

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT

HUANG, et al.,

Plaintiffs,

v.

LEO BARTOLINI, JR., DAVID EAGLE,  
AND PAUL DREPANOS, as members of the  
TOWN OF SOUTHBOROUGH ZONING  
BOARD OF APPEALS, and PARK  
CENTRAL, LLC, and WILLIAM A.  
DEPIETRI,

Defendants.

CIVIL ACTION NO. 16-01359-B

**AGREED FACTS**

The Parties hereby jointly submit the following agreed facts:

1. On or about February 11, 2014, Park Central, LLC and William A. Depietri filed an application for a comprehensive permit with the Town of Southborough for a 180-unit project with 45 affordable units.
2. Park Central proposed to construct the 40B Development on approximately 13.28 acres ("the Site") of a contiguous 101.25-acre parcel ("the Overall Site") located at the intersection of Turnpike Road (state highway 9) and Interstate 495.
3. In 2015, Park Central modified its application to include an additional market rate component comprising an additional 158 townhomes on the project site.
4. The Southborough Zoning Board of Appeal (the "Board") has adopted Comprehensive Permit Regulations and Guidelines to establish procedures for applications for comprehensive permits under G.L. c. 40B ("40B Regulations").
5. The Board's 40B Regulations provide that the public hearing for comprehensive permit applications will be conducted according to the Rules and Regulations of the Board.
6. The Board consists of five members and two associate members, who may be designated by the Chairman to act when a member is absent or unable to participate.
7. Public hearings on the comprehensive permit were commenced on March 26, 2014 and were continued until August 24, 2016.

8. On August 24, 2016, the Board of Appeal voted to approve the application of Defendant Park Central, LLC for a comprehensive permit under G.L. c. 40B by a vote of 3-0.
9. The only Board members in attendance at the August 24, 2016 Board meeting were Defendant Board members Bartolini, Drepanos, and Eagle.
10. During a meeting on March 24, 2016, the Board had approved approximately seventeen separate waiver requests for the proposed Park Central project by a vote of 3-0 (by Board members Bartolini, Drepanos, and Eagle).
11. The Overall Site abuts Interstate 495 on its western boundary, Route 9 on its southern boundary, and a single-family residential neighborhood on its eastern boundary.
12. The Overall Site's point of access to Route 9, Park Central Drive, is approximately 300 feet east of the on-ramp to I-495 north.
13. When exiting Park Central Drive onto Route 9, vehicles can only turn right and move in a westbound direction.
14. Due to the proximity of the I-495 on-ramp and the traffic conflicts it creates, the state allowed only limited access to the Overall Site from Route 9: via a permit issued in 1988, the state allowed access but limited it as follows: "The use of this driveway is limited to access to the (abutting) Red Roof Inn Motel and the new development of 66,000 S.F. of office space."
15. During the hearing process Park Central revised its site plan and proposed to construct a single access road, "John Boland Drive," that would connect the development to Flagg Rd.
16. Traffic exiting from Flagg Road onto Route 9 must turn right and proceed in a westbound direction.
17. A copy of the Board's 40B Regulations is Trial Ex. 4.
18. A copy of the Board's Rules and Regulations is provided as Trial Ex. 49.
19. A copy of § 174-25 of the Southborough Zoning By-Law is Trial Ex. 50
20. A copy of Town Code, c. 249 is provided as Trial Ex. 51. (A certified copy of the Town Code in effect in 2015-2016 is provided as Trial Ex. 57.)
21. A copy of the August 24, 2016 Meeting Minutes is Trial Ex. 52.
22. A copy of the March 24, 2016 Meeting Minutes is Trial Ex. 53.
23. The following meetings concerning the Park Central comprehensive permit application were attended by three members of the Board: November 18, 2015; December 2, 2015; December 9, 2015, January 20, 2016; February 24, 2016; March 23, 2016, and August 24, 2016.
24. A copy of the relevant excerpts for the meetings referenced in the preceding paragraph is Trial Ex. 54.

25. Plaintiffs Huang, Perkins, L'Abri Fellowship/Keyes, Herczeg, and Brownell are all direct abutters to the Project. *Plaintiffs; Plans.*
26. Plaintiff L'Abri Fellowship Foundation is the owner of real property with a physical address of 43 Lovers Lane, Southborough, MA 01772 and 49 Lynbrook Road, Southborough, MA 01772. 49 Lynbrook is adjacent to I-495 to the west. *Testimony of Ben Keyes. Exhibit 90.*
27. 43 Lovers Lane is the home of Ben Keyes and his family. It abuts the northeastern corner of the parcel owned by Park Central, LLC which constitutes the open space area of the project and is identified as Lot 4A on Assessors Map 41. *Testimony of Ben Keyes; Exhibit 90.*
28. The dwelling at 49 Lynbrook Road is located west of the intersection with Lover's Lane, is on a dead-end section of Lynbrook Road. That dwelling is used as a retreat and can accommodate a maximum capacity of 20 students attending L'Abri for room and board for up to three months per semester. *Testimony of Ben Keyes.*
29. Plaintiff Attila Herczeg owns in a single-family residence located at 4 Jacobs Lane, Southborough, MA 01772. *Testimony of Attila Herczeg.*
30. Plaintiff Yan Tang Huang lives with family in a single-family residence located at 75 Flagg Road, Southborough, MA 01772.
31. The Huang residence is also located north of an existing culvert crossing that itself is approximately 450 feet north of Route 9 west and approximately 270 feet north of the proposed project access drive John Boland Road. The driveway serving the Huang residence provides for egress to Flagg Road. *Testimony of Huang. Testimony of Dandrade, See Exhibit 112.*
32. Plaintiff Linda Perkins owns and lives with her husband and son who is in college in a single-family residence located at 1 Tara Road, Southborough, MA 01772. *Testimony of Perkins.*
33. The Perkins parcel abuts the eastern side of the Park Central parcel on which Park Central proposed to locate market rate town homes. The Perkins parcel is also proximate to Park Central's proposed emergency connection to Blackthorn Drive. *Testimony of Perkins.*
34. Plaintiff Matthew Brownell lives at 8 Jacobs Lane, Southborough, MA 01772 and abuts the eastern side of the northern parcel owned by Park Central, LLC identified as Lot 4A on Assessors Map 41. Brownell did not testify at trial. *Exhibit 90.*
35. Plaintiffs Huang, Perkins, L'Abri Fellowship/Keyes, and Herczeg all regularly use the Neighborhood Roads. *Plaintiffs; Cram.*
36. Defendant Southborough Zoning Board of Appeals (the "Board") is a duly organized municipal board with a principal office, at all times material to the instant appeal, at 9 Cordaville Road, Lower Level, Southborough, MA 01772.
37. Defendant Park Central, LLC ("Park Central"), is a domestic limited liability company, with a principal office at 259 Turnpike Road, Suite 100, Southborough, MA 01772.

Park Central is the owner of a 101.25 parcel of land located at the intersection of Turnpike Road (state highway 9) and Interstate 495.

38. Defendant William A. Depietri (“Depietri”) is an individual residing at 15 Presidential Drive, Southborough, MA 01772. Depietri is the Manager and co-owner of Park Central.
39. On or about February 11, 2014, Park Central, LLC and Depietri (collectively, the “Applicant”) filed an application for the issuance of a comprehensive permit pursuant to G.L. c. 40B with the Southborough Zoning Board of Appeals for the construction of a 180-unit for sale condominium project of which 45 would be affordable units. *See Exhibits 1 and 2.*
40. Section 174-25(4) of the Zoning Bylaws establishes that the Board of Appeals may issue comprehensive permits for publicly subsidized housing, as provided in MGL c. 40B, § 21. *See Exhibit 50.*
41. The Applicant qualified, pursuant to 760 CMR 31.01, for application consideration in that: (a) it is or will become a “limited dividend corporation” as that term is used in G.L. c. 40B, § 21 and 760 CMR 31.01 (1); (b) it has a funding commitment from a subsidizing agency as shown by the Project Eligibility Letter from MassHousing dated February 11, 2014 and as amended and confirmed by letter from MassHousing dated June 19, 2015; and (c) Applicant has “control of the site” as that term is used therein in that it has legal and/or equitable interests in the Project Site. the Project Site is owned by Park Central, LLC, William A. Depietri, Manager; Park Central, LLC is designated as the Owner and Capital Group Properties, LLC as the Developer during the Application and public hearing process. *See Exhibit 6 attached to Exhibit 1; See Exhibit 2.*
42. At the time Park Central filed its 40B Application, the subsidized housing inventory in the Town of Southborough as maintained by DCHD was 8.83%. Site eligibility for the project was approved by MassHousing on February 11, 2014 (*See Exhibit 2 at pp. 19-27*).
43. As part of its February 11, 2014 Application (*Exhibit 2*) Park Central proposed to construct the 40B Development on approximately 13.28 acres (“the Site”) of a contiguous 101.25-acre parcel (“the Overall Site”) located at the intersection of Turnpike Road (state highway 9) and Interstate 495.
44. In an October 16, 2013 letter to Michael Busby of MassHousing, Mr. Depietri stated, “During the first public meeting we were attentive to both neighborhood and official comment about the impact the development would have on traffic and safety in the area, and accordingly modified the traffic pattern as reflected on the attached revised plan.” Depietri Testimony, Ex. 40; *Ex. 2, p. 89 of 193 “Proposed 180 Unit 40B Project.”*
45. The Board has adopted Comprehensive Permit Regulations and Guidelines to establish procedures for applications for comprehensive permits under G.L. c. 40B (“40B Regulations”). *See Exhibit 4.*

46. The Board's 40B Regulations provide that the public hearing for comprehensive permit applications will be conducted according to the Rules and Regulations of the Board. *See Exhibit 4.*
47. The full Board consists of five members and two associate members, who may be designated by the Chairman to act when a member is absent or unable to participate.
48. At the time of the August 24, 2016 Decision (*Exhibit 1*) members Eagle, Bartolini and Drepanos were the only acting and voting Members of the Board.
49. As originally proposed, the project had access at Tara Road, Bantry Road, Blackthorn Drive, Flagg Road, and Park Central Drive. Application; Depietri.
50. Flagg Road feeds into several other neighborhood roads, including Lovers' Lane, Lynbrook Road, Deerfoot Road ("Neighborhood Roads"), all of which feed into State Route 30 and its connection to the Mass. Pike. Plans; Maps; Plaintiffs; Cram.
51. On August 8, 2016, Bartolini stepped down as Chairman of the Board and the three member Board voted to elect Eagle as Chairman *Pro-Tem* for purposes of Park Central only. Eagle testimony.
52. On August 24, Eagle released his homestead declaration on his Southborough home. Eagle; Ex. 119.
53. On August 30, 2016 David Eagle submitted his letter of resignation from the Board. *See Exhibit 46.* The Eagle residence at 11 Sarsen Way, Southborough, owned by Suzanne J. Eagle, had been on the market prior to August 24, 2016. On August 24<sup>th</sup>, Ms. Eagle executed a deed for that residence to Kejie Zhao and Haiying Shen. The deed was recorded on August 25, 2016. *Exhibit 118; Eagle testimony.*
54. Public hearings on the comprehensive permit were commenced on March 26, 2014 and were continued until August 24, 2016. Of the thirty (30) noticed public hearings eleven (11) were for purposes of continuing the public hearing to a subsequent date or to provide brief updates without the submission of new information or public comment. *Exhibit 1; Stipulation (Exhibit 143).*
55. In advance of Applicant's submission of its application for comprehensive permit, Applicant retained Green International Affiliates, Inc. ("Green International") to conduct two Traffic Impact and Access Studies ("TIAS") dated March 2013 and June 2013 each of which were provided to the Board. *See Exhibit 1, Exhibit 6 and Exhibit 7.* The scope of the Green International TIAS was limited to the original affordable housing project proposed by Applicant.
56. During the public hearing process, the Board retained the services of Edward Marchant, a G.L. c. 40B consultant, to assist in the review of the Chapter 40B Application. Mr. Marchant is not an attorney. Testimony of Marchant.
57. The 158 unit market rate component was permitted by virtue of the Board's 2015 grant of a use variance ("the Use Variance"). *Depietri; Application; Use Variance.*
58. On May 27, 2015 the Board voted 4-1 to grant the Use Variance to Park Central, conditioned upon the subsequent granting of a final Comprehensive permit, allowing

for the construction of up to 158 market rate “for sale” townhomes on approximately 56.75 acres of the 101.25-acre parcel to be integrated into and share a connector road, stormwater, drainage infrastructure and wastewater infrastructure with the affordable housing apartment complex as depicted on a Concept Plan. *See Exhibit 20.*

59. The Use Variance Decision (*Exhibit 47*) incorporated the Concept Plan and the terms of Declaration of Restrictive Covenants and Agreement between Applicant and six direct abutters represented by Attorney Hill (“Six Abutter Agreement”) and was subsequently duly executed and recorded (*Exhibit 48*). As part of the Concept Plan, the Applicant set aside 21.64 acres of the entire 101.25-acre parcel as open space, identified on the Concept Plan as “deed restricted no build parcel”. *Testimony of Marchant; See Exhibit 20.*
60. As a result of the Six Abutter Agreement, the Defendants relocated the affordable housing component to two apartment style buildings near I-495 and gave up their proposed access points to the neighborhood except for access at Flagg Road.. *Depietri; Marchant; Settlement Agreement.*
61. After execution of the Six Abutter Agreement, the Defendants proposed to direct all project traffic onto Flagg Road, allowing motorists to turn left on Flagg, not just right as had originally been proposed. *Depietri; Plans; Decision.*
62. The Board’s decision approving the Use Variance was not appealed and the Notice of Decision on a Use Variance was duly recorded at the Worcester District Registry of Deeds in Book 54060, Page 303 and with the Land Court on Certificate 17001 Book 00086 Page 1, Park Central modified its proposal to include the town house component and other features consistent with the Concept Plan. *See Exhibit 47.*
63. In accordance with the Use Variance, the Concept Plan and the Six Abutter , Agreement, Applicant modified the project proposal reducing the affordable housing component from five (5) three (3) story buildings to two (2) four (4) story buildings which were relocated from an area directly abutting resident properties on Tara Road and Bantry Road to a 9.03-acre portion of the overall site situated adjacent to I-495. *Testimony of Depietri, See Exhibits 20 and 47.*
64. Other significant changes to the Applicant’s proposal from its original application involved change in traffic pattern including the elimination of access to the adjoining neighborhood through Tara Road or Bantry Road and changing the connection to Blackthorn Drive to an emergency access only. Access to the project remained directly from Route 9 to Park Central Drive and from a new private way (John Boland Road) connecting to Flagg Road, a public way, which connects to Turnpike Road (Route 9, West) to the south, and other local roadways to the north. Egress from the Site was limited to John Boland Road. John Boland Road intersects with Flagg Road approximately 270 feet north of Route 9. *Testimony of Kevin Dandrade*
65. Site eligibility for the revised project was approved by MassHousing *See Exhibit 6 attached to Exhibit 1; See Exhibit 2.*
66. During the public hearing, the Applicant retained The Engineering Corporation (“TEC”) to serve as the Applicant’s traffic and safety engineer in relation to

Applicant's expanded Overall Project which included, in addition to the 180-unit affordable housing apartment component, the potential for 158 two-bedroom market rate townhomes and possible sites for a 125-bed hotel and 150 room Assisted Living Facility. *Testimony of William Depietri. See Exhibit 14.*

67. Kevin Dandrade, Principal and Worcester Regional Director of Traffic Engineering with TEC in the Worcester office was hired by Depietri to provide consulting on traffic and safety engineering and testified to having 24 years of personal familiarity with the location of the Project and the neighborhood roadways in the vicinity of the Project. *Testimony of Kevin Dandrade.*
68. TEC served as the Applicant's primary traffic engineer during the public hearing before the Board. TEC initially prepared a "Second" Traffic Impact and Access Study (TIAS) for the proposed overall "Full-Build" project which included the 180 for sale condominium units, 140 market rate "for sale" townhomes, the assisted living residence and a hotel to forecast the traffic impacts of the Project. The Second TIAS incorporated data and analysis that was included in the two Green International 2013 TIASs. *See Testimony of Kevin Dandrade; Exhibit 9.*
69. The Board engaged and utilized the services of engineering and technical consultants to assist in the review of the application, the site design and site plans. Fuss & O'Neil, a civil engineering firm with offices in Boston, also engaged by the Southborough Planning Board, provided site design engineering Peer Review services. Greenman Pederson, Inc. (PDI) and Toole Design Group of Boston, MA ("Toole") provided traffic and safety engineering Peer Review services. *See Exhibit 1; Testimony of Dandrade; Testimony of Donald Morris.*
70. Jason Degray, both for PDI and later as Office Director of Traffic Engineering at the Boston office for Toole Design ("Toole") of Boston, Massachusetts served as the Board's consultant on traffic and safety engineering. Mr. Degray provided written Peer Review in response to the two TIAS submitted by Applicant's second traffic engineer, TEC. *See Exhibits 69 and 70.*
71. During the course of the public hearing process TEC prepared and submitted to the Board, subsequent reports and responses to specific and various inquiries made by the Board and by the public regarding the traffic impact of the project, as well as responses to Peer Review comments submitted to the Board by the Town's consultants. *See Exhibits 8, 9, 10, 11, 12, 14, 15, and 18.*
72. In 2016 Mr. Degray and Toole were also retained by the Town of Southborough through the Board of Selectmen to conduct a Roadway Safety Study with Flagg Road and Deerfoot Road as the study area. A written report dated May 9, 2016 was submitted to the Town and the Board (*Exhibit 17*); The Safety Study included traffic counts and crash data obtained in 2016 and presented recommendations to the Town for off-site traffic mitigation of existing roadway conditions. *Testimony of Jason Degray. Testimony of Dandrade. Testimony of Kenneth Cram. Testimony of Karen Galligan.*

73. The crash history summary provided by Mr. DeGray included the most recent three-year period available (2012-2014) and was obtained from the Town of Southborough Police Department crash records. *Testimony of Jason Degray, See Exhibit 17, p. 9.*
74. In order for any additional vehicles to be allowed to enter the Park Central development from Route 9, the project requires a final Highway Access Permit from MassDOT Central Drive. *Testimony of Depietri and Testimony of Dandrade; Ex. 16.*
75. In order to gather daily traffic-volume data during a continuous 48-hour timeperiod, the Applicants' initial traffic engineer, Green International, utilized Automatic Traffic Recorder ("ATR") counts that were conducted along Flagg Road and Deerfoot Road from Tuesday, February 5 to Wednesday, February 6, 2013 and along Blackthorn Road from Wednesday, May 29 to Thursday, May 30, 2013. *See Exhibit 9 at p. 6*
76. Additional ATR counts were collected as part of the Toole Traffic Safety Study for a 48-hour period from Tuesday, March 8 to Wednesday, March 9, 2016 at the following locations: (1) Deerfoot Road adjacent to the P. Brent Trottier Middle School, south of the Middle School driveway; and (2) Flagg Road in the vicinity of 35-37 Flagg Road. *See Exhibit 17 at p.6.*
77. TEC's projected site generated traffic impacts were based on standard trip-generation data published by the Institute of Transportation Engineers (ITE) *Trip Generation Manual*. The trip generation data for Land Use Code ("LUC") 230 for Residential Condominium/ Townhouse published by the ITE was evaluated to determine the expected trip generation for the project's components. *See Exhibit 9 at p. 17 and Exhibit 14 at p. 18.*
78. As a result of the Applicant's modification of the proposed affordable housing development from "for sale" condominiums to "rental" apartments, TEC prepared and submitted to the Board an updated TIAS dated December 1, 2015. In preparing the study TEC incorporated the Green International 2013 Study and accepted, without further data collection, that the daily traffic volume on Flagg Road north of Rout 9 was 978 vehicles. *See Exhibit 14 at page 6.*
79. TEC's December 1, 2015 Study considered the Full-Build project, notwithstanding that neither the hotel or the assisted living residence had been permitted. TEC, based on standard trip rates published in the ITE publication *Trip Generation, 9<sup>th</sup> Edition* for the four applicable Land Use Codes, estimated a combined total trip of 3,222 trips to and from the site, from both Route 9 and Flagg Road on a regular weekday. *See, Exhibit 14; Testimony of Dandrade.*
80. The road at the culvert is too narrow to be striped because it does not provide sufficient width for a full lane. *Testimony of Galligan.*
81. The industry standard and methodology for forecasting the distribution of site-generated traffic-volumes for residential and assisted living trips employed by TEC were based upon a gravity model using 2000 U.S. Census Journey-to-Work data for residents residing in the Town of Southborough, as the 2000 Census was the most recent year in which journey-to-work information was collected as part of the U.S. Census. *See Exhibit 14 at p. 18. Testimony of Dandrade.*



82. On August 11, 2016 town counsel was advised by a member of the Board of Selectmen that the Planning Board and Conservation Commission were in the process of reviewing the project, intended to offer comments to the ZBA; that preparing a draft decision without those comments was "breakdown in the overall process." Exh. 29.
83. By letter dated August 22, 2016, the Conservation Commission advised the Board that there were still more than 200 outstanding items that required the Commission's further review. *Board Defendants; Possemato; Ex.30* .
84. During the weekend of August 20, 2016, Southborough resident Magid Yazdani drove past Mr. Eagle's house and observed a large moving van parked in the driveway. He took a photograph of the house and van and handing a copy of the photograph to each member of the Board of Selectmen at their meeting on August 23, 2016. Testimony of Yazdini; Ex. 120.
87. Park Central had agreed to an extension of the public hearing process through at least August 31, 2016. Eagle; Depietri; Exs. 134, 141.
88. In an email dated August 23, 2016, Kenneth Paulhus, Southborough Chief of Police, advised the Board that the Police Department would be opposed to the proposed 7 a.m. to 9 a.m. turn restriction and stated that the ordinance would be unenforceable. Paulhus; Eagle; Ex. 32.
89. Chief Paulhus testified that the proposed turn restriction would create an "extreme safety issue" for cars traveling north on Flagg Road. Paulhus; Ex. 32.
90. The Board received the email from Chief Paulhus before it voted to close the public hearing and approve the application. Paulhus; Eagle.
91. The Board members in attendance at the August 24, 2016 Board meeting were Defendant Board members Bartolini, Drepanos, and Eagle.
92. On September 19, 2016, the Southborough Board of Selectmen wrote to MassDOT to express concern about increased traffic on Flagg Road that would result from the Project as proposed. *Shea; Ex. 35*.
93. Park Central requires MassDOT approval to use Park Central Drive as an access road for the project. Park Central has not obtained that approval. *Depietri; 1988 Permit; Cram; Decision*
94. Prior to construction and to receiving any building permit, the Applicant must first obtain Final Approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7) and must provide evidence of such Final Approval to the Building Commissioner and the Board. *See, Exhibit 1*.
95. The project is subject to approval of an Order of Conditions by the Southborough Conservation Commission (and/or Superseding Order of Conditions issued by Massachusetts Department of Environmental Protection ("DEP")) pursuant to the Massachusetts Wetlands Protection Act, and implementing regulations (310 CMR 10.00 et seq.), and shall comply with the DEP Stormwater Policy. *Testimony of William A. Depietri and Mark Possemato. Exhibit 1 at p 2*.

96. Park Central filed a Notice of Intent with the Conservation Commission seeking an Order of Conditions for the project under the Wetlands Protection Act. The Conservation Commission denied Park Central's request and Park Central has appealed to the Department of Environmental Protection (DEP). *Testimony of William A. Depietri and Mark Possemato.*
97. In order to construct and operate a proposed waste water treatment plant Park Central must obtain a valid Groundwater Discharge Permit issued by the DEP for the wastewater treatment plant. *See Exhibit 1 at p. 21.*
98. Prior to construction and the issuance of a building permit for any work on the Project Site Applicant must provide a Stormwater and Erosion Control Management Plan for the Project satisfactory to the Conservation Commission or its Designee before. *See Exhibit 1 at p. 21.*
99. The Decision requires the installation of No-Left Turn signs in order to prohibit left-hand turns from John Boland Road onto Flagg Rd between the hours of 7am and 9am Monday through Friday, with the exception of school buses. *See Exhibit 1 at p. 22.*
100. The Town of Southborough engaged engineers and consultants to conduct peer review and evaluation of Park Central's information and work product during the hearing process. *See Exhibit 1 at 4-6.*
101. The Overall Site abuts Interstate 495 on its western boundary, Route 9 on its southern boundary, and a single-family residential neighborhood on its eastern boundary.
102. The Overall Site's point of access to Route 9, Park Central Drive, is approximately 300 feet east of the on-ramp to I-495 north.
103. When exiting Park Central Drive onto Route 9, vehicles can only turn right and move in a westbound direction.
104. Flagg Road is classified by the Massachusetts Department of Transportation (MassDOT) as an urban collector road running approximately 1.1 mile in length between Turnpike Road (Route 9 West) and Deerfoot Road, also classified as an urban collector roadway. *See Exhibit 20 at p. 3.*
105. Traffic exiting from Flagg Road onto Route 9 must turn right and proceed in a westbound direction.
106. Flagg Road feeds into other neighborhood roads including Lovers' Lane, Lynbrook Road, Deerfoot Road, all of which feed into State Route 30 (Main Street) and/or Clifford Road.
107. The sole ingress and egress for the residents of Blackthorn Drive, Tara Road and Bantry Road is Flagg Road.
108. The TEC traffic study from May 19, 2014 included a connection from the Project to Blackthorn Drive. Exhibit 9.
109. The Applicant subsequently eliminated the proposed Blackthorn Drive connection as part of a settlement agreement with a group of abutters.

110. TEC submitted a revised traffic study dated December 4, 2015. Exhibit 14.
111. There is an existing culvert on Flagg Road approximately one hundred feet (100') to one hundred and twenty-five feet (125') from the entrance to John Boland Drive. Testimony of Kevin Dandrade, February 1, 2021, at 67.
112. In his December 23, 2015 memorandum, Mr. DeGray recommended that the culvert on Flagg Road just north of John Boland Drive be replaced. Exhibit 70; Testimony of Jason DeGray, February 8 2021, at 24.
113. The Board did not require the culvert to be replaced as part of its decision. Exhibit 1.
114. The Board's decision did not require the Applicant to fund the replacement of the culvert. Exhibit 1.
115. Mr. DeGray also provided a Safety Study of Flagg Road and Deerfoot Road to the Town in his role as a consultant for the Toole Design Group. Exhibit 17.
116. The Toole Design Road Safety Study recommended the relocation of a stone wall impeding the sight distance at the Blackthorn Drive and Flagg Road intersection. Exhibit 17.
117. The Applicant's traffic engineer also identified the existing sight distance deficiency at the intersection of Blackthorn Drive and Flagg Road, and recommended the installation of a three-way stop condition at this location. Exhibit 12.
118. Also as acknowledged by the Applicant's traffic consultant, the use of Lover's Lane "for anything other than a negligible amount of traffic" would constitute a safety concern. Testimony of Kevin Dandrade, February 1, 2021, at 64.
119. According to the Applicant's traffic consultant, the peak queue at the Flagg Road/Route 9 intersection will be 346' under future build conditions, an increase from the peak queue of 59' under existing conditions. Exhibit 14.
120. The entrance to John Boland Drive is 275' from the Flagg Road/Route 9 intersection.
121. The Applicant's traffic engineer conducted a real-time GPS study to estimate travel times in order to support its trip distribution estimate of eighty-five percent (85%) of vehicles heading south on Flagg Road towards Route 9. Exhibit 65.

<p>Plaintiffs,</p> <p>YAN HUANG, EMILY SMITH, RONALD DEAN, CHARLES GENNARI, ATILA HERCZEG, MATTHEW BROWNELL, LINDA PERKINS, and L'ABRI FELLOWSHIP FOUNDATION,</p> <p>By their Attorneys,</p> <p><u>/s/ Daniel J. Pasquarello</u>  Daniel J. Pasquarello (BBO#647379)  PASQUARELLO   FINK   HADDAD, LLC  185 Devonshire Street, Third Floor  Boston, MA 02110  T: 617.963.0042  F: 617.505.1571  dpasquarello@pasqfinklaw.com</p> <p><u>/s/ Ginny Sinkel Kremer</u>  Ginny Sinkel Kremer (BBO# 629147)  Paul Haverty (BBO# 652359)  Blatman Bobrowski &amp; Haverty, LLC  9 Damonmill Square, Suite 4A4  Concord, MA 01742  978-371-2226  ginny@bbhlaw.net  paul@bbhlaw.net</p>	<p>Defendants</p> <p>PARK CENTRAL, LLC and WILLIAM A. DEPIETRI,</p> <p>By their attorneys,</p> <p><u>/s/ Angelo P. Catanzaro</u>  Angelo P. Catanzaro, Esq. (BBO #078960)  2000 Commonwealth Avenue  Auburndale, MA 02466  (617) 332-7514  apc@catallen.com</p> <p><u>/s/ David M. Click</u>  David M. Click (BBO #677043)  Law Office of David M. Click  1253 Worcester Road, Suite 303  Framingham, MA 01701  (508) 508-1554  dmclick@davidclicklaw.com</p> <p>and</p> <p>LEO BARTOLINI, JR., DAVID EAGLE, AND PAUL DREPANOS, as members of the TOWN OF SOUTHBOROUGH BOARD OF APPEALS</p> <p>By their attorney,</p> <p><u>/s/ Aldo A. Cipriano</u>  Aldo A. Cipriano, Esq. (BBO#084300)  Town Counsel  277 Main Street  Marlborough, MA 01752  (508) 485-7245  Aldoc.esq@comcast.net</p>
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Date: June 4, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was served **by email** in accordance upon all counsel on June 4, 2021.

/s/ Daniel J. Pasquarello