

RECORD OF THE MEETING OF THE BROOKLINE SCHOOL COMMITTEE ON **TUESDAY, MAY 19, 2020** AT 7:00 PM (REMOTE VIA WEBEX). STATUTORY NOTICE OF THIS MEETING WAS FILED WITH THE TOWN CLERK.

ANNUAL TOWN MEETING WARRANT ARTICLES JOINT PUBLIC HEARING WITH THE PLANNING BOARD AND SCHOOL COMMITTEE

Public Hearing and possible vote on the following warrant articles for the 2020 Annual Town Meeting: Articles 9-15 Newbury College Land Use & Land Acquisition

Chair Greene announced the public hearing on the Newbury college articles.

Steve Heiken opened the hearing for the Planning Board.

Planning Board attendees: Steve, Heiken, James Carr, Linda Hamlin, Blair Hines, (recused from discussion as a member of the architect team), and Mark Zarrillo.

Julie Schreiner Oldham opened the hearing for the School Committee.

School Committee members: Julie Schreiner Oldham, Sharon Abramowitz, Suzanne Federspiel, Barbara Scotto, Helen Charlupski, David Pearlman: Staff, Ben Lummis and Mary Ellen Normen.

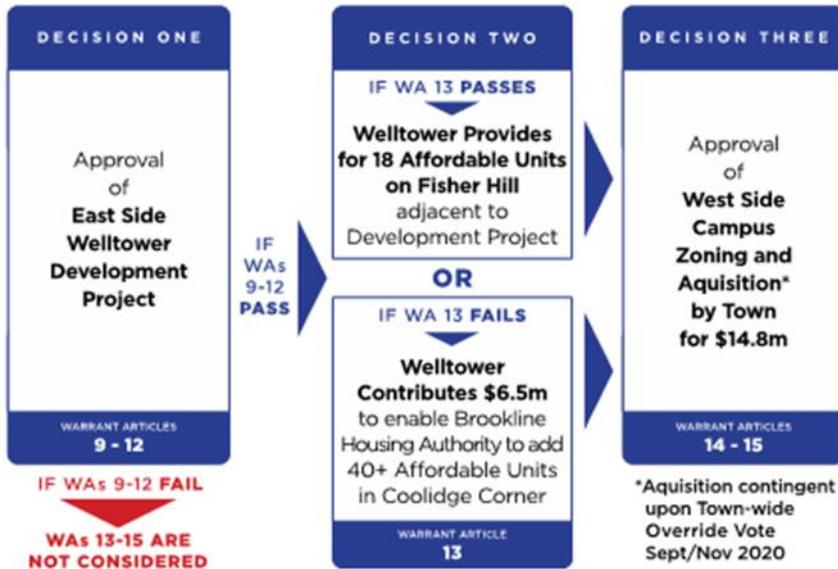
Neil Wishinsky, Newbury Acquisition Committee member made a brief introduction explaining that Welltower purchased the Newbury campus property in Sept 2019, and approached the town with an opportunity to acquire the west campus. The Select Board formed the Newbury Zoning committee, and from that came a package of warrant articles, that boil down to three decisions:

**Welltower-Newbury College
Campus Warrant Articles**

Select Board

5/12/2020

Newbury Warrant Article Decision Process



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Neil Wishinsky:

Decision one - Do we approve the Welltower development project; if yes continue with articles 9-12.

Decision two - How to deliver affordable housing Article 13.

Decision three - Approve to acquire the West Side Campus with a debt exclusion attached Articles 14-15.

DECISION 1

Presentation Outline

- Introduction and Overview
- Welltower Outlook
- Financial Feasibility Analysis
- Project Overview
- Fiscal Benefits
- Proposed Zoning

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Overview

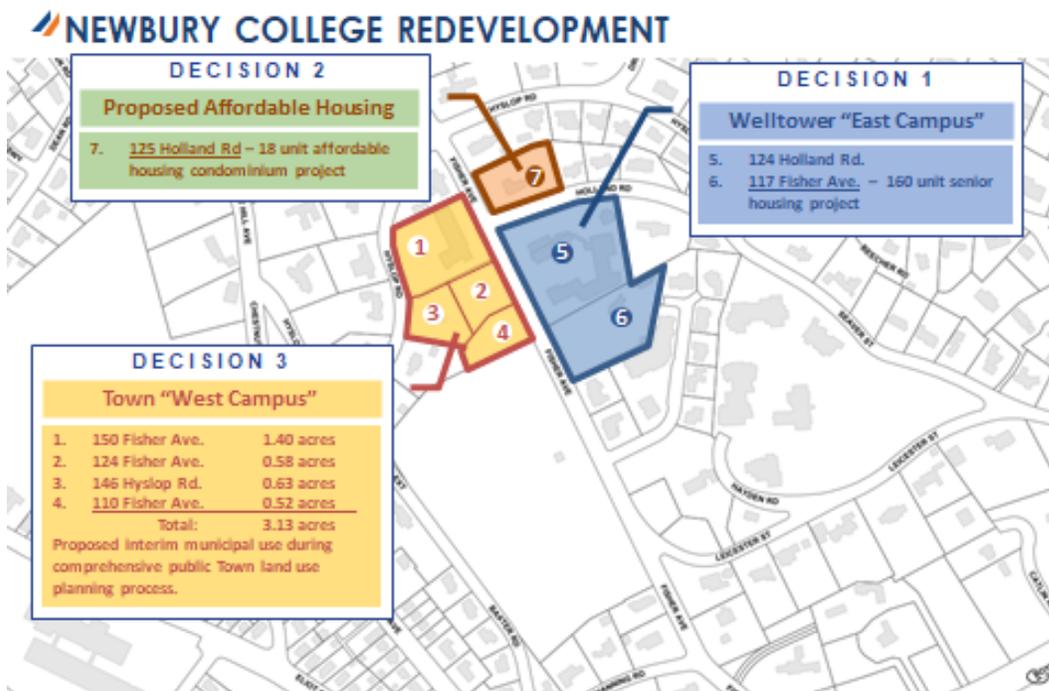
- Welltower, Inc purchased the Property in September 2019 for \$34 Million.
- After the purchase, Welltower approached the Town to propose a Senior Living Community and a possible Town acquisition of the former West Campus

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Overview (Continued)

- Newbury Zoning Committee (NCZ) consisting of real estate professionals, many neighbors, and 2 Select Board Members.
- 10 public meetings of the NZC, 7 of the Architectural Subcommittee and 8 of the Negotiations Subcommittee.
- “Package” of articles was unanimously voted by the NCZ on March 4th. Result of over 8 months of negotiations between the Town and Welltower.

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Map showing where the decisions are.

DECISION 1

Senior Living Community

- Approximately 193,000 square foot senior living community. – 1.15 FAR. About 2x existing buildings
- 160 luxury market rate senior rental units, with approx. 80 independent living, 40 assisted living and 40 memory care units
- 98 parking spaces, 43 of which will be sheltered.

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Adaptive Reuse of Mitton House



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Jennifer Dopazo Gilbert introduced their team: Steven Schwartz, Cheryl Fever, Nicolas Rumanes, Michael Schonbrunn, Ellen Anselonei, Mary McCarthy. Cheryl Fever, Vice president for Investment gave some brief remarks relating to the COVID19 crisis, and the impact on senior living facilities. Their business continues to be up and running and their business is well capitalized. We stand behind our commitment to continue all development and constructions. She reviewed the extra precautions the company is taking to ensure safety protocols during this crisis.

Welltower would like to keep this MOA moving forward.

DECISION 1
Senior Living Community

- Major impact project requiring a Design Advisory Team (DAT).
- Design guidelines to inform the DAT already reviewed by the Planning Board.

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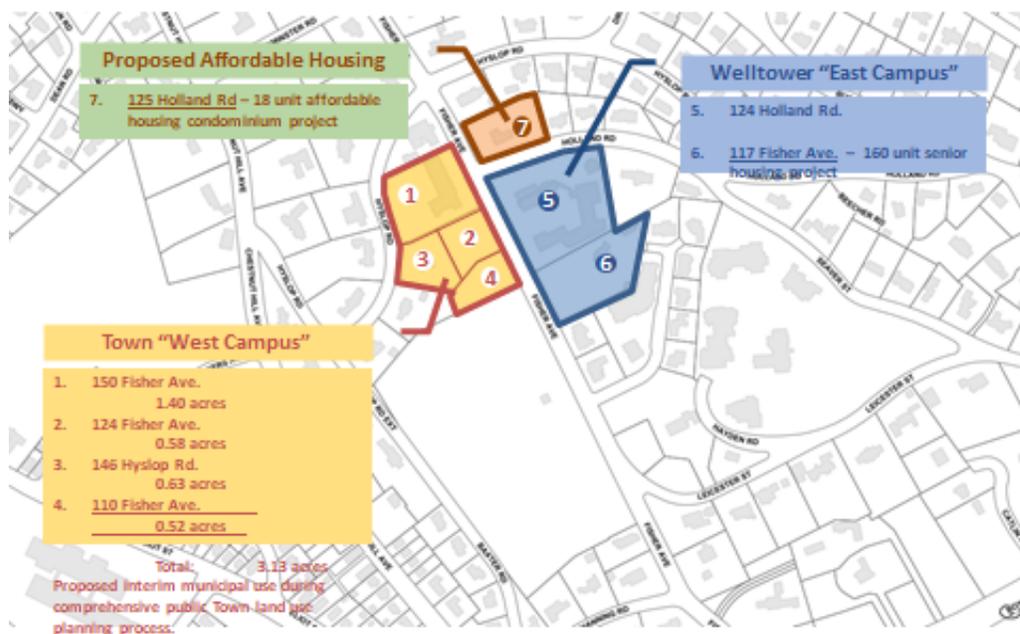
Pam McKinney, Financial Analysts for the Town continued the presentation.

DECISION 1
Financial Feasibility Analyses

- Pam McKinney - the Town's independent real estate financial consultant for a number of negotiated overlay zones.
- Reviewed Welltower's development pro forma per an NDA.
- Is the proposed unit mix and project scale necessary to enable operational efficiency and financial feasibility?

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NEWBURY COLLEGE REDEVELOPMENT



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WELLTOWER PURCHASE of ENTIRE CAMPUS

- Strong demand was exhibited during the sale process by educational and other non-profit institutional buyers for both East & West parts of the campus.
- Restrictions imposed on the sale by the AG & Newbury College required - a quick close, no contingencies for permitting or finance, and the sale of campus in whole to a single purchaser – all of which depressed the pricing.
- The result - Welltower acquired the Newbury College campus in late 2019 for a total purchase price of \$34 million.
- Without these restrictions, a higher price – greater than \$34M – likely would have been achieved.

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HIGHEST & BEST USE and MARKET VALUE OPINIONS

- Highest & Best Use of the East and West Campus parcels is the existing "Dover-eligible" institutional use.
- Highest and Best Use of 125 Holland Road – is for Single Family Use
- East Campus - The proposed change in zoning to allow Sr. Housing Use of the East Campus does not confer a land value premium to that parcel (Value is \$17.0M as a Sr. Housing Site v. about \$19M in the existing institutional use).
- West Campus - The negotiated price for the West Campus represents a 15% to 20% discount to its market value under the institutional highest and best use (\$14.8M negotiated price v. \$17M to \$18.5M to the institutional market).
- Feasibility – Further discounting (a lower price for West Parcel or a reduced Senior Housing project scale on West Parcel) imperils the feasibility of the project.

NOTE: The opinions of market value contained herein were presented in previous public sessions, predating COVID-19.

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OTHER BENEFITS OF THE PACKAGE

- The proposed Welltower project and associated proposed zoning overlay, as contemplated by the parties in late 2020 / early 2019, results in the creation of a package of benefits for the Town:
 - **Low-intensity use** relative to educational user alternative;
 - Creation of **high-quality senior housing product** with limited local availability and high level of local demand;
 - Tax-certainty along with **near- and long-term fiscal benefit** to the Town from a previously tax-exempt property;
 - Opportunity for the Town to **acquire land** and facilities **at a discount** OR **share in sale revenue** should the Town elect not to purchase the West Campus;
 - Path to the creation of **new onsite affordable housing** in the Fisher Hill neighborhood of Brookline or elsewhere;
 - Commitment by Welltower and Balfour to a host of **additional community benefits** as outlined in the MOA.

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Study Highlights

Market & Development Review

Market Conditions

- ❖ Demand for both Independent and Assisted Living units in Brookline and the surrounding market area is strong
- ❖ Few competitive new units have been delivered in recent years
- ❖ Demand for high quality senior living product outstrips supply and is trending higher

Market Positioning

- ❖ The site is extraordinarily well positioned to capture Brookline senior housing demand which is growing and has the ability/propensity to exercise choice
- ❖ The proposed program is a match to the market and the requirements for operational feasibility in terms of its Independent and Assisted Living mix, unit sizes and counts

Study Highlights

Market & Development Review

Proforma Review

- ❖ Rents and occupancy by bed type are consistent with best in class market offerings
- ❖ Operating ratios and costs are consistent with other high-rent projects in the market
- ❖ Operating margins match market expectations for projects with similar RevPOR.
- ❖ Project development costs are consistent with best in class product expectations
- ❖ Revenue-operating (staffing) cost-development cost assumptions applied in the Welltower proformas meet the market but most important, are internally consistent
- ❖ The stabilized returns for the project as proposed (revenues/cost) are now razor thin – well below 6.5% after Town negotiations - in a market that targeted 7.0% even before the recent COVID-19 crisis (see my comments that follow)

Conclusions

Market & Development Review

Key Market/Financial Take-Aways

Project Size – The unit counts, unit sizes and proposed amenity spaces are essential to the project’s ability to attract the market and to its operational feasibility.

The proposed project is a small as it can be and still be viable.

Public Concessions – The project returns were below accepted market minimums prior to the Town negotiations and now, with additional agreements achieved with respect to affordable housing, RE taxes and the price of the West Side land, the expected project returns are even lower – razor thin.

The proposed project cannot support addition public costs and still be viable.

Impacts of COVID-19

Expected Effects on Market and Financial Performance

General Financial Observations

- ❖ **Revenues and occupancy** for existing projects are sure to decline, especially in the short-run as facilities have stopped taking in new residents and performance is likely to be affected the mid-term as facilities are forced to offer marketing inducements to regain stabilized occupancy.
- ❖ **Operating costs** are sure to increase as protocols for ensuring resident health and safety produce both higher absolute costs and lower operating efficiencies – these changes are expected to be enduring.
- ❖ **Development costs**, especially the cost of labor and local materials may be lower in the short-term, offset by new construction site safety protocols, disruptions in overseas supply chains and much higher costs of capital and insurance. Mid- to long-term, cost impacts are uncertain, as it is unclear how quickly the new development markets will rebound and how new operating/safety protocols will impact on construction schedules and end-user space.

Impacts of COVID-19

Expected Effects on Market and Financial Performance

Specific Comments About the Welltower Development

- ❖ **Market Potentials/Revenues** – Demand continues to trend higher for need-based senior living product, and for the Welltower project the anticipated 3 to 5-year delivery/stabilization period is long enough to buoy optimism that the markets will have recovered sufficiently by then to generate a strong rent and occupancy response. Note that a well capitalized development sponsor and a superior facility manager will be essential to engendering necessary consumer confidence in the project.
- ❖ **Operating expenses** are likely to reset at higher levels in response to sustained changes to the senior living operating protocols as a result of COVID-19 and will necessitate even more attention to the achievement of operational efficiencies at the project. Note that the talent and creativity of an established operator like Balfour is essential to the success of the project.
- ❖ **Development costs** - Hopefully, when construction contracts are ultimately bid, the costs will be a bit lower than pre-Coronavirus conditions - providing an offset to the increased market risks and higher operating and capital costs resulting from COVID-19 referenced above. A deep-pocketed and experienced development sponsor like Welltower will be essential to the success of the project.

Lower costs (hoped for) are estimated to equilibrate higher market and operating risks.

Proposed Site Plan



Neil Wishinsky turned over the presentation to Carlos Ridruejo who along with Steve Heikin and

Derik Cho formed the Architecture Subcommittee of the Newbury Zoning Committee. A brief overview of the proposed site:

- 160 rental units, with approximately 80 independent living units; services included in the rental price
- 40 assistant living units will have modified kitchens
- 40 memory care units will have no kitchen meals are included
- Parking set back increased from three feet to twenty feet and the overall height was decreased

Adaptive Re-Use of Mitton House



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Will be preserved
Trying to achieve a domestic scale through architectural

View from Holland Road



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details
Two courtyards with preservation of large existing trees along Fischer Ave

View from Fisher Avenue and Holland Road



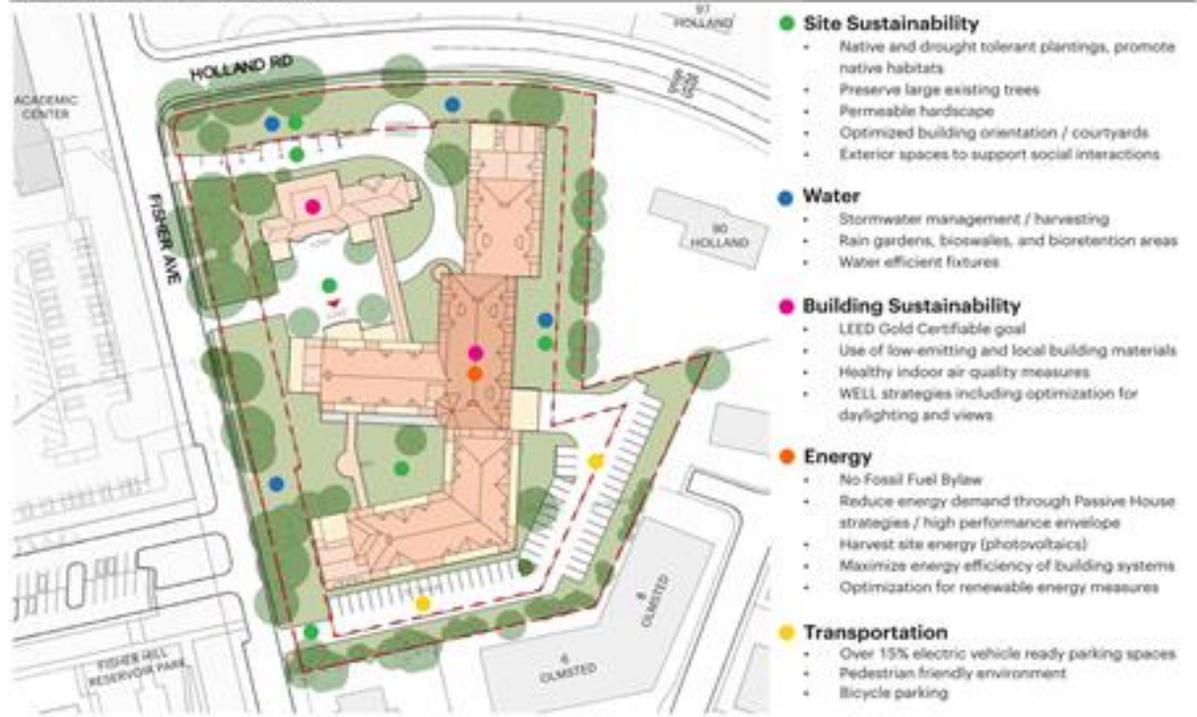
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View from Fisher Avenue



Result in an increase of open space and green space.

Sustainability Strategies



Neil Wishinsky continued the presentation:
As of two years ago the property did not produce any taxes to the Town.

DECISION 1

Fiscal Benefits to Town

- Conservative estimate of Real Estate taxes at stabilization: \$800,000/year
- Translates to an NPV of \$40m to 60m (2.5% yearly growth, 92 years, 3-4% discount rate)
- Tax Certainty agreement
- Fiscal costs to town not expected to be significant

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Victor Panak of the Planning Department continued the presentation: Article 9 proposes the required zoning for Welltower to construct a senior living community and establishes the zoning with an overlay district.

Zoning: Fisher Hill Special Overlay District

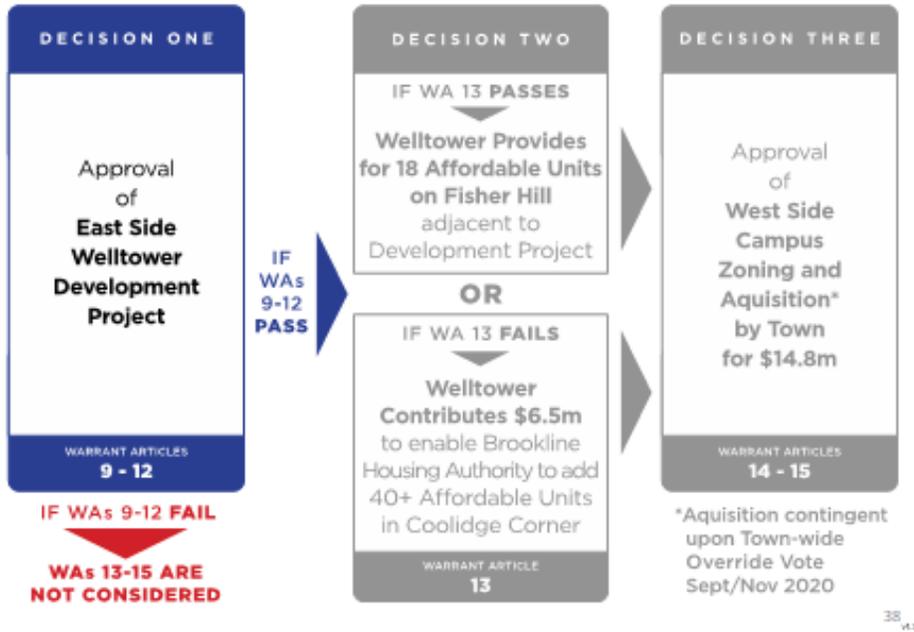
- **Establish an overlay district on the east side that allows for a Life Care Facility (Use 6A) that:**
 - Contains a maximum of 160 units (all market-rate)
 - Provides 98 parking spaces, 43 of which are concealed
 - Does not exceed a 1.15 FAR
 - Provides 40% of lot area as open space
- **Site Plan Review and Design Review required**
- **Design Guidelines established to guide Planning Board review**

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Completion of decision one.

Decision two: Affordable Housing piece. Chair of the Housing Advisory Board (HAB) presented.

Newbury Warrant Article Decision Process



Roger Blood noted the affordable housing portion requires at least 18 affordable units. The Town's bylaw offer alternative means to deliver affordable housing prepared as two choices

DECISION 2

Affordable Housing Component

- Inclusionary Zoning requires 15% affordable units
 - Welltower project = 120 units. Minimum affordable units = 18
- 18 onsite affordable units is not financially feasible
- Inclusionary Bylaw alternatives to onsite affordable units include in order of preference:
 - Offsite affordable units located as near as possible to proposed project
 - Cash payment to Affordable Housing Trust
- HAB has developed two recommended affordable housing options for Town Meeting consideration

related to this project.

Two Affordable Housing Choices

Option A: Holland Road Zoning Overlay

- 18 affordable mixed-income condominium units
- Located on Holland Road directly across from main project
- Renovation of existing “Holland Hall” with new addition
- Welltower contribution includes
 - Land and building valued at \$3.027 million
 - \$3.123 million cash
 - \$650,000 contingent backup
- Welltower will contract with New Atlantic Development to design and produce the 18 affordable unit Holland Road project
- Requires Town Meeting approval of a Zoning Overlay

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Two Affordable Housing Choices

Option B: BHA Contribution

- \$6.525 million Welltower cash payment to Affordable Housing Trust
- Earmarked to Brookline Housing Authority (BHA)
- All proceeds will be used to rebuild and expand BHA’s Col. Floyd Apts.
 - Located on Marion Street near Coolidge Corner
 - All units are low-income senior rental housing
- Trust Funds will augment substantial other BHA subsidy sources to:
 - Demolish 60 obsolete senior walk-up apartments
 - Build 100+ new affordable units in multistory elevator building(s)
 - 40+ net new affordable senior housing units
- No re-zoning required

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Both of these options are favorable to HAB. Option 2 would require no re-zoning. The Holland Rd. option adds to the advantage of affordable housing diversion and what is referred as work house units which the town does not have, with ability to purchase affordable condominiums.

Option A

Holland Road Zoning Overlay



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Option B

BHA Col. Floyd Senior Housing Project



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Zoning: Holland Road Mixed Income Housing Overlay District-Article 13

- Establish an overlay district on the property at 125 Holland Road that would allow for an 18-unit mixed-income housing development providing:
 - 6 affordable units at 80% of AMI* (*Min of 4 by Special Permit with HAB support*)
 - 6 affordable units at 100% of AMI (*Min of 4 by Special Permit with HAB support*)
 - 6 affordable units at 150% of AMI (*Max of 10 by Special Permit with HAB support*)

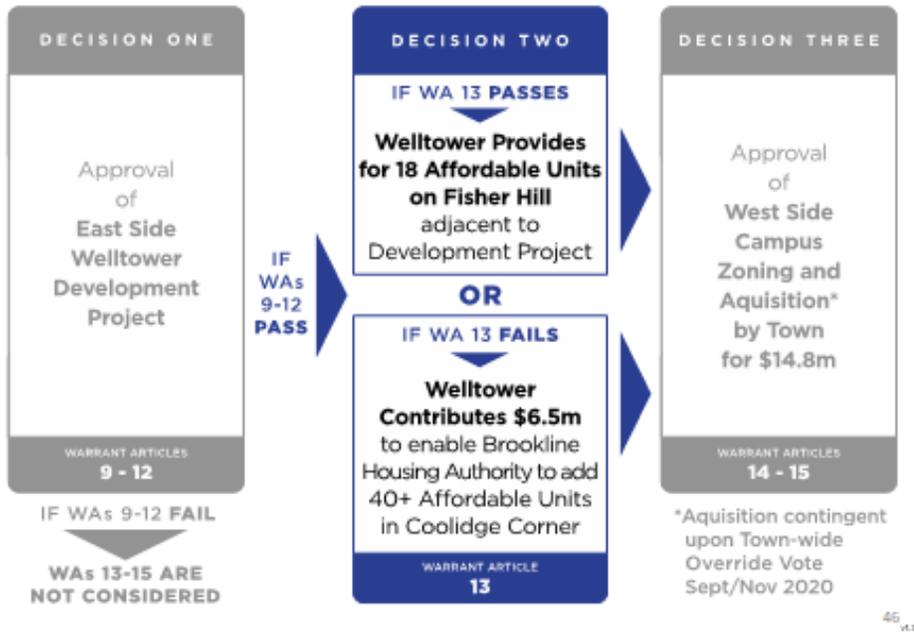
Dimensional requirements

Requirement	Existing (S-2S)	New (HIMHDO)
Lot Size (min)	25,000 sf	35,000 sf
Floor Area Ratio (max)	0.20	0.50
Height (max)	35 ft.	40 ft.
Setbacks (front/side/rear)	40/30/60	30/40/40
Open Space (landscaped/usable)	80%/none	40%/10%
Parking (min ratio)	2 spaces per unit	1 space per unit

*AMI: Area Median Income

Mr. Panak added that 125 Holland Rd across for the proposed Welltower development. One parking space per unit.

Newbury Warrant Article Decision Process



Select Board Member Nancy Heller continued the presentation:

Article 15

Option to Purchase West Campus

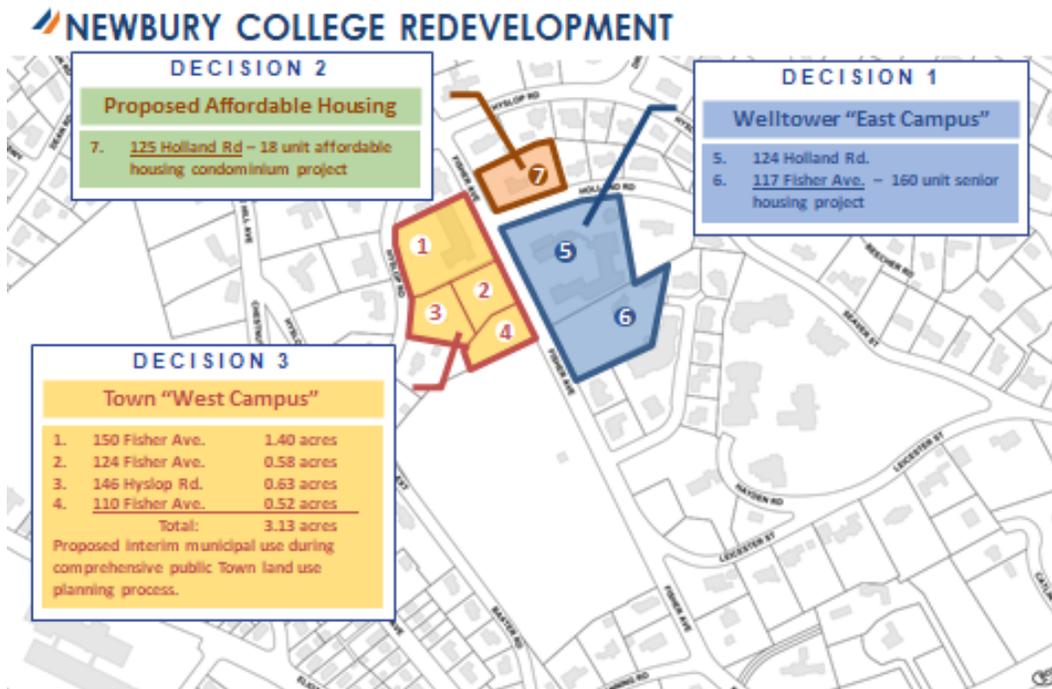
Purchase price of \$14.8 Million, to be funded via debt exclusion of 14.9 million

- Extra 100k – Minor capital improvements and closing costs
- TM votes w/ contingency for a Debt Exclusion ballot
- Debt Exclusion postponed to Sept or possibly Nov due to Covid
- If not approved by voters, Welltower sells, shares profits with Town

Acquisition of West Campus

- **What would we be purchasing?**
 - 3.13 acres, consisting of 4 parcels with 2 buildings
 - Academic Center: 31,000 sf educational facility in good/move-in ready condition
 - West Hall: 10,000 sf classroom and administrative facility in fair/average condition
 - 3 Parking Lots, 150 Cars
 - Adjacent to Fisher Hill Reservoir Park

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DECISION 3
Academic Center



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DECISION 3
Academic Center



Academic Building Interior



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Academic Building Interior



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DECISION 3

West Hall



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West Hall is in fair condition and needs work and to determine a long term use.

Reasons to Purchase West Campus

- Unique opportunity for a strategic acquisition of municipal space
- Modest cost to meet Long and Short Term Town needs

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Long Term Use

- No permanent use of the West Campus has been determined
- Select Board will initiate a comprehensive planning process likely to span multiple years

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A Range of Potential Uses (listed alphabetically)

- Affordable Housing
- Athletic Fields or Expanded Park Use
- Building Dept. Workshop/Storage and Offices
- Municipal/School Office Spaces and Training Center
- Recreational Facilities (Pool, Rink, Gym)
- Satellite Senior Citizen Space
- School Classrooms or Educational Spaces

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Elements of Long Term Use Process

- Creation of a Land Use Committee-
 - Town Officials and Agencies, Neighbors and Residents. Supported by Experts
- Public Input/ Community Engagement
 - (Public Hearings, Surveys, Possible Charrette)
- Identification of Options
- Public Dissemination and Input
- Select Board Recommendation
- Town Meeting Approval

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Short Term Uses

- Short Term Plans for Academic Building
- Utilize all floors of building to address different needs across Town
- Short Term period is estimated to last between 2 and 5 years.

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Short Term Needs

- **Problem:** Substandard Building Department Workshop/Storage space at Larz Anderson



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Why Building Dept?

- Current space at Larz approximately 2500 sq ft
- No independent workshops/storage for carpenters and plumbers
- Sharing workshops is **inefficient** - plumbers wait until carpenters are finished, and vice versa.
- Storage inadequate – less bulk purchasing - workers have to travel frequently to purchase items needed at **greater cost** to Town

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Short Term: Solution to Use Academic Building **Basement**

- Ideal for Workshops/Storage (~10,000 Sq. Ft.)
- Plenty of storage space for proper organization of equipment and supplies.
- Plumbers, electricians, carpenters will each have separate work and storage spaces.
- Building Dept - **efficient and cost effective**.
- Parking: ample parking for vans, pickup trucks, SUV's - no large trucks like DPW uses.

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Short Term Use Academic Building **1st Floor**

- **Problem:** Town Hall meeting/conference rooms as well as meeting spaces in other buildings are not sufficient for Town needs.
- **Solution:** Use 1st Floor for Municipal training/conference facility – Several departments of town believe such space would be a relief to the pressures of finding adequate space in other town buildings

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Short Term Use

Academic Building **2nd Floor**

- **Problem:** Office space throughout the Town is insufficient
- **Solution:** Convert former classroom space to offices for Town employees

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Short Term Use West Hall

- West Hall is only in fair condition
- No short term use
- Use and upgrades will be determined during the long term planning process.

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Annual Cost Impact to Taxpayer

Median Taxpayer Type	3% Bond	4% Bond
Single Family Home	\$49	\$54
Condominium	\$15	\$17
Commercial	\$112	\$124

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Article 14: Zoning overlay for municipal uses

- **Establish an overlay district on the west side that expands the allowed municipal uses on the site:**
 - Municipal offices with associated support services
 - Educational facilities
 - Public libraries or museums (by Special Permit)
 - Public recreational facilities (by Special Permit)
- **Site Plan Review and Design Review required**
- **Design Guidelines established to guide Planning Board review**

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Neil Wishinsky concluded the presentation. The project will enhance the neighborhood enhance the Town and be a showpiece. To get there the three decisions would need to be followed.

ARTICLE 13 Newbury College - 125 Holland Road Mixed Income Overlay Zoning (Newbury Zoning Committee)

Steve Heiken, Chair of the Planning Board spoke on Article 13, the affordable housing piece. He advocated for the Holland Rd. options. This is not an either or decision, if we select Holland Rd. that does not preclude the Col Floyd project; they own that property and down the road it could be renovated. If we lose the opportunity at Holland rd., that property will be sold and most likely a large single family home will be built and the developer would have a chance to expand the FAR even more. The Col. Floyd project is on their plan several years down the road and offers them time to find alternative financing. If Holland Rd is chosen they can start building right away, and would spread the affordability housing locations. Efforts could be made to expand affordable housing funds. He feels they can do both, although the Brookline Housing Authority is in disagreement.

Patrick Dober Director of the Brookline Housing Authority gave a PowerPoint presentation, and reviewed their position as noted in the following memo to the Select Board: As one component of the draft MOU between the Town of Brookline and Welltower Inc., 18 housing units would be built by a third-party private real estate developer at the former Newbury College property on a parcel of land at 125 Holland Rd. donated by Welltower. The donation of land would meet Welltower's affordable housing obligation under the Town's Inclusionary Zoning By-law.

Warrant Article 13 would re-zone 125 Holland Rd. to allow the housing to be built. Zoning district changes require a two-thirds vote by Town Meeting. If Town Meeting does not achieve the two-thirds vote, the MOU provides an alternative: A cash payment of \$6.5 million to the Town to support the Brookline Housing Authority's (BHA) proposal to create 40 new seniors housing apartments. Under this plan, the BHA would raze its existing 60-unit Col. Floyd property in Coolidge Corner and rebuild on the site. The BHA would replace the 60 units and create an additional 40, for a total of 100 senior apartments. The Housing Advisory Board unanimously approved this option as an acceptable alternative.

Col. Floyd is located at Marion and Foster Streets in Coolidge Corner and was built in 1959. As a two story, six-building seniors property without elevators, it is now obsolete. The apartments are undersized, lack aging-in-place features, and there is insufficient space for service programs and community engagement. The utility systems are costly and beyond their useful lives. Further, the Col. Floyd site is underutilized. It can accommodate greater density under current zoning. Exhibit A. shows the existing Col. Floyd property and representative surrounding properties. Several of the neighboring properties are apartment buildings of 4 to ten stories.

The Housing Authority proposal would create more than twice as much affordable housing as the 125 Holland Rd. option. Creating new, service-enriched seniors housing will only be possible with Inclusionary Zoning funds from the Wellbridge transaction. Available federal, state, and local affordable housing subsidy would be insufficient if the Welltower funds are not made available. This is a once-in-a-generation opportunity for the Town of Brookline.

The BHA's proposal would address the greatest need identified in the Town's 2016 Housing Production Plan: Seniors housing with supportive services. BHA provides a rich variety of

supports to its seniors including service coordination, ESOL and computer literacy classes, free tax preparation, home delivered meals, no-cost computer access, and more. Coolidge Corner is an ideal location for aging-in place with excellent access to shopping, medical and social services, and the Elder Bus and the Green Line.

When redeveloped, Col. Floyd would continue to house people over 62 years old along with a 20% set aside for younger disabled individuals. Income limits would remain below 60% of Area Median Income (AMI), in perpetuity, for all 100 apartments. (Greater Boston 60% AMI for single person households is \$49,800). The 40 new units would be widely advertised and filled by lottery. State law allows a portion of the units to be set-aside for people who live or work in the Town of Brookline. Existing Col. Floyd residents would be relocated to other BHA seniors properties during construction of the new property. The BHA owns four seniors properties totaling 338 units within a one-half mile radius.

The financial projections in Exhibit B illustrate that the BHA anticipates raising \$43.7 million in non- Town funds, from federal and state subsidies and bank loans for the project. These funds would leverage the \$6.5 million from Welltower by a ratio of almost seven to one. The BHA would go through a competitive process to apply for subsidy funds and we are confident of receiving awards given the highly attractive features of the proposal. BHA's real estate team would conduct much of the planning and design while awaiting the funding. In fact, the BHA already has retained a very well-qualified architecture firm for preliminary planning.

In order to bring this opportunity to fruition, the Housing Authority would "project-base" Sec 8 vouchers at the rebuilt Col. Floyd, to support the 40 new apartments. The BHA administers approximately 1,000 Sec. 8 vouchers. The vast majority of BHA vouchers would remain "resident based" assistance, which allows recipients to rent an apartment of their choice on the open market within certain cost limit.

The BHA has the capacity and track record to assure the successful redevelopment of this exceedingly valuable property. Its recent projects include the 2015 new construction of 86 Dummer St., the total rehabilitation of 61 Park St that is currently underway, and the total rehabilitation of 90 Longwood Ave. expected to commence construction soon.

(BHA PowerPoint and exhibits attached)

Board member Hamilton asked how many Holland Rd properties is one bedroom apartment. Of the 18 units, 2 are 2 bedrooms and the remaining 16 are one bedroom.

Linda Hamlin of the Planning Board asked about the parking count and how it was established and if there will be alternative transportation options.

Ellen Anselone from Finegold Alexander responded that they worked to determine how many spaces by the actual use, staff, visitors and residents. As it turns out, most residents don't have a car and if they do have a car they end up selling within the first year. This is based on the experience of the operator.

Jennifer Dopazo Gilbert responded that there are no contemplated shared shuttle services. There will be vehicles provided to get residents to appointments and a handicapped van for group outings. Also shuttles to get employees to the MBTA stations.

Public hearing:

Paula Friedman, TMM #14 and past president of Fischer Hill neighborhood association and resident living a block away from the proposed development. Last night a caucus was performed with Town Meeting members from precincts 13, 14 and 15. There was no formal vote taken, but they did a straw poll and all were in support of articles 9-12. Everyone found the Col. Floyd housing option compelling as it targets low income senior residents and would offer 100 brand new units. It is clear that these units need to be replaced. A more informed consensus will be determined after Sunday once that group meets again.

Mark Levy, TMM#7 spoke in support of the Col Floyd affordable housing options. Article 13 is a once in a lifetime opportunity, the Holland Rd option is not going to make a huge dent in affordable housing needs to address lower income levels the Col. Floyd option is the way to go; it takes years to get into elder senior housing and work force housing is a great idea to provide ownership options . Maybe someday there will be resources to do both.

Joanne Sullivan, Vice Chair of the Brookline Housing Authority Board spoke in support of the Col. Floyd option. This is a good and timely opportunity to rebuild 60 units and add 40 additional units. She spoke about the service enriched housing model and the reason it is so successful is because it supports the elderly and those with disabilities.

Deborah Brown, TMM#1 feels that option 9-12 may be dead on arrival if Holland Rd. is the chosen choice. She also feels that just 18 affordable housing units do not seem like a huge dent on the obvious need and an overwhelming sense of the numbers alone dictate the need for more senior housing. She also spoke on the potential use of basement space for municipal use on the west side campus, and hopes this is considered thoroughly.

Ken Goldstein, Holland Rd. said that he appreciates the response Welltower has given to neighborhood concerns. He is proud that his neighbors have been so receptive due to the fact this will be a large dense addition to the neighborhood. He added that he is not hearing any strong opposition to Article 13. Mr. Dober provided a convincing case, and the BHA has lots of needs and projects down the line. The Col. Floyd option is a good one.

Wendy Macmillan offered that the Col. Floyd option seems to be the better choice.

Steve Heikin added that the Planning Board will continue their deliberation next Wednesday at 7:00pm.

Select Board member Fernandez thanked everyone for the presentation. To address Article 13, the affordable housing component, the opportunity for some to buy a home at an affordable rate allows them to build generational wealth. Unfortunately, when I looked at our track record, of the 143 affordable condos purchased, only 5 are occupied by black residents, and compare that to BHA's equity numbers, folks of color are significantly higher, about 25 % and section 8 numbers are higher than that. We need to figure out what's going on there. I can't support a project like that when we could have a good viable project within the BHA properties and they are built efficiently.

Select Board member Heller added that there are two choices and they don't have to be an either

or. The Col. Floyd option would result in less section 8 vouchers in exchange for 30 units at the Col. Floyd properties. We have a lot of uncertainty right now in the market, and we are not sure when the BHA will get those subsidies that it needs, they only give to one project at a time in Brookline, and right now the O'Shea property is almost finished. If we can have both, that would be a good goal. Development is growing in Coolidge Corner, and we know that those developers are required to build in affordability or make cash payments that could be used for several BHA projects. The 18 units of affordable condos is a chance we don't often get. Board member Fernandez made a good point, and there is no reason we can't try to improve our track record. Select Board member Greene spoke on the need to develop in Brookline intergeneration wealth for the black community and the Col. Floyd option does not really help with that. The Holland Rd. option is a small contribution, but a start.

Patrick Dober responded that they have not been successful in receiving developer subsidies. The Col. Floyd option would create new affordable housing opportunities in perpetuity.

Julie Schreiner Oldham, School Committee, stated that the School Committee will continue this discussion on May 27, 2020.

Suzanne Federspiel, School Committee member asked if the plans for the west side of the Newbury site addressed any school use.

Board member Heller responded that is on the table for long term use, for short term use, we know the School Department has a difficult time finding training and conference space, which would fit into the plan for short term use. Nothing has been determined for long term use. That is in the planning process.

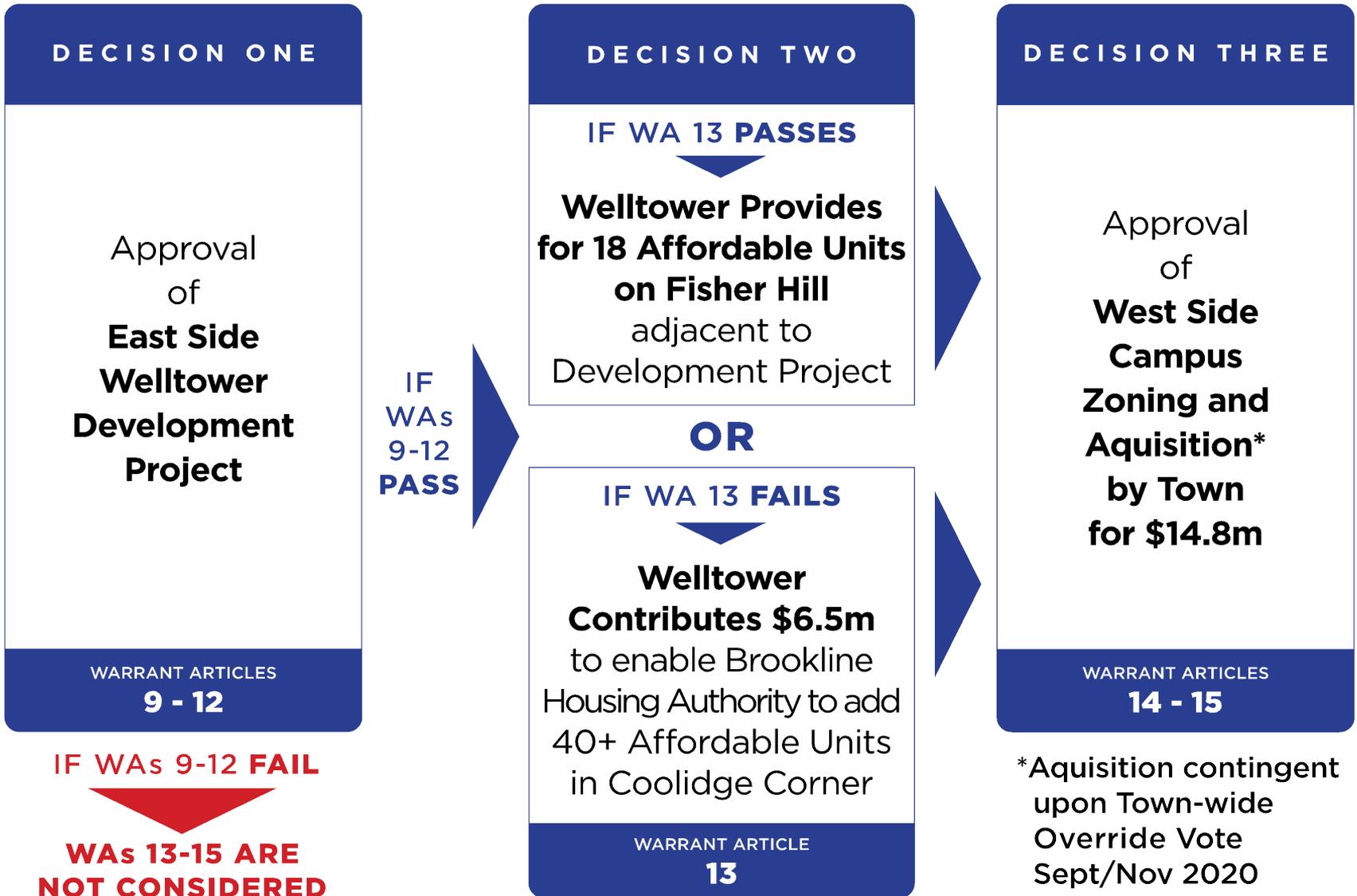
This joint hearing ended at 7:48 pm and the Planning Board and School Committee adjourned.

5.A.

Welltower-Newbury College Campus Warrant Articles

Select Board
5/12/2020

Newbury Warrant Article Decision Process



Newbury Warrant Articles

WARRANT ARTICLES FOR DECISION ONE

- WA 9 Fisher Hill Special Overlay District Zoning**
("East Side" Zoning, for the proposed Welltower Development Project)
- WA 10** Acceptance of **Restrictive Covenant/Tax Certainty Agreement**
- WA 11** Authorize Select Board to enter into **Memorandum of Agreement** and attendant agreements
- WA 12** **Acceptance of an easement** protecting trees along Fisher Avenue

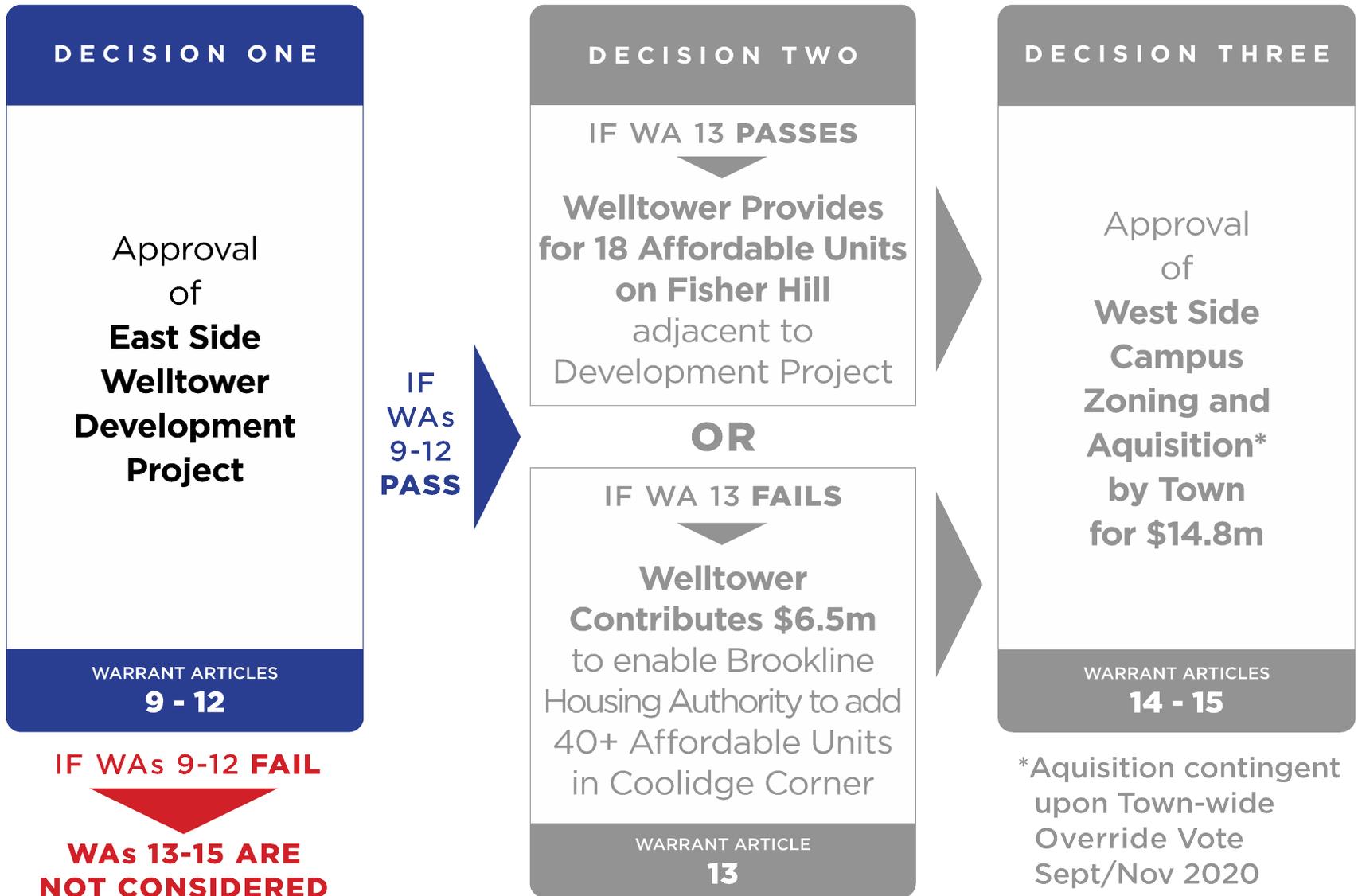
WARRANT ARTICLES FOR DECISION TWO

- WA 13** **25 Holland Road Mixed Income Overlay Zoning**

WARRANT ARTICLES FOR DECISION THREE

- WA 14** Fisher Avenue and Hyslop Road **Municipal Uses Overlay Zoning**
- WA 15** Authorization to **acquire former Newbury College West Campus**

Newbury Warrant Article Decision Process



DECISION 1

Presentation Outline

- Introduction and Overview
- Welltower Outlook
- Financial Feasibility Analysis
- Project Overview
- Fiscal Benefits
- Proposed Zoning

Overview

- Welltower, Inc purchased the Property in September 2019 for \$34 Million.
- After the purchase, Welltower approached the Town to propose a Senior Living Community and a possible Town acquisition of the former West Campus

Overview (Continued)

- Newbury Zoning Committee (NCZ) consisting of real estate professionals, many neighbors, and 2 Select Board Members.
- 10 public meetings of the NZC, 7 of the Architectural Subcommittee and 8 of the Negotiations Subcommittee.
- “Package” of articles was unanimously voted by the NCZ on March 4th. Result of over 8 months of negotiations between the Town and Welltower.

“Package” Negotiated with Welltower

- Welltower will build a high-end senior living community which requires a zoning change
- Inclusionary zoning (affordable housing) alternatives, and
- Extracting value from the West Campus either in the form of a discounted purchase price for the Town or revenue sharing when sold.

NEWBURY COLLEGE REDEVELOPMENT

DECISION 2

Proposed Affordable Housing

- 7. 125 Holland Rd – 18 unit affordable housing condominium project

DECISION 1

Welltower “East Campus”

- 5. 124 Holland Rd.
- 6. 117 Fisher Ave. – 160 unit senior housing project

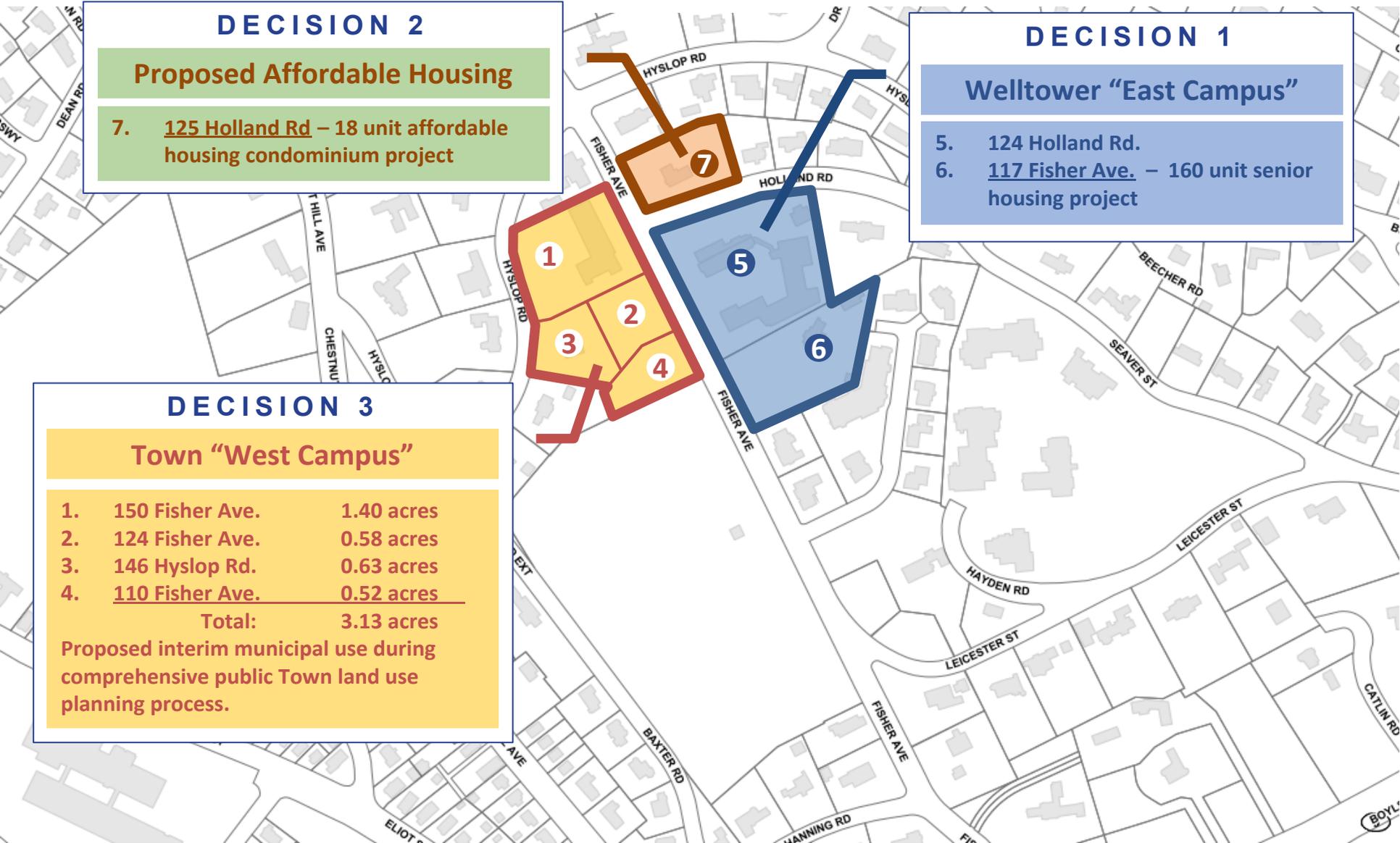
DECISION 3

Town “West Campus”

- 1. 150 Fisher Ave. 1.40 acres
- 2. 124 Fisher Ave. 0.58 acres
- 3. 146 Hyslop Rd. 0.63 acres
- 4. 110 Fisher Ave. 0.52 acres

Total: 3.13 acres

Proposed interim municipal use during comprehensive public Town land use planning process.



DECISION 1

Senior Living Community

- Zoning needs to be changed to allow all aspects of the proposal
- Present zoning permits single-family residential (S-15 and S-25)
- Welltower as developer
- Balfour as operator

DECISION 1

Senior Living Community

- Approximately 193,000 square foot senior living community. – 1.15 FAR. About 2x existing buildings
- 160 luxury market rate senior rental units, with approx. 80 independent living, 40 assisted living and 40 memory care units
- 98 parking spaces, 43 of which will be sheltered.

5.A.

Adaptive Reuse of Mitton House



DECISION 1

Senior Living Community

- Major impact project requiring a Design Advisory Team (DAT).
- Design guidelines to inform the DAT already reviewed by the Planning Board.

5.A.

DECISION 1

Senior Living Community

- Welltower Update and Outlook

DECISION 1

Town's Real Estate Advisor

- McCall & Almy directly participated in the negotiations with Welltower.
- Advised on
 - Highest and best use for the East side property and how does that compare to both the land value attributable to the senior living proposal as well as to what is allowed under zoning.
 - Did we get as much from the developer as we could?

DECISION 1

Financial Feasibility Analyses

- Pam McKinney - the Town's independent real estate financial consultant for a number of negotiated overlay zones.
- Reviewed Welltower's development pro forma per an NDA.
- Is the proposed unit mix and project scale necessary to enable operational efficiency and financial feasibility?

5.A. NEWBURY COLLEGE REDEVELOPMENT

Proposed Affordable Housing

7. 125 Holland Rd – 18 unit affordable housing condominium project

Welltower “East Campus”

5. 124 Holland Rd.
6. 117 Fisher Ave. – 160 unit senior housing project

Town “West Campus”

1. 150 Fisher Ave.
1.40 acres
2. 124 Fisher Ave.
0.58 acres
3. 146 Hyslop Rd.
0.63 acres
4. 110 Fisher Ave.
0.52 acres

Total: 3.13 acres

Proposed interim municipal use during comprehensive public Town land use planning process.

5.A. WELLTOWER PURCHASE of ENTIRE CAMPUS

- Strong demand was exhibited during the sale process by educational and other non-profit institutional buyers for both East & West parts of the campus.
- Restrictions imposed on the sale by the AG & Newbury College required - a quick close, no contingencies for permitting or finance, and the sale of campus in whole to a single purchaser – all of which depressed the pricing.
- The result - Welltower acquired the Newbury College campus in late 2019 for a total purchase price of \$34 million.
- Without these restrictions, a higher price – greater than \$34M – likely would have been achieved.

HIGHEST & BEST USE and MARKET VALUE OPINIONS

- Highest & Best Use of the East and West Campus parcels is the existing “Dover-eligible” institutional use.
- Highest and Best Use of 125 Holland Road – is for Single Family Use
- East Campus - The proposed change in zoning to allow Sr. Housing Use of the East Campus does not confer a land value premium to that parcel (Value is \$17.0M as a Sr. Housing Site v. about \$19M in the existing institutional use).
- West Campus - The negotiated price for the West Campus represents a 15% to 20% discount to its market value under the institutional highest and best use (\$14.8M negotiated price v. \$17M to \$18.5M to the institutional market).
- Feasibility – Further discounting (a lower price for West Parcel or a reduced Senior Housing project scale on West Parcel) imperils the feasibility of the project.

NOTE: The opinions of market value contained herein were presented in previous public sessions, predating COVID-19.

OTHER BENEFITS OF THE PACKAGE

- The proposed Welltower project and associated proposed zoning overlay, as contemplated by the parties in late 2020 / early 2019, results in the creation of a package of benefits for the Town:
 - ***Low-intensity use*** relative to educational user alternative;
 - Creation of ***high-quality senior housing product*** with limited local availability and high level of local demand;
 - Tax-certainty along with ***near- and long-term fiscal benefit*** to the Town from a previously tax-exempt property;
 - Opportunity for the Town to ***acquire land*** and facilities ***at a discount*** OR ***share in sale revenue*** should the Town elect not to purchase the West Campus;
 - Path to the creation of ***new onsite affordable housing*** in the Fisher Hill neighborhood of Brookline or elsewhere;
 - Commitment by Welltower and Balfour to a host of ***additional community benefits*** as outlined in the MOA.

5.A Study Highlights

Market & Development Review

Market Conditions

- ❖ Demand for both Independent and Assisted Living units in Brookline and the surrounding market area is strong
- ❖ Few competitive new units have been delivered in recent years
- ❖ Demand for high quality senior living product outstrips supply and is trending higher

Market Positioning

- ❖ The site is extraordinarily well positioned to capture Brookline senior housing demand which is growing and has the ability/propensity to exercise choice
- ❖ The proposed program is a match to the market and the requirements for operational feasibility in terms of its Independent and Assisted Living mix, unit sizes and counts

5.A. Study Highlights

Market & Development Review

Proforma Review

- ❖ Rents and occupancy by bed type are consistent with best in class market offerings
- ❖ Operating ratios and costs are consistent with other high-rent projects in the market
- ❖ Operating margins match market expectations for projects with similar RevPOR.
- ❖ Project development costs are consistent with best in class product expectations
- ❖ Revenue-operating (staffing) cost-development cost assumptions applied in the Welltower proformas meet the market but most important, are internally consistent
- ❖ The stabilized returns for the project as proposed (revenues/cost) are now razor thin – well below 6.5% after Town negotiations - in a market that targeted 7.0% even before the recent COVID-19 crisis (see my comments that follow)

Conclusions

Market & Development Review

Key Market/Financial Take-Aways

Project Size – The unit counts, unit sizes and proposed amenity spaces are essential to the project’s ability to attract the market and to its operational feasibility.

The proposed project is as small as it can be and still be viable.

Public Concessions- The project returns were below accepted market minimums prior to the Town negotiations and now, with additional agreements achieved with respect to affordable housing, RE taxes and the price of the West Side land, the expected project returns are even lower – razor thin.

The proposed project cannot support additional public costs and still be viable.

Impacts of COVID-19

Expected Effects on Market and Financial Performance

General Market Observations

- ❖ The senior housing markets are more sensitive to the recent COVID-19 pandemic than most, as the population is inherently more vulnerable and the recent news of outbreaks in senior living facilities has been both frightening and widely reported.
- ❖ While the need-based demand for and relative under-supply of this product (especially locally) provides optimism for the long-term, the senior living market is expected to be among the slowest to recover from COVID-19...second only to the hospitality/resort markets.

Impacts of COVID-19

Expected Effects on Market and Financial Performance

General Financial Observations

- ❖ **Revenues and occupancy** for existing projects are sure to decline, especially in the short-run as facilities have stopped taking in new residents and performance is likely to be affected the mid-term as facilities are forced to offer marketing inducements to regain stabilized occupancy.
- ❖ **Operating costs** are sure to increase as protocols for ensuring resident health and safety produce both higher absolute costs and lower operating efficiencies – these changes are expected to be enduring.
- ❖ **Development costs**, especially the cost of labor and local materials may be lower in the short-term, offset by new construction site safety protocols, disruptions in overseas supply chains and much higher costs of capital and insurance. Mid- to long-term, cost impacts are uncertain, as it is unclear how quickly the new development markets will rebound and how new operating/safety protocols will impact on construction schedules and end-user space.

Impacts of COVID-19

Expected Effects on Market and Financial Performance

Specific Comments About the Welltower Development

- ❖ **Market Potentials/Revenues** – Demand continues to trend higher for need-based senior living product, and for the Welltower project the anticipated 3 to 5-year delivery/stabilization period is long enough to buoy optimism that the markets will have recovered sufficiently by then to generate a strong rent and occupancy response. Note that a well capitalized development sponsor and a superior facility manager will be essential to engendering necessary consumer confidence in the project.
- ❖ **Operating expenses** are likely to reset at higher levels in response to sustained changes to the senior living operating protocols as a result of COVID-19 and will necessitate even more attention to the achievement of operational efficiencies at the project. Note that the talent and creativity of an established operator like Balfour is essential to the success of the project.
- ❖ **Development costs** - Hopefully, when construction contracts are ultimately bid, the costs will be a bit lower than pre-Coronavirus conditions - providing an offset to the increased market risks and higher operating and capital costs resulting from COVID-19 referenced above. A deep-pocketed and experienced development sponsor like Welltower will be essential to the success of the project.

Lower costs (hoped for) are estimated to equilibrate higher market and operating risks.

Proposed Site Plan



5.A.

Adaptive Re-Use of Mitton House



View from Holland Road



5.A.

View from Fisher Avenue and Holland Road



View of Piazza Entry



View from Fisher Avenue



Sustainability Strategies



● Site Sustainability

- Native and drought tolerant plantings, promote native habitats
- Preserve large existing trees
- Permeable hardscape
- Optimized building orientation / courtyards
- Exterior spaces to support social interactions

● Water

- Stormwater management / harvesting
- Rain gardens, bioswales, and bioretention areas
- Water efficient fixtures

● Building Sustainability

- LEED Gold Certifiable goal
- Use of low-emitting and local building materials
- Healthy indoor air quality measures
- WELL strategies including optimization for daylighting and views

● Energy

- No Fossil Fuel Bylaw
- Reduce energy demand through Passive House strategies / high performance envelope
- Harvest site energy (photovoltaics)
- Maximize energy efficiency of building systems
- Optimization for renewable energy measures

● Transportation

- Over 15% electric vehicle ready parking spaces
- Pedestrian friendly environment
- Bicycle parking

DECISION 1

Fiscal Benefits to Town

- Conservative estimate of Real Estate taxes at stabilization: \$800,000/year
- Translates to an NPV of \$40m to 60m (2.5% yearly growth, 92 years, 3-4% discount rate)
- Tax Certainty agreement
- Fiscal costs to town not expected to be significant

Zoning: *Fisher Hill* *Special Overlay District*

- **Establish an overlay district on the east side that allows for a Life Care Facility (Use 6A) that:**
 - Contains a maximum of 160 units (all market-rate)
 - Provides 98 parking spaces, 43 of which are concealed
 - Does not exceed a 1.15 FAR
 - Provides 40% of lot area as open space
- **Site Plan Review and Design Review required**
- **Design Guidelines established to guide Planning Board review**

Zoning: *Fisher Hill* *Special Overlay District*

Setbacks

- Setback requirements vary:
 - 35 ft. (from Fisher Ave, Holland Rd, and east-side property line)
 - 50 ft. and 60 ft. from the southern property lines.

Height

- Height requirements vary, ranging from 70 ft. to 100 ft. above *District Record Grade* (the midpoint of the Holland Road property line) depending on distance from Fisher Ave or Holland Rd

Inclusionary Zoning

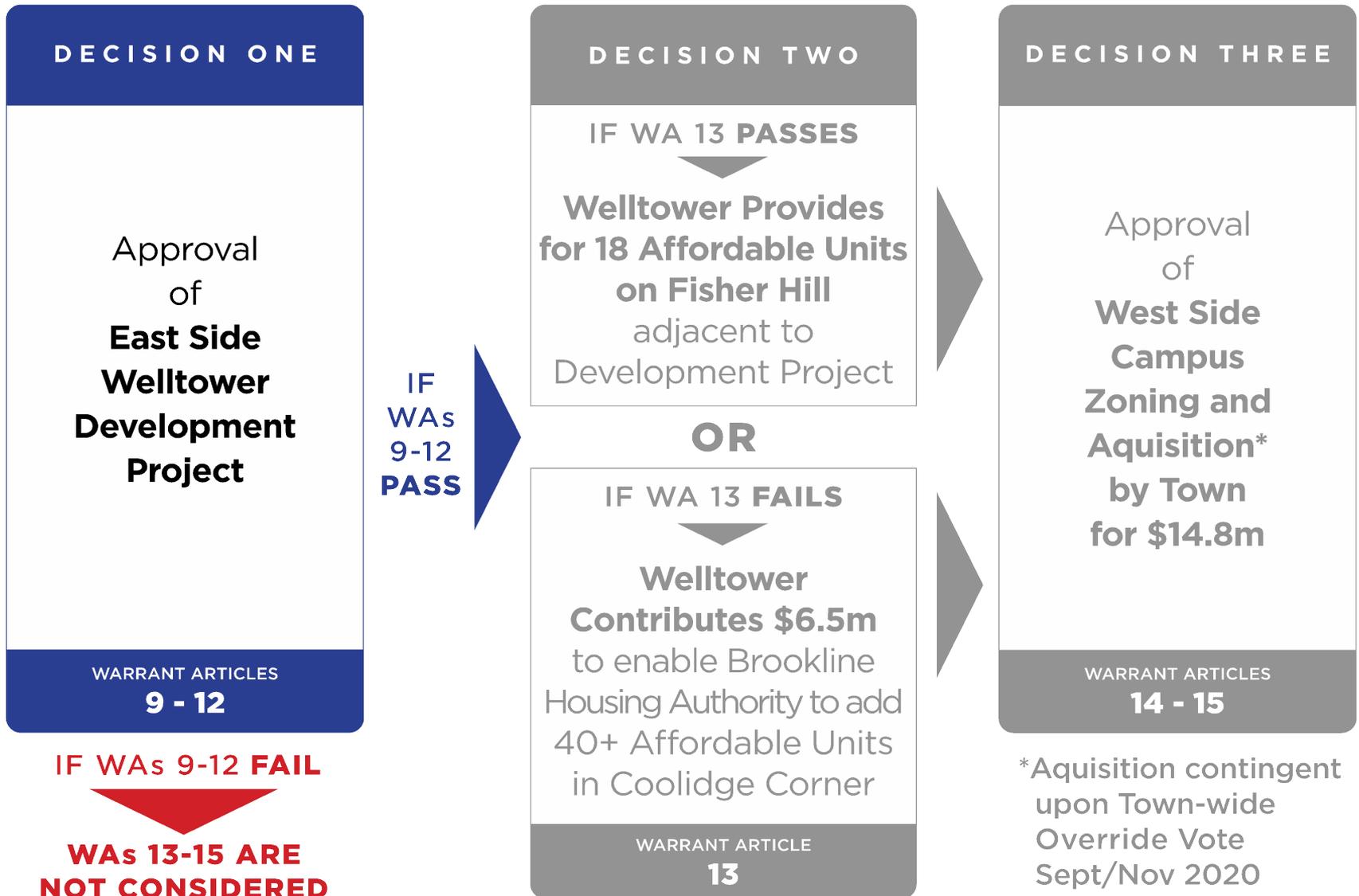
- Inclusionary zoning requirements from Section 4.08 will be satisfied.

DECISION 1

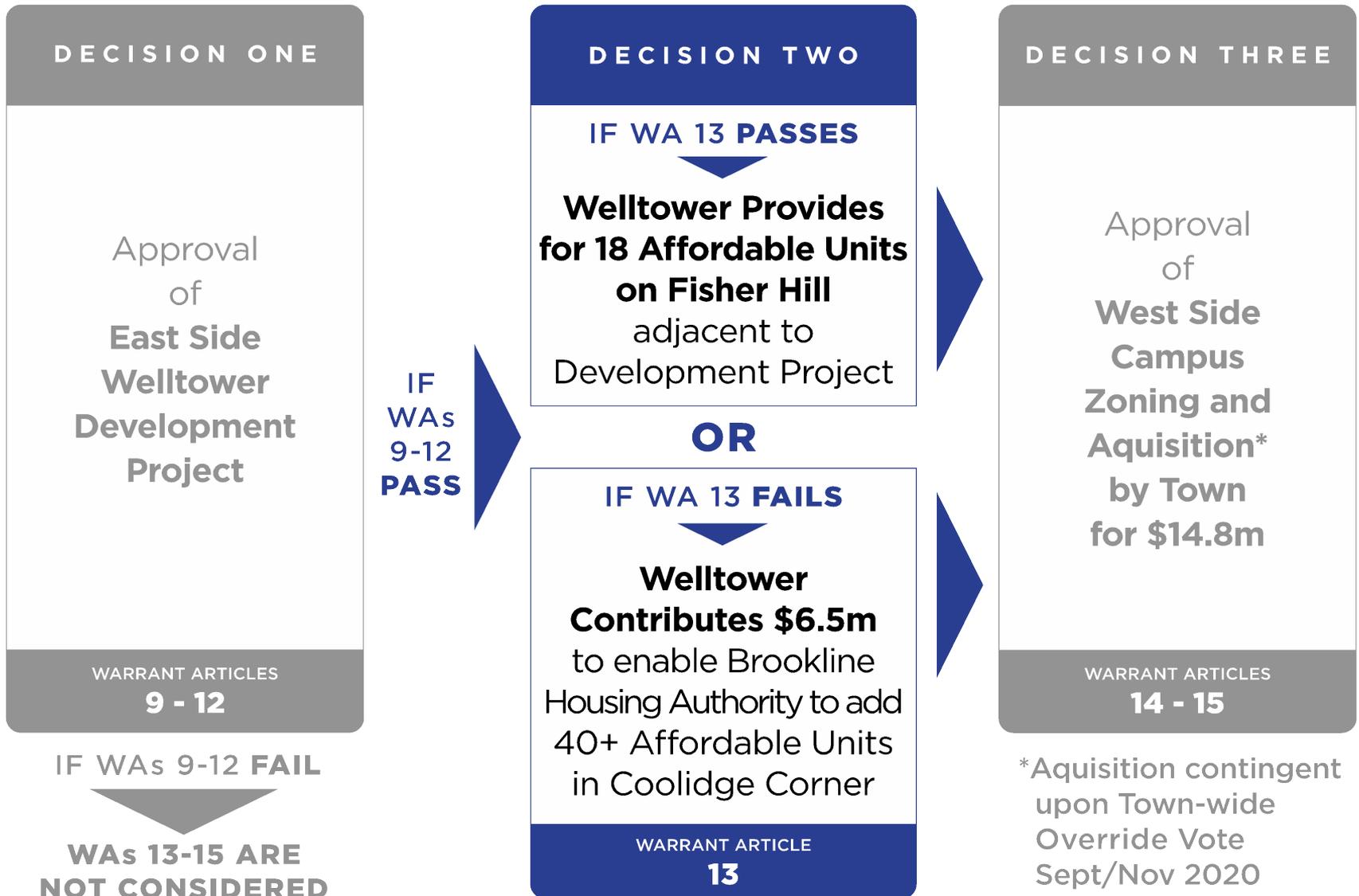
Senior Living Community

- If the Overlay District zoning is not approved by Town Meeting remaining articles are moot
 - New tax growth and negotiated benefits not achieved
 - Missed affordable housing opportunity
 - Missed opportunity to acquire West Campus (or share in the profits of a sale to a an entity other than the Town)

Newbury Warrant Article Decision Process



Newbury Warrant Article Decision Process



DECISION 2

Affordable Housing Component

- Inclusionary Zoning requires 15% affordable units
 - Welltower project = 120 units. Minimum affordable units = 18
- 18 onsite affordable units is not financially feasible
- Inclusionary Bylaw alternatives to onsite affordable units include in order of preference:
 - Offsite affordable units located as near as possible to proposed project
 - Cash payment to Affordable Housing Trust
- HAB has developed two recommended affordable housing options for Town Meeting consideration

Two Affordable Housing Choices

Option A: Holland Road Zoning Overlay

- 18 affordable mixed-income condominium units
- Located on Holland Road directly across from main project
- Renovation of existing “Holland Hall” with new addition
- Welltower contribution includes
 - Land and building valued at \$3.027 million
 - \$3.123 million cash
 - \$650,000 contingent backup
- Welltower will contract with New Atlantic Development to design and produce the 18 affordable unit Holland Road project
- Requires Town Meeting approval of a Zoning Overlay

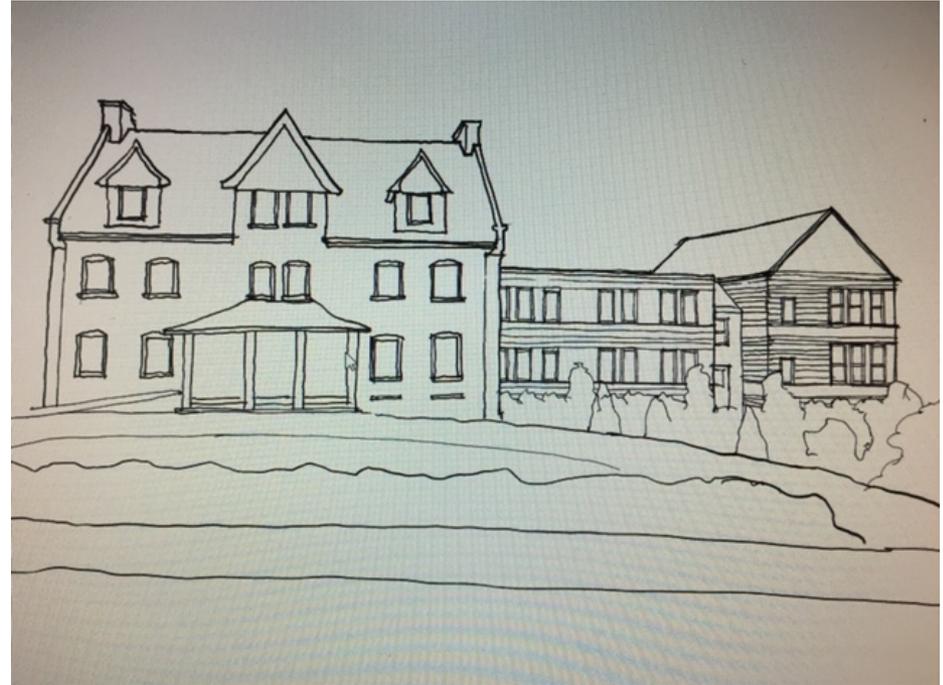
Two Affordable Housing Choices

Option B: BHA Contribution

- \$6.525 million Welltower cash payment to Affordable Housing Trust
- Earmarked to Brookline Housing Authority (BHA)
- All proceeds will be used to rebuild and expand BHA's Col. Floyd Apts.
 - Located on Marion Street near Coolidge Corner
 - All units are low-income senior rental housing
- Trust Funds will augment substantial other BHA subsidy sources to:
 - Demolish 60 obsolete senior walk-up apartments
 - Build 100+ new affordable units in multistory elevator building(s)
 - 40+ net new affordable senior housing units
- No re-zoning required

Option A

Holland Road Zoning Overlay



Option B

BHA Col. Floyd Senior Housing Project



Zoning: Holland Road Mixed Income Housing Overlay District-Article 13

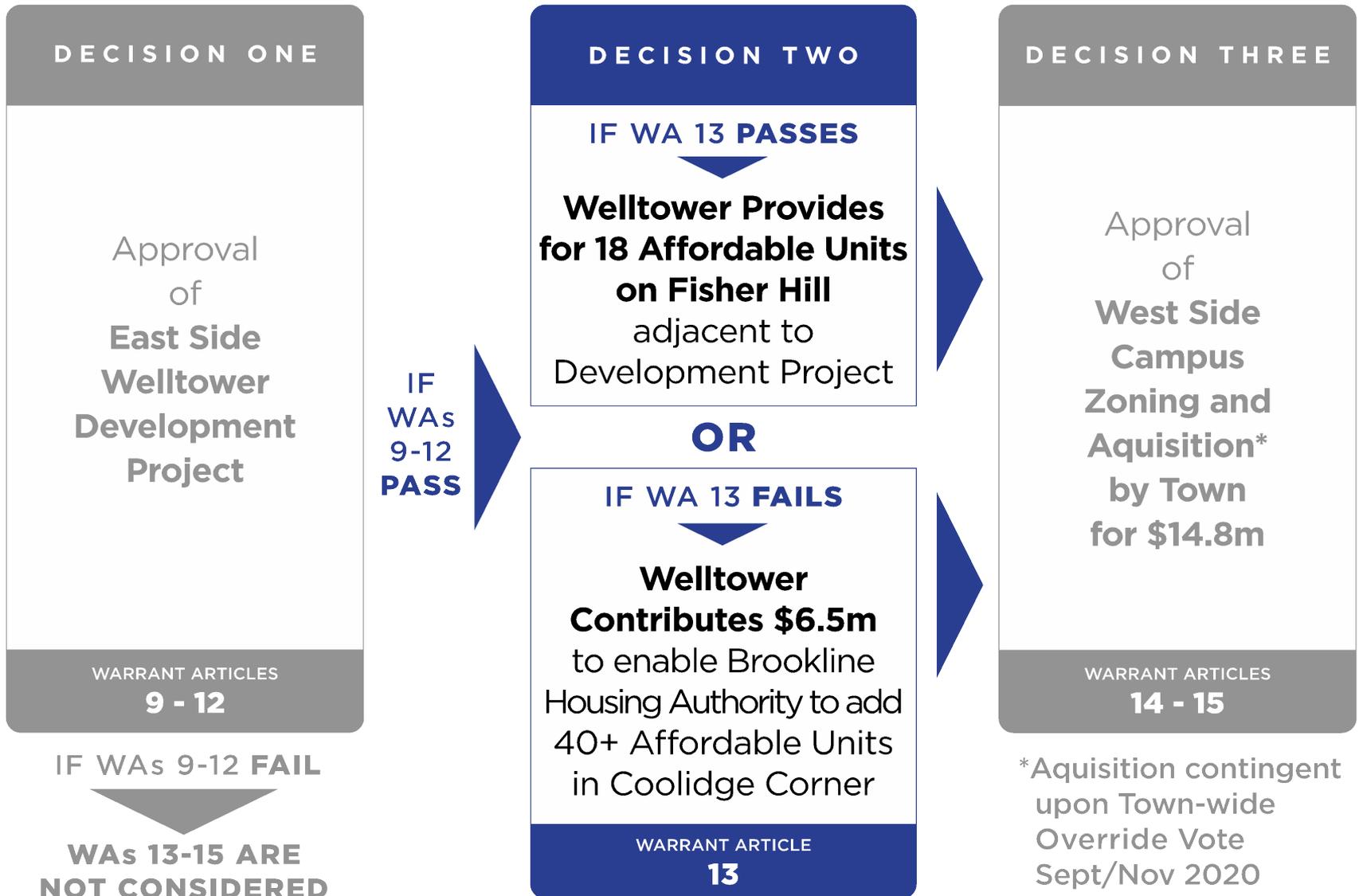
- **Establish an overlay district on the property at 125 Holland Road that would allow for an 18-unit mixed-income housing development providing:**
 - 6 affordable units at 80% of AMI* *(Min of 4 by Special Permit with HAB support)*
 - 6 affordable units at 100% of AMI *(Min of 4 by Special Permit with HAB support)*
 - 6 affordable units at 150% of AMI *(Max of 10 by Special Permit with HAB support)*

Dimensional requirements

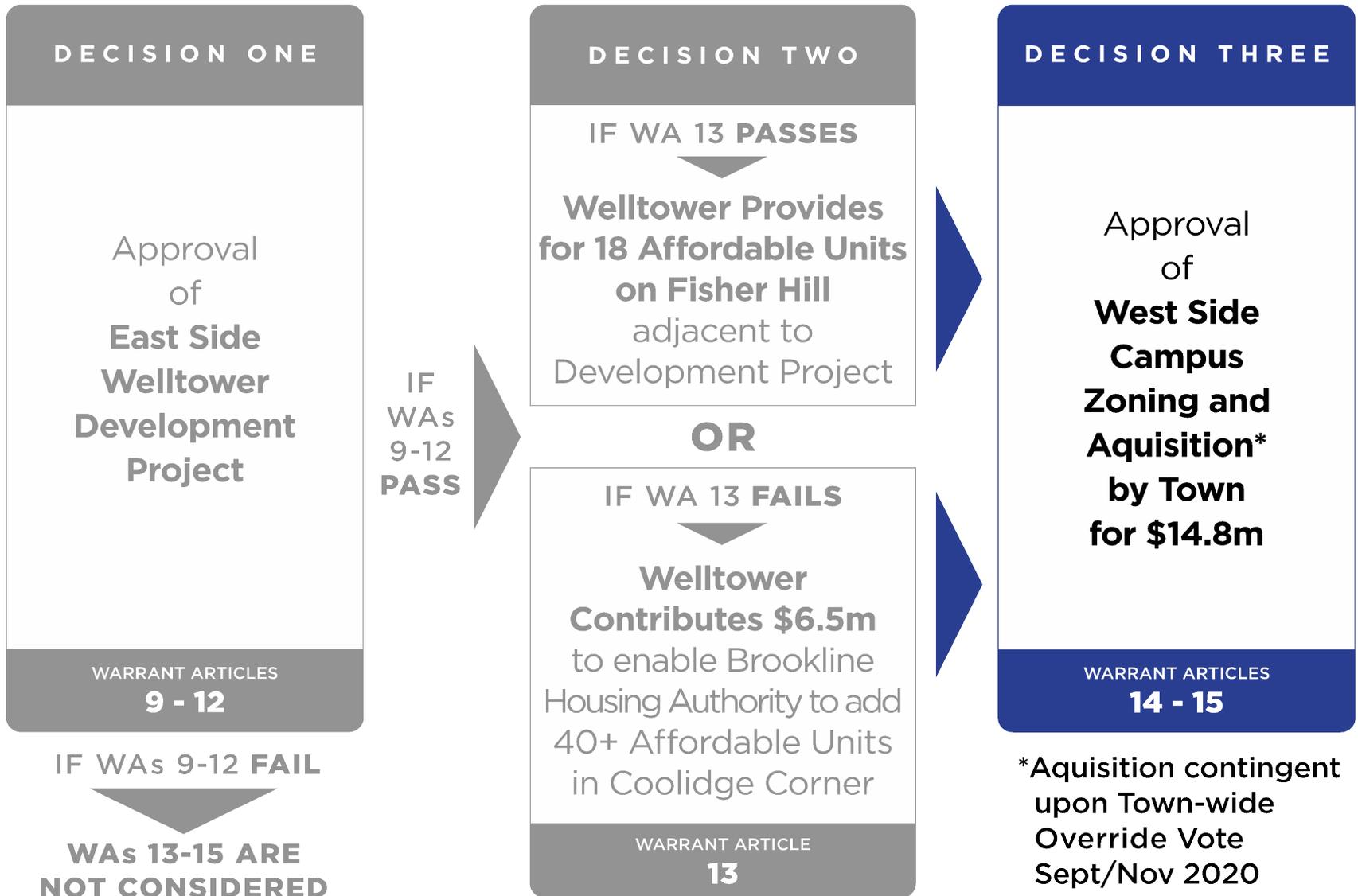
Requirement	Existing (S-25)	New (HRMIHOD)
Lot Size (min)	25,000 sf	35,000 sf
Floor Area Ratio (max)	0.20	0.50
Height (max)	35 ft.	40 ft.
Setbacks (front/side/rear)	40/30/60	30/40/40
Open Space (landscaped/usable)	80%/none	40%/10%
Parking (min ratio)	2 spaces per unit	1 space per unit

*AMI: Area Median Income

Newbury Warrant Article Decision Process



Newbury Warrant Article Decision Process



Article 15

Option to Purchase West Campus

Purchase price of \$14.8 Million, to be funded via debt exclusion of 14.9 million

- Extra 100k – Minor capital improvements and closing costs
- TM votes w/ contingency for a Debt Exclusion ballot
- Debt Exclusion postponed to Sept or possibly Nov due to Covid
- If not approved by voters, Welltower sells, shares profits with Town

Acquisition of West Campus

- **What would we be purchasing?**
 - 3.13 acres, consisting of 4 parcels with 2 buildings
 - Academic Center: 31,000 sf educational facility in good/move-in ready condition
 - West Hall: 10,000 sf classroom and administrative facility in fair/average condition
 - 3 Parking Lots, 150 Cars
 - Adjacent to Fisher Hill Reservoir Park

NEWBURY COLLEGE REDEVELOPMENT

5.A.

DECISION 2

Proposed Affordable Housing

7. 125 Holland Rd – 18 unit affordable housing condominium project

DECISION 1

Welltower “East Campus”

5. 124 Holland Rd.
6. 117 Fisher Ave. – 160 unit senior housing project

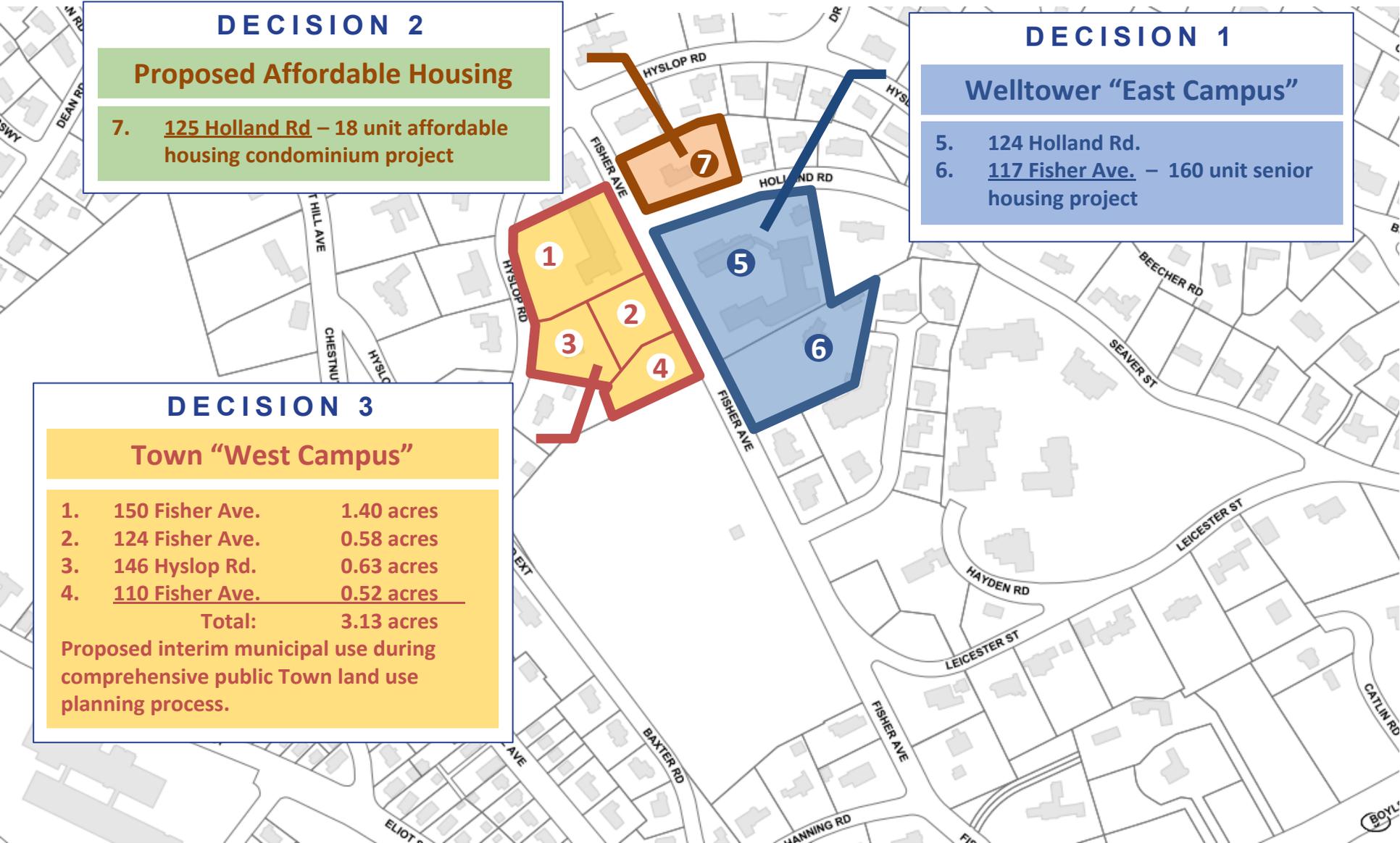
DECISION 3

Town “West Campus”

1. 150 Fisher Ave. 1.40 acres
2. 124 Fisher Ave. 0.58 acres
3. 146 Hyslop Rd. 0.63 acres
4. 110 Fisher Ave. 0.52 acres

Total: 3.13 acres

Proposed interim municipal use during comprehensive public Town land use planning process.



5.A.

DECISION 3

Academic Center



5.A.

DECISION 3

Academic Center



5.A.

Academic Building Interior



5.A.

Academic Building Interior



5.A.
DECISION 3
West Hall



Reasons to Purchase West Campus

- Unique opportunity for a strategic acquisition of municipal space
- Modest cost to meet Long and Short Term Town needs

Long Term Use

- No permanent use of the West Campus has been determined
- Select Board will initiate a comprehensive planning process likely to span multiple years

A Range of Potential Uses (listed alphabetically)

- Affordable Housing
- Athletic Fields or Expanded Park Use
- Building Dept. Workshop/Storage and Offices
- Municipal/School Office Spaces and Training Center
- Recreational Facilities (Pool, Rink, Gym)
- Satellite Senior Citizen Space
- School Classrooms or Educational Spaces

Elements of Long Term Use Process

- Creation of a Land Use Committee-
 - Town Officials and Agencies, Neighbors and Residents. Supported by Experts
- Public Input/ Community Engagement
 - (Public Hearings, Surveys, Possible Charrette)
- Identification of Options
- Public Dissemination and Input
- Select Board Recommendation
- Town Meeting Approval

Short Term Uses

- Short Term Plans for Academic Building
- Utilize all floors of building to address different needs across Town
- Short Term period is estimated to last between 2 and 5 years.

Short Term Needs

- **Problem:** Substandard Building Department Workshop/Storage space at Larz Anderson



Why Building Dept?

- Current space at Larz approximately 2500 sq ft
- No independent workshops/storage for carpenters and plumbers
- Sharing workshops is **inefficient** - plumbers wait until carpenters are finished, and vice versa.
- Storage inadequate – less bulk purchasing - workers have to travel frequently to purchase items needed at **greater cost** to Town

5.A. Short Term: Solution to Use Academic Building **Basement**

- Ideal for Workshops/Storage (~10,000 Sq. Ft.)
- Plenty of storage space for proper organization of equipment and supplies.
- Plumbers, electricians, carpenters will each have separate work and storage spaces.
- Building Dept - **efficient and cost effective.**
- Parking: ample parking for vans, pickup trucks, SUV's - no large trucks like DPW uses.

Short Term Use

Academic Building 1st Floor

- **Problem:** Town Hall meeting/conference rooms as well as meeting spaces in other buildings are not sufficient for Town needs.
- **Solution:** Use 1st Floor for Municipal training/conference facility – Several departments of town believe such space would be a relief to the pressures of finding adequate space in other town buildings

Short Term Use

Academic Building **2nd Floor**

- **Problem:** Office space throughout the Town is insufficient
- **Solution:** Convert former classroom space to offices for Town employees

5.A. Short Term Use West Hall

- West Hall is only in fair condition
- No short term use
- Use and upgrades will be determined during the long term planning process.

Annual Cost Impact to Taxpayer

Median Taxpayer Type	3% Bond	4% Bond
Single Family Home	\$49	\$54
Condominium	\$15	\$17
Commercial	\$112	\$124

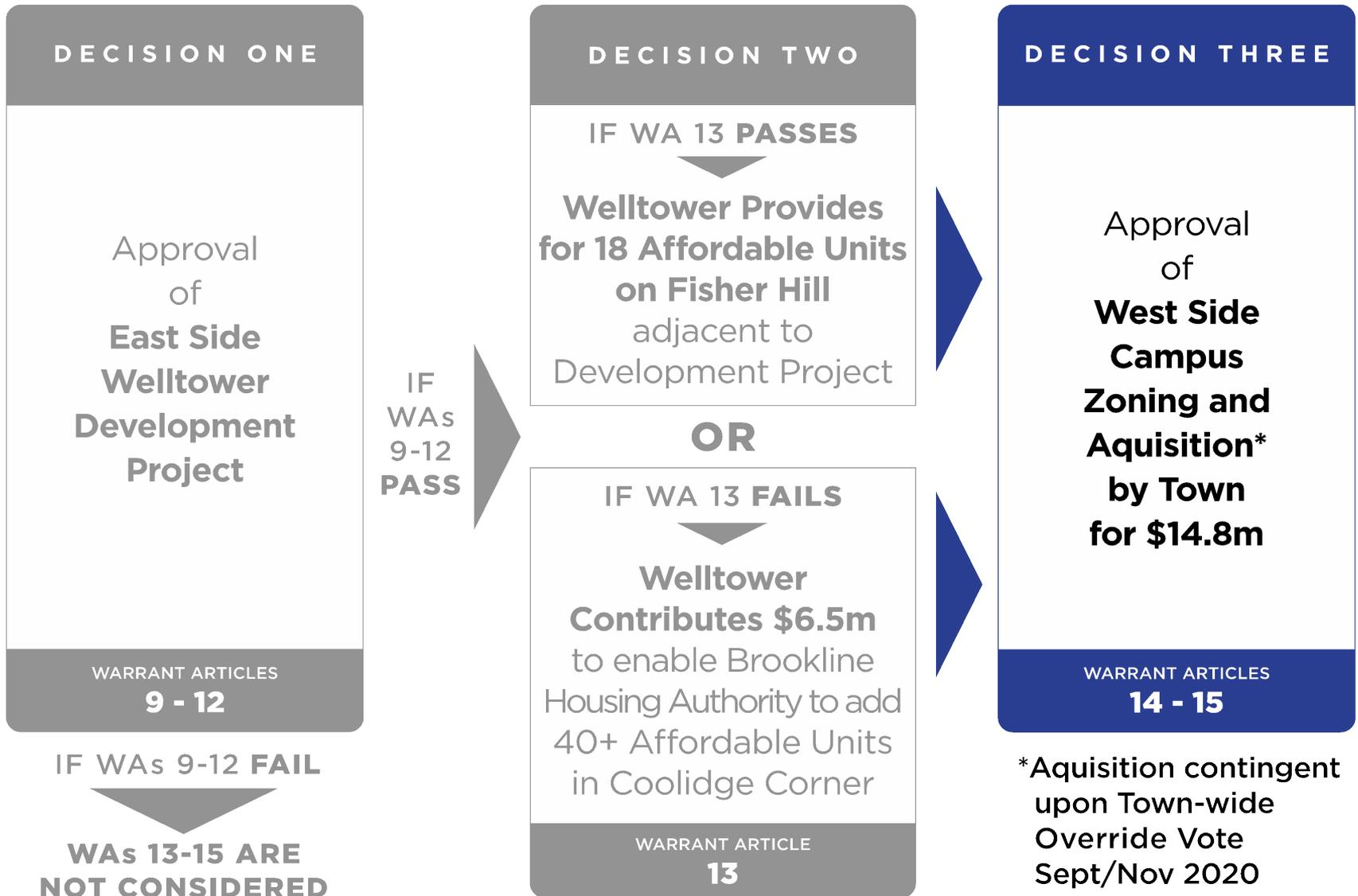
5.A. Profit Sharing if Town Does not Acquire the West Campus

- Revenue Sharing for sale price above \$14.8 million
 - Sharing scale set to provide incentive for as high a sale price as possible.
- No proceeds to Town for sale under \$14.8 million

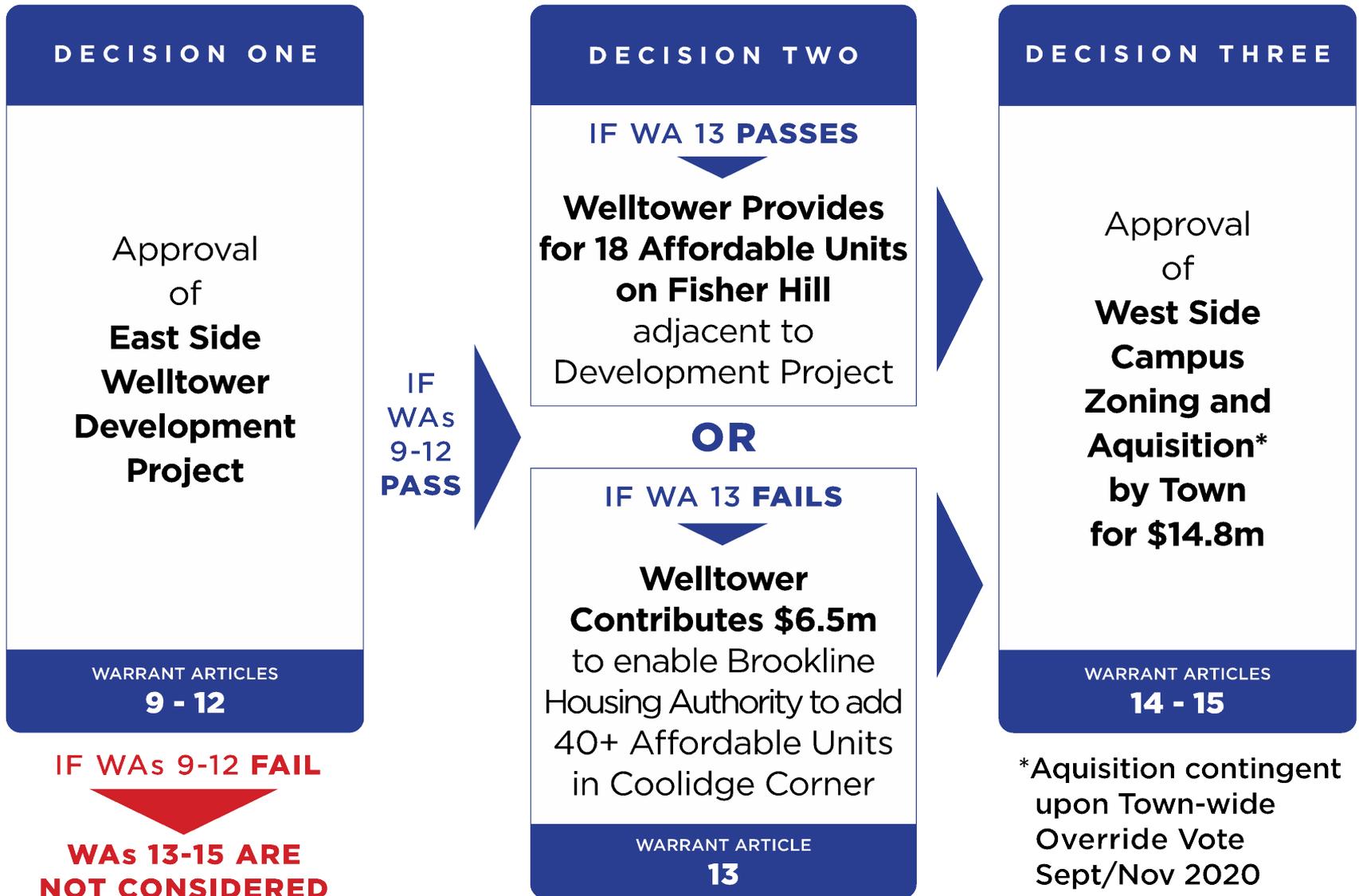
Article 14: Zoning overlay for municipal uses

- **Establish an overlay district on the west side that expands the allowed municipal uses on the site:**
 - Municipal offices with associated support services
 - Educational facilities
 - Public libraries or museums (by Special Permit)
 - Public recreational facilities (by Special Permit)
- **Site Plan Review and Design Review required**
- **Design Guidelines established to guide Planning Board review**

Newbury Warrant Article Decision Process



Newbury Warrant Article Decision Process



Newbury Warrant Articles

WARRANT ARTICLES FOR DECISION ONE

- WA 9 Fisher Hill Special Overlay District Zoning**
("East Side" Zoning, for the proposed Welltower Development Project)
- WA 10** Acceptance of **Restrictive Covenant/Tax Certainty Agreement**
- WA 11** Authorize Select Board to enter into **Memorandum of Agreement** and attendant agreements
- WA 12** **Acceptance of an easement** protecting trees along Fisher Avenue

WARRANT ARTICLES FOR DECISION TWO

- WA 13** **25 Holland Road Mixed Income Overlay Zoning**

WARRANT ARTICLES FOR DECISION THREE

- WA 14** Fisher Avenue and Hyslop Road **Municipal Uses Overlay Zoning**
- WA 15** Authorization to **acquire former Newbury College West Campus**

5.A.

Brookline Advisory Committee Planning and Regulation Subcommittee Report Warrant Articles 9 through 15

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on Wednesday, April 29, 2020 which, due to current health concerns, was held via Zoom, to review Warrant Articles 9-15 to be acted upon at the 2020 Annual Town Meeting. In attendance were Subcommittee members Steven Kanes (Chair), Ben Birnbaum, Carol Levin, Carlos Ridruejo, Lee Selwyn and Neil Wishinsky.

Also present were: Jennifer Dopazo Gilbert (Law Offices of Robert Allen), Nikil Chaudhri (VP Investments for Welltower), Lauren Donahue (McCall & Almy), Pam McKinney (Byrne McKinney & Associates, Inc.), Victor Panak (Planner with Regulatory Division of the Town's Planning Department), Nancy Heller (Select Board), Alison Steinfeld (Director of Planning and Community Development), Michael Jacobs and Patrick Dober (respectively, Chair and Executive Director of the Brookline Housing Authority), Fred Levitan (AC), Roger Blood (Housing Advisory Board), Paul Saner (Economic Development Advisory Board), Michael Schonbrun (Founder & CEO, Balfour Senior Living), Steve Heikin (Brookline Planning Board), William Madsen Hardy (New Atlantic), Jonathan Simpson (Assistant Town Counsel)

A Zoom attendance log which lists attendees is attached.

Background

After Newbury College closed, the Town was an active participant in the bidding process that the Newbury Trustees established for the sale of the Campus. Welltower, Inc. was the successful bidder and purchased the property in September 2019 without significant contingencies for \$34 Million. After the purchase, Welltower approached the Town to propose a Senior Living Community and a possible Town acquisition of the former West Campus. In response to this approach, the Select Board appointed the Newbury Zoning Committee (NZC) consisting of real estate professionals, many neighbors, 2 members of the Advisory Committee and 2 Select Board Members. The NZC held 10 public meetings plus 7 meetings of the Architectural Subcommittee and over 8 meetings of the Negotiations Subcommittee. Warrant Articles 9-15 are the outcome of over 8 months of process and negotiations between the Town and Welltower. The NZC unanimously voted on March 4, 2020 to support the Warrant Articles 9-15 and is the Petitioner.

Warrant Articles 9-15 provide for the following:

1. Welltower will build a high-end senior living community which requires a zoning change.
2. Two Inclusionary zoning (affordable housing) alternatives, and
3. An option for the Town to acquire the West Campus for \$14.8m or if the Town does not elect to exercise the option, a level of revenue sharing when sold by Welltower.

The following 2 charts show the 3 distinct decisions that Town Meeting needs to make along with the warrant articles associated with each decision. The key point being that, in order for the Town to obtain the benefits of the affordable housing and the West Campus acquisition option, Town Meeting needs to approve Warrant Articles 9-12, which enable the senior living community.

Figure 1: Decision Process

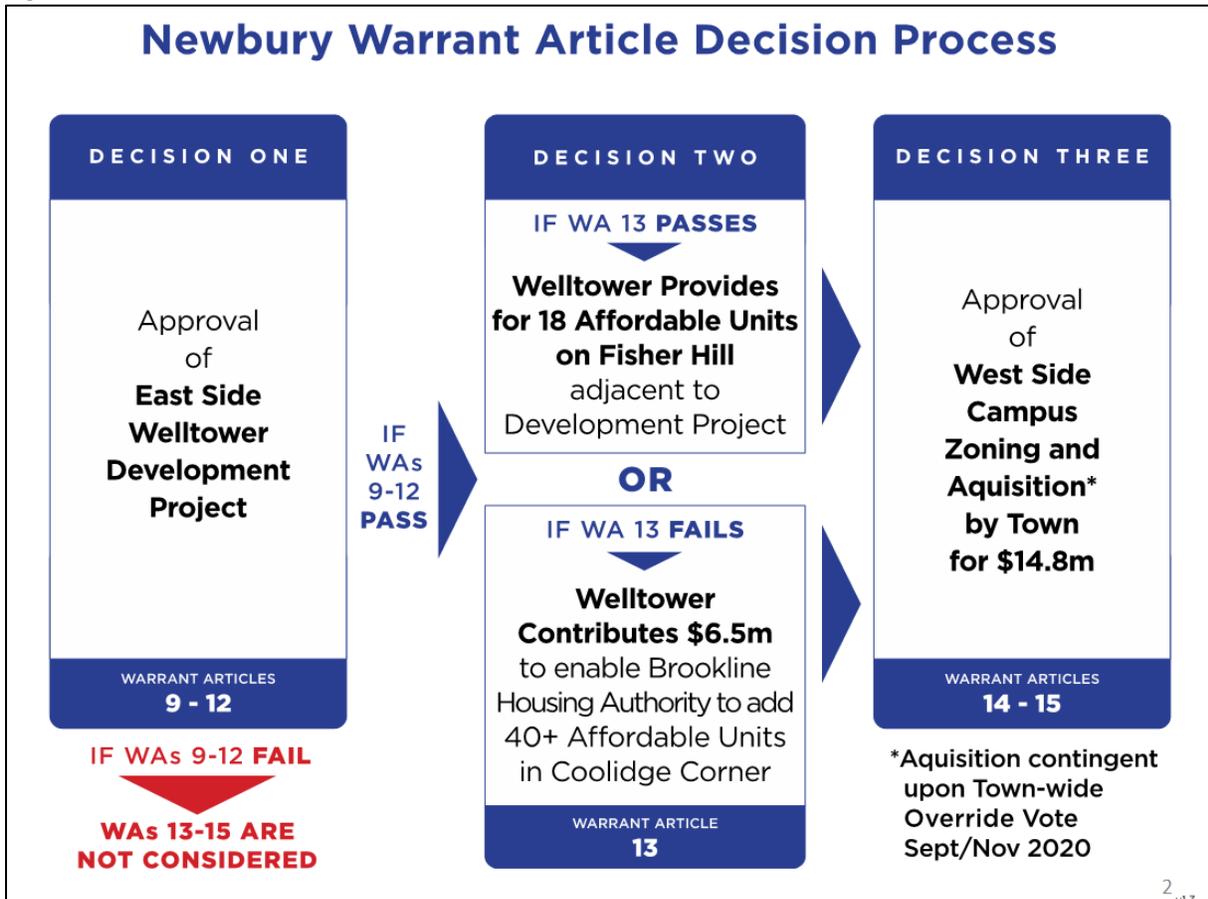
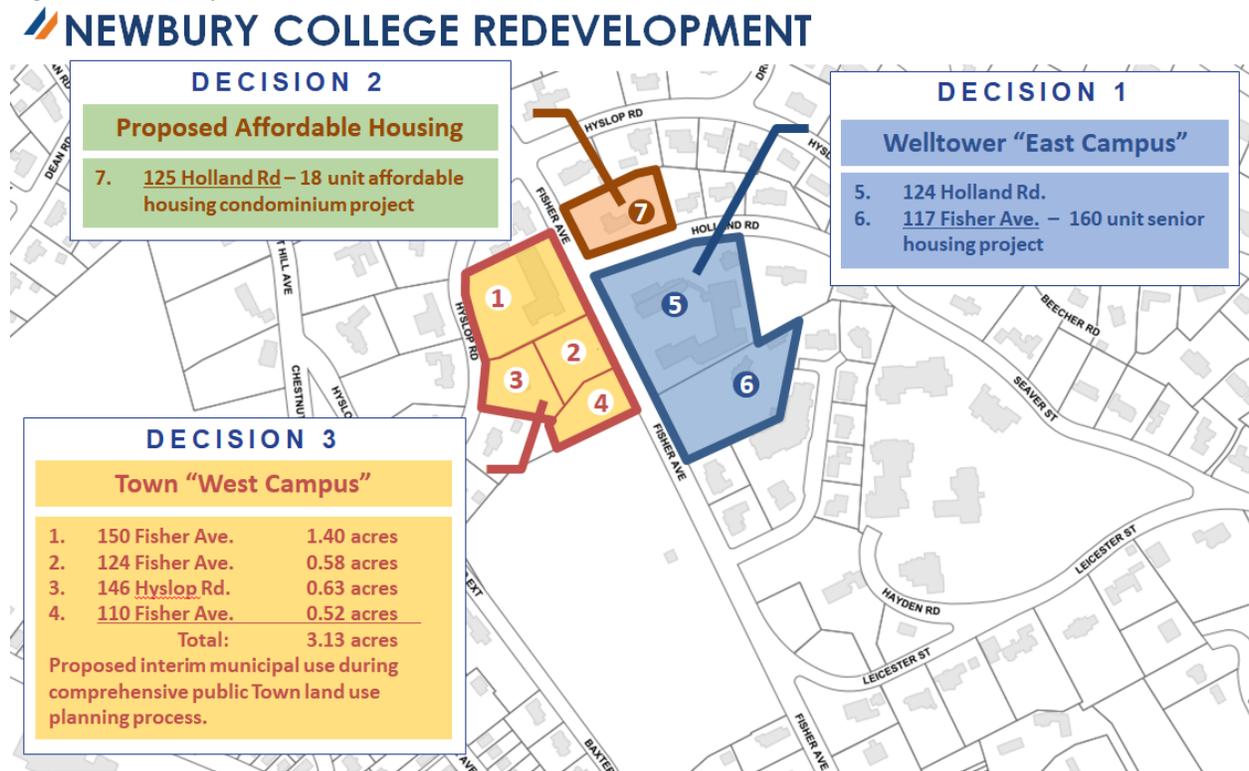


Figure 2: Warrant Article Groupings



Figure 3: Site Map with Decision references



Decision 1: East Campus Senior Community

The Proposed Project

Welltower, Inc. is proposing to build a Senior Living Community which will be operated by Balfour on approximately 3.88 acres on the east side of Fisher Ave at Holland Road. Welltower Inc. is a real estate investment trust (REIT) that mostly invests in senior housing, assisted living and memory care communities, post-acute care facilities, and medical office buildings. It also owns hospitals and other healthcare properties outside the United States. Balfour Senior Living is based in the Denver, Co. area and operates a number of senior living communities in Colorado and Michigan. This will be their first community in the Boston Metropolitan Area. The project will be comprised of:

- An Approximate 193,000 square foot senior living community.
 - 1.15 FAR which is about twice that of the existing buildings on the site
- 160 luxury market rate senior rental units,
 - Approximately 80 independent living units
 - Approx. 40 assisted living units
 - Approx. 40 memory care units with no kitchens
 - Not included in inclusionary zoning requirement calculations
- 98 parking spaces, 43 of which will be concealed

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Article 9 contains very proscriptive zoning and detailed design guidelines that have been developed by the NZC Architecture Committee and approved by the Planning Board. These design guidelines cover the materials, shapes, and how the buildings will look.

The zoning sunsets if the permitting process does not begin by December 31, 2020. While there is no specified required completion date for the project, if more than 24 months elapse from the date of the application for a special permit, the proposed zoning grants the Zoning Board of Appeals the right to deny the request for a special permit if it feels there has been excessive delay on the part of the developer.

The proposed site plan is follows:

Figure 4: Proposed Senior Living Community Site Plan



The architectural team is comprised of Robert A.M. Stern and Associates and Finegold Alexander Architects

Welltower has committed to preserving and adaptively reuse the Mitton House which is the most distinctive building on the existing campus. The buildings will follow many of the architectural traditions of Fisher Hill. A priority in the design is to achieve domestic scale and includes many special elements such as the roof scape, chimneys, etc. and two courtyards. For example, the ground floor has many residential elements; pergolas, columns and residential scale windows.

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The lowest parts of the building are along the Holland Road and Fisher Avenue. The maximum height of 6 stories is achieved in the middle of the site, away from the abutting properties. The project will yield more open space and green space than actually exists right now.

The following sustainability commitments are memorialized in the Memorandum of Understanding:

1. As envisioned by the recently passed Article 21 of Fall 2019 Town Meeting (Prohibition on Fossil Fuel Infrastructure), no use of natural gas or fuel oil except for the commercial kitchens, emergency generator, and domestic hot water. We expect a limited exemption request for heating the water of an indoor pool
2. LEED-NCv4 Gold Certifiable.
3. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
4. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
5. Implement Site Sustainable Measures which will include the following:
 - a. Storm water control measures that will optimize on-site filtration using rain gardens and bioswales.
 - b. Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.
 - c. Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.
6. Existing trees along the street will be preserved and protected by an easement and will contribute to the image of buildings that have been there for a long time.

The following are a number of views which apply the proposed zoning and Design Guidelines:

Figure 5:
View from Holland Road



Figure 6:
View from Fisher Avenue and Holland Road



Figure 7:
View of Piazza Entry



Figure 8:
View from Fisher Avenue



Fiscal Benefits to the Town

Article 10 authorizes a Tax Certainty agreement for 95 years on the Welltower parcels which is intended to insure the payment of property taxes or its equivalent as a Payment in Lieu of Taxes (PILOT) if sold in the future to a tax exempt entity. A conservative estimate of property taxes at stabilized occupancy is \$800,000/year. This translates to a Net Present Value of \$40 million to \$60 million (assuming 2.5% yearly growth, over 92 years, at 3-4% discount rates.) We do not expect the demand for services provided by the Town to be significant.

Project Outlook

Nikhil Chaudhri, Vice President, Investments for Welltower stated that despite the Covid-19 pandemic, Welltower continues to be committed to the project. Welltower has a very long term outlook and they see continued long term demand for the type of facility they are proposing. Notwithstanding, he noted that due to COVID-19, the supply chain for materials and labor has been significantly impacted, and there are added costs for cleanliness – all which will likely lengthen the timeline and increase costs. But it is still too early to fully evaluate the effects of the pandemic, as construction costs typically come down in an economic downturn while other costs may increase.

Despite these issues, Welltower is well capitalized and the project remains financeable.

Lauren Donahue of the firm McCall and Almy has been the real estate and strategy advisor to the Town throughout the Newbury project. She stated that the outlook for projects 3-5 years out is still optimistic and what they are seeing with their other clients echoes Welltower's reality.

Pam McKinney of the firm Byrne and McKinney has been the Town's financial advisor for this and a number of previous projects including Waldo Durgin and River Road. Highlights of her analysis on the impact of Covid-19 include:

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General Market Observations

- ❖ The senior housing markets are more sensitive to the recent COVID-19 pandemic than most, as the population is inherently more vulnerable and the recent news of outbreaks in senior living facilities has been both frightening and widely reported.
- ❖ While the need-based demand for and relative under-supply of this product (especially locally) provides optimism for the long-term, the senior living market is expected to be among the slowest to recover from COVID-19...second only to the hospitality/resort markets.

General Financial Observations

- ❖ ***Revenues and occupancy*** for existing projects are sure to decline, especially in the short-run, as facilities have stopped taking in new residents, and performance is likely to be affected in the mid-term as facilities are forced to offer marketing inducements to regain stabilized occupancy.
- ❖ ***Operating costs*** are sure to increase as protocols for ensuring resident health and safety produce both higher absolute costs and lower operating efficiencies – these changes are expected to be enduring.
- ❖ ***Development costs***, especially the cost of labor and local materials may be lower in the short-term, offset by new construction site safety protocols, disruptions in overseas supply chains and much higher costs of capital and insurance. Mid- to long-term, cost impacts are uncertain, as it is unclear how quickly the new development markets will rebound and how new operating/safety protocols will impact on construction schedules and end-user space demand (more people staying at home – so less demand v. more SF needed per person – so more demand).

Specific Comments About the Welltower Development

- ❖ ***Market Potentials/Revenues*** – Demand continues to trend higher for need-based senior living product, and for the Welltower project the anticipated 3 to 5-year delivery/stabilization period is long enough to buoy optimism that the markets will have recovered sufficiently by then to generate a strong rent and occupancy response. Note that a well capitalized development sponsor and a superior facility manager will be essential to engendering necessary consumer confidence in the project.
- ❖ ***Operating expenses*** are likely to reset at higher levels in response to sustained changes to the senior living operating protocols as a result of COVID-19 and will necessitate even more attention to the achievement of operational efficiencies at the project. Note that the talent and creativity of an established operator like Balfour is essential to the success of the project.
- ❖ ***Development costs*** - Hopefully, when construction contracts are ultimately bid, the costs will be a bit lower than pre-COVID-19 conditions - providing an offset to the increased market risks and higher operating and capital costs resulting from COVID-19 referenced above. A deep-pocketed and experienced development sponsor like Welltower will be essential to the success of the project.

McKinney also indicated that in her experience the “hurdle rate of return” for projects of this sort has been around 7%. A “hurdle rate” is the minimum anticipated return on investment that a developer

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would require to justify making the investment. She said that based upon her in camera review of confidential Welltower financial analyses relating to this project its projected rate of return is expected to be “well below 7%.” Note that McKinney’s review of Welltower’s financial statements was conducted pursuant to a nondisclosure agreement which does not permit disclosure of Welltower’s internal projections.

Decision 2. Inclusionary Zoning (Affordable Housing)

This discussion is relevant only if Articles 9 through 12 are approved. The Town’s Inclusionary Zoning Bylaw requires 15% affordable units. While the Welltower project has 160 units, the 40 memory care units are not subject to the inclusionary zoning. That leaves 120 units subject to the Inclusionary Zoning Bylaw. The minimum number of affordable units is therefore 18. Providing the units on site is the preferred way to deliver these units under the Bylaw. The Newbury Zoning Committee agrees with the developer that 18 onsite affordable units is not financially feasible.

The Inclusionary Bylaw alternatives to onsite affordable units, including in order of preference:

- Offsite affordable units located as near as possible to proposed project
- Cash payment to Affordable Housing Trust

The Housing Advisory Board (HAB) has developed two recommended affordable housing options for Town Meeting consideration

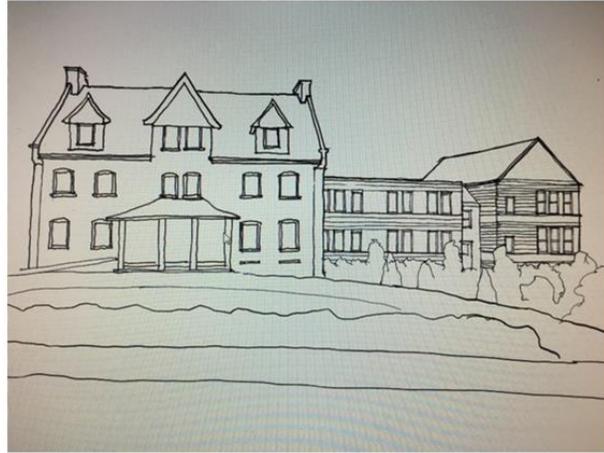
Option A: Holland Road Zoning Overlay

- 18 affordable mixed-income condominium units
- Located on Holland Road directly across from main project
- Renovation of existing “Holland Hall” with new addition
- Welltower contribution includes
 - Land and building valued at \$3.027 million
 - \$3.123 million cash
 - \$650,000 contingent backup
- Welltower will contract with New Atlantic Development to design and produce the 18 affordable unit Holland Road project
- Requires Town Meeting approval of Article 13, Holland Road Zoning Overlay
- **Article 13:** The zoning overlay for 125 Holland Road would allow for an 18-unit mixed-income housing development providing:
 - 6 affordable units at 80% of AMI¹ (*Min of 4 by Special Permit with HAB support*)
 - 6 affordable units at 100% of AMI (*Min of 4 by Special Permit with HAB support*)
 - 6 affordable units at 150% of AMI (*Max of 10 by Special Permit with HAB support*)

¹ Area Median Income

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Figure 8: 125 Holland Road. Existing conditions and possible concept.



Option B: BHA Contribution

- \$6.525 million Welltower cash payment to Brookline Affordable Housing Trust
- Earmarked to Brookline Housing Authority (BHA)
- All proceeds will be used to rebuild and expand BHA's Col. Floyd Apts.
 - Located on Marion Street near Coolidge Corner
 - All units are low-income senior rental housing
- Trust Funds will augment substantial other BHA subsidy sources to:
 - Demolish 60 obsolete senior walk-up apartments
 - Build 100+ new affordable units at 60% AMI in multistory elevator building(s)
 - 40+ net new affordable senior housing units
- No re-zoning required

If Article 13 is not approved, the zoning for the 125 Holland Rd. site (presently zoned for single family homes) will not be changed and the BHA contribution option will be the selected option.

Figure 9. Colonel Floyd Apartments existing conditions



Decision 3: Acquisition of West Campus

This discussion is relevant only if Articles 9 through 12 are approved. The Town has been presented with an opportunity to acquire the West Campus of Newbury College. A decision of Town Meeting to acquire the West Campus will need to go to the voters in the form of a debt exclusion which will occur either prior to September 15 (with a preference for the vote to be done concurrent with the September 1 state primary) or at the November 3 Presidential election. There are technical impediments to having the election on Sept. 1 which are being researched and worked through. A decision by the Select Board on the election date will need to be made soon after Town Meeting. If the Town does not hold an election on or before November 3, 2020, the option to acquire the West Campus will expire.

Article 15 authorizes the acquisition of the West Campus and associated bonding with an amendment to make it contingent on a successful debt exclusion vote. (Note: if the debt exclusion election is held after September 15, the bonding authorization will need to be voted again by Town Meeting in November.)

Article 14, creates a new overlay district with allowed municipal uses of (1) Municipal offices with associated support services, (2) Educational facilities, (3) Public libraries or museums (by Special Permit) and (4) Public recreational facilities (by Special Permit). Without this zoning change, the Town wouldn't be able to use the property after acquisition.

There are no changes to the dimensional requirements within the overlay. This means that any future expansions to the existing footprints will require a zoning change to be voted at a future Town Meeting.

The negotiated purchase price is \$14.8 Million. If Town Meeting approves acquisition with the debt exclusion contingency, the Select Board will place a debt exclusion of \$14.9 Million on the ballot. The extra \$100,000 is to cover minor capital improvements and closing costs.

Yearly debt service for a 3%, 25 year bond would be \$855,675.

Yearly debt service for a 4%, 25 year bond would be \$953,778.

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The annual cost impact to median taxpayer by property type:

Median Taxpayer Type	3% Bond	4% Bond
Single Family Home	\$49	\$54
Condominium	\$15	\$17
Commercial	\$112	\$124

If for whatever reason the Town does not acquire the West Campus, the Town has negotiated a profit sharing arrangement should the sale to a third party exceed the \$14.8 million that the Town agreed to pay. The revenue sharing scale is in Appendix 1 and has been designed to provide an incentive to Welltower to sell for as high a sale price as possible. There will be no proceeds to Town if the sale is under \$14.8 million.

West Campus Description

The West Campus is 3.13 acres, consisting of 4 parcels with 2 buildings adjacent to the new Fisher Hill Reservoir Park. The Academic Center is an educational facility with 31,000 sf in good/move-in ready condition. West Hall contains 10,000 sf of classroom and administrative space and is in fair/average condition. West Hall is not in move in condition and would likely be mothballed until a long term use is determined. The West Campus also contains 3 parking lots with space for 150 cars. Photos of buildings on the West Campus follow:

Figure 10: Academic Center View from Fisher Ave.



Figure 11: Academic Center Rear with 1990's Library Addition



Figure 12 Academic Building Interior Photo



Figure 12 Academic Building Interior Photo



Figure 13: West Hall



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Long Term Use of the West Campus

No permanent use of the West Campus has been determined given the short time frame in which the option to purchase will expire (by November 3, 2020) as compared to the long time frame a Town land use decision typically entails. The Select Board is committing to initiate a comprehensive planning process likely to span multiple years with the following structure:

1. Creation of a Land Use Committee-
 - a. Town Officials and Agencies, Neighbors and Residents. Supported by Experts
2. Public Input/ Community Engagement
 - a. (Public Hearings, Surveys, Possible Charrette)
3. Identification of Options
4. Public Dissemination and Input
5. Select Board Recommendation
6. Town Meeting Approval

The range of potential uses initially identified by the Select Board and the Town's recently completed Strategic Assets Plan (listed in alphabetical order):

1. Affordable Housing
2. Athletic Fields or Expanded Park Use
3. Building Dept. Workshop/Storage and Offices
4. Municipal/School Office Spaces and Training Center
5. Recreational Facilities (Pool, Rink, Gym)
6. Satellite Senior Citizen Space
7. School Classrooms or Educational Spaces

Short Term Use of the West Campus

In the short term (expected to last 2-5 years) it is likely that the only building to be used is the Academic Center. The Current plans are as follows:

Basement: Building Department workshops.

The current space at Larz Anderson is substandard. Here, the plumbers, electricians, carpenters will each have separate work and storage spaces. The basement has sufficient storage space for proper organization of equipment and supplies. There is ample parking for the vans, pickup trucks, and SUV's used by the department. There will be no large trucks like those used by DPW.

First Floor: Municipal training/conference facility

There is insufficient space in Town Hall and other Town Building to meet the Training and conference needs of the Town and Schools.

Second Floor: Former classrooms could be converted to offices.

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Discussion

Decision 1 East Campus Senior Living Community

Public Comment and Subcommittee questions

-After the unanimous 100% vote to acquire the entire campus why didn't the Town just take the property using its eminent domain authority.

Nancy Heller indicated that the Town considered but concluded that eminent domain is not an easy process and involves significant risk. Eminent domain is, perhaps, the most expensive way to acquire property especially in an adverse proceeding. The appraisal standard is highest and best use which, is in all likelihood, higher than the market value. The Town also needs to have a compelling public use. The Town didn't have a previously determined public purpose or long term use unlike at the 111 Cypress St property. Investment or resale is not necessarily a legitimate public purpose for eminent domain purposes. There also wasn't an identified funding source to pay for a possible taking. There would be a litigation risk for pricing that would focus on dueling experts which would introduce significant upside pricing risks.

-Two abutters (Andrew Koyfman and Ken Goldstein) spoke in favor of the Welltower project .

-Frank Caro stated that he was advocating for seniors and spoke in favor of the Welltower development. He said that they are offering a type of senior community we currently don't have in Brookline. This would be an asset for the Town.

-Where do the risks lie for the Town of Brookline going forward if we pass Decision 1? Where are those risk points and what are the Town's options?

There is a sunset in the zoning which limits the amount of time that Welltower has to proceed with the project; they can't drag their feet. A risk is that we pass it and another developer with lower standards could take it over. We are mitigating that through the sunset, very proscriptive zoning and design guidelines plus a detailed Memorandum of Agreement which will be recorded with the Registry of Deeds.

Paul Saner noted that the party at risk is Welltower now. The Town is in need of new tax growth especially post COVID-19. We need the new tax growth from this type of project. He indicated that there is not significant risk for the Town.

-Residents on Fisher Hill have expressed concern about traffic during construction phase, can someone address this? Jennifer Gilbert stated that a robust construction management plan needs to be submitted and approved by Building Commissioner covering items such as dust and road control, which will be put in place before the project even starts.

-Pushan Sengupta questioned whether the Town extracted all it could from Welltower. Pam McKinney responded that to expect that the Town can extract more is not supported by the economics.

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-Lee Selwyn asked similar questions. What is zoning relief in WA 9 worth? With the return on investment 6% or less, he seriously doubts that a publically traded corporation would enter into a project as risky as this one with a return as low as Ms. McKinney indicates. He wondered if she had seen all the necessary data? Pam McKinney replied: Welltower provided sufficient data to conduct this analysis. Markets will regain their equilibrium. Developers looking at a 3-5 year window, they will manage their way through that.

In response to a question about COVID-19 deaths at Balfour managed properties, Mike Schonbrum, Balfour's CEO stated that of the 9 properties operated by Balfour, only one has 5 residents and 5 staff members who have tested positive for COVID-19. In the other 8 properties with approximately 800 residents they had no deaths but one person died in the hospital after complications from dialysis. This record is attributable to policies which include no visitors, regular temperature taking, and those who do come, come solely to our community.

Subcommittee Comments

- A persuasive case has been made to say yes to the first decision.
- This is a reasonable use of the property – the design fits in the neighborhood
- Impressed that Welltower took a gamble to buy the property.
- Both sides negotiated in good faith, compromised and allowed the project to become what it is today.
- If we let this go, we lose future taxes, we wouldn't get affordable units, and we wouldn't get an option on the West Side.
- We have been able to modify the size and the way it looks that is satisfactory to the neighborhood and the Town. We are lucky to have the team of architects that have been working with us. It is a very high end team and a very high end project.
- Welltower sees an opportunity to create a new product that can be showcased in other towns and locations. Producing a project with high quality and design will serve as a show piece for Welltower and Balfour.
- This is very complex transaction – hard fought, well negotiated. All pieces in the articles hang together. Convinced we've squeezed Welltower as much as we can.
- It is a good project for the Town, for Fisher Hill; low impact use.
- The Town needs the taxes and the services.
- There is no reason to think that there would be an alternative that would be better for the Town.
- The project package will benefit the Town over the long term, and the design will be a positive contribution to the neighborhood.
- Most subcommittee members found the presentation about the project's margins to be persuasive.

Decision 2: Affordable Housing Alternatives

Option A (Holland Road) was favored by the Housing Advisory Board by one vote. The HAB unanimously voted that both options would be good outcomes and entirely acceptable each in their own right.

Contrasting features of these options:

Option A:

- Proximity to main project,

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- Geographic disbursement of affordable units around Town,
- Bylaw preference.

Option B:

- BHA serves a lower income range of beneficiaries,
- Project results in at least 100 modern units of which net new units would be 40+ compared with 18 at Holland Road.

Public Comment and Subcommittee questions

Questions to Mike Jacobs, Chair Brookline Housing Authority:

Q: There have been statements in social media that has said that the Col. Floyd Senior Housing Project affordable housing effort could be accomplished without the \$6.525M infusion?

A: If we don't have the funds, this project will not happen. Extremely large source of funding and you don't see sources this large come available. This is a unique opportunity to produce 40 units. We have a long waiting list via state and federal funding.

Q: What do we estimate the total cost of the Col. Floyd rehab?

A: \$50M which is a mixture of things, tax exempt financing, tax credits which a bank would buy, and funding from State Department of Housing Development.

Q: What happens if you don't get \$6.5M?

A: Choice of rehabbing a project that makes no sense for seniors. We'd have units that are inaccessible with utility systems that are inefficient.

Q: What happens if the Town authorizes the \$6.5 million, where do residents go during new construction?

A: We have 380 units within Coolidge area and would use those as "hotel" units. 6 buildings on the site and may be able to keep some occupied, during phased demolition.

Bill Madsen Hardy, New Atlantic: New Atlantic has an agreement with Welltower that if Article 13 passes they would act as developer of the 125 Holland Rod. Project. They are exploring rehabbing the building but nothing is final and they are open to a public process around making those decisions. He was concerned that 125 Holland and Col. Floyd are being presented as being an either/or decision. He said we need as much affordable housing in Brookline that we can get. He suggested a Community Preservation Act (CPA) vote that may provide more affordable housing dollars and other funding opportunities. He would like to see both projects done in the future and more on the West Campus. He said that there is a reason why there is a preference in every inclusionary zoning bylaw to reduce residential economic segregation.

Steve Heikin advocated for the Holland Road option. He felt strongly that affordable housing should be geographically dispersed throughout the Town and this was an opportunity to locate affordable housing

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in a part of Town where these opportunities rarely arise. He felt that the resources to do the Col Floyd project would appear at some time in the future and cited sources such as a possible transfer tax or passage of the CPA in Brookline.

Mike Toffel: He questioned the slight majority of the HAB recommending Holland Rd rather than Coolidge Corner. Regarding Coolidge Corner, he asked whether proximity to retail and mass transit was considered as part of the recommendation? Roger Blood responded that those advantages were discussed and recognized and especially for seniors. There were a number of HAB members not voting in that meeting. For Holland Road, the benefit was geographic dispersion of affordable housing and the fact that while there are advocates for work force housing. There is no current program serving those ranges of income for Town employees. The Col. Floyd option, by the sheer production numbers does have an edge, over the 18 units on Holland Rd. But the number of units produced is not the only metric.

Frank Caro: Regarding Article 13 use of the funds for the Col. Floyd development is attractive and there is an enormous need for affordable housing for seniors and the use of the money would improve housing in the 60 units on the site and the idea of adding 40 units makes it more attractive.

Amanda Zimmerman: Regarding the Inclusionary Zoning discussion, to make Col Floyd property work is to tie Sec 8 vouchers to the property and she asked how many are needed to make the finances work? Mike Jacobs answered they will use 30 of approximately 1000 vouchers for the project and that there will still be significant vouchers available for other Brookline residents.

Marty Rosenthal: Speaking on Brookline PAX, based on preliminary information PAX favors the Col. Floyd property option.

Ken Goldstein: Comparing 18 units to 100 it seems clear what we should be doing. West Side lot might be the place for additional affordable housing. If Holland Hall is the option it would mean retaining the present structure and retrofit an addition and afraid that if we try to preserve odd duck of a building you may come up with something odder. He indicated a preference for a complete demolition and rebuilding at the Holland Road site.

Deborah Brown: Questioned how we ended up having 18 units at Holland Rd. competing against the 100+ units at Col Floyd.

Subcommittee Comments

Rationales for favoring the BHA Options

-No brainer favoring the BHA option. You have an opportunity to put up 18 affordable units which is a long walk from public transport versus taking a housing development in inferior condition and not only replacing it but adding units for a total of 100. The odds of passing a transfer tax for additional funding is small.

-This would not be a difficult decision if it were the case that by choosing the Holland Road Option, we knew that we could also do Col. Floyd. But it seems unlikely that there would be future resources in the foreseeable future from the State or Federal government. Given what is going on in the economy and

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other asks we have of the voters, it is unlikely that the voters would be willing increase their taxes for this purpose. We have an opportunity to have the \$6.525 million leveraged to modernize 60 units and add 40 or even more favoring the Col Floyd option.

-The units being planned at Col. Floyd are much more affordable as opposed to those at Fisher Hill. The conditions at Col. Floyd are deplorable and a disgrace to the Town. This is an opportunity to improve and expand Col. Floyd.

Rationale for abstention

-This is a win-win whichever way you go. The Holland Hall option is an opportunity to add 18 affordable units on Fisher Hill that will otherwise not be available to the Town. At the same time in this economy there will be more people who need affordable housing and Col. Floyd would provide more units to address that need. On the other hand, there is already a concentration of affordable housing in the Coolidge Corner neighborhood. The choice should be left to Town Meeting. The BHA view is that this is a one-time chance vs the HAB view that this may not be an either/or choice. It is unclear who has the right crystal ball.

Decision 3 Acquisition of West Campus

Note: Even if Town Meeting votes to authorize the acquisition, the acquisition will not occur unless the funding is authorized by the Town's voters subsequent to Town Meeting. The question will be placed before the voters in the form of a debt exclusion question in either September or November.

Public Comment and Subcommittee questions

Cliff Brown: It is clear that there are many uses for this property. We have so many issues and of course we can find a use. We will never be in a position to find property like this – and it is a great opportunity. This is the opportunity to locate a needed municipal use here given everything we know that the Town needs. Also, regarding price, when you are strategic buyer, price is not always the most important factor. A strategic buyer is willing to accept lower returns for strategic value. We have an opportunity to purchase and control it because it is in our long term strategic interest.

Deborah Brown: If we know affordable housing (including green space and recreation) is an issue why aren't we moving in that direction and not spending years making a decision and end up with office space. Nancy Heller noted that affordable housing is on the list of possible uses and it is the responsibility of the Select Board to lead a process but not to dictate what the outcome will be. The Town conducted a few studies in the fall – about a school, about municipal spaces – and those are on the website. Affordable housing is not any less important but we need a process.

Subcommittee Comments

- We have to take a long-term view and jump on this opportunity. We should put the question to the voters.

-The weakest argument you can make is to suggest a list of so many things we can do. That isn't an argument that wins and is misleading. The argument that prevails and is that you don't get a chance to

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pick up this kind of acreage very often. It is a reasonable investment that we cannot afford to forego. Yes, COVID has weakened every educational institution across this country.

-This is an opportunity for the Town but we need to take a comprehensive look at possible uses and determine that before we acquire the property. Advocates for acquisition should be careful about fear mongering about another buyer (especially a Dover institution), loss of tax revenue, lack of control of use. We need to understand the impact of this in relation to other overrides instead of going to Town Meeting with business as usual. We also have a number of other educational institutions that are teetering before this crisis and teetering more because of this crisis, so the Town may be able to acquire land for some of these purposes elsewhere, if and when those institutions fail.

- If you agree in principle with the points about doing things comprehensively, this is a strange time to start applying the BFAC principles to this small amount. The Town is buying this at a discount – if you accept that premise – some other opportunity comes along then we should be able to sell this at a profit.

- The Newbury Zoning Committee showed many more alternative uses. There were drawings, preliminary studies for some of those suggested uses. Is it the right time to spend money? The Town should we act on this opportunity and can get out of it if we need to.

- The Town may not be getting the absolute lowest price but it is likely close to it. We must remember that the Town is a long term buyer like Boston University and not a developer. Even if the Town overpaid slightly, what is the significance? As is, the property tax impact of the debt service for the transaction, assuming a 4% interest rate for the debt, for a median single family homeowner, is \$54 a year. Even if we are paying 10% too much, the impact is just roughly an extra \$5 per year. Should we be arguing about the price given the lengthy negotiations, all the other issues before us plus the opportunity the property presents.

Recommendations

A **MOTION** was made and seconded to recommend favorable action on Warrant Articles 9-12 as they appear in the warrant. The Subcommittee voted unanimously 6-0 to recommend favorable action on these articles.

A **MOTION** was made and seconded for favorable action on Warrant Article 13. The Subcommittee voted unanimously 0-5-1 and the motion failed indicating support for the Col. Floyd project.

A **MOTION** was made and seconded for favorable action on Article 14 as it appears in the warrant. The Subcommittee voted unanimously 6-0 to recommend favorable action on Article 14.

A **MOTION** was made and seconded for favorable action on Article 15 as amended to provide that the appropriation to acquire the property be contingent on the approval by Town voters of a debt exclusion vote. The Subcommittee voted unanimously 6-0 to recommend favorable action on Article 15 as so amended.

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Appendix 1: West Campus Profit Sharing Schedule:

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 <i>net proceeds</i>					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	

*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily

**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale

***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds

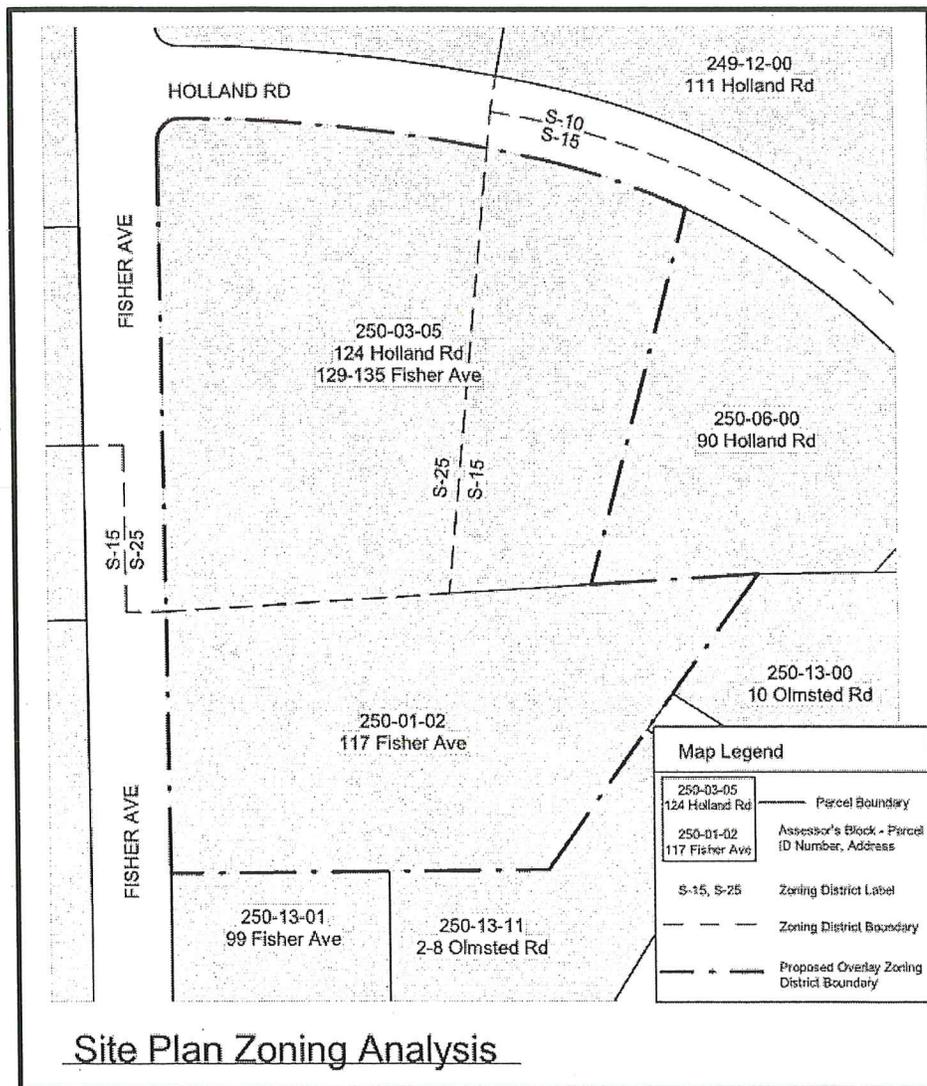
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Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article __: Fisher Hill Special Overlay District Zoning

To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

1. By adopting the following map change, adding a Fisher Hill Special Overlay District as shown below, including: parcels with Tax Parcel Identifications 250-03-05 (124 Holland Road and 129-135 Fisher Avenue) and 250-01-02 (117 Fisher Avenue).



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2. By amending Section 3.01.4 by adding a new item at the end:

“g. Fisher Hill Special Overlay District”

3. By amending Section 4.07 – Table of Use Regulations – to allow for life care facilities on lots less than 5 acres but greater than 3 acres in the overlay district, by adding a sentence at the end of the description of Use 6A in the Use Table, underlined below:

Use 6A, Life care facilities, incorporating independent apartment living units for elders combined with supportive medical, nursing or other shared facilities.

*Allowed by special permit only on lots greater than 5 acres, but within the Fisher Hill Special Overlay District, the minimum lot size shall be 3 acres.

4. By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 22 after the words “Any other structure or principal use” in the rows for the S-25 and S-15 Districts, which Footnote 22 shall also be added at the end of the Table and read as follows:

“22. See Section 5.06.4 – Special District Regulations, subsection l. Fisher Hill Special Overlay District with respect to uses and all dimensional requirements.”

5. By amending Section 5.06.4 – Special Districts – by adding a new item as follows:

“l. Fisher Hill Special Overlay District

1) *It has been determined through study of the former Newbury College campus that the potential exists for careful, planned redevelopment. It has further been determined that, due to the surrounding residential development pattern, and the municipal need for housing for an aging population, assisted living residential uses in a life care facility designed with a similar architectural character as the neighborhood are appropriate. Benefits to the community include maintenance for adaptive reuse of the Mitton House and creating a public easement along Fisher Avenue to preserve mature shade trees, and are significant reasons for why additional density may be allowed by Special Permit under the criteria of this section.*

2) *At any point prior to December 31, 2020, an applicant may seek relief by Special Permit under this Overlay District by completing the Design Review preapplication process as set forth in Section 5.09 (3)(a)(2) provided the proposed project includes the following requirements and limitations:*

a. Includes a minimum of three acres of contiguous land.

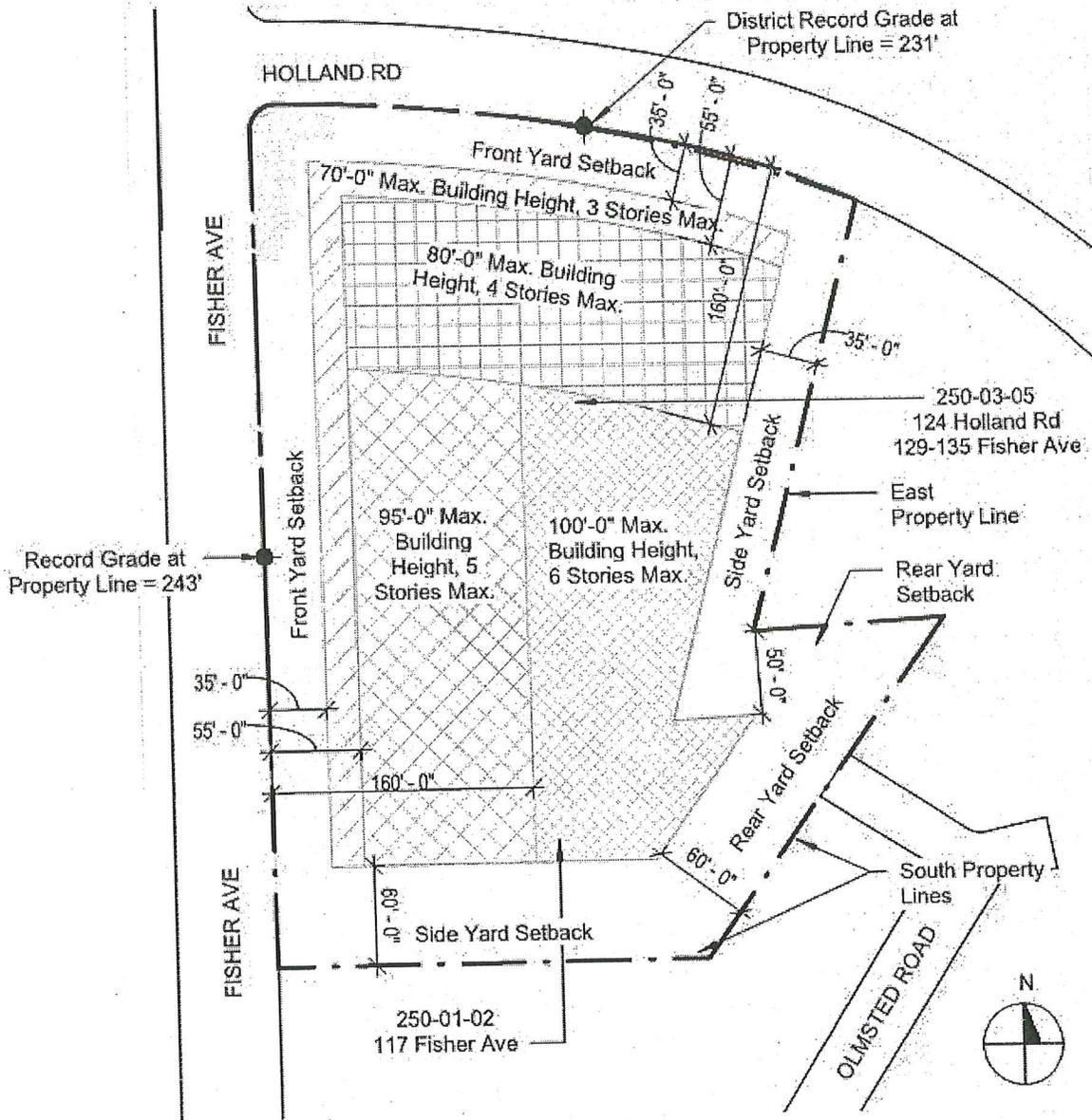
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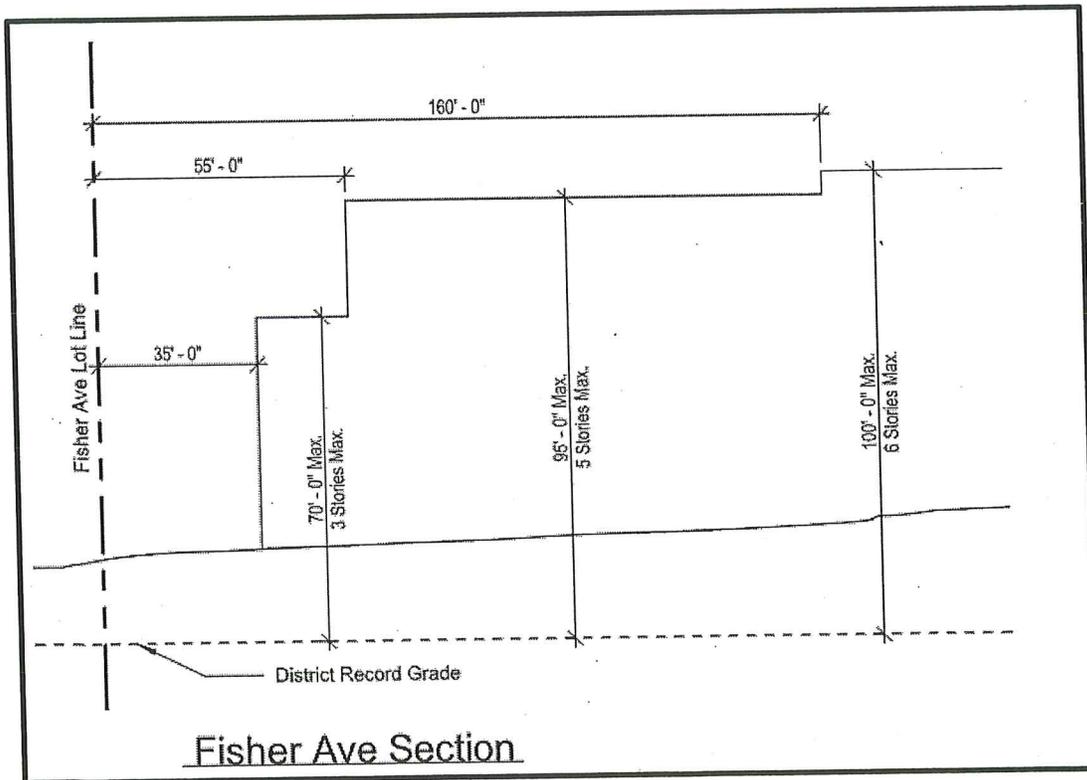
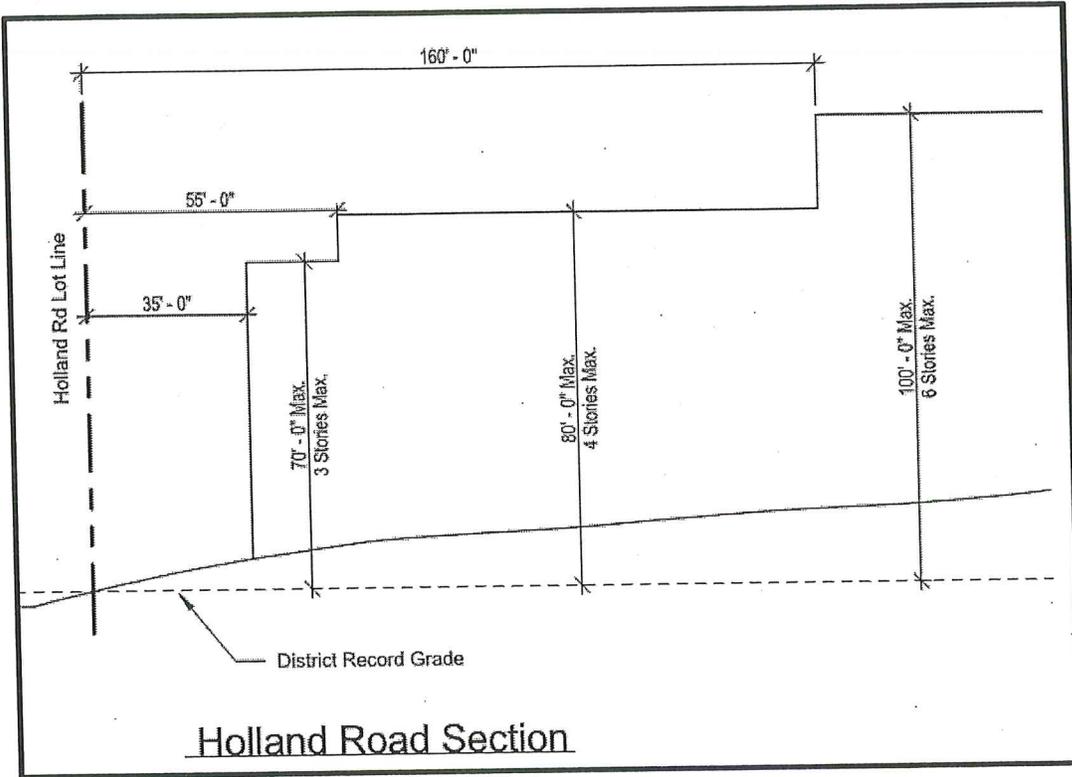
- b. *Includes a life care facility with a maximum of 160 units as its primary use including all related accessory uses.*
- 3) *The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.*
- a. *Open Space*
- i. *The project must dedicate a minimum of 40% of lot area towards Open Space. For the purposes of this requirement, Open Space shall include parts of a lot at ground level that are contiguous landscaped areas and walkways that include planted containers, landscaped beds, and/or street trees. Usable open space is not a requirement for this use.*
 - ii. *The open space requirements of **Table 5.01 — Table of Dimensional Requirements** may be reduced in accordance with Site Plan Review as noted in **Section 5.06.4.1.4** below.*
- b. *Parking*
- i. *98 parking spaces shall be provided with a minimum of 43 concealed.*
 - ii. *The number of parking spaces required per Article 6 of the Zoning By-Law may be reduced at the request of the applicant, following review of a parking study and favorable recommendation by the Planning Board.*
 - iii. *Parking area setback along the southern lot line shall be no less than 20 feet.*
 - iv. *The parking and drive requirements under Section 6.04, including stall width and depth, aisle width, and width of entrance and exit drives, may be modified in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below.*
 - v. *Once a minimum of five years have passed since the issuance of a Certificate of Occupancy for any project promulgated pursuant to a Special Permit granted under this Section, the holder of said Special Permit may seek modification of the Special Permit to allow the provision of fewer than 98 spaces, but only through a reduction in the number of non-concealed parking spaces and only upon a showing to the Zoning Board of Appeals that such a reduction will not impact the neighborhood.*

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- c. *The Gross Floor Area Ratio for a project permitted pursuant to this section shall not exceed 1.15.*
- d. *The maximum building height shall be 70' and three stories max. for portions of a building that are within 55' of Fisher Avenue and Holland Road. The maximum building height shall be 80' and four stories max. for portions of a building that are within 160' of Holland Road. The maximum building height shall be 95' and five stories max for portions of a building that are within 160' of Fisher Avenue. Otherwise, the maximum building height is 100' and six stories max. The maximum number of stories does not include basements or means of egress. These maximum building heights do not include rooftop structures such as elevator penthouses, chimneys, mechanical equipment, and mechanical screens. Building heights shall be measured from the District Record Grade rather than as prescribed in Section 5.30. The District Record Grade shall be the record grade of the Holland Road property line at the midpoint of the Holland Road boundary of the Fisher Hill Overlay District. Refer to Building Height and Setback Diagram. The Board of Appeals may grant a Special Permit for projections into front yards that do not comply with Section 5.51.*



Building Height & Setback Diagram



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- e. *The residential component of the project shall not include more than 160 living units. All 160 units may be market-rate.*
- f. *Notwithstanding anything to the contrary in Section 4.08, for the purposes of satisfying the requirements of Section 4.08 the applicant may provide eighteen (18) affordable units off-site within 100 yards of the boundary line of this overlay district or make a cash payment not to exceed Six Million Five Hundred and Twenty Five Million Dollars (\$6,525,000).*
- g. *Building setback requirements shall be as follows:
From Fisher Avenue, no less than 35 feet;
From Holland Avenue, no less than 35 feet;
From east side lot line, no less than 35 feet;
From southern side and southern rear lot lines, no less than 60 feet;
From the rear lot line, no less than 50 feet.
Refer to Building Height and Setback Diagram.*
- h. *Accessory Structures allowed within the site setbacks include retaining walls, fencing, and utility equipment- ie generator and transformer. Setback for all structures is 6' min. from any lot line. Where required for emergency vehicle access, retaining walls and fencing can encroach on front yard setbacks.*
- i. *Notwithstanding the provisions of Section 6.06.6, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below. If the loading zone includes an area for trash and recycling this area for trash and recycling shall be enclosed. If the entire loading zone including the area for trash and recycling is fully enclosed, such area shall not count towards the project's total gross floor area.*
- j. *Design Standards: During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Fisher Hill Special District Design Guidelines developed by the Newbury Zoning Committee for guidance on general exterior massing, scale and design.*

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- 4) Any application including new structures that seeks relief under this Overlay District shall:
- a. be subject to Site Plan Review by the Planning Board to ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian, bicycle and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish and recycling removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:
 - i. Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;
 - ii. Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site; and
 - iii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.
 - b. be deemed a Major Impact Project with respect to Section 5.09, Design Review.
 - c. include as a condition of the special permit a Transportation Access Plan Agreement ("TAPA") approved by the Director of Transportation that includes Transportation Demand Management ("TDM") programs.
- 5) Allowing the additional density through the Special Permit contemplated by this Section has a potential benefit contemporaneous with its inclusion in the By-Law.

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However, planning objectives potentially achieved by this Section may not be met if substantial time elapses. Therefore, if upon closing the public hearing on the Special Permit contemplated herein, the Board of Appeals finds: (a) more than two years has elapsed since the opening of the public hearing; and (b) the amount of elapsed time is, in the discretion of the Board, excessive and contravenes the planning objectives of this Section, the Board may deny the request for a Special Permit.

6. By amending Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements – by adding a new footnote as follows:

“4. For the Fisher Hill Special Overlay District, parking requirements shall be no less than 0.5 space per unit. Section 6.02.2.h shall not apply”.

7. By amending Section 7.07 – Sign By-Law – Exceptions to the Above – by adding to Section 7.07.1 a new item at the end:

“f. The Board of Appeals may by special permit grant relief to the requirements of Section 7.01 for signage for the buildings in the Fisher Hill Special Overlay District subject, however, to compliance with the Design Review Procedures set forth in Section 7.08 and the Design Guidelines adopted for this district.”

...or act upon anything else relative thereto.

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EXPLANATION

Summary

The Newbury Zoning Committee (NZC) voted at its meeting on March 4th to sponsor seven interrelated warrant articles dealing with the former Newbury College campus. This “package” of articles is the result of over 8 months of negotiations between the Town and Welltower, Inc. (“Welltower” or the “Developer”), the new owner of the campus. Welltower is a Real Estate Investment Trust (REIT) and a senior housing developer.

The three key components of the transaction are:

1. Proposed “**Fisher Hill Special Overlay District**” (the “**Overlay District**”) to allow Welltower to develop a senior living community on a portion of the property. The Developer has indicated that if the Fisher Hill Special Overlay District is not approved at the May Town Meeting it intends to sell the property in one or more pieces.
2. Related **Affordable Housing Inclusionary Zoning Alternatives**. **Town Meeting is being presented with two** alternative paths by which Welltower may satisfy its affordable housing obligations in connection with its senior housing project.
3. Assuming the Fisher Hill Special Overlay District Zoning is passed by Town Meeting and subsequently approved by the Attorney General, the Town will have the **Opportunity to Purchase** that portion of the property located on the West side of Fisher Avenue (“former West Campus”) for \$14.8 million, a below-market price, if a debt exclusion vote planned for May 5th is approved by the voters and followed by Town Meeting approval of the acquisition. If either of those two steps fail, the Town will otherwise **share in sale proceeds over \$14.8 million** when the former West Campus is sold by the Developer to another party. A description of the property to be acquired is contained in Article X7 which is the authorization to purchase the former West Campus.

The articles are listed below:

Article	Warrant Reference	Comments
Article X1	Fisher Hill Special Overlay District Zoning	If Articles X1-X4 are not approved, the Developer has indicated its intent to sell off the property to another buyer. Articles X5, X6 and X7 would then be moot.
Article X2	Acceptance of Restrictive Covenant	
Article X3	Authorize Select Board to enter into Memorandum of Agreement	
Article X4	Acceptance of an easement protecting trees along Fisher Avenue	This easement will protect trees along Fisher Avenue and allow the linkage of the Tax Certainty Agreement to the Project Site.

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Article X5	125 Holland Zoning	If Article X5 is not approved, the inclusionary zoning requirement will be met with the Alternative Cash Option.
Article X6	Municipal Use Overlay Zoning	Approval of Article X6 is necessary for the Town to be able to use the former West Campus for municipal uses, most notably municipal office and associated support services if Article X7 is approved.
Article X7	Authorization to acquire former Newbury College West Campus.	If Article X7 is not approved, the Developer will sell the former West campus to another buyer. The Town will share in the proceeds of the sale for the portion of the sale price above \$14.8 million.

Town Benefits: If passed, the articles will provide significant benefits to the Town, including:

- Substantial inclusionary zoning (affordable housing) commitments;
- New and secure property taxes, with a present value to the Town estimated to range from approximately \$40 million to \$60 million¹ and memorialized in the tax certainty agreement (Article x4);
- Sustainability undertakings including voluntary compliance with the No Fossil Fuels By-law²;
- The maintenance and adaptive re-use of the historic Mitton House; and
- Other community benefits (such as partnering with the Senior Center and Teen Job Fairs).

Passage of the Fisher Hill Special Overlay District zoning article is a prerequisite of Welltower offering the Town the opportunity to acquire the west side of the former campus. The Town's acquisition of the west side is dependent on both the voters and Town Meeting approving it and funding it.³ Article X6 is a zoning Article that would allow the Town to use the West Campus for short-term, interim municipal uses while it undertook an intensive process involving the community to determine the final use of the former West Campus.

The Town's real estate advisor, McCall & Almy (<http://mccallalmy.com/>), has considered the following questions: (1) *What is the highest and best use for the East side property and how does that compare to both the land value attributable to the senior living proposal as well as to what is allowed under zoning?* and (2) *Did we get as much from the developer as we could?*

The Town's advisors believe a tax-exempt educational use is the highest and best use for the former Newbury campus. If the property were sold to such an institution, the Town would not receive any tax

¹ The range reflects 3% and 4% discount rates. The Town's long term cost of capital is currently about 2%. Present value was calculated over 95 years.

² With an expected limited exemption request for heating the water of an indoor pool

³ Technically, Town Meeting could approve the purchase even if the voters reject it but the strain such an acquisition would put on the Town's Capital Improvement Program would be a strong disincentive for the Select Board to act on the authorization.

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revenue⁴, nor would there be any new affordable housing units built or funded. Further, if such an educational entity elected to invoke the Dover amendment, the Town's ability to control what happens on the site, an important goal of the neighborhood, will be limited, although, according to Ch. 40A sec. 3, the Town may impose reasonable dimensional controls on such a development.

See the **Commonly Asked Questions Regarding the Property and the Transactions** section at the end of this explanation for a discussion of these and other questions, a financial analysis of the Welltower development, and related issues.

Background and Developer

In December 2018, Newbury College ("Newbury" or the "College") publicly announced that it would be closing its 7.87-acre campus atop Fisher Hill at the conclusion of the 2019 spring term. Non-profit educational uses have been located there for nearly 70 years, and this is a by-right allowed use throughout the Town. Due to its tax-exempt status, the College was not paying taxes but was making a small voluntary PILOT. The property is located in an area zoned for single-family residential (S-15 and S-25).

The Spring 2019 Bid Process

In early 2019, the College's Trustees engaged Colliers International to sell the property. Specific transaction terms required a single buyer for the entire property and there was a stated preference for bids containing neither permitting nor financing contingencies.

The Town engaged McCall & Almy in early 2019 to assist the Town in its pursuit of the Newbury campus. McCall & Almy served as the Town's professional advisor throughout the competitive auction process and acted as intermediary between the Town and Colliers International. McCall & Almy confirmed that Colliers planned to run its process as an auction with multiple rounds of bidding. McCall & Almy guided the Town in its formulation of a bidding strategy which was designed to: i) allow for the Town's advancement to each subsequent round of bidding while also ii) attempting to secure the property for the Town at the lowest possible price. Given Newbury's desire to quickly find a buyer, there was a sense that Newbury might accept a lower bid from the Town given its credit worthiness and credibility. In an attempt to provide Newbury with certainty of closure, the Town structured all but its final bid at price levels that did not require the contingency of a debt exclusion vote. Because the Town's decision-making and capital procurement process is political in nature, the Town was at a competitive disadvantage in the auction process relative to many other bidders. In the "final and best" round of bidding, the Town put forth an offer to purchase the property in excess of \$30 million, subject to a debt exclusion vote contingency. Final and best bids were due just after the failed May 2019 debt exclusion vote, highlighting to Newbury the risk that the Town might not approve a debt exclusion for the acquisition of the property.

⁴ The Town would likely attempt to negotiate a PILOT ("Payment In Lieu of Taxes") agreement for some revenue but, even if successful, such payments would likely be substantially less than the tax revenue from the project being discussed.

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Welltower as the Winning Bidder

In June 2019, the Town was confidentially approached by representatives of Welltower Inc., the winning bidder. Welltower is a major health care REIT (NYSE: WELL) that develops and owns senior housing, assisted living and memory care communities, as well as post-acute care facilities and medical office buildings. Welltower generally owns assets by itself or in joint venture with other entities. As a REIT, Welltower does not directly operate its properties and either leases them under long-term triple net leases or owns them subject to management agreements with leading industry operators. Recently, Welltower has grown its direct development portfolio, targeting state of the art, luxury senior housing developments in growing urban areas, particularly in coastal markets. On February 10, 2020, Welltower was recognized as a "Global Leader in Sustainability Performance" by S&P Global. While Welltower owns many senior living facilities in Massachusetts, Newbury would be Welltower's first direct development in the metropolitan Boston market.

Welltower's representatives disclosed that they had the entire 7.87-acre Newbury property under contract to purchase, subject to the Attorney General's approval of the Newbury Trustees' disposition plan. Welltower requested that the Select Board immediately upon Welltower's closing on the acquisition, to begin work on a zoning change to enable the development of a high-end senior living community, incorporating the maintenance and adaptive re-use of the Mitton House, on the East side of the campus⁵. In addition, Welltower offered to sell to the Town the former West Campus⁶. Welltower also indicated its intent to sell the final Newbury parcel, the .87 acre 125 Holland Road site, given that it was not part of the senior care facility development.

Thirty days after the Attorney General approved the transaction, Welltower finalized the purchase for \$34 million, representing 13% less than the property's \$39.1 million assessed value at the time of sale.

In anticipation of the closing, the Select Board created and charged the Newbury Zoning Committee ("NZC"). See <https://www.brooklinema.gov/1720/Newbury-Campus-Zoning-Study-Committee> for plans, minutes, and the identities of NZC members, many of whom had served on the previous Newbury Acquisition Committee. Members consisted of real estate professionals, neighbors, and two Select Board members. The Town Administrator and representatives of the Planning Department and Town Counsel's office provided staff support to the NZC.

Welltower repeatedly requested that the Town expeditiously review its request for a zoning change since its intentions were, and remain, to commence construction as soon as possible. Since October 2019, there have been 10 public meetings of the NZC, 7 of the Architectural Subcommittee and 8 of the Negotiations Subcommittee (mostly in Executive Session) in addition to a number of working group negotiations with Welltower.

The recent Brookline Fiscal Advisory Committee report recommends expanded economic development with targeted zoning changes to provide much needed new tax growth. Newbury is a unique opportunity to do this in a residential zone where an educational use has a value greater than residential. That is rarely the case in Brookline.

⁵ A total of 3.88 acres at 117 Fisher Avenue and 124 Holland.

⁶ A total of 3.13 acres at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road.

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Package Negotiated with Welltower

Negotiations with Welltower focused primarily on 3 topics: i) the proposed size and design of the senior living community, ii) the inclusionary zoning (affordable housing) alternatives, and iii) extracting value from the former West Campus either in the form of a discounted purchase price for the Town or revenue sharing upon the potential sale of the property to a party other than the Town. McCall & Almy advised the Town and directly participated in the negotiations. Market and financial feasibility analyses were provided by Pam McKinney (<https://tinyurl.com/sq3k8z7>), an independent consultant who has been the Town's real estate financial consultant for a number of negotiated overlay zones. Gary McCabe, the recently-retired Chief Assessor, provided advice on the projected senior living real estate taxes.

Ms. McKinney concluded the proposed unit mix and project scale are necessary to enable operational efficiency and financial feasibility.

The Town focused its negotiating efforts on securing for the Town the requirements Welltower, as the developer of a major project in the Town, would need to follow – most particularly the means by which it would meet its inclusionary zoning requirement – along with memorializing the benefits and planning objectives the development would advance while mitigating its impacts. The main municipal benefit pursued by the Town's negotiators was the creation of value from the disposition of the West Campus: either through the lowest possible purchase price in an acquisition by the Town or, should the voters elect not to proceed with the acquisition, the highest return in a profit-sharing arrangement if Welltower were to sell it to a third party. However, as noted above, the fiscal benefit of a completed and operational Welltower project to the Town was considerable, so negotiations needed to be pursued in a manner that would not jeopardize the viability of the entire transaction. Finally, all parties involved recognized that a failure to negotiate a deal would likely lead to a sale of the former Newbury campus to one or more tax-exempt educational uses, with an attendant loss of tax revenue.

Through the MOA, Welltower has committed to sustainability requirements and goals in excess of State and local requirements, Transit Demand Management (TDM) measures, the maintenance and adaptive re-use of the Mitton House, the two affordable housing inclusionary zoning alternatives before Town Meeting, and the opportunity for the Town to purchase the former West Campus or otherwise share in sale profits in excess of what the Town would pay as well as other community benefits.

Fisher Hill Special Overlay District

The Fisher Hill Overlay District proposes zoning changes to the 3.88-acre Newbury College East Parcel fronting on Fisher Avenue. Even though the existing site has been used as a college campus, it is zoned for single family residences.

The Overlay District zoning would allow, by special permit, the development of Balfour at Brookline, an approximately 193,000 square foot senior living community. The redevelopment includes the maintenance and adaptive re-use of the 20,000-square foot historic Mitton House, and will require the demolition of 75,000 square feet of existing structures. The project is expected to contain approximately 160 luxury market rate senior rental units, with approximately 80 independent living, 40 assisted living and 40 memory care units⁷.

⁷ This is the current allocation of units and is subject to minor adjustments.

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Proposed Zoning and Summary Project Design

The proposed Overlay District allows by special permit a maximum Floor Area Ratio (FAR) of 1.15. This overlay zoning sunsets if the required special permits are not applied for by the end of 2020, or in the event of the developer not using best efforts to diligently receive all permits and approvals subject to financing and economic conditions. The proposed Overlay District leaves in place the existing residential zoning which consists of S-25 (FAR of .20 with .25 for cluster by special permit) as well as S-15 (FAR .25 or .30 for cluster by special permit). The proposed 193,000 square foot project would slightly more than double the amount of floor space currently on the property.

Balfour at Brookline would be a major impact project requiring a Design Advisory Team (DAT) appointed by the Planning Board. Over the course of several public meetings, the NZC Architectural Subcommittee guided a 9% reduction to the proposed building mass, as well as significant changes to the site plan and building design. The NZC Architectural Subcommittee has also developed design guidelines to inform the DAT, which have already been reviewed by the Planning Board. Welltower has requested that the DAT be appointed in June should Town Meeting approve the zoning change.

The Welltower architectural team consists of Robert A.M. Stern Architects (RAMSA), a distinguished architecture firm based in New York City, and Finegold Alexander Architects, an established local architecture firm. The proposed design references the architectural traditions found in the surrounding residential neighborhood. It reinforces a neighborhood scale at grade and activates the street edge with open space in excess of what presently exists by varying setbacks and building heights. These range from a low of three stories or 70 feet along Fisher Ave and Holland Road to a range within the interior of 80 to 95 feet and five stories to a maximum of 100 feet and 6 stories.

Balfour at Brookline will contain two courtyards that face Holland Road and Fisher Avenue, allowing the preservation of large existing street trees. There will be two piazzas where residents enter the building as well as sheltered parking. Gambrel and hipped roof forms are expected to reduce the appearance of the project's size. The project will result in an increase in both open and green space.

There will be 98 parking spaces, 43 of which will be sheltered. The approximately 0.6 spaces per unit is deemed sufficient given the expected low use of cars by residents and the TDM measures to which Welltower has committed. After 5 years, based on operating experience, a special permit may be applied for to reduce the amount of exterior (not sheltered) parking.

Anticipated Operating Approach

Welltower has selected Balfour Senior Living <https://balfourcare.com> as the operator of Balfour at Brookline. In 2019, Welltower formed a new relationship with this Denver, Colorado-based premier operator of luxury independent, assisted living and memory care communities.

Balfour at Brookline will offer an all-inclusive lifestyle including distinctive restaurant venues, over 200 life enrichment programs each month and complimentary scheduled transportation. Facility amenities will include a large centralized dining room with adjacent great room, lounge, salon, indoor swimming pool, fitness center, library and upper-floor sky bar.

The approximately 80 Independent living units will range in size from about 750 sq. ft. to 2,000 sq. ft., and all will contain either 1 or 2 bedrooms and have full kitchens with in-unit washer and dryers. Rents

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are projected to average \$9,600 per month with all utilities included. Also included will be a range of services and amenities, including an extensive activities program containing a variety of lectures, educational, cultural and musical events. There are a number of meal plan options and some services may require an additional fee.

The 40 assisted living units will average approximately 450 sq. ft. and will have modified kitchens. These units will consist of studios, and 1- and 2-bedroom units and will have in-unit washers and dryers. Rents are projected to average \$8,700 per month with all utilities included. Extensive activities with entertainment and a variety of educational events will be run within the assisted living wing which has a separate kitchen and community dining room serving all meals. Nursing services will be provided including assistance with medication administration. In addition, advanced high-tech monitoring systems will be provided so that nursing staff can monitor remotely the residents' activity levels 24/7 to ensure that nursing staff is aware of activity levels relating to the health and well-being of the residents who need assistance. Residents will receive a basic level of care and for those who need or request additional services they will be available at an additional cost.

The 40 Memory Care Units will average 350 sq. ft. and average monthly rents are projected to be \$10,700. All meals are provided as these units do not have kitchens. Residents have a separate activities program and dining room. The Memory Care units are staffed 24/7 with slightly higher overnight staffing than the Assisted Living Units and are all located within a secure wing.

The community will have a Director of Nursing whose sole focus and responsibility is for the care of residents in the assisted living and memory care units. The Director of Nursing will also supervise the nursing staff made up of RNs, LPNs and CNAs. Residents of the Independent Living units will also have access to nursing care should they require it in an emergency. Balfour asserts that this complement of on-site nursing staff sets Balfour apart from other Senior Living facilities and not only provides a high level of care and security to its aging residents, but also reduces the need to use 911 services for non-emergency situations.

Nursing staff will be on-site 24/7. There will be three employee work shifts with staff allocated among all three unit types. Approximately 50 employees will work the morning and afternoon shifts, while the overnight shift will have approximately 10 employees.

Anticipated Net Fiscal Benefits and Tax Certainty

The Tax Certainty Agreement will be triggered if Town Meeting votes in favor of the Fisher Hill Overlay District article and the Attorney General approves it. The Tax Certainty Agreement has a term of 95 years with the proposed senior living community use taxed at the residential rate. Welltower has agreed separately to hold all associated personal property in an entity taxable by the Town, which will mean the Town will be able to assess personal property tax on it at the higher commercial rate. Once the Project is completed, the Tax Certainty Agreement will be recorded, ensuring that it will run with the land and apply to Welltower or any successive owner of the property for the full term.

Determining a future assessed value for this type of asset is complicated with few if any comparable properties to look to as examples. Further, Balfour at Brookline has operating business components generating significant value that are not subject to real estate tax. While the Developer believes the taxes upon stabilization will be about \$800,000 (assuming the current tax rate and no overrides), the Town's tax consultant believes this may be a conservative estimate.

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Fiscal costs to the Town associated with this development are not expected to be significant. Balfour will have on-site 24/7 nursing staff to limit the number of 911 calls generated by the facility to an expected average of one call per week. The Town is not responsible for paying for ambulance service, and it is anticipated that there is sufficient capacity if police and fire EMTs also respond to calls.

The present value of the fiscal benefits has been calculated to range from approximately **\$40 million to \$60 Million**. That range is based on the \$800,000 estimate beginning in late 2025, the projected date for stabilized occupancy and 3 years after the tax certainty agreement starts.⁸ The three-year lease-up after projected completion is a standard assumption according to Ms. McKinney. The analysis assumes the \$800,000 grows at the rate of 2.5% annually over 92 years (the maximum amount the overall tax levy can increase but conservatively assumes no operating overrides which would increase the tax). The analysis also uses a discount rate of 3% and 4%, conservative figures given the Town's current long-term cost of capital of approximately 2%.

In addition, building permit fees are estimated to be at least \$1.5 Million.

Negotiated Sustainability Benefits:

The following sustainability commitments are contained in the MOA:

1. As envisioned by the recently passed Article 21 of Fall 2019 Town Meeting (Prohibition on Fossil Fuel Infrastructure), no use of natural gas or fuel oil except for the commercial kitchens, emergency generator, and domestic hot water⁹.
2. LEED-NCv4 Gold Certifiable.
3. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
4. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
5. Implement Site Sustainable Measures which will include the following:
 - a. Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.
 - b. Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - c. Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.

Negotiated Community Benefits:

The following community commitments also are contained in the MOA:

1. Balfour will partner with the Council on Aging and/or Brookline Community Aging Network ("CAN") on various cultural, educational and/or musical/artistic events at least quarterly. Such events shall be either at the Project Site or the Senior Center or such other public place as mutually agreed

⁸ There will be smaller tax payments from the issuance of the Certificate of Occupancy made until then.

⁹ The developer has stated their requirement to use natural gas to heat an indoor pool.

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upon. Welltower has also agreed to make a voluntary contribution of \$2,500 per year to the Senior Center to support its programming.

2. Provide community space for meetings of local neighborhood associations or other Brookline non-profits up to once a month or 12 times per year.
3. Balfour will hold a job fair at the Brookline Teen Center or other public venue and, to the extent permitted by law, will give qualified Brookline residents preference for jobs at Balfour at Brookline. In order to make Brookline residents aware of job opportunities, Balfour will send a notice of such job opportunities to the Town. Balfour will also work with the Brookline High School culinary arts and restaurant program to provide, from time to time, paid or unpaid internship opportunities for students engaged in the culinary arts program at the High School.
4. A Public Easement Area will be provided to create a green buffer of mature trees on Fisher Ave maintained by Developer.
5. The Developer will provide a landscape buffer to abutters on the south side entry.
6. Electric vehicle charging stations will be provided in excess of Town requirements for Project residents and guests.
7. Full cut-off exterior light fixtures with LED lighting. Use of pole mounted fixtures limited to surface parking areas.
8. Optimize Energy Efficiency of Building Systems
 - a. Provide water-efficient plumbing fixtures;
 - b. Perform building commissioning training for Operations and Maintenance

Compliance with Findings and Mitigation Suggestions from Transportation Study

The scope of the transportation study paid for by Welltower and completed by VHB was developed in consultation with the Town's Transportation Department staff. The study treated the entire senior housing development as *new* for impact analysis purposes and did not take any traffic credit for the prior college use nor consider traffic impacts from future uses of the West campus. Since the average age of residents at the time of entry is expected to be approximately 82 years, car ownership will be relatively low and the potential for resident trips by personal automobile is expected to be minimal. The operations of the proposed facility are aimed at reducing the number of automobile trips to and from the site and minimizing single occupant vehicles. Specifically, Balfour will implement the following transportation demand management ideas along with other measures:

1. Staggered employee shifts that do not coincide with peak roadway traffic hours
2. Employee shuttles will be run to the nearest train stations (C and D Green line stations to the north) and employee T passes will be subsidized
3. Residents will have access to electric vehicles and vans with drivers for shared trips to appointments and errands
4. No trailer truck deliveries, except for moving trucks hired by residents, will be allowed to service the site
5. Bicycle parking will be provided on-site and showers/dressing rooms will be available for employees
6. New on-site walkways will connect to the existing sidewalk on Fisher Avenue

VHB's report concludes that additional peak period traffic estimated to be generated by the development falls within the range of daily fluctuations in traffic volumes and will not be perceptible to a typical driver traveling through the area. Detailed analysis presented in the study indicates that the

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existing transportation infrastructure in the area can adequately support development related traffic. The report also concludes no off-site traffic mitigation will be necessary to support the development.

Negotiated Inclusionary Zoning (Affordable Housing) Alternatives

While the main project includes 160 total units, only 120 of those units—the approximately 80 units of service-supported senior housing and the approximately 40 assisted living units—are covered under the Town's Inclusionary Zoning By-law. The 40 memory care units are not considered full dwelling units under Inclusionary Zoning as they do not have cooking facilities.

The NZC Negotiating Subcommittee, with input from the Housing Advisory Board (HAB), sought to arrive at an affordable housing recommendation which would fulfill as closely as possible the various provisions of Brookline's existing Inclusionary Zoning By-law. The ultimate recommendation, along with all of the other Town objectives, had to remain within Welltower's overall financial feasibility constraints. These financial limitations were evaluated by the Town's consultant.

Town Meeting will actually be provided the opportunity to choose between two distinct affordable housing plans, both of which were unanimously voted as acceptable by HAB.

HAB Preferred Plan: Develop 18 new mixed-income affordable condominium units at 125 Holland Road, a part of the former Newbury College campus directly across from the main project. This plan is a preferred alternative under the Town's Inclusionary Zoning By-law and by the HAB. Because 125 Holland Road would require an affordable housing zoning overlay, this preferred option would require a 2/3 vote of approval by Town Meeting.

Acceptable alternative plan: Welltower would contribute \$6.525 million to the Housing Trust Fund. The Housing Advisory Board has recommended that these funds be earmarked for the exclusive prescribed use of the Brookline Housing Authority (BHA). The BHA would be required to apply these funds to redevelop its Colonel Floyd senior housing property on Marion Street, including replacing 60 obsolete senior housing units and adding 40 to 45 new low-income senior rental housing units. This acceptable alternative plan does not require re-zoning. Should the needed rezoning for the preferred plan not receive the required 2/3 vote, the Colonel Floyd/BHA alternative plan would become effective as part of a majority Town Meeting vote to approve the Memorandum of Agreement (MOA) for the main project.

The Inclusionary Zoning By-law requires 15% or 18 of the 120 housing units to be affordable. The preferred 125 Holland Road development plan includes 18 affordable ownership units, with 6 units affordable to households earning up to 80% of the Area Median Income (AMI), 6 units affordable to households earning up to 100% of AMI, and 6 units affordable to households earning up to 150% of AMI. With 40 to 45 new affordable units, the alternative BHA plan would exceed the minimum 15% requirement and serve primarily households earning less than 50% of AMI.

A third option that is generally prescribed under the existing By-law—direct integration of the affordable units within the main project—was evaluated at the outset and determined by all parties to be infeasible for this type of project because the very costly service/support amenity package is inseparable from the housing component. Only about six affordable units would have been feasible under this option.

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Further detail comparing the preferred 125 Holland Road plan with the alternative Colonel Floyd/BHA plan appears in the following table.

	125 Holland Road: 38,000 sq. ft. parcel adjacent to main Welltower project	Brookline Housing Authority: Existing BHA Col. Floyd property with available land
Zoning By-law preference	Adjacent offsite development is #1 of 3 defined By-law alternatives	Payment to Trust Fund for future affordable housing development is #3 of 3 alternatives
Zoning By-law compliance (4.08)	Meets 15% requirement but some units serve income range above current by-law range	Payment is less than the By-law formula, but yields over 2x the minimum 15% of total units
Up-zoning required	Yes	No; eventual parking relief may be needed
Creation of new affordable units	18 affordable ownership units (15% x 120) serving incomes up to 80% (6 units), up to 100% (6 units), and up to 150% (6 units) of AMI and available to all age groups	40 net new affordable rental units targeting incomes at 50% of AMI + 60 replacement units available only to seniors
Geographic dispersion of affordable housing	Would augment 24 existing affordable units on Fisher Hill (Olmsted Hill)	Would increase affordable housing concentration near Coolidge Corner
Timing and delivery	By yearend 2022. May be longer than main project but earlier than BHA option.	Depends upon timing of state subsidy awards. Could take 1-2 years longer to complete.
40B – SHI inventory credit	Minimum 6 units would qualify for 40B SHI inventory credit	All the 40 new units would receive 40B SHI inventory credit
Affordable Housing developer	Anticipated to be: New Atlantic Development—developer of Olmsted Hill Affordable Housing-- designated and supported by Welltower ¹⁰	Brookline Housing Authority
Physical features	Max. 0.5 FAR; Max.18,965 GSF; 2.5 floors; 18 affordable units, most or all 1-bedroom w/most parking under new building area; Preserve/add to existing building if feasible; otherwise all new construction	One or more multistory elevator buildings at Col. Floyd site. Would replace 60 obsolete 2-story walk-up senior housing units and add 40-45 net new units for a total of 100-105 new 1BR units. Welltower contribution would be one component of a larger finance and subsidy package for the BHA project.

COMMONLY ASKED QUESTIONS REGARDING THE PROPERTY AND THE TRANSACTIONS

¹⁰ Note that the selection of New Atlantic is subject to Welltower and New Atlantic entering into a binding agreement with respect to the development of the 125 Holland Site.

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What is the highest and best use for the East side property and how does that compare to both the land value attributable to the senior living proposal as well as to what is allowed under zoning?

As part of the Town's due diligence when formulating its bid, McCall & Almy prepared a set of opinions of land value based on a range of residential and continued educational uses:

Newbury College - "East Campus"				
3.88 acre site (168,856 square feet)				
Range of Land Value Scenarios and Associated Town Benefit				
Scenario	Unit Count	Estimated Value	NPV Stream of Tax Payments ¹	Affordable Housing Contribution
Educational User	N/A	\$ 18,900,000 ⁴	N/A	N/A
Welltower Senior Living Project	160	\$ 17,000,000 ⁴	\$40-\$60 million ⁵	\$ 6,525,000
Cluster Residential Development ²	12	\$ 5,300,000	\$ 7,250,000	\$ 2,000,000
"As of Right" Residential Development	6	\$ 4,300,000	\$ 6,150,000	\$ 700,000
East Campus Assessed Value: \$18,960,000				
Newbury College - "West Campus"				
3.13 acre site (136,157 square feet)				
Range of Land Value Scenarios and Associated Town Benefit				
Scenario	Unit Count	Estimated Value	NPV Stream of Tax Payments ¹	Affordable Contrib.
Educational User	N/A	\$ 17,700,000 ⁶	N/A	N/A
Town Acquisition	N/A	N/A	N/A	N/A
Cluster Residential Development ²	8	\$ 6,400,000	\$ 5,510,000	\$ 900,000
"As of Right" Residential Development ³	4	\$ 5,400,000	\$ 4,570,000	N/A
West Campus Assessed Value: \$14,800,000				
FOOTNOTES & ASSUMPTIONS				
¹ Net Present Value calculation applies discount rate of 3.0% to stream of inflation-adjusted future real estate tax payments (see footnote 5 for Welltower assumptions)				
² As of Right" Residential Development Zoning Requirements - S-15 zoning for residential as of right requires a minimum lot size of 15,000 SF and stipulates a maximum FAR of 0.25. - S-25 zoning for residential as of right requires a minimum lot size of 25,000 SF and stipulates a maximum FAR of 0.20.				
³ Cluster Residential Development Zoning Requirements - S-15 zoning for residential cluster requires a minimum lot size of 7,500 SF and stipulates a maximum FAR of 0.30. - S-25 zoning for residential cluster requires a minimum lot size of 12,500 SF and stipulates a maximum FAR of 0.25.				
⁴ Estimated provided by Byrne McKinney				
⁵ Estimated fiscal impact of Welltower project (approximate). - Assumes \$800,000 tax payment beginning at stabilized occupancy (3 years after Tax Certainty Agreement takes effect). - Increases 2.5% per year over 92 years. Smaller tax payments during three-year lease-up not considered. - Range reflects discount rates of 3.0% and 4% applied to stream of future inflation-adjusted real estate tax payments				
⁶ Estimate provided by McCall & Almy				
<i>This analysis is an opinion of value only based on a review of readily accessible publicly available information relating to the subject property. The opinion presented herein is based on our market and development experience and expertise and general conversations with knowledgeable real estate professionals. This opinion of value is further based on current market conditions, changes to which would likely impact the value ranges we present. We make no warranty or representation, expressed or implied, as to the accuracy of the information contained herein, and the same is submitted subject to errors, omissions.</i>				

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These valuations were determined using the standard residual land value methodology¹¹ while factoring in the value of existing improvements (or the cost of their demolition).

As shown above, McCall & Almy determined that the highest level of value for the East Campus would be the reuse of the 95,000 square feet of existing buildings (potentially adding additional space) by an educational non-profit. Educational non-profits that are exempt from both real estate taxes and zoning, except for reasonable dimensional controls, can pay more for real estate. Ms. McKinney attributed a value of \$18.9 million for the East Campus assuming this use, identical to its assessed value.

McCall & Almy valued the land in the range of \$7.9 to \$10.1 million under the existing residential zoning regime (with the variation attributable to development as single family on the low end and as cluster housing on the high end).

Commercial tax paying uses were determined to not be a good fit. The Town is currently awaiting state certification of its Subsidized Housing Inventory (SHI), which the Town asserts is now at 10%. It should be noted that the Town's SHI is expected to fluctuate over the next few years for a variety of reasons, but any property owner's recourse to 40B will be risky—the Town may very well be at 10% at the time of filing of a Comprehensive Permit so a developer may not claim the protections of 40B.

If an educational use remains the highest and best value, how was Welltower able to buy the property?

As stated above, the rules set forth by the Trustees of Newbury impacted the sale process. The Trustees valued a single purchaser and certainty of execution over price. That is not unusual in many institutional transactions. McCall & Almy believes, through their own research and discussions with the agent for the Trustees, that in addition to the Town and Welltower, interested buyers were primarily educational institutions and other senior community developers. Those prospective buyers, however, apparently struggled with the requirement to purchase the entire property subject to existing zoning and may not have possessed the same resources as Welltower to ensure a closing that would meet the objectives of Newbury College.

As mentioned above, Welltower obtained an approximately 13% discount from assessed value, a value our consultants believe could have been realized if Newbury did not impose the aforementioned acquisition requirements on the market.

Did Brookline get as much from Welltower as it could?

One never knows if there is a little more to be obtained in a negotiation. It is, however, the view of the NZC that the Town has negotiated a fair deal for both parties and that Welltower is not receiving any windfall.

¹¹ Residual land value looks at the present value of a development using industry standard discount rates and subtracts from that present value the total cost of construction (hard, soft, interest carry, etc.). The excess of the present value over the total cost of construction is the theoretical maximum value someone would pay for the land.

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The NZC reached this conclusion by evaluating the facts of the transaction and by analyzing, with the help of its consultants, appropriate market information. Some of the key matters the NZC reviewed and/or concluded are:

1. The up-zoning will not create any value in the East Campus land beyond what Welltower has paid. Welltower provided its detailed senior living community development *pro forma*, including projected development costs and projected stabilized net operating income to Ms. McKinney for her review and evaluation¹². The allocated land value of \$17 million is the result of a residual land analysis and, based on comparable market data for other senior living developments, believed to be reasonable. That conclusion suggests that if Welltower, subsequent to the up zoning, were to sell the East side to another senior housing developer, that buyer would not value the land substantially greater than the \$17 million Welltower will have “invested” in at that time. Our consultants believe that if an up-zoning would create substantially greater value then the bidding for the property might have reflected that, even with the restrictions imposed by Newbury. On the other hand, if another purchaser used less ‘aspirational’ rent assumptions, they might offer less for the property.
2. If the up-zoning occurs but the Town does not buy the former West Campus, Welltower will be limited in the upside it can realize from the sale of that property. The Town negotiated a dual-option on the former West Campus. The Town can elect to purchase the property at the discounted price of \$14,800,000¹³ or the Town can share in the revenue when Welltower sells the former West Campus.
3. In presenting her market and financial analysis to the NZC, including her analysis of the financial and operational feasibility of the senior living community, Ms. McKinney characterized the Welltower *pro-forma* as carrying “aspirational” rents and “conservative” development costs. The development costs include demolition of existing facilities and the costly maintenance and adaptive reuse of the Mitton House. Ms. McKinney explained that while Welltower is proposing a high-end project, its operating margin is thin given the high costs of providing the services that the operations will entail. Citing the industry standard benchmark of stabilized Return on Cost (ROC), she concluded that the projected ROC for the Welltower project is less than 6.5%, and that was before the Town negotiated additional concessions. She believes that typical developments target a stabilized ROC of more than 6.5%.¹⁴
4. Additional concessions that have eroded Welltower’s returns were an increased commitment beyond what it was initially willing to pay for one of the inclusionary zoning alternatives and a reduction of the initial asking price for the former West Campus.

¹² As is generally normal practice when dealing with public companies or negotiated transactions, the details of the developer’s *pro forma* are subject to a non-disclosure agreement, with the specific exception in this instance for the inclusionary zoning amount and the land value attributed to the senior living project.

¹³ McCall & Almy estimates that the \$14.8 million purchase price represents a \$2.9 million discount from the \$17.7 million McCall & Almy believes a non-profit educational user would be willing to pay for the former West Campus. Colliers, the agent for Newbury, has appraised the former West Campus at \$18.55 million.

¹⁴ Welltower’s February 12, 2020 annual earnings press release stated that it had “completed \$308 million of development funding with an expected stabilized yield of 7.9%”.

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If the Town has really pushed Welltower to such a thin ROC, why would they proceed?

Ms. McKinney's answer to this question at the public meeting was "The site is exceptionally rare and has an exceptional competitive edge over other options." Companies often make investments for strategic reasons. In this instance, Welltower may want to establish a presence in the Boston market with a premier property and they may be willing to accept lower returns to accomplish that goal.

Even if we have pushed Welltower to a subpar ROC, why can't we get more or even be given the property for free as some have suggested?

The adage 'Pigs get fat, hogs get slaughtered' is commonly used in the real estate industry. From afar, it seems like developers always 'win'. That is not reality because, as most banks will confirm, real estate development (and investment) is a very risky undertaking.¹⁵ Development requires the investment of considerable resources, financial and human, in the optimistic hope that a concept will be successful even though the results will not be known until many years in the future. The more appropriate question is, 'Why would any rational person, business or otherwise, do whatever a negotiating party wanted if it jeopardized the viability of a decision beyond an acceptable level of risk?'

Balfour at Brookline will not be successful and value will not be created just because it gets built. What must be understood is that the up-zoning is required for Welltower to be able to create the critical mass necessary to make a substantial investment to try and create a successful operation at the site. There is no assurance that Welltower and Balfour will succeed in the operating endeavor that is planned. Every dollar in value the Town obtains reduces the viability of the project because it adds to the cost of the project without adding any earning power.

As a public company, Welltower, its management and Board of Directors have legal and fiduciary obligations to their shareholders (which includes anyone who owns an S&P 500 index fund). It has been demonstrated that the projected returns on this project are thin and apparently below market and certainly below what Welltower has been able to achieve in recent developments.¹⁶

The SB and the NZC have determined, with the help of our expert advisors, that the economics of the proposed project are at the point where seeking additional concessions or payments to the Town is not economically reasonable. The choice is to agree with the proposal or to reject the deal and enter a new period of extreme uncertainty, and revenue stagnation (as it relates to the property). In making this decision, Town Meeting Members should understand and evaluate 'what happens if we reject this deal'. The Select Board and the NZC have done that and do not believe there is a 'what if' scenario that is as, let alone more, favorable to the Town.

¹⁵ The last two major recessions in the United States were caused by real estate conditions (the savings & loan collapse and the housing crisis).

¹⁶ Welltower's February 12, 2020 annual earnings press release stated that it had "completed \$308 million of development funding with an expected stabilized yield of 7.9%".

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Why Aren't We Just Saying No to This Whole Thing and Taking the Entire Property By Eminent Domain?

Eminent domain is an extremely risky and expensive undertaking that is widely misunderstood. It is the view of the Select Board and the NZC that a taking would result in the following:

1. An expensive initial award to the current owner that could be at least as large as the value attributed by Colliers in their appraisal conducted on behalf of Newbury (over \$40 million).
2. A lawsuit from Welltower that would challenge our right to acquire the land. Land may only be taken by eminent domain for a valid public purpose, and the current owner would likely claim that the taking failed to meet that standard. Even if the Town succeeded in this initial lawsuit, in the years it was pending, the land's use would be limited, since long-term capital investment would be inadvisably risky. Further, the risk involved would cloud the title such that selling all or a piece of the land would be impossible.
3. A second lawsuit from the former owner challenging our valuation as insufficiently low. The former owner would argue that the appropriate value ascribed to the property would be, by law, the highest and best use of the property assuming zoning changes that could be reasonably anticipated to be approved. The former owner's argument on valuation would not be limited by what previous consultants or assessors have said. It would likely be a number substantially higher than any value previously associated with the property. If the argument by some in the community that the up-zoning immediately creates value for Welltower in the amount of roughly \$170 million is correct, the Town could, conceivably, be required to pay that amount¹⁷.
4. The final outcome of that second lawsuit would not be known for many years and would be decided by a jury and not a judge. Juries in these matters traditionally bestow considerably higher valuation awards than judges.
5. A decision to take is binding and irrevocable. The initial award would have to be immediately available and payment must be made as soon as the decision to take is made. There will not be time to go to voters for a debt exclusion. This will result in a financing that will defer or possibly eliminate significant portions of the current CIP. Additionally, once the property is taken, the Town is obligated to pay however how much the valuation is determined to be. If the jury decided to award the former owner a massive amount in additional damages, the Town would have no choice but to pay it.

The opportunity the Town will have to buy the former West Campus would advance municipal goals without the legal (and associated financial) risk of an eminent domain taking. If, as the NZC and our consultants believe, the value of the East Campus approximates what Welltower is valuing it at in its *pro forma*, then opting for an eminent domain taking would mean the Town would be taking on significant risk without a compelling reason to do so – especially if the contemplated goal were essentially what is contemplated by these warrant articles: upzoning the parcel to allow for additional development while retaining some of the land for municipal use at the lowest possible cost.

¹⁷ Neither the NZC, the Select Board nor the Town's expert consultants believe the analysis that led to this perspective to be realistic or remotely close to the actual value of the property.

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Fisher Hill Special Overlay District Zoning

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

	<u>SIGNATURE</u>	<u>print name</u>	<u>Address</u>
1.		NANCY S. HELLER	40 Abbottsford Rd
2.		Bernard Greene	77 Park St #1
3.		PAUL SAWYER	462 CHESTNUT HILL AVE
4.		Michael Glover	4 Franklin Ct.
5.		Georgia Johnson	80 Seaver St
6.		Neil Wishinsky	20 Henry St
7.		CARLOS RIDRUEO	16 HOLLAND ST
8.		JANET B. FIERMAN	169 Clark Road
9.		STEVEN A. HEIKIN	57 HARRIS ST.
10.		ROGER R. LIPSON	622 Chestnut Hill Ave., Brookline
11.		HELEN CHARLURSEY	523 BOYLSTON ST.
12.		PAUL SAWYER	462 Chestnut Hill Ave
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

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Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article __: Acceptance of Restrictive Covenant (Tax Certainty Agreement)

To see if the Town will accept a Restrictive Covenant, entitled "IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and 124 Holland Road (Assessors' Parcel I.D. No. 250-03-05) Brookline, Massachusetts Tax Certainty Agreement", in substantially the same form as the draft attached hereto and included herewith as Exhibit A and incorporated herein by reference, from Welltower, Inc., a Delaware Corporation, their successors and assigns (hereinafter collectively referred to as "Welltower") relative to the land and buildings owned by Welltower and commonly referred to as 117 Fisher Avenue and 124 Holland Road in Brookline, Massachusetts (hereinafter collectively referred to as the "Site") all as further described in the legal description below; such Covenant will be upon such terms and conditions as the Select Board deems in the best interests of the Town with respect to the proposed development of the Site and will provide for the future tax certainty of the land and buildings thereon, and authorize the Select Board to enter into any necessary agreement(s) in furtherance of the purposes of the Restrictive Covenant with respect to the future tax certainty of the land and buildings as more specifically set forth in the Restrictive Covenant.

Legal Description of the Site:

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

- NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence
- NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence
- SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence
- SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

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PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY	by Holland Road by two measurements, 260.70 feet and 102.00 feet;
EASTERLY	by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;
SOUTHERLY	by Tract II herein, 298.18 feet;
WESTERLY	by Fisher Avenue, 323.75 feet;
NORTHWESTERLY	by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

OR ACT ON ANYTHING RELATIVE THERETO.

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EXPLANATION

This Article, if approved, will authorize the Select Board to enter into a Restrictive Covenant, entitled "Tax Certainty Agreement" and/or any related agreements. Once recorded, this Tax Certainty Agreement would run with the land and provide tax certainty for real estate taxes for a 95-year term pertaining to the proposed development at so-called "East Parcel" of the former Newbury College Campus – the parcels with the addresses 117 Fisher Avenue and 124 Holland Road in Brookline. The current proposed uses are a senior living facility, but future uses could potentially include ones exempt from taxation. Although no such use is currently contemplated, this Tax Certainty Agreement would ensure a full payment in lieu of taxes to the Town.

This warrant article is one of seven warrant articles related to Welltower's proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled "Fisher Hill Special Overlay District Zoning" proposing a rezoning of the east side of the former Newbury College campus.

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TAX CERTAINTY AGREEMENT – March 5, 2020 version

**IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and
124 Holland Road (Assessors' Parcel I.D. No. 250-03-05)
BROOKLINE, MASSACHUSETTS
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 (“Welltower”; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is executed this ___ day of _____, ____ (the “Execution Date”), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Effective Date”), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No.250-03-05) sometimes collectively referred herein collectively as the “East Parcel”, which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [____], 2020 and recorded in the Registry in Book [____], Page [____] (the “Memorandum of Agreement”); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

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WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

1. Developer Commitment to Voluntary Payment to the Town. Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the "Term"), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer's tax-exempt status (the "Payment Conditions"), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the "Voluntary Payment"). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term "Assessment Date" shall mean January 1st or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term "Exempt Use" or "Exempt Uses" shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.

2. Payment of the Voluntary Payment to the Town. The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town's Assessors.

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3. Termination of Agreement. The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term "Exempt Uses". This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power. Upon transfer of title of the Premises, the grantor Developer's obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.

4. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

5. Representations as to Authority.

i. The Town's Authority. As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

ii. Developer's Authority. As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and

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delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

6. Lien/Collection Remedies. Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

7. Deed Reference and Affirmation of Successor In Title. Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

"Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated _____, _____, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (together with all amendments duly made and recorded, the "Tax Certainty Agreement"). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of "Developer" under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms."

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

8. Miscellaneous Provisions.

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

If to Developer:

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Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen Jr., LLP
300 Washington Street
Brookline, MA 02445

If to the Town:

Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement

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is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

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(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title. This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to “run with the land” for the duration of the Term. Any Developer, as grantor of title to the Premises, shall be released from all obligations as “Developer” under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a “Premises Deed”), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

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IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline
Select Board:

By _____

Hereunto duly authorized

Date: _____

Hereunto duly authorized
Date:

County of Lucas

State of Ohio

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ of Welltower Inc. as _____ of _____ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

5.A.

Exhibit A

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

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SOUTHERLY by Tract II herein, 298.18 feet;
WESTERLY by Fisher Avenue, 323.75 feet;
NORTHWESTERLY by the curve forming the southeast corner of said Holland
Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

Acceptance of Restrictive Covenant
(Tax Certainty Agreement)

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

	<u>SIGNATURE</u>	<u>print name</u>	<u>Address</u>
1.		Nancy Heller	40 Abbottsford Rd
2.		Bernard Greene	77 Park St #1
3.		Michael Glener	4 Franklin Ct
4.		Georgia Johnson	80 Seaver St
5.		Neil Wishinsky	20 Henry St.
6.		CARLOS PIDRUIDO	16 HOLLAND RD
7.		JANET B. FIERMAN	169 Clark road
8.		STEVEN A. HEIKIN	57 HARRIS ST.
9.		ROGER R. LIPSON	622 Chestnut Hill Ave
10.		HELEN CHARLUPSKI	523 BOYLSTON ST.
11.		PAUL JANER	462 CHESTNUT HILL AVE
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

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Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ___: Authorize Select Board to Enter into Memorandum of Agreement and attendant agreements

To see if the Town will authorize the Select Board to enter into any necessary agreement(s) and/or amendments to existing agreements or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and related Tax Certainty Agreement, between the Town of Brookline (hereinafter referred to as the "Town") and Welltower Inc., and Welltower TRS Holdco LLC, their successors and assigns (hereinafter collectively referred to as "Welltower"). Welltower owns the parcels of land formerly occupied by Newbury College and commonly referred to as 117 Fisher Avenue and 124 Holland Avenue (said properties being sometimes referred to herein as the "East Parcel"); 110 Fisher Avenue, 150 Fisher Avenue, 146 Hyslop Road (a/k/a 129 Fisher Avenue) and 124 Fisher Avenue (said properties being collectively referred to as the "West Parcel"); and (ii) 125 Holland Road ("125 Holland"). Welltower intends to construct a senior living community on the East Parcel including 160 units, of which 80 will be independent living, 40 will be assisted living and 40 will be memory care (hereinafter referred to as the "Project"); as further described below, said Memorandum of Agreement to include the following terms at a minimum:

- 1) Offering the West Parcel for sale to the Town for \$14.8 million;
- 2) Providing two separate means for meeting the inclusionary zoning requirements imposed by the planned overlay district on the Project: (i) transferring the 125 Holland Road parcel to a qualified developer along with \$3.123 million in cash to allow for the construction of 18 affordable condominium units; or (ii) making a \$6.525 million payment in the Town's Affordable Housing Trust Fund;
- 3) Requiring CHR to not object to certain conditions of the Special Permits related to the Project, including:
 - a) Sustainability commitments, including a commitment not to use natural gas or fuel oil except for the commercial kitchen, emergency generator, domestic hot water, and indoor swimming pool, and to construct the Project in a manner so as to be LEED-NCv4 Gold Certifiable;
 - b) Partnership with the Council on Aging or Brookline CAN on programming and events as well as a commitment to a yearly contribution to CAN;
 - c) Additional commitments to sustainable design elements;
 - d) Historic documentation of the East Parcel buildings;
 - e) The provision of a Public Easement Area along Fisher Avenue and a commitment to maintain the existing trees within said Public Easement Area;
 - h) Maintenance and adaptive re-use of the Mitton House on the East Parcel into the Project;
 - i) Relocation of a Fisher Avenue crosswalk.

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- j) Job fairs and internship opportunities targeted to Brookline residents
- 4) Providing a 95-year Tax Certainty Agreement on the East Parcel which shall be a restrictive covenant; and
- 5) Requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said Site.
- 6) Other terms and conditions that the Select Board deem in the best interest of the Town.

The legal descriptions of the parcels for the Site are as follows:

EAST PARCEL

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

- NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence
- NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence
- SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence
- SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

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NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

WEST PARCEL

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY on Fisher Avenue, one hundred and fifty (150) feet;

NORTHERLY on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;

WESTERLY on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;

SOUTHEASTERLY on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and

SOUTHERLY on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

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A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and 80/100 (180.80) feet;

SOUTHEASTERLY by a line, forty-eight and 30/100 (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty-two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

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Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351

125 HOLLAND

The premises at 125 Holland Road, Brookline, Massachusetts bounded and described as follows:

BEGINNING at a stone bound on the easterly side of Fisher Avenue about 15 feet northwesterly of Holland Road; thence running

NORTHWESTERLY on said Fisher Avenue 127.50 feet; thence turning at a right angle and running

EASTERLY by land now or late of Curtis and land now or late of Nash on two courses 215.82 feet and 53.10 feet; thence turning and running

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SOUTHERLY by land now, or late of Curtis 157.08 feet to Holland Road; thence
 turning and running
WESTERLY on said Holland Road 224.12 feet to a stone bound, thence turning
 and running
NORTHERLY on the street line 23.33 feet of beginning.

Containing 37,930 square feet of land, more or less, and being shown on plans by Ernest W. Bowditch, Engineer, recorded with said Registry in Book 807, Page 458; Book 1007, Page 553; and Book 1081, Page 378.

OR ACT ON ANYTHING RELATIVE THERETO.

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EXPLANATION

This Article, if approved, will authorize the Select Board to enter into and/or amend as necessary any new or existing agreements so that the Town receives the full benefits and protections as set forth in the Memorandum of Agreement pertaining to the proposed development of the former Newbury College Campus.

The Memorandum of Agreement and draft exhibits follows – although please note some exhibits may be placeholders.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled “Fisher Hill Special Overlay District Zoning” proposing a rezoning of the east side of the former Newbury College campus.

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MEMORANDUM OF AGREEMENT – March 5, 2020 version

MEMORANDUM OF AGREEMENT
 BY AND BETWEEN
 THE TOWN OF BROOKLINE AND WELLTOWER INC. AND WELLTOWER TRS
 HOLDCO LLC

This Memorandum of Agreement (this “Agreement”) between WELLTOWER INC., a Delaware corporation and WELLTOWER TRS HOLDCO LLC, a Delaware limited liability company, each having an office at 4500 Dorr Street, Toledo, Ohio 43615 (together with their successors and assigns hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is made and entered into this ___ day of _____, 2020, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, Welltower Inc. acquired property in Brookline, Massachusetts commonly known as 117 Fisher Avenue and 124 Holland Avenue (said properties being sometimes referred to herein as the “East Parcel”, a legal description of which is attached hereto as Exhibit A-1);

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Registry in Book 37136, Page 286, Welltower TRS Holdco LLC acquired property commonly known as (i) 110 Fisher Avenue, 150 Fisher Avenue, 146 Hyslop Road (a/k/a 129 Fisher Avenue) and 124 Fisher Avenue (said properties being collectively referred to as the “West Parcel”, a legal description of which is attached hereto as Exhibit A-2), and (ii) 125 Holland Road (“125 Holland”), a legal description of which is attached hereto as Exhibit A-3;

WHEREAS, Developer seeks to construct a senior living facility consisting of 160 units of independent living, assisted living and memory care units and related facilities and parking spaces for a total of 98 vehicles (hereinafter collectively referred to as the “Project”, which term does not include the 125 Holland Project as such term is defined below), and a summary of the proposed Project and associated concept site plan, and concept building massing are attached hereto as Exhibit B;

WHEREAS, the proposed location for the Project is the East Parcel all as more particularly described in the legal description contained in Exhibit A-1 (collectively referred to as the “Property” or the “Site” unless otherwise indicated);

WHEREAS, the Parties have elected to develop multiple options for the Project to address the requirements it engenders related to affordable housing, and intend to memorialize the parameters by which the Developer will either: (1) provide eighteen (18) affordable

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condominium units at 125 Holland; or (2) provide a cash payment of Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) made payable to the Brookline Affordable Housing Trust Fund;

WHEREAS, the Parties agree that the Project will benefit the Town in many ways including, but not limited to: (1) the opportunity for the Town to acquire the West Parcel at an agreed-upon price or, if the Town elects not to acquire the West Parcel, share in certain proceeds of the sale of the West Parcel, as set forth below; (2) substantial fiscal benefits associated with the redevelopment of the East Parcel for a taxable use; (3) a 95-year Tax Certainty Agreement for the East Parcel (the "Tax Certainty Agreement"); (4) improvements to the public realm including a public area easement along the Fisher Avenue frontage of the East Parcel which will include the obligation of Developer to maintain the existing trees in the easement area (the "Public Area Easement"); (5) commitment to sustainable development in general conformance to the standards embodied in the Town's "Prohibition on New Fossil Fuel Infrastructure in Major Construction"; (6) providing access in the Project for neighborhood meetings and for events held by the Town's Council on Aging; and (7) maintenance for adaptive reuse of the Mitton House and addition on the East Parcel, subject to the terms hereof;

WHEREAS, the Newbury College Zoning Study Committee ("the Committee") intends to submit a zoning by-law amendment (the "Proposed Zoning Amendment") for consideration at the Town Meeting commencing in May, 2020 that, if approved, would allow the Project to proceed through a special permit process informed by design guidelines developed specifically for the Project;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit(s) for the Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and obligations with respect to (1) the Project and certain permits and approvals required for the Project, as well as any other agreements between the Developer and the Town pertaining to the Project, including a 95-year Tax Certainty Agreement and the Public Area Easement, (2) the manner in which the Developer will comply with the requirements of Section 4.08 of the Town's Zoning Bylaw with respect to affordable housing requirements; (3) agreements of the Parties with respect to the disposition of the West Parcel; and (4) other matters set forth herein, all on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Project and to satisfy the mutual obligations contained herein;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. CERTAIN DEFINITIONS. All references herein to the following terms shall have the meanings hereinafter set forth:

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- a. All references to the “Proposed Project Zoning Amendment” shall be construed as a reference to the text of a Warrant Article prepared for the Town Meeting commencing May 19, 2020, a copy of which is attached hereto as Exhibit C, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Project that are materially adverse to the financial feasibility of the Project in the reasonable judgement of Developer (which may include construction or operation costs). If Developer determines in its reasonable judgment that any such amendment/s to the text of the Proposed Project Zoning Amendment (Exhibit C) do impose burdens on the Project that are materially adverse to the financial feasibility of the Project, Developer shall use all commercially reasonable efforts to notify the Town as soon as possible prior to any vote to amend the Proposed Project Zoning Amendment. If the Proposed Project Zoning Amendment is nonetheless passed in a form amended in a materially adverse manner, and as a result thereof Developer decides in its sole discretion not to proceed with the Project or if Developer determines in its reasonable judgment that the amendment/s prohibits Developer from proceeding with Project as proposed then, in either case, Developer shall so notify the Town in writing within seven (7) business days after the date Town Meeting votes these articles, and in such case this Agreement shall immediately become null and void and of no force and effect.
- b. All references to the “Town Meeting Approval Conditions” shall be construed as references to: (i) approval by the 2020 Annual Town Meeting and the Attorney General of the Proposed Project Zoning Amendment; (ii) authorization by Town Meeting of the acceptance of the 95-year Tax Certainty Agreement attached hereto as Exhibit D; (iii) authorization by Town Meeting for the Select Board to execute this Agreement and any other documents or agreements necessary or appropriate for implementation of the proposed Project; and in each case with challenge periods to all such Town Meeting actions having passed (which, in the case of the Proposed Zoning Amendment, shall be the challenge period under G.L. c. 40, Secs. 32 and 32A) with no challenges by unrelated third parties pending or, if any of such actions is/are challenged, the same having been finally disposed of in a manner favorable to the Town Meeting action, not later than December 31, 2020. Notwithstanding anything herein to the contrary, if the Town Meeting Approval Conditions have not been satisfied by such date, then the Developer shall have the right, at any point prior to the issuance of the Special Permit contemplated by the Proposed Project Zoning Amendment, to abandon its permit application and relinquish its right to pursue the Project. Exercise of said right by the Developer will terminate this Agreement without the need for any further action on the part of either Developer or the Town, and without further recourse to the parties hereto.
- c. All references to the “Special Permit and Other Required Approvals” shall be construed as references to such other special permits, variances, licenses and/or other approvals, including but not limited to the expiration of any demolition delay under the Town’s Demolition Delay By-Law or lift(s) of stay as to such delay, any additional special permits under the existing Zoning By-Law and Proposed Project Zoning Amendment, including building permits and certificates of occupancy, which are necessary, in Developer’s and Town’s reasonable determination, to allow for the construction and operation of the Project such that the Project, with all the appeal periods having passed,

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with no appeals pending or, if any such permit or approval is appealed, the same having been finally disposed of favorably to Developer not later than two (2) years from the date of issuance of the permit or approval which is the subject of the appeal.

2. AFFORDABLE HOUSING.

- a. 125 Holland Option. In addition to the Town Meeting Approval Conditions, the Committee shall submit a warrant article for consideration at the 2020 Annual Town Meeting (the “Proposed 125 Holland Warrant Article”, a copy of which is attached hereto as Exhibit E) pursuant to which 125 Holland shall be included in an overlay district to allow for the construction thereon of a condominium project containing eighteen (18) units of affordable housing (the “125 Holland Project”). In the event that the 125 Holland Warrant Article fails to achieve the 2/3 Town Meeting vote necessary for approval, the “Cash Option”, as described further below, shall automatically take effect.

A conceptual site plan of the development of 125 Holland Project proposed by the Proposed 125 Holland Warrant Article is attached as Exhibit F. The conceptual site plan is subject to change as 125 Holland Developer advances the 125 Holland Project.

The Town understands and agrees that the Developer does not intend, nor shall it be required to construct the 125 Holland Project. Accordingly, the Developer shall have the right to enter into such contractual arrangements with a third party, which the Developer has determined to have the requisite experience and financial wherewithal to construct the 125 Holland Project (the “125 Holland Developer”). The Developer shall include within the arrangements it enters into with the 125 Holland Developer a provision stating that any recourse by the 125 Holland Developer to the Zoning Board of Appeals for modification of the affordability requirements pursuant to Section 5.06.4.m.4 (or equivalent section), if such recourse would require raising the applicable Median Income levels, shall be conditioned upon prior recourse to funds available to the 125 Holland Developer by means of all budgeted contingencies (but in no event including the Developer Backstop, as such term is hereinafter defined). The Developer shall send to the Town copies of all contractual arrangements reached with the 125 Holland Road Developer prior to their execution. Pursuant to said contractual arrangements:

- (i) As soon as is reasonably feasible following the later of (i) issuance of a building permit for the Project, and (ii) the 125 Holland Developer’s obtaining a construction loan for the 125 Holland Project (which construction loan is expected to contain or require customary net worth and liquidity covenants of the 125 Holland Developer and its guarantors), the Developer shall cause 125 Holland to be conveyed for nominal consideration to the 125 Holland Developer, subject to an Affordability Deed Restriction (in a form substantially similar to the one attached at Exhibit G) whose terms specify that it will survive any further transfer including foreclosure; and

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- (ii) the Developer shall contemporaneously contribute cash in the amount of Three Million One Hundred Twenty Three Thousand Dollars (\$3,123,000) to the 125 Holland Project, to be deposited in a construction disbursement account and made available on a requisition basis to the 125 Holland Developer during the course of construction on customary terms and conditions; and
- (iii) except for the Developer Backstop (as hereinafter defined), the 125 Holland Developer shall be solely responsible for all costs associated with the 125 Holland Project, including, without limitation, the design, financing, construction, completion and marketing of the same. The Developer agrees to reasonably cooperate in the 125 Holland Developer's attempt to secure all permits and approvals necessary to proceed with the 125 Holland Project, including by executing applications for the same (or authorizing the 125 Holland Developer to do so), but such cooperation shall be at no additional cost or obligation to Developer. Following the conveyance of 125 Holland to the 125 Holland Developer, the 125 Holland Developer shall be responsible for obtaining all necessary approvals and permitting and the Developer agrees not to appeal or otherwise contest any issuance of any permit necessary to complete or bring online the 125 Holland Project.

It is expressly understood and agreed by the Town that under no circumstance shall the issuance of the Special Permit and Other Required Approvals for the Project (including, without limitation, any building permit or certificate of occupancy) be conditioned on the commencement or completion of the 125 Holland Project.

If the 125 Holland Developer is unable to close on a construction loan for the 125 Holland Project by December 31, 2021, the obligations of the Developer hereunder will automatically revert to making the cash payment described in the Cash Option below without the need for any further agreement or documentation.

Upon closing of the construction loan for the 125 Holland Project, Welltower Inc., will also provide a financial guaranty of up to \$650,000 (the "Developer Backstop") for the benefit of the Town to help ensure completion of the 125 Holland Project should the funds available for completion be deemed insufficient by the construction lender after recourse to the available sources of funding from the 125 Holland Developer and its guarantor(s). Evidence that the construction lender has deemed the funds insufficient shall include: (1) notification by the construction lender to the Developer or the Town that the construction lender has reached such a conclusion; (2) publication of a foreclosure sale of 125 Holland; (3) classification by the lender of the loan as 100 percent impaired with a full write-off; or (4) an arm's length sale of the loan while impaired. To the extent Welltower Inc. elects not to contribute further funds under the Developer Backstop to help ensure completion of the 125 Holland Project under those circumstances, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced by the Developer under its Developer Backstop.

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If (1) Welltower has not advanced the full amount of the Developer Backstop prior to the later of (i) December 31, 2023 or, (ii) the term of any applicable construction loan as the same may be extended by the construction lender, and (2) the 125 Holland Road Project has not been completed by such date, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced under the Developer Backstop, unless it has already done so.

It is understood that the text of the Proposed 125 Holland Warrant Article may be amended at Town Meeting, provided that such amendment/s in the reasonable judgement of the 125 Holland Developer, do not impose burdens on the 125 Holland Project which are materially adverse to the Developer or the ability of the 125 Holland Developer to complete the 125 Holland Project (which may include increased construction or operation costs or decreased maximum affordable sales prices). If any such amendment/s to the text of the Proposed 125 Holland Warrant Article do impose burdens on the 125 Holland Project as set forth in the preceding sentence, then Developer or the 125 Holland Developer shall so notify the Town in writing within seven (7) business days of the conclusion of Town Meeting, and in such case the provisions of Section 2(b) below shall automatically come into effect.

- b. Cash Option. Upon the occurrence of the Cash Trigger Conditions (as hereinafter defined), in lieu of the 125 Holland Project, the Developer shall fully satisfy all obligations arising under Section 4.08 or other operative provision of the Zoning By-law with respect to affordable housing by making a cash contribution to the Town's Affordable Housing Trust Fund (the "Cash Contribution") equal to Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) in two installments. Per Section 4.08 of the Town's Zoning By-Law, this obligation (minus the initial 25% payment if paid in advance) shall be secured at Developer's discretion via a recorded legal instrument or letter of credit satisfactory to the Community Development Division prior to issuance of a building permit for the Project. Fifty percent (50%) of the Cash Contribution shall be payable thirty days after the later of (i) the issuance of the first non-appealable building permit for the Project, and (ii) the occurrence of a Cash Trigger Condition. The balance of the Cash Contribution shall be due prior to the issuance of the final Certificate of Occupancy for the Project. Early advances on the 50% final payment may be made on a mutually agreed upon basis between the Select Board and Developer with incentives for early payments to be negotiated in good faith. Any unpaid balance 48 months following an appeal-free Special Permit shall accrue interest at an annual rate equal to the monthly 10-year U.S. Treasury rate.

As used herein, the term "Cash Trigger Conditions" shall mean and include either of the following: (1) the Town Meeting beginning in May, 2020 fails to approve the Proposed 125 Holland Warrant Article, or it is approved with one or more material adverse text amendments as set forth in Section 2(a) above, or the Attorney General does not approve it or the rescission thereof; or (2) the 125 Holland Developer fails to close on a construction loan by December 31, 2021.

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3. WEST PARCEL

- a. Possible Acquisition of West Parcel by the Town. The Town agrees to take such actions as are required to cause there to be a vote of all the Town's electorate by no later than May 8, 2020 to approve a so-called debt exclusion enabling the Town's acquisition of the West Parcel for a purchase price (the "West Purchase Price") equal to Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000). In anticipation of that vote, the Town shall propose for the 2020 Annual Town Meeting the following warrant articles (collectively, the "Proposed West Parcel Warrant Articles"): (i) a warrant article authorizing the Town to acquire the West Parcel for the West Purchase Price, in the form of Exhibit H annexed hereto, and (ii) a warrant article authorizing the Town's chosen method for financing the acquisition. If the Town electorate approves the debt exclusion by majority vote, the Developer and the Town shall negotiate in good faith to enter into a purchase and sale agreement for the conveyance of the West Parcel to the Town (the "West Parcel PSA") for the West Purchase Price with a closing to take place no later than thirty (30) days after the satisfaction of the Town Meeting Approval Conditions (or as otherwise agreed to by the Parties), and on terms otherwise reasonably acceptable to the Parties. Developer shall carry commercially reasonable property insurance until closing to cover any potential property loss. Without limiting the generality of the foregoing, it is understood that the West Parcel shall be conveyed to the Town on an "as-is, where-is" basis without any representation or warranty as to the condition of the West Parcel or any improvements thereon or its potential development.
- b. Possible Profit Sharing Upon Sale of West Parcel. Upon the occurrence of any Profit Sharing Trigger Conditions (as hereinafter defined), the Developer shall commence and thereafter use commercially reasonable efforts to market the West Parcel for sale to a third party. Such commercially reasonable efforts may include, at Developer's discretion, retaining a qualified real estate brokerage firm to assist with the marketing of the property in order to achieve the best possible price on terms and conditions that are acceptable to the Developer in its discretion. Developer shall send to the Town or its consultant for informational purposes only Welltower's marketing and disposition plan for the West Parcel. It is understood and agreed that whether or not to sell the West Parcel, the identity of any purchaser, the timing of such sale, and all other terms and conditions of any such potential sale shall all be in the Developer's sole discretion. If the purchase price Developer is willing to accept for the West Parcel in an arms-length transaction exceeds the West Purchase Price then Developer shall pay to the Town an amount (the "Town's Share") equal to the total of the "Incremental Town Proceeds, as shown on the Chart entitled "Profit Sharing Structure – Newbury College West Side" and annexed hereto as Exhibit I, less the Developer's out of pocket transaction costs incurred by the Developer in connection with the sale. The Town's Share shall be paid by the Developer to the Town not later than seven (7) business days after the closing of such sale, and shall be deposited with the Town Treasurer and held in a separate account until a purpose is authorized. As used herein, Developer's transaction costs shall include reasonable and customary costs and charges incurred by a seller

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of commercial property in the Commonwealth of Massachusetts and the Town of Brookline, including, without limitation, broker's fees and commissions, all marketing costs, transfer taxes, costs to clear any title matters, attorneys' and other consultants' fees and expenses related to the sale.

The term Profit Sharing Trigger Conditions shall include any of the following: (i) the Town's voters failing to approve the debt exclusion by May 8, 2020; (ii) the May, 2020 Town Meeting failing to approve the Proposed West Parcel Warrant Articles, or the Attorney General failing to approve the same or the rescission thereof; or (iii) the Parties, despite the exercise of good faith efforts, failing to agree upon the terms and enter into the West Parcel PSA by thirty (30) days after the approval by Town Meeting of the Proposed West Parcel Zoning Articles. It is understood and agreed that if the Parties enter into the West Parcel PSA and the Town subsequently defaults on its obligation to acquire the West Parcel, the same shall not be considered a Profit Sharing Trigger Condition. Rather, upon such a default, the Developer shall immediately be relieved of its obligations under this Section 3 to convey the West Parcel to the Town and any requirement to pay the Town's Share (or any other amount) to the Town upon a sale or other disposition of the West Parcel, without the need for any further documentation to that effect.

Further, should the Developer elect to convey the West Parcel to an entity not subject to taxation by the Town, the Developer shall supply such tax-exempt purchaser with a copy of the Town's Payment In Lieu of Taxes (PILOT) Policy (a copy of which is attached hereto as Exhibit J and require, as a condition of the Purchase and Sale Agreement with said tax-exempt purchaser, that the purchaser meet with the Town Administrator to discuss PILOT Payments prior to closing.

4. FURTHER PERMITTING. The Developer agrees to use all commercially reasonable efforts to diligently apply for and pursue all permits and approvals necessary to proceed with the Project subject to financing and economic conditions. It is understood that the Developer will be subject to the timeframes applied to the Project by the Proposed Project Zoning Amendment, including all sunset provisions. Further, it is of great importance to the Developer that it be able to commence construction of the Project as soon as possible. Accordingly, to the maximum extent permitted by law, the Town agrees to take such actions as may be reasonably necessary or appropriate to expedite review and approval of the Project so that Developer (or any affiliate thereof) can receive a building permit for the Project as soon as possible. Such actions shall include the formation by the Town of a Design Advisory Team ("DAT") for the Project as a so-called "Major Impact Project" under the Town's Zoning By-law within fifteen (15) days after Town Meeting approval of the Proposed Project Warrant Article, and the Town will use best efforts to cause the DAT to begin its review of the Project by no later than June 30, 2020. It is further understood and agreed that the Design Guidelines to be used by the DAT in its review of the Project shall be substantially in accordance with the document attached as Exhibit K hereto. Representatives of the Town Planning Department and Town Counsel's office will use best efforts to attend all meetings of the Developer and Town Preservation Commission at which the Project is discussed, including without limitation, Developer's efforts to expedite

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the lifting of the stay of demolition of affected buildings on the East Parcel under the Town's Demolition Delay By-law.

5. RECORDING OF AGREEMENT AND EXECUTION OF TAX CERTAINTY AGREEMENT. Upon satisfaction of the Town Meeting Approval Conditions Developer shall immediately record this Agreement with the Registry at its own expense and shall provide evidence of such recording to Town Counsel; and ii) Developer and the Town shall execute the Tax Certainty Agreement and Developer shall deliver the same to a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the "Escrow Agent"). In the event the Town Meeting Approval Conditions are not satisfied by December 31, 2020, and the Developer elects to abandon its permit application and relinquish its right to pursue the Project prior to the issuance of a Special Permit contemplated by the Proposed Project Zoning Amendment, this Agreement and the obligations set forth in the Tax Certainty Agreement shall become null and void and of no force and effect.
6. RECORDING OF TAX CERTAINTY AGREEMENT. In the event that the Special Permit and Other Required Approvals are satisfied, Developer shall deliver notice thereof to the Escrow Agent, who shall promptly thereafter record with the Registry the Tax Certainty Agreement. In the event that the Special Permit and Other Required Approvals are not satisfied, or Developer does not proceed with the Project, either party may deliver notice to the Escrow Agent (with a copy to the other party hereto), and the Escrow Agent shall thereafter immediately return the original copy of the Tax Certainty Agreement to Developer. In such case where the Tax Agreement is returned to the Developer, all further obligations set forth in this Agreement shall become null and void and of no force and effect.
7. TAXABLE PERSONAL PROPERTY. The Developer agrees to have the personal property associated with the Project held in entity taxable to the Town, and taxed at the applicable commercial rate. In the event of a conveyance of the Project to a third party in a bona fide transaction, the Developer shall take steps insure this standard remains in place, absent any changes to the applicable laws or regulations.
8. SUSTAINABLE DESIGN. Upon execution of this Agreement, the Town and the Developer agree to work in a voluntary partnership such that the development process of the Project will explore, pilot and innovate sustainable practices from conceptual design through full occupancy ("Voluntary Sustainability Partnership"). The purpose of this Voluntary Sustainability Partnership is to create replicable best practices that will be shared by the Town and the Developer, to the benefit of the Town, the Developer, and the larger community. Without limiting the generality of the foregoing, the Developer will undertake the following in connection with the construction and operation of the Project (referred to herein as the "Sustainability Undertakings")
 - a. The Project will be constructed in a manner so as to be LEED-NCv4 Gold Certifiable.

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- b. The Project will not use natural gas or fuel oil except as necessary for the commercial kitchens, emergency generator, indoor swimming pool and domestic hot water.
 - c. Developer will implement certain sustainable design principals as follows
 - (i) Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.
 - (ii) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - (iii) Installation of native and drought tolerant plants and bird- friendly and pollinator plants.
 - (iv) Use of Electric vehicles for on-site fleet of passenger vehicles for transporting Project residents, including providing electric vehicle charging stations in excess of current Town requirements for Project residents and guests. On-site fleet will be registered in Massachusetts and garaged at the property in a manner that allows the application of Town vehicle excise tax.
 - (v) Providing bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - (vi) Use of full cut-off exterior light fixtures with LED lighting and pole mounted fixtures limited to surface parking areas.
 - (vii) Provide visual and physical access to vegetation.
 - (viii) General design spaces designed to support social connection.
 - d. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
 - e. Developer will optimize energy efficiency of building systems, including
 - (i) Providing water-efficient plumbing fixtures,
 - (ii) Performing Building Commissioning, and
 - (iii) Training for Operations and Maintenance
 - f. To the extent feasible as reasonably determined by the Developer, Developer will implement WELL strategies to provide users with a healthy building, including
 - (i) Optimizing daylighting and views,
 - (ii) Specification of healthy building materials, and
 - (iii) Providing healthy indoor air quality measures
 - g. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
9. VOLUNTARY SPECIAL PERMIT CONDITIONS: The Developer hereby acknowledges that the following conditions of the Special Permits for the Project shall be acceptable to the Developer and shall not be grounds for objection to the Special Permits granted by the Brookline Zoning Board of Appeals (Board of Appeals):

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- a) To the fullest extent permitted by law, the Developer shall comply with all terms of this Memorandum of Agreement, as such Agreement may be amended from time to time, in accordance with the provisions herein.
- b) The Project will include a maximum of 160 units of which no more than 120 shall be a combination of independent living units (IL) and assisted living (AL) units, with the balance to be memory care (MC) units, it being understood that the precise unit mix may change from time to time in accordance with the provisions of this paragraph. The base numbers of 80 IL units and 40 AL units may vary such that there will be between 74 and 86 IL units and between 34 and 46 AL units, subject to the cap of a total of 120 IL and AL units. Further, to the extent there are fewer than 120 IL and AL units, the number of units below 120 may be MC units. Nothing in this paragraph shall preclude Developer from reducing the overall number of units in the Project (such as, by way of example, only combining separate units into a single unit). The following are examples only of permissible unit mixes: (1) 74 IL, 40 AL, 46 MC; (2) 74 IL, 46 AL, 40 MC; (3) 76 IL, 36 AL, 48 MC; (4) 70 IL, 30 AL, 40 MC.
- c) The Project will have bulk and dimensional limits meeting the requirements of the Proposed Project Zoning Amendment, and have parking provided for 98 vehicles, of which only 55 may be surface parking.
- d) In accordance with the Proposed Project Zoning Amendment, if Developer determines that the number of surface parking spaces (55) can be reduced without impacting the neighborhood it may seek a modification to the Special Permit to reduce the surface parking subject to review and approval by the Director of Engineering and Transportation.
- e) All illuminated exterior signage shall be designed and installed with the ability to be automatically dimmed after midnight.
- f) Developer will comply with the Sustainability Conditions.
- g) Unless otherwise agreed to by the Preservation Planners the applicant shall, using available records and to the extent it is feasible to do so, provide historic documentation of the following buildings on the East Parcel, prior to the issuance of a demolition or other building permit with respect to such buildings: _____ . Issuance of the demolition permit shall be evidence that this condition has been satisfied.
 - i. This documentation shall include:
 1. background information: the historic and common names of the property, documentation of date of construction, complete stylistic and/or architectural description of the resource, description of architectural and/or associative significance using reliable sources, contextual information that equates the significance of the property,

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original and current function, and the name and biographical information of architect and/or builder.

2. drawings, maps, and historic images: site plan showing footprint of the subject resource and surrounding buildings; sketch floor plans of existing conditions of all levels of each building, or copies of original plans if available (8 ½ x 11 format or digital format); if available, clear copies of historic photographs; USGS quad/topo map indicating location of property with UTM's;
 3. photographs of: overall site showing context and setting; each exterior elevation of subject property; detail images of significant character-defining features, such as windows, doors, eave details, porches, balconies, etc.; general views of all significant interior spaces; detail images of significant structural details if building is of a rare construction method (i.e. post and beam, balloon framing, mortise and tenon joinery, etc.). All photos must be identified with a list of the photographs indicating property name, address (city, county), date of photograph(s), and view; unmounted.
 - ii. All non-photographic documentation shall be submitted in 8 ½ x 11 format and printed on archivally stable paper (25% cotton bond or better) and provided in digital format (min 300dpi).
 - iii. All photographic documentation shall be provided in 5x7 or 8x10 format using archival quality paper and provided in digital format (min 300 dpi).
- h) Developer shall propose a Transportation Demand Management Plan for approval by the Director of Engineering & Transportation and the Planning and Community Development Director (or designee).
 - i) The Project Operator will partner with the Council on Aging and/or Brookline CAN on various cultural, educational and/or musical/artistic events at least quarterly per year with the location and logistics of such events to be agreed to in advance by the Project Operator and the Director of the Council on Aging or Brookline CAN as the case may be. Such events shall be at either the Project Site or the Senior Center or other public place as mutually agreed upon. The Developer has also agreed to make a voluntary contribution of \$2500 per year to the Brookline Multi-Service Senior Center Corporation to support its programming for so long as the Developer or any affiliate thereof owns and operates the Project.
 - j) Developer will provide community space for meetings of local neighborhood associations or other Brookline non-profits a minimum of twelve times per year.
 - k) Developer will provide a landscaped buffer to abutters on the South side entry.
 - l) Developer will remove the existing curb cut on Holland Road to reduce traffic.

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- m) Developer will provide a Public Easement Area to create a green buffer on Fisher Ave and maintain the existing trees on Fisher Ave (with an approximate current value of \$276,000). The Public Easement Area shall be subject to a Tree Protection Plan, which shall be submitted to the Tree Warden for his review and approval. Trees within the Public Easement Area shall be maintained at Developer's cost.
- n) On-site and off-site pedestrian and landscaping improvements equivalent to those shown and diagrammed on Exhibit B;
- o) Additional pedestrian, bicycle, and traffic infrastructure mitigation may be required subject to further study and analysis during the Major Impact Project review process. Such mitigation is anticipated by Developer to include the following:
 - i. bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - ii. To the extent feasible, new on-site pedestrian walkways will provide connectivity to/from the existing public sidewalk and crosswalk network around the site to enhance pedestrian mobility for residents and employees.
- p) Developer will maintain the Mitton House and its addition for adaptive reuse in its Project design.
- q) The Project operator will hold a job fair at the Brookline Teen Center or other public venue, and to the extent permitted by law will give qualified Brookline residents preference for jobs at the facility. In order to make Brookline residents aware of job opportunities the Project operator will send a notice at reasonable intervals of such job opportunities to the Town's Director of Diversity and Inclusion and he/she may post and/or share with other interested parties. The Project operator will also work with the Brookline High School culinary arts and restaurant program to provide, from time to time paid or unpaid internship opportunities for students engaged in the culinary arts program at the High School.
- r) Developer will pay for the relocation and raising of the crosswalk on Fisher Avenue in front of the proposed development.
- s) Balfour Senior Living, or an affiliate thereof shall be the initial manager of the Project.

10. Standard Requirements:

All Parties to this Agreement agree that the Project shall not, by way of this Agreement or the Proposed Project Zoning Amendment, be exempt from any charges, fees monetary or otherwise, that have been promulgated as of the date hereof pursuant to statute, by-law, regulation or written policy.

March 5, 2020

11. Undertakings of the Town:

On _____, 2020 the Select Board voted favorable action on the Proposed Project Zoning Amendment, Tax Certainty Agreement, the Proposed West Parcel Warrant Articles and a Warrant Article related to the general authorization for this Memorandum of Agreement subject to the terms and conditions of this Agreement and shall convey its votes and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Select Board shall support and undertake action necessary to obtain the approval of the Attorney General of The Commonwealth of Massachusetts of the Proposed Project Zoning Amendment by Town Meeting. The Select Board shall also, to the extent appropriate, cooperate with the Developer and shall encourage Town staff to cooperate with the Developer in reviewing in a timely and expeditious manner any required permits and approvals for the Project.

11. Miscellaneous:

- a) It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the Project and be binding upon and inure to the benefit and burden of the Developer and its mortgage lenders and their heirs, successors and assigns during their respective periods of ownership of and/or interests in the Project and its components and shall survive any transfer of the Property or any portion thereof. The Developer agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof.
- b) Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.
- c) All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

with a copy to:

Town Counsel
Office of Town Counsel
333 Washington Street
Brookline, MA 02445

If to Developer addressed as follows:

Welltower Inc.
4500 Dorr Street

March 5, 2020

Toledo, OH 43615
Attention: General Counsel

with copies to:

Welltower Inc.
767 5th Avenue, 8th Floor
New York, NY 10153
Attention: Investment Team

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110
Attention: Steven Schwartz, Esq.

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen, LLP
300 Washington Street
Brookline, MA 02445

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof to confer the benefits to each respective party as contemplated by this Agreement. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation: acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation, strikes, lockouts; actions of labor unions; condemnation, laws or orders of governmental or military authorities, requirement of statute or regulation, action of any court, regulatory authority, or public authority having jurisdiction; or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of Developer only, the term force majeure shall include the denial or, refusal to grant or appeals of any permit or approval of any public or quasi-public granting authority related to the Town Meeting Approval

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Conditions and Special Permit and Other Required Approvals, and any litigation brought by a third party relating to any such obligation.

- d) Failure by the Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the Developer fails to commence to cure, correct or remedy such failure within sixty (60) days of the receipt of written notice of such failure from the Town to the Developer and thereafter fails to complete such cure, correction or remedy within ninety (90) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such ninety (90) day period, within such additional period of time as is reasonably required to remedy such default, provided the Developer exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.
- e) The Parties agree that time is of the essence with respect to the obligations of the Parties as set forth herein. Subject to market conditions and financing availability, the Developer agrees to use best efforts to diligently apply for the necessary special permits and then expeditiously as possible after the issuance of the Special Permit(s) for the Project to apply for all necessary building permit(s) and to diligently commence work on the Project subject to the terms herein. The Town agrees to request an expedited determination from the Office of the Attorney General with respect to the Proposed Project Zoning Amendment.
- f) The obligations of the Developer do not constitute the personal obligations of the Developer's employees, shareholders, members, directors or officers and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall the Developer be liable for any incidental, indirect, punitive or special or consequential damages.
- g) Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Property and any component of the Project.
- h) Upon full performance by the Developer of its obligations hereunder, the Town, at the Developer's request shall issue a statement in a form appropriate for recording with the Registry stating that all of the terms of this Agreement have been satisfied.
- i) Whenever the consent or approval of any party is required for another party to take an action under this Agreement, except where explicitly provided to the contrary, such consent or approval shall not unreasonably be withheld, delayed or conditioned.

5.A.

March 5, 2020

- j) This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.
- k) If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.
- l) This Agreement and the accompanying 95-year Tax Certainty Agreement set forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Select Board and the Developer.
- m) Non-discrimination: Developer agrees to fully comply with the federal, state, and local nondiscrimination laws, including the provisions of Mass. Gen. Laws, Chapter 151B, in its employment practices, its contracting, and its procurement of goods and services. Developer further agrees that it will take commercially reasonable affirmative steps to establish fair access to employment opportunities at the project with the goal of attempting to create a workforce that is an accurate reflection of the demographics of the qualified available workforce in the Boston /Brookline /Newton geographic area or other area from which the type of employees sought are located.
- n) M/WBE contracting/Procurement: Developer commits to work with the Brookline Office of Diversity, Inclusion, and Community Relations (the Diversity Office) (1) to identify minority and women contractors and subcontractors for the development of the project, (2) to identify minority and women vendors to provide goods and services to the project during construction and once it is operational, and (3) to establish goals for the number of contractors and subcontractors it will attempt to use and the amount of procurement from minority and women vendors and service providers it will attempt to purchase. Once a year Developer agrees to report to the Diversity Office the extent to which it succeeds in achieving its goals as stated above.

(The Remainder of this Page is Intentionally Left Blank – Signature Pages follow)

March 5, 2020

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

DEVELOPER

WELLTOWER INC.

By: _____
Its:
Title:

WELLTOWER TRS HOLDCO LLC

By: _____
Its:
Title:

Dated: _____

**TOWN OF BROOKLINE SELECT
BOARD**

Dated: _____

March 5, 2020

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public
My Commission Expires:

March 5, 2020

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, _____, _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Select Board of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2020.

Notary Public
My Commission Expires:

**NOTE: FOLLOWING ARE DRAFT EXHIBITS
AND/OR PLACEHOLDERS TO BE REPLACED
AND/OR ADDED TO PRIOR TO FINAL EXECUTION.**

March 5, 2020

EXHIBIT A-1PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

March 5, 2020

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

EXHIBIT A-2

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY on Fisher Avenue, one hundred and fifty (150) feet;

NORTHERLY on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;

WESTERLY on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;

SOUTHEASTERLY on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and

SOUTHERLY on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and 80/100 (180.80) feet;

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SOUTHEASTERLY by a line, forty-eight and 30/100 (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty-two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

March 5, 2020

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

EXHIBIT A-3

125 HOLLAND

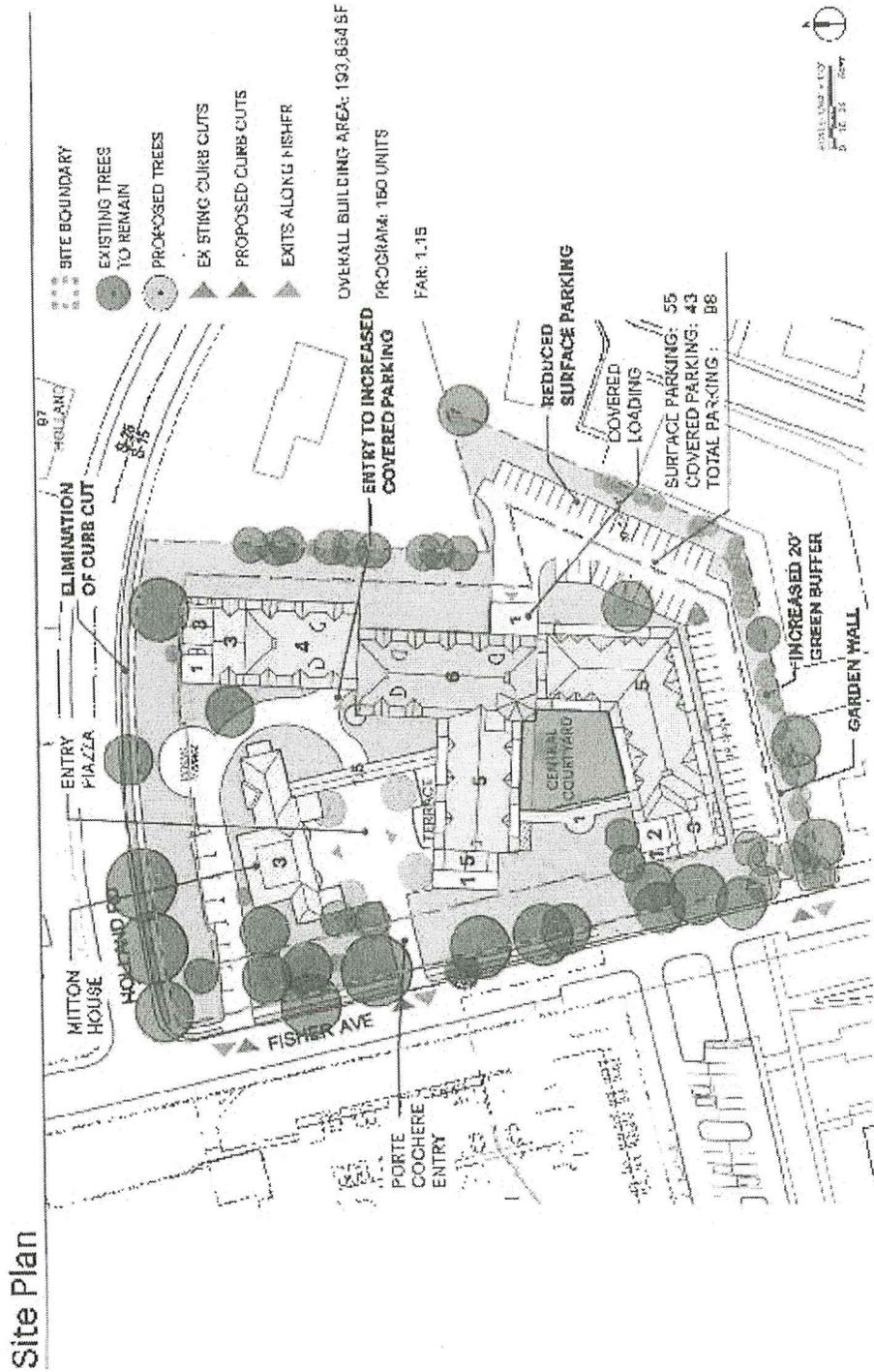
The premises at 125 Holland Road, Brookline, Massachusetts bounded and described as follows:

BEGINNING at a stone bound on the easterly side of Fisher Avenue about 15 feet northwesterly of Holland Road; thence running

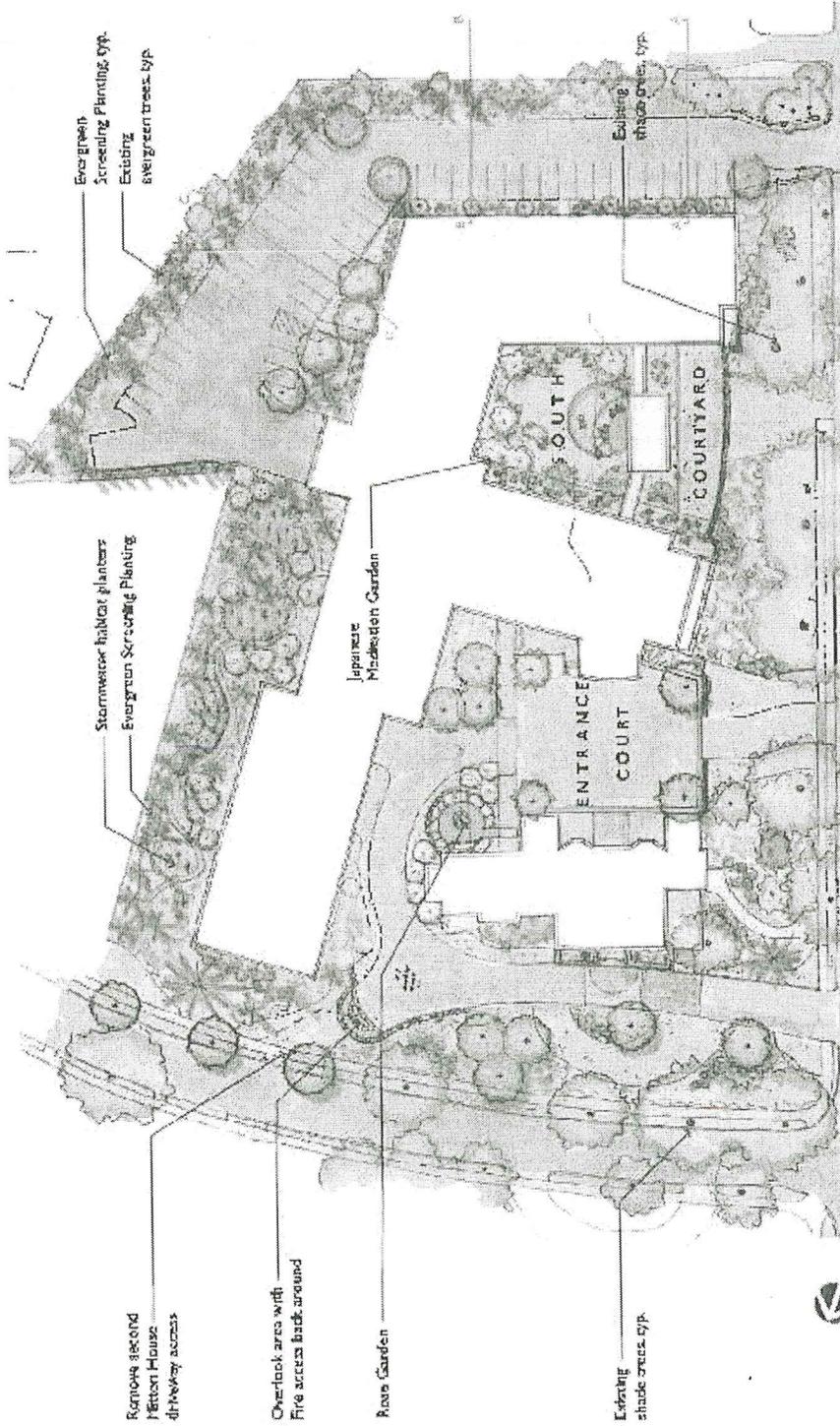
NORTHWESTERLY	on said Fisher Avenue 127.50 feet; thence turning at a right angle and running
EASTERLY	by land now or late of Curtis and land now or late of Nash on two courses 215.82 feet and 53.10 feet; thence turning and running
SOUTHERLY	by land now, or late of Curtis 157.08 feet to Holland Road; thence turning and running
WESTERLY	on said Holland Road 224.12 feet to a stone bound, thence turning and running
NORTHERLY	on the street line 23.33 feet of beginning.

Containing 37,930 square feet of land, more or less, and being shown on plans by Ernest W. Bowditch, Engineer, recorded with said Registry in Book 807, Page 458; Book 1007, Page 553; and Book 1081, Page 378.

EXHIBIT B – CONCEPT SITE PLAN AND BUILDING MASSING



Landscape Plan- Draft



VERDANT
LANDSCAPE ARCHITECTURE

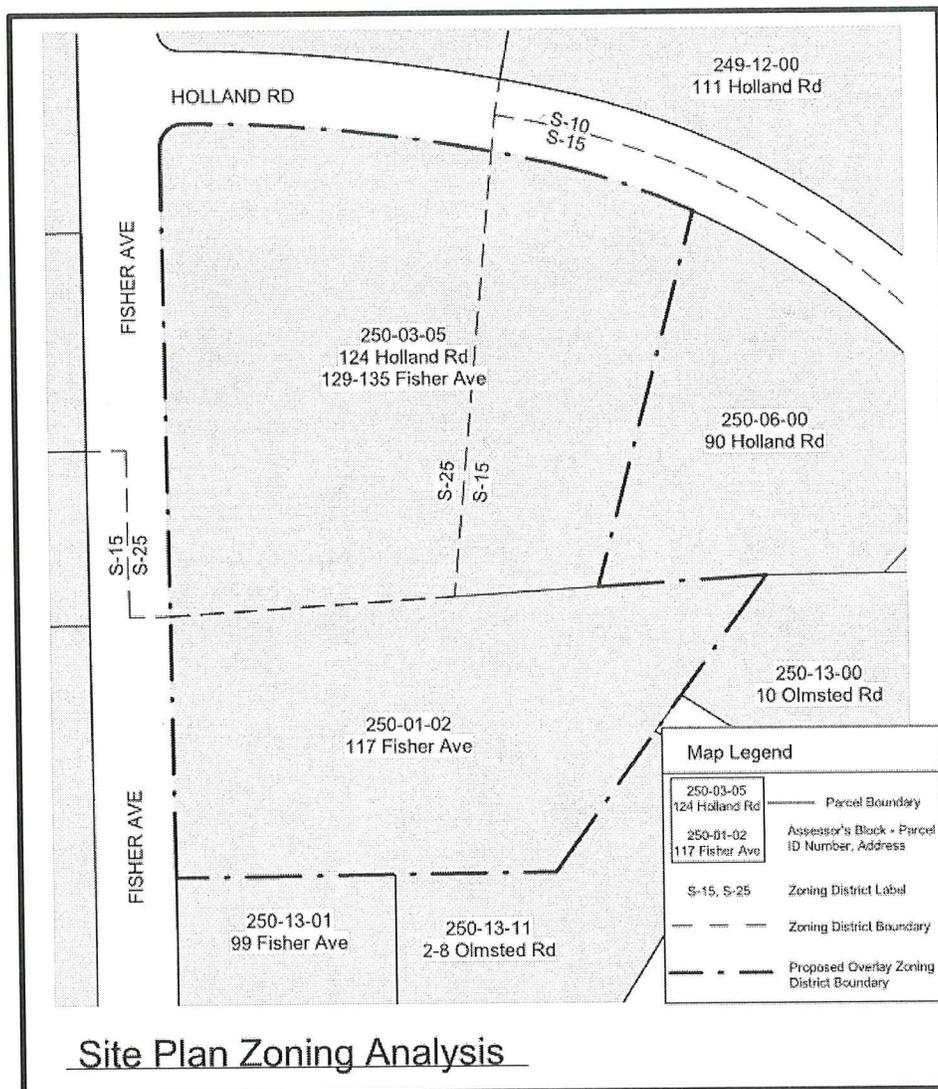
EXHIBIT C – Proposed Project Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ___: Fisher Hill Special Overlay District Zoning

To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

1. By adopting the following map change, adding a Fisher Hill Special Overlay District as shown below, including: parcels with Tax Parcel Identifications 250-03-05 (124 Holland Road and 129-135 Fisher Avenue) and 250-01-02 (117 Fisher Avenue).



2. By amending Section 3.01.4 by adding a new item at the end:

“g. Fisher Hill Special Overlay District”

3. By amending Section 4.07 – Table of Use Regulations – to allow for life care facilities on lots less than 5 acres but greater than 3 acres in the overlay district, by adding a sentence at the end of the description of Use 6A in the Use Table, underlined below:

Use 6A, Life care facilities, incorporating independent apartment living units for elders combined with supportive medical, nursing or other shared facilities.

*Allowed by special permit only on lots greater than 5 acres, but within the Fisher Hill Special Overlay District, the minimum lot size shall be 3 acres.

4. By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 22 after the words “Any other structure or principal use” in the rows for the S-25 and S-15 Districts, which Footnote 22 shall also be added at the end of the Table and read as follows:

“22. See Section 5.06.4 – Special District Regulations, subsection l. Fisher Hill Special Overlay District with respect to uses and all dimensional requirements.”

5. By amending Section 5.06.4 – Special Districts – by adding a new item as follows:

“l. Fisher Hill Special Overlay District

- 1) *It has been determined through study of the former Newbury College campus that the potential exists for careful, planned redevelopment. It has further been determined that, due to the surrounding residential development pattern, and the municipal need for housing for an aging population, assisted living residential uses in a life care facility designed with a similar architectural character as the neighborhood are appropriate. Benefits to the community include maintenance for adaptive reuse of the Mitton House and creating a public easement along Fisher Avenue to preserve mature shade trees, and are significant reasons for why additional density may be allowed by Special Permit under the criteria of this section.*
- 2) *At any point prior to December 31, 2020, an applicant may seek relief by Special Permit under this Overlay District by completing the Design Review preapplication process as set forth in Section 5.09 (3)(a)(2) provided the proposed project includes the following requirements and limitations:*

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- a. *Includes a minimum of three acres of contiguous land.*
 - b. *Includes a life care facility with a maximum of 160 units as its primary use including all related accessory uses.*
- 3) *The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.*

a. *Open Space*

- i. *The project must dedicate a minimum of 40% of lot area towards Open Space. For the purposes of this requirement, Open Space shall include parts of a lot at ground level that are contiguous landscaped areas and walkways that include planted containers, landscaped beds, and/or street trees. Usable open space is not a requirement for this use.*
- ii. *The open space requirements of **Table 5.01 — Table of Dimensional Requirements** may be reduced in accordance with Site Plan Review as noted in **Section 5.06.4.1.4** below.*

b. *Parking*

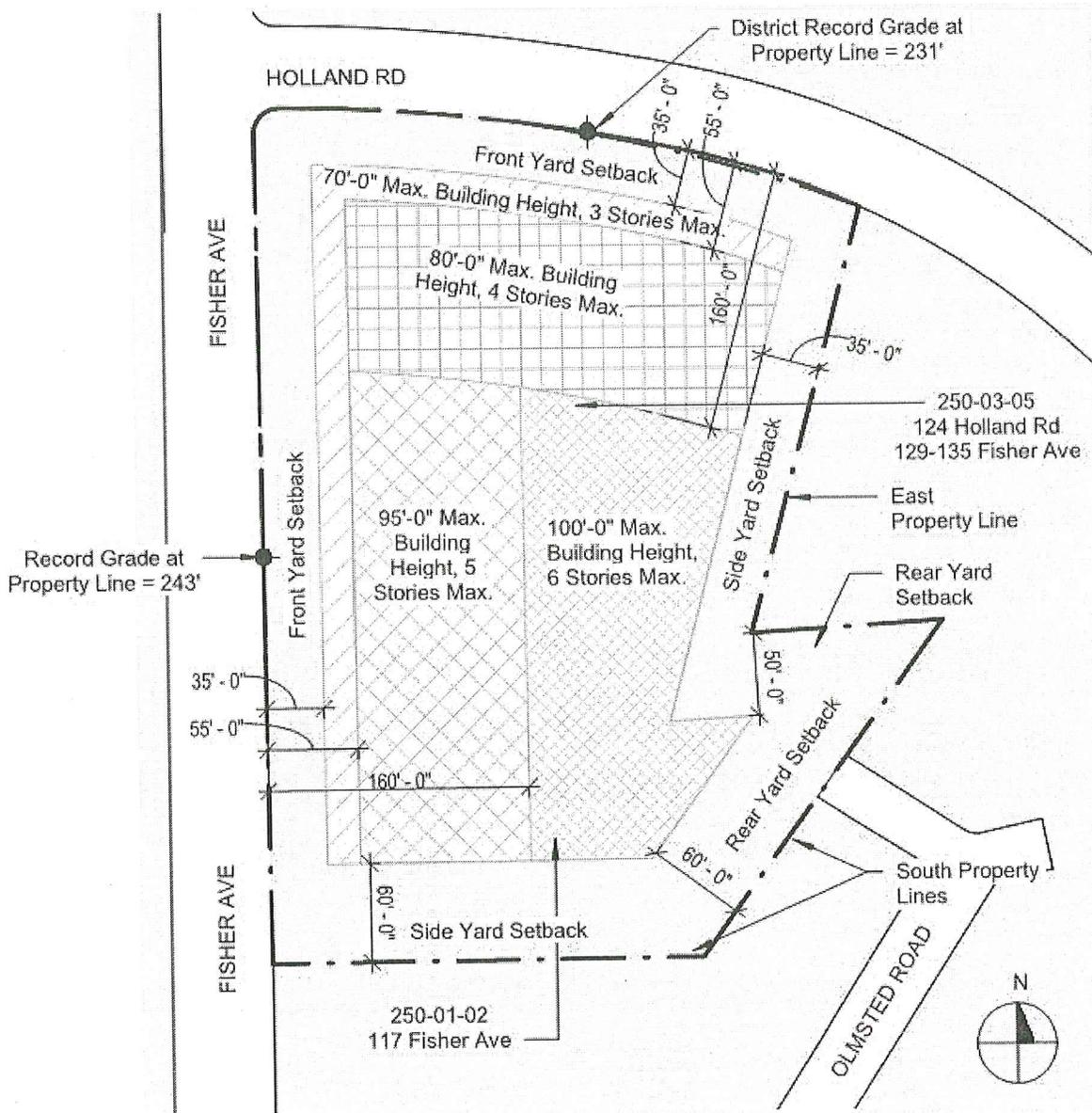
- i. *98 parking spaces shall be provided with a minimum of 43 concealed.*
- ii. *The number of parking spaces required per Article 6 of the Zoning By-Law may be reduced at the request of the applicant, following review of a parking study and favorable recommendation by the Planning Board.*
- iii. *Parking area setback along the southern lot line shall be no less than 20 feet.*
- iv. *The parking and drive requirements under Section 6.04, including stall width and depth, aisle width, and width of entrance and exit drives, may be modified in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below.*
- v. *Once a minimum of five years have passed since the issuance of a Certificate of Occupancy for any project promulgated pursuant to a Special Permit granted under this Section, the holder of said Special Permit may seek modification of the Special Permit to allow the provision of fewer than 98 spaces, but only through a reduction in the number of non-concealed parking spaces and only*

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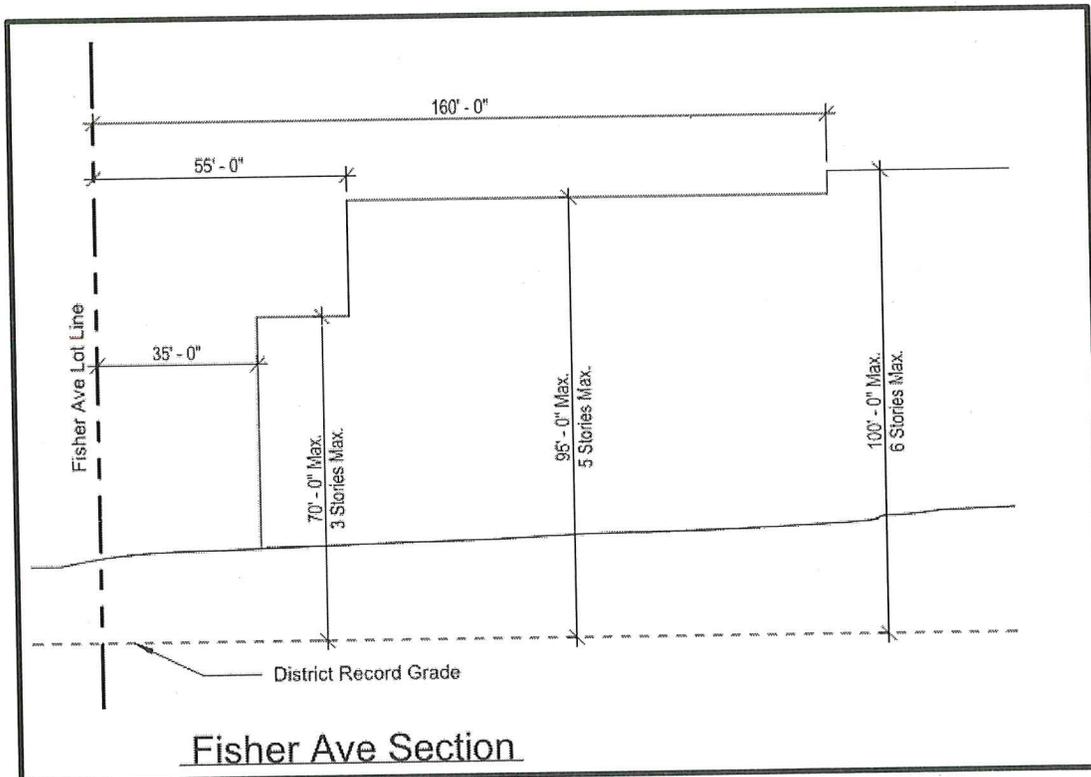
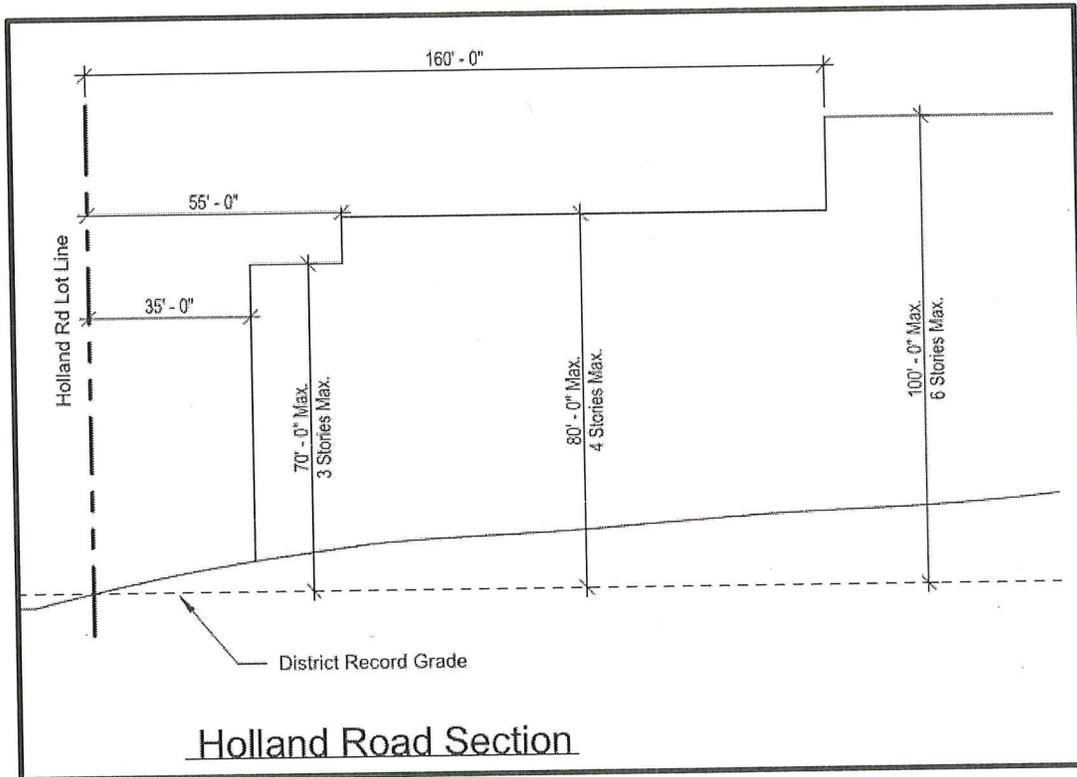
March 5, 2020

upon a showing to the Zoning Board of Appeals that such a reduction will not impact the neighborhood.

- c. The Gross Floor Area Ratio for a project permitted pursuant to this section shall not exceed 1.15.*
- d. The maximum building height shall be 70' and three stories max. for portions of a building that are within 55' of Fisher Avenue and Holland Road. The maximum building height shall be 80' and four stories max. for portions of a building that are within 160' of Holland Road. The maximum building height shall be 95' and five stories max for portions of a building that are within 160' of Fisher Avenue. Otherwise, the maximum building height is 100' and six stories max. The maximum number of stories does not include basements or means of egress. These maximum building heights do not include rooftop structures such as elevator penthouses, chimneys, mechanical equipment, and mechanical screens. Building heights shall be measured from the District Record Grade rather than as prescribed in Section 5.30. The District Record Grade shall be the record grade of the Holland Road property line at the midpoint of the Holland Road boundary of the Fisher Hill Overlay District. Refer to Building Height and Setback Diagram. The Board of Appeals may grant a Special Permit for projections into front yards that do not comply with Section 5.51.*



Building Height & Setback Diagram



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- e. *The residential component of the project shall not include more than 160 living units. All 160 units may be market-rate.*
- f. *Notwithstanding anything to the contrary in Section 4.08, for the purposes of satisfying the requirements of Section 4.08 the applicant may provide eighteen (18) affordable units off-site within 100 yards of the boundary line of this overlay district or make a cash payment not to exceed Six Million Five Hundred and Twenty Five Million Dollars (\$6,525,000).*
- g. *Building setback requirements shall be as follows:
From Fisher Avenue, no less than 35 feet;
From Holland Avenue, no less than 35 feet;
From east side lot line, no less than 35 feet;
From southern side and southern rear lot lines, no less than 60 feet;
From the rear lot line, no less than 50 feet.
Refer to Building Height and Setback Diagram.*
- h. *Accessory Structures allowed within the site setbacks include retaining walls, fencing, and utility equipment- ie generator and transformer.
Setback for all structures is 6' min. from any lot line. Where required for emergency vehicle access, retaining walls and fencing can encroach on front yard setbacks.*
- i. *Notwithstanding the provisions of Section 6.06.6, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below. If the loading zone includes an area for trash and recycling this area for trash and recycling shall be enclosed. If the entire loading zone including the area for trash and recycling is fully enclosed, such area shall not count towards the project's total gross floor area.*
- j. *Design Standards: During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Fisher Hill Special District Design Guidelines developed by the Newbury Zoning Committee for guidance on general exterior massing, scale and design.*

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- 4) *Any application including new structures that seeks relief under this Overlay District shall:*
- a. *be subject to Site Plan Review by the Planning Board to ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian, bicycle and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish and recycling removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:*
 - i. *Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;*
 - ii. *Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site; and*
 - iii. *Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.*
 - b. *be deemed a Major Impact Project with respect to Section 5.09, Design Review.*
 - c. *include as a condition of the special permit a Transportation Access Plan Agreement ("TAPA") approved by the Director of Transportation that includes Transportation Demand Management ("TDM") programs.*
- 5) *Allowing the additional density through the Special Permit contemplated by this Section has a potential benefit contemporaneous with its inclusion in the By-Law.*

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However, planning objectives potentially achieved by this Section may not be met if substantial time elapses. Therefore, if upon closing the public hearing on the Special Permit contemplated herein, the Board of Appeals finds: (a) more than two years has elapsed since the opening of the public hearing; and (b) the amount of elapsed time is, in the discretion of the Board, excessive and contravenes the planning objectives of this Section, the Board may deny the request for a Special Permit.

6. By amending Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements – by adding a new footnote as follows:

“4. For the Fisher Hill Special Overlay District, parking requirements shall be no less than 0.5 space per unit. Section 6.02.2.h shall not apply”.

7. By amending Section 7.07 – Sign By-Law – Exceptions to the Above – by adding to Section 7.07.1 a new item at the end:

“f. The Board of Appeals may by special permit grant relief to the requirements of Section 7.01 for signage for the buildings in the Fisher Hill Special Overlay District subject, however, to compliance with the Design Review Procedures set forth in Section 7.08 and the Design Guidelines adopted for this district.”

...or act upon anything else relative thereto.

March 5, 2020

EXHIBIT D -**TAX CERTAINTY AGREEMENT – March 5, 2020 version**

**IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and
124 Holland Road (Assessors' Parcel I.D. No. 250-03-05)
BROOKLINE, MASSACHUSETTS
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 (“Welltower”; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is executed this ___ day of _____, ____ (the “Execution Date”), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Effective Date”), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No.250-03-05) sometimes collectively referred herein collectively as the “East Parcel”, which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [____], 2020 and recorded in the Registry in Book [____], Page [____] (the “Memorandum of Agreement”); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

March 5, 2020

WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

1. Developer Commitment to Voluntary Payment to the Town. Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the "Term"), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer's tax-exempt status (the "Payment Conditions"), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the "Voluntary Payment"). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term "Assessment Date" shall mean January 1st or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term "Exempt Use" or "Exempt Uses" shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.

2. Payment of the Voluntary Payment to the Town. The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town's Assessors.

March 5, 2020

3. Termination of Agreement. The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term "Exempt Uses". This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power. Upon transfer of title of the Premises, the grantor Developer's obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.

4. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

5. Representations as to Authority.

i. The Town's Authority. As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

ii. Developer's Authority. As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and

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delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

6. Lien/Collection Remedies. Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

7. Deed Reference and Affirmation of Successor In Title. Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

"Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated _____, _____, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (together with all amendments duly made and recorded, the "Tax Certainty Agreement"). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of "Developer" under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms."

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

8. Miscellaneous Provisions.

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

If to Developer:

March 5, 2020

Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen Jr., LLP
300 Washington Street
Brookline, MA 02445

If to the Town:

Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement

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is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

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(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title. This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to “run with the land” for the duration of the Term. Any Developer, as grantor of title to the Premises, shall be released from all obligations as “Developer” under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a “Premises Deed”), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

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IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline

Select Board:

By _____

Hereunto duly authorized

Date: _____

Hereunto duly authorized

Date:

County of Lucas

State of Ohio

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ of Welltower Inc. as _____ of _____ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

March 5, 2020

Exhibit A

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

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SOUTHERLY by Tract II herein, 298.18 feet;
WESTERLY by Fisher Avenue, 323.75 feet;
NORTHWESTERLY by the curve forming the southeast corner of said Holland
Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

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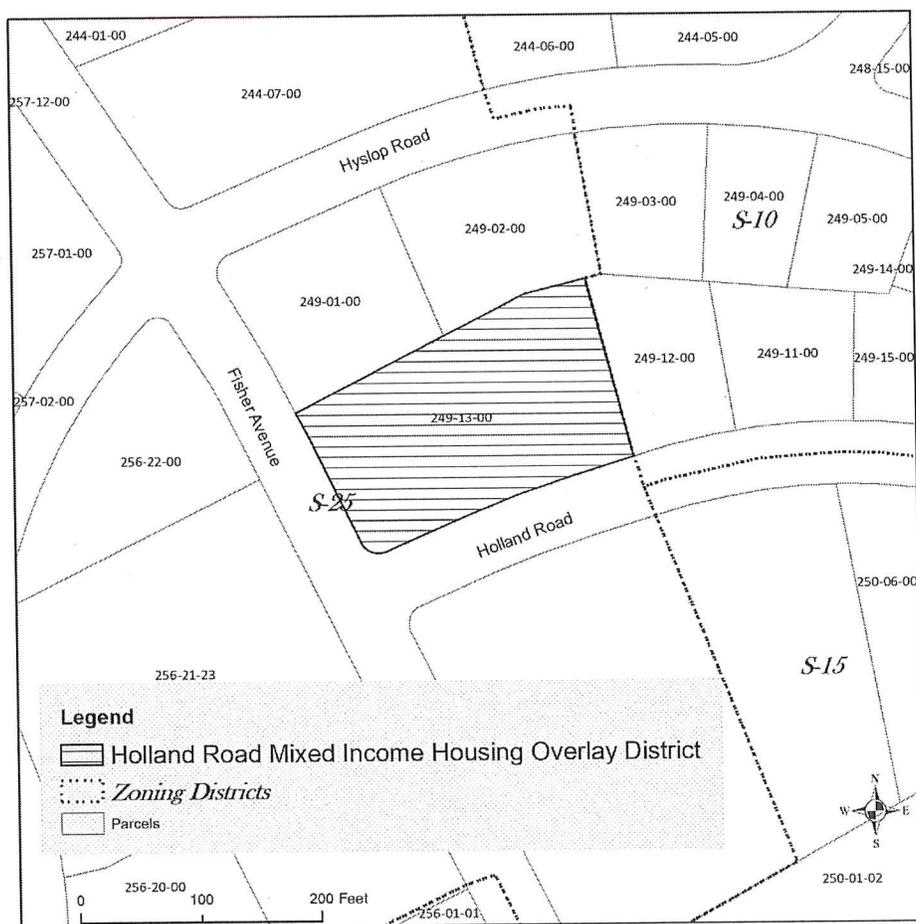
Exhibit E – 125 Holland Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Holland Road Mixed Income Housing Overlay District

To see if the Town will amend the Zoning By-law and Zoning Map as follows:

- 1. By adopting the following map change: adding a Holland Road Mixed Income Housing Overlay District including the parcel located at 125 Holland Road (Tax Parcel Identification #s 249-13-00), as shown in the map below.**



- 2. By amending Section 3.01.4 by inserting a new item "h" as follows:**

h. Holland Road Mixed Income Housing Overlay District

March 5, 2020

3. By amending Section 5.06.4 by inserting a new item "m" as follows:*m. Holland Road Mixed Income Housing Overlay District*

- 1) It is found that the parcel of land at 125 Holland Road, formerly a part of the Newbury College campus (the "Site") has been identified by the Newbury Zoning Committee, based on a recommendation from the Housing Advisory Board, as an appropriate site for mixed-income affordable housing development. For this reason, a developer may opt to develop the Site in accordance with the requirements of this overlay district.
- 2) Any applicant may seek relief under this overlay, provided the applicant's proposed development meets the following requirements:
 - a. It contains 18 Dwelling Units, contained in a single building.
 - b. Six (6) of the Dwelling Units on the Site must be Affordable Units (as defined in Section 4.08.2.c.) for households with incomes up to 80% of Median Income, defined in accordance with Section 4.08.2.f and which must also qualify for the Town's Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 100% of Median Income. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 150% of Median Income.
 - c. It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning and Community Development.
- 3) Multi-Family Dwellings. Superseding any conflicting restrictions in Section 4 of the Zoning Bylaw, any development proposed pursuant to the requirements of this overlay district:
 - a. may include Multi-Family Dwellings;
 - b. is not required to meet the requirements of Section 4.08, with the exception that the development must meet the "Standards"

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requirements listed under Section 4.08.6. With respect to the standard for unit sizes described in 4.08.6.c, any project proposed pursuant to this section will be deemed to meet the standard if the average unit size for the units with the applicable bedroom count meets or exceeds the listed square footage, so long as no individual unit has less than 95% of the prescribed square footage.

- 4) All applications in the Holland Road Mixed Income Housing Overlay District shall be subject to §5.09, Design Review, including any applicable Design Guidelines adopted by the Planning Board. Further, the Zoning Board of Appeals shall be empowered to require such other conditions as it deems necessary to bring the project into conformance with the goals of this overlay district, including a modification of the affordability requirements in 5.06.4.m2.b. The Zoning Board of Appeals may only grant a modification of the affordability requirements in 5.06.4.m.2.b that raises the applicable Median Income levels following a favorable recommendation from the Housing Advisory Board and in no case shall the affordability requirements be modified to provide fewer than 4 Affordable Units for households with incomes up to 80% of Median Income and 4 Affordable Units for households with incomes up to 100% of Median Income, and in no case can any of the Affordable Units be available for households with incomes greater than 150% of Median Income.
- 5) Dimensional and Parking Requirements. Any development proposed pursuant to the requirements of this overlay district shall be subject to the dimensional requirements listed below, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district. Any dimensional requirements not specified below shall be required according to the requirements of the underlying zoning district.
 - a. Lot size. A minimum lot size of 35,000 square feet shall be required.
 - b. Floor Area Ratio. An overall maximum Floor Area Ratio of 0.5 shall be permitted.
 - c. Height. A maximum height of 40 feet, measured from the record grade of the midpoint of the lot line along Holland Road, shall be permitted.

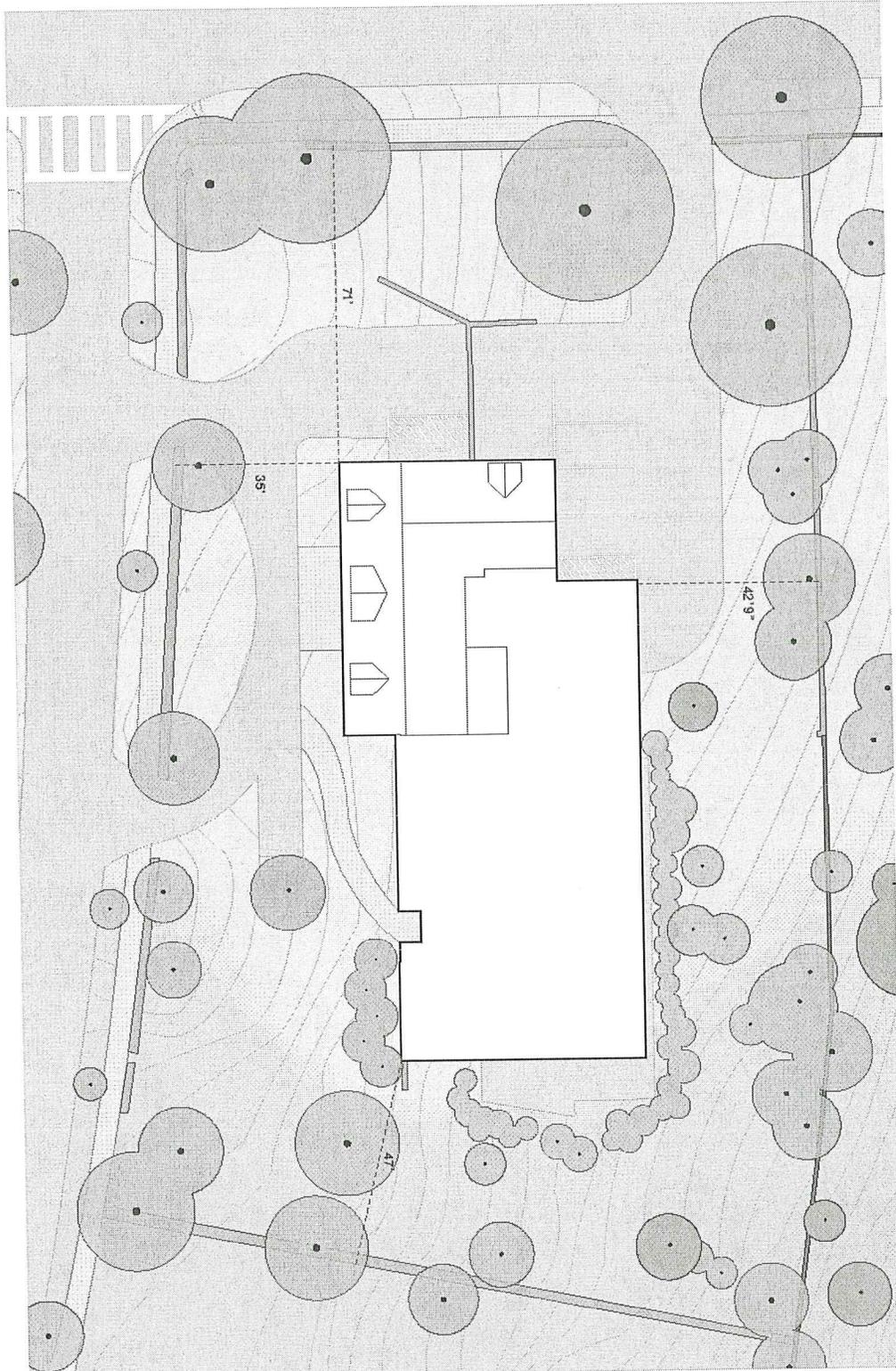
5.A.

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- d. Setbacks. A minimum Front Yard setback of 30 feet, a minimum Side Yard setback of 40 feet, and a minimum Rear Yard setback of 40 feet shall be provided. Relief from these setback requirements may be sought under Section 5.43.
- e. Open Space. A minimum amount of Landscaped Open Space of 40% of Gross Floor Area and a minimum amount of Usable Open Space of 10% of Gross Floor Area shall be provided.
- f. Parking. Parking shall be provided at a minimum rate of 1 space per Dwelling Unit.

Or take any action thereto.

Exhibit F – Conceptual Site Plan – 125 Holland



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Exhibit G – Deed Restriction

[TO BE INCLUDED PRIOR TO EXECUTION]

March 5, 2020

Exhibit H – Article for Town to Acquire West Parcels**Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee****Article ___: Authorization to Acquire Former Newbury College West Campus**

To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, eminent domain or otherwise, in fee simple, the parcels of land located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 255-01-01, 256-24-00, 256-21-23, and 256-20-00) including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, for general municipal purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure to appropriate a sum of money to be expended at the direction of the Select Board, to pay costs of acquiring said property, and for the payment of all costs incidental and related thereto, including refurbishment of the buildings thereon, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; to authorize the Selectmen to apply for, accept and expend any grants from any source whatsoever that may be available to pay any portion of this project or to take any other action relative thereto.

Land Description:PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY	on Fisher Avenue, one hundred and fifty (150) feet;
NORTHERLY	on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
WESTERLY	on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
SOUTHERLY	on the same, eighty-nine and 27/100 (89.27) feet.

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Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY	on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;
NORTHERLY	by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;
EASTERLY	by a line, one hundred and eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	by a line, forty-eight and 30/100 (48.30) feet; and
SOUTHWESTERLY	on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

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NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

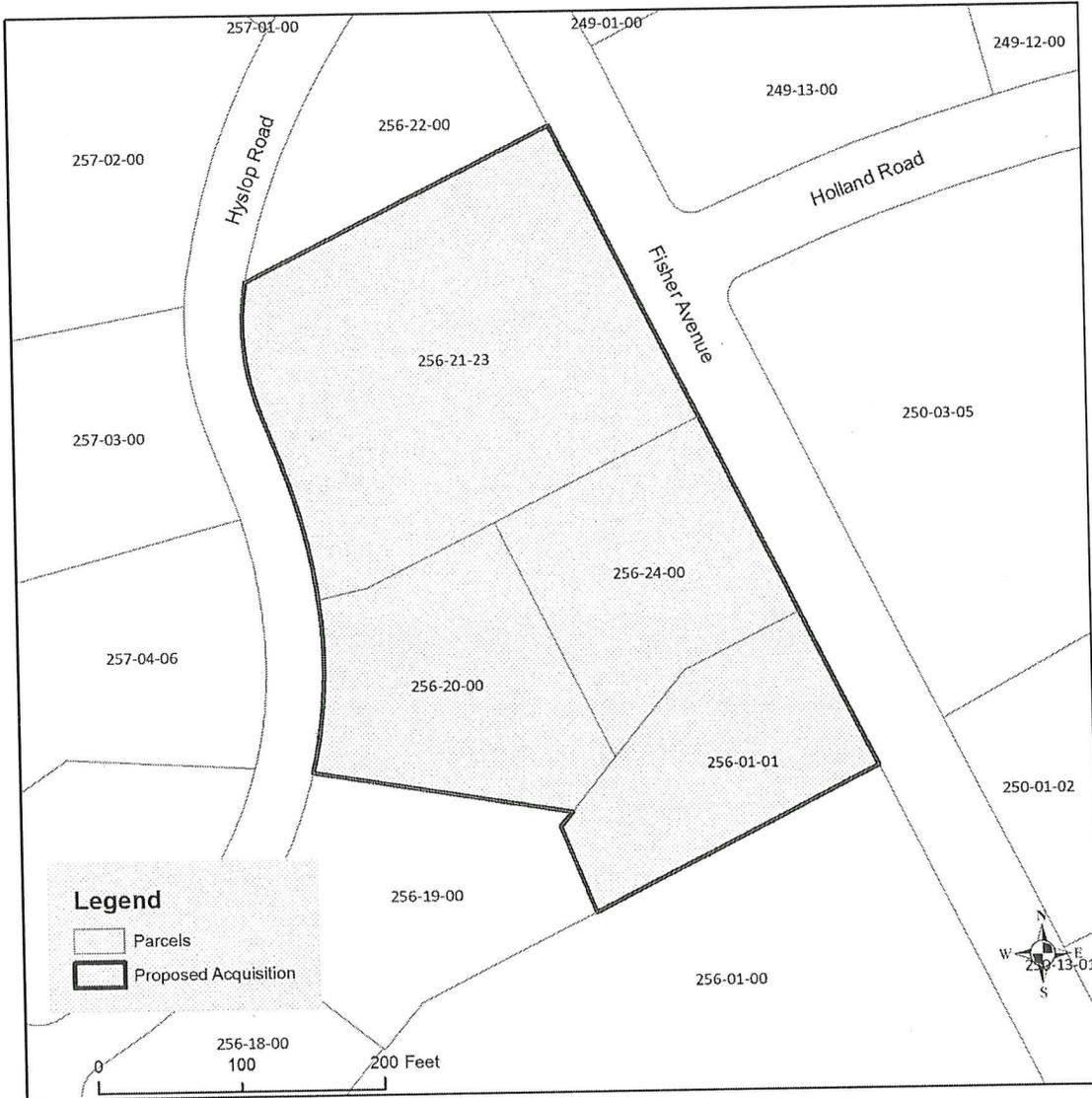
Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

March 5, 2020



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Exhibit I – West Parcel Profit Sharing Chart

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 net proceeds					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	

*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily incurred for similar commercial transactions.

**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale

***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds

March 5, 2020

Exhibit J – Town PILOT Policy

Adopted 12/18/07

Amended 6/28/2011

The Town of Brookline Payment In Lieu of Tax (PILOT) Policy

Brookline is home to, and welcomes a diverse mix of property owners: residential, commercial, governmental and non-profit charitable and educational. The Town's vibrant and growing nonprofit sector both contributes to and benefits from the Town's overall quality of life. The Town provides a variety of critical services to all segments of the community, whether they are residents, businesses or non-profit organizations. While these services provide benefits to all, funding for town departments and services relies heavily on property tax revenues. In order to maintain the high standard of municipal services that Brookline has historically provided, the Board of Selectmen believes that all property owners should contribute a fair share toward the cost.

Overview

“Increasing the overall fiscal capacity of cities and towns turns out to be central to the future prosperity of the Commonwealth... providing communities with the resources to deliver the services and amenities is critical to the state's future development and prosperity ... (and) equally important is making sure that local municipalities have the ability to provide the economic and social environment that is attractive....” Revenue Sharing and the Future of the Massachusetts Economy by the Northeastern University Center for Urban and Regional Policy(2006)

The Town of Brookline, through its various departments, provides a variety of services to its residential and commercial taxpayers and non-profit organizations located or conducting business within the Town. While municipal service requirements vary among these diverse groups, all benefit from the overall enhanced quality of life enjoyed by the community. However, the cost of municipal services is substantial, and the Commonwealth of Massachusetts has limited the sources of revenue available to municipalities. The property tax provides approximately 75% of municipal revenue used to support services. Revenue generated from property taxes is determined by law (Proposition 2 ½), mix of land uses, and geography.

The Town is approximately 6.8 square miles in size and is fully built out; therefore any development is based almost entirely on re-use. The current makeup of the Town based on land use is approximately 55% taxable land and 45% non-taxable. The largest share of the non-taxable land is owned by the Town and used for public buildings, streets/sidewalks, open space and other public uses. Other owners include the state and federal government, a foreign government (Japan), the MBTA, private educational and religious institutions, and charitable and benevolent organizations.

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A taxable parcel that becomes tax-exempt does not reduce the Town's total tax levy. Instead, it shifts the tax burden to all remaining taxable parcels. It is a primary goal of the Town to preserve its taxable land, while at the same time continuing to support its rich cultural diversity. It is also a primary goal of the Town to have the cost burden of providing services borne by and shared among all residents, taxpayers, commercial entities and non-profit institutions, to the extent possible and reasonable.

The Commonwealth of Massachusetts and its political sub-divisions, including the Town of Brookline, have historically been recognized as leaders in the area of higher education, arts and culture, public health and religious freedom, and have encouraged non-profits to organize in the state to enrich the quality of life of its residents. The General Court of the Commonwealth created a series of property tax exemptions within the General Laws (M.G.L. Chapter 59 Section 5) as an incentive to support the often vital work of non-profit organizations.

The Town's location adjacent to Boston, and its easy access to mass transportation and major roadways, makes it attractive for non-profit institutions to locate in Brookline. This demand for land and buildings to operate non-profit organizations has absorbed taxable property in Brookline at an alarming rate. The Town is concerned that a continuing shift in tax burden to a diminishing tax base will have a negative impact on residents, local businesses and the overall Brookline community. In order to maintain a fair balance between the cost of town services and payment for those services, the Town has developed a policy to address the need for a payment-in-lieu-of-tax (PILOT) program for tax exempt properties.

Policy

Brookline recognizes that non-profit organizations contribute directly to the quality of life within the community and welcomes them to the town. In order to maintain the financial health of the community so as to continue to provide a range of quality services, the Town must preserve its existing tax base and expand that revenue source where reasonably possible. It is the Town policy to distribute the burden of cost in a fair method among all users of services: citizens, taxpayers and non-profit institutions.

M.G.L. Chapter 59 section 5 enables the granting of tax exempt status to certain non-profit organizations. Once an organization is granted an exemption, the Town can not legally require that organization to pay a property tax or bind that organization to give up the rights to these legal exemptions. Therefore:

1. The Town will seek voluntary PILOT Agreements with all tax exempt institutions within the community that own real property, or that rent real property from the Town (pursuant to MGL Chapter 59 section 5, sub-section 2B);
2. These PILOT Agreements should be based upon fair market value and tax levy. PILOT Agreements should be established on the basis that the non-profit organization's payment

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amount is equal to the percentage of tax levy that supports the critical services of the Town's Police, Fire and Public Works operations. The Town has determined that this share is equal to at least 25% of the full levy;

3. In the event that a non-profit organization enters into a voluntary PILOT agreement, the Town may offer to phase in the impact over a period of time. The Town expects to negotiate PILOT agreements, whereby once the payment target is reached, the payment will annually increase by an escalation factor generally equal to the average historic growth in annual tax levy;

4. For smaller, community-based non-profit organizations with controlling interests in properties assessed at less than \$ 5 million in FY 2007 dollars, consideration for community service may be granted as part of an approach to establish the basis for a PILOT Agreement. This value ceiling would be inflated by 2.5% per year in subsequent years. The Town may base such a PILOT Agreement on less than 25% of the full levy.

5. A PILOT Agreement will remain in force for the entire tenure of its contractual term as long as the use and value established in the PILOT Agreement have not changed. All property under a PILOT Agreement must still meet all the requirements for eligibility for exempt status.

6. A PILOT Agreement does not replace the requirement that each organization seeking property tax exemption must file a "Return of Property Held for Charitable Purposes" form (State Tax Form #3ABC) with the Board of Assessors on or before March first of each year;

Guidelines for PILOT Agreements

- Recognizing the financial limitations of non-profit organizations, the Town expects to initiate PILOT discussions with non-profit organizations when they are in the process of acquiring property or considering an expansion of existing real estate holdings or planning of new construction on existing property. This approach has the pragmatic advantage of allowing exempt institutions to include the cost of any PILOT Agreement in the financial planning of the new or expanded facility. Further, the Town may waive this approach in the event that a non-profit organization suffers an extraordinary or catastrophic loss, resulting in a financial hardship.

- In the event that a non-profit organization acquires property and plans new construction or substantial reconstruction, the eligibility for tax exemption cannot be determined until the construction is completed and eligible exempt use is determined. The exemption would then be applied to the next fiscal year.

- In the case of a significant physical change in the property resulting in a change in the property's fair market value that occurs after a PILOT Agreement has been established, the Town will adjust the PILOT Agreement to include a phased in change of the payment on the addition, per the agreement or per an agreed upon schedule.

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- In the event that there is a change in the use of property under a PILOT Agreement, the Town may review the eligibility of the exemption, and the terms and conditions of the PILOT Agreement and propose such changes as may be needed to reflect the change in the value of the property.

- In the event that the non-profit gives up ownership of the parcel, the parcel will revert back to a taxable status. In the event that a non-profit organization purchases a parcel from a non-profit organization that has agreed to a PILOT Agreement, the parcel will revert back to a taxable status, pending submission of the state tax form (#3ABC), a determination by the Board of Assessors of its tax exemption eligibility, and the completion of a PILOT Agreement with the new owner. In this instance, the Town may elect to seek a voluntary PILOT agreement with the new non-profit acquirer of property.

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Exhibit K – Design Guidelines**DRAFT V4 2/25/2020****Newbury College East Parcel Design Guidelines**
Proposed to Newbury Zoning Committee

It has been determined by the Newbury Zoning Committee (NZC) that additional guidance is needed to ensure that all future buildings constructed in the Newbury College East Parcel are designed in a manner that reflects the vision and guiding principles established by the Committee. Both the Planning Board and Design Advisory Team should utilize this document to inform their discussions and decisions surrounding their design review of all buildings.

The Newbury College East Parcel is a unique property within the single-family zoning district for its prominence in the Fisher Hill neighborhood. It fronts on Fisher Avenue and the parcel is within the Fisher Hill national register historic district. It serves as a central parcel to the neighborhood at the peak of Fisher Hill and a prominent counterpoint to Reservoir Park. New buildings should be designed and built in a manner that reinforces a neighborhood scale at the street and activates the street edge with street level openness and plantings. Building design should strengthen the relationship between the built environment and the Historic neighborhood. Sustainability and harmony between existing and newly planned buildings should be emphasized.

In the Guidelines that follow, the Study Committee seeks to shape the visual and functional qualities of the buildings, to influence their relationship to neighboring buildings, and to underscore their contribution to the Fisher Hill historic fabric. We chose not to be overly prescriptive, believing that the excellence which we seek for this development will result from a rigorous Design Advisory Team process.

2) Setting

The design problems the site presents are numerous, but the site design priorities of this project should include:

- Scale and setbacks relative to existing Adjacent single- and multi-family residences
- Compatibility to existing Buildings on the site
- Scale along the streets: Fisher Ave and Holland Road
- FAR for the site
- Building Height

3) Buildings- General

Height and mass are the most critical features the NZC sought to address, and the design guidelines therefore encourage the use of intermediate elements to break down the massing and volume of the buildings.

- Human-Scaled Design Elements

- Examples: bays, setbacks, stepbacks, dormers, porticos, porches, breezeway
- Encourage the use of thoughtful articulation and intermediate design elements such as pilasters, decorative railings, architectural trim, window surrounds, etc.
- Architectural elements should be used to provide scale to large building facades. Layout may correspond to architectural or structural bay dimensions.
- Variation in building massing may include changes in wall plane or height and may relate to primary building entries, window openings, important corners, or other significant architectural features.
- Variation in building massing and detail should relate to scale of surrounding buildings.
- Pedestrian scale streetscape components are encouraged; this may include benches and site lighting.

- Materials

- Consistent with and relatable to local neighborhood buildings.
- Building materials should be selected with the objectives of quality and durability appropriate within its context, and sympathetic with materials used on local neighborhood buildings.
- Scale and texture of architectural detailing is important to relate to the existing historic fabric.
- To encourage human-scale buildings and to ensure the consistent use of high quality materials appropriate to this environment, buildings on this site may incorporate the following materials and detailing as appropriate:
 - Masonry such as stone, cast stone, brick or architectural precast concrete
 - Cladding and architectural trim may include wood to the extent feasible or aesthetic equivalent.
 - Architectural metals including metal sheets with expressed seams. Limited use of standing metal seam roofing may be used where photovoltaics are required.

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- Roofing materials may include slate or shingles to the extent feasible or aesthetic equivalent. Roof material should have some surface relief.
 - Carefully detailed selection of materials should reinforce architectural scaling and appropriate proportions.
 - Roofs
 - Articulated roof forms are encouraged through changes in height and shape (hip and gambrel profiles) and the use of dormers, decks, eyebrows, chimneys and gutters.
 - Limited use of flat roofs.
 - All Rooftop equipment should be screened from the street in a way that integrates the building architecture in form and material. Screen all rooftop equipment for decreased visibility from the street.
 - The roof should complement the scale of the building and enhance the design qualities of base middle and top.
 - Roof decks to have detailing consistent with residential scale and style and high quality materiality.
 - Fenestration
 - Residential scale, larger openings on more public ground floor spaces, smaller windows at upper floors.
 - Vary scale of fenestration between living areas, bedrooms, etc.
 - Transparent glazing (non-tinted, non-colored) is encouraged as appropriate and to the extent feasible.
 - Location and patterns of glazing should enhance building function and scale.
 - Recessed glazing, glass framing, and mullion patterns should be used to provide depth and substance to building façade and should consider play of sunlight across façade where appropriate.
 - Glazing systems should utilize framing and mullion systems that provide scale and surface relief.
 - Building Entries
 - Use of porches, large openings, and canopies.
 - Primary building entries should be emphasized through changes in wall plane or building massing, a greater level of detail, quality of materials, and more articulated lighting.
- 4) Sustainable Design Elements
- a. Goal of LEED Gold Certifiable; includes but is not limited to elements listed below.
 - b. Include elements of Passive House and WELL strategies

5.A.

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- c. Will comply with the intent of the Town's No Fossil Fuels Bylaw with the exception of the indoor pool.
- d. Implement Sustainable Site Measures which will include the following.
See also Section 8: Landscaping.
 - (i) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - (ii) Bicycle parking will be provided on site to accommodate residents, staff, and visitors. Shower and dressing room access will be provided.
 - (iii) Consider use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. overlook, and other site features.
 - (iv) Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.
 - (v) Visual and physical access to vegetation.
 - (vi) Spaces designed to support social connection.
 - (vii) Full cut-off exterior light fixtures with LED lighting. Use of pole mounted fixtures limited to surface parking areas. Site lighting is encouraged to be installed at low elevation to adequately light the path of travel per code. All exterior lights will meet the required Backlight-Uplight-Glare rating. There will be no uplighting of landscaping or buildings.
 - (viii) Electric vehicles for on-site fleet of passenger vehicles. Electric vehicle charging stations will be provided in excess of Town requirements.
- e. Optimize Energy Efficiency of Building Systems
 - (i) Reduce energy demand - implement Passive House strategies to reduce energy use. Strategies include increased insulation at walls and roofs, tight building envelope, and high-performance windows.
 - (ii) Harvest Site Energy: Optimize the building for solar renewable energy measures, consider including photovoltaic and solar thermal.
 - (iii) Provide water-efficient plumbing fixtures
 - (iv) Perform Building Commissioning for MEP systems and building envelope
 - (v) Provide training for Operations and Maintenance
- f. Indoor Environmental Quality

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- (i) Optimize daylighting and views
 - (ii) Specify healthy building materials
 - (iii) Promote occupants' comfort and well-being by providing interior cross-contamination prevention measures and CO2 monitoring.
 - g. Implement WELL strategies to provide users with a healthy building:
 - (i) Aesthetic Circulation Network
 - (ii) Drinking Water Access
 - (iii) Restorative Room
 - (iv) Control Glare
- 5) New Buildings
- The new building (s) may incorporate the following measures to minimize its scale, establish compatible massing relationships with adjacent structures, and engage the streetscape:
- Generous first floor height
 - Public and common space on first floor
 - Diminishing verticality
 - Reduce footprint of building at top floor to create a diminished sense of scale – intermittent roofdecks at top floor is encouraged.
 - Building massing that is perpendicular to streets should be scaled down by reducing the building width at setbacks and creating smaller elements at the ends of massing, as demonstrated by the massing that was presented to the zoning committee on January 8th, 2020.
- 6) Historic Buildings
- Proposed changes to historic buildings are to be reviewed with the Town's Preservation Staff and Commission.
 - Propose a joint committee (architectural sub committee & preservation commission) for streamlining this process.
 - Where existing historic buildings on site are to be retained, their renovation will be consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties. This applies to exterior elements of the buildings.
 - Any new intervention for accessibility, connections to new buildings, etc. will be done in a historically sensitive manner to ensure consistency with existing historic elements.
- 7) Public Space and Streetscape
- Holland Road and Fisher Ave Public Space and Streetscape
 - o Preservation of existing Street Trees
 - o Protection of existing trees on site per Arborist Report

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- Review of streetscape to determine whether there are opportune areas for public benches along the perimeter of the site. If provided, bench location and design to be integrated into the landscape design.
- 8) Vehicular Circulation, Access, and Parking
- Surface parking will be limited to the south end of the site. 20' setback will be maintained from property line to edge of surface parking areas for all adjacent properties to the south. 5' min. buffer to adjacent property line and fence will be provided at any vehicle turn-around areas.
 - Eliminate Holland Road driveway and create an overlook
 - Service and delivery activities should be separated whenever possible from the primary public access and screened from public view by means such as locating underground or locating internal to structures.
 - Parking structures should utilize materials and architectural detailing found in the primary development being served.
- 9) Landscape
- Provide either fencing, berming, or landscape screening to buffer the south parking area from the adjacent Olmsted Hill development.
 - Landscaped areas adjacent to the public streets will be designed to maintain soil and prevent runoff.
 - Rain Gardens: Where feasible, rain gardens will be installed to collect drainage at the perimeter and interior of the project. Bioswales and other stormwater systems will be designed and maintained in a clean manner to enhance the view from the street.
 - Predominant use of native and drought tolerant plantings will be used where possible.
 - Site lighting design is to be integrated into the wayfinding and building identification.
 - Irrigation design and maintenance consistent with LEED standards.
 - Improve permeability of roadway with pavers and other pervious materials to the extent feasible.
- 10) Signage
- Signage design will conform to guidelines described in "A Guide to Sign and Façade Design".

5.A.

Warrant Article signature page

Authorize Select Board to Enter into Memorandum of Agreement and Attendant Agreements

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

Table with 3 columns: SIGNATURE, print name, Address. Rows 1-11 contain handwritten signatures and printed names/addresses. Row 1: Nancy S. Heller, 40 Abbottsford. Row 2: Bernard Greene, 77 Park St #1. Row 3: Michael Glaver, 4 Franklin Ct. Row 4: Georgia Johnson, 80 Seaver St. Row 5: Neil Wishinsky, 20 Henry St. Row 6: Carlos Ridda, 16 Hollis Rd. Row 7: Janet B. Fierman, 169 Clark Road. Row 8: Steven A. Heikin, 57 Harris St. Row 9: Roger R. Lipsin, 622 Chestnut Hill Ave. Row 10: Helen Charlowska, 523 Boylston St. Row 11: Paul Sanga, 462 Chestnut Hill Ave.

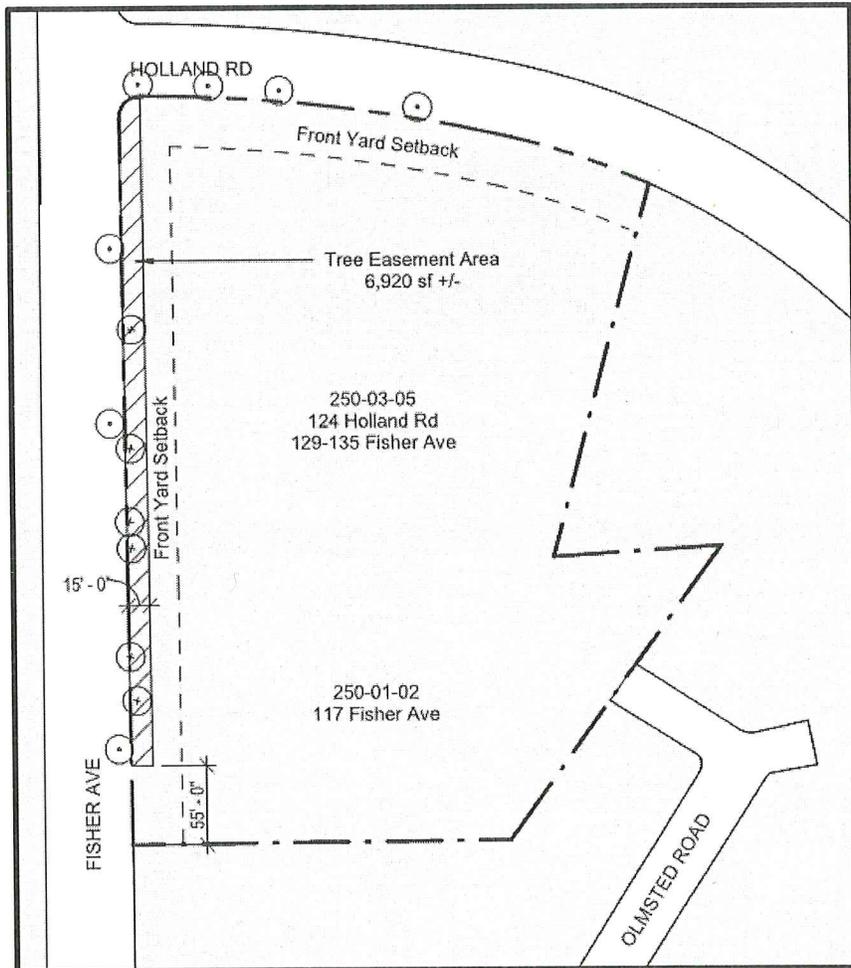
March 5, 2020

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ___: Acceptance of an Easement Protecting Trees Along Fisher Avenue

20 MAR 5 AM 11:25

To see if the Town will vote to authorize the Select Board, on such terms and conditions that are in the best interest of the Town, to accept a grant of easement from Welltower Inc. a Delaware corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, or one of its successors or assigns ("Grantor"), over portions of land located at what is now known as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road, 129-135 Fisher Avenue (Parcel I.D. No. 250-03-05), Brookline, Massachusetts and substantially shown as Tree Easement in an area approximately 6,920 s.f. +/- on the sketch included with this Article for the purposes of maintaining six trees and a green buffer along Fisher Avenue in connection with Grantor's development of a senior living facility at the site, said easement will be further described in an Easement Agreement and plan to be recorded at the Norfolk County Registry of Deeds upon future acceptance by the Select Board.



Or act on anything relative thereto.

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EXPLANATION

This article will authorize the Select Board to accept an easement from Welltower Inc. the developer of the so-called East Parcels at the former Newbury College site in order to maintain six trees and a green buffer on a portion of Fisher Avenue in connection with the proposed development of a senior living facility at the site. This easement will also allow for the linkage to the site for the Town's Tax Certainty Agreement for the East Parcels.

This warrant article is one of seven warrant articles related to Welltower's proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled "Fisher Hill Special Overlay District Zoning" proposing a rezoning of the east side of the former Newbury College campus.

Acceptance of an Easement Protecting Trees along Fisher Avenue

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

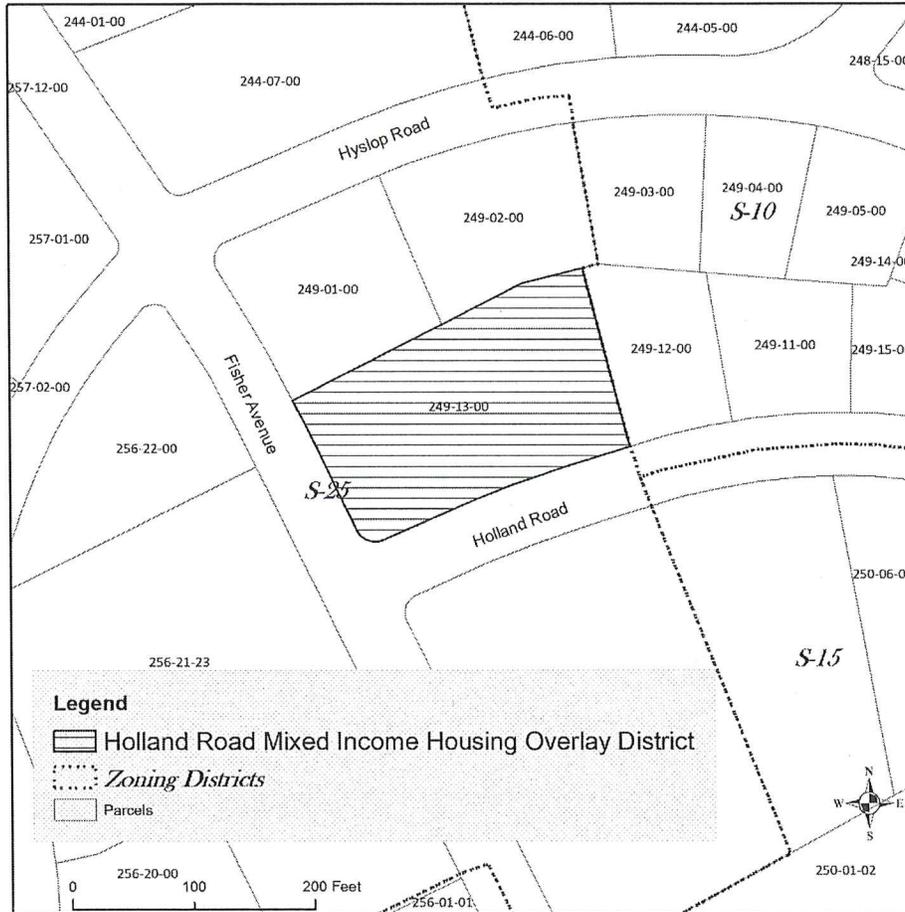
	<u>SIGNATURE</u>	<u>print name</u>	<u>Address</u>
1.		Nancy S. Heller	40 Abbottsford
2.		Bernard Greene	77 Park #1
3.		Michael Glaner	4 Franklin Ct
4.		Georgia Johnson	80 Seaver St
5.		Neil Wislinsky	20 Henry St
6.		CARLOS RODRIGUEZ	16 HOLLAN RD
7.		JANET B. FIERMAN	169 Clark Road
8.		ROGER R. LIPSON	622 Chestnut Hill Ave.
9.		STEVEN A. HEIKIN	57 HARRIS ST.
10.		HELEN CHARLUPSKI	523 Boylston St.
11.		PAUL SAUER	462 CHESTNUTHILL AVE.
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Holland Road Mixed Income Housing Overlay District

To see if the Town will amend the Zoning By-law and Zoning Map as follows:

- 1. By adopting the following map change: adding a Holland Road Mixed Income Housing Overlay District including the parcel located at 125 Holland Road (Tax Parcel Identification #s 249-13-00), as shown in the map below.



- 2. By amending Section 3.01.4 by inserting a new item "h" as follows:

h. Holland Road Mixed Income Housing Overlay District

- 3. By amending Section 5.06.4 by inserting a new item "m" as follows:

m. *Holland Road Mixed Income Housing Overlay District*

5.A.

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- 1) It is found that the parcel of land at 125 Holland Road, formerly a part of the Newbury College campus (the "Site") has been identified by the Newbury Zoning Committee, based on a recommendation from the Housing Advisory Board, as an appropriate site for mixed-income affordable housing development. For this reason, a developer may opt to develop the Site in accordance with the requirements of this overlay district.
- 2) Any applicant may seek relief under this overlay, provided the applicant's proposed development meets the following requirements:
 - a. It contains 18 Dwelling Units, contained in a single building.
 - b. Six (6) of the Dwelling Units on the Site must be Affordable Units (as defined in Section 4.08.2.c.) for households with incomes up to 80% of Median Income, defined in accordance with Section 4.08.2.f and which must also qualify for the Town's Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 100% of Median Income. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 150% of Median Income.
 - c. It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning and Community Development.
- 3) Multi-Family Dwellings. Superseding any conflicting restrictions in Section 4 of the Zoning Bylaw, any development proposed pursuant to the requirements of this overlay district:
 - a. may include Multi-Family Dwellings;
 - b. is not required to meet the requirements of Section 4.08, with the exception that the development must meet the "Standards" requirements listed under Section 4.08.6. With respect to the standard for unit sizes described in 4.08.6.c, any project proposed pursuant to this section will be deemed to meet the standard if the average unit size for the units with the applicable bedroom count meets or exceeds the listed square footage, so long as no individual unit has less than 95% of the prescribed square footage.
- 4) All applications in the Holland Road Mixed Income Housing Overlay District shall be subject to §5.09, Design Review, including any applicable Design Guidelines adopted by the Planning Board. Further, the Zoning Board of Appeals shall be empowered to require such other conditions as it deems necessary to bring the project into conformance with the goals of this overlay district, including a modification of the affordability requirements in 5.06.4.m2.b. The Zoning Board of Appeals may only grant a modification of the affordability requirements in

March 4, 2020

5.06.4.m.2.b that raises the applicable Median Income levels following a favorable recommendation from the Housing Advisory Board and in no case shall the affordability requirements be modified to provide fewer than 4 Affordable Units for households with incomes up to 80% of Median Income and 4 Affordable Units for households with incomes up to 100% of Median Income, and in no case can any of the Affordable Units be available for households with incomes greater than 150% of Median Income.

- 5) Dimensional and Parking Requirements. Any development proposed pursuant to the requirements of this overlay district shall be subject to the dimensional requirements listed below, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district. Any dimensional requirements not specified below shall be required according to the requirements of the underlying zoning district.
- a. Lot size. A minimum lot size of 35,000 square feet shall be required.
 - b. Floor Area Ratio. An overall maximum Floor Area Ratio of 0.5 shall be permitted.
 - c. Height. A maximum height of 40 feet, measured from the record grade of the midpoint of the lot line along Holland Road, shall be permitted.
 - d. Setbacks. A minimum Front Yard setback of 30 feet, a minimum Side Yard setback of 40 feet, and a minimum Rear Yard setback of 40 feet shall be provided. Relief from these setback requirements may be sought under Section 5.43.
 - e. Open Space. A minimum amount of Landscaped Open Space of 40% of Gross Floor Area and a minimum amount of Usable Open Space of 10% of Gross Floor Area shall be provided.
 - f. Parking. Parking shall be provided at a minimum rate of 1 space per Dwelling Unit.

Or take any action thereto.

EXPLANATION

This warrant article proposes the creation of a new overlay district, the Holland Road Mixed Income Housing Overlay District, and its establishment over the property at 125 Holland Road – a part of the former Newbury College campus. The overlay district allows an applicant to develop the land for the purpose of mixed-income housing provided it complies with the provisions of the overlay district. Those provisions include a requirement that the mixed-income housing development include exactly 18 units, six of which must be affordable to households with incomes up to 80% of median income, six of which must be affordable to households with incomes up to 100% of median income, and six of which must be affordable to households with incomes up to 150% of median income. These affordability requirements could be modified by the Zoning Board of Appeals if the Housing Advisory Board recommends doing so. The Overlay District also imposes a few dimensional requirements that are generally more restrictive, but in some cases less restrictive, than the existing underlying zoning. All developments proposed pursuant to this Overlay District would require Design Review with the Planning Board and a Special Permit from the Zoning Board of Appeals.

This warrant article is one of seven warrant articles related to Welltower's proposed development on the former Newbury College campus. For more information on how this proposed rezoning fits into the larger package, please review the explanation for the warrant article titled "Fisher Hill Special Overlay District Zoning" proposing a rezoning of the east side of the former Newbury College campus.

125 Holland Road Mixed Income Housing Overlay District

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

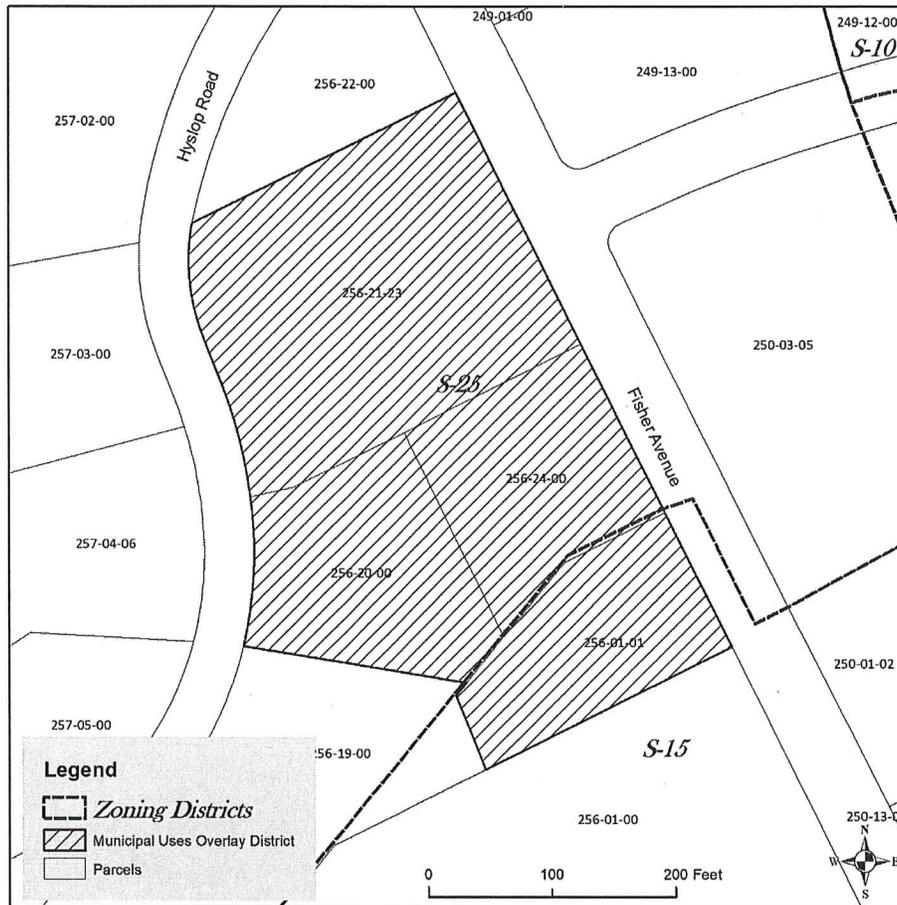
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8.		STEVEN A. HARKIN	57 HARRIS ST.
9.		ROGER R. LIPSON	622 Chestnut Hill Ave.
10.		HELEN CHARLUPSKI	523 BOYLSTON ST.
11.		PAUL SAUER	462 CHESTNUT HILL AVE
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Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Municipal Uses Overlay District

To see if the Town will amend the Zoning By-law and Zoning Map as follows:

1. By adopting the following map change: adding a Municipal Uses Overlay District including the 4 parcels located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 256-01-01, 256-24-00, 256-21-23, and 256-20-00), as shown in the map below.



2. By Amending §3.01.4 by inserting a new item "i" as follows:

- i. Municipal Uses Overlay District

3. By amending Section 5.06.4 by inserting a new item "n" as follows:

- n. Municipal Uses Overlay District

5.A.

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- 1) This overlay district is established where the Town finds that certain properties are suitable for the conduct of municipal uses having a minimal impact on surrounding properties and the neighborhood in which they are located. An applicant may opt to develop any property within this overlay district in accordance with the requirements of this overlay district.
- 2) Any applicant may seek relief under this overlay, provided the application meets the following requirements:
 - a. The use is one of the following:
 - i. Municipal or governmental offices, along with associated municipal support services contained within a building.
 - ii. A municipal or governmental educational facility, along with associated accessory uses.
 - iii. Library or museum, open to the public or connected with a permitted educational use, and not conducted as a private gainful business, provided that a Special Permit shall be required for such uses.
 - iv. Recreational facility owned or operated by an agency of the Town, provided that a Special Permit shall be required for such uses.

Or take any action thereto.

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EXPLANATION

This warrant article proposes the creation of a new overlay district, the Municipal Uses Overlay District, and its establishment over the 4 parcels that comprise the west side of the former Newbury College campus. The overlay district allows an applicant to use the land for the purposes of municipal or governmental offices and educational facilities by right and for the purposes of public libraries, museums, and recreational facilities by Special Permit. The overlay district also provides allowances for associated support services and uses commonly found in conjunction with the above uses, including, but not limited to, welder and carpenter workshops provided that they are contained within a building.

This warrant article is one of seven warrant articles related to Welltower's proposed development on the former Newbury College campus. For more information on how this proposed rezoning fits into the larger package, please review the explanation for the warrant article titled "Authorization to Acquire Former Newbury College West Campus" proposing an acquisition of the west side of the former campus.

Municipal Use Overlay Zoning

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

	<u>SIGNATURE</u>	<u>print name</u>	<u>Address</u>
1.		Nancy S. Heller	40 Abbottsford Rd
2.		Bernard Greene	77 Park St #1
3.		Michael Glazer	4 Franklin Ct
4.		Georgia Johnson	80 Seaver St
5.		Neil Wishinsky	20 Henry St
6.		CARLOS RIQUELME	16 HOLLAND RD
7.		JANET B. FIEMAN	169 Clark Road
8.		STEVEN A. HEIKIN	57 HARRIS ST.
9.		ROGER R. LIPSON	622 Chestnut Hill Ave
10.		HELEN CHARLUPSKI	523 BOYLSTON
11.		PAUL SAWYER	462 CHESTNUTHILL AVE.
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March 5, 2020

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ___: Authorization to Acquire Former Newbury College West Campus

To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, eminent domain or otherwise, in fee simple, the parcels of land located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 255-01-01, 256-24-00, 256-21-23, and 256-20-00) including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, for general municipal purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure to appropriate a sum of money to be expended at the direction of the Select Board, to pay costs of acquiring said property, and for the payment of all costs incidental and related thereto, including refurbishment of the buildings thereon, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; to authorize the Selectmen to apply for, accept and expend any grants from any source whatsoever that may be available to pay any portion of this project or to take any other action relative thereto.

Land Description:

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY	on Fisher Avenue, one hundred and fifty (150) feet;
NORTHERLY	on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
WESTERLY	on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
SOUTHERLY	on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

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A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and 80/100 (180.80) feet;

SOUTHEASTERLY by a line, forty-eight and 30/100 (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

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Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

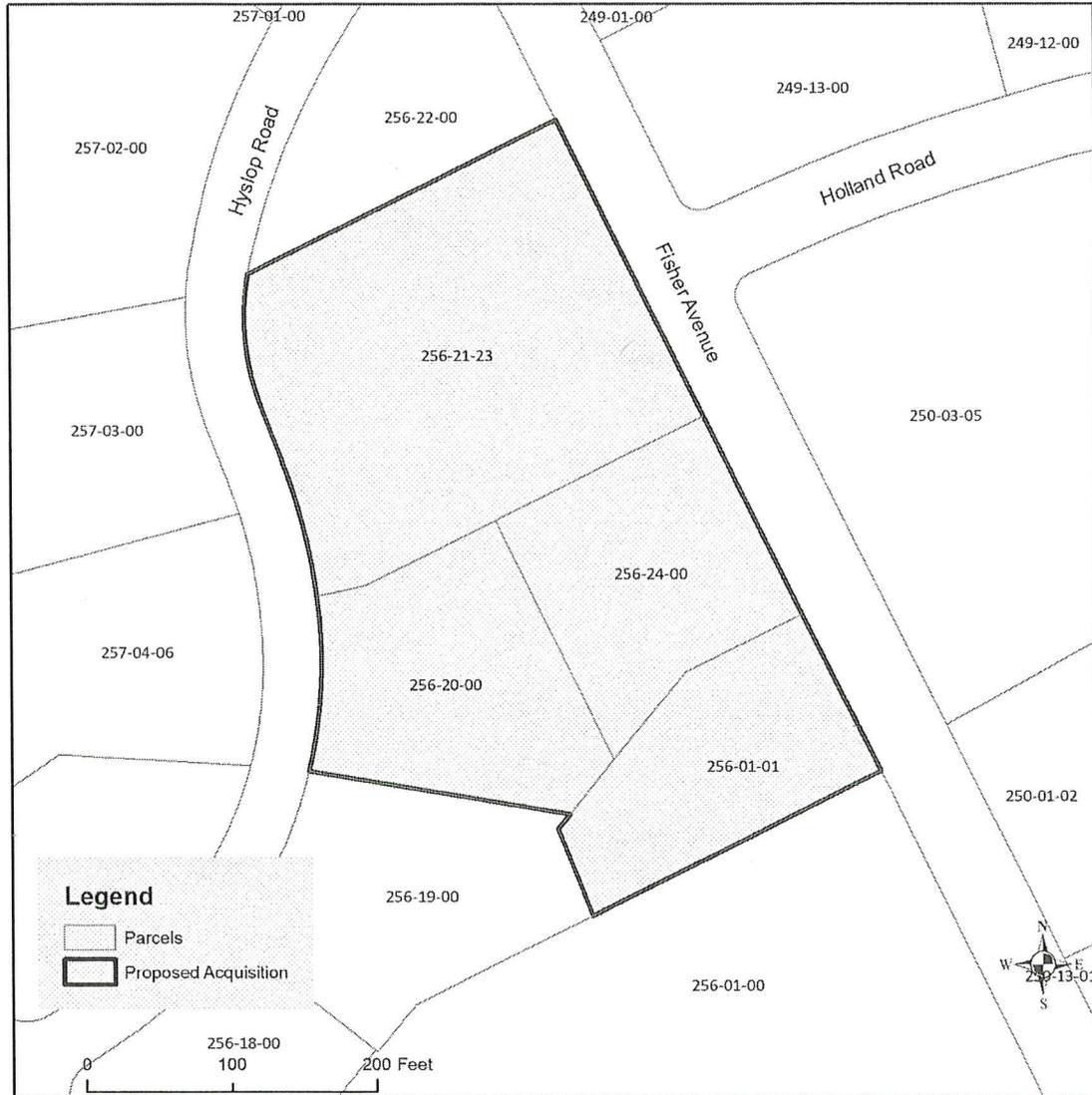
Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

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EXPLANATION**Summary**

This article will enable the Town to acquire the former West Campus of Newbury College. The Town has been presented with an opportunity to acquire badly needed land with buildings at a discounted price for current and future municipal use. A debt exclusion question is being placed on the May 5 ballot to provide a funding source. While this potential acquisition is a component of the Welltower senior living proposal, its passage is not essential to the viability of the senior living project. If the package of warrant articles which enable the senior living proposal is approved and the Town does not acquire the former West Campus, the Town will share in the proceeds of the sale to another party above the Town agreed upon price of \$14.8 million. If the senior living package is not approved by Town Meeting, the offer to purchase (or share in the proceeds of a sale to another party) is rescinded and this article is moot.

A number of short term, low impact uses for the property have been identified and are described below. No long-term use for the parcels has been determined at this point; such a use would be the result of a multi-year study involving input from Town staff, boards and committees as well as the neighborhood and the community at large. Pursuant to MGL c. 40, §14, any acquisition of land by a town's Select Board must be authorized by a two-thirds vote of Town Meeting. This Article authorizes the Select Board to acquire the parcels with the addresses 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road and appropriate the funds necessary for the acquisition of the property and attendant expenses.

The former West Campus of Newbury College

When Newbury College announced its decision to close, the Town recognized the opportunity this presented for acquisition of badly needed property for potential municipal and school uses. Before, during and after the almost unanimous April 2019 Town Meeting Resolution to pursue acquisition of the campus, the Town participated in the bidding process established by the college and under the purview of the State's Attorney General. The Town was not the winning bidder—in large measure due to the difficult requirements imposed by Newbury on prospective bidders. Upon designation as the selected bidder, Welltower Inc. offered the Town the opportunity to purchase the portion of the campus that is on the west side of Fisher Avenue. A more detailed description of the bidding process and the other components of the Welltower deal are contained in the explanation of Article X1, the Fisher Hill Special Overlay District.

The property that comprises the former West Campus of Newbury college consists of four parcels (110, 124 and 150 Fisher Avenue and 146 Hyslop Road) totaling 3.18 acres.

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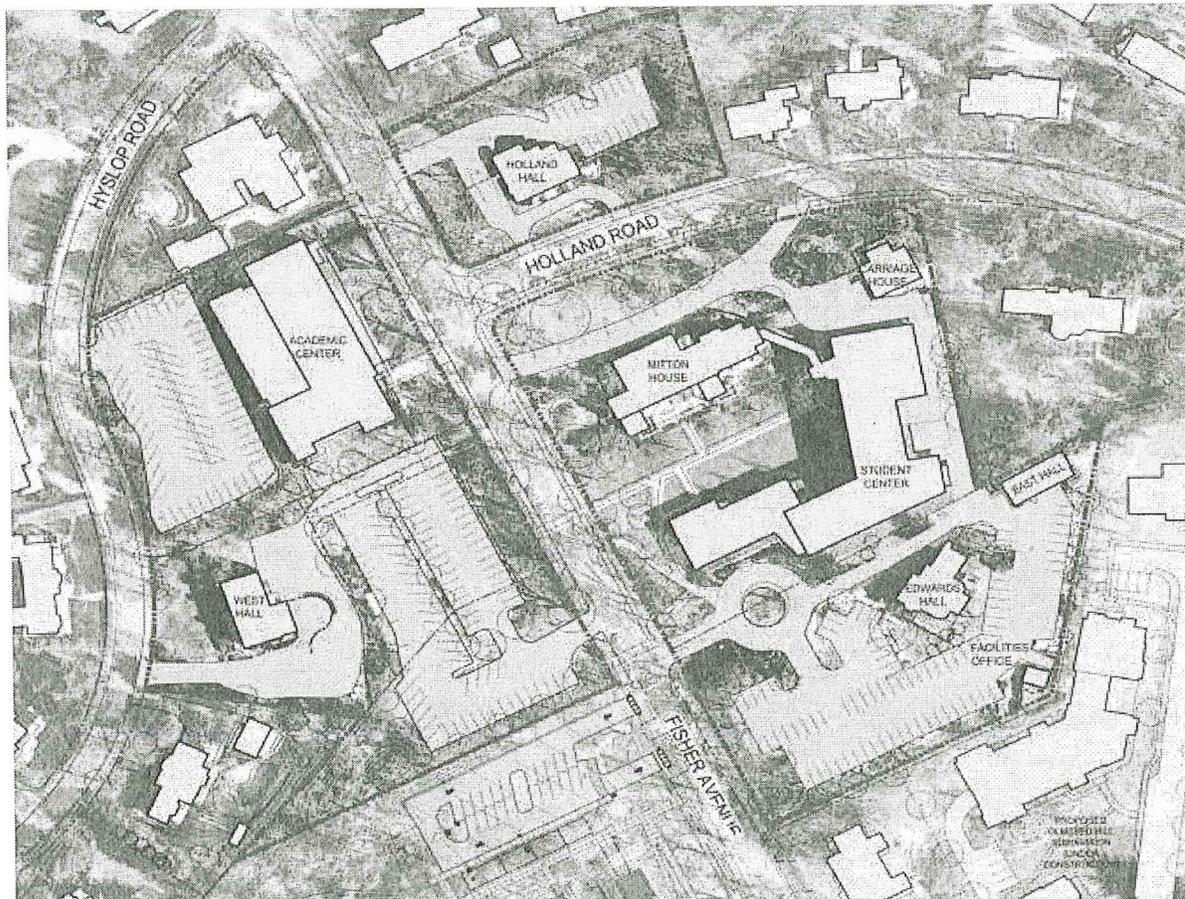


Figure 1: Site Plan. Proposed section for acquisition is on the west (left) side of Fisher Ave.

The site contains the former Academic Center and West Hall (each with dedicated parking) plus two parking areas for approximately 156 vehicles (according to the Newbury College Master Plan prepared by Stantec in 2014). The purchase price, established following a robust negotiation process between Welltower and representatives of the Town, has been set at \$14.8 million. A debt exclusion override referendum is being placed on the May 5, 2020 Town election ballot by the Select Board in order to provide the bonding capacity to purchase the property if authorized by Town Meeting. If the Town purchases the property, it will be “as is.”

The Academic Center, consisting of the main building constructed in 1957 and a library added in 1997, contains 30,940 square feet of program space distributed amongst three levels plus a partial basement consisting of classrooms/lab spaces, offices and a café as well as the library. It is the building on the campus best suited in its as-is condition for Town uses.

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Figure 2: Academic Center view from Fisher Ave.

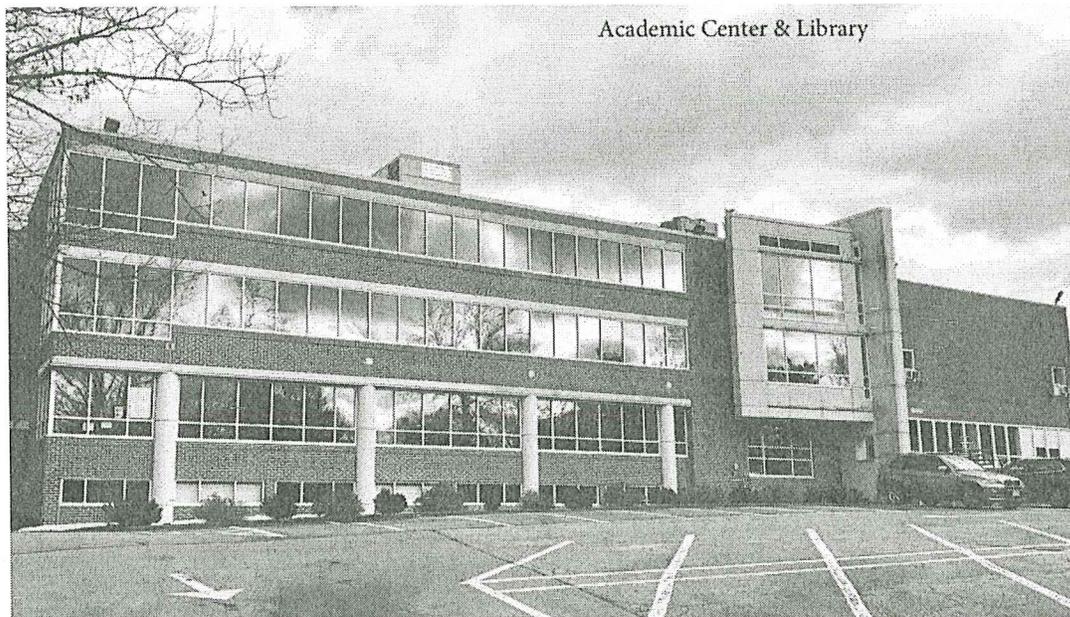


Figure 3: Rear of Academic Center showing 1997 Library addition

West Hall is a three-story building constructed as a private residence in 1920 consisting of 9,841 square feet. It had been used by Newbury College for classrooms, offices and a mail room. The building is in general disrepair, but in overall sound condition. It has no accessible features and internal circulation is awkward.

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Figure 3: Rear View of West Hall

Summary of the Town's due diligence on site conditions:

As part of the bidding process in spring 2019 and then subsequently as part of its decision-making process relative to purchasing the former West Campus, the Town undertook a significant amount of due diligence within a compressed time frame. In addition to commissioning a title search, the Town focused on the condition of the two buildings on the former West Campus as well as the status of public infrastructure serving the property. A Capital Needs Assessment was prepared for the Town by Commercial Construction Consulting, Inc. (CCC), a professional engineering firm experienced in the design, construction and operation of institutional buildings and office buildings. CCC evaluated the condition of all buildings on the entire campus and provided a ten-year capital forecast for the property. The buildings were also evaluated by the Public Buildings Division of the Building Department, which incorporated inspections by the Town's sub-contractors, including but not limited to the condition and life-expectancy of life safety systems, HVAC, roofs, chimneys, windows, facades and availability and capacity of utilities. These studies concluded that neither the Academic Building nor West Hall **appear to have any** structural deficiencies.

How will the Town use the property?

The Town has not made any determinations as to the long term use(s) of the property. In the short term, the Town will use the properties essentially as-is while engaging in an inclusive process over the next three to five years relative to the long term use of the site. A vision of how the process would be conducted is described below.

Many municipal needs have been identified in the Town's Strategic Asset Plan completed and adopted by the Select Board in 2018. The Strategic Asset Plan was designed to serve

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as a foundation for future planning relating to facilities and services to be provided to Brookline residents and the commercial sector. The study is available here: <https://www.brooklinema.gov/DocumentCenter/View/14147/Strategic-Asset-Plan-PDF>

Short-Term Uses

The Town has identified a number of short-term uses, most notably office and workshop space for the Building Department, which will be able to relocate from **substandard**, ill-suited and inefficient space at Larz Anderson Park. This will bring approximately 20 employees to the site. In addition to providing a centralized location for Building support services, Building Department personnel are the ideal tenants to provide a municipal presence within the building to oversee the building and activity. Further, since no interim uses are proposed for West Hall, Building Department personnel will be in a position to monitor the vacant building. The Academic Building will be available to meet other municipal space needs including overflow use for meetings, training and other programs. Given the site's location immediately adjacent to Reservoir Park, it could accommodate overflow parking. The Town Administrator is continuing to explore other possibilities for short-term uses that can be accommodated on the property with minimal impacts on the abutting residential neighborhood.

Long-Term Uses

No permanent use of the west campus has been determined. Given that the identification of an appropriate long-term use or uses for the west side warrants a significant and inclusive planning process, the Select Board will initiate a comprehensive planning process that is anticipated to take several years. That process will begin with the creation of a Land Use Committee consisting of Town officials, neighbors and residents with support from professional staff and outside experts, as necessary. The extended process will seek to capture input from all sectors of our community and include public hearings, social media engagement, and planning workshops and/or charrettes. Based on public input and professional analysis, the Land Use Committee will submit its recommendation to the Select Board, which will ultimately make its decision and seek Town Meeting approval.

The following is a partial list of potential uses:

- Affordable Housing
- Athletic Fields or Expanded Park Use
- Building Division Workshop and Offices
- Municipal/School Office Spaces
- Municipal/School Training Center
- Recreational Facilities (Pool, Rink, Gym)
- Satellite Senior Center
- School Classrooms or Educational Spaces

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Some preliminary studies have already been conducted as part of the Town's exploration as to the feasibility and desirability of purchasing the former West Campus. The Town commissioned two architectural firms to perform very preliminary "test fits" of potential municipal and school uses of the Academic Building as well as the entire west side property to determine if and the extent to which they could accommodate various municipal and school uses.

ICON Architecture was commissioned to test fit a number of municipal uses, most of which were identified in the Strategic Asset Plan, including:

1. Building Department operation and equipment storage needs
2. Recreation Department's Early Childhood Education and After School programs
3. Police Department training and storage needs
4. Sports and recreation fields
5. Multi-story indoor recreation facility
6. An indoor skating and hockey facility
7. An indoor /outdoor swimming facility

Several permutations involving shared deployment of the property by different uses were also identified and examined.

The study is available here:

<https://www.brooklinema.gov/DocumentCenter/View/20621/Other-Municipal-Uses---NEWBURY-TESTFITs---103119?bidId=>

HMFH Architects studied potential elementary school uses at the following sizes:

2+++ Sections (Baldwin Program, 109,005 gross square feet)

3+++ Sections (136,682 gross square feet)

4+++ Sections (Driscoll Program, 158,432 GSF)

Note: +++ Indicates inclusion of:

- * 3 Pre-K classroom
- ** 3 RISE Special Education classrooms
- *** 3 English as a second language classrooms

The study is available here:

<https://www.brooklinema.gov/DocumentCenter/View/20622/School---Newbury-Test-Fit-Presentation---103119?bidId=>

The studies prepared by architects (and based, in part, on the due diligence previously undertaken) represented preliminary and essentially conceptual analyses. The planning process to be established by the Select Board will be designed to explore additional uses identified by the community as well to generate more detailed plans upon which to make decisions.

5.A.

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Financing the Acquisition

The Select Board will be placing a debt exclusion question on the May 5 ballot for \$14.9 million dollars to finance the \$14.8 million purchase price plus provide \$100,000 for minor improvements and repairs to the site. The most significant repair which has been identified is a required upgrade to the fire alarm panel which is estimated to cost about \$15,000.

Debt Service for a \$14.9 million borrowing for 25 years at 4% is about \$953,778 per year. The Town's most recent long term borrowings have been **below** 3%. A \$14.9 million borrowing for 25 years at 3% is about \$855,675 per year.

Tax Impact of Debt Exclusion at 3%

TAX IMPACT OF DEBT EXCLUSION (LEVEL DEBT SERVICE)		
Project(s) Cost	\$14,900,000	
Town Share	\$14,900,000	
Term	25	
Interest Rate	3.00%	
Annual Debt Service	\$855,675	
Tax Impact on Median Single-Family Home	\$49	0.4%
Tax Impact on Median Condo	\$15	0.4%
Tax Impact on Median Commercial Prop	\$112	0.4%

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Tax Impact of Debt Exclusion at 4%

TAX IMPACT OF DEBT EXCLUSION (LEVEL DEBT SERVICE)		
Project(s) Cost	\$14,900,000	
Town Share	\$14,900,000	
Term	25	
Interest Rate	4.00%	
Annual Debt Service	\$953,778	
Tax Impact on Median Single-Family Home	\$54	0.4%
Tax Impact on Median Condo	\$17	0.4%
Tax Impact on Median Commercial Prop	\$124	0.4%

The Public Buildings department estimates that the cost to the Town to own and maintain the property on an annual basis is approximately \$73,000.

Note that the property is currently generating tax revenue of about \$140,000 per year which will be lost if the Town purchases the property.

Town Proceeds Sharing in the event Fisher Hill Overlay District is approved and the Town does not Purchase the Former West Campus

If the package of warrant articles which enable the senior living proposal is approved and the Town does not acquire the former West Campus, the Town will share in the proceeds of the sale to another party above the Town agreed upon price of \$14.8 million. The proceeds will be shared in accordance with the following chart.

March 5, 2020

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 net proceeds					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	

*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily incurred for similar commercial transactions.

**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale

***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds

Authorization to Acquire Former Newbury College West Campus

SIGNATURES (Ten registered voters required)

The following registered Brookline voters support the attached submitted article.

	<u>SIGNATURE</u>	<u>print name</u>	<u>Address</u>
1.		Nancy S. Heller	40 ABBOTSFORD
2.		Bernard Greene	77 Paul St #1
3.		Michael Glazer	4 Franklin Ct
4.		Georgia Johnson	80 Seaver St
5.		Neil Wisnisky	20 Henry St
6.		CARLOS RIPPUSO	16 HOLLAND RD
7.		JANET B. FIERMAN	169 Clark Road
8.		STEVEN A. HEIKIN	57 HARRIS ST.
9.		ROGER R. LIPSON	622 Chestnut Hill Ave
10.		HELEN CHARLUPSKI	523 BOYLSTON ST
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