

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: October 2, 2018

Time: 5:30 PM

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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2018 SEP 27 P 12: 09

New Business:

1. 05-21-2018 – **Order No. 18-1007287:** Communication from Attorney Falk, Mirick O' Connell, re: Proposed Zoning Amendment – Ancillary Residential Communities.
-Refer to Urban Affairs Committee & Planning Board
-Public Hearing: July 23, 2018
2. 07-23-2018 – **Order No. 18-1007338:** Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Proposed Zoning Amendment to add Chapter 650, §40 as it relates to Large Scale Ground Mounted Solar Photovoltaic Installation Overlay District, sponsored by Councilor Doucette.
-Refer to Urban Affairs Committee & Planning Board
-Public Hearing: September 10, 2018

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

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

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



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 21, 2018

PAGE 1

ORDERED:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended as follows:

1. In Section 650-5.B, insert the following new definition:

ANCILLARY RESIDENTIAL COMMUNITY

A single multifamily building containing up to thirty (30) dwelling units in a Retirement Community Overlay District that is incorporated as part of a retirement community or located on a lot adjacent to a retirement community.

2. Add to the Table of Use Regulations, Section 650-17, a category for "Ancillary Residential Community" under "Residential Uses", as follows:

	Zoning District Abbreviations											
	RR	A-1	A-2	A-3	RB	RC	RCR	B	CA	LI	I	MV
Residential Use												
Ancillary Residential Community (§ 650-22)	N	N	N	N	N	N	N	N	N	SP	SP	N

3. Add to Section 650-22 the following new Subsection C(14) as follows:

(14) Ancillary Residential Community: An Ancillary Residential Community shall be subject to the following requirements:

- (a) An Ancillary Residential Community shall be permitted: (i) as part of a retirement community and authorized in conjunction with the granting of a special permit for the retirement community or an amended special permit for the retirement community; or (ii) as a principal use through a separate special permit for a lot adjacent to a retirement community, provided that the organization governing the adjacent retirement community provides written consent to the filing of such special permit application.
- (b) The Ancillary Residential Community's principal building shall face upon an existing street, or the street-facing side of the building shall be designed in a manner satisfactory to the City Council.
- (c) The Ancillary Residential Community's principal building shall have a maximum height of 2 1/2 stories.



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ORDERED:

Marlborough, Mass., _____ MAY 21, 2018

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- (d) The Ancillary Residential Community's principal building shall have a minimum front yard of 10 feet. Each building, whether principal or accessory, shall be at least 50 feet from any other building by air line distance between the nearest points of the building.
- (e) No dwelling unit shall contain less than 800 square feet of floor space exclusive of halls and stairs, and no room in a dwelling unit shall contain less than 120 square feet.
- (f) No part of any building in any Ancillary Residential Community shall be less than 30 feet from any lot line, less than 50 feet from any street, or less than 80 feet from the nearest structure in the retirement community.
- (g) All site landscaping shall be designed so as to provide a clear sense of separation between the Ancillary Residential Community and the retirement community. Landscape design preference shall be given to the maintenance of existing trees and ground cover. The development of large lawn areas shall be minimized.
- (h) The City Council may, as a condition of any special permit for an Ancillary Residential Community, require that the land area on which the Ancillary Residential Community is located be permanently maintained as one undivided lot or, within a condominium, as one undivided condominium unit, or require such other legal mechanism as will, in the opinion of the City Council, assure that the Ancillary Residential Community will not be subdivided or its ownership further condominiumized, that the Ancillary Residential Community will remain as rental housing, and that ownership of the Ancillary Residential Community will remain consolidated.



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ORDERED:

- (i) The total number of units in an Ancillary Residential Community shall not exceed 30% of the combined total of retirement community and Ancillary Residential Community units.

Be and is herewith **SET A PUBLIC HEARING FOR JULY 23, 2018, ADVERTISE, REFER TO URBAN AFFAIRS COMMITTEE AND PLANNING BOARD.**

ADOPTED

ORDER NO. 18-1007287

MIRICK O'CONNELL

ATTORNEYS AT LAW

 RECEIVED
 CITY CLERK'S OFFICE
 CITY OF MARLBOROUGH

2018 MAY 17 A 8:41

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

May 17, 2018

Councilor Edward Clancy, President
 Marlborough City Council
 City Hall
 Marlborough, MA 01752

Re: Proposed Zoning Amendment – Ancillary Residential Communities

Dear Councilor Clancy:

I represent Williams Street Holdings LLC (Williams Street), the owner of land located at 615 Williams Street, Assessors Map 113, Parcel 6. On behalf of Williams Street, I respectfully request that the City Council consider amending the Zoning Ordinance of the City of Marlborough by allowing Ancillary Residential Communities by special permit in Retirement Community Overlay Districts, as specified in the enclosed Proposed Order. In accordance with M.G.L. c. 40A, § 5, Williams Street is the owner of land to be affected by this proposed amendment.

As you may recall, Williams Street previously proposed an over-55 Ancillary Residential Community consisting of 28 units in a single building. The project had the support of the adjacent Villages at Crane Meadow retirement community. However, unbeknownst to Williams Street until recently, the City's published Zoning Ordinance erroneously contained provisions authorizing Ancillary Residential Communities, but those provisions were repealed by the Council in 2011. The proposed amendment would restore the Ancillary Residential Community provisions in substantially the same form, but with a few revisions to clarify certain terms.

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/ljk

Encl.

cc: Client
 Arthur P. Bergeron

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

PROPOSED CITY COUNCIL ORDER

ORDERED:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended as follows:

1. In Section 650-5.B, insert the following new definition:

ANCILLARY RESIDENTIAL COMMUNITY

A single multifamily building containing up to thirty (30) dwelling units in a Retirement Community Overlay District that is incorporated as part of a retirement community or located on a lot adjacent to a retirement community.

2. Add to the Table of Use Regulations, Section 650-17, a category for "Ancillary Residential Community" under "Residential Uses", as follows:

	Zoning District Abbreviations											
	RR	A-1	A-2	A-3	RB	RC	RCR	B	CA	LI	I	MV
Residential Use												
Ancillary Residential Community (§ 650-22)	N	N	N	N	N	N	N	N	N	SP	SP	N

3. Add to Section 650-22 the following new Subsection C(14) as follows:

(14) Ancillary Residential Community: An Ancillary Residential Community shall be subject to the following requirements:

- (a) An Ancillary Residential Community shall be permitted: (i) as part of a retirement community and authorized in conjunction with the granting of a special permit for the retirement community or an amended special permit for the retirement community; or (ii) as a principal use through a separate special permit for a lot adjacent to a retirement community, provided that the organization governing the adjacent retirement community provides written consent to the filing of such special permit application.
- (b) The Ancillary Residential Community's principal building shall face upon an existing street, or the street-facing side of the building shall be designed in a manner satisfactory to the City Council.
- (c) The Ancillary Residential Community's principal building shall have a maximum height of 2 1/2 stories.
- (d) The Ancillary Residential Community's principal building shall have a minimum front yard of 10 feet. Each building, whether principal or accessory, shall be at least

50 feet from any other building by air line distance between the nearest points of the building.

- (e) No dwelling unit shall contain less than 800 square feet of floor space exclusive of halls and stairs, and no room in a dwelling unit shall contain less than 120 square feet.
- (f) No part of any building in any Ancillary Residential Community shall be less than 30 feet from any lot line, less than 50 feet from any street, or less than 80 feet from the nearest structure in the retirement community.
- (g) All site landscaping shall be designed so as to provide a clear sense of separation between the Ancillary Residential Community and the retirement community. Landscape design preference shall be given to the maintenance of existing trees and ground cover. The development of large lawn areas shall be minimized.
- (h) The City Council may, as a condition of any special permit for an Ancillary Residential Community, require that the land area on which the Ancillary Residential Community is located be permanently maintained as one undivided lot or, within a condominium, as one undivided condominium unit, or require such other legal mechanism as will, in the opinion of the City Council, assure that the Ancillary Residential Community will not be subdivided or its ownership further condominiumized, that the Ancillary Residential Community will remain as rental housing, and that ownership of the Ancillary Residential Community will remain consolidated.
- (i) The total number of units in an Ancillary Residential Community shall not exceed 30% of the combined total of retirement community and Ancillary Residential Community units.

ADOPTED
In City Council
Order No. 18-

Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



IN CITY COUNCIL

Marlborough, Mass., _____ JULY 23, 2018

ORDERED:

PAGE 1

That the PUBLIC HEARING On the Proposed Zoning Amendment, to Chapter 650 §5.B, §17, & §22 as it pertains to Ancillary Residential Communities, Williams Street, Order No. 18-1007287, all were heard who wish to be heard, hearing closed at 8:22 PM.

Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.

PUBLIC SPEAKING IN FAVOR

Arthur Bergeron, represented the proposed developers of a project previously before the City Council. The proposal was for a property on Williams Street before it was determined as not allowed by zoning, and there were discussions regarding an allowed ancillary retirement residential community next to a retirement community and how it would affect existing and proposed developments throughout the City.

This proposal states an ancillary retirement residential community could be on a property within a retirement community overlay district and on land contiguous to the retirement community overlay district. Currently in Marlborough, there are two retirement community overlay districts, one on Williams Street (Crane Meadow) where all the property was developed as a retirement community overlay district except for one small area consisting of several acres which was set aside specifically for an ancillary retirement residential community. The second retirement community overlay district is located at Sasseville Way and Crowley Drive (Toll Brothers) and none of its remaining land is adjacent to the retirement community so it could not be used as an ancillary retirement residential community under the terms of this proposed zoning amendment. Mr. Bergeron also discussed the Marlborough Airport Property and its proposal as a retirement community overlay district but its plans called for all the land to be developed as part of their proposal so it would not be affected by this zoning change.

Mr. Bergeron noted ancillary retirement residential communities were previously allowed in the zoning for retirement community overlay districts but removed by the Council several years ago. He believed many Councilors were unaware this specific section of the zoning was abolished and wished to return it to the City's zoning regulations.

There is no one else speaking in favor. That part of the Public Hearing is closed.



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ORDERED:

QUESTIONS FROM THE PUBLIC

There are no questions from the public. That part of the Public Hearing is closed.

PUBLIC SPEAKING IN OPPOSITION

Charles Trombetta, 42 Whispering Brook Road at Crane Meadow, believed the word ancillary should not be added to the regulations because it would give the attorneys and builders more tools to develop more of the property in Marlborough. Mr. Trombetta stated despite Mr. Bergeron's assurances, not all the residents were in favor of the Williams Street project. The proposed project would share a septic system with the current retirement community which was updated at considerable expense to the residents. He also felt the proposed building should face the public way and not the power lines. For those reasons, Mr. Trombetta felt ancillary should be left out of the description.

There is no one else speaking in opposition. That part of the Public Hearing is closed.

QUESTIONS FROM THE CITY COUNCIL

✓ Councilor Juare requested Mr. Bergeron explain the difference between the proposal submitted months ago and whether it was on the same parcel of land. Mr. Bergeron noted it was the same parcel of land and if they moved forward their proposal would be like what was previously presented to the Council.

There are no further questions from members of City Council. That part of the Public Hearing is closed.

That ends the entire Public Hearing. This is currently in the Urban Affairs Committee.

ADOPTED

ORDER NO. 18-1007287A



City of Marlborough
Commonwealth of Massachusetts

PLANNING BOARD

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

Krista Holmi, Administrator

Phone: (508) 624-6910 x33200

Email: planning_board@marlborough-ma.gov

kholmi@marlborough-ma.gov

September 27, 2018

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

RE: Council Order#18-1007337 Proposed Zoning Amendment, Section 650-5 Definitions; Word usage, Section 650-17 Table of Uses and section 650-22, Subsection C (14) Ancillary Residential Community

Honorable President Clancy and Councilors:

At its regularly scheduled Planning Board meeting on September 24, 2018, the Board took the following action regarding the above-referenced Council order:

On a motion by Mr. Fay and seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the City Council on the proposed zoning amendment, provided that the definition of adjacent parcel be clarified to include specific language that the adjacent parcel must be within a Retirement Community Overlay District and that ancillary multifamily developments be excluded from any parcel east of Broadmeadow Road. Chairperson Fenby opposed. Motion carried.

The Board provided the following reasons in reaching its recommendation:

- The developer established that the proposed overlay district would result in a development meeting a demonstrated need for a diversified housing stock in the City of Marlborough;
- The developer established that the proposed overlay district would benefit the City by providing an age-restricted (Age 55+) housing option with a positive fiscal impact to the City of Marlborough;
- The developer established to the Board's satisfaction that the proposed overlay district fits into the neighborhood, and in the Board's opinion, approval of the overlay district for this area would not unduly burden abutters.

While the Board's majority felt that an ancillary multifamily development did not unduly burden abutters on the proponent's parcel (adjacent to the Villages at Crane Meadow), my negative vote reflects agreement with the expressed opposition to this zoning amendment by the most impacted residents.

Sincerely,

Barbara L. Fenby/KH

Barbara L. Fenby
Chairperson

cc: City Clerk
File



IN CITY COUNCIL

Marlborough, Mass., JULY 23, 2018

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ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

1. That a new Section 40 be inserted into Chapter 650, as follows:

ARTICLE VI

§ 650-40 Large-scale Ground-mounted Solar Photovoltaic Overlay District

A. Purpose and Objectives:

- 1) The Large-scale Ground-mounted Solar Photovoltaic Overlay District (herein, also a "LGSPOD") 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 district(s). The purpose of this section is to provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and which provide adequate financial assurance for the eventual decommissioning of such installations.
- 2) The provisions set forth in this section apply to the construction, operation and/or repair of large-scale ground-mounted solar photovoltaic installations.
- 3) This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.



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ORDERED:

B. Designation of overlay location; as-of-right use. For the purposes of this Section, the LGSPOD shall be superimposed on the other district(s) existing at the time that any land in any said underlying district is also included in the LGSPOD, as designated by the Marlborough City Council in accordance with M.G.L. c.40A, §5, where ground-mounted large-scale solar photovoltaic installations may be sited as of right. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 relating to the underlying zoning district not otherwise impacted by this Section shall continue to remain in full force and effect. In the event of any conflict between the provisions of this section and any other provisions of the Zoning Ordinance, the provisions of this Section shall govern and control. The LGSPOD overlay zoning district is located on the northerly side of Parameter Street, consisting of the parcels identified in Exhibit A annexed hereto and incorporated by reference herein, and as indicated on the Zoning Map of the City of Marlborough. Said map is hereby made a part of this chapter and is on file in the office of the City Clerk.

C. Definitions. As used in this section, following terms shall have the meanings indicated:

As-of-Right Siting: As-of-Right Siting shall mean that development under this § 650-40 may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval, however said as-of-right development is subject to site plan review as provided under Chapter 270 Code of the City of Marlborough and this § 650-40. Projects cannot be prohibited, but can be subject to reasonable regulation.

Large-Scale Ground-mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground, is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

Solar Photovoltaic Installation: A solar photovoltaic array that is constructed at a location where other allowable uses of the underlying property may occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).



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ORDERED:

Site Plan Review: Review by Site Plan Review procedures as governed by § 270-2 of the Code of the City of Marlborough and this § 650-40.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Photovoltaic Array: An arrangement of solar photovoltaic panels.

D. General Requirements for all large-scale ground-mounted solar photovoltaic installations. The following requirements are common to all large-scale ground-mounted solar photovoltaic installations to be sited in designated overlay locations:

1. Compliance with Laws, Ordinances and Regulations. The construction and operation of all large-scale ground-mounted solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable security, safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a large-scale ground-mounted solar photovoltaic installation shall be constructed in accordance with the State Building Code.
2. Building Permit and Building Inspection. No large-scale ground-mounted solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
3. Fees. The application for a building permit for a large-scale ground-mounted solar photovoltaic installation must be accompanied by the fee required for a building permit.
4. Site Plan Review. Large-scale ground-mounted solar photovoltaic installations shall undergo site plan review by Site Plan Review prior to construction, installation or modification as provided in § 270-2 of the Code of the City of Marlborough and in this section, as follows:
 - a. General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.
 - b. Required Documents. Pursuant to the site plan review process, the project proponent shall provide the following documents:



IN CITY COUNCIL

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ORDERED:

- i. A site plan showing:
 1. Property lines and physical features, including roads, for the project site;
 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation, fences or other screening structures;
 3. Drawings of the large-scale ground-mounted solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 4. One or three-line electrical diagram detailing the large-scale ground-mounted solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 5. Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter;
 6. Name, address, and contact information for proposed system installer;
 7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 8. The name, contact information and signature of any agents representing the project proponent;
 9. Emergency services access points and through points; and
- ii. Documentation of actual or prospective access and control of the project site (see also Section E herein); and
- iii. An operation and maintenance plan (see also Section F herein); and
- iv. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- v. Proof of liability insurance; and
- vi. Description of financial surety that satisfies Section L herein; and
- vii. A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise informs abutters within 300' of the property line of the project site. Site Plan Review may waive documentary requirements as it deems appropriate.



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ORDERED:

- E. Site Control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed large-scale ground-mounted solar photovoltaic installation.
- F. Operation & Maintenance Plan. The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
- G. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to Site Plan Review that the utility company that operates the electrical grid where the installation is to be located has been informed of the large-scale ground-mounted solar photovoltaic installation's owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- H. Dimension and Density Requirements.
 - a. Setbacks. For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:
 - i. Front yard. The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the front yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.
 - ii. Side yard. Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the side yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.



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ORDERED:

iii. Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the rear yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.

b. Appurtenant Structures. All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

I. Design Standards.

a. Lighting. Lighting of large-scale ground-mounted solar installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the large-scale ground-mounted solar installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

b. Signage. Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Chapter 526 of the Code of the City of Marlborough. A sign consistent with the City's sign ordinances shall be required to identify the owner and provide a 24-hour emergency contact phone number. Large-scale ground-mounted solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the large-scale ground-mounted solar.



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ORDERED:

- c. Utility Connections. Reasonable efforts, as determined by Site Plan Review, shall be made to place all utility connections from the large-scale ground-mounted solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- d. Screening. Every abutting property, private way, private driveway, and public way shall be visually screened from the project through any one or combination of the following: location, distance, plantings, existing vegetation.
- e. Top soil. No top soil shall be removed from the site. Said topsoil shall be stockpiled on site and used to stabilize the site with a minimum cover of 6 inches cover of loam. Any topsoil remaining after stabilization shall be stockpiled on site for use during decommissioning.

J. Safety and Environmental Standards.

- a. Emergency Services. The large-scale ground-mounted solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Chief of the Marlborough Fire Department. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. Everything means of shutting down the large-scale ground-mounted photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- b. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and ordinances.



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ORDERED:

K. Monitoring and Maintenance.

- a. Large-scale Ground-mounted Solar Photovoltaic Installation Conditions. The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and emergency medical services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access or through road(s). Landscaping and fencing, including vegetation used for screening, shall be maintained in good condition.
- b. Modifications. After the required permits, have been issued, the Building Commissioner may approve minor non-material modifications to a large-sale ground-mounted solar photovoltaic installation. All major material modifications to a large-scale ground-mounted solar photovoltaic installation made after issuance of the required permits shall require approval by Site Plan Review.

L. Abandonment or Decommissioning.

- a. Removal Requirements. Any large-scale ground-mounted solar photovoltaic installation which has been discontinued by reaching the end of its useful life, reaching the end of a lease term without renewal or extension, or having been abandoned (as provided in paragraph L.b. herein) shall be removed as herein provided. The owner or operator shall physically remove the installation no more than 150 days after the date of said discontinued operations. The owner or operator shall notify Site Plan Review by certified mail of the proposed date of discontinued operations and plans for removal by decommissioning. Decommissioning shall consist of:
 - i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.



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ORDERED:

- ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - iii. Stabilization or re-vegetation of the site as necessary to minimize erosion, including use of any remaining topsoil stockpiled on site. Site Plan Review may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- b. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale ground-mounted solar photovoltaic installation shall be considered abandoned when it fails to operate for more than six months without the written consent of the Building Commissioner. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation.
- c. Financial surety. Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through a cash escrow account with interest retained for escalating decommissioning costs, bond or otherwise, to cover the cost of removal in the event that the City must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by Site Plan Review, but in no event in excess more than 125% of the cost of removal and compliance with additional requirements set forth herein, as determined by Site Plan Review. Such surety will not be required for municipally owned or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. Site Plan Review may request the proponent to provide an update of the fully inclusive estimate of costs associated with removal every five years following the issuance of a building permit. Site Plan Review may require the proponent to provide additional surety based on the updated cost estimate.

M. The effective date of these amendments shall be the date of their passage.



IN CITY COUNCIL

Marlborough, Mass., JULY 23, 2018
PAGE 11

ORDERED:

Be and is herewith refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD,
AND ADVERTISE PUBLIC HEARING FOR MONDAY SEPTEMBER 10, 2018.**

ADOPTED

ORDER NO. 18-1007338



City of Marlborough
Legal Department

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 CITY CLERK'S OFFICE
 CITY OF MARLBOROUGH

2018 JUL 19 A 11:05

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
 CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
 ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
 PARALEGAL

July 19, 2018

President Edward Clancy and
 Members of the Marlborough City Council
 140 Main Street
 Marlborough, MA 01752

RE: Proposed Amendment to Chapter 650 (Zoning Ordinance)
 Large-scale Ground-mounted Solar Photovoltaic Installation Overlay District

Dear President Clancy and Members of the City Council:

At the request of Councilor Doucette, I submit for your consideration the attached proposed zoning amendment which would create a new overlay district for large-scale ground-mounted solar photovoltaic installations. Also included is a sketch map illustrating the location of the proposed overlay district. Said order is in proper form for your consideration.

Please let me know if you have any questions.

Very truly yours,

Cynthia Panagore Griffin
 Assistant City Solicitor

Cc: Priscilla Ryder, Conservation Officer
 Jeffrey Cooke, Building Commissioner

ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

1. That a new Section 40 be inserted into Chapter 650, as follows:

ARTICLE VI

§ 650-40 Large-scale Ground-mounted Solar Photovoltaic Overlay District

A. Purpose and Objectives:

- 1) The Large-scale Ground-mounted Solar Photovoltaic Overlay District (herein, also a "LGSPOD") 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 district(s). The purpose of this section is to provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and which provide adequate financial assurance for the eventual decommissioning of such installations.
- 2) The provisions set forth in this section apply to the construction, operation and/or repair of large-scale ground-mounted solar photovoltaic installations.
- 3) This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

- B. Designation of overlay location; as-of-right use. For the purposes of this Section, the LGSPOD shall be superimposed on the other district(s) existing at the time that any land in any said underlying district is also included in the LGSPOD, as designated by the Marlborough City Council in accordance with M.G.L. c.40A, §5, where ground-mounted large-scale solar photovoltaic installations may be sited as of right. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 relating to the underlying zoning district not otherwise impacted by this Section shall continue to remain in full force and effect. In the event of any conflict between the provisions of this section and any other provisions of the Zoning Ordinance, the provisions of this Section shall govern and control. The LGSPOD overlay zoning district is located on the northerly side of Parmenter Street, consisting of the parcels identified in Exhibit A annexed hereto and incorporated by

reference herein, and as indicated on the Zoning Map of the City of Marlborough. Said map is hereby made a part of this chapter and is on file in the office of the City Clerk.

C. Definitions. As used in this section, following terms shall have the meanings indicated:

As-of-Right Siting: As-of-Right Siting shall mean that development under this § 650-40 may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval, however said as-of-right development is subject to site plan review as provided under Chapter 270 Code of the City of Marlborough and this § 650-40. Projects cannot be prohibited, but can be subject to reasonable regulation.

Large-Scale Ground-mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground, is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

Solar Photovoltaic Installation: A solar photovoltaic array that is constructed at a location where other allowable uses of the underlying property may occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site Plan Review: Review by Site Plan Review procedures as governed by § 270-2 of the Code of the City of Marlborough and this § 650-40.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Solar Photovoltaic Array: An arrangement of solar photovoltaic panels.

D. General Requirements for all large-scale ground-mounted solar photovoltaic installations.

The following requirements are common to all large-scale ground-mounted solar photovoltaic installations to be sited in designated overlay locations:

1. **Compliance with Laws, Ordinances and Regulations.** The construction and operation of all large-scale ground-mounted solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable security, safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a large-scale ground-mounted solar photovoltaic installation shall be constructed in accordance with the State Building Code.
2. **Building Permit and Building Inspection.** No large-scale ground-mounted solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
3. **Fees.** The application for a building permit for a large-scale ground-mounted solar photovoltaic installation must be accompanied by the fee required for a building permit.

4. Site Plan Review. Large-scale ground-mounted solar photovoltaic installations shall undergo site plan review by Site Plan Review prior to construction, installation or modification as provided in § 270-2 of the Code of the City of Marlborough and in this section, as follows:
 - a. General. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.
 - b. Required Documents. Pursuant to the site plan review process, the project proponent shall provide the following documents:
 - i. A site plan showing:
 1. Property lines and physical features, including roads, for the project site;
 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation, fences or other screening structures;
 3. Drawings of the large-scale ground-mounted solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 4. One or three-line electrical diagram detailing the large-scale ground-mounted solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 5. Documentation of the major system components to be used, including the photovoltaic panels, mounting system, and inverter;
 6. Name, address, and contact information for proposed system installer;
 7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 8. The name, contact information and signature of any agents representing the project proponent;
 9. Emergency services access points and through points; and
 - ii. Documentation of actual or prospective access and control of the project site (see also Section E herein); and
 - iii. An operation and maintenance plan (see also Section F herein); and
 - iv. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
 - v. Proof of liability insurance; and
 - vi. Description of financial surety that satisfies Section L herein; and
 - vii. A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise informs abutters within 300' of the property line of the project site. Site Plan Review may waive documentary requirements as it deems appropriate.

- E. Site Control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed large-scale ground-mounted solar photovoltaic installation.
- F. Operation & Maintenance Plan. The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
- G. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to Site Plan Review that the utility company that operates the electrical grid where the installation is to be located has been informed of the large-scale ground-mounted solar photovoltaic installation's owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- H. Dimension and Density Requirements.
 - a. Setbacks. For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:
 - i. Front yard. The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the front yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.
 - ii. Side yard. Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the side yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.
 - iii. Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a conservation use, residential use, or public way, the rear yard depth shall be comprised of a no-clear vegetated buffer of not less than 50 feet and, as measured therefrom, a no-build buffer of not less than 50 feet. Site Plan Review may require plantings in the 50 foot no-clear vegetated buffer if none exist.
 - b. Appurtenant Structures. All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations,

shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

I. Design Standards.

- a. Lighting. Lighting of large-scale ground-mounted solar installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the large-scale ground-mounted solar installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
- b. Signage. Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Chapter 526 of the Code of the City of Marlborough. A sign consistent with the City's sign ordinances shall be required to identify the owner and provide a 24-hour emergency contact phone number. Large-scale ground-mounted solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the large-scale ground-mounted solar.
- c. Utility Connections. Reasonable efforts, as determined by Site Plan Review, shall be made to place all utility connections from the large-scale ground-mounted solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- d. Screening. Every abutting property, private way, private driveway, and public way shall be visually screened from the project through any one or combination of the following: location, distance, plantings, existing vegetation.
- e. Top soil. No top soil shall be removed from the site. Said topsoil shall be stockpiled on site and used to stabilize the site with a minimum cover of 6 inches cover of loam. Any topsoil remaining after stabilization shall be stockpiled on site for use during decommissioning.

J. Safety and Environmental Standards.

- a. Emergency Services. The large-scale ground-mounted solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Chief of the Marlborough Fire Department. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the large-scale ground-mounted photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

- b. Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and ordinances.

K. Monitoring and Maintenance.

- a. Large-scale Ground-mounted Solar Photovoltaic Installation Conditions. The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and emergency medical services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access or through road(s). Landscaping and fencing, including vegetation used for screening, shall be maintained in good condition.
- b. Modifications. After the required permits have been issued, the Building Commissioner may approve minor non-material modifications to a large-sale ground-mounted solar photovoltaic installation. All major material modifications to a large-scale ground-mounted solar photovoltaic installation made after issuance of the required permits shall require approval by Site Plan Review.

L. Abandonment or Decommissioning.

- a. Removal Requirements. Any large-scale ground-mounted solar photovoltaic installation which has been discontinued by reaching the end of its useful life, reaching the end of a lease term without renewal or extension, or having been abandoned (as provided in paragraph L.b. herein) shall be removed as herein provided. The owner or operator shall physically remove the installation no more than 150 days after the date of said discontinued operations. The owner or operator shall notify Site Plan Review by certified mail of the proposed date of discontinued operations and plans for removal by decommissioning. Decommissioning shall consist of:
 - i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
 - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - iii. Stabilization or re-vegetation of the site as necessary to minimize erosion, including use of any remaining topsoil stockpiled on site. Site Plan Review may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

- b. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale ground-mounted solar photovoltaic installation shall be considered abandoned when it fails to operate for more than six months without the written consent of the Building Commissioner. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation.
- c. Financial surety. Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through a cash escrow account with interest retained for escalating decommissioning costs, bond or otherwise, to cover the cost of removal in the event that the City must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by Site Plan Review, but in no event in excess more than 125% of the cost of removal and compliance with additional requirements set forth herein, as determined by Site Plan Review. Such surety will not be required for municipally owned or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. Site Plan Review may request the proponent to provide an update of the fully inclusive estimate of costs associated with removal every five years following the issuance of a building permit. Site Plan Review may require the proponent to provide additional surety based on the updated cost estimate.

M. The effective date of these amendments shall be the date of their passage.

EXHIBIT A

The newly established Large-scale Ground-mounted Solar Photovoltaic Overlay District shall include all or portions of the properties shown on the Zoning Map existing at the passage of this Ordinance, which properties include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

Assessors Map 98, Parcel 8

Assessors Map 98, Parcel 7A

Assessors Map 98, Parcel 9

Assessors Map 98, Parcel 10

Assessors Map 108, Parcel 1

Assessors Map 108, Parcel 2

Assessors Map 109, Parcel 1

Assessors Map 109, Parcel 5

ADOPTED

In City Council
Order No 18-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



Proposed Large-scale Ground-mounted Solar Installation Overlay District

Marlborough, MA

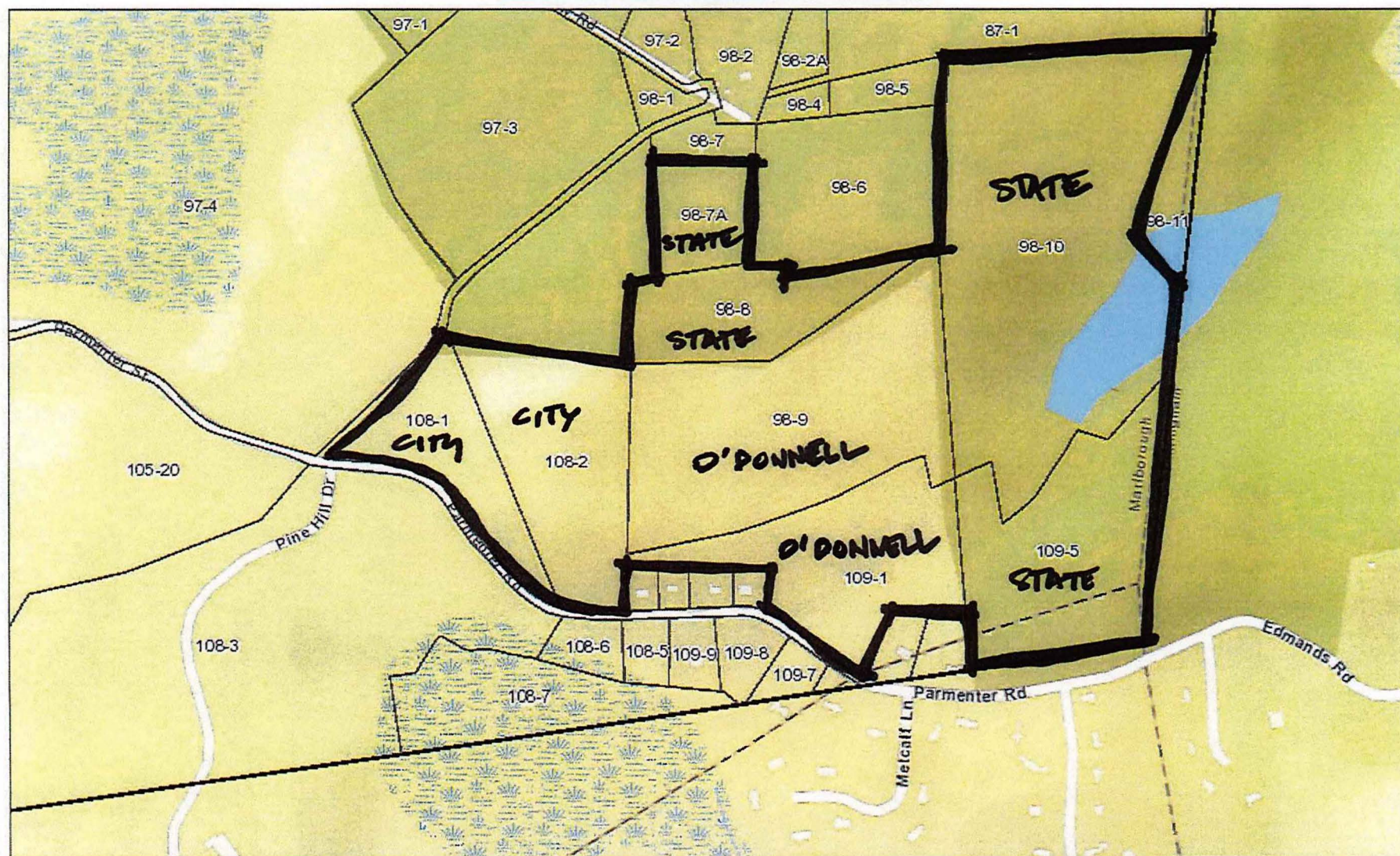


July 18, 2018

1 inch = 537 Feet

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