

# MarketStreet Advisory Committee (MSAC)

## Advisement Summary

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## **INTRODUCTION:**

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The MarketStreet Advisory Committee, established in May of 2017, is a group of thirteen Lynnfield residents appointed by the Board of Selectmen who all share a common interest to ensure MarketStreet is a success now and into the future. Each precinct in Lynnfield is represented on the committee as well as a representative from the Planning Board, representative from the Finance Committee, representative from LIFE and a representative from Public Safety / Law Enforcement.

During the one-year term (June 2017–June 2018), MSAC’s objective has been to hear resident’s feedback relative to MarketStreet (**Appendix xi.**), investigate all questions and concerns relative to MarketStreet, and ultimately share these findings and any recommendations or advisement deemed necessary with the Board of Selectmen.

This report, intended for the Board of Selectmen, is written to summarize the questions and concerns relative to MarketStreet that have been brought to MSAC’s attention, the facts that the committee has uncovered relative to those concerns, and any recommendations or advisement deemed necessary to share with the Board of Selectmen.

SECTION I: Provides a general overview of the MarketStreet Advisory Committee including the committee’s Mission Statement, Responsibilities and

Function, Compliance with State and Local Law and the Process MSAC adopted to complete its objective. (**Appendix x.**)

SECTION II: Provides the summary of our committee's work over the past year outlining 1.) the questions and concerns brought to MSAC's attention relative to MarketStreet, 2.) the facts MSAC uncovered in their discovery process, and 3.) the advisement or recommendations MSAC felt important to share with the Board of Selectmen.

SECTION III: Provides supporting documentation – Appendix.

## **SECTION I: OVERVIEW**

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### **A. MISSION STATEMENT**

The mission of the MarketStreet Advisory Committee is to establish a means of effective and ongoing communication for Lynnfield residents, Town of Lynnfield representatives and WS Development and National Development, the firms that manage MarketStreet Lynnfield. The result of this communication will lead to better collaboration and a strengthened partnership between all parties involved with MarketStreet Lynnfield. This Committee will play a critical role in making sure MarketStreet Lynnfield is a success for the Town of Lynnfield now and in the future.

### **B. RESPONSIBILITIES AND FUNCTION**

The MarketStreet Advisory Committee will consider and advise on issues and concerns regarding the Market Street Lynnfield development. The Committee will meet regularly to discuss issues and concerns brought to the attention of the Committee. The MarketStreet Advisory Committee is to appear regularly before the Board of Selectmen to update and advise the Board and Town of Lynnfield on issues and concerns regarding MarketStreet Lynnfield.

### **C. COMPLIANCE WITH STATE AND LOCAL LAW**

The MarketStreet Advisory Committee is responsible for conducting its activities in a manner that is in compliance with all relevant State and Local Laws and regulations including, but not limited to the Open Meeting Law, Public Records Law and Conflict of Interest Law.

### **D. MSAC'S PROCESS**

In order to achieve its mission, carry out its responsibilities and function and adhere to state and local law, MSAC employed the following process: First, the committee listened to resident feedback and identified concerns relative to MarketStreet. Next, subcommittees were established to serve as subject matter experts on specific concerns. Then, those

subcommittees employed a fact-finding / discovery process to uncover all information relative to their assigned MSt. concerns. Once subcommittees felt they had all the facts, they presented a written summary of their findings and any related conclusions or recommendations to be shared with the Selectmen. **(Appendix A,B,C,D,E,F)**. After hearing the subcommittee's Final Report, the committee at large would discuss and ultimately vote on adoption of the subcommittee's recommendations. The recommendations / advisement was shared with the Board of Selectmen and the subcommittee would follow up with residents and related parties to share the final outcome.

#### **E. CONCERNS MSAC IDENTIFIED AND INVESTIGATED**

MSAC identified and investigated all of the following MarketStreet.-related concerns:

1. Berm Improvement and Compliance
2. Noise Management Improvement
3. Financial Impact
4. Traffic Improvement
5. Updating on the Development of Building 1350
6. Parking
7. Potential for a Theater Proposal

## **SECTION II: CONCERNS, FINDINGS & ADVISEMENT**

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#### **A. BERM IMPROVEMENT AND COMPLIANCE**

The Berm Subcommittee was asked by MSAC in June 2017 to look into the MarketStreet berm, its origin and purpose, and stakeholders' present concerns regarding it. By "berm" we are referring to the artificial, raised bank of earth that begins along the north side of the drive as one enters and exits MarketStreet from Walnut Street, and continues north along King Rail Drive to a point near the King Rail Reserve Golf Course and Colonial Village.

For our fact-finding efforts, information was gathered from Residents (via a Public forum on Sept 14, 2017 & via individual meetings with abutters who live on or near Walnut St.), from Documents (such as the Zoning By-laws and "Lynnfield 40R Planned Village Development District Design Standards and Procedures" – commonly known as "The Design Standards"), from Angus Jennings, the original Design Consultant as MarketStreet was first approved by the town and from National Development, through a discussion with Doug Straus, SVP.

On September 14, 2017, MSAC held a public forum for stakeholders to speak to the Committee regarding berm- and noise-related concerns at MarketStreet. Stakeholders (primarily abutters and Town residents who live on or near Walnut Street) expressed clear concerns about the lack of vegetation on the berm. Speakers said that a lack of enforcement of the Design Standards relating to vegetation on the berm was enabling the inadequate vegetation to persist. Residents specifically stressed the need for staggered, native vegetation that will grow and thicken.

A resident provided the Committee with a printed PowerPoint presentation and a CD with MarketStreet-related documents. The CD contained:

1. copies of the original Development Agreement for MarketStreet (**Appendix H1**);
2. the Amended and Restated Development Agreement from January 2011 (**Appendix H2**);
3. National Development's presentation to the 2007 Town Meeting;
4. The 2007 Design Standards (**Appendix G4**)

which made it clear that the berm's vegetation (a photo taken in April 2017) was not meeting the letter or spirit of the Design Standards, and that certainty is needed regarding enforcement of the Design Standards.

Section 5.I of the Design Standards speaks to this expectation and the berm clearly.

The Guiding Principles state that the "Overall site design should minimize impacts to adjacent properties on Walnut St by providing a raised buffer with year-round, vegetated screening and other site planning features. Screening should be designed to minimize both visual and audible impacts from the District..."

The Guiding Principles go on to say "Overall site design should retain a substantial vegetated buffer of existing vegetation adjacent to Walnut St and said buffer should be enhanced with a raised, vegetated berm to minimize the visual and noise impacts of the District on adjacent properties..."

Table X of the same document further reinforces the vegetation expectation by describing the berm as: "Raised, landscaped berm or berms of a minimum combined 1,100 linear feet, with a minimum height of ten feet above the adjacent parking area, landscaped with a mix of Deciduous Trees, Evergreens and shrub material."

When asked his thoughts, Angus Jennings, the original design consultant at the time MarketStreet was approved, recalled that the berm's purposes were to address visual impact and noise. On berm landscaping, he believes that the plan was a mix of keeping some of what was there, and some new plantings. A mix of deciduous and evergreen; minimum height & caliper, with the berm's height being above adjacent parking. The goal was a mix of vegetation in order to have a year-round visual buffer. He said there was an expectation that plantings, which were conditions of approval, by plan reference, are continuing, enforceable conditions at the project. From his perspective it was reasonable to think National Development would maintain plantings in initial years, so that irrigation would not be needed down the line.

In a conversation with National Development, Doug Straus, SVP acknowledged its responsibility with respect to the berm and that they would adhere to that responsibility with its upcoming plantings, planning to plant additional trees in areas of concern noted by neighbors. To further demonstrate their commitment to addressing stakeholder's concerns, Straus said budgets were revised to incorporate a line item relating to removal and replacement of vegetation on the berm. He acknowledged the Berm is an ongoing condition of the development and they will honor their obligations with respect to it. He explained that plantings have failed for a variety of reasons and that in conjunction with their contracted landscaping company, Leahy Landscaping, they have been experimenting to find native vegetation that will hold. Leahy recommended that National Development use smaller, 6-8' trees, to give them a better chance of surviving. National Dev. committed to plant 12 trees in the fall of 2017 and assuming those trees held over the winter, committed to plant a significant number of replacement trees in Spring 2018.

National Development has lived up to that commitment, planting 24 trees (double the initial commitment) in the fall of 2017 and 24 more trees in the spring (May) of 2018.

In light of National Development's follow through on their commitment to make significant plantings in fall of 2017 and in spring of 2018 (approximately 50 total trees), and National Development's acknowledgement of the continuing enforceability of Berm vegetation requirements, there is no specific recommendation to the Board of Selectmen other than to monitor the ongoing health of the berm. Any future concerns relative to the berm should be shared with National Development. If needed any future concerns relative to enforcement should be directed to the Planning Board and Building Commissioner. **(See Appendix A for subcommittee's full report)**

## **B. NOISE MANAGEMENT IMPROVEMENT**

The MSAC Noise Sub-Committee took note of the concerns raised by residents during the hearing on September 14, 2017 and had several follow-up meetings with Nanci Horn, GM of WS Development (“MarketStreet Management”) and with Police Chief David Breen.

Key Noise Issues or Noise Concerns Raised by Residents were the following: Loud noise from the use of snow removal equipment (especially on the evenings after a large snow storm); Landscaping/cleaning company use of loud blowers early in the morning and 7 days a week; Delivery truck hours of operation; Music (this was a historical complaint); Building 1350 construction (potential noise in future); and the lack of ability to enforce the noise level requirements (i.e., the maximum noise level of 9 decibels from the property line) and the suggestion made for the implementation of noise by-law for enforcement.

In terms of snow removal noise, MSAC found that WS Management has made a great deal of effort to minimize snow removal noise – from requesting the snow removal company oil their plow blades to make snow dumping easier (and less noisy) and using backhoes to pull off trucks (instead of truck gates banging while they dump snow) to placing a foreman on duty to monitor snow removal to ensure noise is minimized. Some challenges however, are inevitable. Due to the timing of storms and various safety considerations, evening plowing and related snow removal noise is unavoidable. Ultimately, MarketStreet Management is committed to address all concerns brought to their attention and continue its efforts to mitigate snow removal noise. There is no specific recommendation from MSAC relative to minimizing the snow removal noise other than continuing to monitor for future issues. Any future concerns should be shared with the MarketStreet General Manager’s office (Chrissy Barrows).

In terms of noise related to landscaping/cleaning equipment, delivery/trash trucks and music, we found that there were very few complaints (5 complaints in 4 years) and that MarketStreet was responsive to and addressed most (if not all) concerns. Landscapers are on property M-Sat, and not to arrive before 7am. Delivery vehicles are not allowed on property prior to 6am. Trash pick-up hours are from 7am – 9pm. In response to complaints about music, speakers have been removed or faced away from Walnut Street. Hours of music are 7am-10pm (shorter in winter) and security proactively monitors noise level at property line. MarketStreet Management will continue to resolve noise related issues communicated to them and will continue to be proactive and sensitive to noise issues raised by neighboring residents. Any future noise concerns are to be brought to the attention of MarketStreet Management office (Chrissy Barrows) and that this issue is monitored as needed.

In terms of noise related to the construction of building 1350, ultimately, this noise is unavoidable however typical hours of construction will be 7am – 3pm. It was recommended that MarketStreet Management update residents on its website regarding construction schedule and the time periods when noise will be unusually loud (e.g. steel hammering) and that Mr. Yerardi assist updating Colonial Village residents on accessing this information.

In terms of concerns raised about the lack of ability to enforce noise levels and a suggestion of instituting a noise by-law, we learned that if a noise by-law would be implemented, it would be implemented town-wide, and not just apply exclusively to MarketStreet. Another challenge raised was the practical task of measuring the decibel level at a property line. How is that accomplished and how does one determine if the decibel level exceeds what is allowable? In light of those findings, the fact that there have been a limited number of noise complaints on record, and that Market Street Management has taken steps to address the residents' noise complaints, MSAC is not recommending that the Selectmen research or consider proposing a noise by-law at this time. We do recommend it be reviewed again in a year (Fall 2018). **(See Appendix B for subcommittee's full report)**

### **C. FINANCIAL IMPACT**

Residents have posed questions and concerns relative to the financial impact of MarketStreet e.g. has it met financial expectations? Has there been any negative financial impact? How has revenue from MarketStreet benefited the town? What about the opportunity offset resident's property taxes?

To answer these questions, MSAC sourced financial data from the Town Administrator's office one document of which being the Connery Report, which in 2007 provided a projection for Market Street's future revenues. After a thorough review of financial data, MSAC found the following:

1. MarketStreet revenues far surpass 2007 projections.
2. Connery Report projected net annual fiscal benefit to town to be \$1,013,000. FY2018 Net Benefit is \$3,271,822, which equates to 3x the projected revenues.
3. MarketStreet generates 7.13% of town revenue.
4. MarketStreet's property, meals and business tax receipts, have enabled Lynnfield the financial flexibility to undertake many capital improvements that would have not been possible without prop 2.5% override or other meaningful budget cuts elsewhere. MarketStreet

Incremental \$ Benefit for life of the projects = \$16.6M. Operational and Capital Expenditure Highlights = \$14.9M.

5. Improvements (most if not all approved via town meeting vote) have been:
  - a. Fields Project (\$9M)
  - b. Infrastructure & public safety improvements (\$3M)
  - c. School Security & Technology (\$1.47M)
  - d. Creation of Trust to address long-term obligation to OPEB. (\$600k)
  - e. Centre Farm (\$500k)
  - f. Full day kindergarten (\$291k)
  
6. Other benefits include:
  - a. National Development / MarketStreet Development donated land for Senior Housing Development.
  - b. MarketStreet Development donated 9-hole King Rail Golf course to town.
  - c. MarketStreet employs 90-110 Lynnfield residents either part or full-time.
  - d. Similar to other business in Lynnfield, MarketStreet and its businesses currently support at least 25 local charities and make their property available to them.
  - e. MarketStreet Development donated and built out the AI Merritt Center.
  - f. MarketStreet Development donated an onsite Lynnfield Police Sub-station.
  
7. It could also be noted that the MarketStreet Development has allowed Lynnfield to avoid potential negative impacts from an alternative developer. If MarketStreet was not approved, the alternatives for the land included single family or multifamily homes which would have put additional stress on schools, public safety and traffic.
  
8. While there is no specific recommendation relative to financial impact (the goal was simply to uncover and share information), there are some long-term items outstanding for the Board of Selectmen to consider.
  - a. MSt. near completion for current retail space of 395k sq. feet.
  - b. Net Benefit, while substantially larger than predicted, has leveled off.
  - c. Financial Impacts unknown: A). Abatement – impacts on homeowners. B). Fire & Police after day-time hours response costs. C). Real estate valuation strength comparison between MSt. abutters vs. non-abutters. D). Increase accident impact on all homeowner car insurance.

9. Ultimately, given that MarketStreet is 7.13% of the tax base, it is in the town's best interest for it to remain viable and thriving, as long as there isn't an adverse impact to the residents quality of life. **(See Appendix C for subcommittee's full report)**

## **D. TRAFFIC IMPROVEMENT**

### **1. Heather Drive and King Rail Dr. Intersection**

Residents of Colonial Village expressed their concern when taking a left turn into Heather Drive from King Rail Drive. At that intersection, where the roadway curves, is a retaining wall that residents say diminishes the view of oncoming and speeding cars when a driver is in the process of making a turn.

Colonial Village residents concerns include:

- Was the site plan approval process for incorporating the retaining wall properly implemented?
- Do the road design and traffic control devices for this private road need to comply with state and federal regulations?
- To what degree are roadway violations enforceable by the Police?
- What is the impact of the aforementioned concerns on the success of current and future traffic improvements at this intersection?

This Advisement has been conducted as follows: (1) Identify and review the source documents, (2) confirm and document the development drawings which show the retaining wall and approval, (3) determine National Development's position related to compliance for roadway and traffic control devices on a private road, (4) determine enforcement of roadway violations and (5) provide recommended traffic improvements.

The subcommittee has determined that the retaining wall has been identified on development drawing LR-2.2 with the July 30, 2013 issue of plans. The decision letter of September 3, 2013 provided Planning Board approval of the July 30, 2013 plan submittal. The grading plan was not part of the July 30, 2013 issue. **(See Appendix D, Fig. 1).**

During October 2017 the subcommittee met with Doug Straus of National Development to discuss the various elements of this Advisement and to address questions regarding compliance issues on a private road. National Development's consultant Stantec responded, in writing, to our four questions as follows: (1) "As a private road we

are not required to comply with AASHTO (American Association of State Highway and Transportation Officials) and MUTCD (Manual on Uniform Traffic Control Devices). MGL (Massachusetts General Law) is very broad but any pertinent portions of MGL would need to be complied with, (2) Our design utilizes best practices for private roadway design and is based on our experience in private land development projects, (3) Our design standards and best practices consider AASHTO and MUTCD and our experience in the design of private roadways and (4) Our design utilizes applicable best practices for private roadway design". The full memorandum is attached. **(See Appendix D, Fig. 2)**

The subcommittee has determined that this response, prepared by National Developments consultant Stantec represents its professional opinion and fulfills the documentation requirement of this issue.

Enforcement of roadway violations is addressed in MGL Chapter 60 Sections 17 and 18, which covers speed limits and special regulations, respectively, for persons operating a motor vehicle. Section 17 states that no person operating a motor vehicle on any way shall run at a rate of speed greater than is reasonable and proper. If the way is not posted in accordance with section 18 than it shall be prima facie evidence of a rate of speed greater than is reasonable and proper. That is evidence, which is sufficient to establish a fact or sustain a judgment unless it is rebutted or contradictory evidence is produced.

There have been a number of traffic devices installed during 2016 and 2017 with the intent of slowing down traffic as it approaches the Heather Drive and King Rail Drive Intersection. The following additions were not found to be effective in slowing down traffic to safe levels:

- Dangerous Curve Ahead signs on King Rail Drive approaching Heather Drive from the East and West.
- Stop sign at Heather Drive exiting onto King Rail Drive.
- Stop sign and stop line installed at the MarketStreet entrance off King Rail Drive, near the golf course entrance.

National Development has provided the following two proposals:

- 3-way stop located at the intersection of Heather Drive and King Rail Drive.
- Installation of speed humps installed at two locations on King Rail Dr. near Heather Dr.

Recommendations – Heather Drive:

- The subcommittee has determined that the installation of the speed humps has been effective in meeting the objective of slowing down speeding vehicles to a safe and acceptable level and recommends their current use.
- For safety purposes, the rubber speed humps should be removed and reinstalled annually, according to MarketStreet Operations Schedule.
- Since the current speed hump installation is temporary (removed during winter months), National Development should continue work in finding materials and installation methods that would work safely with snowplows and result in year-round use.

## **2. Walnut St.**

Since the opening of MarketStreet, traffic has been one of, if not the main concern of many residents. The traffic affects anyone traveling around the area, not just those individuals heading into Market Street. MSAC gathered information about traffic from the following sources: Lynnfield residents, Lynnfield Police and Fire Department, VHB Traffic Report 2012, WS Management, MASSDOT and National Development. The following specific concerns have been shared by residents:

- a. Heading south on Walnut Street, drivers may have to wait for a few lights before one can make a right-hand turn into MarketStreet. Currently, there is not enough room for a car to make a right-hand turn into MarketStreet while traffic is stopped going south on Walnut St.
- b. Heading north on Walnut St., drivers are sometimes backed almost into Saugus due to the timing of the lights and the buildup of traffic.
- c. Traffic backs up taking a right or left from Salem St. onto Walnut St. due to the timing of lights. Residents have commented about sitting through several lights until they are able to make a turn.
- d. As traffic backs up for drivers taking a left turn into MSt., non-MSt. drivers have to wait several lights before being able to continue up Walnut St.
- e. At times, especially on the weekends, traffic is backed all the way up the ramp to Route 128.
- f. Residents have stated their quality of life is impacted negatively by the increase in side-street traffic, U-turns and driveway turn-arounds.
- g. Nice weather and events results in increased traffic. While traffic may be an indicator that business is booming at MSt., it

can also cause people to avoid the area and go elsewhere for the shopping and dining experience.

- h. Building 1350 is planned to open later this year and there are concerns it will have an impact on traffic.

#### FINDINGS:

MarketStreet's Impact on Traffic during the holiday season includes a lack of parking, massive backups (Salem St. to Rt. 1 Saugus – Walnut St. to Thomas Rd), gridlock intersections, inability to move traffic through MarketStreet and multiple traffic light adjustments by MASSDOT.

During non-holiday season, MarketStreet drivers still see increased periods of delays including occasional periods of lengthy back-ups (weekend days-especially in good weather) and the off-ramp backs up on to the highway (as a result of the inability of 95 SB Exit 43 operators to turn right on Walnut St. because of through traffic to MarketStreet.)

In response to these issues, mitigation plans by LPD and WS Development were put together and have been successful helping drivers find open parking spots more quickly, helping vehicles navigate through the property more efficiently and ultimately creating less backups inside MarketStreet, less backups on Walnut & Salem St. and less frequent periods of extended delays on Walnut St. & MarketStreet.

Another finding is that since MarketStreet has opened, there has been an increase in traffic accidents in the area and as a result there is a concern about a potential impact on auto insurance rates. Because most traffic accidents occur close to home, the area one lives in greatly affects one's rates.

#### CONCLUSIONS:

MarketStreet as expected has had a profound impact on traffic through the Route 128, Walnut St. Salem St. corridor. In 2012, Chief Breen wrote a security plan for MarketStreet. This plan included a section on traffic.

While it is not difficult to comprehend that a large retail/office complex would have an impact on public safety and traffic, the heavy volume that one would expect around the holiday shopping season appears to be recurring on a regular basis. The traffic volumes and back-ups have frustrated residents of Lynnfield and have presented challenges for public safety as well. At times, long delays have slowed response times for police and fire apparatus. Walnut Street is a narrow thoroughfare. When traffic gets backed up it can be difficult and

dangerous for public safety personnel and the general public when responding to emergency calls.

With the addition of building 1350, traffic volume will only increase. One business that will open in this building is a Lahey Urgent Care Facility. Consultants have discussed possible calls for service from public safety, specifically rescue calls for service. Both LPD Chief Breen and LFD Chief Tetreault find these estimates to be patently inaccurate. This building will also house a possible 7,500 square foot restaurant and doctors' offices. Building 1350 remains an enigma whose impact will not be known for at least 12 months after it opens and is fully leased.

Relative to the 2012 VHB Traffic Report, while we don't take issue with the standards with which the study was conducted, it's apparent that the study and its projections do not appear to accurately describe current traffic conditions. Far too frequently the mitigation measures do not accommodate site-generated traffic. While we acknowledge that the mitigation efforts have improved some existing operational deficiencies in the vicinity of the site, the development, has clearly increased drive times and, at times, has overwhelmed the capacity of these intersections.

#### RECOMMENDATIONS:

- a. Install Adaptive Signal Technology
- b. Create a dedicated right turn lane from Walnut St. into MarketStreet.
- c. Create a dedicated right turn lane from Route 95 SB (exit 43) to Walnut St.
- d. Create additional parking spaces (garage).
- e. Continue with mitigation strategies that were implemented during the holiday season.
- f. Reassess whether right turn on red will be permitted.

**(See Appendix E for subcommittee full report)**

#### **E. UPDATING ON THE DEVELOPMENT OF BUILDING 1350**

Questions and concerns were raised by residents in 2017 on the building design for Building 1350 (the Lahey medical building). It was quickly made clear by the Planning Board that Building 1350 was an approved build and that all concerns relative to complying with the Design Standards would be addressed by the Planning Board. That being the case, the role of MSAC relative to building 1350 has been limited to staying abreast of

the construction by receiving updates from the Planning Board and assisting with communication on potential construction-related noise issues. Should any concerns arise in the future about building design etc... those should be directed to the Planning Board and Building Inspector.

Construction began in late Fall of 2017 and is scheduled to be completed in the Fall of 2018.

## **F. PARKING**

Residents have raised concerns about MarketStreet (MSt.) not having sufficient parking spaces, particularly during peak times of the week, holidays, and special events and during times of snow accumulation.

To investigate this concern further, MSAC gathered information from the following sources: Residents (via public forum on 3/24/18), VHB Parking Reports (March 2017 Traffic Study and April 2018 Parking study), WS Development (MarketStreet Management), Documents such as the development Parking Summary Plans, plans for Building 1350 and applicable PVDD Design Standards and Bylaws), and National Development.

According to the VHB Parking Study of April 2018 there are parking spots available at almost all times. At the peak time of the weekend – Saturdays 7:30pm, about 85% of the parking spots were occupied (after adjusting for spaces occupied by equipment and snow). Peak time middle of week – Wednesday afternoon, about 57% of the parking spaces were occupied (after adjustment). What we learn from this is on Saturdays, patrons may have park further away from the green or the store or restaurant they are going to, but parking spots are available.

Also according to the VHB April report, there were 2,206 spots available in April 2018 during Building 1350's construction. There will be 2,288 spots available when building 1350 is completed. The zoning bylaw requires MSt. at its complete approved build-out (395k sq. ft. of total retail and 80,000 sq. ft. total office space) to have a minimum of 1,930 parking spaces. If the 40K sq. ft. of office space is swapped out for a theater the zoning bylaw requires a minimum of 2,077 spaces. The takeaway here is the number of parking spaces available now at MSt. and the number of parking spaces National Development has projected for any future build (theater replacing office space or not) exceeds the zoning bylaw requirements.

The month of December, holiday season, is when the demand for parking is the greatest. To mitigate parking issues during this peak time, WS Development will continue to use measures such as having employees park off-site and using parking attendants to help patrons find parking spaces. Also to mitigate issues during times of snow accumulation, WS Development will consider moving snow off-site and using other mechanisms such as snow melting machines to reduce snow's impact on parking supply.

VHB predicts that at peak holiday time, the parking demand when MSt. is at full build out (approved development) will be 2,593 parking spaces and at full build out with a theater replacing office space, 2,767 parking spaces. This assessment was done to identify the number of parking spaces that may be necessary during the peak month (December) and peak day of the month (December). Based on the results of the assessment conducted for the total build out with the theatre, future-parking expansion should be in the range of 0 - 357 parking spaces (to meet typical and peak demands).

National Development has proposed to build a parking structure with between 300-375 parking spaces should the swap of 40k sq. office space for a theater be approved which would satisfy this recommendation for an increase in parking supply.

In the event a theater is not approved and the full build out is complete with 40k square feet of approved office space and potentially 15k square feet more of approved retail space, a smaller parking structure still may be desired to achieve the best customer experience with parking.

MSAC has made recommendations to National Development and WS Development to improve signs directing patrons to parking. Please refer to the parking subcommittee's final report for those details. **(See Appendix F for subcommittee full report)**

## **G. POTENTIAL FOR A THEATER PROPOSAL**

Concerns were brought to MSAC's attention by residents early on about the possibility for National Development to submit a proposal to build a cinema at MarketStreet. Currently, in the zoning bylaws, a cinema is not an approved use. In order for National Development to propose a theater, a warrant article is required to be submitted to the Board of Selectmen to be voted on at town meeting to change the zoning by-laws to permit a cinema as an approved use.

There has been no official proposal or warrant article submitted by National Development in 2018, however National Development has expressed a theater would benefit MarketStreet and is considering submitting a proposal in the future.

In a presentation delivered on 2/22/18 (**Appendix G1**), National Development shared that a cinema proposal would not entail increasing the square footage of MarketStreet. 372K square feet of the 395K square feet of approved retail space has been built, leaving 23K square feet of retail remaining. 38K square feet of the 80K square feet of approved office space has been built, leaving 42K square feet remaining. A proposal for a theater would be substituting 40K square feet of office space for 40K square feet for a cinema. The total approved square footage of MarketStreet (475K square feet) would not change.

This would not be the first time a theater has been brought up. A theater was a part of the original proposed development project, but ultimately was written as an unapproved use in the zoning bylaws when the MarketStreet project was approved in 2007 with National Development's agreement. A warrant article was submitted to town meeting in 2008 to amend the bylaws to allow a theater. The final vote was 237 residents voted in favor of allowing a cinema, and 143 residents opposed allowing a theater. Although it did win the popular vote, it did not achieve the 2/3rds vote needed to change the zoning bylaw as state law requires. That same town meeting a move to reconsider the article was defeated. In Feb of 2013, National Development requested a hearing with the Board of Selectmen to propose a 1,200 seat cinema. The Board of Selectmen voted 1-1 on the proposal and National Development decided not to submit an article. A warrant article was submitted again in March of 2017, but was withdrawn.

A number of concerns were brought to MSAC's attention relative to a potential theater proposal. Instead of assigning a subcommittee made up of 2 or 3 members, it was decided it was best for all committee members to be involved in the discovery / fact-finding process. MSAC focused their discovery efforts on the following concerns:

- 1.) Proposed Amendments to the Town's Zoning Bylaws
- 2.) Traffic
- 3.) Parking & Parking Structure
- 4.) Building Design & Noise
- 5.) Public Safety
- 6.) Cinema Experience
- 7.) Financial Impact
- 8.) Public Comment

Information was gathered from all, but not limited, to the following sources: Lynnfield residents via a public forum on May 24, 2018, a number of presentations made by National Development, a presentation on the state of retail by WS Development, the PVDD, the zoning bylaws, Traffic and Parking Studies by ND's engineering firm VHB, a letter relative to spot zoning by ND's legal counsel Robert A. Fishman Esq., a financial impact study by ND's financial consultant RKG Associates, the Lynnfield Police Department, Police Chiefs of Newton and Dedham who shared information on the impact of Showcase Superlux at The Street and Showcase Cinema de Lux at Legacy Place on public safety in their communities, MASSDOT, and MSAC also gathered information by visiting The Showcase Superlux Cinema at The Street in Chestnut Hill, which was described by ND as a similar luxury theater concept as what would be proposed for MarketStreet.

After the discovery process was complete, two committee members were assigned to draft an advisement for each theater related concern. The committee met on June 28, 2018 to discuss and vote on adoption of those theater-related concerns.

The concerns, findings and any recommendations related to the aforementioned theater-related topics are outlined below:

*Note: The conclusions and recommendations included in this summary should in no way be construed by the Board of Selectmen or the Town that the MarketStreet Advisory Committee supports or rejects the theater proposal. The information included in this summary is for informational purposes only – to allow the Board of Selectmen and the voters to make more of an informed decision (assuming the theater proposal presented to MSAC by National Development is the same theater proposal presented at a future Town Meeting).*

## **1. Proposed Amendments to the Town's Zoning ByLaws**

MSAC asked that National Development, as part of its proposal for a cinema at MarketStreet, provide MSAC with proposed amendments to the Town's Zoning Bylaws that would be necessary in order for National Development to build the cinema that it and its cinema-operator partner (CMX) envision. National Development responded with a PowerPoint presentation at MSAC's meeting on March 22, 2018 ("MarketStreet Cinema Preliminary Zoning Approach") (**Appendix G2**) that detailed tentative Zoning Bylaws amendments.

As of the adoption of MSAC's Advisement, there is no proposed warrant article to change the Zoning Bylaws to allow a cinema at MarketStreet and National Development has not said when, if ever, it intends to come to Town Meeting with

proposed cinema-related Zoning Bylaws amendments. The Zoning Bylaws amendments shared with MSAC could change substantially – or completely – between now and when they are included in a warrant article and come before Town Meeting for a vote. Because any such amendments are to the Town’s *Zoning Bylaws*, rather than the *General Bylaws*, they will require a 2/3 majority vote in order to be adopted.

The MarketStreet property is zoned as a Planned Village Development District (“PVDD”)(**Appendix G3**), which includes 2 sub-districts, including the Traditional Neighborhood Village Sub-District. Within this Sub-District, a “cinema” is a prohibited use under both **Section 9.5.4** (definition of Recreational Use) and under **Section 9.5.6** (section addressing Prohibited Uses). “**Cinema**” is currently defined in Section 9.5.4 as “***a theater designed and constructed for the primary intended purpose of showing films or movies for a fee.***”

## I. OUTLINE OF PRELIMINARY ZONING CHANGE REQUESTS

National Development zoning change requests were not in a form of a warrant article (i.e., in the form that was included in the 2017 Town warrant to allow a cinema use at MarketStreet), but rather National Development outlined the key changes separately in a PowerPoint presentation.

National Development’s stated goals were:

1. Create a new definition in Zoning Bylaws § 9.5.4 of what is actually intended to be built – for now called a “Traditional Neighborhood Theater.”<sup>1</sup>
2. Make the new definition restrictive so that the use, location and size of any cinema would be included in the zoning article and could not be changed without Town Meeting approval.

Below are the preliminary zoning amendments as presented in National Development’s PowerPoint Presentation (the actual language changes to the zoning by-law are underlined).

### ***Proposal - Part 1 - Amend the Recreational Use definition in Section 9.5.4:***

“The principal use or intended principal use of land or structures for relaxation, entertainment, amusement, sports, or the like, whether on a fee or non-fee basis, but not including a cinema other than a Neighborhood Village Theater.”

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<sup>1</sup> The phrase “Traditional Neighborhood Theater” according to National Development is not a term of art, but rather is the phrase National Development chose to use in its draft amendments.

**Proposal - Part 2 - Add a definition of the Neighborhood Village Theater in Section 9.5.4:**

“A theater designed and constructed for the primary purpose of showing films or video which satisfies each of the following criteria:

- (a) no more than eight hundred (800) theater seats;
- (b) no more than eight (8) screens;
- (c) no more than 40,000 square feet of Gross Leasable Floor Area;
- (d) may include premium seating and state of the art projection and sound and may also include enhanced food and beverage service;”

**Proposal - Part 3 - Also in 9.5.4, restrict the location of the Neighborhood Village Theater by identifying it on a plan that would be part of the Zoning Amendment.**

“(e) the location is limited to that designated area of the Traditional Neighborhood Village Sub-District labeled “Proposed Location of Neighborhood Village Theater” as shown on the accompanying plan entitled “MarketStreet Lynnfield” dated \_\_\_\_\_.”

**Note:** this proposal was accompanied by a map with the theater location designated in the parking lot next to Gaslight (1100 Market Street).

**Proposal - Part 4 - In the listing of Prohibited Uses in 9.5.6, make clear that a Neighborhood Village Theater as defined is not prohibited. Prohibited Uses:**

“Cinema, except that a Neighborhood Village Theater shall be an allowed use only in the designated area of the Traditional Neighborhood Village Sub-District shown on the plan referenced in Section 9.5.4.”

**Proposal – Part 5 - In 9.5.7.4(b), within the PVDD, 1 story buildings may be 30’ and 2 story buildings may be 45’. Amend Section 9.5.7.4(b) so that the height of a Neighborhood Village Theater would be defined as 1 story, 45’ as follows:**

“...the maximum height of a one story building shall be 30 feet, the maximum height of a two story building shall be 45 feet, and the maximum height of a one story Neighborhood Village Theater shall be 45 feet, provided further that an architectural feature of a building located at a corner or end of a streetscape may be permitted up to 60 feet in height at locations designated in the Design Standards...”<sup>2</sup>

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<sup>2</sup> At a MSAC meeting after the one on March 22, 2018, at which National Development walked through the tentative Zoning Bylaws amendments, Ted Tye of National Development mentioned that the “one-story” element may need to be revised further, because National Development’s architects had indicated that the

***Proposal – Part 6 - In 9.5.8-1, there is currently no parking requirement established for the proposed use. A new line would be added to establish the requirement as 1 space per 3 seats, which is the generally accepted standard zoning requirement.***

**Note:** no proposed amendment/language was provided.

***Proposal – Part 7 - Section 9.5.7.9 currently requires that 50,000 square feet of the permitted 475,000 square feet be built on the second floor of a building.***

With Building 1350's completion, there will be 29,700 finished square feet of MarketStreet that are located on a second floor. The text would be updated to change the requirement from 50,000 square feet to 29,000 square feet, meaning that no additional construction in the Planned Village Development District would have to be located on a floor of a building other than the first floor.

**Note:** no proposed amendment/language was provided.

## **II. QUESTIONS AND CONCERNS RELATIVE TO THESE PRELIMINARY ZONING CHANGE REQUESTS**

The following is a list of questions and concerns relative to National Development's Preliminary Zoning Change Requests along with our preliminary findings on these questions and concerns:

### **1. Is the proposed zoning change request with respect to a designated location for the theater illegal spot zoning?**

- a. Ted Tye, from National Development, represented that this is not spot zoning and presented a memorandum to the Committee prepared by Robert A. Fishman, Esq., (**Appendix G5**) who was retained by National Development, to address this issue. In his memo, Mr. Fishman states that the "proposed zoning amendment presently being reviewed by the MarketStreet Advisory Committee" is not illegal "spot zoning."
  - i. We express no opinion as to this conclusion and respectfully refer this issue to the Board of Selectmen to review with Town Counsel.

### **2. It was noted that the definition of Traditional Neighborhood Theater included language that was permissive but not required, specifically**

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theater structure, if built, might not be truly one story because it would have a mezzanine level for projection booths.

: (d) **may** include premium seating and state of the art projection and sound and **may** also include enhanced food and beverage service;”

- a. When asked by Mr. Charville at a MSAC meeting if National Development would consider changing “may” to “shall,” Mr. Tye stated yes, that would be an “easy change.”
  - i. Use of the term “may” as opposed to “shall” would allow National Development to lease to any type of cinema operator.
  - ii. We recommend that all language in the proposed zoning by-law change be mandatory (not just permissive) if in a context that provides certainty and quality for the Town.
  - iii. It is not clear what specifically is meant by the provision “enhanced food and beverage.” This provision should be elaborated and defined.
  - iv. We express no opinion as to whether a failure to bring in a type of theater as defined in this requested zoning change would be construed as a “major change” or “major modification” that would require approval by a Town vote and refer this issue to the Board of Selectmen for its consideration.

**3. A question was raised as to other uses of the theater, such as using the theater as “gaming” rooms.**

- a. As defined, the use of the word “primary” may leave open the issue of whether the theater could be used for other, unintended purposes/uses.
- b. To avoid other unintended uses, we recommend more restrictive language in subsection (d) of the definition: “A theater designed and constructed for the intended purpose of showing films or videos for a fee.”

**4. Based on the language of the zoning by-law relative to the height of the theater, does the location of the theater mean it could be as high as 60 feet?**

- a. Specifically, the existing language of the Zoning Bylaws includes the following: “provided further that an architectural feature of a building located at a corner or end of a streetscape may be permitted up to 60 feet in height at locations designated in the Design Standards provided that the portion of the architectural feature above forty-five (45) feet is not occupied.”
- b. The Town (the Board of Selectmen or the Planning Board, in consultation with Town Counsel) should determine if the theater location will be located “at a corner or end of a streetscape” which will permit an architectural feature of the building to be up to 60 feet.

- c. We recommend that the Board of Selectmen and the Planning Board, at the time they consider Zoning Bylaws amendments regarding a cinema and make their recommendations to Town Meeting, investigate limiting the height of the theater and any architectural features to 45 feet regardless of this 60 foot exception.

**5. By changing 40K square feet of office space to cinema/retail space, have we accounted for sufficient parking spaces (cinema and retail space require more parking than office space)? Do we have enough parking to account for the 3 to 1 ratio (or 267 parking spaces)?**

- a. Mr. Tye of National Development submitted a parking analysis which includes the construction of a parking garage to account for the parking needed for the theater.
  - i. We note that although the lack of sufficient parking has been a concern voiced without regard to the theater, National Development has stated that it will only construct a parking garage at MarketStreet if a theater is approved. National Development also is proposing that a new, cinema-specific line be added to establish the requirement as 1 space per 3 seats, which National Development represented is the generally accepted standard zoning requirement for cinemas.
  - ii. Additional parking analysis may be required after Building 1350 is open and fully leased to more fully address this question/concern.
  - iii. The preliminary proposed zoning changes do not currently include a reference to building a parking structure. While a parking garage is an allowed use under Section 9.5.7(12) and (13), there currently is no requirement that National Development build a parking structure if a theater is approved.
  - iv. We recommend that any zoning change include (perhaps with National Development's assent via a supplement to the Amended and Restated Development Agreement for Market Street at Lynnfield) a required parking structure with specifications as to dimensions and parking spaces included in the zoning by-law to address the additional parking needed to accommodate an 800-seat movie theater.
  - v. National Development also represented that the location of the parking structure will be behind Wahlburgers (930 Market Street) (in response to the concerns raised by the LIFE residents about the initially proposed location next to California Pizza Kitchen). Accordingly, we recommend that Section 9.5.7(13) of the zoning by-law restrict the parking structure / garage location to the lot behind Wahlburgers.

- 6. By changing 40K square feet of office space to cinema/retail space, will there be more traffic and different traffic patterns (cinema and retail space generate more and different traffic than office space)?**
- a. Mr. Tye acknowledged that with the increase in cinema/retail space, there will be more traffic and different traffic patterns.
    - i. This is an increase of 10% of retail space from office space, as originally agreed upon in the Development Agreement. The Development Agreement will have to be revised/amended accordingly by National Development and the Board of Selectmen.
    - ii. This issue of increased traffic is more fully addressed by the traffic subcommittee.
- 7. A question was raised as to whether National Development would consider a smaller number of seats (less than 800) to limit the amount of increased traffic.**
- a. Mr. Tye informed the committee that he could not find an operator willing to lease the space for less than 800 seats.
- 8. A question was raised as to what the space could be used for at that location if a theater failed.**
- a. Mr. Tye indicated that the space could be used for any “allowed” use in the Planned Village Development District but only a theater could be in the same space.
- 9. In addition to the language of the zoning by-law, a question was raised as to whether the Design Standards (Appendix G4) will need to be reviewed and/or revised to address this proposed theater, including the issue of signage. It also was pointed out that the Design Standards use the word “should” 137 times instead of “shall,” and this has led to wide variation in what was promised or intended in the Design Standards.**
- a. Because this is a new use, the Design Standards likely will have to be revised accordingly. We recommend a review and revision of the Design Standards if Town Meeting amends the Zoning Bylaws to allow a cinema, to address any changes required in conjunction with a theater, including lighting, exterior signs and free-standing signs. Such review and revision of the Design Standards in conjunction with a cinema use would be a good opportunity for a lingering issue in the Design Standards – use of “should” in many contexts, rather than “shall” or “must” – to be addressed, and we recommend those changes occur then.
- 10. What will be the hours of operation of the theater?**

- a. When asked this question, Mr. Tye said he would need to report back to the committee on this, but this question has not yet been addressed.
  - i. Section 3.1 of the Development Agreement addresses hours of operation for all of the various approved uses at MarketStreet (but as an unapproved use, the hours for a theater are not addressed). A review of similar theaters and Cineplex's have movies ending after 1:00 a.m.
  - ii. We recommend that the hours of operation of a theater be addressed in conjunction with the proposed zoning by-law requests so that when the Town is asked to vote on a theater, the full scope of the use can be assessed by the voters.

### III. PRELIMINARY CONCLUSIONS RELATIVE TO NATIONAL DEVELOPMENT'S PRELIMINARY ZONING CHANGE REQUESTS

The following is a list of our preliminary conclusions/recommendations:

1. As an initial matter, National Development's proposals are clearly stated as "preliminary" and are subject to change. These conclusions/recommendations are based solely on these preliminary proposals.
2. To avoid unintended uses of the theater, the definition of Neighborhood Village Theater as proposed be amended in Section 9.5.4 should be modified as follows:

"A theater designed and constructed for the ~~primary~~ intended purpose of showing films or video for a fee which satisfies each of the following criteria:

- (a) no more than eight hundred (800) theater seats;
- (b) no more than eight (8) screens;
- (c) no more than 40,000 square feet of Gross Leasable Floor Area;
- and
- (d) ~~may~~ shall include premium seating and state of the art projection and sound and ~~may~~ shall also include enhanced food and beverage service;"

In addition, we recommend that the phrase "enhanced food and beverage service" specifically be defined.

3. National Development should provide the proposed amendment/language with regard to Part 6 (relative to the number of parking spaces) and Part 7 (relative to the square footage requirement for the second floor).

4. The Board of Selectmen should have Town Counsel review the memorandum prepared by National Development's legal counsel to confirm that the proposed amendment is not illegal spot zoning. The cinema's location should be confined in the Zoning Bylaws to the lot next to Gaslight.
5. The proposed zoning by-law changes also should include a provision that mandates a parking structure in conjunction with a theater as well as the location of the parking structure on the lot behind Wahlburgers. The proposed by-law changes also should set forth specifically the dimensions and capacity of the parking structure.
6. The hours of operation of the theater should be identified by National Development and addressed prior to bringing a theater proposal to Town Meeting.
7. If the Zoning Bylaws are amended to allow a cinema use, the Design Standards should be reviewed and revised to address lighting, exterior signs and free-standing signs in conjunction with a theater. As noted above, that review and revision process would be an opportunity to address use of "should" rather than "shall" or "must" throughout the Design Standards.
8. The Board of Selectmen and the Planning Board, prior to cinema-related Bylaws coming before Town Meeting, should consider limiting the height of the proposed theater and architectural features to 45 feet total.
9. The zoning by-laws are lengthy and detailed, and there may be other issues that are implicated with these by-law changes. Accordingly, we recommend that the Board of Selectmen and the Planning Board review and reconcile these proposed by-law changes with existing zoning by-laws to ensure there are no ambiguities or confusion. By way of example, the following are several by-law provisions that may need to be reviewed and/or revised in conjunction with the proposed by-law changes:
  - a. Definition of "Cinema" under Section 9.5.4 of the by-laws and references to Cinema throughout the by-laws;
  - b. Principal Uses – Appendix A of the by-laws, Section D, #21; and
  - c. Table of Parking Requirements - Section 6.2.4.

## **2. Public Safety and Traffic**

### **a. Theatre Public Safety Impact**

After reviewing a theatre's impact on public safety in other communities, the Chiefs of Police have been consistent with their response. The increase in calls-for-service will be negligible on a year-to-year basis. Theatres tend to be well-managed businesses. Calls-for-service for theatres tend to be for removing unwanted guests and medical aids. We do not foresee a theater as having a profound impact on our police and fire departments.

**b. Serving Alcoholic Beverages**

The presence of liquor can present problems for these types of establishments. Strict oversight by management must be the norm. The Mall at Chestnut Hill has an open bar area that is not age restricted. It also has liquor service in the theatres where underage persons are present. This can create supervision issues, which may expose underage persons to consume liquor. Other malls restrict those theatres that serve alcohol to only allowing those of legal drinking age into the theater. If a theatre is voted on favorably by the town, we strongly recommend this practice be memorialized in the agreement.

**c. Traffic**

VHB Corporation conducted a traffic study for the theatre project that used an extremely small sample (1 day) (**Appendix G6**). Prior studies conducted by VHB used larger sample sizes, which offer a more precise representation of traffic throughout the Walnut Street corridor. Notwithstanding the fact that VHB "generally" followed standardized methodologies in their 2012 traffic studies (**Appendix G7**), traffic remains to be a major concern in the Walnut St area. This is certainly evident during the holiday shopping season, as well as many weekend days throughout the year. As well as during nicer weather when there are frequent large public events (yoga on the green, summer concerts, movie nights, etc.) held at MarketStreet. While we are pleased to see that MarketStreet has retained the services of a reputable company, like VHB, to perform traffic studies, we do not give the studies the same weight we once did. According to the 2012 VHB report, "Overall, VHB concludes that the implementation of the above mentioned mitigation measures not only accommodates future site-generated traffic, but also improves the existing operational deficiencies in the vicinity of the site". Clearly these conclusions have not come to fruition. In addition to current traffic volumes, new development within MarketStreet will increase volume at unknown levels.

**d. Building 1350**

Building 1350, scheduled for a fall 2018 opening, will have an impact on traffic and parking. What that impact will be remains nebulous. Building 1350 will house The Lahey Urgent Care facility, office space, and a restaurant with a possible square-foot size of 7,500 feet. This is similar in size to The Yard House Restaurant. Seating capacity at the Yard House is approximately 450 patrons. Between employees and patrons/patients of a building of this size, one could expect enough vehicles to overwhelm the parking capacity. This will result in major traffic back-ups in the area. Without having the ability to observe the impact of building 1350 once fully opened and leased, it is impossible to determine what, if any, mitigation measures could/should be implemented.

e. **Conclusions**

Since no formal theatre proposal has been filed by MarketStreet, it is extremely difficult for us to draw conclusions. There are so many unanswered questions that need to be addressed. That being said, we will attempt to do so with the limited amount of information that was gleaned from MarketStreet management's presentation. Building 1350 will have a detrimental impact on public safety, traffic, and parking. Just how much that impact will be is unclear. We believe that Building 1350's impact needs to be assessed. This can only be done after it is open, fully leased, and operational for a period of at least one year. To do otherwise will deprive the town of that information necessary to make an informed assessment of its impact. In addition to the impact that building 1350 will create, a theatre will impact these three areas:

i. **Public Safety**

Of the three, public safety appears to be the least impacted by a theatre opening. As stated above, calls for service should not have an appreciable increase for the police/fire departments. Those types of calls (medical aids, unwanted guests) should be similar in frequency to those communities that we researched. The only major concern is underage drinking. If properly managed and if certain development agreement stipulations are followed, these types of incidents will be few.

ii. **Parking**

Parking remains to be a major concern because it has a direct correlation to traffic. Simply put, a lack of parking creates traffic back-ups on Walnut St, Salem St, and Route 95. Holiday parking has been at a premium. Mitigation plans

were implemented and were successful in finding parking for incoming motor vehicles. However, parking has been an issue on weekend afternoons throughout the year. Building 1350 and a theatre will certainly reduce parking, increase vehicle volume, and create traffic congestion. Construction of a parking garage should be considered especially if a theatre is approved.

**iii. Traffic**

As noted above, a lack of parking or slow acquisition of a parking spot can back traffic up through the corridor. This can be frustrating and hazardous especially when traffic gets backed-up onto Route 95 north and south. This is beginning to occur with alarming frequency. According to MarketStreet management, the theatre could possibly hold 800 patrons. Even with staggered movie times, this will introduce considerably more traffic than it currently does. The impact will be noticeable and will, at times, further exacerbate an already congested corridor. This will also make it difficult for responding emergency vehicles to navigate safely through the intersections. If a theatre is approved, the recommendations suggested below are strongly encouraged.

**f. Recommendations:**

- i. Delaying consideration of a theatre until Building 1350 and its impact on parking, traffic, and public safety can be determined
- ii. Initiate holiday mitigation plans on afternoons/evenings throughout the year (especially during pleasant weather and when large public events are held at MarketStreet)
- iii. Create additional parking (garage)
- iv. Install Adaptive Signal Control Technology
- v. Install right turn lanes as discussed in our prior report

**g. If a theatre is approved:**

- i. If movie times are staggered, it can reduce the surge of traffic that may occur when movies have similar start times.
- ii. Restrict the theatre to only allowing those of legal drinking age into the theater. Either separate the alcohol serving to an upper floor like Legacy Place, or have certain theatres within the complex dedicated to serving alcohol and allowing

only those of legal drinking age into the theatre. If a theatre is voted on favorably by the town, we would strongly recommend this practice be memorialized in the development agreement.

- iii. Have all employees tip certified

### 3. Parking & Parking Structure

The questions and concerns over parking and parking structure are taken from the three sources described below and are included in their respective Appendices.

- Resident Feedback document (relevant comments highlighted in yellow) received by MSAC through emails and public comment **(Appendix G8 - A)**
- Abutters concerns provided during interviews with the parking subcommittee **(Appendix G8 - B)**
- Petition letter from Colonial Village residents concerning the proposed parking garage next tot California Pizza Kitchen (CPK) **(Appendix G8 - C)**

#### FINDINGS

- a. EXISTING SITE CONDITIONS – VHB (National Developments parking consultant) submitted their report on parking during April 2018 **(Appendix G9)**. The site conditions at the time of this parking report in April include the ongoing construction of building 1350. Inside the building 1350 construction fence are plans for 82 parking spaces around the building when it is completed. Outside of the construction fence about 150 parking spaces were temporarily occupied by construction equipment and snow.
- b. PARKING SUPPLY – The parking supply during April 2018 was determined to be 2,206 spaces. This number includes 150 temporary spaces described above. At the completion of building 1350 the parking supply will be 2,288 due to the additional of 82 spaces within the construction fence area that now surrounds the building.
- c. PROPOSED MODIFICATION – FULL BUILD-OUT WITH THEATER – A parking shared assessment was conducted for the total build-out of the development which includes the existing built portion inclusive of building 1350, the proposed

theater and a small future retail building (about 15,000 sf next to CPK). This modification considers trading out 40,000 sf of office space with 40,000 sf of theater space. The study concluded that during the peak month of the year (December) and peak day of the month (December) 2,767 parking spaces would be required. Applying a parking rate of 90% and accounting for a reduction in parking supply due to lost spaces it was proposed to construct a parking garage with between 300-375 parking spaces. The lost parking spaces to accommodate the future building and theater were a net reduction of 39 spaces for the future building (69 spaces with 30 of those spaces replaced around the building) and a reduction of 116 spaces at the location of the theater.

- The VHB study also concluded that there is no increase in parking supply required for an average month, which is defined as the average of the parking demand for the development of all 12 months of the year.
- Based on bylaw zoning requirements the proposed parking supply of 2,288 spaces (at the completion of building 1350) exceeds the minimum parking requirements for both the approved development (1,930 spaces) and the build-out with the proposed theater (2,077 spaces) (based on 1 space per 3 seats for theaters).

d. APPROVED DEVELOPMENT – BUILD-OUT WITH NO THEATER – A shared parking assessment was conducted for the approved development that includes the existing built portion inclusive of building 1350, a small retail building (about 15,000 sf) next to CPK and proposed future office building (40,000 sf) next to Gaslight. National Development has stated that there will be no garage if there is no theater. In the event a theater is not approved, the following assessment was made by the subcommittee:

- Although this situation is not explicitly addressed in the VHB report the subcommittee, following the VHB methodology used in the case of the Proposed Modification, has determined that the 2,593 required parking spaces would result in a potential increase in parking supply of about 201 spaces for the approved development. As in the case of the Proposed Modification these projections are for the peak month and day in December and not realized during other periods during the year.

e. PARKING STRUCTURE LOCATION- during the April 26, 2018 presentation by National Development and VHB two alternative locations for a proposed parking structure were discussed: a 2

level garage adjacent to CPK and a 4 level garage behind Wahlburgers and next to the proposed theater at the Gaslight Restaurant. National Development stated that pros for the CPK location were a simpler route along King Rail Drive and closer to building 1350 and to the shops near building 1100. The cons included the impact to the LIFE community at Colonial Village. The MSAC subcommittee believes the Market Street Apartments and Walnut Street abutters are impacted as well. The other location, generally behind Wahlburgers and next to the theater, pros were its proximity to the theater, promoted use of exit 42 and that it would be outside the residential area. The cons included the expense to be incurred by National Development due to the presence of the below ground drainage system.

## CONCLUSIONS & RECOMMENDATIONS

The preceding sections discussed the impact on parking in the following key areas: (1) Proposed Modification – full build-out including building 1350, a small future retail building and a theater (trading out 40,000 sf of office space with 40,000 sf of theater space), (2) Approved Development – build out included building 1350, a small future retail building, proposed future office building (40,000 sf) next to Gaslight and no theater and (3) parking structure location. Following are the related conclusions and recommendations.

- a. PROPOSED MODIFICATION – FULL BUILD-OUT WITH THEATER
  - If a theater is approved the construction of a parking structure with 300-375 parking spaces should provide an adequate parking supply after adjusting for any additional loss of space due to the final location of the parking structure, to meet typical and peak season demands.
  - Parking projections by VHB for the peak month (December) and peak day (December) account for increased parking demand that is typical at shopping centers during holiday seasons.
  - The VHB study also concluded that there is no increase in parking supply required for an average month, which is defined as the average of the parking demand for the development of all twelve months of the year.
  - The proposed parking supply exceeds the zoning bylaw requirements with or without a theater (assuming 1 space per 3 seats for theaters is adopted).

b. APPROVED DEVELOPMENT – BUILD-OUT WITH NO THEATER

- This condition is important since National Development has stated that there will be no garage if no theater.
- The parking projections, as determined by the subcommittee using the methodology in the VHB study, shows a potential shortfall of about 201 parking spaces for the peak month (December) and peak Day (December). Therefore, in the event a theater is not approved, a parking structure may still be needed for the approved development.
- The subcommittee has concerns over additional shortfall in parking spaces that could be further exacerbated by the additional loss of space due to snow and snow removing equipment occupying existing parking spaces during winter conditions.
- Some of this shortfall may be eliminated through National Developments Parking Demand Management efforts, which include shuttling employees to adjacent properties thereby making more spaces available to customers.
- National Development should continue ways of educating customers about parking alternatives, better utilization of parking lots and additional parking signage.
- Based on the zoning bylaws the approved project exceeds the minimum required number of spaces.

c. PARKING STRUCTURE LOCATION

- National Development has not submitted a proposal for design and aesthetics of the parking structure so the focus has been placed on issues related to the proposed locations of the parking structure.
- A parking structure constructed adjacent to CPK would be located directly across from the residential area formed by Colonial Village and the MarketStreet Apartments. Residents there would experience the effects of increased traffic, noise, lights, etc. and several homes in this area could be less than 125 feet from the parking structure. The location behind Wahlburgers and next to the theater, away from residents, being near Audubon Road, should be more accessible to/from Exit 42 and should promote its used by the public. Having the parking structure location adjacent to the proposed theater as has been done at Legacy Place would appear to be a benefit since moviegoers want to park close to the theater.

- Residents of Colonial Village opposed the location of the parking structure at CPK and have submitted a petition (See Appendix C).
- The capacity and location of the parking structure requires planning board approval. Section 9.5.7.13 of the bylaws states “Structured parking in the Traditional Neighborhood Village Sub-District shall not exceed forty-five (45) feet in height and shall be approved as to capacity and location by the Approving Authority”.
- The subcommittee recommends that National Development construct the parking structure behind Wahlburgers, next to the proposed theater at the Gaslight Restaurant, and not at CPK.

#### 4. Experience

As it relates to cinema experience, the following questions and concerns have been raised: What is the overall experience like? Would a proposed theater at MarketStreet offer standard movie theater experience – like that offered by the multiplex or megaplex experience throughout the 1980s and 90s? Will loitering be an issue?

To answer these questions and address these concerns, MSAC gathered information from National Development and by visiting the Showcase Superlux in Chestnut Hill, a theater ND identified as a similar luxury theater concept as what would be proposed for MarketStreet.

The proposed language by National Development to update the zoning bylaw agreement speaks to the experience.

***Proposal - Part 2 - Add a definition of the Neighborhood Village Theater in Section 9.5.4:***

“A theater designed and constructed for the primary purpose of showing films or video which satisfies each of the following criteria:

- (a) no more than eight hundred (800) theater seats;
- (b) no more than eight (8) screens;
- (c) no more than 40,000 square feet of Gross Leasable Floor Area;
- (d) may include premium seating and state of the art projection and sound and may also include enhanced food and beverage service;”

As stated above, in contrast to the traditional multi-plex or mega-plex cinema that has 16+ screens, a proposed theater for MarketStreet would have no more than 8 screens and no more than 800 seats.

During the April 26 MSAC meeting, National Development stated that CMX would be the theater operator. When asked about the number of seats per theater, ND said the largest theater would have a seating capacity between 175-180 seats with an average of 80 seats in the remaining theaters. It was clarified that all theaters would offer luxury amenities. ND shared a number of articles detailing why small theater concept / experience is working. **(Appendix G10)** The following two videos were shared by National Development to demonstrate the amenities offered by a luxury theater experience:

CMX Miami:

- <https://wsvn.com/entertainment/luxury-movie-theater-opens-at-brickell-city-centre-2/>

Showcase Superlux – Chestnut Hill:

- <https://www.youtube.com/watch?v=7YSKcfkePuU>

The Showcase Superlux Cinema in Chestnut Hill has been identified by National Development as a similar luxury theater concept as what would be proposed for MarketStreet. Committee members visited the theater in Chestnut Hill on April 23, 2018 and observed that the luxury experience offered the following:

- Extra wide, plush, leather seats that electronically allow one to fully recline.
- Full food and beverage in-theater dining experience
- Premium seating equipped with a server call button.
- Superlux Lounge located in the cinema lobby that offers full service bar and food.
- Ticket cost ranges from \$22 - \$30, based on seating type.
- Advance ticket purchase and seat reservations can be made online or by visiting an electronic kiosk at the theater.
- A/V included state of the art, advanced projection and sound.

Loitering was not observed during our visit and the GM of The Street stated there is no issue with loitering.

### Conclusion:

Regarding feedback from the residents of Lynnfield both in person at MSAC meetings and on-line via email there is no mention of a theater not being a good fit or experience. On the contrary a comment was made by a resident regarding speaking with senior citizens who would welcome a move theater experience close to home.

As far as “experience” and fitting in with the atmosphere of MarketStreet, along with entertainment type businesses such as Kings and Skeleton Key a theater would be a natural fit.

## **5. Financial Impact and Viability**

### Fiscal Impact:

A potential theater and a shift of 40,000 sq ft of office space to retail space may have the following Financial Impact on the town of Lynnfield (many of these numbers are estimates from RKG associates report. RKG is an economic consulting firm hired by National Development).**(Appendix G11)**

- a. One time permit fees on Movie Theater + Parking Garage are estimated at \$190,000. Using mid-point of 40k square feet of office cost, one time fees on office building out are estimated to be \$90,000.
- b. Office buildout results in \$153,700 in annual tax revenue, the Theater + Garage would result in \$324,600 in annual tax receipts. Making the Theater +Garage a \$170,900 positive impact. Here is the breakdown of these numbers:
  - i. Annual property tax on Theater is estimated in the range of \$205,000
  - ii. Annual property tax on Garage is estimated in the range of \$119,600
  - iii. Annual property tax on 40k Sq. foot office space is estimated in the range of \$153,700 (based on the mid-point of the \$9M in assessed value).
- c. Annual Meals revenue generated from a Theater is estimated at between \$26,000 and \$52,000, meals tax is not a component of office use.

- d. National Development is proposing Adaptive Lights (“smart lights”) on Walnut Street as part of a Theater proposal – the cost of these lights is several hundred thousand dollars and would be paid for by ND. These lights and the cost benefit to the town would not be part of an office build out.

Viability:

The outlook on Cineplex’s is very poor, 15, 20, 25 screen megaplexes are becoming a thing of the past (not unlike many big box retailers). In response to this, the theater industry has reinvented itself and has become focused on creating a High-end/ Luxury experience - which is consistent with what is being proposed at Market Street. (Although National Development has not defined a “luxury theater” in its proposed by-law and it not clear how you can re-zone for a “luxury theater”). National Development cited the Superlux Theater in Chestnut Hill as a comparable luxury theater where ticket prices are between \$22 and \$28.

Theater capacities have dropped, prices have risen and demand has remained stable. Last summer, theater attendance reached a 25 year low. Several analysts and commentators have stated that the drop in movie theater attendance has resulted, in part, from competition with streaming services. In recent years streaming services such as Netflix and Amazon Prime video have put the movie, Cable TV and the whole media industry on watch. At this time, it appears these streaming services are winning customers primarily from traditional cable consumers, these streaming services may also continue to have an impact on theater attendance in the future.

Although new releases such as Avengers, Black Panther and Star Wars continue to break box office records, any experience that is considered luxury will have economic risk, if consumer discretionary spending were to decline. A concern related to Market Street - if the U.S. experiences an economic downturn, a Luxury theater and mid-to-higher end dining establishments will most likely have a highly correlated decline. I would consider, dining, retail and theater as sub asset class diversification.

New movie theatres are a higher risk venture than rehabbing an older established venue. If this proposal fails National Development (ND) would most likely file for tax abatement. It is also unclear the type of lease that is being proposed and if it is a revenue sharing lease, the possibility also exists that ND would file a tax abatement if revenue projections are not met. These potential

abatements would be in addition to the current abatements already before the State Appellate Tax Board.

We have spoken about a Theater helping other Market Street business, if there is correlation between Theater, dining and retail during a downturn in the economy, it can be assumed that these business should complement each other during normal and prosperous economic times. No one has a crystal ball, but it is difficult to envision a scenario where there is lack of demand for out of the home entertainment and dining, and office demand remains strong.

#### Other Financial Considerations:

Building 1350 and its anchor tenant of Lahey Health does provide Market Street with consumer diversification - a patient at Lahey isn't dependent on the economy and having discretionary dollars to spend. Not knowing the extent of building 1350's impact on Market street as a whole, we feel this should be considered a "to be determined" financial impact on a potential Theater. Increased traffic from a theater is also a potential financial consideration. Among other issues, increased traffic volume or traffic backups from a theater could negatively impact patronage at Market Street as a whole.

WS and National Development have proposed that they would pay for smart lights on Walnut Street. This technology should help the quality of life of Lynnfield residents, particularly the abutters to Market Street and should provide a positive financial impact on the Market Street tenants. However, Chief Breen and Randy Hart from VHB (ND's traffic consultant) agreed that smart lights (adaptive traffic signals) will not help if there is a high volume of overall traffic. From a mitigation standpoint, this may not solve all of the financial problems associated with traffic, but it is a meaningful positive step.

Real Estate valuation impact to abutting properties. Several local Real Estate agents have mentioned, proximity to MS was consider a negative during construction and now is a positive factor. We have not found data to support or contradict this factor. National Development has experienced weak demand for office space in this area. If a Theater proposal were not move forward, they have indicated they would not be in a rush to buildout their remaining approved office square footage. MS's impact on Lynnfield's auto insurance rates, if any, has not been determined. Chief Breen has stated that it is dependent on

three factors: 1.) Number of accidents, 2.) Number of auto thefts and 3.) Number of thefts from autos.

As noted above there is with Market Street, as there is with any property assessment, an opportunity for the tax payer to file for abatement – there is unknown impact to MS revenue, based on ongoing abatement process.

Long term planning: ND and WS have mentioned they are long-term holders of their properties and tend not to sell them once completed. This isn't something the town can control, however, having stable ownership and a productive relationship with the biggest source of tax revenue is in any town's best interest.

#### Conclusion:

Market Street tax revenue has had a positive impact on the town of Lynnfield's tax base. It is a successful operation currently without a theater. Whether it be the fields project, schools or public safety, it is difficult to demonstrate a situation where this revenue has not been additive to the quality of life of Lynnfield residents. Market Street's original estimates were to provide net revenue to the town of 1 million dollars and it now is approximately 3.5 million dollars per year. Gross revenue is now approximately 4.3 million dollars per year. Looking into the future, MS revenue is largest single driver of the stability of our tax base and keeping it viable is in all tax payers' best interest.

Market Street has been and is currently a successful operation without a theater and there are some potential risks with a theater noted above. At this time, we do not have any information to suggest that a theater is essential or critical to keeping Market Street viable.

The traffic flow improvements may help the traffic situation that has frustrated abutters. Bundling the Parking structure to the Luxury Theater and giving the residents input into its location should be an overall positive impact to abutting residents. Based on the financial data presented above by RKG Associates, a Theater and Parking structure will have a positive financial impact on the town, relative to an office buildout. However, we do not view this as an overwhelmingly make or break financial decision and it will be the will of the people that allow a Theater to move forward or not.

## **6. Building Design & Noise**

The following questions and concerns have been raised relative to building design and noise. What would a structure of a cinema look like? How would it fit in with the rest of the MarketStreet Development? Would it comply with the Design Standards?

To answer these questions and address these concerns, MSAC gathered information from National Development and by visiting a theater National Development believes would be similar to a MSt. theater – the Showcase Superlux at The Street, Chestnut Hill.

During the MSAC meeting on April 26, 2018, National Development shared the following relative to Building Design and Noise:

- a. Not to exceed 40,000 square feet – would be an equal swap for approved 40,000 square feet office space.
- b. Commitment by National Development to fit well with MarketStreet., today, building designs are diverse yet feel like they all belong together.
- c. Design Standards may need updating – would fall to Planning Board.
- d. Height not to exceed 45'. Similar to the height of Whole Foods and the Fugakyu / Merritt Center building.
- e. May end up being classified as 2-story building because of projection room serving each theater.
- f. To be positioned next to Gaslight and National Development would stipulate limitation to this location in by-law.
- g. Theater completely sound-proof. No noise from movie theaters was heard while standing in parking lot during MSAC's visit to the Showcase Superlux. No noise from movie theaters was heard inside the building in the hallway or in the lounge area during that same visit.
- h. No speakers (that typically play music) will be on the cinema building's exterior
- i. The cinema would be built to the cinema Operator's needs.
- j. 800 seats/ 8 screens
- k. Largest theater to have 180 seats for major feature releases.

A presentation delivered by National Development on May 10 (**Appendix G12**) shared the following additional information relative to a proposed building design and the existing Design Standards applicable to MarketStreet:

- I. Relative to Scale and Proportions\*:
  - i. Front setback line is encouraged to keep a consistent "street wall."

- ii. Building facades more than 50 feet wide shall be broken down into a series of smaller elements.
- iii. Two story building design shall maintain the distinction between upper and lower floors.
- m. Relative to Building Facades\*:
  - i. Projecting bays, columns, recessed balconies, and roof shape variation should be utilized.
  - ii. Side and rear facades may be less detailed than the primary façade but shall be generally consistent with the primary façade’s architectural style.
- n. Relative to Roof Styles\*:
  - i. Shall employ varied vertical and horizontal planes for visual relief to the tops of buildings. Design elements such as parapets, cornices, towers and piers may also be used to break up the horizontal massing.
  - ii. HVAC equipment shall be screened.
  - iii. Buildings shall, when considered in relation to adjacent structures, incorporate a diversity of roof heights, gable orientations, and volumes.
- o. Relative to Materials and Color\*:
  - i. Building façade materials including but not limited to brick, wood, cementitious fiber board, manufactured limestone, cast stone, masonry, stone, glass, terra cotta, cellular PVC, trim, tile and sustainable materials are permitted.
  - ii. The use of exterior insulation finishing system (EIFS)... is prohibited below eight (8) feet above finish floor.
  - iii. A combination of materials should be used within a building.

*\*For sample design plans and photos see presentation from 5/10/18.*

#### Conclusions & Recommendations:

MSAC found the visit to the Showcase Superlux at Chestnut Hill helpful, but we have not reviewed construction drawings and specifications (nor have any been created, as far as MSAC knows) for a cinema at MarketStreet in order to validate the Lynnfield theater will be built the same way including sound proofing. MSAC urges Town Meeting when considering any cinema proposal to consider potential for crowd noise outside the theater and how it impacts the abutters.

Building design as presented seems to be in general compliance with the Design Standards, although much more design work is expected.

## 7. Public Comment

While a formal theater proposal has not been presented by National Development, MSAC has been fact finding and inviting residents to share comments and concerns regarding the possibility of a theater at MarketStreet. Over the past several months, there have been numerous opportunities for the residents of Lynnfield to voice their opinions to MSAC, either through attendance at MSAC meetings or via the committee's email. Approximately twenty residents/comments have been presented to MSAC, which are specifically related to the potential theater proposal. **(Appendix xi)**

Years ago when the decision was made to make MarketStreet a reality, it was decided that the property would not include a theater. Years later, some residents believe that "no still means no", while others believe a theater would be a nice addition to the mix of retail and dining options at MarketStreet.

Some residents are concerned about the viability of a theater. In recent years, several news outlets have reported a decline in cinema revenues and attendance at theaters. There are also many technological opportunities that allow individuals to stay home and watch movies in the comfort of home, rather than going to a cinema. Please refer to Section "*Financial Impact and Viability*" for MSAC findings and advisement.

A major concern regarding a theater at MarketStreet is the increase in traffic. Traffic affects anyone traveling around the MarketStreet area, not just those heading into MarketStreet. Building 1350 (Lahey Building) has yet to open and residents are concerned with that increase traffic on top of the increased traffic from a proposed cinema. Please refer to Section "*Traffic Improvements*" for MSAC findings and advisement.

Lack of sufficient parking is another main concern regarding a potential theater at MarketStreet. Building 1350 (Lahey Building) has yet to open and residents are concerned how that opening will affect the current parking situation. National Development has indicated a parking garage will be included in the formal proposal for a cinema. While the parking garage will help with the lack of sufficient parking, residents are concerned with the look and location of the garage. Colonial Village residents favor the garage location behind Wahlburgers, referred to as Site 2 by National Development. Please refer to Section "*Parking*" for MSAC findings and advisement.

Residents disliked the small sample size selected by the traffic/parking consultant as being indicative for everyday travels in/around MarketStreet. It appears nice weather and frequent events were not considered in the analysis. As MarketStreet is an outside walking venue, more people visit the property on days/seasons with nicer weather. Please refer to Section "*Traffic Improvements*" for MSAC findings and advisement.

Please refer to the Lynnfield Residents Comments and Concerns Document under the section entitled *Advisement on Potential Theater/Cinema Proposal* for the details of all residents who reached out to MSAC regarding the possibility of a theater at MarketStreet.

### **SECTION III: APPENDIX**

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Hard copies of the supportive documentation outlined in the Table of Contents can be found in the MSAC Advisement Summary binder provided to the Board of Selectmen. Electronic copies of the supportive documentation can be found on the town of Lynnfield website at [www.town.lynnfield.ma.us](http://www.town.lynnfield.ma.us), click Boards and Commissions, click MarketStreet Advisory Committee.