

FRAMINGHAM  
MASSACHUSETTS

Dr. Yvonne M. Spicer  
Mayor

Thatcher W. Kezer III  
Chief Operating Officer

OFFICE OF THE MAYOR  
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Framingham, MA 01702

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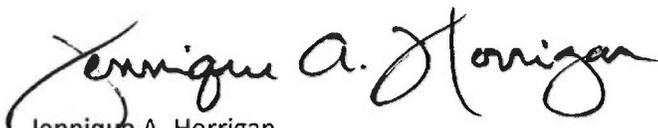
Framingham City Clerk  
150 Concord Street  
Framingham, MA 01702

January 10, 2020

Dear City Clerk,

Enclosed is the Mayor's Decision upon Findings for South Middlesex Realty Group, LLC (SMRG), Pursuant to Section V.I.4.d of the Framingham Zoning By-Law for the Property Located at 43, 43B, and 45 Nixon Road.

Decision upon Findings dated January 10, 2020. Please stamp this decision as received by your office today, January 10, 2020.

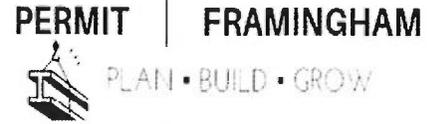


Jennique A. Horrigan  
Executive Assistant to the Mayor

2020 JAN 10 P 12:45  
CITY OF FRAMINGHAM  
CITY CLERK'S OFFICE



CITY OF FRAMINGHAM  
MAYOR YVONNE M. SPICER



PUBLIC  
150 CONCORD STREET, FRAMINGHAM, MA  
01702

2020 JAN 10 P 12:45  
CITY OF FRAMINGHAM  
CITY CLERK'S OFFICE

**Decision upon Findings for South Middlesex Realty Group, LLC (SMRG)  
Pursuant to Section V.I.4.d of the Framingham Zoning By-Law  
for the Property Located at 43, 43B, and 45 Nixon Road  
Decision upon Findings dated January 10, 2020**

**GENERAL PROPERTY INFORMATION**

Property Address: 43, 43B, and 45 Nixon Road  
Assessor's Information: 012-29-6807-000; 012-29-7786-000; 013-39-1865-000; 013-39-1309-000; 006-30-0359-000  
Zoning District: Single Family (R-4)

**GENERAL PROJECT CONTACT INFORMATION**

Applicant/Property Owner and Address: South Middlesex Realty Group, LLC, 665 Cochituate Road, Framingham, MA  
Project Contact and Attorney: Attorney George F. Connors, Connorstone Engineering  
Project Engineer: Vito Colonna, P.E., Connorstone Engineering

**LEGAL AD & PUBLIC HEARING INFORMATION**

MetroWest Daily News Run dates of the Legal Ad: (more than 14 days prior) September 25, 2019 and (7 days prior) September 30, 2019  
Date of abutter/7 Abutting municipalities/parties of interest mailing: September 23, 2019  
Date of opening public hearing: October 7, 2019  
Date of continued public hearing: December 10, 2019

**PLANNING BOARD PLAN APPLICATION INFORMATION**

Date of Plan: September 3, 2019, revised through November 11, 2019

**PROJECT DESCRIPTION**

South Middlesex Realty Group, LLC ("SMRG") proposes to construct 24 units of ACTIVE ADULT HOUSING [i.e., age-restricted] in twelve duplex structures for which water and sewer "will rely on: (1) an on-site Community Well and attendant distribution system (regulated by Massachusetts DEP), and (2) an on-site subsurface sewage disposal system (Septic System) regulated under Mass. DEP Title 5 and the local Board of Health Regulations."

**APPLICABLE BYLAW**

Framingham Zoning Bylaws [Active Adult Housing] Article V.I.4.d in effect prior to April 16, 2019 provides that:

Any person intending to submit an application for an Active Adult Housing Development shall have a pre-application conference with the full Planning Board that has been noticed by a community notice sign posting on the property, in the local newspaper at the Applicant's expense and by mail to abutters and to town meeting members in the precinct at which time the applicant shall describe the proposed plan and any impacts to the parcel of land that will be required in order to file a complete application. If the Active Adult Housing Development is proposed to have private wells and sewage disposal systems on site, the Applicant shall submit the proposal to the Board of Selectmen for the purpose of determining by majority vote whether to allow a well or septic system on the site. The Board of Selectmen acting as the Water and Sewer Commissioners shall hold a public hearing within 45 days of said submission. No tree removal, no utility installation, no ditching, no soil or percolation testing, no well testing, no grading or construction of roads (temporary or otherwise), no grading of land or lots, no excavation, no dredging or filling, and no construction of buildings or structures shall be done on any part of the development site until the proposal has been reviewed at the pre-application conference and the Board has given its approval for the required work (emphasis added).

Under the City's Charter, the Mayor, as the successor executive to the Board of Selectmen, acts as Framingham's Water and Sewer Commissioner.

On July 24, 2019, George F. Connors, Esq., on behalf of SMRG, served a written request to the City for a hearing before the Mayor "pursuant to Framingham Zoning Bylaws [Active Adult Housing] Article V.I.4.d in effect prior to April 16, 2019 "for the purpose of determining . . . whether to allow a well or septic system" at 43, 43B and 45 Nixon Road ("the Site") and requested that such hearing be held within 45 days, i.e., no later than September 9, 2019. Attorney Connors' request for a hearing before the Mayor followed a June 20, 2019 meeting with the Planning Board to review SMRG's pre-application for review of an Active Adult Housing development at the Site. The hearing date was extended to Monday, October 7, 2019 by mutual assent of the applicant and the Mayor.

Enclosed with Attorney Connors' July 24, 2019 letter were SMRG's "WATER and SEWER PROPOSAL SUPPORTING INFORMATION" to support SMRG's proposal to construct 24 units of ACTIVE ADULT HOUSING [i.e., age-restricted] in 12 duplex structures for which water and sewer "will rely on: (1) an on-site Community Well and attendant distribution system (regulated by Massachusetts DEP), and (2) an on-site subsurface sewage disposal system (Septic System) regulated under Mass. DEP Title 5 and the local Board of Health Regulations."

## PUBLIC HEARING

On October 7, 2019, Mayor Spicer opened the public hearing for the Site in accordance with Framingham Zoning By-Law, Section V.I.4.d. in effect prior to April 16, 2019 . The hearing, which was held in the Blumer Room of the Memorial Building, was continued to October 28, 2019 without testimony, and further continued to December 10, 2019. The following members of municipal staff were present during the hearing and continued hearing to assist the Mayor:

- Eric V. Johnson, P.E., City Engineer, Department of Public Works;
- Amanda Loomis, AICP, Planning Board Administrator;
- Amanda Zuretti, Esq., Office of City Solicitor, Petrini & Associates, P.C.;
- Michael K. Terry, Esq., Office of City Solicitor, Petrini & Associates, P.C.;
- Samuel S. Wong, PhD, Director of the Health Department;
- Brian T. Smith, Health Department;
- Blake D. Lukis, Deputy Director of the Department of Public Works; and
- Robert McArthur, Conservation Administrator.

SMRG was represented by its Manager, Rick Smith and its counsel, George F. Connors.

### Summary of Public Hearing Minutes

On October 7, 2019, Mayor Spicer opened the hearing and swore in all witnesses providing testimony. After the Applicant's presentation and questioning by members of municipal staff, the Mayor received public comment in oral and written format. The hearing was continued by written agreement of SMRG to December 10, 2019. At the December 10, 2019, continued hearing, the Mayor swore in witnesses who provided testimony. Further submittals were received from the applicant and members of the public by electronic mail until 7:00 p.m. on December 17, 2019. The October 7, 2019 hearing and December 10, 2019 continued hearing were video recorded. The video record and minutes of the hearing and continued hearing, and as stated as the conclusion of the hearing, those submittals received by December 17, 2019 at 5:00 p.m., are incorporated by reference into these Findings and Decision.

## FINDINGS

Having reviewed the applicant's submittals and testimony, the correspondence from municipal departments and public comment, I find as follows:

1. Four wells identified as PW-1, PW-2 and PW-3 and another well serving 45 Nixon Road currently exist on the Site.
2. The well identified as PW-4 is not on the Site but is located on land owned by the Sudbury Valley Trustees.

3. On September 21, 2005, Massachusetts Department of Environmental Protection ("MassDEP" or "Massachusetts DEP") approved well PW-1 as a source for a Community Public Water System proposed by Nexum Development Corporation ("Nexum") with a daily flow of 8,640 gallons per day (gpd) in response to application number X282572, which was prepared by Northeast Geoscience, Inc. ("NGI") for Ericon Limited prepared under the Seal of John L. Wattu, a Massachusetts Registered Professional Engineer number 40184.
4. Bedrock well PW-1 is six inches in diameter and 1,225 feet deep. The well was drilled in June-July 2003 and hydrofractured in August 2003. Well PW-1 is grouted to a depth of 30 feet, of which 28 feet is competent bedrock.
5. The Community Public Water System design approved by MassDEP on September 21, 2005 called for PW-1 to be equipped with a pitless adapter and a 3 horsepower, 7.5 gpm Webtrol Model 202S3025 submersible pump set at a depth of 675 feet. The well water will be pumped through a meter into a 23,000-gallon atmospheric storage tank. Three centrifugal booster pumps will be used to pump water from the storage tank into the distribution system. Primary disinfection treatment via sodium hypochlorite will be provided before the water enters the atmospheric storage tank. Booster chlorination will be provided following the tank as needed to provide a suitable chlorine residual, paced to a flow meter that measures the combined flow from the three booster pumps. A corporation cock will be provided in the pumping station so that corrosion control treatment can be provided should it become necessary in the future.
6. MassDEP's September 10, 2015 letter indicated that "This New Source Approval is good for 5 years. If the proponent has not begun construction of the permanent pumping facilities within 5 years of the date of this letter, the approval will be considered to have lapsed. After that, DEP will require portions of the New Source Approval process to be conducted as it deems necessary before granting a new approval -this will likely include requirement of another pumping test to provide updated water quality data."
7. The adequacy of the water supply at 45 Nixon Road was litigated first in a lawsuit filed on April 16, 2004 titled Nexum Development Corporation v. Spack, Member Planning Board Town of Framingham et al., Civil Action No. 0481CV01628. The Superior Court upheld the Planning Board's denial of special permit and the resulting cluster subdivision plan necessary to construct an Open Space Residential Development Special Permit with detailed findings regarding the adequacy of the water supply. The findings in Civil Action No. 0481CV01628 are incorporated herein by reference.

8. The Massachusetts Appeals Court upheld the Planning Board's Decision in the March 18, 2011 decision in Nexum Dev. Corp. v. Planning Bd. of Framingham, 79 Mass. App. Ct. 117 (2011) which is incorporated herein by reference.
9. On February 28, 2013, the Planning Board endorsed an Approval Not Required Plan for the land at 45 Nixon Road titled "Plan of Land at 45 Nixon Road in Framingham, Massachusetts" prepared by Connorstone Consulting Civil Engineers and Land Surveyors with a revision date of Jan. 2, 2013, which plan was recorded with the Middlesex South District Registry of Deeds as Plan No. 659 of 2013 on August 27, 2013.
10. On March 7, 2013, Paul Croft and Nexum filed an application with the Planning Board for approval of the Definitive Subdivision Plan for Ford's Hill Estates at 43B and 45 Nixon Road. The Site Plans for a Definitive Subdivision known as "Ford's Hill Estate" were prepared for Nexum Development Corp and Paul Croft by Connorstone Consulting Civil Engineers and Land Surveyors dated Jan 3, 2013 (Planning Board Document #153-13), and were later revised on May 23, 2013 (Planning Board Document #347-13).
11. The adequacy of water supply was the basis of a second suit in the Middlesex Superior Court filed on July 3, 2013, captioned Croft, Paul R. et al. v. Long, Christine, Member, Framingham Planning Board, Christine A. et al., Civil Action No. 1381CV02845 challenging Section F, Conditions 35 through and including 42 of the Planning Board's Definitive Plan Approval. Conditions 35 through and including 42 required in pertinent part that the applicant to "perform pump tests in mid-August to mid- September of 2013 on each of the eight lots in the Subdivision, and also perform a comprehensive hydrologic study to ensure that adequate water [quantity and quality] exists" for the dwellings located within 350 feet of the proposed subdivision boundary; that the applicant fund replacement of wells negatively impacted by its project; and that for those properties "whose water quality and/or quantity cannot be resolved by the installation of new wells, the Applicant shall be responsible for the entire cost of a thorough technical review and analysis, installation of public water system" to serve them.
12. On February 10, 2017, the appeal in C.A. No. 1381CV02845 was terminated by an agreement of the plaintiff to dismiss the action with prejudice and without award of costs or fees to any party pursuant to MRAP 29(b).
13. In 2017, NGI contacted MassDEP in 2017 regarding SMRG's proposed use of PW-1 for its senior housing development for 45 Nixon Road. NGI stated that PW-1 was pumped to waste for four weeks in early 2017 to obtain updated water quality analyses of the well water. NGI's Hydrogeologic Study concluded that "Laboratory results of water samples from Well PW-1 collected in January 2017 confirm that the