

APPROPRIATION COMMITTEE

TOWN OF LEXINGTON



REPORT ON ARTICLE 44 TO THE 2017 ANNUAL TOWN MEETING

Released April 19, 2017

APPROPRIATION COMMITTEE MEMBERS

John Bartenstein, Chair • Ellen Basch • Carolyn Kosnoff (ex-officio; non-voting)
Alan Levine, Vice Chair/Secretary • Eric Michelson • Richard Neumeier • Sanjay Padaki
Andrei Radulescu-Banu • Lily Manhua Yan • Jian Helen Yang

Article 44: Amend Zoning Bylaw – Brookhaven (Owner Article)		
Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	<i>N/A</i>

Brookhaven at Lexington (“Brookhaven”) is requesting a zoning change of a parcel of land located at 960-990 Waltham Street from the current RO One Family Dwelling District to a PD Planned Development District, and to add it to the adjoining RD Planned Residential District Brookhaven at Lexington. This rezoning would allow Brookhaven to construct a new building on the 960-990 Waltham Street parcel property as well as to expand its parking and make other improvements.

This Committee does not express any opinion on the non-financial aspects of the requested zoning change, and has not voted to approve or disapprove this article. However, because an essential part of the discussions between Brookhaven and the Town for the zoning change required to allow this expansion has been the negotiation of a financial mitigation package designed to address the financial impacts of the project on the Town, the Committee has evaluated that mitigation package and provides this report for informational purposes. The mitigation package consists of two main components: (1) a revision of Brookhaven’s current arrangement for payment-in-lieu-of-taxes (PILOT) to account for the expanded number of units and increased valuation; and (2) a mitigation payment designed to preserve the Town’s existing ratio of affordable housing units.

Background

Brookhaven is a non-profit, age-restricted (62+), life care community providing housing and health care services to the elderly. The existing facility was constructed in 1987 on 26 acres. Modifications, special permits, and rezoning in 1994, 1999 and 2004 have resulted in expansion of the facility to its current size of 240 Independent Living Units, 20 Assisted Care Units, and 49 Skilled Nursing beds, for a total of 309 Units.

Brookhaven currently pays an annual PILOT to Lexington which increases by 3% every year. This payment was negotiated with the original property sale and rezoning and was based on a percentage of the residential property tax at the time. As Brookhaven has expanded in the past, it has agreed to increase its base PILOT by the same percentage as the increase of the number of units it has added to the property, and to increase the resulting amount by 3% annually.

The newly planned expansion at Brookhaven will add a new building of approximately 119,000 sq. ft. on the property and allow Brookhaven to add 49 Independent Living Units and 30 Assisted Care Units, while lowering the number of Skilled Nursing beds by 37, for a net increase of 42 units. This amounts to a 13.6% increase in the number of units at Brookhaven.

This planned increase has triggered a review of the current PILOT payments made to the Town. At issue is not only an update of the existing PILOT agreement to accommodate the expansion in size and population of the facility, but also the effect that the planned increase in housing units, which count as “market rate” units for purposes of the denominator in the calculation of Lexington’s ratio of affordable housing under Chapter 40B, will have on the Town’s current 11.1% affordable housing ratio.

A proposed new Memorandum of Agreement between the Town and Brookhaven provides for the following:

Payments in Lieu of Taxes

- Brookhaven's PILOT payment will increase by 13.6 percent, but the entire increase will not take effect immediately; 7% of the increase would occur in the fiscal year the Certificate of Occupancy is issued for the core building, with the remaining 6.6% increase to occur 12 fiscal years later.
- Beginning in the fiscal year the Certificate of Occupancy is issued for the core building, and continuing for the subsequent 14 fiscal years, the Brookhaven PILOT will increase by 2.5% instead of 3% annually.
- After the Affordable Housing Mitigation Payments, discussed below, are complete, the rate of increase for the Brookhaven PILOT will revert to 3% annually until the parties agree to a new PILOT payment.
- If in the future Brookhaven is determined to be subject to property taxation, the PILOT payments will cease and regular property tax payments will be made instead.

Affordable Housing Mitigation Payments

- Brookhaven will make affordable housing payments to the Town with a present value of \$1,536,369, but payable over 15 years (the sum of the mitigation payments, with interest, is \$2,081,631)
- The agreed amount payable for affordable housing is based on the Town's analysis of the cost today of purchasing land for and constructing 5.5 affordable housing units.
- The additional Assisted Care units will be constructed in such a fashion that they will not be included in the Town's Subsidized Housing Inventory denominator of market-rate units at the next census
- The affordable housing mitigation payments will be made if the expansion of Brookhaven proceeds, regardless of Brookhaven's property tax status with the Town.

Analysis

A PILOT is a condition of Brookhaven's current special permit and, together with the housing mitigation payments, would be a condition of the new special permit. Representatives of the Board of Selectmen, the Planning Board and Brookhaven have spent many months negotiating a package that is mutually acceptable should the zoning change be approved. This includes:

- Deferring the commencement of any affordable housing mitigation and increased PILOT payments until the fiscal year a Certificate of Occupancy is issued for the core building.
- Spreading payments for the Affordable Housing Mitigation over a 15-year period.
- Deferring a portion of the 13.6% increase in the base PILOT, phasing it in at the fiscal year of the Certificate of Occupancy (7.0%) and 12 fiscal years later (6.6%).
- Lowering the annual increase in the PILOT from 3% to 2.5% immediately and continuing that lower rate of increase through the fiscal year that Affordable Housing mitigation payments for the project have been completed. Annual increases of the PILOT will return to 3% in the 16th fiscal year after the initial 7.0% increase to the base PILOT is made.

The following chart shows the schedule of payments to the town in FY17 – FY39 if the Certificate of Occupancy for the first independent unit is issued in FY20. The first two highlighted columns show the PILOT on a per-unit basis if Brookhaven were to maintain the status quo (no expansion), and after the adjustments described above. The second two highlighted columns show, on a per-unit basis, the affordable housing mitigation payments, and the combined amount of the PILOT + affordable housing mitigation payments if the expansion is approved.

Est Project Year	Est Fiscal Year	PILOT Status Quo (3% annual increase)	PILOT Status Quo \$ per unit	Adjusted PILOT Payment (2.5% annual increase; 13.6% increase allocated 7% in Yr. 3 and 6.6% in Yr. 14; 3% PILOT increase begins in Yr.18)	Adjusted PILOT \$ per unit - with expansion	Affordable Housing Mitigation Payment	Affordable Housing Mitigation Payment \$ per unit -with expansion	Annual Payment: Adjusted PILOT + Affordable Housing Payment for 351 Units (F+H)	Adjusted PILOT + Affordable Housing Payment \$ per unit - with expansion
UNITS		309		351					
	FY 17	497,279		497,279					
	FY 18	512,197		509,711					
	FY 19	527,563		522,454					
YR 1	FY 20	543,390	1,759	573,001	1,632	111,922	319	684,923	1,951
YR 2	FY 21	559,692	1,811	587,326	1,673	115,280	328	702,606	2,002
YR 3	FY 22	576,483	1,866	602,009	1,715	118,738	338	720,748	2,053
YR 4	FY 23	593,777	1,922	617,060	1,758	122,300	348	739,360	2,106
YR 5	FY 24	611,590	1,979	632,486	1,802	125,969	359	758,455	2,161
YR 6	FY 25	629,938	2,039	648,298	1,847	129,749	370	778,047	2,217
YR 7	FY 26	648,836	2,100	664,506	1,893	133,641	381	798,147	2,274
YR 8	FY 27	668,301	2,163	681,118	1,941	137,650	392	818,768	2,333
YR 9	FY 28	688,350	2,228	698,146	1,989	141,780	404	839,926	2,393

Est Project Year	Est Fiscal Year	PILOT Status Quo (3% annual increase)	PILOT Status Quo \$ per unit	Adjusted PILOT Payment (2.5% annual increase; 13.6% increase allocated 7% in Yr. 3 and 6.6% in Yr. 14; 3% PILOT increase begins in Yr.18)	Adjusted PILOT \$ per unit - with expansion	Affordable Housing Mitigation Payment	Affordable Housing Mitigation Payment \$ per unit -with expansion	Annual Payment: Adjusted PILOT + Affordable Housing Payment for 351 Units (F+H)	Adjusted PILOT + Affordable Housing Payment \$ per unit - with expansion
YR 10	FY 29	709,001	2,295	715,600	2,039	146,033	416	861,633	2,455
YR 11	FY 30	730,271	2,363	733,490	2,090	150,414	429	883,904	2,518
YR 12	FY 31	752,179	2,434	801,448	2,283	154,926	441	956,374	2,725
YR 13	FY 32	774,744	2,507	821,484	2,340	159,574	455	981,058	2,795
YR 14	FY 33	797,987	2,582	842,021	2,399	164,362	468	1,006,383	2,867
YR 15	FY 34	821,926	2,660	863,072	2,459	169,292	482	1,032,364	2,941
Subtotal-15 Year Agreement for Housing		10,106,467		10,481,065		2,081,631		12,562,696	
YR 16	FY 35	846,584	2,740	888,964	2,533	-	-	888,964	2,533
YR 17	FY 36	871,982	2,822	915,633	2,609	-	-	915,633	2,609
YR 18	FY37	898,141	2,907	943,102	2,687	-	-	943,102	2,687
YR 19	FY38	925,085	2,994	971,395	2,768	-	-	971,395	2,768
YR 20	FY39	952,838	3,084	1,000,537	2,851	-	-	1,000,537	2,851
Total over 20 Yrs.		14,601,098		15,200,694				17,282,325	

Note that the total dollar amount of the PILOT to be paid by Brookhaven increases from the status quo (if there were no expansion) beginning in FY20, but on a per-unit basis it decreases. Note also that beginning in FY35, after the Affordable Housing Mitigation Payments have been completed, the PILOT payment will continue to be slightly higher in total dollar amount but lower on a per-unit basis than it would have been if no expansion had occurred.

Although the current valuation of the Brookhaven facility is not available from the Assessors' Department, the Committee estimates that Brookhaven's existing PILOT represents roughly one-half to two-thirds of the residential property tax it would pay if it were deemed to be taxable. This is a very rough, back-of-the-envelope calculation based on taxes paid by Avalon at Lexington – and adjusting for the somewhat smaller size of Brookhaven. Once the expansion units are constructed, that ratio may be somewhat closer to one-half.

The property tax status of Brookhaven is determined by the Town's Board of Assessors. At its September 12, 2016 meeting, the Board of Assessors determined that Brookhaven "has provided sufficient evidence to meet its burden of proof establishing entitlement to an exemption from the local property taxes pursuant to M.G.L. Chapter 59 Section 5 Clause Third" as a "charitable organization" and voted 2-0 in favor of continuing the charitable tax exemption which Brookhaven has had since its inception.

It should be noted that an organization's status as a non-profit corporation or a 501(c)(3) entity under the federal tax laws does not *per se* entitle that organization to exemption from local property taxes *see* Mass. Dept. of Revenue, *Taxpayer's Guide to Local Property Tax Exemptions, Religious and Charitable Organizations* (2016), p.3 ("Non-profit status is not sufficient, nor is tax exempt status for state or federal tax purposes. The organization must be organized for charitable purposes and must actually operate as a public charity. To qualify for exemption, an organization's dominant purposes and activities must benefit the public at large, not just a limited group of people"). Continuing care retirement facilities in other communities have been determined to be taxable, even though organized and operated as non-profits, and there is no assurance that Brookhaven will continue to be treated as tax-exempt in the future.

The Board of Assessors is the only body within the Town authorized to determine the charitable status of a property owner, and Town Meeting is not empowered to change that determination. In the event the Board of Assessors determines in the future that Brookhaven is not entitled to a charitable exemption, and that determination is not successfully appealed, the MOA provides that the PILOT payment will be replaced by actual taxes based on the assessed valuation of the Brookhaven facility. Brookhaven will continue to be responsible for the affordable housing mitigation payment even if determined subject to taxation.

As Brookhaven is a continuing care retirement community with a minimum age of 62 and an average age of 86, its expansion will have no direct impact on the Lexington Public Schools. Indeed, a study recently done by OHI Engineering found that there would be relatively little impact to any of Lexington's public services. However, as Brookhaven is satisfying the Town's request to help maintain the Town's affordable housing ratio by contributing to the Town's construction of 5.5 external affordable units, rather than providing affordable units within its own complex, the external units can be assumed to have the same impact as any other new residential construction.

If Brookhaven does not go forward with this project and sells the property, a developer would be able to put four single family homes on the property by right. With special permitting, it is possible that a subdivision with a substantially larger number of units, perhaps as many as 10-14, could be approved for the site. A residential development would likely have a greater impact on Lexington schools and town services. The Town's negotiating committee took this issue into account during the negotiations and felt that a conventional residential subdivision alternative would be a less desirable outcome.