

REGULAR MEETING
NOVEMBER 28, 2016

IN CITY COUNCIL
ABSENT:

CONVENED:
ADJOURNED:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2016 NOV 22 P 3: 30

1. Minutes, City Council Meeting, November 14, 2016.
2. CONTINUED PUBLIC HEARING On the Proposed Amendment to City Code providing the Zoning Board of Appeals 100 days to file a decision on an appeal or a variance, Order No. 16-1006702A.
3. From City Councilors Clancy and Robey: Certifications After Review of Evidence, Adjudicatory Public Hearing, Apex Development, Application for Special Permit to Operate a Drive-Through Restaurant Window, Order No. 16-1006632B.
4. Communication from the Mayor re: Request for Executive Session for the purpose of discussing an ongoing contractual matter involving property off Boston Post Road East.
5. Communication from the Mayor re: Recycling Dividends Program Grant acceptance in the amount of \$10,500.00 awarded to DPW to expend on approved equipment and activities as depicted in the scope of Grant.
6. Communication from the Mayor re: Appointment of Robert Levine as a member of the Zoning Board of Appeals for a term to expire three years from the date of City Council confirmation. Mr. Levine will be replacing Ted Scott who is now the DPW Assistant Commissioner of Operations.
7. Communication from City Solicitor, Donald Rider re: Proposed Zoning Amendment-Assisted Living Facilities in proper legal form, Order No. 16-1006631C.
8. Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Application for Special Permit for a drive-thru window at Apex Center in proper legal form, Order No. 16-1006632C.
9. Communication from Assistant City Solicitor, Cynthia Panagore Griffin re: Acceptance of Deed-in-Lieu-of-Foreclosure, Russell St., in proper legal form, Order No. 16-1006700.
10. Communication from MA Public Employee Retirement Administration Commission, (PERAC), re: Appropriation for Fiscal Year 2018.
11. Minutes, Planning Board, October 24, 2016.
12. Minutes, Zoning Board of Appeals, September 27, 2016.
13. Minutes, Library Board of Trustees, October 4, 2016.
14. CLAIMS:
 - a. Ann & Karen Leandres, 43 Maplewood Ave., other property damage.
 - b. Thelma Balsler, 125 Framingham Rd., other property damage.
 - c. Boys & Girls Club, 169 Pleasant St., other property damage.
 - d. Curtis Square Condominium, 47A Curtis Ave., other property damage.
 - e. Silas Evangelista, 27 Brook St., other property damage.

REPORTS OF COMMITTEES:

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

UNFINISHED BUSINESS:

From Operations & Oversight Committee

15. **Order No. 16-1006679 - That the City Solicitor contact the Department of Revenue and any other department at the state level for a legal opinion whether the City of Marlborough is legally allowed to overcharge residents on water and sewer bills as a result of old and faulty water meters that may have undercharged residents in previous readings. Motion made by Councilor Robey, seconded by Chair, to report Order No. 16-1006679 with no action. The motion carried 3-0.**

From Public Services Committee

16. **Order No. 16-1006705 - Communication from Attorney Twohig, on behalf of Hines Global REIT Marlborough Campus I LLC, to extend sewer connection permit for Campus at Marlborough, 100 Campus Drive. Motion made by Councilor Doucette, seconded by Chair, to approve. The motion carried 2-0. (Councilor Irish absent.)**

From Legislative and Legal Affairs Committee

17. **Order No. 16-1006700 – Acceptance of title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, for land known on City of Marlborough Assessors' Map as Map 55 Parcel 210B, being approximately 43,966 SF, located on Russell St. Councilor Delano moved to recommend acceptance of the order – That pursuant to Section 77C of Chapter 60 of the General Laws of Massachusetts, the City does hereby accept title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, of the Sisters of the Benedictine Center, 254 Still River Road, Still River, MA, to a certain parcel of land described herein as follows: That certain parcel known and numbered on the Assessors' Map of the City of Marlborough as Map 55 Parcel 210B, being approximately 43,966 S.F., and located on Russell Street, the motion was seconded and carried 3-0.**
18. **Order No. 16-1006458C - Reporting Obligations after a Devastating Event, Order 16-1006458A, with proposed new Article III of Chapter 485 of City Code to be entitled "Reporting Obligations After a Devastating Event." It was moved and seconded to amend Section 485-17. Reporting Obligations, A to read, "Within 72 hours after the City has sent, by first class mail and by certified mail, written notification to the owner of the building..." The motion carried 3-0. It was moved and seconded to ask for suspension of rules to put this in proper legal form and then to advertise. The motion carried 3-0. ADVERTISED AS AMENDED AND TABLE UNTIL THE DECEMBER 19, 2016 MEETING AS THE TEN DAY PERIOD WILL NOT BE MET FOLLOWING THE ADVERTISEMENT DATE OF NOVEMBER 26, 2016.**

From Urban Affairs Committee

19. **Order No. 16-1006632 - Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant (Friendly's) with a Drive-thru, 157 Apex Drive. Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0. Motion made by Councilor Elder, seconded by Chair, to request a suspension of the rules at the next regular City Council Meeting on November 14, 2016 to send to the Legal Department to be placed in proper form. The motion carried 5-0.**

20. **Order No. 16-1006631A - Communication from Mirick O'Connell on behalf of BSL Marlborough Development LLC regarding Proposed Zoning Amendment to the City of Marlborough Zoning Ordinance Allowing Assisted Living Facilities along Bolton Street. The Committee discussed requesting a suspension of the rules at the next regular City Council meeting to forward to the City Solicitor to be placed in proper form for the City Council agenda on November 28, 2016. Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0.**

From City Council

21. **Order No. 16-1006719- DPW transfer request in the amount of \$1,650,000.00 which moves funds from Undesignated to Department of Public Works Solid Waste Disposal account to fund ongoing legal fees and settlement with WeCare Environmental, ORDERED TABLED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING.**



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723**

NOVEMBER 14, 2016

Regular meeting of the City Council held on Monday, NOVEMBER 14, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juairé, Oram, Ossing, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 9:35 PM.

Council President Clancy recognized the City Clerk's Office for their diligence and professionalism in processing the Early Voting Ballots and in preparation of the State Election.

ORDERED: That the Minutes of the City Council meeting OCTOBER 17, 2016, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Proposed Amendment to City Code providing the Zoning Board of Appeals 100 days to file a decision on an appeal or a variance, Order No. 16-1006702, **CONTINUED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING.**

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey.

Suspension of the Rules requested to allow a new Communication from the Mayor amending the language of the Act to include the Assistant City Engineer – granted

ORDERED: That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**An Act exempting certain positions in the City of Marlborough
from the Civil Service Law.**

SECTION 1. Notwithstanding any general or special law to the contrary, the positions of police patrol officer in the Marlborough Police Department, and the positions of Assistant Chemist, Assistant City Engineer, Associate City Engineer, Chemist, Chief Treatment Plant Operator, General Foreman, GIS Administrator, Grade I Engineering Aide, Grade II Engineering Aide, Grade III Inspector, Junior Engineer, Superintendent of Automotive Maintenance, and Treatment Plant Operator in the City of Marlborough shall be exempt from the provisions of chapter 31 of the General Laws.

SECTION 2. This act shall not impair the civil service status of a person holding a position described in section 1 on the effective date of this act.

SECTION 3. This act shall take effect upon its passage, **APPROVE**; adopted.

ORDERED: That the Communication from the Mayor re: Other Post-Employment Benefits (OPEB) Trust Update, **FILE**; adopted.

ORDERED: That it be ordained by the City Council of the City of Marlborough, acting upon a recommendation of the Mayor, that the Code of the City of Marlborough (hereinafter, the "City Code"), as amended, be further amended by amending in Chapter 125, entitled "Personnel," Section 6, entitled "Salary Schedule," as follows:

- A. This salary schedule shall take effect January 1, 2017.
- B. The position of Senior Clerk (nonunion) shall now be titled Administrative Assistant,
- C. The position of Financial Assistant (nonunion) shall now be titled DPW Financial Analyst.
- D. All positions on the 7 Step schedule shall work a 40-hour work week.

Position	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7 / Max
	<i>Start</i>	<i>6 months of service</i>	<i>1 year of service</i>	<i>2 yrs. of service</i>	<i>3 yrs. of service</i>	<i>4 yrs. of service</i>	<i>5 yrs. of service</i>
Assistant City Solicitor	\$87,909.17	\$89,667.35	\$91,460.70	\$93,289.91	\$95,155.71	\$97,058.82	\$99,000.00
Recreation Director	\$71,037.71	\$72,458.46	\$73,907.63	\$75,385.79	\$76,893.50	\$78,431.37	\$80,000.00
Executive Director of the Council on Aging	\$69,261.77	\$70,647.00	\$72,059.94	\$73,501.14	\$74,971.16	\$76,470.59	\$78,000.00
DPW Financial Analyst	\$58,142.62	\$59,305.47	\$60,491.58	\$61,701.41	\$62,935.44	\$64,194.15	\$65,478.03

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the DPW transfer request in the amount of \$1,650,000.00 which moves funds from Undesignated to Department of Public Works Solid Waste Disposal account to fund ongoing legal fees and settlement with WeCare Environmental, **TABLED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		Sewer				FISCAL YEAR:		2017		
FROM ACCOUNT:					TO ACCOUNT:					
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$12,178,290.00	\$1,650,000.00	10000	35900	Undesignated Fund	\$1,650,000.00	60086006	52935	Solid Waste Disposal	\$124,439.40	
Reason:					Wecare settlement agreement					
\$1,650,000.00		Total			\$1,650,000.00		Total			

ORDERED: That the Stabilization transfer request in the amount of \$337,500.00 which moves funds from Undesignated to a new Stabilization account, Future Growth Stabilization Fund, to fund investment in projects which will increase property values and attract economic development, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH											
BUDGET TRANSFERS --											
DEPT:		Mayor				FISCAL YEAR:					2017
		FROM ACCOUNT:				TO ACCOUNT:					
Available										Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance	
\$12,176,290.00	\$337,500.00	10000	35900	Undesignated Fund	\$337,500.00	83600	32727	Stabilization-Revenue Growth		\$0.00	
	Reason:					First mitigation payment from the Preserves @ Ames Brookview Village for the City Revenue Growth Enhancement Fund					
	\$337,500.00	Total			\$337,500.00	Total					

ORDERED: That the Police transfer request in the amount of \$324,200.00 to fund the recently ratified collective bargaining agreement between the City and the Police Patrol Union for FY 2016, 2017 and 2018, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR: 2017				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$671,172.25	\$324,200.00	11990006	57820	Reserve for Salaries	\$181,700.00	12100001	50420	Police Officers	\$1,915,371.52
	Reason:	Calculated amounts for contractual obligations			Reason:	Calculated amounts for contractual obligations			
					\$2,800.00	12100001	50435	Police Specialists	\$25,299.80
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$21,300.00	12100003	51310	Overtime - Regular	\$89,729.09
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$600.00	12100003	51319	Overtime-Call Watch	\$541.57
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$13,300.00	12100003	51320	Overtime-Court Time	\$157,353.06
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$900.00	12100003	51329	On-Call Pay	\$9,097.88
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$11,600.00	12100003	51342	Longevity	\$124,986.12
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$3,400.00	12100003	51360	Overtime-Training	\$14,039.38
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$1,200.00	12100003	51370	Overtime-Celebrations	\$2,643.46
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$4,000.00	12100003	51410	First Responder	\$39,086.88
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$33,200.00	12100003	51440	Educational Incentive	\$392,580.23
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$8,700.00	12100003	51450	Night Shift Differential	\$92,847.15
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$19,700.00	12100003	51490	Holiday	\$218,609.63
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$1,100.00	12100003	51505	K-9 Unit	\$9,927.45
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$10,200.00	12100003	51920	Sick Leave Buy Back	\$155,785.25
	Reason:				Reason:	Calculated amounts for contractual obligations			
					\$10,700.00	88021001	51710	Workers Comp. Ins.	\$50,697.20
	Reason:				Reason:	Calculated amounts for contractual obligations			
	\$324,200.00	Total			\$324,200.00	Total			

ORDERED: That the Downtown Stabilization transfer request in the amount of \$150,000.00 which moves funds from Undesignated to Downtown Stabilization account by which the amount transferred is from mitigation payments related to the Crabtree Project and intended to be used for downtown economic development, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH											
BUDGET TRANSFERS --											
DEPT:		Mayor					FISCAL YEAR:		2017		
		FROM ACCOUNT:					TO ACCOUNT:				
Available										Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance	
\$12,176,290.00	\$150,000.00	10000	35900	Undesignated Fund	\$150,000.00	83600	32700	Stabilization-Downtown		\$650,000.00	
	Reason:					Final mitigation payment from Crabtree Lake Williams to be used for downtown economic development.					
	\$150,000.00	Total			\$150,000.00	Total					

ORDERED: That the DPW transfer request in the amount of \$24,626.56 which moves funds from Reserve for Salaries to Sick Leave Buyback account to fund the sick leave buy back for a retiree in DPW, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH											
BUDGET TRANSFERS --											
DEPT:		Comptroller					FISCAL YEAR:		2017		
		FROM ACCOUNT:					TO ACCOUNT:				
Available										Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance	
\$671,172.25	\$24,626.56	11990006	57820	Reserve for Salaries	\$24,626.56	14001303	51920	Sick Leave Buy Back		\$28,893.42	
	Reason:	Recalculate amounts for contract obligations				Reason:	Obligation for retirement from DPW				
	\$24,626.56	Total			\$24,626.56	Total					

ORDERED: That the transfer request in the amount of \$1,660.00 from Reserve for Salaries to various accounts to fund successful negotiation of contracts affecting City employees, **APPROVED**; adopted.

BUDGET TRANSFERS --										
DEPT:		Comptroller				FISCAL YEAR:		2017		
FROM ACCOUNT:						TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$671,172.25	\$1,660.00	11990006	57820	Reserve for Salaries	\$620.00	14001003	51920	Sick Leave Buy Back	\$7,480.00	
		Reason: Recalculate amounts for contract obligations				Reason: Recalculate amounts for contract obligations				
					\$740.00	11920003	51430	Longevity	\$8,800.00	
		Reason:				Reason: Recalculate amounts for contract obligations				
					\$300.00	14920003	51430	Longevity	\$2,225.00	
		Reason:				Reason: Recalculate amounts for contract obligations				
					\$0.00				\$0.00	
		Reason:				Reason: Obligation for retirement from DPW				
	\$1,660.00	Total			\$1,660.00	Total				

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the MassWorks Grant acceptance in the amount of \$3,050,000.00 to supplement the significant investment that Ryan Development is making through the construction of the Apex Center; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the FY2016 State 911 Department Support and Incentive Grant in the amount of \$99,805.00 to offset costs in the dispatch center; adopted.

ORDERED: That the Cultural Council Appointments as follows: Stephan D'Alessandro and Jessica Bowen to the Cultural Council for a term of three years and Reappointments of Mark Bartlett and Melissa Vera for a term of three years which expired in August 2016, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Reappointment of Auditor, Diane Smith, for a term of three years to commence upon City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Reappointment of Chief Procurement Officer, Beverly Sleeper, for a term of three years to commence upon City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from the Mayor re: Notification of Free Cash certified by DOR in the amount of \$12,176,290.00, **FILE**; adopted.

ORDERED: That the Downtown Marlborough Parking Analysis, refer to **OPERATIONS & OVERSIGHT COMMITTEE**; adopted.

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that legal interests in certain portions of land located on East Main Street and located on land at the intersection of East Main Street and Brown Street, and at the intersection of East Main Street and Sawin Street (hereinafter, collectively, "East Main Street"), as more particularly described herein, be taken for the purpose of the reconstruction, construction, and maintenance of improvements to East Main Street, and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, in order to promote the public welfare, safety, common convenience, and necessity, it is necessary to take by Eminent Domain the easement interests in the land for the purposes and duration described herein; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the easement interests or fee simple interest in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN

1. Street address: East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and driveway reconstruction: Being an approximately 232 S.F portion of the property located on East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 323 on the Assessors' Map of the City of Marlborough and shown as Parcel TE-28 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: B.B. Realty Corp.

262 Main Street

P.O. Box 5

Marlborough, MA 01752

2. Street Address: 48 East Main Street, Marlborough, MA

Temporary easement for the purposes of grading, driveway reconstruction, pedestrian walk reconstruction: Being a 703 S.F. portion of the property located at 48 East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 322 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-29 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: U.S. Bank National Association, Trustee
425 Walnut Street
Cincinnati, OH 45202

3. Street Address: 56 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and driveway reconstruction: Being a 643 S.F. portion of the property located at 56 East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 324 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-27 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: William W. George, Trustee, Carlisle Realty Trust
P.O. Box 436
Marlborough, MA 01752

4. Street Address: 60 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and sidewalk reconstruction: Being a 1,210 S.F. portion of the property located at 60 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 125 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-26 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: William W. George, Trustee, Carlisle Realty Trust
P.O. Box 436
Marlborough, MA 01752

5. Street Address: 59 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 568 S.F. portion of the property located at 59 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 133 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-6 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Michael Triaforos, Trustee
59 East Main Street Realty Trust
49 East Main Street
Marlborough, MA 01752

6. Street Address: 79 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 335 S.F., more or less, portion of the property located at 79 East Main Street, known and numbered as Map 57, Parcel 182 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-4 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Todd Uminsky, Trustee
79 East Main Street Realty Trust
Marlborough, MA 01752

7. Street Address: 83-A East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 209 S.F., more or less, portion of the property located at 83-A East Main Street, known and numbered as Map 57, Parcel 184 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-3 on Sheets 3 and 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Glayton DaCruz, Trustee
DaCruz Realty Trust
Marlborough, MA 01752

8. Street Address: 87 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 411 S.F., more or less, portion of the property located at 87 East Main Street, known and numbered as Map 57, Parcel 185 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-2 on Sheets 3 and 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Fred R. Angier, Jr.
87 East Main Street
Marlborough, MA 01752

9. Street Address: 95 East Main Street, Marlborough, MA 01752
Temporary easement for purposes of grading, driveway reconstruction, and restoration and reconstruction of stonewall: Being a 593 S.F. portion of the property located at 95 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 186 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-5 on Sheet 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: David P. DeCenzo
95 Oakbridge Drive
Pueblo, CO 81001

10. Street Address: 99 East Main Street, Marlborough, MA 01752
Temporary easement for purposes of grading, driveway reconstruction, and restoration and reconstruction of stonewall: Being a 314 S.F. portion of the property located at 99 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 187 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-2 on Sheet 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: Jeanne Bengiovanni
99 East Main Street
Marlborough, MA 01752

11. Street Address: 114 East Main Street, Marlborough, MA 01752
Permanent easement for purposes of new utility pole installation and aerial utility: Being a 298 S.F., more or less, portion of the property located at 114 East Main Street, known and numbered as Map 57, Parcel 194 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-1 on Sheets 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."
OWNER: Cumberland Farms, Inc.
777 Dedham Street
Canton, MA 02021

12. Street Address: 19 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, installment of fence, removal of trees: Being a 148 S.F. portion of the property located at 19 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 318 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-20 on Sheet 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: Thomas J. Parks & Cheryl Greska

19 Brown Street

Marlborough, MA 01752

13. Street Address: 21 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, installment of fence, removal of trees: Being a 795 S.F. portion of the property located at 21 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 319 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-18 on Sheet 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: David E. Grant & Tina L. Grant

21 Brown Street

Marlborough, MA 01752

14. Street Address: 38 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, reconstruction of pedestrian walk: Being a 335 S.F. portion of the property located at 38 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 321 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-35 on Sheets 4 and 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: James C. Thomas & Lauren B. Thomas

31 Ash Street

Hopkinton, MA 01748

15. Street Address: 15 Sawin Street, Marlborough, MA 01752

Permanent easement for purposes of new utility pole installation and aerial utility:
 Being a 67 S.F., more or less, portion of the property located at 15 Sawin Street, known and numbered as Map 70, Parcel 373 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-5 on Sheets 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: 15 Sawin Street LLC
 15 Sawin Street
 Marlborough, MA 01752

Said plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County" to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Order.

AWARDS

The City Council hereby makes the following awards for damages for the owner or owners of record:

<u>OWNERS</u>	<u>MARLBOROUGH ASSESSORS' MAP/PARCEL</u>	<u>AREA (OF TAKING OF EASEMENT)</u>	<u>AWARD</u>
B.B. Realty Corp. 262 Main Street P.O. Box 5 Marlborough, MA	70/323	232 S.F.	\$40.00
U.S. Bank National Association, Trustee 425 Walnut Street Cincinnati, OH 45202	70/322	703. S.F.	\$366.00
William W. George, Trustee, Carlisle Realty Trust P.O. Box 436 Marlborough, MA 01752	70/324	643 S.F.	\$390.00
William W. George, Trustee, Carlisle Realty Trust P.O. Box 436 Marlborough, MA 01752	57/125	1,210 S.F.	\$2,130.00
Michael Triaforos, Trustee 59 East Main Street Realty Trust 49 East Main Street Marlborough, MA 01752	57/133	568 S.F.	\$630.00

<u>OWNERS</u>	<u>MARLBOROUGH ASSESSORS' MAP/PARCEL</u>	<u>AREA (OF TAKING OF EASEMENT)</u>	<u>AWARD</u>
Todd Uminsky, Trustee 79 East Main Street Realty Trust Marlborough, MA 01752	57/182	335 S.F.	\$630.00
Glayton DaCruz, Trustee DaCruz Realty Trust 26 Hilldale Road Ashland, MA 01721	57/184	209 S.F.	\$627.00
Fred R. Angier, Jr. 87 East Main Street Marlborough, MA 01752	57/185	411 S.F.	\$567.00
David P. DeCenzo 95 Oakbridge Drive Pueblo, CO 81001	57/186	593 S.F.	\$335.00
Jeanne Bengiovanni 99 East Main Street Marlborough, MA 01752	57/187	314 S.F.	\$545.00
Cumberland Farms, Inc. 777 Dedham Street Canton, MA 02021	57/194	298 S.F.	\$1,043.00
Thomas J. Parks & Cheryl Greska 19 Brown Street Marlborough, MA 01752	70/318	148 S.F.	\$161.00
David E. Grant & Tina L. Grant 21 Brown Street Marlborough, MA 01752	70/319	795 S.F.	\$863.00
James C. Thomas & Lauren B. Thomas 31 Ash Street Hopkinton, MA 01748	70/321	335 S.F.	\$335.00
15 Sawin Street LLC 15 Sawin Street Marlborough, MA 01752 (Land Court Book 1362, Page 007, Certificate No. 243066)	70/373	67 S.F.	\$117.00

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Reappointment of Lisa Thomas as City Clerk for a term of three years to expire on February 28, 2020, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

1. Section 650-56, entitled "Enforcement," is hereby amended by striking out, in subsection F, the word "six" and inserting in place thereof the following word:-- twelve.
2. Section 650-59, entitled "Powers and procedures of special-permit-granting authorities," is hereby amended by striking out, in subsection A(1), entitled "Special permits," the number "two" and inserting in place thereof the following word:-- three.

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, DECEMBER 19, 2016**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Application to Modify Special Permit, New Cingular Wireless PCS, LLC, 175 Maple St., in proper legal form, Order No. 16-1006637B, **MOVE TO ITEM 37**; adopted.

Suspension of the Rules requested to allow a new Communication be submitted from the Assistant City Solicitor regarding amended Legal Order for Site Plan Permit for below referenced-- granted

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin, re: Site Plan Permit for 163-175 Main St., Marlborough on Main, in proper legal form, Order No. 16-1006668, **MOVED TO REPORTS OF COMMITTEE**; adopted.

**Suspension of the Rules requested to remove Order No. 16-1006517D, request for LED Sign Special Permit at 50 Main Street from the Table – granted
ORDERED:**

**DECISION ON AN LED SIGN SPECIAL PERMIT
IN CITY COUNCIL**

LED Sign Special Permit
Discount Gas
50 Main Street
Order No. 16-1006517B

**DECISION ON AN LED SIGN SPECIAL PERMIT
CITY COUNCIL ORDER NO. 16-1006517B**

The City Council of the City of Marlborough hereby GRANTS the application for an LED Sign Special Permit to V&G Realty Trust, Vrej Askanian and Grace Kanoon, Trustees (the “Applicant”) for the property located at 50 Main Street in Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings, Findings of Facts and Conditions.

PROCEDURAL FINDINGS

1. The owner of the property located at 50 Main Street in Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 70, Parcel 226 (the “Site”) is V&G Realty Trust, Vrej Askanian and Grace Kanoon, Trustees, 231 Oxford Street North, Auburn, MA 01501.
2. On March 1, 2016, the City of Marlborough issued Building Permit No. BP-2016-000198 for a “Free Standing Sign ‘Discount Gas’ Length 3”, Width 8”, Height 14”.”
3. On March 1, 2016, the City of Marlborough Code Officer notified the Applicant in writing that, in order for the Applicant to use an LED (light emitting diode) sign showing current gas prices at the Site, the Applicant would need to obtain from the Marlborough Planning Board a variance from Section 526-9, entitled “Downtown Business District,” of the Sign Ordinance set forth as Chapter 526 of the City Code of the City of Marlborough, which otherwise prohibits all interior illuminated signs in the Downtown Business District as defined in Section 526-9; and would also need to obtain from the Marlborough City Council an LED sign special permit under Section 526-13, entitled “Electronic Message Center Signs and Digital Display Signs,” of the Sign Ordinance.
4. By application dated March 8, 2016, the Applicant submitted to the Planning Board a request for a variance from Section 526-9 of the Sign Ordinance.
5. At its meeting held on March 21, 2016, the Planning Board granted the Applicant a variance from Section 526-9, except for any LED usage, and with the conditions
a) that the sign be turned off when the service station is not open for business and
b) that all other extraneous signage be removed from the Site.

6. By application dated March 29, 2016, the Applicant submitted to the City Clerk for the City of Marlborough an LED Sign Permit Application (the "Application"). The Applicant seeks an LED sign special permit pursuant to Section 526-13, in order for the Applicant to use an LED sign showing current gas prices at the Site.
7. In connection with the Application, the Applicant submitted a picture of the Site and the sign as presently installed on the Site.
8. The Marlborough City Council held a public hearing on the Application on Monday, April 25, 2016. The public hearing was closed on April 25, 2016.
9. The Applicant presented testimony at the public hearing that the changeable portion of the Sign would be used to advertise gas prices which the Applicant stated is crucial to the success of its business. John Rowe, Rowe Funeral Home, 57 Main Street, testified that although he was not opposed to the Proposed LED Sign, it should not be operational until the Applicant had completed site work required by the Site Plan Review Committee. Applicant testified that he continues to work with the Site Plan Review Committee on all items.
10. The Applicant further presented its Application at the Urban Affairs Committee meeting held on July 19, 2016. The Committee agreed to recommend approval of the Application pending confirmation from the City Engineer that the Applicant completed site work required by the Site Plan Review Committee.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE
FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING
ACTIONS**

- A. The Applicant has complied with all the rules and regulations promulgated by the Marlborough City Council as they pertain to an application for an LED sign special permit under Section 526-13 of the Sign Ordinance.
- B. The City Council finds that the Sign complies with the standards set forth in Section 526-13.B of the Sign Ordinance.
- C. The City Council finds, pursuant to Section 526-13.B(16) of the Sign Ordinance, that: all other signage on the Site is in compliance with zoning requirements; the Sign does not create unnecessary visual clutter or constitute signage overload for the lot or surrounding neighborhood or street; the Sign does not substantially block visibility of signs on abutting lots; the Sign does not substantially block solar access of, or view from, windows of residential dwellings on abutting lots; the proposed illumination is appropriate to the Site and is appropriately located with respect to the character of the surrounding neighborhood; the scale and/or location of the Sign is appropriate; and the dimensions of the Sign comply with the area limitations of the Sign Ordinance.
- D. The City Council, pursuant to its authority under Section 526-13 of the Sign Ordinance, hereby GRANTS the Applicant an LED Sign Special Permit for the Sign, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

CONDITIONS

1. The Sign shall be operated in accordance with the Sign Ordinance of the City of Marlborough, and in compliance with the variance issued by the Planning Board which includes the conditions a) that the Sign be turned off when the service station is not open for business and b) that all other extraneous signage be removed from the Site
2. All plans and/or other documentation provided by the Applicant as part of the Application, and as amended during the Application/hearing process before the City Council and/or the Urban Affairs Committee, are incorporated into and become part of this LED Sign Special Permit, and become conditions and requirements of the same, unless otherwise altered by the City Council.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

Nay: 0

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 5, 2016** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit, from Attorney Cipriano, on behalf of Tigercat Properties LLC, to construct a multifamily dwelling at 487 Lincoln St, refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE**; adopted.

ORDERED: That the Minutes, Library Board of Trustees, June 7 & September 6, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, October 3, & October 17, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Recreation Commission, January 21, February 17, & June 15, 2016, **FILE**; adopted.

ORDERED: That the Minutes, School Committee, September 27, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, October 6, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, September 27, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging Board of Directors, September 13 & October 11, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, September 13 and October 11, 2016, **FILE**; adopted.

ORDERED: That the Minutes, License Board, August 24, September 15, September 22, September 28, & October 18, 2016, **FILE**; adopted.

ORDERED: That the Minutes, OPEB Trust Board, March 31, 2015, **FILE**; adopted.

ORDERED: That the following **CLAIMS**, refer to the **LEGAL DEPARTMENT**; adopted.
a. Noa Romo, 78 Applebriar Ln., pothole or other road defect.

Reports of Committees:

Councilor Elder reported the following out of the Operations & Oversight Committee:

Meeting Name: City Council Operations & Oversight Committee

Date: October 25, 2016

Time: 6:30 PM

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 6:44 PM – Adjourned: 7:45 PM

Present: Chairman Elder; Operations & Oversight Committee Members Councilors Robey and Landers; Councilors Clancy, Delano, Doucette, Juaire and Ossing

Also Present: Donald Rider (City Solicitor, City of Marlborough); John Ghiloni (Commissioner of Public Works, City of Marlborough)

Order No. 16-1006679: That the City Solicitor contact the Department of Revenue and any other department at the state level for a legal opinion whether the City of Marlborough is legally allowed to overcharge residents on water and sewer bills as a result of old and faulty water meters that may have undercharged residents in previous readings. The Operations and Oversight Committee met with City Solicitor Donald Rider for a discussion of whether the City of Marlborough is allowed to collect on unpaid water and sewer usage by residents that was not accurately reflected in previous bills. City Solicitor Rider stated the City is allowed to back collect for prior water and sewer usage according to the City code water use ordinances, Chapter 608: Water and Chapter 510: Sewers. In each of those chapters, it states anyone who uses the water and sewer systems from the City enters into a contract relationship with the City. The City has the ability when a discrepancy occurs between the meter on the inside of the house and the register (or reader) on the outside of the house to collect for actual usage based upon the water meter reading located inside the house. Over time the reader on the outside of the house slows down and does not accurately reflect the usage from the meter located on the inside of the house. City Solicitor Donald Rider stated the statute of limitations on contracts is six years, so the City is allowed to go back six years to collect for use. **Motion made by Councilor Robey, seconded by Chair, to report Order No. 16-1006679 with no action. The motion carried 3-0.**

Motion made by Councilor Robey, seconded by Chair, to adjourn. The motion carried 3-0. The meeting adjourned at 7:45 PM.

Reports of Committees Cont'd:

Councilor Landers reported the following out of the Public Services Committee:

Meeting Name: City Council Public Services Committee

Date: October 25, 2016

Time: 5:30 PM

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 5:35 PM – Adjourned: 5:42 PM

Present: Chairman Landers; Public Services Committee Member Councilor Doucette; Councilor Clancy

Absent: Public Services Committee Member Councilor Irish

Also Present: Brian Dugdale (Goulston & Storrs); John Twohig (Goulston & Storrs)

Order No. 16-1006705: Communication from Attorney Twohig, on behalf of Hines Global REIT Marlborough Campus I LLC, to extend sewer connection permit for Campus at Marlborough, 100 Campus Drive. Brian Dugdale, attorney for Goulston & Storrs, appeared before the Public Services Committee to request an extension of a sewer connection permit for the Campus at Marlborough, 100 Campus Drive. Mr. Dugdale explained there are no changes to their existing plans and they are looking for an extension to the current permit which expires December 18, 2016. The extension applies to the second stage of development and it would be an additional two years before they have tenant commitments and move the project forward. Chairman Landers read a communication from Thomas DiPersio, City Engineer, for the record stating *“The extension of the sewer connection permit is acceptable to the Public Works Department, for a period which would coincide with their recent extension of the Site Plan Permit, to December 2, 2018.”* **Motion made by Councilor Doucette, seconded by Chair, to approve. The motion carried 2-0 (Councilor Irish absent.) Motion made by Councilor Doucette, seconded by Chair, to adjourn. The motion carried 2-0 (Councilor Irish absent.) The meeting adjourned at 5:42 PM.**

Councilor Robey reported the following out of the Legislative and Legal Affairs Committee:

City Council Legislative and Legal Affairs Committee

Monday, November 7, 2016– In Council Chambers

Minutes and Report

Present: Chairman Katie Robey, Councilor Juare and Councilor Delano. Also attending were Cynthia Panagore Griffin, Assistant City Solicitor; Tom DiPersio, City Engineer; Councilors Clancy, Doucette, Tunnera, Irish, Landers, and Oram.

Reports of Committees Cont'd:

Order No. 16-1006700 – Acceptance of title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, for land known on City of Marlborough Assessors' Map as Map 55 Parcel 210B, being approximately 43,966 SF, located on Russell St.

The meeting was called to order at 5:15 PM. The mayor's letter of October 13, 2016 was read into the record. The property is comprised mostly of wetlands and is unbuildable but receiving the property in exchange of debt forgiveness of property taxes on the land of \$1,924.99 would give the city the deed and enable them to maintain a culvert on the property which is part of the street drainage system.

Councilor Delano moved to recommend acceptance of the order – That pursuant to Section 77C of Chapter 60 of the General Laws of Massachusetts, the City does hereby accept title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, of the Sisters of the Benedictine Center, 254 Still River Road, Still River, MA, to a certain parcel of land described herein as follows: That certain parcel known and numbered on the Assessors' Map of the City of Marlborough as Map 55 Parcel 210B, being approximately 43,966 S.F., and located on Russell Street, the motion was seconded and carried 3-0.

It was moved and seconded to adjourn the Legislative & Legal Committee meeting; carried 3-0. Meeting adjourned at 5:25 PM.

City Council Legislative and Legal Affairs Committee
Tuesday, October 25, 2016— In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Juairé and Councilor Delano. Also attending were Don Rider, City Solicitor; Pam Wilderman, Code Enforcement Officer; Councilors Clancy, Ossing, Landers and Doucette.

Order No. 16-1006458B-Reporting Obligations after a Devastating Event, Order 16-1005458A, with proposed new Article III of Chapter 485 of City Code to be entitled "Reporting Obligations After a Devastating Event."

The meeting was called to order 5:00 PM. Mr. Rider began reminding us that this started as an order to research how the city can ensure prompt remedial action after a devastating event takes place. In the past, the Code Enforcement office was notified but there was no time limit on the owner for action and the only recourse was fining them under the Anti-Blight Ordinance.

The recommendation is to add a new section to the Code, which defines a devastating event, owner, and structure; details a timeframe for reporting an event (72 hours); giving a status report (30 days); as well as sanctions for inaction. Councilor Ossing asked how an owner knows the 72 hours' clock is ticking and the response was that someone from Code Enforcement would inform them. Councilor Ossing suggested amending the language so there was formal notification before the 72 hours began.

Reports of Committees Cont'd:

It was moved and seconded to amend Section 485-17. Reporting Obligations, A to read, "Within 72 hours after receiving written notification from the City following a devastating event, the owner of the building..." The motion carried 3-0.

It was moved and seconded to ask for suspension of rules to put this in proper legal form and then to advertise. The motion carried 3-0.

It was moved and seconded to adjourn the Legislative & Legal Committee meeting; carried 3-0. Meeting adjourned at 5:25 PM.

Councilor Delano reported the following out of the Urban Affairs Committee:

Meeting Name: City Council Urban Affairs Committee

Date: October 25, 2016

Time: 5:45 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:50 PM – Adjourned: 6:40 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juare, Tunnera and Landers; and Councilors Clancy, Doucette, Ossing and Robey
Also Present: Kevin Eriksen (General Counsel, Ryan Development LLC); Robert Walker (Principal, Walker Realty); Cynthia Panagore Griffin. (Assistant City Solicitor, City of Marlborough); Douglas Scott (Interim Building Commissioner, City of Marlborough)

Order No. 16-1006443H: Communication from Attorney Erikson, Walker Realty LLC, multisided architectural elevations for proposed buildings to be located at 160, 142, 115, 105, 90, 58, 43, 36, 22, 21 & 11 Apex Drive. Kevin Eriksen and Robert Walker of Walker Realty LLC appeared before the Urban Affairs Committee for submission of proposed buildings for architectural review by the City Council as required by paragraph eight of the Development Agreement ("8. *Architectural Review*".) Mr. Walker presented renderings for buildings at 160, 142, 115, 105, 90, 58, 43, 36, 22, 21 & 11 Apex Drive where Councilors had the opportunity to ask questions about the individual buildings and their appearance. The Urban Affairs Committee recommended approval of the final elevations as presented to them. This approval allows the Building Commissioner the authority to issue building permits subject to building regulations in compliance with all applicable State laws. The committee also recommended the Building Commissioner be allowed to approve minor (*de minimis*) changes in the final designs. The committee agreed to request a suspension of the rules at the next regular City Council meeting on November 14, 2016 to request a vote on approval of the final elevations. **Motion made by Councilor Elder, seconded by Chair, to approve the final elevations as presented. The motion carried 5-0.**

Motion made by Councilor Juare, seconded by Chair, to authorize the building inspector to approve de minimis changes in the final designs. The motion carried 5-0.

Reports of Committees Cont'd:

Motion made by Councilor Juairé, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 6:40 PM.

Meeting Name: City Council Urban Affairs Committee

Date: November 1, 2016

Time: 5:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:33 PM – Adjourned: 6:55 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juairé, Tunnera and Landers; and Councilors Clancy, Doucette, Ossing and Robey
Also Present: Kevin Eriksen (General Counsel, Ryan Development LLC); Joe Trolla (Ryan Development LLC); Cynthia Panagore Griffin. (Assistant City Solicitor, City of Marlborough)

Order No. 16-1006632: Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant (Friendly's) with a Drive-thru, 157 Apex Drive. The Urban Affairs Committee met with Kevin Eriksen of Ryan Development LLC for a discussion of a Friendly's Restaurant located at 157 Apex Drive. The Apex Center was allowed two drive-thru restaurants by-right and any additional drive-thru restaurants would require a Special Permit approved by the City Council. Mr. Eriksen presented the location and proposed appearance of the Friendly's with the committee. They reviewed the proposed conditions of the draft decision for a special permit and had extended discussions for condition "6. Change of Operator." They decided since the site was internal to the Apex Center if there was a future change of operator with the similar use of a restaurant with a drive-thru, they could return to the Site Plan Review Committee for approval of changes to the site. If the site changed its primary use from a restaurant, the new operator would be required to appear before City Council for a special permit modification. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0.**

Motion made by Councilor Elder, seconded by Chair, to request a suspension of the rules at the next regular City Council Meeting on November 14, 2016 to send to the Legal Department to be placed in proper form. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 6:55 PM.

Reports of Committees Cont'd:

Meeting Name: City Council Urban Affairs Committee

Date: November 7, 2016

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:39 PM – Adjourned: 7:48 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juare, Tunnera and Landers; and Councilors Clancy, Doucette, Irish, Oram and Robey

Also Present:

Order No. 16-1006668: Arthur Bergeron (Attorney, Mirick O'Connell); Kevin Brett (Marlborough On Main Development LLC); Larry Reeves (Reeves Design Associates); Bruce Saluk (Bruce Saluk & Associates Inc.); Thomas DiPersio, Jr., P.E. (City Engineer, City of Marlborough); Cynthia Panagore Griffin (Assistant City Solicitor, City of Marlborough)

Order No. 16-1006631A: **David McCay** (Attorney, Mirick O'Connell); Eric Gardner (Director, Project Development, Benchmark Senior Living); Donald Rider, Jr. (City Solicitor, City of Marlborough)

Order No. 16-1006668: Site Plan Application from Attorney Bergeron, on behalf of Marlborough on Main Development LLC, for a mixed-use project at 163-175 Main Street in the Marlborough Village District. The Urban Affairs Committee met with Assistant City Solicitor Panagore Griffin, City Engineer DiPersio, Atty. Bergeron, Kevin Brett, Larry Reeves, and Bruce Saluk for a discussion of the Site Plan Application for a proposed mixed-use project to be built at 163-175 Main Street. The project is allowed by right under the downtown zoning ordinance, §650-34 Marlborough Village District (MV), where City Council acts as site plan review. They reviewed renderings of the building (front and back) and requested clarification from the applicant on their parking garage and the assignment of those spaces. They also discussed the two proposed businesses within the building. They went through the Draft Site Plan Approval Final Conditions revised on November 3, 2016 and made no changes to the conditions. The committee requested the Assistant City Solicitor place the Site Plan Approval Final Conditions in proper legal form for the next City Council meeting on November 14, 2016. **Motion made by Councilor Elder, seconded by Chair, to approve. The motion carried 5-0. Motion made by Councilor Elder, seconded by Chair, to request a suspension of the rules at the next regular City Council Meeting on November 14, 2016 to vote on the application. The motion carried 5-0.**

Reports of Committees Cont'd:

Order No. 16-1006631A: Communication from Mirick O'Connell on behalf of BSL Marlborough Development LLC regarding Proposed Zoning Amendment to the City of Marlborough Zoning Ordinance Allowing Assisted Living Facilities along Bolton Street. The Urban Affairs Committee met with City Solicitor Rider, Atty. McCay, and Eric Gardner for a discussion of the proposed zoning modification to Chapter 650, "Zoning", by inserting definitions for Assisted Living Facility, Convalescent Home/Nursing Home, Dementia Care Facility and Special Care Residence as well as adding a new subsection (44) Assisted Living Facilities to §650-18, "Conditions for uses." City Solicitor Rider explained the proposed changes to the zoning ordinance and that Assisted Living Facilities would be permitted in a certain A2 Zone by Special Permit only. They discussed the changes and how it related to the proposed project. The committee discussed requesting a suspension of the rules at the next regular City Council meeting to forward to the City Solicitor to be placed in proper form for the City Council agenda on November 28, 2016. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0.**

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 7:48 PM.

Suspension of the Rules requested – granted to allow the Communication from City Solicitor Donald Rider pertinent to new Ordinance language into the record.

Suspension of the Rules requested – granted

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, November 14, 2016 at 8:00 PM in the City Council Chambers, City Hall, the following proposed amendment to the Code of the City of Marlborough, "PROPERTY MAINTENANCE", having been read was ORDERED ADVERTISED as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 485, ENTITLED "PROPERTY MAINTENANCE," AS FOLLOWS:

1. Chapter 485, entitled "Property Maintenance," is hereby amended by adding a new Article III, entitled "Reporting Obligations After a Devastating Event," as follows:

ARTICLE III: Reporting Obligations After a Devastating Event

Section 485-16. Definitions.

When used in this article, the following terms shall have the following meanings, unless a contrary intention clearly appears:

BUILDING

A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed of a combination of any materials, to form shelter for persons, animals, or property.

CITY

The City of Marlborough.

COMMISSIONER

The Building Commissioner of the City of Marlborough or his/her designee.

DEVASTATING EVENT

A fire, gas explosion, lightning strike, storm, flood, falling tree, earthquake, act of vandalism, plumbing burst or freeze, or other similar event that significantly damages, in the estimation of the Commissioner, a building or structure located, at least in part, within the City.

OWNER

Every person, entity, mortgage lender, service company, property manager or real estate broker, who alone or severally with others:

A. Has legal or equitable title to any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise; or

B. Has care, charge or control of any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or

C. Is a mortgagee in possession of any such dwelling, dwelling unit, mobile home unit, building or parcel of land, vacant or otherwise; or

D. Is an officer or trustee of the association of unit owners of a condominium;

F. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

G. Is a person who operates a rooming house.

STRUCTURE

A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter or enclosure such as a building, framework, retaining wall, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

Section 485-17. Reporting Obligations.

- A. Within 72 hours after the City has sent, by first class mail and by certified mail, written notification to the owner of a building or structure damaged by a devastating event, the owner of the building or structure damaged by the devastating event shall report in writing to the Building Commissioner the name, mailing address, and contact information including phone number of the insurance company providing insurance on the building or structure, as well as the name, mailing address, and contact information including phone number of any licensed public insurance adjuster retained by or on behalf of the owner.
 - B. No later than 30 calendar days after the date of the devastating event, and at no less than 30-calendar-day intervals thereafter, the owner shall report in writing to the Building Commissioner the status of settlement negotiations with the insurer of the damaged building or structure, together with a timetable for repairing, renovating or otherwise disposing of the building or structure. The building or structure will be subject to evaluation by the Building Commissioner or his/her designee every 30 calendar days after the date of the devastating event.
 - C. Failure of the owner to comply, within the pertinent 30-calendar-day period, with the reporting obligations of this Section 485-17 shall subject the owner to the antiblight provisions set forth in Article I of this Chapter.
 - D. Nothing contained in this Section 485-17 shall prohibit the City from seeking any relief the City deems appropriate to protect and advance the health, safety, welfare and aesthetic concerns of the public, including but not limited to a demolition order pursuant to M.G.L. c. 139, § 1; an inspection of the building or structure by the Building Commissioner or his/her designee pursuant to M.G.L. c. 143, § 6; or a referral of the matter to the City's Board of Health to enforce the provisions of the sanitary code including by means of judicial appointment of a receiver pursuant to M.G.L. c. 111, § 127I. All costs incurred by the City pursuant to this section shall constitute a debt due the City pursuant to the provisions of M.G.L. c. 139, § 3A, M.G.L. c. 143, § 9, or M.G.L. c. 111, § 125, as applicable.
2. Since the deferred operation of this ordinance would tend to defeat its purpose, which is to make effective its provisions as soon as possible in order to protect the health and safety of the people or their property, this ordinance shall become effective immediately upon passage.

Be and is herewith ordered **ADVERTISED AS INDICATED ABOVE AND TABLE UNTIL THE DECEMBER 19, 2016 MEETING AS THE TEN DAY PERIOD WILL NOT BE MET FOLLOWING THE ADVERTISEMENT DATE OF NOVEMBER 26, 2016**; adopted.

Suspension of the Rules requested – granted to allow the Communication from the Assistant City Solicitor into the record.

ORDERED: That the Communication from Assistant City Solicitor re: Architectural Review Under Paragraph 8 of the Development Agreement for the Apex Center, **FILE**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the City Council did perform an architectural review, pursuant to paragraph 8 of the Development Agreement for Apex Center, of the architectural elevations and perspective renderings submitted by Walker Realty LLC for certain proposed buildings which will be located on a private way to be known as Apex Drive, located at Apex Center on Boston Post Road West (Route 20), which were as follows:

Building 3: Sheet 1, entitled “160 Apex Drive, Marlborough, MA 01752; Building Elevations; prepared for: APEX WR 1031 LLC, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1'-0”; Revisions: October 12, 2016;”

Building 4: Sheet 1, entitled “142 Apex Drive, Marlborough, MA 01752; Building Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1'-0”; Revisions: October 12, 2016;”

Building 5: Sheet 1, entitled “115 Apex Drive, Marlborough, MA 01752; Schematic Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1'-0”; Revisions: October 12, 2016;”

Fairfield Inn & Suites (105 Apex Drive): Sheets 01 and 02, both of which sheets are entitled “Fairfield Inn & Suites, Marlborough, MA, by LK Architecture” and dated April 14, 2016;

Building 6: Sheet 1, entitled “90 Apex Drive, Boston Post Road West, Marlborough, MA 01752; Building Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1'-0”; Revisions: October 12, 2016;”

Building 7 (58 Apex Drive): Sheet 1, entitled “Schematic Elevations; Apex Center Bldg-7; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1'-0”; Revisions: October 12, 2016;”

43 Apex Drive: Sheet 1, entitled "Perspective Views; Apex Center Bldg-10; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8" = 1'-0"; Revisions: May 12, 2016; *and* Sheet 2, entitled "Schematic Elevations, Apex Center Bldg-10; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8" = 1'-0"; Revisions: May 12, 2016;"

36 Apex Drive (Building 8): Being a color perspective rendering illustrating the standard prototype of a Chick-Fil-A restaurant with a drive-through window and outdoor patio dining space (no title block);

Building 11 (21 Apex Drive): Sheet 1, entitled "Building Elevations; Apex Center, Bldg 11, Marlborough, MA; prepared for: Building 11, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" *and* Sheet R1, entitled "Exterior Views, Apex Center, Bldg 11, Marlborough, MA; prepared for: Building 11, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" and

Building 12 (11 Apex Drive): Sheet 1, entitled "Building Elevations; Bldg-12, Marlborough, MA; prepared for: Owner, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" *and* Sheet 1, entitled "Perspective View" and "Option 2 1 Building – Split Entry; Apex Center, Bldg-12; prepared for: Owner, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;"

and having determined that said architectural elevations and perspective renderings substantially conform in all material respects with the details provided within the Master Concept Plan and Development Agreement, hereby authorizes the Building Commissioner to do the following:

- i. To issue building permits for said above-referenced buildings, subject to pertinent laws and regulations, as amended, including but not limited to the Massachusetts State Building Code.
- ii. To review any and all proposed changes to, or variations from, said architectural elevations and perspective renderings to determine whether the proposed changes or variations are material modifications which will require further review by the City Council.
- iii. To approve any and all proposed changes to, or variations from, said architectural elevations and perspective renderings which in the determination of the Building Commissioner are non-material modifications which will not require further review by the City Council.

APPROVED; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant with a Drive-thru, 157 Apex Dr., Order No. 16-1006632B, refer to **LEGAL DEPARTMENT TO PLACE IN PROPER LEGAL FORM FOR THE NOVEMBER 28, 2016 CITY COUNCIL MEETING**

President Clancy called a recess at 9:34 PM and returned to open meeting at 9:35 PM.

MOTION made by Councilor Juairé to change Condition number 5 of section C to add “Outside activity to start after 8:00 AM on Saturdays” – Does Not Carry

Suspension of the Rules requested – granted

ORDERED:

Site Plan Permit # _____
Site Plan Approval with Conditions

Applicant: Marlborough on Main Development LLC

Property Owner: Marlborough on Main Development LLC

Location: 163-175 Main Street (the “Site”) being shown as Parcels 77, 78 and 79 on Assessors Map 70, consolidated as a single lot as shown on a plan recorded with the Middlesex South Registry of Deeds in Plan Book _____, Plan _____.

Zoning District: Marlborough Village District (MV)

Plans: The following Site Plan Approval Final Conditions are based on a set of plans entitled “Marlborough On Main, 165-175 Main Street, Marlborough, MA, Site Plan,” said plans being comprised of sheets EX, C1, C2, C3, C4, C5, C6, C7, and C8, with the last revision date of 11-3-16 (said set of plans hereinafter, collectively, the “Site Plans”); a set of seven (7) architectural drawings including “Front Elevation – Proposed Concept” (dated September 27, 2016), “Section Through Building Showing Stepped Condition” (dated September 7, 2016), “Main Floor Plan – Parking and Commercial Space” (dated September 7, 2016), “2nd Floor Plan - Prelim. Unit Concept” (dated September 7, 2016), “3rd and 4th Floor Plans - Prelim. Unit Concept” (dated September 2, 2016), “5th Floor Plan - Prelim. Unit Concept” (dated September 2, 2016), and “Prelim. 6th/Roof Plan” (dated September 2, 2016), all of which seven (7) architectural drawings are by Reeves Design Associates; and a set of two (2) conceptual architectural renderings entitled “175 Main Street - Reeves Design Associates – 2016,” and “175 Main Street - Marlborough, MA, Conceptual Sketch - Rear View from Devens/McEnelly, Reeves Design Associates - Architects - 2016.”

SITE PLAN APPROVAL FINAL CONDITIONS:**A. Site Conformance:**

1. Construction of the Site shall be in conformance with the approved Site Plans, the provisions of Chapter 270 of the Code of the City of Marlborough, and the conditions stated herein.
2. All construction on the Site shall conform to the appropriate National, State and City of Marlborough codes and regulations in force for each respective discipline and be in accordance with the approved plans and permits. Codes and regulations shall include but are not limited to State Building, Plumbing, Wiring, NFPA, Zoning, DPW utility and roads, Noise and Signs.

B. Prior to Issuance of a Building Permit:

1. Construction Staging and Safety Plan:
 - a. The Applicant shall complete the project in accordance with a Construction Staging and Safety Plan (the "Construction Plan") approved by the Building Commissioner, Fire Chief, Police Chief, and City Engineer, which shall be consistent with the document entitled "Construction Safety and Staging Plan for The Landmark Building on Main Street," dated October 1, 2016, or as modified at the direction of the City officials listed above.
 - b. The Construction Plan shall provide detailed information concerning:
 - (i.) areas of the Site and adjacent property that will be marked-off for the staging of construction vehicles, etc.; (ii.) traffic management, detour routes if necessary, construction signage, pedestrian protection, blocked sidewalks, streets, etc.; (iii.) construction fencing to enclose material and equipment; (iv.) fencing and/or barricades to provide limits within the construction site for the separation of construction, pedestrian and vehicular traffic; and (vi.) dedicated illuminated and covered pedestrian walkways adjacent to the structure at egress paths in accordance with 780 CMR Massachusetts State Building Code and related Mass. Amendments, including but not limited to Chapters 31, 32, 33, and 34, in effect at the time the building permit application is submitted.
2. Green Building: The building plans shall show compliance with Section 650-34.D.2.(m), concerning sustainable building design, of the Zoning Code of the City of Marlborough. Prior to the issuance of Building Permits, the Building Commissioner shall review the building plans to ensure that the design incorporates green building techniques.

3. Rooftop Mechanicals: On the building plans, the elevation drawings shall show areas reserved for rooftop mechanicals and the elevator penthouse. Detail drawings illustrating the type, location, and dimensions of fencing/screening must be provided. The Building Commissioner shall confirm that the building drawings conform to the requirements of Section 650-34.D.2.(b) regarding screening of rooftop mechanical equipment.
4. Footings: If the footings for the proposed building will be located within the City of Marlborough public way layout, an easement from City Council will need to be obtained prior to the issuance of any building permits.

C. Construction:

1. Preconstruction Meeting: Prior to the commencement of construction, a preconstruction meeting shall be held on-site with the Building Commissioner, City Engineer, Conservation Officer, Fire Chief, Police Chief, and the site contractor responsible for doing the work. At this meeting said City officials will review the plans and conditions, exchange contact information including emergency contact numbers, and inspect erosion controls.
2. Use of Ways During Construction: Consistent with the Construction Plan, all areas for construction staging and offloading of building materials shall be coordinated to maximize public safety and to minimize interference with the customary use of public ways. Police Chief shall have the discretion and authority to require additional protection and/or details as needed. The Applicant shall pay to the City the cost for every police detail which is provided by the Marlborough Police Department for the project.
3. OSHA: All Contractors shall abide by OSHA regulations as appropriate, including but not limited to OSHA – 29 CFR, Section 1926.
4. Safety Official: The Applicant / site contractor shall have on the Site at all times during construction, a qualified Construction Safety Official. Prior to the commencement of construction, Applicant shall provide to the Building Commissioner the name and contact information of said Construction Safety Official.
5. Hours of Operation: In accordance with Section 431-3B. of the Code of the City of Marlborough, excavation machinery may be operated only during the normal workweek, from Monday through Saturday, except holidays, between the hours of 7:00 a.m. to 7:00 p.m., except Sunday when all use is prohibited except with variance by the Board of Health or as emergency work.

D. Storm Water:

1. **Siltation Control**: The Applicant, Property Owner, and site contractor shall be responsible for notifying the Conservation Officer in an expeditious manner if there is any visible siltation to the existing drainage system. Immediate measures shall be taken to control the siltation source and to restore any impacted areas.

E. Landscaping:

1. **Modifications**: All modifications to the approved Landscape Plans related to changes to the kind, size and placement of plant material shall receive the prior written approval of the Conservation Officer and shall be considered a minor change. The final landscape plan should indicate what will happen with the existing trees which were recently planted on the site. They should be saved for re-planting in the City.
2. **Site Visit**: Prior to the final signoff, the Landscape Architect shall provide an as-built planting plan and a letter of confirmation that the plan conforms to the approved plans. The Conservation Officer shall confirm by a site visit that the planting has been installed according to the approved Landscape Plans, or a revision, previously approved by the Conservation Officer, of the Landscape Plans.
3. **Replacement of Plantings**: Following 18 months of the date of the final signoff of the site work, any plant material that has died or is dying shall be replaced by the Property Owner with a species of the same kind and size.
4. **Mulch Placement**: Installation of mulch at the time of planting and thereafter shall be placed so that the mulch is not in contact with the trunk of newly planted trees and shrubs as shown on the details on the Landscaping Plan.
5. **Maintenance**: Landscaping will be properly maintained, replaced if necessary, and kept in good condition and in compliance with the Landscape Plans at all times. This shall be an ongoing condition.

F. Parking Garage:

1. The design of the parking garage access shall be such that entering and exiting from the garage is controlled by the Site's residents and business operators. The building design shall provide for adequate sight distances for vehicles exiting the garage to provide for pedestrian safety.
2. The parking garage is to be for the sole use of the residents of the Site, with two (2) spaces designated for employee parking for two (2) businesses located on the Site. The parking garage is not intended for public use.

3. The final design of the garage has not been completed and is therefore not included in the Site Plans reviewed. Once complete, details such as the locations of columns, dumpster(s), drains, grease trap, lighting and ventilation, final parking layout, and other items shall be reviewed and approved by the Building Commissioner and other City officials as appropriate.

G. Main Street Parking Spaces:

1. The Site Plans indicate that two (2) existing parking spaces on the north side of Main Street will be eliminated (see Section H.2 below).

H. Prior to Issuance of a Certificate of Occupancy:

1. Payment in Lieu of Parking: The Project contains a residential component, and therefore must either (i.) comply with parking space requirements, or (ii.) make a “payment in lieu of parking” for each space not provided, per Section 650-34.E. of the Zoning Ordinance. Required parking for the Project is as follows:

1 bedroom units:	2 @ .75 spaces per unit =	1.5 spaces
2 bedroom units:	30 @ 1.25 spaces per unit =	37.5 spaces
Total Spaces Required		= 39 spaces

Of the 27 parking spaces shown on the Site Plans, 25 spaces will be reserved for residential use (with 2 additional spaces for the use of the businesses located on site) providing a delta of 14 spaces. The Project will make a payment to the City in the amount of \$10,000 per space, for a total of \$140,000, in accordance with Section 650-34.E.(2)(b) of the Zoning Ordinance. With this payment, the Project complies with the parking requirements of the Marlborough Village District.

Of the 27 parking spaces shown on the Site Plans, the 25 spaces reserved for residential use count towards the total of 39 required parking spaces. The difference between the parking spaces provided and the parking spaces required, which is 14 spaces, will be addressed in strict accordance with Section 650-34.E.(2)(b) of the Zoning Ordinance of the City of Marlborough. Per the Ordinance, a payment-in-lieu-of-parking equal to \$140,000 (\$10,000 for each of the 14 spaces required but not provided on the Site) shall be paid to the City of Marlborough prior to the issuance of the first Certificate of Occupancy for the project. In addition, prior to the issuance of the first Certificate of Occupancy for the project, the Applicant shall pay to the City of Marlborough \$20,000 for the two (2) parking spaces (\$10,000 per space) eliminated on Main Street as part of the project (\$10,000 per space).

2. Work Within Public Way: All work within the public way layout, including but not limited to the street landscaped islands, planting, repaving, catch basin replacement, pavement milling and overlay, pavement markings, etc., as shown on the approved plans, shall be completed prior to the issuance of the first Certificate of Occupancy.

3. As-Built Plan: An as-built plan(s) must be submitted to the City Engineer for review prior to the issuance of the first Certificate of Occupancy or Temporary Certificate of Occupancy. The as-built plan(s) shall be prepared in accordance with the As-Built Plan Standards established by the City Engineer, which standards may be found on the website for the City of Marlborough.
4. Time for Completion: Work as provided for on the Site Plans shall be carried into effect and completed within three (3) years following the date of issuance of the Building Permit, unless the City Council has granted an extension of time for completion of the work in writing.
5. Signage. Pursuant to Section 650-34.I. of the Code of the City of Marlborough, the City Council hereby retains jurisdiction over all signage of the project to the extent such signage requires a sign permit under the Sign Ordinance. The final design, material, dimensions, content, and location of all such signage, including any freestanding entry signs and the project's internal signage, shall be subject to further review and sign permit approval from the City Council which must meet the requirements of Section 650-34.I. of the Code of the City of Marlborough.

I. General Provisions:

1. Minor Changes: The City Council delegates to the Building Commissioner the authority to approve minor changes to the approved Site Plans.
2. Enforcement: The City Council designates the Building Commissioner as the enforcing authority to bring enforcement actions for violations of this permit.
3. Deliveries: In order to mitigate the impact on traffic flow on Main Street and the impact of noise to the residents of and abutters to the Site, deliveries to the business on the Site by semi-trailers shall occur between 8:00 a.m. and 8:30 p.m. Daily deliveries to business on the Site by a small box truck, van or similar sized vehicle may occur between the hours of 7:00 a.m. and 9:00 p.m. On-site trash collection shall occur twice a week, or as required by management or the Board of Health to facilitate disposal demand, between the hours of 7:00 a.m. and 9:30 a.m. All possible measures shall be taken to avoid noise and disturbances to residents and neighboring businesses.

APPROVED; adopted.

Council President Clancy asked the Councilors to stand in affirmation of the vote. All eleven Councilors stood.

Suspension of the Rules requested – granted to allow a Communication from the City Solicitor re: Proposed Zoning Amendment to be entered a part of the record.

ORDERED: That the Proposed Zoning Amendment Allowing Assisted Living Facilities under Sections 650-5.B, 650-17, 650-18.A(44) and 650-48.A, refer to **LEGAL DEPARTMENT TO PUT IN PROPER LEGAL FORM & PLACE ON THE NOVEMBER 28, 2016 CITY COUNCIL AGENDA.**

ORDERED:

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT 11-1003004C (99-8311B)**

**NEW CINGULAR WIRELESS PCS, LLC
BY AT&T MOBILITY CORPORATION, ITS MANAGER**

CITY COUNCIL ORDER NO. 16-100663B

Re: 175 Maple Street

The City Council of the City of Marlborough hereby **GRANTS** the application to modify Special Permit No. 11-1003004C (which modified Special Permit No. 99-8311B) to New Cingular Wireless PCS, LLC ("AT&T"), having a usual place of business at 550 Cochituate Road, Suites 13 and 14, Framingham, MA 01701, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is New Cingular Wireless PCS, LLC which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On November 22, 2011, the City Council granted to Applicant, Special Permit No. 11-1003004C to modify Special Permit No. 99-8311B (collectively, the "Original Special Permit") which allowed an upgrade to the wireless communications facility ("WCF") attached to the existing water tank located at 175 Maple Street, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 82, Lot 132 (hereinafter "Site"). The owner of record for the Site is the PMC/Maple Landowner LLC.
3. By letter dated July 18, 2016, the Applicant submitted to the City Council an application to modify the Original Special Permit (hereinafter "Application"). The Applicant is a lessee of the Site's owner for purposes of the Application.
4. The WCF is located in the Business (B) Zoning District. Wireless communication devices are allowed by grant of a special permit in Business (B) Zoning District.
5. The modification of the Original Special Permit is sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.

6. Due to the continuing and ongoing modifications of the WCF, Applicant requests that the City Council delete Condition 7 of the Special Permit which requires that an American flag be flown at the WCF and that a more appropriate condition be imposed to honor the American flag. In particular, the Applicant proposes to remove the flag and associated mechanical lanyard device, as well as the gold ball finial at the top of the antenna canister.
7. Pursuant to the Rules and Regulations of Application for Special Permit (“Rules and Regulations”), the Building Commissioner, on behalf of the City Planner, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on Applicant's request to modify the Original Special Permit on August 29, 2016, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the modification to the Original Special Permit meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the WCF.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit to modify the Original Special Permit.
- B) The Site remains an appropriate location for the WCF and the modification to remove the flag from the WCF at the Site is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval. Flying the American flag is no longer appropriate due to the ongoing changes to the WCF located at the Site.

- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and continuing to screen its WCF to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant a modification of the Original Special Permit (hereinafter "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 4:**
- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
 - 2) Any problems arising out of the operation of the WCF that interfere with reception at the Marlborough Fire Department's headquarters at 215 Maple Street or the City of Marlborough's public safety radio system shall be rectified by Applicant as soon as possible.
 - 3) Condition numbered 7 of the Original Special Permit is hereby deleted and replaced with the following: "Applicant shall make, within thirty (30) days after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, a one-time contribution of \$5,000 to the City of Marlborough's Flag Account (#29024001 55851) as an appropriate means to honor the American flag in lieu of flying the American flag at the WCF located at the Site."
 - 4) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant, at its expense, shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit, if necessary, concerning the removal of the American flag and associated mechanical lanyard device, as well as the gold ball finial at the top of the antenna canister. Prior to applying for any necessary building permit, the Applicant shall provide a copy of the recorded Modified Special Permit to the Building Department, the City Council's office and the City Solicitor's office; if no building permit is deemed necessary by the Building Commissioner, the Applicant shall provide such copy to those offices forthwith after recording.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:35 PM.



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 14, 2016

ORDERED:

That the PUBLIC HEARING On the Proposed Amendment to City Code providing the Zoning Board of Appeals 100 days to file a decision on an appeal or a variance, Order No. 16-1006702, be and is herewith **CONTINUED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING.**

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juare, Oram, Ossing, & Robey.

ADOPTED

ORDER NO. 16-1006702A

CITY OF MARLBOROUGH RECEIVED
Office of the City Council CITY CLERK'S OFFICE
140 Main Street CITY OF MARLBOROUGH
Marlborough, Massachusetts 01752 NOV 21 P 4: 53
(508) 460-3711 TDD (508) 460-3610

City Councilor's Certification
Review of Evidence
Adjudicatory Public Hearing

Date: November 21, 2016
To: Marlborough City Council
From: City Councilor Kathleen D. Robey
Subject: Certification – Review of the Public Hearing on an Application for a
Special Permit for a Drive-Through Window, Apex Development, 157
Apex Drive.

This letter serves to document for the public record that I have reviewed the September 26, 2016 public hearing video for the special permit application for the proposed Drive-Through Window at 157 Apex Drive.

In accordance with MGL c. 39, § 23D (a), I hereby certify that I have reviewed the testimony or other evidence received at the public hearing. This certification, which shall be part of the record of the hearing, now enables me to participate in the City Council's deliberation and to vote on the subject special permit application.

CITY OF MARLBOROUGH
Office of the City Council
140 Main Street
Marlborough, Massachusetts 01752
(508) 460-3711 TDD (508) 460-3610

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2016 NOV 21 P 4: 53

City Councilor's Certification
Review of Evidence
Adjudicatory Public Hearing

Date: November 21, 2016
To: Marlborough City Council
From: City Councilor Edward Clancy
Subject: Certification – Review of the Public Hearing on an Application for a Special Permit for a Drive-Through Window, Apex Development, 157 Apex Drive.

This letter serves to document for the public record that I have reviewed the September 26, 2016 public hearing video for the special permit application for the proposed Drive-Through Window at 157 Apex Drive.

In accordance with MGL c. 39, § 23D (a), I hereby certify that I have reviewed the testimony or other evidence received at the public hearing. This certification, which shall be part of the record of the hearing, now enables me to participate in the City Council's deliberation and to vote on the subject special permit application.



City of Marlborough

Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

Arthur G. Vigeant
MAYOR

Nicholas J. Milano
EXECUTIVE AIDE

2016 NOV 22 A 11:01

140 Main Street

Marlborough, Massachusetts 01752

Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

www.marlborough-ma.gov

Patricia Bernard
EXECUTIVE SECRETARY

November 22, 2016

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Executive Session

Honorable President Clancy and Councilors:

I respectfully request an executive session with the Council for the purpose of discussing an ongoing contractual matter involving a property off Boston Post Road East.

I have enclosed a proposed motion for this request.

Please do not hesitate to contact my office with any questions or concerns.

Sincerely,



Arthur G. Vigeant
Mayor

Enclosure

MOTION:

It is moved that the Marlborough City Council conduct an executive session to discuss an ongoing contractual matter involving a property off Boston Post Road East, for the following purposes:

- 1) in conformance with the provisions of MGL c. 30A, section 21(a)(3), to discuss litigation strategy in the above matter, as an open meeting may have a detrimental effect on the litigating position of the City of Marlborough, and the chair hereby declares that an open meeting may have that effect; and
- 2) in conformance with the provisions of MGL c. 30A, section 21(a)(7), to comply with MGL c. 44, section 33B governing transfer requests, and to receive legal advice relative thereto in accordance with the holding of *Suffolk Construction Co., Inc. v. DCAM*, 449 Mass. 444 (2007).

It is further moved and stated that the Marlborough City Council will re-convene in open session after the executive session.



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November 22, 2016

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Grant Acceptance – Department of Public Works

Honorable President Clancy and Councilors:

Please find enclosed for your acceptance a grant for the Department of Public Works in the amount of \$10,500.00 from the Massachusetts Department of Environmental Protection.

This grant was awarded to the City through the Sustainable Materials Recovery Program and the City has received Recycling Dividends funds and Small-Scale Initiative funds. I have enclosed for your information documentation regarding the grant, as well as a letter and grant award notification from DPW Commissioner John Ghiloni.

I want to thank Governor Baker, Lieutenant Governor Polito, and MassDEP Commissioner Marty Suuberg for their continued support of Marlborough.

Please do not hesitate to contact me or Commissioner Ghiloni with any questions or comments.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosures



CITY OF MARLBOROUGH
Department of Public Works
Office of the Commissioner
135 Neil Street
Marlborough, Massachusetts 01752
(508) 624-6910 Ext. 33200
Facsimile (508) 624-7699 * TDD (508) 460-3610

November 20, 2016

Arthur Vigeant, Mayor
City of Marlborough
140 Main St
Marlborough, MA 01752

Dear Mayor Vigeant:

The Department of Public Works was recently awarded a Sustainable Materials Recovery Program grant in the amount of \$10,500. These funds, earned under the Recycling Dividends Program (RDP) and Small Scale Initiatives grant program, provide incentives for municipalities to improve their recycling programs by implementing best practices and reward communities who practice model recycling and waste reduction programs.

Funds will be expended on approved equipment and activities as detailed under section 8 of the attached grant award notice. I respectfully request that you submit this grant for Council acceptance and approval at the next meeting of the City Council on November 28, 2016.

A copy of the grant acceptance form has also been attached for Council's review and consideration.

Sincerely,

John L. Ghiloni
Commissioner of Public Works

cc: Ted Scott
Assistant Commissioner of Operations

11/21/2016

**RECYCLING DIVIDEND PROGRAM CONTRACT ("RDP Contract")
BETWEEN THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION ("MassDEP")**

AND THE City of Marlborough ("Municipality")

Pursuant to the Green Communities Act, relevant provisions of which are codified at M.G.L. c. 25A, Section 11F(d) and the regulations promulgated thereunder at 310 CMR 19.300 and in support of the Massachusetts Solid Waste Master Plan developed pursuant to M.G.L. c. 16, Section 21, MassDEP has awarded the Municipality a Sustainable Materials Recovery Program grant under the Recycling Dividends Program ("RDP") and Small Scale Initiatives grant. The Municipality has earned a payment of \$10,500.

The Recycling Dividends Program provides payments to municipalities that have implemented specific programs and policies proven to maximize reuse, recycling and waste reduction. Municipalities receive payments according to the number of criteria points their program earns. RDP provides an incentive for municipalities to improve their recycling programs by implementing best practices and it rewards communities with model recycling and waste reduction programs.

Duration: The term of this Contract shall be in effect until the municipality has expended all RDP funds and reported to MassDEP on use of funds.

RESPONSIBILITIES OF THE MUNICIPALITY

1. **Authority:** The Signatory of this RDP Contract is authorized by the governing body of the Municipality to enter into this Contract on behalf of the Municipality and apply for and accept funds on behalf of the Municipality.
2. **Commonwealth Terms and Conditions:** The Municipality shall comply with the Commonwealth Terms and Conditions and other requirements set forth in the Municipality's executed Master Service Agreement.
3. **Failure to Comply:** If, in the judgment of MassDEP, the Municipality fails to comply with any of its responsibilities identified in this Contract, then, at the election of MassDEP, (a) the Municipality shall repay the RDP funds to MassDEP within 90 days; and/or (b) title to all materials purchased with the RDP funds immediately and without any further steps shall be transferred to MassDEP; and/or (c) MassDEP may find the Municipality not eligible to seek another Sustainable Materials Recovery Program Grant for up to three years. MassDEP may provide written notice to the Municipality of any such failure to comply. Such notice may provide a time period and manner for the Municipality to cease or remedy the failure. Such notice from MassDEP of any such failure by the Municipality is not a precondition to MassDEP's right to select options (a), (b), and/or (c) above. The Municipality shall follow the instructions of MassDEP regarding possession of the materials purchased with RDP funds. The Parties hereby agree to execute any and all documents necessary to accomplish said transfer. Furthermore, the Municipality shall transfer or arrange to transfer actual possession of said materials to an authorized representative of the Commonwealth of Massachusetts or its designee.
4. **Recycling in Practice:** The Municipality has established paper, bottle and can recycling in all municipal offices and meeting spaces, excluding schools. The Municipality shall continue such paper, bottle and can recycling during the term of the RDP Contract.
5. **Buying Recycled Products:** The Municipality has established a written policy which promotes a preference for the purchase of recycled products in lieu of non-recycled products and all staff with purchasing authority are aware of and are following the established policy during the term of the RDP Contract. Proof of annual buy recycled policy staff notification is required for all SMRP grant applications.

6. RDP Payment Calculation: MassDEP has calculated the RDP Payment using the table below which shows payment brackets based on the number of households served by the municipal solid waste program and the point value for each bracket. *Section 7 – Program Criteria* and *Appendix A – Criteria Performance Standards* describe in detail the conditions for earning points.

Trash Households Served	Value of Each Point
1 - 1,999	\$200
2,000 - 4,999	\$400
5,000 - 7,499	\$800
7,500 - 9,499	\$1,000
9,500 - 12,499	\$1,500
12,500 - 16,999	\$2,500
17,000 - 24,999	\$3,000
25,000 - 31,999	\$3,500
32,000 - 99,999	\$6,000
100,000 +	\$10,000

7. Program Criteria: The Municipality, through its RDP application, certifies that all points earned are for programs that were in place no later than June 15, 2016 and that these programs fully meet the performance standard set forth in *Attachment A – Criteria Performance Standards*. *Section 13 – RDP Payment Calculation* lists the program criteria for which the Municipality has earned points, and upon which the Municipality's payment was calculated.
8. Use of Funds: RDP Payments shall be expended on approved equipment and activities, listed below, to enhance the performance of the Municipality's waste reduction programs. Use of a dedicated account or revolving account is recommended but not required. Funds do not have to be spent in the fiscal year received, and may be carried over to future years and accumulated to fund a larger eligible expense or project. Small-Scale Initiative awarded as part of this contract and referenced in Section 13 follow the same Use of Funds requirements.

Approved Equipment and Activities (See Grant Guidance for details and examples):

- a. Recycling carts, bins, and/or other recycling collection containers and signage;
- b. Compost bins, kitchen scrap buckets, carts and other collection containers for food waste/organics;
- c. Environmentally Preferred Products including rain barrels and purchases from state contract FAC85 Categories: 1, 2, 3, 5C, 5E, 5F, 5H, and 7. Compostable foodservice ware may be purchased from GRO29;
- d. Incremental operating costs for a new organics diversion program;
- e. Roll-off containers, compactors and balers for the collection of materials for reuse or recycling;
- f. Cost to host a second or subsequent household hazardous waste collection event; conditions apply (see Grant Guidance);

- g. Dedicated Waste Reduction Enforcement Coordinator (must spend designated time each week on enforcement). Mandatory recycling must be codified in regulation, ordinance or bylaw and must include a fine for non-compliance. Municipalities receiving a Waste Reduction Enforcement Coordinator (WREC) SMRP grant may not use RDP funding as part of the matching funds requirement;
 - h. Costs associated with the collection and recycling of materials listed in the CHARM section of the RDP grant application;
 - i. Establishing and/or maintaining a municipally operated swap shop;
 - j. Recycling collection infrastructure and recycling site improvements at schools and drop-off locations with prior approval from MassDEP;
 - k. Recycling outreach and educational tools and materials listed and described in the Approved Equipment and Activities section of the Recycling Dividends Program (RDP) Grant Guidance;
 - l. Costs associated with implementing or maintaining a Pay-As-You-Throw (PAYT) program;
 - m. Funds to enhance school recycling and composting programs;
 - n. School chemical disposal;
 - o. Reusable trays for cafeterias, small compostable cups, reusable bags, reusable water bottles;
 - p. Funding up to \$750 annually for recycling related conferences and memberships.
9. **Record Keeping:** The Municipality shall be responsible for keeping documentation (i.e. proof of purchase in the form of an invoice which lists the vendor name and address, item purchased, item price, number of items purchased and shipping costs if any) by calendar year, of how RDP funds were expended and the remaining balance of RDP funds. MassDEP may conduct record audits each year to ensure compliance with this Contract.
10. **Reporting:** By February 15th of each year, for the duration of the Contract, the Municipality shall submit the Recycling and Solid Waste survey and the Recycling Dividends Program Annual Report through its ReTRAC Connect™ account. Failure to comply with these reporting requirements will jeopardize future grant awards and RDP payments.
11. **Environmental Compliance:** The Municipality understands receipt of RDP funds from MassDEP does not in any way imply that the Municipality is in full compliance with all applicable environmental regulations. This Municipality shall not be construed as, nor operate as, relieving the Municipality or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals. The Municipality's facility(ies) are subject to inspection at any time by MassDEP and noncompliance with applicable environmental regulations may result in formal enforcement actions, including penalties.
12. **Addendums:** Should MassDEP award additional RDP funds, an addendum to the Contract shall be provided to the Municipality. The same terms and conditions apply to the addendum.

13. RDP Payment Calculation:

The Municipality's payment has been calculated as follows:
(Value of each point) x (Total RDP Points) + (Small Scale payment amount)

a. Solid Waste Program	0
b. Organics	0
c. Bulky Items	2
d. Yard Waste	1
e. Mandatory Recycling	0
f. Household Hazardous Waste	1
g. Center for Hard to Recycle Materials	2
h. Textile Bonus Point	0

TOTAL RDP POINTS 6

VALUE OF EACH POINT \$1,500

RDP PAYMENT AMOUNT \$9,000

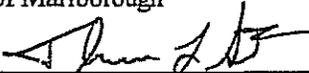
SMALL-SCALE PAYMENT AMOUNT \$1,500

TOTAL GRANT PAYMENT AMOUNT \$10,500

IN WITNESS WHEREOF, MassDEP and the Municipality hereby execute this Contract.

COMMONWEALTH OF MASSACHUSETTS

By: _____ (Date)
Greg Cooper, Division Director
Bureau of Air and Waste
Department of Environmental Protection

City of Marlborough
By:  ASSISTANT COMMISSIONER OF OPERATIONS 11/10/16
(Signature and Title) (Date)

THEODORE L. SCOTT
(Print Name)

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: Department of Public Works DATE: 11/15/2016

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Ted Scott- Asst Commissioner of Operations

NAME OF GRANT: Recycling Dividends Program Grant

GRANTOR: MassDEP Sustainable Materials Recovery Program

GRANT AMOUNT: \$10,500.00

GRANT PERIOD: Calendar Year 2017 - Grant Award can be carried forward

SCOPE OF GRANT/
ITEMS FUNDED RDP funds will be expended on approved equipment and activities from the
approved list: Examples include: Recycling Carts, bins, containers and signage;
Compost bins; Costs associated with hazardous waste collection event;
Recycling collection infrastructure; (Please refer to Item 8. from the attached
notice of award for a comprehensive list of authorized expenditures.)

IS A POSITION BEING
CREATED: No

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? No

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS
TO BE USED:

ANY OTHER EXPOSURE TO CITY?
City must comply with its responsibilities as identified in the contract.

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: A.S.A.P. (no later than 12-31-16)

**DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER
LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL
FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT**



City of Marlborough

Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2016 NOV 22 A 11: 01

140 Main Street

Marlborough, Massachusetts 01752

Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

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Arthur G. Vigeant
MAYOR

Nicholas J. Milano
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

November 22, 2016

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Appointment to the Zoning Board of Appeals

Honorable President Clancy and Councilors:

Please find enclosed for your review and confirmation the appointment of Robert Levine as a member of the Zoning Board of Appeals (ZBA) for a term to expire three years from the date of City Council confirmation.

Mr. Levine has a long history of community involvement and has served as an alternate member on the ZBA since September 2013. Since his appointment as an alternate member, he has participated in many ZBA meetings and is well-prepared to serve on the ZBA as a regular member.

Mr. Levine will be replacing Ted Scott who is now the Department of Public Works Assistant Commissioner of Operations. Mr. Scott's resignation letter is attached.

Please do not hesitate to contact me with any questions or comments.

Sincerely,

Arthur G. Vigeant
Mayor

Enclosure



CITY OF MARLBOROUGH
Department of Public Works
Assistant Commissioner of Operations
135 Neil Street
Marlborough, Massachusetts 01752
(508) 624-6910 Ext. 33102 Facsimile (508) 624-7699

November 21, 2016

Mayor Arthur Vigeant
140 Main Street - City Hall
Marlborough, MA 01752

Re: Resignation from the ZBA

Dear Mayor Vigeant:

Please accept this letter as my resignation from my position as full-time member of the City of Marlborough Zoning Board of Appeals. Unfortunately, the responsibilities of my new position with the city will not allow me to continue my commitment to the ZBA. With the addition of new full-time member Tom Pope and with part-time member Bob Levine able to commit to being a fulltime member, I feel now is the time to step down. Please consider my resignation effective upon the conferment of Bob Levine as a full-time board member.

It has been a pleasure serving on the board and representing the City of Marlborough.

Sincerely,

Theodore L. Scott
Assistant Commissioner, Operations

cc: Susan Brown, ZBA Secretary



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

DONALD V. RIDER, JR.
CITY SOLICITOR

2016 NOV 22

WILLIAM S. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

November 22, 2016

Edward J. Clancy
President
Marlborough City Council

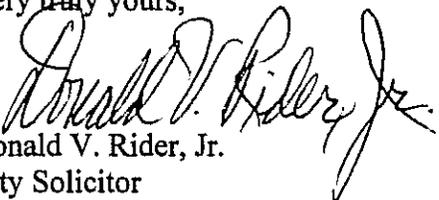
RE: Order No. 16-1006631C
Proposed Zoning Amendment – Assisted Living Facilities

Dear President Clancy and Councilors:

I enclose for the Council's consideration a proposed amendment to the City's Zoning Ordinance that would specially permit certain areas of land in the Residential A-2 zoning district to be used for assisted living facilities. The proposed amendment is in proper legal form.

Thank you for your attention to this matter.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Arthur Vigeant, Mayor
David McCay, Esquire

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 650, ENTITLED "ZONING," AS FOLLOWS:

1. Chapter 650, entitled "Zoning," is hereby amended as follows:
 - a. In Section 650-5.B, by deleting the definition of ASSISTED LIVING FACILITY and inserting in place thereof the following:-- ASSISTED LIVING FACILITY means a managed residential community, operating under the provisions of MGL Chapter 19D and the regulations promulgated thereunder at 651 CMR 12.00 as may be amended from time to time. An Assisted Living Facility may provide a Special Care Residence, but shall not provide a (i) Dementia Special Care Unit, or (ii) any other full-time nursing care such as provided at a Long-Term Care Facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.
 - b. In Section 650-5.B, by amending the definition of BOARDINGHOUSE OR LODGING HOUSE by inserting after the words "nursing homes" the following:-- Assisted Living Facilities.
 - c. In Section 650-5.B, by deleting the definition of CONVALESCENT HOME / NURSING HOME and inserting in place thereof the following:-- CONVALESCENT HOME / NURSING HOME means any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for four or more persons admitted thereto for the purpose of convalescent or nursing care, as provided in MGL c. 111, § 71 and the regulations promulgated thereunder at 105 CMR as may be amended from time to time.
 - d. In Section 650-5.B, by adding the following new definition:-- DEMENTIA SPECIAL CARE UNIT means a facility licensed pursuant to 105 CMR 150.000, or a unit thereof, that uses any word, term, phrase, or image, or suggests in any way, that it is capable of providing specialized care for residents with dementia, which must comply with 105 CMR 150.022 through 150.029. The purpose of a Dementia Special Care Unit is to care for its residents with dementia in the long term. A Dementia Special Care Unit may be a stand-alone use, or it may be part of another Long-Term Care Facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.
 - e. In Section 650-5.B, by adding the following new definition:-- SPECIAL CARE RESIDENCE" means a separate and distinct section within an Assisted Living Facility and comprising no more than 30% of its residence units, that provides an

enhanced level of supports and services for one or more of its residents to address their specialized needs due to cognitive or other impairments.

- f. In Section 650-17, entitled “Table of Use Regulations,” by adding to said section Section 650-17 the following use to be regulated in each zoning district as follows:

Zoning District Abbreviations

	RR	A1	A2	A3	RB	RC	RCR	B	CA	LI	I	MV
Residential Use												
Assisted Living Facilities (44)	N	N	SP	N	N	N	N	N	N	N	N	N

- g. In Section 650-18, entitled “Conditions for uses,” by adding new subsection (44), as follows:--

(44) Assisted Living Facilities:

- a. shall only be located within the A-2 zoning district north of U.S. Route 20 and with frontage on Massachusetts State Route 85;
- b. shall be located only on parcels of five acres or more;
- c. shall be subject to a special permit based on the City Council’s written determination which shall include, but not be limited to, consideration of each of the following criteria:
 - (1) Adequate access to and from the proposed Assisted Living Facility for emergency response vehicles;
 - (2) Adequate alternative access, if necessary, to and from the proposed Assisted Living Facility in case an emergency requires evacuation thereof;
 - (3) Provision for medical transport; and
 - (4) The overall impact of the proposed Assisted Living Facility will not adversely affect the neighborhood or the City;
- d. and shall be subject to the following additional requirements:
 - (1) Dimensional Conformity.
A proposed Assisted Living Facility shall conform to the dimensional criteria for the A-2 zoning district as set forth in Section 650-41, entitled “Table of Lot Area, Yards, and Height of Structures”; provided, however, that if the City Council finds, in accordance with Section 650-59.C(12)(a), that (i) land to be donated for municipal purposes to the City as a condition of a special permit to be granted hereunder will benefit the City and its citizens generally, and that (ii) prior to such land donation the proposed Assisted Living Facility otherwise conforms to the dimensional criteria of Section 650-41, then the City Council may, as a condition for granting a special permit hereunder, modify Section 650-41’s dimensional criteria as applied to the proposed Assisted Living Facility.
 - (2) Application Process.
 - (a) The applicant shall submit a plan for the overall development, including a final site plan showing the final completed development in all phases as contemplated on the site at the time of application, regardless of the number of phases in

which it may be constructed. The application shall include at a minimum a completely designed first phase of development.

(b) The application shall be filed in the name of the applicant. The applicant must either own the development parcel or, when the application is submitted, submit authorization in writing to act for all of the owners of the development parcel.

(3) Design Standards.

In addition to all applicable landscaping and screening regulations set forth in Section 650-47, the following design standards shall apply:

- (a) Structures shall be designed to be compatible in architectural character with the surrounding neighborhood and shall not present an 'institution'-like front façade;
- (b) Surface parking in front of the facility shall be minimized, with staff parking preferably at the side and rear;
- (c) Rooftop mechanicals shall be screened and not look like 'add-on' elements;
- (d) Pedestrian walkways and connections to surrounding uses, particularly public uses, shall be encouraged;
- (e) Bicycle parking shall be provided; and
- (f) As appropriate, a covered bus shelter may be required.

- h. In Section 650-48, entitled "Off-street parking," subsection A, by inserting a new sub-subsection 16 as follows:-- (16) Assisted Living Facility: one space for each two beds. Reserve parking area equivalent to one space per four employees on the largest shift at the Facility shall be provided on the site plan in case of need, such provision to be reviewed after one full year of continuous Facility operation.

- 2. This ordinance shall become effective upon passage by the City Council and signature by the Mayor.

ADOPTED

In City Council
Order No. 16-1006631B
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:



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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

NOV 21 P 4:01

City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

November 22, 2016

Edward Clancy, President and Members
Marlborough City Council

RE: Order No. 16-1006632B Special Permit for a Third Drive-Through Window
at Apex Center

Dear President Clancy and Members:

Attached for your consideration is Order No. 16-1006632B. As you and the members of the Council are aware, up to two drive-through windows associated with food service facilities are allowed as of right at Apex Center under section 650-35 E.1(j.), the Hospitality and Mixed Use Overlay District, of the Zoning Code. The subject of the attached Order is special permit for a third drive-through window associated with a food service facility at Apex Center. Said Order is in proper form for consideration by the body.

I am available to answer your questions. Thank you for your attention to this matter.

Very Truly Yours,

/s/ Cynthia Panagore Griffin

Cynthia Panagore Griffin
Assistant City Solicitor

Enclosure

Cc: Kevin Eriksen, Esq.
Arthur Bergeron, Esq.
Brian Falk, Esq.

IN CITY COUNCIL

Marlborough, MA November ____, 2016

ORDERED:

DECISION FOR SPECIAL PERMIT

IN CITY COUNCIL

Special Permit
Ryan Development LLC
Order No. 16-1006632B

**DECISION ON AN APPLICATION FOR SPECIAL PERMIT
CITY COUNCIL ORDER NO. 16-1006632B**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Walker Realty LLC, its successors and assigns (the "Applicant") to build a third restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District (the "HRMUOD") located at 157 Apex Drive, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT & RULINGS

1. Applicant, is a duly organized and existing Limited Liability Company having a business address of 4 Lan Drive, Westford, Massachusetts 01886.
2. Apex WR 1031 LLC is the owner of the property located at 22 Apex Drive, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 78, Parcels 12, 14, 38 and 39, and Map 89, Parcel 7 (the "Site").
3. The Applicant proposes to build and operate a third restaurant with a drive-through at the Site (the "Use") as part of the larger Apex Center development (the "Project").
4. The Site is located in the HRMUOD, following the City Council's approval of a Master Concept Plan for the Project (See Order No. 16-1006443G-1), approval of the Development Agreement for the Project (See Order No. 16-1006443G-2), and the Owner's acquisition of the Site

(See deed recorded in the Middlesex South District Registry of Deeds in Book 67444, Page 575).

5. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an application for a special permit for the third restaurant with a drive-through at Apex Center, as provided in this Decision and subject to the following.
6. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled "157 Apex Drive Building Pad and Site Plan" prepared by Hancock Associates and dated August 2, 2016, last revised September 15, 2016 (the "Plans").
7. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
8. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, September 12, 2016. The hearing was opened and closed on that date.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic.

BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:

A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.

B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and

conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to build and operate restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.

2. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Project.

3. Site Plan Review. The issuance of the Special Permit is further subject to that certain Site Plan Review Decision issued on November 2, 2016 for the overall Project, which Site Plan Review Decision was issued in accordance with the HRMUOD Ordinance and the City of Marlborough Site Plan Review Ordinance.

4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the City Council or the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow, increase the size, shape or position of the building, or alter the fencing bordering the property (if any), all as shown on the Plans.

5. Incorporation of Submission. All plans, photo and other renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

6. Rendering. The City Council expressly approves the appearance of the building design for the Use, illustrated in the form of an architectural

rendering by Upland Architects, dated 9.7.2016 (the "Rendering"), which is herein incorporated into and becomes a part of this Special Permit and which becomes a condition and requirement of the same, unless otherwise altered by the City Council, except that minor alterations substantially consistent with the Rendering may be granted by the Building Commissioner, pursuant to paragraph 2. of section L. of §650-35 (HRMUOD) of the City Zoning Code, in the Building Commissioner's reasonable discretion.

7. Change of Operator. The Applicant intends that the operator of the drive-through will be Friendly's Restaurant, or an equivalent or similar type of food service establishment. For so long as Apex Drive remains a private way, a type of food service establishment equivalent or similar to Friendly's Restaurant may operate the drive-through without an amendment to this Special Permit provided that the Building Commissioner, in his reasonable discretion, determines that (i) the proposed new type of food service establishment is not likely to generate significantly greater drive-through traffic volumes, or (ii) in the event that the Building Commissioner, in his reasonable discretion, determines that the proposed new type of food service establishment is likely to generate significantly greater drive-through traffic volumes as provided in (i) above, the Site Plan Committee or its successor, through a Site Plan Approval decision may, in the Site Plan Committee's reasonable discretion, impose reasonable site and/or layout modification conditions to ensure safe drive-through operations.

8. Recording of Decision. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its successors and/or assigns at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: _____ - Nay: _____ - Absent: _____

ADOPTED
In City Council
Order No. 16-1006632B

Adopted: _____ 2016

A TRUE COPY
ATTEST:
City Clerk



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MARLBOROUGH

P 4: 01

City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

November 22, 2016

Edward Clancy, President and Members
Marlborough City Council

RE: Order No. 16-1006700 Acceptance of Deed-in-Lieu-of-Foreclosure, Russell Street

Dear President Clancy and Members:

Attached for your consideration is the above captioned order. Said Order is in proper form for consideration by the body.

I am available to answer your questions. Thank you for your attention to this matter.

Very Truly Yours,

/s/ Cynthia Panagore Griffin

Cynthia Panagore Griffin
Assistant City Solicitor

Enclosure

Cc: Eileen Bristol, Collector

ORDERED:

That pursuant to Section 77C of Chapter 60 of the General Laws of Massachusetts, the City does hereby accept title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, of the Sisters of the Benedictine Center, 254 Still River Road, Still River MA, to a certain parcel of land described herein as follows:

That certain parcel known and numbered on the Assessors' Map of the City of Marlborough as Map 55 Parcel 210B, being approximately 43,966 S.F., and located on Russell Street.

ADOPTED

In City Council
Order No. 16-1006700
Adopted

Approved By Mayor
Arthur G. Vigeant
Date:

A TRUE COPY

ATTEST:

DEED IN LIEU OF FORECLOSURE

I, **Antoinette C. Dufault**, of 254 Still River Road, Still River, MA 01467

for consideration paid and in full forgiveness of the present outstanding tax liability on the herein conveyed property

hereby grants, transfers and delivers unto the City of Marlborough, a municipal corporation having a principal address of City Hall, 140 Main Street, Marlborough, MA, ("Grantee") with Quitclaim covenants

all of my right, title and interest in and to the fee in that certain lot located on the southerly side of Russell Street, shown as all of Lot No. 3 and one-half of Lot No. 4 on a plan of land entitled "Plan of Land in Marlboro, Mass, owned by William A. Amato, Scale 1" = 40 ft., June 1953, George D. White, Marlboro, Mass., Surveyor" recorded in the Middlesex South Registry of Deeds as Plan 1048 of 1953 in Book 8089, Page 263, the area of said certain lot being 43,966 S.F. acres, more or less, also known and numbered on the Assessors Map of the City of Marlborough as Map 55, Parcel 210B.

Being the same premises conveyed to Richard A. Dufault and Antoinette C. Dufault, as tenants by the entirety by deed of Karl Siniawski dated November 24, 1971 and recorded in the Middlesex South Registry of Deeds in Book 12117, Page 55. For probate of Richard A. Dufault, see Massachusetts Probate Court, Middlesex Division, Docket Number 85D-4060.

WITNESS my hand and seal this _____ day of _____, _____.

By: _____
Antoinette C. Dufault

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, _____, before me, the undersigned notary public, personally appeared Antoinette C. Dufault, proved to me through satisfactory evidence of identification, being _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

PERAC

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CITY CLERK'S OFFICE

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chairman*

JOSEPH E. CONNARTON, *Executive Director*
2016 NOV 18 A 9 19

Auditor SUZANNE M. BUMP | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES M. MACHADO | ROBERT B. MCCARTHY | JENNIFER F. SULLIVAN

MEMORANDUM

TO: Marlborough Retirement Board
FROM: *Joseph E. Connarton*
Joseph E. Connarton, Executive Director
RE: Appropriation for Fiscal Year 2018
DATE: November 15, 2016

Required Fiscal Year 2018 Appropriation: **\$8,446,002**

This Commission is hereby furnishing you with the amount to be appropriated for your retirement system for Fiscal Year 2018 which commences July 1, 2017.

Attached please find summary information based on the present funding schedule for your system and the portion of the Fiscal Year 2018 appropriation to be paid by each of the governmental units within your system.

The current schedule is/was due to be updated by Fiscal Year 2018.

The amounts shown in this letter reflect an assumed payment date of July 1. The Housing Authority typically makes its payments in October, November and December (on average, assumed November 15). The adjusted payment for the Housing Authority is \$98,932.

If you have any questions, please contact PERAC's Actuary, Jim Lamenzo, at (617) 666-4446 Extension 921.

JEC/jrl
Attachments

cc: Office of the Mayor
City Council
c/o City Clerk

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Marlborough Retirement Board

Projected Appropriations

Fiscal Year 2018 - July 1, 2017 to June 30, 2018

Aggregate amount of appropriation: **\$8,446,002**

Fiscal Year	Estimated Cost of Benefits	Funding Schedule (Excluding ERI)	ERI	Total Appropriation	Pension Fund Allocation	Pension Reserve Fund Allocation	Transfer From PRF to PF
FY 2018	\$9,850,534	\$8,446,002	\$0	\$8,446,002	\$8,446,002	0	\$1,404,532
FY 2019	\$10,377,721	\$8,820,051	\$0	\$8,820,051	\$8,820,051	\$0	\$1,557,670
FY 2020	\$10,932,877	\$9,210,710	\$0	\$9,210,710	\$9,210,710	\$0	\$1,722,167
FY 2021	\$11,517,484	\$9,618,719	\$0	\$9,618,719	\$9,618,719	\$0	\$1,898,765
FY 2022	\$12,133,105	\$10,044,851	\$0	\$10,044,851	\$10,044,851	\$0	\$2,088,254

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.

For illustration, we have shown the amount to be transferred from the Pension Reserve Fund to the Pension Fund to meet the estimated Cost of Benefits for each year. If there are sufficient assets in the Pension Fund to meet the Cost of Benefits, this transfer is optional.

Marlborough Retirement Board
Appropriation by Governmental Unit

Fiscal Year 2018 - July 1, 2017 to June 30, 2018

Aggregate amount of appropriation: **\$8,446,002**

UNIT	Percent of Aggregate Amount	Funding Schedule (excluding ERI)	ERI	Total Appropriation
City of Marlborough	69.83%	\$5,897,843	\$0	\$5,897,843
School Department	29.03%	\$2,451,874	\$0	\$2,451,874
Housing & Community Devel. Authority	1.14%	\$96,285	\$0	\$96,285
UNIT TOTAL	100%	\$8,446,002	\$ 0	\$8,446,002

The Total Appropriation column shown above is in accordance with your current funding schedule and the scheduled payment date(s) in that schedule. Whenever payments are made after the scheduled date(s), the total appropriation should be revised to reflect interest at the rate assumed in the most recent actuarial valuation. Payments should be made before the end of the fiscal year.

**MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752**

2016 NOV 17 A 9:15

Call to Order

October 24, 2016

The Meeting of the Marlborough Planning Board was called to order at 7:00pm in Memorial Hall, 3rd Floor City Hall 140 Main Street, Marlborough, MA. Members present included: Barbara Fenby, Colleen Hughes, Sean Fay & Philip Hodge.

Also in attendance were Board Secretary Melissa Peltier & City Engineer Thomas DiPersio
Brian DuPont & Shawn McCarthy were absent.

1. Meeting Minutes:

A. Regular Meeting October 17, 2016

On a motion made by Ms. Hughes, seconded by Mr. Fay it was voted to approve the minutes of the October 17, 2016 Regular Meeting. Motion carried with Mr. Hodge Abstaining.

2. Chair's Business:

A. Update regarding Planning Board Page – Calendar

This item was carried over to the next regularly scheduled agenda. (November 14, 2016)

3. Approval Not Required: None

4. Public Hearings (7:15): None

5. Pending Sub Division Plans: Updates and Discussion:

A. Engineers Report

City Engineer DiPersio reported out that all of his items will be addressed later in the agenda.

B. Request for extension (Formal) Walker Brook Estates (December 6, 2016)

Ms. Hughes read the request from the developer into the record.

Ms. Hughes read the communication from the Code Enforcement Officer into the record.

On a motion made by Ms. Hughes, seconded by Mr. Fay it was vote to accept the communications and place them on file as well as refer the attached construction schedule to the Engineering Department and allow for the extension of the subdivision completion deadline to January 10, 2017. Motion passed.

C. Discussion/Decision Goodale Estates (November 15, 2016)

Attorney Austin was in attendance to answer any questions the Board may have.

A final vote was taken in regards to the requested waivers, the votes were as follows:

- Sidewalk width (Article V, Section A676-26 (A)(1) and cross section in appendix "F" requires a 6' sidewalk width. This request is for a 5' width.

On a motion made by Mr. Fay, seconded by Ms. Hughes it was voted to approve this waiver. Motion passed.

- A waiver to Article V, Section A676-26(A) is requested to allow for elimination of the sidewalk on the right side of the road between the rounding at station 0+50 to the driveway on lot #7.

This waiver request was withdrawn by the developer.

- A waiver is requested to allow a reduction of the right of way width required in Article V, Section 676-12c(1)(a) from 50 Ft to 40 Ft.

On a motion made by Mr. Fay, seconded by Mr. Hodge it was voted to approve this waiver. Motion passed.

- A waiver is requested to allow the reduction of the paved road width required in Article V, Section 676-24(B)(2)(a) from 26 Ft to 24Ft.

On a motion made by Mr. Fay, seconded by Mr. Hodge it was voted to deny this waiver request. Motion passed.

On a motion made by Mr. Fay, seconded by Ms. Hughes it was voted to approve the Goodale Estates subdivision with the waivers as outlined above. Motion passed.

D. Discussion/Decision Certificate of Vote Goodale Estates

On a motion made by Mr. Fay, seconded by Ms. Hughes it was voted to endorse the Certificate of Vote as presented. Motion passed.

E. Discussion/Decision Covenant Goodale Estates

On a motion made by Ms. Hughes, seconded by Mr. Fay it was voted to endorse the Covenant as presented. Motion passed.

6. Preliminary/Open Space Submissions/Limited Development Subdivisions: None

7. Definitive Subdivision Submission: None

8. Signs: None

9. Unfinished Business:

A. Proposed Zoning Amendment 650-34 & 650-41 (Downtown Village)

City Council Order 16-1006667

This Public Hearing is still open for discussion.

After much discussion amongst the members present the following wording was presented for continued discussion at the next meeting.

Item 14: amended to include the following,

...Provided however that consideration is given to include Visible Public Space Green or Otherwise.

The Hearing was left open for additional discussion at the November 14, 2016 regular meeting.

10. Informal Discussion: None

11. Correspondence: None

12. Public Notices of other Cities and Towns: None

Adjournment: On a motion made by Mr. Fay, seconded by Ms. Hughes it was voted to adjourn at 7:57pm. Motion carried.

Respectfully submitted,

Colleen Hughes
Clerk

/mai

Marlborough, MA
Zoning Board of Appeals
Minutes
September 27, 2016

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2016 NOV 17 P 3:45

Members Present: Paul Giunta-Chairman, Theodore Scott, Thomas Pope, Ralph Loftin,
Thomas Golden and Robert Levine

230 Hudson St. – Jennifer Macedo - ZBA Case #1442-2016

Members sitting: Paul Giunta, Thomas Golden, Theodore Scott, Ralph Loftin
and Robert Levine.

Petition: To expand her existing 25 ft. driveway opening to 27 ft. In
accordance to the Marlborough City Code Chapter 650-49.B7) maximum
curb opening shall be 25 ft. (not including the driveway return). The
property is located at 230 Hudson St. being Map 43, Parcel 31 of the
Assessor's Maps. Property is located in Zoning District A-3.

Ms. Macedo was present. She requested a continuance of her hearing. She
needed more time to notify her abutters. With the consent of the applicant
and with a vote of 5-0, the hearing was continued to October 25, 2016.

**796 Boston Post Rd. – Jeffrey Glew, Manager 796 BPR, LLC
ZBA Case #1443-2016**

Members sitting: Paul Giunta, Thomas Pope, Theodore Scott, Ralph Loftin
and Robert Levine. (Thomas Golden abstained)

Petition: Proposed parking lot changes. A minimum landscaped strip in a
nonresidential zone is required to be a minimum of 15 ft. with an addition
setback of 5.35 ft. due to the existing frontage being greater than 100 ft. for a
total required landscaping strip of 20.35 ft. in width. A small triangular
section does not meet this section of the zoning by laws. Section 650-47.

The property is located in Zoning District Business, being Map 61, Parcels 29
and 29A of the Assessors' maps.

The 2 lots in question have the following features:

- #794 (Lot 29) Boston Post Road East - contains 34,484 sq. ft. with a
structure.
- #796 (Lot Lot 29A) Boston Post Road East – contains 33,033 sq. ft.
with a structure.
- These 2 lots are rectangular in shape with an irregular front lot line.
- The topography of the lots slopes considerably to the rear.

- At the rear of these two lots are an additional 28 parking spaces
- At the front there are 32 parking spaces
- At the rear of these two lots are wetlands.
- Adjacent to the left of building #794 and to the rear of these two lots is a city's sewer and access easement.
- The front lots lines to these 2 parcels abuts greenspace owned by Mass. Highway and beyond that is the street.
- There is free passage from said lots into #814 Boston Post Rd.
- The 2 lots have over 200 ft. of frontage, so that equals 21 ft. between the lot line and right of way line.

The abutting lots are of various shapes and sizes. The two lots abutting the lots in question have wetlands located at the rear of their lots.

The applicants were represented by Atty. Sandra Austin, 40 Mechanic St., Marlborough, MA. and Bruce Saluk of Bruce Saluk & Associates. The owners of the 2 lots are Dave McKay and Jeffrey Glew.

Proposal: Existing sidewalk in front of the stores will remain. They will attach a new concrete sidewalk to the existing one, which will push forward existing parking spaces. They would like to straighten out the parking line at the front lot line which will increase parking spaces from 32 to 34 (includes 2 handicapped spaces). There are currently 28 parking spaces in the rear. The side entrance from 782 Boston Post Rd. into 794 Boston Post Rd. will be eliminated. There will be new landscaping between #782 and #794 Boston Post Rd. Also new landscaping and paving in front of the stores and new landscaping at the front lot line.

The applicant provided a plan entitled: "Preliminary Site Plan, #794-#796 Boston Post Rd. East, Marlborough, MA Prepared by: Bruce Saluk & Associates, Inc. Dated: Rev. 9/6/2016. (in Board's file)

The applicant provided a list of proposed plantings. (in Board's file)

Hardships as stated by applicant:

- Safety issues in entering and existing out of the lots in question. Also safety for the general public within the plaza.
- Landscaping will be more efficient with new pavement and plantings at the front of the stores and also new plantings at the front lot line.
- The proposal will provide a better flow of traffic into the site. Cars will be forced to slow down as they enter the plaza from Boston Post Rd.
- The applicant is trying to make the buildings more viable.

- The variance request is minor, improvements to the site is visual and the character of the site will be maintained. (Section 650-47A)
- The shape of the lots, being rectangular with an irregular front lot line.
- The dimensions of the property require that the parking lots be changed for safety reasons. The hardship is based on the dimensions of the property, as opposed to lot coverage or something else.
- The shape of the lot and the location of the existing buildings limits their ability to improve the appearance of the 2 lots.
- Atty. Auston stated the requested variance is dimensionally based.

Currently there are 5 tenants on site.

Ted Scott, a Board Member, stated that the existing set back to the parking lot on the right side is 18 ft. , and the proposed set back is 1.5 ft. , this is not a minor deviation. There is no assurance the abutting grass strip owned by the State will remain as green space.

Bruce Saluk stated that the State strip of land is abandoned. He felt it was not probable the State will come in to do something with that strip of land.

It was suggested by the Board that maybe the applicant should try to purchase the State strip of land. The attorney stated they have not considered that and it would be a lengthy process. The Board wanted assurance that the State will not do anything with their strip of land.

The Board suggested that the applicant Withdraw Without Prejudice giving the applicant some time to do some research in asking what the State's plans are for this strip of land. The Applicant said that the state usually reserves a shoulder adjacent to their roadway. The board said they would consider the Applicants position if they could show the shoulder in the State's standard details or other literature.

Paul Giunta, Board Member, stated he can see the safety aspect of the proposal and the improvements will enhance the site. He also suggested they try to purchase the strip of land from the State.

Ralph Loftin, Board Member, stated he agrees the proposal is attractive and will improve safety. He also stated that "hardship" means that the property can't be used as it is zoned for unless a variance is granted, which is not the case here. There must be other ways that "safety" can be addressed on these 2 lots. It is not the role of the Board to grant variances to enhance the front of this property. The Board is bound by the definition of a "hardship".

No one spoke in opposition.

Speaking in favor:

- Ms. Kortel – 782 Boston Post Rd.
 - She is in favor of eliminating the entrance between her lot and the 2 abutting lots.
 - The proposal will be an improvement to the 2 lots and to the surrounding neighboring lots.
 - The improvements will be an asset to the east side of the city.

In the audience was also Ms. Kortel's real estate advisor, Stan Gordon.

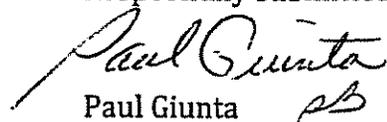
The owners of the 2 lots, Mr. McKay and Mr. Glew, stated they purchased the property approximately 7 months ago. At that time, there were 4 vacant store fronts. Parking was a problem when they purchased the lots.

The Board asked the applicant if they would like to continue the public hearing in order for them to contact the State to ask what their intentions are for that strip of land. A Board Member requested a few examples of case law that support a "dimensional" issue as a criteria (hardship) for a variance. Atty. Austin agreed to research case law and contact the State. With the consent of the applicants, the hearing was continued to October 25, 2016.

A motion was made by Ralph Loftin, seconded by Theodore Scott to continue the public hearing to Oct. 25th, 2016 at 7:30 PM. The Board voted 5-0 to continue the hearing to October 25, 2016.

The meeting was adjourned.

Respectfully submitted,


Paul Giunta *ps*
Chairman

Marlborough Public Library Board of Trustees
Meeting Minutes

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October 4, 2016

2016 NOV 21 A 8:39

Bigelow Auditorium, Marlborough Public Library

Meeting called to order by Rustin Kyle at 7:07pm

Board Members Present: Tom Abel, Karen Bento, Nena Bloomquist, William Brewin, Ray Hale, Raymond Johnson, Rustin Kyle, and Robyn Ripley

Also Present: Margaret Cardello, Library Director and Jason Homer, Assistant Library Director

Absent: Janice Merk

Proceedings:

1. **Minutes:** After minor corrections, a motion to approve the meeting minutes from the September 6th meeting was passed (Bloomquist/Hale).
2. **Trust Fund Reports:** A motion was passed to approve the Trust Fund Reports for September (Abel/Ripley).
3. **Director's Report:** (see attached for more details)
 - Progress is being made with camera installation in the library. 3 wireless cameras are up so far and more will be installed soon.
 - Jason Homer was able to locate and refurbish old counters used for counting the number of patrons visiting the library. They are currently in use and Jason has found that the library has a daily average of 843 visitors. Fine-free Wednesday brings in the most patrons with an average of 1,099 coming through the doors. Interestingly, the average hourly number of people (83.7) rivals larger libraries such as Natick with 75/hour. Studying how many people come to the library, as well as when they come, allows us to evaluate staffing and programming decisions. For example, The Children's Room is considering adding a Storytime on Saturdays, a day when many families visit the library.
 - There are 3 tests to be completed on our selected site for the grant application which will cost \$13,614.50. These tests are separate from the Architects fee and include a site survey (\$6,374.50), a geotechnical report (\$5,280), and a hazardous materials survey (\$1,960). John Ghiloni will help with these costs but Margaret needs Trustee approval to pay the library's share from State Aid funds. *A motion was passed to use \$6,807.25 of State Aid funds to pay for these additional tests (Brewin/Abel).*
 - There was additional discussion of whether the city should take action to resolve the original deed of land for the library which stipulates that the land reverts to the original owners or their heirs should the property no longer be used as a library. Margaret will check with the Legal Department for their recommendation.

- DCU has generously donated \$5,000 in the previous couple of years which has been used for the creation of a teen space and for the deposit for new cabinets in the reading room. This year, DCU donated \$7,500. We currently owe a balance to Rich Holland, the carpenter working on the local history cabinets, of \$9,200. *A motion was passed to use the \$7,500 donation from DCU toward the balance for the cabinets (Brewin/Abel).* The remaining balance will come from State Aid.

4. **Committee Reports:**

- Foundation: Interviews are currently being conducted for the Foundation's campaign feasibility study. These are being conducted by the FDA consultants hired by the Foundation. Many community leaders are included and all but two city councilors are participating. Appointments are scheduled through October 14th.
- Friends: (see attached for more details) The book and bake sale has brought in \$2,094 so far, with an addition \$150 or so coming in for the remaining books not sold. Ray Johnson is speaking at a state-wide Friends Committee workshop on October 19th. The upcoming art show usually has a prize sponsored by the trustees. *A motion was passed for the Trustees to sponsor the First Honorable Mention prize of \$50 from State Aid (Hale/Abel).*

5. **Old Business:**

- None

6. **New Business:**

- **Building Committee:** The Mayor's office approved sending letters to 32 current library neighbors to see if any would voluntarily enter into discussions about selling their property to the city. One abutter has already replied in the positive.
- Margaret is working with Cynthia Panagore Griffin to develop a timeline of all grant related activities and required city approvals. An informative meeting with City Council is one such activity to be included on the timeline in order to keep them apprised and prepare them for the eventual approval needed to accept grant monies. Margaret will look into getting on City Council's agenda for their last meeting in November of this year.

7. **Adjournment:** A motion to adjourn passed at 8:16pm (Bloomquist/Johnson).

Minutes submitted by Secretary Robyn Ripley.