

1. Minutes of the City Council Meeting, November 7, 2011, Order No, 11-1003079.
2. Minutes of the City Council Meeting, November 21, 2011.
3. PUBLIC HEARING with Board of Assessors to establish the percentages of tax levy for each property classification for FY2012.
4. Communication from the Mayor re: Commonwealth's Finalization of the City's FY2012 Tax Levy.
5. Communication from the Mayor re: Information Technology Capital request in the amount of \$180,000.00 which moves funds from Undesignated to Capital Outlay-IT Equipment.
6. Communication from City Solicitor, Donald Rider, re: St. Mary's of French Hill Redevelopment, LLC, Special Permit in proper legal form, Order No. 11-1002922E.
7. Communication from City Solicitor, Donald Rider, re: 110 Pleasant, LLC, Special Permit in proper legal form, Order No. 11-1002923E.
8. Communication from City Solicitor, Donald Rider, re: Pleasant St. Fire Station, Order No. 11-1003070-2.
9. Communication from Attorney Bergeron on behalf of Marlborough/Northborough Land Realty Trust, to withdraw without prejudice application for Special Permit to construct 290 apartment units on Boston Post Rd. West, Order No. 11-1002986B.
10. Communication from Charles Doty, John G. Crowe Associates, Inc., re: Extension of Time for Sewer Connection Permit, 55 Fairbanks Blvd.
11. Communication from Michael J. Norris re: Road Acceptance, Cleversy Drive, Elm Farm Valley Estates.
12. Application for Special Permit from Rossella Mercuri, on behalf of Sprint, for modification of a wireless facility located at 445 Simarano Dr.
13. Minutes, Planning Board, October 17 and November 7, 2011.
14. CLAIMS:
 - A. Carol Willoughby, 189 Parkerville Rd., Southborough, other property damage
 - B. Edward Philmon, 165 Dartmouth St., pothole or other road defect

REPORTS OF COMMITTEES:

From Finance Committee

15. **Order No. 11-1003069 – Grant for \$7,490.00 for the Marlboro Cultural Council.** The Finance Committee reviewed the Mayor's letter dated November 3, 2011 requesting the approval of a \$7,490.00 grant for the Marlboro Cultural Council for cultural programming in the City. **Recommendation of the Finance Committee is to approve 5 – 0.**
16. **Order No. 11-1002997B – Transfer \$168,654.80 to Fund DPW Engineers' Union Contract.** The Finance Committee reviewed the Mayor's letter dated October 14, 2011 requesting the transfer of \$168,654.80 to fund the DPW Engineers' Union contract and reorganize positions at the Westerly Waste Water Treatment Plant. The Finance Committee reduced the transfer from Reserve for Salaries from 3,977.94 to 461.93 to fund the Sick Leave Buy Back Engineering Account 14001103-51920. **Recommendation of the Finance Committee is to approve 5 – 0.**

17. **Order No. 11-1003068 – Fire Department Intra-departmental Transfer of \$57,267.04 from Firefighters Account to Firefighter Overtime.** The Finance Committee reviewed the Mayor’s letter dated November 3, 2011 requesting the transfer of \$57,267.04 from the Firefighter account to the Fire Fighter Overtime account. **Recommendation of the Finance Committee is to approve 5 – 0.**
18. **Order No. 11-1003048 – Transfer \$150,000.00 from Economic Development Special Revenue to Marlboro Economic Development Corporation (MEDC) Funding.** The Finance Committee reviewed the Mayor’s letter dated October 13, 2011 requesting the transfer of \$150,000.00 from the Economic Development Special Revenue account to the MEDC account. Councilor Ferro requested confirmation that the initial \$200,000 approved from Undesignated Funds in February 2011 has been reimbursed to the General Fund. The Finance Committee Chairman will work with the Comptroller to get a full accounting of the funds received to date from the additional hotel tax and money’s disbursed from the account. This information will be provided to the full City Council. **Recommendation of the Finance Committee is to approve 5 – 0.**

From Urban Affairs Committee

19. **Order No. 11-1002922 – Application by Attorney Bergeron on behalf of St. Mary's of French Hill Development LLC top modify an existing Special Permit (Order No. 07-1001500C) to allow rental of all proposed units until first sale of each unit at 26 Broad St.** The Applicant addressed concerns raised at the public hearing including the election of a Board of Trustees, the impact of rental units on condo values, and FHA financing concerns. A Board of Trustees has been elected, the question of allowing additional rental units was approved by a majority of condo owners, and the applicant has resolved the issue of FHA restrictions on ownership. The draft conditions were updated to reflect changes to the term “Applicant, its successors or assigns” related to the FHA issue. **Recommendation of the Urban Affairs Committee is approve the application as amended and under Suspension of the Rules, send the document to the City Solicitor to be placed in proper form.**
20. **Order No. 11-1002923 - Application by Attorney Bergeron on behalf of 110 Pleasant LLC top modify an existing Special Permit (Order No. 10-1002683B) to allow rental of all proposed units until first sale of each unit at 110-118 Pleasant St. (Corbin Plaza).** The Applicant addressed concerns raised at the public hearing regarding maintenance of the property and the impact of rental units on neighborhood home values. The applicant has cleaned up the site, hired a landscaper and met with neighbors regarding their concerns. The ward councilor confirmed that neighbors are now agreeable to the proposed changes in the special permit. The draft conditions were updated to reflect changes to the term “Applicant, its successors or assigns” related to FHA financing issues. **Recommendation of the Urban Affairs Committee is approve the application as amended and under Suspension of the Rules, send the document to the City Solicitor to be placed in proper form.**



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
NOVEMBER 7, 2011**

Regular meeting of the City Council held on Monday, NOVEMBER 7, 2011 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 9:45 PM.

ORDERED: That the City Council president recognized Boy Scout Troop 2, sponsored by the American Legion, for the Citizenship and Community Merit Badges, **FILE**; adopted.

ORDERED: That the minutes of the City Council Meeting OCTOBER 17, 2011, **TABLED UNTIL NOVEMBER 21, 2011**; adopted.

ORDERED: That the request for Executive Session for November 7, 2011 re: Litigation Strategy in an Employee Matter to be heard when City Council convenes for the meeting, **FILE**; adopted.

ORDERED: That the Certification of Free Cash in the amount of \$7,766,863.00, **FILE**; adopted.

ORDERED: That the Capital transfer request in the amount of \$1,182,000.00 which moves funds from Free Cash to various capital equipment accounts which will enable the City to purchase a portion of the FY12 capital equipment outright, therefore reducing the tax burden, refer to the **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$1,182,000.00

TO:

Acct. # 19300006-58462 \$299,000.00

Water

Acct. # 19300006-58731 \$358,000.00

DPW Equip.

Acct. # 19300006-58618 \$375,000.00

IT Equipment

Acct. # 19300006-58467 \$ 150,000.00

Public Facilities

ORDERED: That the Other Post Employment Benefits (OPEB) transfer request in the amount of \$1,000,000.00 which moves funds from Undesignated to OPEB Stabilization, refer back to the **MAYOR FOR CORRECTION**; adopted.

FROM:

Acct. #10000-35900 \$1,000,000.00

Undesignated Funds

TO:

Acct. # 836000-32726 \$1,000,000.00

OPEB Stabilization

ORDERED: That the Capital Outlay transfer request in the amount of \$618,720.00 which moves funds from Free Cash to various accounts as detailed in the attached spreadsheets, refer to **FINANCE COMMITTEE**; adopted.

TRANSFER REQUEST									
FROM ACCOUNT				TO ACCOUNT					
AVAILABLE BALANCE	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAL
				Undesignated Fund				Capital Outlay	
\$ 7,766,863.00	\$ 618,720.00	10000	35900	Undesignated Fund	\$ 99,000.00	19300006	58420	Guardrail	\$ -
					\$ 30,000.00		58461	Sewer	
					\$ 31,000.00		58462	Water	
					\$ 50,000.00		58514	DPW Projects	
					\$ 28,750.00		58731	DPW Equip	
					\$ 56,000.00		58508	Police Vehicles	
					\$ 53,143.00		58593	Police Equip	
					\$ 212,327.00		58512	Fire Equipment	
					\$ 28,500.00		58513	Fire Protection	
					\$ 30,000.00		58618	is Equipment	
					\$ 618,720.00				
Reason To Fund Capital Outlay Reduced From The FY 12 Budget. Please see attached request from Mayor									
Capital DPW									
Streets									
	5/8 Floor Standing Drill				\$ 400.00				
	Jumping Jack Compactor				\$ 2,500.00				
	Guardrail Fencing				\$ 99,000.00				
	Traffic Line Painting Downtown				\$ 50,000.00				
					\$ 151,900.00				
Repair									
	Wheel Grabber Tool Hub Remover				\$ 1,600.00				
	13 Ton Puller Set				\$ 1,000.00				
	Pressure Washer				\$ 6,900.00				
					\$ 9,500.00				
For,Parks Cemets									
	Winch for 254xxp Chipper				\$ 5,000.00				
	48 inch walk behind mower				\$ 4,850.00				
	Set of Flotation Tracks for Skidsteer				\$ 4,500.00				
	Plate Compactor				\$ 2,000.00				
					\$ 16,350.00				
Sewer									
	1 inch Steel Plate 8'x20'				\$ 5,000.00				
	Composite Sampler (EWTP)				\$ 4,000.00				
	Composite Sampler (WWTP)				\$ 4,000.00				
	Sewer Lateral Camera				\$ 5,000.00				
	Sewer Gas Meter Detector				\$ 1,500.00				
	Mudsucker Pump				\$ 2,000.00				
	Trench Safety-Shoring Modular				\$ 8,500.00				
					\$ 30,000.00				
Water									
	1 inch Steel Plate 8'x20'				\$ 5,000.00				
	Jumping Jack Compactor				\$ 2,500.00				
	Portable Generator				\$ 1,000.00				
	Modular Trench Shoring				\$ 8,500.00				
	Fencing Water Tanks				\$ 14,000.00				
					\$ 31,000.00				
	DPW TOTAL				\$ 238,750.00				
Police									
	2 Patrol Vehicles				\$ 56,000.00				
	Automatic License Plate Reader Sys.				\$ 20,000.00				
	Update/Replace gym Equipment				\$ 22,403.00				
	Replace shotguns 15 @716				\$ 10,740.00				
					\$ 109,143.00				
FIRE									
	Radios				\$ 183,927.00				
	SCBA				\$ 12,500.00				
	Fit Tester				\$ 15,900.00				
	Turnout Gear				\$ 28,500.00				
					\$ 240,827.00				
IS									
	Security Set Up				\$ 30,000.00				
	Total				\$ 618,720.00				

ORDERED: That the DPW Snow Equipment transfer request in the amount of \$298,000.00 which moves funds from Undesignated to DPW Equipment as two of the City's sidewalk plows have been decommissioned, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$ 298,000.00
Undesignated Funds

TO:

Acct. # 19300006-58731 \$ 298,000.00
DPW Equipment

ORDERED: That the October Nor'easter transfer requests in the amount of \$125,000.00 from Undesignated and \$25,000.00 from Hurricane Irene which moves funds to Halloween Snow Storm, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$125,000.00
Undesignated Funds

Acct. # 11990006-53021 \$ 25,000.00
Hurricane Irene

TO:

Acct. # 11990006-53019 \$ 150,000.00
Halloween Snow Storm

ORDERED: That the intra-departmental DPW transfer request in the amount of \$39,000.00 which moves funds from Assistant Commissioner Utilities to Maintenance-Trenches as a result of a major water main break, **APPROVED**; adopted.

FROM:

Acct. # 60080001-50630 \$39,000.00
Assistant Commissioner Utilities

TO:

Acct. # 61090006-54620 \$39,000.00
Maintenance-Trenches

ORDERED: That the intra-departmental Fire Department transfer request in the amount of \$30,000.00 and \$27,267.04 which moves funds from Firefighter to OT., refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS									
DEPT: FIRE					FISCAL YEAR: 2012				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$2,033,075.70	\$30,000.00	12200001	50450	FIREFIGHTER	\$30,000.00	12200003	51300	OVERTIME	\$74,753.38
	Reason:	Transfer is available due to a resignation							
\$2,033,075.70	\$27,267.04	12200001	50450	FIREFIGHTER	\$27,267.04	12200003	51300	OVERTIME	\$74,753.38
	Reason:	Transfer is available due to 111F payments being made to Firefighters							

ORDERED: Under authority of MGL, Chapter 44, Section 53A, the City Council hereby refers to **FINANCE COMMITTEE** the Cultural Council Allocation, which provides grant support for cultural programming in our community in the amount of \$7,490.00; adopted.

ORDERED: That the City Council response to Massachusetts Historical Commission regarding proposed demolition of Commonwealth Armory, **APPROVED AND REQUEST THAT THE ASSISTANT CITY SOLICITOR SUBMIT THE FOLLOWING LETTER TO MS. BRONA SIMON OF THE MASSACHUSETTS HISTORICAL COMMISSION**; adopted.

Pursuant to the extension granted by the Massachusetts Historical Commission ("MHC") until November 14, 2011 for a response from the City Council and the Marlborough Historic Commission to MHC's letter of September 27, 2011 concerning a request for demolition by the owner of the Armory, the City Council provides the following information and response:

- The City Council strongly opposes demolition of the Armory;
- The Marlborough Economic Corporation (MEDC), a quasi-governmental organization, is not an official entity of the City and any communications with MEDC does not constitute an effort to discuss any proposal with the City.
- The attached report entitled "Analysis of the Old Armory Building" provided by Stephen Reid, Building Commissioner for the City of Marlborough, includes the various allowable uses of the property – both those as a matter of right and those allowed by special permit - under the City's zoning ordinance;
- The owner has not submitted to the City Council a request for a special permit based on the original plan or a revised plan for the property since the initial denial of a special permit in October 2008;
- The sale price of the Armory and the adjacent property at 364 Lincoln Street (also owned by the owner of the Armory) when previously marketed was excessively high based on fair market value;
- The owner of the Armory has shown no initiative, intent or interest in moving ahead with any project, besides demolition, since the City Council denied a special permit;
- The owners have failed to maintain the property and have created blight in the City. They have declined offers by Armory neighbors to mow the lawn of the Armory and the adjacent property, and in May 2011 the owner placed objects on the lawns of his properties in order to kill the vegetation (*see attached photos*); and
- Demotion of the Armory would be detrimental to the owner's interests with respect Historic Preservation tax credits and with respect to the zoning ordinance because the owner would lose any advantage of a pre-existing non-conforming use would be required to obtain a special permit for a residential use comprised of more than three units while the demolition of the Armory eliminates any flexibility afforded to the City Council as it relates to allowances for non-conforming use of the building.

In closing, the City Council states that it opposes demolition of the Armory, that there are alternatives to demolition which are allowable as of right, as well as the opportunity for the owner to submit a request for a special permit, including revisions to the alternative plans which address the concerns voiced by City officials during the special permit process, that the owner can attempt to sell the property based on fair market value, that City officials are willing to work with the owner regarding these alternatives, but that the owner has shown no cooperation, initiative, intent or interest in any project besides demolition since the City Council denied a special permit.

ORDERED: WHEREAS municipal property at Pleasant Street Fire Station site located at 98 Pleasant Street in Marlborough as shown on Assessors' Map 68, Parcel 174 (collectively, "the Property") is currently under the care, custody, management and control of the City Council, and

WHEREAS the City Council of the City of Marlborough was notified in a previous City-wide study that a portion of the building (namely, the bell tower) located on Parcel 174 had been identified as a possible ideal location for one to two carrier stealth antenna installations, and

WHEREAS the Fire Chief will be providing the City Council with further notification that a portion of the building, (namely, the bell tower) is no longer needed for the specific purpose of a fire station,

NOW THEREFORE, the City Council by a two-thirds majority vote pursuant to the requirements of § 15A of MGL c.40, hereby transfer to the Fire Department, with the approval of the Mayor, the care, custody, management and control of a portion of such Property, to be defined by the Fire Chief, for the purpose of leasing a portion of the building inside the bell tower located on the Property for installation and operation of a Wireless Communications Facility (WFC) and associated ground equipment, subject to a Special Permit as may be granted by the City Council, and subject also to a lease as may be subsequently negotiated and executed by the Mayor for the installation of wireless telecommunications facilities, **APPROVED**; adopted.

AND FURTHER ORDERED: That, pursuant to this City Council Order, a portion of the Property, to be defined by the Fire Chief, at the Pleasant Street Fire Station site located at 98 Pleasant Street in Marlborough, is hereby declared available for disposition by lease for the installation, operation and maintenance of wireless telecommunications equipment, pursuant to the provisions of § 16(a) of MGL c.30B; provided that said declaration is hereby made subject to the following non-exclusive restrictions, including but not limited to (1) an applicant's engineering report for structural suitability, (2) an applicant's compliance with all federal and state regulations pertaining to the site's use as a fire station, and (3) subject to any restrictions as may be set forth by the Historical Commission; **APPROVED**; adopted.

ORDERED: That items #14-21, Communications from the City Solicitor for Special Permits, in proper form, Orders No. 11-1002954E, 3004B, 3018B, 2956E, 2973D, 2974C, 2975C, 2976C, **MOVED TO ITEM #31**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 5, 2011**, as date for a **PUBLIC HEARING** for the Application for Special Permit Application for Special Permit from Sprint for modification of a wireless facility located at 450-460 Boston Post Rd., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 5, 2011**, as date for a **PUBLIC HEARING** for the Application for Special Permit Application for Special Permit from Sprint for modification of a wireless facility located at 57 Union St, refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

Councilor Seymour Abstained

ORDERED: That the Communication from Attorney Bergeron on behalf of US Wireless, LLC, to withdraw without prejudice application for Special Permit to construct a Wireless Communications Facility consisting of 180' tall monopole tower with ancillary antennas and ground based telecommunications equipment at 402 Bolton St (formerly known as 402 Hudson St.), Order No.11-1002902B, be **WITHDRAWN WITHOUT PREJUDICE, APPROVED**; adopted.

ORDERED: That the Communication from Kristin Regan re: Permission to Park on City Property at the top of Emmett St., refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Minutes, Marlborough Community Development Authority, July 14, August 25, September 8, and October 13, 2011, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, September 12 and October 3, 2011, **FILE**; adopted.

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

- A. Kenneth Giardina, 650 Berlin Rd., other property damage
- B. David Elkinson, 10 Schipper Farm Ln., Southborough, pothole or other road defect
- C. Francis Jones, 8 Midland St., other property damage

ORDERED: That the City of Marlborough invite National Grid before the City Council along with various department heads to discuss recent power outages, response time, and what we as a city can do to better prepare ourselves in the event we are facing more outages, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

Councilor Ossing abstained

ORDERED: WHEREAS, the School Committee of the City of Marlborough has endorsed acceptance of the driveway layout, which includes the sidewalks, at the Jaworek School by the City Council as a public way pursuant to the requirements for approval by the Massachusetts Department of Transportation and the Federal Highway Administration for a program of safety improvements along said driveway layout under the Safe Routes To School Infrastructure Program, and

WHEREAS, in the opinion of the City Council, the common convenience and necessity require that the LAYOUT OF THE ENTRANCE DRIVEWAY AT THE JAWOREK SCHOOL be accepted as a public way

From HOSMER STREET to terminus at the entrance to the Jaworek School building
Title to said layout of the entrance driveway shall remain in the City of Marlborough and control of said layout of the entrance driveway shall remain with the School Committee.

IT IS THEREFORE ORDERED THAT:

The ENTRANCE DRIVEWAY LAYOUT AT THE JAWOREK SCHOOL be accepted as a public way in the City of Marlborough.

APPROVED; adopted.

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 03-100112B**

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

CITY COUNCIL ORDER NO. 11-1002954F

Re: 445 Simarano Drive (a/k/a 40 Crane Meadow Road)

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").

2. On September 22, 2003, the City Council granted to AT&T Wireless PCS, LLC a Special Permit to install and operate a wireless communications device at 445 Simarano Drive, which is also known as, and is referred to in that Special Permit as, 40 Crane Meadow Road, Marlborough, MA (hereinafter, "the Original Special Permit"). In 2005, AT&T Wireless PCS, LLC changed its name, as registered in Massachusetts, to New Cingular Wireless PCS, LLC. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 116, Lot 1 (hereinafter "Site"). The owner of record for the Site is 445 Simarano Drive Marlborough LLC.
3. Through its Application for Modification of a Special Permit for an Existing Wireless Communications Facility (hereinafter "Application"), the Applicant seeks permission to modify the Original Special Permit referenced in ¶ 2 above, so as to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility tower; (6) remote radio units onto existing wireless communications facility tower; one (1) LTE GPS antenna on the existing ice bridge; one (1) 23" LTE rack in the existing equipment shelter; as well as the placement of one (1) 2½" flex conduit connecting the antennae to the existing equipment shelter (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlborough Crane Meadow Road, MA-3118, 40 Crane Meadow Road, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 3/08/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The Site is zoned Industrial (I). Wireless communication devices are allowed by grant of a special permit in Industrial (I) Zoning Districts.
6. The modification of the Original 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, 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 opened a public hearing on the Proposed WCF Project on August 1, 2011, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Said hearing was continued to and closed on August 29, 2011.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 6:**
 - 1) Except as modified below, all conditions set forth in the Original Special Permit shall apply to the Modified Special Permit.
 - 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.

- 3) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.
- 4) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in the operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 5) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.

- 6) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.
- 7) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

ORDERED: At President Vigeant's request to recess at 9:00 PM and returned to open meeting at 9:02 PM, **APPROVED**; adopted.

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 99-8311B**

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

CITY COUNCIL ORDER NO. 11-1003004C

Re: 175 Maple Street

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 99-8311B to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On December 20, 1999, the City Council granted to AT&T Wireless PCS, d/b/a AT&T Wireless Services, a Special Permit to locate a wireless communications facility at the existing water tank located at 175 Maple Street, Marlborough, MA (hereinafter, "the Original Special Permit"). 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 L-A 175 Maple Street Land Owner, LLC.
3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas inside an existing stealth flagpole wireless communication facility; (6) remote radio heads mounted to existing water tank wireless communication facility; one (1) LTE GPS antenna mounted to the existing water tank; one (1) 23" LTE rack in the existing equipment room; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlborough Maple Street (MA-3461), 175 Maple Street, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 7/22/11, a copy of which were provided as Exhibit 10 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The proposed WCF is located in the Industrial (I) Zoning District. Wireless communication devices are allowed by grant of Special Permit in Industrial (I) Zoning Districts.

6. The modification of the Original 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, 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 the Proposed WCF Project on September 26, 2011, 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 WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 9:**

- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
- 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 3) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 4) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.
- 5) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 6) Any problems arising out of the operation of the Proposed WCF Project that interfere with reception, at the Marlborough Fire Department's headquarters at 215 Maple Street, of the City of Marlborough's public safety radio system shall be rectified by Applicant as soon as possible.
- 7) The Applicant shall ensure that the American flag flown appropriately, in the opinion of the Veteran's agent, on the stealth flagpole is proportionately sized to that flagpole and is maintained in proper condition on an as-needed basis. The flag must be illuminated if flown at night.

- 8) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.
- 9) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 10- Nay: 0

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

Absent: Seymour

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 04-100527B**

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

CITY COUNCIL ORDER NO. 11-1003018C

Re: 53 Brigham Street

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 04-100527B to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On December 20, 2004, the City Council granted to Southwestern Bell Mobile Systems, LLC, d/b/a Cingular Wireless, a Special Permit to attach a set of antennas, behind camouflaged screening, to, and to install related equipment consisting of a prefabricated equipment shelter and emergency generator, and coaxial cables, at, the existing building located at 53 Brigham Street, Marlborough, MA (hereinafter, "the Original Special Permit"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 104, Lot 2 (hereinafter "Site"). The owner of record for the Site is Mountaintop Corporation.
3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to replace four (4) existing panel antennas and their stealth wall, and to replace the antennas with four (4) new UMTS/GSM panel antennas, three (3) LTE panel antennas; (6) remote radio heads mounted on the proposed cable trays along the rooftop; one (1) LTE GPS antenna mounted to the existing equipment shelter; one (1) 23" LTE rack inside of the existing equipment shelter (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "MARLBOROUGH SOUTH RT 85 (MA-3239), 53 Brigham Street, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/27/11, a copy of which were provided as Exhibit 10 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.

5. The proposed WCF is located in the Business B Zoning District. Wireless communication devices are allowed by grant of Special Permit in Business B Zoning Districts.
6. The modification of the Original 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, 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 the Proposed WCF Project on October 3, 2011, 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 WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 8:**

- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
- 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 3) 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.
- 4) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 5) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.
- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.

- 7) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.
- 8) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 08/09-1002083B**

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

CITY COUNCIL ORDER NO. 11-1002956F

Re: 860 Boston Post Road East

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 08/09-1002083B to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On April 6, 2009, the City Council granted to New Cingular Wireless PCS, LLC a Special Permit to allow co-location of six (6) wireless communications panel antennas on an existing 140' high wireless communications monopole, and one (1) GPS antenna mounted on a proposed ice bridge, and a 12' X 20' equipment shelter on the ground within an existing compound and associated cables, utilities and equipment at 860 Boston Post Road East, Marlborough, MA (hereinafter, "the Original Special Permit"). 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.
3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to modify the Original Special Permit referenced in ¶ 2 above, so as to allow at the Site co-location of three (3) LTE panel antennas onto an existing wireless communication facility tower; (6) remote radio heads onto an existing wireless communication facility tower; one (1) LTE GPS antenna on the existing ice bridge; one (1) 23" LTE rack in the existing equipment shelter; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment shelter (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlborough Water Treatment Plant (MA-3528)" by Pro Terra Design Group, LLC and dated 3/11/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
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 a special permit in Rural Residential Zoning Districts.
6. The modification of the Original 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, 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 opened a public hearing on the Proposed WCF Project on August 1, 2011, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Said hearing was continued to and closed on August 29, 2011.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 3:**

- 1) Except as modified below, all conditions set forth in the Original Special Permit shall apply to the Modified Special Permit.
- 2) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 3) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

ORDERED: At President Vigeant's request to recess at 9:20 PM and returned to open meeting at 9:22 PM, **APPROVED**; adopted.

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 99-8280C**

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

CITY COUNCIL ORDER NO. 11-1002973D

Re: 450-460 Boston Post Road East

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 99-8280C to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On December 20, 1999, the City Council granted to AT&T Wireless PCS, d/b/a AT&T Wireless Services, a Special Permit to locate its wireless communications facility at the existing building located at 450-460 Boston Post Road East, Marlborough, MA (hereinafter, "the Original Special Permit"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 73, Lot 31 (hereinafter "Site"). The owner of record for the Site is Trinity Countryside Limited Partnership.
3. Through its Application for Modification of Special Permit for a Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility rooftop; (6) remote radio heads onto an existing wireless communication facility rooftop; one (1) LTE GPS mounted to the rooftop; two (2) LTE equipment cabinets on the existing elevated frame on the rooftop; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlborough Boston Post RD (MA-3373), 450 Boston Post Road East, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/22/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.

5. The proposed WCF is located in the Business B Zoning District. Wireless communication devices are allowed by grant of Special Permit in Business B Zoning Districts.
6. The modification of the Original 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, 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 opened a public hearing on the Proposed WCF Project on August 1, 2011, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Said hearing was continued to and closed on August 29, 2011.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 7:**

- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
- 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 3) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 4) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.
- 5) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.

- 6) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.

- 7) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 96-6861**

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

CITY COUNCIL ORDER NO. 11-1002974D

Re: 97 Arnold Street Extension

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to New Cingular Wireless PCS LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. Through its Application for a Special Permit (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility water tank; (6) remote radio heads onto an existing wireless communication facility water tank; one (1) LTE GPS antenna on the existing ice bridge; one (1) 23" LTE rack in the existing equipment shelter; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment shelter (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlboro (MA-3039), 97 Arnold Street Ext., Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/22/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").

3. The location of the Proposed WCF Project is 97 Arnold Street Extension, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 68, Lot 80 (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 proposed WCF is located in the Residential A-3 Zoning District. Wireless communication devices are allowed by grant of Special Permit in Residential A-3 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, 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 the Proposed WCF Project on August 29, 2011, 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 WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 11:**

- 1) The Proposed WCF 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 WCF 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 WCF 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 Special 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 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 WCF referenced in this Special 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 WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 8) No construction or installation at the Proposed WCF Project shall commence until the Applicant has received written approval from the Department of Public Works Commissioner that he is satisfied as to the Plans. No operation of the Proposed WCF 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 WCF Project shall be subject to site plan review, if applicable.

- 10) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.
- 11) 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 WCF Project. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 97-6059B**

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

CITY COUNCIL ORDER NO. 11-1002975D

Re: 4 Mount Royal Avenue

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-6059B to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On July 14, 1997, the City Council granted to AT&T Wireless Services a Special Permit to attach a set of antennas to the existing building located at 4 Mount Royal Avenue, Marlborough, MA (hereinafter, "the Original Special Permit"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 79, Lot 94 (hereinafter "Site"). The owner of record for the Site is Mount Royal Associates, a Massachusetts limited partnership, c/o Haynes Management Inc.
3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility rooftop; (6) remote radio heads onto an existing wireless communication facility rooftop; one (1) LTE GPS pipe mounted; two (2) 23" LTE equipment cabinets on the existing elevated frame on the rooftop; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Mount Royal Avenue (MA-3297), 4 Mount Royal Avenue, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/27/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.

5. The proposed WCF is located in the Business B Zoning District. Wireless communication devices are allowed by grant of Special Permit in Business B Zoning Districts.
6. The modification of the Original 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, 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 the Proposed WCF Project on August 29, 2011, 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 WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 10:**

- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
- 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 3) 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 Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 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 Modified Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCF 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 Modified Special 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 Modified 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 WCF referenced in this Modified Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Modified 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 WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 8) No operation of the Proposed WCF Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.

- 10) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 99-8204B**

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

CITY COUNCIL ORDER NO. 11-1002976D

Re: 157 Union Street

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 99-8204 to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 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, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On November 8, 1999, the City Council granted to AT&T Wireless PCS, d/b/a AT&T Wireless Services, a Special Permit to locate and operate a wireless communications facility at the existing building located at 157 Union Street, Marlborough, MA (hereinafter, "the Original Special Permit"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 43, Lot 56 (hereinafter "Site"). The owner of record for the Site is Marlborough Hospital.

3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility smokestack; (6) remote radio heads onto an existing wireless communication facility smokestack; one (1) LTE GPS located on the existing ice bridge; one (1) 23" LTE equipment cabinet in the existing equipment area; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Marlborough Hospital (MA-3307), 157 Union Street, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/21/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The proposed WCF is located in the Residential (A-3) Zoning District. Wireless communication devices are allowed by grant of Special Permit in Residential (A-3) Zoning Districts.
6. The modification of the Original 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, 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 opened a public hearing on the Proposed WCF Project on August 29, 2011, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Said hearing was continued to and closed on August 29, 2011.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF 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 WCF 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 WCF 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 WCF Project and the Proposed WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 7:**
 - 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
 - 2) The Proposed WCF 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 Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
 - 3) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.

- 4) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified 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.
- 5) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant.
- 6) 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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 WCF 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 qualified 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.

- 7) 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 Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 10- Nay: 0

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

Abstain: Seymour

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:45 p.m.



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
NOVEMBER 21, 2011**

Regular meeting of the City Council held on Monday, NOVEMBER 21, 2011 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 8:44 PM.

ORDERED: That the minutes of the City Council Meeting OCTOBER 17, 2011, **FILE**; adopted.

ORDERED: That the minutes of the City Council Meeting NOVEMBER 7, 2011, **TABLED UNTIL DECEMBER 5, 2011**; adopted.

ORDERED: It is moved, in conformance with the provisions of section 21(a)(3) of Chapter 30A of the General Laws of the Commonwealth, that the City Council conduct an executive session for the purpose of discussing strategy with respect to litigation, as an open meeting may have a detrimental effect on the litigating position of the City and other defendants, and the chair hereby declares that an open meeting may have that effect. It is further moved and stated that the City Council will re-convene in open session after the executive session, **APPROVED** and returned to open meeting at 8:28 PM; adopted.

Yea: 11- Nay: 0

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

ORDERED: That the Other Post Employment Benefits (OPEB) transfer request in the amount of \$1,000,000.00 which moves funds from Undesignated to OPEB Stabilization, refer to the **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$1,000,000.00
Undesignated Fund

TO:

Acct. # 836000-62726 \$1,000,000.00
OPEB Stabilization

ORDERED: That the October Nor'easter transfer request in the amount of \$50,000.00 which moves funds from Undesignated to Halloween Snow Storm, **APPROVED**; adopted.

FROM:

Acct. #10000-35900 \$50,000.00
Undesignated Funds

TO:

Acct. # 11990006-53019 \$50,000.00
Halloween Snow Storm

ORDERED: That the transfer request in the amount of \$39,850.24 which moves funds from Open Space Stabilization to Open Space account for annual payment to Ward Mountain LLC, **APPROVED**; adopted.

FROM:

Acct. #83600-11520

\$39,850.24

Open Space Stabilization

TO:

Acct. # 19300006-58170

\$39,850.24

Open Space Acquisition

ORDERED: That the Communication from the Mayor re: Update Concerning Request for Proposals for a New Senior Center, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor Rider re: Requested Conveyance of Two Parcels of Municipal Property off Pleasant St., refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

Councilor Ossing read a disclosure statement as required by G.L.C. 268A §23(b)(3).

ORDERED: That the Communication from the Planning Board re: Proposed Zoning Amendment, Section 650-26 (A)(1)(a), Order No. 11-1002985A of which the Planning Board is sending a **NEGATIVE** recommendation to the City Council, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the communication from the Planning Board regarding acceptance of Perry Lane., refer to **PUBLIC SERVICES AND THE CITY SOLICITOR**; adopted.

ORDERED: That the Communication from Attorney Bergeron re: Notice of Application for Site Eligibility for Construction of 290 Units of Affordable Housing on a Site between Glenn St. and Ames St., Map 89, Parcel 3B, **FILE**; adopted.

ORDERED: Per communication from Rosella Mercuri, Agent for Sprint, That there being no objection thereto **RESCHEDULE TO THE SECOND REGULARLY SCHEDULED CITY COUNCIL MEETING IN 2012**, as date for a **PUBLIC HEARING** for the Application for Special Permit Application for Special Permit from Sprint for modification of a wireless facility located at 450-460 Boston Post Rd., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: Per communication from Rosella Mercuri, Agent for Sprint, That there being no objection thereto **RESCHEDULE TO THE SECOND REGULARLY SCHEDULED CITY COUNCIL MEETING IN 2012**, as date for a **PUBLIC HEARING** for the Application for Special Permit Application for Special Permit from Sprint for modification of a wireless facility located at 157 Union St, refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

Councilor Seymour Abstained

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

ORDERED: That the Minutes, Conservation Commission, September 15, **FILE**; adopted.

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

A. Daniel Jenkins and Kelly Maloney, 6 Maplewood Ave., other property damage

B. Edward Philmon, 165 Dartmouth St., pothole or other road defect

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order No. 11-1003069 – Grant for \$7,490.00 for the Marlboro Cultural Council. The Finance Committee reviewed the Mayor’s letter dated November 3, 2011 requesting the approval of a \$7,490.00 grant for the Marlboro Cultural Council for cultural programming in the city. **Recommendation of the Finance Committee is to approve 5 – 0.**

Order No. 11-1002997B – Transfer \$168,654.80 to Fund DPW Engineers’ Union Contract. The Finance Committee reviewed the Mayor’s letter dated October 14, 2011 requesting the transfer of \$168,654.80 to fund the DPW Engineers’ Union contract and reorganize positions at the Westerly Waste Water Treatment Plant. The Finance Committee reduced the transfer from Reserve for Salaries from 3,977.94 to 461.93 to fund the Sick Leave Buy Back Engineering Account 14001103-51920. **Recommendation of the Finance Committee is to approve 5 – 0.**

Order No. 11-1003068 – Fire Department Intra-departmental Transfer of \$57,267.04 from Firefighters Account to Firefighter Overtime. The Finance Committee reviewed the Mayor’s letter dated November 3, 2011 requesting the transfer of \$57,267.04 from the Firefighter account to the Fire Fighter Overtime account. **Recommendation of the Finance Committee is to approve 5 – 0.**

Order No. 11-1003048 – Transfer \$150,000.00 from Economic Development Special Revenue to Marlboro Economic Development Corporation (MEDC) Funding. The Finance Committee reviewed the Mayor’s letter dated October 13, 2011 requesting the transfer of \$150,000.00 from the Economic Development Special Revenue account to the MEDC account. Councilor Ferro requested confirmation that the initial \$200,000 approved from Undesignated Funds in February 2011 has been reimbursed to the General Fund. The Finance Committee Chairman will work with the Comptroller to get a full accounting of the funds received to date from the additional hotel tax and money’s disbursed from the account. This information will be provided to the full City Council. **Recommendation of the Finance Committee is to approve 5 – 0.**

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

Order No. 11-1002922 – Application by Attorney Bergeron on behalf of St. Mary's of French Hill Development LLC top modify an existing Special Permit (Order No. 07-1001500C) to allow rental of all proposed units until first sale of each unit at 26 Broad St. The Applicant addressed concerns raised at the public hearing including the election of a Board of Trustees, the impact of rental units on condo values, and FHA financing concerns. A Board of Trustees has been elected, the question of allowing additional rental units was approved by a majority of condo owners, and the applicant has resolved the issue of FHA restrictions on ownership. The draft conditions were updated to reflect changes to the term “Applicant, its successors or assigns” related to the FHA issue. **Recommendation of the Urban Affairs Committee is approve the application as amended and under Suspension of the Rules, send the document to the City Solicitor to be placed in proper form.**

Order No. 11-1002923 - Application by Attorney Bergeron on behalf of 110 Pleasant LLC top modify an existing Special Permit (Order No. 10-1002683B) to allow rental of all proposed units until first sale of each unit at 110-118 Pleasant St. (Corbin Plaza). The Applicant addressed concerns raised at the public hearing regarding maintenance of the property and the impact of rental units on neighborhood home values. The applicant has cleaned up the site, hired a landscaper and met with neighbors regarding their concerns. The ward councilor confirmed that neighbors are now agreeable to the proposed changes in the special permit. The draft conditions were updated to reflect changes to the term "Applicant, its successors or assigns" related to FHA financing issues. **Recommendation of the Urban Affairs Committee is approve the application as amended and under Suspension of the Rules, send the document to the City Solicitor to be placed in proper form.**

Suspension of the Rules requested- granted

ORDERED: That the DPW Snow Equipment transfer request in the amount of \$298,000.00 which moves funds from Undesignated to DPW Equipment as two of the City's sidewalk plows have been decommissioned, **APPROVED**; adopted.

FROM;

Acct. # 10000-35900	\$ 298,000.00
Undesignated Funds	

TO:

Acct. # 19300006-58731	\$ 298,000.00
DPW Equipment	

Suspension of the Rules requested-granted

ORDERED: That the Application for Special Permit by Attorney Bergeron on behalf of St. Mary's of French Hill Development LLC top modify an existing Special Permit (Order No. 07-1001500C) to allow rental of all proposed units until first sale of each unit at 26 Broad St., **REFER TO THE CITY SOLICITOR TO BE PLACED IN PROPER FORM**; adopted.

Suspension of the Rules requested-granted

ORDERED: That the Application for Special Permit by Attorney Bergeron on behalf of 110 Pleasant LLC top modify an existing Special Permit (Order No. 10-1002683B) to allow rental of all proposed units until first sale of each unit at 110-118 Pleasant St. (Corbin Plaza), **REFER TO THE CITY SOLICITOR TO BE PLACED IN PROPER FORM**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:44 p.m.

Public Hearing – 2012 Tax Levy

LEGAL NOTICE
CITY OF MARLBOROUGH
OFFICE OF CITY CLERK

Notice is given that the City Council of the City of Marlborough will hold a **Joint Tax Classification Public Hearing with** the Board of Assessors on **Monday, December 5, 2011** at 8:00 p.m. in Council Chambers, 2nd Floor, City Hall, 140 Main Street, Marlborough, MA to determine the percentage of the local tax levy to be borne by each class of property for Fiscal Year 2011. Massachusetts General Laws Chapter 40, Section 56 sets forth the procedures and responsibilities under the law.

Per Order of: City Council President, Arthur G. Vigeant



City of Marlborough
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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
Office of the Mayor

2011 DEC - 1 P 3:44
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

Nancy E. Stevens
MAYOR

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. LaRose
EXECUTIVE SECRETARY

November 28, 2011

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

Honorable President Vigeant and Councilors:

To provide for the Commonwealth's finalization of the City's FY 2012 tax levy, I am submitting the following Board of Assessors' recommendations for your approval:

- Residential property FY 12 levy of (51.9831%)
- Commercial/Industrial/Personal property FY12 levy of (48.0169%)

To reduce the FY2012 tax levy, I am submitting the following transfer requests:

Sheet 1: Transfer in the amount of \$634,866.82 moving funds from account number 10000-35900 (Undesignated Funds). An additional transfer in the amount of \$1,365,133.18 from account number 10000-35900 (Undesignated Funds) will offset the tax levy by eliminating the snow and ice deficit.

Sheet 2: Transfer in the amount of \$37,675.00 from account number 27000-33020 (Sale of Graves), transfer in the amount of \$750,000.00 from Account No. 61000-31200 (Aquifer Protection) and transfer in the amount of \$10,884.83 from account number 27000-33040 (Sale of Land).

Acting City Assessor Dan Brogie, Comptroller Tom Abel and I will be present at the December 5th meeting to respond to any Council inquiries. Your prompt review and vote will provide the necessary timeframe for preparation of the City's tax request to the Commonwealth.

As always, please feel free to call with any questions or concerns.

Sincerely,

Nancy E. Stevens
Mayor

Enclosures

TRANSFER REQUEST

Office of the Mayor

		FROM ACCOUNT		TO ACCOUNT					
AVAILABLE BALANCE	AMOUNT	ORG CO	OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
				Undesignated Fund				Tax Levy	
\$ 7,468,863.00	\$ 634,866.82	10000	35900	Undesignated Fund	\$ 634,866.82			To Reduce FY 12 Tax Levy	
	\$ 1,365,133.18	10000	35900	Undesignated Fund	\$ 1,365,133.18			To Reduce Snow & Ice Deficit on FY 12 Tax Levy	
Totals	\$ 2,000,000.00				\$ 2,000,000.00				

Reason: Free Cash used to reduce FY 12 tax levy

TRANSFER REQUEST

Office of the Mayor

AVAILABLE BALANCE	AMOUNT	FROM ACCOUNT					TO ACCOUNT	AMOUNT	AMOUNT AVAIL
		ORG C	OBJECT	ACCOUNT DESCRIP		ORG CODE	OBJECT	ACCOUNT DESCRIP	
\$ 37,675.00	\$ 37,675.00	27000		33020 Sale Of Graves	\$	37,675.00	To Reduce FY 12 Tax Levy		
\$ 1,534,088.19	\$ 750,000.00	61000		31200 Aquifer Protection	\$	750,000.00	To Reduce FY 12 Tax Levy		
\$ 10,884.83	\$ 10,884.83	27000		33040 Sale of Land	\$	10,884.83	To Reduce FY 12 Tax Levy		
	Total				\$	798,559.83			

Reason: Other funds used to reduce FY 12 tax levy

CITY OF MARLBOROUGH

CLASSIFICATION HEARING

Allocation of Local Tax Levy

Fiscal Year 2012

December 5, 2011

MARLBOROUGH BOARD OF ASSESSORS

Daniel C. Brogie
Anthony C. Arruda Jr.
Anthony R. Trodella

Information

One of the City Council's responsibilities is to annually determine the percentage of the local tax levy to be borne by each class of property. This responsibility and procedure are described in chapter 40, Section 56 of the Massachusetts General Laws.

The Council's decision is based on technical data and recommendations provided by the Board of Assessors. Examples included herein assume adoption by the City Council of the classification as presented by the Board of Assessors.

It must be understood that the rates and percentages are made final only after the Department of Revenue reviews and certifies our submission on the recap sheet.

FY 2012 new growth and values have been approved by the Department of Revenue.

Definitions

The following are definitions of the terms frequently used in the discussion of the tax rate.

Levy: The levy is the actual amount to be raised by taxes. The levy amount is determined by the budget. The total amount of the approved budget less all revenues from other sources is the amount of the levy.

Levy Ceiling: The levy ceiling is 2.5 percent of the full value of the city. This is sometimes referred to as the "Chapter 797 levy"; in reference to the state law that defines it.

Levy Limit: Also referred to as the "allowable levy", this is calculated by adding 2.5 percent of the previous year's levy limit plus new growth revenue of the present fiscal year to last year's levy limit. To exceed the levy limit requires an override of Proposition 2 1/2.

Excess Levy Capacity: The excess levy capacity is the difference between the levy and the levy limit.

The following chart is an illustration of these terms as applied to fiscal year 2012.

FISCAL YEAR 2012 LEVY LIMIT

FY 2011 LEVY LIMIT	\$103,447,705
2.5% FY 2011 LEVY LIMIT	\$2,586,193
FY 2012 NEW GROWTH	\$2,296,606
FY 2012 LEVY LIMIT	\$108,330,504
FY 2012 LEVY	\$85,869,048*
EXCESS LEVY CAPACITY	\$22,461,456

***Levy reflects the application of \$2,000,000 from Undesignated Funds and Other Sources.**

The task before the City Council is to vote on the PERCENTAGE OF LEVY to be borne by the different classes of properties, as prescribed by Chapter 40, Section 56 of the Massachusetts General Laws. While the vote technically is not to set a tax rate or rates, the rates fall out as merely a mathematical calculation based on those percentages. We have provided information on what the tax rate would be for the recommended classification. The Department of Revenue actually sets the tax rate by certifying all the information submitted to them on the Re-cap sheet.

Although it is never used in any of the calculations within this report, it is interesting to note that the hypothetical average single family home is assessed at \$302,412 for FY 2012. This is down from \$307,047 for FY 2011.

Dividing the total value of all single family homes by the number of single family homes derives this value. This is a decrease of approximately 1.5% from fiscal year 2011. *Individual assessments will increase or decrease at varying levels. NOT NECESSARILY AT 1.5%*

It is important to recognize that changes in assessments are never uniform across all types of residential properties. There will be variations based on market activity within different properties classes. As an example, single family homes may not rise or fall at the same rate as condominiums or multi families.

These variations will result in increases or decreases in actual tax bills.

RECOMMENDATIONS

The key elements that were considered and are included in the criteria that lead to the recommendations being made by the Board of Assessors are as follows:

1. Maintaining the split in the CIP factor of 1.50 for the Residential/CIP tax structure so that the City of Marlborough will continue to spread the cost of running the City as equitably as possible between both residential and commercial/industrial/personal property taxpayers.

The city does have the option of raising the split to 1.75 for FY 2012

2. The proposed levy reflects the mayor's recommendation to apply \$2,000,000 from Undesignated Funds and Other Sources to the tax levy.

It is important to note that although the CIP properties represent 32.0113% of the total value of the City, they pay 48.0169% of the tax levy.

Based on the proposed CIP shift for FY 2012, the residential taxpayer will bear 51.9831% of the tax levy and the Commercial/Industrial/Personal Property taxpayer will bear 48.0169% of the tax levy. This results in a minimal change in the percentage of the levy paid by the residential taxpayer when compared to FY 2011 while allowing the CIP taxpayer to remain competitive (FY 2011 percentages were Res. 51.2117% and CIP. 48.7883%).

The Board of Assessors would also like to note that we will continue with our Measure and List program. This program is vital to maintaining accurate property data and ultimately fair and accurate assessments for all taxpayers in the city. This year we will concentrate primarily on residential properties.

The chart below summarizes the Board's specific recommendations and their impact on the tax rate.

IT IS TO BE NOTED THAT THE FINAL TAX RATE WILL BE SET BY THE DEPARTMENT OF REVENUE WHEN THE FINAL RE-CAP FINANCIAL AND VALUATION INFORMATION IS APPROVED.

Class	Assessed Value	Total Levy	Levy Percent	Tax Rate
Residential	3,014,994,435	44,637,357	51.9831	14.81 (+6.2%)
CIP	1,419,557,464	41,231,691	48.0169	29.05 (+5.4%)
Total	4,434,551,899	85,869,048	100.00	

CIP LEVY PERCENTAGE BY CLASS

COMMERCIAL: 26.2158
INDUSTRIAL: 13.6866
PERSONAL: 8.1145

FY 2011 AVERAGE SINGLE FAMILY HOME DATA

FY 2011 ASSESSMENT: 307,047

FY 2011 RES. TAX RATE: 13.94

FY 2011 TAX BILL: \$4,280

PROPOSED FY 2012 AVG. SINGLE FAMILY HOME DATA

FY 2012 ASSESSMENT: 302,412

FY 2012 RES. TAX RATE: 14.81

FY 2012 TAX BILL: \$4,479

DOLLAR CHANGE: \$199 (+4.6%)

FY 2012 RATE CHANGE: \$.87 (+6.2%)

FY 2011 TYPICAL RETAIL STRIP MALL DATA

FY 2011 ASSESSMENT: 932,800

FY 2011 CIP TAX RATE: 27.55

FY 2011 TAX BILL: \$25,698

PROPOSED FY 2012 RETAIL STRIP MALL DATA

FY 2012 ASSESSMENT: 899,300

FY 2012 CIP TAX RATE: 29.05

FY 2012 TAX BILL: \$26,125

DOLLAR CHANGE: \$427 (+1.7%)

FY 2012 RATE CHANGE: \$1.50 (+5.4%)

The single tax rate for FY 2012 under the proposed levy would be \$19.36 per thousand. The average single family tax bill would be \$5,855 (+ \$1,575).



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140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

Nancy E. Stevens
MAYOR

Krista F. Holmi
EXECUTIVE AIDE

Katherine M. LaRose
EXECUTIVE SECRETARY

November 30, 2011

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

Honorable President Vigeant and Councilors:

As requested in the November 21st meeting of the Finance Committee, I am submitting for your approval the following transfer to fund the Informational Technology capital request:

Transfer in the amount of \$180,000.00 moving funds from account number 10000-35900 (Undesignated Fund) to account number 19300006-58618 (Capital Outlay-IT Equipment).

Also attached for your information is a spreadsheet which includes the location and description of the proposed equipment, as well as a summary provided by IT Director Mark Gibbs.

As always, please feel free to call with any questions or concerns.

Sincerely,

Nancy E. Stevens
Mayor

Enclosures

TRANSFER REQUEST

AVAILABLE BALANCE	AMOUNT	FROM ACCOUNT		TO ACCOUNT			AMOUNT AVAIL
		ORG C	OBJECT	AMOUNT	ORG CODE	OBJECT	
		Undesignated Fund		Capital Outlay			
\$ 7,468,863.00	\$ 180,000.00	10000	35900 Undesignated Fund	\$ 180,000.00	19300006	58618 IT Equipment	-

\$ 180,000.00

Reason To Fund Departmental Equipment for the I.T. Please see attached request from Mayor



City of Marlborough
Marlborough Public Schools
Information Technology

140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 460-3763 FACSIMILE (508) 481-6058
mgibbs@marlborough-ma.gov



November 30, 2011

TO: Finance Committee / City Council
FROM: Mark Gibbs, Information Technology Director
CC:
RE: FY12 Computer and Network Equipment Needs

November 30, 2011

Dear Committee Members,

Below is a summary of the FY12 computer and equipment needs that encompasses both the city and MPS.

The computer replacement program objective has been to replace/recycle computers yearly over a 5 year period, ensuring that there are no computers older than 5 years in use. There are roughly 300 computers in the City and we would like to replace the oldest one-fifth of them, or 60 machines, this year. Most of these machines are at the DPW in addition to machines in City Hall, and the Walker Building that need to be replaced not including machines that are 5 years old and older. Our goal for the Public Library is to replace 10 computers a year. This will ensure that the public use machines are modern and can meet the needs of the library patrons.

After the committee meeting a further review of laptop needs revealed that replacements this year would primarily be aimed at school principals, assistant principals, district administrators and four city department heads. Their laptops would be rebuilt and redeployed to staff members that currently have old and out of warranty machines such as coordinators, SPED personnel, and other mobile users.

Network equipment and infrastructure upgrades this year would include the replacement of network switches that will address our increasing capacity needs as well as replacing equipment such as VPN hardware and firewalls, some of which is nearing obsolescence at 8 years old or older. It also includes the purchase of a spare network antenna. In the event that we lose one due to inclement weather it can be replaced immediately. Our current email spam filter is running at 80% utilization, soon to reach full capacity at which point email delivery will be impeded.

We would also like to replace several aging servers, such as our Vision, DocuShare and virtual servers and we would like to deploy a more powerful City domain controller.

Please feel free to contact me with any questions or concerns. I can be reached at 508-460-3763 or mgibbs@marlborough-ma.gov.

Sincerely,

Mark Gibbs,
Information Technology Director

Equipment	Location	Number	Cost
Desktops	DPW	30	30,000
	City Hall	20	20,000
	Walker Building	10	10,000
	Library	10	10,000
Network Equipment	Switches		32,000
	Wireless Radio		10,000
	Spam Filter		10,000
	Firewalls		8,000
Laptops	MPS	5	10,000
	City Hall	3	6,000
	MPD	2	4,000
Servers	Vision		10,000
	Virtual Server		15,000
	Domain Controller		5,000
	Total		180,000



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DEC - 1 A 11:44

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

ELLEN M. STAVROPOULOS
PARALEGAL

December 1, 2011

Arthur Vigeant
President
Marlborough City Council

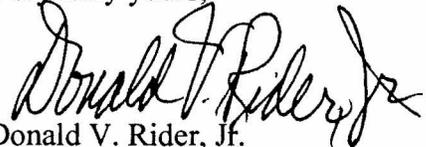
RE: Order No. 11-1002922/x 07-1001500C
Application for Amendment to Special Permit
St. Mary's of French Hill Redevelopment LLC
26-30 Broad Street – St. Mary's Condominiums

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 decision on the application submitted by St. Mary's of French Hill Redevelopment LLC to amend its existing special permit at 26-30 Broad Street – St. Mary's Condominiums. The LLC primarily seeks to amend the original special permit's condition number 27 pertaining to owner-occupancy.

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: Arthur Bergeron, Esquire

AMENDMENT
TO ORIGINAL SPECIAL PERMIT
GRANTED TO ST. MARY'S OF FRENCH HILL REDEVELOPMENT, LLC
Order No. 11-1002922/x 07-1001500C

St. Mary's of French Hill Redevelopment LLC
26 Elderwood Drive, Stoughton, MA 02072

St. Mary's Condominiums
26-30 Broad Street, 2-22 St. Mary's Way Marlborough, MA 01752

The City Council of the City of Marlborough hereby GRANTS the application of St. Mary's of French Hill Redevelopment LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, as provided in this Decision and subject to the following Findings of Fact and Conditions.

PROCEDURAL FINDINGS OF FACT

1. St. Mary's of French Hill Redevelopment LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, is referred to hereinafter as the "Applicant."
2. Applicant is the owner of certain real estate located at 26-30 Broad Street, Marlborough, MA, as further described in a deed recorded at the Middlesex South District Registry of Deeds in Book 50143, Page 588 (hereinafter, the "Premises").
3. On June 25, 2007, the City Council of the City of Marlborough voted to grant the Applicant a special permit concerning the Premises, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 50144, Page 1 (hereinafter, the "Original Special Permit").
4. On May 19, 2011, the Applicant submitted to the City Clerk for the City of Marlborough an application seeking to amend the Original Special Permit under the provisions of M.G.L. c. 40A, § 9 and the Marlborough Zoning Ordinance, Article VI, § 650-59C(20) (hereinafter, the "Application"). In connection with the Application, the Applicant submitted a Special Permit Summary Impact Statement, certified list of abutters, and filing fee.
5. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk caused to be advertised the public hearing's date in the MetroWest Daily News and sent notice of said hearing to abutters entitled to notice under law.
6. On June 20, 2011, the City Council held a public hearing concerning the Application. The hearing was opened and closed on that date. On October 17, 2011, the

City Council voted to approve the Applicant's request to extend the time for final action on the Application to December 31, 2011.

7. The Applicant presented testimony at the public hearing detailing the Application. All testimony made by those speaking at the public hearing have been duly considered in making this Decision.

8. The Procedural Findings of Fact specified above supplement those made in the Original Special Permit, which are expressly incorporated herein by reference.

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

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed new use of the non-conforming structures at the site will not be substantially more detrimental to the neighborhood than the original uses of those structures. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from alternative uses. In addition, the City Council finds that the proposed residential use may act as a catalyst in encouraging further growth and improvements to the surrounding area.

C) The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant an amendment to the Original Special Permit, a) deleting the condition number 21 of the Original Special Permit and substituting therefor a new condition number 21, as set forth below; and b) deleting the condition number 27 of the Original Special Permit and substituting therefor a new condition number 27, as set forth below. All other conditions of the Original Special Permit shall continue in full force and effect, and are expressly incorporated herein by reference.

21. Recording. This Amendment to the Original Special Permit shall be recorded at the Middlesex South District Registry of Deeds in accordance with the provisions of M.G.L. Chapter 40A, § 11 promptly after any appeal period from the issuance hereof as expired, or after any said appeal has been resolved. The Applicant (St. Mary's of French Hill Redevelopment LLC), including its successors and assigns, shall be responsible for recording, at its expense, this Amendment to the Original Special Permit; and shall present evidence of said recording to the City Solicitor's office, which thereupon shall duly forward said recording evidence to the Building Inspector.

27. Owner-Occupancy. It shall be a condition of the condominium by-laws of the project that all units in the project, consisting of a total of thirty-six units, that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this

section of the condominium by-laws, and will provide that this section may not be amended. No occupancy permit regarding the project shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium by-laws for the project conform to this provision and that the condominium by-laws, along with the condominium master deed, have been recorded. Applicant (St. Mary's of French Hill Redevelopment LLC), including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said unit to tenants; provided, however, that:

- a. No said unit shall be or continue to be rented after September 1, 2016;
- b. The number of units being rented and occupied by tenants shall not exceed eight (8) units;
- c. An executed "rent to own" contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit; this condition shall not apply to 4 rented units for the first year of rent with rental agreements signed prior to June 20, 2011;
- d. Applicant, including its successors and assigns, shall continue to market the units as condominiums;
- e. No sign at the premises shall market any units as being for rent; however, "rent to own" signs are permissible so long as they are in compliance with City's sign ordinance without variance; and
- f. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.

The term "Applicant, its successors and assigns," as used herein and for purposes of this Condition 27, shall include Applicant, its successors and assigns, and any entity controlled by said entities, or controlled by the principal and/or principals of said entities. No entity may, at one time, own more than 10% of the units in any condominium created hereunder.

ADOPTED

In City Council
Order No. 11-1002922/x 07-1001500C
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:



RECEIVED
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CITY OF MARLBOROUGH

City of Marlborough
Legal Department

2011 DEC -1 A 11:43 140 MAIN STREET
MARLBOROUGH, MASSACHUSETTS 01752
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DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

ELLEN M. STAVROPOULOS
PARALEGAL

December 1, 2011

Arthur Vigeant
President
Marlborough City Council

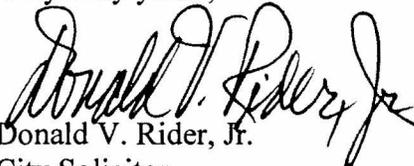
RE: Order No. 11-1002923/x 10-1002683B
Application for Amendment to Special Permit
110 Pleasant LLC
110-118 Pleasant Street – Corbin Plaza

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 decision on the application submitted by 110 Pleasant LLC to amend its existing special permit at 110-118 Pleasant Street – Corbin Plaza. The LLC primarily seeks to amend the original special permit's condition number 22 pertaining to owner-occupancy.

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: Arthur Bergeron, Esquire

AMENDMENT
TO ORIGINAL SPECIAL PERMIT
GRANTED TO 110 PLEASANT LLC
Order No. 11-1002923/x 10-1002683B

110 Pleasant LLC
26 Elderwood Drive, Stoughton, MA 02072

110-118 Pleasant Street
Marlborough, MA 01752

The City Council of the City of Marlborough hereby GRANTS the application of 110 Pleasant LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, as provided in this Decision and subject to the following Findings of Fact and Conditions.

PROCEDURAL FINDINGS OF FACT

1. 110 Pleasant LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, is referred to hereinafter as the “Applicant.”

2. Applicant is the owner of certain real estate located at 110-118 Pleasant Street, Marlborough, MA, as further described in a deed recorded at the Middlesex South District Registry of Deeds in Book 55633, Page 468 (hereinafter, the “Premises”).

3. On September 27, 2010, the City Council of the City of Marlborough voted to grant the Applicant a special permit concerning the Premises, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 55633, Page 471 (hereinafter, the “Original Special Permit”).

4. On May 19, 2011, the Applicant submitted to the City Clerk for the City of Marlborough an application seeking to amend the Original Special Permit under the provisions of M.G.L. c. 40A, § 9 and the Marlborough Zoning Ordinance, Article VI, § 650-59C(20) (hereinafter, the “Application”). In connection with the Application, the Applicant submitted a Special Permit Summary Impact Statement, certified list of abutters, and filing fee.

5. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk caused to be advertised the public hearing’s date in the MetroWest Daily News and sent notice of said hearing to abutters entitled to notice under law.

6. On June 20, 2011, the City Council held a public hearing concerning the Application. The hearing was opened and closed on that date. On October 17, 2011, the

City Council voted to approve the Applicant's request to extend the time for final action on the Application to December 31, 2011.

7. The Applicant presented testimony at the public hearing detailing the Application. All testimony made by those speaking at the public hearing have been duly considered in making this Decision.

8. The Procedural Findings of Fact specified above supplement those made in the Original Special Permit, which are expressly incorporated herein by reference.

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

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed new use of the site, and the structure as altered, will not be substantially more detrimental to the neighborhood than the continued use of the existing site and structure for manufacturing and other non-conforming uses. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from industrial uses. In addition, the City Council finds that the proposed residential use may act as a catalyst in encouraging further growth and improvements to the surrounding area.

C) The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant an amendment to the Original Special Permit, a) deleting the condition number 22 of the Original Special Permit and substituting therefor a new condition number 22, as set forth below; and b) adding a new condition number 26, as set forth below. All other conditions of the Original Special Permit shall continue in full force and effect, and are expressly incorporated herein by reference.

22. Owner-Occupancy. It shall be a condition of the condominium by-laws of the project that all residential units in the project, consisting of a total of seventeen units, that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium by-laws, and will provide that this section may not be amended. No occupancy permit regarding the project shall be issued unless and until the City Solicitor has certified to the Building Inspector that the condominium by-laws, along with the condominium master deed, have been recorded. Applicant (110 Pleasant LLC, 26 Elderwood Drive, Stoughton, MA 02072), including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said units to tenants; provided, however, that:

- a. No said unit shall be or continue to be rented after the fifth anniversary of the date of issuance of the occupancy permit of said unit;
- b. No unit shall be rented or continue to be rented after the seventh anniversary of the date of issuance of the first occupancy permit for the site;
- c. The number of units being rented and occupied by tenants shall not exceed seventeen (17) units;
- d. An executed “rent to own” contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit;
- e. Applicant, including its successors and assigns, shall continue to market the units as condominiums;
- f. No sign at the premises shall market any units as being for rent; however “rent to own” signs are permissible so long as they are in compliance with City’s sign ordinance without variance; and
- g. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.

The term “Applicant, its successors and assigns,” as used herein and for purposes of this Condition 22, shall include Applicant, its successors and assigns, and any entity controlled by said entities, or controlled by the principal and/or principals of said entities. No entity may, at one time, own more than 10% of the units in any condominium created hereunder.

26. Recording. This Amendment to the Original Special Permit shall be recorded at the Middlesex South District Registry of Deeds in accordance with the provisions of M.G.L. Chapter 40A, § 11 prior to the issuance of any occupancy permit regarding the Project. The Applicant (110 Pleasant LLC, 26 Elderwood Drive, Stoughton, MA 02072), including its successors and assigns, shall be responsible for recording, at its expense, this Amendment to the Original Special Permit; and shall present evidence of said recording to the City Solicitor’s office, which thereupon shall duly forward said recording evidence to the Building Inspector as a condition of his issuance of any occupancy permit regarding the site.

ADOPTED

In City Council
Order No. 11-1002923/x 10-1002683B
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
City of Marlborough
Legal Department

2011 DEC -1 P 2:24 140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

ELLEN M. STAVROPOULOS
PARALEGAL

December 1, 2011

Arthur Vigeant
President
Marlborough City Council

RE: Pleasant Street Fire Station
Order No. 1003070-2

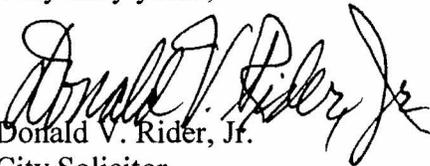
Dear President Vigeant and Members:

At its meeting on November 7, 2011, the Council voted to make the Pleasant Street Fire Station available for disposition by lease for wireless communications purposes. That vote included language stating that further restrictions on that disposition may be set forth by the City's Historic District Commission. Subsequent to that vote, however, it was determined that the fire station in question, while an historical asset of the City, was not located within an historic district.

Accordingly, a clarifying order has been enclosed for your consideration tonight. That order would authorize the lease disposition of the station to be made subject to further restrictions as may be set forth by the City's Historical Commission, which was created under M.G.L. c. 40, § 8D to preserve, protect and develop historical assets in Marlborough.

Thank you for your attention to this matter.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Beverly Sleeper, Chief Procurement Officer

ORDERED:

That this vote is taken to clarify a vote taken on this matter on November 7, 2011;

AND FURTHER ORDERED:

That, pursuant to this City Council Order, a portion of the Property, to be defined by the Fire Chief, at the Pleasant Street Fire Station site located at 98 Pleasant Street in Marlborough, is hereby declared available for disposition by lease for the installation, operation and maintenance of wireless telecommunications equipment, pursuant to the provisions of § 16(a) of M.G.L. c. 30B; provided that said declaration is hereby made subject to the following non-exclusive restrictions, including but not limited to (1) an applicant's engineering report for structural suitability, (2) an applicant's compliance with all federal and state regulations pertaining to the site's use as a fire station, and (3) subject to any restrictions as may be set forth by the Marlborough Historical Commission.

ADOPTED
In City Council
Order No.

Approve by Mayor
Nancy E. Stevens
Date

A TRUE COPY
ATTEST:

MIRICK O'CONNELL

ATTORNEYS AT LAW

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CITY OF MARLBOROUGH

2011 NOV 29 P 12:58

Arthur P. Bergeron
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
abergeron@mirickoconnell.com
t 508.929.1652
f 508.463.1385

November 28, 2011

Councilor Arthur Vigeant, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: Marlborough/Northborough Land Realty Trust request for special permit
Order # 2986A

Dear Councilor Vigeant:

At the suggestion of several City Councilors, my client Marlborough/Northborough Land Realty Trust hereby requests permission to withdraw without prejudice its application for a special permit to construct 290 apartment units on Boston Post Road West.

Very truly yours,



Arthur P. Bergeron

APB/lmb

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

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2011 NOV 28 A 10:33

November 22, 2011

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

RE: Sewer Connection Permit
Boston Scientific Corporation
55 Fairbanks Boulevard (now Boston Scientific Way)
Marlborough, MA

Ladies and Gentlemen:

On behalf of our client, Boston Scientific Corporation, we respectfully request that the City Council approve an extension of time from December 1, 2011 to June 1, 2013 (18 month extension) for the sewer connection permit for the above referenced property. We understand that this request may be acted upon after the expiration date of December 1, as we expect the City Council may refer this matter to the Public Service Committee for review and recommendation.

The sewer connection permit is for a new connection to the existing sewer system for the construction of two new buildings (known as M4 and M5) on the property located at 55 Fairbanks Boulevard (now Boston Scientific Way) and off Sasseville Way in the City of Marlborough. The total expected daily sewage flow from the two proposed buildings is 37,500 GPD.

On June 30, 2004 an Application for a Sewer Connection Permit (with accompanying plans and specifications) was filed with the Marlborough City Council. The permit was approved by the City Council on September 13, 2004 and the application was endorsed by the Marlborough Department of Public Works on October 20, 2004. The Application was then filed with the Commonwealth of Massachusetts Department of Environmental Protection as required by 314 CMR 7.00 et. seq. (at that time). The Commonwealth of Massachusetts Department of Environmental Protection approved the sewer connection permit (#W045553) on June 1, 2005.

The original Marlborough City Council approval of the sewer connection permit contained an 18 month time restriction on the construction of the sewer connection. On February 10, 2006 our firm requested that the time limit for the construction of the sewer connection be extended. On March 27, 2006 the City Council extended the permit time limit for an additional 18 months to September 13, 2007. On July 20, 2007 our firm requested that the time limit for the construction of the sewer connection be further extended. On September 10, 2007 the City Council extended the permit time limit for an additional 18 months to March 10, 2009. On February 6, 2009 our firm requested that the time limit for

Mr. Arthur G. Vigeant, President, Marlborough City Council
Sewer Connection Permit, Boston Scientific Corporation
55 Fairbanks Boulevard (now Boston Scientific Way) Marlborough, MA
November 22, 2011, Page 2 of 2

the construction of the connection of the sewer connection be further extended. On February 23, 2009 the City Council granted an extension of the time limit for construction of the sewer connection to June 1, 2010. On March 18, 2010 our firm requested that the time limit for the construction of the connection of the sewer connection be further extended. On June 14, 2010 the City Council granted an extension of the time limit for construction of the sewer connection to December 1, 2011.

Since purchasing the property in 2004, Boston Scientific Corporation has performed renovation and fit-up work on the existing buildings and has moved various functional groups onto the property. This process is ongoing. Recent corporate events within Boston Scientific and the overall economy will require additional planning for future expansions. Boston Scientific considers the expansion capability of the site extremely important to its future plans and this capability was one of the features that attracted Boston Scientific to the site. Therefore, we respectfully request that the City Council extend the approval of the sewer connection permit for an additional 18 months to June 1, 2013.

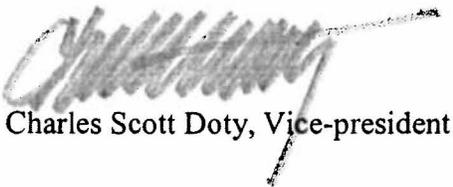
Please note that although the State Sewer Connection Permit granted by the Massachusetts Department of Environmental Protection (MADEP) is approved indefinitely. Regulatory changes made to 314 CMR 7.00 et. seq. (effective as of January 2007) no longer require MADEP approval for certain sewer connections (ordinary sanitary sewage such as the sewage from the two proposed office buildings) with daily flows less than 50,000 gallons (the total expected daily sewage flow from the two proposed buildings is 37,500 gallons).

If necessary our firm and our client would be pleased to meet with the City Council at your convenience to review the requested extension and discuss the details of the project. Please advise us of the date and time you wish us to meet with you.

If you have any questions regarding this matter or should you require any additional information, please do not hesitate to call.

Very truly yours,

JOHN G. CROWE ASSOCIATES, INC.



Charles Scott Doty, Vice-president

cc: Mr. Ronald M. LaFreniere, P.E., Commissioner of Public Works, Marlborough DPW
Mr. Roy Barker, Boston Scientific Corporation
Ms. Lisa M. Thomas, City Clerk

Law Office of
MICHAEL J. NORRIS

171 LOCKE DRIVE, SUITE 101
MARLBOROUGH, MA 01752
PHONE (508) 624-7733
FAX (508) 229-2600

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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2011 DEC -1 P 5:15

Michael J. Norris
mnorris@mjnattorney.com

November 15, 2011

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

RE: Road Acceptance – Cleversy Dr., Elm Farm Valley Estates

Dear Mr. Vigeant:

I represent Niel Fossile and Geraldine Fossile, Trustees of Elm Farm Realty Trust, who are the owners and developers of Elm Farm Valley Estates.

Elm Farm Valley Estates has completed the construction of this subdivision, including the roads and all of the utilities.

The City Planning Board has approved and recommended the acceptance of the road and has forwarded the description to the City Solicitor for his review and approval. The As-Built Plans have previously been approved by the City Engineer. I am requesting that the City Council accept the road. I am enclosing for your review a copy of the proposed road acceptance including the easements.

Please advise me as to the date(s) of any hearings regarding the same.

Very truly yours,



Michael J. Norris

MJN/sn
enclosure

City of Marlborough Commonwealth of Massachusetts



November 15, 2011

Linda Fossile
Elm Farm Realty Trust
PO BOX 676
Marlborough, MA 01752

Re: Elm Farm Valley Estates, Cleversy Drive
Subdivision Acceptance

Dear Ms. Fossile:

At its meeting on Monday, November 7, 2011, the Planning Board took the following action:

On a motion by Ms. Hughes, seconded by Mr. Hodge it was duly voted:

To endorse the subdivision known as "Plan of Acceptance of Cleversy Drive and Easements, Marlborough, MA", dated May 4, 2001 with the latest revision date of April 14, 2010, scale 1"=40" drawn by Robert J. Parente P.L.S. 15 Hickory Road, Southborough, MA as with a Scriveners' Affidavit, Book 57730 Page 22" has remained in satisfactory condition for the year long maintenance period. The remaining bond will stay in place until certification of the recordings.

It will be your responsibility to contact the City Council to have the street acceptance.

Sincerely,

Barbara L. Fenby
Chairperson

Cc: Attorney Norris
City Solicitor
City Engineer
File

ELM FARM VALLEY ESTATES

ROAD ACCEPTANCE - CLEVERSY DRIVE

To see if the City Counsel will vote to accept a layout of Cleversy Drive as a city way and easements shown on a Plan entitled "Plan of Acceptance of Cleversy Drive and Easements in Marlborough, Massachusetts, Robert J. Parente, P.L.S., 15 Hickory Road, Southborough, MA. 01772, Date: Oct. 14, 2004, Revised April 15, 2007, Revised March 8, 2010, Scale: 1" = 40'", a print of which has been duly filed in the office of the City Clerk of Marlborough, Massachusetts. Said new road being more particularly described as follows:

BEGINNING at the Southwest corner of the roadway on the northerly side of Elm Street;
THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 38.40 feet;
THENCE N. 02° 00' 54" W. 237.76 feet;
THENCE by a curve to the left having a radius of 710.00 feet, an arc length of 223.19 feet;
THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 32.05 feet;
THENCE by a curve to the right having a radius of 50.00 feet, an arc length of 216.12 feet;
THENCE by a curve to the right having a radius of 760.00 feet, an arc length of 316.00 feet;
THENCE S. 02° 00' 54" E. 233.88 feet;
THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 40.37 feet;
THENCE S. 85° 28' 14" W. 43.11 feet;
THENCE S. 85° 59' 07" W. 57.19 feet to the point of beginning.

Said area of Cleversy Drive contains 34,567 square feet as shown on said plan.

Together with the following easements:

- Utility Easement within Lots 4, 5 and 12 running from Millham Street to Cleversy Drive shown as 30' WIDE UTILITY EASEMENT TO CITY OF MARLBOROUGH on said "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide sewer easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the end of the cul-de-sac of Cleversy Drive, said point

being an arc length of 46.62 feet from the northwesterly corner of Lot 11;
THENCE N. 17° 30' 43" E., 89.81 feet to a point;
THENCE N. 17° 30' 43" E., 149.16 feet to a point;
THENCE S. 37° 30' 18" E., 36.62 feet along Millham Street sideline to a point;
THENCE S. 17° 30' 43" W., 133.11 feet to a point;
THENCE S. 17° 30' 43" W., 86.59 feet to a point;
THENCE by a 50' radius, 30.52' arc length to the point of beginning.

Said Utility Easement contains 6,799 square feet, more or less.

- Drainage Easement within Lot 10, containing 4,388 s.f., shown as DRAINAGE EASEMENT "A" TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide drainage easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the northeasterly corner of Lot 8 along Cleversy Drive;
THENCE S. 83° 25' 16" W., 121.80 feet to a point;
THENCE N. 56° 34' 44" W., 35.90 feet to a point;
THENCE N. 33° 25' 16" E., 30.00 feet to a point;
THENCE S. 56° 34' 44" E., 25.00 feet to a point;
THENCE N. 83° 25' 16" E., 110.00 feet to a point;
THENCE along Cleversy Drive by a curve to the right having a radius of 710.00 feet, an arc length of 30.00 feet to the Point of Beginning.

Said Drainage Easement "A" contains 4,388 square feet, more or less.

- Drainage Easement within Lots 8 and 10, containing 9,389 s.f., shown as DRAINAGE EASEMENT "B" TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide drainage easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at a drill hole on a wall along the westerly lot line of Lot 8;
THENCE N. 17° 05' 42" E., 189.36 feet to a drill hole on a stone wall;
THENCE S. 72° 54' 18" E., 50.00 feet to a point;
THENCE S. 15° 18' 11" W., 166.25 feet to a point;
THENCE S. 84° 01' 02" W., 60.00 feet to the point of beginning.

Said Drainage Easement "B" contains 9,389 square feet, more or less.

- Flowage Easement within Lots 8 and 10, containing 15,693 s.f., shown as FLOWAGE EASEMENT TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a flowage easement on a

plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the southwesterly corner of Lot 8;
THENCE N. 17° 05' 42" E., 12.00 feet to a point;
THENCE N. 84° 01' 02" E., 60.00 feet to a point;
THENCE N. 15° 18' 11" E., 166.25 feet to a point;
THENCE N. 72° 54' 18" W., 50.00 feet to a point;
THENCE N. 17° 05' 42" E., 50.00 feet to a point;
THENCE S. 72° 54' 19" E., 45.00 feet to a point;
THENCE S. 29° 16' 56" E., 78.32 feet to a point;
THENCE N. 56° 34' 44" W., 25.00 feet to a point;
THENCE S. 33° 25' 16" W., 30.00 feet to a point;
THENCE S. 56° 34' 44" E., 35.90 feet to a point;
THENCE S. 09° 17' 13" W., 162.63 feet to a point;
THENCE N. 74° 53' 06" W., 125.89 feet to the point of beginning.

Said Flowage Easement contains 15,693 square feet, more or less.

We, **Niel Fossile and Geraldine Fossile, Trustees of Elm Farm Realty Trust**, u/d/t dated September 15, 2000, recorded with the Middlesex South Registry of Deeds in Book 31824, Page 160, of Marlborough, Middlesex County, Massachusetts

for consideration paid and in full consideration of ONE DOLLAR (\$1.00) and 00/100

hereby grant, sell, transfer and deliver unto the **City of Marlborough**, a municipal corporation

All of the roadways, sewer easements, drainage easements, flowage easements, all water and drain pipes, manholes, conduits, and all appurtenances thereto, that are now or hereafter constructed or installed in, through or under the land shown on "Plan of Acceptance of Cleversy Drive and Easements in Marlborough, Massachusetts, Robert J. Parente, P.L.S., 15 Hickory Road, Southborough, MA. 01772, Date: Oct. 14, 2004, Revised April 15, 2007, Revised March 8, 2010, Scale: 1" = 40", a print of which has been duly filed in the office of the City Clerk of Marlborough, Massachusetts. Said new road being more particularly described as follows:

BEGINNING at the Southwest corner of the roadway on the northerly side of Elm Street;

THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 38.40 feet;

THENCE N. 02° 00' 54" W. 237.76 feet;

THENCE by a curve to the left having a radius of 710.00 feet, an arc length of 223.19 feet;

THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 32.05 feet;

THENCE by a curve to the right having a radius of 50.00 feet, an arc length of 216.12 feet;

THENCE by a curve to the right having a radius of 760.00 feet, an arc length of 316.00 feet;

THENCE S. 02° 00' 54" E. 233.88 feet;

THENCE by a curve to the left having a radius of 25.00 feet, an arc length of 40.37 feet;

THENCE S. 85° 28' 14" W. 43.11 feet;

THENCE S. 85° 59' 07" W. 57.19 feet to the point of beginning.

Said area of Cleversy Drive contains 34,567 square feet as shown on said plan.

Together with the following easements:

- Utility Easement within Lots 4, 5 and 12 running from Millham Street to Cleversy Drive shown as 30' WIDE UTILITY EASEMENT TO CITY OF MARLBOROUGH on said "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide sewer easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the end of the cul-de-sac of Cleversy Drive, said point being an arc length of 46.62 feet from the northwesterly corner of Lot 11;
THENCE N. 17° 30' 43" E., 89.81 feet to a point;
THENCE N. 17° 30' 43" E., 149.16 feet to a point;
THENCE S. 37° 30' 18" E., 36.62 feet along Millham Street sideline to a point;
THENCE S. 17° 30' 43" W., 133.11 feet to a point;
THENCE S. 17° 30' 43" W., 86.59 feet to a point;
THENCE by a 50' radius, 30.52' arc length to the point of beginning.

Said Utility Easement contains 6,799 square feet, more or less.

- Drainage Easement within Lot 10, containing 4,388 s.f., shown as DRAINAGE EASEMENT "A" TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide drainage easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the northeasterly corner of Lot 8 along Cleversy Drive;
THENCE S. 83° 25' 16" W., 121.80 feet to a point;
THENCE N. 56° 34' 44" W., 35.90 feet to a point;
THENCE N. 33° 25' 16" E., 30.00 feet to a point;
THENCE S. 56° 34' 44" E., 25.00 feet to a point;
THENCE N. 83° 25' 16" E., 110.00 feet to a point;
THENCE along Cleversy Drive by a curve to the right having a radius of 710.00 feet, an arc length of 30.00 feet to the Point of Beginning.

Said Drainage Easement "A" contains 4,388 square feet, more or less.

- Drainage Easement within Lots 8 and 10, containing 9,389 s.f., shown as DRAINAGE EASEMENT "B" TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a 30' wide drainage easement on a plan of land entitled "Definitive Subdivision Plan of Land in

Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at a drill hole on a wall along the westerly lot line of Lot 8;
THENCE N. 17° 05' 42" E., 189.36 feet to a drill hole on a stone wall;
THENCE S. 72° 54' 18" E., 50.00 feet to a point;
THENCE S. 15° 18' 11" W., 166.25 feet to a point;
THENCE S. 84° 01' 02" W., 60.00 feet to the point of beginning.

Said Drainage Easement "B" contains 9,389 square feet, more or less.

- Flowage Easement within Lots 8 and 10, containing 15,693 s.f., shown as FLOWAGE EASEMENT TO CITY OF MARLBOROUGH on a plan entitled "Plan of Acceptance of Cleversy Drive and Easements", and previously described as a flowage easement on a plan of land entitled "Definitive Subdivision Plan of Land in Marlborough, Massachusetts" recorded as Plan No. 782 of 2002; further bounded and described as follows:

BEGINNING at the southwesterly corner of Lot 8;
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THENCE N. 84° 01' 02" E., 60.00 feet to a point;
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THENCE S. 72° 54' 19" E., 45.00 feet to a point;
THENCE S. 29° 16' 56" E., 78.32 feet to a point;
THENCE N. 56° 34' 44" W., 25.00 feet to a point;
THENCE S. 33° 25' 16" W., 30.00 feet to a point;
THENCE S. 56° 34' 44" E., 35.90 feet to a point;
THENCE S. 09° 17' 13" W., 162.63 feet to a point;
THENCE N. 74° 53' 06" W., 125.89 feet to the point of beginning.

Said Flowage Easement contains 15,693 square feet, more or less.

Being a portion of the premises conveyed to the Grantor in that certain deed dated September 15, 2000, and recorded with the Middlesex South District Registry of Deeds in Book 31824, Page 164.

The undersigned hereby certifies as follows:

1. That said Declaration of Trust and Schedule of Beneficial Interest remains in full force and effect and has not been modified or amended;
2. That we are the duly named and appointed Trustees of said Trust;
3. None of the Beneficiaries of the Trust are minors;
4. That the Trustees have been directed and authorized by the Beneficiaries to execute and deliver this Deed.

WITNESS our hands and seal this _____ day of _____, 2010.

ELM FARM REALTY TRUST

By: _____
Niel Fossile, Trustee

By: _____
Geraldine Fossile, Trustee

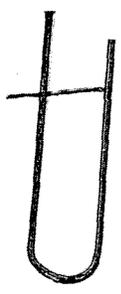
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2010, before me, the undersigned notary public, personally appeared Niel Fossile and Geraldine Fossile, proved to me through satisfactory evidence of identification, being a driver's license, to be the persons whose names are signed on the preceding or attached documents, and acknowledged to me that they signed it voluntarily for its stated purpose as Trustees of the Elm Farm Realty Trust.

Notary Public:
My Commission Expires:

6-N



2011 00189167

Bk: 57730 Pg: 22 Doc: AFF
Page: 1 of 5 10/27/2011 11:29 AM

SCRIVENER'S AFFIDAVIT

I, Robert J. Parente, do hereby depose and state on oath:

1. My name is Robert J. Parente. I am licensed in Massachusetts as a land surveyor. I was the owner of Central Mass. Engineering & Survey, Inc., which was dissolved as a corporation in 2007. I have personal knowledge of the following facts.
2. The purpose of this affidavit is to correct a scrivener's error in a plan I prepared as identified in paragraphs 3 and 4 below, which plan was later referenced in several deeds specified in paragraphs 5 and 6 below. The scrivener's error involves an easement that I inadvertently labeled as a "30' Wide Sewer Easement," which contains a water line as well as a sewer line as properly identified in the complete definitive subdivision plan approved by the Planning Board for the City of Marlborough during the subdivision control process for a subdivision in Marlborough known as Elm Farm Valley Estates.
3. In 2000, I prepared a plan entitled, "Plan of Land in Marlborough, Massachusetts," Owned by Elm Farm Realty Trust, Instrument No. 552 of September 15, 2000, Central Mass. Engineering & Survey, Inc., 45 River Street, Marlborough, MA 01752, dated September 19, 2000, scale 1"=50', and recorded on January 25, 2001 with the Middlesex South District Registry of Deeds (hereinafter, "MSDRD") in Book 32273, Page 567 as Plan 78 of 2001 (hereinafter, "the Plan of Land"). The Plan of Land is attached hereto as "Exhibit A."
4. The Plan of Land showed an easement across Lots 4 and 5 entitled, "30' Wide Sewer Easement." Lots 4 and 5 front on Millham Street in Marlborough, Massachusetts.
5. As recorded with the MSDRD in Book 33024, Page 278 on June 8, 2001, Lot 5 was conveyed to its current owner, Scott O. Regnier, "[s]ubject to 30' Wide Sewer Easement as shown on said Plan," namely, the Plan of Land.
6. As recorded with the MSDRD in Book 51860, Page 150 on November 3, 2008, Lot 4 was conveyed to its current owner, Blair Watts, "[s]ubject to 30' Wide Sewer Easement as shown on said Plan," namely, the Plan of Land.
7. In 2002, I revised a plan entitled, "Plan & Profile of Cleversy Drive in Marlborough, Massachusetts," Owned by Elm Farm Realty Trust, Instrument No. 552 of Sept. 15, 2000, Central Mass. Engineering & Survey, Inc., 45 River Street, Marlborough, MA 01752, dated May 4, 2001, last revised March 29, 2002 ("hereinafter, "the Plan & Profile of Cleversy Drive"). The Plan & Profile of Cleversy Drive was one of the sheets comprising the definitive subdivision plan for the Elm Farm Valley Estates subdivision. The Plan & Profile of Cleversy Drive showed the "30' Wide Sewer Easement" crossing Lots 4 and 5, which were ANR (approval not required) lots adjacent to that subdivision.

2009 1-20-01 . 10

Michael Norris
171 Locke Dr
Marlboro, MA 01752

6-N



SCRIVENER'S AFFIDAVIT

I, Robert J. Parente, do hereby depose and state on oath:

1. My name is Robert J. Parente. I am licensed in Massachusetts as a land surveyor. I was the owner of Central Mass. Engineering & Survey, Inc., which was dissolved as a corporation in 2007. I have personal knowledge of the following facts.
2. The purpose of this affidavit is to correct a scrivener's error in a plan I prepared as identified in paragraphs 3 and 4 below, which plan was later referenced in several deeds specified in paragraphs 5 and 6 below. The scrivener's error involves an easement that I inadvertently labeled as a "30' Wide Sewer Easement," which contains a water line as well as a sewer line as properly identified in the complete definitive subdivision plan approved by the Planning Board for the City of Marlborough during the subdivision control process for a subdivision in Marlborough known as Elm Farm Valley Estates.
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7. In 2002, I revised a plan entitled, "Plan & Profile of Cleversy Drive in Marlborough, Massachusetts," Owned by Elm Farm Realty Trust, Instrument No. 552 of Sept. 15, 2000, Central Mass. Engineering & Survey, Inc., 45 River Street, Marlborough, MA 01752, dated May 4, 2001, last revised March 29, 2002 ("hereinafter, "the Plan & Profile of Cleversy Drive"). The Plan & Profile of Cleversy Drive was one of the sheets comprising the definitive subdivision plan for the Elm Farm Valley Estates subdivision. The Plan & Profile of Cleversy Drive showed the "30' Wide Sewer Easement" crossing Lots 4 and 5, which were ANR (approval not required) lots adjacent to that subdivision.

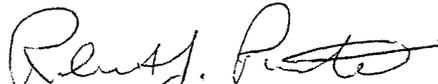
Millham st. Marlboro

Michael Nozilis
171 Locke Dr
Marlboro, MA 01752

On May 6, 2002, the Planning Board for the City of Marlborough approved the definitive subdivision plan for Elm Farm Valley Estates, including the Plan & Profile of Cleversy Drive. The Plan & Profile of Cleversy Drive is attached hereto as "Exhibit B."

8. The Plan & Profile of Cleversy Drive showed that the "30' Wide Sewer Easement" was proposed to contain not only a sewer main, but also a water main.
9. As built, the "30' Wide Sewer Easement" across Lots 4 and 5 contains not only a sewer main, but also a water main.
10. Accordingly, on the Plan of Land, when I labeled the easement across Lots 4 and 5 as a "30' Wide Sewer Easement," I inadvertently did so and should have labeled it instead as a 30' foot wide utility easement.
11. In 2010, I revised a plan entitled, "Plan of Acceptance of Cleversy Drive and Easements in Marlborough, Massachusetts," Robert J. Parente, P.L.S., 15 Hickory Road, Southborough, MA 01772, dated Oct. 14, 2004, last revised March 3, 2010, scale 1"=20', said plan to be recorded at the MSDRD (hereinafter, "the Plan of Acceptance"). The Plan of Acceptance is attached hereto as "Exhibit C."
12. The Plan of Acceptance shows an easement across Lots 4 and 5 entitled, "30' Wide Utility Easement to City of Marlborough, Area - 4,200 SF±" (hereinafter, "the Utility Easement").
13. The Plan of Acceptance contains a note which provides: "The Utility Easement shown on the Acceptance Plan reflects the existence of a water main and a sewer main within the easement area between Cleversy Drive and the Millham Street lots [i.e., Lots 4 and 5] as shown on the" Plan & Profile of Cleversy Drive.
14. The Plan of Acceptance accurately shows the 30' wide easement across Lots 4 and 5 as a Utility Easement containing both the sewer main and the water main.

Signed under the pains and penalties of perjury this 7th day of October, 2011.


Robert J. Parente

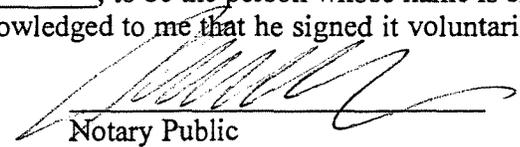
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 7th day of October, 2011, before me, the undersigned notary public, personally appeared Robert J. Parente, proved to me through satisfactory evidence of identification, which was P.N., to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



MICHAEL J. NORRIS
Notary Public
Commonwealth of Massachusetts
My Commission Expires 2
March 23, 2012


Notary Public
My commission expires:

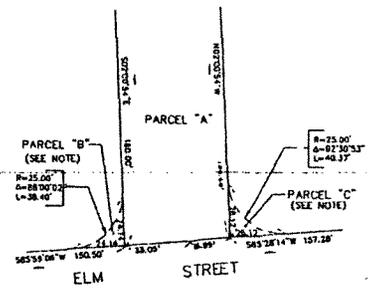
Middlesex Registry of Deeds
 Southern District
 Cambridge, Massachusetts
 Plan No. 78 of 2001
 Rec'd. 10/16/2000
 Rec'd. No. 322731-2567
 Assess
 Rec. 10/16/2000

ZONING CLASSIFICATION
 RESIDENCE A-1/A-2
 APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
 MARLBOROUGH PLANNING BOARD
 10/16/2000
 DATE

I HEREBY CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.
 Robert J. Parente 9/16/00
 ROBERT J. PARENTE PROF. LAND SURVEYOR DATE

I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN PREPARING THIS PLAN.
 Robert J. Parente 9/16/00
 ROBERT J. PARENTE PROF. LAND SURVEYOR DATE

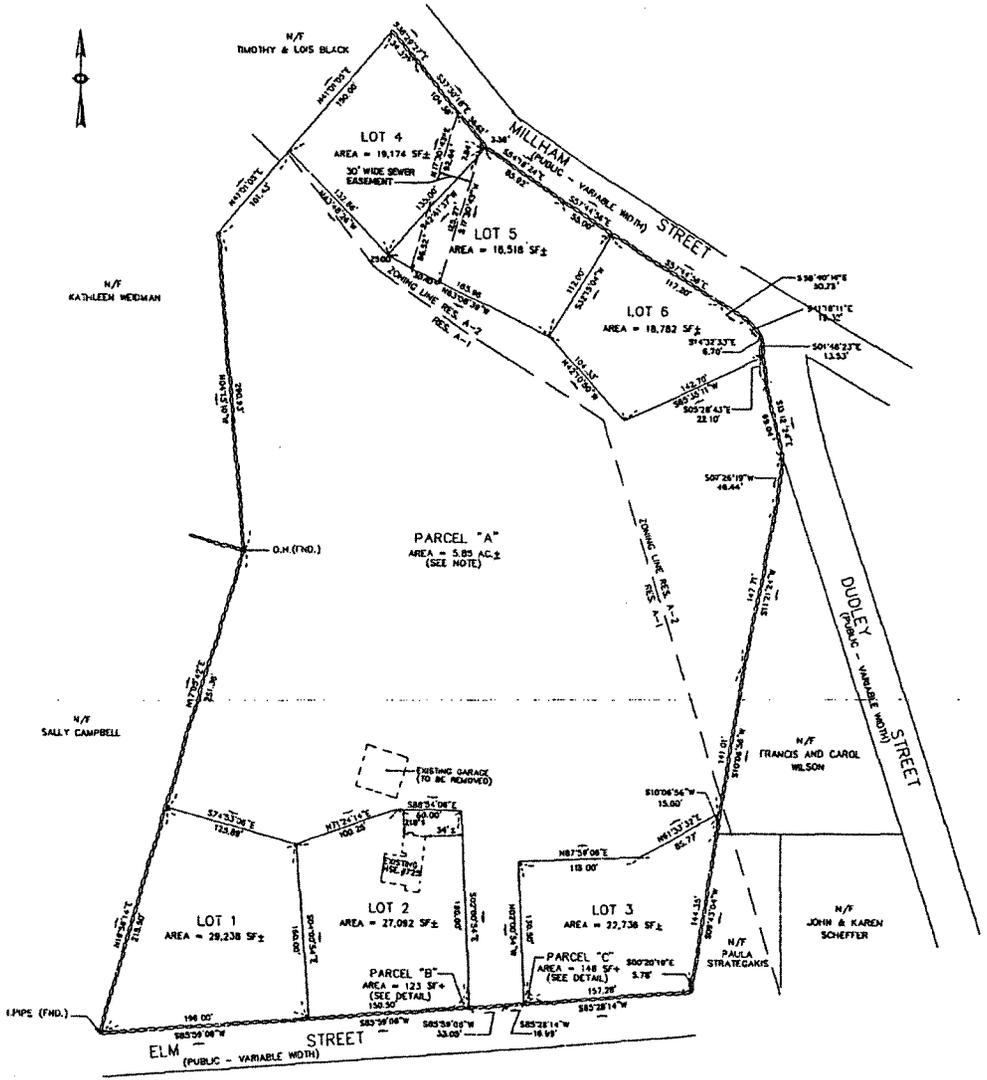
Robert J. Parente



DETAIL
 N.T.S.

NOTE:
 PARCEL "A" IS NOT TO BE CONSIDERED AN INDEPENDENT BUILDING LOT AND IS SHOWN FOR DESCRIPTIVE PURPOSES ONLY.
 PARCELS "B" AND "C" ARE NOT TO BE CONSIDERED INDEPENDENT BUILDING LOTS AND ARE RESERVED FOR FUTURE ROADWAY USE.

PLAN OF LAND
 IN
 MARLBOROUGH, MASSACHUSETTS
 OWNED BY ELMFARM REALTY TRUST
 INSTRUMENT NO. 552 OF SEPT. 6, 2000
 CENTRAL MASS ENGINEERING & SURVEY, INC.
 43 RIVER STREET MARLBOROUGH, MA 01752
 DATE, SEPT 19, 2000 SCALE: 1"=50'



78

Exhibit A

E-248
 MPB-2926

Middlesex Registry of Deeds
 Southern District
 Cambridge, Massachusetts
 Plan No. 79 of 2001
 Rec'd 10/16/2001
 18-135-1-10-1-21
 Rev. 03-22-731-2-567
 ASSESSOR
 [Signature]
 REC'D

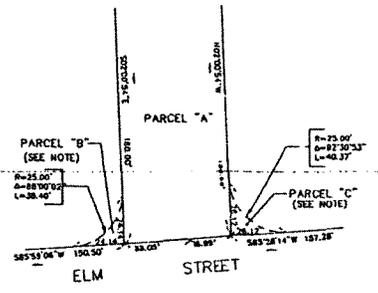
ZONING CLASSIFICATION
 RESIDENCE A-1/A-2
 APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
 MARLBOROUGH PLANNING BOARD
 [Signature] 10/16/2001
 DATE

I HEREBY CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.
 [Signature] 9/26/01
 ROBERT J. PARANTE PROF. LAND SURVEYOR DATE

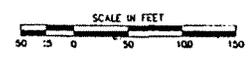
I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN PREPARING THIS PLAN.
 [Signature] 9/26/01
 ROBERT J. PARANTE PROF. LAND SURVEYOR DATE

[Signature]

NOTE:
 PARCEL "A" IS NOT TO BE CONSIDERED AN INDEPENDENT BUILDING LOT AND IS SHOWN FOR DESCRIPTIVE PURPOSES ONLY.
 PARCELS "B" AND "C" ARE NOT TO BE CONSIDERED INDEPENDENT BUILDING LOTS AND ARE RESERVED FOR FUTURE ROADWAY USE.



DETAIL
 N.E.S.



PLAN OF LAND
 IN
 MARLBOROUGH, MASSACHUSETTS
 OWNED BY ELMFARM REALTY TRUST
 BETHLHLM NO. 332 OF SEPT. 15, 2000
 CENTRAL MASS ENGINEERING & SURVEY, INC.
 45 RIVER STREET MARLBOROUGH MA 01752
 DATE: SEPT 18, 2000 SCALE: 1"=50'

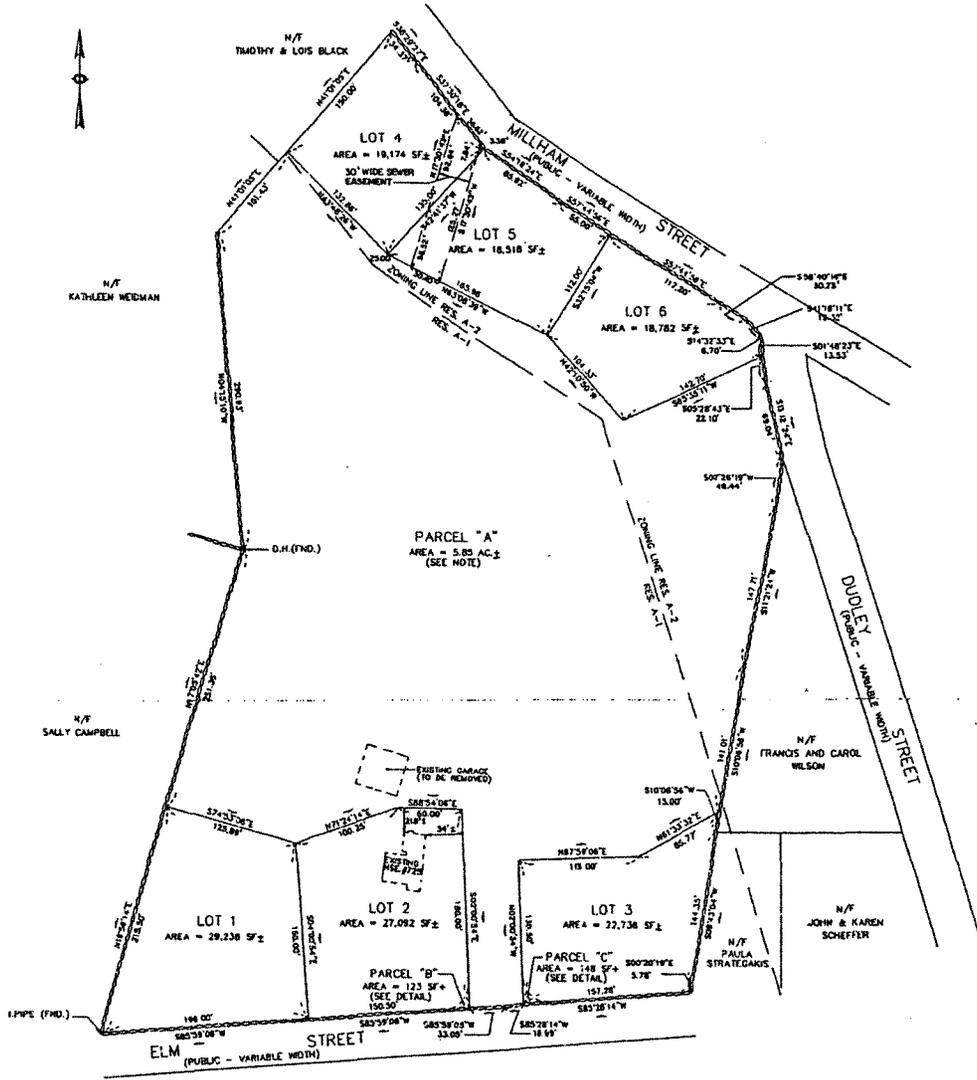
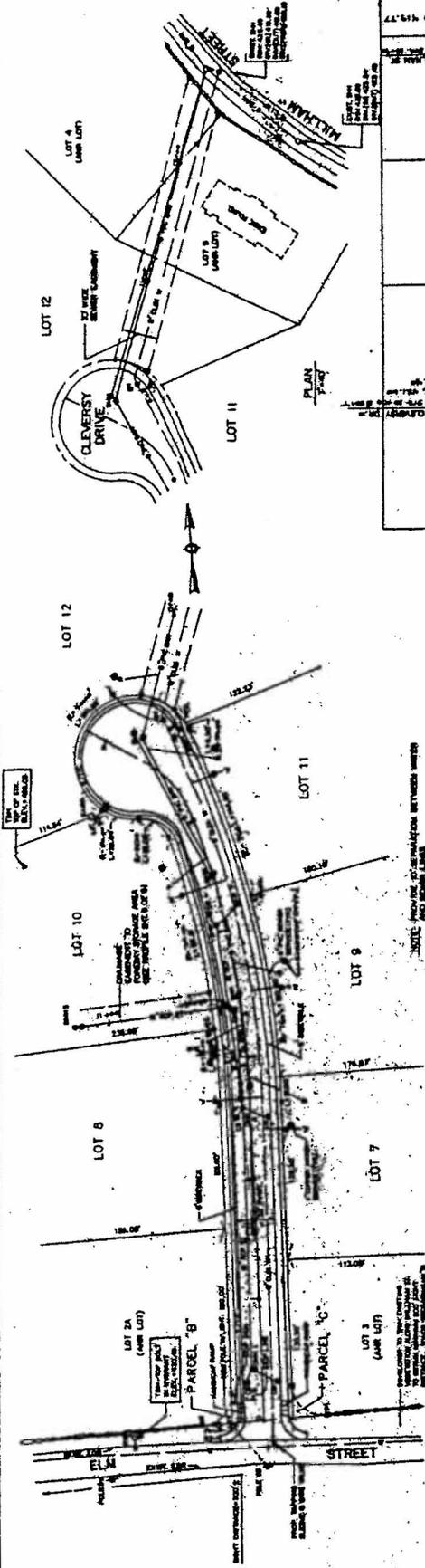


Exhibit A

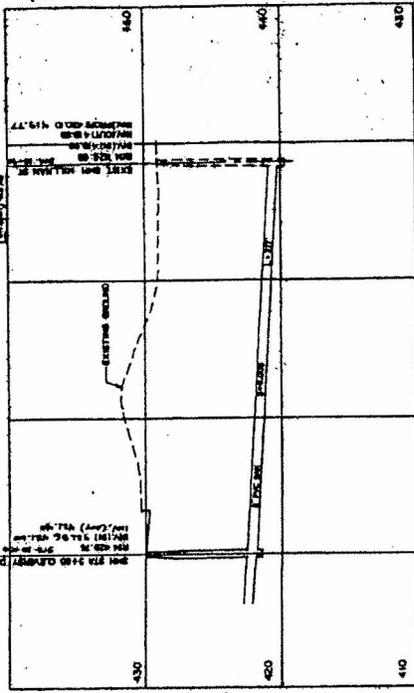
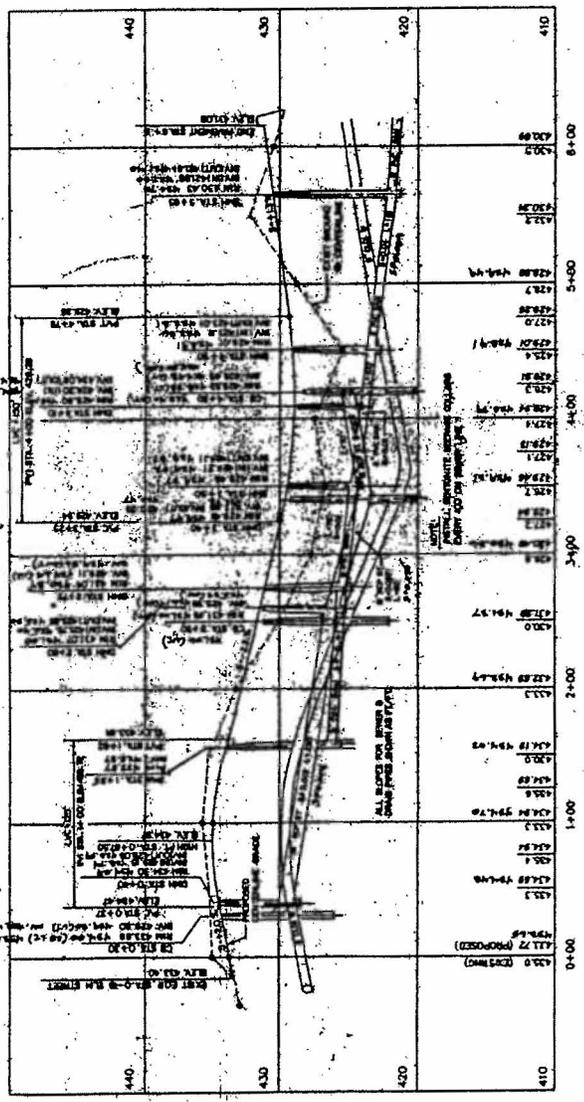
Exhibit B



NOTE: PROVIDE SEPARATION BETWEEN WALK AND BIKEWAY

PLAN
1-24-08

NOTE: PROVIDE SEPARATION BETWEEN WALK AND BIKEWAY



SEWER EASEMENT PROFILE
1-24-08

"ELMFARM VALLEY ESTATES"
DEFINITIVE SUBDIVISION PLAN -
PLAN & PROFILE OF CLEVERSY DRIVE
IN
MARLBOROUGH, MASSACHUSETTS

OWNED BY: ELMFARM REALTY TRUST
WITH AN USE OF 0.000000

GENERAL: WASE ENGINEERING & SURVEY, INC.
40 BIRCH STREET, MARLBOROUGH, MA 01501

DATE: MAY 4, 2008
REV. 1: OCTOBER 22, 2008
REV. 2: FEB. 12, 2009
REV. 3: MARCH 6, 2009

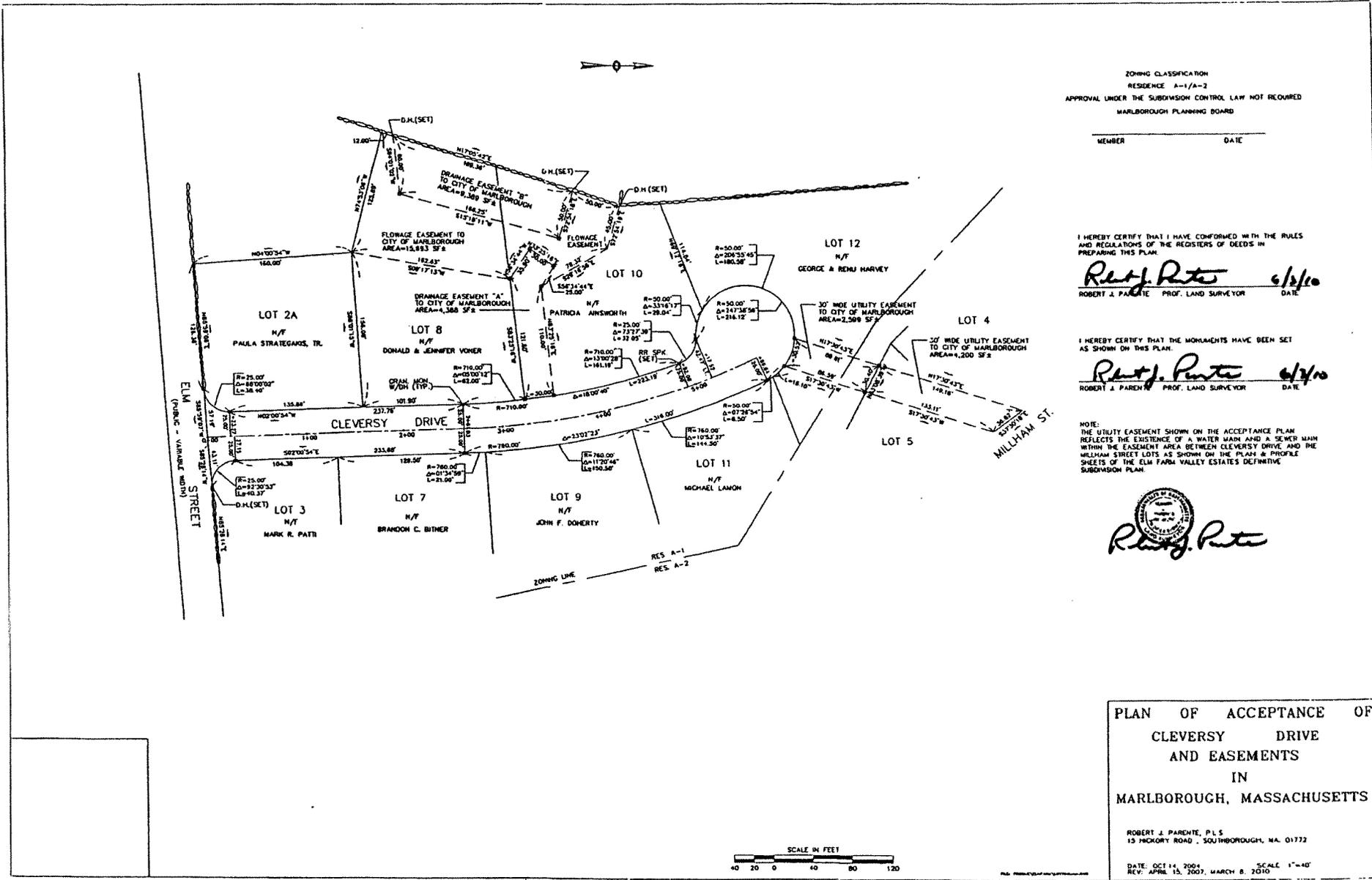
SCALE: AS SHOWN
SHEET 3 OF 3

REGISTERED PROFESSIONAL ENGINEER
RESIDENCE: 4-7/14

MARLBOROUGH PLANNING BOARD

DATE: May 4, 2008

C-453
MAY 2008



ZONING CLASSIFICATION
 RESIDENCE A-1/A-2
 APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
 MARLBOROUGH PLANNING BOARD

MEMBER _____ DATE _____

I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN PREPARING THIS PLAN.
Robert J. Pante 6/12/10
 ROBERT J. PANTE PROF. LAND SURVEYOR DATE

I HEREBY CERTIFY THAT THE MONUMENTS HAVE BEEN SET AS SHOWN ON THIS PLAN.
Robert J. Pante 6/12/10
 ROBERT J. PANTE PROF. LAND SURVEYOR DATE

NOTE:
 THE UTILITY EASEMENT SHOWN ON THE ACCEPTANCE PLAN REFLECTS THE EXISTENCE OF A WATER MAIN AND A SEWER MAIN WITHIN THE EASEMENT AREA BETWEEN CLEVERSY DRIVE AND THE MILLHAM STREET LOTS AS SHOWN ON THE PLAN & PROFILE SHEETS OF THE ELM FARM VALLEY ESTATES DEFINITIVE SUBDIVISION PLAN.

Robert J. Pante

PLAN OF ACCEPTANCE OF
 CLEVERSY DRIVE
 AND EASEMENTS
 IN
 MARLBOROUGH, MASSACHUSETTS

ROBERT J. PANTE, P.L.S.
 15 HICKORY ROAD, SOUTHBOROUGH, MA. 01772
 DATE: OCT 14, 2004 SCALE: 1"=40'
 REV: APRIL 15, 2007, MARCH 8, 2010

Exhibit C

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2011 NOV 22 PM 2:05



66-H CONCORD STREET WILMINGTON, MA 01887

November 18, 2011

City Council
City of Marlborough
140 Main Street
Marlborough, MA 01752

RE: *Application for Modification of Special Permit*
Property Address: 445 Simarano Drive, Marlborough, MA01752

Applicant: *Sprint ("Sprint", the "Applicant")*
1 International Blvd. Suite 800
Mahwah, NJ 07495

Dear Chairman and Members of the Council:

On Behalf of Sprint (the "Applicant"), CDavis Inc., respectfully submits the following supporting documents to each of the respective offices called for in Application Package. The Applicant seeks to modify its existing Wireless Communications Facility (the "WCF") on the Property. The proposed Facility is more particularly depicted on the plans attached hereto, and incorporated by reference ("The Plans").

The Property is located in the Industrial Zoning District, Map 116, Lot 1. Pursuant to Sections 200-25c(2) and (4) of the City of Marlborough Zoning Ordinance (the "Ordinance") the use of the Property for a WCF is permitted by Special Permit of the Council. The Applicant believes that the proposed installation satisfies the requirements for issuance of a special permit under Sections 200-25 and 200-59 of the Ordinance, as well as Chapter 40A, Section 9 of the Massachusetts General Laws.

- Tab 1:** City Council Special Permit Application
Special Permit of Summary Impact Statement
- Tab 2:** Supporting/Legal Statement
- Tab 3:** Sprint Federal Communication Commission (FCC) License
- Tab 4:** Plans
- Tab 5:** Certified Abutter's List

Please feel free to contact me regarding any questions or concerns at 617.839.7515.

Respectfully,

Rossella Mercuri, Sprint (Agent for CDavis Associates)

**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:

SPRINT

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

445 Smeraldo Drive, MARLBOROUGH, MA

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

CROWN ATLANTIC, 500 CAMPINGS PARK, WOBURN, MA

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

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

Article VI Section 200 Paragraph 20 Sub-paragraph C

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

Industrial

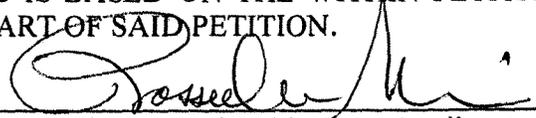
7. Specific reason(s) for seeking Special Permit

Modification of a wireless facility

Please see attached Supporting Statement

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

Address: 27 FULLER RD

WATERTOWN, MA 02472

Telephone No. 617/839/7515

Date: 1/2011

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

City of Marlborough
Commonwealth of Massachusetts

2011 NOV 22 A 11: 56



October 17, 2011
7:00 PM

PLANNING BOARD

Barbara L. Fenby, Chair
Colleen M. Hughes, Clerk
Philip J. Hodge
Edward F. Coveney
Clyde L. Johnson
Sean N. Fay

Carrie Lizotte, Board Secretary

Phone: (508) 460-3769

Fax: (508) 460-3736

Email: CLizotte@marlborough-ma.gov

The Planning Board for the City of Marlborough met on Monday, October 17, 2011 in Memorial Hall, 3rd Floor, City Hall 140 Main Street, Marlborough, MA 01752. Members present: Barbara Fenby, Philip Hodge, Colleen Hughes, Sean Fay, Clyde Johnson and Edward Coveney. Also present: City Engineer Thomas Cullen.

MINUTES

September 12, 2011

On a motion by Ms. Hughes, seconded by Mr. Fay, it was duly voted:

To accept and file the meeting minutes with amendments.

October 3, 2011

On a motion by Mr. Fay, seconded by Ms. Hughes, it was duly voted:

To accept and file the meeting minutes with amendments.

CHAIRS BUSINESS

Proposed Amendment to Affordable Housing Units

Mr. Fay stated that he had some concerns with amending the ordinance for one particular developer. Mr. Fay questioned whether the units would be counted if the Developer paid money instead of building the units until the units are built. Mr. Hodge stated that he was skeptical changing the ordinance to benefit a developer where the effect would not benefit those who need affordable housing. The questions from the Board posed who would monitor the housing units and does the City have the resources to mandate this change.

Prior to making a decision the Board would like to see a tract version of the amendment and to ask the CDA's opinion about this proposed amendment.

APPROVAL NOT REQUIRED PLAN

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

City Engineer Update

Mr. Cullen updated the Board on the following:

- Berlin Farms: the Developer has been working with the City Engineer to complete his subdivision, the City Engineer is recommending to the Planning Board to defer the vote of revocation until further notice;
- Shaughnesy Estates II: suggested to move forward with the revocation
- West Ridge & Cider Mill Estates: has spoken to the project manager and has started some of the outstanding items.

Berlin Farms (Long Drive)

Bond Revocation

In the City Engineers update, he suggested that the Board hold off on the revocation since the developer is working to complete the outstanding items.

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To table the matter until the next Planning Board meeting.

Elm Farm Valley (Cleversy Drive)

Correspondence from Attorney Norris

Mr. Norris sent correspondence to the two owners of the home effected by the "easement" and stated that a scrivener's affidavit with the correct plan will be recorded at the Registry of Deeds. He mentioned that his will not affect the use of their property.

On a motion Ms. Hughes, seconded by Mr. Coveney, it was duly voted:

To accept and file correspondence.

Mauro Farm (Spenser Circle and Nolan Way)

Engineering Bonds

Mr. Cullen asked his Engineering Colleagues in other communities on how they determine whether to bond the whole subdivision in its entirety or to phase. His report shows that in Shrewsbury and Worcester allow phasing when it makes sense.

- Shrewsbury: Field Engineer determines bond amount, developer has option to bond all or portion of the work, when bond is released or reduced, covenant will be secured before lot release;
- Worcester: A covenant is signed for the whole subdivision, roadway construction must be completed before house construction and occupancy, and entire phase must be secured with bond or security.

Shaughnesy Estates II (Kelber Drive)

Bond Revocation

Mr. Cullen stated at last meeting the Planning Board should pull the remaining bond for this subdivision and Mr. Connolly, legal council for Avidia bank, stated to pull the remaining bond for the City to complete the remainder of the subdivision.

On a motion by Ms. Hughes, seconded by Mr. Coveney, it was duly voted:

To revoke the remaining bond in the amount of \$172,000.00 plus accrued interest, to forward documents to the City Solicitor to review the paperwork for proper form for revoking the bond, to notify the developer's attorney of the proceeding documents and to have the chairperson Fenby sign documents once returned from the City Solicitor.

PENDING SUBDIVISION PLANS: Updates and Discussion

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

Rotary Club

Temporary A Frame Signs

Elaine McDonald, of the Marlborough Rotary Club, is seeking relief from the City's Sign Ordinance to place two "A" frame signs at the end of Agoritas Drive and Union Street for their annual recycle day. They are asking to display these signs from October 18 through October 22, 2011 and removed right after the event.

On a motion by Mr. Hodge, seconded by Mr. Coveney, it was duly voted:

To grant a temporary variance to allow the placement of the two signs at the corner of Agoritas Drive and Union Street, between October 18, 2011 and October 22, 2011 and to notify the Code Enforcement Officer of the temporary variance.

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

On a motion by Ms. Hughes, seconded by Mr. Coveney, it was duly voted:

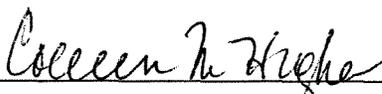
To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Johnson, seconded by Ms. Hughes, it was duly voted:

To adjourn at 8:00 p.m.

A TRUE COPY

ATTEST:



Colleen Hughes, Clerk

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

City of Marlborough
Commonwealth of Massachusetts

2011 NOV 22 A 11: 56



November 7, 2011
7:00 PM

PLANNING BOARD

Barbara L. Fenby, Chair
Colleen M. Hughes, Clerk
Philip J. Hodge
Edward F. Coveney
Clyde L. Johnson
Sean N. Fay

Carrie Lizotte, Board Secretary

Phone: (508) 460-3769

Fax: (508) 460-3736

Email: CLizotte@marlborough-ma.gov

The Planning Board for the City of Marlborough met on Monday, November 7, 2011 in Memorial Hall, 3rd Floor, City Hall 140 Main Street, Marlborough, MA 01752. Members present: Barbara Fenby, Philip Hodge, Colleen Hughes, Sean Fay, and Clyde Johnson. Also present: Assistant City Engineer Timothy Collins.

MINUTES

October 17, 2011

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To accept and file the meeting minutes with amendments.

CHAIRS BUSINESS

Proposed Amendment to Affordable Housing Units

The Planning Board asked the Community Development Authority their opinion of the proposed amendment change since they would be the benefactor. Lynn Faust, Vice Chair, sent correspondence on behalf of the CDA in which they voted unanimously to affirm these three points:

- CDA is not in favor of the proposal,
- CDA would be in favor if the amendment if the last sentence ended with " as affordable housing units in the SHI",
- And if the change is not made to the amendment, that the CDA would consider the amendment as improved if the last sentence would read, "or a sum not less then the amount necessary, in the opinion of the CDA, pursuant to its input into the special permit process, to cause the construction of said number of affordable housing units plus 19% for administrative expenses, shall be paid to the Community Development Authority at such time City Council shall determine."

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To accept and file correspondence.

The Board had also asked the proponent to provide the statistics of the inventory for the proposed amendment as well as the cost of the associated amendment. None of the information was provided to the Board.

Decision

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To send a **negative** recommendation to the City Council on the proposed amendment to Chapter 650-26 (1) (a) of Code of the City of Marlborough, Affordable Housing.

APPROVAL NOT REQUIRED PLAN

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

City Engineer Update

Mr. Collins updated the Board on the following:

- Berlin Farms: the Developer has placed the fence per specifications, they are waiting on the as-builts, still in communication with the developer, asked to table the bond revocation at this time
- West Ridge & Cider Mill Estates: Curbing has been placed around the new homes.

Berlin Farms (Long Drive)

Bond Revocation

In the City Engineers update, he suggested that the Board hold off on the revocation since the developer is working to complete the outstanding items.

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To table the matter until the next Planning Board meeting.

Davis Estates (Boivin Drive)

Recording and Release of Bond

The Developers Attorney has recorded all plans and deeds of Conveyance and has duly recorded all at the Middlesex South Registry of Deeds.

On a motion by Mr. Johnson, seconded by Mr. Hodge, it was duly voted:

To accept and file all correspondence.

The Planning Board all agreed that since the City Council has accepted the subdivision, with all deeds and documents recorded, they are now in position to return the remaining bond monies of \$85,000.00.

On a motion by Mr. Hodge, seconded by Ms. Hughes, it was duly voted:

To return the remaining bond monies of \$85,000.00, terminate the existing Tri-Partite Agreement between, Mr. Valchuis, Marlborough Savings Bank and the City of Marlborough Planning Board.

Elm Farm Estates Valley (Cleversy Drive)
Correspondence from Attorney Norris

The Developers Attorney has shown to the Board the recorded copies of the registered scrivener's affidavit, the attempts of the certificate mailings and is asking the Planning Board to accept the subdivision.

On a motion by Mr. Fay, seconded by Mr. Hodge it was duly voted:

To accept and file correspondence.

On a motion by Ms. Hughes, seconded by Mr. Hodge it was duly voted:

To endorse the subdivision known as "Plan of Acceptance of Cleversy Drive and Easements, Marlborough, MA", dated May 4, 2001 with the latest revision date of April 14, 2010, scale 1"=40" drawn by Robert J. Parente P.L.S. 15 Hickory Road, Southborough, MA as with a Scriveners' Affidavit, Book 57730 Page 22" has remained in satisfactory condition for the year long maintenance period. The remaining bond will stay in place until certification of the recordings.

Shaughnesy Estates II (Kelber Drive)
Bond Revocation

The City Solicitor has reviewed all documents for the bond revocation for the Shaughnesy Estates subdivision.

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

To accept and file all correspondence.

On a motion by Mr. Fay, seconded by Mr. Johnson, it was duly voted:

To allow the Planning Board members sign the Notice of Default and authorize the Chair to sign Sight Draft for the performance bond of the subdivision known as "Shuaghnesy Estates (Phase II)",

PENDING SUBDIVISION PLANS: Updates and Discussion

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

On a motion by Ms. Hughes, seconded by Mr. Hodge, it was duly voted:

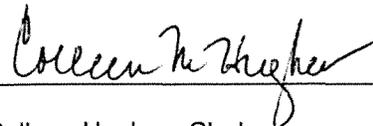
To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Johnson, seconded by Ms. Hughes, it was duly voted:

To adjourn at 7:28 p.m.

A TRUE COPY

ATTEST:



Colleen Hughes, Clerk