

REGULAR MEETING
MAY 20, 2019
TIME: 8:00 PM

IN CITY COUNCIL
ABSENT
LOCATION: CITY HALL, 140 MAIN STREET, 2ND FLOOR

CONVENED:
ADJOURNED:
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY 16 P 1:55

1. Minutes, City Council Meeting, May 6, 2019.
2. PUBLIC HEARING On the Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 To Verizon MH #516 for a distance of 65' within the Public Way, Order No. 19-1007672.
3. PUBLIC HEARING On the Proposed FY20 Budget Recommendation from Mayor Vigeant, in the amount of \$169,023,174.00 which represents a 3.8 % increase over the FY19 appropriation, Order No. 19-1007668.
4. Communication from President Clancy, re: Election of Steven W. Kerrigan as City Clerk for a 3-year term effective immediately upon confirmation.
5. Communication from the Mayor, re: DPW Transfer Request in the amount of \$1,325,300.00 which moves funds from Undesignated to Overtime-Snow & Ice, Snow Removal and Operating Expenses in the amounts of \$280,300.00, \$395,000.00 & \$650,000.00 respectively to fund FY19 deficit.
6. Communication from the Mayor, re: Transfer Request in the amount of \$388,000.00 which moves funds from Meals Tax Revenue Account to fund FY19 bond payments associated with Parks & Recreation improvements.
7. Communication from the Mayor, re: Transfer Requests in the amounts of \$58,000.00 for the DPW to fund park maintenance, consultant fees and roof and masonry repairs at the DPW and \$15,000.00 for the Fire Department to fund the purchase of a new command vehicle.
8. Communication from the Mayor, re: Transfer Request in the amount of \$16,900.00 from Reserved for Salaries to Sick Leave Buy Back and Human Resources Director to fund the retirement benefit for David Brumby who will be retiring effective July 1, 2019.
9. Communication from the Mayor, re: Transfer Request in the amount of \$4,500.00 which moves funds from Undesignated to Stabilization-Open Space from wireless antenna payments received in FY18.
10. Communication from the Mayor, re: Revolving Fund Spending Limits for the Public Safety Revolving Fund, the Parks and Recreation Revolving Fund and the Council on Aging Revolving Fund for FY20.
11. Communication from City Solicitor, Donald Rider, re: Proposed Zoning Amendment to Chapter 650 which will create the Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road area, in proper legal form, Order No. 19-1007533C.
12. Communication from City Solicitor, Donald Rider, re: Proposed Conservation Restriction and Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East.

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.

13. Communication from the Retirement Board re: Consideration of a cost of living increase (COLA) pursuant to MGL Chapter 32, §103(j).
14. Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Map Amendment, relative to land off Williams Street identified as Map 113, Parcels 5 & 6, Order No. 19-1007587A.
15. Petition from Massachusetts Electric and Verizon New England, to relocate Pole and anchor #6 to the opposite side of Boudreau Avenue to accommodate a city road widening project.
16. Communication from Attorney Michael Dolan on behalf of New Cingular Wireless PCS, LLC (AT&T), re: Small Cell Antenna Petition, 28 Concord Road, Order No. 17-1007055B.
17. Communication from Attorney Brian Falk, on behalf of Vincenza Sambataro, re: Request to Extend Time Limitations to August 27, 2019 at 10:00 PM on the Application for Special Permit to construct a Mixed-Use Development in the Marlborough Village District consisting of both residential and commercial space, 161-175 Main Street, Order No. 19-1007571A (X18/19-1007135B).
18. Communication from Attorney Brian Falk on behalf of Post Road Residential, LLC, re: Proposed Zoning Amendment relative to the Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road area, Order No. 19-1007533C.
19. Communication from Hunter Bjorkman on behalf of ecoATM, re: Information on the Renewal of Junk Dealer/Second Hand Dealer License, 601 Donald J. Lynch Boulevard, Order No. 19-1007588.
 - a. Email from Police Chief Giorgi, re: Review of CORI and no objection on the renewal of Junk Dealer/Second Hand Dealer License, ecoATM, 601 Donald J. Lynch Boulevard.
20. Minutes, Council on Aging, March 12, 2019.
21. Minutes, Planning Board, April 29, 2019.
22. CLAIMS:
 - a) Lynn Formica, 110 Woerd Avenue, Waltham, pothole or other road defect.
 - b) Kelsey Maley, 80 Newton Street, pothole or other road defect.

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Public Services Committee

23. **Order No. 19-1007588: Application for Renewal of Junk Dealer's/Second Hand Dealer's License, ecoATM, LLC, 601 Donald J. Lynch Boulevard.** The company, ecoATM, LLC, with headquarters in California, has a machine located at the Solomon Pond Mall which collects used cell phones and other small electronic devices and provides payment to its customers. It is a good way to dispose of old electronic devices. The junk dealer license was first issued in 2012 to permit the installation of the kiosk at the mall. A representative appeared to speak in behalf of ecoATM prior to the issuance of the first junk dealer license. Because there were no problems associated with the siting of the kiosk the first year and in subsequent years, the applicant has been allowed to submit a letter detailing the activity of the device for the previous year. Additionally, an ecoATM employee has annually submitted a CORI to the Police Chief. Other than the first year, their application for a junk dealer license has been approved without an employee being present at the committee meeting, pending receipt of the required CORI and activity report. **Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal pending receipt of the necessary documents and materials from ecoATM, LLC. The motion carried 3-0 (Documents received from applicant and Chief of Police as requested).**
24. **Order No. 19-1007628: Application for Renewal of Junk Dealer/Second Hand Dealer License, TVI, Inc., d/b/a Savers, 222A East Main Street.** Police Chief Giorgi approved the CORI report from the store manager since 2018, Jerry A. Moore Jr., and had no objection to the renewal of Savers' application for a Junk Dealer's/Second Hand License. David Manoogian, an Attleboro attorney, once again appeared on behalf of applicant, TVI, Inc., d/b/a Savers. Attorney Manoogian stated the store has been operating smoothly for the past twelve-month period, and they were prepared to answer questions from the committee. Atty. Manoogian and Mr. Moore discussed the history of the store since its first junk dealer license was issued in 2013 and its positive impact on the community.

The following conditions and waivers are part of their license:

Conditions

1. The license shall not be transferred without prior review and approval of the City Council.
2. The license hereby granted is issued to TVI, Inc. d/b/a Savers only and is applicable only to the 222A East Main Street location.
3. There will be no exterior storage, display or sales of merchandise, other than a recycle trailer, a cloth delivery trailer with items waiting to be processed, and a local trailer from one of Savers' charitable partners delivering merchandise to the store. No more than three such trailers and trucks shall be parked at the loading dock area in the rear of the building at any one time, and no such trailers or trucks shall be parked on any other side of the building at any time.
4. Donations shall take place only during the hours of operation which shall be 9:00 A.M to 9:30 P.M. Monday through Saturday and 10:00 A.M. to 7:00 P.M. on Sundays, and during the month of October from 9:00 A.M. to 10:00 P.M. Monday through Saturday and 10:00 A.M. to 10:00 P.M. on Sundays.
5. No Savers' donation boxes shall be permitted outside of the building.
6. No scrolling or rotating message signs shall be permitted as part of Savers' signage plans.

7. Glue boards shall be installed at locations within the business premises satisfactory to the Marlborough Board of Health and Savers, and a monthly monitoring program shall be implemented consisting of a log book for said glue boards satisfactory to the Board of Health.
8. This license shall be subject to revocation or suspension for noncompliance of the above conditions or other applicable local ordinances or state laws.
9. The waivers granted as part of this license shall no longer be applicable should Savers commence paying the general public for merchandise delivered without first obtaining the review and approval of the City Council.

Waivers

1. The waiver of Section 377-4 of the Ordinance as requested by Savers is not granted because Section 377-4 is not applicable to Savers' operations.
2. The waiver of Section 377-5 of the Ordinance is granted with respect to the last sentence thereof requiring the City Clerk to keep a list of persons employed by Savers. All other provisions of Section 377-5, other than the duty of the City Clerk to keep a record of the name and residence of each dealer, are not applicable to Savers.
3. The provisions of Sections 377-6, 377-7 and 377-9 of the Ordinance are waived in their entirety.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal with all conditions and waivers. The motion carried 3-0.

From City Council

25. **Order No. 19-1007533C: Proposed Zoning Amendment, to add to Chapter 650 a new section §36, which will create an Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road Area. ITEM WAS REFERRED TO THE LEGAL DEPARTMENT TO PLACE IN PROPER LEGAL FORM FOR THE MAY 20, 2019 CITY COUNCIL MEETING.**



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 MAY 13 P 1:35

CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
Steven W. Kerrigan
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723

MAY 6, 2019

Regular meeting of the City Council held on Monday, May 6, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juaire, Oram, Ossing, Robey, Delano, Doucette, Dumais, Tunnera, Irish and Landers. Meeting adjourned at 8:53 PM.

ORDERED: That the Announcement of Veteran of the Year, made by the President of the Marlborough Veteran's Council, Richard Jenkins, along with City Council President Clancy, who presented Michael A. Ferro with the prestigious honor of Veteran of the Year, an award plaque and a proclamation from the Mayor were presented, **FILE**; adopted.

ORDERED: That the Minutes of the City Council meeting, APRIL 29, 2019 **FILE AS AMENDED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MAY 20, 2019** as date for a **PUBLIC HEARING** for the Proposed FY20 Budget as submitted by Mayor Vigeant in the amount of \$169,023,174.00 for review and appropriation in which this spending plan reflects an increase of 3.8% over last year's appropriation, refer to **FINANCE COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, Order No. 19-1007584C, **MOVED TO ITEM 21**; adopted.

ORDERED: That the Communication from the Retirement Board re: Consideration of a cost of living increase (COLA) pursuant to MGL Chapter 32, §103(i), **FILE** adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation and comments on the Proposed Zoning Ordinance Amendment, Chapter 650, §5, §17, §18 & §48 relative to adding Food Trucks to the Table of Uses, Order No. 19-1007543A, **FILE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Map Amendment, land at 31 and 35 John Street, Order No. 19-1007569A, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 17, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Sign Special Permit, from Attorney Elizabeth McDonough Noonan on behalf of Colbea Enterprises, LLC, 342 Boston Post Road East, refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE**; adopted.

ORDERED: That the Communication from Melynda & JP Gallagher, of Lost Shoe Brewing and Roasting Company, 19 Weed Street, to add outdoor seating to their establishment, refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY MAY 20, 2019** as **DATE FOR PUBLIC HEARING** on the Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 To Verizon MH #516 for a distance of 65' within the Public Way, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Brian Falk on behalf of David Skarin, re: Proposed Zoning Amendment, to Chapter 650 §12 Nonconforming Uses, refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, JUNE 17, 2019**; adopted.

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by amending certain provisions of (new text underlined, deleted text in strikethrough):

§650-12 Nonconforming uses.

- A. No building or other structure nor any land shall be used nor shall any building or other structure or part thereof be erected or altered except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located; provided, however, that this chapter shall not apply to the existing use of any building or structure or of land to the extent to which it was lawfully used at the time of the adoption of this chapter.
- B. This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent, ~~provided that~~ unless the City Council determines, by the grant of a special permit, that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use, except that an alteration, reconstruction, extension or structural change of or to a lawful pre-existing nonconforming single-family dwelling or two-family house shall be governed by Section 650-58B(3), and subject, however, to the following provisions:
 - (1) Such use has not been abandoned for a period of two years or more, except in the case of land used for agriculture, horticulture or floriculture for a period of less than five years.
 - (2) Such use is not enlarged to more than 25% of the floor and ground areas of use existing at the time of adoption of the original Zoning Ordinance, or any amendments thereto, except than any nonconforming farm may be enlarged up to the total area owned by the nonconforming farmer at the time of adoption of this chapter, and there shall be no limit as to the expansion of farm buildings.

- (3) In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that:
- (a) The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under Subsection B(3)(b) of this section.
 - (b) The restoration or rebuilding shall conform to this chapter so far as practicable and shall be completed within two years of the catastrophe, unless approved by the City Council in writing in accordance with Article VIII.
- (4) The building or structure is completed if a permit for construction was granted prior to the adoption of this chapter and construction is accomplished within two years after the date of adoption of this chapter.
- (5) The provisions of the above Subsection B(1), (2) and (4) shall not apply to a single-family dwelling.

ORDERED: That the Minutes, School Committee, April 9, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, April 17, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, March 4, 2019, **FILE**; adopted.

ORDERED: That the Minutes, License Board, March 27, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, March 27, 2019, **FILE**; adopted.

Reports of Committees:

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

Meeting Name: City Council Public Services Committee

Date: April 30, 2019

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 6:50 PM – Adjourned: 7:31 PM

Present: Chairman Landers; Public Services Committee Members Councilors Doucette and Irish; and Councilor Clancy

Order No. 19-1007628: Application for Renewal of Junk Dealer/Second Hand Dealer License, TVI, Inc., d/b/a Savers, 222A East Main Street. Police Chief Giorgi approved the CORI report from the store manager since 2018, Jerry A. Moore Jr., and had no objection to the renewal of Savers' application for a Junk Dealer's/Second Hand License. David Manoogian, an Attleboro attorney, once again appeared on behalf of applicant, TVI, Inc., d/b/a Savers. Attorney Manoogian stated the store has been operating smoothly for the past twelve-month period, and they were prepared to answer questions from the committee. Atty. Manoogian and Mr. Moore discussed the history of the store since its first junk dealer license was issued in 2013 and its positive impact on the community.

Reports of Committee Continued:

The following conditions and waivers are part of their license:

Conditions

1. The license shall not be transferred without prior review and approval of the City Council.
2. The license hereby granted is issued to TVI, Inc. d/b/a Savers only and is applicable only to the 222A East Main Street location.
3. There will be no exterior storage, display or sales of merchandise, other than a recycle trailer, a cloth delivery trailer with items waiting to be processed, and a local trailer from one of Savers' charitable partners delivering merchandise to the store. No more than three such trailers and trucks shall be parked at the loading dock area in the rear of the building at any one time, and no such trailers or trucks shall be parked on any other side of the building at any time.
4. Donations shall take place only during the hours of operation which shall be 9:00 A.M to 9:30 P.M. Monday through Saturday and 10:00 A.M. to 7:00 P.M. on Sundays, and during the month of October from 9:00 A.M. to 10:00 P.M. Monday through Saturday and 10:00 A.M. to 10:00 P.M. on Sundays.
5. No Savers' donation boxes shall be permitted outside of the building.
6. No scrolling or rotating message signs shall be permitted as part of Savers' signage plans.
7. Glue boards shall be installed at locations within the business premises satisfactory to the Marlborough Board of Health and Savers, and a monthly monitoring program shall be implemented consisting of a log book for said glue boards satisfactory to the Board of Health.
8. This license shall be subject to revocation or suspension for noncompliance of the above conditions or other applicable local ordinances or state laws.
9. The waivers granted as part of this license shall no longer be applicable should Savers commence paying the general public for merchandise delivered without first obtaining the review and approval of the City Council.

Waivers

1. The waiver of Section 377-4 of the Ordinance as requested by Savers is not granted because Section 377-4 is not applicable to Savers' operations.
2. The waiver of Section 377-5 of the Ordinance is granted with respect to the last sentence thereof requiring the City Clerk to keep a list of persons employed by Savers. All other provisions of Section 377-5, other than the duty of the City Clerk to keep a record of the name and residence of each dealer, are not applicable to Savers.
3. The provisions of Sections 377-6, 377-7 and 377-9 of the Ordinance are waived in their entirety.

Reports of Committee Continued:

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal with all conditions and waivers. The motion carried 3-0.

Order No. 19-1007588: Application for Renewal of Junk Dealer's/Second Hand Dealer's License, ecoATM, LLC, 601 Donald J. Lynch Boulevard. The company, ecoATM, LLC, with headquarters in California, has a machine located at the Solomon Pond Mall which collects used cell phones and other small electronic devices and provides payment to its customers. It is a good way to dispose of old electronic devices. The junk dealer license was first issued in 2012 to permit the installation of the kiosk at the mall. A representative appeared to speak in behalf of ecoATM prior to the issuance of the first junk dealer license. Because there were no problems associated with the siting of the kiosk the first year and in subsequent years, the applicant has been allowed to submit a letter detailing the activity of the device for the previous year. Additionally, an ecoATM employee has annually submitted a CORI to the Police Chief. Other than the first year, their application for a junk dealer license has been approved without an employee being present at the committee meeting, pending receipt of the required CORI and activity report.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal pending receipt of the necessary documents and materials from ecoATM, LLC. The motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0. Meeting adjourned at 7:31 PM.

ORDERED: That the Transfer Request in the amount of \$699,088.00 which moves funds from Economic Development to MEDC Funding to fund the FY20 operations, **APPROVED;** adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		Mayor				FISCAL YEAR:		2019		
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance
	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		
\$1,661,109.48	\$699,088.00	27000099	42440	Economic Development	\$699,088.00	11740006	53950	MEDC Funding	\$0.00	
	Reason:	To allow the MEDC to continue it's work in promoting the economic development of the City for FY20								
	\$699,088.00	Total			\$699,088.00	Total				

Councilor Oram Opposed.

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH HEREBY ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING THE ZONING MAP, SECTION 650-8, AS FOLLOWS:

That, upon the petition of Stephen Vigeant, Trustee of the 22 Englewood Trust, the Zoning Map established under Chapter 650, the City of Marlborough’s Zoning Ordinance, in Article III, entitled “Establishment of Districts” is hereby amended in subsection 8 thereof, entitled “Boundaries Established; Zoning Map,” by rezoning, from the Industrial (I) zoning district to the Commercial Automotive (CA) zoning district, the parcels shown on the Marlborough Assessors Map as Map 104, Parcel 29 and Map 104, Parcel 29A.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

At the request of Councilor Ossing, President Clancy called a recess at 8:41 PM and returned to open meeting at 8:46 PM.

- ORDERED: That the Proposed Zoning Amendment, to add to Chapter 650 a new section §36, which will create an Executive Residential Overlay District (EROD) in the Simarano Drive and Cedar Hill Road Area as amended by the Urban Affairs Committee, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE MAY 20, 2019 CITY COUNCIL MEETING**; adopted.
- ORDERED: That the Proposed Zoning Ordinance Amendment, Chapter 650, §5, §17, & §18 – Home Office & Contractor Yards, as amended by the Urban Affairs Committee and reported out with a favorable recommendation, Order No. 18/19-1007500C, **TABLED**; adopted.
- ORDERED: That the Communication from City Solicitor, Donald Rider, re: Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, Order No. 19-1007584C, **FILE**; adopted.
- ORDERED: That Order No. 19-1007584C the Acceptance of Deed Conveying 10.09 Acres of land located on Berlin Road identified as Map 41, Parcel 37B, **REMOVED FROM THE TABLE**; adopted.
- ORDERED: That the City of Marlborough, acting by and through its City Council, does hereby accept from Ernest A. Houde, Jr., the deed of the fee interest in a parcel of land containing 10.09 acres and situated on the easterly side of Berlin Road, described as Map 41, Parcel 37B of the Marlborough Assessors Maps, and more particularly described as Lot 37-2B on a plan entitled “Plan of Land in Marlborough, Massachusetts; Owner: Ernest A. Houde, Jr., 399 Berlin Road, Marlborough, MA; Prepared by: Connorstone Consulting Civil Engineers and Land Surveyors, 276 West Main Street, Northborough, MA 01532; Scale: 1" = 50'; Dated: April 21, 2000, revised: May 1, 2000,” and recorded at Middlesex South District Registry of Deeds as Book 31403, Page 364, Plan Book 2000, Plan 513, said plan attached hereto along with said deed.
- The above-described parcel is conveyed to the City under the provisions of Mass. Gen. Laws c. 40, § 8C and is to be managed and controlled by the Marlborough Conservation Commission for the purposes of the promotion and development of natural resources, watershed protection, passive recreation, and conservation of open space.
- APPROVED**; adopted.
- ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:53 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 6, 2019

ORDERED:

That there being no objection thereto set **MONDAY MAY 20, 2019** as **DATE FOR PUBLIC HEARING** on the Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 To Verizon MH #516 for a distance of 65' within the Public Way, be and is herewith refer to **PUBLIC SERVICES COMMITTEE**.

ADOPTED

ORDER NO. 19-1007672



IN CITY COUNCIL

Marlborough, Mass., _____

MAY 6, 2019

ORDERED:

That there being no objection thereto set **MONDAY, MAY 20, 2019** as date for a **PUBLIC HEARING** for the Proposed FY20 Budget as submitted by Mayor Vigeant in the amount of \$169,023,174.00 for review and appropriation in which this spending plan reflects an increase of 3.8% over last year's appropriation, be and is herewith refer to **FINANCE COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 19-1007668



City of Marlborough Office of the City Council

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3711 Fax (508) 460-3710 TDD (508) 460-3610
Email citycouncil@marlborough-ma.gov

Edward J. Clancy
PRESIDENT

Joseph F. Delano, Jr.
VICE-PRESIDENT

Karen A. Boule
CITY COUNCIL SECRETARY

May 13, 2019

Marlborough City Council
City Hall, 140 Main Street
Marlborough, MA 01752

Reference: Election of Steven W. Kerrigan as Marlborough City Clerk

Dear Honorable Councilors:

I am writing to submit for election, effective immediately upon confirmation by the City Council, Assistant City Clerk Steven W. Kerrigan as City Clerk for a three-year term.

As you know, Steve has served as acting clerk since the retirement of Lisa Thomas and has admirably filled the duties incumbent upon the office. The transition has been truly seamless in no small part to the training received but also to Steve's dedication and commitment to the office.

Steve joined the City Clerk's Office on November 13, 2012, filling a vacancy left by the retiring assistant, Claire Lucier. Steve's technical skills and experience in the hospitality industry in various managerial capacities and his municipal service as a member of the Marlborough Planning Board from 2006 to 2010 were key in his appointment as Assistant City Clerk. As a resident of the city for 24 years, his knowledge of the city was a welcome addition when residents appeared to obtain one or more of the many licenses or permits issued by the office. Steve's affiliation with the Marlborough Fraternal Order of Eagles and membership in the Masonic Lodge are fine examples of his community spirit.

Steve's tenure in the City Clerk's Office has shown him to be a faithful public servant, interested in the history of the city and its people. I am pleased to submit his name to you for immediate approval.

Sincerely,

Edward J. Clancy
CITY COUNCIL PRESIDENT

EC/kb

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY 14 P 1:55



City of Marlborough
Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Arthur G. Vigeant
MAYOR

2019 MAY 16 A-11:31

Kate Flanagan
EXECUTIVE AIDE

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

Patricia Bernard
EXECUTIVE SECRETARY

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Transfer Request – Snow and Ice to Fund Fiscal Year 2019 Deficit

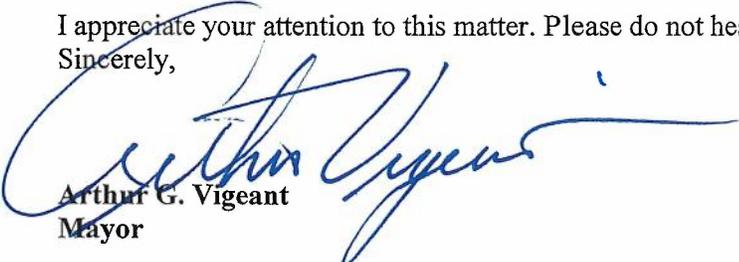
Honorable President Clancy and Councilors:

Enclosed please find for your review a transfer request to fund the Fiscal Year 2019 Snow and Ice deficit. Upon receipt of your approval, a total of \$1,325,300.00 shall be transferred from the Undesignated Fund to the Snow and Ice accounts:

\$280,300.00 Overtime-Snow Ice
\$395,000.00 Snow Removal
\$650,000.00 Operating Expenses

Due to two major storms and massive power outages in 2018 the total cost to the city for snow and ice removal was \$1,588,000.00. We were lucky this year to have a mild winter with only eight plowable storms. Although we had numerous power outages due to the weather, we did not experience massive outages. The milder winter brought with it a reduction in costs for snow and ice removal with a savings of \$262,700.00 from FY2018. I am thankful to the DPW, plow contractors, first responders and National Grid for working together to ensure we had safe roads and power restored.

I appreciate your attention to this matter. Please do not hesitate to contact me with any questions.
Sincerely,


Arthur G. Vigeant
Mayor

Enclosure

BUDGET REPORT

5/13/19

FOR 2019 99

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	YTD EXPENDED	ENC/REQ	AVAILABLE BUDGET	PCT USED
100 GENERAL FUND							
4000 DEPARTMENT OF PUBLIC WORKS							
0120 STREETS-SNOW & ICE							
14001203 51390 OVERTIME-SNOW & ICE	125,000	.00	125,000.00	405,292.68	.00	-280,292.68	324.2%
14001206 52960 SNOW REMOVAL	275,000	.00	275,000.00	645,128.18	22,143.05	-392,271.23	242.6%
14001206 57040 OPERATING EXPENSES	100,000	.00	100,000.00	687,677.56	59,976.48	-647,654.04	747.7%
TOTAL STREETS-SNOW & ICE	500,000	.00	500,000.00	1,738,098.42	82,119.53	-1,320,217.95	364.0%
TOTAL DEPARTMENT OF PUBLIC WOR	500,000	.00	500,000.00	1,738,098.42	82,119.53	-1,320,217.95	364.0%
TOTAL GENERAL FUND	500,000	.00	500,000.00	1,738,098.42	82,119.53	-1,320,217.95	364.0%
TOTAL EXPENSES	500,000	.00	500,000.00	1,738,098.42	82,119.53	-1,320,217.95	
GRAND TOTAL	500,000	.00	500,000.00	1,738,098.42	82,119.53	-1,320,217.95	364.0%

** END OF REPORT - Generated by Diane Smith **



City of Marlborough
Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY 16 A 11:31
Arthur G. Vigeant
MAYOR
Kate Flanagan
EXECUTIVE AIDE

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

Patricia Bernard
EXECUTIVE SECRETARY

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Transfer Request – Meals Tax Revenue Account

Honorable President Clancy and Councilors:

Enclosed for your review you will find a transfer request in the amount of \$388,000.00 to be allocated from the Meals Tax Revenue account to fund FY19 bond payments associated with parks and recreation improvements.

We adopted the meals tax to fund the many improvements we have made and continue to make to our parks and recreation areas. The tax revenue collected continues to climb each year due to our strong economy and great restaurants. In 2015, our first full calendar year after the meal tax was adopted, we collected \$835,884.00. In 2018, we generated \$1,029,033.00 in tax revenue. That is a \$193,149.00 increase since the local meals tax went into effect.

Marlborough has so much to offer when it comes to dining. When residents and visitors choose Marlborough as their dining destination they contribute to the beautification of our parks and recreational facilities allowing them to be enjoyed by many for years to come.

Thank you for your consideration and please do not hesitate to contact me with any questions.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure

TAX RATE RECAPITULATION
 Fiscal Year 2019

LOCAL RECEIPTS NOT ALLOCATED *

Receipt Type Description	(a) Actual Receipts Fiscal 2018	(b) Estimated Receipts Fiscal 2019
==> 1. MOTOR VEHICLE EXCISE	5,605,522.00	5,526,591.55
2. OTHER EXCISE		
==> a.Meals	398,500.00	388,000.00
==> b.Room	1,772,605.00	1,750,000.00
==> c.Other	52,780.00	50,000.00
==> d.Cannabis	0.00	0.00
==> 3. PENALTIES AND INTEREST ON TAXES AND EXCISES	561,424.00	560,000.00
==> 4. PAYMENTS IN LIEU OF TAXES	254,195.00	255,000.00
5. CHARGES FOR SERVICES - WATER	11,900,534.00	11,900,000.00
6. CHARGES FOR SERVICES - SEWER	10,267,909.00	10,300,000.00
7. CHARGES FOR SERVICES - HOSPITAL	0.00	0.00
8. CHARGES FOR SERVICES - SOLID WASTE FEES	0.00	0.00
9. OTHER CHARGES FOR SERVICES	0.00	0.00
10. FEES	357,729.00	360,000.00
a.Cannabis Impact Fee	0.00	0.00
11. RENTALS	279,389.00	275,000.00
12. DEPARTMENTAL REVENUE - SCHOOLS	0.00	0.00
13. DEPARTMENTAL REVENUE - LIBRARIES	2,462.00	2,500.00
14. DEPARTMENTAL REVENUE - CEMETERIES	68,080.00	67,000.00
15. DEPARTMENTAL REVENUE - RECREATION	0.00	0.00
16. OTHER DEPARTMENTAL REVENUE	150,588.00	140,000.00
17. LICENSES AND PERMITS	1,343,207.00	800,000.00
18. SPECIAL ASSESSMENTS	0.00	0.00
==> 19. FINES AND FORFEITS	148,482.00	150,000.00
==> 20. INVESTMENT INCOME	874,859.00	500,000.00
==> 21. MEDICAID REIMBURSEMENT	585,488.00	400,000.00
==> 22. MISCELLANEOUS RECURRING (PLEASE SPECIFY)	62,095.00	60,000.00
23. MISCELLANEOUS NON-RECURRING (PLEASE SPECIFY)	520,958.00	400,000.00
24. Totals	35,206,806.00	33,884,091.55

I hereby certify that the actual receipts as shown in column (a) are, to the best of my knowledge correct and complete, and I further certify that I have examined the entries made on page 4 of the Fiscal 2019 tax rate recapitulation form by the City, Town or District Clerk and hereby acknowledge that such entries correctly reflect the appropriations made and the sources from which such appropriations are to be met.

Accounting Officer

I hereby certify that the actual receipts as shown in column (a) are, to the best of my knowledge correct and complete, and I further certify that I have examined the entries made on page 4 of the above-indicated fiscal year tax rate recapitulation form by the City / Town / District Clerk and hereby acknowledge that such entries correctly reflect the appropriations made and the sources from which such appropriations are to be met.

Diane L. Smith, City Auditor, Marlborough, dsmith@marlborough-ma.gov 508-460-3774 | 11/28/2018 3:38 PM

Comment:

* Do not include receipts in columns (a) or (b) that were voted by the City / Town / District Council or Town Meeting as offset receipts on Schedule A-1, enterprise funds on Schedule A-2, or departmental revolving funds per Chapter 44, Section 53E 1/2. Written documentation should be submitted to support increases / decreases of estimated receipts to actual receipts.

==> Written documentation should be submitted to support increases/ decreases of FY 2019 estimated receipts to FY 2018 estimated receipts to be used in calculating the Municipal Revenue Growth Factor (MRGF).

NOTE : The information was Approved on 12/6/2018

LOCAL OPTION MEALS TAX

6/30/2014 State Aid	\$60,975.10	May
9/30/2014 State Aid	\$198,618.41	Jun, Jul, Aug
12/31/2014 State Aid	\$202,214.11	
3/31/2015 State Aid	\$197,399.16	
6/30/2015 State Aid	\$197,114.57	
9/30/2015 State Aid	\$223,086.95	
12/31/2015 State Aid	\$218,283.51	
3/31/2016 State Aid	\$221,714.03	
6/30/2016 State Aid	\$214,435.84	
9/30/2016 State Aid	\$232,554.39	
12/31/2016 State Aid	\$225,517.35	
3/31/2017 State Aid	\$218,918.28	
6/30/2017 State Aid	\$226,968.72	
9/30/2017 State Aid	\$237,499.87	
12/31/2017 State Aid	\$235,562.25	
3/31/2018 State Aid	\$231,462.05	
6/30/2018 State Aid	\$264,487.50	
9/28/2018 State Aid	\$266,737.22	
12/31/2018 State Aid	\$266,346.66	
3/26/2019 State Aid	\$280,759.99	

Total Funding	<u>\$4,420,655.96</u>
---------------	-----------------------

10/6/2014 CO# 14-1005915	-\$34,000.00
6/20/2016 CO# 16-1006570A	-\$62,400.00
6/4/2018 CO# 18-1007278A	-\$398,500.00

Total Transfers	<u>-\$494,900.00</u>
-----------------	----------------------

Available for future transfers	\$3,925,755.96
--------------------------------	----------------



City of Marlborough
Office of the Mayor

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2019 MAY 16 A 11:31

Arthur G. Vigeant
MAYOR
Kate Flanagan
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Year-end Transfer Requests

Honorable President Clancy and Councilors:

I have enclosed for your review and approval end of year transfer requests for the Department of Public Works and the Marlborough Fire Department.

The request from the Department of Public Works for a \$58,000.00 transfer will be allocated from surpluses within their operating budget. This funding will be used for park maintenance, consultant fees for the Assistant Commissioner duties and roof and masonry repairs at the DPW.

The Marlborough Fire Department is requesting a transfer of \$15,000.00 for the purchase of a new vehicle which will replace the 2011 Ford Expedition which was recently struck and totaled while responding to an emergency. Initial reports indicate the Marlborough Fire Department will receive insurance funds to cover a substantial amount of the cost of the new vehicle. The \$15,000.00 transfer will make up the difference.

Thank you for your time and consideration. Please do not hesitate to contact Chief Kevin Breen or myself with any questions.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

JOHN L. GHILONI
COMMISSIONER

May 15, 2019

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

Re: Transfer Request

Dear Mayor Vigeant:

Enclosed herewith are the Department of Public Works and Public Facilities Department final transfer requests for Fiscal Year 2019. These requests are being funded from surpluses within the operating budget.

Please contact if require any additional information.

Sincerely,

John L. Ghiloni,
Commissioner

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Department of Public Works/Public Facilities

FISCAL YEAR: 19

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$23,343</u>	<u>\$15,000.00</u>	<u>14001002</u>	<u>50062</u>	<u>Finance Asst.</u>	<u>\$23,000.00</u>	<u>14001506</u>	<u>54640</u>	<u>Park Maintenance</u>	<u>\$49</u>
	Reason:	<u>Excess due to step increases</u>				<u>Byrne and Korean Veterans Field drainage, Irrigation at Women Veterans Park and Station 1</u>			
<u>\$45,142</u>	<u>\$8,000.00</u>	<u>14001101</u>	<u>50710</u>	<u>Junior Civil Engineer</u>					
	Reason:	<u>Excess due to step increases</u>							
<u>\$26,254</u>	<u>\$11,000.00</u>	<u>60080001</u>	<u>50630</u>	<u>Asst. Comm. Utilities</u>	<u>\$15,000.00</u>	<u>60081004</u>	<u>53174</u>	<u>Contract Services</u>	<u>\$888</u>
	Reason:	<u>Excess due to vacancy</u>				<u>Consultant fee for Assistant Commissioner duties</u>			
<u>\$18,041</u>	<u>\$4,000.00</u>	<u>60080001</u>	<u>50570</u>	<u>Chemist</u>					
	Reason:	<u>Excess due to maternity leave</u>							
<u>\$34,649</u>	<u>\$20,000.00</u>	<u>13032001</u>	<u>50292</u>	<u>Craftsman</u>	<u>\$20,000.00</u>	<u>11920006</u>	<u>53999</u>	<u>Other Services</u>	<u>\$14</u>
	Reason:	<u>Excess due to vacancy</u>				<u>Roof and masonry repairs at DPW</u>			
<u>\$58,000.00</u>		Total			<u>\$58,000.00</u>	Total			

Department Head signature:

Auditor signature:

Comptroller signature:





City of Marlborough
FIRE DEPARTMENT
215 MAPLE STREET
MARLBOROUGH, MASSACHUSETTS 01752

KEVIN J. BREEN
FIRE CHIEF

PHONE: (508) 624-6986
FAX: (508) 460-3795

May 13, 2019

Brian J. Doheny, Comptroller
City of Marlborough
140 Main Street
Marlborough, MA 01752

REF: FY2019 Budget Transfer – MFD Car 5

Dear Brian:

Please accept this letter outlining our discussion last week concerning a year-end budget transfer related to a recent motor vehicle crash occurring to Marlborough Fire Department's incident command vehicle (C5). You may recall this vehicle, a 2011 Ford Expedition, was struck while responding to an emergency. The other party was found responsible and cited by Marlborough police. Our insurance representative has indicated the vehicle has been declared "totaled". Preliminary reports indicate we will receive insurance funds that will cover a substantial amount of the cost of a new vehicle. A transfer in the amount of \$15K from FY2019 will make up the difference. If authorized, this will enable us to move quickly to replace this important asset and exclude it from our FY2020 capital request. Thank you for your anticipated support.

Sincerely,

A handwritten signature in black ink that reads "Kevin Breen". The signature is written in a cursive style.

Kevin J. Breen
Fire Chief

Cc: Hon. Arthur G. Vigeant, Mayor
Diane Smith, Auditor

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Fire

FISCAL YEAR: 2019

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$1,054,000.00

\$15,000.00

17110006

59968

2018 Multi Purpose Bond

\$15,000.00

19300006

58512

Fire Dept Equipment

\$128,631.40

Reason:

Excess due to favorable interest rates

Replace vehicle totaled in accident

Reason:

Reason:

Reason:

Reason:

\$15,000.00

Total

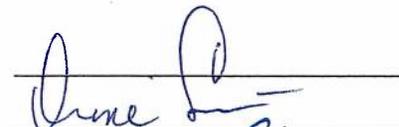
\$15,000.00

Total

Department Head signature:

Auditor signature:

Comptroller signature:







City of Marlborough
Office of the Mayor

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MAYOR
2019 MAY 16 A 11:31
Arthur G. Vigeant
KATE FLANAGAN
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Transfer Request – Human Resources

Honorable President Clancy and Councilors:

I have enclosed for your review a transfer request in the amount of \$16,900.00 to fund the sick leave buy back and vacation benefit for David Brumby, Director of Human Resources, who will be retiring effective July 1, 2019.

Upon your approval, \$11,900.00 will be transferred from the Reserve for Salaries account to the Human Resources Director account for accrued vacation time reimbursement. An additional, \$5,000.00 will be transferred from the Reserve for Salaries account to the Sick Leave Buy Back account.

Thank you for your consideration and please do not hesitate to contact me with any questions.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure



City of Marlborough
Office of the Mayor

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Arthur G. Vigeant
MAYOR

2019 MAY 16 A 11: 31

Kate Flanagan
EXECUTIVE AIDE

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

Patricia Bernard
EXECUTIVE SECRETARY

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Transfer Request – Antenna Receipts

Honorable President Clancy and Councilors:

Please find enclosed for your review and approval a transfer request in the amount of \$4,500.00. These funds will be transferred from the Undesignated Fund to the Stabilization – Open Space Fund.

I appreciate your attention to this matter. Please do not hesitate to contact me with any questions

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure



- Detail
- Months
- Seg Find
- Totals
- User Defined Fields

Account

Fund <input type="text" value="100"/> ... GEN FUND	Acct <input type="text" value="100-00-93-0000-00-0-0000-0-43600"/>
Org <input type="text" value="10093"/> ... LOCAL RCPT	Acct name <input type="text" value="WIRELESS RECEIPTS"/>
Object <input type="text" value="43600"/> ... WIRELESS	Type <input type="text" value="Revenue"/> Status <input type="text" value="Active"/>
Project <input type="text"/> ...	Rollup <input type="text"/> ...
<input type="checkbox"/> MultiYr Fund	

4 Year Comparison

History

Yr/Per 2019/01	Fiscal Year 2019	Fiscal Year 2018	Fiscal Year 2017
Original Budget	-4,500.00	-18,000.00	-25,000.00
Transfers In	.00	.00	.00
Transfers Out	.00	.00	.00
Revised Budget	-4,500.00	-18,000.00	-25,000.00
Actual (Memo)	-19,500.00	-4,500.00	-18,000.00
Encumbrances	.00	.00	.00
Requisitions	.00		
Available	15,000.00	-13,500.00	-7,000.00
Percent used	433.33	25.00	72.00

Display detail information for current account.

STABILIZATION FUND ANALYSIS FY19:

	Open Space	Downtown Econ Development	Undesignated	Total
7/1/2018 TOTAL	659,037.63	800,000.00	12,988,519.44	\$14,447,557.07
1/7/2019 CO# 19-1007475A(Free Cash)			887,745.00	
2/28/2019 Interest July thru February	13,388.50		32,401.55	
3/25/2019 CO# 19-1007584B(Berlin Property purch)	-150,000.00			
Total	522,426.13	800,000.00	13,908,665.99	\$15,231,092.12



City of Marlborough
Office of the Mayor

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CITY OF MARLBOROUGH

2019 MAY 16 A 11:30

Arthur G. Vigeant
MAYOR

Kate Flanagan
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

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

May 16, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Fiscal Year 2020 Revolving Funds Spending Limit

Honorable President Clancy and Councilors:

I have enclosed for your review and approval three orders to set spending limits on the City's three revolving funds including Public Safety, Parks and Recreation and the Council on Aging.

I am requesting approval for expenditures from each of the revolving funds, not to exceed the following:

- Public Safety Revolving Fund - \$75,000.00
- Parks and Recreation - \$350,000.00
- Council on Aging - \$70,000.00
 - In February of this year, the spending limit for the COA revolving fund received an expenditure increase of \$20,000.00, bringing the limit of expenditures to \$60,000.00. Due to the completion of the Senior Center renovation, additional programming and increased membership, I request that the limit be set at \$70,000.00.

Thank you for your consideration. I look forward to discussing this proposal further with you. Do not hesitate to contact me should you have any questions.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure



CITY OF MARLBOROUGH

Office of the City Auditor
140 Main St.
Marlborough, MA 01752

May 9, 2019

MEMORANDUM

TO: Mayor Arthur G. Vigeant

FROM: Diane Smith, City Auditor

RE: Public Safety Training Revolving Account

The income and expenditures of the Public Safety Training Revolving account are as follows:

Beginning balance as of July 1, 2018	\$14,336.54
Funds received to date	54,630.96
Expenditures to date-	
Police Academy for 6 officers	(18,000.00)
Drug Lab Awareness Training	(2,133.00)
IMC Training	(963.72)
Paratech Tool Training	(1,138.28)
Promotional Training	(250.00)
Fire Chiefs Conference	(780.00)
Active Shooter Training	(22,707.89)
Pump Operator Training	(7,941.94)
Tech Rescue Training	(5,767.60)
Taser Training	(8,402.42)
Subtotal	(68,084.85)
Encumbrances	(882.65)
Balance as of May 9, 2019	<u>\$ 0.00</u>

ORDERED:

That no more than seventy-five thousand dollars (\$75,000.00) shall be expended from the Public Safety Revolving Fund during fiscal year 2020, unless otherwise authorized by City Council and Mayor.

ADOPTED

In City Council

Order No 19- ·

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

JOHN L. GHILONI
COMMISSIONER

To: Mayor Arthur G. Vigeant

From: John L. Ghiloni *JLG*

Date: May 15, 2019

Re: Parks and Recreation Revolving Account – 26244401-52415

The Revenue and Expenditures for the Parks and Recreation Revolving Account are shown below:

Balance as of July 1, 2018	\$ 780,820.93	
Funds received between July 1, 2018 and May 15, 2019	<u>\$ 285,049.07</u>	\$1,065,870.00
Funds expended between July 1, 2018 and May 15, 2019		\$ <u>9,973.50</u>
Balance		<u>\$1,055,896.50</u>

Expenditure Summary

Forenet		\$ 9,973.50
---------	--	-------------

ORDERED:

That no more than three hundred fifty dollars (\$350,000.00) shall be expended from the Parks and Recreation Revolving Fund during fiscal year 2020, unless otherwise authorized by City Council and Mayor.

ADOPTED

In City Council

Order No 19-

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:



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

May 14, 2019

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

Re: Council on Aging/Senior Center Revolving Account Reauthorization

Dear Mayor Vigeant,

Since the authorization of the Revolving Account in October of 2015 these funds have been used solely for programming. The Senior Center continues to grow as more and more older adults are becoming of age and taking advantage of the beautiful Center and extraordinary programs offered. With the newly completed renovation of the second floor we will be able increase our programs and events to give even more options to the older adults in our community. As you will recall, I did request an increase of an additional \$20,000 in the spending limit for the Revolving Account in February of this year. Therefore, I am requesting that the spending limit on the Revolving Account be increased to \$60,000.00. I do feel this increase in the spending limit will allow us the flexibility needed to be able to offer more programs and events as our membership continues to increase.

The revenue generated in the Revolving Account represents fees associated with programs, classes and trips run through the Council on Aging/Senior Center. The expenditures represent payment for Fitness Instructors, Computer Training, Entertainment, Bus Trips along with program supplies and associated food costs. We also use funds from the State Formula Grant to offset some of the costs associated with these programs.

The Senior Center receives tremendous support from the City for which we feel very fortunate. I hope that you will consider our request for an increase in the spending limit of the Revolving Account, so we can continue to meet the needs and expand the programs offered to our older adults.

Sincerely,

Patricia A. Pope
Executive Director



Memo

To: Mayor Arthur Vigeant
From: Patricia A. Pope
Date: May 14, 2019
Re: Council on Aging Revolving Account

Pursuant to the provisions of the Council Order #15-1006306, the revolving account established by this order had income and expenditures as shown below:

Balance as of 7/1/18	\$	66,597.61
Total revenue generated (7/18 – 5/14/19)	\$	56,850.48
Funds expended (7/1/18 – 5/14/19)	\$	43,096.50
Funds encumbered	\$	144.75
Current Balance:	\$	80,206.84

EXPENDITURE SUMMARY

The revenue generated represents the fees associated with programs, classes and trips run through the Council on Aging. The expenditures represent payment for Exercise Teachers, Computer Teachers, Entertainment, Bus Trips, program supplies and associated food costs.

There are 2 bus trips and one event remaining in this fiscal year and once the bills are received we will pay them from this account.

Detailed information is attached.

ORDERED:

That no more than seventy thousand dollars (\$70,000.00) shall be expended from the Council on Aging Revolving Fund during fiscal year 2020, unless otherwise authorized by City Council and Mayor.

ADOPTED
In City Council
Order No 19-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

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2019 MAY 16 AM 11:55
DONALD V. RIDER, JR.
CITY SOLICITOR

May 16, 2019

Edward J. Clancy
President
Marlborough City Council

RE: Proposed Executive Residential Overlay District
Order No. 19-1007533C

Dear President Clancy and Members:

The Council has referred to Legal the Executive Residential Overlay District (“EROD”) being proposed by Post Road Residential, LLC (“Post Road”) for placement in proper legal form.¹

The Council’s referral is for the version recommended by the Urban Affairs Committee at its meeting on April 22, 2019. However, I will also take the liberty of commenting on Post Road’s modified version proposing a cap of 475 multifamily dwelling units in the EROD, specifically Section D.2.A, which proposes:

“Multifamily Dwellings, provided that the total number of units within the entire EROD shall not exceed 475.”

In my opinion, the above cap language would achieve President Clancy’s 2-step goal of requiring Post Road in the future 1) to amend, if at all, the EROD in order to allow more than 475 multifamily dwelling units and 2) to apply for and be granted, if at all, a special permit for such units in conformance with any amended EROD.

¹ Note that there is no Post Road Residential, LLC registered with the Massachusetts Secretary of the Commonwealth (“MA SOC”). An online search for “Post Road Residential” reveals a company in Connecticut named Post Road Residential, Inc., with Mr. Andrew Montelli as its president. While the Inc. is registered with the Connecticut Secretary of State, it, like the LLC, is not registered with the MA SOC. Nonetheless, the proposed adoption of the EROD was properly initiated under MGL c. 40A, § 5 by the “individual owning land to be affected” by the proposed EROD, namely, BP Crane Meadow, LLC. BP is itself registered with the MA SOC. BP’s 1/24/19 letter to the Council, while authorizing Post Road Residential, LLC to propose the EROD, probably meant to say Post Road Residential, Inc., the Connecticut-registered entity.

Note further that if the Council approves the proposed EROD, then Post Road Residential would need to have registered with the MA SOC – whether as an LLC or as an Inc. – in order to then apply to the Council for a special permit.

However, in reviewing both the UA-recommended version as well as Post Road’s modified version, I note the following 2 issues which both versions share; and I recommend the Council consider the corresponding motions.

1. **Section D.1.a.** The uses proposed to be permitted as of right in the EROD are listed in Section D.1.a. The Table of Uses in § 650-17 of the Marlborough Zoning Ordinance (“MZO”) shows that most of those uses – offices, banks, insurance, and financial institutions – are indeed permitted as of right in the Industrial and Limited Industrial zoning districts. Those 2 districts bisect each of the 3 parcels (Assessors Map 116, Parcels 5, 11, 12) that would comprise the EROD.

However, Section D.1.a. also includes 2 uses that are *not* noted in the Table of Uses in § 650-17 of the Marlborough Zoning Ordinance (“MZO”):

- “professional offices;” and
- “co-working or shared working spaces.”

Since those uses are not noted in the Table of Uses, Section 650-16.B of the MZO dictates that “[a]ll uses not noted in § 650-17, entitled “Table of Uses,” shall be deemed prohibited, except where so to deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation or permit.”

RECOMMENDED MOTION: Move to delete “professional offices” and “co-working or shared working spaces” from Section D.1.a.

2. **Section D.4.** The proposed amendment makes it clear that Site Plan Approval, which is to be conducted by the City Council, will always be conducted with reference to a so-called ERO Phase.² In turn, Section D.4. proposes as follows:

“Once an ERO Phase receives Site Plan Approval, individual uses within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.”

In the case of a special permit use, it is assumed that in the normal course an ERO Phase would receive Site Plan Approval only after the Council has already granted a special permit for that use. But if the use has already been granted a special permit, it is unclear how an individual use within the ERO Phase which has already been granted that special permit “may be changed” (even *with* “further Site Plan Approval”) without first getting a new or modified special permit for that changed use – though of course the specially permitted use could always be abandoned in favor of an as-of-right use.

² Section B.1.2. defines an ERO Phase as a phase of development within the EROD, and says that “[e]ach ERO Phase may consist of one or more parcels of land” – which is assumed to mean the 3 parcels (Assessors Map 116, Parcels 5, 11, 12) that would comprise the EROD. Note that, unlike with the RWMUOD and the HRMUOD, there is no Master Plan governing the EROD and its ERO Phases.

RECOMMENDED MOTION: Move to delete Section D.4. in its entirety and insert in place thereof the following new Section D.4.:

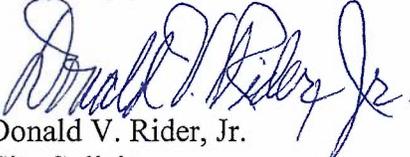
“Once an ERO Phase receives Site Plan Approval,

- i) an individual as-of-right use within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3; and
- ii) an individual use already granted a special permit within the ERO Phase may be changed upon the grant of a new or modified special permit, as appropriate, for that changed use, and will be subject to Site Plan Approval; provided, however, that if the change is to an as-of-right use in the EROD, no further Site Plan Approval is required unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.”

Apart from the 2 issues above, both versions of the EROD are in proper legal form.

Thank you for your attention to this matter.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

cc: Arthur Vigeant, Mayor
Jeffrey Cooke, Building Commissioner
Priscilla Ryder, Conservation Officer / Site Plan Review Coordinator
Brian Falk, Esquire



City of Marlborough
Legal Department

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DONALD V. RIDER, JR.
CITY SOLICITOR

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

May 16, 2019

Edward J. Clancy
President
Marlborough City Council

RE: Avalon Orchards
91 Boston Post Road East
Proposed Conservation Restriction and Proposed Regulatory Agreement

Dear President Clancy and Members:

In September 2000, the Marlborough Zoning Board of Appeals granted a comprehensive permit to AvalonBay Orchards, Inc. This letter calls attention to 2 legal matters arising out of that comprehensive permit from nearly 20 years ago.

The first legal matter pertains to a conservation restriction. Specifically, condition no. 10 in the ZBA's comprehensive permit provided that a conservation restriction ("CR") was to be recorded on approximately nine acres of the site located at 91 Boston Post Road, and that the Marlborough Conservation Commission was to hold that CR after having approved its terms. Similarly, condition no. 11 provided that, as part of the CR, a 10-foot wide trail easement allowing public pedestrian access was to be constructed, with a pedestrian 5-foot wide trail within that easement. However, while the trail was constructed some time ago, the CR itself was never drafted let alone recorded. Accordingly, a copy of the proposed CR, already reviewed and approved as to language by the relevant state agency (Division of Conservation Services at the Commonwealth's Executive Office of Energy and Environmental Affairs) is enclosed for your review and approval. Please note:

- the proposed CR is also on the May 16 agenda for Conservation Commission for its required review and approval; and
- a proposed public pedestrian trail easement, to be granted by AvalonBay to the City, will be submitted on a future Council agenda.

The other legal matter arising out of the ZBA's comprehensive permit pertains to a regulatory agreement ("RA"). One of the main features of the proposed RA deals with affordable housing units at Avalon Orchards. Specifically, condition no. 20 in the 2000 comprehensive permit recites, in part, AvalonBay's agreement not to convert the rental units at Avalon Orchards for a period of 20 years. Since Avalon Orchards is presently a rental community, all 156 units there are currently counted as affordable housing units. However, if Avalon Orchards converted

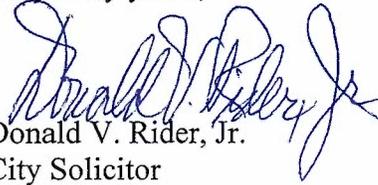
after 20 years to an ownership community by condominiumizing, only 25% of the 156 units – or 39 – would then be counted as affordable housing units. In other words, 117 units would no longer be counted as affordable if Avalon Orchards converted to condos. The proposed RA extends out to the year 2045 what otherwise would be the 20-year period set forth in condition no. 20. A copy of the proposed RA is enclosed for your review and approval.

Note that AvalonBay's counsel and I have already met with the ZBA, as issuing body for the 2000 comprehensive permit, in order to discuss both the proposed CR and the proposed RA.

Further details on the proposed CR and the proposed RA can be discussed in committee.

Thank you for your attention to this matter.

Very truly yours,



Donald V. Rider, Jr.
City Solicitor

Enclosures

cc: Arthur Vigeant, Mayor
Priscilla Ryder, Conservation Officer
Paul Momnie, Esquire

GRANTOR: AVALONBAY ORCHARDS, INC.
GRANTEE: CITY OF MARLBOROUGH
ADDRESS OF PREMISES: 91 Boston Post Road East,
Marlborough, MA 01752
FOR GRANTOR'S TITLE SEE: Middlesex County
(S.D.) Registry of Deeds at Book 32898, Page 152

CONSERVATION RESTRICTION

AVALONBAY ORCHARDS, INC., a Maryland corporation, constituting the owner, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to the CITY OF MARLBOROUGH, with an address of City Hall, 140 Main Street, Marlborough, Massachusetts 01752, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and its permitted successors and assigns (“Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on an 11.483-acre portion of a 22.869-acre parcel of land located in the City of Marlborough, Massachusetts (the “Premises”), which Premises is shown as “Conservation Restriction Area, Area = 500,187 sq. ft., 11.483 acres” on a plan entitled “Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.,” dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118; Scale: 1”=50’ (2 sheets), recorded in the Middlesex County (S.D.) Registry of Deeds as Plan No. ____ of 2019 (the “Plan”), which Premises is more particularly described on Exhibit A and shown on a reduced copy of the Plan in Exhibit B, both of which exhibits are incorporated herein.

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (the “conservation values”).

This Conservation Restriction is required by the following permits:

- (1) Comprehensive Permit dated September 26, 2000 issued to the Grantor pursuant to M.G.L. c. 40B, §§ 20-23 by the City of Marlborough Zoning Board of Appeals for a 156-unit multi-family development with related amenities and improvements on the project known as “Avalon Orchards” (the “Development”), which Comprehensive Permit was recorded with the Middlesex (S.D.) Registry of Deeds (“Deeds”) in Book 32898, Page 157 (the “Comprehensive Permit”).
- (2) Order of Conditions dated December 21, 2000 issued to the Grantor by the City of Marlborough Conservation Commission (the “Conservation Commission”) related to the Development, which Order of Conditions was recorded with Deeds in Book 32898, Page 177 (the “Order of Conditions”).

The Premises contain unique and unusual qualities, the protection of which in their predominantly natural and open state will be of lasting benefit to the public and to the citizens of the City of Marlborough. These include qualities such as the natural, scenic, wooded and open condition of the Premises. The purpose of this Conservation Restriction is to retain the Premises in their natural, scenic and open condition.

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of the City of Marlborough and the protection of the Premises will enhance the open-space value of these and nearby lands.
- Preservation of Water Quality. The Premises is mapped as Outstanding Resource Waters located within a drainage area to a public water supply, as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Massachusetts General Laws Chapter 131, section 40).
- Public Access. Public access to the Premises will be allowed for passive outdoor recreational activities as defined herein.

The Conservation Values, as well as the current uses of and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;
- (9) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, woods, fence lines, and trails and meadows;
- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (5) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
- (6) Trails. The marking, clearing and maintenance of existing footpaths, including a trail of approximately 5 feet in width in the location shown as "Trail Easement" on the Plan, and with prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than 5 feet;
- (7) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- (8) Outdoor Passive Recreational Activities. Hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;

- (9) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in General Laws, Ch. 61, Sec. 1, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor) and carried out pursuant to a Forest Stewardship Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Stewardship Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of said Stewardship Plan. The Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

- (10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (11) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(8) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(8). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto

benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their

attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of

Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex (S.D.) Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex (S.D.) Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

c/o AvalonBay Communities, Inc.
Attention: Scott Dale, Senior Vice President - Development
600 Atlantic Avenue, 20th Floor
Boston, Massachusetts 02210
Email: sdale@avalonbay.com

With copies to:

c/o AvalonBay Communities, Inc.
Attention: Legal Department / Brian Lerman, Vice President –
Assistant General Counsel
Ballston Tower
671 N. Glebe Road, Suite 800

Arlington, Virginia 22203
Email: brian_lerman@avalonbay.com

And to Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110
Attention: Steven Schwartz, Esq.
Email: sschwartz@goulstonstorrs.com

To Grantee: City of Marlborough
Conservation Commission
City Hall
140 Main Street
Marlborough, Massachusetts 01752
e-mail: pryder@marlborough-ma.gov

and

City of Marlborough
Legal Department
City Hall, 4th Floor
140 Main Street
Marlborough, Massachusetts 01752
e-mail: legal@marlborough-ma.gov

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor attests that, as of the date hereof, there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a security interest affecting the Premises.

C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor
Grantee Acceptance
Approval by City Council
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises
Exhibit B: Reduced Copy of Plan of Premises

4819-5520-2422.8

Executed under seal this ____ day of _____, 2019.

BY: AVALONBAY ORCHARDS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

_____, SS

On this ___ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as _____, for AvalonBay Orchards, Inc., a Maryland corporation.

Notary Public: _____
My commission expires: _____

STATE OF CONNECTICUT

_____, SS

On this ___ day of _____, 2019, before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as Senior Vice President Finance and Assistant Treasurer, for AvalonBay Orchards, Inc., a Maryland corporation.

Notary Public: _____
My commission expires: _____

**ACCEPTANCE OF GRANT BY THE
CITY OF MARLBOROUGH CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the City of Marlborough, Massachusetts, hereby certify that at a public meeting duly held on _____, 2019, the Conservation Commission voted to approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc., pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8C, and do hereby accept the foregoing Conservation Restriction, subject to approval by the City Council of the City of Marlborough.

MARLBOROUGH CONSERVATION
COMMISSION

Edward Clancy

Dave Williams

John Skarin

Allan White

Dennis Demers

William Dunbar

Karin Paquin

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH

We, the undersigned, being a majority of the City Council of the City of Marlborough, hereby certify that at a public meeting duly held on _____, 2019, the City Council voted to approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

MARLBOROUGH CITY COUNCIL

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY THE MAYOR OF THE CITY OF MARLBOROUGH

I, Arthur Vigeant, the undersigned, the Mayor of the City of Marlborough, hereby approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

MAYOR

Arthur Vigeant

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2019

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises

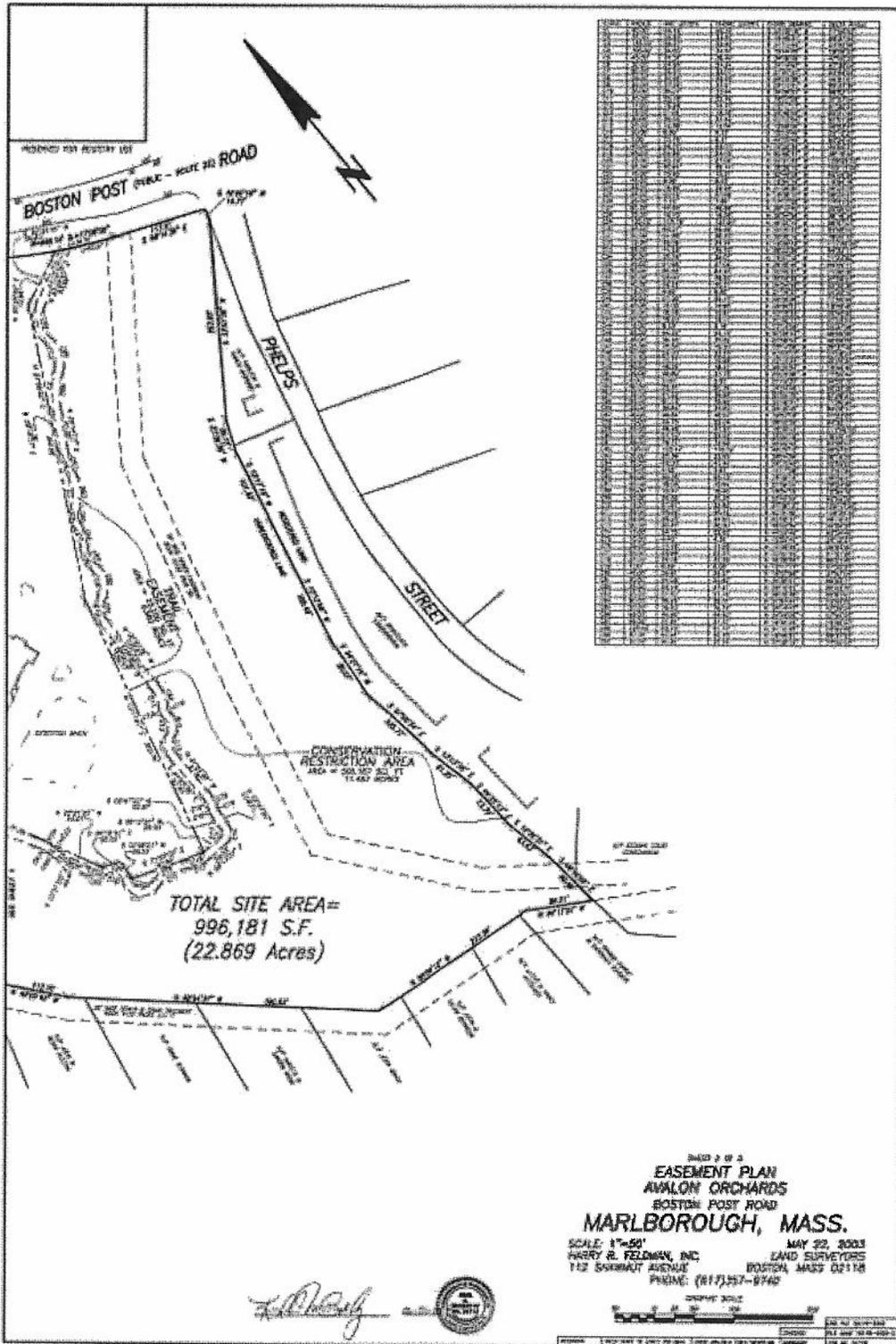
The Premises subject to this Conservation Restriction is the entirety of the 11.483 acre area shown as "Conservation Restriction Area, Area = 500,187 sq. ft., 11.483 acres" on a plan of land entitled "Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.," dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118, Scale: 1"=50' (2 sheets), said plan recorded at the Middlesex County (South District) Registry of Deeds in Book ____, Page ____, a reduced copy of which is attached hereto as Exhibit B.

Street Address: 91 Boston Post Road East, Marlborough, MA 01752

EXHIBIT B - Reduced Copy of Plan of Premises

[See attached copy]

For official full size plan see Middlesex (South) County Registry of Deeds as plan No. ___ of
2019



REGULATORY AGREEMENT

This Regulatory Agreement (the "Agreement") is made this _____ day of _____, 2019 by AVALONBAY ORCHARDS, INC., a Maryland corporation, with an address of 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203, its successors and assigns ("AvalonBay") and the CITY OF MARLBOROUGH, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, with an address of 140 Main St, Marlborough, Massachusetts 01752 (the "City").

BACKGROUND:

A. AvalonBay owns and operates a development consisting of 156 rental units with related amenities and improvements commonly known as "Avalon Orchards" and having an address of 3 Avalon Drive, Marlborough, Massachusetts 01752 (the "Development"). The Development is located on land more particularly described on Exhibit A attached hereto (the "Property").

B. The Development was developed pursuant to a comprehensive permit issued under M.G.L. c. 40B and its implementing regulations (collectively, "Chapter 40B") by the Marlborough Zoning Board of Appeals by decision dated September 26, 2000, recorded with the Middlesex (S.D.) Registry of Deeds (the "Registry") on May 21, 2001 in Book 32898, Page 157 (the "Comprehensive Permit").

C. AvalonBay has repaid in full the loan in the original principal amount of \$20,679,509 (the "Loan") funded by revenue bonds issued by the Massachusetts Housing Finance Agency ("MHFA"), which Loan was secured by, among other things, that certain Mortgage, Security Agreement, and Assignment of Rents and Leases with respect to the Property dated as of June 27, 2003 from AvalonBay to MHFA, which was recorded in the Registry in Book 39713, Page 493 (the "MHFA Mortgage").

D. In connection with the Loan, AvalonBay and MHFA entered into a certain Regulatory Agreement dated as of June 27, 2003, which was recorded with the Registry in Book 39713, Page 528 (the "Regulatory Agreement") and a certain Disposition Agreement dated as of June 27, 2003, which was recorded with the Registry in Book 39713, Page 486 (the "Disposition Agreement"). The Regulatory Agreement, the Disposition Agreement and the MHFA Mortgage are sometimes collectively referred to herein as the "MHFA Agreements."

E. The MHFA Agreements set forth, among other things, certain affordability requirements with respect to low or moderate income housing to be provided as part of the Development.

F. The MHFA Agreements, among other things, were discharged by instrument dated August 6, 2018 which was recorded with the Registry in Book 71510, Page 336 (the "Discharge").

G. In light of the Discharge, the City and AvalonBay wish to memorialize their understanding as to the affordability requirements that will continue to apply to the Development so long as the Development or Property continues to be used as multi-family housing pursuant to

the Comprehensive Permit (which shall be, at a minimum, until the expiration of the Minimum Term, as such term is hereinafter defined).

NOW THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AvalonBay and the City hereby agree and covenant as follows.

1. The term of this Agreement shall commence as of the date the Loan was or is repaid in full and shall continue in perpetuity as may be permitted by law. In entering into this Agreement, the parties intend for the restrictions, rights and obligations herein to be perpetual. To that end, if for any reason this Agreement or any of the restrictions, rights or obligations contained herein shall be deemed subject to sun-setting provisions, invalid, terminated, void or voidable on any grounds, or other principles requiring duration less than perpetual, then AvalonBay and its successors, assigns and transferees shall carry out all necessary measures to extend, adopt and/or renew the terms of this Agreement to renew and extend this Agreement and otherwise to ensure that the City holds in perpetuity the rights and restrictions set forth herein for the benefit of the City in a manner consistent with the terms and intent of this Agreement.

2. During the term of this Agreement, AvalonBay covenants, agrees, and warrants that the Development and each Affordable Unit, as hereinbelow defined, will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the disabled.

3. To the maximum extent permitted by law, throughout the term of this Agreement, AvalonBay shall reserve, market and lease, as "low or moderate income housing," as that term is defined in M.G.L. c. 40B, § 20, twenty five percent (25%) of the units in the Development to Low or Moderate Income Persons or Families (the "Affordable Units"). For the purposes hereof, the term Low or Moderate Income Persons and Families shall mean persons or families earning not more than eighty percent (80%) of the applicable area median income ("AMI") adjusted for household size, as determined by the U.S. Department of Housing and Urban Development ("HUD"), the Comprehensive Permit and this Agreement.

4. For so long as this Agreement is in effect, the annual rental expense for each of the Affordable Units shall be equal to the gross rent plus allowances for all tenant-paid utilities (including tenant-paid heat, hot water and electricity) and shall not exceed thirty percent (30%) of 80 percent (80%) of the AMI, adjusted for household size (the "Maximum Rents"). The Maximum Rents shall be determined on an annual basis by AvalonBay in accordance with the rental determination regulations adopted by MHFA (or its successor agency) or Massachusetts Department of Housing and Community Development ("DHCD"), as the same may be amended from time to time, and any policy regulations promulgated thereunder. Annually, AvalonBay shall submit to the City a proposed schedule of monthly rent expenses for all Affordable Units in the Development. Rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by AvalonBay to all affected tenants. If the City fails to respond to a submission of the proposed schedule of rents for the Affordable Units as set forth above within thirty (30) days of the City's receipt thereof, the City shall be deemed to have approved the submission. If rentals of the Affordable Units are

subsidized under any state or federal housing subsidy program providing rental or other subsidy to the Development (a "Housing Subsidy Program"), then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the Maximum Rents as provided in this Agreement.

5. AvalonBay will advise the Director of the City's Community Development Authority (the "Director") of any revisions to the designation of any Affordable Units on an annual basis and will provide the Director an annual report with respect to the Development certifying in writing (i) that the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement, and (ii) a listing of each Affordable Unit tenant rent and income. AvalonBay shall deliver the annual report within one hundred twenty (120) days of the end of each calendar year during the term of this Agreement.

6. The Affordable Units will be intermingled with all other dwelling units in the Development and will have access to all common facilities of the Development for use and enjoyment equal to that of other tenants. All Affordable Units constructed and/or to be constructed as part of the Development must be similar in exterior appearance to other units in the Development. Materials used for the interiors of the Affordable Units must be of good quality.

7. If, after initial occupancy, the income of a household occupying an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such household, AvalonBay shall not be in default hereunder so long as either (i) the household's income does not exceed one hundred forty percent (140%) of the maximum income permitted (in which case the unit in question shall continue to be counted as an Affordable Unit) or (ii) AvalonBay rents the next available unit at the Development as an Affordable Unit in conformance with Section 3 of this Agreement. If a unit that formerly was an Affordable Unit no longer qualifies as an Affordable Unit due to an increase in the income of the household occupying such unit to an amount in excess of one hundred forty percent (140%) of the maximum income permitted hereunder for such household, AvalonBay may charge a market rental rate for such unit, provided that AvalonBay promptly and continuously markets and leases a different unit or units that are not already Affordable Units as Affordable Units to mitigate the reduction in the number of Affordable Units and to maintain the total number of Affordable Units at the Development as required by Section 3 above.

8. If at any time fewer than the required number of Affordable Units are leased, rented or occupied by Low or Moderate Income Persons or Families, the next available units with at least the same number of bedrooms shall all be leased, rented or otherwise made available to Low or Moderate Income Persons or Families until the required number of units occupied by Low or Moderate Income Persons or Families is again obtained.

9. AvalonBay shall enter into a lease with each tenant for a minimum term of one year. Such leases shall contain clauses, among others, wherein each resident of such Affordable Unit agrees and certifies compliance with the accuracy of information provided.

10. In fulfilling its obligations under this Agreement, AvalonBay will accept referrals of tenants from the public housing authority in the City, and will not unreasonably refuse

occupancy to any prospective tenants so referred who meet the requirements of any applicable tenant selection plan. Notwithstanding the foregoing, in no event shall this Agreement require AvalonBay to take any action which would result in a violation of the federal Fair Housing Act or any other applicable federal, state or local law, rule, ordinance, regulation or requirement or which is inconsistent with any applicable guidelines, rules or regulations. Without limiting the generality of the foregoing, there shall be no discrimination upon the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age or familial status in the lease, use or occupancy of the Development.

11. AvalonBay will obtain, at the time of initial rental and on each anniversary of the rental during the term of such rental, and maintain on file certifications of tenant eligibility with respect to the Affordable Units in a form prescribed by MHFA or another qualified agency overseeing affordable housing in the Commonwealth of Massachusetts. Such certifications shall be filed with the Director annually as part of the report required under Section 5 hereof. AvalonBay shall make good faith efforts to verify that the income provided by an applicant in an income certification is accurate.

12. The Director shall represent the interests of the City concerning the enforcement of the terms and conditions of this Agreement. As such, the Director and any person(s) designated by the Director (whether such person(s) are employees of the City or agents acting on behalf of the Director or the City) shall be the person authorized to monitor AvalonBay's compliance with the terms and conditions of this Agreement. AvalonBay will maintain complete and accurate records pertaining to the Affordable Units, and during reasonable business hours and upon reasonable notice, will permit the Director and any person(s) designated by the Director to inspect the books and records of AvalonBay pertaining to the Affordable Units.

13. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

14. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, by e-mail, or by reputable overnight courier (such as Federal Express), to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

To AvalonBay:

AvalonBay Communities, Inc.
1499 Post Road, Second Floor
Fairfield, Connecticut 06824
e-mail: joannel@avalonbay.com
Attn: Joanne Lockridge, Senior Vice President -- Finance

With copies to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800

Arlington, Virginia 22203
e-mail: alan_adamson@avalonbay.com
Attn: Alan Adamson, Esq., Vice President & Associate General Counsel

and

Goulston & Storrs PC
400 Atlantic Avenue
Boston, Massachusetts 02110-3333
Facsimile: (617) 574-7636
Attn: Steven Schwartz, Esq
e-mail: sschwartz@goulstonstorrs.com.

To City:

Marlborough Community Development Authority
250 Main Street
Marlborough, Massachusetts 01752
Attention: Douglas Bushman, Director
e-mail: dbushman@marlborough-ma.gov

and

City of Marlborough
Legal Department
City Hall, 4th Floor
140 Main Street
Marlborough, Massachusetts 01752
e-mail: legal@marlborough-ma.gov

15. This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c.184, § 26, 31, 32 and 33, in perpetuity. This Agreement is made for the benefit of the City, which shall be deemed to be the holder of the affordable housing restriction created by this Agreement. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder. The City has determined that the acquiring of such affordable housing restriction is in the public interest. For the purposes hereof, the term "perpetuity" shall mean for so long as the Development is being used for multi-family housing pursuant to the terms of the Comprehensive Permit, which shall be, at a minimum, for a term (the "Minimum Term") ending on May 21, 2045. Notwithstanding the foregoing or anything in this Agreement to the contrary but subject to the provisions of the next sentence, the term of this Agreement shall expire, and this Agreement shall be of no further force and effect, at such time as no portion of the Development or Property is used as multi-family housing pursuant to the Comprehensive Permit (but no sooner than the expiration of the Minimum Term). Further, this Agreement shall terminate and be of no further force and effect with respect to all the Affordable Units to the extent that the provisions of M.G.L. Chapter 40B (or any amendment or successor

statute thereto) no longer require that any of the units in the Development be restricted for low and moderate income housing.

16. Nothing in this Agreement shall be deemed to prohibit the conversion of the use of the property on which the Development is built for other uses permitted by the applicable zoning then in effect, so long as no such conversion takes place, at a minimum, until the expiration of the Minimum Term; provided, however, that any conversion of the Property to condominium use may take place after the expiration of the Minimum Term; and provided, further, that in the event of such condominium conversion after such period, the Affordable Units shall remain in perpetuity as "low or moderate income housing," in conformance with Section 3 of this Agreement, in the form either of home ownership units or of rental units as may be agreed to by AvalonBay and the Marlborough Zoning Board of Appeals. In the event of such a condominium conversion, AvalonBay shall execute and record all necessary documents (including but not limited to deed restrictions on the unit deeds for the Affordable Units which will be subject to the affordability restriction approved by DHCD pursuant to M.G.L. c. 184) to ensure that the affordability restriction as to such units will continue in force for the entire term hereof, in accordance with the terms relative to qualifying purchasers and maximum sales prices for initial sales and re-sales in accordance with the regulations promulgated by MHFA (or, if MHFA has ceased to promulgate such regulations, then such terms shall be determined based on substitute regulations and requirements of DHCD, and thereafter of a federal or state governmental agency providing subsidies for low or moderate income home ownership as shall be reasonably determined by AvalonBay). In addition, in the event of such a conversion, AvalonBay shall establish in the condominium master deed a provision for the maintenance of the Development and Property, including, but not limited to, roadway maintenance and repair, snow plowing, trash removal / recycling, and other amenities relating to the Development and Property. Further, in the event of such a conversion, a Deed Rider shall be attached to the deed of each Affordable Unit, and substantially similar restrictions as are in the Deed Rider shall be contained within the condominium master deed; such Deed Rider shall be in a form which is reasonably acceptable to the City, DHCD and any federal or state subsidizing agency providing a subsidy in connection with such conversion to condominium use. In no event shall any conversion of the use of the Property at any time, whether during or subsequent to the expiration of the Minimum Term, impair or interfere with the conservation values protected by the Conservation Restriction granted or to be granted in perpetuity by AvalonBay to the City of Marlborough, acting by and through its Conservation Commission.

17. Subject to the rights of any mortgage lender, AvalonBay agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, AvalonBay shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by AvalonBay, AvalonBay shall be required to maintain the same percentage of Affordable Units (namely, 25%, as set forth in Section 3 of this Agreement) to the total number of units then remaining in the Development.

18. AvalonBay intends, declares and covenants on behalf of itself and its successors and assigns, and the parties hereto agree (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Development for the term of this Agreement accepted by the City by its execution of this Agreement, and are binding upon AvalonBay's successors in title, (ii) are not merely personal covenants of AvalonBay, and (iii) shall bind AvalonBay, its successors and assigns for the term of the Agreement, and shall inure to the benefit of the parties hereto and their respective successors and assigns. AvalonBay hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full. AvalonBay shall cause this Agreement to be recorded in the Registry. AvalonBay shall pay all fees and charges incurred in connection with such recording or filing.

19. If any default, violation or breach by AvalonBay of the terms of this Agreement is not cured within thirty (30) days after notice to AvalonBay thereof (or such longer period of time as is reasonably necessary to cure such a default so long as AvalonBay is diligently and continuously prosecuting such a cure), then the City may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require AvalonBay to perform its obligations under this Agreement; (b) have access to, and inspect, examine and make copies of all of the books and records of AvalonBay pertaining to the Development; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of AvalonBay under this Agreement. If the City brings any claim to enforce this Agreement, and the City finally prevails in such claim, AvalonBay shall reimburse the City for its reasonable attorneys' fees and expenses incurred in connection with such claim. No delay or omission on the part of the City in enforcing the covenants, agreements and restrictions contained herein shall operate as a waiver of the City's right to enforce them, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or waiver of the same or of any other right on any future occasion.

20. Recognizing that each party may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, either party on the request of the other party made from time to time, will promptly furnish to the requesting party a statement of the status of any matter pertaining to this Agreement, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Agreement.

(Signatures on following page)

CITY:

CITY OF MARLBOROUGH

By: _____

Arthur G. Vigeant

Mayor

Hereunto duly authorized by vote
of the Marlborough City Council
Order No. _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss:

On this _____ day of _____, 2019 before me, the undersigned notary public, personally appeared Arthur G. Vigeant, in his capacity as Mayor of the City of Marlborough, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

(SEAL)

MARLBOROUGH RETIREMENT BOARD

289 Elm Street, Suite 111
Marlborough, Massachusetts 01752-3812
Telephone (508) 460-3760

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 MAY -9 P 2:00

Gregory P. Brewster, Chairman
David Keene
Diane Smith
Daniel J. Stanhope
William S. Taylor

May 7, 2019

Marlborough City Council
140 Main Street, City Hall
Marlborough, MA 01752

Dear President and Members:

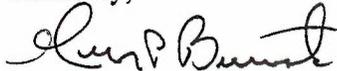
The Marlborough Retirement Board voted unanimously to increase the cost-of-living (COLA) base from \$12,000 to \$14,000 in accordance with G.L. c.32, s.103(j). The Board has made substantial progress in its funding plan and its members believe now is the time to extend a modest benefit increase to its retirees and survivors.

The \$12,000 COLA base was established by Chapter 17 of the Acts of 1997. In 2010, Chapter 188 of the Acts of 2010 allowed Boards, with the approval of their legislative bodies, to increase the COLA base in increments of \$1,000. A \$2,000 increase in the base provides a small increase to our retired members. Assuming approval of a 3% COLA, adoption of a \$14,000 base provides an annual increase of \$420; a monthly increase of only \$5 per month. The annual increase in retiree payroll will be approximately \$19,250.

Sherman Actuarial Associates recently completed an actuarial valuation of the system. The Board and the City continue to make steady progress toward its goal of fully funding the system. As of January 1, 2017, the system was 76.5% funded; up from 70.7% in 2015. The gains in funding have allowed the Board to recently adopt a **shorter funding schedule** (with full funding reached in 2025) with **lower annual appropriations** than its current schedule **while still providing for a COLA base increase**. An increase in the COLA base of \$2,000 will increase the annual appropriation by an average of \$330,664 for the next six years.

The Marlborough Retirement Board urges you to approve the Board's adoption of a \$14,000 COLA base. If you have questions, please do not hesitate to contact me or any one of my colleagues on the Board.

Sincerely,



Gregory P. Brewster, Chairman
Marlborough Retirement Board



City of Marlborough Planning Board

Administrative Offices
135 Neil St.
Marlborough, MA 01752

PLANNING BOARD

Barbara L. Fenby, Chair
Philip Hodge
Sean N. Fay
George LaVenture
Christopher Russ
Matthew Elder

Krista Holmi, Administrator
(508) 624-6910 x33200

kholmi@marlborough-ma.gov

May 8, 2019

Mr. Edward Clancy
Council President
140 Main St.
Marlborough, MA 01752

RE: City Council Order No. 19-1007587, Section 650-8, "Boundaries Established" Proposed rezoning of Map 113, Parcels 5 and 6, - Land off Williams St.

Honorable President Clancy and Members:

At its regularly scheduled meeting on May 6, 2019, the Planning Board took the following action regarding the above-referenced Council order:

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to send a favorable recommendation to the City Council regarding the proposed zoning change. Motion carried.

Should you need further information, don't hesitate to contact me.

Sincerely,

Barbara L. Fenby
Chairperson

cc: City Clerk ✓

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY -9 P 3:48

PETITION FOR JOINT POLE RE-LOCATIONS

April 24, 2019

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 MAY 10 A 11: 50

To the City Clerk Office
of the City of Marlborough, Massachusetts

MASSACHUSETTS ELECTRIC COMPANY and VERIZON NEW ENGLAND, INC.
request permission to relocate poles, wires, cables and fixtures, including anchors, guys and other such
necessary sustaining and protecting fixtures, along and across the following public way or ways:-

Boudreau Avenue Pole 6
National Grid request to relocate Pole and anchor #6 to opposite side of
Boudreau Avenue. As the city of Marlborough will be widening road.

Wherefore they ask that they be granted a joint relocation for and permission to erect and maintain poles, wires,
cables and fixtures to be placed thereon, together with anchors, guys and other such sustaining and protecting
fixtures as they must find necessary, said poles to be located substantially in accordance with the plan filed
herewith marked: Plan No. 28060435 Dated: 3/25/2019

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

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

MASSACHUSETTS ELECTRIC COMPANY

By: Rob Leonardo
Manager of Distribution Design *RL*

VERIZON NEW ENGLAND, INC.

By: Ally E. Davis
Manager, R.O.W.

ORDER FOR JOINT POLE RELOCATION

April 24, 2019

By the City Clerk Office
of the City of Marlborough, Massachusetts

IT IS HEREBY ORDERED:

that **MASSACHUSETTS ELECTRIC COMPANY and VERIZON NEW ENGLAND, INC.** be and they are hereby granted a joint relocation for and permission to erect and maintain poles and wires to be replaced thereon, together with such sustaining and protecting fixtures as said Companies may deem necessary, in the public way or ways hereinafter referred to, as requested in petition of said Companies dated the **24th day of April, 2019**

All construction under this order shall be in accordance with the following conditions:-
Poles shall be sound and timber, and reasonably straight, and shall be set substantially at the points indicated upon the plan marked:

Plan No. **28060435** Dated: **3/25/2019** filed with said petition.

There may be attached to said poles by said **MASSACHUSETTS ELECTRIC COMPANY** necessary wires, cables and fixtures and by said **VERIZON NEW ENGLAND, INC.** not to exceed **40** wires and **4** cables and all of said wires and cables shall be placed at a height of not less than **18** feet from the ground at highway crossings, and not less than 16 feet from the ground elsewhere.

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

Boudreau Avenue Pole 6

National Grid request to relocate Pole and anchor #6 to opposite side of Boudreau Avenue. As the city of Marlborough will be widening road.

Also that permission be and hereby is granted to each of said Companies to lay and maintain underground cables, conduits, wires and necessary equipment in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each may desire for distributing purposes.

I hereby certify that the foregoing order was adopted at a meeting of the City Council of the City of Marlborough, Massachusetts held on the _____ day of _____ 2019

Clerk of Council

CERTIFICATE

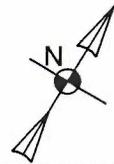
I hereby certify that the foregoing order was adopted at a meeting of the City Council of the City of Marlborough, Massachusetts held on the _____ day of _____ 2019

recorded with the records of location orders of said City,

Book _____, Page _____.

This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest: _____
City Clerk



P3



Spring St

Proposed
P6



#46

P6



#47

#42

P5



P4



Boudreau Ave

National grid to relocate pole / anchor #6 to opposite side of Boudreau Ave. As the city of Marlborough will be widening road.

Exhibit A not to scale. The exact location of said facilities to be established by and upon the installation and erection of the facilities thereof.

JOINT OWNED POLE PETITION

nationalgrid

And

Verizon New England, Inc.

- Proposed NGRID Pole Locations
- Existing NGRID Pole Locations
- Proposed J.O. Pole Locations
- Existing J.O. Pole Locations
- Existing Telephone Co. Pole Locations
- Existing NGRID Pole Location To Be Made J.O.
- Existing Pole Locations To Be Removed

Date: 3/25/19

Plan Number: 28060435

To Accompany Petition Dated:

To The: City Of Marlborough

For Proposed: JO Pole: 6 Location: Boudreau

Date Of Original Grant:

DISTANCES ARE APPROXIMATE

brownrudnick

MICHAEL R. DOLAN
direct dial: 401.276.2610
mdolan@brownrudnick.com

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

May 7, 2019

2019 MAY -9 P 2:00

VIA EMAIL AND OVERNIGHT DELIVERY

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: New Cingular Wireless PCS, LLC ("AT&T") Small Cell Antenna Petition - 28
Concord Road (Order No. 17-1007055)

Dear Honorable President Clancy and City Councilors:

You will recall that the last of AT&T's Small Cell Antenna applications (28 Concord Road) is still pending with the Wireless Committee and that the remaining action item for AT&T from the Committee at the last meeting was that AT&T needed to work with NGrid to produce a structural analysis demonstrating that the subject pole is capable of holding AT&T's proposed equipment. The existing pole is leaning considerably.

After many discussions with NGrid, my client has been advised by NGrid that they will actually replace the existing pole with a new pole to address the structural concerns. It will also improve the appearance of the existing pole which currently tilts so much as to be aesthetically unpleasing. Enclosed herewith is a copy of the plans for the new pole with the proposed AT&T equipment thereon. As with AT&T's other approved installations and per the request of the City Council, all of AT&T's equipment will be at least 11' off the ground on the new pole.

NGrid is requiring that AT&T pay for the installation of the new pole and as such AT&T is seeking to first secure an approval from the City Council for its proposed antenna facility before it gives the go-ahead to NGrid to install the new pole. It is my understanding that Small Cell Antenna applications are now considered by the Public Services Committee as opposed to the Wireless Committee and, as such, AT&T respectfully requests that its updated Petition be placed on the agenda of the next Public Services Committee meeting.

Thank you for your consideration, and do not hesitate to contact me if you have any questions.

Respectfully,

BROWN RUDNICK LLP

Michael R. Dolan

MRD/sad

cc: Donald V. Rider, Jr., Esq. (email only)

63394572 v1-WorkSiteUS-024519/1016

Brown Rudnick LLP | brownrudnick.com | 10 Memorial Boulevard, Providence, RI 02903 | 1.401.276.2600

APPROXIMATE COORDINATES: LAT: 42.352556° N LONG: 71.529969° W



550 COCHITUATE ROAD
FRAMMINGHAM, MA 01701



95 RYAN DRIVE
RAYNHAM, MA 02767



1400 OSGOOD STREET
BURLINGHAM, MA 01930 TEL: (978) 667-6553
H. ANDOVER, MA 01845 FAX: (978) 336-5584

CHECKED BY: AT

APPROVED BY: DJC

SUBMITTALS

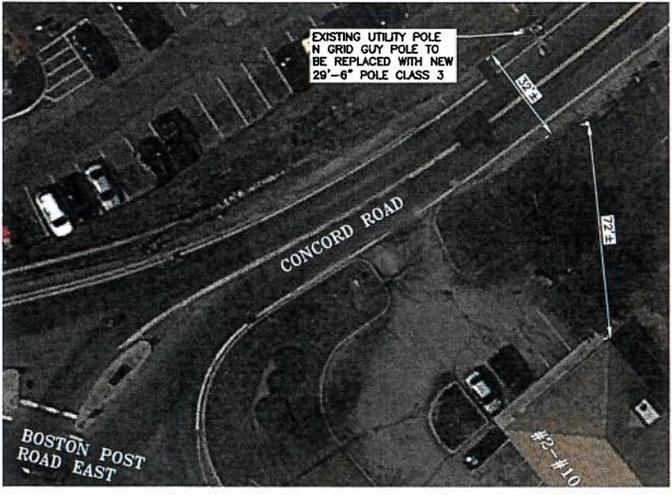
REV.	DATE	DESCRIPTION	BY
3	04/18/18	REVIEW PER COMMENTS	JH
2	04/18/18	REVIEW PER COMMENTS	JH
1	10/01/17	REVIEW PER COMMENTS	SB
0	08/22/17	ISSUED FOR REVIEW	SB

CLUSTER AND NODE NUMBER:
AREA 5_87A

SITE ID:
AREA 5_87A
SITE ADDRESS:
**28 CONCORD ROAD
MARLBOROUGH, MA 01752
MIDDLESEX COUNTY**

SHEET TITLE
**KEY PLAN AND
ELEVATION**

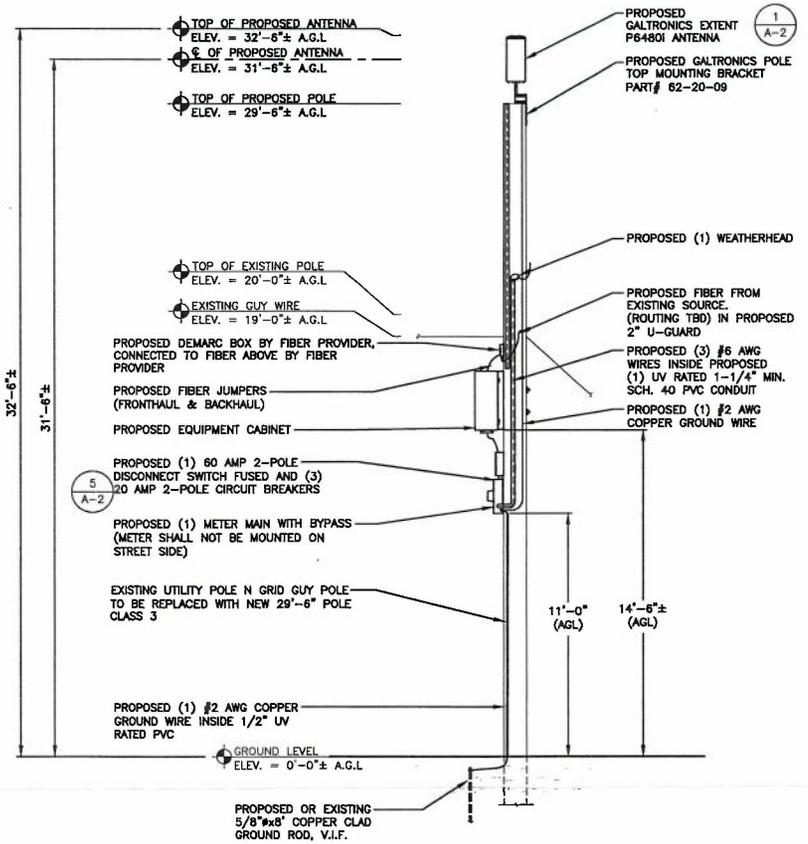
SHEET NUMBER
A-1



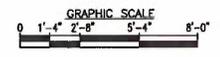
KEY PLAN
22x34 SCALE: 1"=20'
11x17 SCALE: 1"=40'

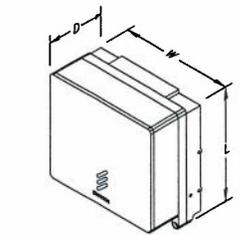
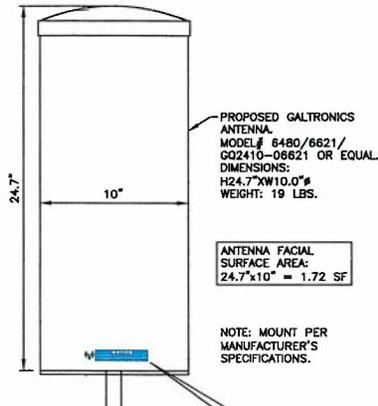


EXISTING CONDITIONS PHOTO DETAIL
SCALE: N.T.S.



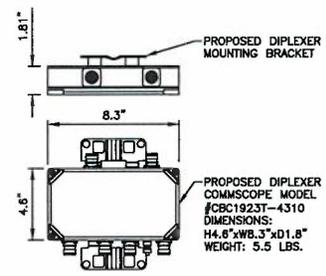
ELEVATION
22x34 SCALE: 3/8"=1'-0"
11x17 SCALE: 3/16"=1'-0"





MODEL	QTY	L	W	D	WGT.
2203	2	8.0"	8.0"	4.0"	11 LB
2205	1	8.0"	8.0"	4.0"	11 LB

RRH DETAIL
SCALE: N.T.S.

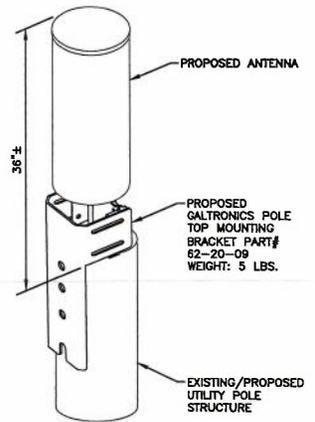


DIPLEXER DETAIL (AS REQUIRED)
SCALE: N.T.S.

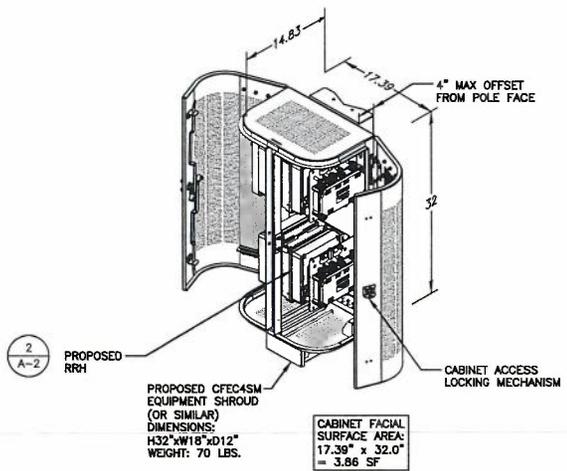
NOTICE
RF energy emitted by this device may exceed the FCC's general public exposure limits. Stay at least 1 foot away from this device. Call 800-616-2622 for help if you need access within 1 foot.

NO1-CD-16 1"x6" NOTICE DECAL
PLACE THREE NOTICE STICKERS EQUALLY SPACED
AROUND THE BOTTOM OF ANTENNA RADOME

ANTENNA DETAIL
SCALE: N.T.S.

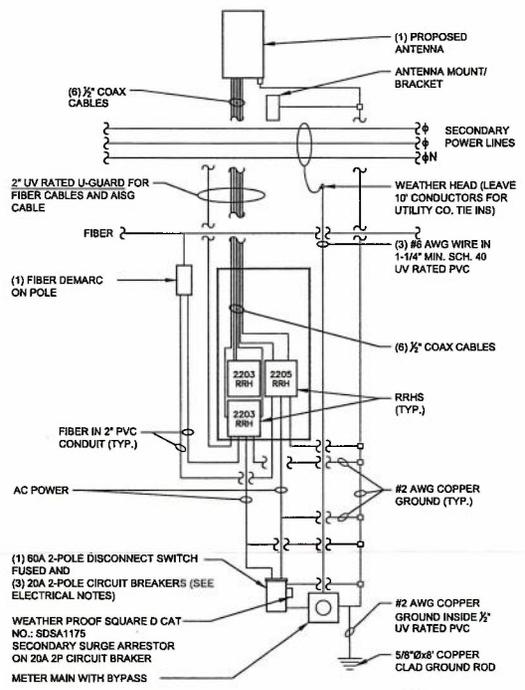


ANTENNA MOUNT DETAIL
SCALE: N.T.S.



NO BATTERY BACKUP OR AUXILIARY OUTLETS FOR BACKUP POWER ARE BEING PROVIDED IN THIS DESIGN

NOTE: MOUNT PER MANUFACTURER'S SPECIFICATIONS.
EQUIPMENT CABINET DETAIL
SCALE: N.T.S.



GENERAL WIRING DIAGRAM
SCALE: N.T.S.



CHECKED BY: AT
APPROVED BY: DJC

SUBMITTALS

REV.	DATE	DESCRIPTION	BY
3	04/16/19	REVISION PER COMMENTS	MR
2	04/16/19	REVISION PER COMMENTS	MR
1	10/01/17	REVISION PER COMMENTS	SB
0	08/22/17	ISSUED FOR REVIEW	SB

CLUSTER AND NODE NUMBER:
AREA 5_87A

SITE ID:
AREA 5_87A

SITE ADDRESS:
28 CONCORD ROAD
MARLBOROUGH, MA 01752
MIDDLESEX COUNTY

SHEET TITLE
EQUIPMENT DETAILS

SHEET NUMBER
A-2



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 MAY 16 A 9:27

CITY OF MARLBOROUGH
Office of the City Council
140 Main Street
Marlborough, Massachusetts 01752
(508) 460-3711 TDD (508) 460-3610

**AGREEMENT TO EXTEND
TIME LIMITATIONS**

Order No.19-1007571 (X 18/19-1007135B)

Application for Special Permit from Attorney Brian Falk, on behalf of Vincenza Sambataro, to construct a Mixed Use Development in the Marlborough Village District consisting of both residential and commercial space at 161-175 Main Street

The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the City Clerk.

Pursuant to Mass. General Laws, c.40A, s.9, as amended, the required time limits for action by the Marlborough City Council, as it is the special permit granting authority in the above referenced matter, is hereby extended, by agreement, until 10:00 p.m. on August 27, 2019

By: _____
Edward J. Clancy, City Council President

acting on behalf of, and at the direction of,
the special permit granting authority:
Marlborough City Council

By: _____

For Petitioner

*Brian Falk,
Attorney for Vincenza Sambataro*

**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH****2019 MAY 16 A 9 26****Brian R. Falk**
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

May 14, 2019

VIA EMAIL + Hand DeliveryCouncilor Edward Clancy, President
Marlborough City Council
City Hall
Marlborough, MA 01752Re: Proposed Zoning Amendment – Executive Residential Overlay District

Dear Councilor Clancy:

I understand that at the City Council's last meeting, concerns were raised about the proposed Executive Residential Overlay District (EROD) Ordinance proposed by my client, Post Road Residential LLC. Specifically, there were concerns that the proposed EROD Ordinance recommended by the Urban Affairs Committee did not impose a cap on the total number of dwelling units permitted in the 43-acre overlay district.

Enclosed with this letter are two versions of the proposed EROD Ordinance:

1. The version recommended by the Urban Affairs Committee on April 22nd, and
2. A modified version imposing a cap of 475 units in the overlay district, accomplished with a revision to Section D.2(a) of the proposed EROD Ordinance.

Post Road Residential LLC is amenable to the modified version of the EROD Ordinance with a 475 unit cap.

In addition, please note that both versions of the EROD Ordinance require that multifamily developments in the overlay district are subject to the Affordable Housing Zoning Ordinance, Section 650-26, as specified in Section D.5 of the proposed EROD Ordinance. As you may recall, the Affordable Housing Zoning Ordinance requires that multifamily developments must either (i) provide that at least 15% of the units will be made available at affordable prices, or (ii) if authorized by the City Council, provide a sum not less than \$50,000 per affordable dwelling unit that would have been required. These issues would be addressed by

MIRICK O'CONNELL

Marlborough City Council
May 14, 2019
Page 2

the City Council as part of the special permit process for multifamily developments in the EROD.

In the hope of having both versions of the proposed EROD Ordinance in final legal form in time for discussion and a possible vote at the Council's May 20th meeting, I have copied the City Solicitor on this communication.

Very truly yours,



Brian R. Falk

BRF/
Enclosures

cc: Donald V. Rider, Jr., Esq., City Solicitor
Arthur P. Bergeron, Esq.
Client

EROD – Revised With 475 Unit Cap

ORDERED:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by adding a new §650-36, Executive Residential Overlay District, as follows:

§650-36 – EXECUTIVE RESIDENTIAL OVERLAY DISTRICT

A. Purpose and Objectives

The Executive Residential Overlay District (“EROD”) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval, as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the EROD are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety, and welfare by promoting integrated, pedestrian-friendly, residential and mixed-use development with convenient access to employment options in Marlborough’s southwest quadrant and along Interstate 495.

B. Location of EROD; Development Phasing

1. For the purposes of this Section (§650-36 et. seq.), the EROD is located on the easterly side of Simarano Drive between the Interstate 495 Interchange and Cedar Hill Road containing approximately 43 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.
2. Within the EROD, there may be one or more phases of development (“ERO Phase”). Each ERO Phase may consist of one or more parcels of land and may include any eligible use set forth in Subsection D below, which may be commingled within a single structure or located in separate structures on one or more parcels. Parcels within the EROD may be combined or subdivided and held under separate ownership or leaseholds. Each ERO Phase shall be subject to Site Plan Approval.
3. Upon the issuance of Site Plan Approval for an ERO Phase on a parcel or parcels in the EROD, this Section (§650-36 et. seq.) shall govern said parcel as developed in accordance with the Site Plan Approval.
4. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-36 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-36 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-36 et. seq.) shall govern and control.

EROD – Revised With 475 Unit Cap

C. Authority of Permit Granting Authority

1. The City Council shall be the Permit Granting Authority for Special Permits and Site Plan Approvals in the EROD. Special Permits shall require a two-thirds vote of the City Council; Site Plan Approvals shall require a simple majority vote.
2. At the request of an applicant as part of an initial application or as part of a modification pursuant to Subsection H, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to an ERO Phase by Site Plan Approval upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-36 et. seq.).
3. An application for Site Plan Approval for an ERO Phase shall comply with the City Council's Rules for Site Plan Approval. An application for a Special Permit for a use in the EROD shall comply with the requirements of §650-59 of the Zoning Ordinance.

D. Eligible Uses

1. The following uses are permitted BY-RIGHT in the EROD:
 - a. Uses allowed by right in the underlying zoning district, as set forth in the Table of Use Regulations, including but not limited to offices, professional offices, banks, insurance, financial institutions, and co-working or shared working spaces.
 - b. Accessory uses, as defined in Section 650-5B.
2. The following additional uses are permitted BY SPECIAL PERMIT in the EROD:
 - a. Multifamily Dwellings, provided that the total number of units ~~in the first two ERO Phases within the entire EROD~~ shall not exceed 475, ~~and additional units in the EROD may be permitted by special permit.~~
 - b. Restaurant, café with or without table service (including outside seating and service) without drive-thru.
 - c. Restaurant, café with or without table service (including outside seating and service) with drive-thru, provided that said facilities have no dedicated driveway with a curb cut on a public way.
 - d. Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
 - e. Retail sales and services.

EROD – Revised With 475 Unit Cap

- f. Brew pubs.
 - g. Distilleries with attached restaurants.
 - h. Accessory solar energy installations, including but not limited to roof-top systems and solar parking canopies.
 - i. Uses allowed by special permit in the underlying zoning district.
3. All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited in the EROD.
 4. Once an ERO Phase receives Site Plan Approval, individual uses within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.
 5. Multifamily dwellings in the EROD shall be subject to Section 650-26 of the Zoning Ordinance.

E. Dimensional Requirements

1. Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the EROD shall be subject to the following dimensional standards:
 - a. Minimum lot area: none.
 - b. Minimum Lot Frontage: none.
 - c. Minimum Front Yard or Setback from a Public Way: 20 feet.
 - d. Minimum Side and Rear Yard: 25 feet.
 - e. Maximum Building Height: 80 feet, no limitation on stories.
 - f. Maximum Lot Coverage: 60%, over the entire EROD.
2. Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements or planting strips required as to internal lot lines within the EROD.

F. Parking Requirements

1. Parking Locations – Parking may be provided at ground level, underground, or in parking garages. Parking garages may be free standing or part of buildings dedicated to other permitted uses. Parking garages may contain accessory solar energy installation.

EROD – Revised With 475 Unit Cap

2. Minimum Required Parking Spaces – An ERO Phase shall provide parking as follows: 1 parking space per bedroom; 1 parking space per 250 square feet of office or co-working / shared working space; 1 parking space for every 3 seats plus 1 parking space for every 3 employees for a restaurant or other food/beverage service use; and 1 parking space for each 100 square feet of public floor area of other commercial space; provided, however, that the City Council may, through Site Plan Approval, authorize a reduction in the required number of parking spaces upon finding that the parking provided for the ERO Phase is sufficient to meet demand.
3. Parking Space Dimensions – Each parking space shall be no less than 9' x 18' except that the use of compact spaces (no smaller than 8' x 16') may be utilized throughout provided that no more than 33% of the total parking spaces within an ERO Phase shall be compact spaces.
4. Except as otherwise provided in this Section (§650-36 et. seq.), parking and circulation requirements in the EROD shall conform with the provisions of §650-48 and §650-49 of the Zoning Ordinance.

G. Design Standards

1. Design Criteria – An application for Site Plan Approval under this Section (§650-36 et. seq.) shall adhere to the design criteria specified in §270-2 of the Marlborough City Code.
2. Roadways – To the extent feasible, internal roadways shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those roadways shall be adequate for the intended vehicular and pedestrian traffic. The design of ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.
3. Landscaping – Landscaping in the EROD shall conform with the provisions of §650-47 of the Zoning Ordinance, except that continuous landscaped strips shall be provided along all public ways with an average minimum width of 10 feet, with at least one tree per 50 linear feet of planting area length on average or with groups of trees spaced no further apart than 100 linear feet on average.
4. Storm Water Management System – An ERO Phase shall have a storm water management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, §271 of the Marlborough City Code.
5. Signage – Except as otherwise provided in this Section (§650-36 et. seq.), signage shall conform to the provisions of §526 of the Marlborough City Code.

EROD – Revised With 475 Unit Cap

H. Modifications

1. After approval, applicants may seek modifications to any approved Special Permits or Site Plan Approvals.
2. Special Permits – Major modifications to a Special Permit may be granted by a two-thirds vote of the City Council, and minor modifications to Special Permit may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Special Permit is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Special Permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Special Permit is not minor, per §650-59 of the Zoning Ordinance, an application for a revised Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application.
3. Site Plan Approvals – Major modifications to a Site Plan Approval may be granted by a majority vote of the City Council, and minor modifications to a Site Plan Approval may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Site Plan Approval is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Site Plan Approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Site Plan Approval is not minor, an application for a revised Site Plan Approval shall be filed in accordance with the City Council's Rules for Site Plan Approval.

EROD – Revised With 475 Unit Cap

EXHIBIT A

The Executive Residential Overlay District shall include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

- Assessors Map 116, Parcel 5
- Assessors Map 116, Parcel 11
- Assessors Map 116, Parcel 12

EROD – Recommended by Urban Affairs on 4-22-2019

ORDERED:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by adding a new §650-36, Executive Residential Overlay District, as follows:

§650-36 – EXECUTIVE RESIDENTIAL OVERLAY DISTRICT

A. Purpose and Objectives

The Executive Residential Overlay District (“EROD”) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval, as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the EROD are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety, and welfare by promoting integrated, pedestrian-friendly, residential and mixed-use development with convenient access to employment options in Marlborough’s southwest quadrant and along Interstate 495.

B. Location of EROD; Development Phasing

1. For the purposes of this Section (§650-36 et. seq.), the EROD is located on the easterly side of Simarano Drive between the Interstate 495 Interchange and Cedar Hill Road containing approximately 43 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.
2. Within the EROD, there may be one or more phases of development (“ERO Phase”). Each ERO Phase may consist of one or more parcels of land and may include any eligible use set forth in Subsection D below, which may be commingled within a single structure or located in separate structures on one or more parcels. Parcels within the EROD may be combined or subdivided and held under separate ownership or leaseholds. Each ERO Phase shall be subject to Site Plan Approval.
3. Upon the issuance of Site Plan Approval for an ERO Phase on a parcel or parcels in the EROD, this Section (§650-36 et. seq.) shall govern said parcel as developed in accordance with the Site Plan Approval.
4. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-36 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-36 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-36 et. seq.) shall govern and control.

EROD – Recommended by Urban Affairs on 4-22-2019

C. Authority of Permit Granting Authority

1. The City Council shall be the Permit Granting Authority for Special Permits and Site Plan Approvals in the EROD. Special Permits shall require a two-thirds vote of the City Council; Site Plan Approvals shall require a simple majority vote.
2. At the request of an applicant as part of an initial application or as part of a modification pursuant to Subsection H, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to an ERO Phase by Site Plan Approval upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-36 et. seq.).
3. An application for Site Plan Approval for an ERO Phase shall comply with the City Council's Rules for Site Plan Approval. An application for a Special Permit for a use in the EROD shall comply with the requirements of §650-59 of the Zoning Ordinance.

D. Eligible Uses

1. The following uses are permitted BY-RIGHT in the EROD:
 - a. Uses allowed by right in the underlying zoning district, as set forth in the Table of Use Regulations, including but not limited to offices, professional offices, banks, insurance, financial institutions, and co-working or shared working spaces.
 - b. Accessory uses, as defined in Section 650-5B.
2. The following additional uses are permitted BY SPECIAL PERMIT in the EROD:
 - a. Multifamily Dwellings, provided that the total number of units in the first two ERO Phases shall not exceed 475, and additional units in the EROD may be permitted by special permit.
 - b. Restaurant, café with or without table service (including outside seating and service) without drive-thru.
 - c. Restaurant, café with or without table service (including outside seating and service) with drive-thru, provided that said facilities have no dedicated driveway with a curb cut on a public way.
 - d. Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
 - e. Retail sales and services.

EROD – Recommended by Urban Affairs on 4-22-2019

- f. Brew pubs.
 - g. Distilleries with attached restaurants.
 - h. Accessory solar energy installations, including but not limited to roof-top systems and solar parking canopies.
 - i. Uses allowed by special permit in the underlying zoning district.
3. All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited in the EROD.
 4. Once an ERO Phase receives Site Plan Approval, individual uses within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.
 5. Multifamily dwellings in the EROD shall be subject to Section 650-26 of the Zoning Ordinance.

E. Dimensional Requirements

1. Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the EROD shall be subject to the following dimensional standards:
 - a. Minimum lot area: none.
 - b. Minimum Lot Frontage: none.
 - c. Minimum Front Yard or Setback from a Public Way: 20 feet.
 - d. Minimum Side and Rear Yard: 25 feet.
 - e. Maximum Building Height: 80 feet, no limitation on stories.
 - f. Maximum Lot Coverage: 60%, over the entire EROD.
2. Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements or planting strips required as to internal lot lines within the EROD.

F. Parking Requirements

1. Parking Locations – Parking may be provided at ground level, underground, or in parking garages. Parking garages may be free standing or part of buildings dedicated to other permitted uses. Parking garages may contain accessory solar energy installation.

EROD – Recommended by Urban Affairs on 4-22-2019

2. Minimum Required Parking Spaces – An ERO Phase shall provide parking as follows: 1 parking space per bedroom; 1 parking space per 250 square feet of office or co-working / shared working space; 1 parking space for every 3 seats plus 1 parking space for every 3 employees for a restaurant or other food/beverage service use; and 1 parking space for each 100 square feet of public floor area of other commercial space; provided, however, that the City Council may, through Site Plan Approval, authorize a reduction in the required number of parking spaces upon finding that the parking provided for the ERO Phase is sufficient to meet demand.
3. Parking Space Dimensions – Each parking space shall be no less than 9' x 18' except that the use of compact spaces (no smaller than 8' x 16') may be utilized throughout provided that no more than 33% of the total parking spaces within an ERO Phase shall be compact spaces.
4. Except as otherwise provided in this Section (§650-36 et. seq.), parking and circulation requirements in the EROD shall conform with the provisions of §650-48 and §650-49 of the Zoning Ordinance.

G. Design Standards

1. Design Criteria – An application for Site Plan Approval under this Section (§650-36 et. seq.) shall adhere to the design criteria specified in §270-2 of the Marlborough City Code.
2. Roadways – To the extent feasible, internal roadways shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those roadways shall be adequate for the intended vehicular and pedestrian traffic. The design of ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.
3. Landscaping – Landscaping in the EROD shall conform with the provisions of §650-47 of the Zoning Ordinance, except that continuous landscaped strips shall be provided along all public ways with an average minimum width of 10 feet, with at least one tree per 50 linear feet of planting area length on average or with groups of trees spaced no further apart than 100 linear feet on average.
4. Storm Water Management System – An ERO Phase shall have a storm water management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, §271 of the Marlborough City Code.
5. Signage – Except as otherwise provided in this Section (§650-36 et. seq.), signage shall conform to the provisions of §526 of the Marlborough City Code.

H. Modifications

1. After approval, applicants may seek modifications to any approved Special Permits or Site Plan Approvals.
2. Special Permits – Major modifications to a Special Permit may be granted by a two-thirds vote of the City Council, and minor modifications to Special Permit may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Special Permit is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Special Permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Special Permit is not minor, per §650-59 of the Zoning Ordinance, an application for a revised Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application.
3. Site Plan Approvals – Major modifications to a Site Plan Approval may be granted by a majority vote of the City Council, and minor modifications to a Site Plan Approval may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Site Plan Approval is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Site Plan Approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Site Plan Approval is not minor, an application for a revised Site Plan Approval shall be filed in accordance with the City Council's Rules for Site Plan Approval.

EROD – Recommended by Urban Affairs on 4-22-2019

EXHIBIT A

The Executive Residential Overlay District shall include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

- Assessors Map 116, Parcel 5
- Assessors Map 116, Parcel 11
- Assessors Map 116, Parcel 12



10121 BARNES CANYON RD. SAN DIEGO, CA 92121

**Marlborough City Council
140 Main Street
Marlborough, MA 01752**

05/07/2019

Re: ecoATM's 2019-2020 Junker Dealer License Renewal

Dear Councilmembers:

Hello, hope this letter reaches you all doing well. ecoATM is based in San Diego, CA and we were unable to have an employee at this hearing. Thank you for reading this letter and reviewing our application.

ecoATM is one of the largest electronic recyclers in the USA. We have over 3,600 kiosks in 48 states and also operate an online re-commerce store, Gazelle. To date we have recycled over 21 million devices. ecoATM has been operating in Marlborough since 2012 and so far in 2018 we collected and recycled 827 devices and paid members of your community close to \$25,714.00. 2019 stats year to date: we collected 214 devices, and paid Out: \$7,043.00.

ecoATM is a certified Responsible Recycler (R2) which means our devices do not end up in landfills and are not dumped overseas. All of our devices are refurbished and resold to wholesalers and consumers across the world; or safely recycled right here in the USA.

ecoATM is also certified in ISO 27001 which is an information security standard that protects consumer data including personal information.

ecoATM is pro-law enforcement and we work closely with them in all aspects of our business. No search warrants or subpoenas are ever needed. We have provided evidence and helped solve hundreds of crimes.

If you have any questions, please do not hesitate to contact me. We look forward to our continued positive business relationship with the Marlborough community. Thank you!

Hunter Bjorkman

Regulatory Affairs Counsel
o: 858.766.7244
hunter.bjorkman@ecoatm.com
www.ecoatm.com | www.gazelle.com



City Council

From: David Giorgi
Sent: Thursday, May 9, 2019 2:00 PM
To: City Council
Subject: EcoATM junk dealer's license

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY 13 P 4:27

Good afternoon Karen,

We have received the CORI report for David Maquera, the representative of EcoATM, and I have no objection to renewing their junk dealer's license with the City.

Any questions or concerns, please let me know.

Thank you,
D. Giorgi

Chief David A. Giorgi
Marlborough Police Department
355 Bolton Street
Marlborough, MA 01752
Office: (508)485-1212 ext. 36974
Fax: (508)624-6938
FBI NA #234

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 MAY -3 P 1:23

CITY OF MARLBOROUGH MEETING MINUTES

MEETING: Council on Aging Board of Directors Meeting
DATE: March 12, 2019
TIME: 8:30 A.M.
LOCATION: Sr. Center Conference Rm, 40 New Street, Marlborough, MA
ATTENDANCE: Leslie Biggar, Joseph Bisol, Jim Confrey, Brenda Costa, Richard Cygan, Pat Gallier, Judy Kane, Mike Ossing, Trish Pope
EXCUSED: Richard Collins, Marie Elwood, Jeanne McGeough

- I. CALL TO ORDER at 8:30 a.m.
- II. Approval of February Meeting Minutes
- III. DIRECTOR'S UPDATE – Trish Pope

The St. Patrick's Day party sold out in 3 days.

The Mayor's senior of the year event is on May 15th at Marlborough High. Sign up begins on May 1st.

The "SCRPT" (Senior Citizen Residential Property Tax Work-Off) Program is filled for the year with 24 jobs. Looking to increase to 30 jobs for next year with City Council approval. Mike Ossing stated that the increase was reported out favorably from the legal/legislative committee.

The construction upstairs is going well. The walls are up and the electrical is almost done. The doors and windows are on back order. Yoga can move back upstairs at the end of the month and lunch can start up again.

The greenhouse footings will go in after the upstairs is done.

IV. BOARD UPDATES

A. BAYPATH ELDER SERVICES UPDATE – Richard Cygan

The BayPath February board highlights attached. (Att. #1)

Richard relayed information on the Mission Springs (Hopkinton) presentation at the BayPath Board meeting. Richard explained how there is currently 98 elders on the wait list to receive services. He also informed the board that several legislators are participating in delivering Meals on Wheels this spring.

B. TRANSPORTATION REPORT FOR JUNE, JULY & AUGUST – Jeanne McGeough

See attached February Transportation Report. (Att. #2)

V. ITEMS TO ADDRESS AND DISCUSSED

The board discussed the upcoming Mayor's senior of the year dinner.

VI. Meeting adjourned at 9:15 am and Trish gave the board a tour of the new upstairs space under construction.

The next board meeting is Tuesday, April 9, 2019 at 8:30 a.m. in the conference room at the Senior Center, 40 New Street, Marlborough, MA.

Respectfully Submitted,

Brenda Costa, Secretary

Board Meetings for 2019

March 27
June 26
October 23

April 24
July 24
November 20

May 22
September 25
December 18

Legislative Breakfast

BayPath hosted a Legislative Breakfast early in February. Representatives Danielle Gregoire, Jack Lewis and Carolyn Dykema, along with several Legislative Aides from Senator Eldridge's office, Senator Rausch's office, and Representative Gentile's office were in attendance. Many of our board members as well as BayPath staff were also present. Our legislators were very interested in hearing about BayPath's programs and several legislators have volunteered to deliver meals and go on home visits.

Massachusetts Census Equity Fund for 2020

The Massachusetts Census Equity Fund is a non-profit organization that was created to try and increase the participation in the annual census. The Massachusetts Census Equity Fund for 2020 is giving out grant money to assist in the process of reaching out to the older adult population regarding the census.

The Board voted and approved the request for BayPath to partner with the COA's to apply for this grant money so they can collaboratively target outreach efforts in Framingham, Natick and Marlborough. The grant money will be used for personnel to go into the field and visit with older adults to help them complete the census and well as providing them with outreach education.

Strategic Plan – Rebranding Committee

BayPath is working with Inside Out Communications on the re-branding process. Steve Zafron is joining the committee. A preparation meeting will be held in a couple of weeks the process will get underway.

Area Agency on Aging Report

The Council on Aging board members were encouraged to speak with their directors about applying for grant money offered through Title III Federal funding. To apply, you need to write your goals, explain how you will reach those goals and how you will measure your goals. This is a great opportunity to receive funding to launch new programs/projects in each town. Ms. Bakstran, BayPath's AAA Assistant Director is happy to provide technical assistance to anyone interested in the application process.

Board Meeting Highlights – February 27, 2019

Home Care Programs: Total 1,161 consumers enrolled

Town Analysis

Town	Consumer #	Town	Consumer #
Ashland	39	Natick	113
Dover	2	Northborough	33
Framingham	205	Sherborn	1
Holliston	42	Southborough	7
Hopkinton	27	Sudbury	41
Hudson	71	Wayland	22
Marlborough	101	Westborough	27

Enhanced Community Options Program (ECOP)	243
Choices Program	148

Nutrition - Meal Days - 21

TOWN	TOTAL	TOWN	TOTAL
Ashland	442	Natick	1475
Dover	20	Northborough	239
Framingham	4873	Sherborn	96
Holliston	567	Southborough	288
Hopkinton	242	Sudbury	415
Hudson	1213	Wayland	849
Marlborough	2600	Westborough	353
		Total	13,672

MARLBOROUGH SENIOR CENTER TRANSPORTATION REPORT
MONTH OF FEBRUARY, 2019

TOTAL NUMBER OF TRIPS = 114

BROKEN DOWN

SUPERMARKET/SHOPPING/RESTAURANTS = 15

SENIOR CENTER = 38

CITY VAN- OTHER = 32

MWRTA = 29

NEW APPLICANTS = 7 – 6 Female, 1 Male

NEW RIDERS = 0

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
April 29., 2019
2019 MAY -7 P 4: 06

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: Barbara Fenby, Phil Hodge, Sean Fay, George LaVenture, Chris Russ and Matthew Elder. Also in attendance were City Engineer, Thomas DiPersio, City Solicitor, Don Rider, and Planning Board Administrator, Krista Holmi.

1. Meeting Minutes

- A. April 8, 2019
On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the meeting minutes of April 8, 2019. Motion carried.

2. Chair's Business (None)

3. Approval Not Required

- A. ANR APPLICATION – Applicant: Denis Lewis, 1 Douglas Dr. Sudbury, MA 01776; Engineer: Bruce Saluk & Associates, Inc., 576 Boston Post Rd. East, Marlborough, MA; Description of Property- Middlesex South Registry of Deeds, Book 70752, Page 114 and Book 70854 p. 108 (106 Hildreth St.)
The plan Engineer, Bruce Saluk, was in attendance to present the ANR to the Board. He explained that the purpose of the ANR was to reconfigure two parcels, creating two lots with frontage along Hildreth Street. Both lots would exceed the requirements of the A3 zone, which is a minimum of 12,500 square feet and a minimum frontage of 100'. Lot one will contain .72 acres (31,288 s.f.) with 130.53 feet of frontage. Lot two will contain .62 acres (26,862 s.f.) and 101.00 feet of frontage. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to refer the ANR application to Engineering. Motion carried.

4. Public Hearings

- A. Public Hearing – City Council Order No. 19-1007587, Section 650-8, "Boundaries Established" Proposed rezoning of Map 113, Parcels 5 and 6, - Land off Williams St.
Ms. Fenby opened the public hearing. Mr. LaVenture read the public hearing notice into the record. Chairperson Fenby 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 Board members.
Presentation:
Mayor Vigeant, 650 Pleasant St., was in attendance to represent the proposed zoning amendment. Mr. Vigeant explained that the parcels in question are adjacent to established residential neighborhoods. Rezoning the parcels will create a neighborhood more in keeping with the current uses, which include A1 Residential and the Crane Meadow Retirement Community. Mayor Vigeant indicated that there was a previous plan filed with the sole purpose of maintaining the current zone. Two years remain on that action. He also mentioned that this proposed zone change will not have any bearing on current litigation involving one of the properties.
Speaking in Favor:
As no person spoke in favor of the proposed amendment, Chairperson Fenby closed that portion of the hearing.
Speaking in Opposition:
As no person spoke in opposition to the proposed amendment, Chairperson Fenby closed that portion of the hearing.
Questions and Comments from Board Members:
As there were no questions from the Board, Chair Fenby closed the public hearing.

5. Subdivision Progress Reports (Updates and Discussion)

A. Engineer’s Report- Subdivision Status Report

City Engineer DiPersio informed the Board that in preparation for street acceptance, Howes Landing provided As-Built and Acceptance Plans to the City for review. While they are in the one-year maintenance period until September, the developer is hopeful that the acceptance process can be expedited. If the Board is agreeable, he will work with the developer to schedule a site inspection and generate a punch list. Chair Fenby and members had no objections. Ms. Fenby encouraged members to visit the site if they haven’t already done so. She complimented the developer on their project work. Goodale Estates has mobilized to restart project work. Engineering has met with the developer and reminded them of the proper work order. The primary concern is the creation of the site detention basin that will accept water once roadway construction begins. The water/sewer lines are near completion. A checklist on remaining items was provided to the developer. The checklist items must be completed prior to the issuance of building permits.

B. Berlin Farms – Certificate of Covenant Release.

Mr. LaVenture read into the record the emailed correspondence dated April 27, 2019 from Attorney Morgan A. Russell. Ms. Russell requests that the Board execute a release for the Berlin Farms Subdivision covenant dated February 25, 2008. On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to refer the matter to Engineering for recommendation and to the Legal Dept. to check for proper legal form. Motion carried.

6. Preliminary/Open Space /Limited Development Subdivision Submissions / Updates

A. Hager St. Open Space Special Permit-Peter Bemis

Mr. LaVenture read the April 25, 2019 emailed letter from Peter Bemis of Engineering Design Consultants, Inc. into the record. On behalf of his client, South Coast Advisors, LLC, Mr. Bemis respectfully requests the withdrawal, without prejudice, of the Hager Street Open Space Development Application (Open Space Special Permit Application) of 72 Hager St. He indicates that remaining issues have proven too difficult to resolve, and a new plan will be necessary. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the communication. Motion carried.

Mr. Fay wondered what alternate plan may be proposed if the open space plan is not pursued. Mr. DiPersio said that they could create two lots with an ANR plan and still preserve the open space, and they also have the option of doing the conventional subdivision plan. Mr. Fay asked whether there was any reason not to vote to approve the requested withdrawal. Solicitor Rider explained that under Chapter 40A, section 16, the petitioner’s application may only be withdrawn without prejudice with the approval of the special permit granting authority. The Board may grant the request if they desire. On a motion by Mr. Fay, seconded by Mr. Hodge, the Board voted to grant the withdrawal of the open space special permit application without prejudice. Motion carried.

7. Definitive Subdivision Submissions / Updates (None)

8. Signs (None)

9. Informal Discussion

A. Sign Variances

Mr. Fay summarized the Board’s frustration with the current sign ordinance. Recent variance requests at two gas stations indicate a need to revise the language in the ordinance. Common conventions such as red to represent regular gas and green to represent diesel is a current violation of the sign ordinance. Video displays units at gas pumps are also not allowed without a variance, nor are electronic pricing displays on each pump, since the distance between pumps is less than the allowed 100 feet between displays. The Board believes changes to the ordinance will provide the opportunity to add clarity and further definition of allowed uses, particularly contemporary applications of electronic message displays and video displays that are modern point of sale interfaces. Several City Councilors were present including Councilors Robey, Dumais and Ossing. Following the discussion, Councilor Ossing agreed to champion the issue on behalf of the

Council. He recognizes that the ordinance is a living document that requires tweaks and modifications from time to time to meet current needs. The Board expressed its appreciation for the Council's assistance.

10. Unfinished Business

- A. Public Hearing – City Council Order No. 19-1007569, Section 650-8, "Boundaries Established" Proposed rezoning of Map 82, Parcels 112 and 113, and adjacent portions of John Street to the center line in the Business District. (31 and 35 John Street) Mirick O'Connell Attorneys at Law on behalf of St. Mary's Credit Union.

Following a discussion of the proposed ordinance, the Board took the following action on the above referenced proposed zoning amendment:

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to send a generally favorable recommendation with the following comments to the City Council. Motion carried.

- Reposition the property dumpsters to reduce potential impact on abutting neighbors.
- Reposition the proposed structure(s) closer to the Maple Street/South Bolton Business District to lessen impact on the surrounding residential neighborhood.
- Analyze traffic impacts to ensure safety at the John Street park and consider mitigating designs to facilitate left-hand turns at the John St. and South Bolton St. intersection.

11. Calendar Updates

12. Public Notices of other Cities & Towns

Public Notices of other Cities & Towns

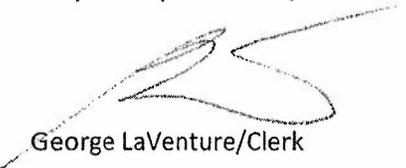
- A. City of Framingham – 3 Notices
- B. Town of Berlin - 1 Notice
- C. Town of Sudbury- 1 Notice

On a motion my Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the notices. Motion carried.

Ms. Fenby took the opportunity to acknowledge the exemplary work of retiring City Solicitor Rider and thanked him for his years of service to the Marlborough Planning Board. She expressed that Solicitor Rider will be sorely missed. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to send a letter of appreciation to Mr. Rider for his work.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting of the Planning Board. Motion carried.

Respectfully submitted,



George LaVenture/Clerk

/kih