

## Memo

To: Karis L. North, Esq., Murphy, Hesse, Toomey & Lehane, LLP

From: Brian S. Grossman and Katherine Garrahan

CC: Gregg Corbo, Sherborn Town Counsel

Date: June 21, 2021

**Re: Summary of Legal Processes for Proposed Sewer Services from Natick into the Contemplated Developments in Sherborn**

As you may know, Pulte Homes of New England, LLC (“Pulte”) and Baystone Development (“Baystone”) have or will file applications to the Town of Sherborn’s Zoning Board of Appeals and Planning Board to construct two residential developments: Meadowbrook Commons, consisting of 67 age-restricted senior condominium units (10% affordable) to be located on approximately twenty-five acres with a main access on Coolidge Street (“Meadowbrook Commons”) and Baystone’s Coolidge Crossing development consisting of 120 rental units (25% affordable), being developed in cooperation with Pulte, to be located on 15+ acres of land with a main access on Coolidge Street (“Coolidge Crossing”). Meadowbrook Commons is described in the Preliminary Development Plan approved by Sherborn Town Meeting in 2017, as further detailed in the application to the Sherborn Planning Board for Special Permit for Multi-Dwelling Residences in EA District to be filed in May 2021; Coolidge Crossing is described in the M.G.L. c. 40B Comprehensive Permit application submitted to the Town of Sherborn’s Zoning Board of Appeals in October of 2020, and as approved in the Project Eligibility letter of the Department of Housing and Community Development to the Town of Sherborn dated October 14, 2020

Engineering reviews and studies undertaken by Pulte, Baystone, and the Town of Sherborn have indicated that installation, operation, and maintenance of private sewer and water well(s) to serve Meadowbrook Commons and Coolidge Crossing will not be feasible. As you know, Pulte is engaged with the Towns of Sherborn and Natick to negotiate the provision of sewer to Meadowbrook Commons and Coolidge Crossing and approached the Town of Sherborn with a proposal to request sewer service from Natick (as well as water service from the City of Framingham). On March 3, 2020, the Town of Sherborn, through its Town Manager, executed a letter of support for the requested sewer service extension proposed by Pulte.

Pulte proposes for Natick’s consideration entering into an intermunicipal agreement (“Sewer IMA”) for a term of fifty years to provide sewer service to the following potential users in Sherborn:

(1) Meadowbrook Commons (the “Meadowbrook Commons Users”); and

(2) Coolidge Crossing (the “Coolidge Crossing Users”).

**Proposal:** This memorandum is provided on behalf of Pulte and Baystone to summarize the required local (Natick) and state legislative action and MWRA approvals to effectuate the proposed extension of a suitable sewer service from Natick into Sherborn. Pulte and Baystone represent that no further extension of the sewer line or service area or number of users beyond the Meadowbrook Commons and Coolidge Crossing Users is contemplated as part of this proposal and that controlling documents shall include provisions prohibiting additional connections to the sewer system in the future without Natick, Sherborn and MWRA approval.

**Connection with Natick and Natick’s Sewer Capacity:** A private sewer force main from the developments to the Natick sewer system is proposed serving only the Pulte Development, defined as the 55+ Meadowbrook Commons senior housing development and the Coolidge Crossing affordable rental community. A pressure sewer connection will be designed to connect, via a new gravity stub, to the existing SMH 16-219 located in Speen Street just south of England Road in Natick. Any sewer force main installed in Natick necessary for this sewer connection will remain privately owned and maintained initially by Pulte, and later by its successor, Meadowbrook Commons Condominium Association. A cost sharing, sewer/forcemain use agreement will be in place between Meadowbrook Commons and Coolidge Crossing to reflect all obligations and responsibilities under the connection agreement. Pulte will undertake the design, permitting and installation of the sewer force main extension to Speen Street. The total estimated sewer flow proposed for the IMA is a maximum daily use as follows:

- |     |   |            |
|-----|---|------------|
| (1) | Meadowbrook Commons, 67 condominium units = | 10,420 gpd |
| (2) | Coolidge Crossing, 120 rental units =       | 24,700 gpd |

Total Maximum Daily Wastewater Flow by developments = 35,120 gpd

(Note: The original estimated flow calculation was 33,500 GPD. The revised value above reflects an additional proposed allowance for Club House facilities at the two developments.)

Pulte funded a peer review by the Town of Natick’s peer review consultant Haley & Ward to affirm the capacity and adequacy of Natick’s sewer system located downstream of Pulte’s proposed connection on Speen Street to the MWRA interceptor, based upon periodic pumped flows up to 90 GPM from the developments. Haley & Ward confirmed that suitable capacity existed but recommended that Pulte complete certain Speen Street rehabilitation repairs to the existing sewer infrastructure in Speen Street, from sewer manhole 16-219 to the MWRA interceptor recommended by Haley & Ward, including without limitation, to clean and line the entire length of sanitary sewer from their point of entry to its discharge to the MWRA sewer interceptor (along Speen Street from Sherborn town line to approximately Central Street). Upon completion of the

Speen Street sewer repairs, the Natick Sewer system from sewer manhole 16-219 on Speen Street to the MWRA interceptor will then be suitable to accept the Pulte Development's sewer flow.

## **Legislative action to authorize intermunicipal agreement Sewer IMA for a term of fifty years**

M.G.L. c. 40, § 4A as affected by Chapter 188 of the Acts of 2008, authorizes intermunicipal agreements, but only permits them for a maximum duration of up to twenty-five years. Therefore, in order to allow for the proposed fifty year agreement to better align with the proposed capital improvements and mitigation, it is anticipated that the Sewer IMA will require the passage of special legislation by the General Court to allow for the fifty year term. Both the Town of Sherborn and Town of Natick would be required to include an Article(s) on an upcoming Town Meeting Warrant to authorize the filing of the special legislation to authorize a Sewer IMA with a fifty year term and to enter into the Sewer IMA.

A detailed timeline for the approval of special legislation for the proposed Sewer IMA with a fifty year term; the execution of the Sewer IMA; and required MWRA approvals is appended to this memorandum as **Exhibit A**. For your ease of reference, a list of Applicable Statutes, Regulations, and Policies is attached as **Exhibit B**.

The contemplated Sewer IMA will include the following provisions; this list is not a complete summary of terms:

1. **Personnel:** The sewer components within Sherborn will be operated, maintained and managed by the development association using contract operators, including for emergency response purposes. The association will hire and retain a licensed wastewater professional and sewer system operator for operation, regular and preventative maintenance, repairs and emergency response services. The system operator will also provide a Inflow/Infiltration (I&I) detection/inspection program, a flow meter calibration program and a valve exercising program consistent with final constructed components and industry standards. The system operator shall also be responsible for the water meter readings on a periodic basis to facilitate correlation to measured wastewater flows and for Natick billing.
2. **Wastewater Restrictions:** All wastewater will be strictly residential and/or domestic in nature without commercial or industrial influences. The sewer collection system within the development is anticipated to be a combination of low pressure sewer components with some gravity piping limiting I&I influences. A program for I&I detection will be a component of the contract operations of the system with an annual reporting requirement.
3. **Billing:** A user charge system will be negotiated between Natick, Sherborn and Pulte, and detailed in the Sewer IMA. Pulte proposes that sewer charges be based upon individual water meter readings with the system operator responsible for the meter readings on a

periodic basis to facilitate Natick billing. Pursuant to G.L. c. 83, §16A will have the authority to bill, collect and lien the Sherborn properties/users.

- Mitigation:** On Natick's behalf, Haley & Ward confirmed the capacity and adequacy of Natick's sewer capacity located downstream of Pulte's proposed connection on Speen Street to the MWRA interceptor. Haley & Ward recommended certain rehabilitation and repairs to the Natick Sewer system from sewer manhole 16-219 on Speen Street to the MWRA interceptor, including without limitation, to clean and line the entire length of sanitary sewer from their point of entry to its discharge to the MWRA sewer interceptor (along Speen Street from Sherborn town line to approximately Central Street). Results from that analysis were used as the basis for developing the necessary repairs and improvements and the potential mitigation fee proposal for additional and future system rehabilitation, currently under discussion. In addition, both MWRA and the Town of Natick require compensation for rehabilitation measures necessary to remove Inflow within the Natick sewer system at a ratio of 4:1 based upon proposed design flows. Haley & Ward has identified sewer manhole repairs of sufficient quantity to provide that 4:1 compensation subject to MWRA approval. Pulte's payment of an I&I fee to Natick will be paid pursuant to Natick's customary I&I payment timing requirements and the implementation of the targeted improvements by Natick, time being of the essence, will be completed prior to the developments discharging sewer into the Natick sewer system. It is anticipated that such improvements will be implemented by Change Order through the Town's existing three year sewer rehabilitation contract.

Please advise if a meeting to discuss this overview would be helpful, or if you have questions or concerns. You may reach Brian Grossman at (508) 416-2410 or Kathy Garrahan at (508) 416-2474.

## Exhibit A Timeline

### 1. Authorizing legislation for the proposed Sewer IMA:

<b>Task</b>	<b>Responsible Party</b>	<b>Anticipated date</b>
<ul style="list-style-type: none"> <li>Prepare proposed Sewer IMA; prepare Sherborn Town Meeting warrant Articles</li> </ul>	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	May 2021
Identify legislative sponsor(s)	Counsel for Pulte in consultation with Counsel for Sherborn and Natick	May 2021
Special Permit filing to Sherborn Planning Board for Meadowbrook Commons	Pulte	May 2021
Informal presentation to Sherborn Select Board <ul style="list-style-type: none"> <li>proposed authorizing legislation for Sewer IMA;</li> <li>proposed Sewer IMA; prepare Sherborn Town Meeting warrant Articles;</li> </ul>	Counsel for Pulte with review by Sherborn Town Counsel	May 2021
Informal presentation of proposed legislation to legislative sponsor(s)	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	May 2021 (after informal presentations to Sherborn Select Board and Natick Select Board)
Formal presentation to Natick Select Board <ul style="list-style-type: none"> <li>proposed authorizing legislation for Sewer IMA;</li> <li>proposed Sewer IMA; prepare Sherborn Town Meeting warrant Articles;</li> </ul>	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	June 2021
Formal presentation to Sherborn Select Board <ul style="list-style-type: none"> <li>proposed authorizing legislation for Sewer IMA;</li> <li>proposed Sewer IMA; prepare Sherborn Town Meeting warrant Articles;</li> </ul>	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	June/July 2021

Formal presentation to Natick Finance Committee <ul style="list-style-type: none"> <li>• draft response to proposed FinCom questionnaire;</li> <li>• proposed authorizing legislation for Sewer IMA;</li> <li>• proposed Sewer IMA; Proposed Natick Town Meeting warrant Articles; Proposed Natick Town Meeting motions</li> </ul>	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	Warrant Articles by July 2021  Presentations/Meetings August-September 2021
Natick Town Meeting	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	October 19, 2021
Sherborn Town Meeting	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	October-November 2021
File authorizing legislation for Sewer IMA with General Court	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	December 2021
Receive notice of enacted legislation for Sewer IMA	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	February 2022

## Execution of the Sewer IMA

Sherborn Select Board	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	March 2022
Natick Town Manager (as authorized by Select Board)	Counsel for Pulte with review by Sherborn Town Counsel and Natick Town Counsel	March 2022

## State and MWRA Approvals:

Town of Sherborn Letter of Intent	Town Administrator	Letter of David Williams, March 3, 2020
Technical reports per 360 C.M.R. 10.00	Design Report	July 2021
MEPA approval, evidenced by FEIR certificate	Pulte's consultants file ENF, DEIR, and FEIR applications	December 2021
Interbasin Transfer Approval	Concurrent with MEPA review/Approval	December 2021
Natick Engineering/DPW Design Review	Pulte's consultants file design submission/Approval	June 2021
Sherborn Engineering/DPW Design Review	Pulte's consultants file design submission/Approval	June 2021
Conservation Commission – Natick, if applicable	Pulte's consultants file NOI/Approval	July 2021
Conservation Commission – Sherborn	Pulte's consultants file/Approval	July 2021
MWRA 8(m) Permit (Crossing Aqueduct)	Pulte's consultants file/Approval	August 2021
MWRA Sewer System Connection Application	Pulte's consultants file/Approval	August 2021
Army Corp of Engineers (Culvert Crossing), if applicable	Pulte's consultants file/Approval	July 2021
MWRA Advisory Board Approval	Processed by MWRA	December 2021
MWRA Board of Directors Approval	Processed by MWRA	January 2022

## **Exhibit B**

**Applicable Statutes, Regulations, and Policies:** The following statutes, regulations and policies are applicable to the extension project:

### **As to Sewer IMA:**

- Chapter 40, Section 4A and Chapter 188 of the Acts of 2008 regarding Intermunicipal agreements
- Town of Sherborn General By-Laws
- Town of Natick General By-Laws

### **As to MWRA approvals:**

- Chapter 372 of Acts of 1984 as most recently amended in 2018, Section 8(c): MWRA, subject to the approval of the MWRA advisory board and regulatory bodies within the executive office of environmental affairs with jurisdiction, may extend the sewer services system to additional local bodies on such reasonable terms as the Authority may determine; provided, however, that in each instance the Authority shall make required findings
- Chapter 30, Section 61 regarding environmental review;
- MWRA OP-11, Admission of New Community to MWRA Sewer System and Other Requests for Sewer Service to Locations Outside MWRA Sewer Service Area; and
- 360 C.M.R. 10.00: Massachusetts Water Resources Authority, Sewer Use.