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FEB 05 2018



BOXBOROUGH PLANNING BOARD
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PLANNING BOARD
TOWN OF BOXBOROUGH

John Markiewicz, Chair Abby Reip, Clerk Nancy Fillmore Eduardo Pontoriero Hongbing Tang

700, 750, & 800 MASSACHUSETTS AVENUE SITE PLAN APPROVAL APPLICATION

PLANNING BOARD REQUESTS TO APPLICANT – January 8, 2018

APPLICANT RESPONSES – February 4, 2018

1. Stow Road Emergency Access Easement – Overburdening

The project site as depicted on the site plan (excluding Parcel A), appears to be an assemblage of smaller parcels presently owned by Boxborough Town Center, LLC, and one parcel owned by Mane Realty Trust (the “Mane Parcel”). The Mane Parcel, described in the deed recorded in Book 19267, Page 606, appears to form the northwest-most corner of the project site, and include the proposed main access to the project from Route 111/Massachusetts Avenue.

The site plan proposes an emergency access roadway serving the project extending from the project site through a 50 foot wide access easement over the adjoining Sheriff’s Meadow Condominium property to Stow Road (the “Access Easement”). The Access Easement was established by reservation in the deed dated April 14, 1995, and recorded with the Registry in Book 25286, Page 52. By its terms, the easement is made appurtenant to and benefits other land of the Grantor (Town Center Limited Partnership, the predecessor in interest to Boxborough Town Center, LLC). which land appears to include the project site less the Mane Parcel and another parcel acquired in 1997.

The Mane Parcel does not appear to be benefitted by the Access Easement. Applying the law on overburdening of easements, the Access Easement may not be used by Town Center Limited Partnership and its successors and assigns (Boxborough Town Center, LLC) to pass to or from the Mane Parcel. Because the main access to the Project is contained within the Mane Parcel, it appears use of the Access Easement to serve the project will overburden the Access Easement.

The Planning Board requests the Applicant to provide a legal opinion explaining why use of the Access Easement to serve the project will not constitute overburdening of that easement.

First, the Applicant reminds the Board that any alleged “overburdening” of the Access Easement is entirely a question of private property rights, not public rights. As such, the Board is not the proper venue for resolution of these rights. See, e.g., Hahn v. Planning Board of Stoughton, 24 Mass. App. Ct. 533 (1987)(“[T]he planning board

is not authorized to determine the existence of easements or to settle other property disputes.”)

Second, the Access Easement is reserved exclusively for emergency access. Pursuant to G. L. c. 89, § 7, “[t]he members and apparatus of a fire department while going to a fire or responding to an alarm, police patrol vehicles and ambulances, and ambulances on a call for the purpose of hospitalizing a sick or injured person shall have the right of way through any street, way, lane or alley.” The only vehicles that will use the access Easement are the Town’s fire, police, and other public safety vehicles, and then only in an emergency. Without conceding the point, the responders can use the Access Easement to reach an emergency on the Town Center parcel and leave the way they came in without any “overburdening”. The responders can also use the main entrance to reach the Mane and Town Center Parcels, again without any overburdening.

Finally, first responders are generally shielded from trespass claims when engaged in the performance of their duties. See, e.g., G.L. c. 48, s. 27.

2. Stow Road Emergency Access Easement – Zoning Freeze

The Access Easement is located on land that is not part of the land shown on the definitive subdivision plan endorsed by the Planning Board on April 28, 2014 and recorded on April 24, 2015 as Plan No. 294 of 2015 (the “Subdivision Plan”). The applicant contends that the land shown on the Subdivision Plan is entitled to a plan freeze under G.L. c.40A, §6 and is thus governed by the zoning bylaws in effect as of May 9, 2013. The Access Easement appears to have been appurtenant to most of the land shown on the Subdivision Plan when the zoning freeze went into effect.

The Planning Board requests the Applicant to provide a legal opinion explaining why use of the Access Easement is entitled to the plan freeze, notwithstanding that the Access Easement is not located on land shown on the Subdivision Plan.

The Access Easement is a private property interest arising from an express reservation in the 1995 deed from Town Center Limited Partnership to Sheriff’s Meadow Development Corp. Under Section 8002 of the Zoning By-law, “any alteration of a lot” requires site plan approval. The installation of the emergency access road would trigger Section 8002, but it does not require a variance or special permit. Thus, the Applicant is entitled to exercise its rights to build the emergency access road after site plan approval. In short, whether the freeze extends to the Sheriff’s Meadow parcel is irrelevant.

3. Location of Wells Serving the Project

The site plan shows two public wells serving the project located on the project site immediately adjacent to Parcel A. Use of Parcel A is not entitled to the plan freeze and must comply with current zoning. The depicted location of the wells is not established on the site plan by survey.

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The Planning Board requests the Applicant to provide a plan stamped by a registered surveyor depicting the surveyed location of the wells in their entirety and all related improvements in relation to Parcel A.

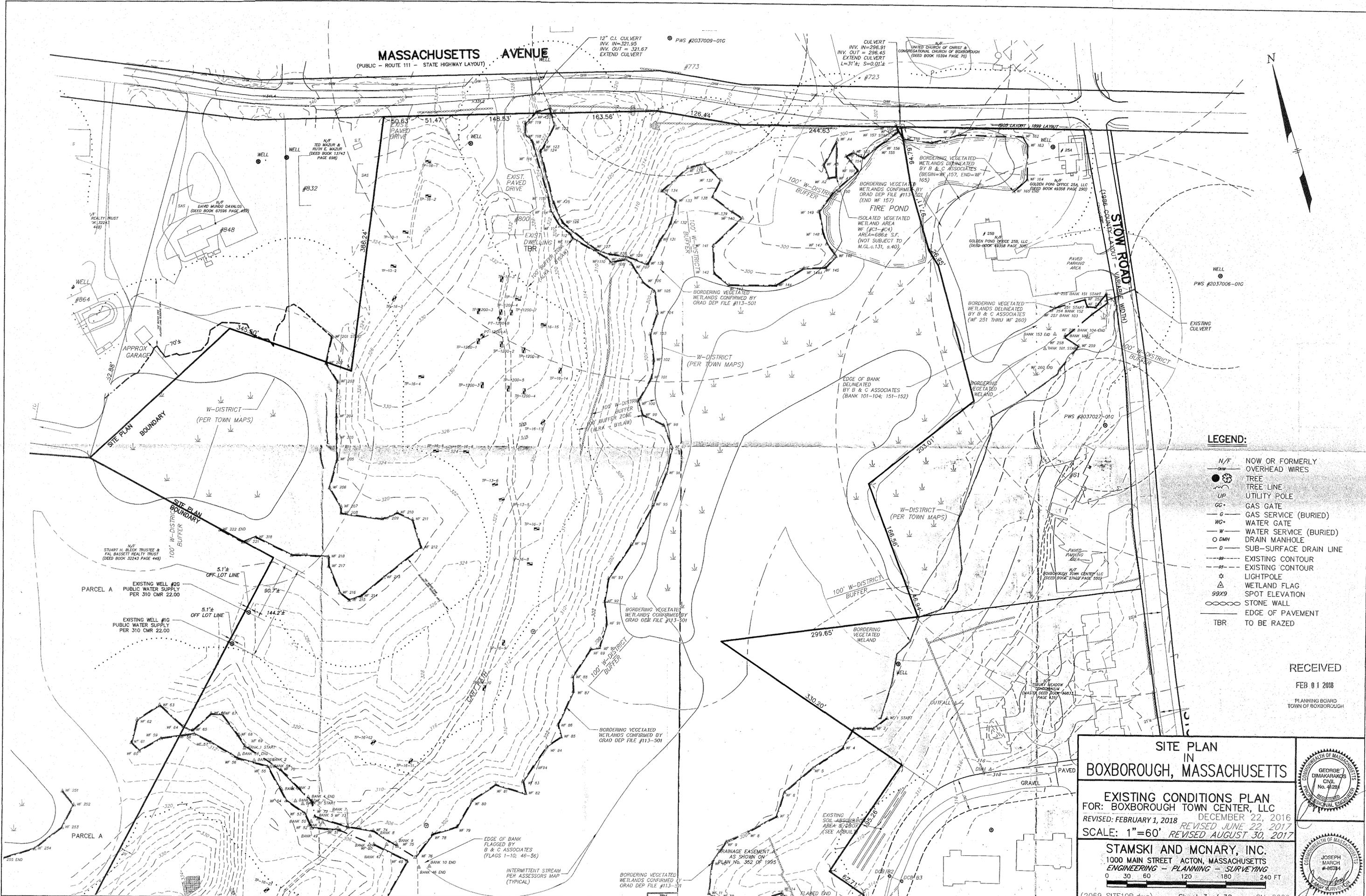
Plan submitted under separate cover.

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TOWN OF LANSING

MASSACHUSETTS AVENUE
(PUBLIC - ROUTE 111 - STATE HIGHWAY LAYOUT)



LEGEND:

- N/F NOW OR FORMERLY OVERHEAD WIRES
- TREE LINE
- UP UTILITY POLE
- GG GAS GATE
- G GAS SERVICE (BURIED)
- WG WATER GATE
- W WATER SERVICE (BURIED)
- DMH DRAIN MANHOLE
- S SUB-SURFACE DRAIN LINE
- EXISTING CONTOUR
- - - EXISTING CONTOUR
- ☆ LIGHTPOLE
- △ WETLAND FLAG
- 99X9 SPOT ELEVATION
- STONE WALL
- EDGE OF PAVEMENT
- TBR TO BE RAZED

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TOWN OF BOXBOROUGH

**SITE PLAN
IN
BOXBOROUGH, MASSACHUSETTS**

**EXISTING CONDITIONS PLAN
FOR: BOXBOROUGH TOWN CENTER, LLC**

REVISED: FEBRUARY 1, 2018 DECEMBER 22, 2016
REVISED JUNE 22, 2017
SCALE: 1"=60' REVISED AUGUST 30, 2017

STAMSKI AND MCNARY, INC.
1000 MAIN STREET - ACTON, MASSACHUSETTS
ENGINEERING - PLANNING - SURVEYING

0 30 60 120 180 240 FT

(2069 SITE10B.dwg) Sheet 3 of 30 SM-2069

COMMONWEALTH OF MASSACHUSETTS
GEORGE DIMAKARAKOS
CIVIL
No. 4128
REGISTERED
PROFESSIONAL ENGINEER

COMMONWEALTH OF MASSACHUSETTS
JOSEPH MARCH
No. 86534
REGISTERED
PROFESSIONAL SURVEYOR