

REGULAR MEETING
JANUARY 3, 2011

IN CITY COUNCIL
ABSENT:

CONVENED:
ADJOURNED:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2010 DEC 30 P 12:38

1. Organizational Meeting.
2. Minutes of the City Council Meeting, December 20, 2010.
3. Communication from the City Solicitor re: Special Permit, MetroPCS Massachusetts LLC, 860 Boston Post Rd., in proper legal form, Order No. 10-1002715A.
4. Communication from the City Solicitor re: Home Rule Petition pertaining to the increased room occupancy excise from the rate of 4% to the rate of 6%, in proper legal form, Order No. 10-1002762.
5. Communication from the Assistant City Solicitor re: changes to the City Code relative to Junk Dealer's License, in proper legal form, Order No. 10-1002667.
6. Communication from the DPW Commissioner re: determination that a portion of the former landfill property off Hudson St is surplus and available for lease, Order No. 10-1002764.
7. Communication from Attorney Cipriano re: Street Acceptance-Boivin Dr., Davis Estates.
8. Application for amendment to Special Permit 94-560B to increase the number of amusement devices from 26-42.
9. CLAIMS:
 - A. Amica Insurance, on behalf of Rajesh Kumar, 22 Azalea Ln., other property damage

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Wireless Communications Committee

10. **Order No. 10-1002715A - Application of MetroPCS for a Special Permit for a wireless communications facility at the Easterly Treatment Plant, 860 Boston Post Road.** Discussion was begun on the application for a Special Permit from Metro PCS Massachusetts LLC to install a telecommunications facility on to an existing tower located at 860 Boston Post Road (Easterly Treatment Plant). A review of the Applicant's folder was conducted and all the inclusions were found to be proper. No new testimony was heard but an update and change to the plans was submitted. A review of the "Decision" was begun covering the Evidence, Findings of Fact and the thirteen (13) Conditions, that would be applied. Minor changes were made to the wording for clarification and wording was added for the protection of the City owned equipment shelter, which would be located beside the proposed equipment pad. **Recommendation of the Wireless Communications Committee is to approve the application 2-0. Motion was made by Councilor Landers under Suspension of the Rules, to refer to the City Solicitor to be put in proper form, and place item on the January 3, 2011 City Council agenda.**

From Legislative and Legal Affairs Committee

11. **Order No. 10-1002667 – Communication from Councilor Clancy regarding proposed changes to the City Code relative to Junk Dealers.** An email from Councilor Clancy was read into the record as he was unable to attend the meeting. The Committee reviewed the letter dated August 2, 2010 from Councilor Clancy. The Committee also reviewed a revised draft ordinance from the Assistant City Solicitor which incorporated the changes proposed by Councilor Clancy and additional modifications at the request of Chief Leonard. **Recommendation of the Legislative and Legal Affairs Committee is to approve 2-0, as amended, the proposed changes to Chapter 377 of the City Code and to approve 2-0, as amended, the proposed changes to Chapter 315 of the City Code. Motion was made by Councilor Seymour under Suspension of the Rules, to refer to the City Solicitor to put in proper form proposed changes to Chapter 377 and 315 of the City Code and place item on the January 3, 2011 City Council agenda.**

12. **Order No. 10-1002762 – Communication from the City Solicitor with a draft order for a proposed Home Rule Petition pertaining to the increased room occupancy excise from the rate of 4% to the rate of 6%.** The Committee reviewed the letter dated December 2, 2010 from the City Solicitor as well as the revised draft order dated December 15, 2010. **Recommendation of the Legislative and Legal Affairs Committee is to approve 2-0, as amended, for the submission of a Home Rule Petition. Motion was made by Councilor Seymour under Suspension of the Rules, to refer to the City Solicitor to put in proper form and place item on the January 3, 2011 City Council agenda.**



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**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
Lisa M. Thomas
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
DECEMBER 20, 2010**

Regular meeting of the City Council held on Monday, DECEMBER 20, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy and Landers. Meeting adjourned at 8:22 p.m.

ORDERED: That the minutes of the City Council Meeting December 6, 2010, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from Massachusetts Electric Co. and Verizon New England Inc. to install stub P. 81-50 as midspan pole to service new construction of Farm Commons Dr., Order No. 10-1002765, all were heard who wish to be heard, hearing recessed at 8:05 p.m.; adopted. **Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour & Clancy & Landers.**

ORDERED: That the transfer request in the amount of \$14,959.49 from Fringes to Asst. City Engineer, \$135.28 from Fringes to Longevity and \$26,927.08 from Fringes to Sick Leave necessary to fund benefits associated with an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500 \$42,021.85
Undesignated Fund

TO:

Acct. # 14001101-50660 \$14,959.49
Assistant City Engineer

Acct. # 14001103-51430 \$135.28
Longevity

Acct. # 14001103-51920 \$26,927.08
Sick leave

ORDERED: That the Emergency Management Performance Grant in the amount of \$12,500.00 awarded to the Department of Emergency Management to enhance the City's alerting/communications system to be used for purposes outlined in M.G.L., Chapter 44, Section 53A, **APPROVED**; adopted.

ORDERED; That the Traffic Enforcement and Equipment Grant in the amount \$6,000.00 awarded to the Marlborough Police Department for high visibility traffic enforcement patrols to be used for purposes outlined in M.G.L., Chapter 44, Section 53A, **APPROVED**; adopted.

ORDERED: That the reappointment of Police Chief Leonard as Keeper of the Lock to expire the 1st Monday of February 2012, **APPROVED**; adopted.

ORDERED: That the reappointment of Mark Gibbs as Director of Information Technology for a term to expire three years from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointment of Deborah Puleo as City Collector for a period of one year effective February 1, 2011, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointment of Stephen Reid as the City of Marlborough Building Inspector for a term to expire three years from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Application of Ronald Roza, d/b/a Techcell USA, for Junk Dealer's license at 276 Main St, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Board of Assessors, December 1, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Insurance Advisory Committee, October 19, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, November 22, 2010, **FILE**; adopted.

ORDERED: That the Minutes, MetroWest Regional Transit Authority, September 13, 2010, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, October 26, 2010, **FILE**; adopted.

ORDERED: That the following **CLAIMS**, refer to the **LEGAL DEPARTMENT**; adopted.

A. Gilbert Weinstein, 397 Bolton St., B-5, other property damage

B. Lindsay Stokes, 18 Spring Ln., other property damage

Reports of Committees:

Councilor Clancy reported the following out of the Wireless Communications Committee:

Order No. 10-1002715: Application of MetroPCS for a Special Permit for a wireless communications facility at the Easterly Treatment Plant, 860 Boston Post Road. Discussion was begun on the application for a Special Permit from Metro PCS Massachusetts LLC to install a telecommunications facility on to an existing tower located at 860 Boston Post Road (Easterly Treatment Plant). A review of the Applicant's folder was conducted and all the inclusions were found to be proper. No new testimony was heard but an update and change to the plans was submitted. A review of the "Decision" was begun covering the Evidence, Findings of Fact and the thirteen (13) Conditions, that would be applied. Minor changes were made to the wording for clarification and wording was added for the protection of the City owned equipment shelter, which would be located beside the proposed equipment pad. **Recommendation of the Wireless Communications Committee is to approve the application 2-0. Motion was made by Councilor Landers under Suspension of the Rules, to refer to the City Solicitor to be put in proper form, and place item on the January 3, 2011 City Council agenda.**

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

Order No. 10-1002667 – Communication from Councilor Clancy regarding proposed changes to the City Code relative to Junk Dealers. An email from Councilor Clancy was read into the record as he was unable to attend the meeting. The Committee reviewed the letter dated August 2, 2010 from Councilor Clancy. The Committee also reviewed a revised draft ordinance from the Assistant City Solicitor which incorporated the changes proposed by Councilor Clancy and additional modifications at the request of Chief Leonard.

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Recommendation of the Legislative and Legal Affairs Committee is to approve 2-0, as amended, the proposed changes to Chapter 377 of the City Code and to approve 2-0, as amended, the proposed changes to Chapter 315 of the City Code. Motion was made by Councilor Seymour under Suspension of the Rules, to refer to the City Solicitor to put in proper form proposed changes to Chapter 377 and 315 of the City Code and place item on the January 3, 2011 City Council agenda.

Order No. 10-1002762 – Communication from the City Solicitor with a draft order for a proposed Home Rule Petition pertaining to the increased room occupancy excise from the rate of 4% to the rate of 6%. The Committee reviewed the letter dated December 2, 2010 from the City Solicitor as well as the revised draft order dated December 15, 2010. Recommendation of the Legislative and Legal Affairs Committee is to approve 2-0, as amended, for the submission of a Home Rule Petition. Motion was made by Councilor Seymour under Suspension of the Rules, to refer to the City Solicitor to put in proper form and place item on the January 3, 2011 City Council agenda.

ORDERED: That the Legal Services transfer request in the amount of \$25,000.00 from Undesignated Fund to Legal Services to fund outside labor services related to ongoing collective bargaining negotiations, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$25,000.00
Undesignated Fund

TO:

Acct. # 11510004-53110 \$25,000.00
Legal Services

ORDERED: WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the easements on FAHEY STREET be accepted as municipal easements as shown on plans thereof and as hereinafter described:

DESCRIPTION

Plan entitled “Acceptance Plan Of Fahey Street Easements In Marlborough, MA; Prepared For: White Real Estate, 536 Lincoln Street, Marlborough, Ma; Prepared By: Thomas Land Surveyors & Engineering Consultants, Inc., 265 Washington Street, Hudson, MA; Scale 1” = 20’; Dated March 30, 2010,” to be recorded herewith in the Middlesex County South Registry Of Deeds Plan Book ____ as Plan ____ of _____;

Title to the easements, including sidewalk, utility, and highway purposes, as shown on said plan, has been granted to the City of Marlborough in a Quitclaim Deed from Gary J. White, Trustee of Fahey Street Realty Trust, 116 Broad Street, Marlborough, MA, said deed to be recorded herewith at the Middlesex County South Registry of Deeds.

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IT IS THEREFORE ORDERED THAT:

The sidewalk, utility, and highway easements on FAHEY STREET be accepted as municipal easements in the City of Marlborough, **APPROVED**; adopted.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, Levy

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:22 p.m.



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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CYNTHIA M. PANAGORE GRIFFIN
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BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

December 23, 2010

Arthur Vigeant
President
Marlborough City Council

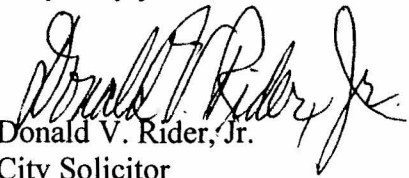
RE: Order 10-1002715
Special Permit Application
MetroPCS Massachusetts, LLC
860 Boston Post Road East (Easterly Wastewater Treatment Plant)

Dear President Vigeant and Members:

Pursuant to Chapter 650-59C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed findings on the special permit application submitted by MetroPCS Massachusetts, LLC for 860 Boston Post Road East (Easterly Wastewater Treatment Plant). The application is to install a wireless communication facility onto the existing wireless communications tower consisting of six (6) wireless communications antennas, along with the supporting equipment cabinets which will be located on the ground adjacent to the existing equipment compound.

I have enclosed a copy of the proposed decision. I certify that that decision is in proper legal form.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Andy Candiello, on behalf of MetroPCS Massachusetts, LLC

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**DECISION ON A SPECIAL PERMIT
METROPCS MASSACHUSETTS, LLC
CITY COUNCIL ORDER NO. #10-1002715**

Re: 860 Boston Post Road East, Marlborough, MA

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The applicant is METROPCS MASSACHUSETTS, LLC, which has a business address of 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application for a Special Permit (hereinafter "Application"), the Applicant seeks permission to install a wireless communication facility onto the existing wireless communications tower consisting of six (6) wireless communications antennas, along with the supporting equipment cabinets which will be located on the ground adjacent to the existing equipment compound (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0623A BOSTON POST ROAD" 860 Boston Post Road East, Marlborough, MA 01752, Middlesex County," prepared by Dewberry-Goodkind, Inc., 280 Summer Street, 10th floor, Boston, MA 02210, dated 8/27/08, last revised 12/13/10 Revision #6 (hereinafter "Plans").
3. The location of the Proposed WCD Project is 860 Boston Post Road East, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 61, Lot 16 (hereinafter "Site"). The owner of record for the Site is the City of Marlborough.
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The Site is zoned Rural Residential (RR) and Business (B). The Proposed WCF is located in the Rural Residential (RR) portion of the Site. Wireless communication devices are allowed by grant of Special Permit in Rural Residential Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector 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 the Proposed WCD Project on November 22, 2010, 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 Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
- 11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
- 12. 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 Proposed WCD Project.

**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.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project 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.
- 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 screening its Proposed WCD Project 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 Special Permit,

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SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:

- 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of the Application 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.
- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of the Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing

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and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code.

- 8) No operation of the Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) Applicant's Proposed WCD Project shall be subject to site plan review, if applicable.
- 10) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District 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, and before the Applicant has applied to the Building Commissioner Inspector for a building permit concerning the Proposed WCD Project. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.
- 11) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall i) state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall

provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.

- 12) Subject to final agreement between the City of Marlborough and the Applicant, the Applicant shall execute a lease agreement with the City of Marlborough to be drafted by the City Solicitor, approved by the Chief Procurement Officer and executed by the Mayor, and the Applicant shall provide the necessary insurance and indemnification provisions as required by said lease.



City of Marlborough Legal Department

140 MAIN STREET

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ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

December 30, 2010

Arthur Vigeant
President
Marlborough City Council

RE: Proposed Home Rule Petition re. Local Room Occupancy Excise -
Containing the 12/15/10 Revisions by the Legislative and Legal Affairs Committee

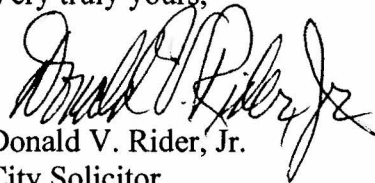
Dear President Vigeant and Members:

On December 15, 2010, the City Council's Legislative and Legal Affairs Committee conducted a review of the proposed home rule petition pertaining to Marlborough's local room occupancy excise. Enclosed are both a tracked and a clean version of that petition, containing the revisions made by the L&L Committee.

Please note that the Commonwealth's Department of Revenue has reviewed the petition as revised, and has verbally indicated to me that it appears acceptable from DOR's standpoint.

Thank you for your attention to this matter.

Very truly yours,



Donald V. Rider, Jr.
City Solicitor

Enclosures
cc: Nancy Stevens, Mayor

DRAFT

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 ESTABLISHING
A BUSINESS AND ECONOMIC DEVELOPMENT SPECIAL REVENUE FUND
IN THE CITY OF MARLBOROUGH**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding section ~~53~~fifty-three of chapter ~~44~~forty-four of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Business and Economic Development Special Revenue Fund of the city of Marlborough, into which account shall be deposited certain receipts comprising a portion of the total local room occupancy tax received annually by the city under section three A of chapter sixty-four G of the General Laws, as set forth in section 2 herein. The purpose of this act, and of the Business and Economic Development Special Revenue Fund, shall be to promote and to sustain the development of business and the local economy in the city of Marlborough.

SECTION 2. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate in excess of 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough ~~for the fiscal year beginning July 1, 2011 and each fiscal year thereafter~~ shall be credited to the Business and Economic Development Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough; ~~provided, however, that if the passage of this act occurs after July 1, 2011 and prior to November 1, 2011, then the amount of~~

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~~the room occupancy excise based on a rate in excess of 4% collected under this section 2 by the city of Marlborough from July 1, 2011 up to and including the date of said passage, which amount had theretofore been credited to the General Fund of the city of Marlborough, shall thereupon be credited to the Business and Economic Development Special Revenue Fund and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough; and provided further that if the passage of this act occurs on or after November 1, 2011, then the amount of the room occupancy excise based on a rate in excess of 4% collected under this section 2 by the city of Marlborough for the fiscal year beginning July 1, 2011 shall remain in the General Fund of the city of Marlborough for that fiscal year, and the amount of the said excise collected by the city for the fiscal year beginning July 1, 2012 and each fiscal year thereafter shall be credited to the Business and Economic Development Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.~~

SECTION 3. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate equal to 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the General Fund of the city of Marlborough.

SECTION 4. Notwithstanding the provisions of any general or special law to the contrary, any interest accruing on any amount on deposit in the Business and Economic Development Special Revenue Fund shall be credited to the General Fund in the city of Marlborough.

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SECTION 45. Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

~~**SECTION 5.** The city of Marlborough may amend, by a majority vote of the city council of the city pursuant to section three A of chapter sixty-four G of the General Laws and section (2)(h) of 830 Code of Massachusetts Regulations Part 64G.3A.1, the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws. Upon any such~~

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~~vote to amend the rate, the amount of the room occupancy excise based on a rate in excess of 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough shall be credited to the Business and Economic Development Special Revenue Fund on the first day of the calendar quarter following 30 days after the date of the amendatory vote, pursuant to section (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1, and shall thereupon be subject to further appropriation by a majority vote of the city council of the city of Marlborough.~~

~~SECTION 6. The city of Marlborough may revoke, by a majority vote of the city council of the city pursuant to section three A of chapter sixty-four G of the General Laws and section (2)(h) of 830 Code of Massachusetts Regulations Part 64G.3A.1, the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws. Upon any such vote to revoke the rate in excess of 4%, If the city of Marlborough revokes, by a majority vote of the city council of the city pursuant to section three A of chapter sixty-four G of the General Laws and sections (2)(h) and (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1, its acceptance of the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws, then the city of Marlborough shall thereupon decide, by a two-thirds vote of the city council of the city, the separate question whether the Business and Economic Development Special Revenue Fund shall cease to have effect in the city. If two-thirds of the city council of the city votes that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be credited to the General Fund of the city on the first day of the calendar quarter following 30 days after the date of the revocatory vote, pursuant to section (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1; however, if two-thirds of the city council of the city does not vote that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, the said Fund shall continue to have effect in the city, and all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.~~

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SECTION 7. The city of Marlborough may amend this act by a two-thirds vote of the city council of the city of Marlborough. Such amendatory vote shall designate a) that the Business and Economic Development Special Revenue Fund shall thereupon cease to have effect in the city of Marlborough; b) that all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of said amendatory vote, shall forthwith be credited to the General Fund of the city of Marlborough; and c) that the portion of the total room occupancy excise in excess of 4% received annually by the city of Marlborough under section three A of chapter sixty-four G of the General Laws and theretofore credited to the Business and Economic Development Special Revenue Fund, as set forth in section 2 herein, shall thereafter be credited to the General Fund of the city.

SECTION 8. This act shall take effect upon its passage.

ADOPTED

In City Council
Order No. 10-
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:

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 ESTABLISHING
A BUSINESS AND ECONOMIC DEVELOPMENT SPECIAL REVENUE FUND
IN THE CITY OF MARLBOROUGH**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding section fifty-three of chapter forty-four of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Business and Economic Development Special Revenue Fund of the city of Marlborough, into which account shall be deposited certain receipts comprising a portion of the total local room occupancy tax received annually by the city under section three A of chapter sixty-four G of the General Laws, as set forth in section 2 herein. The purpose of this act, and of the Business and Economic Development Special Revenue Fund, shall be to promote and to sustain the development of business and the local economy in the city of Marlborough.

SECTION 2. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate in excess of 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough shall be credited to the Business and Economic Development Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.

SECTION 3. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate equal to 4% collected under section three

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A of chapter sixty-four G of the General Laws by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the General Fund of the city of Marlborough.

SECTION 4. Notwithstanding the provisions of any general or special law to the contrary, any interest accruing on any amount on deposit in the Business and Economic Development Special Revenue Fund shall be credited to the General Fund in the city of Marlborough.

SECTION 5. Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

SECTION 6. If the city of Marlborough revokes, by a majority vote of the city council of the city pursuant to section three A of chapter sixty-four G of the General Laws and sections (2)(h) and (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1, its acceptance of the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws, then the city of Marlborough shall thereupon decide, by a two-thirds vote of the city council of the city, the separate question whether the Business and Economic Development Special Revenue Fund shall cease to have effect in the city. If two-thirds of the city council of the city votes that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be credited to the General Fund of the city on the first day of the calendar quarter following 30 days after the date of the revocatory vote, pursuant to section (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1; however, if two-thirds of the city council of the city does not vote that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, the said Fund shall continue to have effect in the city, and all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.

SECTION 7. The city of Marlborough may amend this act by a two-thirds vote of the city council of the city of Marlborough. Such amendatory vote shall designate a) that the Business

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and Economic Development Special Revenue Fund shall thereupon cease to have effect in the city of Marlborough; b) that all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of said amendatory vote, shall forthwith be credited to the General Fund of the city of Marlborough; and c) that the portion of the total room occupancy excise in excess of 4% received annually by the city of Marlborough under section three A of chapter sixty-four G of the General Laws and theretofore credited to the Business and Economic Development Special Revenue Fund, as set forth in section 2 herein, shall thereafter be credited to the General Fund of the city.

SECTION 8. This act shall take effect upon its passage.

ADOPTED

In City Council
Order No. 10-
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:



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

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

December 30, 2010

Arthur Vigeant, President and
Members of the City Council
City Hall
140 Main Street
Marlborough, MA 01752

RE: Amendments to City Code Chapter 377 Junk And Secondhand Dealers and
Chapter 315 Enforcement, Order No. 10-1002667

Dear President Vigeant and Members:

Please accept the attached amendments to the City Code, including amendments to Chapter 377 Junk And Secondhand Dealers and amendments to Chapter 315 Enforcement, which were reviewed by the Legal & Legislative Committee under Order No. 10-1002667. The amendments to Chapter 377 Junk And Secondhand Dealers include revisions to the original version as approved by the Legal & Legislative Committee.

The amendments to Chapter 377 Junk And Secondhand Dealers and Chapter 315 Enforcement are in proper legal form.

Very truly yours,

/s/ Cynthia Panagore Griffin

Cynthia Panagore Griffin
Assistant City Solicitor

ORDERED:

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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 377, ENTITLED "JUNK AND SECOND HAND DEALERS LICENSES," AS FOLLOWS:

Chapter 377 is hereby amended by deleting section 377-1 in its entirety and replacing it with the following:

377-1. License Required; License Revocation.

- A. No person shall be a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or secondhand articles unless licensed by the City Council, which may grant licenses as it may determine.
- B. Said licenses may be revoked, suspended or modified at pleasure by the City Council.
- C. Upon revocation, suspension or modification of such license, the City Clerk shall note the revocation upon the face of the record thereof, and shall give written notice to the licensee as provided under M.G.L. c. 140, § 205, as amended.
- D. A licensee may make a written request for a hearing before the City Council on any such revocation, suspension or modification, which shall be held by the City Council within thirty (30) days, or as soon as practicable thereafter, of the receipt of the request.

Chapter 377 is also hereby amended by changing the duration of time described in section 377-6 from one week to thirty (30) days as follows:

377-6. Retention period prior to resale.

No article purchased or received by a dealer in junk or secondhand articles shall be sold or removed from his or her possession until at least thirty (30) days from the date of purchase or receipt of the same has elapsed.

Chapter 377 is also hereby amended by adding terms concerning violations of section 377-7:

377-7. Required Records to be kept by dealer.

- D. Violations of this section by licensees purchasing or receiving gold, silver or platinum shall be subject to penalties described in M.G.L. 266, § 142A, as amended.

Further, Chapter 377 is also hereby amended by adding the following new section concerning enforcement and penalties:

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377-10. Enforcement; Penalties.

- A. Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or second hand articles without a license or after notice that his license has been revoked or suspended shall be subject to a fine of \$100.00 per day for each and every day the violation continues after issuance of a Notice of Violation by the Building Inspector of his designee, who may enforce such violation pursuant to the provisions of M.G.L. c. 40, § 21D, as amended.
- B. Whoever violates the provisions of this chapter, other than by operation after revocation or suspension as provided in paragraph A. of this section or as provided in paragraph D. of section 377-7, shall be subject to a fine of \$100.00 per day for each and every day the violation continues after issuance of a Notice of Violation by the Chief of Police or his designee, who may enforce such violation pursuant to the provisions of M.G.L. c. 40, § 21D, as amended. Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or second hand articles without a license may also be subject to a fine under the provisions of this paragraph.
- C. All fines are payable to the City of Marlborough through the City Clerk's office.

ADOPTED

In City Council
Order No. 10-
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:

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 315, ENTITLED "ENFORCEMENT," AS FOLLOWS:

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Chapter 315 is hereby amended by adding the following new sub-sections to part B of section 315-2, Non-criminal Disposition:

Ordinance/Violation (Chapter/Section)	Penalty	Enforcing Agent
(30) Junk And Second Hand Dealer's Licenses, Chapter 377, Section 377-10, Paragraph A.	\$100.00	Building Inspector and his designee
(31) Junk And Second Hand Dealer's Licenses, Chapter 377, Section 377-10, Paragraph B.	\$100.00	Chief of Police and his designee

ADOPTED

In City Council
Order No. 10-
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:



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

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

December 22, 2010

Arthur Vigeant, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2010 DEC 22 P 3:18

RE: Communication from DPW Commissioner LaFreniere, Order No. 10-1002764

Dear President Vigeant and Members:

The above referenced communication from DPW Commissioner Ronald M. LaFreniere concerns to his determination that a portion of the former Landfill Property off Hudson Street is surplus and available for lease for other municipal purposes is required by M.G.L. c. 40, § 15A. The Council determined that the property was available for disposition by lease for the operation and maintenance of wireless telecommunications equipment, including construction of a tower, pursuant to the provisions of § 16(a) of M.G.L. c. 30B per Council Order No. 10-1002765 dated August 23, 2010.

I recommend that this communication be accepted by the Council and placed on file.

Sincerely,

Beverly J. Sleeper
Chief Procurement Officer

Attachment (1) – Proposed Order

Cc: Nancy E. Stevens, Mayor
Legal Department
Ronald M. LaFreniere, Commissioner

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ORDERED: That the City Council of the City of Marlborough hereby accept the communication from DPW Commissioner LaFreniere RE: Determination that a Portion of the Former Landfill Property off Hudson Street is Surplus and Available for lease for Other Municipal Purposes, dated November 29, 2010, be and is herewith placed on file as recommended by the Chief Procurement Officer.

ADOPTED
In City Council
Order No. 10-1002764A
Adopted:

Approved by Mayor
Nancy E. Stevens
Date:

A True Copy,
ATTEST:

ALDO A. CIPRIANO
ATTORNEY AND COUNSELLOR AT LAW

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2010 DEC 29 A 11:41

377 MAIN STREET
VICTORIA BUILDING
SECOND LEVEL • ATRIUM SUITE
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 485-7245
FAX (508) 485-2304

December 29, 2010

Marlborough City Council
Arthur Vigeant, President
City Hall
140 Main Street
Marlborough, MA 01752

RE: Street Acceptance - Boivin Drive, Davis Estates - Off of Farm Road

Dear Mr. President and City Council Members,

Please be advised that I represent Robert Valchuis on the completion of the Davis Estates residential subdivision.

It is my understanding that the roadway is now ready for public acceptance. We would respectfully request that this correspondence be sent to the Planning Board, your appropriate committee, and the City Solicitor's office so that the final procedures for acceptance can be effectuated. The original plans for acceptance are also in the possession of the Department of Public Works.

I remain available throughout any legislative proceedings to address any issues or furnish any documents requested by the City Agencies.

Respectfully Submitted,


Aldo A. Cipriano, Esq.

CC: Robert Valchuis

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**CITY OF MARLBOROUGH
OFFICE OF THE CITY CLERK**

APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT

1. Name and address of Petitioner or Applicant:

QUAD RINK LIMITED PARTNERSHIP/NEW ENGLAND SPORTS MANAGEMENT CORPORATION/ Donald Lynch Boulevard Realty Trust u/d/t/d December 23, 1994

2. Specific Location of property including Assessor's Plate and Parcel Number.:

121 DONALD LYNCH / Map13 , Lot 15 &16

3. Name and address of owner of land if other than Petitioner or Applicant:

Same as Item 1.

4. Legal interest of Petitioner or Applicant (owner, lessee, prospective owner, etc.):

Owner

5. Specific Zoning Ordinance under which the Special Permit is sought:

City Code Part II Chapter 650 Article V Section 650-17 and 18

6. Zoning District in which property in question is located:


Limited Industrial LI

7. Specific reason(s) for seeking Special Permit:

AMENDMEND EXISTING SPECIAL PERMIT, #94-560B to Alter the existing permit section 4 (g)

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HEREWITH AND MADE PART OF SAID PETITION.


Signature of Petitioner or Applicant

CHIP ORCUTT, AGENT FOR
NEW ENGALND SPORT MANAGEMENT CORP.
Address: 84 SOUTH STREET
CARLISLE MA 01741
Telephone #: 978-369-8848

Date: _____
City Clerk's Office 1

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**Application For Modification to Existing Special Permit
Special Permit #94-560B, and as amended.**

INTRODUCTION

New England Sports Management (NESM) Corporation presently operates the New England Sports Center, located At 121 Donald Lynch Boulevard, under Special Permit #94-560B approved by the Marlborough City Council 23 May 1994, and as amended for a fifth ice and sixth ice surface. NESM has operated in conformance with the requirements of the Special Permit and amendments which incorporates six (6) Ice Surfaces with associated support and viewing facilities for 16 years.

NESM formally requests a modification to the Special Permit to increase the limitation of amusement devices from 26 to 42 under the existing special permit #94-506B dated 23 May 1994, section 4 (q) page 8. The City granted the special permit in 1994 with a limitation of 26 units.

NESM requests an amendment to the existing permit for additional machines/devices based on our review of sixteen years of operation. The current device allowance does not meet our customer demand or satisfy the need to provide alternative venues while others are participating in ice rink activities. Our original request for amusement devices was based on an arbitrary number at the time, over the years our experience and building expansions requires us to request an expansion of the entertainment options as proposed.

The requested additional devices are consistent with our vision of providing a family recreational facility for all ages.

I am available for any questions you may have, and request that you act favorably on our request.

Sincerely,

Chip Orcutt
Project Manager
978-369-8848