

REGULAR MEETING
JANUARY 27, 2020
TIME: 8:00 PM

IN CITY COUNCIL
ABSENT

LOCATION: CITY HALL, 140 MAIN STREET, 2ND FLOOR

CONVENED:
ADJOURNED:
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2020 JAN 23 P 1:05

1. Minutes, City Council Meeting, January 13, 2020.
2. PUBLIC HEARING On the Application for Special Permit from Attorney Brian Falk, on behalf of Vedi Naturals LLC, to operate an Adult Use Marijuana Retail Establishment, 505 Boston Post Road West (Twin Boro Crossing), Order No. 19-1007881.
3. From City Councilor Robey - Proposed Zoning Amendment to Chapter 650 §17 & §18 relative to Livestock Farms.
4. Communication from the Mayor, re: Transfer Request in the amount of \$3,029,000.00 for the design and construction of DEP corrective actions related to the Redevelopment of the Hudson Street Landfill.
5. Communication from the Mayor, re: Transfer Request in the amount of \$400,000.00 from Stabilization-Open Space to Open Space Acquisition to fund the proposed acquisition of 45-47 and 55 Bolton Street (Map 57 Parcel 104 and Map 70 Parcel 296) and authorize the Mayor to enter into a purchase and sale agreement.
6. Communication from the Mayor, re: Gift Acceptance in the amount of \$14,358.35 for the Police Department from the Marlborough Police K-9 Unit Fundraiser to be used for the department's K-9 program.
7. Communication from the Mayor, re: Reappointment of Diane Smith as City Auditor for a three-year term from date of confirmation.
8. Communication from the Mayor, re: Appointment of Nusrath Khan to the Planning Board for a one-year term to expire the first Monday in February 2021.
9. Communication from City Solicitor, Jason Grossfield, re: Decision of Land Court in favor of the city, relative to Williams Street Holdings, LLC v. members of the Marlborough City Council, Docket No. 18 MISC 000284-HPS.
10. Communication from Town of Littleton Board of Selectman and Planning Board, re: Counterpoint to Town of Needham's letter relating to House Bill No. 3507.
11. Minutes of Boards, Commissions and Committees:
 - a) School Committee, November 26, 2019 & December 10, 2019.
 - b) Conservation Commission, December 5, 2019.
 - c) Planning Board, December 16, 2019.
 - d) Zoning Board of Appeals, January 7, 2020.

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.

12. CLAIMS:

- a) Kori Berardino, 53 East Dudley Street, residential mailbox claim (2a).
- b) Caitlyn Cerrone, 4 Glade Street, Worcester, pothole or other road defect.
- c) John Kingsley, 21 Pine Hill Road, Southborough, pothole or other road defect.
- d) Melanie Pollard, 12 Bacher Circle, residential mailbox claim (2a).
- e) Scott Wudyka, 57 Kelleher Street, residential mailbox claim (2a).

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2020 JAN 22 P 4: 32

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

JANUARY 13, 2020

Regular meeting of the City Council held on Monday, January 13, 2020 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Oram, Perlman, Robey, Wagner, Doucette, Dumais, Tunnera, Irish, Navin and Landers. Meeting adjourned at 8:18 PM.

ORDERED: That the Minutes of the City Council meeting, DECEMBER 16, 2019, **FILE**; adopted.

ORDERED: That the Minutes of the City Council meeting, January 6, 2020, **FILE**; adopted.

ORDERED: That the Communication from City Council President Ossing re: 2020 City Council Regular Meeting Schedule and City Council Committee Assignments for Legislative Year 2020, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from Massachusetts Electric, to install new underground equipment to feed street lights 52 through 57 from existing street light #24 on Donald J. Lynch Boulevard, Order No. 19-1007863, all were heard who wish to be heard, hearing closed at 8:04 PM; adopted.

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

ORDERED: On the Petition from Massachusetts Electric, to install push brace #7-89 on Front Street which will enable National Grid to remove the pole to tree guy wire, Order No. 19-1007864, all were heard who wish to be heard, hearing closed at 8:07 PM; adopted.

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

ORDERED: On the Petition from Massachusetts Electric, to install a new pole and anchor #30-84 on Bigelow Street which will enable National Grid to remove the pole to tree guy wire, Order No. 19-1007877, all were heard who wish to be heard, hearing closed at 8:10 PM.; adopted.

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

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Gift Acceptance in the amount of \$3,000.00 for the Police Department from Michael Burnell, Nicole Grunbaum, and Elida Barrera employees of Cummings Properties, LLC to be used for community outreach programs by the Police Department; adopted.

ORDERED: That the Communication from the Mayor, re: Notification of 60-Day Appointments of Collector Eileen Bristol as Interim Treasurer and Stephen Cirillo as Interim Comptroller, effective January 10, 2020 at 5:00 PM, **FILE**; adopted.

ORDERED: That the Communication from the Mayor, re: Notification of Appointment of John Garside as the Director of Public Health by the Board of Health, **FILE**; adopted.

ORDERED: That the Reappointment of Patricia Carlson to the Commission on Disabilities for a two-year term from date of confirmation, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Reappointments to the Zoning Board of Appeals of Paul Giunta and Robert Levine for three-year terms from date of confirmation, in addition to Thomas Golden and Ralph Loftin for two-year terms from date of confirmation, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Appointment of Paul Gould to the Fort Meadow Commission for a three-year term from date of confirmation who will be replacing Commissioner Delgenio, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from the Public Employee Retirement Administration Commission (PERAC) re: Required FY21 Appropriation in the amount of \$9,187,513.00, **FILE**; adopted.

ORDERED: That the Communication from NSTAR Electric Company d/b/a Eversource Energy re: Copy of Final Decision of the Energy Facilities Siting Board, **FILE**; adopted.

ORDERED: That the Minutes, Cultural Council, November 19, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Library Trustees, November 5, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, December 2, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Retirement Board, October 29, 2019 & November 26, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, December 10, 2019, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- a) Anthony Annese, 111 West Hill Road, residential mailbox claim (2a).
- b) Larry Bentley, 137 Helen Drive, other property damage and/or personal injury.
- c) Christopher J. Nordstrom, 182 Blanchette Drive, residential mailbox claim (2a).
- d) Holly Bloon-Ranieri, 33 Hamilton Circle, pothole or other road defect.
- e) Babak Roushanaee, 15 Robert Road, pothole or other road defect.
- f) Lorna Rousseau, 140 Donahue Drive, residential mailbox claim (2a).
- g) Keith St. John, 148 Stearns Road, pothole or other road defect.
- h) Steven Tambeau, 8 Pierce Street, residential mailbox claim (2a).
- i) Gina Yates, 11 Avalon Drive, #12, pothole or other road defect.

Reports of Committees:

THERE WERE NO REPORTS OF COMMITTEE.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:18 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., DECEMBER 16, 2019

ORDERED:

That there being no objection thereto set **MONDAY, JANUARY 27, 2020** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Attorney Brian Falk, on behalf of Vedi Naturals LLC, to operate an Adult Use Marijuana Retail Establishment, 505 Boston Post Road West (Twin Boro Crossing), be and is herewith refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE.**

Ninety days after public hearing is 04/26/20 which falls on a Sunday, therefore 04/27/20 would be considered the 90th day.

ADOPTED

ORDER NO. 19-1007881

2020 JAN 23 A 7:38

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:

I. Section 18 of Chapter 650, entitled "Conditions for uses," is hereby amended by:

- a. Amending paragraph (12), entitled "Livestock farms" as follows (new text shown as underlined):

(12) Livestock farms. The raising of or keeping of a small flock of poultry (other than Chicken hens), less than 10, or of saddle horses, private kennel, livestock, or other farm animals for use only by residents of the premises, provided further, that adequate open space is available for their care.

- b. Inserting the following paragraph:

(49) Chicken hens, personal use. The raising or keeping of female chickens (*Gallus gallus domesticus*) for personal use, not to exceed either 6 hens or 12 hens, as stated in the Table of Uses. The raising or keeping of roosters, cocks, or cockerels is prohibited. The slaughtering of Chicken hens for non-personal use is prohibited.

II. Section 17 of Chapter 650, entitled "Table of Uses," is hereby amended by inserting the following:

	RR	A1	A2	A3	RB	RC	RCR	NB	B	CA	LI	I	MV	WAYSIDE
Chicken hens, personal use (6 or fewer) (49)	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N	N
Chicken hens, personal use (between 7 and 12) (49)	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N

ADOPTED

In City Council

Order No. 20-

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
MAYOR
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
EXECUTIVE AIDE
2020 JAN 23 A 11:35
Patricia Bernard
EXECUTIVE SECRETARY

January 23, 2019

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

Re: Hudson Street Landfill Redevelopment

Honorable President Ossing and Councilors:

As you may know, the City of Marlborough was informed of a successful "Parklands Acquisition and Renovation for Communities" (PARC) Grant through the Commonwealth of Massachusetts for the redevelopment of the Hudson Street Landfill in 2015. This initiated a bond request to fund the redevelopment of the landfill for \$3,095,000.00 to complete the revitalization efforts and meet grant requirements.

Unfortunately, when ensuring the site met the Department of Environmental Protection guidelines, we encountered several environmental health and safety concerns. Since then, we have performed a Comprehensive Site Assessment (CSA) and Corrective Actions Alternative Analysis (CAAA) for the site, which identified all deficiencies in the existing soil cap and mapped out a DEP approved plan to mitigate said deficiencies.

Per Commissioner Ghiloni's attached letter, the cost for the design and construction of the DEP corrective actions and preparing a portion of the site for active reuse would be \$3,029,000.00. I am enclosing for your approval a free cash transfer request for \$3,029,000.00.

If it is concluded that this parcel will never become a City of Marlborough Recreational Facility, we could feasibly reduce the amount to fund this project to \$2,000,000.00. However, I believe a recreational facility would be a wonderful use for this parcel of land.

Additionally, I intend to send you documentation revoking the bond authorization for the \$3,095,000.00 approved in 2015 in the upcoming weeks. Thank you in advance for your consideration. I look forward to discussing this with you further.

Sincerely,

Arthur G. Vigeant
Mayor



City of Marlborough
Department of Public Works

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

JOHN L. GHILONI
COMMISSIONER

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

Re: Hudson Street Landfill

Dear Mayor Vigeant:

The former Hudson Street Landfill ceased operation and was capped in the early 1980's. In 2015 the City evaluated the site for possible recreational use. During the development of concept plans, it was discovered that, while some periodic environmental monitoring had taken place over the years, strict regulatory compliance procedures to the level necessary under DEP regulations had not been performed.

This initiated the work of bringing the site into compliance with DEP Regulations. Over the past three years, we have performed a Comprehensive Site Assessment (CSA) and Corrective Actions Alternative Analysis (CAAA) for the site. The work has included extensive soil, groundwater, and surface water monitoring. The CSA has identified all deficiencies in the existing soil cap, and the CAAA has evaluated the actions necessary to correct them. Both analyses have been approved by DEP.

The cost for the design and construction of the required corrective actions is estimated at \$2,029,000. This is the cost required to bring the site into full compliance with DEP Regulations. Ongoing long-term soil and groundwater monitoring will also be required.

The additional cost required to prepare a portion of the site for some sort of active re-use, if that option is still desirable, is estimated at \$1,000,000.

I am seeking a funding request in the amount of \$3,029,000 for the site to be fully compliant and useable for future projects.

Thank you for your consideration.

Sincerely,

John L. Ghiloni
Commissioner

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: DPW

FISCAL YEAR: 2020

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$13,169,020.00

\$3,029,000.00

10000

35900

Undesignated Fund

\$3,029,000.00

19300006

55966

Capital Outlay-Hudson St Landf

\$0.00

Reason:

Clean up of Hudson St Landfill for recreational purposes

Reason:

Reason:

Reason:

\$3,029,000.00

Total

\$3,029,000.00

Total

Department Head signature:

Auditor signature:

Comptroller signature:



City of Marlborough
Office of the Mayor

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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
MAYOR
2020 JAN 23 A 11:35
Nathan R. Boudreau
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

January 23, 2020

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

RE: Acquisition of 45-47 and 55 Bolton Street, Marlborough
Assessor Map #57-104 and Map 70-296

Dear President Ossing and Councilors,

I respectfully submit this request for City Council approval of the proposed acquisition of the above-referenced two (2) parcels of land on Bolton Street, across from the DEC building.

The above-identified parcels are uniquely situated as the land is within a short walking distance near the existing DEC building. These Bolton Street parcels can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands. Enclosed please find the letter from Chief Procurement Officer Beverly Sleeper regarding why the proposed purchase constitutes a unique acquisition under procurement law.

The attached order fully authorizes the acquisition of these two parcels for a total combined purchase price of \$400,000.00 and allows me to enter into a purchase and sale agreement for each parcel. To fund the purchase, the proposed order includes a transfer of \$400,000.00 from Open Space Stabilization. With your approval, I anticipate the City of Marlborough being able to acquire these parcels in early 2020, which will allow for additional parking at the DEC building.

I am available to discuss this acquisition with you further. If you have any questions, please do not hesitate to contact me.

Sincerely,



Arthur G. Vigeant
Mayor

Enclosures

ORDERED:

Pursuant to MGL c. 30B, § 16(e)(2), the City Council determines that advertising for the proposed purchase of the following two (2) parcels of land will not benefit the City's interest because of the unique qualities and location of the properties:

A parcel identified on the Assessors Map of the City of Marlborough as Map 57 Parcel 104 containing 0.26 acres, more or less, located at 55 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 100. The person(s) having a beneficial interest in this parcel is 55 Bolton Street LLC;

A parcel identified on the Assessors Map of the City of Marlborough as Map 70 Parcel 296 containing 0.27 acres, more or less, located at 45-47 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 080. The person(s) having a beneficial interest in this parcel is Bolton-Goodale LLC.

The above-identified parcels satisfy the requirements of said M.G.L. c. 30B, § 16(e)(2), because: the land is uniquely located within a short walking distance in close proximity to the existing DEC building across Bolton Street which can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands.

And further, that the Mayor is authorized to negotiate and enter into a purchase and sales agreement to acquire said parcels, for a total combined purchase price of \$400,000.00, subject to the following conditions: (i) that, in accordance with M.G.L. c. 43, § 30, the purchase price of any parcel shall not be more than 25% higher than the average assessed value of the parcel during the previous three years; and (ii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the appropriation of sufficient funds for the purchase of the parcel. The Mayor is authorized to accept a deed pursuant to M.G.L. c. 40, § 3 for each parcel.

Pursuant to Mass. Gen. Laws c. 43, § 30 and c. 40, § 5B, the City Council, by a two-thirds vote of all its members, hereby authorizes an appropriation from Stabilization – Open Space (account # 83600-32918) in the amount of \$400,000.00 as sufficient funds to pay for the purchase of said parcels.

ADOPTED

In City Council

Order No. 20-

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:

APPROVED AS TO LEGAL FORM:

City Solicitor / Asst. City Solicitor

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2020

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
<u>\$539,397.80</u>	<u>\$400,000.00</u>	<u>83600</u>	<u>32918</u>	<u>Stabilization-Open Space</u>	<u>\$400,000.00</u>	<u>19300006</u>	<u>58170</u>	<u>Open Space Acquisition</u>	<u>\$0.00</u>
	Reason:	<u>For purchase of Bolton Street property</u>							
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STABILIZATION FUND ANALYSIS FY20:

	Open Space	Downtown Econ Development	Undesignated	Total
7/1/2019 TOTAL	534,285.60	800,000.00	13,926,476.85	\$15,260,762.45
9/30/2019 Interest thru September	5,112.20		12,372.05	
Total	539,397.80	800,000.00	13,938,848.90	\$15,278,246.70



City of Marlborough



PROCUREMENT OFFICE

140 Main Street, 3RD Floor, Marlborough, MA 01752

DIRECT DIAL (508) 460-3707 FACSIMILE (508) 460-3747 TDD (508) 460-3610

BSLEEPER@MARLBOROUGH-MA.GOV

January 10, 2020

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

RE: Unique Acquisition of Real Property – Additional DEC Off-Street Parking off Bolton Street

Dear Mayor Vigeant:

Pursuant to the provisions of M.G.L. c. 30B, § 16, the City must solicit proposals prior to obtaining real property valued in excess of \$35,000 *unless* the City Council determines in writing that advertising for the submissions of proposals will not benefit the City's interests because of the unique qualities or location of the property needed (M.G.L. c. 30B, § 16(e)(2)). It is my understanding that the City is interested in acquiring two (2) vacant parcels of land off Bolton Street, located within close proximity to the existing Marlborough Public Schools District Education Center (DEC), identified as follows:

Parcel 1 identified on the Assessors Map of the City of Marlborough as Map 57 Parcel 104 containing 0.26 acres, more or less, located at 55 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 100. The person(s) having a beneficial interest in this parcel is 55 Bolton Street LLC;

Parcel 2 identified on the Assessors Map of the City of Marlborough as Map 70 Parcel 296 containing 0.27 acres, more or less, located at 45-47 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 080. The person(s) having a beneficial interest in this parcel is Bolton-Goodale LLC.

Page 2

Letter to Mayor RE: Additional DEC Off-Street Parking

January 10, 2020

The parcels remain privately-owned and are uniquely located within a short walking distance to the existing DEC building across Bolton Street which can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands. This acquisition would also provide an additional municipal parking lot within the City of Marlborough.

For the City Council's deliberation and approval, I have determined that the locations and/or qualities of the Land satisfy the unique requirements of the City pursuant to M.G.L. c. 30B, § 16(e)(2). Specifically, the Land is uniquely situated because it lies within close walking distance to the existing DEC building and will provide additional off-street parking. The only way to increase needed parking is to purchase parcels uniquely located either adjacent to or within close proximity to the existing DEC site.

In light of the foregoing, it is my opinion that it is proper to waive the advertisement requirements of M.G.L. c. 30B, § 16 with respect to the acquisition of the Land. Pursuant to M.G.L. c. 30B, § 16, I will schedule publication of this determination along with the names of parties having a beneficial interest in the property as required under M.G.L. c. 7C, § 38, the location and size of the property, and the proposed purchase price in the Commonwealth's Central Register not less than thirty (30) days before the City enters into a binding agreement with the current owners to purchase real property identified above under a unique acquisition determination.

If you have any questions or require further information, please let me know.

Sincerely,



Beverly J. Sleeper
Chief Procurement Officer

cc: John L. Ghiloni, DPW Commissioner/Public Facilities Director
Michael Bergeron, Superintendent of Marlborough Public Schools
Douglas Dias, Director of Finance & Operations of Marlborough Public Schools
Jason Grossfield, City Solicitor

PURCHASE AND SALE AGREEMENT

This 17 day of JANUARY 2020.

1. PARTIES: BOLTON-GOODALE LLC, a Massachusetts limited liability company with a mailing address of 154 North Avenue, Weston, Massachusetts hereinafter called the SELLER, agree to sell, and CITY OF MARLBOROUGH, a municipal corporation with a principal place of business at 140 Main Street, Marlborough, Middlesex County, Massachusetts 01752, hereinafter called the BUYER, agrees to buy, upon the terms and conditions hereinafter set forth, the following described premises:
2. DESCRIPTION: Land identified as 45-47 Bolton Street, Marlborough, MA 01752 and shown as Parcel 296 on Assessors' Map 70, containing 0.27 acres, more or less, and the buildings and improvements thereon. For further description, see deed recorded with Middlesex South Registry of Deeds in Book 64292, Page 080 (hereinafter, the "Premises" or "premises").
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES: Included in the sale as a part of said premises and improvements thereon, the buildings, structures, fixtures, including, if any, gates, trees, shrubs, plants.
4. TITLE DEED: Said premises are to be conveyed by a good and sufficient Quitclaim Deed (hereinafter, "the Deed") running to the BUYER, and said deed shall convey a good and clear title thereto, free from encumbrances, except for:
 - (a) Provisions of existing building and zoning ordinances;
 - (b) Any existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
 - (d) Any liens for municipal betterments assessed after the date of this Agreement; and
 - (e) Easements, covenants, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for municipal purposes, or purposes appurtenant thereto.

BUYER, at its sole expense, may elect to obtain an owner's policy of title insurance with respect to the Premises and SELLER agrees to cooperate with BUYER and the Title Company to facilitate the issuance of such policy, provided that such

cooperation does not require the SELLER to incur any additional expenses and/or to accept any additional or increased liability.

5. PLANS: If said deed refers to a plan necessary to be recorded therewith, the BUYER shall be responsible for such plan with the Deed in form adequate for recording or registration. The survey for said plan will be at BUYER'S expense.
6. PURCHASE PRICE: The agreed purchase price for said premises, subject to BUYER'S contingencies in this Agreement, shall be \$200,000.00 (hereinafter, the "Purchase Price"). The Purchase Price shall be due and payable on the Closing Date as provided in paragraph 7 and 8 herein.

\$200,000.00 _____	is to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, bank check, wire transfer, City of Marlborough check, or attorney's clients' trust account check.
-----------------------	---

\$200,000.00	Total
--------------	-------

7. BUYER'S CONTINGENT PERFORMANCE

- (a) BUYER'S obligations and performance, including without limitation the purchase obligations, under this Agreement shall be contingent upon a vote of the Marlborough City Council (the "City Council") to (i) approve the subject purchase at the Purchase Price, and (ii) an appropriation of said Purchase Price, no later than March 6, 2020. In the event that the City Council does not approve said purchase or appropriate said Purchase Price, this Agreement shall automatically terminate and be null and void, without recourse to either party, and any deposits made hereunder shall be refunded forthwith.

8. CLOSING:

- a) Subject to the foregoing provisions, final settlement of the parties' purchase and sale obligations hereto, including but not limited to delivery of the deed, shall occur at 10:00 A.M. on the thirtieth (30th) day from said vote of the City Council, or if said date is a Saturday, Sunday or legal holiday, on the first business day thereafter, or as altered or extended by written agreement of the parties (hereinafter, "the Closing Date" or "date of closing"). Accordingly, neither the SELLER nor the BUYER shall be required to proceed with the closing for purchase of the Premises unless and until the City Council has authorized the purchase for the above-stated Purchase Price and appropriated said Purchase Price. In the event that the City Council votes to authorize the purchase and appropriate the Purchase Price, then the closing shall take place at Marlborough City Hall on the Closing Date unless otherwise agreed to by the parties in writing.
- b) Performance/Closing Condition – Simultaneous Closings Required for 45-47 and 55 Bolton Street. The SELLER and BUYER expressly acknowledge and agree that the purchase and sale of the Premises must occur simultaneously with the purchase and sale

of the property known as 55 Bolton Street, Marlborough, MA which is the subject to a separate purchase and sale agreement between the BUYER and the seller of said property. The Closing Date for both properties shall occur simultaneously, and there shall be no obligation to close on one property without closing at the same time on the other property.

- c) Expenses and Prorations: Real estate taxes on the Premises, which shall be paid by SELLER, shall be prorated as of the day of Closing based upon the latest available tax bill. SELLER shall pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises and SELLER shall pay the cost of recording the municipal lien certificate. BUYER shall pay all costs associated with recording of the Deed and cost of BUYER's title policies, if any. Each party shall be responsible for their own legal expenses. Any payments or expenses due by SELLER at time of Closing shall be made by certified or bank check only.
- d) On the Closing Date, BUYER'S attorney shall record the municipal lien certificate and the Deed and deliver to the appropriate parties all closing documents. It is agreed that the BUYER'S attorney shall have no liability to the SELLER for the performance of services in relation to the purchase and sale of the Premises, and that the performance of said services by BUYER's attorney does not constitute an attorney-client relationship between SELLER and BUYER'S attorney. SELLER agrees to pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises. Each party shall be responsible for his/her/its own legal expenses.
- e) Before the Closing Date, BUYER shall have complied with the provisions of chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act) for acquisition of real property.
- f) Buyer's Deliveries. At closing, BUYER shall execute and/or deliver to SELLER the following: Purchase Price.
- g) Seller's Deliveries. In addition to the Deed, SELLER shall deliver to BUYER in advance of the Closing, as a condition of BUYER'S obligations under this Agreement, the following, in forms acceptable to BUYER:
 - i) IRS Form W-9, Taxpayer Identification Number and Certification (delivered to BUYER no later than 21 days before Closing Date);
 - ii) Certificate of Non-Foreign Status pursuant to IRS Code 26 CFR 1.1445;
 - iii) Disclosure Statement for Transaction with a Public Agency Concerning Real Property pursuant to M.G.L. c. 7C, § 38 (delivered at time of execution of this Agreement);
 - iv) Tax Attestation Form pursuant to M.G.L. c. 62C, § 49A (delivered at time of execution of this Agreement);
 - v) Municipal Lien Certificate from the City of Marlborough's Collector;
 - vi) Closing Statement counterpart;

- vii) Owner's affidavit in customary form used by BUYER's title company, if any, however SELLER shall not be required to indemnify any person or entity from any loss as it pertains to any title insurance policy said title insurance company may issue;
 - viii) Eminent domain release; and
 - ix) Any other instrument/document as BUYER may reasonably request, including without limitation, documents for purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Premises to BUYER in accordance with this Agreement.
9. POSSESSION, CONDITION OF PREMISES: Full possession of said premises is to be delivered at the time of the delivery of the Deed, said premises to be in the same condition as they are now, reasonable use and wear thereof excepted. The SELLER agrees to deliver the Premises at the time of delivery free of all personal property of SELLER not being conveyed to BUYER, including all motor vehicles, equipment, debris and trash upon the Premises. The BUYER shall be entitled to personally inspect said Premises prior to delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or make conveyance, or to deliver possession of the Premises all as herein stipulated, or if at the time of delivery of the Deed the Premises does not conform with the provisions hereof or is not completed, the SELLER shall use reasonable efforts to remove any defects in title, provided that SELLER shall not be required to spend in excess of \$1,000 (One thousand dollars) exclusive of voluntary encumbrances and attorney's fees, to delivery possession as provided herein, in which event the time for performance hereunder shall be extended, by written notice from the SELLER to the BUYER, for a period designated by SELLER in their sole discretion, not in excess of sixty (60) days, and if a shorter period than sixty (60) days is designated, SELLER may further extend the time for performance one or more times, by written notice from the SELLER to the BUYER, but in no event beyond such sixty (60) day period.
11. AUTHORIZATION TO EXTEND DEADLINES. BUYER and SELLER hereby authorize their respective attorneys (if any, as the case may be) to execute on their behalf any extensions to the time for buyer's contingency deadline, performance and any change of location and/or time of delivery of the Deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent of such extensions, that either party has disclaimed the authority granted herein to bind them. For the purposes of this Agreement, facsimile and pdf signatures shall be construed as original.
12. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.: If at the expiration of any such extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage for said Premises shall refuse to permit

the insurance proceeds, if any, to be used for such purposes, then BUYER's sole and exclusive rights shall be to elect either: (a) to require that any deposit made hereunder be forthwith refunded, whereupon the deposit shall be refunded with interest and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto; or, (b) at the Closing Date or any extended time for performance, BUYER shall accept such title and possession as the SELLER can deliver to the Premises in its then condition, and pay the Purchase Price with deduction as agreed upon by BUYER and SELLER, in which case the SELLER shall convey such title and deliver such possession.

13. BUYER'S ELECTION TO ACCEPT TITLE: The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in its then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER have previously restored the Premises to their former condition either:
 - (a) pay over or assign to the BUYER, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration; or
 - (b) if a holder of a mortgage in said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
14. ACCEPTANCE OF DEED: The acceptance of the Deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation of SELLER herein contained or expressed, except of this Agreement which expressly provide that any obligation of SELLER shall survive the Time of Closing, and such as are, by the terms hereof, to be performed after the delivery of said Deed.
15. USE OF PURCHASE MONEY TO CLEAR TITLE: To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded within a reasonable time following delivery of the Deed in accordance with prevailing conveyancing practices.
16. INSURANCE: Until delivery of the Deed at closing, SELLER shall maintain insurance on said Premises as follows:

Type of Insurance

Amount of Coverage

- | | |
|---|---|
| (a) Appropriate types of coverage and endorsements for the subject premises, including but not limited to fire and casualty | SELLER shall maintain coverage and endorsements in an amount sufficient to guarantee full replacement value |
| (b) Extended Coverage | Risk of loss to remain with SELLER until delivery, acceptance, and recording of Deed |

Commencing with the Date of the Closing, the BUYER shall be responsible for maintaining insurance on the Premises.

17. ADJUSTMENTS: There shall be no adjustments of any kind or nature. SELLER shall be responsible for all real estate taxes, water and sewer charges, and outstanding financing relating to the property.
18. BROKER'S FEE: There will be no broker's fee involved with this transaction. If SELLER is represented by a real estate broker in connection with this Agreement and the transaction contemplated by this Agreement, SELLER agrees that SELLER shall be solely responsible for compensating such agent or broker in connection with same, and shall indemnify and hold harmless the BUYER from any claim or cause of action related to any such fee.
19. DEPOSIT: Any deposits made hereunder (if applicable) shall be made payable to the SELLER at the address first set forth above, and who shall hold said deposit in escrow subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. Said deposit shall be held in an interest-bearing escrow account or accounts with interest payable to the BUYER so long as BUYER does not default hereunder.
20. WARRANTIES AND REPRESENTATIONS: The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction, nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.
21. PROPERTY SOLD "AS IS": The Premises are being conveyed "AS IS" and as shown, and no representations have been made by the SELLER with regard to its condition except those contained in this Agreement; the BUYER and SELLER agree that they have incorporated into this Agreement their entire understanding and that no oral statement or prior written statement made by any of them or by any person extrinsic to this Agreement shall have any force and effect.

22. COMPLIANCE WITH LAWS: This Agreement is subject to compliance with any and all applicable requirements of the Massachusetts General Laws, Special Laws, regulations and the ordinances of the City of Marlborough relative to acquisition of land by the BUYER and to the sale of land by the SELLER. Pursuant to M.G.L. c. 43, § 30, the City is prohibited from purchasing land for a price more than twenty-five percent in excess of the average assessed valuation during the previous three years to purchase.
23. EMINENT DOMAIN TAKING TO CONFIRM & CLEAR TITLE: In addition to agreeing to obtain conveyance of the Premises by transfer of a deed from the SELLER hereunder, SELLER hereby assents and agrees to the City of Marlborough's adoption and recording of an eminent domain order of taking under chapter 79 of the Massachusetts General Laws, at the City's sole discretion, for the purposes of confirming and clearing title to the Premises. SELLER further agrees to accept one (\$1.00) dollar as adequate compensation and damages for said confirmatory taking, and agrees to execute a release for themselves, their successors and assigns releasing the City of Marlborough, its officials, employees and agents from all claims resulting from said taking, and waiving SELLER'S, their successors and assigns, right to appeal or contest said taking for any reason in any forum including without limitation for and right, if any, to relocation assistance under M.G.L. c. 79A. SELLER shall institute no action for assessment of damages or bring any action in the nature thereof subsequent to the recording of any order of taking by the BUYER hereunder. The provisions of this paragraph shall survive delivery of the Deed hereunder.
24. CONSTRUCTION OF AGREEMENT: This instrument, which may be executed in multiple counterparts, is to be governed and construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as SELLER, their obligation hereunder shall be joint and several. The headings used in the numbered paragraphs of this Agreement are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties thereto.
25. INSPECTION PROVISIONS: SELLER agree to allow BUYER access to and entry onto and/or into the Premises prior to the date of performance herein under the following terms and conditions:
- (a) BUYER shall give at least 72 hours' notice to the SELLER;
 - (b) BUYER shall not perform any work on the Premises including inspections or testing of any kind without written notice to the SELLER and receipt of written authorization from the SELLER which shall not be unreasonably withheld. BUYER shall have the right, from time to time, at BUYER's sole cost, without

material damage being imposed upon the Premises and remaining unrepaired, to enter upon the premises to make, or cause to be made, inspection, engineering and development findings in respect thereto, including (without limitation) the making of tests to determine whether any portion of the Premises contains any hazardous substances under applicable laws. Upon determination that a hazardous substance is present on or in the Premises, BUYER may terminate this Agreement upon written notice to SELLER. In the event of any such termination, any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties shall cease and this Agreement shall be void without recourse to either party.

- (c) BUYER or BUYER'S agents, employees, licenses or contractors shall indemnify and hold SELLER harmless from any and all personal and/or property damage resulting from said access to and entry onto and/or into the Premises.

26. SELLER' COVENANTS: SELLER covenants and agrees as follows:

- (a) Henceforth through Closing, SELLER shall not consent to any request to make and/or extend any lease, contract, option or agreement affecting the Premises which would grant any third party any rights to such land, except with written consent of the BUYER;
- (b) Henceforth through Closing, SELLER shall not consent to any request or cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Premises, except with written consent of the BUYER;
- (c) Henceforth through Closing, with the exception of ordinary landscape maintenance, including but not limited to mowing of grass, raking leaves, and trimming of trees and shrubs, SELLER shall not consent to any request to erect any structures and/or remove any vegetation, soils or minerals from the Premises or to disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever, except with written consent of the BUYER; and
- (d) At or prior to the Closing, SELLER shall pay in full all outstanding amounts due to third parties arising from any work or services performed at or on the Premises by such third parties and in the event that any mechanics lien or materialmen's lien is filed by any such third party in connection with such work, SELLER hereby assent and agree to indemnify and hold harmless the City of Marlborough, its officials, employees and agents with respect to such claim.

Each of the above covenants is material and is relied upon by BUYER. Except insofar as SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of the closing and shall survive the Closing. If, before Closing, SELLER discover any information or facts that would

materially change the foregoing representations, SELLER shall immediately give notice to BUYER of those facts and information.

27. SELLER'S REPRESENTATIONS: SELLER represents and warrants to BUYER that:

- (a) SELLER has full power and authority to enter into this Agreement, and the person(s) signing this Agreement for SELLER have full power and authority to sign and bind SELLER to this Agreement;
- (b) There are no parties in possession of the premises, and no work has been done on the Premises which would entitle anyone to a mechanic's lien and or to file notice of contract relating to the premises as of the date of this Agreement;
- (c) The premises are not the subject of any outstanding agreements with any party pursuant to which any such party may acquire any interest in the premises. Neither the execution and delivery of this Agreement nor SELLER' performance of its obligations hereunder will constitute a breach or default under any agreement to which the SELLER are bound;
- (d) There here is no litigation or proceeding pending or threatened, that would affect a transfer of title to the Premises;
- (e) There is no evidence that Hazardous Substances, as defined herein, have been stored, generated, manufactured, disposed, transported or treated at or on the Premises. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance that may be classified as hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant under applicable federal, state or local laws, statute, ordinance, rule or regulation (hereinafter, "Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws;
- (f) During the SELLER' period of ownership of the Premises, SELLER have not used, nor will it permit the use of by any other person or entity, any portion of the Premises for the purposes of storage, generation, manufacture, disposal, transportation or treatment of any Hazardous Substance under Applicable Laws which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws; and
- (g) There are no petitions in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or other action under Federal of State bankruptcy laws pending against or contemplated by SELLER.

Each of the above representations is material and is relied upon by BUYER. Except in so far as the SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall

survive the Closing. If, before Closing, SELLER discover any information or facts that would materially change the foregoing covenants, warranties or representations, SELLER shall immediately give notice to BUYER of those facts and information.

In the event of a breach of any representation set forth in this paragraph, prior to Closing, BUYER may elect either (i) to waive such breach and proceed to Closing with no reduction in the Purchase Price, or (ii) terminate this Agreement upon written notice to SELLER, in which case the parties shall have no further obligations under this Agreement other than those obligations, if any, that expressly survive the termination of this Agreement.

28. SELLER'S CLOSING STATEMENT

SELLER agrees to execute at the closing under oath to the BUYER or to any title insurance company issuing a policy to the BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the Premises; (2) SELLER has no knowledge of any work having been done on the Premises which would entitle anyone now or hereafter to claim a mechanics or materialmen's lien on the Premises; and (3) SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

29. REMEDIES:

- a. Seller's Failure to Perform. In addition to any other remedy provided for in this Agreement, in the event of SELLER's failure to perform any of SELLER's obligations under this Agreement, BUYER shall have: (i) the right to waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, or (ii) the right to terminate this Agreement upon written notice to SELLER with any deposits returned to BUYER upon such termination, in which case the parties shall have no further obligations under this Agreement except for those obligations, if any, which expressly survive the termination of this Agreement.
- b. Buyer's Failure to Perform. In the event of BUYER's failure to perform any of BUYER's obligations under this Agreement, SELLER shall have as its sole remedies: (i) the right to waive such failure or breach and proceed to Closing without adjustment to the Purchase price, or (ii) retain any deposit made hereunder, either of which shall be SELLER's sole and exclusive remedy.

30. TITLE STANDARD: Any title matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of The Real Estate Bar Association for Massachusetts, Inc. at the time for delivery of the Deed shall be governed by such standard to the extent applicable.

30. NOTICE: Whenever, by the terms of this agreement, notice shall or may be given either to BUYER or to SELLER, such notice shall be deemed to have been given only

if in writing and either delivered by hand or sent by registered or certified mail, postage prepaid, if intended for the BUYER, to:

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

with copy to:

City Solicitor
City of Marlborough
140 Main Street
Marlborough, MA 01752

and, if intended for the SELLER, to:

Andrew J. Clavette, Esq.
Maher + Spang, P.C.
8 Winchester Place, Suite 306
Winchester, MA 01890
617-627-9600 (ph)
617-627-9602 (fax)
aclavette@maherandspang.com

or such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when deposited in the mail within the continental United States.

31. NEXT BUSINESS DAY: If the period by which any right, option or election must be exercised, or by which any act must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, Federal or Commonwealth of Massachusetts holiday, such time shall automatically extend through the close of business on the next business day.
32. BINDING ON SUCCESSORS: This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.
33. APPLICABLE LAW: This Agreements shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.
34. ENTIRE AGREEMENT; MODIFICATIONS; WAIVER: This Agreement constitutes the entire agreement between BUYER and SELLER pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or

amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

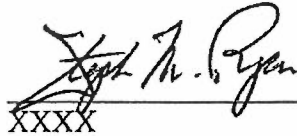
35. COUNTERPARTS: This Agreement may be signed and delivered in counterparts with the same effect as if each party had signed and delivered the same copy. When each party has executed and delivered a counterpart, all counterparts together constitute one Purchase and Sale Agreement. A copy of the executed Agreement that has been faxed or sent electronically shall have the same force and effect as the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

UPON SIGNING THIS DOCUMENT WILL BECOME A LEGALLY BINDING AGREEMENT, IF NOT UNDERSTOOD, SEEK ADVICE FROM AN ATTORNEY.

SELLER:

BOLTON-GOODALE LLC


XXXX

Date: 1-17-20

BUYER:

THE CITY OF MARLBOROUGH
BY ITS DULY AUTHORIZED MAYOR:

Arthur G. Vigeant, Mayor,
and not his individual capacity

Date: _____

PURCHASE AND SALE AGREEMENT

This 17 day of January, 2020.

1. PARTIES: 55 BOLTON STREET, LLC, a Massachusetts limited liability company with a mailing address of 70 Hope Avenue, Apt. 513, Waltham, Massachusetts hereinafter called the SELLER, agree to sell, and CITY OF MARLBOROUGH, a municipal corporation with a principal place of business at 140 Main Street, Marlborough, Middlesex County, Massachusetts 01752, hereinafter called the BUYER, agrees to buy, upon the terms and conditions hereinafter set forth, the following described premises:
2. DESCRIPTION: Land identified as 55 Bolton Street, Marlborough, MA 01752 and shown as Parcel 104 on Assessors' Map 57, containing 0.26 acres, more or less, and the buildings and improvements thereon. For further description, see deed recorded with Middlesex South Registry of Deeds in Book 64292, Page 100 (hereinafter, the "Premises" or "premises").
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES: Included in the sale as a part of said premises and improvements thereon, the buildings, structures, fixtures, including, if any, gates, trees, shrubs, plants.
4. TITLE DEED: Said premises are to be conveyed by a good and sufficient Quitclaim Deed (hereinafter, "the Deed") running to the BUYER, and said deed shall convey a good and clear title thereto, free from encumbrances, except for:
 - (a) Provisions of existing building and zoning ordinances;
 - (b) Any existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
 - (d) Any liens for municipal betterments assessed after the date of this Agreement; and
 - (e) Easements, covenants, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for municipal purposes, or purposes appurtenant thereto.

BUYER, at its sole expense, may elect to obtain an owner's policy of title insurance with respect to the Premises and SELLER agrees to cooperate with BUYER and the Title Company to facilitate the issuance of such policy, provided that such

cooperation does not require the SELLER to incur any additional expenses and/or to accept any additional or increased liability.

5. PLANS: If said deed refers to a plan necessary to be recorded therewith, the BUYER shall be responsible for such plan with the Deed in form adequate for recording or registration. The survey for said plan will be at BUYER'S expense.
6. PURCHASE PRICE: The agreed purchase price for said premises, subject to BUYER'S contingencies in this Agreement, shall be \$200,000.00 (hereinafter, the "Purchase Price"). The Purchase Price shall be due and payable on the Closing Date as provided in paragraph 7 and 8 herein.

<u>\$200,000.00</u>	is to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, bank check, wire transfer, City of Marlborough check, or attorney's clients' trust account check.
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\$200,000.00	Total
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7. BUYER'S CONTINGENT PERFORMANCE

- (a) BUYER'S obligations and performance, including without limitation the purchase obligations, under this Agreement shall be contingent upon a vote of the Marlborough City Council (the "City Council") to (i) approve the subject purchase at the Purchase Price, and (ii) an appropriation of said Purchase Price, no later than March 6, 2020. In the event that the City Council does not approve said purchase or appropriate said Purchase Price, this Agreement shall automatically terminate and be null and void, without recourse to either party, and any deposits made hereunder shall be refunded forthwith.

8. CLOSING:

- a) Subject to the foregoing provisions, final settlement of the parties' purchase and sale obligations hereto, including but not limited to delivery of the deed, shall occur at 10:00 A.M. on the thirtieth (30th) day from said vote of the City Council, or if said date is a Saturday, Sunday or legal holiday, on the first business day thereafter, or as altered or extended by written agreement of the parties (hereinafter, "the Closing Date" or "date of closing"). Accordingly, neither the SELLER nor the BUYER shall be required to proceed with the closing for purchase of the Premises unless and until the City Council has authorized the purchase for the above-stated Purchase Price and appropriated said Purchase Price. In the event that the City Council votes to authorize the purchase and appropriate the Purchase Price, then the closing shall take place at Marlborough City Hall on the Closing Date unless otherwise agreed to by the parties in writing.
- b) Performance/Closing Condition – Simultaneous Closings Required for 45-47 and 55 Bolton Street. The SELLER and BUYER expressly acknowledge and agree that the purchase and sale of the Premises must occur simultaneously with the purchase and sale

of the property known as 45-47 Bolton Street, Marlborough, MA which is the subject to a separate purchase and sale agreement between the BUYER and the seller of said property. The Closing Date for both properties shall occur simultaneously, and there shall be no obligation to close on one property without closing at the same time on the other property.

- c) Expenses and Prorations: Real estate taxes on the Premises, which shall be paid by SELLER, shall be prorated as of the day of Closing based upon the latest available tax bill. SELLER shall pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises and SELLER shall pay the cost of recording the municipal lien certificate. BUYER shall pay all costs associated with recording of the Deed and cost of BUYER's title policies, if any. Each party shall be responsible for their own legal expenses. Any payments or expenses due by SELLER at time of Closing shall be made by certified or bank check only.
- d) On the Closing Date, BUYER'S attorney shall record the municipal lien certificate and the Deed and deliver to the appropriate parties all closing documents. It is agreed that the BUYER'S attorney shall have no liability to the SELLER for the performance of services in relation to the purchase and sale of the Premises, and that the performance of said services by BUYER's attorney does not constitute an attorney-client relationship between SELLER and BUYER'S attorney. SELLER agrees to pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises. Each party shall be responsible for his/her/its own legal expenses.
- e) Before the Closing Date, BUYER shall have complied with the provisions of chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act) for acquisition of real property.
- f) Buyer's Deliveries. At closing, BUYER shall execute and/or deliver to SELLER the following: Purchase Price.
- g) Seller's Deliveries. In addition to the Deed, SELLER shall deliver to BUYER in advance of the Closing, as a condition of BUYER'S obligations under this Agreement, the following, in forms acceptable to BUYER:
 - i) IRS Form W-9, Taxpayer Identification Number and Certification (delivered to BUYER no later than 21 days before Closing Date);
 - ii) Certificate of Non-Foreign Status pursuant to IRS Code 26 CFR 1.1445;
 - iii) Disclosure Statement for Transaction with a Public Agency Concerning Real Property pursuant to M.G.L. c. 7C, § 38 (delivered at time of execution of this Agreement);
 - iv) Tax Attestation Form pursuant to M.G.L. c. 62C, § 49A (delivered at time of execution of this Agreement);
 - v) Municipal Lien Certificate from the City of Marlborough's Collector;
 - vi) Closing Statement counterpart;

- vii) Owner's affidavit in customary form used by BUYER's title company, if any, however SELLER shall not be required to indemnify any person or entity from any loss as it pertains to any title insurance policy said title insurance company may issue;
 - viii) Eminent domain release; and
 - ix) Any other instrument/document as BUYER may reasonably request, including without limitation, documents for purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Premises to BUYER in accordance with this Agreement.
9. POSSESSION, CONDITION OF PREMISES: Full possession of said premises is to be delivered at the time of the delivery of the Deed, said premises to be in the same condition as they are now, reasonable use and wear thereof excepted. The SELLER agrees to deliver the Premises at the time of delivery free of all personal property of SELLER not being conveyed to BUYER, including all motor vehicles, equipment, debris and trash upon the Premises. The BUYER shall be entitled to personally inspect said Premises prior to delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or make conveyance, or to deliver possession of the Premises all as herein stipulated, or if at the time of delivery of the Deed the Premises does not conform with the provisions hereof or is not completed, the SELLER shall use reasonable efforts to remove any defects in title, provided that SELLER shall not be required to spend in excess of \$1,000 (One thousand dollars) exclusive of voluntary encumbrances and attorney's fees, to delivery possession as provided herein, in which event the time for performance hereunder shall be extended, by written notice from the SELLER to the BUYER, for a period designated by SELLER in their sole discretion, not in excess of sixty (60) days, and if a shorter period than sixty (60) days is designated, SELLER may further extend the time for performance one or more times, by written notice from the SELLER to the BUYER, but in no event beyond such sixty (60) day period.
11. AUTHORIZATION TO EXTEND DEADLINES. BUYER and SELLER hereby authorize their respective attorneys (if any, as the case may be) to execute on their behalf any extensions to the time for buyer's contingency deadline, performance and any change of location and/or time of delivery of the Deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent of such extensions, that either party has disclaimed the authority granted herein to bind them. For the purposes of this Agreement, facsimile and pdf signatures shall be construed as original.
12. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.: If at the expiration of any such extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage for said Premises shall refuse to permit

the insurance proceeds, if any, to be used for such purposes, then BUYER's sole and exclusive rights shall be to elect either: (a) to require that any deposit made hereunder be forthwith refunded, whereupon the deposit shall be refunded with interest and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto; or, (b) at the Closing Date or any extended time for performance, BUYER shall accept such title and possession as the SELLER can deliver to the Premises in its then condition, and pay the Purchase Price with deduction as agreed upon by BUYER and SELLER, in which case the SELLER shall convey such title and deliver such possession.

13. BUYER'S ELECTION TO ACCEPT TITLE: The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in its then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER have previously restored the Premises to their former condition either:
 - (a) pay over or assign to the BUYER, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration; or
 - (b) if a holder of a mortgage in said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
14. ACCEPTANCE OF DEED: The acceptance of the Deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation of SELLER herein contained or expressed, except of this Agreement which expressly provide that any obligation of SELLER shall survive the Time of Closing, and such as are, by the terms hereof, to be performed after the delivery of said Deed.
15. USE OF PURCHASE MONEY TO CLEAR TITLE: To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded within a reasonable time following delivery of the Deed in accordance with prevailing conveyancing practices.
16. INSURANCE: Until delivery of the Deed at closing, SELLER shall maintain insurance on said Premises as follows:

Type of Insurance

Amount of Coverage

(a) Appropriate types of coverage and endorsements for the subject premises, including but not limited to fire and casualty

SELLER shall maintain coverage and endorsements in an amount sufficient to guarantee full replacement value

(b) Extended Coverage

Risk of loss to remain with SELLER until delivery, acceptance, and recording of Deed

Commencing with the Date of the Closing, the BUYER shall be responsible for maintaining insurance on the Premises.

17. ADJUSTMENTS: There shall be no adjustments of any kind or nature. SELLER shall be responsible for all real estate taxes, water and sewer charges, and outstanding financing relating to the property.
18. BROKER'S FEE: There will be no broker's fee involved with this transaction. If SELLER is represented by a real estate broker in connection with this Agreement and the transaction contemplated by this Agreement, SELLER agrees that SELLER shall be solely responsible for compensating such agent or broker in connection with same, and shall indemnify and hold harmless the BUYER from any claim or cause of action related to any such fee.
19. DEPOSIT: Any deposits made hereunder (if applicable) shall be made payable to the SELLER at the address first set forth above, and who shall hold said deposit in escrow subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. Said deposit shall be held in an interest-bearing escrow account or accounts with interest payable to the BUYER so long as BUYER does not default hereunder.
20. WARRANTIES AND REPRESENTATIONS: The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction, nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.
21. PROPERTY SOLD "AS IS": The Premises are being conveyed "AS IS" and as shown, and no representations have been made by the SELLER with regard to its condition except those contained in this Agreement; the BUYER and SELLER agree that they have incorporated into this Agreement their entire understanding and that no oral statement or prior written statement made by any of them or by any person extrinsic to this Agreement shall have any force and effect.

22. COMPLIANCE WITH LAWS: This Agreement is subject to compliance with any and all applicable requirements of the Massachusetts General Laws, Special Laws, regulations and the ordinances of the City of Marlborough relative to acquisition of land by the BUYER and to the sale of land by the SELLER. Pursuant to M.G.L. c. 43, § 30, the City is prohibited from purchasing land for a price more than twenty-five percent in excess of the average assessed valuation during the previous three years to purchase.
23. EMINENT DOMAIN TAKING TO CONFIRM & CLEAR TITLE: In addition to agreeing to obtain conveyance of the Premises by transfer of a deed from the SELLER hereunder, SELLER hereby assents and agrees to the City of Marlborough's adoption and recording of an eminent domain order of taking under chapter 79 of the Massachusetts General Laws, at the City's sole discretion, for the purposes of confirming and clearing title to the Premises. SELLER further agrees to accept one (\$1.00) dollar as adequate compensation and damages for said confirmatory taking, and agrees to execute a release for themselves, their successors and assigns releasing the City of Marlborough, its officials, employees and agents from all claims resulting from said taking, and waiving SELLER'S, their successors and assigns, right to appeal or contest said taking for any reason in any forum including without limitation for and right, if any, to relocation assistance under M.G.L. c. 79A. SELLER shall institute no action for assessment of damages or bring any action in the nature thereof subsequent to the recording of any order of taking by the BUYER hereunder. The provisions of this paragraph shall survive delivery of the Deed hereunder.
24. CONSTRUCTION OF AGREEMENT: This instrument, which may be executed in multiple counterparts, is to be governed and construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as SELLER, their obligation hereunder shall be joint and several. The headings used in the numbered paragraphs of this Agreement are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties thereto.
25. INSPECTION PROVISIONS: SELLER agree to allow BUYER access to and entry onto and/or into the Premises prior to the date of performance herein under the following terms and conditions:
- (a) BUYER shall give at least 72 hours' notice to the SELLER;
 - (b) BUYER shall not perform any work on the Premises including inspections or testing of any kind without written notice to the SELLER and receipt of written authorization from the SELLER which shall not be unreasonably withheld. BUYER shall have the right, from time to time, at BUYER's sole cost, without



material damage being imposed upon the Premises and remaining unrepaired, to enter upon the premises to make, or cause to be made, inspection, engineering and development findings in respect thereto, including (without limitation) the making of tests to determine whether any portion of the Premises contains any hazardous substances under applicable laws. Upon determination that a hazardous substance is present on or in the Premises, BUYER may terminate this Agreement upon written notice to SELLER. In the event of any such termination, any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties shall cease and this Agreement shall be void without recourse to either party.

- (c) BUYER or BUYER'S agents, employees, licenses or contractors shall indemnify and hold SELLER harmless from any and all personal and/or property damage resulting from said access to and entry onto and/or into the Premises.

26. SELLER' COVENANTS: SELLER covenants and agrees as follows:

- (a) Henceforth through Closing, SELLER shall not consent to any request to make and/or extend any lease, contract, option or agreement affecting the Premises which would grant any third party any rights to such land, except with written consent of the BUYER;
- (b) Henceforth through Closing, SELLER shall not consent to any request or cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Premises, except with written consent of the BUYER;
- (c) Henceforth through Closing, with the exception of ordinary landscape maintenance, including but not limited to mowing of grass, raking leaves, and trimming of trees and shrubs, SELLER shall not consent to any request to erect any structures and/or remove any vegetation, soils or minerals from the Premises or to disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever, except with written consent of the BUYER; and
- (d) At or prior to the Closing, SELLER shall pay in full all outstanding amounts due to third parties arising from any work or services performed at or on the Premises by such third parties and in the event that any mechanics lien or materialmen's lien is filed by any such third party in connection with such work. SELLER hereby assent and agree to indemnify and hold harmless the City of Marlborough, its officials, employees and agents with respect to such claim.

Each of the above covenants is material and is relied upon by BUYER. Except insofar as SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of the closing and shall survive the Closing. If, before Closing, SELLER discover any information or facts that would

materially change the foregoing representations, SELLER shall immediately give notice to BUYER of those facts and information.

27. SELLER'S REPRESENTATIONS: SELLER represents and warrants to BUYER that:

- (a) SELLER has full power and authority to enter into this Agreement, and the person(s) signing this Agreement for SELLER have full power and authority to sign and bind SELLER to this Agreement;
- (b) There are no parties in possession of the premises, and no work has been done on the Premises which would entitle anyone to a mechanic's lien and or to file notice of contract relating to the premises as of the date of this Agreement;
- (c) The premises are not the subject of any outstanding agreements with any party pursuant to which any such party may acquire any interest in the premises. Neither the execution and delivery of this Agreement nor SELLER' performance of its obligations hereunder will constitute a breach or default under any agreement to which the SELLER are bound;
- (d) There here is no litigation or proceeding pending or threatened, that would affect a transfer of title to the Premises;
- (e) There is no evidence that Hazardous Substances, as defined herein, have been stored, generated, manufactured, disposed, transported or treated at or on the Premises. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance that may be classified as hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant under applicable federal, state or local laws, statute, ordinance, rule or regulation (hereinafter, "Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws;
- (f) During the SELLER' period of ownership of the Premises, SELLER have not used, nor will it permit the use of by any other person or entity, any portion of the Premises for the purposes of storage, generation, manufacture, disposal, transportation or treatment of any Hazardous Substance under Applicable Laws which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws; and
- (g) There are no petitions in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or other action under Federal of State bankruptcy laws pending against or contemplated by SELLER.

Each of the above representations is material and is relied upon by BUYER. Except in so far as the SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall

survive the Closing. If, before Closing, SELLER discover any information or facts that would materially change the foregoing covenants, warranties or representations, SELLER shall immediately give notice to BUYER of those facts and information.

In the event of a breach of any representation set forth in this paragraph, prior to Closing, BUYER may elect either (i) to waive such breach and proceed to Closing with no reduction in the Purchase Price, or (ii) terminate this Agreement upon written notice to SELLER, in which case the parties shall have no further obligations under this Agreement other than those obligations, if any, that expressly survive the termination of this Agreement.

28. SELLER'S CLOSING STATEMENT

SELLER agrees to execute at the closing under oath to the BUYER or to any title insurance company issuing a policy to the BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the Premises; (2) SELLER has no knowledge of any work having been done on the Premises which would entitle anyone now or hereafter to claim a mechanics or materialmen's lien on the Premises; and (3) SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

29. REMEDIES:

- a. Seller's Failure to Perform. In addition to any other remedy provided for in this Agreement, in the event of SELLER's failure to perform any of SELLER's obligations under this Agreement, BUYER shall have: (i) the right to waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, or (ii) the right to terminate this Agreement upon written notice to SELLER with any deposits returned to BUYER upon such termination, in which case the parties shall have no further obligations under this Agreement except for those obligations, if any, which expressly survive the termination of this Agreement.
- b. Buyer's Failure to Perform. In the event of BUYER's failure to perform any of BUYER's obligations under this Agreement, SELLER shall have as its sole remedies: (i) the right to waive such failure or breach and proceed to Closing without adjustment to the Purchase price, or (ii) retain any deposit made hereunder, either of which shall be SELLER's sole and exclusive remedy.

30. TITLE STANDARD: Any title matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of The Real Estate Bar Association for Massachusetts, Inc. at the time for delivery of the Deed shall be governed by such standard to the extent applicable.

30. NOTICE: Whenever, by the terms of this agreement, notice shall or may be given either to BUYER or to SELLER, such notice shall be deemed to have been given only

if in writing and either delivered by hand or sent by registered or certified mail, postage prepaid, if intended for the BUYER, to:

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

with copy to:

City Solicitor
City of Marlborough
140 Main Street
Marlborough, MA 01752

and, if intended for the SELLER, to:

Andrew J. Clavette, Esq.
Maher + Spang, P.C.
8 Winchester Place, Suite 306
Winchester, MA 01890
617-627-9600 (ph)
617-627-9602 (fax)
aclavette@maherandspang.com

or such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when deposited in the mail within the continental United States.

31. NEXT BUSINESS DAY: If the period by which any right, option or election must be exercised, or by which any act must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, Federal or Commonwealth of Massachusetts holiday, such time shall automatically extend through the close of business on the next business day.
32. BINDING ON SUCCESSORS: This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.
33. APPLICABLE LAW: This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.
34. ENTIRE AGREEMENT; MODIFICATIONS; WAIVER: This Agreement constitutes the entire agreement between BUYER and SELLER pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or



amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

35. COUNTERPARTS: This Agreement may be signed and delivered in counterparts with the same effect as if each party had signed and delivered the same copy. When each party has executed and delivered a counterpart, all counterparts together constitute one Purchase and Sale Agreement. A copy of the executed Agreement that has been faxed or sent electronically shall have the same force and effect as the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

UPON SIGNING THIS DOCUMENT WILL BECOME A LEGALLY BINDING AGREEMENT, IF NOT UNDERSTOOD, SEEK ADVICE FROM AN ATTORNEY.

SELLER:

55 BOLTON STREET, LLC


XXXX

Date: 01-17-2020

BUYER:

THE CITY OF MARLBOROUGH
BY ITS DULY AUTHORIZED MAYOR:

Arthur G. Vigeant, Mayor,
and not his individual capacity

Date: _____





City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
MAYOR
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Patricia Bernard
EXECUTIVE AIDE
2020 JAN 23 A 11:35
EXECUTIVE SECRETARY

January 23, 2020

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

Re: Donation Acceptance – Marlborough Police Department

Honorable President Ossing and Councilors:

I am pleased to submit for your acceptance a grant for the Marlborough Police Department for \$14,358.35 from the Marlborough Police K-9 Unit Fundraiser held in September 2019, designated for the department's K-9 account. These donations will be used by Marlborough Police to assist with funding the department's K-9 program.

Please find enclosed a letter from Chief Giorgi, a copy of the Notification of Grant Award forms, and a copy of the donation check.

Thank you to everyone who supported our police officers and their K-9 colleagues at this wonderful event! If you have any questions, please do not hesitate to contact Chief Giorgi or my office.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosures



City of Marlborough

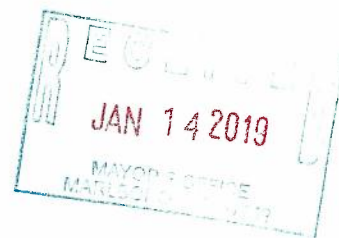
Police Department

355 Bolton Street, Marlborough, Massachusetts 01752
Tel. (508)-485-1212 Fax (508)-624-6938

David A. Giorgi
Chief of Police

January 6, 2020

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



Dear Mayor Vigeant:

The Marlborough Police Department has received a \$14,358.35 gift award from the Marlborough Police K-9 Unit fundraiser designated for the department's K-9 account. The fundraising event, which was held in September 2019, was slightly different than in past years and was held on Weed Street in the area behind City Hall in conjunction with several local businesses and sponsoring groups. All proceeds from the day's events, which included silent auctions, corn-hole tournaments, a bake sale and a percentage of brewery sales, were designated to benefit the department's K-9 program and new K-9 member Meiko, as K-9 Kaiser is nearing the end of his service to our City. The generosity of the businesses, sponsoring groups, and individual participants made the event an extraordinary success and the significant donation is greatly appreciated by Sgt. Ken McKenzie, Meiko and the entire department. The volunteer support and community sponsorship is a testament to the City of Marlborough's support for our K-9 program.

I have attached a copy of the check which the department received from the event and I am requesting that the gift award be forwarded to the City Council for approval. Should you have any questions, please do not hesitate to call.

Sincerely,

David A. Giorgi
Chief of Police

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: POLICE DATE: 1/6/2020

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: CHIEF DAVID A. GIORGI

NAME OF GRANT: DONATION TO K-9 ACCOUNT

GRANTOR: MARLBOROUGH POLICE K-9 FUNDRAISER

GRANT AMOUNT: \$14,358.35

GRANT PERIOD: _____

SCOPE OF GRANT/
ITEMS FUNDED SUPPLIES & TRAINING FOR K-9 PROGRAM

IS A POSITION BEING
CREATED: N/A

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? N/A

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS
TO BE USED:

ANY OTHER EXPOSURE TO CITY?
N/A

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: N/A

DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER
LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL
FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT

DATE 1/2/2020

PAY TO THE
ORDER OF

City of Marlborough K9

\$ 14,358³⁵

Fourteen Thousand, Three Hundred Fifty Eight

35
100
DOLLARS

Security Features
Indicated
Details on Back



st. mary's
credit union
P.O. BOX 729
MARLBOROUGH, MASSACHUSETTS 01752

MEMO

K9 money

(Signature)
0111

MP

GRAYSTONE



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Nathan R. Boudreau
2020 JAN 23 A 11:35
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

January 23, 2020

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

Re: Reappointment of Auditor Diane Smith

Honorable President Ossing and Councilors:

I am pleased to submit for your confirmation the reappointment of Auditor Diane Smith for a three-year term to expire three years from the date of City Council confirmation.

For well over a decade, Ms. Smith has proven to be an invaluable resource for the City in a time when qualified municipal auditors are becoming harder to find and even harder to keep. Ms. Smith has proven her worth time and time again by being an active office administrator and being meticulously familiar with every line item in our budget.

Ms. Smith was an essential part of the financial decision making that resulted in our recent AAA bond rating, which will benefit Marlborough for decades to come. She leads her team professionally and effectively, recording all City revenues, and maintaining accurate financial records. I'm proud of their hard work every day.

Thank you in advance for your consideration of this reappointment. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Arthur G. Vigeant
Mayor



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
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Arthur G. Vigeant
RECEIVED OR
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
EXECUTIVE AIDE
2020 JAN 23 A 11:35
Patricia Bernard
EXECUTIVE SECRETARY

January 23, 2020

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

Re: Appointment of Nusrath Khan to the Planning Board

Honorable President Ossing and Councilors:

I am submitting for your review and confirmation the appointment of Nusrath Khan to the Marlborough Planning Board for a term of one year, to expire the first Monday in February 2021. Ms. Khan will bring a wide variety of experience and a fresh perspective with her to the Marlborough Planning Board.

Nusrath responded to my public outreach to serve on local boards and committees and began attending Planning Board Meetings to learn in 2019, where she gained the support from Chair Fenby. She is employed by Dell Technologies, where she has worked as a Senior Manager of Global Finance and Business Analytics since 2017. I believe her education, vigor, and experience will make a great addition to the Planning Board.

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

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure

EDUCATION**Babson College****Babson Park, MA***Master of Business Administration*, GPA: 3.51

May 2013

Bachelor of Science in Business Management

May 2010

Concentrations: Finance and Economics

Diversity-Leadership Full Scholarship Award Recipient

Phillips Exeter Academy**Exeter, NH**

Graduated with Honors.

2002-2006

Full Merit Scholarship Recipient

EXPERIENCE**Dell Technologies (Formerly EMC)****Hopkinton, MA***Sr. Manager, Global Finance & Business Analytics*

May 2017- Present

- During and post the largest tech merger in history, led the development of reporting infrastructure that would allow users to do first level of analysis.
- Be the end-to-end finance partner to Dell Finance and Sales executive leadership to enable effective and efficient business activity.
- Partner with Finance and Sales leaders to define, optimize and monitor progress on their strategic agenda, short-term and long-term plans and investments, operational success metrics, efficiencies, risks and mitigations.
- Lead all aspects of the global core finance processes for Finance (annual margin planning, revenue and sales forecasting and reporting), and partner with the business leaders to evaluate the productivity of operations, enable wise resource allocation, and drive intelligent scenario planning.
- Cultivate relationships and collaborations across numerous internal touch points with leaders in Finance and cross-functional partner organizations.
- Convert large, complex datasets into visualizations that can be easily understood.
- Work directly with senior management team members in storyboarding and preparation of weekly, monthly and quarterly executive financial planning and performance presentations
- Provide executives with insights into drivers of business performance; define and track meaningful metrics to support decision-making.
- Create frameworks to tackle complex problems; drive diagnostic rigor in making decisions; analyze research and data to develop actionable solutions.
- Manage and coach a team of financial analysts
- Understand and stay current on tech industry trends, competitive landscape and internal product development efforts
- Received 2nd EMC Excellence Gold Award for exceptional work on Dell Integration-including overcoming significant obstacles, building new contacts, putting in extra hours and maintaining a positive attitude through the entire process.
- Graduated the Business Ops Emerging Leaders Program (ELP), it is a 12 month development program designed to build upon management and business skills to empower participants to advance their careers to the next level and lead the Global Business Organization

Dell Technologies (Formerly EMC)**Hopkinton, MA***Manager, Global FPA*

September 2016- May 2017

- Assisted in leading the OPEX and Expense integration of the Enterprise Sales Segment during the merger of Dell and EMC, the largest tech merger in history.
- Provide financial and strategic support to senior management, including preparing executive presentations
- Responsible for preparing the AOP (Annual Operating Plan) for \$2.1B Enterprise Sales OPEX budget, including revising quarterly budgets as necessary
- Build and establish relationships with key business, financial, and operational personnel to ensure full understanding and support for GBO expense initiatives including manage coordination of communications and information dissemination cross-functional organizations
- Develop and provide trending information and analytics to drive cost saving initiatives

Dell Technologies (Formerly EMC)**Hopkinton, MA***Senior Financial Analyst, Global FPA*

July 2014- September 2016

- Tracked, reconciled, and reported on headcount and operating expense across EMC's Global Sales and Operations
- Provided end-to-end financial support through new business development corporate initiatives that focus on cost-avoidance and cost-saving activities.
- Performed forecast and close activities for EMC's Global Sales and Operations.
- Acted as a financial liaison and main contact for EMC business partners in North America, EMEA, Asia Pacific, India, and Latin America.
- Built reporting and forecasting tools in SAP BPC and responsible for Financial Business Review (FBR) and Quarterly Business Review (QBR) Decks.
- Produced 3 weekly deliverables trending attrition and headcount data to aid in strategic decisions for upper management including all EMC theater VPs and the Senior VP of Business Operations
- Managed global financial expense forecasts in-line with corporate guidelines and expectations..
- Managed two direct reports
- Achieved a 'Far Exceeds' and rated top 5% of the company during annual performance review
- Received EMC Excellence Gold Award for extraordinary efforts toward go-to-market readiness activities for the Dell/EMC Merger and Day 1.

Raytheon Integrated Defense Systems**Andover, MA***Senior Financial Analyst*

January 2014- July 2014

Raytheon Integrated Defense Systems**Billerica, MA***Cost Accountant II*

August 2011- January 2014

Raytheon Corporate**Billerica, MA***Financial Analyst*

June 2010-August 2011

VOLUNTEER

Babson College Coaching For Leadership and Teamwork Program

Babson Park, MA*Executive Coach*

October 2010-Present

SKILLS

Computer: Extensive Knowledge of SAP and Business Warehouse, EPM, Advanced knowledge of Microsoft Excel (pivot tables, vlookups, match, sum-ifs) , Powerpoint, Word, Project and Minitab

CERTIFICATIONS

Six-Sigma Certified, EVMS Certified, Prism



City of Marlborough
Legal Department

140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610
LEGAL@MARLBOROUGH-MA.GOV

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JASON D. GROSSFIELD
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JASON M. PIQUES
ASSISTANT CITY SOLICITOR
HEATHER H. GUTIERREZ
PARALEGAL

January 15, 2020

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

Re: Williams Street Holdings, LLC v. Peter J. Juare, Mark A. Oram, Michael H. Ossing, Kathleen D. Robey, Joseph F. Delano, Jr., David Doucette, J. Christian Dumais, Robert J. Tunnera, John J. Irish, Edward J. Clancy and Donald R. Landers, Sr., as members of the Marlborough City Council
Docket No. 18 MISC 000284-HPS

Dear Honorable President Ossing and Councilors:

This letter is to convey a copy of the Land Court's decision and entry of judgment in favor of the City Council on all counts in the above-referenced zoning litigation, for the City Council's records.

This decision follows the Land Court's hearing on the City Council's motion for judgment on the pleadings and the plaintiff's motion for summary judgment in July of 2019. The Land Court adopted the City Council's position, in opposing the motion for summary judgment, that the doctrine of equitable estoppel is not applicable to prevent the City of Marlborough from enforcing the repeal of the zoning ordinance section at issue in this special permit-related matter.

No action is required on this transmittal. Please contact me if you have any questions or concerns.

Respectfully,

Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

MISCELLANEOUS CASE
No. 18 MISC 000284 (HPS)

WILLIAMS STREET HOLDINGS, LLC,

Plaintiff,

v.

PETER J. JUAIRE, MARK A. ORAM,
MICHAEL H. OSSING, KATHLEEN D.
ROBEY, JOSEPH F. DELANO, JR.,
DAVID DOUCETTE, J. CHRISTIAN
DUMAIS, ROBERT J. TUNNERA, JOHN
J. IRISH, EDWARD J. CLANCY,
DONALD R. LANDERS, SR. as members
of MARLBOROUGH CITY COUNCIL,

Defendants.

RECEIVED
JAN 13 2020
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MARLBOROUGH, MA 01752

**DECISION ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS
AND PLAINTIFF WILLIAMS STREET HOLDINGS, LLC'S MOTION FOR
SUMMARY JUDGEMENT**

In 2017, a developer applied to build an “ancillary residential community” (ancillary to an existing retirement community) under the authority of a special permit provision of the Marlborough Zoning Ordinance that had been repealed in 2011. Unfortunately, the repeal of the special permit provision had not been adequately reflected in either the printed or online versions of the Ordinance, and the developer—and even city officials—mistakenly proceeded with the application process to the point of opening and closing a public hearing on the special permit application. By the end of the hearing process, city officials discovered the error, and the special permit granting authority denied the application on the grounds that it had no jurisdiction to grant

A hearing on the City Council's motion for judgment on the pleadings and WSH's motion for summary judgment was held before me on July 25, 2019, after which I took the matter under advisement.

FACTS

The undisputed facts established in the record and pertinent to the motion for summary judgment, with all reasonable inferences drawn in the light most favorable to the non-moving party, the City Council, are as follows:

1. The city of Marlborough maintains a website which includes the Marlborough City Code (including its Zoning Ordinance) ("Ordinance"), which is published and maintained by General Code, LLC.¹ The city's website includes a link to General Code's own website. General Code also publishes and maintains the print version of the Ordinance.²
2. Prior to 2011, the Ordinance included § 650-22(C)(14), concerning retirement community overlay districts.³ Subsection (14) allowed the City Council to approve, subject to certain dimensional limitations, an "ancillary residential community" in conjunction with the grant of a special permit for construction of a retirement community.⁴
3. On April 25, 2011, the City Council voted to amend § 650-22 of the Ordinance.⁵ The amendment approved by the vote was contained in City Council Order No. 11-1002806-1A.⁶ The amendment provided that § 650-22(C) was amended, in relevant part, "by amending subsection (14) thereof, by striking out said subsection in its entirety, including

¹ Joint Appendix Exh. 3.

² Plaintiff's Statement of Material Facts ¶ 4; Defendant's Response to Plaintiff's Statement of Material Facts ¶ 4.

³ Plaintiff's Verified Complaint ("Compl.") ¶ 14; Defendants' Answer ("Answer") ¶ 14; Joint Appendix Exh. 3.

⁴ Joint Appendix Exh. 7.

⁵ Joint Appendix Exh. 8.

⁶ Id.

8. In connection with its special permit application, WSH submitted a certified list of abutters, filing fees, and a site plan entitled “The Residences at Williams Street Crossing, Marlborough, MA, Preliminary Site Plan” prepared by Bruce Saluk and Assoc., Inc., and dated October 5, 2017 (the “Plans”).¹⁵
9. On October 11, 2017, the Plans were certified by the interim building commissioner (“building commissioner”), acting on behalf of the city planner, as having complied with the rules and regulations promulgated by the City Council for the issuance of a special permit.¹⁶
10. On December 4, 2017, the City Council accepted WSH’s Application for Special Permit and duly noticed and commenced a public hearing.¹⁷ The City Council received no testimony on that date, and continued the hearing to January 8, 2018.¹⁸ The City Council closed the public hearing on January 8, 2018.¹⁹
11. As late as March 1, 2018, the Marlborough building commissioner and WSH’s permitting counsel were communicating via e-mail concerning the dimensional restrictions applicable to an ancillary residential community, indicating that they both were apparently operating under the mistaken assumption that § 650-22(C)(14) was still in effect.²⁰
12. In March 2018, the new building commissioner, who had commenced his employment with the city in December, 2017, learned that § 650-22(C)(14)—which by its terms

¹⁵ Compl. ¶ 20, Exh. 4; Answer ¶ 20.

¹⁶ Compl. ¶ 21, Exh. 5; Answer, ¶ 21.

¹⁷ Joint Appendix Exh. 3.

¹⁸ Compl. ¶¶ 23, 25; Answer ¶¶ 23, 25.

¹⁹ Compl. ¶ 25; Answer ¶ 25.

²⁰ Joint Appendix Exh. 6.

Pederson v. Time, Inc., 404 Mass. 14, 17 (1989). In determining whether genuine issues of fact exist, the court must draw all inferences from the underlying facts in the light most favorable to the party opposing the motion. See *Attorney Gen. v. Bailey*, 386 Mass. 367, 371, cert. denied, 459 U.S. 970 (1982). Whether a fact is material or not is determined by the substantive law, and “an adverse party may not manufacture disputes by conclusory factual assertions.” See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Ng Bros.*, supra, 436 Mass. at 648. When appropriate, summary judgment may be entered against the moving party and may be limited to certain issues. *Community Nat’l Bank v. Dawes*, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002).

WSH claims that the City Council is estopped from asserting that the section of the Ordinance upon which WSH sought the special permit was inoperative and unavailable to WSH as having been previously deleted by the City Council from the Ordinance.

The City Council contends that its denial of WSH’s special permit application was in accordance with law because §650-22 (C)(14) had been repealed in 2011 and the City Council had no authority to grant a special permit under a provision that had been repealed. The Council argues that an equitable estoppel theory—such as WSH is arguing—is inapplicable to municipalities, and, in any event, that WSH cannot establish the elements of equitable estoppel against the City Council. The City Council further defends that WSH cannot obtain relief from the City Council because the city website containing the erroneous ordinance contains terms and conditions disclaiming the “accuracy, completeness, adequacy or currency” of the site’s contents.

The City Council also argues, in its motion for judgment on the pleadings, that WSH could not validly seek a special permit in 2018 because it had been administratively dissolved by that time. WSH rebuts that it was never formally dissolved as an LLC, as it did not receive notice

action of city or its officials). Reluctance to utilize the doctrine of estoppel with respect to the actions of governmental officials in the exercise of their official duties extends beyond enforcement of zoning laws. *Phipps Products Corp. v. Mass. Bay Transp. Auth.*, 387 Mass. 687, 693–694 (1982) (estoppel not available with respect to MBTA’s violation of bidding laws).

The facts alleged by WSH are nowhere close to the egregious facts that would be necessary to consider application of the doctrine of estoppel to require the enforced availability of a repealed ordinance to allow a development that is prohibited by the current zoning ordinance. WSH alleges no more than a mistake by the recently hired building commissioner in believing, as WSH and its counsel apparently did as well, that the ancillary residential community provision of the ordinance was still in effect. This belief on the part of WSH can be attributed not just to the error of General Code in failing to delete the repealed language from the published versions of the Ordinance, but to WSH’s failure of due diligence. The versions of the Ordinance published both online and in print contained explicit references to the 2011 amendment to the Ordinance that effected the repeal of the ancillary residential community provisions. Due diligence on the part of permitting counsel and any counsel providing a required zoning opinion for a lender would have mandated checking the actual amendment; apparently no one saw fit to do so until March, 2018, well after WSH had applied for the special permit.

Certainly where no corrupt or intentional purpose of the city or its officials to deceive is alleged or proven, and where discovery of the mutual mistake was within the reasonable reach of the applicant, there is no occasion for even considering the extraordinary application of the doctrine of estoppel in a zoning context. Furthermore, the harm to WSH from its, and the defendants’ mistake in proceeding as far as they did before the mistake was caught was, fortunately, relatively minimal. WSH alleges that it unnecessarily incurred the cost of preparing

plans and its application, and the costs of participating in the approval process, including public hearings and informal meetings, until the mistake was caught in March, 2018. While this is unfortunate, it is a relatively minor expense; WSH never put a shovel in the ground or incurred any actual construction costs, nor was it left with a completed building it cannot occupy. Much greater detriment in reliance on municipal actions has been determined to be insufficient to justify application of the doctrine of estoppel. Compare *Building Comm'r of Lancaster v. Sanderson*, supra, where the landowner purchased land for an additional runway at an airfield in reliance on written expressions of support from the board of selectmen, but that was insufficient to justify application of the doctrine of estoppel against enforcement of the town's zoning bylaw, which prohibited the runway. Even where a building permit was erroneously granted, and a house was constructed in reliance on the erroneously granted building permit, the doctrine of estoppel did not require the town's zoning board of appeals to grant a variance to allow the illegal structure to remain. *Delprete v. Zoning Bd. Of Appeals of Rockland*, 87 Mass. 1104, 1104 (2015) (Rule 1:28 Unpublished Decision).

Even if the general reluctance to apply the doctrine of estoppel to the enforcement of zoning laws did not apply, the equitable estoppel claim asserted by WSH would fail on the merits. To succeed on an equitable estoppel claim, WSH must prove “[a] representation or conduct amounting to a representation intended to induce a course of conduct” by WSH; “[a]n act or omission” by WHS “resulting from the representation”; and detrimental reliance by WHS as a consequence of that act or omission. *Renovator's Supply, Inc. v. Sovereign Bank*, 72 Mass. App. Ct. 419, 426–427 (2008) (emphasis omitted). WSH maintains that the text on the city website, detailing § 650-22(C)(14), was a representation “that the zoning ordinance remained enforceable at all relevant times.” It is difficult to characterize the text on the website as

representing that § 650-22(C)(14) is enforceable, because the text expressly notes that § 650-22(C)(14) has been amended. Consulting the amendment would have revealed that the City Council, in fact, meant to convey that § 650-22(C)(14) was not enforceable.

Neither was the mistaken inclusion of the deleted text of § 650-22(C)(14) on the website intended to induce WSH to act in reliance on it. The website included text of the Code “for informational purposes only.” The disclaimer language included on the website makes clear that the website is provided for convenience and informational purposes but is not intended to be relied upon without further due diligence. It states, in relevant part, that “E-Codes should not be relied upon as the definitive authority for local legislation...The Content may contain typographical errors or other errors or inaccuracies and may not be complete...The accuracy, completeness, adequacy or currency of the Content is not warranted or guaranteed.” Because the City Council did not make a representation intended to induce WSH’s reliance on it, WSH cannot succeed on its equitable estoppel claim.

WSH’s claim fails as a matter of law. There is no legal authority to support an estoppel claim against the City Council in these circumstances. Even if there was, the estoppel claim, on the undisputed facts before the court, fails on the merits.

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, ss.

MISCELLANEOUS CASE
No. 18 MISC 000284 (HPS)

WILLIAMS STREET HOLDINGS, LLC,

Plaintiff,

v.

PETER J. JUAIRE, MARK A. ORAM,
MICHAEL H. OSSING, KATHLEEN D.
ROBEY, JOSEPH F. DELANO, JR.,
DAVID DOUCETTE, J. CHRISTIAN
DUMAIS, ROBERT J. TUNNERA, JOHN
J. IRISH, EDWARD J. CLANCY,
DONALD R. LANDERS, SR. as members
of MARLBOROUGH CITY COUNCIL,

Defendants.

JUDGMENT

This action, which commenced June 14, 2018 with the filing of a complaint by Williams Street Holdings, LLC (“WSH”), asserting an appeal pursuant to G. L. c. 40A, § 17 and a claim for declaratory judgment pursuant to G. L. c. 231A, seeking to annul a denial of an application for a special permit by the city of Marlborough City Council, and a seeking a declaration estopping the City Council from denying the availability for relief under a certain section of the Marlborough Zoning Ordinance.

This case came on for hearing on WSH’s motion for summary judgment and on the defendants’ motion for judgment on the pleadings. In a decision of even date, the court (Speicher, J.) has determined that judgment shall enter in favor of the defendants on all counts.

In accordance with the court's decision, it is

ORDERED and ADJUDGED, on Count I of the complaint, seeking to annul the decision of the City Council dated May 7, 2018, and seeking an order remanding this matter to the City Council to consider WSH's application on the merits, that said Count I is hereby **DISMISSED**.

It is further

ORDERED, ADJUDGED, and DECLARED, on Count II of the complaint, seeking a declaration pursuant to G. L. c. 231A, § 1, with respect to the enforceability of Section 650-22.C(14) of the Marlborough Zoning Ordinance, that said Count II is hereby **DISMISSED**, as plaintiff's sole and exclusive remedy is its appeal under G. L. c. 40A, § 17. See *Whitinsville Retirement Society, Inc. v. Town of Northbridge*, 394 Mass. 757, 762-763 (1985).

It is further

ORDERED and ADJUDGED that this Judgment is a full adjudication of all the parties' claims in this case, and all prayers for relief by any party in this action which are not granted in the preceding paragraphs are **DENIED**.

By the Court. (Speicher, J.)

Attest:

Deborah J. Patterson
Recorder

Dated: January 10, 2020.

A TRUE COPY
ATTEST:

Deborah J. Patterson
RECORDER



TOWN OF LITTLETON

OFFICE OF THE BOARD OF SELECTMEN

37 SHATTUCK STREET, P.O. BOX 1305
LITTLETON, MASSACHUSETTS 01460
(978) 540-2460

January 13, 2020

Governor Charles D. Baker
State House, Room 280
Boston, MA 02133

Senator James B. Eldridge
State House, Room 320
Boston, MA 02133

Representative James Arciero
State House, Room 277
Boston, MA 02133

Re: Counterpoint to the Town of Needham's letter of October 2019 on House Bill No. 3507

Littleton would like to offer a counterpoint to the Needham letter of October 2019 regarding House Bill 3507 – Governor Baker's "Housing Choices Initiative".

The Town of Littleton has also been following the progress of Governor Baker's "Housing Choice Initiative", including House bill 3507. Increased availability of housing options and affordability of housing in Massachusetts, and in Littleton are important goals. The draft bill eliminates the longstanding requirement of a two-thirds local legislative majority to amend city or Town zoning. Massachusetts is the ONLY state in New England to require this challenging supermajority vote, and one of only a handful nationwide.

Littleton has successfully and in good faith worked within the existing structure to achieve well over ten percent housing goal established under MGL Chapter 40B, yet we have not yet met all the local housing needs for Affordable housing. Our seniors, veterans, and young adults cannot find housing in Town, even though Littleton has reached 13.01 % on our Subsidized Housing Inventory.

In November 2017, the Town of Littleton updated its Master Plan and to ensure equitable development in its community Littleton must provide opportunities for residents of all ages, backgrounds and incomes to have suitable, good quality housing. To achieve this Littleton must maintain a diverse mix of housing options so that existing residents are not "priced out" as the Town continues to grow and its housing increases in value.

According to its Housing Production Plan, Littleton's housing stock is out of balance and currently our community offers very few housing choices outside of traditional single-family units. 88% of Littleton's Housing stock consists of single-family units while only 12% of its

housing stock consists of multi-unit dwellings. Age Groups 24-34 and 60+ are mostly affected by the lack of housing options in Littleton and as a result Littleton's population of ages 24-34 is below the state average while over 30% of its population is over the age of 60.

Littleton's unbalanced housing stock is also affecting its ability to attract and retain employees in the areas of emergency response, education, infrastructure, hospitality, utilities and repair.

"Millennials" are expected to overtake Boomers in population in 2030 as their numbers swell to 73 million and Boomers decline to 72 million. Ages 24-34 are seen as essential for urban prosperity and while cultural amenities are an important selling point, one the biggest obstacles to attracting and retaining young adults in the community of Littleton is affordable housing.

Littleton's large stock of single-family homes currently owned by senior citizens represents a potential opportunity to attract young adults and families to our community. However, making this transition requires that seniors have attractive, affordable alternatives to their current housing and young adults have that same opportunity so they can remain or move to Littleton. Simply stated, a variety of housing types in Littleton is needed for people trying to build a life as an adult as well as people trying to preserve the life they have built.

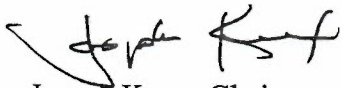
Littleton Board of Selectmen and Planning Board have each voted to oppose Needham's suggestion that a municipality should hold a different status in the affordable housing discussion based on whether or not we have reached the 10% minimum planning threshold on our Subsidized Housing Inventory. The Littleton Affordable Housing Trust also had concerns with the Needham's suggestion. There should be a level playing field so all cities and Town can address the current housing crisis on equal footing.

In addition, the Planning Board and Affordable Housing Trust voted unanimously to support HB 3507 with no amendments.

Littleton urges continued discussions of how to break the housing crisis and provide more affordable housing – both additional housing units and homes that are affordable to more residents.

Sincerely,

LITTLETON BOARD OF SELECTMEN



Joseph Knox, Chair

LITTLETON PLANNING BOARD



Anna Hueston, Acting Chair

Cc: Town of Needham Board of Selectmen and Planning Board



PLANNING BOARD

P.O. Box 1305
Littleton, Massachusetts 01460

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2020 JAN 22 P 5:55



January 15, 2020

Selectboard of Marlborough
140 Main Street
Marlborough, MA, 01752

Marlborough Planning Board
140 Main Street
Marlborough, MA, 01752

Dear Board Members:

The Littleton Board of Selectmen, Planning Board, and Affordable Housing Trust offer a counterpoint to Needham's letter of October 22, 2019 regarding House Bill 3507 – Governor Baker's "Housing Choices Initiative".

The Littleton Board of Selectmen and Planning Board sent the attached letter to our legislative delegation. We encourage all to join the conversation.

If you have any questions or need additional information, please contact Town Planner Maren Toohill or Town Administrator Nina Nazarian.

Sincerely,

Maren A. Toohill, AICP
Littleton Town Planner

School Committee
17 Washington Street, Marlborough, MA 01752
(508) 460-3509

Call to Order

November 26, 2019

1. Vice-Chair Bodin-Hettinger called the regular meeting of the Marlborough School Committee to order at 7:30 p.m. at the District Education Center, 17 Washington Street, Marlborough, MA. Members present included Denise Ryan, Katherine Hennessy, Heidi Matthews and Darren McLaughlin. Also present were Superintendent Michael Bergeron, Assistant Superintendent of Teaching and Learning, Mary Murphy, Director of Finance and Operations, Douglas Dias, MEA Representative Rupal Patel and Administrative Support Julia Marshall.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** The students from the 2019 Akiruno trip led the Pledge of Allegiance.
3. **Presentation:**

A. 2019 Akiruno Student Presentation

MEA Representative, Rupal Patel, who is also the Akiruno exchange program coordinator, began the presentation by thanking the committee, Superintendent and the City for continuing to support this program. She then launched a brief slideshow of the 2019 Akiruno trip and introduced one of the chaperones, Heather Roache, who spoke briefly about her time in Akiruno with the students. Following Ms. Roache, each of the twelve students provided testimonials about their time in Japan. The message among the students was clear and consistent: the main challenge to overcome was a language barrier, but while that was sorted out, a lot was learned about Japanese culture and how their students' values, interests and hobbies are very similar to that of our students. Each of the twelve students was deeply appreciative and grateful for the experiences they were provided with because of this program.

Following these testimonials, Mrs. Hennessy asked the group what inspired them to take the chance to go and urged them to recommend it to other students, because their new role as ambassadors is crucial to continuing the success of future Akiruno trips.

School Committee
17 Washington Street, Marlborough, MA 01752
(508) 460-3509

B. Marlborough Education Foundation Grant Awards

The Marlborough Education Foundation (MEF) board members handed out 9 grant awards, totaling \$9233.37, that help fund educators' enrichment ideas from different schools.

Suzanne Venkataraman, the library media specialist at Marlborough High School, received \$1,000.00 for a creative STEAM project with a Circuit maker.

The Early Childhood Center received two grants. The first is valued at \$970.29 and to be used for funding a project where preschoolers learn about multi-ethnic families and emotional expression while working on puzzles. The second is valued at \$264.99 and to be used for purchasing nine storytelling kits to enhance language and literacy.

Erika Leger, a second-grade teacher at Jaworek school, received \$233.26 for flexible seating for her classroom.

The Whitcomb Robotics program received \$1,847.88 for Joanne Mahoney and Jeff Gay to purchase two V5 competition starter kits.

Marlborough High School and the Hildreth building, represented by Stephanie Gill, received \$3,340.00 for 11th and 12th grade science to have principle of biomedical science course tools and materials.

Traci Cappadona and Jennifer Collins, Jaworek Elementary School teachers, received \$999.00 for iPad pens for their second-grade classrooms.

Kelly Hall, a Whitcomb Middle School teacher, received \$578.58 for materials and resources that will help students with learning disabilities succeed in her engineering class.

Following the distribution of these awards, a picture of the educators with the MEF board members was taken.

4. Committee Discussion/Directives: None

5. Communications: None

6. Superintendents Report:

Superintendent Bergeron began his report by updating the committee on elementary enrollment. There are a few classrooms with under 22 students per class, but some are above that size. Second grade is the only grade *district wide* that has an average of below 22 students per class in the elementary schools. Superintendent Bergeron will make recommendations for FY21 budget to address these stats and lower class sizes.

As he planned to do in the previous school committee meeting, Superintendent Bergeron met with Steve Kerrigan, the Marlborough City Clerk, about the Presidential primary elections. Because it is predicted that there will be a good turnout of voters for this upcoming primary election, the Superintendent believes the best option is to close school on March 3, 2020 and move the half day professional day to March 12, 2020 to split up the week for parents needing to arrange for childcare. These changes move the last day of school from Monday, June 15, 2020 to Tuesday, June 16, 2020.

Superintendent Bergeron then announced that staff assignments for faculty next year were distributed last Thursday and Friday. Tours of the new building for staff members, MEA, etc. are in the works of being scheduled now.

Finally, in his report is a list of recipients for the John & Abigail Adams Scholarship. These scholarships will be presented on December 4, 2019 at 10 a.m. at Marlborough High School.

A. Director of Finance & Operations Report

The Director of Finance & Operations Report, Douglas Dias, updated the committee on food services, transportation and the FY21 budget schedule draft. He began his report by reporting that the food services negative balance spiked over \$4,000.00, which is higher than last year. Mr. Dias reminded families to apply for free/reduced lunch if they have not already done so.

The Food Services department started a harvest of the month program, with kale being the featured vegetable in November, thus being incorporated into cafeteria meals at MHS. Additionally, last Thursday the annual Thanksgiving lunch was provided district wide in cafeterias, and many teachers at Whitcomb purchased the holiday meal.

In regard to transportation, Mr. Dias reported that there is a nationwide shortage of drivers, which is impacting districts, including Marlborough; we are short four permanent drivers. There have been issues of buses arriving late or missing stops. To help with the shortage, NRT and Vanpool have formed a strategic partnership to approach 100+ van drivers that work with Vanpool with a \$3,000 bonus if they upgrade their license to a CDL one. This process takes some time, but a resolution is in the works.

Mr. Dias and Superintendent Bergeron are proposing a FY21 budget that is very similar to last year's budget; the FY21 budget schedule draft is attached in Mr. Dias' report, but the year should say 2020 not 2019 after each date.

Mrs. Matthews asked if drivers have an option of choosing what district to be placed in, because the NRT and Vanpool partnership may incentivize drivers to come to Marlborough. Mr. Dias believes so, and he reported that next year NRT will be paying drivers a minimum of \$25/hour, and this goes in effect July 1, 2020.

7. Acceptance of Minutes:

A. Minutes of the October 15, 2019 School Committee Meeting

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to accept these minutes.

Motion passed 5-0-0.

B. Minutes of the October 29, 2019 School Committee Meeting

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to accept these minutes.

Motion passed 5-0-0.

C. Minutes of the November 12, 2019 School Committee Meeting

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to accept these minutes.

Motion passed 5-0-0.



Marlborough Public Schools

School Committee
17 Washington Street, Marlborough, MA 01752
(508) 460-3509

8. Public Participation: None

9. Action Items/Reports:

A. Changes in the March 2020 School Calendar

Superintendent Bergeron recommends that the School Committee approves the following date changes. Tuesday, March 3, 2020 there will be no school. Thursday, March 5, 2020 there will be a full day of school. Thursday, March 12, 2020 there will be an early release. Superintendent Bergeron reached out to the Boys and Girls Club, because of the calendar changes, to see what their ability to service families is during those days. A plan will be developed with them to figure out which buildings to use on the early release day and day off.

A motion was made by Mrs. Ryan, seconded by Mrs. Bodin-Hettinger to accept the proposed calendar changes.

Motion passed 5-0-0.

B. District-Level Commitment to Comply with CHPS Best Practices

Mr. Dias recommended that the School Committee commits to complying with all CHPS requirements and best practices by meeting or exceeding the CHPS qualifying threshold using the CHPS criteria for: new schools, major renovation projects, new buildings on an existing campus, additions to an existing building and prefabricated classrooms.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to accept this recommendation.

Motion passed 5-0-0.

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C. Resolution of Purchasing Electronic Devices

Mr. Dias recommended that the School Committee approve the attached resolution that this Committee is committed to purchasing school electronic devices including computers, imaging devices, and TV/AV systems that meet the requirements of the Electronic Product Environmental Assessment Tool (EPEAT) rating system, Silver or Gold level. There was some discussion around who will ensure that these standards are met besides the committee. It was confirmed that Mark Gibbs' office will be screening purchasing orders that teachers make for these types of products to ensure they are meeting these standards.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to approve the resolution.

Motion passed 5-0-0.

D. FY20 Operating Budget Transfers

Mr. Dias recommended that the School Committee vote to approve the transfers within the FY20 operating budget, which are attached to the agenda.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to accept these proposed transfers.

Motion passed 5-0-0.

E. Acceptance of Donations and Gifts

Educational Donations from Ohiopyle Prints, Inc. Ohiopyle Prints, Inc. donated \$208.30 to Marlborough High School for their Gift account which will be used to promote school spirit.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the donation.

Motion passed 5-0-0.



Marlborough Public Schools

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Auvi-Q for Schools. ASPN Pharmacies donated \$1,544.00 to Marlborough High School for epinephrine auto injectors both pediatric and adult dosing for the Marlborough Public School system.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the donation.
Motion passed 5-0-0.

Acceptance of check for \$3,995.00 from Brigham Family Trust. Brigham Family Trust donated a check for \$3,995.00 for the 7th grade Whitcomb Middle School technology/engineering classroom of Mark Rodiquenz.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the donation.
Motion passed 5-0-0.

Brigham Family Trust Award. Brigham Family Trust donated \$1,200.00 to the Early Childhood Center for purchasing books that will teach students the concept of helping, donating, and being part of a community.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the donation.
Motion passed 5-0-0.

Lifetouch Commission Check. Lifetouch returns a \$1,171.40 commission to Kane Elementary school for individual and class photos.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the donation.
Motion passed 5-0-0.

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2019-2020 Marlborough Educator Foundation Grant Awards Acceptance.
Marlborough Educator Foundation solicits and awards grants, totaling \$9,233.37 to Marlborough Public Schools teachers.

A motion was made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger, to accept with gratitude the awards presented to MPS staff.
Motion passed 5-0-0.

10. Reports of School Committee Sub-Committees:

Mrs. Hennessy attended a policy meeting recently discussing graduation requirements with Mr. Riley. There will be a meeting next week after the John & Abigail Adams Scholarship event on December 4, 2019.

11. Members' Forum:

Mrs. Matthews suggests that at the next School Committee meeting members should speak about the MASC sessions attended and takeaways. She also reviewed the warrant and will sign it.

Mrs. Bodin-Hettinger attended the annual Hildreth Thanksgiving dinner today and went to MHS for the ceremony and banner unveiling recognizing the high school as a National Unified Champion School through the Special Olympics. MHS is receiving this title for the partnerships they've made with Special Olympics and the work students and faculty at the high school has been doing since 2013 when MHS took on the Unified Track program. Yesterday, she and Superintendent Bergeron also attended a professional development session about the proposed changes for the Superintendent evaluation process.

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12. Adjournment:

Motion made by Mrs. Matthews, seconded by Mrs. Bodin-Hettinger to adjourn at 8:45 p.m.
Motion passed 5-0-0.

Respectfully submitted,

Heidi Matthews
Secretary, Marlborough School Committee

HM/jm

Approved January 14, 2020

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Call to Order

December 10, 2019

1. Chairman Vigeant called the regular meeting of the Marlborough School Committee to order at 7:30 p.m. at the District Education Center, 17 Washington Street, Marlborough, MA. Members present included Michelle Bodin-Hettinger, Heidi Matthews, Darren McLaughlin and Earl Geary. Also present were Superintendent Michael Bergeron, Assistant Superintendent of Teaching and Learning, Mary Murphy, Director of Finance and Operations, Douglas Dias, MEA Representative Rupal Patel and Administrative Support Julia Marshall.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Chairman Vigeant led the Pledge of Allegiance.
3. **Presentation:** None
4. **Committee Discussion/Directives:** None
5. **Communications:** None
6. **Superintendent's Report:**

Superintendent Bergeron explained how the snow and weather forced the cancellation of guest speaker, Chris Sullivan, on December 3rd, 2019. He has rescheduled his visit for January 27th, 2020 where he will meet with students during the day and speak to the community in the evening.

The Superintendent and Mrs. Bodin-Hettinger are trying to schedule a school committee workshop, and there was a discussion among committee members about January 21st being a potential day that works. There was a consensus that the workshop could be held during that day for a couple of hours, but he will send out an invite to double check that everyone is available for that date and time.

Forty more students have been enrolled at MPS since his last enrollment update, leading to 4,799 total students enrolled.

Superintendent Bergeron congratulated the recipients of the John and Abigail Adams Scholarships on December 4th at MHS.

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He ended his report by explaining that on January 22nd, he and Mr. Dias will host community members to discuss redistricting and to gather feedback on initial plans they developed. Mrs. Ryan and Mrs. Bodin-Hettinger have been asked by him to join the meeting. The first PTO meeting where the redistricting will be discussed, will be on February 5th at Richer School, and Superintendent Bergeron asks that the entire school committee attends.

A. Direct of Student Services Report

Ms. O'Brien shared her report which mentioned that during her time in Marlborough there has not been an active special education advisory council, which is a state requirement. There hasn't been enough membership in this council for people to vote and elect officers. A leadership council currently doesn't exist because only 1-2 parents of special education children have attended monthly meetings. The meetings have been put on an online calendar and a website exists to promote the council to try to gain members. Additionally, the district offered workshops and trainings for parents, giving them tips and tools to help with their kids at home, which they appreciated. Ms. O'Brien met with the former chair of the CPAC to inform her that a certain waiver should be submitted to the Department of Education. Ms. O'Brien made it known that parents in the council do not like holding leadership positions, which is something that would be addressed in the waiver aimed at identifying parents who are interested in holding a more active role to support the re-establishment of a CPAC.

B. Director of Finance & Operations Report

Mr. Dias presented his report which stated that the negative food balance is currently \$3,700.00; this is still more than the negative balance during this period last year.

The Boys and Girls Club will have Jaworek Elementary School and their Discovery Club open for March 3rd during the no school day. Between these two locations there is a capacity for just under 80 students and interested parents can reach out to the Boys and Girls Club directly.

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7. Acceptance of Minutes: None

8. Public Participation: None

9. Action Items/Reports:

A. FY21 Budget Schedule

Mr. Dias remarked that the budget calendar is similar to the one from last year, so there are no recommendations for any changes.

A motion was made by Mrs. Matthews, seconded by Chairman Vigeant to approve the calendar as presented.

Motion passed 5-0-0.

B. Policy for Removal

The committee is unable to vote on policy #2.445 until next meeting due to policy #2.615, so it has been submitted for first read.

C. Policies for First Read

The nine policies listed below were submitted for first read.

- 1. Policy #2.600 Adoption & Revision of Policies**
- 2. Policy #2.610 Administration in Policy Absence**
- 3. Policy #2.615 School Committee Policy Development**
- 4. Policy #2.620 Committee Review of Administrative Rules**
- 5. Policy #2.810 School Committee Member Orientation**
- 6. Policy #2.820 Committee Member Development Opportunities**
- 7. Policy #2.840 Reimbursement for Expenses**
- 8. Policy #3.220 Appointment of the Superintendent of Schools**
- 9. Policy #3.300 Administrative Organizational Plan**



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D. Acceptance of Donations and Gifts

Acceptance of \$6,000.00 from Boston Scientific. Boston Scientific donated \$6,000.00 to the Whitcomb Middle School GEMS and makerspace classroom.

A motion was made by Mrs. Matthews, seconded by Chairman Vigeant, to accept with gratitude the donation.

Motion passed 5-0-0.

Acceptance of \$1394.60 from Lifetouch. Lifetouch donated \$1,394.60 to the Richer Gift account to be used for student activities.

A motion was made by Mrs. Matthews, seconded by Chairman Vigeant, to accept with gratitude the donation.

Motion passed 5-0-0.

Donation from Cummings Properties, LLC. Cummings Properties, LLC donated \$1,000.00 to the Early Childhood Center Gift Account.

A motion was made by Mrs. Matthews, seconded by Chairman Vigeant, to accept with gratitude the donation.

Motion passed 5-0-0.

10. Reports of School Committee Sub-Committees:

There is a policy meeting this upcoming Friday from 9:00 – 11:00 am.

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School Committee
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11. Members' Forum:

Mrs. Matthews has reviewed the warrant and will sign it.
This is Mr. McLaughlin's final meeting on the school committee, so the Superintendent recognized him and his diligent work.

January 6th at 10 a.m. at the Whitcomb Middle School is the Inauguration.
Tomorrow night is the winter concert.

12. Adjournment:

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to adjourn at 7:45 p.m.
Motion passed 5-0-0.

Respectfully submitted,

Heidi Matthews
Secretary, Marlborough School Committee

HM/jm

Approved January 14, 2020

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**CITY OF MARLBOROUGH
CONSERVATION COMMISSION**

Minutes

December 5, 2019 (Thursday)

Marlborough City Hall – 3rd Floor, Memorial Hall

7:00 PM

**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2020 JAN 16 P 12:51**

Present: Edward Clancy-Chairman, David Williams, Dennis Demers, and John Skarin.
Also present was Priscilla Ryder-Conservation Officer

Absent: Allan White, Karin Paquin; and William Dunbar

Approval of Minutes – The minutes of November 21, 2019 were unanimously approved 4-0 as written.

Public Hearings:

Abbreviated Notice of Resource Area Delineation

339 Boston Post Rd. – WP Marlborough MA Owner LLC (formerly Heritage aka Magee Farm)

Scott Goddard of Goddard Consulting was present to represent the applicant. Due to the snow cover, Ms. Ryder noted she had not been able to check the wetland flags, the Commission noted this will have to be scheduled once the snow melts. Mr. Goddard reviewed the plan noting that there is Riverfront, bordering vegetated wetland, isolated wetlands, bank, bordering land subject to flooding as well as an intermittent stream. The Commission noted that a color-coded plan would be easier to read. The hearing was continued to the January 9th meeting, with the hope that the snow will melt enough for the delineation to be checked before then. If not, it will be continued again until the snow is gone, and the wetland can be verified.

Notice of Intent (continuation)

107 Simarano Dr. (Green District)-Andrew Montelli-Post Road Realty LLC

Joe Peznola of Hancock Associates, Eric Rains the Landscape Architect, Scott Goddard, of Goddard Consulting; and John Shipe of Shipe Consulting were all present.

Mr. Peznola explained that after the last meeting, the Commission wanted to see some changes to the plan. He reviewed the changes made which includes: 1) Snow management plan in green and red this plan includes a) note on calculating the snow volumes anticipated; b) signage to be added; c) notes on prohibitions of the snow policy; c) snow pile locations. 2) Revised landscape plans showing the additional trees requested and bubbled out areas where trees may be needed along the edge of limit of work. Mr. Rains, Landscape Architect provided some explanation on the tree types and locations and conditions needed when ledge is close by. Chairman Clancy asked about tree sizes and issue of ledge. Mr. Rains explained that the trees to be planted along these

edges will be smaller in caliper as this will help them grow in these less than ideal areas.

Mr. Peznola noted that DEP has issued a DEP # 212-1215 and also some comments. They provided a memo that responds to the DEP issues as follows:

1. Vernal pool impacts: He noted that they are not changing any of the drainage near the Vernal Pool and the ring road is already constructed so there shouldn't be any further impact to the pool.

2. DEP noted that one of the test pits in the basin is ledge and therefore will not work. Mr. Peznola explained that there are more than 10 test pits in the largest detention basins, they believe this test pit mentioned may be a nob as the other test pits were not an issue, however they can make the adjustments in the field as that is needed to get the design volume of the basin. He also noted that the basins are "detention basins" and not "infiltrating basins", so this shouldn't be an issue. One of the infiltration pretreatment systems is within the 50' buffer zone which DEP pointed out would not be feasible. Mr. Peznola indicated this will be moved.

3. DEP commented on the grass pavers, which he noted was removed after the first meeting based on comments from MEPA.

Mr. Goddard noted that they had reviewed the draft conditions that Ms. Ryder had provided and had some comments on it. He reviewed the changes they were suggesting. One condition regarding invasive plant removal was discussed at length, Mr. Shipe wanted to be sure it was well defined and that a plan should be provided. The Commission agreed and asked Ms. Ryder to work on wording with the applicant that would work.

Mr. Peznola provided the Commission with the EPA study on turbidity standards and suggested that the limit be 280 NTU's rather than 100 NTU's as outlined in the conditions. After some discussion, the Commission said they would look into this and decide what is reasonable. The Commission also asked Ms. Ryder to get input from the City Engineer regarding the DEP comments and to report back to the Commission at the next meeting.

After further discussion, the Commission continued the hearing to January 9th in order to review the above information. If all is in order, the Commission noted that it would be reasonable to expect that the hearing could be closed then.

Certificate of Compliance:

- DEP 212-1028 38 Boivin Dr. Ms. Ryder noted she did an inspection of this property two weeks ago before the snow and all items have been addressed and site is stable. The Commission voted unanimously 4-0 to issue a full Certificate of Compliance for this project.

Discussion/and project updates

- 178 Simpson Dr. – Enforcement Order- this item was continued to the next meeting.
- Letter – Ramp Improvements & related work at I-495 south bound and I-290 west bound - this item was reviewed and placed on file.
- Open Space Plan parcels of Conservation interest. Ms. Ryder will provide information for the next meeting.

Correspondence/Other Business

- 260 Mechanic St.- Ms. Ryder noted that the Commission has received a letter from abutters of this house asking that the city investigate work, which they believe is illegal and occurring at this property. Ms. Ryder will work with the Building Department to investigate these complaints.

Next Meeting – January 9th & 23rd , 2020.

Adjournment

There being no further business, the meeting was adjourned at 8:21 PM.

Respectfully submitted,


Priscilla Ryder
Conservation Officer

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
December 16, 2019
2020 JAN 22 P 1:43

Call to Order

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture (arrived 7:10 pm), Chris Russ and Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, were also present.

1. Meeting Minutes

A. December 2, 2019

On a motion Mr. Fay, seconded by Mr. Russ, the Board voted to accept and file the minutes of December 2, 2019. Matthew Elder abstained. Motion carried.

2. Chair's Business

Mr. LaVenture ran late due to a work commitment. Chair Fenby requested that Mr. Russ serve as Clerk until Mr. LaVenture arrived.

3. Approval Not Required

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

Mr. Russ read the 12-12-19 Engineering review letter of City Engineer DiPersio. On a motion by Mr. Elder, seconded by Mr. Hodge, the Board voted to accept and file the correspondence. Motion carried. In his letter, the City Engineer outlined several points for the Board's consideration to determine whether the plan shows a subdivision as defined in MGL Chapter 41 Section 81L or whether the plan can be endorsed as "Approval Not Required". These points include: 1) The status of the gated, unconstructed portion of Hemenway Street as a public way. 2) Hemenway Street's ability to satisfy the definition of "frontage" for the purpose of endorsement of the ANR plan. 3) Whether the "vital access" standard is met for the new building lot.

Mr. Fay recounted some of the history of this proposed plan which had been before the Board informally in past years. Mr. Fay stated that the City's former City Solicitor had also informally researched Hemenway Street's status as a public way, but a final opinion was not made. Mr. Fay acknowledged the work of Attorney Aykanian in establishing a case for Hemenway St. as a public way. Mr. Fay did not wish to challenge that position at present but did question whether the applicant had established that there was present adequate access to the building lot from the public way providing the requisite frontage. Mr. Fay stated he found no evidence that the apparent illusory access provided by the unconstructed portion of Hemenway St. meets the access standard contemplated by the subdivision control law.

Mr. Fay reminded those in attendance that Fire Chief Breen appeared before the Board (on May 7, 2018) as part of a previous informal discussion. He indicated that access with traditional firefighting apparatus would be problematic. Mr. Fay pointed to a number of cases that use vital access in determining whether a plan qualifies as "Approval Not Required" under subdivision control law. Mr. Fay cited the Hrenchuk case involving frontage on RT 95. There was no actual access to Route 95, the public way on which Hrenchuk claimed his lots had frontage. City Engineer DiPersio asked whether that case involved a limited access highway. Mr. Fay was not completely certain. He mentioned additional case law that supports the need for present and non-illusory adequate access. Mr. Fay stated that the Board faces a dilemma, since this access issue is unresolved, and the Board must take action that evening.

Attorney Aykanian requested permission to address the Board. (granted) While he did not argue with Mr. Fay's case findings regarding access, he requested that the Board take a broader view of the plan. He feels that the Board should consider the access from Concord Rd. as providing safe access, and this plan should not be grouped with other situations involving problematic access issues. Attorney Aykanian acknowledged that his client was unlikely to win on a possible appeal, since courts have consistently backed planning boards' decisions made for the health and safety of the public. Mr. Fay said his research indicates that consideration of vital access from the legal frontage (not Concord Rd.) is valid. He summarized the Board's view that the unconstructed way did not provide practical vital access for emergency vehicles to the proposed building lot. Chair Fenby added that the applicant may wish to withdraw at this point unless adequacy of the public way is established. She asked for the Board's sense on the matter. Mr. LaVenture, Mr. Russ, Mr. Elder and Mr. Hodge indicated they were unlikely to vote for endorsement until the issue of access was resolved. Mr. Fay said the Board wants to act responsibly but provide the applicant with another opportunity to find a case that discounts the (illusory) access of the proposed frontage along Hemenway St. Upon consultation with his client, Attorney Aykanian requested that the plan be withdrawn. The request was so granted.

On a motion by Mr. Elder, seconded by Mr. Fay, the Board voted to move to item 4B to allow for City Councilors' participation in the public hearing on the proposed Commonwealth Heights subdivision.

4. Public Hearings

- B. Definitive Subdivision Application: Marlborough/Northborough Land Realty Trust c/o The Gutierrez Company, 200 Summit Drive, Suite 400, Burlington MA 01803. Engineer: Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532. Description of Property: Middlesex South Registry of Deeds Book 31932 Page 445. (Property described as 10.6 acres located at the northeast corner of Ames St. & Forest St.) Scott Weiss from The Gutierrez Company and Vito Colonna of Connorstone Engineering were in attendance for the presentation.
- Chair Fenby opened the public hearing. Mr. LaVenture read the public hearing notice into the record. Chairperson Fenby provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from Board members. Mr. Elder wished to disclose that while he is not a direct abutter to the project, he could be considered and abutter to an abutter. He wished to disclose this fact out of an abundance of caution.

Presentation:

Scott Weiss of The Gutierrez Company addressed the room. He said the 23-lot subdivision is a resubmittal of a previously approved project in 2005/2006. The project was partially constructed during 2007 and 2008, when drainage and utility work were done to the site. The Gutierrez Company is not a home builder, and the site was previously under contract with Birchwood Development. The developer ran into erosion control issues, and the site was shut down on several occasions to allow for remedial work. "Then the bottom fell out of the economy." The builder walked away from the project and Gutierrez was granted extensions of approval numerous times as they worked on finding a new partner and pursued alternative uses for the site, but these uses required a zoning change that did not occur. Since the site remains zoned residential, this plan will provide for a residential development consistent with current zoning.

Vito Colonna of Connorstone Engineering next addressed the group. Mr. Colonna described the current conditions of the 23-lot project. The site has a general slope down from Ames Street. There are existing sewer connections available off Ames St. and MacKay. Catch basins are installed and are complete. Catch basins were recently cleared of debris.

The plan includes a dead end 1017' roadway (waiver required), which previously was the preferred configuration over the alternative plan that included through traffic to Mackay. The plan also calls for a restricted emergency access roadway.

Speaking in Favor:

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

Speaking in Opposition:

Lorraine Suazo – 161 Conrad Rd. is opposed to the plan. She believes the plan will result in more erosion, traffic and noise and will also have a negative impact on area wildlife. Loss of habitat from surrounding development has resulted in more wildlife in the neighborhoods.

Marguerite Sawyer – 33 Teller St. is opposed to the development. Her home is one of the properties that was affected by the runoff from the previous developer. She said that they clear cut the site, which destabilized the soil. Runoff was significant and ran into the sewer system. She isn't confident that a new developer will do things differently.

John Sawyer – 33 Teller St. is also in opposition.

With no further comment, Chair Fenby closed that portion of the public hearing.

Questions and Comments from the Board:

Ms. Fenby requested that Mr. LaVenture read the City comments into the record. Comments were provided by the following:

i. Board of Health- John Garside, Interim Director of Public Health

The submitted soil management plan is from 2006. Due to the historic use of this property as an apple orchard, the plan must be updated and include the following: 1) a current conditions assessment 2) an updated operational plan for on-site and off-site soil management and 3) the names of current consultants, agents and engineers proposed for use. The Board of Health also recommends any approval be conditioned on the applicant providing funds allowing the City to employ an independent Licensed Site Professional (LSP) to review their operations, monitoring and data.

ii. Conservation- Priscilla Ryder, Conservation Officer

Ms. Ryder's comments state that 1) No wetland permits are required 2) Property falls within the City's Water supply Protection District and must, therefore meet the Total Suspended Solids (TSS) removal requirements for stormwater runoff. 3) Due to the site's prior use as an orchard, the Board of Health has the authority to require that the soils from the property be managed to MA Contingency Plan (MCP) standards based on contaminants found at the site. She also recommends a License Site Professional (LSP) be hired to prepare a new soil management plan as well as funding set aside for an independent LSP to advise the City and provide technical assistance on the plan review and monitoring. Sample conditions from similar projects were provided for the Board's consideration. 4) Due to the extremely high clay content on the site, proper erosion control measures are required. The Conservation Officer recommends the developer be required to hire an erosion control consultant approved by the City Engineer. Suggested language was provided for incorporation at the Board's discretion.

iii. Engineering- Timothy Collins, Assistant City Engineer

Mr. Collins detailed previous approval and subsequent expiration of the subdivision approval in 2017. Mr. Collins provided an accounting of prior work on the site. As-Built Plans documenting the completed work should be submitted to the DPW Engineering Division. The work "not completed" should be included in the new Definitive Subdivision Plan submission.

Mr. Collins detailed the one waiver for a roadway in excess of 500 feet. He states that topographic plans should be updated to reflect the completed site work, and the capacities of the detention basins should be certified (at values equal or greater than the original detention basin design.) Utility stub connections should be field verified and shown on the plans as existing and any adjustments to the municipal utility easements be made.

Engineering concurs with the site recommendations of the Conservation Agent and Board of Health. On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondences. Motion carried.

Mr. Elder supported the recommendations of the City officials, including the updated site topography and the employment of LSPs to provide independent oversight. Runoff must be managed.

Mr. Fay asked if Mr. Weiss was aware of the recommendations of the City Officials. Mr. Weiss indicated he was aware of the recommendations and fully supported the conditions. Mr. Weiss was not with Gutierrez during the previous development but acknowledged the previous issues on the site. They have contacted the same Geotech and environmental professionals used on the Talia project next door. They are comfortable with independent review. They also recognize that site work must be done in stages.

Mr. Fay asked if Mr. Weiss had a current development partner for the site. Mr. Weiss indicated no, not at the present time. Mr. Fay asked what assurances can be provided that the same situation won't occur 3 years from now? Mr. Weiss recounted the request for a zone change that was previously requested to attract a partner. The effort did not result in a zone change. He hopes to complete the subdivision approval and find a new development partner. Mr. Fay asked whether the road will be built by next summer if he obtains approval. Mr. Weiss repeated that they are not builders, and they will be looking for a partner to complete the road and houses as one process. Mr. Fay said this scenario reminded him of the Blackhorse Farm subdivision that had languished for years waiting for a developer to complete it. After providing additional pressure to complete the road, sidewalk, curbing and streetlights, the property started to look like a neighborhood, and people wanted to live there, and houses were built. For that reason, Mr. Fay would be opposed to extensions of an approval if the road was not completed. Mr. Weiss will accept and commit to completing the roadway in the prescribed schedule. Mr. Elder stated that his project support was weakened with the knowledge that there is no developer in the picture. Mr. Weiss expressed optimism that by completing the approval process and permitting the site, a developer would follow. They are trying to work with the only development option they have, since the property is zoned for single-family homes. Mr. LaVenture said the Board will look forward to receiving the details of a plan addressing the City's comments. With no further comments or questions, Chair Fenby closed the public hearing.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to return to item 4A.

4. Public Hearings

- A. Definitive Subdivision Application: Richard and Joan Lavoie, 24 Clearview Drive and Richard Archibald, 18 Clearview Drive. Engineer: Robert Parente, 118 Deerfoot Rd., Southborough, MA 01772.
Description of Property: 18 and 24 Clearview Drive, Marlborough, MA 01752
Prior to the start of the public hearing, Mr. Fay offered a disclosure statement. He resides on Clearview Drive beyond the area of the property abutters. To avoid the potential appearance of conflict, he has made a disclosure on this matter to his appointing authority.

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

Presentation:

Project Engineer, Robert Parente, presented the plan to the Board. The applicants are seeking to resolve a building encroachment issue. The plan was filed seeking Planning Board endorsement modifying the lot lines of 18 and 24 Clearview Dr. and to waive the frontage requirement under current zoning. The stone wall between the properties has served as the lot line for over 20 years.

The resultant lots will look more conforming, but the frontage of 18 Clearview will be reduced to 60.79'. Current zoning is 100'.

Speaking in Favor:

Deb Estes and Catherine Mockus of 52 Clearview both spoke in favor of the plan. The lots are fine, and they have no issues with the reconfiguration. The new lots are aesthetically pleasing and pose no issues to anyone in the neighborhood. They hope the plan is approved.

Bob Archibald also spoke in favor of the plan. He noted this is essentially a paper change that has no bearing on how the properties have been or will be used. Nothing will change in the neighborhood.

Chair Fenby noted she spoke to an abutter from Farm Road. She had no issues with the plan. Ms. Fenby closed that portion of the hearing.

Speaking in Opposition:

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

Questions and Comments from Board Members:

Chair Fenby asked Mr. LaVenture to read the included comments from the Board of Health and Assistant City Engineer into the record. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Motion carried.

In his review, City Engineer Collins noted that Lot 96A would require of waiver of the Planning Board of the frontage requirement of the Subdivision Control Law. The following deficiencies of current zoning requirements are noted: Lot 95A: Area and Lot Shape; Lot 96A: Lot Shape.

City Engineer shared a recent concern expressed by Building Commissioner Cooke. Deficiencies of lot shape and area would require variances from the Zoning Board of Appeals. Under these conditions, he was unsure of a mechanism that the owner would be entitled to apply for a variance, since the buildings are already present. During the 1980's, the Building Dept. issued a permit for the encroaching garage to be built, but the authorization to do so was based on an unintentional, yet inaccurate, representation of the lot lines. Mr. DiPersio said that he Building Commissioner cautioned the homeowners that there could be unintended consequences if the lots were put into non-compliance with existing zoning.

Hypothetically, if one of the structures were to burn to the ground, could they be rebuilt?

The Board discussed this issue. Mr. Russ wondered whether it was cleaner to change the lines with an ANR. Mr. Parente and Mr. Russ conceded that to do so would require very odd lot shapes to make the frontage areas and setbacks work. It may still not be possible to keep the lots in full zoning compliance. Ms. Fenby asked the Board for their sense on a potential vote. Mr. Hodge felt that there seems to be a growing consensus that the plan would pose problems. Mr. LaVenture and Mr. Elder felt that the plan would have their support, but once hearing the Building Commissioner's perspective, the viewpoint was changing. Mr. Fay asked if the Board could recess to see if the Commissioner was available to share his perspective with the Board. On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to take a recess. On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to reconvene the meeting. Motion carried.

Mr. Cooke was not in the building, so the Board discussed further options such as an exclusive use agreement or easement. The lots would remain in zoning compliance. Mr. Parente felt this was preferable to other options that may exist such as a case of adverse possession.

Chair Fenby continued the public hearing. If necessary, the Board would entertain possibly having a special meeting of the Planning Board on January 6th. Mr. Parente will be in touch with Engineering to let them know how his client would like to proceed.

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

A. Goodale Estates - Engineering Bond Determination

On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the December 6, 2019 letter from Assistant City Engineer Collins regarding the security determination for the completion of the Goodale Estates subdivision. The Board further voted to approve the recommended security amount of \$352,000.00. Motion carried. The Board requested that Mr. Gillis prepare the appropriate legal documents and submit the selected form of surety for Legal and Planning Board review.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence

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

On a motion by Mr. Fay, seconded by Mr. Russ, the Board voted to waive the reading of the November 11, 2019 correspondence from Heritage Farm, LLC and to place on file. Motion carried.

10. Unfinished Business (None)

11. Calendar Updates

- A. Commonwealth Heights Definitive Subdivision: Decision due prior to March 26, 2020 meeting of the Planning Board.


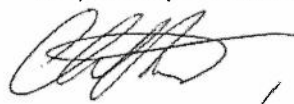
12. Public Notices of other Cities & Towns

- A. City of Framingham (5 Notices)

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

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

Respectfully submitted,



/kih

Christopher Russ/Acting Clerk
George LaVenture/Clerk



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752

Tel. (508) 460-3768

Minutes
January 7, 2020

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67 Florence St. - Special Permit request - ZBA Case # 1463-2019

Applicant-Jaime Vargas representing Olga Guispe Castro of 67 Florence St.

Board Members present were: Paul Giunta-Chairman, Ralph Loftin, Thomas Golden and Robert Levine.

Thomas Pope recused himself because he is serving as treasurer to the Fraternal Order of Eagles at 56 Florence St. which is an abutter to the property in question this evening. Robert Levine signed a "Disclosure of Appearance of Conflict of Interest Form, as required by G.L.c.268A, §23(b)((3), Mr. Levine is a member of the Fraternal Order of Eagles. (form is in Board's file and one was submitted to the City Clerk's Office on 1/8/2020.)

Proposal: The applicant filed an appeal on November 20, 2019. The Nature of the Appeal is the following: According to Chapter 650, Article 41, Table of Lot Area, Yards, and Height of Structures, a **Special Permit** is required for the increase of a pre-existing non-conforming structure by adding a first and second level addition. The propose Lot Coverage will be 36% vs. the existing 34%, required maximum 30%. Front yard setback – existing 18.8 ft. vs. the proposed 18.0 ft., required minimum of 50 ft. Property located at 67 Florence St.

The property is located in Zoning District Business. The lot in question contains 9,372 sq. ft. The lot is rectangular in shape having 66.0 ft. of frontage and extending approximately 142.0 ft. to the rear lot line. The bulk of the lots in the area are similar in size, shape and topography. Most of the lots on the street side of 67 Florence St. have easements located halfway into their lots.

The makeup of the neighborhood is a mixed of single- and two-family homes, with a couple of businesses located near the lot in question. Also, the lot in question is located within a mix of Zoning Districts, i.e. Residence C, Business and Marlboro Village District (MV).

The applicant presented **plans entitled:**

- Plot Plan, 67 Florence St. Marlborough, MA...Contractor Jaime Vargas, Owner-Olga Guispe Castro, 67 Florence St. Marlborough, MA, Prepared and stamped by Bruce Saluk. Dated: Oct. 15, 2019.
- A Renovation and Addition Single Family detached home, Existing and Proposed Basement Level and 1st Floor plans. Dated 9/4/2019 Sheet A-1. Prepared by Viacad, LLC, Design Build, construction Management & Consulting Services.

The Building Commissioner determined thru his denial letter dated Oct. 28, 2019 the existing single-family dwelling is a legal “pre-existing non-conforming structure” with respect to lot size and setbacks, and that the proposed 2 story addition would increase or intensify the non-conformities of said existing structure. The proposed 2 story addition to the existing home would conform to requirements of the City of Marlborough Zoning Code in all respects except for the front yard setback requirement which the existing structure is 18.8 ft. vs. the proposed addition being 18.0 ft. By adding a first and second floor to the proposed addition, they will be increasing the non-conformity.

The applicant, Jaime Vargas, stated the following:

- Would like to modify the existing main structure. Continue using as a single-family house.
- The proposed 2 story addition will be located where the existing bump out is at the left of the house. The proposed 2 story addition will continue to abut the existing driveway as it does now. He would like to just square off the proposed 2 story addition against the existing house.
- The owner of the property is proposing to have her daughter live with her, thus needing more room.
- The existing lot coverage is 34% vs. the proposed 36%. Maximum allowed is 30%. A minimal increase in Lot Coverage.
- There is already an existing driveway on the lot, which becomes a gravel driveway as it extends to the rear of the lot.
- There should be ample off-street parking for the single-family home.
- The proposed 1st floor will contain 1 bedroom, kitchen, bath, family room and dining room. The proposed 2nd floor will contain 4 bedrooms and bath.

The Board discussed the following:

- Lot coverage is increased by 2%. From the existing 34% to the proposed 36%. The Board felt this was a minimal increase.
- The proposed addition will not be any more detrimental to the neighborhood than what already exists.
- The proposed front yard setback of the proposed 2-story addition will be a little less than the existing house.
- Compatibility of the size of the proposed 2-story addition with neighboring properties is very similar.
- The proposed 2-story addition will increase the non-conforming nature of the existing structure, but the improvements to the structure will be esthetically pleasing to the neighborhood.

There was no one to speak in favor or in opposition to the petition.

On a motion by Thomas Golden and seconded by Robert Levine to grant a Special Permit with conditions. Reference ZBA Case # 1463-2019.

After much discussion, the Board voted 4-0 to grant the Special Permit with conditions.

1. The Board finds that the proposed 2 story addition is not any more detrimental to the neighborhood than the existing structure. The house will remain as a single-family home.

2. The proposal is an appropriate use of this lot located in Zoning District Business and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough. The lot in question is located near several Zoning Districts, i.e. Business, Residential C and Marlborough Village District (MV).
3. The Board finds that the Application for the Special Permit does not derogate from the intent or purpose the Zoning Ordinance of the City of Marlborough. The single-family home is located in a Business Zone. Surrounded by residential, business and MV.
4. The neighborhood appears to be of single- and two-family homes with a few businesses in the area. Also, a large area is zoned Marlborough Village District.
5. The Board finds that the proposed use, residential, located in a Business Zone, is in tune with the rest of the neighborhood.

The Board votes 4-0 to issue a Special Permit with the below conditions:

Conditions:

1. **Plans:** The above petition will be constructed according to the plans presented entitled:
(A) Plot Plan, 67 Florence St. Marlborough, MA...Contractor Jaime Vargas, Owner-Olga Guispe Castro, 67 Florence St. Marlborough, MA, Prepared and stamped by Bruce Saluk. Dated: Oct. 15, 2019.
(B) A Renovation and Addition Single Family detached home, Existing and Proposed Basement Level and 1st Floor plans. Dated 9/4/2019 Sheet A-1. Prepared by Viacad, LLC, Design Build, construction Management & Consulting Services.
 2. Any modifications to the approved plans will be subject to review and approval by the Building Dept.
 3. Recording of Special Permit – In accordance with the provisions of Mass. General Laws c.40A, Section 11, the applicant at her expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing the Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the proposed addition. Applicant shall provide a copy of the recorded Special Permit to the Zoning Board of Appeals' office and to the Building Department.
- End of Conditions

30 Maple St. – variance(s) request - ZBA Case #1462-2019
Applicant - Pigs & Coconuts, LLC

Members present were: Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, Thomas Golden and Robert Levine.

The applicant, Shawn Fitzgibbons (the applicant)-owner was present and his attorney, Philip C. Jack of Wise & Jack, LLC, 85 Speen St. Suite 202, Framingham, MA 01701.

It was mentioned there is another owner, Krispen Hopkins, who did not attend. He mentioned the property is in a trust.

Also present were Pam Wilderman-Code Enforcement Officer, and Jeffrey Cooke-Building Commissioner.

30 Maple St. is located in Zoning District Residence C. Map 70, Parcel 453.

Proposal: Variance or variances, or an administrative appeal of the Zoning Denial letter issued by the Building Commissioner dated Sept. 24, 2019, relative to a request to use the existing structures at 30 Maple St. Marlborough, MA (Assessor Map 70, Parcel 453). Zoning District: Residence C, as a five-unit multifamily. Applicant seeks to appeal, to the extent relief is not granted by variance, on the basis of either a pre-existing, non-conformity or not applicable.

Atty. Jack gave a brief history of the past owners of the lot in question:

- According to Atty. Jack currently on the lot is the house containing 2 units and his client is proposing to add a studio apartment creating 3 units in the house. A garage structure is located at the rear of the house which did contain 2 units (an up-stairs and down-stairs unit). Because there were no permits (building, plumbing and electrical) pulled to convert this garage into living units, the Building Dept. ordered the units to be vacated. There is also a dilapidated barn structure located at the rear right corner of the lot, which probably needs to be torn down.
- His clients have not produced a “definitive” plan because the applicant felt the Board/City could weigh in on what they felt would be the best lay out for this lot.

Mr. Fitzgibbons stated the following:

- He would like to work with the neighbors in making improvements to the lot.
- He has walked the neighborhood asking abutters their concerns about screening (i.e. fencing) and about parking.
- He stated there is currently no one living in the garage units. The person the city thinks is living there is currently going thru a divorce and just has his possessions stored in one of the units in the garage. But the Board felt that the garage unit is occupied, even though a person is not actually living there. He also stated he has spent some \$85,000 in renovations.
- He has presented to the Board 2 potential parking plans. In each of the 2 plans, parking and lot coverage cannot be met together.
- It has taken him 2 ½ yrs. to come before the Zoning Board of Appeals. (the Board did not understand what he meant).

Jeff Cooke, Building Commissioner, stated that the back building, the garage, do not have any permits to convert the structure into living units. And also, no occupancy permits were issued for the garage units. Jeff stated the plumbing and electrical were disconnected, but it appears it got re-connected.

Jeff also stated he had enough information, in the plans presented to him for review, to create a “denial” letter to the applicant. It is up to the Board to decide if they need more information on a plan to make an informed decision. It is not the Board’s responsibility to design it for them. There are issues on their lot like i.e. type of fencing and the parking issues in which the applicant can remedy on their own.

Jeff calculated that the applicant would need a total of 15 parking spaces for a proposed 5 units with 10 bedrooms. (One space for each unit and one space for each bedroom). It was not clear how many bedrooms were being proposed.

Pam Wilderman stated the following:

- The previous owner, Mr. Wagner bought said lot for their son.
- Plumbing and electrical were installed in the (garage) with no permits and was being used as residential living space.
- She got a search warrant to go onto the site to inspect what was on the site. She went this route, because she got no response from the owners to come onto the property.
- This is a small lot and Maple St. is a very busy street.

There were several abutters present who spoke in opposition to the petition:

- Oliver Bisson – 19 Warren Ave. – He thought the city is lax about inspecting certain properties that do not meet code. He feels the applicant is just into making money off his rentals.
- Mariela & Luis Velasquez – 11 Maddox Rd. – We have lived in this house for 20 yrs. We have 2 children. The rear barn is falling onto our property. We have tried calling the owners of 30 Maple St., but never heard from them. There is a pit bull running freely at 30 Maple St. We are worried when our children are out playing. We had to repair the fence because the owners of 30 Maple St. did not do it. We have made complaints about noise, parking and the dilapidated barn, and these concerns were never addressed by the owners. The lot has been cleaned up a little, and the owner has called us back. We would like to see some type of screening between our lot and the lot in question. It would be nice to see the barn taken down.
- Mr. Trainer – 11 Warren Ave. – The lot should go back into being a 2-family house. The applicant purchased the lot knowing it is a 2-family. The owner is just looking to make more money out of rentals by adding more units. What is currently existing at 30 Maple St. has diminish the looks of the neighborhood. I will generate a petition against the owners if they are proposing 5 units.

There was no one to speak in favor of the petition.

Paul Giunta, chairman, stated that the problem he has with this case is that there are many issues and violations which have not been resolved with the Building Dept. and he feels the Board cannot move forward in hearing this petition until all these issues and violations with the Building Dept. have been resolved. Until such time as the Building Dept. is satisfied with their concerns about the property and a “definitive” plan is

presented to the Building Dept. for their review is when the Board feels comfortable in going forward with this case.

Atty. Jack stated that they can do up a “definitive” plan as requested. But we cannot meet parking and lot coverage together.

The Board stated that the applicant has to draw up one “definitive” plan showing what the applicant is proposing and present it to the Building Dept. for their review. On that note, the Board made a motion to continue the public hearing to a future date.

A motion was made by Paul Giunta and seconded by Ralph Loftin to continue the public hearing to Feb. 25th, 2020 at 7:00 PM.

The Board voted 4-0 to continue to Feb. 25th, 2020 at 7:00 PM.

Because Feb. 25, 2020 goes beyond the maximum required 100 days for the Board to vote, the Board had the applicant sign a “Time Limit Extension Agreement form”. The extension of time for a vote/decision is Feb. 28th, 2020. (form is in Board's file).


The Board would like the following to happen before the Feb. 25th hearing date:

- The applicant will work along with the Building Dept. to satisfy their issues/violations at 30 Maple St.
- A “definitive” plan will be presented to the Building Dept. for their review, prior to returning to the Zoning Board of Appeals. The number of proposed units and bedrooms will be marked clearly on a plan and the applicant will clearly state what the petitioner is seeking before the Board.

Hearing is continued to Feb. 25, 2020.

Adjournment

Respectfully submitted,


Paul Giunta – Chairman
Zoning Board of Appeals