

CITY OF MARLBOROUGH MEETING POSTING

Meeting: Planning Board

Date: December 16, 2019

Time: 7:00 PM

Location: Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 DEC 12 P 3:12

Agenda Items to be Addressed:

1) Meeting Minutes

A. December 02, 2019

2) Chair's Business

3) Approval Not Required

A. Engineering Review: ANR 285, 297 Concord Rd. Middlesex South Registry of Deeds Book 19501 page 343 and Book 30947 page 443. Applicants: Paul, Joseph and Sandra May, Engineer: Hancock Associates, 315 Elm Street, Marlborough, MA 01752, J. Dan Bremser, applicant's representative.

4) Public Hearings

- A. Definitive Subdivision Application: Richard and Joan Lavoie, 24 Clearview Drive and Richard Archibald, 18 Clearview Drive. Engineer: Robert Parente, 118 Deerfoot Rd., Southborough, MA 01772.
Description of Property: 18 and 24 Clearview Drive, Marlborough, MA 01752
- i. Board of Health (BOH) Comments
 - ii. Engineering Comments
- B. Definitive Subdivision Application: Marlborough/Northborough Land Realty Trust c/o The Gutierrez Company, 200 Summit Drive, Suite 400, Burlington MA 01803. Engineer: Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532. Description of Property: Middlesex South Registry of Deeds Book 31932 Page 445. (Property described as 10.6 acres located at the northeast corner of Ames St. & Forest St.)
- i. Board of Health (BOH) Comments
 - ii. Conservation Comments
 - iii. Engineering Comments

5) Subdivision Progress Reports (City Engineer- Updates and Discussion)

A. Goodale Estates - Engineering Bond Determination

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

7) Definitive Subdivision Submissions (None)

8) Signs (None)

9) Correspondence

A. Supplemental Notice of Intent Pursuant to MGL c. 61A, §14 to Sell Land and Convert Use (23.17 Acres of land – Assessor's Parcels 73-28, 73-24, 73-26 and 73-26A)

10) Unfinished Business (None)

11) Calendar Updates

12) Public Notices of other Cities & Towns (See electronic packet)

A. City of Framingham – 5 Notices

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

December 2, 2019

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, Sean Fay, Phil Hodge, George LaVenture and Chris Russ. Absent: Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, were also present.

1. Meeting Minutes

A. October 21, 2019

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to approve and file the meeting minutes of October 21, 2019. Motion carried.

B. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to approve and file the meeting minutes of November 18, 2019. Mr. Fay abstained. Motion Carried.

2. Chair's Business (None)

3. Approval Not Required

A. ANR 92 Crowley Drive, Assessor's Map 15 Parcels 22 and 23 – Applicant: First Colony Crowley Drive One, LLC, Jon Delli Priscoli - Representative. Engineer: Arthur F. Borden & Associates, Inc., 302 Broadway, Unit 4, Raynham, MA.

Mr. Delli Priscoli explained that the purpose of the plan was to make a minor area adjustment between adjoining commonly-owned lots. The proposed retirement community development project recently went through site plan review. This ANR ensures that the development plan meets the required setbacks. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the ANR application and plan. Mr. LaVenture read the review letter of Assistant City Engineer Collins into the record. The plan dated 10-29-19, revised 11-22-19, modifies Lot 3 and Lot 4, creating Lots 3-1 and 4-1. Both lots have adequate area and frontage, meet the lot shape requirement and have present adequate access. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and endorse the above referenced plan as Approval Not Required under the Subdivision Control Law. Motion carried.

To allow time for City Councilor participation prior to their 8:00 meeting, Ms. Fenby requested a motion to move item 4B up in the agenda. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take up item 4B next in the agenda. Motion carried.

4. Public Hearings

B. Public Hearing - Council Order Number 19-1007716A, Proposed Zoning Amendment, Section 650-7, entitled "Districts Enumerated"; Section 650-17, entitled "Table of Uses"; New Section, Section 650-40, entitled "Special Provisions Applicable to the Route 20 East (Wayside) Zoning District.

Chair 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:

City Councilor Delano and Josh Fiala, Principal Planner, Metropolitan Area Planning Council (MAPC) were in attendance to represent the proposed zoning amendment. Mr. Delano explained that the concept for the proposed zoning amendment along Route 20 has been around since about 2012. There have been numerous meetings and much discussion resulting in the proposed amendment before the Planning Board.

Mr. Delano said that historically the east side of RT 20 has been a challenging business climate. The proposed zoning amendment will better support businesses in the area, while facilitating overall improvements to make the area a better place to live, work and play. Marlborough is sometimes criticized that proposed zoning changes are often developer driven. The purpose of this amendment is to be forward thinking by providing the framework for design standards and desired community growth. While the original plan was to extend the zoning district further to Phelps St., due to some councilors' reservations, the scope has been narrowed. The zone is now proposed from the Sudbury line to Wilson St. It is Mr. Delano's hope that the next Council will build upon this initial zoning work and extend the zone further west. Mr. Delano invited Mr. Fiala from MAPC to continue the presentation.

Mr. Fiala explained that this zoning opportunity parallels planned street improvements for the RT 20 E corridor. The zone change will encourage development that is more compact and pedestrian friendly and allow for commercial, mixed-use development to promote livability and improved quality of life. The proposed zoning ordinance integrates design standards to align site and building design with enhanced quality and walkability. One key feature is encouraging inter-parcel connectivity, enabling vehicular traffic inside developments vs. multiple curb cuts to RT 20. (Apex was used as an example.) Goals are articulated as allowed uses in the ordinance. Mr. Fiala also mentioned RT 1 in Saugus and RT 9 in Wellesley as models of previously "automobile centric" areas that are benefiting from this approach. Mr. Delano agreed that timing for this zoning change is favorable considering the planned roadway improvements on RT 20 East.

Speaking in Favor:

No person spoke in favor of the proposed amendment. Ms. Fenby closed that portion of the hearing.

Speaking in Opposition:

No person spoke in opposition to the proposed amendment. Ms. Fenby closed that portion of the hearing.

Questions and Comments from Board Members:

City Engineer DiPersio asked about page 3, section G on parking access. The ordinance would appear to require development work on property that is not their own. Mr. Fiala said that the access requirement encourages properties to work on internal connectivity vs. reliance on RT 20 for passage between parcels.

Mr. Fay asked how the ordinance affects Marlborough Nissan. Mr. Delano stated that the zone did not allow expansion of car sales across the street. Mr. Fay mentioned the redevelopment of the Marist property in Framingham, which is now "The Branches of Framingham", an assisted living and memory care facility. He wondered whether the Sisters of St. Anne could someday be developed in a similar way. Referencing the Table of Uses, the response was no, retirement communities are not an allowed use in the district.

Mr. Fay also asked about the mobile home park that is included in the proposed zoning district. Will this amendment ultimately push people out if a new mixed-use development is proposed? There could be a loss of low-income housing in the City. Mr. Delano said that mobile home parks are extremely difficult to close. He did not anticipate the amendment to affect the existing mobile home park. Mr. Delano stated that many of the residential parcels were already removed from the proposed ordinance. Mr. Fay wondered why the park was included in the first place then. Mr. Fiala pointed to the geometry of the zone. The inclusion of the park gives depth to the zone as opposed to only including parcels that are less deep but abut RT 20. Mr. Hodge expressed concern. Rezoning could facilitate the reduction of low-income housing. We shouldn't discount this potential impact.

Mr. LaVenture asked if similar zoning changes met the desired expectations. Mr. Fiala pointed to Rt 1 in Saugus. This was a very automobile-centric, highway-like setting. Mixed uses are beginning to transform this area; changes do not transform instantaneously, but incrementally.

Chair Fenby expressed that the proposed zoning district is too limited. The former McGee Farm is prime for development, but this area is not included in the new district. It would be preferred to include the area to Phelps Street, otherwise we are missing an opportunity. Mr. Delano said that Councilors have been debating the boundaries for quite some time. This abbreviated district is a compromise first step that can be expanded upon in the future. Ideally, the district would be extended.

Mr. Russ would like to see more types of housing added at various price points and to extend the district as far as possible. Mr. Delano said that part of the reason the district is more limited is that some Councilors feared losing its grocery store in the Price Chopper Plaza. Mr. Russ also asked how the 52' height restriction was derived and how it compares with existing structures. Mr. Delano explained that there are opportunities to increase height by special permit. Councilors are sensitive to abutting properties and how developments may affect residents. Mr. Fay expressed his consistent reservation in the language "at the discretion of Council". He added, the Council's composition is variable, and it is preferred to spell out the rules as clearly as possible and not leave the decisions up to a City Council of uncertain makeup. Mr. Delano acknowledged the benefit of allowing some flexibility. Sometimes a special permit will tip the scale in establishing a project's financial viability. Members also asked about hotels. Mr. Fiala said that hotels will be limited to more "boutique-style" developments as opposed to large major chains. Mr. Hodge reiterated his point regarding low-income housing. Anyone following the news realizes the impact of development on low income housing. Development is creating a housing crisis in many places. In the current district, the trailer park seems to be singled out.

As there were no comments or questions, Ms. Fenby closed the public hearing. Mr. Delano said if the Board was ready to make their recommendation, the Council would appreciate their comments. If the Board needs additional time, that is fine. On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the Marlborough City Council on the proposed zoning amendment with two additional recommendations:

- 1) That the Wayside Zoning District be expanded to Phelps St. If this extension cannot be accomplished with this proposal, the matter should be taken up by the next Council in 2020.
- 2) That the Council revisit their justification for including the mobile home park on the west side of the district. Motion carried.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take a brief recess to deliver their recommendations to Council. Motion carried.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to reopen the meeting and return to item 3B. ANR 285, 297 Concord Rd. Motion carried.

3. Approval Not Required

- B. ANR 285, 297 Concord Rd. Middlesex South Registry of Deeds Book 19501 page 343 and Book 30947 page 443. Applicants: Paul, Joseph and Sandra May, Engineer: Hancock Associates, 315 Elm Street, Marlborough, MA 01752, J. Dan Bremser, applicant's representative.

J. Dan Bremser of Hancock Associates introduced the ANR. He acknowledged that the ANR has previously appeared before the Board informally. He summarized that the lots created with the ANR are all oversized for the zone – 38K, 34K and 35K square feet, but the issue of frontage has been debated, since the frontage on the plan is derived along an unconstructed way. Mr. Bremser pointed to the work of attorney Sem Aykanian that sought to establish the unconstructed portion of Hemenway St. as a public way. He read the definition of "Subdivision" from Massachusetts General Laws, Chapter 41. He continued, stating his position that if the lots have frontage along a public way, the question of adequacy of the way is irrelevant. He said that the gates on each end of the unconstructed road can provide access to emergency vehicles.

Referencing the "Ball case", Mr. Bremser shared Attorney Aykanian's characterization of the Hemenway Street access as 'could be better but manageable', vs. 'illusory'. Mr. Fay reminded Mr. Bremser that there is a significant difference between the opinion of an attorney advocating for his client and an established fact. Mr. Bremser asserts that the burden to maintain Hemenway St. is the City's. Mr. Fay disagreed that if the portion of Hemenway Street in question is a public way that the adequacy of the way providing the required frontage is irrelevant. Mr. Fay stated that this is a distortion of the findings in the Ball case, and that in prior meetings of the Planning Board, the Board concluded that access was illusory in keeping with the Ball case based on the comments of Chief Breen. Mr. Fay stated that that portion of Hemenway Street is a path to the forest. Mr. Fay stated that development of Mr. May's parcel could occur if that portion of Hemenway Street is a public way by improving the roadway to an acceptable standard. Mr. Bremser contends that if the City did not intend for the roadway to be considered a public way, the City should have discontinued that section of Hemenway as a public way. Mr. Fay questioned whether the applicant had established that that portion of Hemenway Street is a public way and reminded Mr. Bremser that the burden was on the applicant to do so.

Mr. Fay recapped the Board's meeting with Attorney Aykanian for Mr. Bremser, since he was not at the meeting. He stated that he was surprised to see this ANR application since at that meeting there was a clear consensus of the Board that that portion of Hemenway Street could not be used to create the required frontage for an ANR plan. This was confirmed by Chief Breen's comments in a public meeting, photographs offered by Solicitor Rider, and site visits by Board members. Ms. Fenby added that there are any number of unconstructed ways throughout the City. Ignoring a standard for adequate access in determining whether the plan qualifies for Approval Not Required would set a bad precedent. Mr. Fay said that since adequate access remains unestablished, the applicant may wish to withdraw the application and consider another means to develop the lot by improving the way if it is established as a public way. Mr. Bremser's client is away, so that is not possible. Mr. Fay suggested consulting with his client before the next meeting of the Planning Board on December 16 and consider withdrawing the application without prejudice. Mr. Fay reiterated that there are significant questions of law involved with this application, and that it is unlikely that the applicant will be able to meet their burden of proof by the next meeting, and that the City Engineer, without further findings, could not send a letter recommending approval of the plan, only that the dimensional requirements were met. Based on that, Mr. Fay stated that he would not be able to vote in favor of the plan. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to refer the ANR plan to Engineering. Motion carried.

4. Public Hearings

- A. **Continued:** Public Hearing - Council Order Number 19-1007738C, Proposed Zoning Amendment Section 650-8, 269 Mechanic Street. Proposed change from Limited Industrial to Residence B. (Assessor's Map 56, parcel 126, plus a small area behind the parcel within an easement area.) Attorney Michael Norris **Communication from City Solicitor Grossfield re: 269 Mechanic - Legal opinion request.**

Chair Fenby reopened the public hearing continued from 11-18-19. Attorney Michael Norris was present for the hearing.

On a motion from Mr. Fay, seconded by Mr. LaVenture, the Board voted to waive the reading of the communication from City Solicitor Grossfield. Motion carried. Having confirmation of the applicant's rights, and with no further questions from the Board, Chair Fenby declared the hearing closed. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to make a favorable recommendation to the Marlborough City Council on the proposed zoning amendment. Motion carried.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to take a brief recess to deliver their recommendation to the City Council. Motion carried.

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to reconvene the meeting and move to agenda item 5. Motion carried.

5. Subdivision Progress Reports (City Engineer- Updates and Discussion)

A. Goodale Estates

Mr. LaVenture read the November 20, 2019 emailed letter from Kevin Gillis, Managing Director, Northborough Capital Partners into the record. Mr. Gillis requests that in accordance with the Covenant, that the amount of the bond required to ensure the completion of the subdivision be established. Mr. Gillis also provided a draft deed for the roadway and drainage easement, which will become part of the petition for City Council acceptance at the end of the subdivision maintenance period. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the materials and to refer the matter of the establishment of the bond securing the completion of the subdivision to Engineering. Motion carried.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business (None)

11. Calendar Updates (None)

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

On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to adjourn. Motion carried.

Respectfully submitted,

/kih

George LaVenture/Clerk



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

December 12, 2019

Dr. Barbara L. Fenby, Chairwoman - Marlborough Planning Board
 c/o Krista Holmi – Planning Board Administrator
 135 Neil Street
 Marlborough, MA 01752

RE: ANR Plan - #285 & #297 Concord Road

Dear Dr. Fenby,

Pursuant to the request of the Marlborough Planning Board on December 2, 2019, I have reviewed the following ANR Plan:

Plan of Land in Marlborough, MA
 Owned by: Joseph & Sandra May and Paul D. May
 Prepared for: Mr. Joseph May - #297 Concord Road, Marlborough, MA 01752
 Prepared by: Hancock Associates - #315 Elm Street, Marlborough, MA 01752
 Date: November 20, 2019

The purpose of the plan is to subdivide two existing lots: Map 46 Parcel 39 (#285 Concord Road) and Map 46 Parcel 38 (#297 Concord Road) into three lots:

- "Lot 1", containing 38,076 square feet and having 154.18 feet of frontage on Concord Road and 85.40 feet of frontage on Hemenway Street;
- "Lot 2", containing 34,754 square feet and having 27.42 feet of frontage on Concord Road and 226.78 feet of frontage on Hemenway Street, and;
- "Lot 3", containing 35,669 square feet and having 195.18 feet of frontage on Concord Road and 331.31 feet of frontage on Hemenway Street.

Lots 1 and 3 each have sufficient area and sufficient frontage on Concord Road to meet the requirements of building lots in the Residence A-1 zone. These lots will contain the existing houses and will meet the required zoning setbacks from the houses to the new property lines. Lots 1 and 3 also meet the dimensional lot shape zoning rectangles.

Lot 2 has sufficient area to meet the requirements of the Residence A-1 zone but does not have sufficient frontage on Concord Road. It has 226.78 feet of frontage on Hemenway Street. The dimensional lot shape zoning rectangle is also shown to be satisfied along the Hemenway Street frontage.

THEODORE L. SCOTT, P.E.
 ASST. COMMISSIONER, OPERATIONS

THOMAS DIPERSIO, P.E., P.L.S.
 CITY ENGINEER

As you are aware, Hemenway Street is not constructed in this location and is essentially a cart path or trail. The unconstructed way is gated between Concord Road and #185 Hemenway Street near Wilson Street. This raises several issues for the Board to evaluate in considering whether this plan shows a subdivision as defined in MGL Chapter 41 Section 81L, or whether it can be endorsed as "Approval Not Required". These issues include: The status of Hemenway Street as a public way, Hemenway Street's ability to satisfy the definition of "frontage" for the purpose of endorsement of the ANR Plan, and whether the "vital access" standard is met for the new building lot (2).

I offer the following information on each of these issues for the board's consideration:

By all accounts, the City has listed Hemenway Street as a public way since 1897, and in my opinion, its current status in this location is an "unconstructed public way".

In considering frontage for the purpose of qualification for ANR status, the question for the board is whether the frontage along Hemenway is "illusory in fact". In my experience, examples of frontage which were considered illusory were ones which lie entirely in wetland areas or along extreme slopes. Hemenway Street does not have these types of conditions but is not readily accessible by vehicle in its current state.

The vital access standard is not explicitly stated in Chapter 41. It has been raised in court cases involving ANR plans, and in those various cases the courts have examined not only the access along the way in front of the lot, but also the access within the lot from the way to the future building. The applicant for this plan has stated that he intends to access a building on lot 2 from Concord Road and not Hemenway Street. It is not clear to me whether this fact can be used in part to overcome the vital access standard.

It should also be noted that the plan incorrectly refers to "Old Concord Road" instead of "Concord Road".

I will be available to discuss at your next meeting, or please do not hesitate to contact me at (508) 624-6910.

Sincerely,

A handwritten signature in blue ink, reading "Thomas DiPersio, Jr." with a stylized flourish at the end.

Thomas DiPersio, Jr., P.E., P.L.S.
City Engineer

cc: John L. Ghiloni, DPW Commissioner.
Jason Grossfield, City Solicitor



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

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 CITY OF MARLBOROUGH

2019 NOV 19 P 3:40

Matthew Elder
 Krista Holmi, Administrator
 (508) 624-6910 x33200
kholmi@marlborough-ma.gov

November 19, 2019

PUBLIC HEARING NOTICE- Marlborough Planning Board- Definitive Subdivision Plan of Land

Notice is hereby given that the Marlborough Planning Board will hold a public hearing at 7:00 pm on Monday, December 16, 2019, in Memorial Hall, 3rd Floor, City Hall, 140 Main Street, Marlborough, MA to consider the application for approval of a Definitive Subdivision Plan, "18 Clearview Drive and 24 Clearview Drive". This notice is published in accordance with the provisions of Subdivision Control Law, M.G.L. Chapter 41, Section 81-T.

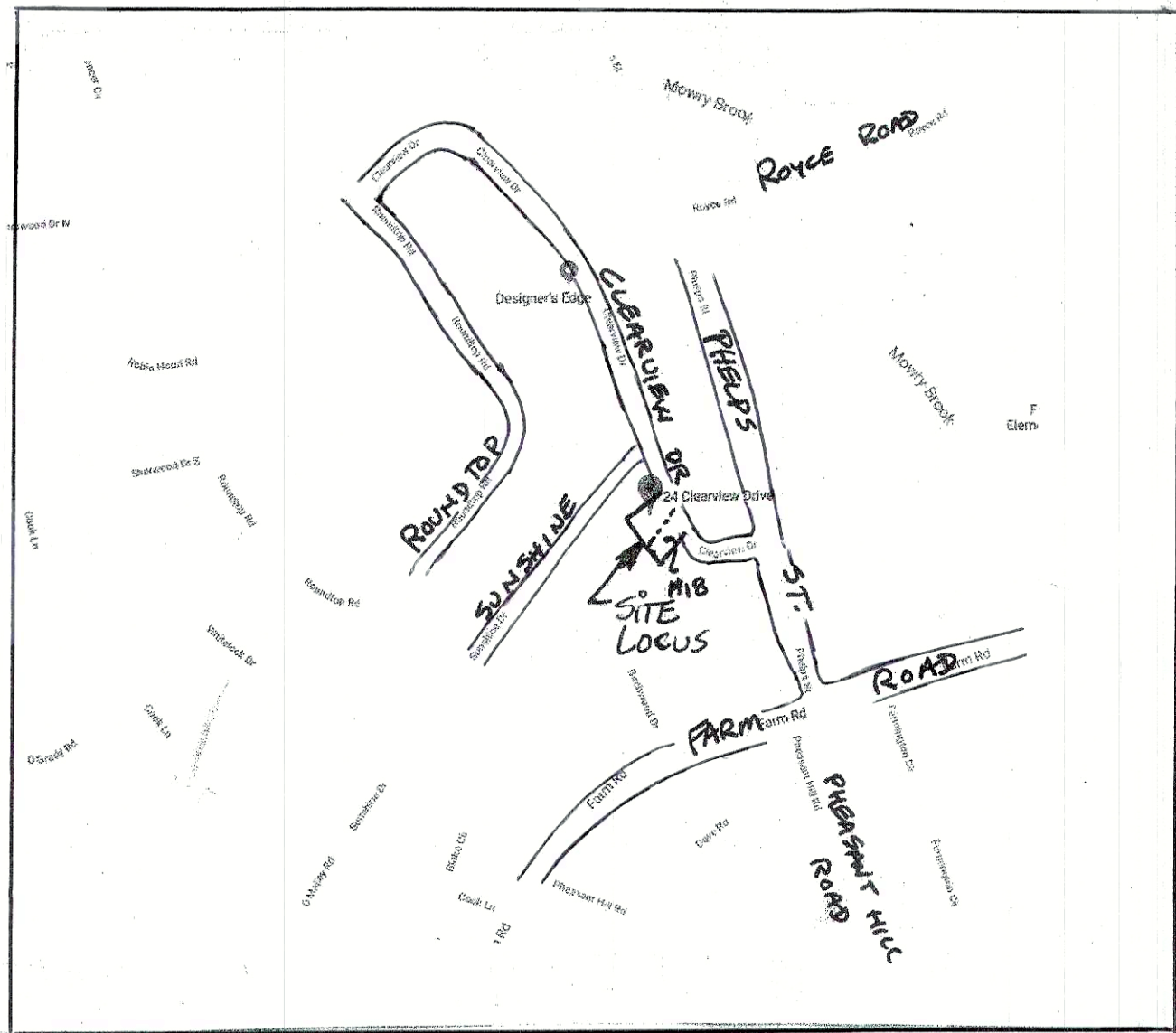
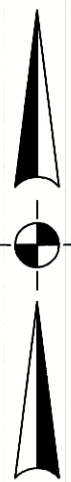
Project Owners: Richard Archibald, 18 Clearview Drive, Marlborough, MA 01752 and Richard and Joan Lavoie, 24 Clearview Drive, Marlborough, MA 01752

Project Engineer: Robert J. Parente, 118 Deerfoot Rd., Southborough, MA 01772

Location of Property: Two existing home lots: 18 Clearview Drive – Middlesex South Registry of Deeds Book 9388, Page 508, Lot 96 and 24 Clearview Drive - Middlesex South Registry of Deeds Book 9388, Page 508, Lot 95, Marlborough, MA 01752
 (The plan seeks to exchange certain parcels of land to remedy an encroachment.)

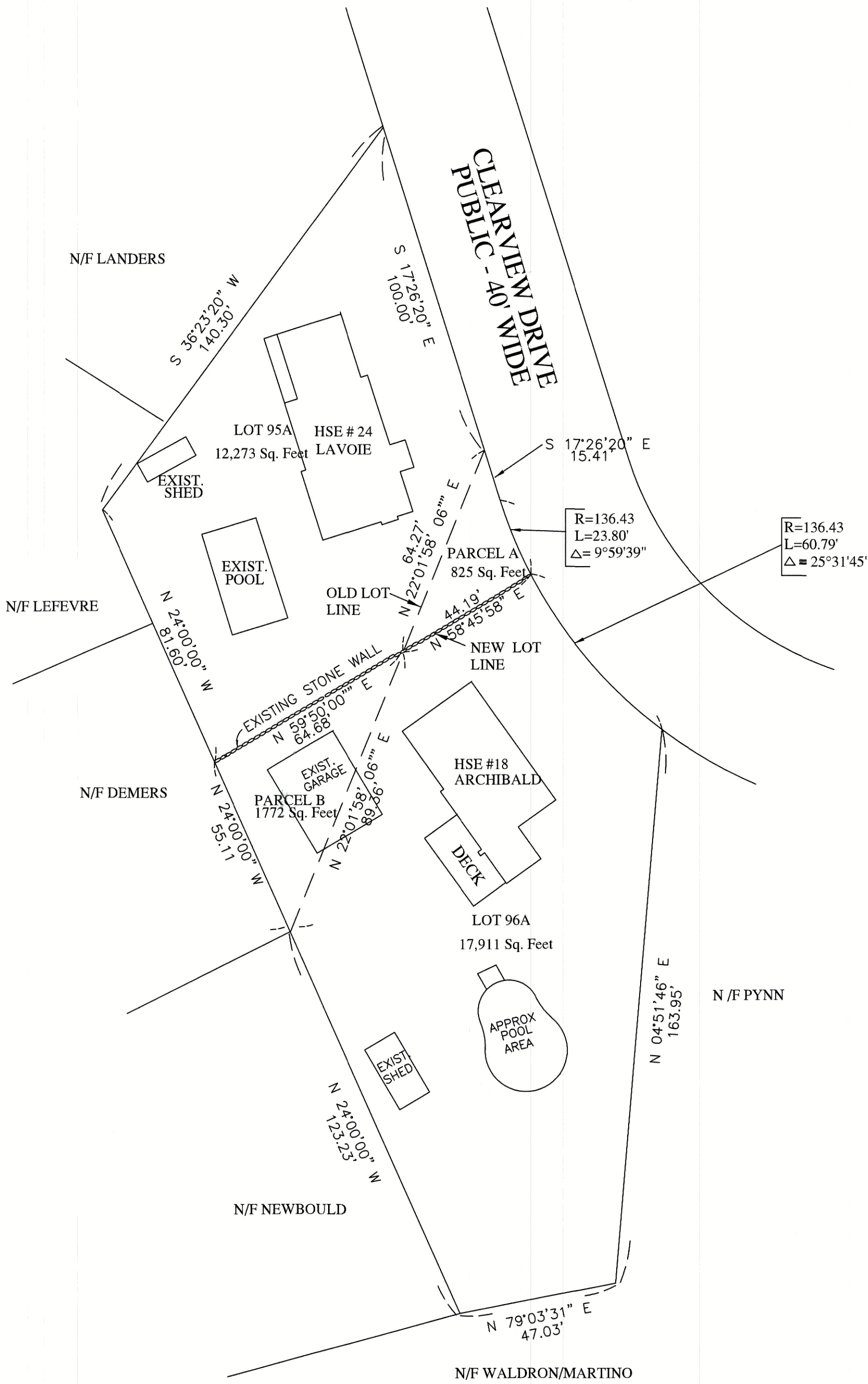
A plan of the proposed subdivision and application is on file in the Office of the City Clerk, 140 Main St. Marlborough, MA 01752 (508) 460-3775, as well as the Administrative Office of the Planning Board, 135 Neil St., 2nd Floor, Marlborough, MA 01752 (508) 624-6910 x33200.

PLAN NO. 428 OF 1981



LOCUS MAP

REGISTRY USE ONLY



CERTIFICATE OF NO APPEAL

THIS IS TO CERTIFY THAT NOTICE FROM THE MARLBORO PLANNING BOARD OF APPROVAL OF THIS PLAN WAS RECEIVED BY ME ON AND NO NOTICE APPEAL WAS RECEIVED BY DURING THE TWENTY DAYS NEXT AFTER THE RECEIPT AND RECORDING OF THE NOTICE OF APPROVAL.

CITY CLERK
CITY OF MARLBOROUGH, MASSACHUSETTS

DATE

MARLBORO PLANNING BOARD

MEMBER

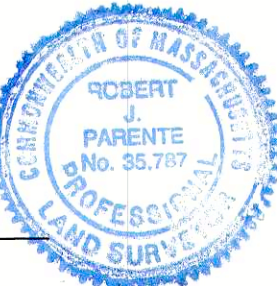
DATE

PLANNING BOARD ENDORSEMENT IS NOT A DETERMINATION AS TO CONFORMANCE WITH THE ZONING BYLAWS.

I HEREBY CERTIFY THAT THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS IN THE COMMONWEALTH OF MASSACHUSETTS

Robert J. Parente

12/12/19



ROBERT J. PARENTE, PROF. LAND SURVEYOR DATE

ZONING DISTRICT - A-3

ITEM	REQUIRED	LOT 95A	LOT 96A
AREA	12,500 SF	12,273 SF*	17,911 SF
FRONTAGE	100.00 FT	139.21'	60.79'
LOT COVERAGE	30%	23%	21%

SETBACKS

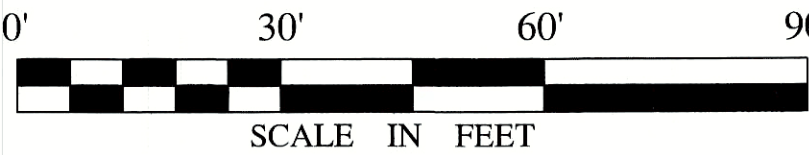
SIDE YARD	15'
FRONT YARD	20'
REAR YARD	30'

* AREA REQUIREMENTS AT TIME LOTS WERE CREATED WAS 10,000 SF.

THE PLANNING BOARD IS RESPONSIBLE FOR GRANTING A WAIVER FOR INSUFFICIENT FRONTAGE FOR LOT 96A.

☐ GRANTED

☐ DENIED



DEFINITIVE SUBDIVISION PLAN
IN
MARLBOROUGH, MASSACHUSETTS

PREPARED FOR: LOT 96- RICHARD D. ARCHIBALD & BONNIE LYNN DICENZO
BOOK 54,696 PG. 596
LOT 95- RICHARD AND JOAN LAVOIE
BOOK 18,620 PG. 317

PREPARED BY: RJP CONSTRUCTION & ENGINEERING
21 CHAPIN ST., NORTHBOROUGH MA
DATE: OCTOBER 5, 2019 SCALE: 1" = 30'
REVISED: DECEMBER 12, 2019

From: [John Garside](#)
To: [Krista Holmi](#)
Subject: Archibald & Lavoie Subdivision- 18, 24 Clearview Drive, plan dated 10/05/19
Date: Friday, November 15, 2019 5:01:14 PM

Hi Krista,

Please be advised that the Marlborough Board of Health is not opposed to subdivision approval for the above referenced project if the planning board determines it is warranted. If you have any questions please call.

-John Garside
Interim Health Director



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

December 11, 2019

Dr. Barbara L. Fenby, Chairwoman - Marlborough Planning Board
c/o Krista Holmi – Planning Board Administrator
135 Neil Street
Marlborough, MA 01752

RE: Definitive Subdivision Plan - #18 & #24 Clearview Drive

Dear Dr. Fenby,

Pursuant to the request of the Marlborough Planning Board at the meeting held on November 18, 2019, I have reviewed the following Definitive Subdivision Plan submission dated October 5, 2019:

DEFINITIVE SUBDIVISION PLAN IN MARLBOROUGH, MA

PREPARED FOR:

LOT 96 – RICHARD D. ARCHIBALD & BONNIE LYNN DICENZO
BOOK 54696, PAGE 596

LOT 95 – RICHARD AND JOAN LAVOIE
BOOK 18620 PAGE 317

PREPARED BY:

RJP CONSTRUCTION & ENGINEERING
118 DEERFIELD ROAD, SOUTHBOROUGH, MA

The subject lots for this plan (Lots 95 and 96) were created with a Definitive Subdivision Plan – Apple Hill Estates – Section 1, endorsed by the Marlborough Planning Board on May 14, 1959. Frontage requirements are the same now as they were in 1959, but the minimum size of lots was only 10,000 square feet compared to the current 12,500 square foot minimum requirement.

In 1988, a garage was constructed, for the benefit of Lot 96 which was located on/across the property line on Lot 95. It appears that the homeowner believed that the stone wall located between the two houses was the property line and his building permit for the garage was issued based on that assumption. Historically both property owners occupied the land on their respective sides of the stonewall as if it were their own. The purpose of this plan is to re-align the

property line between Lot 95 and Lot 96 so the encroachment and side yard setbacks for the existing garage meet the current zoning requirements. The proposed property line is the stone wall.

As proposed, the area for Lot 96 would be reduced by 825 square feet – that portion shown on the plan as Parcel A and increased by 1,772 square feet – that portion shown on the plan as Parcel B, for a net gain of 947 square feet and thus creating Lot 96A containing 17,911 square feet. Lot 95 would be decreased by 947 square feet and thus creating Lot 95A containing 12,273 square feet – less than the required 12,500 square foot area required for the current Residential A-3 Zone. Subsequently, the frontage for Lot 96A would be reduced by 39.21 feet leaving a total of 60.79 feet as the frontage for Lot 96A – less than the required 100 feet of frontage required for the current Residential A-3 Zone. The frontage for Lot 95A would be increase by 39.21 feet for a total lot frontage of 139.32 feet.

Lot 96A would require a waiver by the Marlborough Planning Board of the frontage requirement of the Subdivision Control Law.

Lots 95A and 96A would have the following deficiencies of current zoning requirements:

- Lot 95A: Area and Lot Shape
- Lot 96A: Lot Shape

Should you have any questions regarding this matter, please do not hesitate to contact me at (508) 624-6910.

Sincerely,



Timothy F. Collins,
Assistant City Engineer

cc: John L. Ghiloni - DPW Commissioner.
Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer
Jeffrey Cooke – Building Commissioner
RJP Construction & Engineering



City of Marlborough
Planning Board

Administrative Offices
135 Neil St.
Marlborough, MA 01752

4B
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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 NOV 19 P 3:09

November 19, 2019

PUBLIC HEARING NOTICE- Marlborough Planning Board- Definitive Subdivision Plan of Land

Notice is hereby given that the Marlborough Planning Board will hold a public hearing at 7:10 pm on Monday, December 16, 2019, in Memorial Hall, 3rd Floor, City Hall, 140 Mail Street, Marlborough, MA to consider the application for approval of a Definitive Subdivision Plan, "Commonwealth Heights". This notice is published in accordance with the provisions of Subdivision Control Law, M.G.L. Chapter 41, Sections 81-T.

Project Owner: Marlborough/Northborough Land Realty Trust c/o The Gutierrez Company, 200 Summit Dr. Suite 400, Burlington, MA 01803

Project Engineer: Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532

Location of Property: 10.55 Acres located on the corner of Forest Street and Ames Street. Property Recorded in the Middlesex South Registry of Deeds Book 31932, page 445 (Lot 14). Project consists of twenty-three residential lots.

A plan of the proposed subdivision and application is on file in the Office of the City Clerk, 140 Main St., Marlborough, MA (508) 460-3775, as well as the Administrative Office of the Planning Board, 135 Neil St., 2nd Floor, Marlborough, MA 01752 (508) 624-6910 x33200.

DEFINITIVE SUBDIVISION PLAN
OF
"COMMONWEALTH HEIGHTS"
IN
MARLBOROUGH, MASSACHUSETTS

REFERENCES:
ASSESSORS MAP 100, LOTS 24-26
MAP 89, LOTS 80-99
DEED BOOK 1228, PAGE 149
Plan No. 453 of 1961
Plan No. 1549 of 1968
Plan No. 527 of 1941
Plan No. 1527 of 1986
Plan No. 437 of 1976
Plan No. 198 of 1997
Plan No. 1544 of 1968
Plan No. 511 of 1984
Plan No. 455 of 1961
Plan No. 1174 of 1995
L.C. Plan 30702A
Plan No. 549 of 2007
Plan No. 550 of 2007

Middlesex South
Registry of Deeds

SITE ADDRESS: OFF FOREST STREET

2019 PLAN NOTE:
THE PURPOSE OF THIS PLAN IS FOR RE-PERMITTING/APPROVAL OF
THE COMMONWEALTH HEIGHTS SUBDIVISION PREVIOUSLY APPROVED
BY THE CITY OF MARLBOROUGH PLANNING BOARD IN MAY OF 2006.

THE PREVIOUS SUBDIVISION APPROVAL EXPIRED.

THIS PLAN SET WILL SUPERCEDE THE PREVIOUS SUBDIVISION PLANS
RECORDED AS PLANS 549 & 550 OF 2007 IN THE MIDDLESEX SOUTH
REGISTRY OF DEEDS.

APPROVAL UNDER THE
SUBDIVISION CONTROL LAW,
IS REQUIRED.

MARLBOROUGH PLANNING BOARD

DATE: _____

I HEREBY CERTIFY THAT THIS PLAN
WAS PREPARED IN CONFORMANCE WITH
THE RULES AND REGULATIONS OF THE
REGISTERS OF DEEDS.

VAROUJAM H. HAGOPIAN, P.L.S. 49665



I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

ZONED: RESIDENCE A-3
AREA = 12,500 sf
FRONTAGE = 100 feet
SETBACKS: FRONT = 20 feet
SIDE = 15 feet
REAR = 30 feet

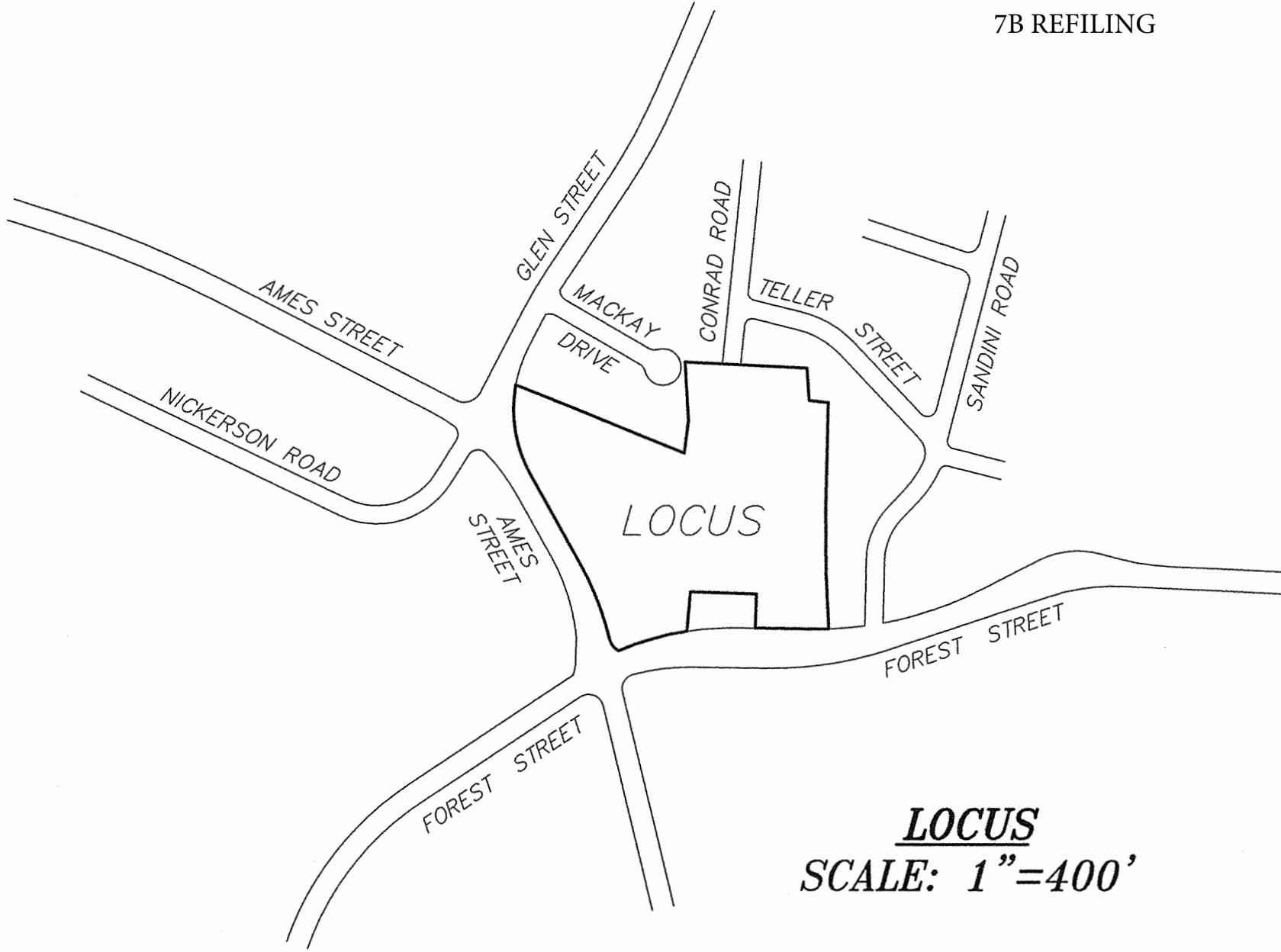
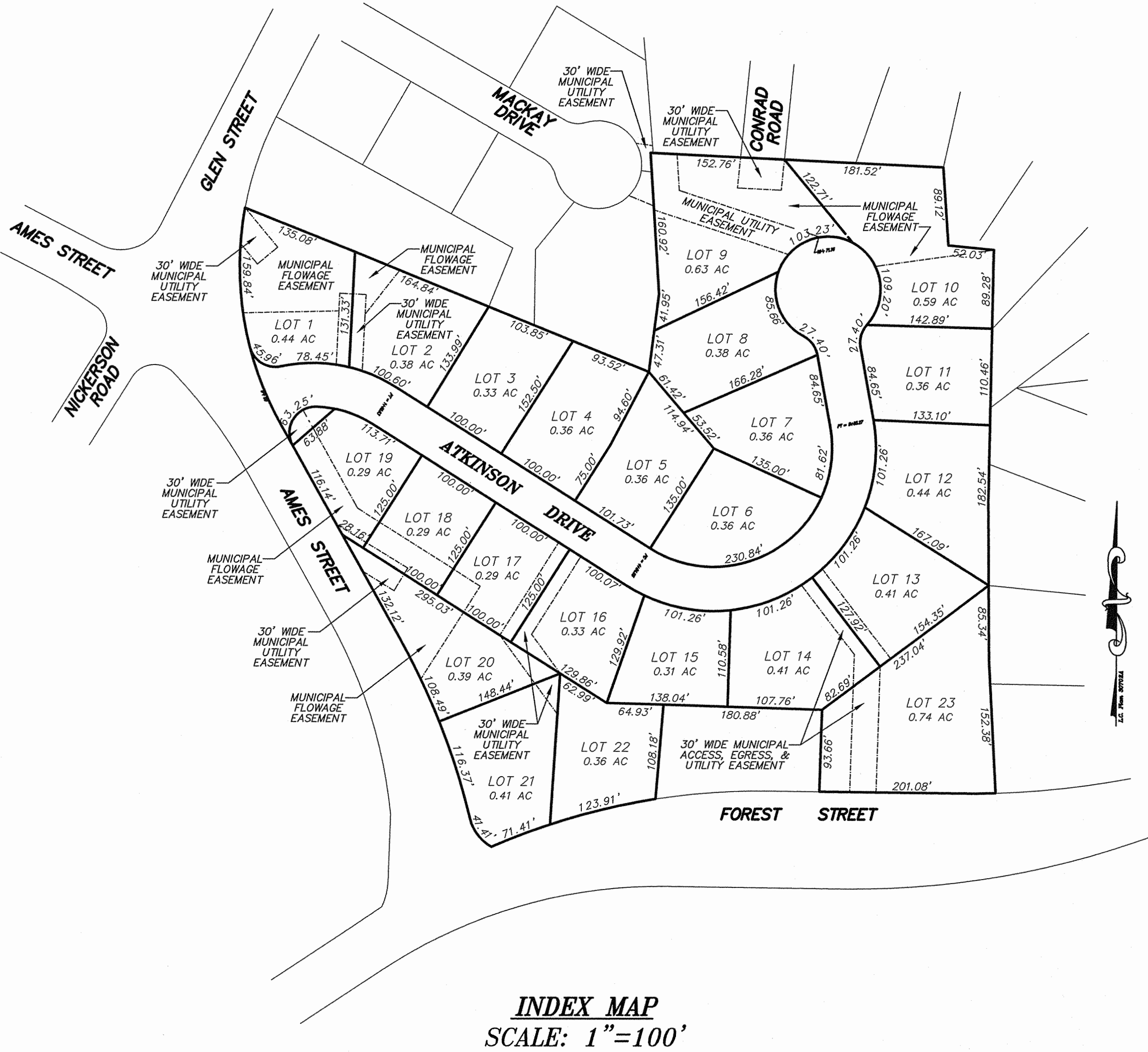


CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
PH. (508) 393 9727 FAX (508) 393 5242

DESIGNED BY: REM,TDP
CHECKED BY: VHH
COMPUTED BY: VHH
FIELD SURVEY: BKK,VHH
DRAWN BY: VHH
SCALE: 1"=40'
SHEET 1 OF 2

DEFINITIVE PLAN
PLAN OF LAND
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.

REVISIONS
OCTOBER 24, 2019



PLAN SUMMARY	
DESCRIPTION	SHEET
LOCUS / INDEX PLAN	1
PLAN OF LAND	2
CONSTRUCTION DRAWINGS	1-9

SITE SUMMARY
TOTAL AREA = 10.60± Acres
TOTAL LOT AREA = 9.23± Acres
ROADWAY AREA = 1.37± Acres
ROADWAY LENGTH = 1,071.16 Feet
TOTAL LOTS = 23

OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
BURLINGTON, MA 01803
PHONE: (781) 272 7000
FAX: (781) 272 3130

SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST MAIN STREET
WILMINGTON, MA 01887
PHONE: (978) 988 8060
FAX: (978) 988 0181

PROJECT SUMMARY

1. TOTAL AREA OF ORIGINAL TRACT SHOWN ON THIS PLAN = 461,938 S.F.
A. AREA IN LOTS 1-23 AND PARCEL "A" = 402,267 S.F.
B. AREA IN STREET = 59,671 S.F.
C. AREA IN EASEMENTS = 76,536 S.F.
D. AREA RESERVED FOR PARKS, SCHOOLS, ETC. = 0 S.F.
TOTAL AREA OF SUBDIVISION = 461,938 S.F.
2. STREETS:
A. ROAD STA. 0+00 TO STA. 10+71.16 = 1071.16 L.F.
3. EASEMENTS:
A. UTILITY EASEMENTS = 68,382 S.F.
B. ACCESS, EGRESS, & UTILITY EASEMENTS = 8,154 S.F.

REFERENCES:
ASSESSORS MAP 100, LOTS 24-26
MAP 89, LOTS 80-99
DEED BOOK 1228, PAGE 149

SITE ADDRESS: OFF FOREST STREET

Plan No. 453 of 1961
Plan No. 1549 of 1968
Plan No. 527 of 1941
Plan No. 1527 of 1986
Plan No. 437 of 1976
Plan No. 198 of 1997
Plan No. 1544 of 1968
Plan No. 511 of 1984
Plan No. 455 of 1961
Plan No. 1174 of 1995
L.C. Plan 30702A
Plan No. 549 of 2007
Plan No. 550 of 2007

Middlesex South
Registry of Deeds

APPROVAL UNDER THE
SUBDIVISION CONTROL LAW,
IS REQUIRED.

MARLBOROUGH PLANNING BOARD

DATE: _____

I HEREBY CERTIFY THAT THIS PLAN
WAS PREPARED IN CONFORMANCE WITH
THE RULES AND REGULATIONS OF THE
REGISTERS OF DEEDS.

VAROJAN H. HAGOPIAN, P.L.S. 49665

I, _____, CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

DEFINITIVE PLAN

PLAN OF LAND
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
PH. (508) 393 9727 FAX (508) 393 5242

OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
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128 WEST MAIN STREET
WILMINGTON, MA 01887
PHONE: (978) 988 8060
FAX: (978) 988 0181

WAIVER REQUEST TABLE		
WAIVER REQUEST	APPROVED	DENIED
SECTION IV B. 5.(a) ROAD > 500'		



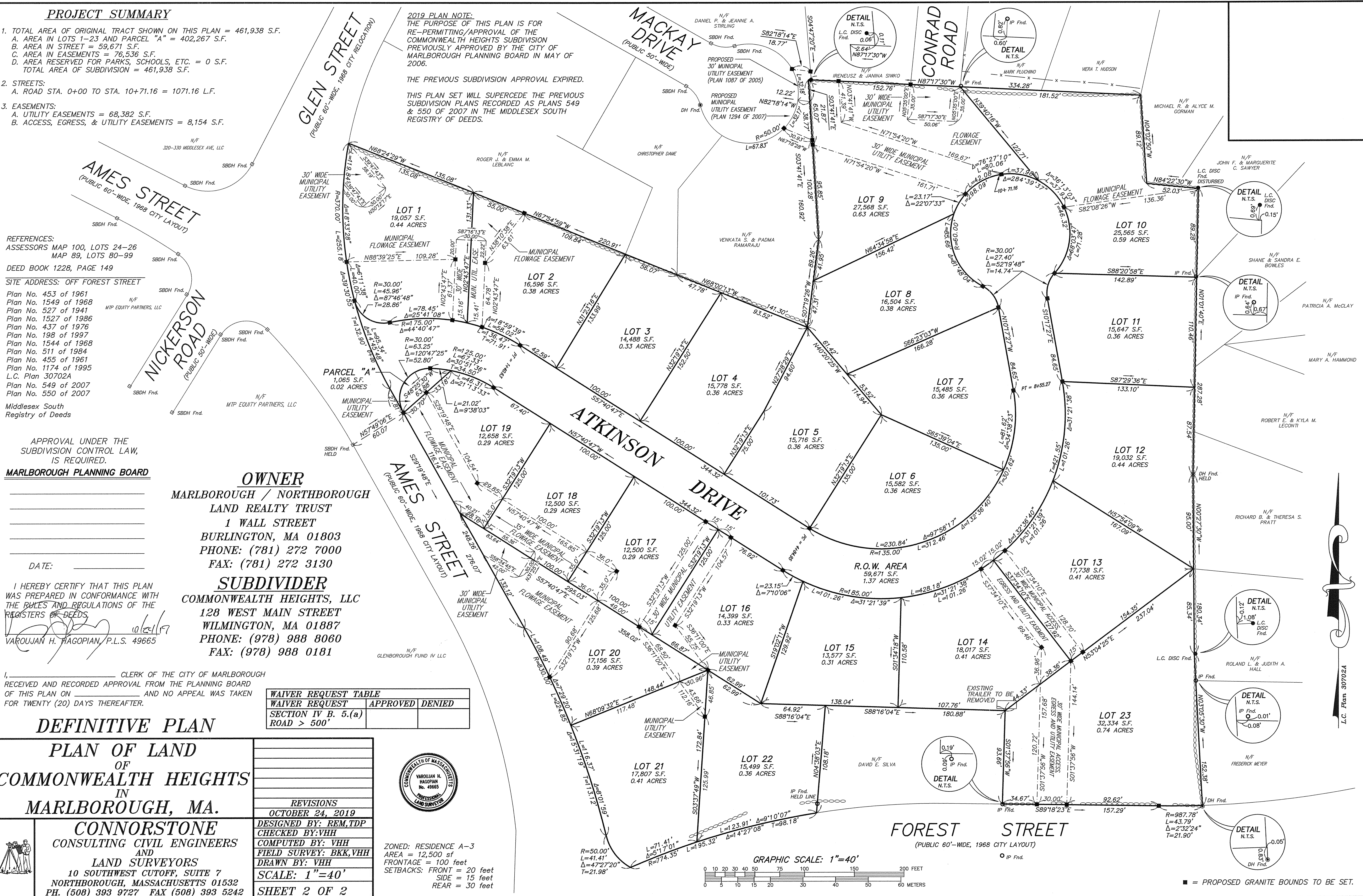
ZONED: RESIDENCE A-3
AREA = 12,500 sf
FRONTAGE = 100 feet
SETBACKS: FRONT = 20 feet
SIDE = 15 feet
REAR = 30 feet

REVISIONS
OCTOBER 24, 2019
DESIGNED BY: REM.TDP
CHECKED BY: VHH
COMPUTED BY: VHH
FIELD SURVEY: BKK,VHH
DRAWN BY: VHH
SCALE: 1"=40'
SHEET 2 OF 2

2019 PLAN NOTE:
THE PURPOSE OF THIS PLAN IS FOR
RE-PERMITTING/APPROVAL OF THE
COMMONWEALTH HEIGHTS SUBDIVISION
PREVIOUSLY APPROVED BY THE CITY OF
MARLBOROUGH PLANNING BOARD IN MAY OF
2006.

THE PREVIOUS SUBDIVISION APPROVAL EXPIRED.

THIS PLAN SET WILL SUPERCEDE THE PREVIOUS
SUBDIVISION PLANS RECORDED AS PLANS 549
& 550 OF 2007 IN THE MIDDLESEX SOUTH
REGISTRY OF DEEDS.



■ = PROPOSED GRANITE BOUNDS TO BE SET.

ZONE: RESIDENCE A-3
AREA = 12,500 sf
FRONTAGE = 100 feet
SETBACKS: FRONT = 20 feet
SIDE = 15 feet
REAR = 30 feet

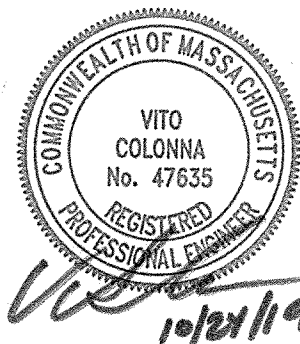
UTILITIES LEGEND
UNDERDRAIN
CABLE/UTILITIES
GAS LINE
SEWER LINE
WATER LINE
DRAIN LINE

LEGEND
FLARED END
PROPOSED DCB
PROPOSED DMH
UTILITY POLE
WET FLAG #
STONE WALL
FINISH GRADE
2' CONTOUR
10' CONTOUR
TREE LINE
EXISTING DMH
EXISTING DCB
EXISTING SMH
S/S=SEWER SERVICE
W/S=WATER SERVICE
C/U=CABLE UTILITIES
W/S=WATER SERVICE
G=GAS MAIN

APPROVAL UNDER THE
SUBDIVISION CONTROL LAW,
IS REQUIRED.

MARLBOROUGH PLANNING BOARD

DATE:



OWNER

MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST

1 WALL STREET

BURLINGTON, MA. 01803

(781) 272-7000

(781) 272-3130

SUBDIVIDER

COMMONWEALTH HEIGHTS, LLC

128 WEST MAIN STREET

WILMINGTON, MA. 01887

(978) 988-8060

(978) 988-0181

TOPOGRAPHICAL PLAN OF COMMONWEALTH HEIGHTS IN MARLBOROUGH, MA.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND

LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
TEL: (508) 393-9727 FAX: (508) 393-5242

DESIGNED BY: REM,TDP

CHECKED BY: VC

COMPUTED BY: VHH

FIELD SURVEY: BKK

DRAWN BY: REM, VHH

SCALE: 1" = 40'

SHEET 1 OF 10

REVISIONS
OCTOBER 24, 2019

NOTE:
GEOTECHNICAL ENGINEER SHALL INSPECT
AND CERTIFY THE CONSTRUCTION OF
THE DETENTION BASIN IN ACCORDANCE
WITH THE REQUIREMENTS OF THE MARLBORO DPW.

FOR REQUIRED MONUMENTATION, SEE PLAN OF LAND, SHEET
2 OF 2, COMMONWEALTH HEIGHTS, DATED JUNE 6, 2005.

MILLING AND RESURFACING OF AMES STREET REQUIRED
WITHIN 25 FEET OF ALL PAVEMENT CUTS. PAVEMENT
MARKINGS SHALL BE REPLACED IN ACCORDANCE WITH THE
MASSHIGHWAY STANDARD SPECIFICATIONS.

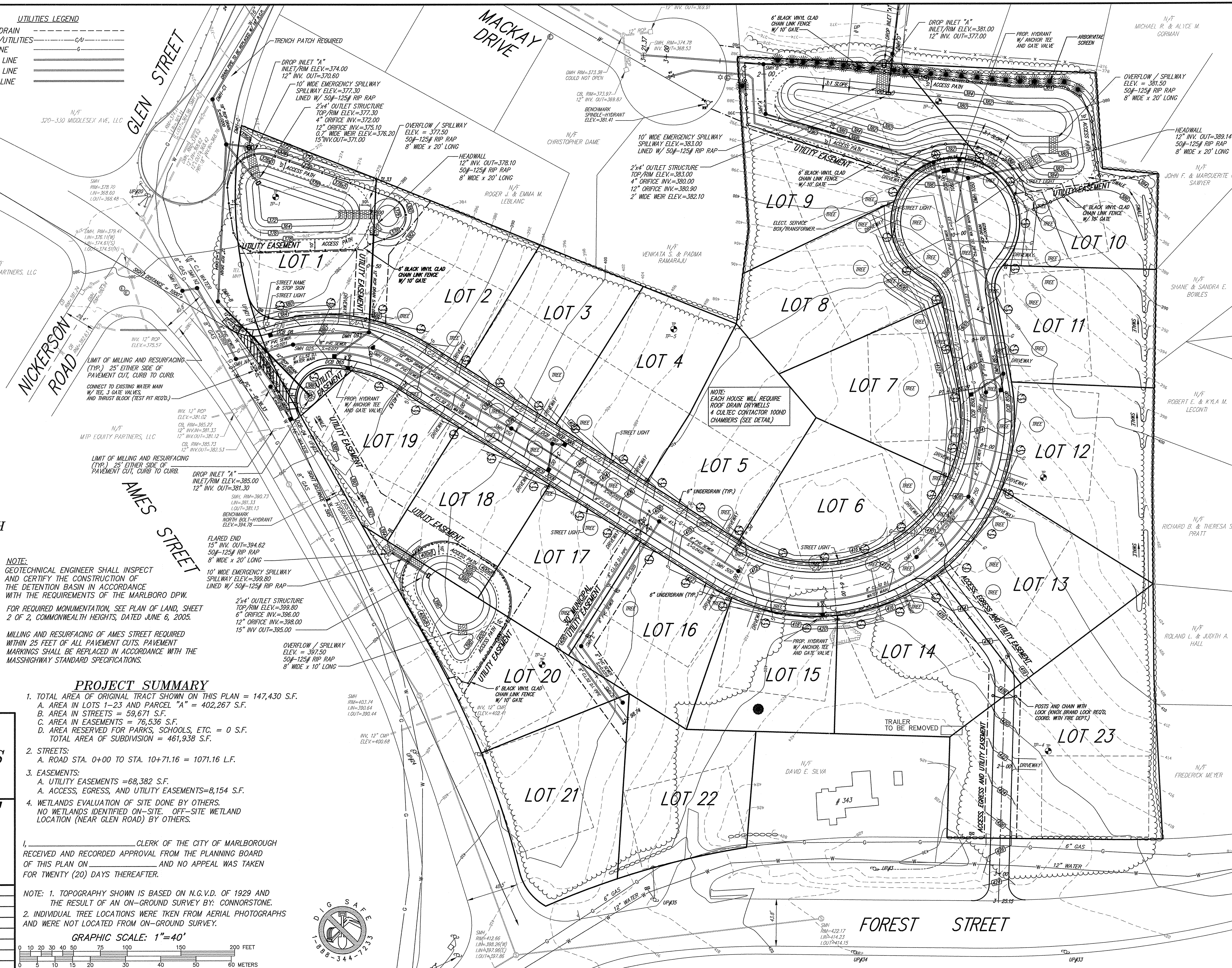
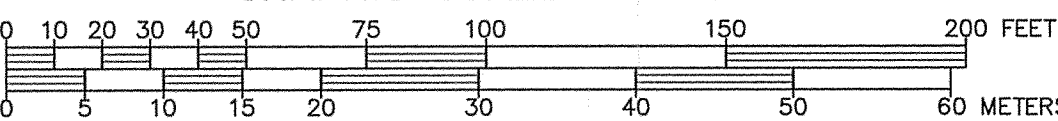
PROJECT SUMMARY

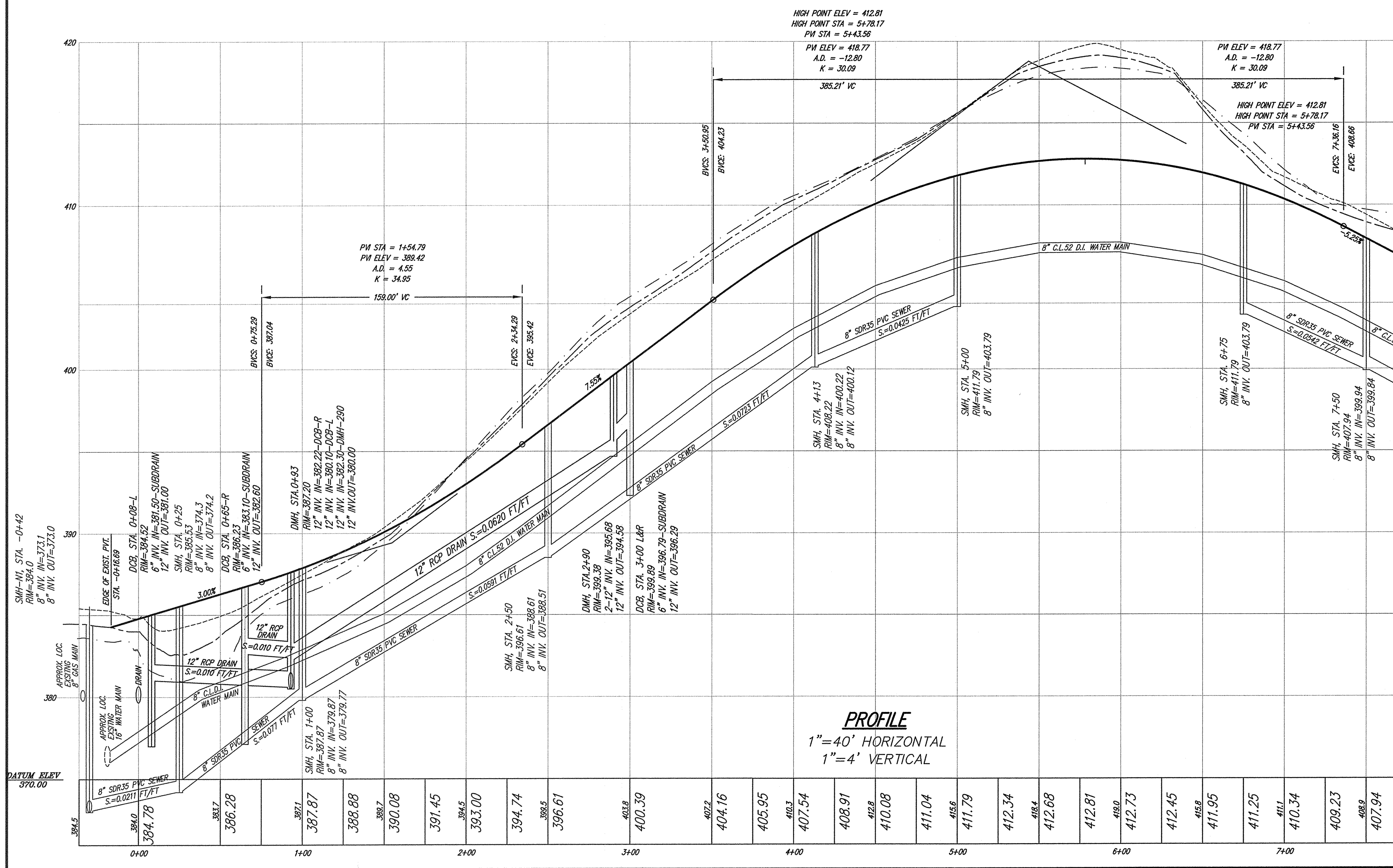
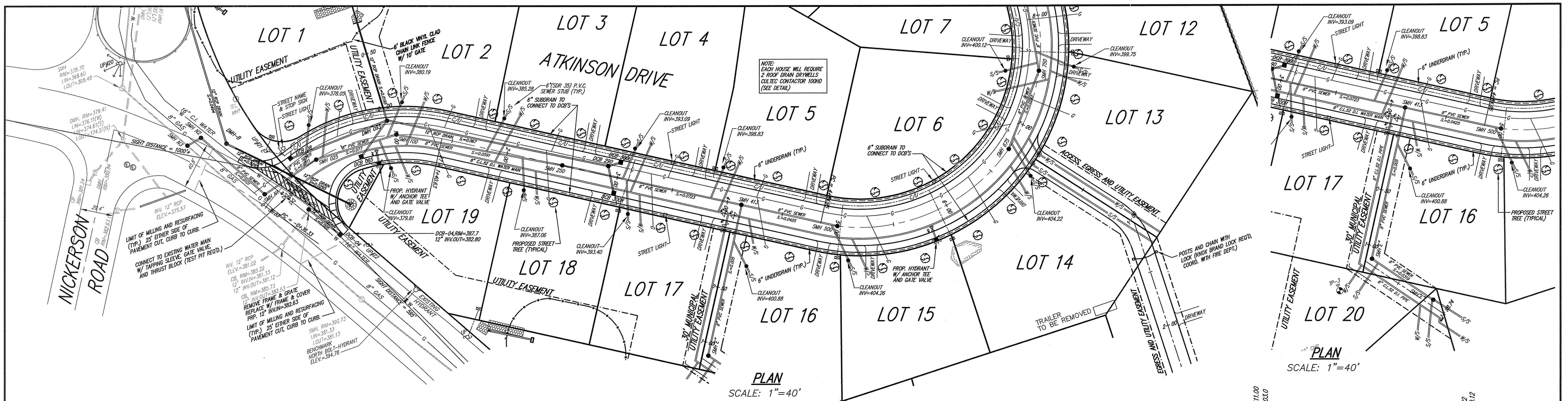
- TOTAL AREA OF ORIGINAL TRACT SHOWN ON THIS PLAN = 147,430 S.F.
A. AREA IN LOTS 1-23 AND PARCEL "A" = 402,267 S.F.
B. AREA IN STREETS = 59,671 S.F.
C. AREA IN EASEMENTS = 76,536 S.F.
D. AREA RESERVED FOR PARKS, SCHOOLS, ETC. = 0 S.F.
TOTAL AREA OF SUBDIVISION = 461,938 S.F.
- STREETS:
A. ROAD STA. 0+00 TO STA. 10+71.16 = 1071.16 L.F.
- EASEMENTS:
A. UTILITY EASEMENTS = 68,382 S.F.
A. ACCESS, EGRESS, AND UTILITY EASEMENTS = 8,154 S.F.
- WETLANDS EVALUATION OF SITE DONE BY OTHERS.
NO WETLANDS IDENTIFIED ON-SITE. OFF-SITE WETLAND
LOCATION (NEAR GLEN ROAD) BY OTHERS.

I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

NOTE: 1. TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND
THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.
2. INDIVIDUAL TREE LOCATIONS WERE TAKEN FROM AERIAL PHOTOGRAPHS
AND WERE NOT LOCATED FROM ON-GROUND SURVEY.

GRAPHIC SCALE: 1"=40'





NOTE: CONTROLLED DENSITY FILL (CDF) SHALL BE REQUIRED FOR ALL TRENCH WORK AND/OR EXCAVATED AREAS LOCATED IN THE RIGHT-OF-WAY LAYOUT OF AMES STREET.

- UTILITIES LEGEND**
- UNDERDRAIN
 - CABLE/UTILITIES
 - GAS LINE
 - SEWER LINE
 - WATER LINE
 - DRAIN LINE

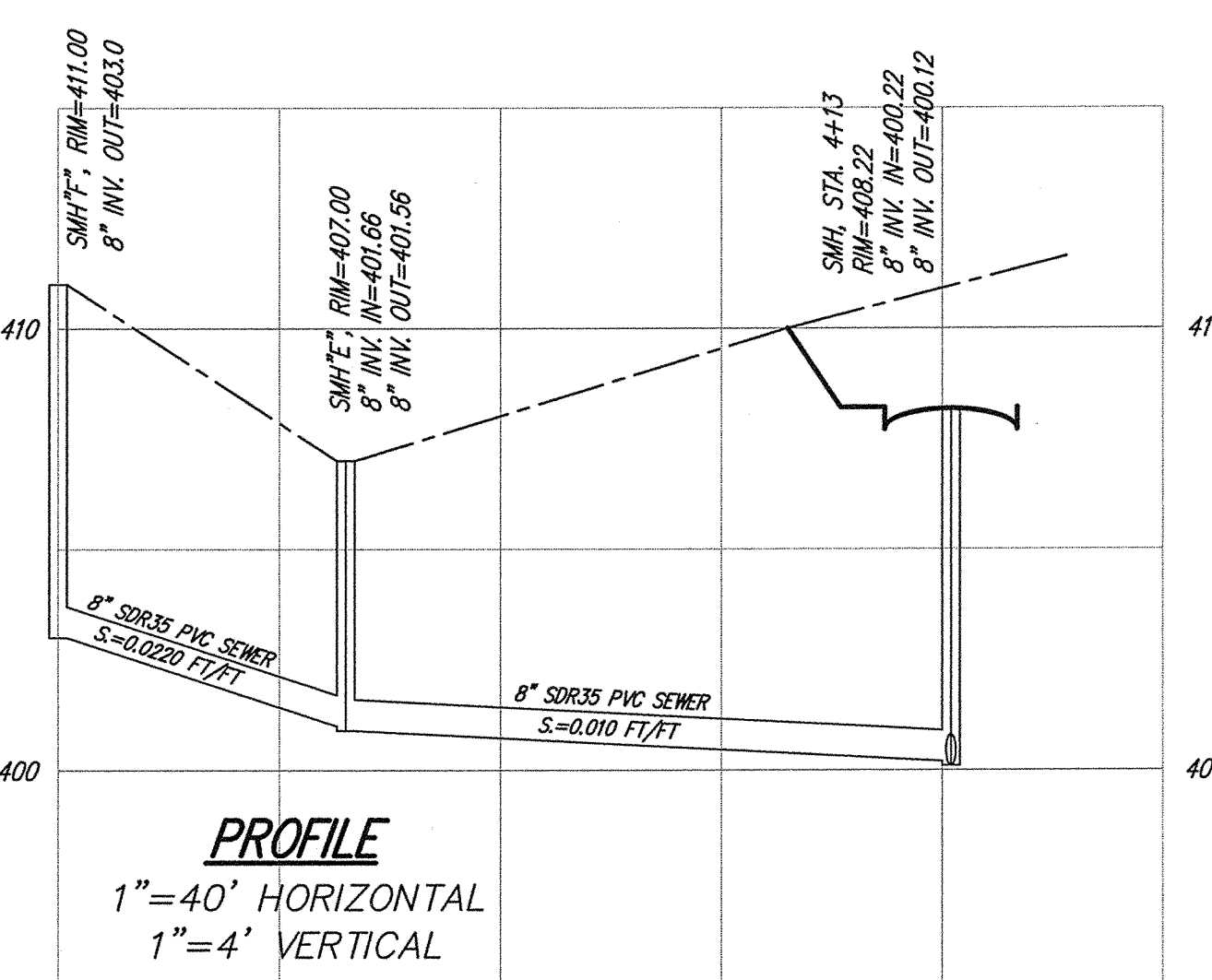
APPROVAL UNDER THE SUBDIVISION CONTROL LAW, IS REQUIRED.
MARLBOROUGH PLANNING BOARD

DATE: _____

OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
BURLINGTON, MA. 01803
(781) 272-7000
(781) 272-3130

SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST MAIN STREET
WILMINGTON, MA. 01887
(978) 988-8060
(978) 988-0181

I, _____, CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.



NOTE: CONNORSTONE DOES NOT WARRANT THE LOCATION OR CHARACTERISTICS OF UNDERGROUND UTILITIES OR OTHER SUBSURFACE CONDITIONS.

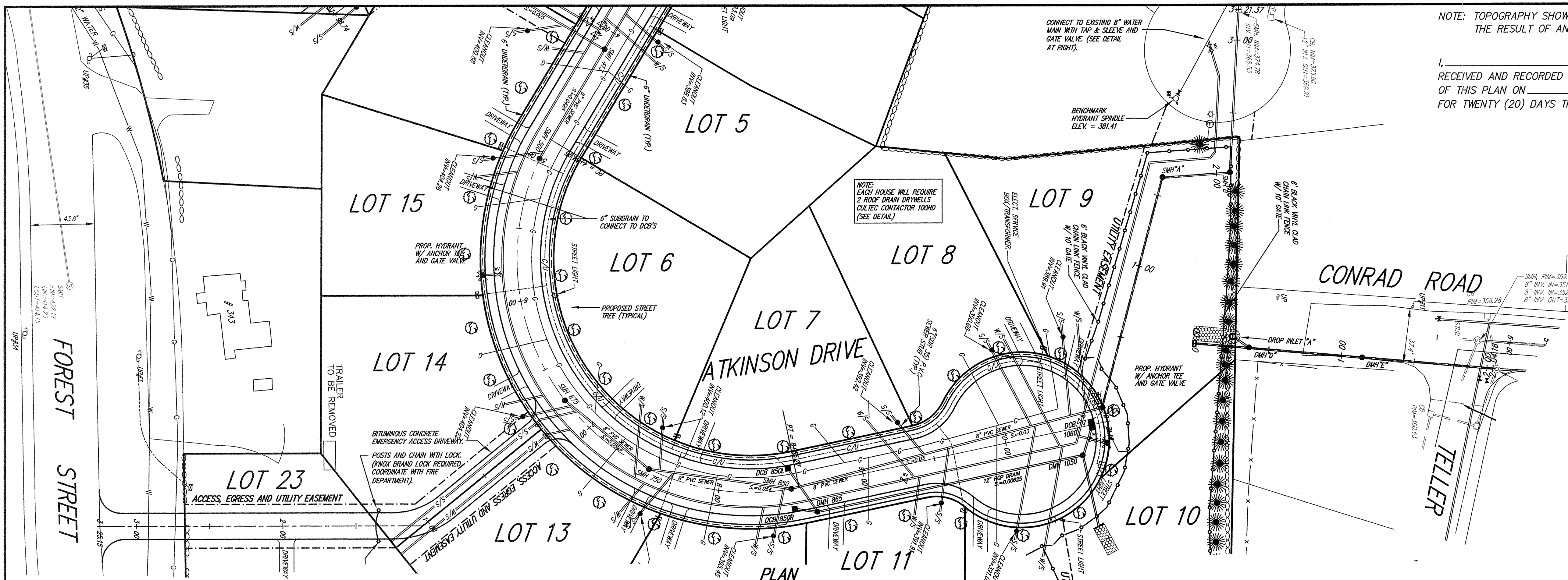


PLAN AND PROFILE
OF
ATKINSON DRIVE
IN
MARLBOROUGH, MA.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
TEL: (508) 393-9727 FAX: (508) 393-5242

DESIGNED BY: REM, TDP	
CHECKED BY: VC	
COMPUTED BY: VHH	
FIELD SURVEY: BKK	
DRAWN BY: REM, VHH	
SCALE: AS SHOWN	
REVISIONS	
SHEET 2 OF 10	OCTOBER 24, 2019

NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.



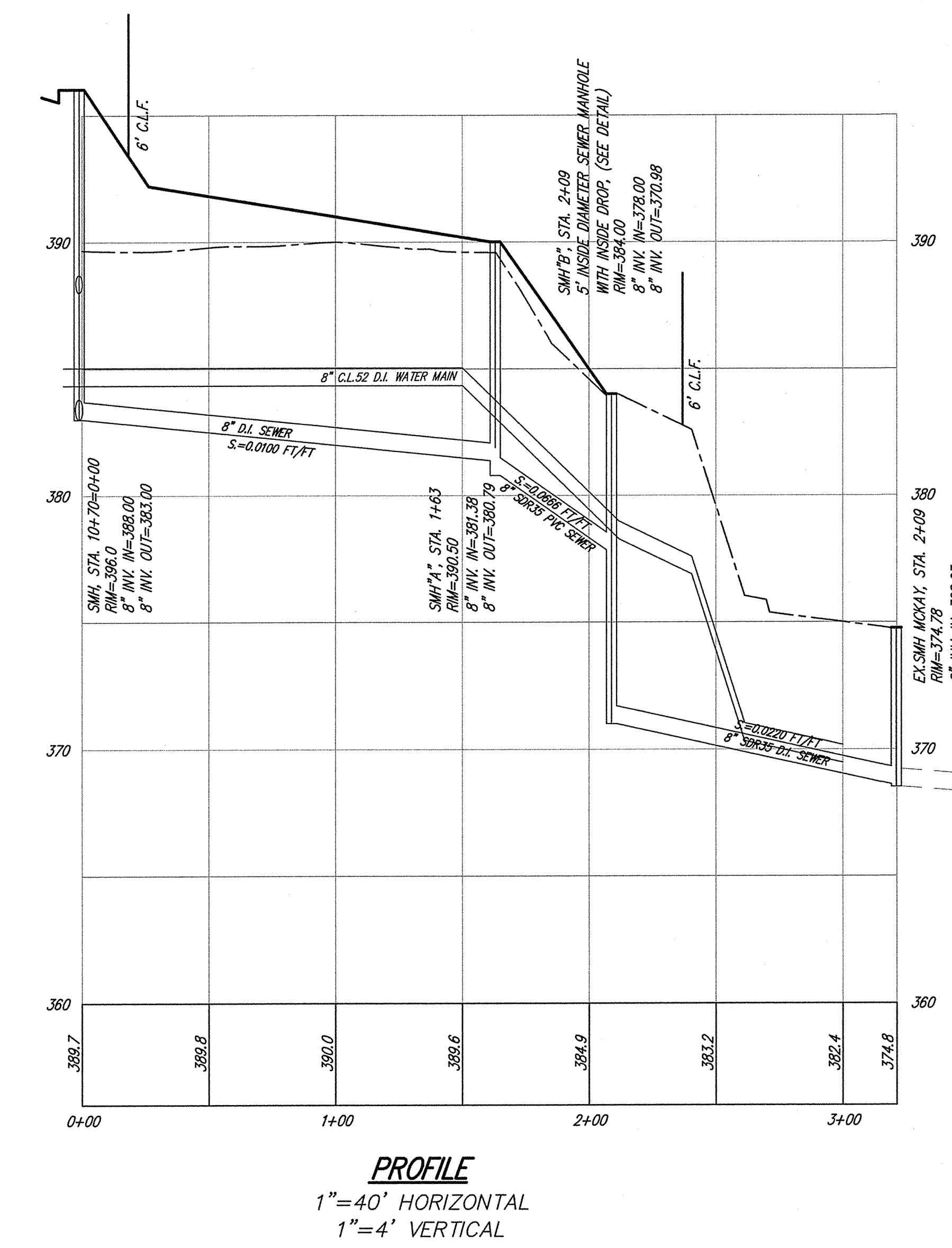
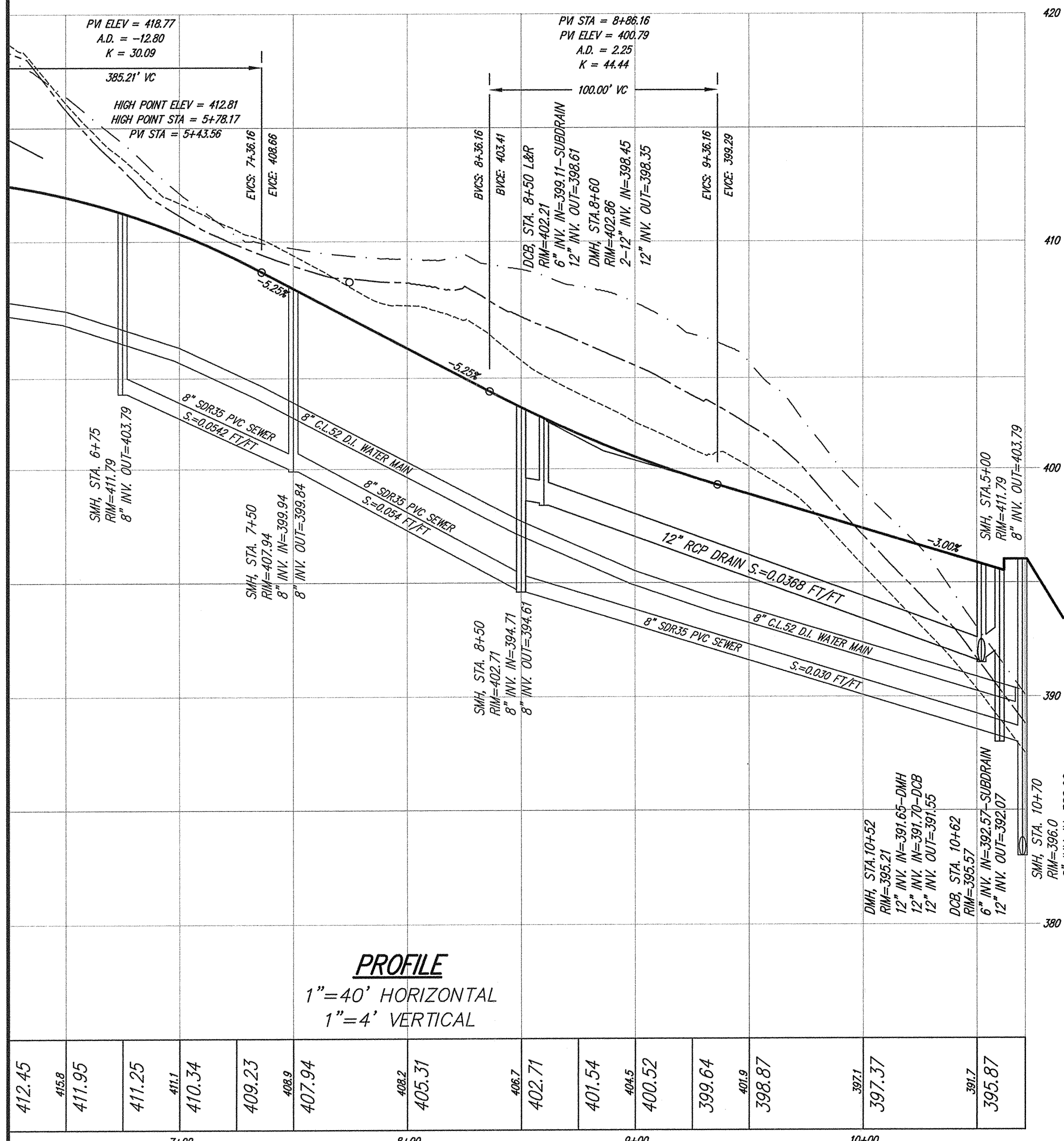
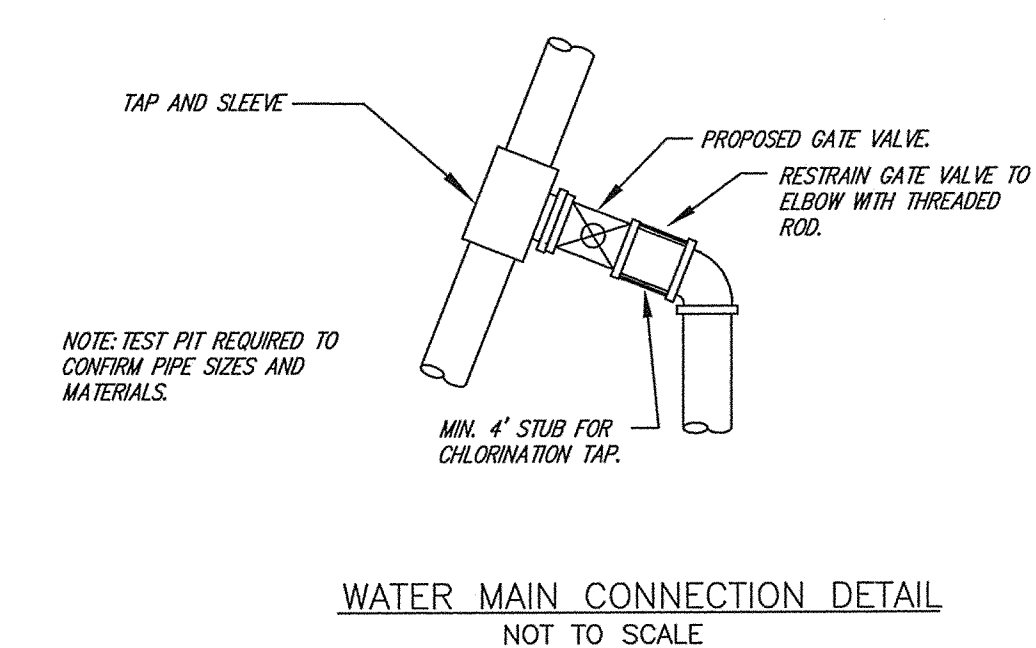
NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.

I, _____ CLERK OF THE CITY OF MARLBOROUGH RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN FOR TWENTY (20) DAYS THEREAFTER.

APPROVAL UNDER THE SUBDIVISION CONTROL LAW, IS REQUIRED.

MARLBOROUGH PLANNING BOARD

DATE: _____



OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
BURLINGTON, MA. 01803
(781) 272-7000
(781) 272-3130

SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST MAIN STREET
WILMINGTON, MA. 01887
(978) 988-8060
(978) 988-0181

PLAN AND PROFILE
OF
ATKINSON DRIVE
IN
MARLBOROUGH, MA.
CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
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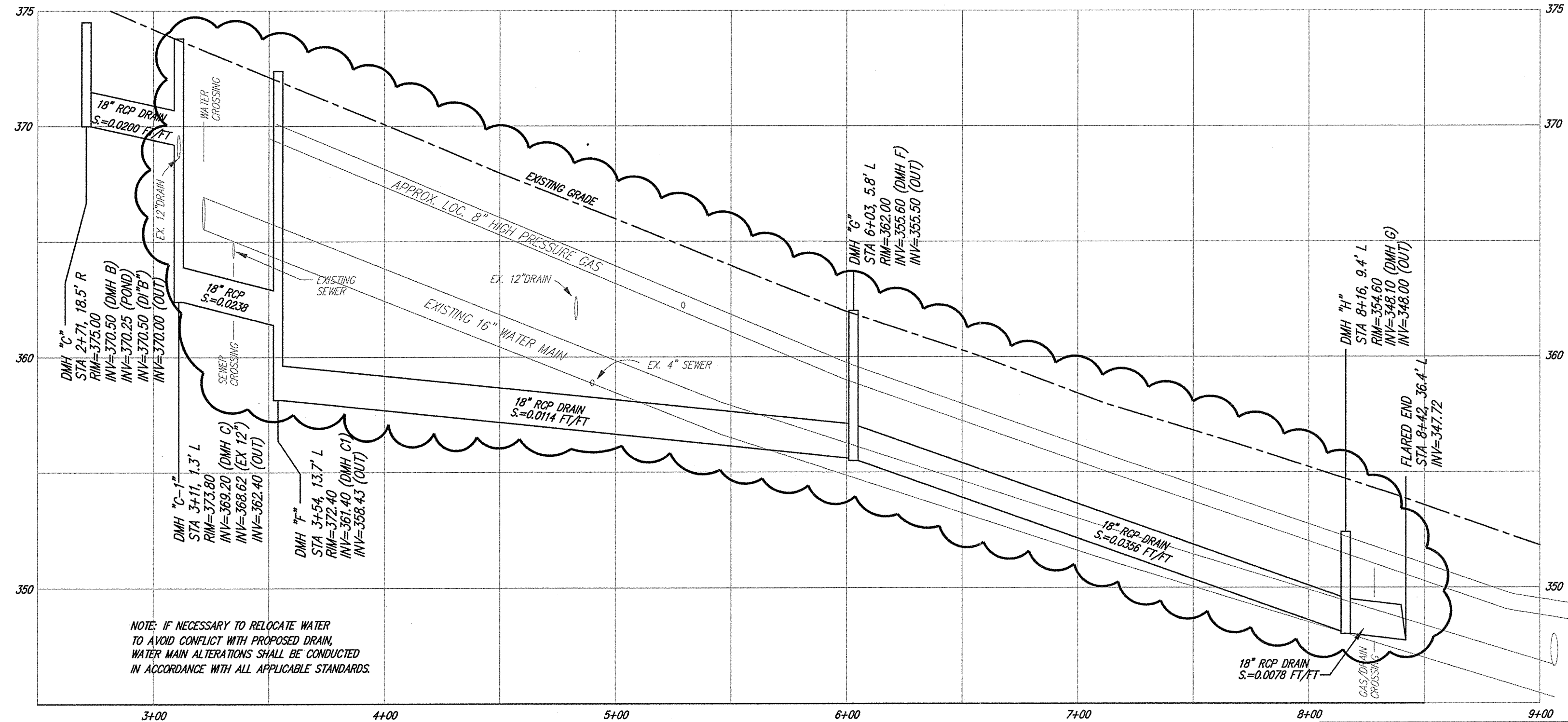
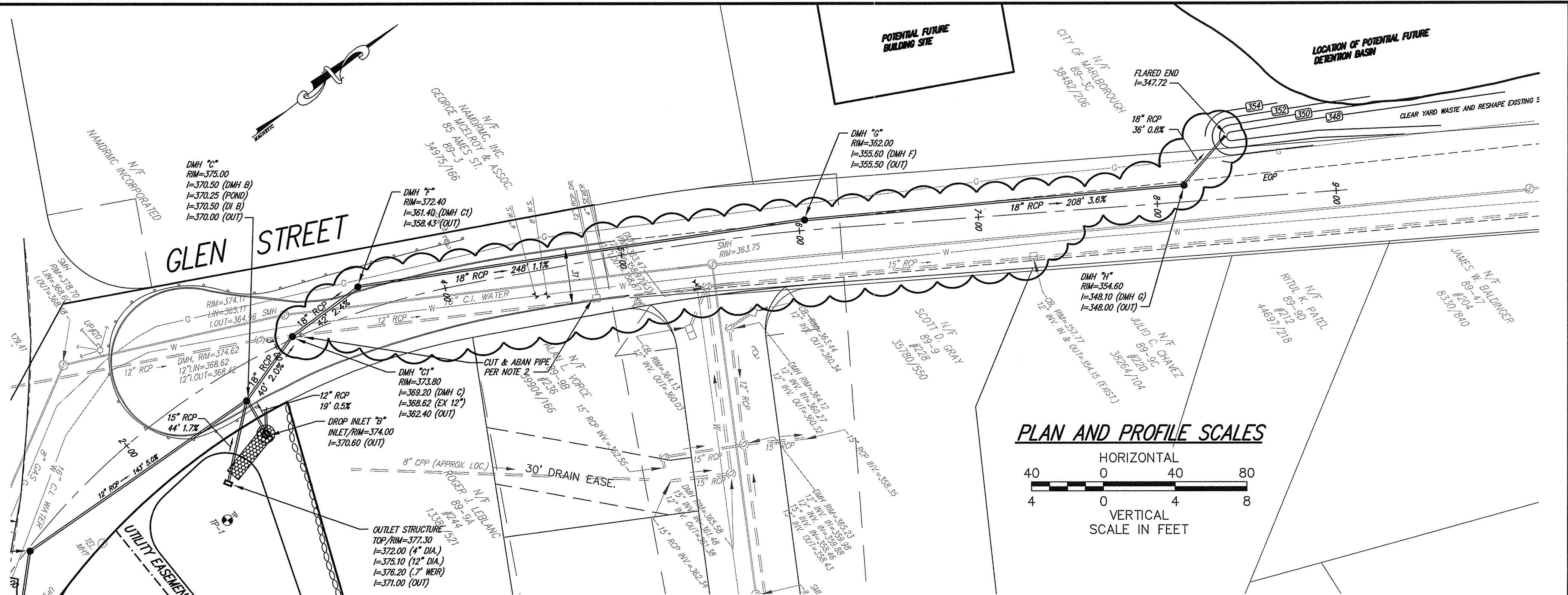
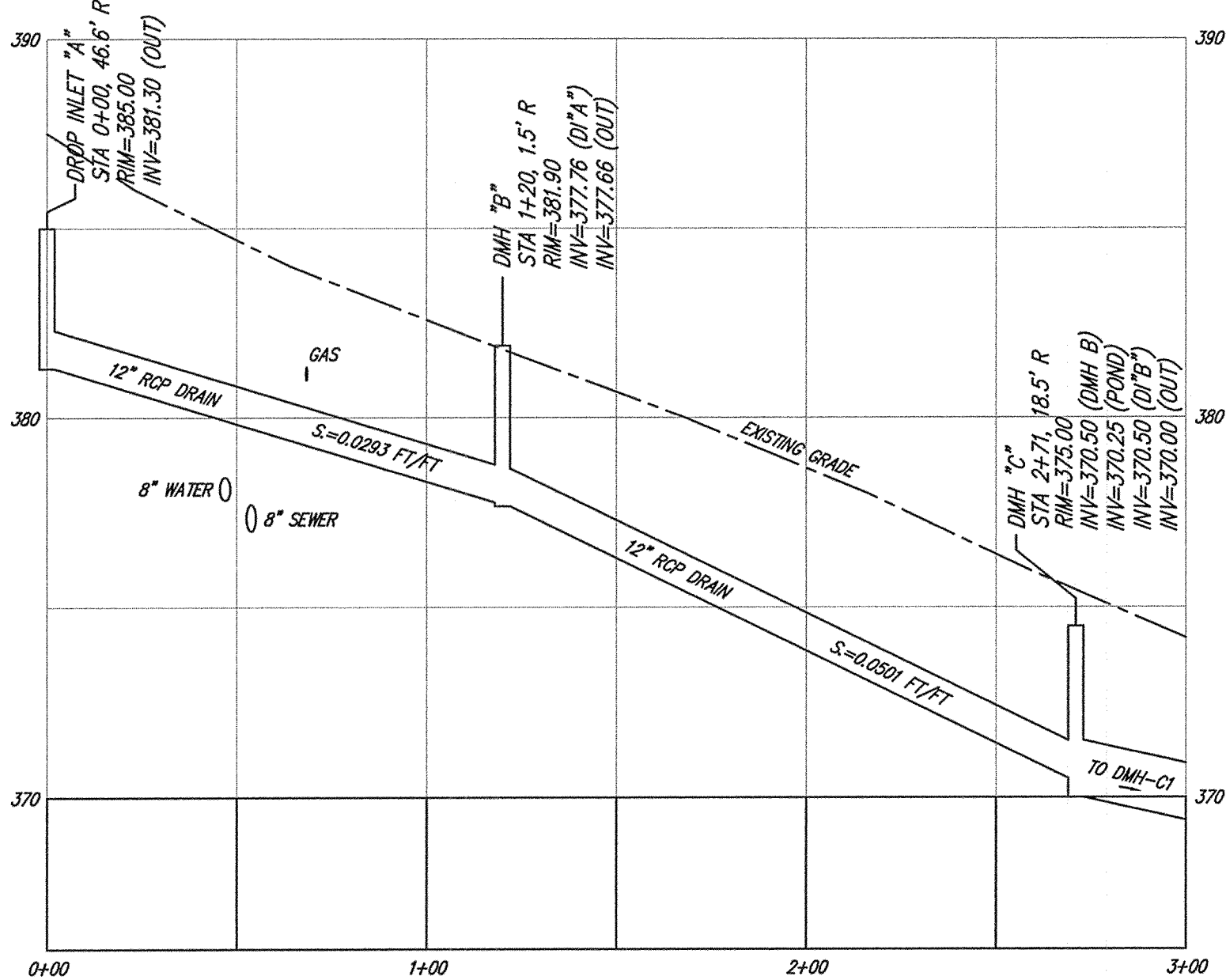
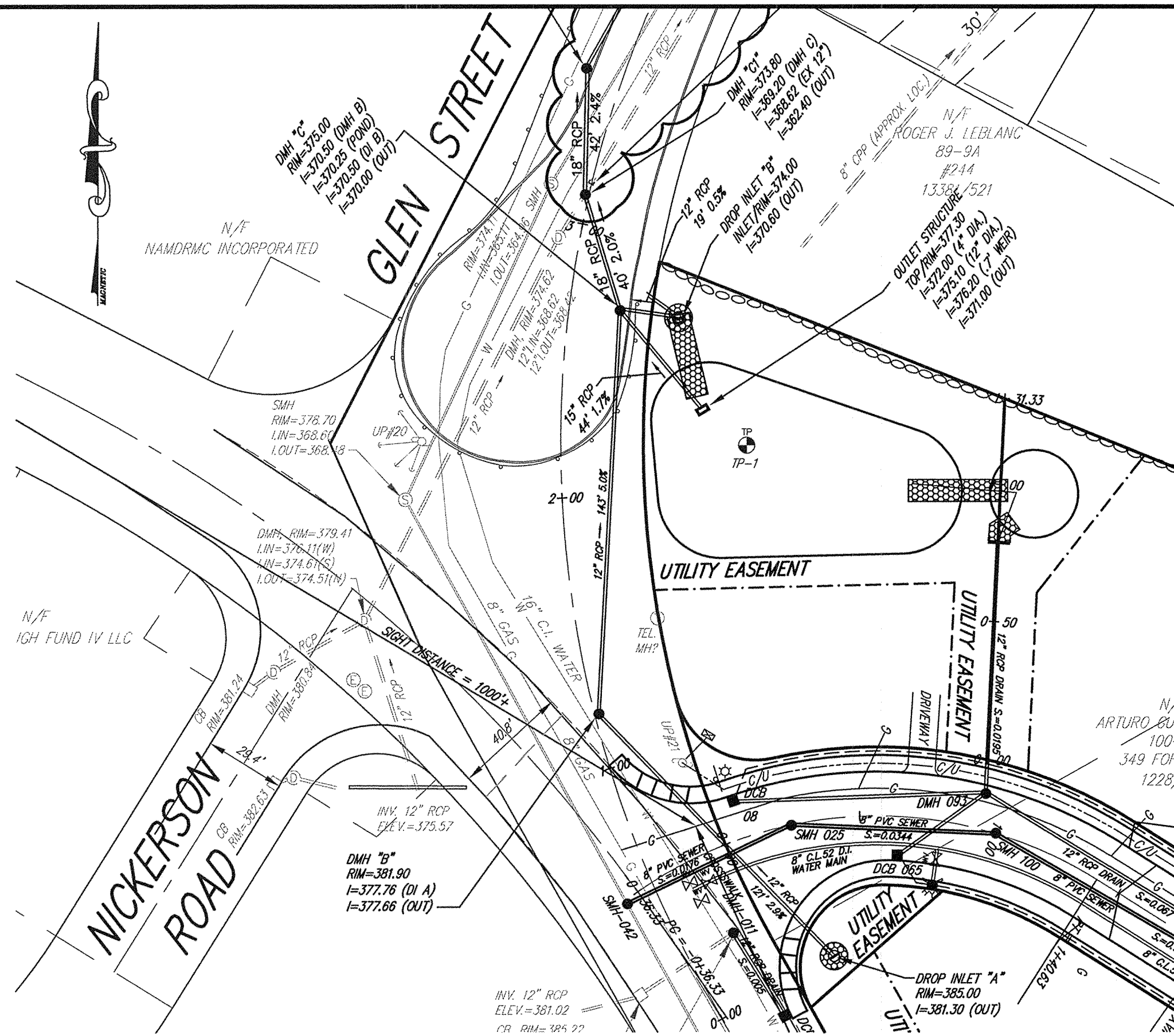
DESIGNED BY: REM, TDP	
CHECKED BY: VC	
COMPUTED BY: VHH	
FIELD SURVEY: BKK	
DRAWN BY: REM, VHH	
SCALE: AS SHOWN	
SHEET 3 OF 10	REVISIONS OCTOBER 24, 2019



NOTE: SURVEY PERFORMED BY CONNORSTONE ENGINEERING IN FEBRUARY AND MARCH, 2005.

NOTE: CONNORSTONE DOES NOT WARRANT THE LOCATION OR CHARACTERISTICS OF UNDERGROUND UTILITIES OR OTHER SUBSURFACE CONDITIONS.



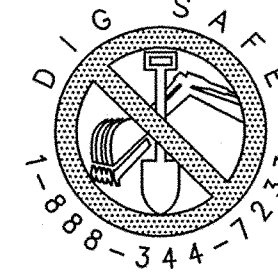


OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
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BURLINGTON, MA. 01803
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FAX (978) 988-0181

NOTE: CONNORSTONE DOES NOT WARRANT THE LOCATION OR CHARACTERISTICS OF UNDERGROUND UTILITIES OR OTHER SUBSURFACE CONDITIONS.

- NOTES:**
- 1) TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND THE RESULT OF AN ON-GROUND SURVEY BY CONNORSTONE AND FROM PLANS OF RECORD.
 - 2) PIPES TO BE ABANDONED SHALL BE FILLED WITH CONTROLLED DENSITY FILL AND PLUGGED AT BOTH THE UPSTREAM AND DOWNSTREAM ENDS WITH CONCRETE OR BRICK MASONRY.
 - 3) ALL PROPOSED TRENCHES SHALL BE SAWCUT IN NEAT, STRAIGHT LINES PRIOR TO EXCAVATION. ALL TRENCHES SHALL BE BACKFILLED AND RESURFACED TO MEET AND MATCH EXISTING GRADES.
 - 4) EACH PORTION OF DRAIN PIPE INSTALLATION SHALL BE INSTALLED WORKING FROM THE DOWNSTREAM END AND WORKING BACK TOWARDS THE SITE.
 - 5) THE CONTRACTOR SHALL COORDINATE WITH THE CITY ENGINEER REGARDING WORK IN THE PUBLIC RIGHT-OF-WAY.
 - 6) END THE END OF WORK EACH DAY, TRENCHES SHALL BE BACKFILLED AND PROTECTED TO THE SATISFACTION OF THE CITY ENGINEER.



OFF SITE PLAN AND PROFILES
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.
CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
TEL: (508) 393-9727 FAX: (508) 393-5242

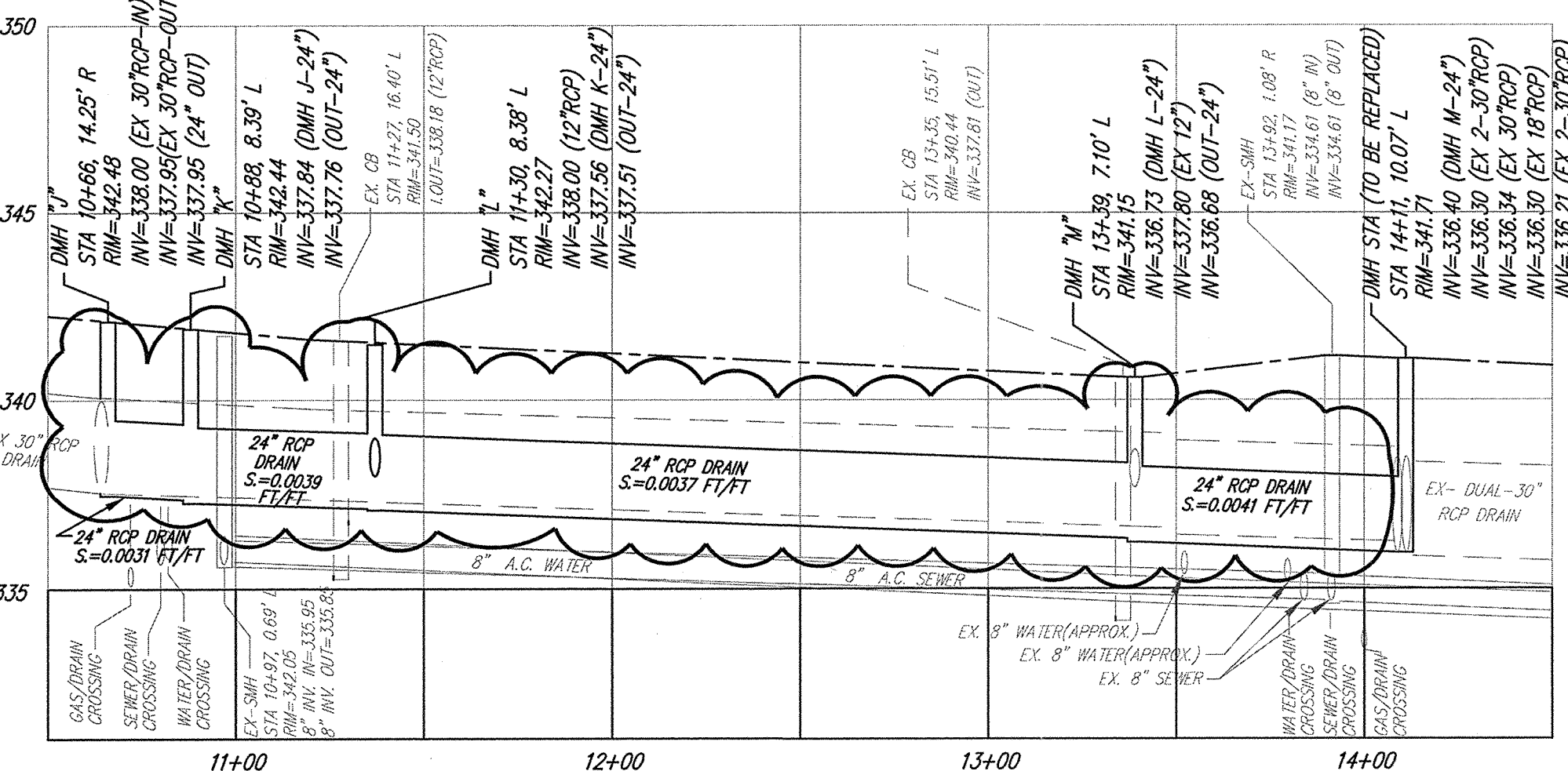
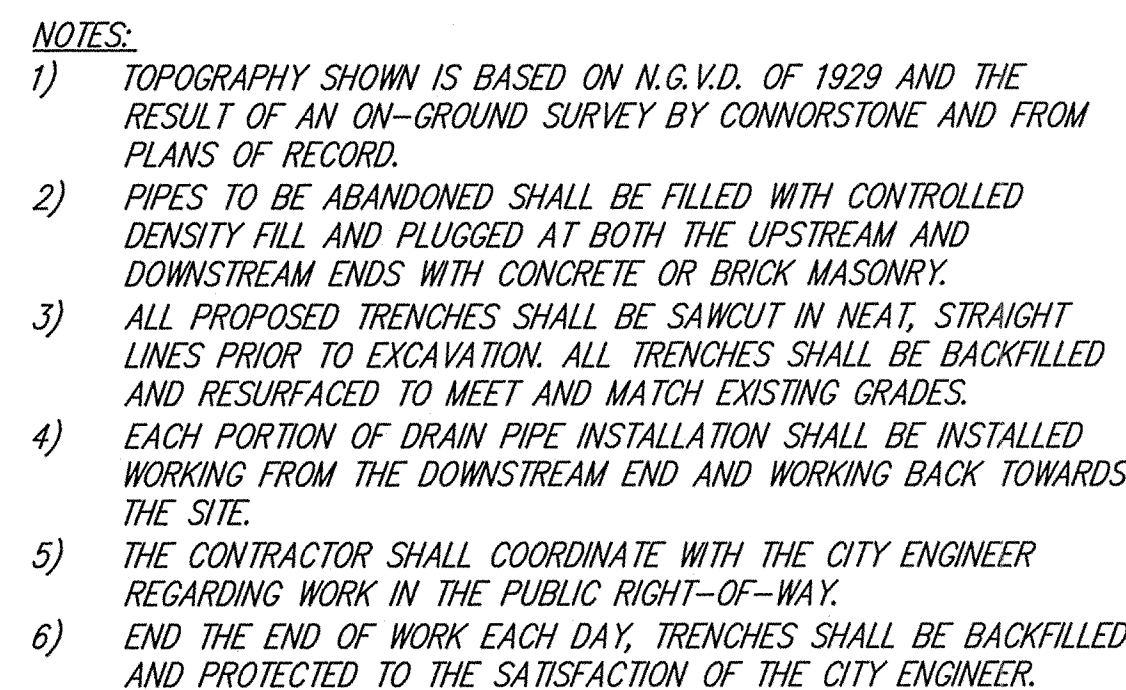
DESIGNED BY: REM,TDP	
CHECKED BY: VC	
COMPUTED BY: TDP	
FIELD SURVEY: BKK	
DRAWN BY: REM, TDP	
SCALE: AS SHOWN	
SHEET 4 OF 10	REVISIONS OCTOBER 24, 2019

APPROVAL UNDER THE
SUBDIVISION CONTROL LAW,
IS REQUIRED.
MARLBOROUGH PLANNING BOARD

NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.

I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

DATE: _____



NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND
THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.

I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
BURLINGTON, MA. 01803
(781) 272-7000
FAX (781) 272-3130

SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST STREET
WILMINGTON, MA. 01887
(978) 988-8060
FAX (978) 988-0181

OFF SITE PLAN AND PROFILE
OF
CONRAD ROAD
IN
MARLBOROUGH, MA.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532

DESIGNED BY: REM,TDP	
CHECKED BY: VC	
COMPUTED BY: TDP	
FIELD SURVEY: BKK	
DRAWN BY: TDP	
SCALE: AS SHOWN	
	REVISIONS
SHEET 5 OF 10	OCTOBER 24, 2019

ZONE: RESIDENCE A-3
AREA = 12,500 sf
FRONTAGE = 100 feet
SETBACKS: FRONT = 20 feet
SIDE = 15 feet
REAR = 30 feet

SOIL MANAGEMENT NOTES:
THE FOLLOWING NOTES APPLY TO THE REMOVAL OF EXISTING CONTAMINATED
SOILS ON-SITE IN ACCORDANCE WITH THE APPROVED SOIL MANAGEMENT
PLAN PRIOR TO COMMENCING CONSTRUCTION OF THE SUBDIVISION.

1. A PRE-CONSTRUCTION MEETING SHALL BE HELD AT THE SITE AT LEAST
SEVEN DAYS PRIOR TO THE START OF CONSTRUCTION, INCLUDING
REPRESENTATIVES OF THE OWNERS, THE CONTRACTOR AND APPROPRIATE
CITY OFFICIALS.
2. A LIST OF RESPONSIBLE PARTIES, AS CITED IN THE SOIL MANAGEMENT
PLAN, WILL BE PROVIDED AT THE PRE-CONSTRUCTION MEETING.
3. APPROPRIATE FENCING WILL BE PROVIDED IN ACCORDANCE WITH THE SOIL
MANAGEMENT PLAN. THE LOCATION OF THE FENCING WILL BE SHOWN ON
A CONSTRUCTION SEQUENCING PLAN TO BE PROVIDED AT OR BEFORE THE
PRE-CONSTRUCTION MEETING.
4. PRIOR TO CONSTRUCTION, THE SOIL MANAGEMENT PLAN FOR THE
DEVONSHIRE SITE WILL BE PROVIDED, SUBJECT TO THE APPROVAL OF THE
MARLBOROUGH BOARD OF HEALTH.
5. AIR QUALITY MONITORING LOCATIONS AND PROCEDURES WILL BE PROVIDED
ON THE CONSTRUCTION SEQUENCING PLAN AND PROVIDED AT THE
PRE-CONSTRUCTION MEETING.
6. THE HEALTH AND SAFETY PLAN WILL BE PROVIDED BY THE CONTRACTOR
AND THE OWNER'S LICENSED SITE PROFESSIONAL AT THE
PRE-CONSTRUCTION MEETING.
7. SUBJECT TO THE IMPLEMENTATION OF THE FINAL SOIL MANAGEMENT PLAN
PREPARED FOR THE GUTIERREZ COMPANY AND BIRCHWOOD DEVELOPMENT,
PREPARED BY ENVIRONMENTAL RISK GROUP DATED FEBRUARY 2006.

LEGEND

- TEMPORARY STUMP PILE
- TEMPORARY SEDIMENT BASIN
- PORTRA POTTY
- LOAM STOCKPILE
- MATERIAL STORAGE
- EXCESS MATERIAL
- CONSTRUCTION TRAILER

PHASING

1. CUT TREES WHERE REQUIRED.
2. INSTALL EROSION CONTROLS
3. CONSTRUCT TEMPORARY SEDIMENT BASINS.
4. REMOVE CONTAMINATED SOILS IN ACCORDANCE WITH APPROVED
SOIL MANAGEMENT PLAN.
5. ROUGH GRADE ROADWAY
6. INSTALL DRAINAGE, SILT SACKS IN CATCH BASINS.
7. INSTALL REMAINING UNDERGROUND UTILITIES.
8. CONSTRUCT SIDEWALK AND ROAD TO BINDER.
9. LOAM AND SEED.
10. WHEN SITE IS STABILIZED, CONVERT TEMPORARY SEDIMENT BASIN
TO TONAL CONSTRUCTED WETLAND.

DUST CONTROL: THE CONTRACTOR SHALL MAINTAIN ON SITE
AN ADEQUATE WATER SUPPLY TO PREVENT THE GENERATION
OF DUST.

NOISE ABATEMENT: ALL EQUIPMENT USED ON THE SITE SHALL
BE EQUIPPED WITH MUFFLERS AND/OR OTHER NOISE
CONTROLLING DEVICES AS REQUIRED BY STATE AND LOCAL
REGULATIONS.

BLASTING: IF REQUIRED, BLASTING SHALL BE CONDUCTED IN
ACCORDANCE WITH ALL LOCAL, FEDERAL AND STATE
REGULATIONS, INCLUDING 527 CMR 13.

NOTES:
1. EROSION CONTROLS TO BE SET IN PLACE PRIOR TO
CONSTRUCTION TAKING PLACE.

2. ONCE CATCH BASINS HAVE BEEN INSTALLED, SILTSACK
SHALL BE PLACED IN ALL CATCH BASINS.

EROSION CONTROL PLAN
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
TEL: (508) 393-9727 FAX: (508) 393-5242

DESIGNED BY: REM,TDP
CHECKED BY: VC
COMPUTED BY: VHH
FIELD SURVEY: BKK
DRAWN BY: REM, VHH
SCALE: 1" = 40'
SHEET 6 OF 10

REVISIONS
OCTOBER 24, 2019

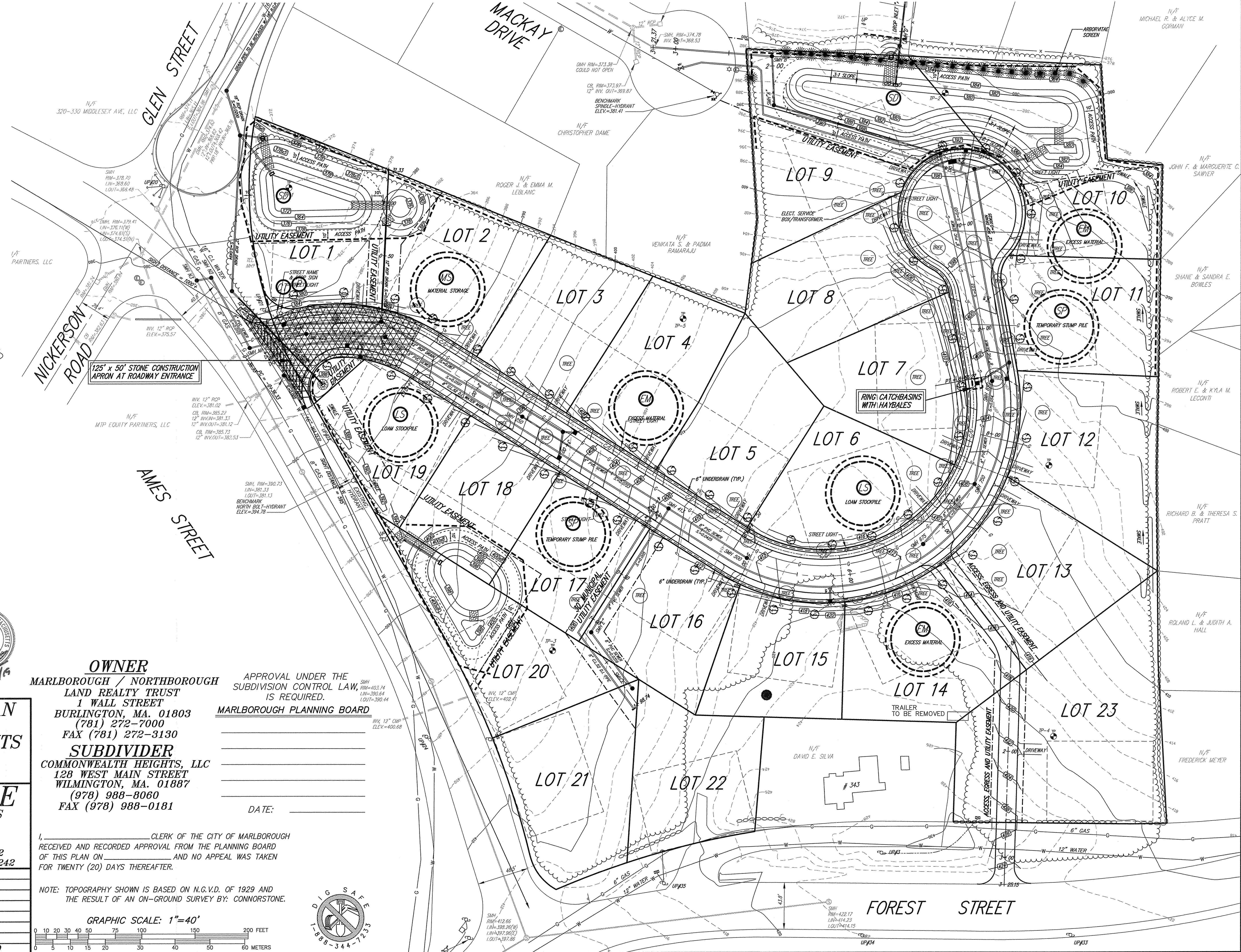
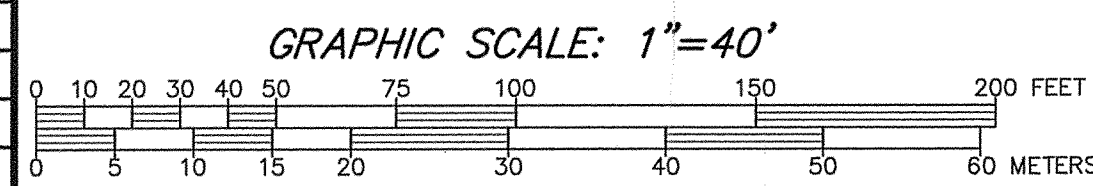
OWNER
MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
1 WALL STREET
BURLINGTON, MA. 01803
(781) 272-7000
FAX (781) 272-3130
SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST MAIN STREET
WILMINGTON, MA. 01887
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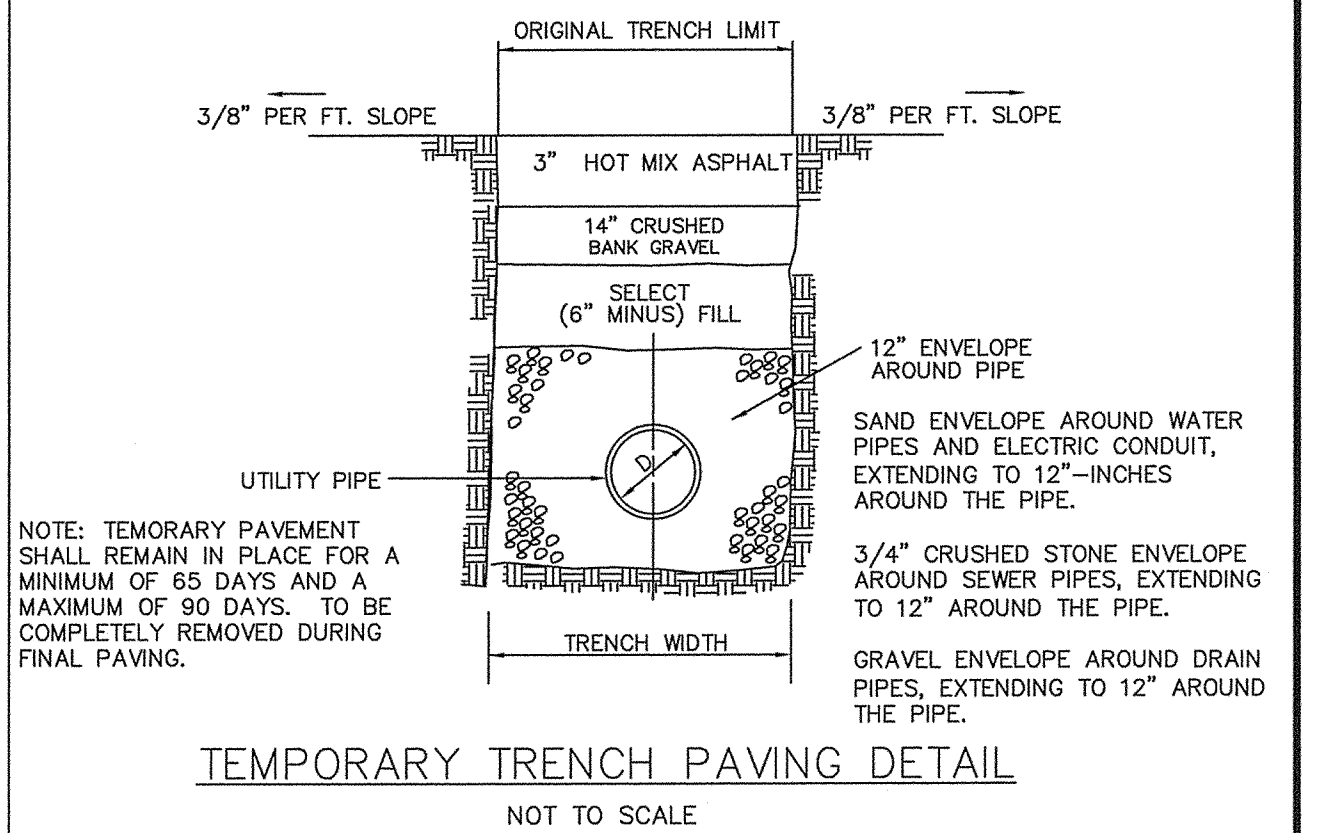
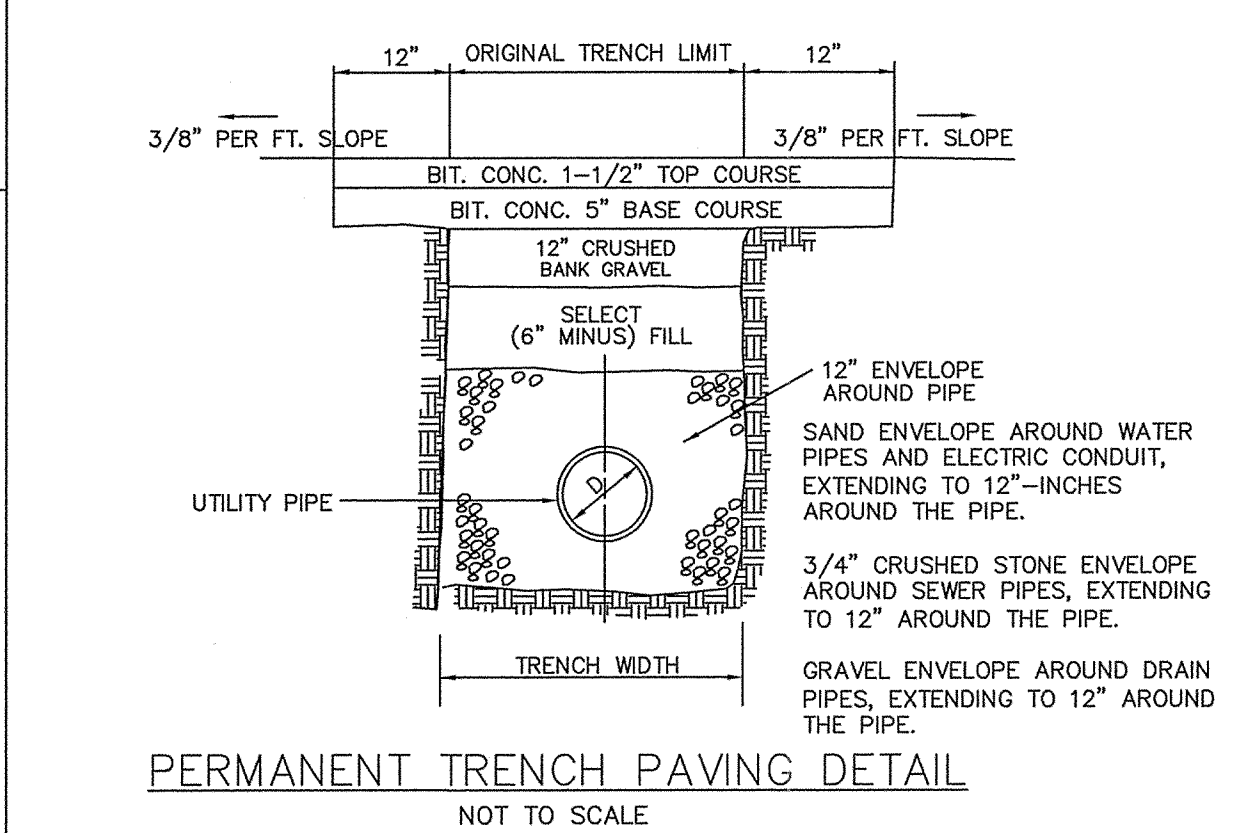
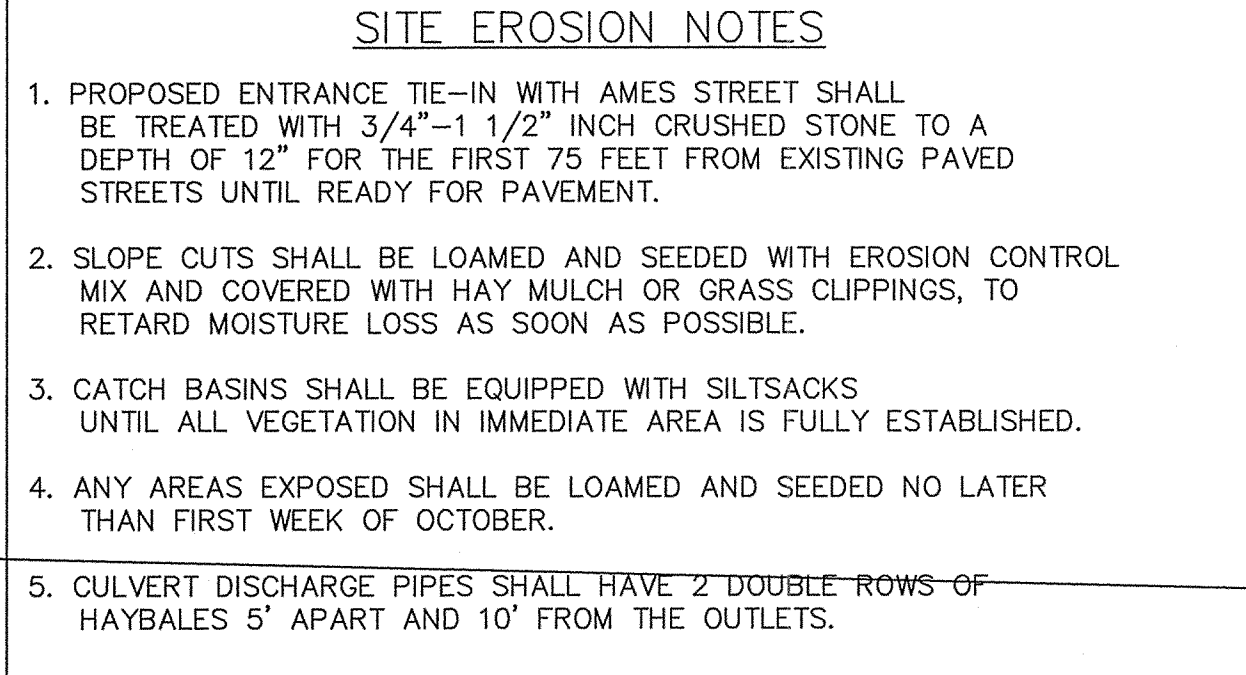
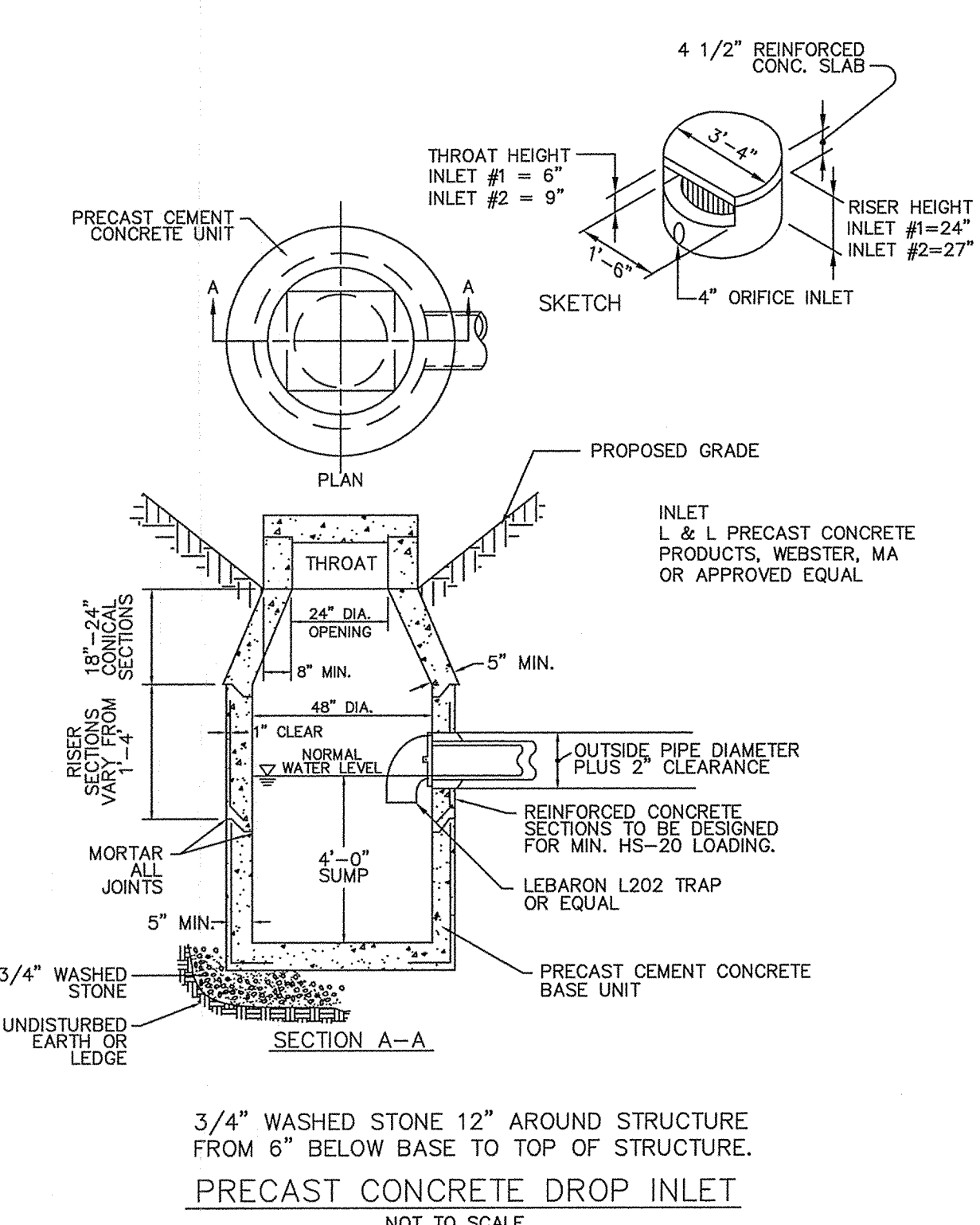
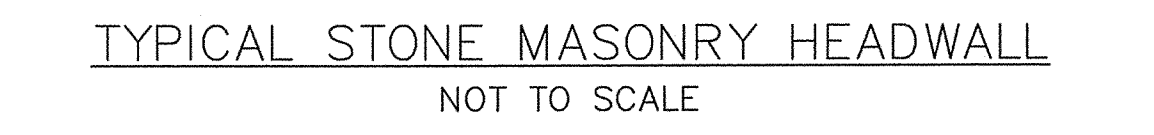
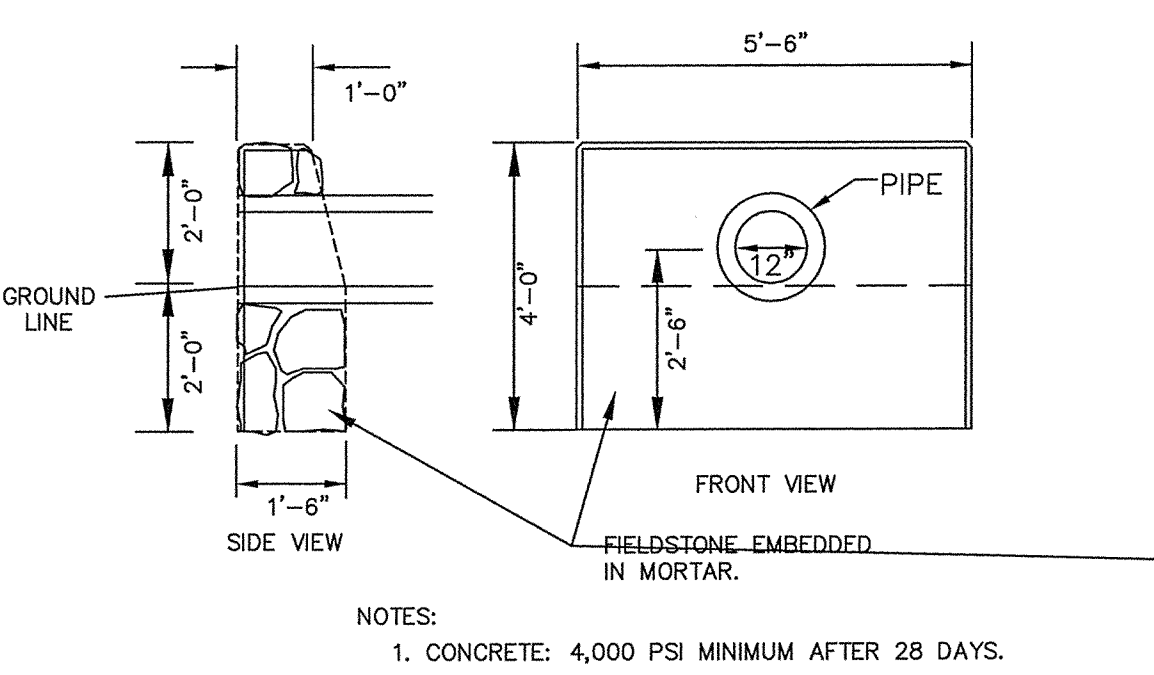
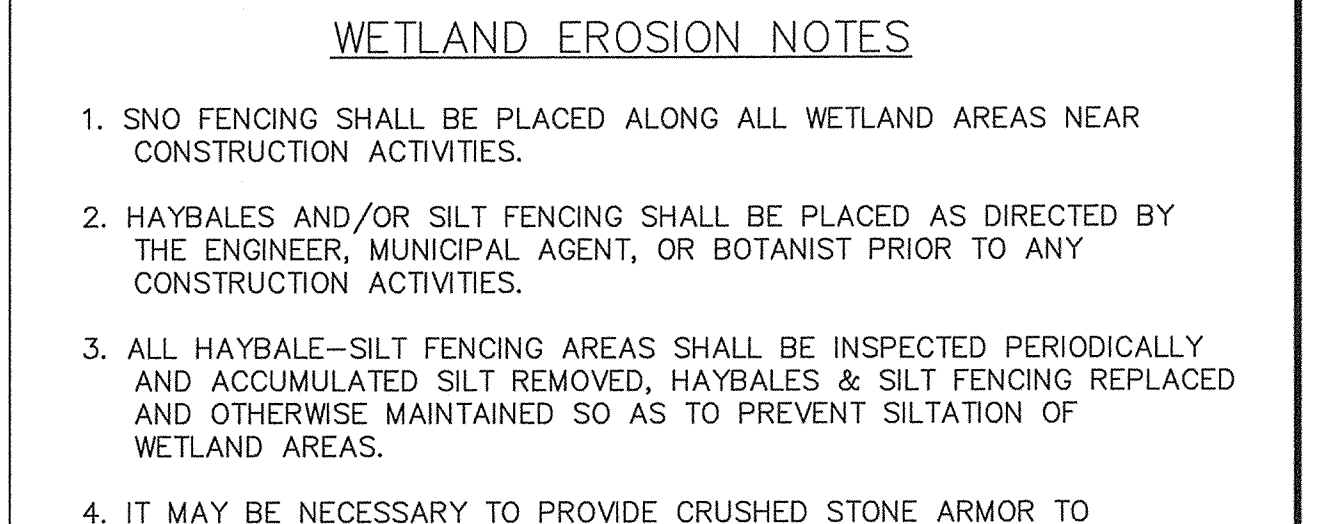
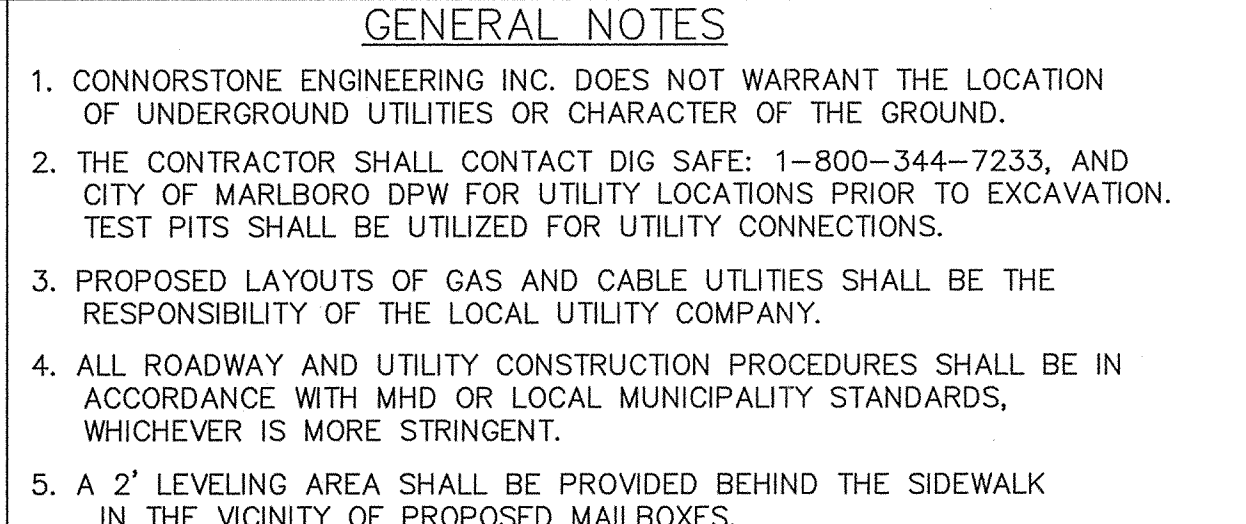
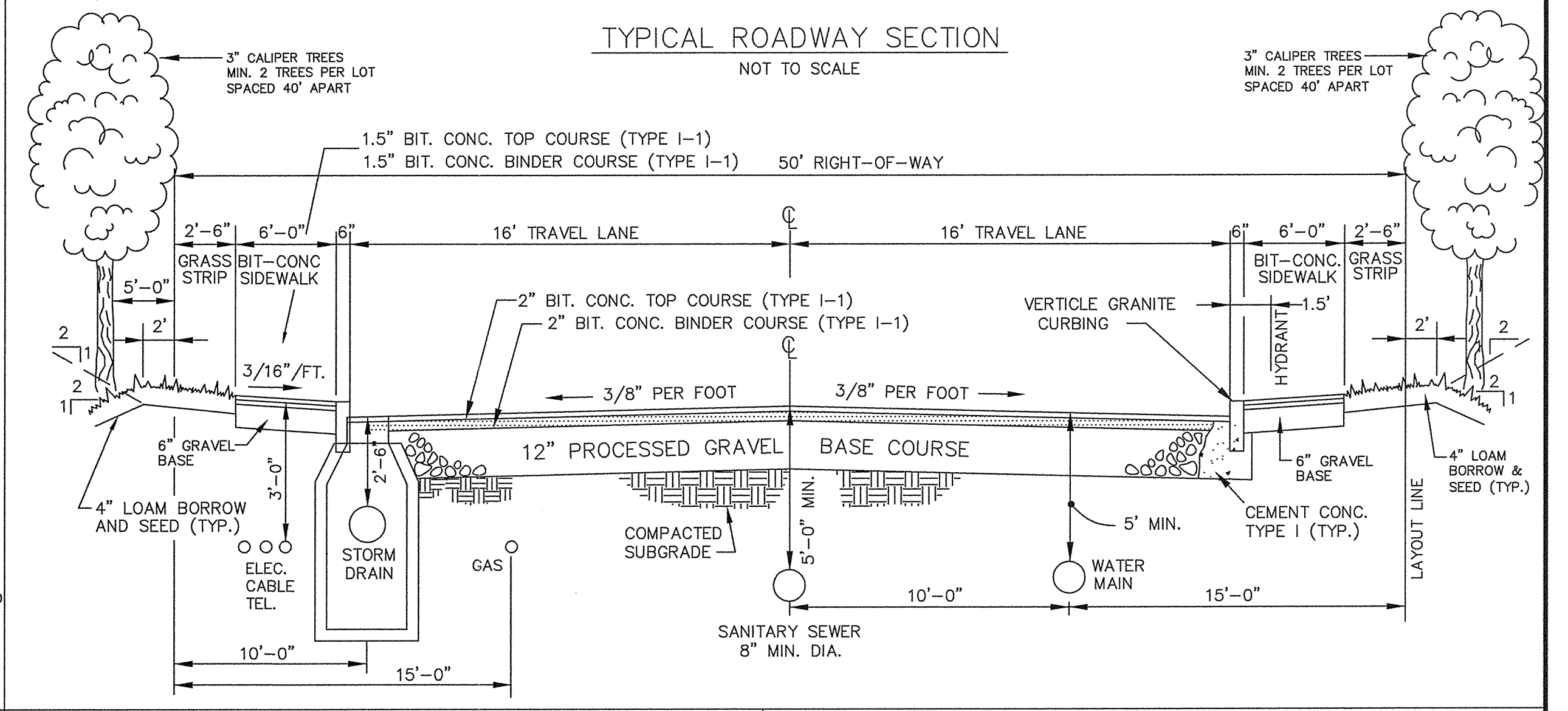
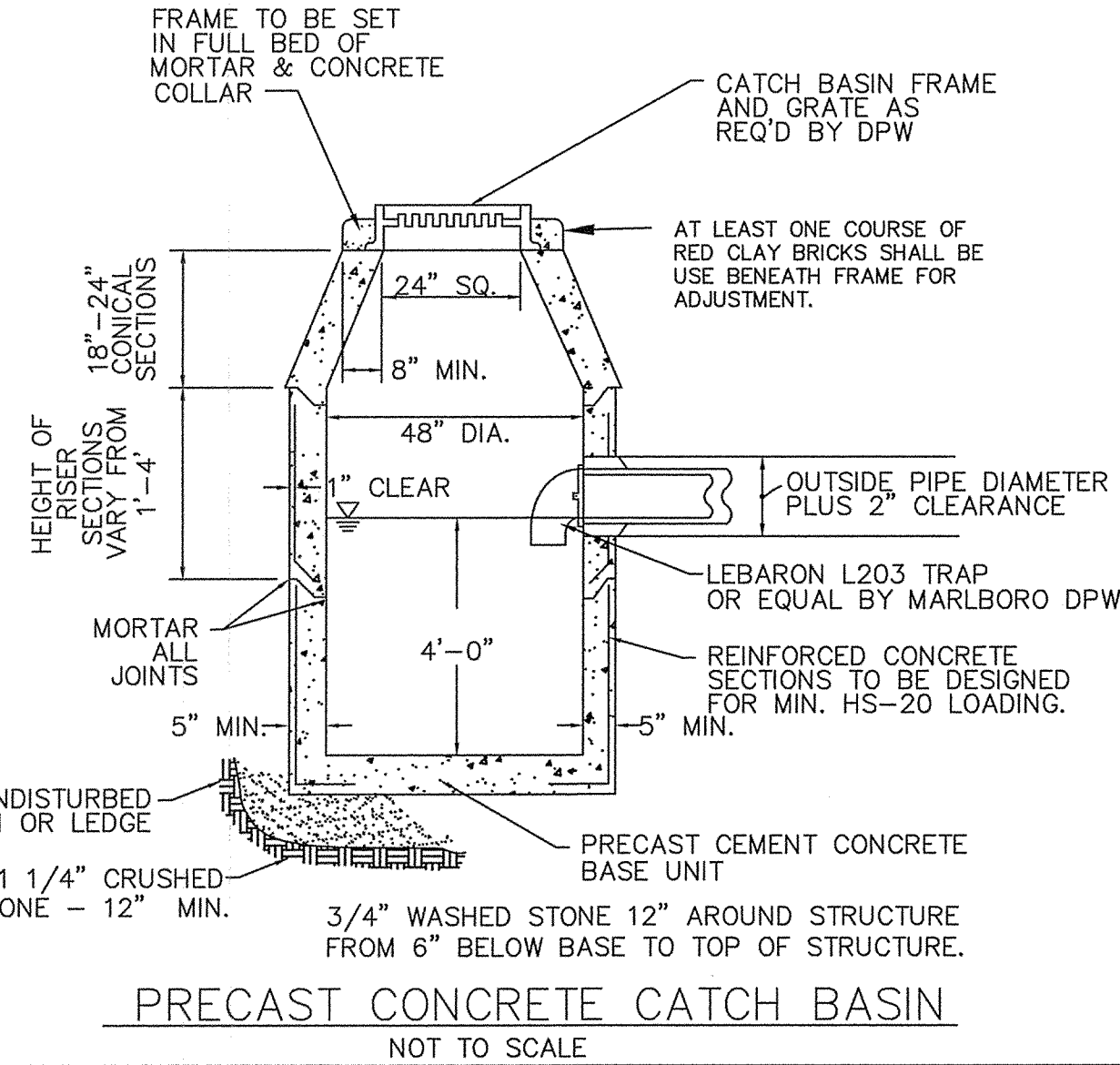
APPROVAL UNDER THE
SUBDIVISION CONTROL LAW,
IS REQUIRED.
MARLBOROUGH PLANNING BOARD

DATE: _____

I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

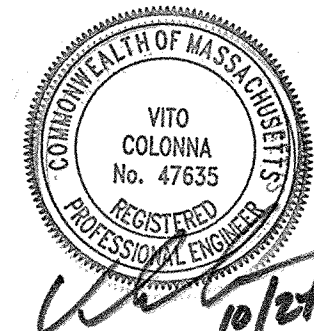
NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND
THE RESULT OF AN ON-GROUND SURVEY BY: CONNORSTONE.





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MARLBOROUGH PLANNING BOARD

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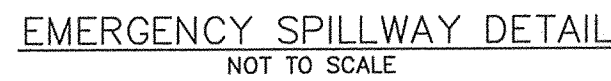
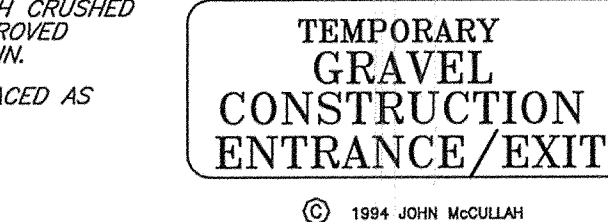
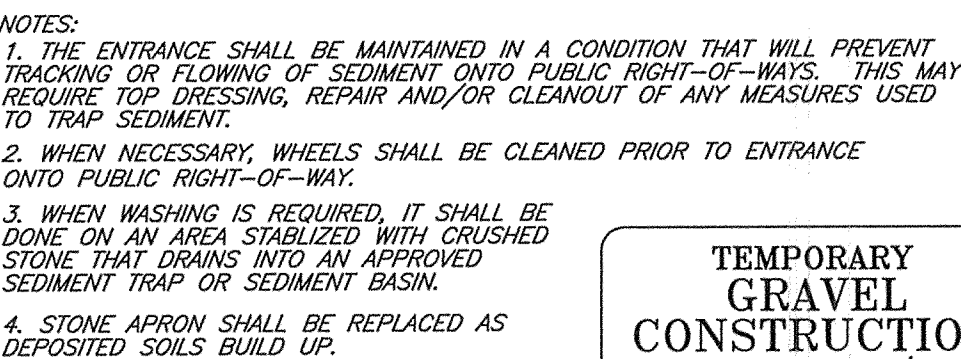
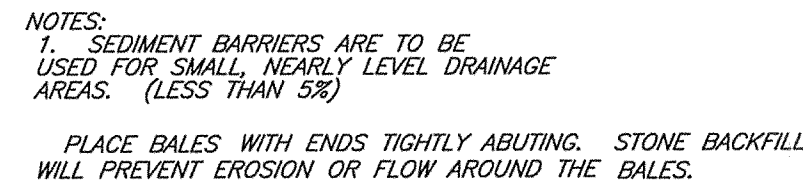


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TEL: (508) 393-9727 FAX: (508) 393-5242

DESIGNED BY: REM, TDP
CHECKED BY: VC
COMPUTED BY: REM
FIELD SURVEY: BKK
DRAWN BY: REM
SCALE: NONE
SHEET 7 OF 10

*CONSTRUCTION DETAILS
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.*

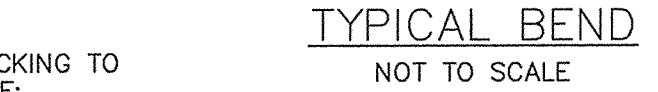
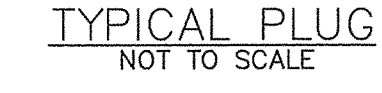
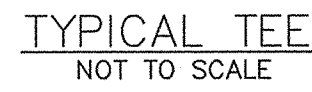
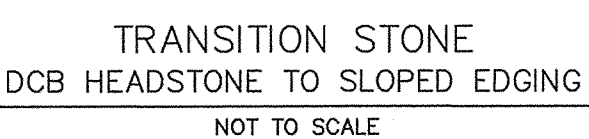
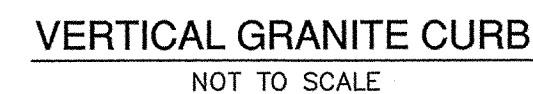
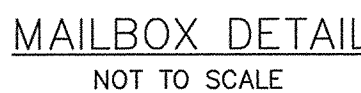
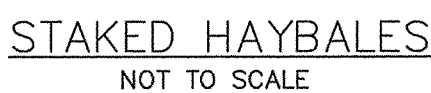
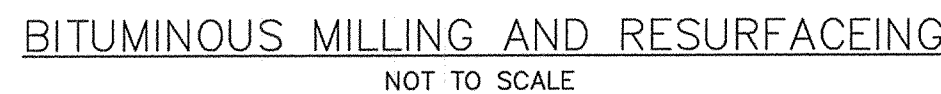
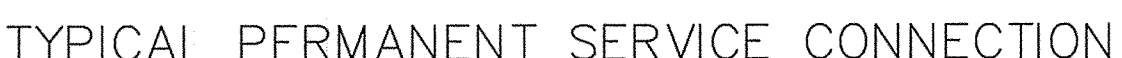
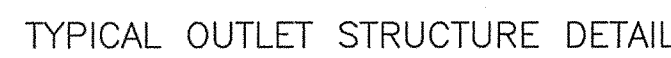
<p><i>REVISIONS</i></p> <p><i>OCTOBER 24, 2019</i></p>
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DESIGN DATA & GENERAL NOTES

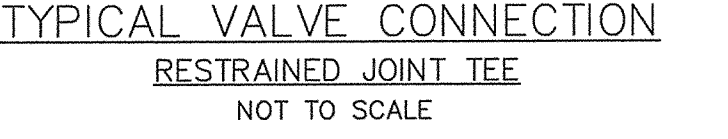
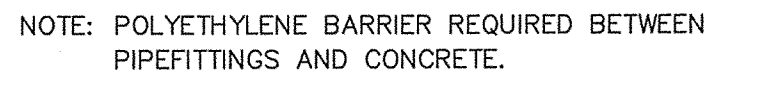
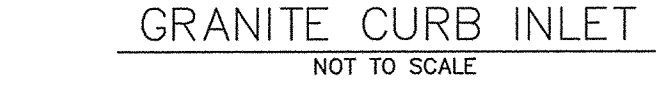
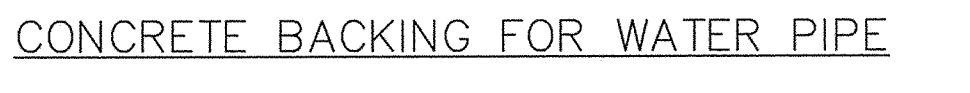
1. CHASE PRECAST CORP. PRODUCT #D1 42-MTA
2. CONCRETE STRENGTH f_c 5,000 28 DAYS. DENSITY 150 PCF.
3. CEMENT, PORTLAND TYPE I OR III PER ASTM C150-81
4. ADMIXTURES & PLASTICIZERS PER ASTM C233-82.
5. REINFORCING PER ASTM A615 GRADE 60. EPOXY COATED.
6. DESIGN LOADING PER AASHTO HS20-44 AND ACI 318-83.
7. CONFORMS TO MASS. TURNPIKE AUTHORITY STANDARDS.
8. INTERIOR FINISH BY CONTRACTOR.
9. APPROXIMATE WEIGHT: 10,500 LBS.

PROVIDE FIELD
MASONRY F



SIZE OF MAIN (IN.)	45° BEND	TEES & PLUGS	22 1/2° BEND
8" OR LESS	8	10	8
10" & 12"	22	16	13

NOTE: POLYETHYLENE BARRIER REQUIRED BETWEEN PIPEFITTINGS AND CONCRETE.



OWNER
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(781) 272-7000

DEFINITIVE PLAN

*CONSTRUCTION DETAILS
OF
COMMONWEALTH HEIGHTS
IN
MARLBOROUGH, MA.*

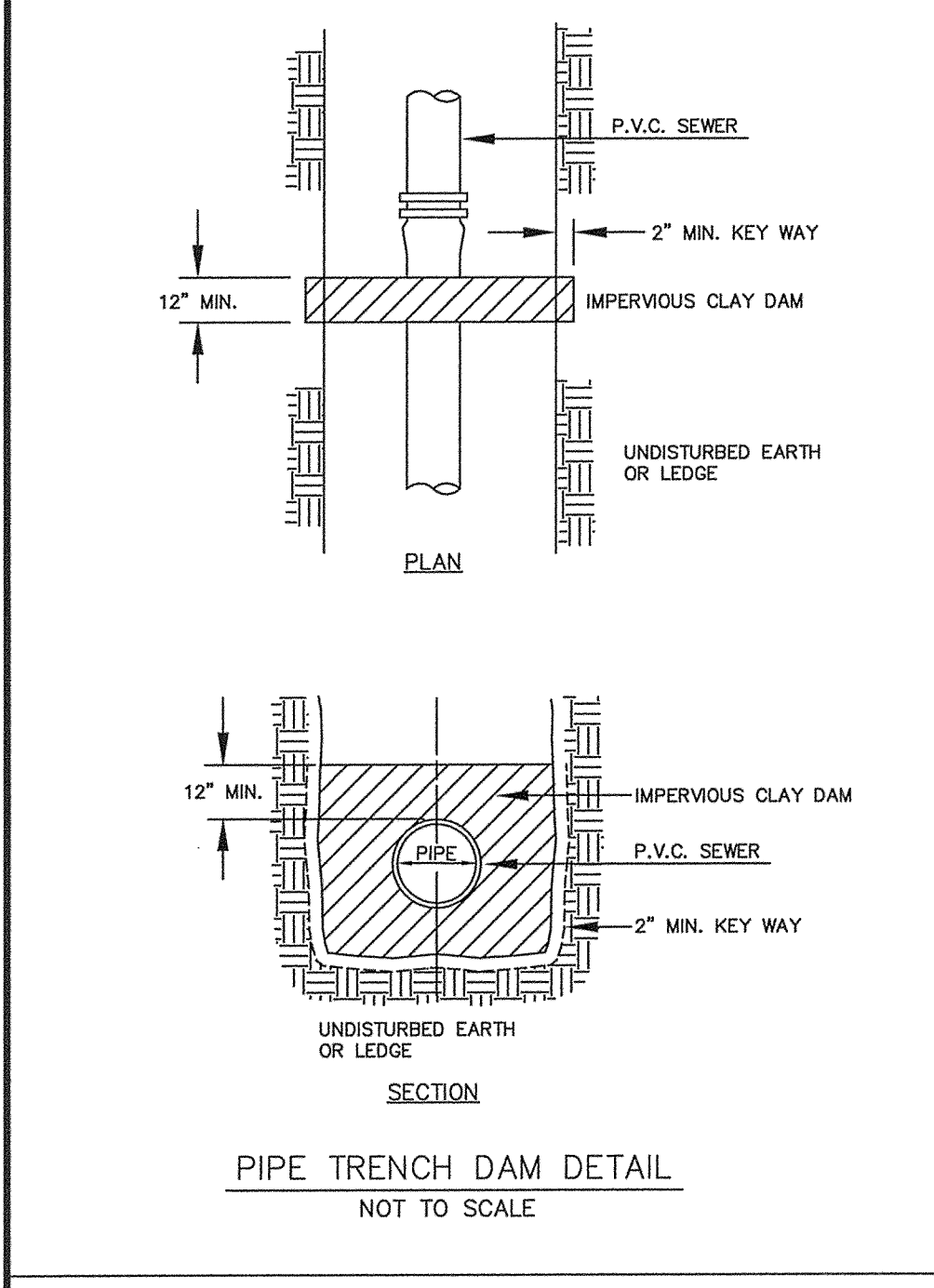
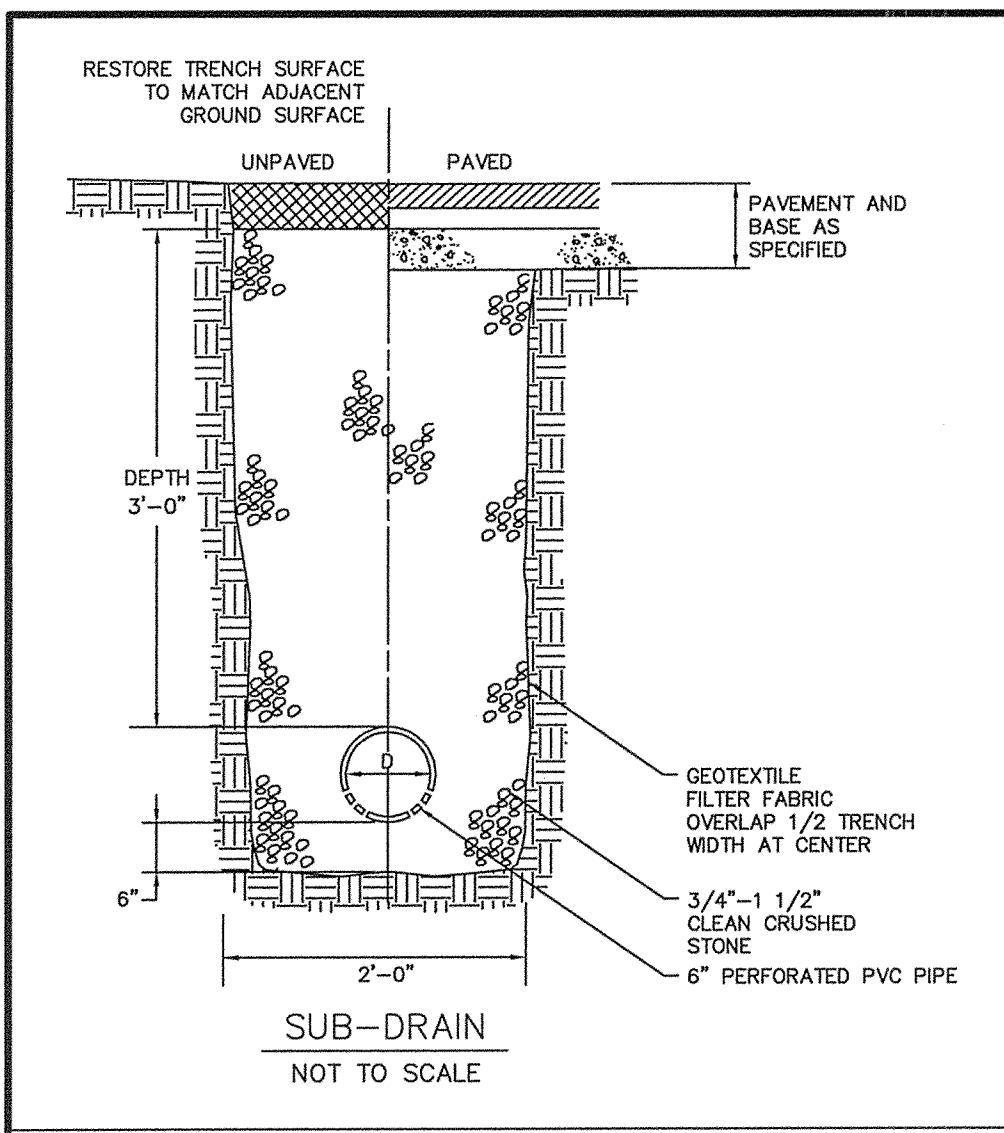
REVISIONS
OCTOBER 24, 2019

I, _____ CLERK OF THE CITY OF MARLBOROUGH
RECEIVED AND RECORDED APPROVAL FROM THE PLANNING BOARD
OF THIS PLAN ON _____ AND NO APPEAL WAS TAKEN
FOR TWENTY (20) DAYS THEREAFTER.

CONNORSTONE
CONSULTING CIVIL ENGINEERS
AND
LAND SURVEYORS
10 SOUTHWEST CUTOFF, SUITE 7
NORTHBOROUGH, MASSACHUSETTS 01532
TEL: (508) 393-9727 FAX: (508) 393-5242

DESIGNED BY: REM, TDP
CHECKED BY: VC
COMPUTED BY: REM
FIELD SURVEY: BKK
DRAWN BY: REM
SCALE: NONE
SHEET 8 OF 10



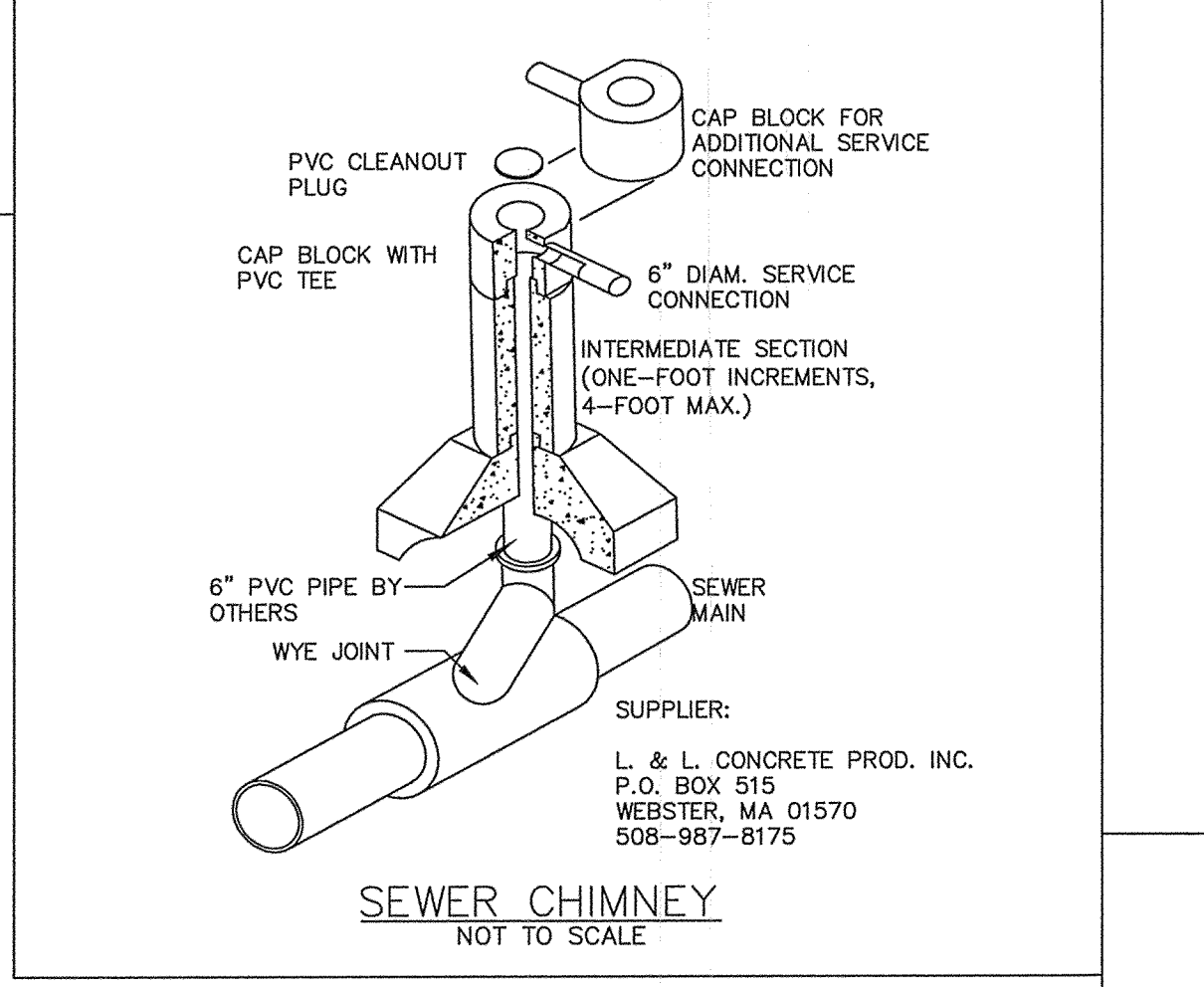
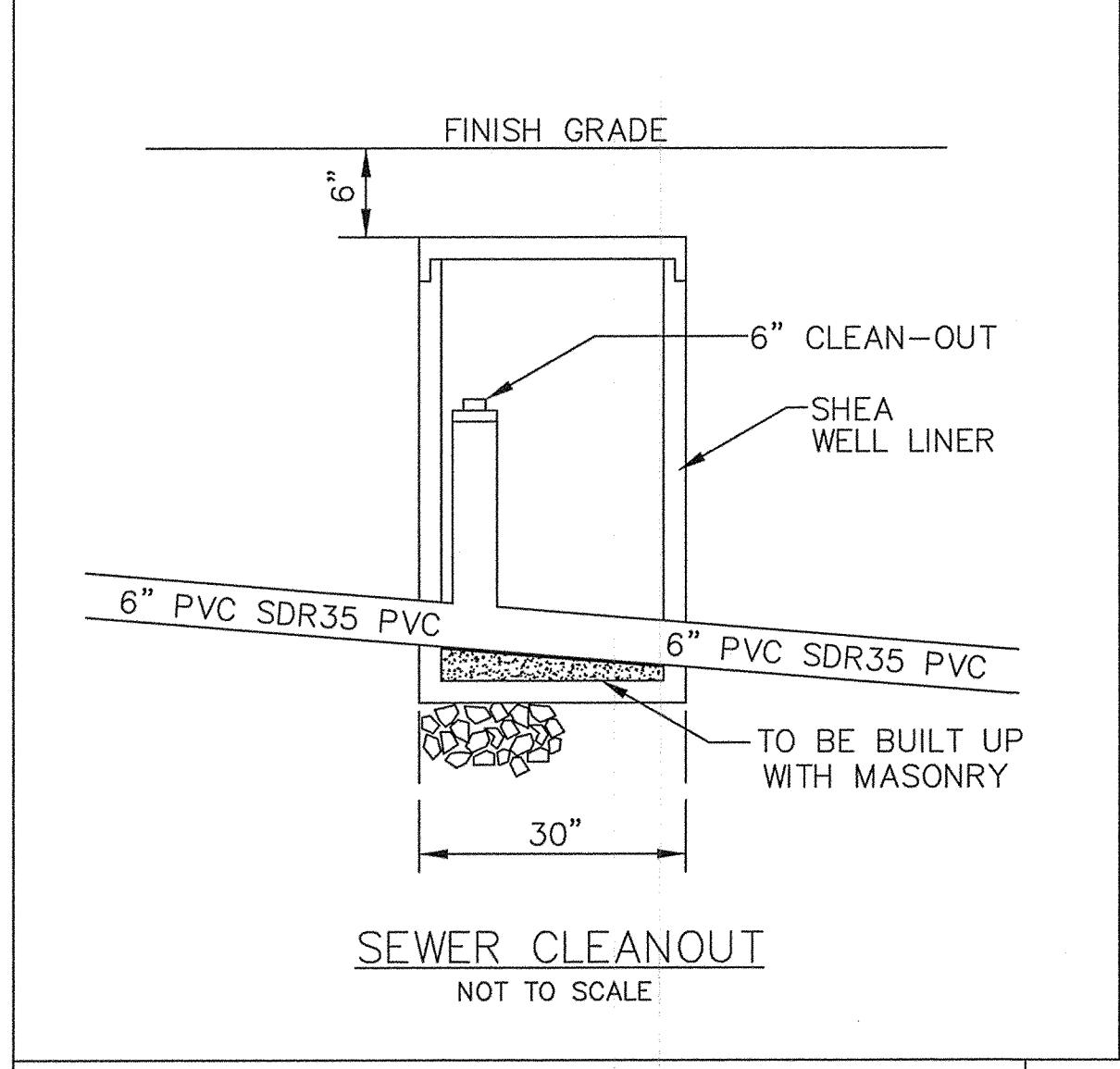
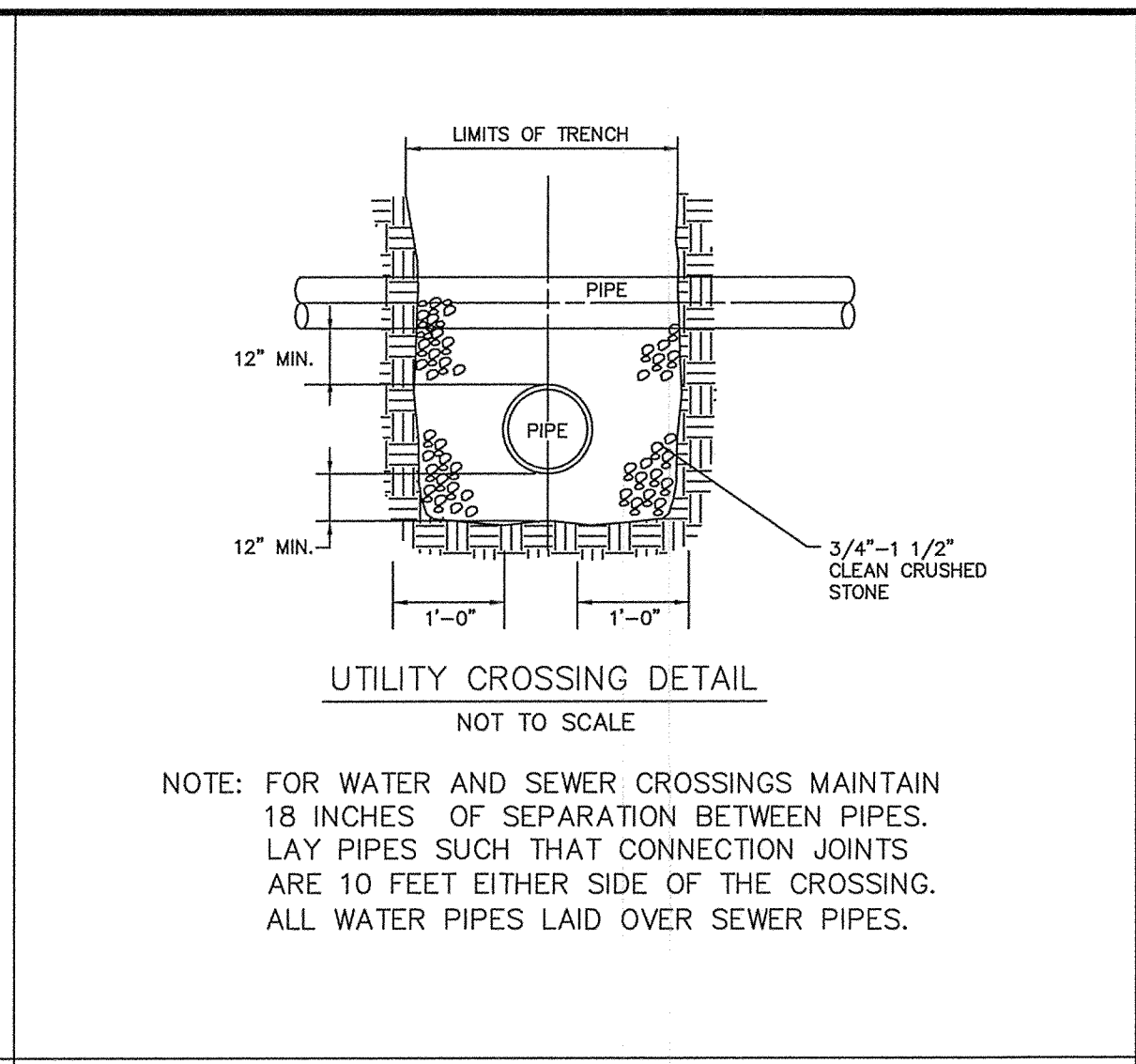


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MARLBOROUGH / NORTHBOROUGH
LAND REALTY TRUST
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BURLINGTON, MA. 01803

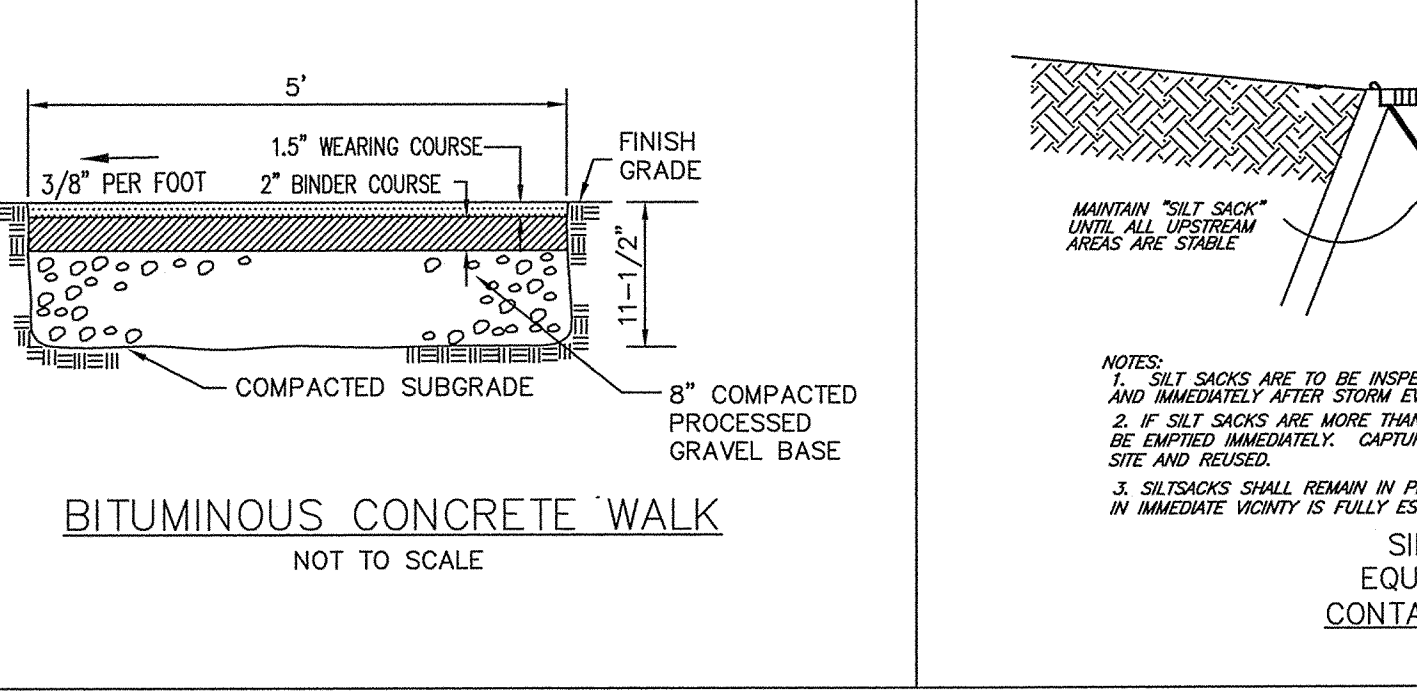
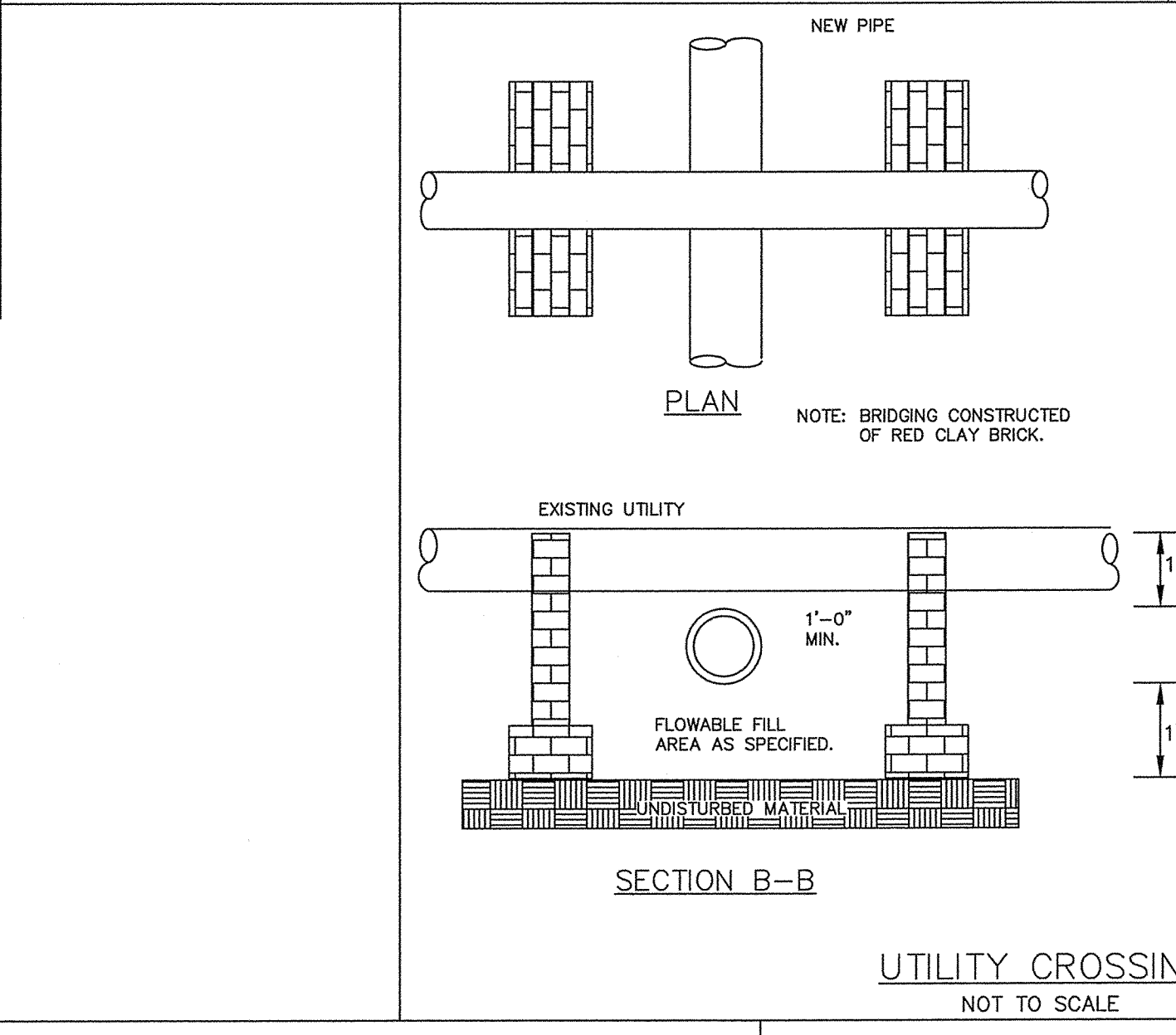
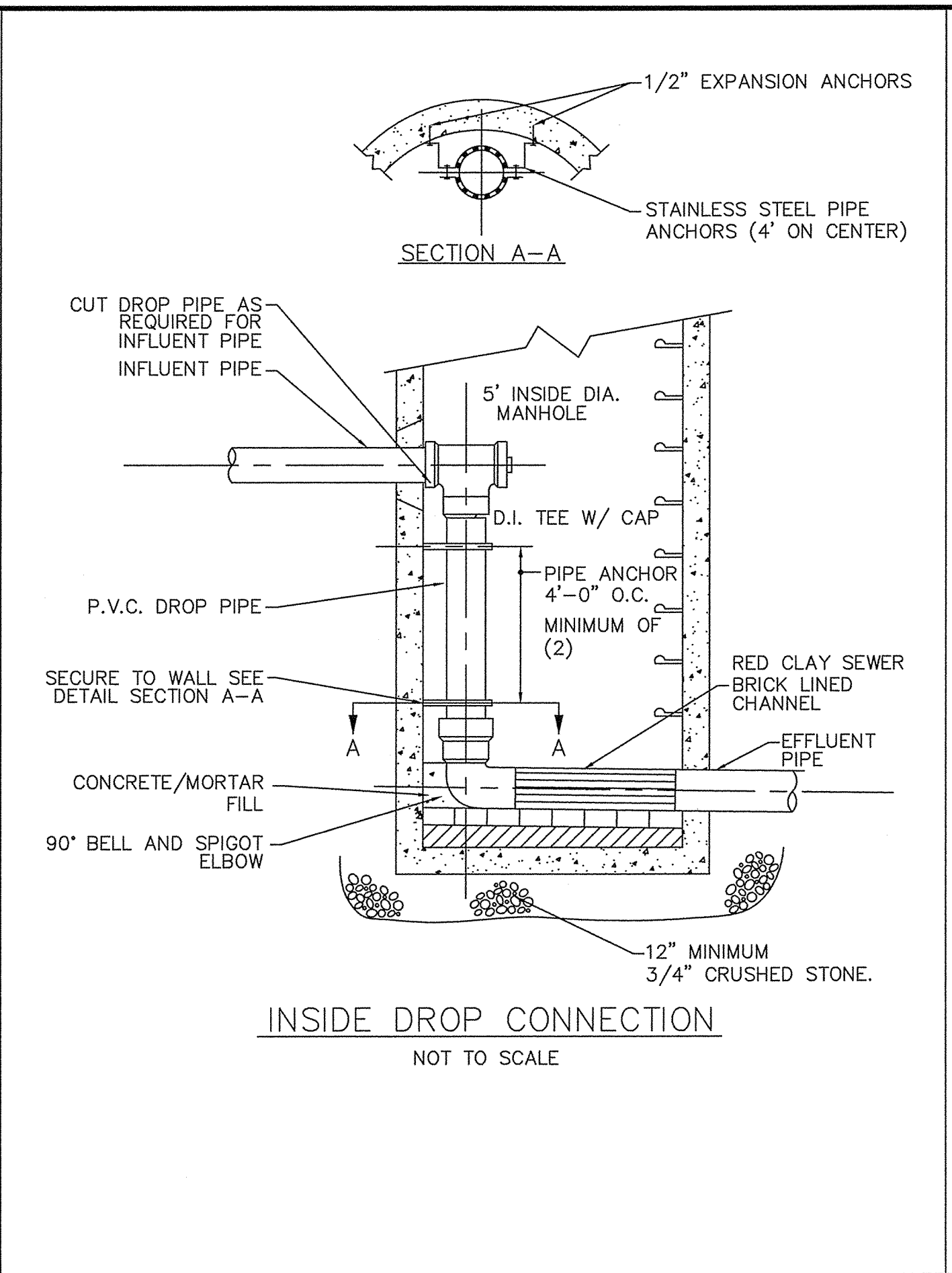
SUBDIVIDER
COMMONWEALTH HEIGHTS, LLC
128 WEST STREET
WILMINGTON, MA. 01887

APPROVAL UNDER THE
 SUBDIVISION CONTROL LAW,
 IS REQUIRED.
MARLBOROUGH PLANNING BOARD

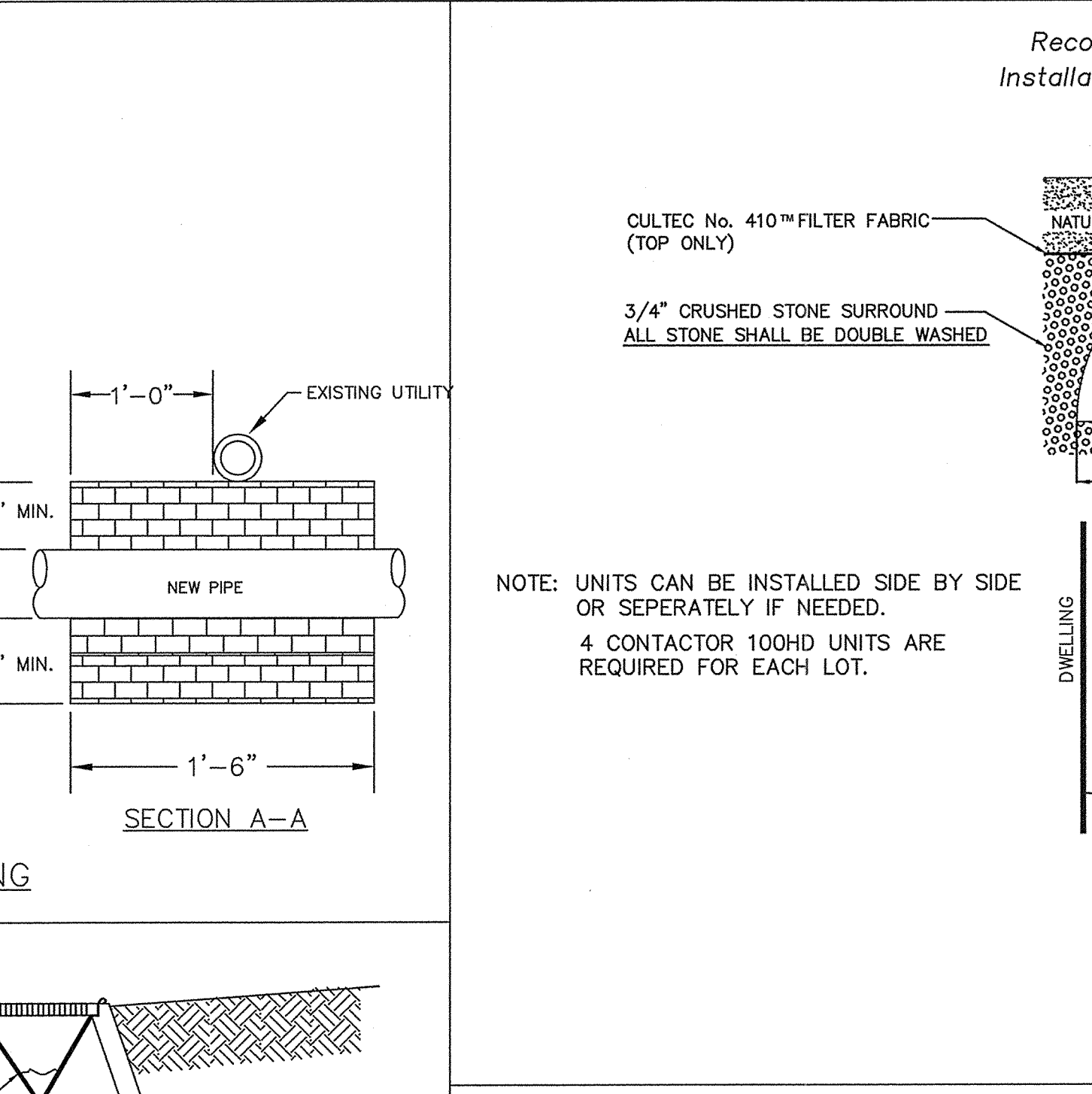
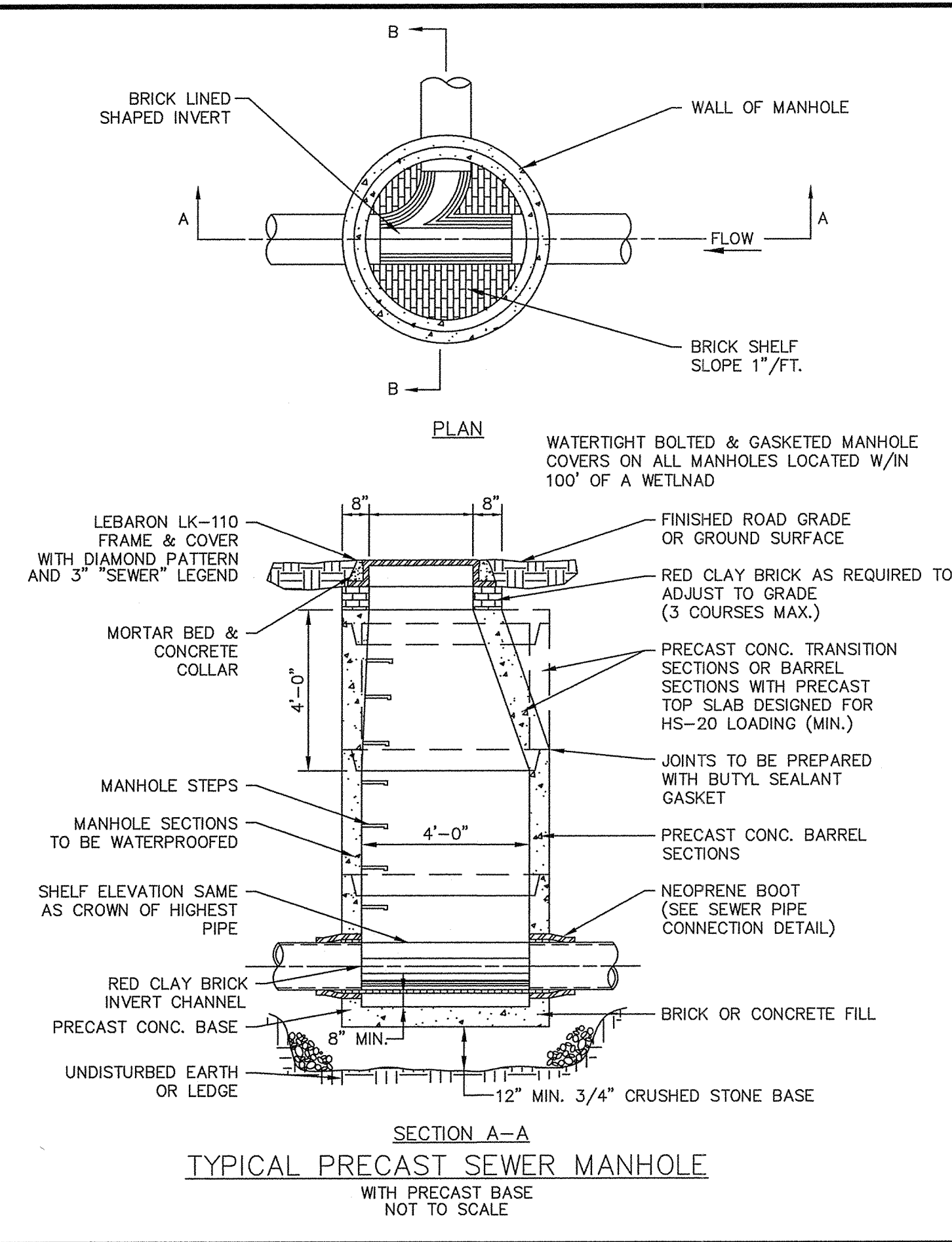
DATE: _____



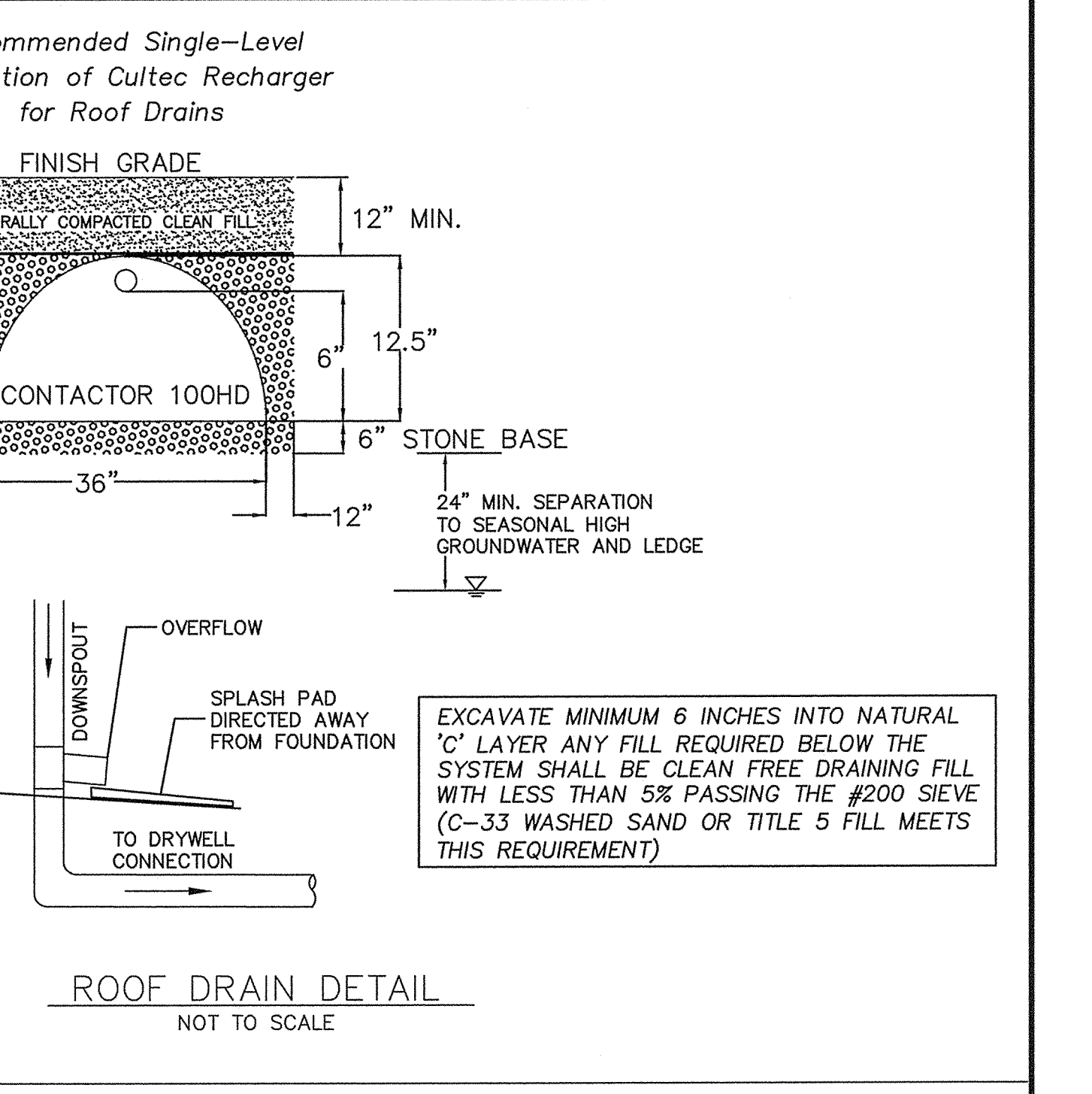
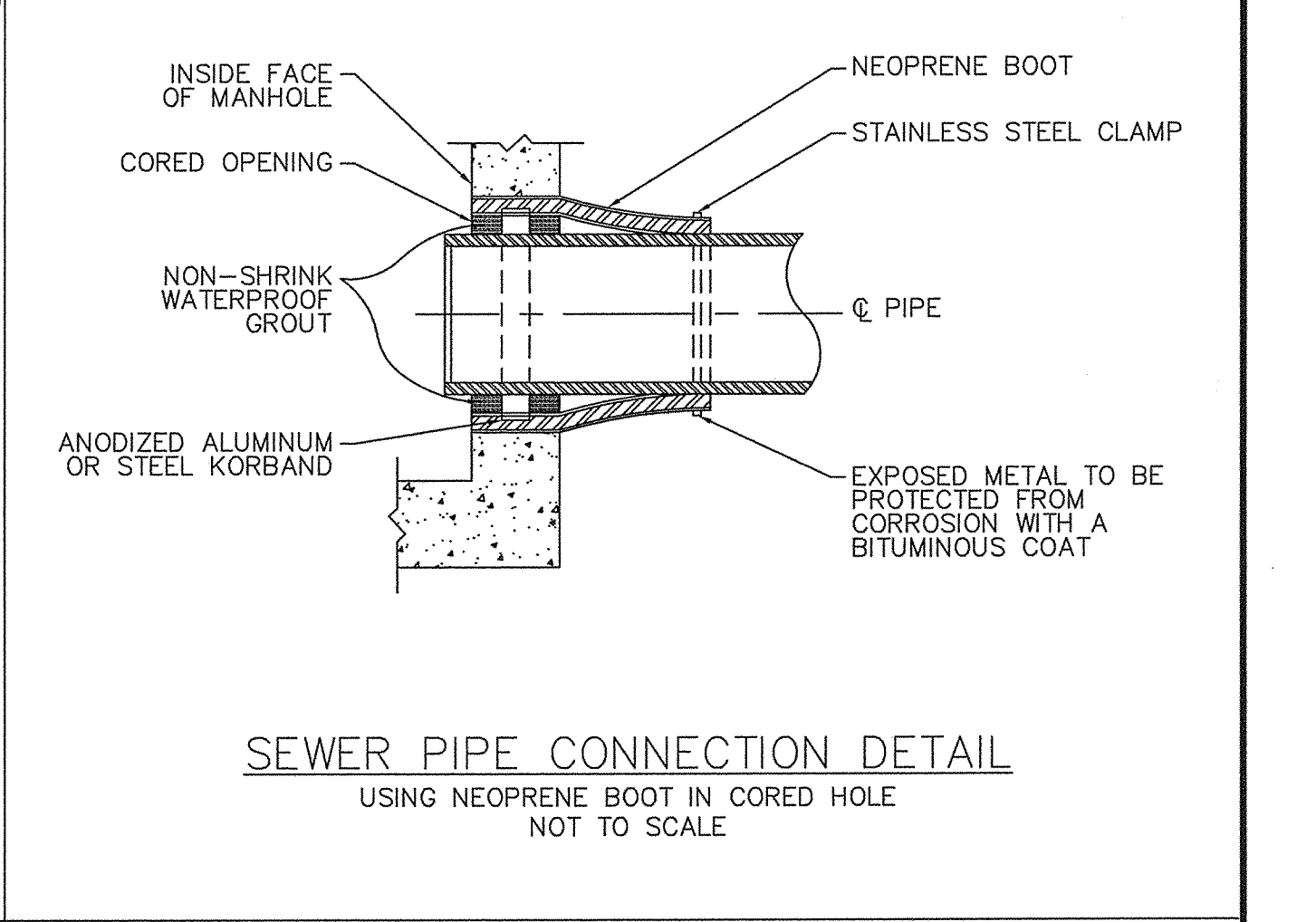
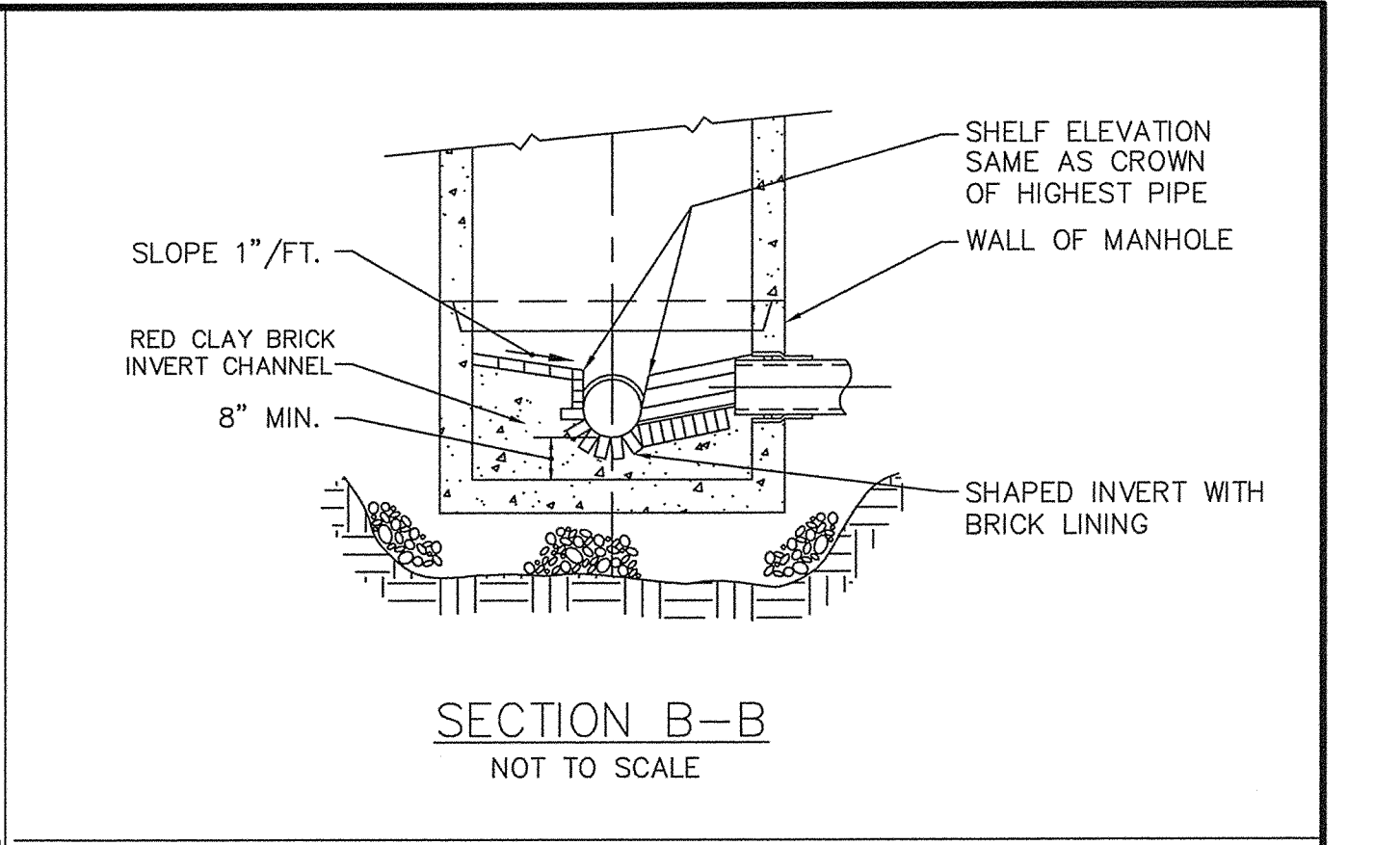
CLERK OF THE CITY OF MARLBOROUGH
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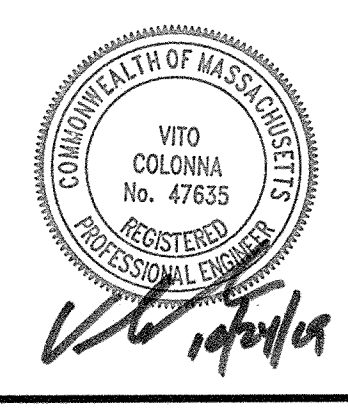
CONCORSTONE
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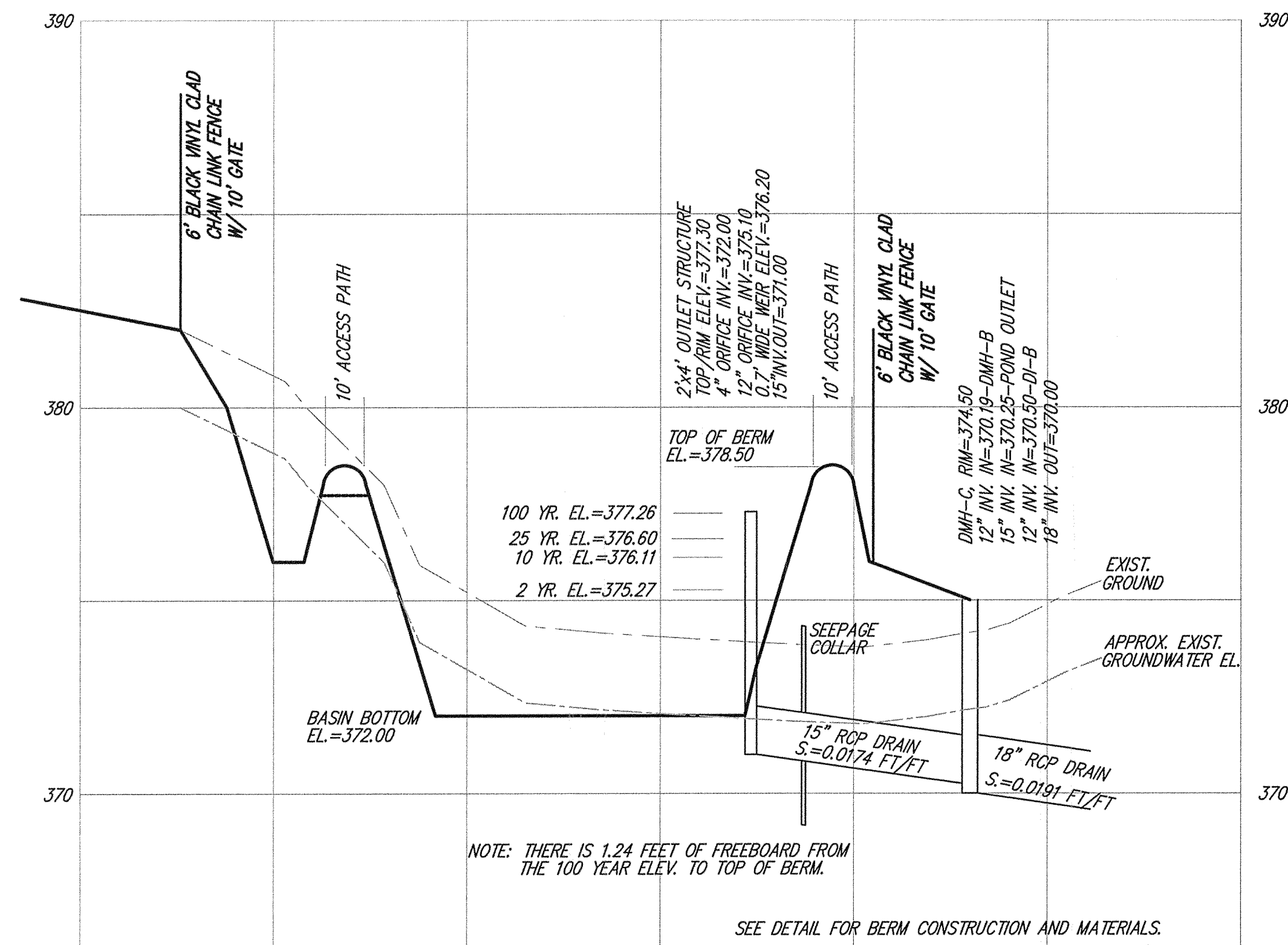


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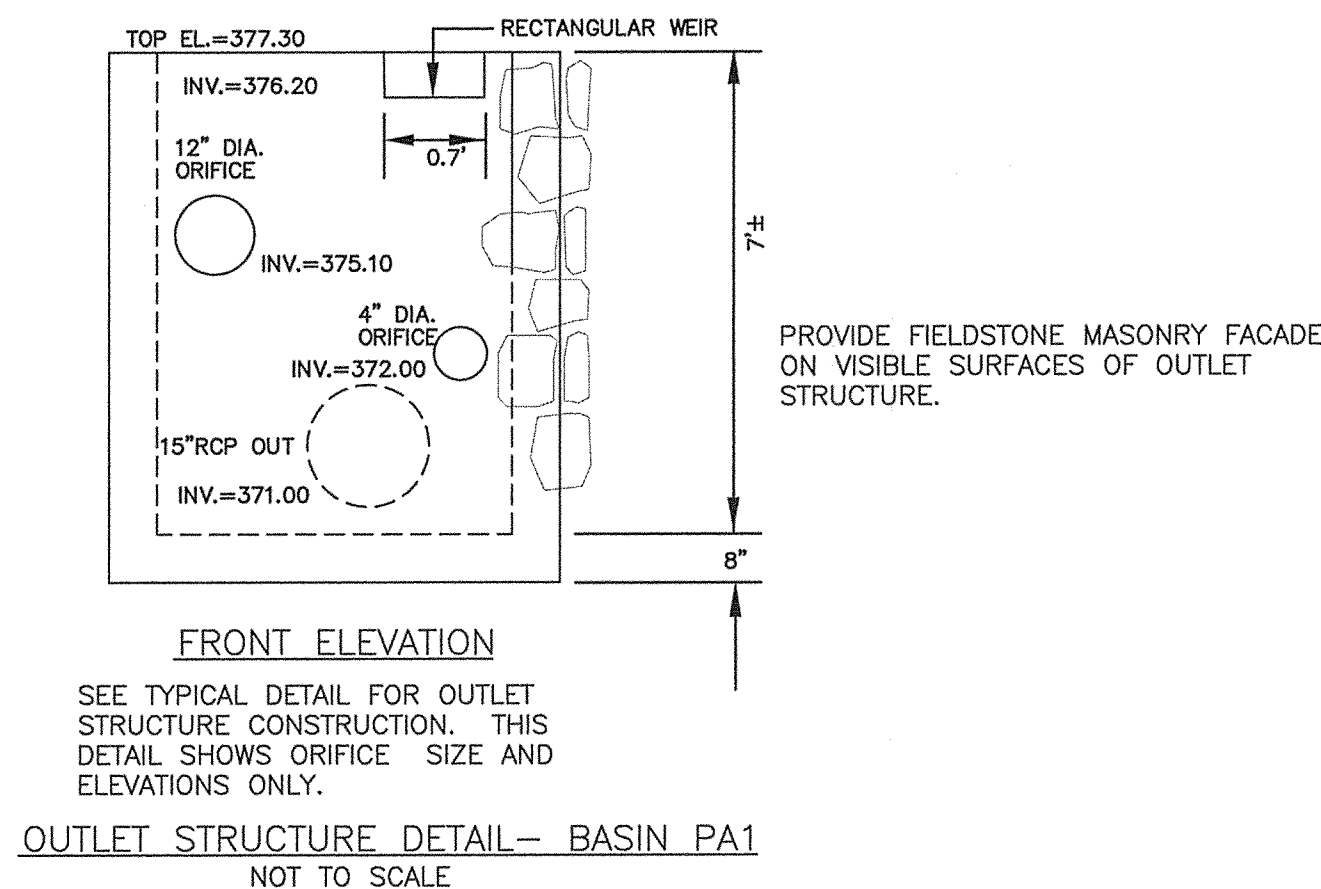
DESIGNED BY: REM, TDP
 CHECKED BY: VC
 COMPUTED BY: REM
 FIELD SURVEY: BKK
 DRAWN BY: REM
 SCALE: NONE
 SHEET 9 OF 10

CONSTRUCTION DETAILS
 OF
 COMMONWEALTH HEIGHTS
 IN
 MARLBOROUGH, MA.

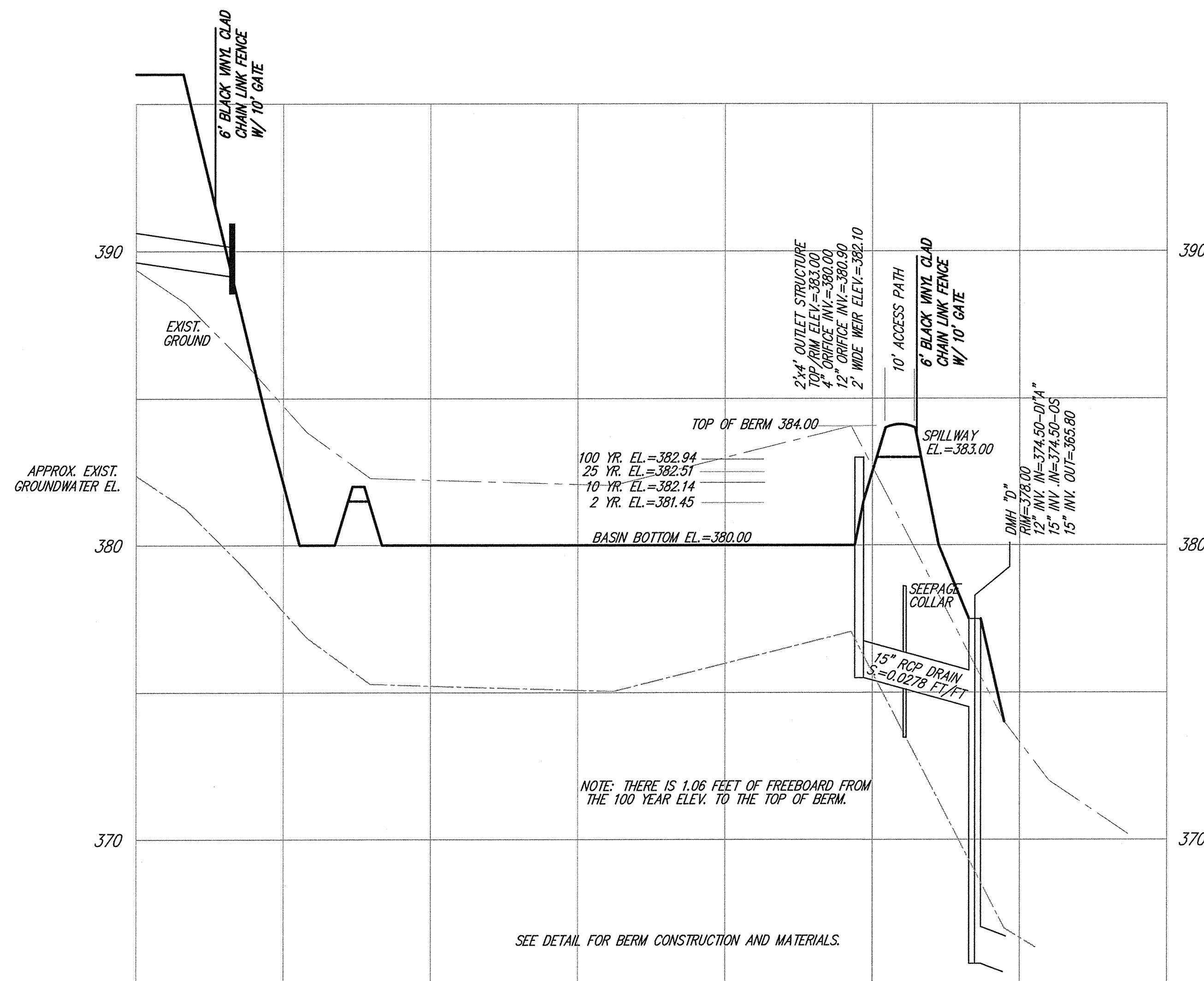
REVISIONS
OCTOBER 24, 2019



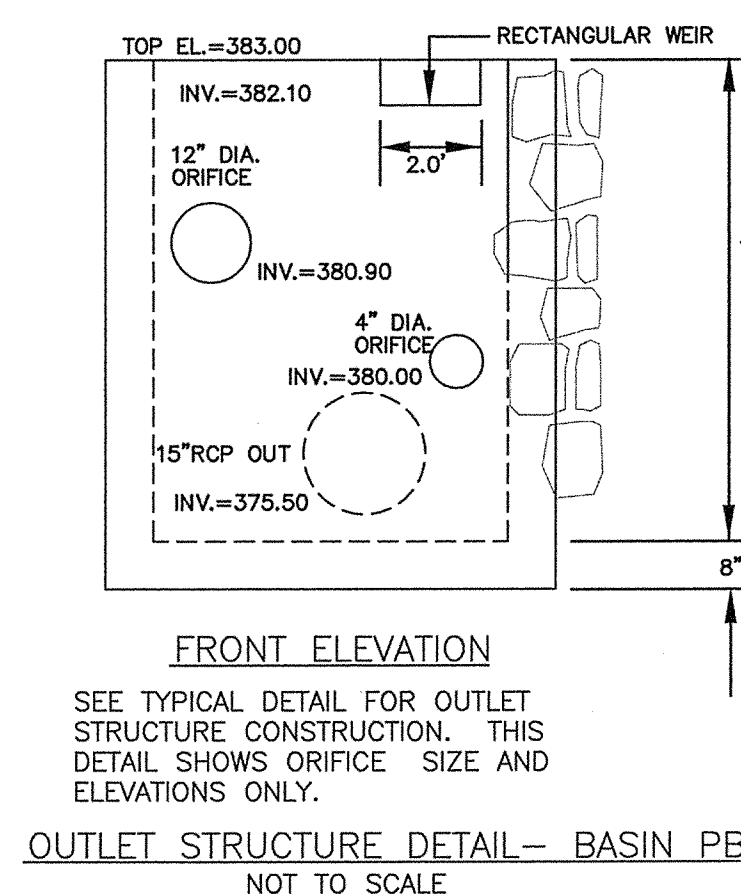
BASIN PA1 SECTION
HORIZONTAL SCALE: 1"=30'
VERTICAL SCALE: 1"=3'



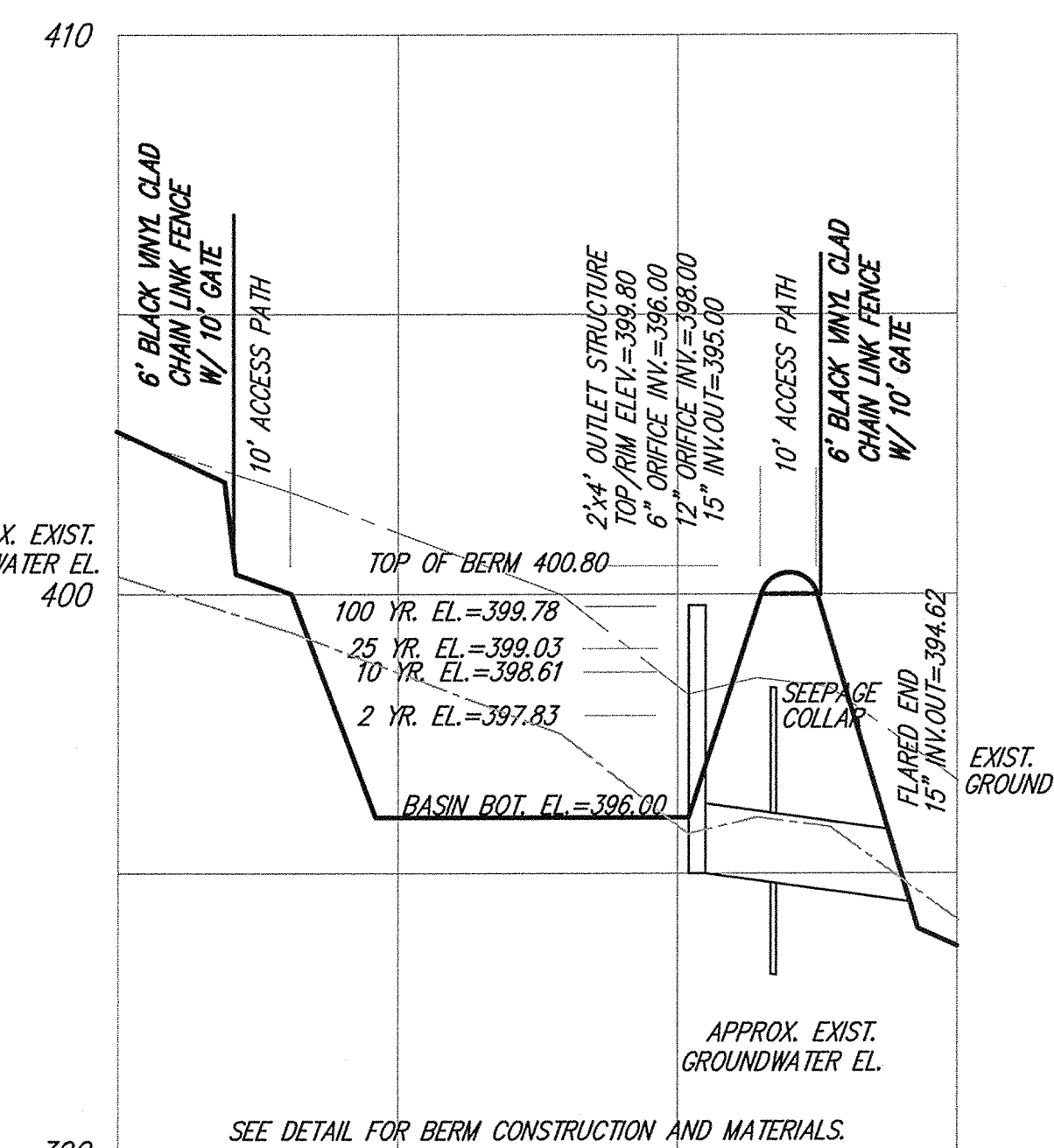
OUTLET STRUCTURE DETAIL- BASIN PA1
NOT TO SCALE



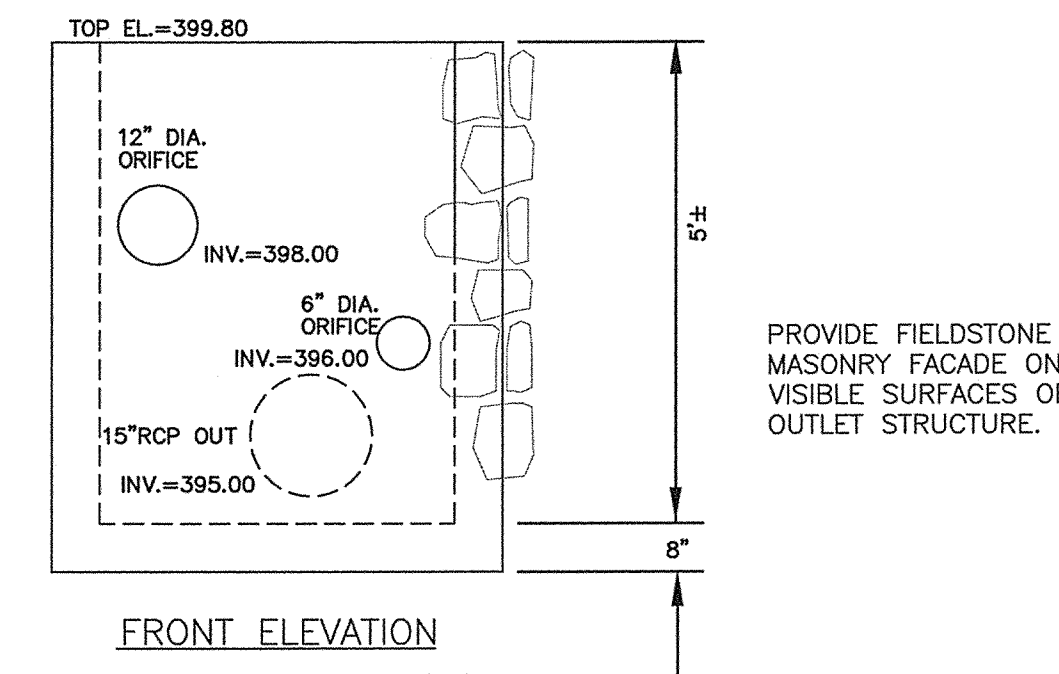
BASIN PB SECTION
HORIZONTAL SCALE: 1"=30'
VERTICAL SCALE: 1"=3'



OUTLET STRUCTURE DETAIL- BASIN PB
NOT TO SCALE



BASIN PA2 SECTION
HORIZONTAL SCALE: 1"=30'
VERTICAL SCALE: 1"=3'

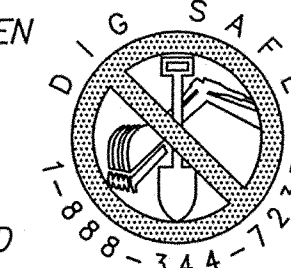


OUTLET STRUCTURE DETAIL- BASIN PA2
NOT TO SCALE

APPROVAL UNDER THE
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MARLBOROUGH PLANNING BOARD

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NOTE: TOPOGRAPHY SHOWN IS BASED ON N.G.V.D. OF 1929 AND
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DRAWN BY: REM, VHH	
SCALE: AS SHOWN	
SHEET 10 OF 10	REVISIONS OCTOBER 24, 2019



CITY OF MARLBOROUGH

BOARD OF HEALTH

140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3638 TDD (508) 460-3610

Robin Williams, Member
James Griffin, Member
Joseph Tennyson, MD, Chair
Tel (508) 460-3751

December 11, 2019

Ms. Barbara Fenby, Chair
City of Marlborough Planning Board
Marlborough, MA 01752

**RE: Commonwealth Heights Subdivision Definitive Plan, dated October 24, 2019
Design Documentation, October 2019**

Dear Ms. Fenby,

The Board of Health can not approve the above referenced plan due to documented contaminated soils on site due to the historic use of this property. The applicant references the use of a Soil Management Plan from February 2006 on the Erosion Control Plan (page 6 of subdivision set). Understanding, construction of this subdivision started and was then discontinued many years ago, if this soil management plan is to be used it should be updated. This update should include, but is not limited to: (1) the current conditions and areas of contaminated soil on site (including the locations of the natural, excavated, and mixed soils); (2) an updated operational plan that reflects how these soils will be managed both on-site and off-site if applicable (the adjacent Devonshire Development parcel was originally proposed for use); and (3) names of the current consultants, agents, and engineers that are proposed for use.

Additionally, the Board of Health recommends that approval from the Planning Board be conditioned on the applicant providing funds to the City to employ an independent Licensed Site Professional to review their operations, monitoring, and data.

Sincerely,

John R. Garside, MS, RS, CHO
Interim Director of Public Health



City of Marlborough

Conservation Commission

4B ii
Conservation
Comments

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

Memorandum

To: Barbara Fenby, Chairwomen
Planning Board

From: Priscilla Ryder

Date: December 6, 2019

RE: Commonwealth Heights Subdivision

I am in receipt of and have reviewed the following documents:

1. Definitive Plan: "Plan of land of Commonwealth Heights in Marlborough dated Oct. 24, 2019" sheets 1 of 2 and 1 of 10; prepared by Connorstone Engineering Inc.
2. Design documentation for Commonwealth Heights Definitive Subdivision in Marlborough July 2005 updated October 2019 prepared by Connorstone Engineering Inc.

The following are my comments:

1. There are no wetlands near this project, therefore, no wetland permits are required.
2. This property falls within the city's Water Supply Protection District therefore, all designs for stormwater runoff must meet the higher TSS removal requirements.
3. This property was a former apple orchard as noted on the second page of the report. As such the soils on this property contain residual pesticides, lead and arsenic used in the operation of the orchard. These are concentrated in and bound to the first 12 inches of the top soil. These only become a hazard when they are airborne. As has been the case for all properties that were apple orchards in the city since 2006, the state has advised that although the property may be exempt from the Massachusetts Contingency Plan (MCP) (state hazardous cleanup requirements), the local Board of Health has the authority to require that for public health reasons that all soils from the property be managed to MCP standards based on the contaminants found at the site. The previous subdivision plans had such a plan that was titled:


"The Soil Management Plan Commonwealth Heights Marlborough, MA, prepared for the Gutierrez Company & Birchwood Development dated February 2006 Final, by Environmental Risk Group."

This plan not only required the removal of all contaminated top soil since the final use was a residential property, but also the monitoring and strict controls of air quality throughout the project construction until the site was stabilized. I recommend that the applicant be required to hire an LSP to prepare a new soil management plan for this property. In addition, under section MGL 53G, I would recommend that the Planning Board also require that the applicant pay the city for the services of an outside consultant LSP to advise the City and provide technical assistance on the plan review and assistance with review of construction of this project as it relates to dust and air quality monitoring. Attached are the sample conditions required by the Conservation Commission for both the Talia on Ames St. site and the Apex Center project. These conditions may be useful to incorporate in some fashion into any Planning Board decisions as this project will not require a wetland permit or a site plan permit.

4. The soils on this property are glacial till with a very, very high clay content. During the initial construction of the roadway under previous ownership, the city issued numerous violation notices and stop work orders due to the issues with muddy water leaving the site on Glen St. and down on Conrad Rd. and Teller Rd. Most rain events sent mud into these neighborhood yards. The applicant needs to be aware of these extremely difficult soil conditions and should be required to add some additional comments and notes to the erosion control plan (sheet 6). In addition, I would recommend that this site be required to hire an erosion control consultant approved by the City Engineer. This consultant would oversee the construction of the site and direct the contractor to ensure that the site remains under control. I have attached language that we normally use in our conservation and site plan permits which I would recommend also be incorporated into any Planning Board decision as well if you find them appropriate.

If you have any questions on the above, please let me know.

Sincerely,


Priscilla Ryder
Conservation Officer

Encl: Sample conditions

Cc: Tom DiPersio, City Engineer
John Garside, Interim Director Board of Health
Jeff Cooke, Building Commissioner
Conservation Commission

Sample conditions used for both apple orchard projects at Talia and Apex Center

Contaminated Soils Management

- As this site was a former apple orchard the soils must be managed to protect the public health and safety of the workers and abutters to the project; therefore, a Soil Management Plan is required to be submitted to the Commission for review prior to the meeting to be held per condition #31 above.
- A Licensed Site Professional shall be hired by the applicant to ensure the Soil Management Plan and construction sequencing protocols are being followed properly to protect public health and safety.
- At the pre-construction meeting noted in #31 above, the Commission, Conservation Officer, applicants site contractor and applicants' site LSP shall discuss the following specific items relative to the soil management plan:
 - i) Air monitoring stations
 - ii) Soil monitoring protocol
 - iii) Where excess soil is to be deposited
 - iv) How excess soil is to be loaded and trucked off site
 - v) Where stockpile materials will be placed so as not to be in line with any utilities.
 - vi) How soil mixing is to be achieved and how it will be transported
 - vii) Daily monitoring logs and reporting requirements
 - viii) How tree stumps are to be treated before being ground or removed from the site to prevent the transport or spread of pesticide laden soil.

Erosion Control/Construction Sequencing

- The developer is required to hire an "Erosion Control Expert" to oversee the site work on the site. This individual(s) shall have a proven record of controlling sites of equal size and equal material type. The Conservation Officer and the City Engineer shall evaluate whether the individual(s) to be hired has adequate experience before they are hired to work on this project. This erosion control expert shall be hired prior to construction and shall be an integral part of the preconstruction meeting.
- The Soils Management Plan (see below) must be followed to ensure proper handling of the contaminated soils on the site. This plan shall be coordinated with the site contractor and erosion control expert.
- Stone construction entrance pads and/or a truck washing station shall be in place at the exits onto the main roadways to prevent the tracking of mud and silt into the public roadway. Dust shall always also be controlled on this site. If dirt is tracked onto the roadway it shall be cleaned up immediately. A street sweeper shall be readily available.
- The Erosion Control Expert shall be consulted when there is any discussion about or deviation to the plan and the erosion control plan to ensure that there is proper coordination with the site development and the erosion control and stormwater management at all times.



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

December 9, 2019

Dr. Barbara L. Fenby, Chairwoman - Marlborough Planning Board
 c/o Krista Holmi – Planning Board Administrator
 135 Neil Street
 Marlborough, MA 01752

RE: Commonwealth Heights Definitive Subdivision submittal

Dear Dr. Fenby:

I have reviewed the Commonwealth Heights Definitive Subdivision submittal and have researched our files and have the following comments to offer regarding the submission for:

Definitive Subdivision Plan of Commonwealth Heights
 In Marlborough, Massachusetts

Owner: Marlborough/Northborough Land Realty Trust

Subdivider: Commonwealth Heights, LLC

Prepared by: Connorstone Consulting Civil Engineers and Land Surveyors

Date: October 24, 2019

This Definitive Subdivision Plan application is a re-submittal of the Commonwealth Heights Definitive Subdivision approved and endorsed by the Marlborough Planning Board on May 11, 2006 and is recorded at the South Middlesex Registry of Deeds as Recorded Plan No. 549 and No. 550 of 2007. After several extensions for the completion of the subdivision at the developer's request, the approval of the Definitive Subdivision expired on November 27, 2017.

This submission includes the Comparative Impact Analysis. The previous subdivision application (2006) contained the same analysis, and the present subdivision configuration was determined to be the preferred layout for this site.

Prior to the expiration of the Definitive Subdivision approval, the developer began and completed the following: off-site drainage including approximately 1,100 feet of drainage on Glen Street and Conrad Road, three detention basins, outlet control structures, and fencing around the detention basins, gas, water and sewer connections to the mains in Ames Street and the site has been rough graded and stabilized. The Definitive Subdivision Plan submittal does not reflect the work that has already been completed. As-Built Plans documenting the work that has been completed should be submitted to the D.P.W. – Engineering Division for review. Any work

THEODORE L. SCOTT, P.E.
 ASST. COMMISSIONER, OPERATIONS

THOMAS DIPERSIO, JR. P.E., P.L.S.
 CITY ENGINEER

that has not been completed should be included in the new Definitive Subdivision Plan submission.

The developer is requesting a single waiver – Section IV. B. 5(a), for a roadway in excess of 500 feet. The proposed roadway is 1,071.16 feet in length. This waiver was granted by the Marlborough Planning Board as part of the May 11, 2006 Definitive Subdivision approval by the Marlborough Planning Board.

The Topographic Plans depicts the existing conditions for the original Definitive Subdivision Plan submittal. As noted above, the Topographic Plans should reflect all the work completed by the developer prior to the approval of the subdivision expiring. A certification should be included on the plan which documents the storage capacity of the existing detention basins is equal or greater than the original detention basin design.

The plans show two proposed municipal utility easements. These easements were obtained by the developer after the Definitive Plans were approved and signed. If these easements are still in effect, they should be labelled as “existing”. There are notes on record in the Engineering files which indicate that some utility work at the end of McKay Drive may been installed, not in accordance with the approved Definitive Subdivision Plans. The utility connections and stub locations should be field verified and shown on the plans as existing and any adjustments to the easements should be made as necessary.

The Engineering Division also concurs with the comments made by the Conservation Agent and the Board of Health, that the Erosion Control Plans should be updated, and conditions added for the protocol for dealing with the contaminated soils on site.

Should you have any question regarding the above, please do not hesitate to contact me at (508) 624-6910.

Sincerely,



Timothy F. Collins
Assistant City Engineer

xc: John L. Ghiloni – DPW Commissioner
Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer
Jason Grossfield – City Solicitor



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

December 6, 2019

Dr. Barbara L. Fenby, Chairwoman - Marlborough Planning Board
 c/o Krista Holmi – Planning Board Administrator
 135 Neil Street
 Marlborough, MA 01752

RE: Goodale Estates – Bond Determination

Dear Dr. Fenby:

Pursuant to the request from the Planning Board on December 2, 2019, the Engineering Division has done a cost estimate for the construction of the roadway at the above-referenced subdivision. It has been determined that the total cost is approximately \$700,000.00. The following work has been completed to date:

- Installation of water main, including hydrant and water services being stubbed onto the lots,
- Installation of sewer main and structures and sewer services being stubbed onto the lots,
- Installation of drain mains and structures and partial completion of a detention basin
- Sewer and sewer castings (frames, grates and covers) have not been installed
- Conduits for underground electric-telephone-cable have been installed
- The road has been brought to grade, compacted and the binder course of pavement has been laid

Based on the cost of the work completed to date, security in the amount of \$352,000.00 should be posted to secure the completion of the above referenced subdivision. Refer to the attached estimate breakdown for details.

Should you have any question regarding the above, please do not hesitate to contact me at (508) 624-6910.

Sincerely,

Timothy F. Collins
 Assistant City Engineer

xc: John L. Ghiloni – DPW Commissioner
 Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer
 Kevin Gillis - Northborough Capital Partners, LLC,

THEODORE L. SCOTT, P.E.
 ASST. COMMISSIONER, OPERATIONS

THOMAS DIPERSIO, JR. P.E., P.L.S.
 CITY ENGINEER

**CITY OF MARLBOROUGH, MASSACHUSETTS
ESTIMATE FOR BONDING PURPOSES**

SUBDIVISION:									DATES
GOODALE ESTATES									2019
JENKS LANE									12/04/19
				BOND NO.		MassDOT Weighted Bid Prices:			12/04/19
				REDUCTION 1		INITIAL DATE OF BOND:			12/04/19
ITEM	DESCRIPTION	UNIT	TOTAL QTY.	UNIT COST	TOTAL COST	QTY. LAST EST.	QTY. THIS EST.	TOTAL COST TO DATE	% COMPLETE
	Earth Work								
	Clearing, grubbing	AC.	0	\$15,000.00	\$0.00	0		COMPLETED	100.00%
	Excavation	C.Y.	0	\$25.00	\$0.00	0		COMPLETED	100.00%
	Sub-base	C.Y.	0	\$35.00	\$0.00	0		COMPLETED	100.00%
	Ledge excavation	C.Y.	0	\$50.00	\$0.00	0		COMPLETED	100.00%
	Water								
1	Hydrants (incl. gate)	EA.	1	\$7,250.00	\$7,250.00	0	1	\$7,250.00	100.00%
2	Gates	EA.	1	\$2,300.00	\$2,300.00	0	1	\$2,300.00	100.00%
3	3/4-in. Copper service (complete)	L.F.	375	\$100.00	\$37,500.00	0	375	\$37,500.00	100.00%
4	Corporation and Curb Stop	EA.	7	\$1,200.00	\$8,400.00	0	7	\$8,400.00	100.00%
5	8-In. CL62 DI main	L.F.	490	\$120.00	\$58,800.00	0	490	\$58,800.00	100.00%
6	6-In. CL62 DI hydrant branch	L.F.	10	\$90.00	\$900.00	0	10	\$900.00	100.00%
	Sewer								
7	6 In. Service (stub at property line)	L.F.	330	\$90.00	\$29,700.00	0	330	\$29,700.00	100.00%
8	8-In. PVC main	L.F.	460	\$100.00	\$46,000.00	0	400	\$40,000.00	86.96%
	8-In. CL52 DI main	L.F.	0	\$0.00	\$0.00	0		\$0.00	#DIV/0!
	10-In. CL52 DI main	L.F.	0	\$100.00	\$0.00	0		\$0.00	#DIV/0!
9	Sewer manhole	EA.	3	\$5,850.00	\$17,550.00	0	2	\$11,700.00	66.67%
	Sewer manhole - 5' inside dia.	EA.	0	\$3,000.00	\$0.00	0		\$0.00	#DIV/0!
	Force main - 2 in.	L.F.	0	\$50.00	\$0.00	0		\$0.00	#DIV/0!
			0						
	Drainage								
10	Catch basin	EA.	4	\$5,350.00	\$21,400.00	0	3	\$16,050.00	75.00%
11	Drain manhole	EA.	2	\$5,350.00	\$10,700.00	0	1.5	\$8,025.00	75.00%
	Drain manhole - 5' inside dia.	EA.	0	\$6,000.00	\$0.00	0		\$0.00	#DIV/0!
12	Drop inlet	EA.	1	\$3,200.00	\$3,200.00	0	1	\$3,200.00	100.00%
	Gutter inlet	EA.	0	\$1,500.00	\$0.00	0		\$0.00	#DIV/0!
	Box culvert	L.F.	0	\$250.00	\$0.00	0		\$0.00	#DIV/0!
	8-In. D.I.	L.F.	0	\$100.00	\$0.00	0		\$0.00	#DIV/0!
13	12-In. RCP	L.F.	61	\$100.00	\$6,100.00	0	61	\$6,100.00	100.00%
	12-In. RCP Flared end	EA.	0	\$750.00	\$0.00	0		\$0.00	#DIV/0!
14	16-In. RCP	L.F.	174	\$110.00	\$19,140.00	0	174	\$19,140.00	100.00%
15	16-In. RCP Flared end	EA.	1	\$1,200.00	\$1,200.00	0	1	\$1,200.00	100.00%
16	18-In. RCP	L.F.	40	\$115.00	\$4,600.00	0	40	\$4,600.00	100.00%
	18-In. RCP Flared end	EA.	0	\$900.00	\$0.00	0		\$0.00	#DIV/0!
	24-In. RCP	L.F.	0	\$160.00	\$0.00	0		\$0.00	#DIV/0!
	24-In. RCP Flared end	EA.	0	\$950.00	\$0.00	0		\$0.00	#DIV/0!
	24-In. RCP	L.F.	0	\$140.00	\$0.00	0		\$0.00	#DIV/0!
	24-In. RCP Flared end	EA.	0	\$1,000.00	\$0.00	0		\$0.00	#DIV/0!
	30-In. RCP	L.F.	0	\$150.00	\$0.00	0		\$0.00	#DIV/0!
	30-In. RCP Flared end	EA.	0	\$1,200.00	\$0.00	0		\$0.00	#DIV/0!
	36-In. RCP	L.F.	0	\$175.00	\$0.00	0		\$0.00	#DIV/0!
	36-In. RCP Flared end	EA.	0	\$1,700.00	\$0.00	0		\$0.00	#DIV/0!
17	Headwalls	C.Y.	11	\$700.00	\$7,700.00	0	5	\$3,500.00	45.45%
18	Detention basins	C.Y.	2250	\$40.00	\$90,000.00	0	750	\$30,000.00	33.33%
	Water Quality Structure	EA.	0	\$3,500.00	\$0.00	0		\$0.00	#DIV/0!
	Outlet Control Structure	L.S.	0	\$2,500.00	\$0.00	0		\$0.00	#DIV/0!
19	Rip-Rap	C.Y.	110	\$75.00	\$8,250.00	1	0	\$0.00	0.00%
	6-In. Under Drain	L.F.	0	\$35.00	\$0.00	0		\$0.00	#DIV/0!
	12-In. Under Drain	L.F.	0	\$40.00	\$0.00	0		\$0.00	#DIV/0!
20	Black Vinyl Clad Fence, Post & Gate	L.F.	540	\$60.00	\$32,400.00	0	0	\$0.00	0.00%
	Roadway/Layout								
21	Gravel base	C.Y.	650	\$45.00	\$29,250.00	0	650	\$29,250.00	100.00%
22	Bit. Conc. Pavement	Ton	470	\$130.00	\$61,100.00	0	293.75	\$38,187.50	62.60%
23	Granite curbing	L.F.	950	\$60.00	\$57,000.00	0	0	\$0.00	0.00%
	Bit. Conc. berm	L.F.	0	\$5.00	\$0.00	0		\$0.00	#DIV/0!
24	Sidewalk gravel	C.Y.	10	\$45.00	\$450.00	0	0	\$0.00	0.00%
25	Sidewalk pavement	Ton	70	\$175.00	\$12,250.00	0	0	\$0.00	0.00%
26	Misc. clean up	L.S.	1	\$10,000.00	\$10,000.00	0	0	\$0.00	0.00%
27	Adj. Structures	EA.	9	\$350.00	\$3,150.00	0	0	\$0.00	0.00%
28	Granite (stone) bounds	EA.	8	\$600.00	\$4,800.00	0	0	\$0.00	0.00%
	Guardrail	L.F.	0	\$25.00	\$0.00	0		\$0.00	#DIV/0!
29	Roadside trees	EA.	28	\$500.00	\$14,000.00	0	0	\$0.00	0.00%
30	Street signs w/ breakaway posts	EA.	1	\$150.00	\$150.00	0	0	\$0.00	0.00%
31	Street lighting	EA.	1	\$3,000.00	\$3,000.00	0	0	\$0.00	0.00%
32	Elec/Tel/Cable	L.F.	760	\$50.00	\$38,000.00	0	190	\$9,500.00	25.00%
33	Gas	L.F.	475	\$45.00	\$21,375.00	0	118.75	\$5,343.75	25.00%
34	As-built plans	EA.	1	\$2,500.00	\$2,500.00	0	0	\$0.00	0.00%
35	Acceptance plans	EA.	1	\$2,500.00	\$2,500.00	0	0	\$0.00	0.00%
36	Field stone masonry wall	C.Y.	20	\$600.00	\$12,000.00	0	0	\$0.00	0.00%
TOTAL					\$684,615.00			\$370,646.25	

**CITY OF MARLBOROUGH, MASSACHUSETTS
ESTIMATE FOR BONDING PURPOSES**

TOTAL COST TO COMPLETE SUBDIVISION:	\$684,615.00
TOTAL COST OF WORK COMPLETED TO DATE:	\$370,646.25
TOTAL COST OF WORK REMAINING:	\$313,968.75
10% RETAINAGE	\$37,064.63
	\$351,033.38
TOTAL BOND FIGURE, THIS ESTIMATE:	\$362,000.00

SUMMARY TABLE

BOND NO. REDUCTION 1

GOODALE ESTATES

JENKS LANE

BOND AMOUNT FOR:

INITIAL BOND	4-Dec-19	\$720,000.00
REDUCTION 1	4-Dec-19	\$362,000.00



9A
full
notice

November 21, 2019

Marlborough City Hall
140 Main Street
Marlborough, MA 01752
Attn: Planning Board

PLANNING BOARD
DATE 12-06-19
AGENDA 12-16-19
ACTION _____

RE: Supplemental Notice of Intent Pursuant to MGL c. 61A, §14 to Sell Land and Convert Use

Dear Board Members,

This letter is being provided pursuant to M.G.L. c.61A, §14 to advise you of a proposed sale and conversion of use of land that is currently taxed under M.G.L. c.61A. This letter supplements the prior notice delivered on August 6, 2019, as the material terms of the purchase and sale agreement have been replaced.

Heritage Farm, LLC ("Seller") is the owner of approximately 23.17 acres of land in Marlborough, Massachusetts, identified as Parcel ID Nos. 73-28, 73-24, 73-26, and 73-26A (the "Property"). Pursuant to that certain Purchase and Sale Agreement attached hereto as Exhibit A (the "Agreement"), Seller has agreed to sell the Property to Waypoint Residential Services, LLC ("Buyer") for the purchase price of \$5,150,000. Buyer intends to purchase the Property upon the terms and conditions set forth in the Agreement for purposes of constructing a multifamily housing (apartments) project, including accessory amenities and potentially other accessory uses. The Property is currently enrolled in the Massachusetts Chapter 61A program as agricultural land. Buyer intends to remove the Property from such classification and convert it to the above described intended use.

A sketch plan of the Property is attached hereto as Exhibit B.

Seller and Buyer have entered into a separate purchase and sale agreement pertaining to approximately 3.27 acres of land contiguous to portions of the Property, identified as Parcel ID No. 73-35 (the "Non-61A Land"), which Buyer and Seller intend to convey contemporaneously with the proposed sale of the Property. The consideration for the Non-61A Land is dependent upon certain factors relating to the development potential of the Non-61A Land, and is expected to range between \$100,000 to \$3,122,000, subject to the terms and conditions set forth in that agreement.

Should you have any questions regarding the proposed sale, please do not hesitate to contact us at the following address:

Heritage Farm, LLC
15149 Winesap Drive
North Potomac, MD 20878
Attention: Valthea M. Fry
Telephone Number: 301-726-7084

David J. Fry
Email: david.james.fry@gmail.com

Contact for the landowner's attorney is also provided below:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attention: Geoffrey H. Smith, Esq.
Telephone Number: 617-348-1767

Sincerely,

HERITAGE FARM, LLC

By: Valthea McGee Fry

Name: Valthea McGee Fry

Title: Manager

EXHIBIT A

CERTIFIED COPY OF PURCHASE AND SALE AGREEMENT

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY
(Marlborough, Massachusetts Property)**

THIS AGREEMENT FOR PURCHASE AND SALE OF PROPERTY (this "Agreement") is made and entered into as of the Effective Date, as defined in Section 1.03 below, by and between **HERITAGE FARM, LLC**, a Delaware limited liability company ("**Seller**") and **WAYPOINT RESIDENTIAL SERVICES, LLC**, a Delaware limited liability company ("**Buyer**").

Recitals

A. Seller is the owner of that certain land consisting of approximately 23.17 acres of land in the City of Marlborough, Middlesex County, Commonwealth of Massachusetts and as more particularly described on **Exhibit "A"** attached hereto and made a part hereof (the "**Land**").

B. Seller desires to sell the Property (defined below) to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions of this Agreement.

Terms of Contract

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller to be supportive of this Agreement in its entirety, it is hereby agreed as follows:

**ARTICLE 1
SALE – PURCHASE**

Section 1.01. Property. Seller and Buyer agree to the Recitals above, and Seller agrees to sell and Buyer agrees to purchase the Property, subject to the terms and conditions of this Agreement. The term "Property" shall mean the Land, together with (a) all improvements thereon of every kind and description, including infrastructure that may be located thereon or thereunder; (b) all of the rights, privileges, appurtenances, hereditaments, easements, air rights, reversions, and remainders pertaining to or used in connection therewith (including, without limitation and to the extent the same exist, all easements, rights-of-way, privileges, licenses and other rights and benefits belonging to, and running with the owner of, or in any way relating to the Land); (c) all right, title and interest, if any, of Seller in and to gaps, strips or gores pertaining to the Land or any land lying in the bed of any street, road, highway, avenue or alley (opened or unopened, existing or proposed, now vacated or hereafter to be vacated) in front of or adjoining the Land; (d) all oil, gas and other hydrocarbon substances, geothermal resources, and mineral rights, on, under, over, in, or that may be produced from the Land; (e) all water rights appurtenant to or used in connection with the Land and any non-appurtenant water rights of any kind owned by Seller from all sources, whether surface water, ground water or spring water, and all claims for any

and all water rights of any kind whatsoever relating to the Land; and (f) the Intangible Personal Property (defined below).

Section 1.02. Intangible Personal Property. The sale of the Property shall include the sale, transfer and conveyance of all of Seller's right, title and interest in and to all Permits and Approvals (defined below), warranties, guaranties, architectural and engineering plans and reports, CAD files, certificates, licenses, bonds, water and sewer agreements, permits, authorizations, consents, approvals, and development orders, which in any respect whatsoever relate to or arise out of the use, occupancy, possession, development, construction or operation of the Property (collectively, "**Seller's Permits**"), but shall not constitute an assumption by Buyer of any liabilities arising under Seller's Permits. The sale shall also include the sale, transfer and conveyance of all of Seller's right, title and interest in and to all intangible personal property, including, without limitation, prepaid water and sewer connection fees, utility capacities, impact fee credits, development agreements, approvals, easements, plans, reports, surveys, environmental and other studies, consents and agreements, any unpaid condemnation awards or awards in lieu thereof, all of which are intended to encompass all of Seller's contractual rights, benefits and entitlements relating to the Property (collectively, along with Seller's Permits, the "**Intangible Personal Property**"). In addition, the sale of the Property shall include all other personal property owned by Seller related to the Property and not removed by Seller prior to the Closing Date, provided that Seller shall deliver the Property in a reasonably clean condition.

Section 1.03. Effective Date. The "**Effective Date**" of this Agreement shall be the date on which the last of Seller and Buyer has executed this Agreement and delivered it to the other in accordance with the Notice provisions of Article 14, which Effective Date the parties shall promptly confirm by email.

ARTICLE 2 PURCHASE PRICE AND TERMS OF PAYMENT

Section 2.01. Purchase Price. The purchase price (the "**Purchase Price**") shall be Five Million One Hundred Fifty Thousand Dollars (\$5,150,000.00). The Purchase Price, as adjusted for and by the Deposit (defined below) and other credits, adjustments and prorations as herein provided, shall be paid by Buyer to Escrow Agent, and then by Escrow Agent to Seller or as Seller may direct by one or more wire transfers or ACH transfers at the time of Closing.

Section 2.02. Deposits. Prior to the Effective Date, Buyer deposited a total of FIFTY THOUSAND DOLLARS (\$50,000.00) (the "**Current Deposit**") with First American Title Insurance Company, c/o Orlando Office, Attention Geoffrey Temple (the "**Escrow Agent**" or "**Title Company**"). The Current Deposit, and all additional deposits referred to in this Agreement, including the First Closing Extension Deposit and the Second Closing Extension Deposit (all as defined in this Agreement), shall be

collectively referred to as the "**Deposit**," and the entire Deposit shall be credited to the Purchase Price at Closing. Notwithstanding anything to the contrary contained in this Agreement, if any Deposit is not timely made or the Purchase Price is not timely paid, Seller shall give Buyer written notice, and if Buyer fails to make such Deposit or pay the Purchase Price within one (1) business day thereafter, this Agreement shall be deemed terminated and shall be null and void with no further obligations between the parties other than those obligations which specifically survive termination, and the Deposit (to the extent made) shall immediately be refunded to Buyer.

Section 2.03. Escrow Agent and Deposit. The Deposit shall be remitted to Escrow Agent by wire transfer or ACH transfer. The Deposit shall be held by Escrow Agent in an interest-bearing money-market account without penalty for early withdrawal. Escrow Agent shall hold the Deposit pursuant to the terms of this Section 2.03 and Article 11 of this Agreement, subject only to mutually agreed upon written modifications executed by the parties hereto; provided, however, that it shall not be necessary for Escrow Agent to execute any amendment to this Agreement unless such amendment specifically modifies the rights or obligations of Escrow Agent. All interest earned on the Deposit shall in all instances be paid to Buyer, except if Buyer defaults in its obligations hereunder and the Deposit is delivered to Seller in accordance with the terms of this Agreement, in which event all interest earned on the Deposit shall be paid to Seller.

ARTICLE 3 TITLE AND SURVEY

Section 3.01. Evidence of Title. Prior to the Effective Date, the Title Company delivered to Buyer a title insurance commitment (the "**Commitment**") for a title insurance policy (the "**Title Insurance Policy**"), covering the Land and Other Land (defined below). At Closing, Seller shall provide to Buyer any and all documents necessary to satisfy all requirements (including those relating to the release of any and all mortgages and other liens encumbering the Property) set forth in the Commitment for the issuance of the Title Insurance Policy in the amount of the Purchase Price plus the Other Land Price (defined below), together with all endorsements desired by Buyer and such properly executed documents necessary to delete the standard Schedule B-1 exceptions from the Title Insurance Policy.

Section 3.02. Survey. Buyer may obtain, at Buyer's sole cost and expense, a new survey of the Property on or prior to expiration of the Investigation Period (the "**Survey**"). If obtained, the Survey shall be certified to Buyer, Seller, counsel for Buyer, the Title Company and any other parties as directed by Buyer.

Section 3.03. Objections to Title or Survey. If the Commitment or Survey contains exceptions to title or survey encroachments or defects which are not acceptable to Buyer in Buyer's sole and absolute discretion, then Buyer shall notify Seller of such in writing on or prior to the expiration of the Investigation Period. Any such objection by Buyer shall be deemed a "**Title Defect**," whether shown on the Survey or disclosed in the Commitment. Such notice is referred to herein as the

"Notice of Title Defect." Seller shall provide notice to Buyer within five (5) business days of receipt of the Notice of Title Defect which, if any, of the Title Defects Seller intends to cure prior to Closing ("**Seller's Response**"). If Seller is unable or unwilling to cure any Title Defect, Buyer may within five (5) business days after receipt of Seller's response to Buyer's Notice of Title Defect, either terminate this Agreement and the Deposit shall be refunded to Buyer, or Buyer may proceed to Closing without reduction in the Purchase Price. Notwithstanding the foregoing, Seller shall cure the following Title Defects (each, a "**Mandatory Cure Item**"). (i) any mortgage or deed of trust granted or assumed by Seller and encumbering the Property, (ii) any mechanic's or materialmen's lien for work performed or materials provide on behalf of Seller, (iii) any tax lien (other than the lien of ad valorem real estate taxes not yet due and payable), and (iv) any judgment lien against Seller. With respect to item (ii) of the definition of "Mandatory Cure Item," such item shall be satisfied at or prior to the Closing Date, but Seller's obligation to satisfy such lien shall be limited to \$75,000, and Seller shall not be required to pay any excess if Seller has a good faith objection to a lien in excess of that amount. Notwithstanding such limit, if any Mandatory Cure Items are not satisfied by Seller on or prior to the Closing Date, Buyer shall have the right, in its sole discretion, to terminate the Agreement, in which instance the Deposit shall be returned to Buyer and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except for the Surviving Obligation, as hereinafter defined.

Section 3.04. New Title Defects; Permitted Exceptions. Buyer shall also have the right to object at any time to any New Title Defect (hereinafter defined), whether discovered by Buyer by virtue of an update to the Commitment or as indicated on an updated Survey or otherwise. With respect to any Title Defect arising after the effective date of the Commitment or Survey (a "**New Title Defect**"), Buyer may prior to Closing, notify Seller in writing of any objection to title or survey (a "**New Notice of Title Defect**") (excluding objections to title which have been waived by Buyer as hereinabove provided or that are or are deemed to be Permitted Exceptions) arising after such date. With respect to any objections to title or survey set forth in a New Notice of Title Defect, Seller shall have the same option to cure (except that Seller shall cure Mandatory Cure Items in accordance with Section 3.03) and Buyer shall have the same option to accept title subject to such matters or to terminate this Agreement, as set forth above. All title exceptions accepted by Buyer and the following items are hereinafter called "**Permitted Exceptions**":

- (i) the lien of all ad valorem real estate taxes and assessments (subject to the provisions of Section 9.03 of this Agreement as to assessments) not yet due and payable as of the date of Closing, subject to adjustment as herein provided;
- (ii) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;

- (iii) all matters, whether or not of record, that arise out of the actions of Buyer or its agents, representatives or contractors;
- (iv) the standard preprinted form exceptions set forth in an ALTA Owner's Title Policy; and
- (v) those matters which Seller is not obligated to remove as provided above.

Section 3.05. Title Correspondence; Heritage PSA. Notwithstanding anything contained herein to the contrary, (i) that certain Notice of Title Defect dated January 10, 2019 (the "**Heritage Notice of Title Defect**") provided by Buyer to Seller pursuant to Section 3.03 of that certain Agreement for Purchase and Sale of Property dated October 30, 2019 as amended (the "**Heritage PSA**") shall constitute the Notice of Title Defect pursuant to Section 3.03 of this Agreement, which shall be deemed to have been delivered to Seller as of the Effective Date; (ii) that certain Seller's Response dated January 17, 2019 (the "**Heritage Seller's Response**") provided by Seller to Buyer pursuant to Section 3.03 of the Heritage PSA shall constitute the Seller's Response pursuant to Section 3.03 of this Agreement, which shall be deemed to have been delivered to Buyer as of the Effective Date; and (iii) that certain Notice to Proceed dated May 3, 2019 (the "**Heritage Notice to Proceed**") provided by Buyer to Seller pursuant to Section 4.04 of the Heritage PSA shall constitute the Notice to Proceed pursuant to Section 4.04 of this Agreement, which shall be deemed to have been delivered to Seller as of the Effective Date. Seller acknowledges that the Title Insurance Policy is to cover the Land and the land that is to be purchased under the Heritage PSA (the "**Other Land**"), pursuant to the transaction contemplated in this Agreement and the transaction contemplated in the Heritage PSA. Seller shall cooperate, as reasonably requested by Buyer and/or Escrow Agent, in connection with the issuance of the Title Insurance Policy covering the Land and Other Land in the total amount of the Purchase Price plus the "Purchase Price" under the Heritage PSA (the "**Other Land Price**"). In connection with the Heritage PSA, Buyer is seeking certain approvals and permits that apply to the Land and Other Land. The references in this Agreement to "**Permits and Approvals**" shall have the same meaning as the "Permits and Approvals" in the Heritage PSA.

ARTICLE 4 INVESTIGATION OF PROPERTY

Section 4.01. Right of Entry. The "**Investigation Period**" under this Agreement shall be a period ending at 6:00 p.m., Marlborough, Massachusetts time on the Effective Date. Buyer, and all of Buyer's agents, contractors, consultants, representatives and other persons designated by Buyer, shall have the right from the Effective Date through Closing upon not less than twenty-four (24) hours prior notice (which notice may be given by both phone at 301-726-7084 (h) and 301-814-3519 (c) and email to iris355@hotmail.com and david.james.fry@gmail.com) to enter on any portion of the Property, for the purpose of investigation, discovery and testing of the Property, which may include, without limitation, appraisals, market feasibility studies, engineering reports, zoning investigations, surveying, soil testing and boring,

hydrological studies, geotechnical testing, environmental studies (including a Phase 2 study if recommended by Buyer's environmental consultant), structural inspections or any other studies or tests Buyer determines in its reasonable discretion to be necessary or appropriate, and Buyer and its consultants may meet in person with governmental officials concerning the Property and land use and other matters related thereto (collectively, the "**Inspections**"). Seller shall be entitled to have a representative present during any Inspections. Seller shall reasonably cooperate with Buyer in conjunction with Buyer's Inspections, including providing access to the Property at all times prior to Closing. All of Buyer's Inspections shall be at Buyer's sole cost and expense. Buyer shall remove or bond over any lien of any type which attaches to the Property as a result of any Buyer's Inspections. Upon completion of any Inspection, Buyer shall restore any "material" damage to the Property caused by such Inspection, "material" for this purpose meaning the repair cost is in excess of \$2,500 in the aggregate. Buyer hereby indemnifies and holds Seller and its shareholders, officers, employees, agents, members, guests and other invitees harmless from all damage, loss, cost or expense, including, but not limited to, reasonable attorneys' fees and court costs, but only those which result from personal injuries or physical damage to the Property or liens which result from Buyer's Inspections; provided that Buyer shall have no liability for any pre-existing conditions with respect to the Property (except to the extent exacerbated by Buyer's acts or omissions, if such exacerbation could have been avoided by reasonable care on the part of Buyer or its agents) or those resulting from Seller's negligence or willful misconduct, nor shall Buyer have any liability for any indirect, consequential (including lost profits), exemplary, or punitive damages of any kind. Buyer shall provide Seller with evidence of insurance in an amount not less than \$2,000,000 per occurrence for bodily or personal injury or death naming Seller as an additional insured prior to entering the Property. All Inspections shall be done on an expeditious and efficient basis and in a manner which minimizes disruption to the current use of the Property and Buyer shall insure that gates on fences containing the horses at the Property shall remain closed immediately after any entry or exit by Buyer. Furthermore, Seller shall use good faith efforts to cause the Town of Marlborough to waive its right of first refusal under Section 14 of Chapter 61A of Massachusetts General Laws prior to the end of the Investigation Period, and thereafter, if requested by Buyer.

Section 4.02. Property Documents. On or before the Effective Date, Seller shall make available to Buyer all items listed on **Exhibit "B"** attached hereto and made a part hereof, and all materials concerning the condition of the Property which Seller possesses or controls, and Seller shall continue to make available to Buyer all materials concerning the Property of which Seller acquires possession subsequent to the Effective Date, including copies of all plans, plats, surveys, zoning and land use information, prior title insurance policies, soil tests and reports, environmental tests and reports, engineering studies, inspection reports, due diligence materials, CAD files, appraisals, feasibility studies, landscape plans, site plans, agreements relating to any warranty or guaranty, deferred or unpaid development or impact fees, recapture payments, offsite improvements, contracts to which Seller is bound relating to the

Property and to which the Property is subject and all other governmental and quasi-governmental applications, approvals, consents, permits, and authorizations, and the most current tax bill and tax bill from the prior year and assessments relating to the Property (collectively, the "**Due Diligence Information**"). Seller shall not intentionally withhold from Buyer a part of any report or document provided by Seller.

Section 4.03. Written Notices. In addition to the foregoing and not as a limitation to, subsequent to the Effective Date, Seller shall provide Buyer with copies of all written notices sent or received (i) with respect to the presence of Hazardous Materials (defined below) in, on or around the Property or in violation of law, (ii) relating to violations of law, (iii) relating to any condemnation, zoning, or other land use regulation proceedings concerning the Property, (iv) relating to litigation, arbitration, or administrative hearing concerning Seller or the Property, and (v) any other material written notices received by Seller concerning the Property.

Section 4.04. Notice of Termination; Notice to Proceed. Buyer shall have the absolute and unqualified right to terminate this Agreement at any time by written notice to Seller prior to the expiration of the Investigation Period for any reason whatsoever or for no reason. In the event Buyer does not so notify Seller that it is terminating this Agreement, then Buyer shall be deemed to have terminated this Agreement and the Deposit shall immediately be refunded to Buyer by Escrow Agent without any further authorization from Seller. In the event Buyer does (or fails to) provide written notice of termination of this Agreement, this Agreement shall be null and void with no further obligations between the parties other than those obligations which specifically survive termination, and the Deposit shall immediately be refunded to Buyer by Escrow Agent without any further authorization from Seller. However, notwithstanding the foregoing, if Buyer sends written notice to Seller of its election to proceed further with the transaction prior to the expiration of the Investigation Period (the "**Notice to Proceed**"), this Agreement shall not terminate pursuant to this Section 4.04. Unless Buyer issues the Notice to Proceed prior to the end of the Investigation Period, Buyer shall reimburse Seller for fifty percent (50%) of Seller's actual out-of-pocket costs, including, without limitation, attorneys' fees, for negotiating this Agreement, up to a maximum payment by Buyer to Seller of TWENTY FIVE THOUSAND DOLLARS (\$25,000), which Buyer shall pay to Seller within ten (10) business days after termination and Buyer's receipt of copies of applicable invoices.

ARTICLE 5 INTENTIONALLY DELETED

ARTICLE 6
SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 6.01. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer, both on the Effective Date and throughout the period of time through Closing, the following:

(A) Ownership and Parties in Possession. Seller owns marketable and insurable fee simple title to the Property. There are no parties in possession of any portion of the Property other than Seller, whether as lessees, tenants-at-sufferance, trespassers or otherwise other than Andrea Hubley, the caretaker for the horses on the Property, who resides at the Property without the benefit of any written agreement, and Seller shall cause Andrea Hubley and all horses (and any material accumulation of horse manure) to vacate the Property prior to Closing. No other "Person," (meaning an individual, or any entity, or any combination thereof), has any right, claim or interest in the Property or any portion thereof, arising out of adverse possession, prescriptive rights, or otherwise. During the term of this Agreement, Seller shall not market, offer to sell, sell, mortgage, pledge, hypothecate, encumber or otherwise transfer or dispose of, or allow any change in the title in and to all or any part of the Property or any direct or indirect interest therein, without the prior consent of Buyer, and Seller shall not solicit or accept any letters of intent, offers, proposal or interest, whether non-binding or otherwise. Seller shall keep the Property insured consistent with Seller's current business practices, and shall maintain all of the Property in accordance with Seller's current practices and in good order and repair, in compliance with all laws. Seller will convey to Buyer at Closing, marketable and insurable fee simple title, free and clear of any liens, mortgages, pledges, security interests, options, rights, leases, charges, claims, encumbrances or restrictions of any kind whatsoever, other than the Permitted Exceptions approved by Buyer pursuant to the terms of this Agreement.

(B) Authority of Seller. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the Commonwealth of Massachusetts. The person executing this Agreement on behalf of Seller has the lawful right, power, authority and capacity to bind Seller to the terms hereof and consummate the transactions contemplated by this Agreement, pursuant to the terms, provisions and conditions of this Agreement. The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any organizational document of Seller, or any agreement or document to which Seller is a party or by which it is bound.

(C) Bankruptcy. Neither Seller nor any of its affiliates, subsidiaries or parent companies is involved, whether voluntarily or otherwise, in any bankruptcy, reorganization or insolvency proceeding, except as a creditor of a bankrupt estate.

(D) Litigation. Seller has received no written notice of any litigation proceeding pending or threatened against or relating to any of the Property or Seller,

and to the best of Seller's knowledge, there are no threatened or contemplated special assessments of any nature with respect to the Property. Seller has no actual knowledge of any pending or contemplated change in any zoning or other regulation or private restriction, any pending or threatened judicial or administrative action, or an action pending or threatened by any third parties applicable to the Property.

(E) No Commitments. No commitments have been made by Seller to any governmental authority, school board, church or other religious body, or any other organization, group or individual relating to the Property which would impose an obligation upon Buyer or its successors or assigns to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property.

(F) Non-Foreign Entity. Seller is not a "foreign corporation," "foreign partnership" or "foreign estate" as those terms are defined in the Internal Revenue Code of 1986, as amended (the "Code").

(G) Prohibited Person. Seller is not (i) a person or entity subject to the provisions of Executive Order 13224; (ii) a person or entity owned or controlled by, or acting for or on behalf of, an entity subject to the provisions of Executive Order 13224; (iii) a person or entity with whom Seller or Buyer (as applicable) is prohibited from dealing by any laws related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act, and any regulations promulgated under either of them; (iv) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control; or to the best of Seller's knowledge (v) a person or entity that is affiliated with a person or entity described in clauses (i) through (iv) of this definition, if an entity existing in the United States is prohibited from doing business with such affiliated person or entity.

(H) Contracts. To Seller's actual knowledge, there is no existing unrecorded contract, lien or mortgage affecting the Property which shall be binding upon Buyer or the Property on or after Closing, and there is no default by Seller or to the actual knowledge of Seller any other party under any contracts to which Seller is bound relating to the Property or to which the Property is subject.

(I) Compliance. Seller has no actual knowledge of and has received no written notices prior to the date of this Agreement from any federal, state or local governmental authority or other party of any land use, zoning, safety, building, fire, environmental, health code or other violations of laws, ordinances, regulations or codes with respect to the Property. To Seller's actual knowledge, Seller and the Property are in compliance with all federal, state and local laws, ordinances, regulations and codes. Seller has received no written notice from any governmental authority that there are presently any special assessment actions pending or threatened against the Property. Subject to the terms and conditions of this Agreement, Seller shall promptly pay prior to Closing any fines or penalties due to any violations of local building or local land use

laws or regulations related to the Property up to \$75,000 to the extent such fines or penalties would be binding on Buyer after the Closing, and provide Buyer and Title Company with evidence of such payment.

(J) No Condemnation. Seller has no knowledge of and has not received any written notice of any pending or threatened condemnation action with respect to all or any portion of the Property and there are no existing condemnation or other legal proceedings affecting the existing use of the Property by any governmental authority having jurisdiction over or affecting all or any part of the Property.

(K) No Public Improvements or Assessments. Seller has not received any written notice of, nor otherwise has knowledge of: (i) any public improvements to be made on or about the Property, or off the Property, required in connection with the development of the Property; or (ii) any assessments for any public improvements made or to be made on or about the Property, or off the Property, required in connection with the development of the Property.

(L) Environmental Condition. Except as provided in any environmental site assessment delivered to Buyer by Seller, if any, Seller has not received any written notice of, nor does Seller, possess any actual knowledge of, a violation of, or any potential responsibility under any law or condition of the Property relating to Hazardous Materials in violation of any Environmental Laws. "**Hazardous Materials**" shall mean "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in CERCLA and the Massachusetts Hazardous Waste Management Act, M.G.L. Chapter 21C, as amended and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. Chapter 21E, and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials. Seller has not generated, released, treated, stored, disposed of, transported, discharged, or otherwise handled at or from the Property any Hazardous Materials in violation of Environmental Laws. "**Environmental Laws**" shall mean without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act, the Massachusetts Hazardous Waste Management Act, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, and other federal, state, county, municipal, and other local laws governing or relating to Hazardous Materials or the environment together with their implementing regulations, ordinances, and guidelines.

(M) Rollback Taxes. Other than the fact that the Property is currently assessed as Agricultural Land pursuant to Chapter 61A of Massachusetts General Laws, to Seller's actual knowledge, no portion of the Property is subject to any other abatement, reduction, deferral or "**rollback**" with regard to real estate taxes nor any agreement or arrangement whereby the Property may be subject to the imposition of real property taxes after the Closing Date on account of periods of time prior to the

Closing Date, provided that if such taxes are found prior to or after Closing, Seller shall promptly pay such taxes in full.

(N) No Associations. The Property is not subject to any community development district, homeowner's association, property owner's association, planned development, condominium association or other similar agreement.

(O) Unrecorded Encumbrances; Written Agreements. To Seller's actual knowledge, there are no unrecorded encumbrances, covenants, restrictions or agreements affecting the Property. Seller has not granted any option agreements or rights of first refusal or first offer with respect to the purchase of the Property or any other rights in favor of third persons to purchase or otherwise acquire the Property.

(P) Further Encumbrances. Seller shall not grant or convey any mortgage, lien, easement, lease, license, or permit in or to the Property or otherwise encumber, create or allow any new title matter after the effective date of the Commitment. In addition, Seller shall not enter into any contract, agreement, writing or instrument that will affect the marketability or insurability of title to any part of the Property subsequent to the Effective Date.

(Q) No Modification to Permits and Approvals; No Change in Zoning or Use. Seller shall not, without Buyer's prior written consent, in Buyer's sole discretion, terminate or modify, if existing or obtained prior to the Closing, the Permits and Approvals or any other approvals, licenses, or permits applicable to the use, zoning, occupancy or operation of the Property. Seller shall not initiate, consent to, approve or otherwise take any action with respect to any change of zoning, use, or development (including the number of permitted apartment units) for the Property without Buyer's prior written consent.

(R) No Historic Sites. To Seller's actual knowledge, there are no historic sites, graveyards or archaeological sites (Native American or otherwise) located at, on, or under the Property.

Section 6.02. Survival. Seller's representations and warranties described in this Article 6 and elsewhere in this Agreement shall survive Closing for a period of five hundred forty five (545) days and no action or proceeding thereon shall be valid or enforceable, at law or in equity, if a legal proceeding is not commenced within that time. References herein to the "**Seller's actual knowledge,**" "**to the best of Seller's knowledge**" or other similar references shall be limited to the actual knowledge, without any investigation or duty to investigate, of the following: Valthea McGee Fry and David J. Fry. Seller represents and warrants that such parties are the individuals with the most and sufficient knowledge with respect to the Property, Seller and the representations and warranties hereunder. Seller shall indemnify and hold Buyer, its parents, subsidiaries and affiliates, and their members, partners, shareholders, directors, officers, principals, employees, and agents, harmless from and against any and all claims, demands, liabilities, liens, costs, expenses, penalties, damages and

losses including reasonable attorney's fees and expenses suffered by Buyer as a result of any breach of warranty or representation made by Seller in this Agreement, and Buyer shall have the remedies available to Buyer for a Seller's Default (defined below). Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Seller agrees that, following the Closing, it shall be liable for the direct, but not consequential or punitive, damages resulting from any breach of its representations and warranties expressly set forth in this Article 6 of this Agreement; provided, however, that: "(i) the total liability of Seller for all such breaches under this Agreement and/or under the Heritage PSA and any matters relating thereto or under any law applicable to the Property or Other Land or this transaction or the transaction under the Heritage PSA shall not, in the aggregate, exceed Four Hundred Thousand and 00/100 Dollars (\$400,000.00), plus applicable reasonable attorneys' fees and costs (the "**Claim Cap**"); and (ii) such representations and warranties are personal to Buyer and may not be assigned to or enforced by any other Person, other than to an assignee of Buyer in accordance with this Agreement. Notwithstanding the foregoing, however, if the Closing occurs, Buyer hereby expressly waives, relinquishes and releases any right or remedy available to it at law or in equity, under this Agreement or otherwise to make a claim against Seller for damages that Buyer may incur, or to rescind this Agreement and the transactions contemplated hereby, as the result of any of Seller's representations or warranties in this Agreement or any document executed by Seller in connection herewith being untrue, inaccurate or incorrect, but only if Buyer had actual knowledge that such representation or warranty was untrue, inaccurate or incorrect at the time of the Closing. Buyer agrees that, following the Closing, no claim may or shall be made for any alleged breach of any representations or warranties made by Seller under or relating to this Agreement unless the amount of such claim or claims, individually or in the aggregate, exceeds Twenty Thousand and 00/100 Dollars (\$20,000.00) (in which event the full amount of such valid claims against Seller shall be actionable up to, but not in excess of, the Claim Cap) (the "**Floor Amount**").

SECTION 6.03. As-Is SALE. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS DELIVERED AT CLOSING; SELLER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, AND SELLER IS SELLING THE PROPERTY "AS-IS, WHERE IS" CONDITION AND "WITH ALL FAULTS" EXISTING AS OF THE CLOSING DATE. BUYER AGREES THAT EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS DELIVERED AT CLOSING: (I) BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR OF SELLER'S AGENTS OR EMPLOYEES, PAST OR PRESENT, INCLUDING, WITHOUT LIMITATION, AS TO THE CONDITION OR REPAIR OF THE PROPERTY OR THE VALUE, EXPENSE OF OPERATION, OR INCOME POTENTIAL THEREOF, THE RELIABILITY OF ANY INFORMATION FURNISHED TO BUYER OR AS TO ANY OTHER FACT OR CONDITION WHICH HAS OR MIGHT AFFECT THE PROPERTY OR THE CONDITION, REPAIR, VALUE, EXPENSE OF OPERATION OR INCOME POTENTIAL OF THE PROPERTY OR ANY PORTION THEREOF, AND (II) BUYER IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND BUYER IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS, AND

THAT BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE CLOSING OF THIS AGREEMENT AND NOT MERGE THEREIN.

ARTICLE 7

BUYER'S REPRESENTATIONS AND WARRANTIES

Section 7.01. Buyer's Representations and Warranties. Buyer represents and warrants to Seller, as true and correct, both on the Effective Date and as of the Closing, that:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and Buyer or Buyer's assignee shall be authorized to conduct business in the Commonwealth of Massachusetts as of Closing. Buyer has the lawful right, power, authority and capacity to enter into this Agreement and consummate the transactions contemplated by this Agreement, pursuant to the terms, provisions and conditions of this Agreement and all documents executed by Buyer that are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by Buyer. This Agreement and such documents are, or at the Closing will be, legal, valid, and binding obligations of Buyer, and do not, and, at the time of Closing will not, violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

(b) There are no proceedings pending or, to Buyer's knowledge, threatened against it in any court or before any governmental authority or any tribunal which, if adversely determined, would have a material adverse effect on its ability to purchase the Property or to carry out its obligations under this Agreement.

(c) Buyer acknowledges that it is experienced and sophisticated in the acquisition, development, management, leasing, ownership and operation of commercial real estate projects such as the Property and that, prior to the end of the Investigation Period, it will have a full and complete opportunity to conduct such investigations, examinations, inspections and analyses of the Property as Buyer, in its absolute discretion, may deem appropriate. Buyer further acknowledges that, except for the Seller representations set forth in this Agreement and in the documents delivered at Closing, Buyer has not relied upon any statements, representations or warranties by Seller or any agent of Seller. Without limiting the foregoing, Buyer acknowledges and agrees that: (1) any environmental, physical condition or other reports provided to Buyer by Seller or its agents are provided without any representation or warranty of any kind, express or implied, as to the completeness (except as specifically set forth in Section 4.02 of this Agreement)

or accuracy of the facts, presumptions, conclusions or other matters contained therein; (2) Buyer shall rely solely on its own investigations and on reports prepared by any consultants engaged by Buyer and not on any environmental, physical condition or other reports provided to Buyer by Seller or its agents.

(d) Neither Buyer nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and to their knowledge none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

All representations and warranties by Buyer in this Agreement shall be true and correct as of the Effective Date hereof and as of the Closing. Should Buyer intentionally breach any of the foregoing representations and warranties, Seller shall, at its option, proceed with any of those remedies available to Seller in this Agreement for a Buyer's Default (defined below) and Buyer shall indemnify and defend Seller against and hold Seller harmless from any and direct but not consequential or punitive damages resulting from any breach of its representations and warranties in Article 7 of this Agreement, for a period of five hundred forty five (545) days after Closing, over the Floor Amount and up to the Claim Cap, all losses, costs, damages, liabilities and expenses (including, without limitation, reasonable counsel fees) arising out of any breach by Buyer of its representations and warranties hereunder.

ARTICLE 8 CONDITIONS TO CLOSING

Section 8.01. Conditions to Closing. The obligation of Buyer to close upon the purchase of the Property pursuant to this Agreement is contingent upon the satisfaction of each and every one of the following contingencies (collectively, the "**Buyer's Conditions Precedent**"), any of which may be waived in whole or in part by Buyer on or before the Closing Date (defined below):

(A) That as of the Effective Date and through the Closing all representations, warranties and covenants of Seller made in this Agreement shall be true, accurate and complete and not misleading in any material respect and there shall have been no breach or breaches of the same by Seller, and there is no Seller's Default under this Agreement.

(B) There has been no material adverse change in the condition of the Property, including without limitation, the environmental and physical condition of the Property on the Closing Date from the condition existing as of the date of the expiration

of the Investigation Period, and there is no endangered, threatened, or other species of plant or animal life located on or in the vicinity of the Property which would adversely affect the development of the Project.

(C) The delivery by Seller of the items described this Agreement to be delivered by Seller, on or before the Closing Date.

(D) Title Company's issuance, or irrevocable commitment to issue promptly after Closing, the Title Insurance Policy, as further described in this Agreement, in the amount of the Purchase Price, insuring Buyer as the fee simple owner of the Property to be conveyed hereunder, subject only to the Permitted Exceptions, and including all endorsements requested by Buyer.

(E) Seller shall have otherwise performed in all material respects Seller's obligations under this Agreement which are required to be performed prior to the Closing Date.

(F) Any outstanding violations issued by governmental authorities with respect to the Property or the ownership or development shall have been cured prior to Closing and released of record prior to Closing, together with payment of all outstanding fines, interest or other amounts due in connection therewith.

(G) All Permits and Approvals in form and substance acceptable to Buyer in Buyer's sole discretion remain in full force and effect, and are final, unappealed and unappealable.

(H) Seller has executed all agreements and documents required under this Agreement along with any other easements, agreements or documents as may have been requested by Buyer and agreed to by Seller.

(I) No moratoria shall be in effect which would prevent commencement of development or construction or the full occupancy of the Project or obtaining access, water or sanitary sewer service, or any other utility in connection with the Project.

(J) Broker (defined below) has delivered the Broker's Lien Release to Escrow Agent with instructions to deliver it to Buyer upon Closing.

(K) Buyer has closed on Buyer's purchase of the Other Land pursuant to the Heritage PSA.

Section 8.02. Failure of Buyer's Conditions Precedent. If one or more of the foregoing Buyer's Conditions Precedent is not satisfied on or prior to the Closing Date, then in Buyer's sole discretion, Buyer may (i) waive the applicable Buyer's Conditions Precedent and close on the Property and/or (ii) terminate this Agreement by written notice ("**Termination Notice**") to Seller and, upon the giving of such Termination

Notice, the Deposit shall immediately be refunded to Buyer without any further authorization from Seller, this Agreement shall terminate and Buyer shall have no further obligations hereunder except for the obligations which expressly survive termination of this Agreement; provided, however, if any of Buyer's Conditions Precedent are not satisfied due to a Seller's Default, Buyer shall also have the remedies available to Buyer for a Seller's Default.

ARTICLE 9 CLOSING

Section 9.01. Closing. Subject to the terms and conditions of this Agreement the sale and purchase of the Property (the "**Closing**") shall occur on the date (the "**Closing Date**") which is sixty (60) days after Buyer has delivered the Approvals Notice, as defined in the Heritage PSA. Buyer, at its sole discretion, may extend the Closing Date for up to two (2) period(s) of sixty (60) days each (each, a "**Closing Date Extension**"). If Buyer elects to exercise a Closing Date Extension, Buyer shall give Seller written notice of such election at least three (3) days prior to the then applicable Closing Date. If Buyer elects to exercise the first Closing Date Extension, Buyer shall deposit with Escrow Agent an additional Deposit of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500) (the "**First Closing Extension Deposit**") prior to or on the then applicable Closing Date, which First Closing Date Extension Deposit shall be credited against the Purchase Price at Closing. If Buyer elects to exercise the second Closing Date Extension, Buyer shall deliver deposit with Escrow Agent TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500) (the "**Second Closing Extension Deposit**") prior to or on the then applicable Closing Date, which Second Closing Date Extension Deposit shall be credited against the Purchase Price at Closing. In no event shall Closing be more than nine hundred ninety five (995) days after the Effective Date.

Section 9.02. Place of Closing. The Closing shall be on the Closing Date at the offices of Escrow Agent, unless otherwise agreed to between the parties, and may be accomplished via wire transfer or ACH transfer of funds and prior delivery to Escrow Agent of all original fully executed Closing Documents (defined below). The Closing under this Agreement and the Heritage PSA must occur simultaneously. Seller shall cooperate with an escrow, mail away Closing through Escrow Agent to accomplish such simultaneous Closing.

Section 9.03. Expenses of Closing and Prorations.

(A) At Closing, all ad valorem and non-ad valorem real property taxes and assessments for the year of Closing will be prorated as of the Closing Date (initially prorated on the basis of the most recent ascertainable bill, but subject to re-proration upon issuance of the actual bill therefor and request of either Buyer or Seller to effectuate the actual proration). All prorations shall assume Buyer owns the Property as of 12:01 am of the Closing Date. If there shall be any rollback taxes imposed on the Property as of or after Closing, Seller shall pay such taxes at Closing, or promptly

thereafter if unknown at Closing. If there is no separate tax bill for the Property after Closing, Seller shall promptly pay the combined tax bill, and Buyer shall reimburse Seller its fair share.

(B) If applicable, Seller shall pay water and sewer charges, fees, utility charges and costs, and any and all other charges, costs, fees and expenses with respect to the Property and any roads, highways, streets, avenues or alleys abutting the same through the Closing Date or levied against the Property for work ordered, commenced or completed prior to Closing, as it may be extended, and any other special assessments. If any assessments are owed with respect to work, improvements or other matters prior to Closing, but which are payable after Closing, Buyer shall be entitled to a credit therefore at Closing and if not known at Closing, Seller shall thereafter promptly pay same, as and when due, or, at Buyer's option, reimburse Buyer for same. Buyer shall pay such fees, charges and costs accruing after Closing and for work ordered, commenced or completed at or following Closing by Buyer. In addition, Buyer shall be responsible for the payment of all impact fees, mobility fees and concurrency fees applicable to the Project only to the extent that same are payable, and have not been paid for, the period after Closing.

(C) Seller shall pay for all transfer taxes and documentary stamps and surtaxes, if any, to be attached to the Deed (defined below), and any other document to be recorded as part of the Closing. Seller will pay for the cost of recording the Deed.

(D) Buyer shall pay for the cost of the Commitment and the Title Insurance Policy and all endorsements thereto. Buyer shall pay for the cost of the Survey.

(E) Buyer shall pay lender's fees or related costs of financing employed by Buyer, including all costs associated with any note or mortgage, including recording costs and state taxes and documentary stamp taxes and intangibles taxes due thereon.

(F) Seller shall satisfy and pay all outstanding governmental and municipal improvement liens.

(G) Each party shall pay its own attorneys' fees, accountants' fees and other advisers' fees and costs incurred at any time in connection with pursuing, drafting, negotiating and consummating this Agreement.

(H) Any other cost or item to be prorated shall be in accordance with custom in Middlesex County, Massachusetts.

Seller's and Buyer's rights and obligations in this Section shall survive Closing.

Section 9.04. Documents for Closing. Prior to or at the time of Closing, Seller and Buyer will execute and provide any and all documents necessary to effectuate the terms, conditions and intent of this Agreement (the "**Closing**

Documents”), including the following, which documents shall be in a form reasonably acceptable to Buyer and Title Company:

(A) A quitclaim deed in recordable format and substantially in the form of **Exhibit “C”** attached hereto (the **“Deed”**), conveying to Buyer or its assignee marketable and insurable fee simple title to the Property free and clear of all mortgages, encumbrances and liens whatsoever and subject only to Permitted Exceptions (without specifically listing them);

(B) An assignment substantially in the form of **Exhibit “D”** (and/or as otherwise required by applicable law or regulations) attached hereto with respect to all of the Intangible Personal Property and any other applicable personal property (the **“Assignment Agreement”**) duly executed, acknowledged and delivered and in form for recording;

(C) A FIRPTA Affidavit;

(D) A Closing Statement in a form prepared by the Title Company;

(E) A duly executed mechanic’s lien and possession affidavit sufficient to delete the exceptions for parties in possession, unrecorded easements and mechanic’s and contractor’s liens and any other affidavits or documents required to satisfy Seller’s obligations pursuant to this Agreement, which is also sufficient for the Title Company to **“insure the gap”** at Closing and delete all other standard exceptions;

(F) Such affidavits, good standing certificates, Secretary of State certified copies of Seller’s articles of incorporation, proof of such Seller’s authority and authorization to enter into the documents to be executed and delivered at Closing, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents and certificates as may be reasonably required by Seller, and as required by the Title Company to satisfy the requirements listed in the Title Commitment and issue the Title Insurance Policy consistent with the terms of this Agreement and, provided a Survey is obtained which is acceptable to the Title Company, with all standard exceptions deleted;

(G) A certificate, executed by Buyer and Seller, certifying that the representations and warranties given by each under this Agreement are true and correct in all material respects on the Closing Date, but the failure to deliver such certificate shall not be deemed to negate the requirement that the representations and warranties must be true and correct as of Closing

(H) Required easements, if any;

(I) The Brokers Lien Release;

(J) Any other documents required in this Agreement, the Commitment, or reasonably requested by either party;

(K) Any transfer tax or similar fees, affidavits, certificates or agreements which may be required in connection with the conveyance of the Property to Buyer; and

(L) An Affidavit signed by all of the Selectmen of the Town of Marlborough that they were notified of the sale and they have voted to waive the Town's right of first refusal, meeting the requirements of Massachusetts law and acceptable to the Title Company and Buyer.

All of the documents executed which are to be delivered at Closing will be duly authorized, legal, valid and binding obligations of the party executing the same. The parties agree to execute any other document, following Closing, as reasonably necessary to effectuate the intent of all terms and conditions set forth in this Agreement. The Closing is not contingent upon Buyer obtaining a mortgage but if Buyer does so, Seller shall use commercially reasonable efforts to cooperate with Buyer obtaining and closing a mortgage. Seller's and Buyer's rights and obligations in this Section shall survive Closing.

ARTICLE 10 REAL ESTATE BROKERS

Section 10.01. Real Estate Brokers. The parties each represent to the other that there are no real estate brokers, salespeople, finders or consultants, who are or were involved in the negotiation and/or consummation of this transaction, other than Walker & Dunlop ("**Broker**"). Buyer shall pay in full if and when Closing occurs all commissions and compensation due to Broker, and Buyer shall cause Broker to deliver to Escrow Agent at Closing a properly executed release of any lien rights such Broker may have against the Property (the "**Brokers Lien Release**"). Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees through all levels of proceedings, for brokerage or professional service fees claimed by any broker employed or claiming to have been employed by Buyer, including Broker. Seller agrees to defend, indemnify and hold Buyer harmless from and against any and all costs and liabilities, including, without limitation, reasonable attorneys' fees through all levels of proceedings, for brokerage or professional service fees claimed by any broker employed or claiming to have been employed by Seller, other than Broker. The indemnification provided hereunder shall be applicable to any party claiming that it is owed a fee or other form of compensation due to or arising out of this Agreement. The rights and obligations of Buyer and Seller under this Article 10 shall survive Closing and any termination of this Agreement.

ARTICLE 11 ESCROW

Section 11.01. Escrow. Subject to the last sentence of this Section 11.01, if there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or as to whom same are to be delivered, Escrow Agent will not be obligated to make any delivery, but in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by Seller and Buyer directing the disposition of same, and in the event either party would be entitled to the Deposit, or other monies or documents held by Escrow Agent, the parties agree to forthwith execute such joint written authorization upon the request of any party hereto. In the absence of such authorization, Escrow Agent may hold the Deposit, or other monies or documents in its possession until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may, but is not required to, bring an appropriate action or proceeding for leave to deposit said funds or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions of Escrow Agent, unless same are a result of the gross negligence, willful misconduct or fraud. Otherwise, provided Escrow Agent acts in accordance with this Agreement, Escrow Agent shall have no liability following the delivery of any funds or documents which Escrow Agent holds pursuant to this Agreement. If Escrow Agent elects to bring an appropriate action or proceeding in accordance with the terms of this Section 11.01, then Escrow Agent shall be entitled to recover all of its reasonable attorneys' fees and costs incurred in connection with the action from the party not entitled to receive the Deposit or other monies or documents as determined by a court of competent jurisdiction. The parties agree that they will hold Escrow Agent harmless from and indemnify it against any costs or liabilities, including reasonable attorneys' fees, resulting from any action brought against Escrow Agent, unless due to Escrow Agent's willful misconduct, gross negligence, or fraud. Notwithstanding the foregoing or any objection by or on behalf of Seller, in the event Buyer elects to terminate or is deemed to have terminated the Heritage PSA on or before the expiration of the Approvals Period (as defined in the Heritage PSA), then, unless waived in writing by Buyer on or before the expiration of the Approvals Period, this Agreement shall also be terminated and Escrow Agent shall and is hereby authorized to deliver the Deposit to Buyer. This Section 11.01 shall survive any termination of this Agreement and shall survive Closing.

ARTICLE 12 CONDEMNATION, CASUALTY, AND MORATORIA

Section 12.01. Condemnation and Casualty

(a) If after the expiration of the Inspection Period, the Property shall have been damaged by fire or other casualty prior to the Closing, such that Seller's reasonable estimate of the cost to repair the same exceeds five percent (5%) of the Purchase Price (a "**Material Casualty**"), then unless Seller has

previously repaired or restored the Property to its former condition prior to the Closing Date, then, at Buyer's sole option, (i) Seller shall pay over or assign to Buyer, on delivery of the Deed all proceeds of any insurance policies payable to Seller, less any amounts reasonably expended by Seller for partial restoration, with a credit to Buyer for the amount of any deductible, or (ii) Buyer shall direct Escrow Agent to return the Deposit and accrued interest thereon to Buyer in which case, except for any obligation which expressly survives termination of this Agreement (each a "**Surviving Obligation**"), all other obligations of the parties hereto shall cease and this Agreement shall terminate and be without further recourse or remedy to the parties hereto.

(b) If after the expiration of the Inspection Period, all or a material part of the Property is taken by condemnation, eminent domain or by agreement in lieu thereof prior to the Closing such that Seller's reasonable estimate of the loss of value of the remaining Property exceeds an amount equal to five percent (5%) of the Purchase Price or if such would adversely affect Buyer's Project (a "**Material Taking**"), Buyer may, at Buyer's sole option, either (i) terminate this Agreement (in which event Buyer shall be entitled to a return of the Deposit, and, except for the Surviving Obligation, all other obligations of the parties hereto shall cease and this Agreement shall terminate and be without further recourse or remedy to the parties hereto) or (ii) close title to the Property in accordance with the terms hereof, without reduction in the Purchase Price, together with an assignment of Seller's rights to any award payable by or on behalf of the condemning authority. If Seller has received payments from the condemning authority and if Buyer elects to close title to the Property, Seller shall credit the amount of said payments against the Purchase Price at the Closing.

(c) With respect to any Material Casualty or Material Taking, Buyer shall be deemed to have elected to proceed under Article 12.01(a)(i) and 12.01(b)(ii) above respectively and as applicable, unless, within thirty (30) days from the date of Seller's delivery of written notice of such Material Casualty or Material Taking to Buyer, Buyer provides Seller with written notice that Buyer has elected to terminate this Agreement as provided for in this Article 12. Seller shall provide Buyer written notice of any casualty or taking or the written threat or notice thereof within five (5) days after Seller learns of such event.

Section 12.02. Moratoria. Notwithstanding anything to the contrary contained in this Agreement, if, at the time of Closing, there is a moratorium, or threat thereof, regarding any aspect of the Project, Buyer shall have the right to extend the Closing for a period not to exceed one hundred eighty (180) days, at which time if a moratorium, or threat thereof, still exists, Buyer shall have the option to either (a) terminate this Agreement, whereupon the Deposit shall be promptly returned to Buyer and neither party shall have any further rights or obligations hereunder, except for those matters that expressly survive termination of this Agreement or (b) waive such condition and proceed with Closing in accordance herewith. If Buyer chooses to proceed with Closing,

the Closing shall occur within ten (10) business days of Seller's receipt of Buyer's notice waiving such condition.

ARTICLE 13 DEFAULTS

Section 13.01. Buyer's Default. In the event Buyer breaches or defaults under any of its representations, warranties, obligations or covenants under this Agreement and such failure continues for ten (10) days after written notice from Seller to Buyer ("Buyer's Default"), including, but not limited to, the failure of Buyer to close this transaction, the parties acknowledge it would be impossible to ascertain the amount of damages suffered by Seller, and therefore the parties agree that in the event there is a Buyer's Default, the Deposit shall be paid to and accepted by Seller as full and liquidated damages and as Seller's sole and exclusive remedy and each of the parties shall thereafter be released of any further liability or responsibility hereunder, except for the obligations which expressly survive termination of this Agreement. Notwithstanding anything contained herein to the contrary, Seller's right to retain the Deposit shall in no event limit Seller's right to enforce and collect upon any indemnification rights afforded under this Agreement.

Section 13.02. Seller's Default. In the event Seller breaches or defaults under any of its representations, warranties, obligations or covenants under this Agreement and/or any of its representations, warranties, obligations or covenants under the Heritage PSA, and such failure continues for ten (10) days after written notice from Buyer to Seller ("**Seller's Default**"), Buyer shall be entitled: (a) to terminate this Agreement by written notice to Seller and receive a refund of the Deposit, and in the event of an intentional and willful default by Seller, Seller shall pay all of Buyer's actual out-of-pocket third party costs relating to this Agreement and/or the Heritage PSA and the Property and/or Other Land, up to a maximum of \$250,000 (which shall be an aggregate maximum amount of actual out-of-pocket third party costs under the Agreement and/or Heritage PSA), or (b) to seek specific performance of this Agreement, which suit must be filed in the state or federal court serving Middlesex County, Massachusetts on or before ninety (90) days following the date of the alleged Seller's Default. Notwithstanding the foregoing, in the event of an intentional and willful Seller's Default where specific performance is not an available remedy, Buyer shall be entitled to all rights and remedies allowed by law, in equity and/or under this Agreement including actual damages (including Buyer's actual out-of-pocket third party costs relating to this Agreement and the Property, up to a maximum of \$250,000) and injunctive and other equitable relief, provided that suit must be filed in the applicable state or federal court of Middlesex County, Massachusetts on or before ninety (90) days following the date of the alleged Seller's Default. Notwithstanding anything contained herein to the contrary, Buyer's right to obtain specific performance shall in no event limit Buyer's right to enforce and collect upon any indemnification rights afforded under this Agreement. Except as specifically provided in this Agreement, Buyer expressly and unconditionally waives any right to recover damages from Seller.

Section 13.03. Post-Closing Default. In the event either party breaches or defaults under any of its representations, warranties, obligations or covenants under this Agreement that survive Closing (including without limitation, any obligations or covenants expressly provided for herein and including breaches that occur prior to Closing but are discovered post-closing), then the non-defaulting party shall have the right (but not the obligation) to take (or cause to be taken) any action necessary to correct such breach or default in order to fulfill the obligations and covenants provided for in this Agreement. In any such event, the non-defaulting party shall be entitled to seek actual out-of-pocket costs and expenses (including without limitation, reasonable attorneys' fees) plus interest at the rate of twelve percent (12%) per annum for any such work completed by a non-defaulting party on the defaulting party's behalf, incurred in connection with such self-help rights granted to a party hereunder.

Section 13.04. Notice and Cure. Unless more time is expressly provided for the cure of a default in this Agreement, prior to either party being able to exercise any of the rights and remedies set forth in this Article 13, the non-defaulting party shall give the defaulting party written notice of such default and five (5) days in which to cure.

Seller's and Buyer's rights and obligations under this Article 13 shall survive any termination of this Agreement and Closing.

Section 13.05. Termination. Notwithstanding anything contained herein to the contrary, if the Heritage PSA is terminated by either party, this Agreement shall automatically terminate and the parties shall be afforded the applicable rights hereunder, including the return of the Deposit, as applicable, unless such termination is waived in writing by Buyer.

ARTICLE 14 NOTICE

Section 14.01. Notice and Addresses. All notices required or desired to be given under this Agreement shall be in writing and either: (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx, UPS or similar overnight service, or (d) sent via electronic mail, so long as notice is also provided through either method (a), (b) or (c) as herein described. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (w) when delivered, if by hand delivery, (x) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (y) one (1) business day after timely deposited in a FedEx, UPS or similar overnight service depository, or (z) upon sending if sent via electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice, and shall be addressed as follows:

Seller:

Heritage Farm, LLC
15149 Winesap Drive

Buyer:

Waypoint Residential Services, LLC
9 West Broad Street

North Potomac, MD 20878
Telephone No.: 301-726-7084 (h) and
301-814-3519 (c)
Attn: Valthea M. Fry
E-Mail: iris355@hotmail.com

With a copy to:

David J. Fry
Address: Email Only
Phone: Email Only
Email: david.james.fry@gmail.com

With an additional copy to:

Geoffrey H. Smith, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky, and
Popeo, P.C.
One Financial Center
Boston, MA 02111
Telephone 617-348-1767
E-mail ghsmith@mintz.com

Escrow Agent/Title Company:

First American Title Insurance Company
National Commercial Services
420 S. Orange Avenue, Suite 250
Orlando, Florida 32801
Attention: Geoffrey Temple, Assistant
Vice President
Phone: 866-753-1149
E-mail: gtemple@firstam.com

Suite 800
Stamford, CT 06902
Telephone No.: 203-210-2757
Attn: James Driscoll
E-Mail: JDriscoll@waypointresidential.com

With a copy to:

Waypoint Residential Services, LLC
150 East Palmetto Park Road
Suite 700
Boca Raton, FL 33432
Phone: 561-961-7923
Attn: Pamela S. Linden, Esq
E-mail: Plinden@WaypointResidential.com

With an additional copy to:

David M. Layman, Esq.
Greenberg Traurig, P.A.
777 S. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Telephone No. 561-650-7990
E-Mail: laymand@gtlaw.com

or to any other address hereafter designated by any of the parties, from time to time, in writing and otherwise in the manner set forth herein for giving notice.

Section 14.02. Attorneys. The respective attorneys for Seller and Buyer are hereby authorized to give any notice pursuant to this Agreement on behalf of their respective clients.

ARTICLE 15 MISCELLANEOUS PROVISIONS

Section 15.01. Choice of Law and Venue. This Agreement shall be construed and interpreted under the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflict of laws, except where specifically pre-empted by Federal law. Seller and Buyer agree that the proper venue with respect to any state or federal litigation in connection with this Agreement shall be Middlesex County, Massachusetts. This Section 15.01 shall survive any termination of this Agreement and Closing.

Section 15.02. Amendments. No amendment to this Agreement shall bind any of the parties hereto unless and until such amendment is in writing and executed by Buyer and Seller.

Section 15.03. Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the parties and no prior written documents, and no prior or contemporary oral statements, representations, promises, or understandings not embodied in this Agreement shall be of any force and/or effect.

Section 15.04. Litigation. In the event of any enforcement action or litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement of all reasonable attorneys' fees and costs incurred at all proceedings (including in Bankruptcy Court), including, without limitation, before trial, at trial and at all appellate levels, from the non-prevailing party. This Section 15.04 shall survive any termination of this Agreement and Closing.

Section 15.05. Assignment.

(A) All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

(B) With notice to Seller no later than five (5) business days prior to Closing, Buyer may assign its interests in the Agreement to an entity owned or controlled by Buyer or under common control or affiliated with Buyer that assumes all of the obligations of Buyer under this Agreement.

Section 15.06. Interpretation. Captions and section headings contained in this Agreement are for convenience and reference only; in no way do they define, describe, extend or limit the scope or intent of this Agreement or any provision hereof. The terms and provisions of this Agreement have been fully negotiated between the parties and each party has been afforded the opportunity to engage, if such party desires, legal counsel to assist in the preparation, negotiation, and drafting of this Agreement. Accordingly, the terms and provisions of this Agreement shall not be

interpreted for or against either Seller or Buyer as the drafting party. The terms "herein," "hereby," "hereof," "hereto," "hereunder" and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used.

Section 15.07. Number and Gender. All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

Section 15.08. Possession. Possession of the Property shall be delivered to Buyer at Closing.

Section 15.09. Time. Time shall be of the essence with respect to this Agreement. All representations and warranties set forth herein are material and of the essence to this Agreement.

Section 15.10. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

Section 15.11. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

Section 15.12. Time Periods. The calculation of the number of days that has passed during any time period prescribed in the Agreement shall be based on calendar days, unless otherwise expressly set forth herein, and shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday or day banks are closed in the State of Florida, the Commonwealth of Massachusetts, and/or the State of New York shall extend to the next full business day. The term "business day" as used herein shall not include Saturday, Sunday and days banks are closed in the State of Florida, the Commonwealth of Massachusetts and/or the State of New York. For all purposes under this Agreement, all times shall mean either Standard Time or Daylight Time as then currently applicable in Marlborough, Massachusetts.

Section 15.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. To facilitate execution and delivery of this Agreement, the parties may execute and exchange executed counterparts by facsimile or e-mail in a PDF file to the other party or to the other party's counsel. Facsimile

signatures or signatures in a PDF file shall have the same legal effect as original signatures.

Section 15.14. Force Majeure. In the event that the performance by either party of any of its obligations hereunder is delayed by natural disaster, terrorist activity, war, delays in government or municipal approvals or inspections, labor dispute or similar matter beyond the control of such party, without such party's fault or negligence, then the party affected shall notify the other party in writing of the specific obligation delayed, and the duration of the delay, and the deadline for completion of such obligation shall be extended by a like number of days. The foregoing shall not apply to any obligation to pay money due hereunder.

Section 15.15. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange under Section 1031 of the Internal Code and the Treasury Regulations thereunder (a "**1031 Exchange**") and, in furtherance of a 1031 Exchange, Buyer may purchase the Real Property through a tenancy-in-common regime, provided: (a) the Closing shall not be delayed or affected by reason of the 1031 Exchange; (b) the exchanging party shall effect its 1031 Exchange through an assignment of its rights under this Agreement to a qualified intermediary, with the non-exchanging party hereby expressly consenting to such assignment and further agreeing to provide to the exchanging party prior to the Closing a written acknowledgement of receipt of any notice of such assignment furnished to it in connection with the 1031 Exchange (and which notice may be by a document signed and sent as a PDF by electronic mail); (c) the non-exchanging party shall not be required to acquire or hold title to any real property for purposes of consummating a 1031 Exchange desired by the other party; and (d) the exchanging party shall pay any additional material costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through a 1031 Exchange. Neither party shall by acquiescence to a 1031 Exchange desired by the other party have its rights under this Agreement affected or diminished or be responsible for compliance with or be deemed to have warranted to the exchanging party that the 1031 Exchange complies with Section 1031 of the Code.

Section 15.16. WAIVER OF TRIAL BY JURY. BUYER AND SELLER HEREBY EXPRESSLY COVENANT AND AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDING RELATING TO, DIRECTLY OR INDIRECTLY, OR CONCERNING THIS AGREEMENT OR THE CONDUCT, OMISSION, ACTION, OBLIGATION, DUTY, RIGHT, BENEFIT, PRIVILEGE OR LIABILITY OF A PARTY HEREUNDER TO THE FULL EXTENT PERMITTED BY LAW. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN AND IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BUYER AND SELLER. BUYER AND SELLER HAVE HAD AN OPPORTUNITY TO SEEK LEGAL COUNSEL CONCERNING THIS WAIVER. THIS WAIVER IS INTENDED TO AND DOES ENCOMPASS EACH INSTANCE AND EACH

ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. BUYER AND SELLER FURTHER CERTIFY AND REPRESENT TO EACH OTHER THAT NO PARTY, REPRESENTATIVE OR AGENT OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE TO BUYER OR SELLER OR TO ANY AGENT OR REPRESENTATIVE OF BUYER OR SELLER (INCLUDING, BUT NOT LIMITED TO, THEIR RESPECTIVE COUNSEL) THAT THEY WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL. THIS WAIVER SHALL APPLY TO THIS AGREEMENT AND ANY FUTURE AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS OF THIS AGREEMENT.

Section 15.17. Memorandum of Contract. The Seller acknowledges and accepts that the Memorandum of Contract that has been recorded in the real estate records of Middlesex County, Massachusetts pursuant to the terms of the Heritage PSA includes the Land and Other Land.

Section 15.18. Title Standards. Any title matter which is the subject of a title or practice standard of the Real Estate Bar Association for Massachusetts f/k/a Massachusetts. Conveyancer's Association at the time for delivery of the Deed hereunder shall be governed by said title and practice standards to the extent applicable and not inconsistent with any provisions contained in this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement on the dates indicated below.

Seller:

HERITAGE FARM, LLC, a Delaware
limited liability company

By: Valthea McGee Fry
Print Name: Valthea McGee Fry
As: Manager & Owner
Dated: Nov. 14/19

Buyer:

**WAYPOINT RESIDENTIAL SERVICES,
LLC**, a Delaware limited liability company

By: Pamela Linden
Print Name: Pamela Linden
As: Authorized Signatory
Dated: November 14, 2019

ACCEPTANCE BY FIRST AMERICAN TITLE INSURANCE COMPANY

First American Title Insurance Company, referred to in this Agreement as the **"Escrow Agent"** and **"Title Company,"** hereby acknowledges receipt of the Current Deposit in the amount of Fifty Thousand Dollars (\$50,000), together with a fully executed copy of this Agreement. First American Title Insurance Company certifies that it has received and understands this Agreement and hereby accepts the obligations of the Escrow Agent and the Title Company as set forth herein, including, without limitation, its agreement to hold the Deposit and disburse same, in strict accordance with the terms and provisions of this Agreement.

Date: _____

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: _____

Name:

Title: _____

SCHEDULE OF EXHIBITS

<u>EXHIBIT "A"</u>	Legal Description of the Land
<u>EXHIBIT "B"</u>	Certain Due Diligence Documents
<u>EXHIBIT "C"</u>	Form of Deed
<u>EXHIBIT "D"</u>	Assignment Agreement

Exhibit "A"

Legal Description of the Land

The Land is described as follows:

Real property in the City of Marlborough, County of Middlesex South, Commonwealth of Massachusetts, described as follows:

Parcel I

The land in Marlborough, situated on the Southerly Side of the Massachusetts State Highway, known as the Boston Post Road, beginning at a point substantially opposite station 100 in the 1928 location of Boston Post Road at the Northeasterly corner of Lot J as shown on "Plan of Land in Marlborough belonging to Leone H. and Nellie A. Fairbanks, dated June 1932. J. Francis Granger, C.E." and recorded in Middlesex South District Deeds as Plan 470 of 1932; thence running Southwesterly along Lot J two hundred thirty-two (232) feet, more or less, to land of the City of Marlborough; thence running Easterly along land of the City of Marlborough one hundred thirty-five (135) feet, and 48.9 feet to an angle; thence turning and running Northeasterly still by City land, one hundred thirteen (113) feet to the Boston Post Road; thence turning and running Northwesterly along the Boston Post Road one hundred seventy-seven (177) feet, more or less, to the point of beginning, and comprising parts of Lots K and L, as shown on said plan.

Parcel II

Also, another certain parcel of land on the Southerly side of said Boston Post Road beginning at a point on land of the City of Marlborough taken for sewer purposes and at the Westerly corner of Lot M as shown on said Plan 470 of 1932, thence turning and running:

Southwesterly along said City's land ninety-two (92) feet, more or less, thence turning and running still

Southwesterly along said City's land five hundred thirty (530) feet, more or less, thence turning and running still

Southwesterly along Clark's land one hundred ninety-six (196) feet, more or less, to a stone wall at land now or formerly of Robert F. Clark, thence turning and running

Southerly along Clark's land ninety-three (93) feet, more or less, thence turning and running

South 28 degrees 42 minutes West along said Clark's land two hundred fifty-four and 9/10 (154.9) feet, more or less; thence turning and running

South 48 degrees 50 minutes East along said Clark's land three hundred ninety (390) feet, more or less; thence turning and running

Southeasterly along said Clark's land seventeen and 9/10 (17.9) feet, more or less, to the Southwesterly

corner of said Lot M; thence turning and running

North 34 degrees 30 minutes East along said Lot M one thousand forty-one (1,041) feet, more or less

Northwesterly along said Lot M to the point of beginning comprising part of Lots I, J, K and L, as shown on said plan.

Said Parcels and I and II are a portion of the premises described in deed of Paul A. Shaw to Lawrence A. Fountain dated October 8, 1951 and recorded with Middlesex South District Registry in Book 7966, Page 15.

EXCEPTING FROM THIS PARCEL ARE THE FOLLOWING:

- a. Part of Lots L and M 1 as described in the Deed, recorded with said Deeds, Book 5712, Page 313 and shown on Plan 106 of 1933 in Book 5712, Page 313;
- b. A parcel of land as described in the Deed, recorded with said Deeds, Book 9564, Page 505. See sketch attached.
- c. Parcel A as described in Book 24056, Page 536 and shown on plan 1060 of 1993 in Book 24056, Page 536.

The excepted parcels are Red, Pink and Brown parcels on the color coded plan in Book 5664, Page End.

Parcel III

A certain parcel of land on the Southerly side of the Boston Post Road in said Marlborough bounded and described as follows; and being Lots F, G, H and the Southwesterly parts of Lots B, C, D and E as shown on a plan entitled "Plan of Land in Marlborough, Mass, owned by Leon H. and Nellie A. Fairbanks, dated June 1932 J. Francis Granger, Civil Engineer," and recorded with Middlesex South District Registry of Deeds as Plan No. 470 of 1932, at the end of Book 5664, and further bounded and described as follows:

Beginning at the Northeasterly corner of the granted premises at land now or formerly of Virginia D. McGee and Lot "A" as shown on said plan; thence running Southwesterly by said Lot "A" one thousand one hundred seven and three tenths (1,107.3) feet, more or less, to land of the City of Marlborough; thence turning and running in an Easterly direction of land of the City of Marlborough two hundred three (203) feet, more or less, to a point; thence turning and running Northeasterly by land of said City of Marlborough thirty (30) feet to a point; thence running Easterly again according to said plan five hundred twenty-nine and five tenths (529.5) feet, more or less, to a point thence turning and running Southerly twenty-six and four tenths (26.4) feet, more or less, to a point as shown on said plan; thence running Northeasterly again by land of the said City of Marlborough three hundred thirty-four and four tenths (334.4) feet, more or less, to a point; thence running Easterly again eighty-three (83) feet, more or less, to Lot "I" as shown on said plan to Boston Post Road four hundred forty-eight (448) feet; thence turning and running Northerly by said Road three hundred (300) feet to land of said Virginia D. McGee; thence turning and running in a Southwesterly direction three hundred eighty (380) feet, more or less,

to a point; thence turning and running Northwesterly four hundred (400) feet, more or less, to the point of beginning.

Said premises are conveyed subject to a ten-foot (10') right of way for water main, as shown on said plan.

Parcel V

The land in Marlborough, Massachusetts as shown on a "Plan of Land in Marlborough, Mass., owned by Virginia D. McGee, Book 9356, Page 588, Scale 1'-40', dated July 20, 1983 by Highland Land Surveyors, Inc., 69 Maple Street, Marlborough, Mass." recorded in Middlesex South District Registry of Deeds on July 26, 1983, in Plan Book Number 809.

Being Lot "K" containing eighteen thousand one hundred sixteen (18,116) square feet, and Lot "L" containing six thousand three hundred forty-two (6,342) square feet.

Being the same premises described in a deed to us from Virginia D. McGee and Valthea McGee Fry, Trustees of the McGee Vet Realty Trust u/a dated December 29, 1992, which trust is recorded in Middlesex South District Registry of Deeds in Book 22872, Page 356, and said Trustees being respectively of Marlborough, Middlesex County, Massachusetts and Potomac, Maryland, dated December 18, 2000, recorded in Middlesex South Deeds in Book 32412, Page 450.

NOTE: Parcels I and V are essentially the same parcel.

PARCEL VII:

LOT M-1 SHOWN ON SAID PLAN AT BOOK 5664, PAGE END, EXCLUDING A PARCEL CONTAINING .66 ACRES SHOWN ON A PLAN ENTITLED "PLAN OF LAND IN MARLBOROUGH, MASS., OWNED BY: LEON H. AND NELLIE A. FAIRBANKS", DATED FEBRUARY, 1933, BY J. FRANCIS GRANGER, RECORDED WITH SAID DEEDS, BOOK 5712, PAGE 313. BEING A PORTION OF MARLBOROUGH ASSESSOR'S PARCEL 73-24.

Parcel VIII (Easement):

Access easement as set forth in that certain City of Marlborough Sewer Taking, dated October 13, 1890, recorded with said Deeds, Book 2004, Page 1 and included on File Plans 55 and 56.

Exhibit "B"

Certain Due Diligence Documents

To the extent these items are in the possession or Seller, Seller shall provide the following:

1. Copy of most current and last year's tax bill and assessment.
2. Copy of Seller's title insurance policy and most recent title report, endorsements and/or commitment and copies of all as-built and boundary surveys of the Property in Seller's possession.
3. Copies of all zoning certificates, zoning resolutions, variances and other zoning or land use approvals relating to the Property in Seller's possession including any development orders, development agreements or planned unit development plans or related documents.
4. Copies of all existing licenses, permits, utility or other easements, restrictive covenants or other title encumbrances, access agreements or special assessment arrangements relating to the Property in Seller's possession.
5. All prior soil or boring reports, engineering, and environmental studies and reports of the Property in Seller's possession.

Exhibit "C"

Form of Deed

[To be confirmed by Title Company]

HERITAGE FARM, LLC, a Delaware limited liability company ("Grantor"), with an address at _____, for cash consideration of _____, the receipt and sufficiency of which are hereby acknowledged, hereby GRANTS unto _____, a _____ ("Grantee"), with an address at _____, with QUITCLAIM COVENANTS, certain land situated in Marlborough, Middlesex County, Massachusetts, as more particularly described on the attached Exhibit "A" (the "Land").

TOGETHER WITH (a) all improvements thereon of every kind and description, including infrastructure that may be located thereon or thereunder; (b) all of the rights, privileges, appurtenances, hereditaments, easements, air rights, reversions, and remainders pertaining to or used in connection therewith (including, without limitation and to the extent the same exist, all easements, rights-of-way, privileges, licenses and other rights and benefits belonging to, and running with the owner of, or in any way relating to the Land); (c) all right, title and interest, if any, of Grantor in and to gaps, strips or gores pertaining to the Land or any land lying in the bed of any street, road, highway, avenue or alley (opened or unopened, existing or proposed, now vacated or hereafter to be vacated) in front of or adjoining the Land; (d) all oil, gas and other hydrocarbon substances, geothermal resources and mineral rights, on, under, over, in, under or that may be produced from the Land; (e) all water rights appurtenant to or used in connection with the Land and any non-appurtenant water rights of any kind owned by from all sources, whether surface water, ground water or spring water, and all claims for any and all water rights of any kind whatsoever relating to the Land (all of the foregoing, together with the Land, the "**Premises**").

Said Premises are conveyed subject to and with the benefit of all easements, rights, restrictions, liens, agreements and other matters of record insofar as the same are still in force and applicable. Said Premises also are conveyed subject to real estate taxes for fiscal year 20____ not yet due and payable, which real estate taxes Grantee, by its acceptance of this Quitclaim Deed, hereby assumes and agrees to pay (but not any rollback taxes related to prior years).

Grantor is not classified for the taxable year as a corporation for federal income tax purposes.

For Grantor's title, see Quitclaim Deed dated December 5, 2003 from VIRGINIA D. MCGEE and VALTHEA MCGEE FRY, General Partners of the HERITAGE FARM FAMILY LIMITED PARTNERSHIP, said Quitclaim Deed recorded in Middlesex South District Registry of Deeds in Book 41574, Page 231.

Executed under seal this ____ day of _____, 2018.

HERITAGE FARM, LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

[Commonwealth/State] of [STATE])
) ss:
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me, the undersigned notary public, personally appeared [SIGNATORY NAME], proved to me through satisfactory evidence of identification, which were [TYPE OF ID PRESENTED], to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he/she] signed it voluntarily for its stated purpose as [TITLE] for HERITAGE FARM, LLC, a Delaware limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public

My commission expires:

Exhibit "A"

Legal Description of the Land

Exhibit "D"

Form of Assignment Agreement

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this "**Assignment**") is made this ____ day of _____, 201__, by and between **HERITAGE FARM, LLC**, a Delaware limited liability company ("**Assignor**") and **WAYPOINT [_____], LLC**, a Delaware limited liability company ("**Assignee**").

RECITALS

A. Pursuant to a certain Agreement for the Purchase and Sale of Property (Marlborough, Massachusetts Property) dated as of _____, 201__, (the "**Agreement**"), Assignor has agreed to sell to Assignee, upon the terms, provisions and conditions set forth therein, certain land situated in _____ County, _____, as more particularly described on **Exhibit "A"** attached hereto and made a part hereof, and related Property described in the Agreement (collectively, "**Property**").

B. In connection with the sale and purchase of the Property, Assignor desires to assign, to Assignee, certain interests of Assignor as to all water, sewer, transportation and other impact fee credits or reservations associated with the Property (as defined in the Agreement), all of the Permits and Approvals (as defined in the Agreement) and other rights or interests of Seller in or related to the Property, all of Seller's development rights with respect to the Property, intangibles and other agreements, permits, plans or approvals affecting or relating to (or to the extent relating to) the Property and the Project, and Assignee desires to accept said assignment upon the terms, covenants and conditions set forth in this instrument.

Terms of Assignment

NOW, THEREFORE, in consideration of the purchase price paid by Assignee to Assignor for the Property, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee covenant and agree as follows:

1. **Assignment**. Assignor hereby assigns, transfers and sets over unto Assignee, its interest with respect to all water, sewer, transportation and other impact fee credits or reservations associated with the Property, all of the Permits and Approvals and other rights or interests of Seller in or related to the Property, all of Seller's development rights with respect to the Property, intangibles and other agreements, permits, plans or approvals affecting or relating to (or to the extent relating to) the Property and the Project, including as listed on **Exhibit "B"** attached hereto and

made a part hereof (collectively, the “**Assigned Interests and Rights**”), to have and to hold the same unto Assignee, its successors and assigns. This Assignment shall also constitute a bill of sale, and Assignor hereby conveys to Assignee all other tangible and intangible personal property owned by Assignor related to the Property.

2. **Right to Assign.** Assignor represents and warrants that Assignor has sole title to and full right to assign the Assigned Interests and Rights.

3. **Indemnification.** Assignor represents and warrants that Assignor has complied with all Assigned Interests and Rights and has paid all amounts due thereunder for the time period through the Closing under the Agreement, and satisfied all obligations and liabilities in connection therewith prior to the date hereof, the Assigned Interest and Rights. Assignor shall and hereby does indemnify and hold harmless Assignee from any and all damages, liens, costs and expenses Assignee incurs with respect to a breach of the foregoing representation and warranty for a period of five hundred forty five days after Closing, over the Floor Amount and up to the Claim Cap as such terms are defined in the Agreement.

4. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, personal representatives, successors and assigns. Facsimile signatures or signatures in a PDF file shall have the same legal effect as original signatures.

[Signature Pages Follow]

My commission expires:

Exhibit "A"

Legal Description of the Land

Exhibit “B”

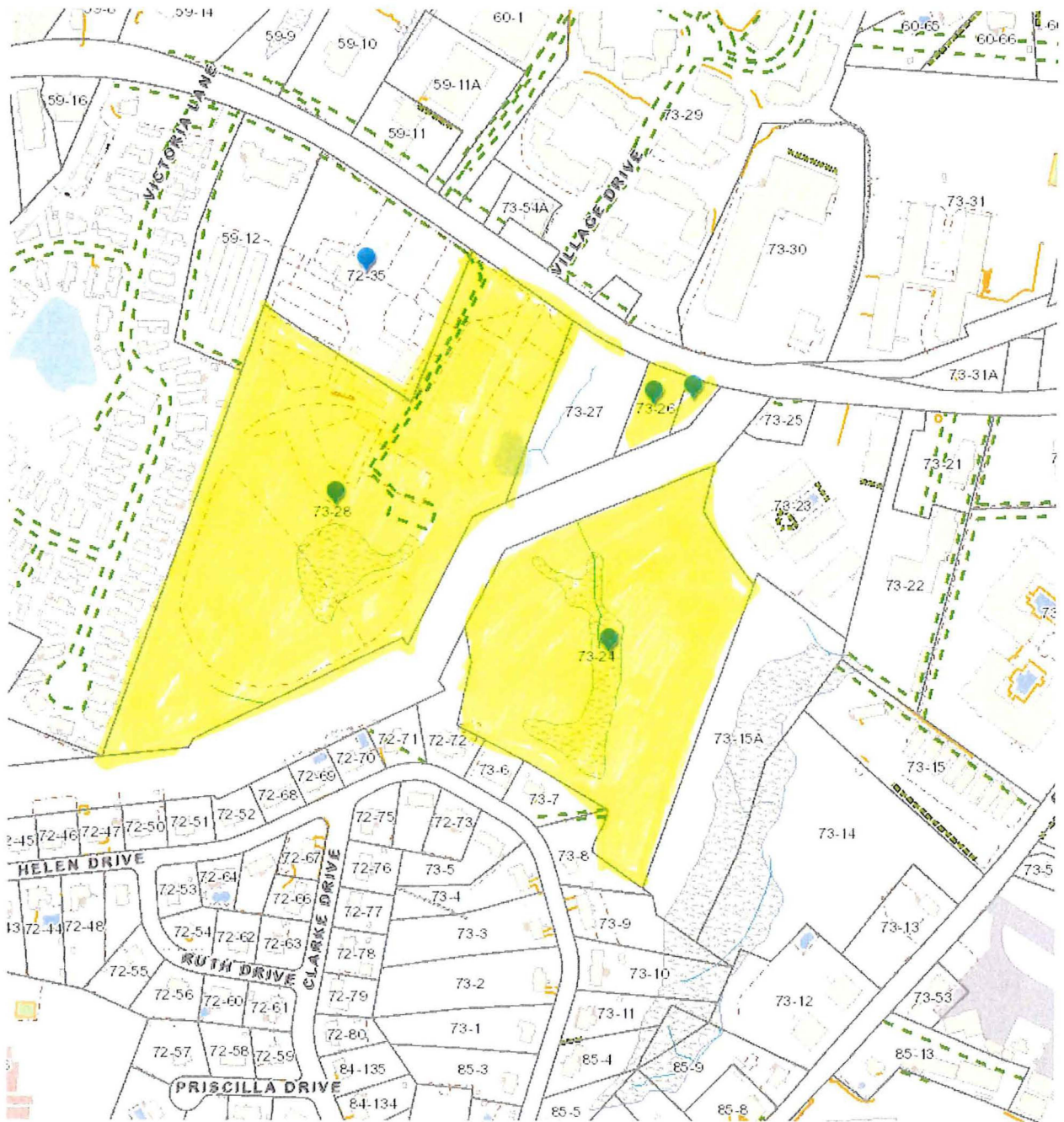
(Specific Assigned Interests and Rights, if applicable)

ACTIVE 46617900v2/176103.011500

EXHIBIT B

SKETCH PLAN OF THE PROPERTY

63564683 v1



Framingham Zoning Board of Appeals - Notice of Decision

Notice is hereby given, that at the hearing on November 13, 2019, the following petitions were decided and the decisions were filed on **November 27, 2019**.

19-26 | GRANTED

Petition of **Holly L. Smith** for a **Variance** to install an eight-foot fence within the required side and rear setback where a maximum of six feet is allowed, pursuant to §IV.E.2 of the Zoning By-Law, on the premises located at **7 Tower Street**, Parcel ID: 089-14-3217-000, Zoning District: Business (B).

Any appeal from this decision shall be made pursuant to M.G.L.c. 40A §17 and must be filed within twenty (20) days after the date of filing of this decision in the Office of the City Clerk.

The full decision is available at: www.FraminghamMA.gov/meetings. Legal notice can be found in the *MetroWest Daily News* or on *MassPublicNotices.org*.

Philip R. Ottaviani, Jr., Chair

Office: 508-532-5456, ZBA@FraminghamMA.gov

Framingham Zoning Board of Appeals - Notice of Decision

Notice is hereby given, that at the hearing on November 13, 2019, the following petitions were decided and the decisions were filed on **November 27, 2019**.

19-24 | GRANTED

Petition of **Christy Rezk, KARAS LLC** to **Appeal** the determination of the Building Commissioner that a used auto dealership is prohibited, and for a **Use Variance** pursuant to §II.B.5.V and VI.D.2.a.2 of the Zoning By-Law, on the premises located at **516 Union Avenue**, Parcel ID: 111-51-6832-000, Zoning District: Community Business (B-2).

Any appeal from this decision shall be made pursuant to M.G.L.c. 40A §17 and must be filed within twenty (20) days after the date of filing of this decision in the Office of the City Clerk.

The full decision is available at: www.FraminghamMA.gov/meetings. Legal notice can be found in the *MetroWest Daily News* or on *MassPublicNotices.org*.

Philip R. Ottaviani, Jr., Chair

Office: 508-532-5456, ZBA@FraminghamMA.gov

Framingham Zoning Board of Appeals - Notice of Decision

Notice is hereby given, that at the hearing on November 13, 2019, the following petitions were decided and the decisions were filed on **November 27, 2019**.

19-27 | GRANTED

Petition of **Nova Farms, LLC** and **Beach Farm Real Estate Holdings, LLC** for a **Variance** to install an eight-foot fence within the required rear setback where a maximum of six feet is allowed, pursuant to §IV.E.2 of the Zoning By-Law, on the premises located at **113 Worcester Road**, Parcel ID: 089-14-3154-000, Zoning District: Business (B) and Highway Corridor (HC) and Marijuana Retail (MRE) Overlays.

Any appeal from this decision shall be made pursuant to M.G.L.c. 40A §17 and must be filed within twenty (20) days after the date of filing of this decision in the Office of the City Clerk.

The full decision is available at: www.FraminghamMA.gov/meetings. Legal notice can be found in the *MetroWest Daily News* or on *MassPublicNotices.org*.

Philip R. Ottaviani, Jr., Chair

Office: 508-532-5456, ZBA@FraminghamMA.gov

Framingham Planning Board – Notice of Decision

on Phase I of the Application of Centercorp Retail Properties, Inc.

for Major Site Plan Review, Special Permit for Land Disturbance and Stormwater Management, Special Permit for Off-street Parking Relief, Special Permit for Use, Public Way Access Permit for the Property Located at **770, 770R, 780 Water Street & 881 and 883 Edgell Road**

The Applicant filed an application for a Major Site Plan Review, Special Permit for Land Disturbance and Stormwater Management, Special Permit for Off-street Parking Relief, Special Permit for Use, Public Way Access Permit, and a Modification to a Scenic Way, notice of the opening public hearing was published in *MetroWest Daily Newspaper* on October 16, 2019 and October 21, 2019; and the legal ad was mailed to parties of interest pursuant to the Framingham Zoning By-Law and M.G.L. Chapter 40A. The Planning Board held a public hearing for the property on October 30, 2019, November 14, 2019, and November 21, 2019. This approval is for Phase I of the redevelopment of the property known as Nobscot Shopping Plaza, which will include the construction of a new CVS Pharmacy and reuse of a historic structure for commercial purposes, off-street parking, landscaping, stormwater management, and associated site improvements. The property is zoned Nobscot Village District (B-4) and listed as Framingham Assessor's Parcel ID: 037-34-9657; 037-34-9320; 037-34-5787; 037-34-5585; 034-34-5780. On November 21, 2019, the Planning Board **APPROVED** the application with conditions. The **DECISION** was filed in the office of the City Clerk on November 27, 2019. For additional information, please see the Planning Board's webpage at www.framinghamma.gov.

Christine Long, Chair FRAMINGHAM PLANNING BOARD

Any appeal from the Decision shall be made pursuant to G.L. Ch. 40A, Sec. 17 and must be filed within twenty (20) days after the date of filing of the Decision in the office of the Town Clerk. The Notice of Decision can be found in the *MetroWest Daily Newspaper* and on the Massachusetts Newspaper Publishers Association's (MNPA) website.

Por favor, póngase en contacto con nuestra oficina para asistencia de traducción.
Entre em contato com nosso escritório para assistência com tradução.

FRAMINGHAM PLANNING BOARD
UPDATED NOTICE OF PRE-APPLICATION PUBLIC MEETING
876 EDGELL ROAD

12A

In accordance with Section II.K.9.d of the Framingham Zoning By-Laws the Framingham Planning Board will hold a pre- application public meeting on Thursday, December 19, 2019 at 7:00 p.m. in the Ablondi Room, Memorial Building, Framingham, Massachusetts to learn about the potential redevelopment of the property at 876 Edgell Road. Such proposal includes the redevelopment of an existing gas station.

Christine Long, Chair - Framingham Planning Board

Please note that this public meeting was previously scheduled for December 5, 2019. At the request of the applicant the meeting date has been rescheduled to December 19, 2019

Por favor, póngase en contacto con nuestra oficina para asistencia de traducción.
Entre em contato com nosso escritório para assistência com tradução.