

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

November 13, 2023

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

1. Draft Meeting Minutes

A. October 23, 2023

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

2. Chair's Business (None)

3. Approval Not Required (None)

4. Public Hearings

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

- i. Legal Notice
- ii. Correspondence from abutter Paul Goldman, 137 Second Road
- iii. Correspondence from abutter Peter Sharon, 95 Lakeshore Drive

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

Arthur Bergeron, of Mirick, O'Connell, DeMallie & Lougee, LLP spoke on behalf of the proposed zoning amendment. Mr. Bergeron went over the proposed changes, 1) capping the number of units to 29 for the parcel and 2) removing the 10-acre section from the proposed zoning amendment.

Mr. Fay explained there are two additional documents that have been submitted. – **See attachment A.**

- Correspondence from Mirick, O'Connell, DeMallie & Lougee, LLP – proposed revisions to the Red Spring Road Overlay District
- Updated plan for the 10-acre parcel

Mr. Bergeron confirmed these documents are the final submissions for the public record.

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

The Board reviewed and discussed their opinions on the below zoning standards:

- Is the proposed change in keeping with the character of the neighborhood?
- Does the proposed change negatively impact the neighbors?
- Does the proposed change benefit the City, or provide a use not permitted elsewhere?
- Is the proposed change in keeping with the intent and purposes of the City's zoning ordinances?

The Board concluded with the following vote and recommendations:

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

The Board provided the following reasons in reaching its recommendation:

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

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

- Add language to define lot frontage:
 - o For lots created prior to (date TBD) required lot frontage is equal to 51.42' (the existing frontage, or round up to 52.0'), instead of zero;
 - o For lots created on or after (date TBD) required lot frontage is equal to 120.0', instead of zero.
- Add language to define lot setback:
 - o For lots created prior to (date TBD) all structures to be set back min. 15.0' from the RSR district boundary line;
 - o For new structures on lots created prior to (Date TBD) all structures to be setback min 30' from the RSR district boundary line
- Add language requiring any new lots created after (Date TBD) to conform with the of the current A2 zoning;
- Remove language allowing the boat club use, keeping the current boat club as "pre-existing, non-conforming";
- Add language limiting the number of structures within each exclusive use area to one single family house, one garage (non-habitable) and one shed (non-habitable) and specifically exclude bunk houses;
- Add language limiting the number of dwelling units to 29 for the entire parcel, consistent with the stated opposition to further development around the reservoir by the residents of Red Spring Road during the Sasseville Road public hearing;
- Secure an agreement giving the City the right of first refusal for the 10-acre undeveloped parcel for conservation purposes.

- B. Council Order No. 23-1008964 – Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcel 5 and 26B located on Robin Hill Street.
- i. Legal Notice
 - ii. Slide Deck Presentation

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

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Presentation:

Arthur Bergeron, of Mirick, O'Connell, DeMallie & Lougee, LLP, Mark Mastroianni and Essek Petrie, of Pulte Homes of New England, LLC, and Robert Michaud of MDM Transportation Consultants all spoke on behalf of the proposed zoning amendment.

Mr. Mastroianni explained Pulte Homes New England is one of 26 local divisions of the Pulte Group, and the Pulte Group is a large publicly traded national home builder based out of Atlanta. Pulte Homes is completely self-funded, allowing them to acquire, develop, build, and sell their projects from start to finish. Pulte homes has 30 years of experience building residential homes in Massachusetts and has about 70 employees. Mr. Mastroianni went over information within their slide presentation. – **See attachment B.**

Mr. Petrie went over the team of professionals that will be working on this project and their roles.

- Civil Design Group, LLC, Matt Lightner – Site design, civil and general engineering
- Mirick O'Connell, Brian Falk, Arthur Bergeron – Legal Services
- VHB – Natural resource evaluation, identification, and analysis
 - This team will be working directly with Priscilla Ryder, Conservation Commission and starting with ANRAD (Abbreviated Notice of Resource Area Delineation) process.
- MDM Transportation Consultants, Robert Michaud – transportation impact analysis
 - Mr. Petrie did make note that they recognize that traffic is going to be a critical discussion point as this project moves forward.
- Coughlin Environmental Services, LLC – utility infrastructure analysis and design

Mr. Petrie explained the site is approximately 28 acres, made up of two parcels, primarily surrounded by residential communities. He argued the proposed zoning change would allow for a residential development, which is a better fit than some of the potential uses in the current limited industrial zoning. The site design on the preliminary concept minimizes the direct impact to the sites' abutters. The concept has approximately 25% lot coverage, leaving over 40% of the site completely undisturbed, leaving ample forest in-between all the proposed buildings and the adjacent residences, including the Hillside School. The development would be a 55+ age restricted community, consisting of 3-50-unit buildings, 57 townhomes, a clubhouse, and amenities. These would be ownership properties, not rentals.

Mr. Petrie explained based on preliminary conversations with the City of Marlborough's Water and Sewer Department, the existing system has the capacity to serve the proposed development. Their plan is to install an internal force main system that would then connect to the existing municipal gravity system at a sewer manhole located in Jacobs Road.

Mr. Petrie continued to go over information within the slide presentation detailing the amenity program and photos from similar developments Pulte Homes has built. He went over Pulte Homes' commitment to building environmentally sensitive communities and described several specific environmentally friendly features the proposed development will have. He argued these homes would provide existing residents the opportunity to downsize while offering a variety of different styles and sized units.

Mr. Mastroianni went over the procedural process and explained if the proposed zoning amendment was approved, the proposed development would require a special permit approval from City Council and site development approval from Site Plan Review Committee and Conservation Commission.

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Mr. Bergeron concluded the presentation by explaining when retirement communities started in the City, about 30 years ago the zoning was in an isolated location. He argued these types of projects should be allowed in additional locations through the City. The proposed project is projected to bring in an additional 1M dollars in tax revenue.

Mr. Fay closed this portion of the public hearing.

Speaking in Favor of the Amendment or Asking Questions:

- Martin Suberg, of Durand and Anastos, 25 Robert Dr., Shrewsbury, MA addressed concerns regarding the wetlands and potential perennial stream on site and asked, “is there enough work that’s been done to indicate whether or not this project is even viable in the way it’s laid out?” He continued to address concerns regarding the watershed protection land in the area and explained the site abuts the North Branch Brook and the Millham Reservoir and asked, “have the proponents evaluated the impact and ways of managing it both during construction and post construction?”.
- Rebecca Salemi 32 Blaiswood Ave asked, if the City of Marlborough has stated housing goals?
- Harmony Larson 173 Barnard Rd asked, asked if there was an estimate on the HOA fees?

Mr. Fay closed this portion of the public hearing.

Speaking in Opposition to the Amendment:

- Damon Michaels 93 Chase Rd asked/addressed the following questions/concerns:
 - Is this supposed to be affordable to 55+?
 - Why is the lower cost Centex not being chosen as Pulte Group says that is for budget conscious consumers?
 - What is the plan to upgrade Robin Hill St?
 - Biking was discussed, but Robin Hill St is not safe in any way for bicycle usage.
 - There are no sidewalks in the area and is a hazard to walk along and will leave this neighborhood as its own island. Will this be addressed?
 - Will any units be designated as affordable housing under MA law?
- David Wagner 649 Robin Hill St spoke in oppositions addressing concerns on increased traffic and roadway safety specifically for pedestrians.
- Brian Robidoux 660 Robin Hill St spoke in opposition.
- Alan Chamberlain 100 Jacobs Rd, spoke in opposition addressing the following concerns:
 - The proposed development is not in keeping with the character of the neighborhood
 - Public safety on Robin Hill St
 - Environmental impact
 - Increase in highway noise
 - Stormwater runoff and potential flooding
 - Sewer capacity
- Paul Pelletier 69 Jacobs Rd, spoke in opposition addressing the following concerns:
 - Increase of traffic
 - Roadway safety
 - Sewer capacity
 - Watershed
 - Wildlife

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- Harley Racer of Larry Friedman, 1 McKinley Square spoke in opposition on behalf of Hillside School, 404 Robin Hill Street. He summarized the attached letter. – **See Attachment C.**
 - Mr. Racer addressed key points from the communications.
 - The proposal not being valid because Pulte Homes is not an individual landowner, they are a prospective buyer.
 - The authorization letter authorizes Mirick O’Connell to present the proposed zoning change and initiate this on behalf of Pulte Homes and argued it is an invalid initiation of the zoning bylaw of the zoning change under the Massachusetts Statue and under the Marlborough ordinances.
 - The proposed zoning changes seeks to rewrite the Marlborough ordinances that related to the retirement Community Overlay in substantial, significant ways.

Mr. Fay acknowledged Mr. Racer’s correspondence for the record.

- Ed Chase, Head of Hillside School, 404 Robin Hill St spoke in opposition. Mr. Chase summarized the Planning Boards’ zoning standards, presented his argument, and presented the Board with additional signatures in opposition. – **See Attachment D.**
- Thomas Pipoli, Dean of Hillside School, 404 Robin Hill St spoke in opposition on behalf of 32 teachers, 27 of which live on campus. He argued one the defining components of Hillside School is their Farm Program and that a project like this proposal would not have any sort of positive impact to the school’s mission or on its population.

Mr. Fay acknowledged correspondence speaking in opposition from Arlene Stetson, 603 Robin Hill St. – **See Attachment E.**

Mr. Fay closed this portion of the public hearing.

Questions and Comments from the Planning Board:

Mr. LaVenture addressed concerns on Mr. Racer’s correspondence and suggested having the legal department review his correspondence. Mr. LaVenture suggested the following items/ideas be considered:

- Provide a summary of the changes being proposed.
- Review the impact on the individual parcels and how it could potentially impact the City has a whole.
- Review the site plan to determine if access to and from the site from Route 290 is feasible.
- Comparison data from other Cities and Towns where similar developments have been built, summarizing the impact on demographics and finance.
 - Mr. LaVenture argued when people considering downsizing, most of them would not consider buying a \$800,000 home and asked whom would this project attract into the community and how would this impact the City?

Mr. Russ asked, why not zone the project with the current zoning the City has? He addressed concerns on the proposed changes to the zoning ordinance and argued the City has them written the way they are for a reason. The proposed change to the building height is not only a significant change but would not include the underground parking in the calculation.

Mr. Fay asked, why propose this change City wide instead of for just this parcel?

Mr. Bergeron explained it made more sense to have the standards reviewed to allow this kind of retirement community in other places.

Mr. Fay argued it’s easier to fashion something for this parcel than for the entire City.

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Mr. Fay asked Mr. Bergeron if he could address the key questions raised at tonight's meeting, specifically items within Mr. Racer's correspondence. Mr. Bergeron agreed with the suggestion to refer to the correspondence to the Legal Department for review. Mr. Fay and Mr. Bergeron discussed keeping the public hearing and record open for additional input/information.

Mr. Petrie explained the wetlands will be delineated and the team will be working with the Conservation Commission to set the ANRAD. The team will be working with MDM Transportation to address the specific questions related to traffic concerns and would conduct a traffic impact analysis. He argued if something was built on site using the current by-right zoning, there would also be an increase in traffic.

Mr. Bergeron reviewed the Board's zoning standards and provided his comment/argument:

- Is the proposed change in keeping with the character of the neighborhood?
 - The proposed zoning change is a better fit than what the site is currently zoned for. The current zoning would result in an increase in truck traffic, traffic and noise.
 - The proposed homes on site that would not fit into to character of the neighborhood would be in the back of the property and would not be visible from Robin Hill Street.
 - Retirement communities generally do not generate a large amount of traffic especially during peak rush hour times.
- Does the proposed change negatively impact the neighbors?
 - Yes, compared to an open space parcel, but much less than what could be built with its current zoning.
- Does the proposed change benefit the City, or provide a use not permitted elsewhere?
 - It increases the amount of housing available for seniors.
 - Some of the homes will be reserved for affordable housing.
 - The fiscal benefit would be significantly higher than what a by-right project would provide.
- Is the proposed change in keeping with the intent and purposes of the City's zoning ordinances?
 - Yes, it is a logical and consistent extension of the efforts that have been made over the last 30 years to develop what has become a variety of retirement communities for a population that is heading into retirement.

On a motion by Mr. Fortin, seconded by Dr. Fenby, the Board voted to refer Harley Racer's correspondence to the legal department for review and to continue the public hearing to the November 27, 2023, meeting and to keep the record open. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

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

- C. Council Order No. 23-1008941 - Proposed Zoning Amendment to Chapter 650, to add a new Section 39A to create the Sasseville Way Residential Overlay District (SWROD). – *Continued from September 18, 2023*
- i. Legal Notice
 - ii. Correspondence from William Pezzoni
 - iii. Revised Proposed Amendment to Zoning Code
 - iv. Fiscal Impact Analysis
 - v. Transportation Impact Assessment (Electronic Packets Only)

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

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Michael Flannery of Goulston & Storrs, Carolyn Hewitt and Mark Shraiberg of Trammell Crow Company all spoke on behalf of the proposed zoning amendment. Mr. Flannery presented the Board with an additional memo. – **See Attachment F.**

Mr. Flannery and Mr. Shraiberg went over information from within their slide presentation – **See Attachment G.** Detailed information on their presentation can be found in the October 23, 2023, meeting minutes.

Mr. Flannery and Mr. Shraiberg also went over information from within Day Pitney's memos, dated November 7, 2023, (which can be found in the November 13, 2023, agenda packet) and dated November 13, 2023, (Attachment F).

Mr. Flannery went over the changes since their original presentation at City Council, presentation. The biggest is, proposing that any development proposed under this overlay zoning would be subject to the special permit process. He briefly discussed the newly provided impact analysis and explained it includes an estimate that there will be 15 school age students in this development.

Mr. Shraiberg went over the revised photos within their slide presentation detailing visuals of the height of the buildings, as requested by the Planning Board at their October 23, 2023, meeting.

Dr. Fenby asked for further clarification on how much additional open space would be left open on top of what is required?

Mr. Shraiberg explained they are allowed to encroach 10% into the 200-foot riverfront set back area. However, this 10% is being preserved.

Mr. Russ asked, why aim for Silver LEED and not higher?

Mr. Shraiberg explained the Silver LEED is what they are committed to today, and because the energy model will be done after July of 2024, they will have to meet a passive house modeling standard or a TEDI modeling standard, both of which increase their ability to meet or have a higher platform than Silver LEED.

Mr. Russ asked, have you considered reducing the impervious surface with parking alternatives and how many parking spots would there be?

Mr. Shraiberg explained there is a 1.7 spot per unit ratio, + 54 spots for the retail unit = 540 parking spots. He explained alternative parking ideas would be discussed during their site plan review and special permit process.

Mr. Hughes ask for further clarification on where the estimate of 15 school aged children came from.

Patrick Sullivan of Trammel Crow Company explained data was pulled from a proprietary database and information from School Superintendent Murphy. He argued in comparison to the Burrow which has 235 unit, based on data from the Marlborough Public Schools, the Burrow has four school aged children.

Ms. Hewitt explained the elementary aged students would attend Goodnow and superintendent explained there was a plan to expand prior to the completion of this project.

Mr. LaVenture asked for more information on the maintenance plan for the retaining walls. Furthermore, who is responsible for fixing, repairing, and maintaining the walls?

Mr. Shraiberg explained it would be the project ownership and it would all be handled in the operations and maintenance plan, which would be attached to the deed. The plan would be developed and then

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approved by the City during the site plan approval process. The plan would be funded by the ownership's operations budget.

Mr. LaVenture asked for more information on similar projects they have completed in close proximity to landfills.

Mr. Shraigberg explained White Stone did phase 1 investigation of this project and confirmed that stormwater will follow the gradient and go downhill towards Fort Meadow Reservoir. He went over Bohler Engineering's extensive experience on projects in areas near landfills.

Mr. LaVenture asked for further clarification on how they plan to protect Fort Meadow Reservoir.

Mr. Shraigberg explained they are committed to sedimentation and temperature monitoring. A plan will be written by their wetland consultant to be approved by the City as part of their operation and maintenance plan which will be attached to the deed. Andrea Kendal of LPC explained establishing a baseline of current conditions is the first step by collecting temperature data from upstream, immediately on site and immediately downgradient of any outfall.

Mr. LaVenture asked if this data would be public.

Mr. Shraigberg explained they would need to discuss this and that it would be available to the City Engineer.

The Board and Mr. Flannery discussed their responses to previously raised questions from the Board, abutters and the Conservation Commission and Mr. Flannery confirmed no additional information would be submitted unless requested.

Mr. Fay asked who would enforce the monitoring of sedimentation and temperature in perpetuity?

Mr. Flannery reminded the board these would be rental properties and there would be a single owner. There would be an operations and maintenance plan in place enforceable by the City of Marlborough that would be binding to the property owner.

Mr. Fay and Mr. Shraigberg discussed the option of using porous pavement on site. Mr. Shraigberg explained once the stormwater system design and soil characterization is completed, they would then have a better understanding on if the porous pavement would be beneficial.

Mr. Russ and Mr. Shraigberg discussed snow storage and Mr. Shraigberg explained this would also be part of their operations and maintenance plan and that they are committed to using low impact chemicals and storing snow in an area where it would not create an issue with the stormwater runoff.

Mr. Fortin and Mr. Shraigberg discussed alternatives for the emergency access and Mr. Shraigberg discussed the difficulties other emergency access locations pose. Mr. Fortin addressed concerns on the impact to the Blaiswood neighborhood and the conditions of the roadway in the future.

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

The Board discussed their opinions on the proposed zoning amendment and concluded with the following recommendation.

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

The Board provided the following reasons in reaching its recommendation:

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

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

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

**D. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A –
*Continued from September 11, 2023 – Vote required based on statutory clock***

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

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

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

- i. Flowchart
- ii. Correspondence from City Engineer, Thomas DiPersio, Jr., - Engineering Review
- iii. Correspondence from Assistant City Solicitor, Jeremy McManus
- iv. Correspondence from Vito Colonna, Connorstone Engineering, Inc.
- v. Revised Plan Set Dated: 10/18/23

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

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Mr. Colonna spoke on behalf of the open space development. He went over the changes since the original submission and explained updated plans have been submitted addressing Engineering's comments. The stormwater report and soil management plan addressing the arsenic on site from the previous apple orchard on site, and the City Solicitor's determination on the perimeter buffer and the status of the road have been provided.

He explained the soil management plan found elevated levels of arsenic on the front ANR lot 1. The plan is to strip and stockpile the soils and bury the contaminated the soil on ANR lot 1. Mr. DiPersio and Mr. Colonna discussed how this would be memorialized to the deed with possibly a AUL restriction and Mr. Colonna explained he was not sure but that this question was sent to the LSP for determination. Mr. LaVenture addressed concerns on future residents gardening, Mr. Colonna explained they are buried about 3 feet deep, and Mr. DiPersio explained these chemicals do not leach into the water and this is the typical way soils are managed on former apple orchard sites and Board discussed other sites where similar procedure was followed.

He explained the letter from the City Solicitor confirmed that the oversized lots do not require the perimeter buffer and the status of the roadway classification it is to be considered a secondary street, which typically requires 28 feet of pavement, so the plan has been revised to include a waiver requesting a 26-foot pavement width.

He explained an ANR plan has been prepared but is has not been submitted yet. The plan is to get it approved prior to the approval of the definitive plan and a note on the definitive plan would need to be added saying ANR Lot 1 as shown on Plan of Land dated XYZ. He explained the ANR lots meet all of the dimensional requirements and have present adequate access on Stow Road.

He explained there a few things that need to be cleaned up but all of the changes would be minor including the name of the Street to Quinn.

Mr. Fay discussed cul-de-sac designs he saw in another town and the Board and Mr. Colonna discussed the tear drop design with a landscaped island. He explained how the ledge on site might cause some additional difficulties. Mr. DiPersio discussed how this would require an additional waiver request and the administrator provided Mr. Colonna with the sketch of the cul-de-sac specifications.

On a motion by Dr. Fenby, second by Mr. Russ, the Board voted to accept and file all correspondence under item 4D, and to close the public hearing and the record. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

Mr. Fay explained to Mr. Colonna that the Board will need the following items:

- Draft certificate of vote
- Draft covenant
- ANR Submission
- Extension request

Mr. Colonna verbally requested an extension request on the decision to December 18, 2023.

On a motion by Dr. Fenby, second by Mr. Russ, the Board voted to grant the extension for the decision on the Open Space Definitive Subdivision on Stow Road (547 Stow Road) to December 18, 2023. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

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4. **Subdivision Progress Reports (None)**
5. **Preliminary/Open Space/Limited Development Subdivision (None)**
6. **Definitive Subdivision (None)**
7. **Signs (None)**
8. **Correspondence (None)**
9. **Unfinished Business**
 - D. Working Group
 - i. Cul-de-sac discussion
 - (1) Response from multiple departments
The Board reviewed the response.
10. **Calendar Updates**
 - D. Planning Board Holiday Party – December 18th
11. **Public Notices of other Cities & Towns (None)**

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

Respectfully submitted,



George LaVenture/Clerk

/kmm

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

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November 9, 2023

BY EMAIL

Sean Fay, Chair
Marlborough Planning Board
City Hall
Marlborough, MA 01752

Re: Proposed Revisions to Red Spring Road Overlay District

Dear Mr. Fay:

Following public hearings and resident comments on the proposed Red Spring Road Overlay District, I have discussed possible revisions to the zoning amendment with my client, the Red Spring Road Homeowners Association, Inc.

The goal of the proposed Overlay District is to render the 29 existing principal structures along Red Spring Road conforming with the Marlborough Zoning Ordinance, thereby minimizing the need for special permits when residents make improvements to their properties. To accomplish that goal and to address concerns from neighbors that the Overlay District would lead to development along the Fort Meadow Reservoir, we offer the enclosed revisions to the proposed Red Spring Road Overlay District.

Below is a summary of the proposed revisions:

- **Location of Overlay District:**

Revisions to proposed Section 650-50.B and Exhibit A provide that the Overlay District would exclude an area of approximately 10 acres, which is currently held as condominium common area. This area would remain subject to the underlying A-2 Zoning District and not the modified dimensional requirements of the Overlay District.

- **Cap on Exclusive Use Areas:**

Revisions to proposed Section 650-50.E caps the total number of exclusive use areas in the Overlay District at the existing number of 29. This change restricts

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the number of principal structures along the lake and limits the area that would be subject to the Overlay District's modified dimensional controls.

While there are no plans to do so, any new building lots formed within the Overlay District would be subject to the underlying A-2 Zoning District.

- **Setback from the Lake:**

Revisions to proposed Section 650-50.E.3 provide that setbacks along Fort Meadow Reservoir are subject to the Floodplain and Wetland Protection District, Section 650-23. That was always intended, but the additional language clarifies the point.

We believe these changes address concerns raised by neighbors at the public hearings while still allowing Red Spring Road owners to carry out improvements to their properties without disproportionate permitting.

Thank you for your ongoing attention to this matter.

Sincerely,



Brian R. Falk

BRF/

cc: Marlborough City Council
Client

ORDERED:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by adding a new §650-50, Red Spring Road Overlay District, as follows:

§650-50 – RED SPRING ROAD OVERLAY DISTRICT

- A. Purpose and Objectives. The Red Spring Road Overlay District (“RSR”) allows the application of supplemental land use controls within the boundaries of a certain overlay district as an alternative to land use controls that exist in the underlying districts. The establishment goals of the RSR are to encourage improvements to existing structures and regulate modifications to a unique lakeside residential community.
- B. Location of RSR; Underlying Zoning.
1. For the purposes of this Section (§650-50 et. seq.), the RSR is located on the southerly side of Fort Meadow Reservoir along Red Spring Road between Reservoir Street and Cullinane Drive containing approximately ~~50~~40 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.
 2. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-50 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-50 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-50 et. seq.) shall govern and control.
- C. Authority of Permit Granting Authority.
1. The City Council shall be the special permit granting authority in the RSR.
 2. At the request of an applicant, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to a use or structure by special permit upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-50 et. seq.).
- D. Use Regulations.
1. The following uses are permitted as of right in the RSR:
 - a. Single-family dwellings.
 - b. Up to one (1) boat club.

- c. Uses allowed as of right in the underlying zoning district, as set forth in the Table of Use Regulations.
- d. Accessory buildings and accessory uses.
- 2. Uses allowed by special permit in the underlying zoning district may be allowed by special permit in the RSR.
- 3. All uses not specified in ~~Subsection~~ Section 650-50.D.1 and ~~Subsection~~ Section 650-50.D.2 above shall be deemed prohibited in the RSR.

E. Dimensional Regulations for Lots in a Condominium Form of Ownership.

1. Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership, provided that: (i) each principal building shall be located within an exclusive use area of at least 8,000 square feet, (ii) there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum distances between structures, (iii) any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization, and (iv) the maximum number of exclusive use areas in the RSR shall be 29.

2. Notwithstanding any provisions of the Zoning Ordinance to the contrary, ~~development~~ a lot under a condominium form of ownership in the RSR shall be subject to the following dimensional ~~standards~~ requirements:

- a. Minimum Lot Area: 18,000 square feet.
- b. Minimum Lot Frontage: none.
- c. Minimum Front, Side, and Rear Yards: none (See Section 650-50.E.23).
- d. Maximum Building Height: 2 ½ stories.
- e. Maximum Lot Coverage: 30%, over the entire RSR.
- f. Maximum Gross Floor Area of a Single-Family Dwelling: 3,000 square feet.

2.3. With the exception of structures erected prior to July 1, 2023, all structures on a lot under a condominium form of ownership in the RSR shall be set back a minimum of 15 feet from the RSR district boundary line, excluding the boundary line adjacent to the Fort Meadow Reservoir, subject to Section 650-23 of the Zoning Ordinance.

~~3. Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership with each principal building located within an exclusive use area of at least 8,000 square feet, and there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum~~

~~distances between structures, provided that any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization.~~

~~F.4. Parking Requirements.~~ Parking for single-family dwellings and boat clubs on a lot under a condominium form of ownership in the RSR shall be provided as feasible. Parking for other uses within the RSR shall conform with the provisions of §650-48.A of the Zoning Ordinance.

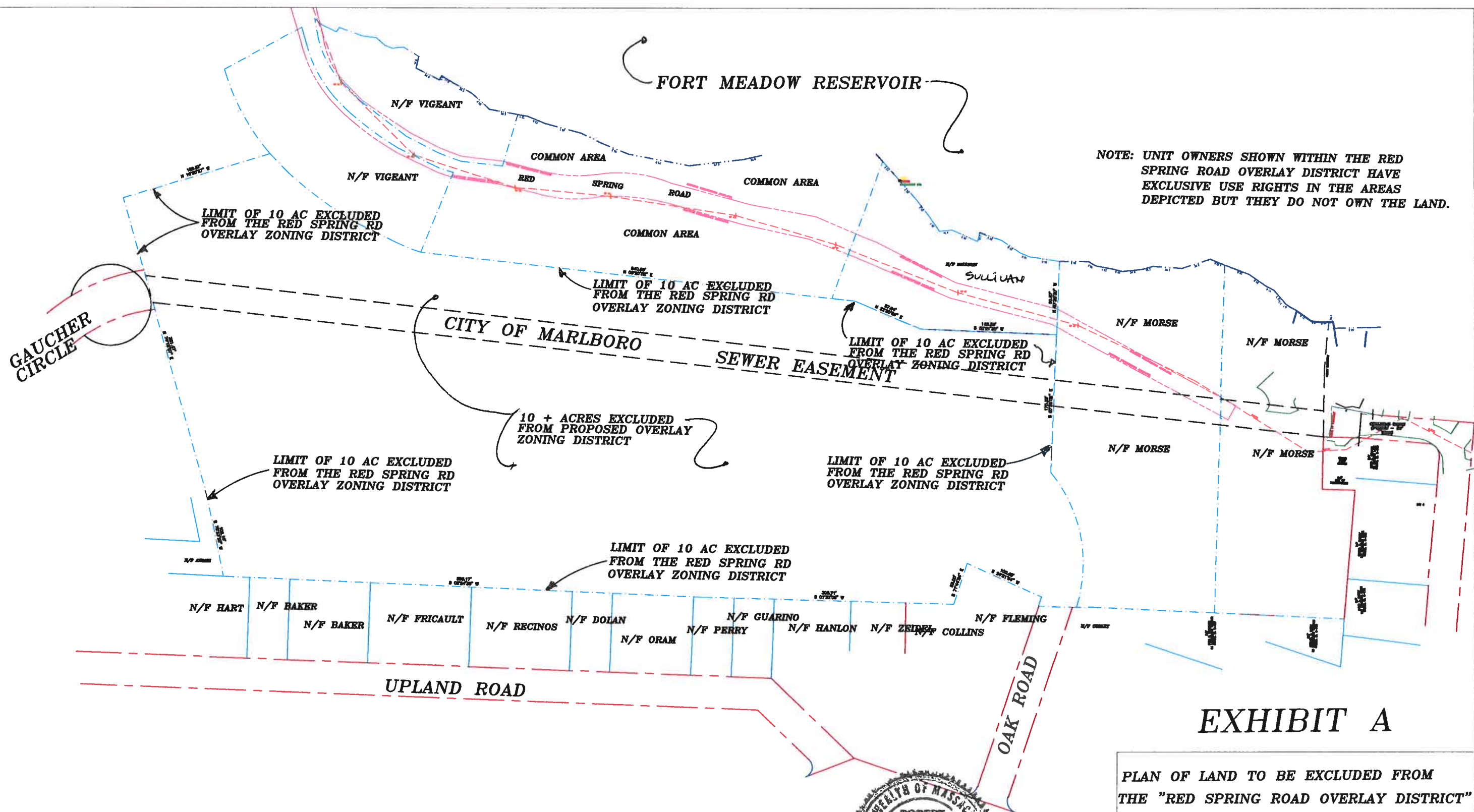
~~G.5. Driveways and Roadways.~~ ~~Driveways and~~ roadways ~~located within~~ serving a lot under a condominium form of ownership in the RSR shall be maintained to provide safe access and egress for vehicular and pedestrian traffic and emergency services, but shall not be subject to the design standards set forth in §650-49 of the Zoning Ordinance or subdivision standards.

~~F. Dimensional Regulations for Other Lots.~~ ~~Lots not under a condominium form of ownership in the RSR shall be subject to the dimensional requirements of the underlying zoning district.~~

EXHIBIT A

The Red Spring Road Overlay District shall ~~include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):~~ consist of

- Assessors Map 30, Parcel 10, with the exception of a portion of said parcel with an area of approximately 10 acres, as shown on the plan entitled "Plan of Land to be Excluded from 'The Red Spring Road Overlay District' " dated November 8, 2023.



COMMONWEALTH OF MASSACHUSETTS
ROBERT J. PARENTE
No. 35,787
PROFESSIONAL
LAND SURVEYOR
11/9/23

EXHIBIT A

PLAN OF LAND TO BE EXCLUDED FROM
THE "RED SPRING ROAD OVERLAY DISTRICT"
IN
MARLBOROUGH, MASSACHUSETTS

OWNED BY: RED SPRING ROAD HOMEOWNERS ASSOC.
ASSESSORS MAP 30 PARCEL 10
PREPARED BY: ROBERT J. PARENTE, P.L.S.
DATE: NOV. 8, 2023 SCALE: 1"=120'

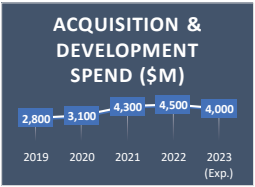
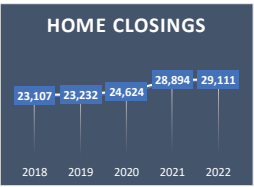
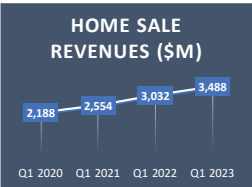
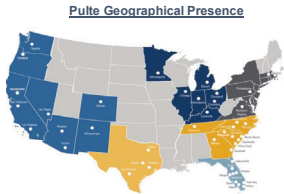
Reserve at Robin Hill
at 582 Robin Hill Street

Planning Board Meeting
November 13, 2023



Who We Are - Nationally

- Unmatched Experience
- National Homebuilder
- Diverse Product and Buyer
- Robust Financing Capabilities



Who We Are - Locally



Pulte Homes of New England is a wholly owned entity of PulteGroup, which is a publicly traded national home builder with 26 divisions throughout the United States.

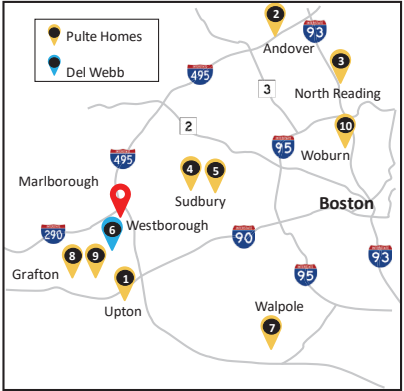
Pulte Homes of New England is completely self-funded. We have no equity partners, banks, financiers, or institutional lenders.

Pulte entered the New England housing market in 1994 and has been a consistent area leader in home building throughout eastern Massachusetts. Our management team at Pulte Homes of New England has acquired, permitted, developed, marketed, and sold over 8,000 homes in the New England market.



Where We Are - Locally

#	Active Community	Details
1	Upton Ridge (Upton)	139 Homes – 55+ Community
2	Riverside Woods (Andover)	200 Homes – 62+ Community; SF and 4-story low rise buildings
3	Martins Landing (North Reading)	502 Homes – 55+ Community; 4 and 5-story low rise buildings
4	Cold Brook Crossing - Emery (Sudbury)	81 Homes – 55+ Community; THs and 4-story low rise buildings
5	Cold Brook Crossing - Preston (Sudbury)	92 Homes – THs
6	Chauncy Lake (Westborough)	700 Homes – 55+ Community; 4-story low rise buildings
7	Pennington Crossing (Walpole)	186 Homes – 55+ Community; 4-story low rise buildings
8	Woodland Hill (Grafton)	46 Homes – SF detached homes
9	Winslow Point (Grafton)	105 Homes – THs and 4-story low rise buildings
10	Highland at Vale (Woburn)	197 Homes – THs and 4-story low rise buildings



Our Team



Site Design and Civil/General Engineering



Legal Services



Natural Resource Evaluation, Identification, and Analysis

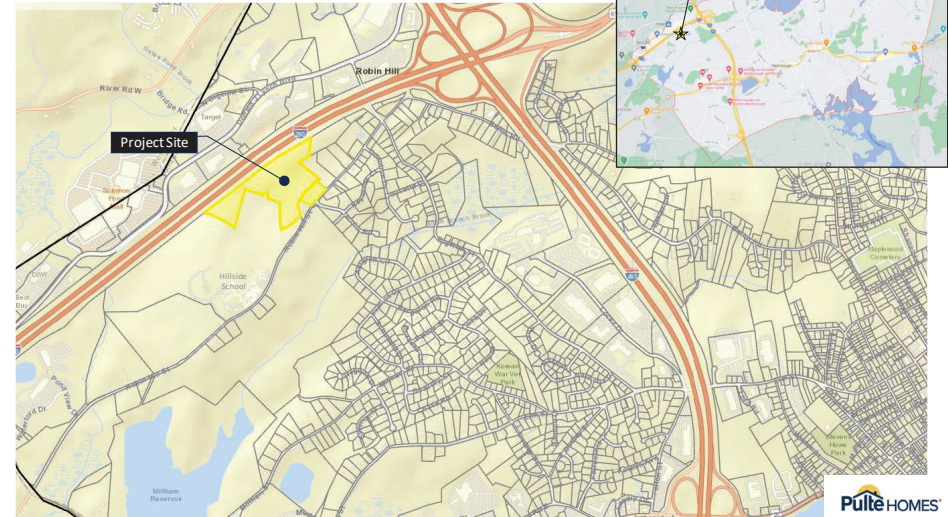


Transportation Impact Analysis



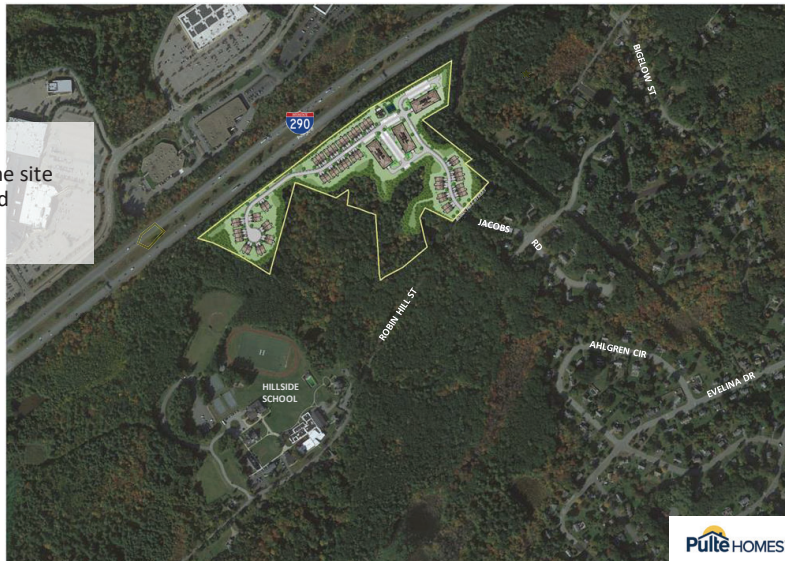
Utility Infrastructure Analysis and Design

Location



Location

- More than 1/3 of the site remains undisturbed
- $\pm 25\%$ lot coverage



Basics

Project Basics

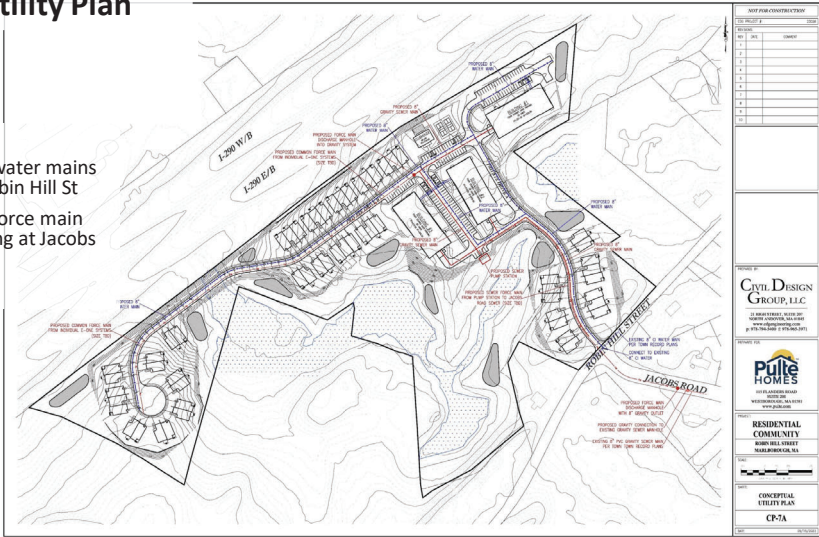
- ± 28 acres
- 55+ Housing
- Home Ownership
- (3) 50-unit buildings
 - Parking under
- (57) Townhomes
- Clubhouse
- Amenities



Proposed Utility Plan

Project Utilities

- Water:** Internal water mains connecting at Robin Hill St
- Sewer:** Internal force main system connecting at Jacobs Rd



Amenities



- Clubhouse w/indoor and outdoor gathering space
- Pickleball courts
- Pedestrian connectivity
- Secure and weather-protected bike parking
- Exterior bike parking



Sustainability



REDUCE FOSSIL FUEL DEPENDENCY



ENERGY EFFICIENT BUILDING



WATER CONSERVATION



LOW IMPACT DEVELOPMENT



Conceptual Architecture



Project Examples - Exterior



Project Examples - Interior



Q & A



LURIE FRIEDMAN LLP

ONE MCKINLEY SQUARE
BOSTON, MA 02109

HARLEY C. RACER

617-367-1970
hracer@luriefriedman.com

November 8, 2023

By Email and U.S. Mail

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

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

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

Dear Mr. Fay and Mr. Ossing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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November 8, 2023
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5. The Zoning Amendment would need a two-thirds majority at City Council to pass.

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

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

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

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

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

LURIE FRIEDMAN LLP

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Michael H. Ossing
November 8, 2023
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Very truly yours,

/s/Harley C. Racer
Harley C. Racer

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

EXHIBIT 1

10

MIRICK O'CONNELL

ATTORNEYS AT LAW

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2023 SEP -7 AM 11:21

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

September 7, 2023

BY HAND DELIVERY

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

Re: Proposed Zoning Amendment: Retirement Community Overlay District

Dear Councilor Ossing:

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

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

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

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

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

(Client Matter 20298/00001/A8441702.DOCX)

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

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www.mirickoconnell.com

MIRICK O'CONNELL

Marlborough City Council
September 7, 2023
Page 2

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

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

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

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

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

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client

EXHIBIT 2

August 28, 2023

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

RE: Robin Hill Street Project

Dear Councilor Ossing:

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

Thank you for your time and attention to this matter.

Denali Belle LLC

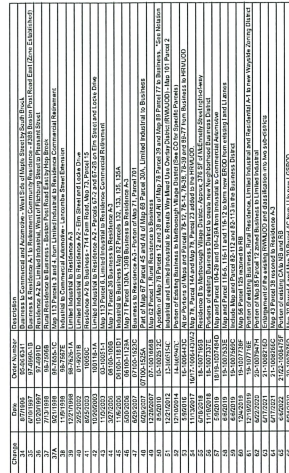
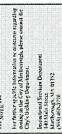
By: 

Name: Todd Pietrasiak

Title: Manager

EXHIBIT 3

City of Marlborough, Massachusetts Zoning Map



Abstract

[illegible]

Tin Hwey, Building Commissioner
Sean Divoll, P.E., Commissioner D.P.W.

Tin Hwey, Building Commissioner
Sean Divoll, P.E., Commissioner D.P.W.

1

Steven W Kemman, City Clerk

This Current as of September 4, 2023

Ed Chase, Headmaster at Hillside School 404 Robin Hill Street

First Standard: Is the proposed change in keeping with the character of the neighborhood?

Response: Absolutely not. The Pulte Development would destroy the character of the community through:

- Deforestation of up to 25 acres of pristine woodlands and wildlife in their natural habitat
- Create of a major traffic safety risk on a hazardous road
- Allow mixed-use housing, including 4-story structures with no height limit
- Create of a mini-city with amenities not in keeping with the bucolic character of the neighborhood

The Robin Hill Street neighborhood is a bucolic setting defined by a scenic road. This road is only 17 ½ feet wide (at the entrance to Hillside School) and includes historic structures, such as the school's 75 year old chapel. It is also a watershed area for the City's drinking water and the location of a reservoir. The City owns a long and wide swath of land on Robin Hill Street to protect the reservoir from pollution and runoff.

The neighborhood is a tree-lined forested area that is sparsely settled. The proposed project would cut down up to 25 acres of trees in an area containing wetlands. The neighborhood is currently a model for preservation.

Hillside School sits on 140 acres of woodlands, most of which are preserved. In short, this area is closer to a nature preserve than a massive mixed use housing development – which would be totally out of character. When Pulte was asked why they had to deforest up to 25 acres, their response was “it is a necessary evil.”

Second Standard: Does the proposed change negatively impact the neighbors?

Response: Absolutely. The development dramatically increases the risk of traffic fatalities on an already very dangerous road. Hillside students and staff cross the street multiple times per day, as several campus residences and the school chapel are located across from our main campus – it is a hazardous street to cross at present and the increase in traffic could have tragic consequences. One city councilor commented that she would not drive on Robin Hill Street with her children in the car because it is so dangerous. The proposed development would also lead to a significant increase in traffic – with up to 1,000 car trips per day, including many construction vehicles. The Jacobs Street neighborhood (located directly across the street from the proposed Pulte development entrance) would become even more of a cut-through, which would be especially dangerous and devastating for this small community.

The neighborhood is made up of single family homes and the zoning change would allow multi-family, 4-story apartments, with no height restrictions and amenities such as a pharmacy, theater, gift shop, convenience store, and more on Robin Hill Street. The fabric of our community would be irreparably destroyed by such a dramatic change to our landscape.

Third Standard: Does the proposed change benefit the City, or provide a use not permitted elsewhere?

Response: In net, the proposed change does not benefit the city, in fact it does just the opposite. It is a net negative for these primary reasons:

- Creates a major safety hazard.
- Turns scenic Robin Hill Street into a mini-city, with mixed-use/multi-family units and amenities which could include a pharmacy, theater, convenience store, bank, offices and more.
- Triggers a city-wide zoning change allowing more automatic approval of other future projects that would currently be disallowed by zoning requirements.
- Potentially impacts the City water supply and destroys preserved greenspace.
- Has virtually no benefit to Marlborough's 55+ community, as most units in the proposed development will be priced in the \$500-800K range, above the \$487K three-year average selling price of Marlborough homes.
- Has no significant impact on the City from a financial standpoint. The developer will reap an estimated \$100 million in revenue, while the city is likely to net less than \$1 million per year (representing ½ of 1% of the City's FY24 budget).

Fourth Standard: Is the proposed change in keeping with the intent and purposes of the City's zoning ordinances?

Response: No. The purpose of the Zoning Ordinance is to promote the health and welfare of the City's inhabitants, protect water and other public services, avoid undue concentrations of population, and encourage the most appropriate use of land.

This proposal is a complete rewrite of the City's ordinances by a developer. It is not based on any need or benefit to the City, its citizens, or its neighborhoods. Furthermore, Pulte is asking for an entire revision of the City's laws, not just a special permit – which is significant in itself.

The Zoning Amendment's changes would have far-reaching implications for the entire City. If approval is granted, some changes would include:

- Retirement Community developments could be large scale combinations – a mix of townhouses, multifamily apartments and various amenities – throughout the entire City.
- Massive developments – mini cities – including multiple four-story apartment buildings, dozens of town homes, four-story clubhouses, and countless amenities.
- Multifamily developments and mixed detached/multifamily developments could be constructed within 100 feet of any non-municipal road.
- Multifamily buildings could be four stories high with no limit on total building height.

There has been no study, no survey, no master plan and no expert report by any City body or agent to suggest that these changes are in any way warranted, desirable, needed or beneficial to the City and its citizens. The City's laws cannot be re-written ad-hoc by national developers for their own pet project and for their own benefit with no consideration for the effect on the City.

Sincerely, Ed Chase 1:16

Katlyn LeBold

From: Arlene Stetson <laceybugtd@comcast.net>
Sent: Monday, November 13, 2023 2:17 PM
To: Katlyn LeBold
Subject: overlay for retirement community

You don't often get email from laceybugtd@comcast.net. [Learn why this is important](#)

from Arlene Stetson 603 Robin Hill St

I would like to share concerns I have about this project.

Robin Hill St is a designated scenic road, that in itself should say something. We have been residents of Marlborough for 40 years and love the area we live in.

We have seen many changes over the years, obviously. The mall was built, Apex was built and the sports center was built and enlarged. All of this has created more traffic on our road. The proposed development is inconceivable with the amount of additional cars it would create on the road daily, not to mention construction vehicles, movers, and multiple vendors that would service the area if built.

There are protected species in that area, which is extremely important. Once deforestation takes place, you can't ever replace it as it was. There will never be as much green space due to hardscape and buildings. If we haven't learned anything yet about what climate change means maybe now is the time we should. The trees that are there now help to create a sound barrier from 290. You can tell a difference in the noise level from 290 in the late fall and till late spring when the leaves are back on the trees. If those trees aren't there, it will be worse. I strongly oppose this project, as I have stated at other meetings.

This is only a brief statement. I had planned to be there tonight, however, due to the fact that my husband is in a Boston hospital and I have to be with him, I will not be able to attend.

Quality of life for current residents should be important and count. I am passionate about this issue and voicing my concerns, above are only a few.

Thank you for your time and consideration.

Arlene Stetson

DAY PITNEY LLP**MEMORANDUM**

One Federal Street, 29th Floor
Boston, MA 02110
T: (617) 345-4777
F: (617) 206-9339

Boston Connecticut Florida New Jersey New York Providence Washington, DC

TO: City of Marlborough City Council Urban Affairs Committee
FROM: William M. Pezzoni
CC: Trammell Crow Company and Goulston & Storrs
DATE: November 13, 2023
RE: **Memorandum regarding Application of Simple Majority Approval Thresholds under M.G.L. c. 40A, §§ 5 and 9**

This memorandum analyzes why (i) the Proposed Amendment to Zoning Ordinance Article VI, Section 650-39A: Sasseville Way Residential Overlay District (the “**Zoning Amendment**”) of Chapter 650 of the Marlborough Zoning Ordinance (the “**Zoning Ordinance**”) to create the Sasseville Way Residential Overlay District (“**SWROD**”) may be approved by simple majority vote of City Council, and (ii) a special permit for certain uses in the SWROD, as drafted in Section 1.B.1 “Authority of Permit Granting Authority” of the Zoning Amendment, may be approved by simple majority vote of the applicable permit granting authority.

A. BACKGROUND

Trammell Crow Company (together with its affiliates, the “**Developer**”) is proposing to add a new Section 39A to the Zoning Ordinance to create the SWROD within 23.3 acres of property located along Sasseville Way in the City of Marlborough (“**City**”), Massachusetts, Assessors’ Map and Parcel Number 29-23 (the “**Property**”). Specifically, the Developer is proposing to develop: (i) seven (7) multifamily apartment buildings, ranging in height from three (3) to four (4) stories with basement levels that walk out to grade at the rear of the buildings, and containing approximately 286 residential units, (ii) approximately 551 parking spaces in surface lots, two (2) freestanding garages, and garages located within residential buildings, (iii) up to approximately 8,000 square feet of space for retail or a single restaurant user, and (iv) clubhouse/leasing office space (collectively, the “**Project**”).

On July 12, 2023, the Developer petitioned City Council to adopt the Zoning Amendment. After receiving feedback in connection with public hearings before City Council, Conservation Commission, and Planning Board, as well as numerous discussions with neighboring residents and City officials, the Developer submitted certain proposed modifications to the Zoning Amendment text to the Planning Board on November 7, 2023. One of the rezoning language modifications is that a development proceeding under the SWROD will be required to receive a special permit and comply with the requirements of § 650-59 et seq. of the Zoning Ordinance. Specifically, Section 1.B.1 of the Zoning Amendment states:

The City Council shall be the permit granting authority for special permit and site plan approval in the SWR Overlay District. In all instances, (i) a development which

proceeds under the SWR Overlay District is subject to site plan approval in accordance with § 270-2 of the Marlborough City Code and (ii) an application for a special permit for a use in the SWR Overlay District shall comply with the requirements of § 650-59 of the Zoning Ordinance, with the exception that the City Council shall be the permit granting authority for special permit and site plan approval in the SWR Overlay District and ***the voting threshold shall be a simple majority, in accordance with Massachusetts General Laws c. 40A, § 9.*** (Emphasis added.)

An analysis of Massachusetts General Laws (“**M.G.L.**”) c. 40A, §§ 5 and 9 and their application to the Zoning Amendment is set forth below.

B. ZONING AMENDMENT VOTING THRESHOLDS UNDER M.G.L. c. 40A, § 5

Massachusetts home prices have increased at the fastest rate in the nation and rent prices rank among the highest in the county.¹ In order to respond to this housing crisis and to encourage the development of new and diverse housing choices, the Commonwealth enacted the Economic Development Legislation of 2020, Chapter 358 of the Acts of 2020. This legislation’s purpose is to facilitate housing production and implement zoning best practices to bring the Commonwealth in-line with current practice in most states.² Specifically, this legislation amended M.G.L. c. 40A (the “**Zoning Act**”) to (i) to reduce the voting threshold required to enact certain kinds of zoning ordinances and bylaws from a two-thirds supermajority to a simple majority and (ii) to reduce the voting threshold required to grant certain kinds of special permits. As it relates to enacting zoning ordinances, amended Section 5 of the Zoning Act states in part:

“[T]hat the following shall be adopted by a vote of a ***simple majority*** of all members of the town council or of the city council where there is a commission form of government [...] an amendment to a zoning ordinance [...] to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location [...]” (Emphasis added.)

The Zoning Amendment meets the criteria outlined in M.G.L. c. 40A, § 5, as discussed in further detail below.

C. THE ZONING AMENDMENT MEETS THE SIMPLE MAJORITY CRITERIA

The Zoning Amendment may be approved by simple majority vote of City Council, rather than a two-thirds vote, because the Zoning Amendment meets the threshold requirements set forth in M.G.L. c. 40A, § 5.

First, M.G.L. c. 40A, §1A defines “multi-family housing” as “a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.” Section 1A also defines “mixed-use development” as a

¹ MassHousing, *Housing Choice Initiative 1* (2022).

² *Id.*

development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.” Section 1.A.1 of the Zoning Amendment explains that the purpose of the SWROD, in part, is to provide for the development of mixed use multi-family housing developments. Section 1.D.1 of the Zoning Amendment includes multifamily housing and certain enumerated business uses in the list of eligible uses that are permitted by special permit in the SWROD. Here, the Developer is proposing to develop seven (7) multifamily apartment buildings with approximately 286 residential units on one lot as part of the Project, as well as parking, space for retail or a single restaurant user, clubhouse/leasing office space, and certain other residential amenities, which Project squarely fit within the definition of a “mixed-use development.” Therefore, the Zoning Amendment would allow a multi-family housing or mixed-use development by special permit and meets the use requirement in M.G.L. c. 40A, § 5(2).

Second, M.G.L. c. 40A, §1A defines “eligible locations” as “areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including ***without limitation***: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.” (Emphasis added.)

Here, the SWROD is located in an area near transit stations. The Property will have direct access to the Assabet River Rail Trail. The Assabet River Rail Trail connects to Lincoln Street in the south and is only a few blocks from the South Bolton/Main Street bus stop where MetroWest Regional Transportation Authority (“**MWRTA**”) Route 7 can be accessed. There are also two MWRTA buses with stops at Marlborough Hospital that are located approximately 1.5 miles from the Property.

Therefore, the Property meets the eligible location requirement in M.G.L. c. 40A, § 5, and the Zoning Amendment may be approved by simple majority vote of City Council. We respectfully request that the Planning Board confirm this determination in its report to City Council.

D. SPECIAL PERMIT VOTING THRESHOLDS UNDER M.G.L. c. 40A, § 9

As stated above, the Economic Development Legislation of 2020 also amended the Zoning Act to reduce the voting threshold required to grant certain kinds of special permits. Amended Section 9 of the Zoning Act states in part:

*A special permit issued by a special permit granting authority shall require a **simple majority vote** for any of the following: (a) **multifamily housing that is located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not***

less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; (b) mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; or (c) a reduced parking space to residential unit ratio requirement, pursuant to this section; provided, that a reduction in the parking requirement will result in the production of additional housing units. (Emphasis added.)

The Zoning Amendment meets the criteria outlined in M.G.L. c. 40A, § 9, as discussed in further detail below.

E. A SPECIAL PERMIT IN THE SWROD MEETS THE SIMPLE MAJORITY CRITERIA

The special permit approval threshold proposed under the Zoning Amendment is allowed to be simple majority, rather than a two-thirds vote, because the Zoning Amendment meets the threshold requirements set forth in M.G.L. c. 40A, § 9.

First, Section 1.D.1 of the Zoning Amendment includes multifamily housing in the list of eligible uses that are permitted by special permit in the SWROD. Specifically, the Developer is proposing to develop seven (7) multifamily apartment buildings with approximately 286 residential units as part of the Project, which qualifies as “multi-family housing” as defined in M.G.L. c. 40A, §1A. Therefore, the Zoning Amendment meets the multifamily housing use requirement in M.G.L. c. 40A, § 9.

Second, the SWROD is located in an area with reasonable connections to transit stations. As discussed above, the Property is bounded by the Assabet River Rail Trail to the south. The Assabet River Rail Trail connects to Lincoln Street in the south, which is only a few blocks from the South Bolton/Main Street bus stop where MWRTA Route 7 can be accessed. There are also two MWRTA buses with stops at Marlborough Hospital that are located approximately 1.5 miles from the Property.

The requirements in M.G.L. c. 40A, § 9 should be interpreted through the guidelines entitled “Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act” issued August 10, 2022, revised October 21, 2022 (“Compliance Guidelines”). The City is designated as an “Adjacent Community” in Appendix 1 “MBTA Community Categories and Requirements” to the Compliance Guidelines. “Adjacent Community” is defined in the Compliance Guidelines as “an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.” The Compliance Guidelines acknowledge that it may not be possible or practical to locate multi-family zoning districts within 0.5 miles of a transit station in Adjacent Communities, and therefore the

Compliance Guidelines do not consider the location requirement M.G.L. c. 40A, § 3A to be “applicable” to Adjacent Communities and said communities may locate the multi-family zoning district anywhere within its boundaries. The eligible location language relating to transit in M.G.L. c. 40A, § 9 mirrors the language in M.G.L. c. 40A, § 3A, so it would be appropriate within an Adjacent Community such as Marlborough to apply the same flexibility with respect to proximity to transit under Section 9 as is applied under Section 3A. As discussed above, the Property has reasonable connections to various transit stations based on existing street conditions, pedestrian connections, and bicycle lanes, especially since the Project will have direct access to the Assabet River Rail Trail. Therefore, the Zoning Amendment meets the transit requirement in M.G.L. c. 40A, § 9.

Third, Section 1.E of the Zoning Amendment provides that the affordable housing restrictions set forth in Section 650-26 of the Zoning Ordinance apply to the Project, except that the percentage of dwelling units to be constructed and made available at affordable prices shall be 12% with respect to developments of 20 or more units. Furthermore, Section 650-26(A)(1)(f) of the Zoning Ordinance specifically requires an affordable housing restriction to be imposed for a period of availability of a minimum of 99 years or in perpetuity. The Developer expects that the affordable housing restriction will include a requirement that the affordable units shall be occupied by households whose annual income is less than 80 per cent of the area wide median income, as determined by the United States Department of Housing and Urban Development and as required under M.G.L. c. 40A, § 9. Therefore, the Zoning Amendment exceeds the 10% threshold and otherwise meets the requirements set forth in M.G.L. c. 40A, § 9.

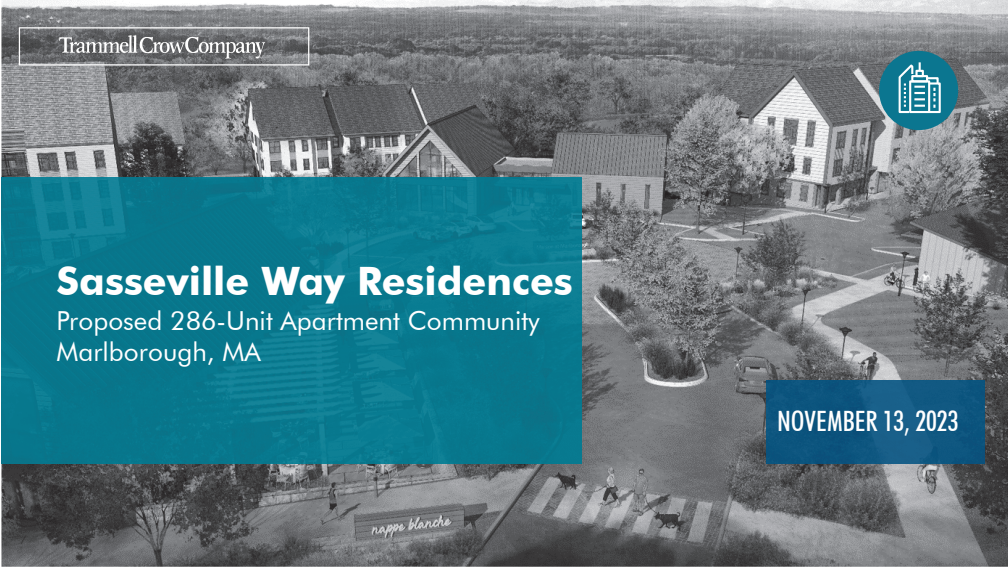
Because the Zoning Amendment meets the threshold requirements for use, location, and affordability as set forth in M.G.L. c. 40A, § 9, the special permit approval threshold proposed under the Zoning Amendment, therefore, is allowed to be simple majority.

F. CONCLUSION

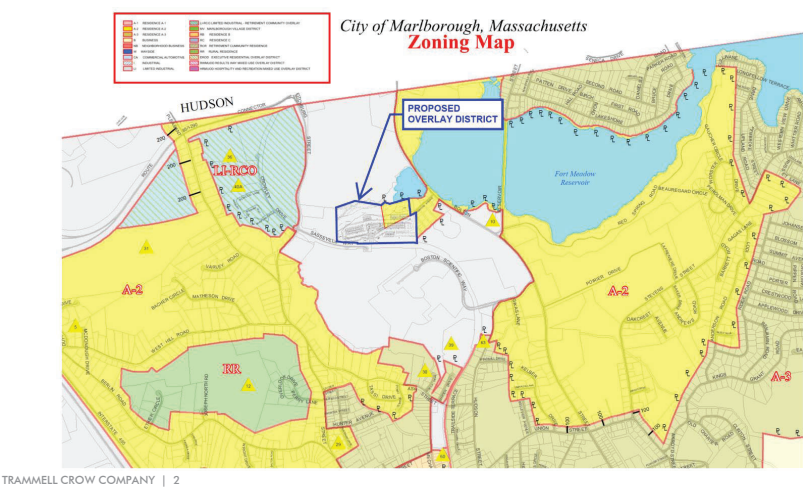
In conclusion, the Zoning Amendment would allow, by special permit, additional multi-family housing, including affordable units, off of Sasseville Way, which Property is located in close proximity to public transportation. Therefore, (i) the Zoning Amendment may be approved by simple majority vote of City Council under M.G.L. c. 40A, § 5 and (ii) a special permit for use in the SWROD, as drafted in the Zoning Amendment, may be approved by simple majority vote of the applicable permit granting authority under M.G.L. c. 40A, § 9.³

If you need any additional information or have any follow-up questions, please do not hesitate to contact us.

³ Note the City does not have to take any action for the amendments to the Zoning Act to take effect as the changes apply automatically to all cities and towns. (See Commonwealth of Massachusetts Executive Office of Housing & Economic Development, *Guidance For Local Officials on Determining Voting Thresholds for Zoning Ordinances and Bylaws* 4 (2021)).



PROPOSED OVERLAY DISTRICT



ZONING AMENDMENTS

Provision	Previous Language (submitted July 2023)	Updated Language (submitted November 7, 2023)
Special Permit Requirement	Required for multifamily developments above 300 dwelling units	Required for any multifamily development
Maximum SF of Business use	Not restricted	8,000 SF
Of the Business use, maximum SF of a consumer service establishment complementary to other principal uses	10,000 SF	8,000 SF
Of the Business use, maximum SF of a restaurant serving food indoors and/or outdoors, or café with or without table service, or brew pub	10,000 SF	8,000 SF
Of the Business use, maximum SF of a health, sports and fitness clubs and related facilities	10,000 SF	8,000 SF
Percentage of affordable dwelling units	10%	12%
Measurement of Building Height	Roof structures that are not occupiable are not included in the overall height measurement	Height shall be measured to the average height between plate and ridge of a gable, hip or gambrel roof ¹
Setbacks	Minimum front and side yard setback of 50 feet	Minimum front, side and rear yard setback of 50 feet, except a minimum front yard setback of 25 feet for a Business use
Maximum combined lot coverage	50%	45%
Maximum Residential Density	15 dwelling units per acre	13 dwelling units per acre
Maximum number of three-bedroom dwelling units	Not restricted	10
Maximum number of dwelling units	Not restricted	286
Maximum number of restaurants serving food indoors and/or outdoors, or cafés with or without table service, or brew pubs	Not restricted	1

1: We note that this formula is consistent with the definition of "Building Height" in the Zoning Ordinance.

DENSITY ANALYSIS

Property	Year Built	Units	Land Acreage	Units/Acre
The Burrow	2022	235	10.2	23.1
The Lodge	In-Process	240	11.8	20.3
Avalon Marlborough	2015	473	34.4	13.7
SWR	TBD	286	23.3	12.3
Talia	2016	225	18.7	12.0

DRAFT SITE PLAN



COMMUNITY VIEWS



COMMUNITY VIEWS



DRAFT LANDSCAPE PLAN



RENDERINGS



TRAMMELL CROW COMPANY | 9

Main Entry from Sasseeville Way

RENDERINGS



TRAMMELL CROW COMPANY | 10

Rear of Clubhouse and Outdoor Amenities

THANK YOU