ground floors of a buildings if:

~~(a) The building that is set behind another a mixed-use building that has business eommereial uses on the ground floor and residential on other floors so long as the building set behind does not face a public way.;~~ or (b) The residential portion of the ground floor of a building is set behind street front nonresidential uses within the same building.

II. By amending Chapter 650 (Zoning), Section 650-17 (Table of Uses), by striking “Y” and replacing it with “SP” for the following specific uses, in the MV zoning district, to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

Business Use	Zoning District Abbreviations													Wayside
	RR	A - 1	A - 2	A - 3	R B	R C	R C R	N B	B	C A	L I	I	MV	
Hotels (41)	N	N	N	N	N	N	N	S P	S P	S P	S P	S P	Y <u>SP</u>	N
Hotels with conference facilities and commercial uses (21)	N	N	N	N	N	N	N	N	S P	S P	S P	S P	Y <u>SP</u>	N
Mixed-Use Development (42)	N	N	N	N	N	N	N	S P	S P	N	N	N	Y <u>SP</u>	SP

III. By amending Chapter 650 (Zoning), Section 650-18 (Conditions for uses), Subsection A, paragraphs 41 and 42, as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(41) Hotels within the Marlborough Village District are by ~~right~~special permit, and subject to site plan approval by the City Council with input from department staff who participate in administrative site plan review as provided under § 270-2. See in § 650-34B special provisions for site plan review by City Council of hotels in the Marlborough Village District.

(42) Mixed-use development, including multifamily residential uses, shall ~~not~~ be subject to special permit provisions for multifamily uses. In the Wayside District, multifamily dwelling shall be allowed only as part of a mixed-use development. Mixed-use development may include vertically mixed uses in a single building or horizontally mixed uses in which multiple buildings create the mix of uses on a single parcel. Each individual building may include a single use with multiple uses occurring next to each other and within multiple buildings on the single parcel.

IV. By amending Chapter 650 (Zoning), Section 650-26 (Affordable Housing), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

§ 650-26. Affordable housing.

The purpose of this section is to provide that multifamily uses include an affordable component to ensure the city remains above the state’s required inventory of affordable units.

A. This section 650-26 shall apply to all developments that result in or contain eight (8) or more dwelling units, in all zoning districts, for the following types of uses: multifamily dwelling(s) or mixed-use development containing multifamily dwelling(s). This section shall apply as set forth above unless an exception is otherwise stated in this section 650-26. Compliance with this section shall be made a condition of any special permit that is required for the development.

All special permits granted to applicants to construct multifamily dwellings, or mixed-use development containing multifamily dwelling(s), thereby increasing the number or density of residential dwellings to a number or level greater than that allowable as a matter of right under the zoning classification for the subject parcel shall require the following.

(1) Developments of ~~20~~ 8 or more units.

(a) Number of on-site affordable units. ~~The A development subject to this section 650-26 shall i) provide that at least 125% of the dwelling units to be constructed for homeownership or rental purposes will be made available at affordable prices to eligible home buyers or renters; or ii) if authorized by a majority of the City Council, provide a sum not less than \$50,000 per affordable dwelling unit that would have been required in Item i) above to be deposited as directed by the City Council into the fund for economic development created by Chapter 126 of the Acts of 2011 or into another fund designated by the City Council. If when applying the specified percentage to the total number of units to determine the required number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if equal to or over one-half, shall be rounded up to the next whole number. ;~~

(b) Eligibility for affordable units. All affordable units must be eligible for inclusion on the state's Subsidized Housing Inventory (SHI). The affordable units shall be available to households at no more than eighty percent (80%) of AMI in accordance with SHI requirements. After initial occupancy, the gross household income of an eligible household shall be verified annually to determine continued eligibility and rent.

(bc) Local preference. The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable dwelling units to eligible residents of the City of Marlborough.

(de) Distribution of affordable units. Dwelling units to be sold or rented at affordable prices shall be integrated into the overall development to prevent physical segregation of such units.

(ed) Appearance. The exterior of the affordable units shall be designed to be compatible with and as nearly indistinguishable from the market rate units as possible.

(fe) Minimum and maximum floor areas. Affordable housing units shall have a gross floor area not less than the minimum required by the State Department of Housing and Community Development under the regulations created under the authority of MGL Chapter 40B.

~~(g)~~ (g) Period of affordability. Limitations and safeguards shall be imposed to ensure the continued availability of the designated affordable units for a minimum of 99 years or in perpetuity. Such limitations and safeguards may be in the form of deed restrictions, resale monitoring, requirements for income verification of purchasers and/or tenants, rent level controls and the like.

~~(h)~~ (h) Limitation on change in affordability. In no event shall any change in affordability occur if the minimum percentage of affordable units required in the entire City under MGL Chapter 40B has either not been met at that time or such change in affordability would cause the City to fall below that percentage.

~~(i)~~ (i) Staging of affordable and market-rate units. No more than 50% of the building permits for the market-rate units shall be issued until construction has commenced on 30% of the affordable units. No more than 50% of the occupancy permits for the market-rate units shall be issued until 30% of the occupancy permits for the affordable units have been issued. The City Council may modify this provision for developments under 50 units.

~~(j)~~ (j) Alternate site. The City Council may allow the developer to build some or all of the affordable housing required by Subsection A(1)(a) on an alternate site¹ within the City, provided that the City Council determines that this is in the best interest of the City and orders that this specific condition be attached to the special permit. The location of the alternate site shall either be specified at the time of approval for the special permit or selected within six months of said application and shall then be subject to approval by the Housing Partnership Committee or its successor, by the City Council if otherwise required by this Zoning Ordinance and by any other proper authority as may be required by law. The development of the alternate site shall comply with Subsection A(1)(b), (e), (f), (g), (h) and (i) of this section, and the staging of development on the alternate site shall be governed by Subsection A(1)(h) applied to all units on both the main and alternate sites.

~~(k)~~ (j) Guaranty of performance. No final certificate of occupancy shall be issued for any unit within a development subject to this section until all actions necessary to preserve the affordability of the affordable units in compliance with this section and include the affordable units on the subsidized housing inventory, including without limitation, a deed restriction, regulatory agreement and declaration of restrictive covenants, and/or any other restrictive instrument necessary, and all other required documentation, have been executed and registered or recorded by the developer, in a form satisfactory to the City Solicitor. The City Council shall require security in a form satisfactory to the City Council and City Solicitor to guarantee performance, including preservation of affordability, under this subsection, and no building permit shall be issued until and unless said security has been provided.

~~(2)~~ (2) ~~Developments of 19 or fewer units. All provisions of Subsection A(1) above applicable to 20 or more units may also be applied to developments of 19 or fewer units as the City Council finds practical.~~

~~(3)~~ (3) The provisions of this section shall not apply to a special permit for an existing retirement community or the expansion of an existing retirement community as governed by §§ 650-21 and

650-22. This subsection will be effective pursuant to the applicable provisions of Chapter 40A of the General Laws.

~~(4) The provisions of this section shall not apply to projects which are granted special permits within the Marlborough Village District.~~

V. By amending Chapter 650 (Zoning), Section 650-34(D)(1), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

D. Design standards.

(1) The purpose of the following design standards is to promote quality development emphasizing the City's sense of history and desire for contextual, pedestrian-scaled projects. Supporting streamlined development review, design standards are integral to the Marlborough Village District regulations and must be met as part of any special permit and/or site plan review and approval.

~~(a) Nonmandatory~~ In addition to the design standards, in connection with a special permit and/or site plan application in the Marlborough Village District, such applications shall be reviewed with respect to the Design Review Guidelines for the Marlborough Village District, which The guidelines will complement the design standards of this section and which will provide a guide to the desired appearance and quality of design in the Marlborough Village District. The guidelines are will be available at the Building Department and/or on the official website of the City.

VI. By amending Chapter 650 (Zoning), Section 650-34(D)(2), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(2) All special permit and/or site plan review and approval applications in the Marlborough Village District shall be subject to the following design standards:

VII. By amending Chapter 650 (Zoning), by **inserting** a new Section 650-34(D)(2)(a)[4], to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

[4] Facade step back. A step back in the facade of a building shall occur at the upper floor(s) for all buildings above three stories in height. For example, the fourth story of a four-story building shall be recessed from the lower three stories of the primary facade with a step back. Five feet shall be the minimum step back.

VIII. By amending Chapter 650 (Zoning), Section 650-34(D)(2)(d), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(d) External materials and appearance.

[1] Predominant wall materials for all ground floors shall be brick in traditional New England colors and character, and stone. ~~shall be red brick, stone, or precast concrete panels;~~ ~~Wood siding may be used where the structures are adjacent to residential districts where the intent is to blend the structure more into the existing neighborhood.~~ Thin brick veneer, precast concrete panel finished to look like brick or stone, masonry brick panels, and Flexbrick (or a similar product) can be used on upper floors. Glass Fiber Reinforced Concrete (GFRC) panels (or something similar) can be used for a curtain wall (non-load bearing) exterior wall cladding. If painted, or coated, a nonmetallic finish is to be used. Cladding materials should be consistent on all facades with the exception of special design elements, such as turrets. Materials designed to imitate brick, e.g., faux brick, are not permitted.

[2] The standards for all acceptable masonry construction are as follows:

[a] Acceptable masonry construction for bricks will be ~~of~~ standard, fired clay, brick units bonded together with mortar. Acceptable applications include building components, such as walls, stairs, columns, arches, planter beds, etc.

[b] ~~Utilize~~ Bricks which are ~~should be~~ sound, hard, well-burnt with uniform color, shape and size.

[c] The bricks should be compact, homogeneous, free from holes, cracks, flaws, air-bubbles, spawls and stone lumps.

[d] Frogged bricks shall be laid with the frogs pointing upwards.

[e] Mortar specifications shall comply with relative ASTM International standards.

[f] The properties of all other masonry units shall comply with the requirements of relevant ASTM International standards. ~~These include concrete masonry, stone masonry and composite masonry. Masonry units are classified into the following types: solid, hollow unit, cellular, perforated and frogged.~~

IX. By amending Chapter 650 (Zoning), Section 650-34(E)(1)(a)[2], to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

[2] Spaces in ~~city-owned~~ public garages and lots within 1,000 feet of the development can be counted to fulfill the required spaces, with payment-in-lieu required.

X. By amending Chapter 650 (Zoning), Section 650-34(E)(1)(b)[1], to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

[1] Eliminate parking minimums per the existing off-street parking (§650-48) unless the use is part of a mixed-use development where off-street parking would be determined during the special permit and/or site plan review process.

XI. By amending Chapter 650 (Zoning), Section 650-34(E)(2), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

(2) Payment in lieu of parking. In the Marlborough Village District, any new commercial or mixed use structure that is required to provide parking spaces may request to make payments to the City of Marlborough in lieu of providing for ~~all or~~ part of the on-site required parking, not to

exceed twenty percent (20%) of the required on-site parking spaces. If when applying the specified percentage to determine the maximum number of on-site parking spaces which may be subject to payment-in-lieu, the resulting number includes a fraction of a unit, this fraction, if equal to or over one-half, shall be rounded up to the next whole number. :

(a) Payment made to the City of Marlborough in lieu of providing some ~~or all~~ of the required off-street parking spaces for a project in the Marlborough Village District (MV) ~~shall~~ may only be allowed by right, subject to site plan and design review authorized by special permit, in parking spaces designated for overnight parking, and subject to conditions set forth by special permit.

(b) A one-time fee to be paid shall be ~~\$2510,000~~ (twenty-five thousand dollars) per parking space, which shall be paid prior to the receipt of an occupancy permit.

XII. By deleting Chapter 650 (Zoning), Section 650-34(E)(3), (Additional reduction in parking requirements).

XIII. By amending Chapter 650 (Zoning), Section 650-34(F), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

F. Heights of structures.

(1) To encourage redevelopment and reuse of parcels within the Marlborough Village District, minimum and maximum heights are established. Minimum heights shall be 35 feet or 2.5 stories; maximum height is 60 feet or 4 stories. ~~six stories and up to 70 feet except for where a proposed structure is within 50 feet of a residential district boundary, where the height limit shall be 52 feet. By grant of a special permit, maximum building height, including building areas within 50 feet of a residential district boundary, may be increased to seven stories and up to 85 feet.~~ Height limits do not include roof-mounted mechanical appurtenances; however, said appurtenances, and the screening required for them in § 650-34D(2)(b), shall be subject to site plan review and design standards. Rooftop mechanical equipment, including wireless communications equipment, shall be located and screened to minimize impacts on abutters and the general public. No interior space shall be occupied for any purpose above these height limits. This shall not preclude the use of a flat roof for purposes allowed in this section.

(2) Roof decks, providing recreation and amenity areas for residents and businesses on the roof above the top story of a building, shall be encouraged in the Marlborough Village District. Roof decks may include open space areas for sitting and gardens; open air areas covered by permanent roofs (flat or sloped); indoor areas for social gathering, meetings, common kitchens, restrooms, and storage; spaces for mechanical equipment; and enclosures for elevators and stairs. The portions of a building designed as a roof deck shall be subject to maximum height restrictions, as but may be increased by special permit.

XIV. By amending Chapter 650 (Zoning), Section 650-41 (Table of Lot Area, Yards, and Height of Structures), District: Marlborough Village District MV, Height, and Notes #12 (as referenced therein) to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

<u>District</u>	<u>Height</u>
Marlborough Village District MV	Minimum: 35 feet <u>or 2.5 stories</u> ; Maximum: 64 stories: not to exceed a maximum of 6070 feet. ¹²

NOTES:

12 Within the Marlborough Village District, special permits may allow for an increase in height for a roof deck to 7 stories and up to 85 feet; also, ~~provided that the height of any development within 50 feet of a residential district boundary, shall be stepped down and shall not exceed 52 feet except where allowed by special permit.~~
 [See § 650-34F(1).]

XV. By amending Chapter 650 (Zoning), Section 650-37 (Special Provisions Applicable to the Wayside Zoning District), Subsection H(4)(A), entitled "Mixed Uses", by inserting the following sentence at the end of the existing subsection: Floor usage in a mixed-use development shall conform to subsection (2) of the definition of "Mixed Use" set forth in Section 650-5(B).

XVI. Effective Date. The effective date of these amendments shall be the date of passage. These amendments do not apply to any special permit or site plan approval, for which an application was submitted and/or a special permit or site plan approval was issued before the date of the first publication of notice of the public hearing pursuant to MGL c. 40A, s. 5 on these amendments.

ADOPTED
In City Council
Order No. 23-

Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



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2023 NOV 30 AM 11:00

City of Marlborough
Planning Board

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 29, 2023

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

RE: Council Order 23-1008964 Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §02 "Retirement Community Over Districts" to include Map 39, Parcels 5 and 26B located on Robin Hill Street

Honorable President Ossing and Councilors:

At its regularly scheduled meeting on 11/27/2023, 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 negative recommendation to the City Council on the above referenced Proposed Zoning Amendment. Yea: Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: Fay. Motion carried. 6-1.

The Board provided the following reasons in reaching its recommendation:

- The consensus of the Board was that a change in zoning to allow residential development of the proposed site would be the least impactful development option and one that is more consistent with the character of the surrounding neighborhood. However, the Board was concerned about the impact from a traffic perspective, specifically because the roadway cannot be widened;
- In the Planning Board's opinion, the developer established that the proposed Zoning Amendment would impact the neighborhood less than a commercial development, but argued the proposed development could negatively impact its abutters due to the height of buildings in close proximity to a single-family neighborhood;
- In the Planning Board's opinion, the developer established that the proposed Zoning Amendment would benefit the City in that it provided a use not permitted elsewhere, but determined that that the benefit would only be sufficient if the proposed development had less density, more screening, and lower building height;
- Without a comprehensive plan for all parcels throughout the City potentially impacted by the proposal, the Board could not recommend a zoning amendment that would be applicable city-wide, and stated a preference for a proposal that would cover only the proposed development site.

If the City Council sees fit to approve the Zoning Amendment, the Planning Board suggests the following items be considered in addition to the above-listed items:

- More extensive definition of allowable building dimension and height restrictions;
- Providing an amenity plan and considering granting the public access to these amenities.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a smaller 'N'. To the right of the signature, the initials 'VL' are written inside a hand-drawn circle.

Sean N. Fay
Chairperson
cc: City Clerk

LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2023 NOV 30 AM 10:40

HARLEY C. RACER

617-367-1970
hracer@luriefriedman.com

November 28, 2023

By Email and U.S. MailKathleen D. Robey, Committee Chair
Urban Affairs & Housing
Marlborough City Council
140 Main Street
2nd Floor
Marlborough, MA 01752Re: Order 23-1008964: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" and the Urban Affairs Hearing on November 30, 2023

Dear Committee Chair Robey:

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"). As you are aware, on November 27, 2023, the Marlborough Planning Board voted for a "**Negative Recommendation**" on this Zoning Amendment.

The Planning Board's Negative Recommendation was well advised and in the interest of the City and its residents because the Zoning Amendment is a full-scale rewrite of the City's Retirement Community Ordinance and would affect the entire City for the sole benefit of one national developer. These proposed changes are substantial and not City-led in any way – they are not the product of any study, report, guidance, master plan or recommendation of any City body or agent. Nor do these changes purport to address any stated City need. The Urban Affairs Committee should follow the Planning Board's negative recommendation and vote against this Zoning Amendment.

1. The Zoning Amendment would change the direction of the City's future and the character of Robin Hill Street.

To be clear, the developer-proponent is not simply requesting a special permit or a variance or approval for an isolated project. It asks the City for two zoning changes: (1) drastic change to the number, size, scope, character and permissible location of retirement communities throughout the entire City; and (2) approval of a massive retirement development complex which is currently not permissible anywhere in the City on Robin Hill Street through its addition to the

LURIE FRIEDMAN LLP

Kathleen D. Robey
 Chair, Urban Affairs Committee
 November 28, 2023
 Page 2

Overlay District. Just some of the citywide proposed changes in the Zoning Amendment include the following:

- Retirement Community developments could be large scale combinations – a mix of townhouses, multifamily apartments and various, broadly defined 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, 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 1 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 –powers that the City Council does not currently hold.

These significant changes should be rejected because they were not initiated by the proper bodies or in response to actual City need. In fact, it is clear that these changes would be bad for Marlborough and its residents. The City’s laws cannot be written ad-hoc by national

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developers for their own pet project and for their own benefit with no consideration of the effect on the City.

The Zoning Amendment is also bad for the Robin Hill Street community. It would convert more than 28 acres of currently undeveloped wooded land to a massive complex of over 60 buildings, including four story condos, a clubhouse 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 Street, 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.

It would be a major increase in congestion, development and dangerous traffic on this very narrow, quiet street. There has been no traffic or safety study conducted by the City to determine if the narrow Robin Hill Street could even support such a massive development. And at last night's hearing with the Planning Board the City Engineer stated that Robin Hill Street could not be expanded to accommodate an increase in traffic. Hillside School and the surrounding neighbors are strongly opposed to this drastic change, which is completely out of character with the current area.

2. The Zoning Amendment is procedurally defective and would be invalid if passed.

In our prior written communications with the City, dated November 8, 17 and 27, and at the Planning Board hearing on November 13, we explained that the Zoning Amendment is procedurally defective under M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60 because: (1) it was wrongfully initiated by a prospective buyer, Pulte Homes, rather than an individual land owner; (2) that the current landowner, Denali Belle, LLC, is not an "individual owning land" under the plain language of the statute; and (3) it would affect zoning districts in which the property owner has no property interest. See attached letter to the City Solicitor dated November 17, 2023.

For each of these reasons, if the Zoning Amendment is positively acted upon, it could be invalidated through an action brought in the Land Court.

3. The Zoning Amendment requires a two-thirds majority vote to pass.

Pursuant to M.G.L. c. 40A, §5, all zoning amendments require a two-thirds majority vote with limited exceptions and any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote. In other words, if any

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part of the Zoning Amendment requires a two-thirds majority vote, the entire Zoning Amendment requires a two-thirds majority vote.

Here, there are two components to the Zoning Amendment, (1) insertion of a parcel on Robin Hill St. into the retirement community overlay district as a newly defined type of retirement community and (2) vast revisions to §650-22. Neither qualify for the reduced quantum of vote. It must also be noted here that the City Council cannot pass only the first part. The City would have to first change the Zoning Amendment as requested in the second part before it could add the sought after combined retirement community district to the overlay map.

For the first component, the proponent relies on exception §5, subsection (2)(a), which 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”. The parcels on Robin Hill Street are not in an “eligible location”, defined 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”. c. 40A, §1A. The parcels are not near any transit station and are not in an area of concentrated development or a commercial or rural village district. The vote threshold remains two-thirds majority and the City Council need not consider the vote threshold for the second part.

If there is any uncertainty as to whether this portion of Robin Hill Street meets the definition of an “eligible location”, the City Council should request an advisory opinion from the Office of Economic Development at <https://www.mass.gov/forms/request-an-advisory-opinion-on-ch40a-eligible-locations>.

As to the second component, the proponent suggests that the *citywide changes* also qualify for simple majority vote under §5, subsection (2)(b) as “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 [special permits]”. However, the proponent does not identify the where or how the permissible density of population for any proposed development would increase by special permit. Nor does it identify any a particular use in any proposed development that would increase by special permit. The Zoning Amendment does neither. The vote threshold remains a two-thirds majority.

Very truly yours,

/s/Harley C. Racer
Harley C. Racer

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

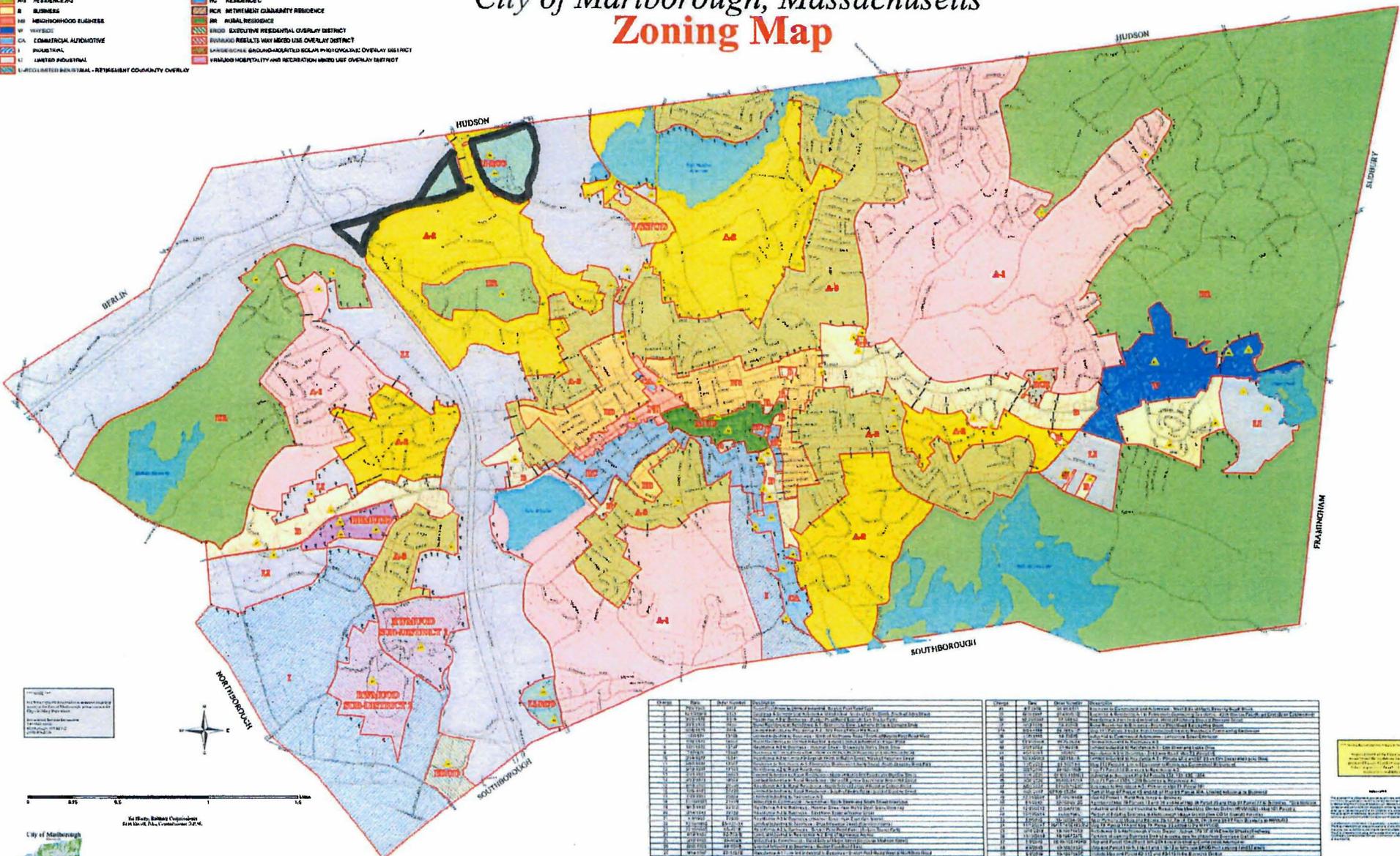
EXHIBIT 1

Current RLO-MF

12-7

City of Marlborough, Massachusetts Zoning Map

- A-1 RESIDENCE A-1
- A-2 RESIDENCE A-2
- A-3 RESIDENCE A-3
- B BUSINESS
- HH NEIGHBORHOOD HOUSING
- WF WAREHOUSE
- CA COMMERCIAL AUTOMOTIVE
- I INDUSTRIAL
- LI LIMITED INDUSTRIAL
- R-1 MARLBOROUGH VILLAGE DISTRICT
- R-2 RESIDENCE B
- R-3 RESIDENCE C
- R-4 RESIDENTIAL COMMUNITY RESIDENCE
- R-5 RURAL RESIDENCE
- R-6 EXECUTIVE RESIDENTIAL OVERLAY DISTRICT
- R-7 EXECUTIVE RESIDENTIAL OVERLAY DISTRICT
- R-8 LARGE-SCALE BROWN-ADJACENT SOLAR PHOTOVOLTAIC OVERLAY DISTRICT
- R-9 VILLAGE HOUSING AND RECREATION OVERLAY DISTRICT
- R-10 LIMITED RESIDENTIAL - RESIDENTIAL COMMUNITY OVERLAY



Scale: 1" = 500'

City of Marlborough
GIS

City Clerk
Sharon W. Kergan, City Clerk

Parcel	Area	Date	Description	Area	Date	Description
1	10000	10/1/00	...	1	10/1/00	...
2	10000	10/1/00	...	2	10/1/00	...
3	10000	10/1/00	...	3	10/1/00	...
4	10000	10/1/00	...	4	10/1/00	...
5	10000	10/1/00	...	5	10/1/00	...
6	10000	10/1/00	...	6	10/1/00	...
7	10000	10/1/00	...	7	10/1/00	...
8	10000	10/1/00	...	8	10/1/00	...
9	10000	10/1/00	...	9	10/1/00	...
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29	10000	10/1/00	...	29	10/1/00	...
30	10000	10/1/00	...	30	10/1/00	...

Map of Marlborough, Massachusetts, showing zoning districts. The map is based on the City of Marlborough's Zoning Ordinance, Chapter 141A, Section 1. The map is subject to change without notice. The City of Marlborough is not responsible for any errors or omissions on this map. The City of Marlborough is not responsible for any damages or losses resulting from the use of this map. The City of Marlborough is not responsible for any legal actions or claims resulting from the use of this map. The City of Marlborough is not responsible for any other actions or claims resulting from the use of this map.

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BOSTON, MA 02109

HARLEY C. RACER

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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 01752

Re: 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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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.mbmllc.com/zoning->

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[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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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.]>

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

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.

End of Document

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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

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

|

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.

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

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2023 NOV 29 AM 9:38

November 22, 2023

Dear President Ossing and Members of the City Council:

Thank you for your continued attention and careful examination of 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).

We continue to be deeply concerned with the scope of the project and potential impact on the Blaiswood Ave. neighborhood, safe use of the Rail Trail along the stretch of Sasseville Way and the Fort Meadow Reservoir and the wildlife corridor as a whole. Participating in public hearings has opened our eyes to the process by which decisions of this type are made. We are grateful for your commitment to ensure concerned citizens are heard. We appreciate the careful deliberation of both the Conservation Commission and Planning Board. We are respectful of their recommendations to you as well as comments offered by City Engineer Thomas DiPersio.

As we continue to participate in this process through our letters of concern, signed petitions from 100+ fellow residents, documented comments at Public Hearings, and by attending meetings of our City Council, Conservation Commission, Planning Board and one meeting with the developer, we wanted to take this opportunity to reiterate our position. Since the initial City Council meeting on September 11, 2023, we have taken note of the changes proposed by the developer, Trammell Crow Company, their lawyers, team of engineers and other contracted professionals. It is clear they are a thoughtful group and continue to say they want to be "good neighbors" and develop a "high-quality" multi-use residential community. We have come to understand this means an apartment complex of no more than 286 rented units and a restaurant. We are dismayed by the term "multi-use." We wonder if there is a need for a restaurant on this site and also wonder if owner-occupied condominiums or single family homes would have been a better option.

It has never been our intent to question the need for additional housing in the city. However, our assertion continues to be that this is simply the wrong location for a project of this scope and scale. Thus we continue to request you do not approve the SWROD.

As this process is now in discussion at Urban Affairs we are reminded that the specific language of SWROD, if approved, will allow for this proposed project to move forward to

the Special Permitting Process. We continue to ask that you **not** support this overlay proposal. As concerned residents we believe there are too many unknowns that warrant further attention.

The proponent is offering changes to their proposed SWROD language. They state that this is a result of feedback. We appreciate their efforts, but continue to question how binding any of these might be. For example, there are numerous references to the concern of stormwater management. Again, we appreciate their effort and their faith in being able to engineer their way through any seen or unforeseen situations. However, clearly no one can guarantee this. In addition we have raised concerns about what will happen to the underground streams and rivulets if this land is disturbed. The rate and constant flow of groundwater from the land is ever-present. Has this been addressed?

In a letter addressed to the Honorable Arthur G. Vigeant; Marlborough City Council & Planning Board signed by Timothy Nelson Senior Manager - Facilities, Real Estate, Environmental Health and Safety states the parcel of land currently owned by Boston Scientific is "underutilized." Does this mean that undeveloped land does not serve a purpose? Is this how you as our elected officials weigh the value of land in the city? It has been our position from the start that this piece of land is indeed serving a critical purpose in the ecosystem that makes up Fort Meadow Reservoir and surrounding wildlife corridor. We strongly ask that you vote **no** because of the many unknowns associated with this property; specifically, in regards to environmental impact, safety and traffic impact, quality of life impact and questionable financial benefits. Please allow us to elaborate further:

Issue - Environmental Impact: The land in question is the headwaters to one of Marlborough's jewels, Fort Meadow Reservoir. It contains cold water streams and filters the water entering the lake. When the city contracted with Camp Dresser and McKee Inc, in 1987, to assess the area around Fort Meadow Reservoir, it included the specific area in question.

More specifically, the report states, "The geologic structure in the area of the Reservoir is dominated by faults rather than by folds. The boundaries between the different rock types are all faults. The major faults present are associated with the Assabet River Fault. These trend northeast-southwest, one fault passing beneath Hager Hill, and another coinciding with the course of Flagg Brook. Minor faults in the watershed are perpendicular to the major fault system, trending northwest southeast. One of these passes between Addition Hill and West Hill, and another passes directly beneath the Reservoir.

The presence of these structures beneath the watershed probably has an influence on ground water flow and discharge in the watershed. The coincidence of a fault with Flagg Swamp and Brook suggests that groundwater from bedrock fractures may be an important source of flows in

this stream. In areas of highly fractured rock, groundwater flow rates and overall permeability in the bedrock may exceed those of surficial deposits.

Soils in the Fort Meadow Reservoir watershed were mapped using information provided by the Soil Conservation Service (Figure 2-1 ref. full report), and the areal extent of the different soil types was measured with a digital planimeter. The most common soil association in the watershed is Paxton-Woodbridge, which comprises 70% of the surface area contributing to the Reservoir (Table 2-1 ref. full report). **This association is characterized by the SCS as having high erosion potential and being subject to a seasonal high water table. This, in combination with the steep slopes previously noted, makes the watershed especially vulnerable to erosion when soils are disturbed."**

It is clear from this report (which can be provided in full if requested) that the nature of this land is environmentally very sensitive and directly impacts the lake's ecosystem. What happens when the lake's algae blooms, weed growth and salinity increase? How about flooding of nearby properties and homes?

Trammell Crow Company has been asked several times about their experience and expertise in building adjacent to wetlands, and have not produced any documentation to support such work.

Action: Vote "no" until a clear understanding of the environmental impact is determined. Also, Trammell Crow Company should provide documents from other similar wetland sites that show what their operation plans look like for stormwater management, what their monitoring records look like, if they ever had to take corrective action or pay out for damages, and what their bonding contracts look like.

Issue - Safety and Traffic Impact: The proposed mixed-use development of 286 units anticipates primarily working tenants. This means commuters, and can easily result in over 500 additional vehicles on the road during rush hour every day, plus additional non-work travel.

The Transportation Impact Assessment (TIA) prepared for Trammell Crow Company by Vanasse & Associates Inc. needs an in-depth review by our city's traffic and safety experts. The TIA does not mention the pandemic and its impact on traffic. It also fails to mention Assabet Valley Regional Technical High School (AVRTHS), its specific traffic flow at the start and end of each school day, students crossing Fitchburg St. to get to the sports field, and the likely use of the school grounds as a shortcut to Route 85.

Who will take responsibility for a student's injury or death as a result of this significant increase in traffic?

There is also the matter of the Assabet River Rail Trail (ARRT). This wonderful addition to our city's amenities will now have an additional safety hazard on Sasseville Way as hundreds of cars would cross it every day in order to exit and enter the proposed residential complex and again at the Fitchburg Street intersection.

Action: Vote "no" until a thorough review of the TIA is completed by our city's traffic and safety experts. It must include special attention for AVRTHS and the ARRT.

Issue – Quality of Life Impact: The proposed development is likely to have negative impacts on the lake and its residents. While the developer has indicated a willingness to stay 200 ft from the brook, there are nuances to this statement that became clear at the Urban Affairs meeting of November 15. They indicated that for stormwater management they might encroach on the 200 ft, and at the Blaiswood Avenue boundary only an 80 ft setback is planned. (Please refer to photo of 80 ft from end of Blaiswood Ave.)

Again, environmental concerns weigh heavily on quality of life in terms of water quality, homes flooding and water runoff. Currently, even when it has not rained for days, the sound of water flowing through the storm drains from the countless underground streams and rivulets that direct water flow from that section of the land down on Blaiswood Avenue are steady and pronounced.

There is also the matter of an emergency gate at the end of Blaiswood Avenue. Even if it is locked and maintained as "promised," it is likely to become a walking shortcut to The Grove, Walmart and the like, potentially leading to security and safety issues.

Action: Vote "no" and acknowledge the concerns of over 100 residents that will be directly and negatively impacted by the overlay. We also welcome you to do a site visit of the property and Blaiswood Avenue to gain a first-hand perspective of what is at stake.

Issue – Questionable Financial Benefits: The Fiscal Impact Analysis prepared for Trammell Crow Company by Fougere Planning & Development Inc should be thoroughly evaluated by our city's financial experts. In addition, the current tax assessment of this 23+ acre property at \$498,300 should be reviewed to determine if it is undervalued and accordingly under taxed. At a Planning Board meeting, one of Trammell Crow Company's lawyers suggested it might be worth 10 times the current assessment.

Action: Vote "no" until an independent fiscal impact analysis by city experts is done, as well as a review of the property's assessed value and associated tax.

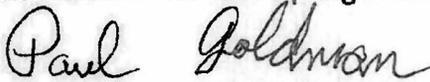
In summary, the requested SWROD for a 286-unit development should not be approved. It is in a highly sensitive environmental location, possesses safety and traffic concerns, and is of questionable financial benefit. Furthermore, the landowner, Boston Scientific, has been a great neighbor in Marlborough with a reputation for both human and environmental health. We encourage our elected officials to collaborate with Boston Scientific in finding a better use for this property that will benefit our city now and long into its future considering its environmentally sensitive nature.

Thank you for taking our concerns into consideration as you vote on this overlay district. We hope that this letter has provided you with additional information to make an informed decision. However, if you have any additional questions, please do not hesitate to contact us.

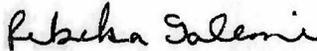
Sincerely,



Bob Durand - 39 Red Spring Road bob@durandanastas.com



Paul Goldman - 137 Second Road goldmap@verizon.net



Rebeka Salemi - 32 Blaiswood Ave. besalemi@comcast.net

CC:

Kathleen D. Robey At-Large Councilor

Mark A. Oram At-Large Councilor

Samantha Perlman At-Large Councilor

Laura J. Wagner Ward 1 Councilor

David Doucette Ward 2 Councilor

J. Christian Dumais Ward 3 Councilor

Teona C. Brown Ward 4 Councilor

John J. Irish Ward 5 Councilor

Sean A. Navin Ward 6 Councilor

Donald R. Landers, Sr Ward 7 Councilor

Signature	Print Name	Address
<i>Lisa A. Morin</i>	Lisa A Morin	297 Lakeshore Dr
<i>Phyllis Griffin</i>	Phyllis Griffin	799 Lakeshore Dr
<i>Michael J. Senal</i>	Michael Senal	17 Canal Rd
<i>JAMES D. WILK</i>	JAMES D. WILK	123 LAKE SHORE DR
<i>RONALD SAWY</i>	RONALD SAWY	34 LAKESHORE DR
<i>Evan Wesley</i>	Evan Wesley	9 Lakeshore Dr
<i>COURTNEY WESLEY</i>	COURTNEY WESLEY	9 Lakeshore Dr
<i>Kathy Swadlow</i>	Kathy Swadlow	179 Bayside St
<i>KELLEN LEWEN</i>	Kellen Lewen	9A Lakeshore Dr
<i>Robert Symour</i>	Robert Symour	34 Lakeshore Dr

Signature	Print Name	Address
<i>Toni Lauster</i>	Toni Lauster	27 Highway St, Marlborough
<i>BRUCE STRICKLAND</i>	BRUCE STRICKLAND	66 COMMUNISTICA AVE MARLBOROUGH
<i>MARIA RODRIGUEZ</i>	MARIA RODRIGUEZ	66 COMMUNISTICA MARLBOROUGH
<i>Joan Perlman</i>	Joan Perlman	91 Wellington St,
<i>RIK WILCOFF</i>	RIK WILCOFF	26 WITFIELD DR
<i>ROBERT BURKE</i>	ROBERT BURKE	420 HIGMAN WAYS
<i>LETTIE SKURA</i>	LETTIE SKURA	54 HIGMAN DR
<i>MACE M WERTHEIMER</i>	MACE M WERTHEIMER	45 LAKESIDE AVE #1
<i>John Walker</i>	John Walker	50 Teller Street
<i>Daniel J. Curran</i>	Daniel J Curran	35 Waterford Circle

Signature	Print Name	Address
<i>ANALIA STEMPSON</i>	ANALIA STEMPSON	25 Lakeshore Dr Marlborough
<i>Nelson Oliver</i>	Nelson Oliver	38 Lakeshore Dr
<i>Richard Syckentha</i>	Richard Syckentha	38 Lakeshore Dr
<i>CHRISTINE P. SMITH</i>	CHRISTINE P. SMITH	257 LAKESHORE DR
<i>LISA SEGARRA</i>	LISA SEGARRA	44 Lakeshore Dr Marlborough
<i>Gillette Schmitt</i>	Gillette Schmitt	38 Lakeshore Dr

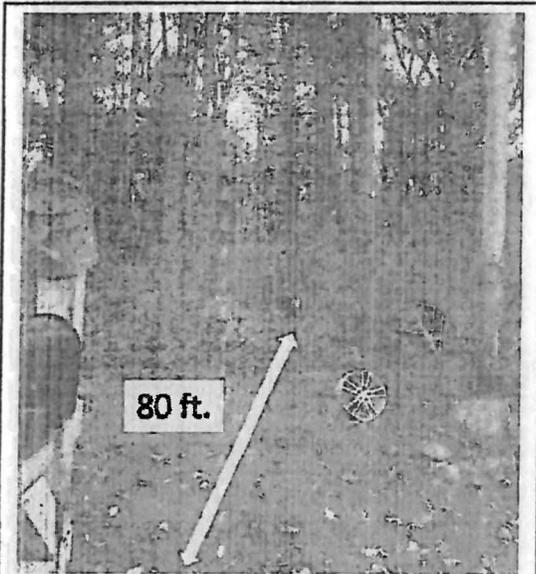
Signature	Print Name	Address
<i>DARIN GRIFFIN</i>	Darin Griffin	84 Kings Court Rd
<i>ANDREW PVE</i>	ANDREW PVE	54 REYNOLDS COURT
<i>James Han</i>	James Han	51 Ewald Ave
<i>Jared A. Herish</i>	Jared A. Herish	707 Stevens St
<i>Jahid Omar Grief</i>	Jahid Omar Grief	21 Raymond Rd
<i>Mark Sprack</i>	Mark Sprack	54 Schofield Dr
<i>Doug Lynch</i>	Doug Lynch	77 Pine

Signature	Print Name	Address
<i>MARIZIA PEBET</i>	MARIZIA PEBET	23 Turner Ridge Rd
<i>Jessica Pebet</i>	Jessica Pebet	23 Turner Ridge Rd
<i>EMANUELA PEBET</i>	EMANUELA PEBET	23 Turner Ridge Rd

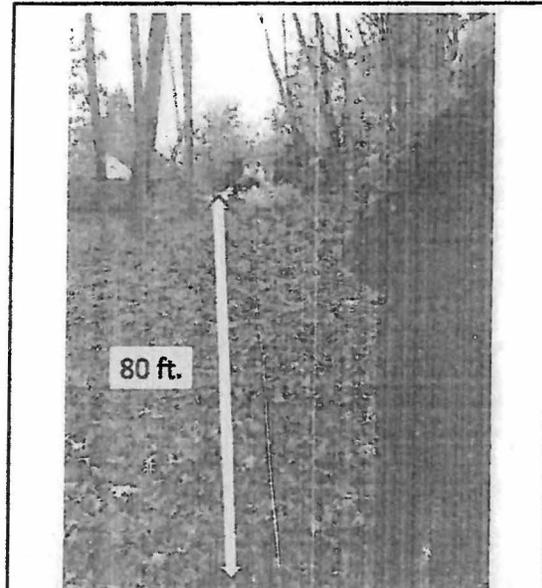
Signature	Print Name	Address
<i>PAUL HAZUAREZ</i>	PAUL HAZUAREZ	79 2ND PO
<i>Billian McCalfe</i>	Billian McCalfe	115 Lakeshore Dr
<i>Dan Lauster</i>	Dan Lauster	212 Reservoir St
<i>Susan Lupisella</i>	Susan Lupisella	51 Bruce Rd

Views from Blaiswood Avenue

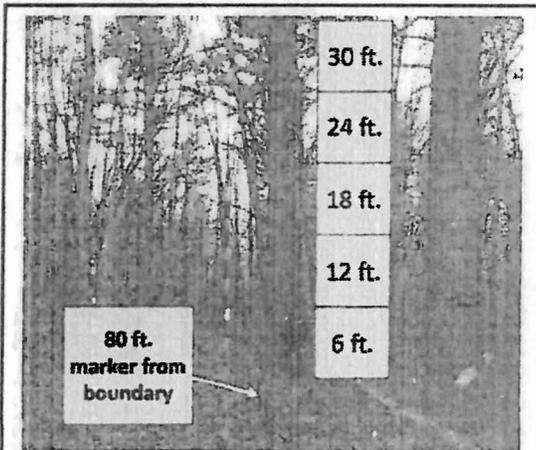
Trammell Crow Company (TCC) stated in the Urban Affairs Meeting of November 15 that their 200 ft. distance from the brook might be breached by the stormwater management system. They also said it did not apply near Blaiswood Ave., where they are planning to be only 80 ft. away from the boundary. They also state in their documents that maximum building heights will not exceed 70 ft. The following images illustrate the impact this will have on our neighborhood, and raise serious questions.



This shows just how close 80 ft. is from the boundary, i.e., the mailbox on the left. The people are in about 100 ft.



This shows the 80 ft. from the woods to the street, and also the tape measure used to make the measurement.



This shows distance and height. A 6 ft. person is next to the tree. Using his height as a gauge, the portion of tree shown is a little over 30 ft., about half of the 70 ft. proposed by TCC.



This rendering from TCC has us wondering, will the 70 ft. high buildings that are 80 ft. beyond the border be visible as our photos suggest?

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To: Honorable President Michael Ossing and Councilors, Marlborough City Council **2023 NOV 30 AM 10:40**

From: Paul Goldman, Ph.D. 137 Second Road

Date: November 29, 2023

Subject: Sasseville Way Residential Overlay District (SWROD) – Letter of Opposition – Order No. 23-1008941

Summary: In light of the Planning Board's recent "neutral" recommendation on SWROD and my review of Trammell Crow Company's (TCC) updated documents, I am submitting this Letter of Opposition to strongly advocate for a "no" vote at the December 4th City Council Meeting. This residential complex will be an environmental disaster for our lake and community, poses serious safety concerns, and is of questionable financial benefit. Please allow me to explain:

Details:

1. Regarding the Planning Board's "neutral" recommendation, while I respect their opinion, I believe they are mistaken when saying "The developer **established** that the proposed Zoning Amendment is more consistent with the character surrounding the neighborhood than the existing limited industrial zoning; and would impact the Blaiswood Avenue neighborhood and Assabet River Rail Trail users less than a commercial development..."
 - a. I have not seen any such "**established**" evidence or data. I believe a comparison should be done and available to the public. What would the impact of a typical commercial development be? Would it be better regulated, create less traffic, and be less of a burden on City services than this residential complex, given that both need to comply with Special Permits? We need real data.
 - b. Given that the current vacancy rate for commercial property is relatively high, 15 – 20%, (based on web research) is this "threat" even relevant at this time?
 - c. Regarding the Planning Board's statement "development could negatively impact its abutters (height of buildings in close proximity...). TCC stated during an Urban Affairs meeting that buildings could be 70 ft. tall and only 80 ft. from the boundary. How come TCC's Blaiswood Ave. emergency exit image doesn't show a building? How is this possible? Can we trust TCC's image?
2. Environmentally, there is no turning back once we destroy this unique land that is the headwaters to Fort Meadow Reservoir, which serves our community with public beaches, recreation, wildlife and beauty. The cold-water brooks are supporting native trout, a rarity in all of Massachusetts.
 - a. Respect the professional judgement of our Conservation Commissioners, who are the stewards of our environment for now and generations to come.
 - b. Review the 1987 Diagnostic/Feasibility Study by Camp Dresser & McKee Inc, where they state that the geology of the specific area in question provides ground water that may be an important source of flows in the streams, and that the combination of soil type and steep slopes make the watershed especially vulnerable to erosion when soils are disturbed.
 - c. I have asked TCC 3 times, i.e. at Planning Board, City Council and neighborhood meetings, for documentation regarding their developments in similar headwater/environmentally sensitive areas. They have produced none. The following TCC documents should be required and made public: 1. Examples of similar environmentally sensitive developments, 2. Copies of their storm water management systems for this or similar sites, 3. How they monitor and report their storm water management data, 4. Records of any storm water management system failures, what happened and what was the corrective action and long-term impact, 5. Records if they had to payout to the community (the bonding they mentioned) for environmental issues, if so, when and why. **We need to know what happens if something goes wrong.**

- d. The headwaters area will play a critical role in our future efforts to address climate resilience for our lake. As climate temperatures rise, the cooler ground water should prove beneficial.
3. TCC's Transportation Impact Study (TIS) lacks mention of the pandemic and Assabet Valley Regional Technical High School (AVRTHS).
 - a. Did anyone contact AVRTHS to hear their concerns? What is traffic like at the start and end of the school day? Do they have concerns about students crossing Fitchburg St. to get to the sports field? Do they have concerns about the school grounds being used as a shortcut to Route 85?
 - b. Assabet River Rail Trail users should not be burdened with another traffic intersection and associated safety concerns, especially one with over 500 cars crossing per day.
 - c. Has Marlborough's City experts reviewed and commented on the TIS? If not, they should; and if so, it should be made public. How accurate is the study without the pandemic and AVRTHS?
4. TCC's Fiscal Impact Analysis (FIA) needs to be carefully reviewed by our City's experts.
 - a. I question TCC's number of 15 students, only 5%; maybe, and maybe not.
 - b. The "School Costs" of \$190,000 seems very low for 15 students. Marlborough's 2023-2024 spending/student data is \$22,495. This value times 15 equals \$337,425; a difference of \$147,425 from what's reported in the FIA. We cannot trust TCC's analysis.
 - c. Police, fire and other department costs are also questionable; based on what I heard during the recent campaign we need to increase salaries to attract qualified candidates for currently unfilled positions. This implies higher costs than what's reported in the FIA.
 - d. If Fort Meadow Reservoir becomes contaminated with salt, weeds, algae, sediment, etc., lake treatment costs will increase and our property values will likely decrease, thus negatively impacting expenses and tax revenue, respectively.

7 Reasons to Vote "No" for SWROD:

1. Over 100 residents signed a petition, and many others have since told me they are willing to sign as well. Listen to our concerns and protect our community.
2. TCC has provided incomplete and questionable documents. We cannot trust their information for our decisions, the City must do their own analysis and make it available to the public.
3. Environmentally this is a disaster, trust our Conservation Commission.
4. The TCC complex has not been proven to be a better alternative than current zoning options.
5. Safety needs a serious review by City officials.
6. Financial benefits appear uncertain considering schools, services and lake contamination.
7. There are many more unknowns than knowns with potentially significant negative consequences.

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1A

2023 NOV 29 AM 9:39

Call to Order

October 2, 2023

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Sean Fay, Barbara Fenby, James Fortin, Patrick Hughes, Dillon LaForce, George LaVenture, and Chris Russ. Meeting support provided by City Engineer, Thomas DiPersio. James Fortin arrived at 7:24 PM

1. Draft Meeting Minutes

A. August 21, 2023

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to accept and file the August 21, 2023, meeting minutes. Yea: Fay, Fenby, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

B. September 11, 2023

On a motion by Dr. Fenby, seconded by Mr. LaVenture the Board voted to accept and file the September 11, 2023, meeting minutes. Yea: Fay, Fenby, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

2. Chair's Business

A. Elmview at Marlborough Sect. #2

i. Correspondence from City Engineer, Thomas DiPersio

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to accept and file the September 28, 2023, correspondence. Yea: Fay, Fenby, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

Mr. DiPersio summarized the correspondence and explained there was a conveyance on a lot at the corner of Ferrecchia Drive and Northboro Road. During the title search of the conveyance it was noted that the lot was never released from the covenant. The attorneys want to release the lot from the covenant to clean the title and to make the conveyance. The Legal Department has reviewed the situation and drafted the release.

ii. Release of Lot(s)

On a motion by Dr. Fenby, second by Mr. LaVenture, the Board voted to authorize the lot release. Yea: Fay, Fenby, Hughes, LaVenture, and Russ. Nay: 0. Motion carried. 5-0. Abstained: LaForce.

Mr. Fay endorsed the released of lots.

- B. NO DISCUSSION REQUIRED – Council Order No. 23-1008964 – Proposed Zoning Amendment to Chapter 650 “Zoning” to amend §22 “Retirement Community Overlay Districts” to include Map 39, Parcel 5 and 26B located on Robin Hill Street. – Public hearing set for 11/13/23**

3. Approval Not Required (None)

4. Public Hearings

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to switch items 4A and 4B on the agenda. Yea: Fay, Fenby, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

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- B. Council Order No. 22-23-1008721H – Proposed Zoning Amendment to Chapter 650, Definitions, Affordable Housing and MV District
i. Legal Notice

Chairperson Fay opened the hearing. Mr. LaVenture read the public hearing legal notice into the record. Chairperson Fay provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from the Board members.

Presentation:

Councilor Katie Robey spoke on behalf of the proposed zoning amendment and thanked the Board for moving up the public hearing. Ms. Robey read and summarized attachment A. – See attached.

Mr. Fay acknowledged Ms. Robey's summary of her remarks and explained it would be part of the public record.

Mr. Fay closed this portion of the public hearing.

Speaking in Favor of the Amendment:

No one spoke in favor.

Mr. Fay closed this portion of the public hearing.

Speaking in Opposition to the Amendment:

No one spoke in opposition.

Mr. Fay closed this portion of the public hearing.

Questions and Comments from the Planning Board:

Dr. Fenby asked, who from the City would be monitoring the affordable housing? Ms. Robey explained she believed the State would monitor this and that the Community Development Authority would be checking residents' eligibility.

Mr. LaVenture asked if there was a formula for the \$25,000.00 parking lot fee. Ms. Robey explained the thought process was to come up with a number that wasn't over burdensome for the developer while giving them some incentives to want to build the parking themselves.

Councilor Mark Oram explained he believes the fee should be \$40,000.00 based on a study done on parking and the costs associated to build a parking garage.

Mr. Fay closed this portion of the public hearing.

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to close the public hearing. Yea: Fay, Fenby, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0.

Mr. Fay requested this item remain on the agenda for the October 23, 2023, meeting.

Mr. James Fortin Arrived at 7:24 PM

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- A. Council Order No. 23-1008951 – Proposed Zoning Amendment to Chapter 650, to add a new section to create the Red Spring Road Overlay District (RSROD)
- i. Legal Notice
 - ii. Correspondence from Brian Falk, Mirick O’Connell
 - iii. Slide presentation (not included in packet)

Chairperson Fay opened the hearing. Mr. LaVenture read the public hearing legal notice into the record. Chairperson Fay provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from the Board members.

Presentation:

Brian Falk, Mirick O’Connell (100 Front Street, Worcester, MA 01608) spoke on behalf of the proposed overlay district, representing the Red Spring Road Homeowners Association, which petitioned the City Council for this proposed overlay district on behalf of the condominium unit owners who live along Red Spring Road. Mr. Falk explained several members of the Board of Trustees from the condominium association and unit owners are present at tonight’s meeting.

Mr. Falk went over the slide presentation, attachment B. – See attached.

Mr. Falk explained the parcel is a single 50-acre lot, with 28 single family homes, a boat club, and various accessory structures. All the structures are pre-existing non-conforming with respect to the current zoning, which makes ordinary changes to single-family homes challenging. The purpose of the overlay district is to preserve the neighborhood as it is and to allow for homeowners to make simple improvements to their homes without the need for a special permit.

Mr. Falk explained the property is heavily wooded with all of the homes located very close to the shoreline. Last year the tenants got together and purchased the property instead of it be sold off to a developer. It was previously owned by the Morse family and the property was developed over several decades with cottages that have ground leases.

Mr. Falk explained a special permit from either City Council, or the Zoning Board of Appeals is required for these homeowners to make simple changes, like building a deck, a detached garage, or a small addition. The Building Commissioner asked the Condominium Association to figure out something with the zoning. Mr. Falk explained other than filing the proposed zoning change, the options are to file a special permit or to file a subdivision. The subdivision option would be very difficult because most of the homes would not fit on a traditional A2 district lot and the roadway would need to be updated to the subdivision control law standards, which would be very costly and have a significant impact on impervious areas. Mr. Falk went over the Section 6, Finding Special Permit procedure and argued the abutters mailing is extensive and costly.

Mr. Falk went over the proposed overlay district and explained the parcel is currently zoned A2, the plan is to take the things in the A2 district that they can’t comply with and make them conforming in the overlay. The 120-foot frontage requirement can’t be met without doing a subdivision and that is why the frontage requirement is 0. Many of the properties are close to the lake and close to each other and could not meet the A2 set back requirements. The proposed overlay district would have a over all perimeter setback for the entire district to keep structures way from neighboring properties. Lot coverage would be capped at 30%, currently the lot coverage is

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about 5%. Any new lot would require 18,000 square feet. The A2 use restrictions would remain in place, the only new uses that are being proposed are multiple single family homes on one lot and a boat club.

Mr. Falk went over the restrictions within the proposed overlay district. He explained most commercial uses are prohibited, along with multi-family apartments buildings, and two-family buildings. The proposed overlay district would also include a 3,000 square foot floor area cap on single family homes, which is a restriction not currently in the A2 zone district. Mr. Falk explained if the proposed overlay district is approved, making the entire property and all the structures conforming, the residents would no longer have the opportunity to seek Section 6, Finding Special Permits.

Robert Durand (39 Red Spring Road, Marlborough, MA 01752), President of the Red Spring Road Homeowners Association spoke on behalf of the proposed overlay district. Mr. Durand explained the residents have been working on this for the last year and make up about 22% of the land mass around Fort Meadow Lake. The wetland was delineated at the request of Priscilla Ryder, Conservation Officer and included on the City's open space master plan. Mr. Durand explained they worked closely with the Building Commissioner and the City Solicitor and reminded the Board it was their recommendation that the Homeowners Association validate the zoning. The homes have been recently re-assessed by the City's Assessor.

Mr. Durand discussed the 10 acres that is currently undeveloped on the property. He explained the Association has three options, 1) give it to the City, which has no value to the Association, 2) sell it to a developer, 3) remain the stewards of the 10 acres and argued that everyone wants to preserve the 10 acres for open space.

Mr. Falk went over the Board's standards for zoning changes:

- Is the proposed change in keeping with the character of the neighborhood?
Mr. Falk said yes, it largely leaves the neighborhood alone and leaves residential use restrictions in place.
- Does the proposed change negatively impact the neighbors?
Mr. Falk said no, it allows for the same residential uses and density that's already there.
- Does the proposed change benefit the City, or provide a use not permitted elsewhere?
Mr. Falk said no, it does not provide a use not permitted elsewhere, it leaves the existing use restrictions in place but it benefits the City because it accommodates improvements to the properties, which will increase their values and tax assessments resulting in an overall increase to the City's bottom line.
- Is the proposed change in keeping with the intent and purposes of the City's zoning ordinances?
Mr. Falk explained they believe it is, it makes minor changes to dimensional controls in the A2 district to address this unique parcel.

Mr. Falk concluded his presentation by explaining he believes this amendment will help clarify and simplify the zoning requirements applicable to this neighborhood and encourage residents to upgrade and add value to their properties.

Mr. Fay acknowledged the correspondence from Mr. Falk to City Council and explained it would be part of the public record.

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Mr. Fay closed this portion of the public hearing.

Speaking in Favor of the Amendment:

- Rebecca Salemi, 32 Blaisewood Ave spoke in favor.
- Pamela Morse, 59 Red Spring Rd spoke in favor.
- Christine Morrow, 6 Blaisewood Ave spoke in favor.
- Mark Oram, 108 Upland Rd spoke in favor.
- Alex Ferrecchia, 27 Red Spring Rd spoke in favor.
- Robert Parente, 328 Desimone Dr spoke in favor.
- Peter Mongeau, 21 Red Spring Rd spoke in favor.
- Steve Vigeant, 51 Red Spring Rd spoke in favor.
- Barbara Allen, 124 Second Rd spoke in favor.
- Neal Vigeant, 53 Red Spring Rd spoke in favor.

- Peter Sharon, 95 Lakeshore Dr presented the Board with 17 questions, see attachment C. – See attached.
Mr. Sharon read a few of the questions.
 - o What would be the maximum development capacity of Red Spring Road if this overlay district is approved?
 - o What does the overlay district provide, specifically, that is not already provided in the current zoning regulation?
 - o Based on your goals stated in the public hearing notice, it seems that you can already do this in the current condominium status. Additions, new construction, etc. are being done – why is an overlay district needed? The only thing needed was a process for association members to approve the activity which would adhere to A-2 zoning regulations.
 - o Does this overlay district provide a use that is not permitted elsewhere?

- Mike McGinnis, 15 Elizabeth Rd asked, would a special permit be required to separate and sell the 10 acres and would the City have the first right to buy it before a developer?
 - o Mr. Falk explained, if it was divided right now a Section 6 finding special permit would be required. If the overlay district was approved; it would no longer require a special permit, it would need to go the Planning Board for an ANR and or definitive subdivision.
 - o Mr. Fay explained, there is nothing in the proposal that gives the City the right of first refusal.

- Donna Paolini, 45 Red Spring Rd spoke in favor.
-
- Paul Goldman, 137 Second Rd asked, does the overlay district need to apply to everything or can it be specific to the structures that are there and then the undeveloped land remains as A-2?
 - o Mr. Fay explained it would apply to the entire parcel.

- Lee Graham, 183 Lakeshore Dr addressed concerns about the Red Spring Road residents not being held to the same building rules and regulations as Lakeshore Drive residents, if the overlay district was approved.
 - o Mr. Falk explained, the Conservation Commission has full jurisdictions; the same rules apply here as they do across the lake in terms of building in the buffer zone. The 15-foot setback pertains to the perimeter of the entire property, but that the shoreline has a separate jurisdiction.

- Dorothy Manning, 302 Lakeshore Dr asked, what is the definition of a condominium.

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- Mr. Falk explained, it is essentially divided ownership of a single parcel of real estate. Here, everyone owns their unit, which is their home. They also have an exclusive use area which they don't technically own, but they have exclusive rights within that yard area, but everything else is common area. It's a division of ownership of a single parcel among multiple owners.
- Paul Kaczmarczyk, 79 Second Rd asked if all the properties were waterfront properties, Mr. Falk said all the properties were waterfront homes.
- Garry Cato, 33 Red Spring Rd spoke in favor.
- Shawn McCarthy, 185 Cullinane Drive asked for clarification on zero feet of frontage.
 - Mr. Falk explained frontage as it's used in the overlay district, pertains to frontage on a public way or a private way that has been approved by the Planning Board. Every lot under the Marlborough Zoning Ordinance must have a certain amount of frontage on one of those streets. In the A2 districts it's 120 feet, this 50-acre parcel has roughly 50 feet of frontage on one end and less on the other end because Red Spring Road is not a public way or private way that has been approved by the Planning the Board, the roadway does not give each property frontage.
- Steve Brule, 23 Red Spring Rd spoke in favor.
- Richard Kelley, 65 Lakeshore Dr asked about how the homes became a condominium association.
 - Mr. Fay explained a public hearing was not required; it was a private transaction where the residents got together as an alternative to selling the property to a developer.

Mr. Fay reminded the residents in attendance that this public hearing is about the overlay district.

- Linda Pakus, 17 Red Spring Rd spoke in favor.
- Daniel Durand, 37 Red Spring Rd spoke in favor.
- Chris Micia, 3 Red Spring Rd Spoke in favor.
- Lisa Morris, 297 Lakeshore Dr asked for further clarification on the definition of a condominium.
- Peter Sharon, 95 Lakeshore Dr asked why is are they proposing a 15-foot set back.
 - Mr. Falk explained the difficulty of defining what side of the parcel should be considered, front, rear and side. Some of the structures are closer than what the A2 calls for and in order to have all the structures be conforming, no longer preexisting nonconforming, we had to come up with a set back that would work for all of them. The 15-foot setback applies to the perimeter of the overall parcel. There isn't a set back with respect to structures within the common parcel because they're subject to the condominium association.
- Garry Cato, 33 Red Spring Rd explained all the homes behind Home Depot are condos.
- Alex Ferrecchia, 27 Red Spring Rd explained the wetland was delineated by a wetland engineer.

Mr. Fay closed this portion of the public hearing.

Speaking in Opposition to the Amendment:

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- Peter Sharon, 95 Lakeshore Dr spoke in opposition and presented the Board with a letter with 139 signatures opposing the proposing the proposed overlay district, attachment D. – See attached
 - o Mr. Fay acknowledged receipt of the correspondence and explained it would be part of the public record.
 - o Barbara Allen, 124 Second Rd explained she signed the above referenced opposition letter, and explained her questions have now been answered and is no longer opposed.

Mr. Fay closed this portion of the public hearing.

Questions and Comments from the Planning Board:

Mr. Russ asked for further clarification on the minimum distance between structures. Mr. Falk explained within the condominium property there are no minimum distances between structures.

Mr. Russ asked if new lots could be created by ANR. Mr. Falk explained with the overlay ANR's would still be very difficult because they do not have a public roadway, a definitive subdivision would need to be done.

Mr. LaVenture asked if each home has a 150 feet of exclusive waterfront usage. Mr. Falk explained each home has a different amount of exclusive waterfront usage.

Mr. LaVenture asked, how many additional "camps/properties" could be added where they would have exclusive waterfront usage? Mr. Durand explained there is one common land area that is in between 55 and 57 Red Spring Road and the 10 acres of undeveloped land where the Red Spring roadway ends on the Cullinane Drive side of the property.

Mr. LaVenture asked, how much of the property is on the other side of the roadway, not the lakefront side? Mr. Falk explained roughly half. Mr. LaVenture asked, is this portion developable? Mr. Falk explained it is mainly wetlands.

Mr. Falk addressed the key questions abutter Peter Sharon, 95 Lakeshore Dr asked.

Q: What would be the maximum development capacity of Red Spring Road if this overlay district is approved?

A: Mr. Falk explained, they have not looked into this, however it would likely be exactly the same of what is in the A2 district, because new lots need to be at least 18,000 square feet and have a 30% max lot coverage.

Q: What does the overlay district provide, specifically, that is not already provided in the current zoning regulation?

A: Mr. Falk explained, there are several dimensional controls that the parcel and structures don't comply with. The overlay district allows the entire property and all the structures to be conforming and would allow homeowners to make simple improvements to their homes without the need for a special permit.

Q: Does this overlay district provide a use that is not permitted elsewhere?

A: Mr. Falk said no, it mirrors the A2 district in terms of use. The only real use that it allows that is not allowed elsewhere is multiple single-family homes on one parcel.

Mr. Fay explained the boat club would also be a new use allowed in the overlay district.

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Mr. Fay explained the Board likely wouldn't be ready to compile a recommendation to the City Council until the Board's November 13th meeting. Mr. Falk confirmed he would provide response to the 17 questions presented by the abutters at the October 23rd Board meeting.

On a motion by Mr. LaVenture, seconded by Mr. Hughes, the Board voted to keep the public hearing and the record open. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0. Abstained: Fenby. Dr. Fenby abstained because she is an abutter.

C. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A –
Continued from September 11, 2023 – Applicant has requested a continuance to October 23, 2023

Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)
Name of Owner: McCabe Family Irrevocable Trust & Judith McCabe
(6 Erie Drive, Hudson, MA 01749)
Name of Surveyor: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)
i. Flowchart

On a motion by Dr. Fenby, second by Mr. Russ, the Board voted to open the public hearing. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

ii. Correspondence from Vito Colonna, Request for continuance to October 23, 2023
Mr. LaVenture read the September 28, 2023, correspondence into the record.

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to accept and file the correspondence and to continue the public hearing to the October 23, 2023, meeting. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

D. **NO DISCUSSION REQUIRED** - Council Order No. 23-1008941 - Proposed Zoning Amendment to Chapter 650, to add a new Section 39A to create the Sasseville Way Residential Overlay District (SWROD). - ***Continued to October 23, 2023***

5. **Subdivision Progress Reports (None)**

6. **Preliminary/Open Space/Limited Development Subdivision (None)**

7. **Definitive Subdivision (None)**

8. **Signs (None)**

9. **Correspondence (None)**

10. **Unfinished Business**

A. Working Group

i. Cul-de-sac discussion

Mr. LaVenture went over two cul-de-sac designs and summarized Attachment E. – See attached.

Mr. Russ gave examples of other cities and towns where they are in the process of implementing similar cul-de-sac designs governed by homeowner associations.

**MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752**

Mr. LaVenture went over a temporary street sign as a notice to public for unaccepted streets. – See attachment E.

Mr. Hughes addressed concerns on retro fitting existing cul-de-sacs to the newly proposed design resulting in existing residents needing to create a homeowner's association. Mr. LaVenture explained this topic did come up in their discussions and they concluded that this idea would not be forced but that some homeowners may be keen to the idea because of the potential decrease in water run off on to their individual properties.

The Board discussed who would be responsible for maintenance of the grass strips along the roadway and the "landscaped" cul-de-sacs.

The Board discussed the idea of installing a drain in the cul-de-sac for the excess water and how with smaller cul-de-sacs will have a difficult time having a significant impact to the stormwater. Mr. DiPersio explained it will be the design engineers' job to show that it can or cannot be done for whatever reason, but in ideal cases these cul-de-sac designs could be used for some stormwater management.

11. Calendar Updates (None)

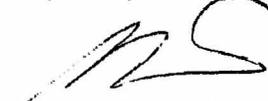
12. Public Notices of other Cities & Towns

- A. (4) Town of Hudson – Public hearing legal notices
- B. Town of Sudbury – Public hearing legal notice

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to accept and file all the correspondence under item 12. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

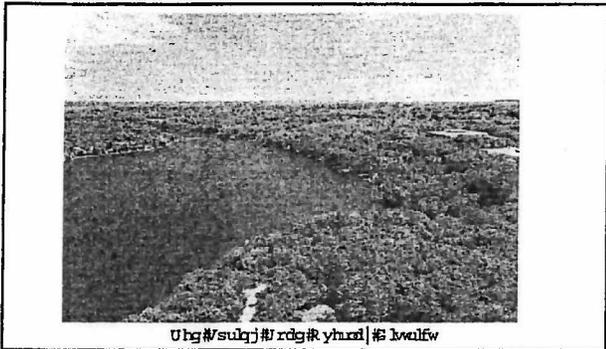
On a motion by Mr. Hughes, seconded by Mr. LaForce, the Board voted to adjourn the meeting. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

Respectfully submitted,



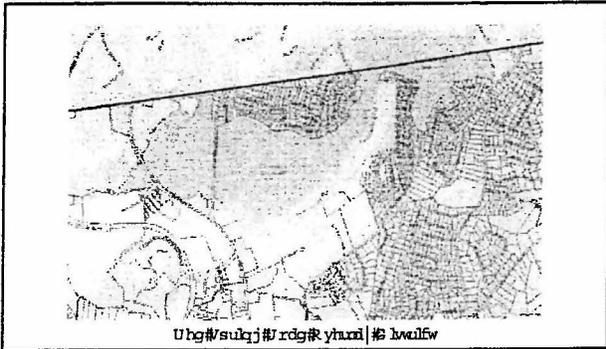
George LaVenture/Clerk

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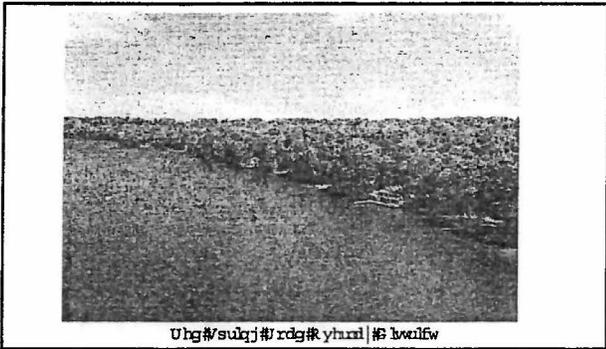
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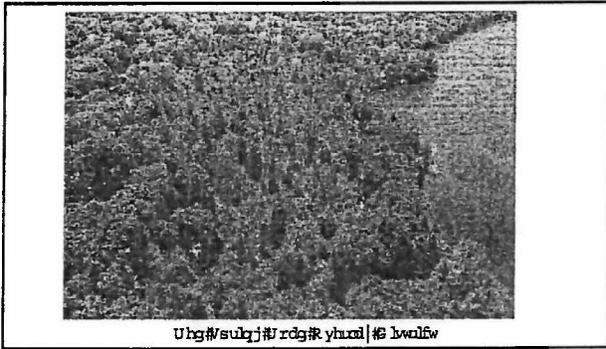
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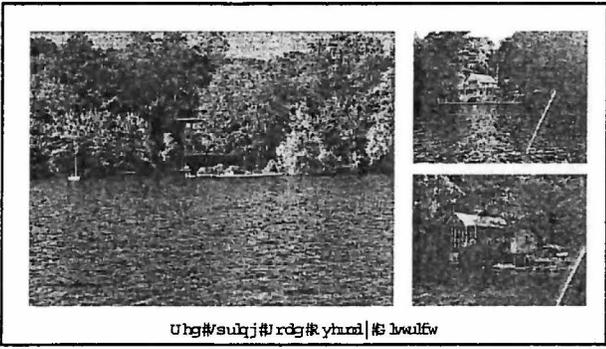
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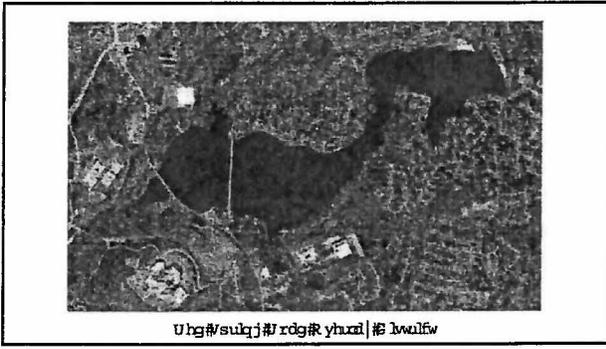
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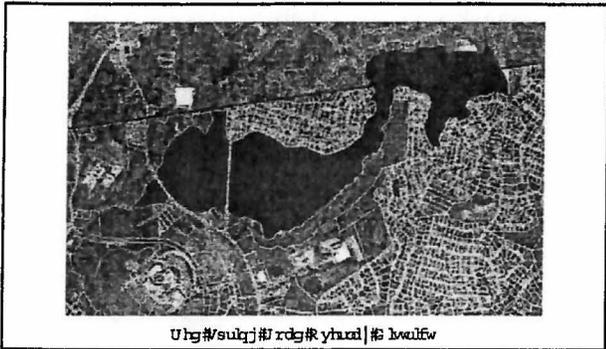
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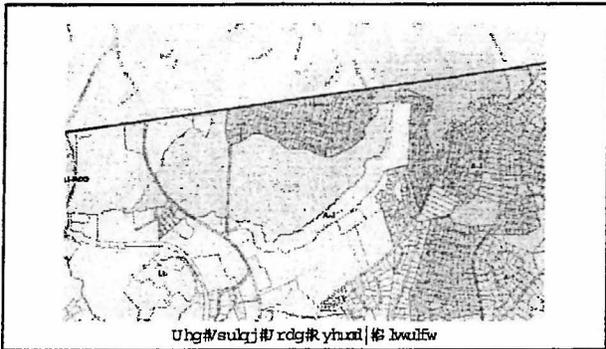
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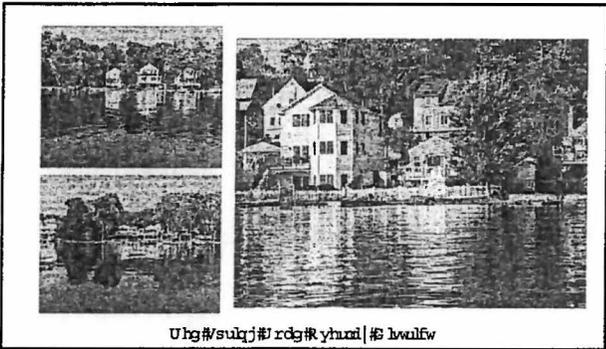
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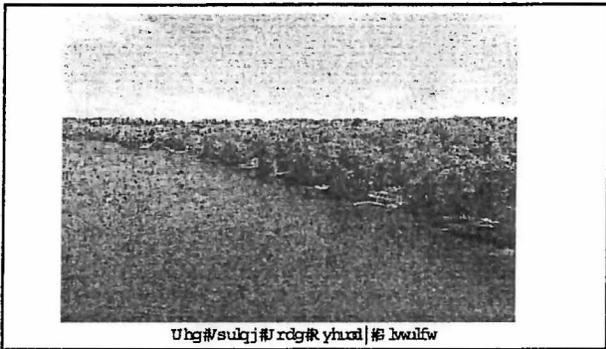
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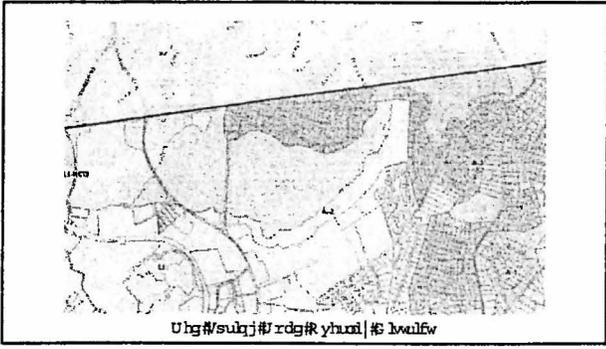
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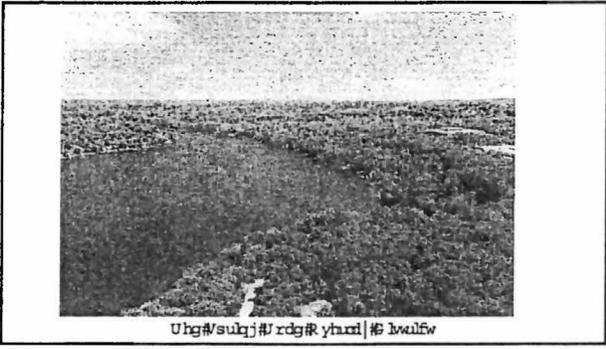
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12

Order No 23-1008951**Red Spring Road Overlay District Public Hearing QUESTIONS**

October 2, 2023 - 7pm Planning Board, 8pm City Council

1. How does this overlay district proposal benefit the city and lake area residents? What would the land property tax implication be with this plan?
2. What benefits will this overlay district provide Red Spring Road residents, specifically, that were not already provided in the A-2 zoning regulation?
3. What would be the maximum development capacity of Red Spring Road if this overlay district is approved?
4. What does the overlay district provide, specifically, that is not already provided in the current zoning regulation?
5. We're here for Red Spring Road overlay district approval by the City Council, but what local city approval allowed the condo district in the existing A-2 zoning to begin this process without a public hearing?
6. Based on your goals stated in the public hearing notice, it seems that you can already do this in the current condo status. Addition, new construction, etc. are being done – why is an overlay district needed? The only thing needed was a process for association members to approve the activity which would adhere to A-2 zoning regulations.
7. Does this overlay district provide a use that is not permitted elsewhere?
8. How many of the existing single family homes on Red Spring Road are non-conforming to A-2 zoning or your current condo classification and how would this overlay correct those situations?
9. What was the reason for not moving forward with the McClure Engineering drawing prepared for the Red Spring Road Homeowners Association dated 8/31/22? These drawings appear to reflect A-2 zoning regulations.

10. Why does section 650-50 state "minimum front, side and rear yards, none"? No definition of section 650-50 could be found on the city website. We have been told that the A-2 zoning was required in this condo zone. A-2 requirements are as follows: 120' frontage, 15' side, 40' rear, 30' front setback with 18,000 sq.ft.
11. Please explain what "accessory building and accessory uses" in 650-50 Red Spring Road overlay district Section "Use Regulations" would include. The definition is very broad.
12. Under use regulations you mention single family dwellings and up to one boat club. Are boat clubs permitted in A-2 residential zoned district, understanding that the existing one would be grandfathered in at the current location?
13. How do the Dimensional Regulations relate to Phase I condo, 29 units, and Phase II identified on the master deed? Could you specifically explain what is meant by "multiple principal and accessory buildings and uses may be located on the same lot with each principal building located within an exclusive use area of at least 8,000 sq. ft. with no setbacks"?
14. Would this overlay district allow additional single family condos in the current 29 unit Phase I section identified in the master deed?
15. Can accessory buildings have kitchen and full living quarters if not allowed in A-2 zoning?
16. Are there certified drawings identifying the Phase II, 10 acre condo parcel of land identified in the master deed? How would this proposed overlay district effect any development plans? Would a public hearing be required due to potential environmental impacts to the lake area?
17. In the total 48+/- total acres, how many acres have been identified as wet land? Are wet lands included when calculating your 18,000 sq ft. lot?

Order No 23-1008951

Red Spring Road Overlay District Public Hearing

October 2, 2023 - 7pm Planning Board, 8pm City Council

We oppose the proposed Red Spring Road (RSR) overlay district because it doesn't show any benefit to the city or lake area residents. The RSR overlay district request appears to be a "blank check" for development by eliminating boundary conditions that pertain to A-2 zoning.

While the request suggests that dealing with "preexisting/nonconforming" homes is a reason for granting this overlay, the fact is, many lake residents have dealt with the same situation without eliminating dimensional zoning standards as indicated in the 650-50 RSR overlay district request.

No plans or discussion have been heard on the potential impact of the overlay to the lake area for Phase II, which is the 10-acre parcel adjacent to the currently existing Phase I condos.

Lastly, based on current assessor records, there appears to be no equity in the condo property tax structure with residents on and around the lake although we all share the same lake frontage.

The undersigned are in agreement with the above and also wish to thank the Council and Planning Board for the opportunity to present our position.

Signature	Name	Address
	Peter Shan	95 Lakeshore Dr
Juan Pan	Juan Pan	96 Lakeshore Dr.
DGT	DONALD TAUDEAU	76 Lakeshore DR
Linda Taudeau	LINDA TAUDEAU	76 Lakeshore DR
Owen McPike	Owen McPike	75 Lakeshore Dr.
Lillian P. Smith	Lillian P. Smith	109 Lakeshore Dr.
John F. Smith	JOHN F. SMITH	109 LAKE SHORE DR.
Mary Ann Gullotti	MARY ANN GULLOTTI	157 LAKESHORE DR
Tiffany L. Caputo	Tiffany L. Caputo	135 Lakeshore Dr.
John Swartzell	John Swartzell	135 LAKESHORE DR
Regina Cahill	Regina Cahill	157 Lakeshore Dr.
Kendra L Caputo	Kendra L Caputo	135 Lakeshore Dr.
Walker W. Clark	Walker W. Clark	131 Lakeshore Dr
John Makay	JOHN MAKAY	287 LAKESHORE DRIVE

Order No 23-1008951

Red Spring Road Overlay District Public Hearing

October 2, 2023 - 7pm Planning Board, 8pm City Council

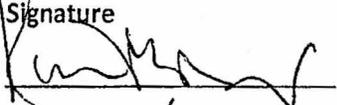
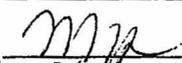
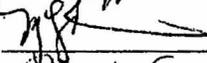
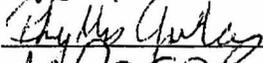
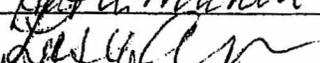
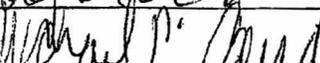
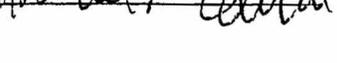
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No plans or discussion have been heard on the potential impact of the overlay to the lake area for Phase II, which is the 10-acre parcel adjacent to the currently existing Phase I condos.

Lastly, based on current assessor records, there appears to be no equity in the condo property tax structure with residents on and around the lake although we all share the same lake frontage.

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Signature	Name	Address
	Kenneth Murphy	287 Lakeshore Dr.
Mark D Plante	Mark Plante	283 Lake shore dr
	Madysan Plante	283 Lake shore Drive
	Margaret Plante	283 Lakeshore Drive
	Phyllis Grella	299 Lakeside Drive
	Michael Graham	183 Lakeshore Dr.
	William Brady	173 Lakeshore Dr.
	Lee Graham	183 Lakeshore Dr.
	Joann Brady	173 Lakeshore Dr.
	Robert Duff	97 Lakeshore Dr
	Heather Allen	97 Lakeshore Dr.
	Heather McPike	75 Lakeshore Dr.
	Lisa A. Morris	297 Lakeshore Dr.
	Michael A. Carroll	11 Hill Road

Order No 23-1008951

Red Spring Road Overlay District Public Hearing

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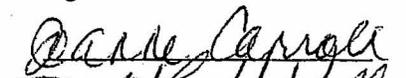
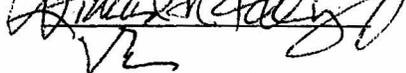
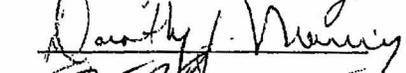
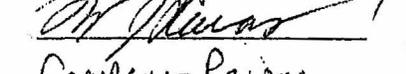
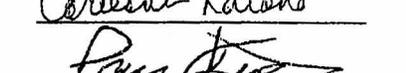
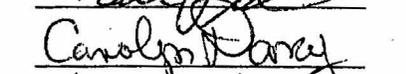
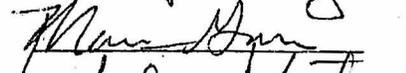
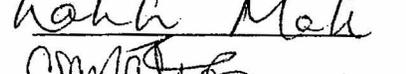
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Signature	Name	Address
	FRANKE CARROLL	11 Hill Rd
	Judith H. Kelley	65 Lakeshore Dr.
	Richard H. Kelley	65 Lakeshore Dr.
	Carl Blatchley	101 Lakeshore Dr.
	Cathie Blatchley	101 Lakeshore Dr.
	Dorothy Manning	302 Lakeshore Dr.
	Robert V. RAIANO	21 First Rd.
	CAROLANN RAIANO	21 First Rd.
	Paul Turcotte	22 First Rd.
	Carolyn Darcy	44 First Rd.
	MARION GARVER	166 LAKESHORE
	Lalita Malta	79 Lakeshore Dr.
	Caitlin Matros	2 Spring Lane
	Michael Matros	2 Spring Lane

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Signature	Name	Address
	Jaymie Pugliese	239 Lakeshore Dr
	Brandon Zide	63 Bruce Rd
	Sarah McIluff	25 Graves Ln
	Nina McGinnis	15 Elizabeth
	Ariene Flynn	1 Daniels Rd Hudson
	Matthew Flynn	1 Daniels Rd Hudson
	Melissa Basmaji	50 Daniels Rd Marlborough
	Youssef Basmaji	50 Daniels Rd Marlborough
	Carolyn Waldron-Parr	11 Wakefield Rd. Mboro
	Kate Waldron-Parr	11 Wakefield Rd. Mboro
	Robert Seymour	24 Lakeshore Dr.
	Sara Zide	63 Bruce Rd, 1451 Marlborough
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Order No 23-1008951

Red Spring Road Overlay District Public Hearing

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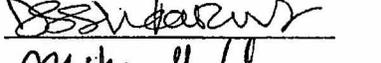
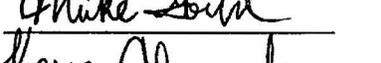
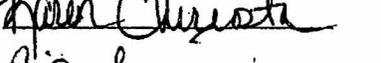
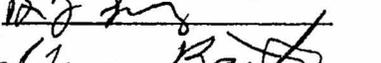
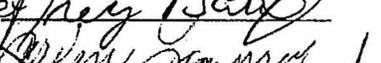
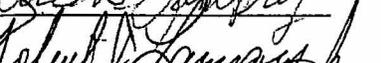
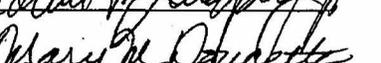
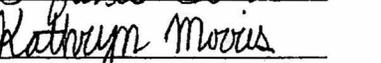
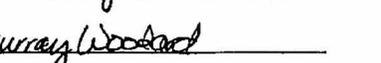
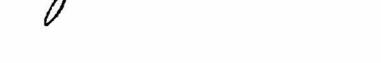
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Signature	Name	Address
	<u>PAUL GOULD</u>	<u>209 LAKE SHORE DR.</u>
	<u>LISA GOULD</u>	<u>309 LAKE SHORE DR.</u>
	<u>RICHARD SHEARNS</u>	<u>210 LAKE SHORE DRIVE</u>
	<u>D SHEARNS</u>	<u>210 LAKE SHORE DR</u>
	<u>MIKE GOULD</u>	<u>209 LAKE SHORE DR.</u>
	<u>KAREN CHIRICOSTA</u>	<u>223 LAKE SHORE DRIVE</u>
	<u>BRIAN LIVELY</u>	<u>202 LAKE SHORE DR.</u>
	<u>JEFFREY BAUTZE</u>	<u>136 LAKE SHORE DR. MARLBOROUGH</u>
	<u>ARLENE LAMPREY</u>	<u>211 LAKE SHORE DR MARLBOROUGH</u>
	<u>ROBERT P. LAMPREY JR</u>	<u>54 SECOND RD. MARLBOROUGH MA.</u>
	<u>MARY DOUCETTE</u>	<u>233 LAKE SHORE DR MARLBOROUGH</u>
	<u>STEPHANIE CARR</u>	<u>233 LAKE SHORE DR. MARLBOROUGH MA</u>
	<u>KATHRYN MORRIS</u>	<u>297 LAKE SHORE DRIVE</u>
	<u>MURRAY WOODARD</u>	<u>297 LAKE SHORE DRIVE</u>

Order No 23-1008951

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Signature	Name	Address
<u><i>Abbe Gould</i></u>	<u>Abbe Gould</u>	<u>209 Lakeshore Dr</u>
<u><i>David W. Peters</i></u>	<u>David W. Peters</u>	<u>223 Lakeshore Dr</u>
<u><i>Linda M. Peters</i></u>	<u>Linda M. Peters</u>	<u>223 Lakeshore Drive</u>
<u><i>Richard W. Peters</i></u>	<u>Richard W. Peters</u>	<u>223 Lakeshore Dr</u>
<u><i>Hannah Litchfield</i></u>	<u>Hannah Litchfield</u>	<u>2352 Lakeshore Dr</u>
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Lastly, based on current assessor records, there appears to be no equity in the condo property tax structure with residents on and around the lake although we all share the same lake frontage.

The undersigned are in agreement with the above and also wish to thank the Council and Planning Board for the opportunity to present our position.

Signature	Name	Address
	Elaine Wilkinson	15 Second RD
	Jeanis Pintzopoulos	22 2nd Rd
	Allison Pintzopoulos	22 2nd Rd
	Jeff MARRAZZO	18 2nd Rd
	Amy Marrazzo	18 Second Rd
	EARL FINE	10 2nd Rd
	Fredrick Graham	28 SECOND RD
	MICHAEL SIMIONEAU	6 2nd Rd
	CYNTHIA KENNEY	34 2nd RD
	Jacqueline LaRUE	34 2nd RD
	Karen Graham	73 Daniels Rd
		6 2nd Rd

Order No 23-1008951

Red Spring Road Overlay District Public Hearing

October 2, 2023 - 7pm Planning Board, 8pm City Council

We oppose the proposed Red Spring Road (RSR) overlay district because it doesn't show any benefit to the city or lake area residents. The RSR overlay district request appears to be a "blank check" for development by eliminating boundary conditions that pertain to A-2 zoning.

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Signature

Name

Address

[Signature]
Evan Wesley

EVAN WESLEY
ATTHEA COLAIANNI

9 Lakeshore Dr
3 LAKESHORE DR

Atthea Colaianni

Atthea Colaianni

3 Lakeshore Drive

Alayne B Dunbar

Alayne B Dunbar

17A Lakeshore Drive

Courtney DeSteg

Courtney DeSteg

9 Lakeshore Drive

Kellen Toewen

Kellen Toewen

9A Lakeshore Drive

John A Dunbar

John A Dunbar

351 Concord Rd

Genessa Dunbar

Genessa Dunbar

351 Concord Rd.

Janet Dunbar

Janet Dunbar

361 Concord Rd.

William Dunbar

William Dunbar

17-18 Lake Shore

Order No 23-1008951

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Signature	Name	Address
 <u>Peter C Morris</u>	<u>Michael McGermick</u> <u>PETER C MORRIS</u>	<u>28 Meadow St Marlborough</u> <u>150 Lakeshore Dr Marlboro</u>
<u>Amber K Morris</u>	<u>Amber K Morris</u>	<u>150 Lakeshore Dr. Marlboro</u>
<u>Kathleen Sharon</u>	<u>Kathleen Sharon</u>	<u>95 Lakeshore Dr.</u>
<u>Elizabeth Parao</u>	<u>Elizabeth Parao</u>	<u>96 Lakeshore Dr.</u>
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Order No 23-1008951

Red Spring Road Overlay District Public Hearing

October 2, 2023 - 7pm Planning Board, 8pm City Council

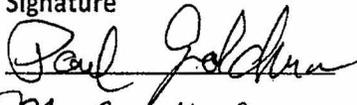
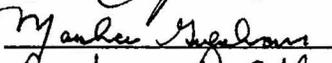
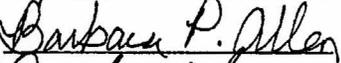
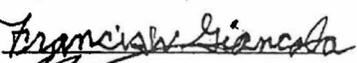
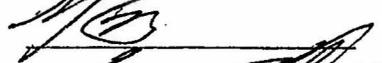
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Signature	Name	Address
	PAUL GOLDMAN	137 SECOND RD.
	MARSHA GOLDMAN	137 SECOND RD.
	Barbara P. Allen	124 Second Rd.
	David Allen	124 Second Rd.
	Francis W. Gianola	125 Second Rd.
	MARK BERUSTRÖM	132 2ND RD
	Wayne Williams	36 Patten Dr.
_____	_____	_____
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Order No 23-1008951

Red Spring Road Overlay District Public Hearing

October 2, 2023 - 7pm Planning Board, 8pm City Council

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Signature	Name	Address
<u>Judy Minard</u>	<u>Judy Minard</u>	<u>53 Alan Rd Marlborough</u>
<u>Janice Prickack</u>	<u>JANICE PRICKACK</u>	<u>65 Amory Rd Marlboro</u>
<u>Brenda Bracken</u>	<u>BRENDA BRACKEN</u>	<u>69 Amory Rd MARLB</u>
<u>Francis Bracken</u>	<u>Francis Bracken</u>	<u>69 Amory Rd MARLBORO</u>
<u>Joseph Peltok</u>	<u>Joseph Peltok</u>	<u>45 Lakeside rd Marlboro MA</u>
<u>Karen Davis</u>	<u>Karen Davis</u>	<u>55 Amory Rd, Marlboro</u>
<u>Kevin Marden</u>	<u>Kevin Marden</u>	<u>22 Blaiswood rd Marlboro</u>
<u>Kathryn O'Neill</u>	<u>Kathryn O'Neill</u>	<u>34 Western View Marlboro</u>
<u>Ellen Robinson</u>	<u>Ellen Robinson</u>	<u>21 Western View Marlboro</u>
<u>William Robinson</u>	<u>William Robinson</u>	<u>" " "</u>
<u>Danielle Lott</u>	<u>Danielle Lott</u>	<u>13 Collman St Marlboro</u>
<u>Mary Foley</u>	<u>Mary Foley</u>	<u>49 Cortland St Marlboro</u>
<u>Michael Foley</u>	<u>Michael Foley</u>	<u>49 Cortland Street Marlborough</u>
<u>James McCon</u>	<u>James McCon</u>	<u>46 Cortland St</u>

Order No 23-1008951

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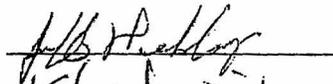
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Address



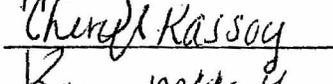
JEFF HEDDERIG

135 CULLINANIZ DR.



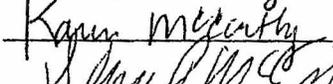
Kimberly Winchman

189 Cullinane Drive



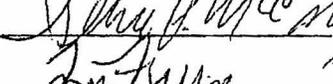
Cheryl Kassoy

172 Cullinane Drive



Karen McCarthy

185 Cullinane Drive



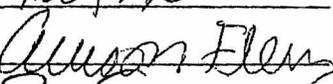
Shawn P. McCarthy

185 Cullinane Dr.



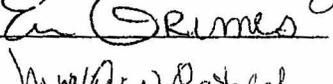
Jim Fouzere

18 Longfellow Terr



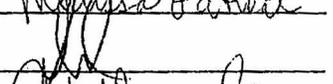
Robert Fleming

18 OAK ROAD



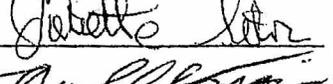
Allison Fleming

18 Oak Rd.



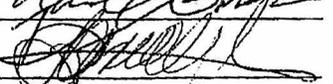
ERIN GRIMES

10 OAK RD



Melissa Patrick

84 Cullinane Drive



Dave Silva

84 Cullinane Dr.



Juliette Silva

84 Cullinane Dr.



Russell Guarino

174 Upland



Kenneth Almeida

16 Beaucher Circle

Order No 23-1008951

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Signature

Name

Address

Ryan Donnelly

Ryan Donnelly

15 Gaucher Circle

Beth Donnelly

Beth Donnelly

15 Gaucher Circle

Suzanne McAllan

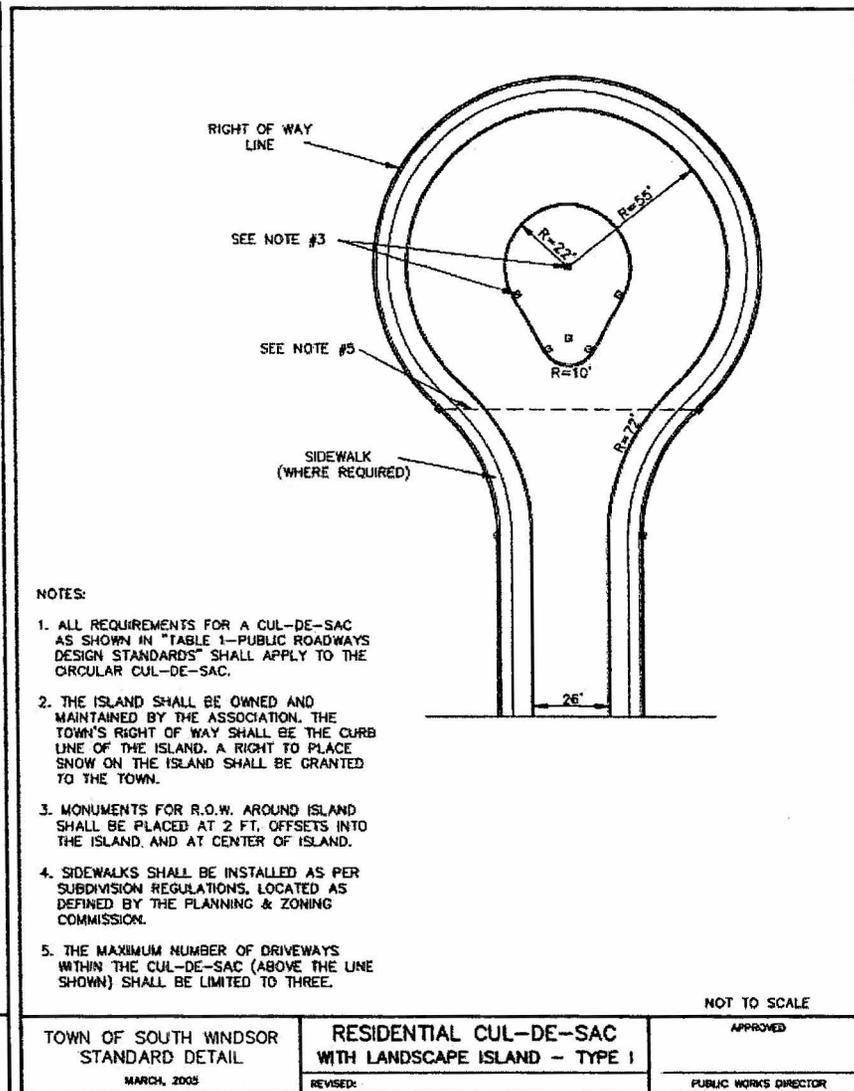
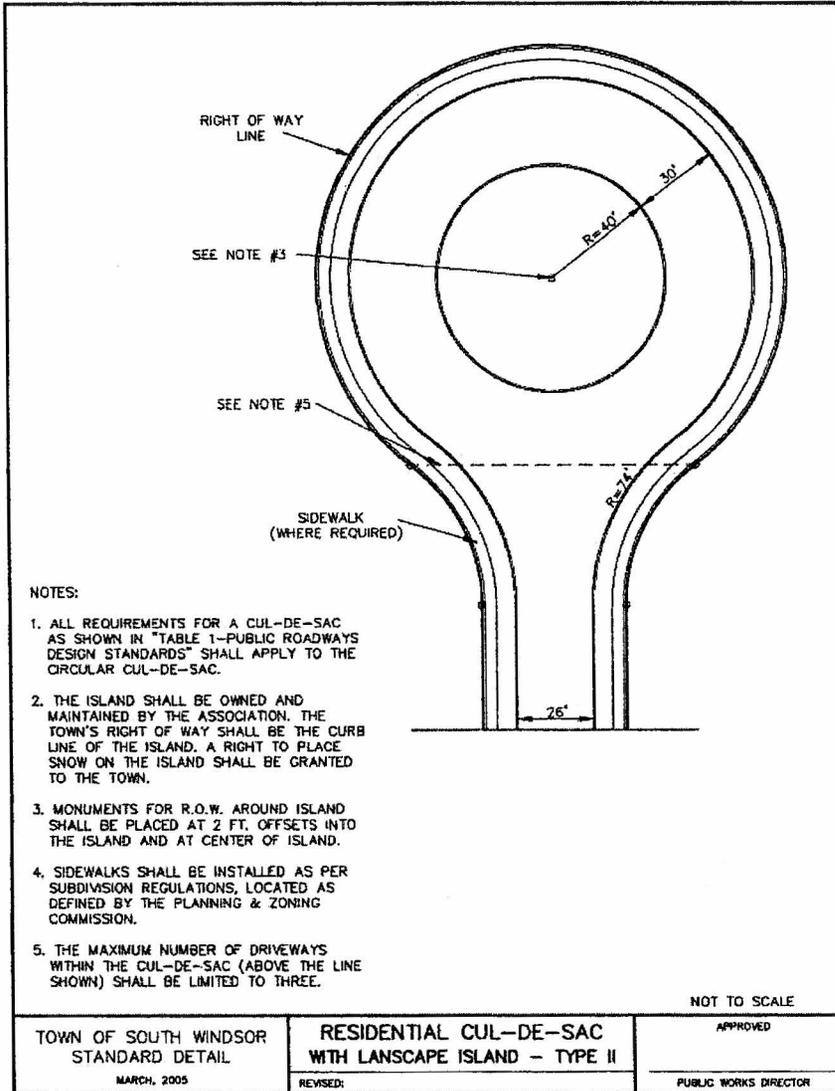
Suzanne McAllan

9 ELIZABETH

Bill McAllan

Bill McAllan

9 ELIZABETH RD



Attachment E

MPBSWG Meeting 2 October 2023 Cul de Sac discussion

During our discussions we reviewed documents from:

South Windsor cul de sac design
Fitchburg street design
LID Manual for Michigan
EPA Stormwater Best Management Practice
Reducing Impervious Surfaces Minnesota Stormwater Manual
EPA Stormwater runoff

amongst others.

While we are still absorbing and discussing, we thought we'd bring the following initial recommendations to the Board for their input and discussion.

1. Cul de Sac design

Based on the South Windsor designs our initial belief of the 60' radius ROR with a 22' teardrop non-impervious surface might work. An additional, much larger cul de sac with a circular center is available for larger area needs.

The City Engineer will specifically model the teardrop shape to verify its viability and ensure its adequacy for the Stow Rd project.

Modelling will also determine whether a grass strip will be allowable between the sidewalk and curb.

The curb recommended is Cape Cod style granite around the teardrop with full height granite along the sidewalk.

The design engineer should look at methods for getting some of the roadway runoff into the center using techniques such as curb channels or sloped roadway.

Four methods of maintenance for the teardrop/circle were discussed and are provided in our preferential order:

- a. A blend of city ownership and HOA land maintenance
- b. HOA limited solely to land maintenance of the teardrop/circle
- c. Map the circle to a specific lot for their maintenance [issues being owner rights/liability/re taxes]
- d. city ownership and maintenance

We additionally recommend the Board requests feedback from both the fire department and DPW.

Lastly, after completion of the Boards consideration of a new cul de sac design, and assuming it moves forward with some variation of our recommendations, we believe the Board should recommend to the DPW Commissioner that existing cul de sacs be retro fitted at their next resurfacing.

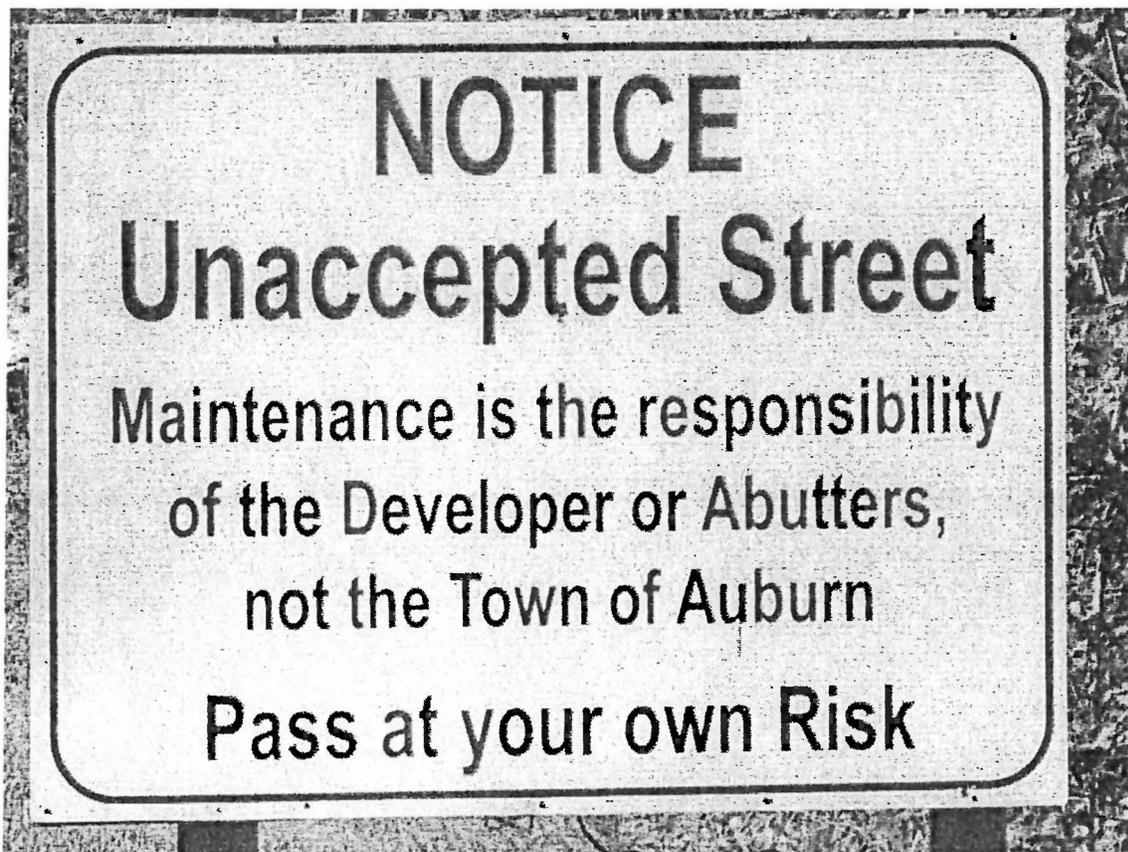
Attachment E

2. Roadway resurfacing

We believe the Board should recommend to the DPW Commissioner that roadways being resurfaced and narrowed have a grass strip added between the sidewalk and curb.

3. Private Way sign

We believe some signage should be placed at all entrances to new subdivisions stating that the roadway is a private way and not maintained by the city. Removal would occur by the developer upon street acceptance by the city.



**MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752**

**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH**

1A

2023 NOV 29 AM 9:39

October 23, 2023

Call to Order

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Sean Fay, Barbara Fenby, James Fortin, George LaVenture, and Chris Russ. Meeting support provided by City Engineer, Thomas DiPersio. Members Absent: Patrick Hughes and Dillon LaForce

1. Draft Meeting Minutes

A. October 2, 2023

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to accept and file the October 2, 2023, meeting minutes. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

2. Chair's Business

A. MAPC & Marlborough – MWRC Member Conversation

Councilor Vice Present, Kathleen Robey spoke and explained she represents the City of Marlborough on the Metro West Regional Collaborative (MWRC), which is a subgroup of the Metropolitan Area Planning Committee (MAPC). She explained the group is made up of 10 communities surrounding Marlborough. She explained MWRC has a new representative from MAPC, who has asked for input from the members and asked for this request to be passed along to the Planning Board and City Council to see if other people would like to join. She explained although they would not be voting members, additional input is always appreciated. MWRC meets monthly on the 3rd Thursday, recently via Zoom meeting, running from 8:00-9:30 PM. She explained if anyone was interested in attending to let her know and that they were having a meeting with Meredith Harris from Marlborough Economic Development Group on October 30th.

B. NO DISCUSSION REQUIRED – Council Order No. 23-1008964 – Proposed Zoning Amendment to Chapter 650 “Zoning” to amend §22 “Retirement Community Overlay Districts” to include Map 39, Parcel 5 and 26B located on Robin Hill Street. – Public hearing set for 11/13/23

3. Approval Not Required (None)

4. Public Hearings

On a motion Dr. Fenby, second by Mr. Russ, by the Board voted to move item 4A down on the agenda. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

B. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A – Continued from September 11, 2023 – Applicant has requested a continuance to November 13, 2023

Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)

Name of Owner: McCabe Family Irrevocable Trust & Judith McCabe
(6 Erie Drive, Hudson, MA 01749)

Name of Surveyor: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to open the public hearing. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

i. Flowchart

ii. Correspondence from Vito Colonna, Request for continuance to November 13, 2023

Mr. LaVenture read the October 18, 2023, correspondence into the record.

**MINUTES
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On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence and to continue the public hearing to the November 13, 2023, meeting. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

The Administrator explained the 90 day clock for the Open Space Definitive Subdivision Application, Stow Road, expires on November 19, 2023.

- C. Council Order No. 23-1008941 - Proposed Zoning Amendment to Chapter 650, to add a new Section 39A to create the Sasseville Way Residential Overlay District (SWROD). – *Continued from September 18, 2023*
- i. Legal Notice
 - ii. Correspondence from Edward Clancy, Chair of the Conservation Commission
 - iii. Compiled correspondence from multiple abutters on Blaiswood Avenue
 - iv. Correspondence from The Assabet River Rail Trail, Inc.
 - v. Correspondence from Boston Scientific (Provided after agenda closed) – See Attachment A.

Chairperson Fay opened the hearing. Mr. LaVenture read the public hearing legal notice into the record. Chairperson Fay provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor or asking questions 3) Those speaking in opposition 4) Comments and questions from the Board members.

Presentation:

William Pezzoni, Day Pitney, LLP, Carolyn Hewitt, Mark Shraiberg and David Driver, Trammell Crow Company, Michael Flannery, Goulston & Storrs and Tim Hayes, Bohler Engineering, all spoke on behalf of the proposed zoning amendment. Mr. Pezzoni explained the property is in the Northwest quadrant of the City, bounded by Sasseville Way, abutting the Blaiswood Ave neighborhood and the Fort Meadow Reservoir (“Reservoir”). He explained they received feedback from the Conservation Commission and abutters during their City Council presentation. Their team went back and looked at the project and made some changes and are continuing to work on further modifications. He explained their team held meetings with the City Engineer, Thomas DiPersio, Conservation Officer, Priscilla Ryder and a handful of abutters to talk through their concerns.

Mr. Pezzoni explained Boston Scientific reached out to Trammell Crow because they wanted to sell the property and have it development. Trammell Crow presented Boston Scientific with multiple options. One was a limited industrial by-right project, which would take up about 70% of the property, consisting of a flat table with significant impervious surface and truck traffic. The other was a mixed used project consisting of roughly 380 residential units, a restaurant, and amenities, which is being presented tonight.

Mr. Pezzoni went over a portion of the slide deck and explained the project is currently under contract. The new design pulled the project out of the 200-foot river area and the wetland protection area. One of the buildings was moved away from Blaiswood Ave and the emergency access entrance on Blaiswood Ave was redesigned. Overall the redesign created a larger buffer for the neighbors and expanded the wildlife corridor. Certain protocols will be implemented to comply with the issues raised regarding the bio-mapped and the cold-water fish habitat area.

Mr. Pezzoni explained the site has an intense vertical drop and rather than just make a flat plateau to the build they are proposing to tier the site and have 3 tiers of buildings going to the back of the property. They are committed to implementing heavy construction controls, phasing the project and plan to have long term operational and maintenance controls on the property because of the water temperature concerns regarding the cold-water fishery. He explained they anticipate preserving roughly 1/3 of the site on the backside towards the Reservoir.

**MINUTES
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Mr. Pezzoni explained that Mr. Driver asked Ms. Ryder to help draft revised language for the proposed zoning amendment and asked if someone from the Planning Board would also like to participate.

Mr. Shraiberg explained the site plan being presented tonight has been informed by their discussions with Ms. Ryder, Mr. DiPersio, the Conservation Commission and the Fire Department. He explained, they confirmed the emergency egress on Blaiswood Ave is required for this project and would only be used for emergency services. It will have a flashing strobe access. When emergency vehicles come up to it with their flashing strobe, it will operate, it will open and close immediately afterwards. The buildings and storm water basin have been pulled away from the Blaiswood Ave neighbors to create a larger buffer. The Fire Department has requested a 24-foot-wide roadway for the emergency access road which will likely require 5 feet on each side for construction tolerance. The plan is to keep that buffer area as wooded as possible.

Mr. Shraiberg explained the site is about 23 acres and the total area of impact for construction is just over 15 acres. Creating a density of 12.3 units per acres, which is less dense than any other multifamily project in Marlborough. He briefly discussed their stormwater treatment plan for the site and explained the Conservation Commission suggested that soil characteristics of this site may be problematic. There are cold water streams and resources that need to be protected and this will be taken into account with the design.

Mr. Shraiberg went over the color planting plan and explained it shows all the native plantings going back where trees are to be taken down for construction. There is a hefty buffer along the Assabet River Rail Trail until you approach the site where the trail will cross through the site, which will include warning signals. He went over the additional slides within the presentation deck and presented photos of the site's visibility from different locations.

Mr. Hayes went over the civil site plan and discussed the stormwater design. The plan is to find areas on site that are suitable for infiltration. The purple blue color on the plan represents subsurface infiltration systems that would be underground chamber systems. The light blue color on the plan identifies places where basins could be. Additional soil testing needs to be done to confirm soil characteristics and depth to groundwater to make sure that the system will function properly. Water quality levels will be heightened, and treatments will be implemented for the cold-water fisheries. Everything will follow the MASS DEP, stormwater bylaws. A fully compliant MASS DEP stormwater report will also be submitted with the final design. Mr. Hayes explained the plan is to essentially create a decentralized filtration system to treat and infiltrate the water as best as possible while mimicking the existing conditions.

Mr. Pezzoni recapped the project and proposed overlay and discussed a suggestion of testing the water temperature at Fort Meadow and the water onsite before it leaves. He explained several abutters on Blaiswood Ave had concerns about the current runoff issues on site. Their intention is to have their engineers investigate options to remedy the runoff and possibly resurfacing the road.

Mr. Fay acknowledged the below correspondence and explained they would be part of the public record.

- Correspondence from Edward Clancy, Chair of the Conservation Commission
- Complied correspondence from multiple abutters on Blaiswood Avenue
- Correspondence from The Assabet River Rail Trail, Inc.

Mr. Fay closed this portion of the public hearing.

**MINUTES
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Speaking in Favor of the Amendment or Asking Questions:

- Rebecka Salemi 32 Blaiswood Ave asked the following questions:
 - o I've heard that because of the location of the pump houses in this area of the City, the only way for water and sewer to reach the proposed site is from Bolton Street, up Blaiswood Avenue, is that correct?
 - o If the proposed overlay is approved and the current project does not come to fruition, can another developer build by right what is delineated in what could become the Sasseville Way overlay district?
 - Mr. Pezzoni said, yes.
 - o Do overlays stand in perpetuity?
 - Mr. Fay said, yes.
 - o Does this complicate current zoning?
 - Mr. Fay said, no.
- Alan DeAmicis 9 Blaiswood Ave asked in addition to the intent of the overlay, what could be the possible consequences to infrastructure, road traffic, water and sewer, public safety, and environmental impact?
- Shihao Zhong 28-A Blaiswood Ave asked if the overlay would provide a use that is not permitted elsewhere in the City?
 - o Mr. Fay explained, not one that isn't permitted elsewhere, but not in this zone.
- Christine Mauro 6 Blaiswood Ave asked how does the Planning Board address or substantiate or even reconcile this type of change or impact this proposed development would have on the abutters if the proposed overlay district was approved?
 - o Mr. Fay explained it's part of how the Board analyzes proposed zoning amendments and referenced the Board's four bullets from their zoning standards memo.
- Denise DeAmicis 9 Blaiswood Ave asked the following questions:
 - o What Board or Committee is responsible for the site plan review?
 - o How does it this process work?
 - o Would residents be able to participate in this process?
 - Mr. DiPersio explained the proposed overlay district says that the City Council is the permitting authority for the special permit. Typically, the City Council looks to the Site Plan Review Committee for input.
- Alda Braga 27 Blaiswood Ave asked if there's a plan in place for looking at the totality of new construction proposal in the City and if this is the Planning Board's responsibly?
- Roberto Braga 27 Blaiswood Ave asked what would be the reason for the Planning Board's support for this overlay?
 - o Mr. Fay explained the Board doesn't approve zoning changes; they provide recommendations based on the zoning standards within their memo on the City of Marlborough's website.
- Caroline MacDonald 108 Gates Pond Rd Berlin, MA asked how much of the site will be preserved that is not mandated by law?
- Emarie Pope 21 Turner Ridge Rd asked the following questions:
 - o Asked for the definition of "under contract", and with whom?
 - Mr. Fay explained, the owner of the property and the developer.
 - o Asked for more detail on problematic soil, run off, and grading issues on site.
- Alice Wertheimer 45 Lakeside Ave asked if any traffic studies have been done and where would the traffic be entering or exiting the site?
- Gary Cato 33 Red Spring Rd asked if the ground water from the landfill has been taken into consideration?

**MINUTES
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- Paul Goldman 137 Second Rd asked the following questions:
 - o What happens in 10 years if there is new ownership?
 - o What happens if the water temperature rises?
 - o What happens if there is a flood?
 - o What happens if weeds in the Reservoir start to grow at an accelerated rate?
 - o Who is responsible overseeing these concerns especially in the future?
- Sarah Barry 35 Blaiswood Ave asked what zones or overlay zones in the City currently have a 70-foot height limit and a 50% lot coverage?
- Grace O'Connell 43 Lakeshore Dr asked for the Planning Board's procedural protocol for answered questions and providing recommendation to the Council.
 - o Mr. Fay explained the Board takes the questions/comments from the public which will be summarized in the meeting minutes. The Board members will ask questions further within the public hearing and ask the proponents to clarify. The Board will decide today whether or not to close the public hearing and or to close the public record. He explained the Board would likely not make a recommendation to the Council until a later meeting.
- Grace O'Connell 43 Lakeshore Dr asked if the public could come to the next meeting and ask additional questions.
 - o Mr. Fay explained no, the public comment portion of the hearing will close today.
- Donna Paolini 45 Red Spring Rd asked if there have been other projects on former landfills and what was the outcome?
- Robert Durand 39 Red Spring Rd asked the following questions:
 - o Is the developer going to do a 21E assessment of this site?
 - o Is there a traffic impact study?
 - o What percentage of the open space doesn't include the wetland and riverfront area setbacks, the river protection act, or the bio map setbacks?
- Marjorie Pechet 23 Turner Ridge Rd asked where can the public access the answers to their questions?
 - o Mr. Fay explained at their next meeting on November 13, 2023.
- Harmony Larson 173 Barnard Rd asked if the answers to their questions could be found online?
 - o Mr. Fay explained the meeting video will be posted online along with the minutes.
- Alice Wertheimer 45 Lakeside Ave asked for an estimate of what a high-end unit would cost and asked if there are going to be any moderately priced units?
 - o Mr. Fay reminded everyone of the Board's zoning standards.
 - Is the proposed change in keeping with the character of the neighborhood?
 - Does the proposed change negatively impact the neighbors?
 - Does the proposed change benefit the City, or provide a use not permitted elsewhere?
 - Is the proposed change in keeping with the intent and purposes of the City's zoning ordinances?

Mr. Fay closed this portion of the public hearing.

Speaking in Opposition to the Amendment:

- Rebeka Salemi 32 Blaiswood Ave spoke in opposition.
 - o Mrs. Salemi submitted multiple letters abutters speaking in opposition. – See Attachment B
- Alda Braga 27 Blaiswood Ave spoke in opposition and addressed concerns on the ecosystem and the wildlife corridor.
- Roberto Braga 27 Blaiswood Ave spoke in opposition.

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- Alan DeAmicis 9 Blaiswood Ave spoke in opposition addressing concerns on water runoff.
- Christine Mauro 6 Blaiswood Ave spoke in opposition addressing concerns the ecosystem, water runoff and existing water runoff issues.
- Denise DeAmicis 9 Blaiswood Ave spoke in opposition.
- Shihao Zhong 28-A Blaiswood Ave spoke in opposition addressing concerns on maintenance costs to the City in the future and argued it would not be a financial advantage to the City.
- Caroline MacDonald 108 Gates Pond Rd Berlin, MA spoke in opposition addressing concerns on the ecosystem and argued there are state programs that offer 80% reimbursement for purchased of land such as this site, specifically the Municipal Vulnerability Preparedness Program. She also addressed concerns on future maintenance of the site and described a similar location in Clinton, MA where the site was tiered, and their main retaining wall is failing and the difficulties this poses for the town of Clinton.
- Grace O'Connell 43 Lakeshore Dr spoke in opposition addressing concerns on the location.
- Marjorie Pechet 23 Turner Ridge Rd spoke in opposition addressing concerns on the ecosystem.
- Emarie Pope 21 Turner Ridge Rd in opposition based on environmental considerations and the relationship to the prior landfill.
- Barbara Allen 127 Second Rd spoke in opposition addressing concerns on environmental impact.
- Stephen Brule 23 Red Spring Rd spoke in opposition.
- Robert Durand 39 Red Spring Rd spoke in opposition and explained he is the president of the Red Spring Road Homeowners Association. At the last General Membership Meeting the members took a vote in opposition of this project and addressed concerns of elevated water temperatures and protecting the cold-water stream.
- Sarah Barry 35 Blaiswood Ave spoke in opposition addressing concerns on its location because of its proximity to the Reservoir, the cold-water stream, the wildlife corridor, and the proximity to the landfill. She argued this is the wrong time for this project because the Marlborough school systems are at capacity.
- Alice Wertheimer 45 Lakeside Ave spoke in opposition addressing concerns on water runoff and future maintenance costs.

Mr. Fay closed this portion of the public hearing.

Questions and Comments from the Planning Board:

Mr. Russ explained on the civil site plan slide it shows the property in close proximity to the Reservoir and asked for clarification on a previous comment stating that buildings would be 100 feet away from the buffer zones.

Mr. Shraiberg explained they are 200 foot outside of the riverfront area.

Mr. Russ explained they are not an additional 200 feet; they are meeting the set back.

Mr. Russ asked if the water treatment systems are active systems or passive systems.

Mr. Hayes explained there would be a mixture of both.

Mr. Russ asked how often are these systems monitored?

Mr. Hayes explained they would be entering a long term operation maintenance plan that will dictated by the MA DEP recommendations.

Mr. Russ asked for stats on the coverage and paving.

Mr. Shraiberg and Mr. Flannery explained there would be 286 units on 23.3 acres with building on just over 15 acres. Roughly 62% with 23.3-units per acre. This includes paved areas and all areas of construction.

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Mr. Russ asked what is the tallest retaining wall?

Mr. Hayes explained they will be roughly in the 15–25-foot range.

Mr. Russ asked if some of these buildings could be upwards of 100 feet tall because of the gable and basements and reference language within the proposed zoning amendment “for the avoidance of doubt, roof structures that are not occupiable shall not be included in the overall height measurement”.

Mr. Shraiberg explained they will need to look into that language because that is not the intention. They will be 5 story buildings from the downhill side of the site. If you’re looking back up at the building from the lowest level of the site, the tallest building will be 5 stories in height and then there will be a gabled roof on top of that. The measurement is from the grade plan to the ridge of the building. Mr. Flannery explained the provision is contemplating things like antennas.

Mr. Russ argued based on how the language is written, the measurements will be from the Sasseville Way roadside, which is up hill. On the backside, they will be taller and suggested revising their section exhibit to show all the way to Bolton Street.

Mr. LaVenture suggested specific mitigation efforts for later within the project, addressing the following items:

- Concerns within the September 11th correspondence from the Conservation Commission
- Concerns within the September 13th correspondence from abutters
- Stormwater runoff plan
- If the current stormwater models take the City’s current increase in rainfall into full consideration
- Proximity and impact to the landfill and how that will affect Fort Meadow Reservoir
- Who will be responsible for monitoring these impacts
- Long term accountability plan
- Further details on the underground hydraulics systems

Dr. Fenby asked if they had read the letter from the Assabet River Rail Trail requesting an underground crossing.

Mr. Pezzoni explained they looked at other crossings along the trail and isn’t aware of any other tunnels and because of grade coming in, they will be able to implement safety protocols. Ms. Hewitt explained they reached out to Mr. Mark of the Assabet River Rail Trail to set up a meeting to discuss his concerns.

Mr. Fortin asked if using a parking deck to reduce impervious surface has been taken into consideration.

Mr. Shraiberg explained it is something they are considering but are unsure if it would have a drastic impact on the impervious surface and argued if they are going to spend extra dollars, they want to be sure it is going to improve the overall design. He explained Ms. Ryder brought up the idea of using porous pavement and explained if the storm water design shows that extra measures need to be taken into account, the parking deck and porous pavement would be looked at as potential solutions.

Mr. Fortin asked if other locations have been considered for the emergency access?

Mr. Shraiberg explained the Fire Department is requiring two access routes, and that they could not both be on Sasseville Way.

Mr. Fortin suggested investigating if they could be off of Hudson Street or Boston Scientific Way but did note that Boston Scientific Way is a private way.

Mr. Shraiberg agreed they would investigate alternative options.

Mr. Fortin addressed concerns on what the condition on the emergency access will look like in 15 years.

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Mr. Russ asked if they did a cut fill analysis?

Mr. Hayes explained they have done a preliminary cut fill analysis onsite.

Mr. Fay asked, 15 years from now will there still be fish in the native trout stream?

Ms. Hewitt and Mr. Pezzoni explained they assume they would still be there. Mr. Pezzoni explained they will have a stringent operation and maintenance agreement which will include testing on an annual basis and testing the water at their basins before it leaves the site. He explained this would all be part of their site plan review. Mr. Shraiberg argued this project is being proposed as a LEED (Leadership in Energy and Environmental Design) project and that they are aware of these cold-water streams and the importance of preserving them.

Mr. Fay explained the Board has the task of formulating a recommendation for the City Council based on our criteria, and it appears that the Board is evaluating a proposal which isn't yet in final form which creates a bit of a challenge because the Board doesn't know what the changes are going to be. He asked for a summary of the changes they are contemplating for the Board to evaluate at the next meeting. Mr. Pezzoni said, OK.

Mr. Fay notified the public in attendance that if the public hearing is left open, the public comment portion of the public hearing is closed and that if anyone would like to submit something in writing the Board has the option of considering it.

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to keep the public hearing and the record open and to continue it to the November 13, 2023, meeting. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

5. Subdivision Progress Reports (None)

6. Preliminary/Open Space/Limited Development Subdivision (None)

7. Definitive Subdivision (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

- A. Council Order No. 22-23-1008721H – Proposed Zoning Amendment to Chapter 650, Definitions, Affordable Housing and MV District

The Board discussed their concerns and concluded with the following vote.

On a motion by Dr. Fenby seconded by Mr. Russ, the Board voted to send a favorable recommendation to the City Council on the above referenced Proposed Zoning Amendment, with the following recommendations:

- Consider whether the affordable housing requirements in the proposed amendment will make redevelopment projects along Main Street cost prohibitive.
- Consider excluding Main Street from Maple Street to Mechanic Street from the requirement.
- Increase the parking space fee to \$40,000.00.

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- Keep a tabulation of the number of parking spaces waved in exchange for fee payments.
- Designate an account for the funds received from the parking space fees to be used to create additional parking in the downtown area.

Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

On a motion by Mr. Fay, second by Mr. LaVenture, the Board voted to recess the meeting. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

On a motion by Dr. Fenby, second by Mr. Russ, the Board voted to end their recess and continue the meeting. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

4. Public Hearings

Mr. Fay explained Brian Falk of Mirick O'Connell is currently presenting at the City Council meeting and is unable to attend the Planning Board meeting and the Board discussed their procedural process.

- A. Council Order No. 23-1008951 – Proposed Zoning Amendment to Chapter 650, to add a new section to create the Red Spring Road Overlay District (RSROD) – *Continued from October 2, 2023*

On a motion by Mr. Russ, seconded by Mr. LaVenture the Board voted to open the public hearing. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

- i. Legal Notice
- ii. Correspondence from Brian Falk, Mirick O'Connell – Response to abutters questions
Mr. Fay acknowledged Mr. Falk's correspondence.
- iii. Correspondence from Red Spring Road Homeowner's Association and compiled abutters

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to continue the public and to keep the record open until the November 13, 2023, meeting and to invited Attorney Brian Falk to attend. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried. 5-0.

10. Unfinished Business

B. Working Group

- i. Cul-de-sac discussion

Mr. DiPersio updated the Board on the Working Groups discussions about revising the standards for the construction of cul-de-sacs to include a vegetated island and provided members with a sketch. – See attachment C. The sketch includes a turning radius of the Marlborough Fire truck apparatus. Mr. DiPersio explained the outer diameter meets the current regulations and the vegetated island is 50-feet in diameter with an increased radii for the roundings of 60-feet for easier turning of larger vehicles. He explained the vegetated island would not be maintained by the City but that there would need to be some sort of deeded right for the City to be allowed to plow snow there if necessary.

Mr. Fay discussed his preference for sloped granite instead of a cape cod berm. Mr. Fay asked Mr. Fortin if he believed this design would limit the ability of the Fire Department to responded and if two fire trucks are likely to park next to each other. Mr. Fortin explained he did not believe it would interfere.

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Dr. Fenby suggested getting Priscilla Ryders input on what kind of vegetation would be useful, low maintenance, native and would thrive in locations like these.
The administrator mentioned needing no parking signs along the vegetated island.

On a motion by Dr. Fenby, second by Mr. LaVenture, the Board voted to send the proposed cul-de-sac redesign to the Site Plan Review Committee (Fire, Conservation, DPW, and Police) for written comment. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried.5-0.

11. Calendar Updates (None)

12. Public Notices of other Cities & Towns (None)

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to adjourn the meeting. Yea: Fay, Fenby, Fortin, LaVenture, and Russ. Nay: 0. Motion carried.5-0.

Respectfully submitted,



George LaVenture/Clerk

/kmm



**Boston
Scientific**
Advancing science for life™

The Honorable Arthur G. Vigeant; Marlborough City Council & Planning Board
Mayor, City of Marlborough
Marlborough City Hall
140 Main Street
Marlborough, MA 01752

Re: Sasseville Way Residential Overlay District

Dear Mayor Vigeant and Members of the City Council:

I am writing on behalf of Boston Scientific Corporation to express our full support for the proposed Sasseville Way Residential Overlay District zoning amendment filed by Trammell Crow Company. The zoning amendment would affect certain vacant property owned by BSC located off of Sasseville Way (Assessors' Parcel 29-23) and which Boston Scientific is under agreement to sell to Trammell Crow Company.

The zoning amendment is a critical first step in allowing Trammell Crow Company to transform an underutilized, large tract of land into a high-quality multi-family housing community in the City of Marlborough. They are deeply committed to helping the City reach its economic development and housing goals through this project and have a track record of success in nearby communities. They have also been a collaborative partner with Boston Scientific to ensure that any future development will minimize impacts to our campus. In addition to housing, the zoning amendment would allow for a consumer service or restaurant establishment at the property, which would be a highly desirable amenity for Boston Scientific's employees and the surrounding neighborhood.

We also recognize the importance of making sure the project has ample opportunity for review by the community to ensure that any impacts are appropriately mitigated. The zoning amendment would still require the project to obtain site plan approval and potentially a special permit from the City Council, where these impacts can be more thoroughly evaluated through a public hearing process. We support TCC's proactive approach to facilitate community engagement thus far and hope that those efforts will continue.

By adopting this zoning amendment, the City has a unique opportunity to bring lasting economic and housing benefits to its residents through the creation of zoning district that can accommodate a highly-desirable mixed-use residential community. Boston Scientific believes in Trammell Crow Company's vision for the site and hopes the City will pass the amendment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy Nelson", written in a cursive style.

Timothy Nelson
Senior Manager
Facilities, Real Estate, Environmental Health and Safety

October 22, 2023

City of Marlborough
Planning Board
135 Neil Street, 2nd Floor
Marlborough, MA 01752

RE: Sasseville Way Residential Overlay District (SWROD)

Subject: Speaking in Opposition to Proposed SWROD

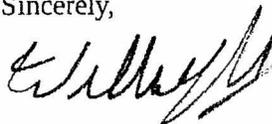
Dear Chairperson Fay and Planning Board Members:

I am William H. Barry and live at 35 Blaiswood Avenue. Due to previously scheduled pack meeting of Cub Scout Pack 31 in Marlborough, I am unable to attend the public meeting.

I oppose the project for a number of reasons. One being the proximity of this large project to my existing single-family home and the proposed connection to Blaiswood Avenue being located directly across from the front of my house. I object to the spot zoning of an overlay that just applies to the single existing 23-acre parcel and this zoning overlay being done irrespective of the zoning and ownership of the abutting land. I believe the developer has generated this zoning overlay proposal without working with the city first to determine if this makes sense for this location and if it is in keeping with the surrounding uses, etc. There appear to be issues with the zoning overlay in regards to its minimal provision of affordable housing, lack of additional requirements to separate the development from the existing Blaiswood Avenue neighborhood and from the Assabet River Rail Trail. The proposed 70-foot allowable building heights appear excessive for this portion of the city. I also question the developer's proposed design for the site using nearly all surface parking rather than structured parking or parking at the bottom levels of the buildings that would reduce the paved surface area of the project.

I request that the Planning Board recommend the City Council vote down this type of zoning overlay. I believe the city needs a city planner that can review the existing zoning throughout the city to determine the best use of the lands that exist within the city. The use of these zoning overlays appears to have created a mess of varying zoning requirements done to suit the requirements of the large / rich property developers that wish to build in our city. I understand that this project will generate new taxes for our city, but this must be weighed against the impact on the environment, increase in traffic and demand for all city services.

Sincerely,



William H. Barry
35 Blaiswood Avenue
Marlborough, MA 01752
bill524a@gmail.com

Chairperson Fay, I am Rebeka Salemi, 32 Blaiswood Ave.

I am speaking in opposition of the Sasseville Way Residential Overlay District on behalf of myself and my husband, John Salemi, who could not be here tonight. We appreciate the opportunity to continue to raise our questions and voice our concerns.

Our concerns are many. The sheer creation of an emergency access road and gate next to the corner of our property is enough cause to disquiet. If the Sasseville Way Residential Overlay District is created it will have numerous impacts on the Fort Meadow Wildlife Corridor, Fort Meadow Reservoir, public safety, our schools, roads, as well as, the intrusive impact on our property, Blaiswood Avenue, and the quiet character of our neighborhood.

All of the renderings, data points and presentation talking points, are an effort to get all of us to believe this would be better than what is allowed "by right" in the current zoning. We recognize that all of the presentations we have seen, in fact, do not matter as these are conceptual plans, estimates and ideas. As much as we hear "we will try," and "we will do the best we can," from the applicant/proponents, there are no guarantees as to what will happen. If this land is developed it will be irreversible.

The only thing that would hold anyone accountable would be the actual wording for a Sasseville Way Residential Overlay District if it were to be approved. We are learning that even this might change.

For these reasons, and many others, we respectfully ask the Planning Board **not** to support this overlay proposal.

Thank you!

October 23, 2023

Richard Trotta
39 Blaiswood Ave.
Marlborough, MA 01752

Dear Chairperson Fay and Members of the Planning Board:

My name is Richard Trotta. I live at 39 Blaiswood Ave. I have lived in Marlborough all of my life. I have owned my home on Blaiswood for over 50 years.

I pretty much know everything about the wildlife, water and landscape around my house. I am a direct abutter to the property. Water has always been a problem on the hill. There are a lot of unground streams. There is a lot of ledge.

I am opposed to the proposed overlay because this is not the right location for this type of project. A project of this size will destroy the wildlife and cause damage to my home and property, as well as, the whole street and the lake.

I am unable to attend the meeting tonight, but want to go on record as being opposed.

Sincerely,

Richard Trotta

A handwritten signature in cursive script that reads "Richard Trotta". The signature is written in black ink and is positioned below the typed name.

October 19, 2023

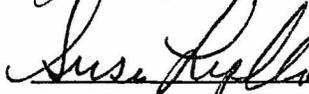
Dear Chairperson Fay and Planning Board Members:

We, the undersigned, are opposed to the proposed Sasseville Way Overlay Residential District (SWORD.) If this overlay is approved we believe the character of the neighborhoods abutting and surrounding Fort Meadow Reservoir will suffer a number of negative effects.

Concerns about the detrimental impact of the proposed 286 unit multi-family housing development range from our public safety, schools, infrastructure, with regard to water, sewer and roadways, and the environmental degradation of Fort Meadow Reservoir.

We believe adding a new Section 650-39A to the ordinances is contrary to the intent and purposes of the City's zoning ordinances. We firmly believe this is not the appropriate site for this type of project.

Thank you for your consideration. We respectfully ask that you **not** support SWORD.

Signature	Print Name	Address
	PAUL KAZUARZYK	79 2ND RD
	Gillian Metcalfe	115 Lake shore Dr.
	Dan Lausten	212 Reservoir St
	Susan Lupisella	51 Bruce Rd

October 19, 2023

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Signature	Print Name	Address
<u>Barbara P. Allen</u>	<u>Barbara P. Allen</u>	<u>124 Second Rd.</u>
<u>J.C. Metcalfe</u>	<u>JAMES METCALFE</u>	<u>115 LAKESTORE DR.</u>
<u>Robert Braga</u>	<u>Robert Braga</u>	<u>27 Blaiswood Av.</u>
<u>Nichelle Hause</u>	<u>Nichelle Hause</u>	<u>35 Red Spring Rd</u>
<u>Bob Durand</u>	<u>Bob DURAND</u>	<u>39 RED SPRING RD</u>
<u>AS Fuccillo</u>	<u>AS FUCCILLO</u>	<u>70 BRUCE ROAD</u>
<u>Bill Meany</u>	<u>Bill Meany</u>	<u>26 Graves Ln.</u>
<u>GARY CATO</u>	<u>GARY CATO</u>	<u>33 Red Spring Rd</u>
<u>Erin Buonomo</u>	<u>Erin BUONOMO</u>	<u>53 Patten Dr.</u>

October 19, 2023

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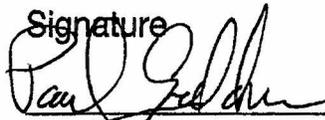
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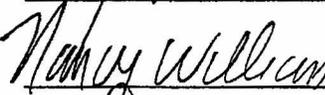
Signature

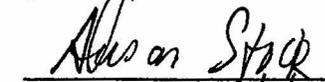
Print Name

Address

 PAUL GOLDMAN 137 SECOND RD.

 P O'CONNELL 43 Lakeshore Drive

 Nancy Williams 55 Lakeshore Dr

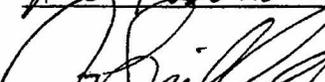
 SUSAN STOCK 57 Lakeshore Dr

 Judith Kelley 65 Lakeshore Dr.

 Rebecca Fuccillo 70 Bruce

 Richard Kelley 65 Lakeshore

 Lee Thomson 37 Lakeshore

 Albert "Trey" Fuccillo 70 Bruce Rd

October 21, 2023

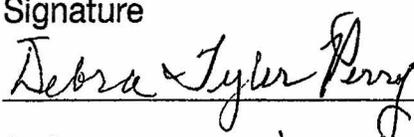
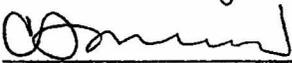
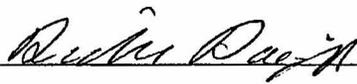
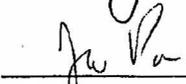
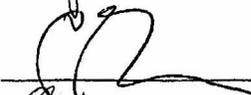
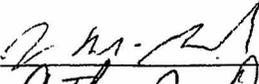
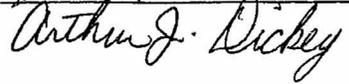
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Concerns about the detrimental impact of the proposed 286 unit multi-family housing development range from our public safety, schools, infrastructure, with regard to water, sewer and roadways, and the environmental degradation of Fort Meadow Reservoir.

We believe adding a new Section 650-39A to the ordinances is contrary to the intent and purposes of the City's zoning ordinances. We firmly believe this is not the appropriate site for this type of project.

Thank you for your consideration. We respectfully ask that you not support SWORD.

Signature	Print Name	Address
	Debra Tyler Perry	84 Linda Cir, Marlborough 10/21/23
	COURTNEY DURAND	34 RICE ST. MARLBORO MA 01752
	Daidre Daigle	51 Lakeshore Dr. Marlborough 01752
	Nicole Knutson	10 Elizabeth Rd. Hudson 01749
	Kathy Sharon	95 Lakeshore Dr. Marlborough
	Jasol Pabon	96 Lake Shore Dr.
	Catherine Blatchley	101 Lakeshore Dr
	Catherine Blatchley	101 Lakeshore Dr
	Sean Shepard	108 Lakeshore Dr.
	Arthur Dickey	100 Lakeshore Dr.

10/22/23

October 22, 2023

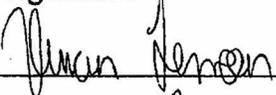
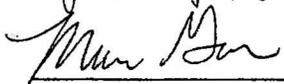
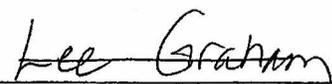
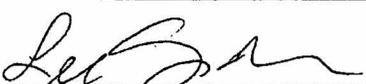
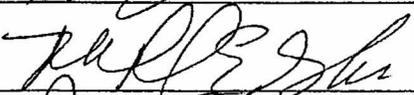
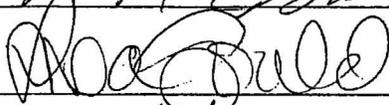
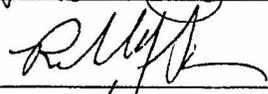
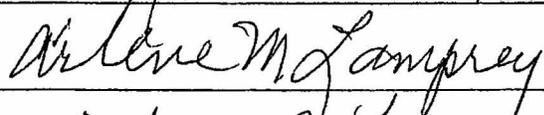
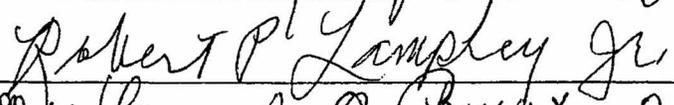
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Thank you for your consideration. We respectfully ask that you not support SWORD.

Signature	Print Name	Address
	VINELLUS LEMUS	169 LAKE SHORE DR
	MARION GARVER	166 LAKESHORE E DR
	Lee Graham	
	Lee Graham	183 Lakeshore Dr
	Michael Graham	183 Lakeshore Dr
	LISA GOULD	209 Lakeshore Dr
	RICHARD SHEARNS	210 LAKESHORE DR.
	Wilene M. Lamprey	211 Lakeshore Dr Marlboro
	Robert P. Lamprey Jr	211 Lakeshore Drive
	Laurel A. Bunker	201 Lakeshore Drive

22
October 19, 2023

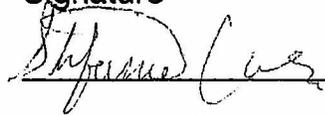
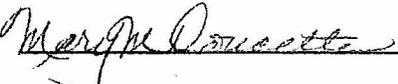
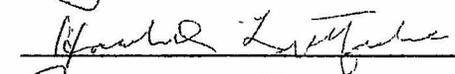
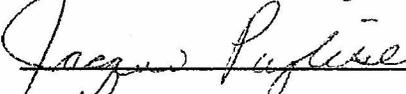
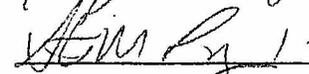
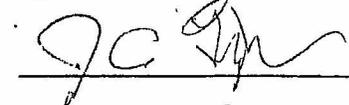
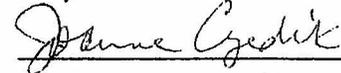
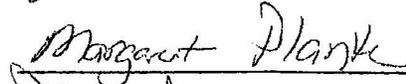
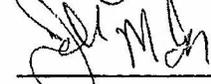
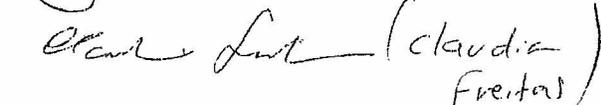
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Thank you for your consideration. We respectfully ask that you **not** support SWORD.

Signature	Print Name	Address
	Stephanie Carr	233 Lake Shore Dr.
	Mary Doucette	11
	HAROLD WHITE	235 LAKE SHORE DR
	Jacqui Pugliese	239 Lakeshore Dr.
	STEVEN PUGLIESE	239 LAKESHORE DR.
	JACKIE TYLER	258 LAKESHORE
	Joanne Czedit	262 Lakeshore Dr
	Margaret Plank	283 Lakeshore Dr
		287 LAKESHORE DR
	(Claudia Freitas)	291 Lakeshore Dr

22
October 10, 2023

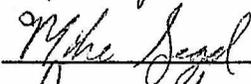
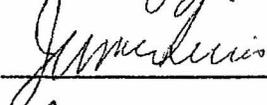
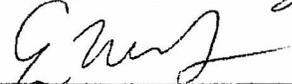
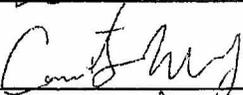
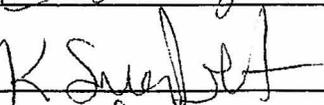
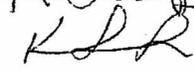
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Thank you for your consideration. We respectfully ask that you not support SWORD.

Signature	Print Name	Address
	Lisa A. Morris	297 Lakeshore Dr.
	Phyllis Grella	299 LAKESHORE DR.
	Michael Segal	17 Daniels Rd
	JAMES D. LEWIS	123 LAKESHORE DR.
	RONALD SAVOY	39 LAKESHORE DR.
	Evan Westel	9 Lakeshore Dr
	Courtney Westel	9 lakeshore dr
	Kelly Swadlow	179 BESAVANS ST
	Kelleen Loewen	9A Lakeshore Dr.
	Robert Seymour	29 Lakeshore Dr.

October 21, 2023

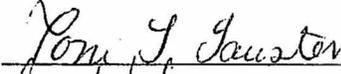
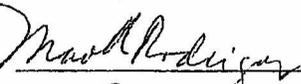
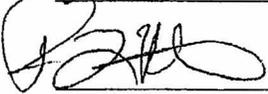
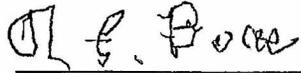
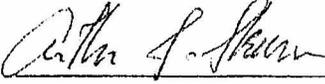
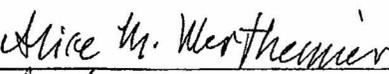
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Thank you for your consideration. We respectfully ask that you **not** support SWORD.

Signature	Print Name	Address
	Tom Lauster	27 Highland St, Marlborough
	BRUCE SHIKAWA	66 Commonwealth Ave MALDEN
	MARIA RODRIGUEZ	66 Commonwealth Marlborough
	Joan Perlman	91 Wellington Str.
	RICH WALCOTT	36 WHITELOCK DR
	ROBERT BURES	420 Hemenway
	ARTHUR SKURA	54 VILLAGE DR. MARLBORO
	Alice M. WERTHEIMER	45 LAKESIDE AVE, #1
	John Walters	50 Teller Street
	Daniel J. Caruso	38 Violetwood Circle

22
October 10, 2023

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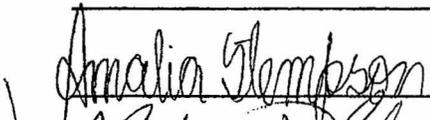
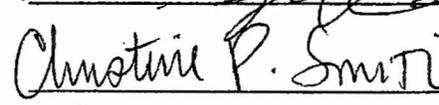
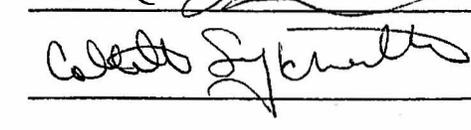
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Thank you for your consideration. We respectfully ask that you **not** support SWORD.

Signature

Print Name

Address

	AMALIA STEMPSON	25 Lakeshore Dr Marlboro MA 01752
	Nelson Chaves	38 Lakeshore Dr
	Richard Sychant	38 Lakeshore Dr
	CHRISTINE P. SMITH	257 Lakeshore Dr
	LISA SEGARRA	44 Lakeshore Dr, Marlboro MA 01752
	Collette Sychant	38 Lakeshore Dr

October __, 2023

Dear Chairperson Fay and Planning Board Members:

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Thank you for your consideration. We respectfully ask that you not support SWORD.

Signature

Print Name

Address

Marjorie Pechet Marjorie Pechet 23 Turner Ridge Rd

Jeff Pechet Jeffrey Pechet 23 Turner Ridge Rd

Emarie Pope Emarie Pope 21 Turner Ridge Rd.

October 23, 2023

PLANNING BOARD

DATE Received by email
AGENDA during 10/23/23 meeting
ACTION _____ KL

Dear Chairperson Fay and Planning Board Members:

We, the undersigned, are opposed to the proposed Sasseville Way Residential Overlay District (SWROD). If this overlay is approved we believe the character of the neighborhoods abutting and surrounding Fort Meadow Reservoir will suffer a number of negative effects,

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Thank you for the consideration. We respectfully ask that you **not** support SWROD.

Signature

Print Name

Address

[Handwritten Signature]

Darina Griffin

84 Kings Grant Rd

[Handwritten Signature]

ANDREW PYE

54 REYNOLDS COURT

[Handwritten Signature]

James Harris

39 Ewald Ave

[Handwritten Signature]

Jared A. Hersh

707 Stevens St.

[Handwritten Signature]

Justin Craven Cretz

21 Raymond Rd.

[Handwritten Signature]

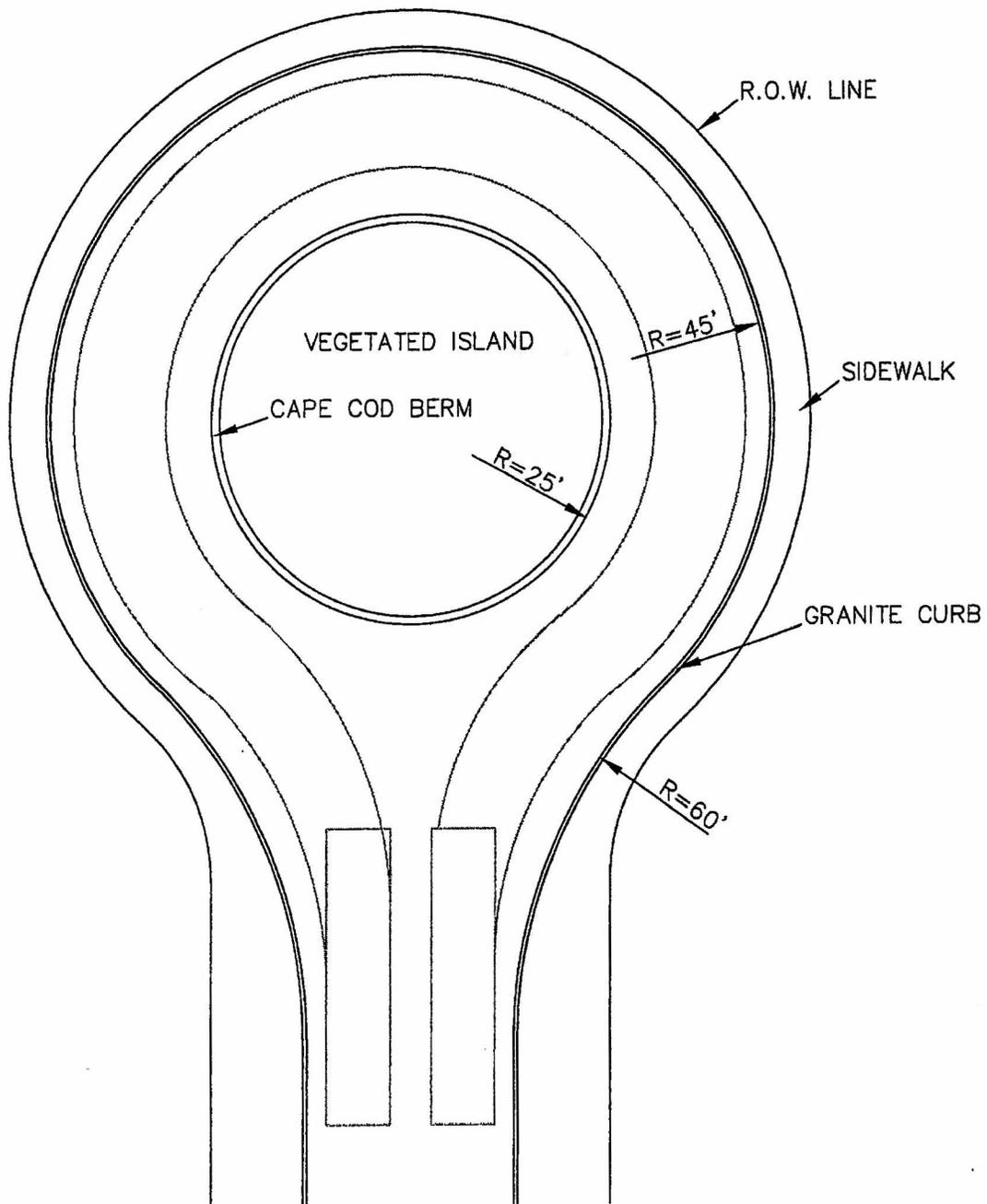
Marks Spacek

64 Schofield A.

[Handwritten Signature]

Dayl Coppola

77 Brimwood



1. THE CUL-DE-SAC ISLAND SHALL BE GRASSED OR MULCHED AND PLANTED WITH VEGETATION.
2. THE VEGETATED ISLAND SHALL OWNED AND MAINTAINED BY A PRIVATE HOMEOWNERS ASSOCIATION. THE CITY SHALL NOT BE RESPONSIBLE FOR REPAIR OR MAINTENANCE OF THE VEGETATED ISLAND.
3. THE CITY SHALL HAVE EASEMENT RIGHTS TO PLACE SNOW ON THE ISLAND DURING WINTER OPERATIONS IF NECESSARY.

SKETCH PLAN SHOWING PROPOSED CUL-DE-SAC DETAIL

DATE: 10/23/23 SCALE: 1" = 20'