

REGULAR MEETING  
JANUARY 26, 2009

IN CITY COUNCIL  
ABSENT:

CONVENED:  
ADJOURNED:

1. Minutes, City Council Meeting, January 5, 2009.
2. PUBLIC HEARING: On the Application for Special Permit from Attorney Anderson, on behalf of New Cingular Wireless PCS, for co-location, construction and operation of a Wireless Communications Facility on and next to the existing multi-carrier monopole located at 860 Boston Post Rd. East.
3. Communication from the Mayor re: budget transfer request in the amount of \$5,000.00 which moves funds from Stabilization to Public Facilities to restore funds to the Public Facilities account which were used in the construction of the swap shack.
4. Communication from the Mayor re: budget transfer request in the amount of \$900.00 which moves funds from Interim Foreman to Educational Incentive as a result of a greater demand due to the higher grade of license obtained by an employee.
5. Communication from the Mayor re: approval of an order which allows the City to incur liability and make expenditures in any fiscal year in excess of available appropriations with respect to snow and ice removal.
6. Communication from the Mayor re: appointments of Robert Kays and Dennis Zilembo to the Recreation Commission for terms expiring May 6, 2013 and May 1, 2011 respectfully.
7. Communication from the City Solicitor re: proposed amendment to the Wireless Communications Facilities Ordinance, Order No. 08-1002064.
8. Communication from the Assistant City Solicitor re: order of acceptance for Eager Court and municipal easement in the Eager Court subdivision.
9. Communication from Omnipoint Communications Inc. re: request to extend time limitations to install, operate and maintain a wireless communication facility at 249 Miles Standish Dr to March 24, 2009 at 5:00 PM, Order No. 08-1002023A.
10. Communication from Attorney Bergeron, on behalf of Toll MA Land Limited Partnership, re: request to extend time limitations to construct 80 units on less than 14 acres and to revise current permit conditions accordingly, to May 15, 2009 at 5:00 PM, Order No. 08-1001938C.
11. Notice, Mosquito Control Exclusion.
12. Minutes, Community Development Authority, November 20, 2008.
13. Minutes, Planning Board, November 24 & December 15, 2008.
14. CLAIMS:
  - A. Brian Vital, 12 Gordon Rd., vehicle damage
  - B. Steven Wise, 61 Washington St., vehicle damage
  - C. Udo Zoettler, 9 Walcott Cir., property damage
  - D. Lisa Malaney, 84 Sheffield Terr., property damage
  - E. Chung Lee, 90 Leoleis Dr., property damage
  - F. Vincent Pellissier, 65 Mosher Ln., property damage
  - G. Judith McCarthy, 221 Bolton St., property damage
  - H. Downtown Marlboro LLC, 11 Court St., property damage
  - I. Chung Lee, 90 Leoleis Dr., additional property damage
  - J. The Meadows at Marlborough, 141 Broadmeadow St., property damage
  - K. Kevin M. Smith, 128 Old Charter Rd., vehicle damage

REPORTS OF COMMITTEES:

## UNFINISHED BUSINESS:

**From Personnel Committee**

15. **Order No. 08/09-1002072A – Reappointment of Ronald LaFreniere as the City's Commissioner of Public Works for a term of five years expiring on January, 11, 2014. Recommendation of the Personnel Committee is to approve 3-0.**
16. **Order No. 08/09-1002073A – Reappointment of Deborah Puleo as the City Collector effective February 1, 2009 to correspond with her bond renewal date. Recommendation of the Personnel Committee is to approve 3-0.**
17. **Order No. 08/09-1002075A – Reappointment of John Rowe to the Board of Health for a term to expire the 1<sup>st</sup> Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.**
18. **Order No. 08/09-1002076A – Reappointment of Raymond Johnson to the Library Board of Trustees for a three year term to expire the 1<sup>st</sup> Monday in February 2012 and to submit the name of William Brewin to assume the position now held by Claude Tsai who will be unable to continue past his term which expires on February 2, 2009. William Brewin's term would expire the 1<sup>st</sup> Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.**



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

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

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

**JANUARY 5, 2009**

Regular meeting of the City Council held on Monday January 5, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juare, Seymour, Clancy and Landers. Meeting adjourned at 9:45 p.m.

**ORGANIZATIONAL MEETING**

Councilor Vigeant called the meeting to order at 8:00 a.m. The City Clerk called for the Election of the City Council President of the Marlborough City Council for the Year 2009. Councilor Ossing nominated Councilor Vigeant as President. Councilor Pope seconded the motion for nomination of Councilor Vigeant as President. Councilor Vigeant received eleven votes for President. Yea – Delano, Ferro, Schafer, Juare, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy. Nay – 0.

Councilor Vigeant called for the Election of the City Council Vice-President of the Marlborough City Council for the Year 2009. Councilor Ossing nominated Councilor Pope as Vice-President. Councilor Clancy seconded the motion for nomination of Councilor Pope as Vice-President. Councilor Pope received eleven votes for Vice-President. Yea – Delano, Ferro, Schafer, Juare, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy. Nay – 0.

City Council President Vigeant announced the next meeting of the City Council to be held on Monday, January 26, 2009 at 8:00 p.m.

**ORDERED:** Minutes, City Council Meeting, December 15, 2008, **FILE**; adopted as amended.

**ORDERED:** Now being the time set for the **CONTINUED PUBLIC HEARING** On the Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws, all were heard who wish to be heard, hearing recessed at 8:40 p.m.; adopted.

**ORDERED:** Now being the time set for the **PUBLIC HEARING** At the request of the Mayor, on behalf of the Marlborough License Board, to convert Two Current Beer & Wine Package Store Licenses to All Alcoholic Package Store Licenses through the adoption of an Initiative Petition by the State Legislature, all were heard who wish to be heard, hearing adjourned at 9:30 p.m.; adopted.

**ORDERED:** That the Commonwealth of Massachusetts Executive Office of Public Safety and Security grants in the amounts of \$27,395.42 and \$15,000.00 awarded to the Police Department for community policing activities and a reimbursement grant respectively, as outlined in MGL, Chapter 44 Section 53A which stipulates that grant funding be strictly applied to purposes outlined, **APPROVED**; adopted.

- ORDERED: That the appointment of Karen Kisty as acting Personnel Director effective January 6, 2009, **FILE**; adopted.
- ORDERED: That the reappointments of Lawrence Roy and Michelle Higgins to the Conservation Commission for terms to expire on March 5, 2012, refer to **PERSONNEL COMMITTEE**; adopted.
- ORDERED: That Agenda #8, Communication from the City Solicitor regarding Special Permit from MetroPCS Massachusetts, LLC for 97 Arnold St, Ext., in proper form, be moved to Reports of Committees; **APPROVED**; adopted.
- ORDERED: That the minutes, MetroWest Regional Transit Authority , October 27, 2008 **FILE**; adopted.
- ORDERED: That the Communication from Stephen Zeitler, owner of Marlboro Wine and Spirit Co., re: All Liquor Licenses; **FILE**; adopted.
- ORDERED: That the application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's license; refer to **PUBLIC SERVICES COMMITTEE**; adopted.
- ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
- A. Mark Dascoli, 146 Beach St., vehicle damage
  - B. Thomas Naze, 31 Diana Dr., vehicle damage
  - C. James Holt, 7 Ash St., property damage
  - D. Diane Insani, 58 Concord Rd., property damage
  - E. Eileen Ahern, 474 Pleasant St., property damage
  - F. Curtis Williams, 15B Onamog St., property damage
  - G. Jonathon Chase, 431 Berlin Rd., property damage
  - H. Carolyn Mariani, 189 Gates Pond Rd., Berlin, vehicle damage

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

**Order No. 08/09-1002072A – Reappointment of Ronald LaFreniere as the City's Commissioner of Public Works for a term of five years expiring on January, 11, 2014. Recommendation of the Personnel Committee is to approve 3-0.**

**Order No. 08/09-1002073A – Reappointment of Deborah Puleo as the City Collector effective February 1, 2009 to correspond with her bond renewal date. Recommendation of the Personnel Committee is to approve 3-0.**

**Order No. 08/09-1002075A – Reappointment of John Rowe to the Board of Health for a term to expire the 1<sup>st</sup> Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.**

**Order No. 08/09-1002076A – Reappointment of Raymond Johnson to the Library Board of Trustees for a three year term to expire the 1<sup>st</sup> Monday in February 2012 and to submit the name of William Brewin to assume the position now held by Claude Tsai who will be unable to continue past his term which expires on February 2, 2009. William Brewin's term would expire the 1<sup>st</sup> Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.**

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

EVIDENCE

1. The Applicant is METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application to City Council for Issuance of Special Permit (hereinafter "Special Permit Application"), the Applicant seeks permission to allow co-location of six (6) wireless communications panel antennas on an existing water tank, and one (1) GPS antenna mounted on a proposed ice bridge, and supporting equipment on the ground within an existing compound (hereinafter "Proposed Wireless Communications Device Project" or "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0482A MARLBOROUGH WATER TANK," by Chappell Engineering Associates, LLC, dated 7/17/08, as submitted with the Special Permit Application, (hereinafter "Plans").
3. The location of the Proposed WCD Project is 97 Arnold Street Ext., Marlborough, MA and is more particularly identified on the Assessor's Map of the City of Marlborough as Map 68 of Lot 80 (hereinafter "the Site"). The owner of record for the Site is the CITY OF MARLBOROUGH.
4. The Applicant is a prospective lessee of the City of Marlborough, which owns the existing water tank at the Site as well as the underlying compound area.
5. The Site is zoned A-3 (Residence). Wireless Communication Devices are allowed by grant of Special Permit in A-3 (Residence) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Ordinance set forth in the City Code of the City of Marlborough (hereinafter "Marlborough Zoning Ordinance").
7. Pursuant to the Rules and Regulations of Application for Special Permit (hereinafter "Rules and Regulations"), 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 WCD Project on October 6, 2008, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. By written agreement by and between the Council and the Applicant, timely filed with the City Clerk for the City of Marlborough, the time period for a decision by the Council on the Applicant's application was extended until February 3, 2009.

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10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance, applicable to the Proposed WCD Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Special Permit Application.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this decision.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Facilities, including Wireless Communication Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCD Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the Marlborough Zoning Ordinance, **GRANTS** the Applicant a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
  - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
  - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of its Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Special Permit 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 WCD 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 WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code of the City of Marlborough.
- 8) No operation of this Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) Applicant shall securely attach cables to the outside of the tank in such a manner as to prevent noise and/or other disturbance that would be obtrusive to the neighborhood.
- 11) In accordance with the provisions of Mass. Gen. Laws 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.

12) 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 Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall certify that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall certify 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.

**Yea: 9 – Nay: 2**

**Yea: Delano, Ferro, Schafer, Seymour, Clancy, Ossing, Pope, Vigeant, Levy**  
**Nay: Juairé, Landers**

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





# IN CITY COUNCIL

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Marlborough, Mass., DECEMBER 15, 2008

ORDERED:

That there being no objection thereto set **MONDAY, JANUARY 26, 2009** as the date for a **PUBLIC HEARING** on Application for Special Permit from Attorney Anderson, on behalf of New Cingular Wireless PCS, for co-location, construction and operation of a Wireless Communications Facility on and next to the existing multi-carrier monopole located at 860 Boston Post Rd. East, be and is herewith refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 08-1002083



*City of Marlborough*  
*Office of the Mayor*

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

*Nancy E. Stevens* 31  
MAYOR

*Karen F. Kistly*  
EXECUTIVE AIDE

*Diane C. Halper*  
EXECUTIVE SECRETARY

January 21, 2009

Council President Arthur G. Vigeant  
Marlborough City Council  
Marlborough City Hall – 2<sup>nd</sup> Floor  
140 Main Street  
Marlborough, MA 01752

Honorable President Vigeant and Councilors:

Attached please find a transfer request in the amount of \$5,000.00 moving funds from Account No. 83600-32721 (Stabilization) to Account No. 11920006-53999 (Public Facilities). This transfer restores funds to the Public Facilities account which were used in the construction of the swap shack at the resident drop-off center. \$5,000 came from T-Mobile mitigation funds.

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

Sincerely,

Nancy E. Stevens  
Mayor

### TRANSFER REQUEST

Available Balance					
<u>\$5,000</u>					
	FROM ACCOUNT:			FISCAL YEAR: 2009	
	Amount	Org Code	Object		
	<u>\$5,000.00</u>	83600	<u>32721</u>		
		Account Description:		TO ACCOUNT:	
		<u>Stabilization-Swap Shack</u>		Org Code	Object
				<u>11920006</u>	<u>53999</u>
				Account Description:	
				<u>Public Facilities-Other Services</u>	
			Amount		
			<u>\$5,000.00</u>		
				Available Balance	
				<u>\$56,930</u>	

Reason: T-Mobile funds for swap shack construction



*City of Marlborough*  
*Office of the Mayor*

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*Nancy E. Stevens* 4/1  
MAYOR

*Karen A. Kisty*  
EXECUTIVE AIDE

*Diane C. Halper*  
EXECUTIVE SECRETARY

January 14, 2009

Council President Arthur G. Vigeant  
Marlborough City Council  
Marlborough City Hall – 2<sup>nd</sup> Floor  
140 Main Street  
Marlborough, MA 01752

Honorable President Vigeant and Councilors:

Attached please find a transfer request in the amount of \$900.00 moving funds from Account No. 60080003-51470 (Interim Foreman) to Account No. 60080003-51440 (Educational Incentive). This need is a result of a greater demand due to the higher grade of license obtained by an employee.

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

Sincerely,

Nancy E. Stevens  
Mayor

CITY OF MARLBOROUGH  
BUDGET TRANSFER REQUEST

DEPT: Publi Works - Water Service DATE: 1/13/2009 FY: 09

Available Balance \$ 2,350.00

Amount \$ 900.00

Reason: Sufficient funds to meet obligation

FROM ACCOUNT:

Org Code 60080003 Object 51470

TO ACCOUNT:

Org Code 60080003 Object 51440 Account Description: Educational Incentive

Available Balance \$ (100.00)

Reason: Greater demand due to higher grade of license obtained by employee. Contract item.

Amount \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \_\_\_\_\_

Reason: \_\_\_\_\_

1/13/09

Department Head Signature: [Signature]

Mayor Signature: [Signature]

AC



*City of Marlborough*  
*Office of the Mayor*

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

*Nancy E. Stevens* 51  
MAYOR

*Karen A. Kisty*  
EXECUTIVE AIDE

*Diane C. Halper*  
EXECUTIVE SECRETARY

January 21, 2009

Council President Arthur G. Vigeant  
Marlborough City Council  
Marlborough City Hall – 2<sup>nd</sup> Floor  
140 Main Street  
Marlborough, MA 01752

Honorable President Vigeant and Councilors:

I respectfully request your approval of the attached order prepared in accordance with MGL Chapter 44: Section 31D which allows the City to incur liability and make expenditures in any fiscal year in excess of available appropriations with respect to snow and ice removal.

All supporting documentation, which will allow for your approval, has been attached.

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

Sincerely,

Nancy E. Stevens  
Mayor

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**ORDERED:**

That pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, with the approval of the Mayor, approves expenditures in excess of available appropriation for snow and ice removal for fiscal year 2009.

ADOPTED

In City Council

Order No. 09-

Adopted

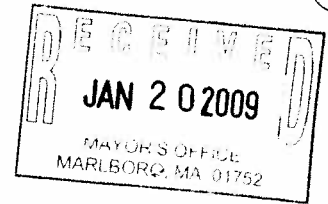
Approved by Mayor

Nancy E. Stevens

Date:

A TRUE COPY

ATTEST:



**CITY OF MARLBOROUGH**  
**Office of the City Auditor**  
140 Main St.  
Marlborough, MA 01752

January 20, 2009

MEMORANDUM

**TO:** Councilor Ossing, Finance Committee Chair and Members of the City Council  
**FROM:** Diane Smith, City Auditor  
**RE:** Snow and Ice Removal Expenditures

Snow and Ice Removal expenditures for preceding years were as follows: FY04 - \$1,440,451; FY05 - \$840,241; FY06 - \$1,237,053; FY07 - \$828,861; and FY08 - \$2,083,008.

The FY09 Snow and Ice budget is at \$1,148,979. Actual expenditures to date are \$746,066 and encumbrances are \$402,913.

Please contact this office if you should have any further questions regarding this information.

CC: Mayor Nancy E. Stevens  
Thomas Abel, Comptroller/Treasurer



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# The General Laws of Massachusetts

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## PART I. ADMINISTRATION OF THE GOVERNMENT

### TITLE VII. CITIES, TOWNS AND DISTRICTS

#### CHAPTER 44. MUNICIPAL FINANCE

##### DEPARTMENT APPROPRIATIONS

#### **Chapter 44: Section 31D. Snow and ice removal; emergency expenditures; reporting requirements**

Section 31D. Any city or town may incur liability and make expenditures in any fiscal year in excess of available appropriations for snow and ice removal, provided that such expenditures are approved by the town manager and the finance or advisory committee in a town having a town manager, by the selectmen and the finance or advisory committee in any other town, by the city manager and the city council in a city having a city manager or by the mayor and city council in any other city; provided, however, that the appropriation for such purposes in said fiscal year equaled or exceeded the appropriation for said purposes in the prior fiscal year. Expenditures made under authority of this section shall be certified to the board of assessors and included in the next annual tax rate.

Every city or town shall annually, not later than September fifteenth, report to the division of local services of the department of revenue the total amounts appropriated and expended, including any funding or reimbursements received from the commonwealth, for snow and ice removal in the fiscal year ending on the preceding June thirtieth.

## Focus on Municipal Finance

# Spending on Snow and Ice Removal

Tony Rassias, Deputy Director, Bureau of Accounts

Snow, spin-outs, wind-chills, traffic jams, states of emergency, school-closings, obstructed sidewalks, parking bans and arguments over the corrosiveness of salt. Yes, it's that time of year again! Whether you rely on the National Oceanic and Atmospheric Administration or *The Old Farmer's Almanac* for your winter prediction, you can probably bet that there'll be snow and ice in our forecast. Given this *chilly* prediction, it's time again for local officials to check the snow and ice removal budget, especially in light of M.G.L. Chapter 44, §31D.

### A History

In early colonial times, severe winter weather would render roads impassible and would hinder commerce and communication. At the time, town populations were small and most wintertime travel was done by foot. As towns grew, the challenge to control and remove snow and ice from the streets began. Horse-carts and coaches were installed with ski-like runners to replace wheels. Residents and merchants were required to clear their own streets and citizens would assist in clearing drifts for sleigh traffic. The horse-drawn snow plow is credited for having initiated municipal responsibility for snow removal.<sup>1</sup>

Through the years, Massachusetts budget officials were forced to ponder whether the snow and ice on the ground would outlast the municipal budget line item to remove it. Cities and towns had to live within their appropriations for snow and ice removal as required by M.G.L. Chapter 44, §31, return to town meeting or city council for further action, or utilize a reserve fund transfer before the deficit occurred. For towns, especially in bad winters, these options always proved problematic. For cities, these options were less prob-

lematic yet sufficient resources to fund the appropriation were not necessarily available.

### Chapter 33 of the Acts of 1976

In 1976, the General Court of Massachusetts passed Chapter 33, "An Act Providing for Certain Snow and Ice Removal in Cities and Towns." This act, now M.G.L. Chapter 44, §31D, gave cities and towns the authority to deficit spend their snow and ice removal appropriations and to include the deficit on the next annual tax rate without appropriation provided two conditions were met.

**This new law gave both cities and towns added flexibility to manage their snow and ice removal expenditures.**

1) The appropriation for snow and ice removal in the year the deficit occurred equaled or exceeded the appropriation for snow and ice removal in the prior fiscal year and;

2) The deficit spending was approved by the town manager and finance committee in a town having a town manager, selectmen and finance or advisory committee in any other town, city manager and city council in a city having a city manager or the mayor and city council in any other city.

This new law gave both cities and towns added flexibility to manage their snow and ice removal expenditures, provided they met the legal conditions. Otherwise, M.G.L. Chapter 44, §31 would still apply.

### Example

Let's suppose it's late winter and the town accountant informs the town manager that the FY09 snow and ice removal budget will likely be over-spent before the season is over. The current fiscal year's appropriation for snow and ice removal is greater than last fiscal year's appropriation. Before the appropriation is depleted, the town manager meets with the finance committee and requests their approval to deficit spend the snow and ice removal budget "up to" a certain dollar amount through a certain period of time, no later than June 30. The finance committee votes the specifics and the town manager concurs. Both legal conditions have now been met. The appropriation can now be deficit spent by the approved amount, which can then be raised without appropriation on the FY10 Tax Rate Recap, unless already provided for.

### FAQs

Through the years, the Division of Local Services (DLS) has provided legal advice to many local officials on snow and ice removal deficit spending. Below are responses to three of the most frequently asked questions.

*What snow and ice removal appropriation is used to determine whether the city or town can deficit spend?*

The annual appropriation, not including any supplemental appropriation or transfer made to cover or prevent a deficit for this purpose, is used to determine the cities and towns' authority to deficit spend their snow and ice removal appropriations — and to include the deficit on the next annual tax rate without appropriation.

**continued on page 8**

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## Spending on Snow and Ice Removal continued from page 7

*For what snow and ice removal expenses can a city or town deficit spend?*

Generally, cities and towns may deficit spend only those expenses directly related to the removal of snow and ice that are variable from year to year depending on the severity of the winter. Cities and towns may not deficit spend for regular recurring activity expenses that are predictable and do not vary with the weather in any given winter.

**Cities and towns may not deficit spend for regular recurring activity expenses that are predictable and do not vary with the weather in any given winter.**

Regular maintenance of equipment must be budgeted, although an emergency repair during plowing season may qualify for deficit spending if the maintenance budget has been exhausted.

Street cleaning cannot be paid for by deficit spending unless unusual weather conditions require extraordinary activity beyond that annually undertaken.

*Can the Finance Committee/Selectman and Town Manager vote a specific dollar amount to deficit spend or can it only approve an amount "up to"?*

Voting an amount to deficit spend "up to" is considered a preferred practice. Although the finance committee/selectman and town manager may approve spending an actual dollar amount for an impending storm and/or spending for a shorter period of time than by June 30, the consequences of this vote should be considered.

### Chapter 45 of the Acts of 1996

In the winter of 1995–1996, after exceptionally heavy snowfall, the Massachusetts Legislature passed Chapter 45, a supplemental appropriation that authorized \$21 million of additional municipal aid for snow and ice removal. Chapter 45 also amended M.G.L. Chapter 44, §31D to require cities and towns to report to DLS FY1993–FY1995 snow and ice removal expenditures and to annually thereafter report to DLS snow and ice appropriation and expenditure data from the prior fiscal year.

*Table 1* shows expenditure data as reported by cities and towns for FY1993 and for FY06–FY08. The *Table* reflects 342 cities and towns reporting for all three fiscal years and 289 reporting for FY08 to date.

For the 342 cities and towns reporting, FY07 expenditures charged to snow and ice removal accounts increased over FY1993 expenditures by \$9.2 million, from \$70.4 million to \$79.6 million, or by 13 percent. For the 289 cities and

towns reporting, FY08 expenditures increased over FY2007 expenditures by \$73.2 million, from \$68.4 million to \$141.5 million or by 107 percent. Although the FY08 amount appears high, the average amount charged between FY03 and FY06 was \$133 million.

For the period between FY1993 and FY07, the data reveals that 228 cities and towns increased these expenditure charges by \$17.3 million, from \$36.9 million to \$54.2 million, or by 47 percent. Further, the data reveals that 114 cities and towns decreased these expenditure charges by \$8.1 million, from \$33.6 million to \$25.5 million, or by 24 percent.

For the period between FY1997 and FY2008, the data reveals that 285 cities and towns increased these expenditure charges by \$73.2 million, from \$68.2 million to \$141.4 million, or by 107 percent. Further, the data reveals that 4 towns decreased these expenditure charges by \$35,510, from \$201,191 to \$165,681, or by 18%.

For more information on snow and ice removal expenditures, please contact the [Bureau of Municipal Finance Law](#) or the [Bureau of Accounts](#). ■

1. "Have Snow Shovel, Will Travel" by Laura Chesire. Created for the [National Snow and Ice Data Center](#). Published in 1997.

**Editor's note: Please turn the page for the data that accompanies this focus article.**



*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. 508.460.3770 Facsimile 508.460.3698 TDD 508.460.3610

*Nancy E. Stevens*  
MAYOR

*Karen H. Kisty*  
EXECUTIVE AIDE

*Diane C. Halper*  
EXECUTIVE SECRETARY

January 21, 2009

City Council President Arthur G. Vigeant  
Marlborough City Council  
Marlborough City Hall – 2<sup>nd</sup> Floor  
140 Main Street  
Marlborough, MA 01752

Honorable President Vigeant and Councilors:

I am submitting for your approval the following individuals for appointments to the Recreation Commission:

Robert Kays is submitted with a term expiring May 6, 2013.

Dennis Zilembo is submitted to fill the unexpired term of David Gadbois, who has resigned his position. The term will expire on May 1, 2011.

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

Sincerely,

Nancy E. Stevens  
Mayor



**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

**KATHERINE M. KIMBER**  
PARALEGAL

January 22, 2009

Arthur Vigeant  
President  
Marlborough City Council

RE: Proposed Amendment to Wireless Communications Facilities Ordinance  
Balloon/Crane Test

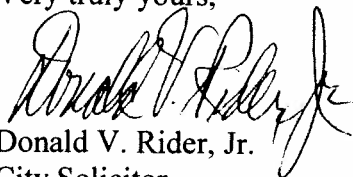
Dear President Vigeant and Members:

Enclosed is a proposed amendment to the Wireless Communications Facilities Ordinance. This proposal is offered in response to Order No. 08-1002064, which requested the drafting of "procedures to provide for a crane test where appropriate and where a balloon test is insufficient."

Please note that the procedures for amending a zoning ordinance will need to be followed, given that the Wireless Communications Facilities Ordinance is part of the City's zoning ordinance.

Thank you for your attention to this matter.

Very truly yours,

  
Donald V. Rider, Jr.  
City Solicitor

Enclosure

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ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 200, ARTICLE VI, SECTION 200-25, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED, AS FOLLOWS:

Section 200-25, entitled “Wireless Communications Facilities,” is hereby amended by deleting in Subsection E, entitled “Development Requirements,” the language contained in sub-subsection (2), and inserting in place thereof the following language:

- (2) (a) In order for the City Council to adequately assess the visual impact of the proposed Tower of the proposed Tower on the surrounding neighborhood, the applicant, solely at its own expense, shall arrange to conduct a balloon test. The applicant shall conduct such balloon test within thirty (30) calendar days after the date when the applicant has filed its special permit application, but in any event prior to the public hearing. The balloon test shall consist of a three-foot diameter brightly-colored balloon being flown, or being raised upon a temporary mast, at the maximum height, and at the location, of the proposed Tower. The date for the balloon test shall be scheduled on a weekend, and said test shall occur for at least four consecutive hours sometime between 9:00 a.m. and 3:00 p.m. on the date scheduled by the applicant. For two (2) consecutive weeks prior to the date of the balloon test, the applicant shall advertise in one (1) newspaper of general circulation in the City of Marlborough the date, time and location of the balloon test. Further, the applicant shall inform the City Council and all abutting property owners, in writing, of the date, time and location of the balloon test at least fourteen (14) calendar days prior to the date of the test. Subsequent to the balloon test but prior to the public hearing, the applicant shall develop and submit to the City Council a written analysis of the visual impact of the proposed Tower. This analysis shall include photographs of the balloon test or, as applicable, the crane test taken from twelve (12) different locations within the City of Marlborough, each photograph taken approximately 30 degrees apart, or as close thereto as may be practicable, but in any event in such a manner so that the City Council can adequately assess the visual impact of the proposed Tower on the surrounding neighborhood.
- (b) Subsequent to the public hearing, the City Council’s Wireless Communications Committee shall be authorized to determine whether the balloon test was adequate for the City Council to assess the visual impact of the proposed Tower on the surrounding neighborhood, and, upon any such determination of inadequacy, to thereupon require that the applicant arrange, solely at its own expense, to conduct a crane test. The applicant shall conduct such crane test within thirty (30) calendar days after the date when the Wireless Communications Committee has made its determination that such test is required; if within said

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thirty days the applicant informs the Wireless Communications Committee in writing that an extension of time is needed for such test, such extension shall be granted by the City Council, on the condition that the applicant must agree to any extension of the ninety (90)-day period which may become necessary for the City Council to timely take final action on the applicant's special permit application. The crane test shall consist of a crane being positioned at the maximum height, and at the location, of the proposed Tower. The date for the crane test shall be scheduled on a weekend, and said test shall occur for at least four consecutive hours sometime between 9:00 a.m. and 3:00 p.m. on the date scheduled by the applicant. For two (2) consecutive weeks prior to the date of the crane test, the applicant shall advertise in one (1) newspaper of general circulation in the City of Marlborough the date, time and location of the crane test. Further, the applicant shall inform the City Council and all abutting property owners, in writing, of the date, time and location of the crane test at least fourteen (14) calendar days prior to the date of the test. Subsequent to the crane test but prior to the expiration of the ninety-day period, or any extension thereof as the case may be, the applicant shall develop and submit to the Wireless Communications Committee a written analysis of the visual impact of the proposed Tower. This analysis shall include photographs of the crane test taken from twelve (12) different locations within the City of Marlborough, each photograph taken approximately 30 degrees apart, or as close thereto as may be practicable, but in any event in such a manner so that the City Council can adequately assess the visual impact of the proposed Tower on the surrounding neighborhood.

(c) Nothing in this sub-subsection (2) shall prevent the applicant from arranging in the first instance to conduct a crane test in place of the balloon test, in which event no balloon test shall be required.

ADOPTED  
In City Council  
Order No. 09-  
Adopted

Approved by Mayor  
Nancy E. Stevens  
Date:

A TRUE COPY  
ATTEST:



*City of Marlborough*  
**Legal Department**

140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610  
LEGAL@MARLBOROUGH-MA.GOV

JAN 22 2009

**DONALD V. RIDER, JR.**  
CITY SOLICITOR

**CYNTHIA M. PANAGORE GRIFFIN**  
ASSISTANT CITY SOLICITOR

**BEVERLY J. SLEEPER**  
CHIEF PROCUREMENT OFFICER

**KATHERINE M. KIMBER**  
PARALEGAL

January 22, 2009

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

Re: Order of Acceptance  
Eager Court

Dear President and Members,

Please find a proposed order of acceptance for the above-referenced street and municipal easement in the Eager Court subdivision. Said order is in proper form for your consideration.

Copies of the deed, legal descriptions of the street and the municipal easement, and the acceptance plan are also attached for your review. The Engineering Division of the DPW has reviewed and approved these attachments.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Cynthia Panagore Griffin  
Assistant City Solicitor

Enclosures

cc: Nancy E. Stevens, Mayor  
Planning Board  
Tom Cullen, City Engineer



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ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that EAGER COURT be accepted as a public way

From EAGER COURT To Terminus

and the associated easement be accepted as a municipal easement as shown on plans thereof and as hereinafter described:

DESCRIPTION

Plan entitled "PLAN OF ACCEPTANCE OF EAGER COURT AND MUNICIPAL FLOWAGE EASEMENT IN MARLBOROUGH, MA, DATED OCT. 10, 2008, LAST REVISED 11/10/08, PREPARED BY THOMAS LAND SURVEYORS & ENGINEERING CONSULTANTS, INC., 265 WASHINGTON STREET, HUDSON, MA 01749, RECORDED WITH MIDDLESEX SOUTH REGISTRY OF DEEDS AS PLAN \_\_\_\_\_ OF 2009" attached hereto as Exhibit A, said plan to be recorded herewith at the Middlesex County South Registry of Deeds;

Title to the roadway known as EAGER COURT and title to the municipal flowage easement as shown on said plan has been granted to the City of Marlborough in a Quitclaim Deed from NRN Realty Group, LLC, 30 Bradford Road, Hudson, MA 01748, said deed to be recorded herewith at the Middlesex County South Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

EAGER COURT be accepted as a public way and its associated easement be accepted as a municipal easement in the City of Marlborough.

ADOPTED  
In City Council  
Order No. 09-  
Adopted

Approved by Mayor  
Nancy E. Stevens  
Date:

A TRUE COPY  
ATTEST:

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**QUITCLAIM DEED**

NRN Realty Group, LLC, a Massachusetts limited liability company with an address of 30 Bradford Road, Hudson, Massachusetts,

In consideration of Less Than One Hundred (\$100.00) Dollars

Grant to The City of Marlborough, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of business at 140 Main Street, Marlborough, Massachusetts

With Quitclaim Covenants

The parcel of land in said City of Marlborough, Middlesex County, Massachusetts, known as Eager Court, together with an appurtenant Municipal Flowage Easement, as described in the legal description attached hereto as Exhibit A. Said Eager Court and appurtenant easement being shown on a plan entitled "Plan of Acceptance of Eager Court and Municipal Flowage Easement in Marlborough, MA", dated Oct. 10, 2008, last revised 11/10/08, prepared by Thomas Land Surveyors & Engineering Consultants, Inc., 265 Washington Street, Hudson, MA 01749, recorded with Middlesex South District Registry of Deeds as Plan \_\_\_\_\_ of 2009.

Said appurtenant easement shall include the right to install, maintain, repair and reconstruct municipal utilities in the easement area shown on the above referenced plan.

For Grantor's title see Deed dated August 12, 2004 and recorded with the Middlesex South District Registry of Deeds in Book 43507, Page 117.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

NRN REALTY GROUP L.L.C.

By

\_\_\_\_\_  
Richard P. DiPersio, Manager

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me the undersigned notary public, personally appeared Richard P. DiPersio, Manger of NRN Realty Group L.L.C., proved to me through satisfactory evidence of identification, which was Massachusetts state drivers license, 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.

\_\_\_\_\_  
Richard E. Hastings, Notary Public  
My commission expires 12/26/14

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Exhibit A

**EAGER COURT**

**Beginning at the southwest corner of the public portion of Eager Court on the southerly side of Eager Court and at land of John Sullivan and land of Glenn Foley,**

**thence running S85-38-12W 346.49 feet by the southerly sideline of Eager Court and land of Glenn Foley, Dora Naves and land of Joanne Santella to a stone bound with a drill hole at a driveway easement and drain easement,**

**thence running westerly, northerly and easterly by a driveway easement, drain easement Lot 1 and land of Barbara Bliss and a curve to the right having a radius of 50.00 feet and a length of 226.75 feet to a stone bound with a drill hole,**

**thence running southeasterly and easterly by land of Barbara Bliss and a curve to the left having a radius of 35.00 feet and a length of 48.77 feet to a stone bound with a drill hole,**

**thence running N85-38-12E 258.16 feet by land of Barbara Bliss and land of John Petrin to a point at land of Carl Field,**

**thence running S18-35-17E 3.57 feet by land of Carl Field to an iron pipe at the northwesterly corner of the public portion of Eager Court**

**thence running S12-29-08E 26.81 feet by the public portion of Eager Court to the point and place of beginning.**

**Said road contains 17,445.64 sq.ft. and is shown on a plan prepared by Thomas Land Surveyors & Engineering Consultants, Inc. entitled "Plan of Acceptance of Eager Court and Municipal Flowage Easement in Marlborough, MA," dated Oct. 10, 2008, last revised 11/10/08.**

Exhibit A (continued)

## **MUNICIPAL FLOWAGE EASEMENT**

**Beginning at the southeasterly corner at a stone bound with a drill hole on the southerly sideline of Eager Court and at land of Joanne Santella,**

**thence running S85-38-12W 97.00 feet by land of Joanne Santella to a stone bound with a drill hole at land of Michael Skulley,**

**thence running N05-23-49E 82.39 feet by land of Michael Skulley to a stone bound with a drill hole at land of Thomas Mcenaney,**

**thence running S81-46-45E 39.38 feet to a stone bound with a drill hole at a point on the westerly sideline of Eager Court,**

**thence running by a curve to the left having a radius of 50.00 feet and a length of 102.01 feet by the westerly sideline of Eager Court to the point and place of beginning.**

**Said easement contains 3,706.75 sq.ft. and is shown on a plan prepared by Thomas Land Surveyors & Engineering Consultants, Inc. entitled "Plan of Acceptance of Eager Court and Municipal Flowage Easement in Marlborough, MA," dated Oct.10, 2008, last revised 11/10/08 and previously referenced.**



PLAN OF ACCEPTANCE  
& MUNICIPAL FLOWAGE  
EASEMENT  
OF EAGER COURT  
IN  
MARLBOROUGH  
MASSACHUSETTS

MADE AND FORWARDED  
TO THE CITY OF MARLBOROUGH  
ON THIS 15th DAY OF  
MAY 1968

MADE AND FORWARDED  
TO THE CITY OF MARLBOROUGH  
ON THIS 15th DAY OF  
MAY 1968

MADE AND FORWARDED  
TO THE CITY OF MARLBOROUGH  
ON THIS 15th DAY OF  
MAY 1968

ACCEPTANCE PLAN  
OF  
EAGER COURT  
MARLBOROUGH, MA

MADE AND FORWARDED  
TO THE CITY OF MARLBOROUGH  
ON THIS 15th DAY OF  
MAY 1968

SHEET 1 OF 1  
11166

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- NOTES:**
1. OWNER: EAGER, Wm. J.
  2. PLAN NUMBER: 11166
  3. DISTRICT: SUBURBAN PLANNING DISTRICT, 15.00
  4. DATE: MAY 15, 1968
  5. CITY OF MARLBOROUGH, MASSACHUSETTS
  6. PLAN NUMBER: 11166
  7. PLAN NUMBER: 11166
  8. PLAN NUMBER: 11166
  9. PLAN NUMBER: 11166
  10. PLAN NUMBER: 11166

1. OWNER: EAGER, Wm. J.

2. PLAN NUMBER: 11166

3. DISTRICT: SUBURBAN PLANNING DISTRICT, 15.00

4. DATE: MAY 15, 1968

5. CITY OF MARLBOROUGH, MASSACHUSETTS

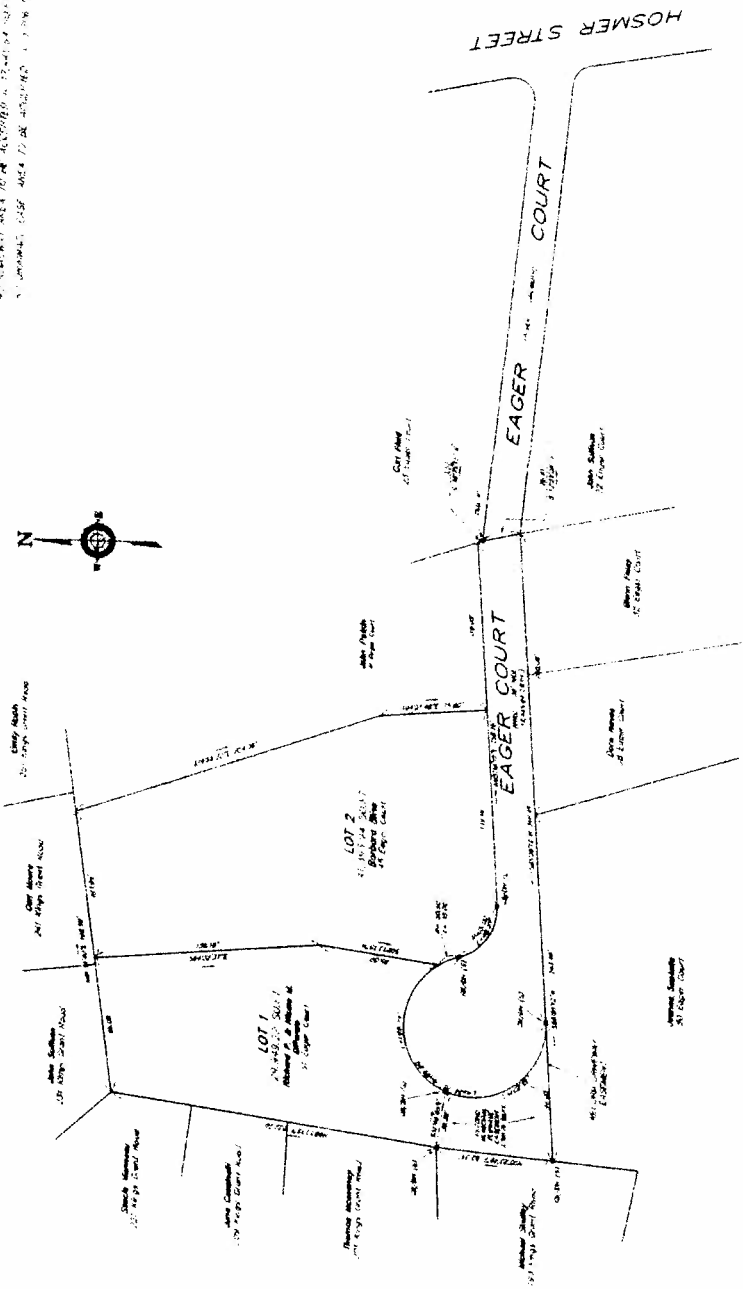
6. PLAN NUMBER: 11166

7. PLAN NUMBER: 11166

8. PLAN NUMBER: 11166

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10. PLAN NUMBER: 11166



- NOTE:**
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2. PLAN NUMBER: 11166

3. DISTRICT: SUBURBAN PLANNING DISTRICT, 15.00

4. DATE: MAY 15, 1968

5. CITY OF MARLBOROUGH, MASSACHUSETTS

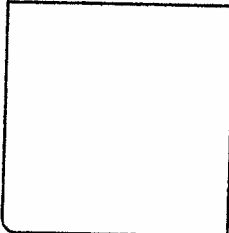
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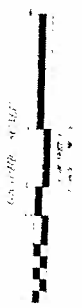
8. PLAN NUMBER: 11166

9. PLAN NUMBER: 11166

10. PLAN NUMBER: 11166



CITY OF MARLBOROUGH  
PLANNING BOARD



9/1

January 16, 2009

**Via First Class Mail**

Karen Boule  
Planning Department  
City of Marlborough  
2nd Floor  
140 Main Street  
Marlborough, MA 01752

Re: Agreement to Extend Time Limitations  
Property Address: 249 Miles Standish Drive, Marlborough, Massachusetts  
Applicant: Omnipoint Communications, Inc., a wholly owned  
subsidiary of T-Mobile-USA, Inc. (the "Applicant")

Dear Ms. Boule:

In connection with the above-referenced matter, enclosed please find a partially executed Agreement to Extend Time Limitations.

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

Thank you for your attention to this matter.

Very truly yours,



Samantha F. Colpak  
Legal Assistant to Jason M. Ellis, Esq.

Enclosure.

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16 2009

**AGREEMENT TO EXTEND  
TIME LIMITATIONS**

- ORDER #

Application for Special Permit from Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc. for installation of 100' flagpole-style monopole at 249 Miles Standish Drive, Marlborough, Massachusetts

-REFER TO

**PUBLIC HEARING: November 10, 2008**

The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the City Clerk.

Pursuant to Mass. General Laws, c.40A, s.9, as amended, the required time limits for action by the Marlborough City Council, as it is the special permit granting authority in the above referenced matter, is hereby extended, by agreement, until 5 p.m. on March 24, 2009.

By: \_\_\_\_\_  
Arthur G. Vigeant, City Council President,  
acting on behalf of, and at the direction of,  
the special permit granting authority:  
**Marlborough City Council**

By: \_\_\_\_\_  
~~Jason M. Ellis, Esq.~~  
Prince, Lobel, Glovsky & Tye LLP  
Acting on behalf of, and at the direction of,  
Petitioner:  
**Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc.**

10

ARTHUR P. BERGERON  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBORO, MASSACHUSETTS 01752

PHONE (508) 481-0103

FAX (508) 485-8506

RECEIVED  
JAN 22 2009

January 22, 2009


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

Re: Toll MA Land Partnership, proposed Revised Special Permit,  
Order # 08-1001938 / 03-10022C

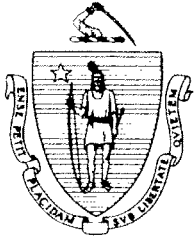
Dear Councilor Vigeant:

Pursuant to Mass. General Laws Chapter 40A sec. 9, my client Toll MA Land Partnership hereby requests that the deadline for City Council action regarding its currently pending request for a modified special permit be extended to May 15, 2009.

Very truly yours,

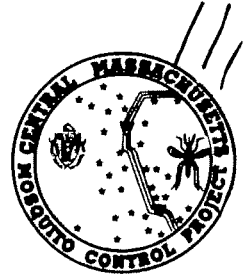
  
Arthur P. Bergeron





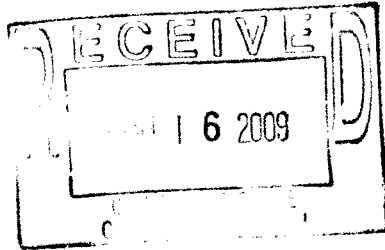
*The Commonwealth of Massachusetts*  
STATE RECLAMATION & MOSQUITO CONTROL BOARD  
**CENTRAL MASSACHUSETTS  
MOSQUITO CONTROL PROJECT**

111 Otis Street, Northborough, MA 01532-2114  
Telephone (508) 393-3055 • Fax (508) 393-8492  
[www.cmmcp.org](http://www.cmmcp.org)



COMMISSION CHAIRMAN  
RICHARD J. DAY

EXECUTIVE DIRECTOR  
TIMOTHY D. DESCHAMPS



January 15, 2009

To: Marlborough City Clerk

Enclosed please find a notice relative to pesticide exclusions which outlines the steps that should be taken by residents wishing to have their properties excluded from pesticide applications.

We ask that you please display this notice in a prominent place, and forward it to the local cable channel and local newspapers for inclusion. Please forward to any concerned parties that may have an interest in the mosquito/gypsy moth exclusion.

Members of our staff will be stopping by your office sometime after April 1, 2009 to collect copies of any exclusions filed with your office.

We would like to thank you for your assistance in this matter.

Sincerely,

Timothy D. Deschamps  
Executive Director

TDD/klm

Enc: (Pesticide Exclusion)

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## PESTICIDE EXCLUSION INFORMATION – 333CMR: PESTICIDE BOARD

The Exclusion Program was implemented by the Department of Food and Agriculture to allow land owners to exclude their property from public area-wide applications of pesticides (see 333 CMR 13.03 - Exclusions for Application). This reads in part:

*Designations for exclusions may be made by supplying the clerk of the municipality in which such lands lie with a certified letter providing the name, address and telephone number (if any), names of all abutters, and defining programs from which exclusion is requested.*

*Designations may be made prior to March 1 of each year and shall be effective from April 1 of that year to March 31 of the following year.  
(333 CMR 13.03, paragraphs 1b & 1c)*

*Ground Applications: The person requesting exclusion shall mark the boundaries or areas to be excluded at least every 50 feet with orange surveyor's tape or another Department-approved marking device which clearly defines the area of exclusion. These markings shall be made known to the Contracting Entity, who shall be responsible for communicating the details of their marking to those who will carry out the application. (333 CMR 13.03 - paragraph 2b)*

This program began in 1983 in response to public concerns about pesticide exposure through public area-wide applications. Generally, the only pesticide application programs affected by this exclusion program are those for the gypsy moth and the mosquito.

Requests for exclusion shall not be honored in those cases which:

1) *The Commissioner of Public Health has certified that the application is made to protect the public health.*

2) *the Commissioner of Environmental Management has certified that the application is necessary to contain an infestation of a recently introduced pest.*

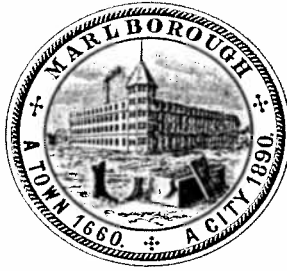
3) *The Commissioner of Food and Agriculture has certified that an application is necessary to contain an infestation of a pest which is a significant threat to agriculture.*

*(from 333 CMR 13.03 - paragraphs 3a, 3b & 3c)*

The full text of this regulation may be found on the Internet at <http://www.lawlib.state.ma.us/cmr.html>.

Please feel free to contact our office if you have any questions, and please access our website at <http://www.cmmcp.org> for more information on the Central Massachusetts Mosquito Control Project.

For more information on these regulations please contact Lee Corte-Real, Director, at the Massachusetts Pesticide Bureau at (617) 626-1776 or [Lee.Corte-Real@state.ma.us](mailto:Lee.Corte-Real@state.ma.us).



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JAN 15 2009

**CITY OF MARLBOROUGH**  
Department of Community Development  
255 Main Street  
Marlborough, Massachusetts 01752  
Voice (508) 460-3715 TDD (508) 460-3610 Facsimile (508) 460-3700

### **MINUTES**

Thursday, November 20, 2008

8:30 AM, 4<sup>th</sup> Floor Conference Room Marlborough City Hall

**CONVENED:** Meeting called to order at 8:35 A.M., by Mayor Stevens.

**MEMBERS PRESENT:** Mayor Stevens, Michael Hogan, Dr. David Muir, Steven Vigeant, Lynn Faust

**MEMBERS ABSENT:** Camille Duridas and David McCabe

**OTHERS PRESENT:** Jackie Malloy, Michelle Ciccolo and Tom Abel

1. **PAST MINUTES – VOTE** Faust made a motion to accept and file the minutes of 11/6/08 as submitted. Vigeant seconded. The Motion passed unanimously.
2. Executive Session Minutes to be placed on file
3. **INVOICES TO BE PAID – VOTE:** Faust made a motion to pay the invoices. Vigeant seconded. The Motion passed unanimously.
4. **HOUSING DIRECOTR'S REPORT CONT'D**

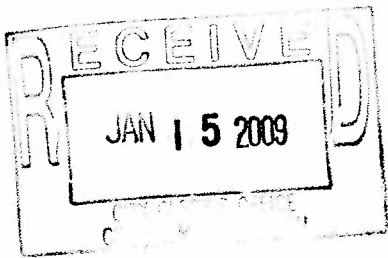
Discussion regarding the funds that had been approved for John Ghiloni from the State Housing Programs. Betsy stated that there is \$5,000.00 in extraordinary maintenance earmarked for John Ghiloni. Betsy noted that she would need to receive an invoice or other documentation in order to properly disperse the funds. It was agreed that Betsy should work with Tom Abel to accomplish this. Motion by Hogan seconded by Faust to make payment through payroll to John Ghiloni as previously authorized; The Motion Passed unanimously.

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would much rather be working on getting the Programs up and running, but the numbers must be cleared up first.

6. The members discuss the City benefits and Personnel Policies for the office. Faust said that she thought the City Benefits package is a bit too generous. A Motion was made by Hogan to send Faust the Benefits Package for her review and to return to the CDA with a Draft of changes. Seconded by Vigeant. The Motion passed unanimously.
7. The Members were presented with a Job Description for the Office Manager's position. Motion was made by the Mayor to accept the Job Description. Seconded by Muir. Motion passed unanimously.
8. The CDA must set a salary range for the Office Manager. Ciccolo provided the Members with a salary range for the Office Manager's Position. T. Abel mentions to the Members that the Head Clerk position which has the same responsibilities as an Office Manager has a salary range of \$39,000 – \$49,000. After a long discussion a Motion was made by Vigeant to set the range to \$35,000 - \$42,000. Seconded by Hogan. Motion passed unanimously.
9. The members voted to post the position of the Office Manager Job Description with a due date of December 5, 2008.

Motion made by Mayor Stevens to adjourn at 10:10 AM, All in favor



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# City of Marlborough Commonwealth of Massachusetts



## PLANNING BOARD

Barbara L. Fenby, Chair  
Steve Kerrigan, Clerk  
Philip J. Hodge  
Edward F. Coveney  
Clyde L. Johnson  
Robert Hanson  
Sean N. Fay

**PLANNING BOARD MINUTES**  
December 15, 2008  
7:00 PM

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, December 15, 2008 in Memorial Hall, 3<sup>rd</sup> floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Chairperson, Steve Kerrigan, Clerk, Clyde Johnson, Robert Hanson, Edward Coveney and Sean Fay. Also present: Assistant City Engineer Richard Baldelli.

### MINUTES

*Meeting Minutes November 24, 2008*

On a motion by Mr. Kerrigan, seconded by Mr. Hanson it was duly voted:

To table the minutes until the next meeting.

### CHAIR'S BUSINESS

*State Representative James Eldridge*

Mr. Eldridge sent correspondence to the Planning Board, stating he was excited to being work as the State Representative for the Middlesex and Worcester Districts. Mr. Eldridge was holding a town hall meeting on Monday, December 15<sup>th</sup> to introduce himself and to hear the concerns of the board members. The Planning Board had a regular scheduled meeting and could not attend this meeting.

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

To send correspondence to State Representative Eldridge thanking him for his service to the community and the board is looking forward to working with him.

### APPROVAL NOT REQUIRED PLAN

*Muddy Lane/Millham Street  
Marlborough Fish & Game  
Approval*

Mr. Cullen has reviewed the ANR Plan, noted that the proximity of the water shed protection district and the tax issues raised by the City Assessor. Mr. Saluk noted that the owners are aware

of the changes in taxes. The City Engineer has reviewed the ANR for 1 Muddy Lane/Millham Street and recommended that the Board approve the ANR Plan.

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

To accept and endorse a plan of land believed to be Approval Not Required of Marlboro Fish & Game, 1 Muddy Lane, Marlborough, MA 01752. Name of Engineer: Bruce Saluk and Associates, 576 Boston Post Road East, Marlborough, MA 01752. Deed of property recorded in South Middlesex Registry of Deeds book 7371, page 73. Location and description of property: located at the Marlboro Fish and Game, 1 Muddy Lane, Land has frontage on Millham Street and is approximately 1.01 Acres, shown on Assessors map 25, parcel 65.

**PUBLIC HEARING**

**SUBDIVISION PROGRESS REPORTS**

***Update from City Engineer***

Mr. Baldelli Stated at this time there was no new developments and has comments regarding Berlin Farms.

***Berlin Farms (Long Drive)***

The City Engineer sent correspondence to Mr. Charles Freeman, the developer of the subdivision, regarding the unsightly conditions at his development on Berlin Road. Mr. Cullen reminded Mr. Freeman that in his covenant with the Planning Board he was to refrain his subdivision of blight which is governed through the Code Enforcement office. Mr. Freeman was also told that if the issues are not addressed in a timely fashion or by December 10, 2008, the duties of sanding and plowing of his subdivision for this upcoming winter will be his sole responsibility.

At the present time, the blight has continued and the City Engineer's office has suggested send notice to the City Code Enforcement Office to start issuing fines.

On a motion by Mr. Kerrigan, seconded by Mr. Hanson it was duly voted:

To send notice of the blight conditions that currently exist at the Berlin Farms Subdivision to the Code Enforcement Officer and to have the City Code Enforcement office fine the developer until the blight is removed.

***O'Leary's Landing (Joseph North Drive)***

*Developer Correspondence*

Mr. Bumpus, the developer for O'Leary's Landing, is requesting the return of his bond monies. The City Council officially accepted Joseph North Road on December 1, 2008 and signed by Mayors Stevens on December 5, 2008.

*Legal Correspondence*

Ms. Cynthia Panagore Griffin sent correspondence to the Planning Board the order of acceptance and the copy of receipts from Middlesex South Registry of Deeds as proof the City has accepted Joseph North Road and it has recorded all documents, including the Deed, Plan, and order of Acceptance.

On a motion by Mr. Kerrigan, seconded by Mr. Hanson it was duly voted:

To accept all correspondence and to refer the request to the City Engineer for the amount of the remaining bond.

**PENDING SUBDIVISION PLANS: Updates and Discussion**

**PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS/ LDS SUBMITTALS**

**DEFINITIVE SUBDIVISION SUBMISSIONS**

**SCENIC ROADS**

**SIGNS**

At the last meeting on November 24, 2008, the Planning Board sent an invitation to Pam Wilderman, The City Code Enforcement Officer; to discuss the signs at tonight's meeting. Mr. Fay stated that he is noticing a trend in the variances with the sign companies being at fault for the non complying signs. Mr. Fay would like amend the sign ordinance allow the Code Enforcement to fine the sign companies as well as the owners of the establishment for non-complying signs.

Ms. Wilderman stated that is was a tough call to see who is really behind the non conforming signs, the owner or the companies. In some cases the sign companies do tell the owners what they are allowed and the owners still ask them to install the non conforming signs. She also stated that through the sign ordinance she has the ability to fine a sign company or owner \$50.00 a day. However under the blight ordinance she has the ability to fine up to \$200.00 a day. Mr. Fay asked if was possible to somehow not allow the companies to apply for a new sign in the City if they have not paid their fines or non complying signs? Ms. Wilderman stated that sign companies have no special licenses to put up signs or any leverage she would have except to fine a company.

The Board all agreed that Mr. Fay should draft an amendment to the sign ordinance to allow the non conforming signs into the blight ordinance.

**INFORMAL DISCUSSION**

**COMMUNICATIONS/CORRESPONDENCE**

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

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

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

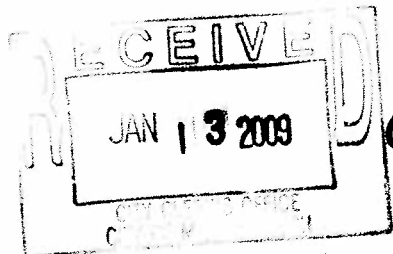
To adjourn at 7:30 p.m.

**A TRUE COPY**

ATTEST:

  
Steven Kerrigan, Clerk

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# City of Marlborough Commonwealth of Massachusetts



## PLANNING BOARD

- Barbara L. Fenby, Chair
- Steve Kerrigan, Clerk
- Philip J. Hodge
- Edward F. Coveney
- Clyde L. Johnson
- Robert Hanson
- Sean N. Fay

**PLANNING BOARD MINUTES**  
**November 24, 2008**  
**7:00 PM**

**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 24, 2008 in Memorial Hall, 3<sup>rd</sup> floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Chairperson, Steve Kerrigan, Clerk, Philip Hodge, Robert Hanson, Edward Coveney and Sean Fay. Also present: Assistant City Engineer Richard Baldelli.

### MINUTES

*Meeting Minutes November 10, 2008*

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

To accept and file the meeting minutes.

### CHAIR'S BUSINESS

### APPROVAL NOT REQUIRED PLAN

*Millham Street  
 Marlborough Fish & Game  
 Submittal*

Bruce Saluk presented to the Planning Board a proposed ANR plan to carve out 1.01 acres of the Marlborough Fish and Game located at 1 Muddy Lane. Mr. Saluk stated that before any filing of lots with the registry of deeds all back taxes would be paid and conservation would be notified. Mr. Fay asked Mr. Saluk if the new residential lot would be affected by the firing range. Mr. Saluk stated he has an overall map showing the layout of the existing lot and will be bringing the map at the next meeting.

On a motion by Mr. Kerrigan, seconded by Mr. Hanson it was duly voted:

To accept and refer the proposed plan to the City Engineer for his review and recommendation at the next meeting on Monday, December 1, 2008.

### PUBLIC HEARING



**SUBDIVISION PROGRESS REPORTS**

***Update from City Engineer***

Mr. Baldelli stated at this time there is no new developments.

*Aspoonant Gardens  
Certificate of Performance*

Barbara Maurice of Attorney David Gadbois Law office is requesting a Certificate of Performance for Cetrina Drive. The subdivision dates back to July of 1960 and no recorded certificate of performance has been found. In 1995, Attorney Aykianan asked for a blanket certificate of performance, received one signed by Dr. Fenby and it was never recorded with the registry of deeds.

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

To accept and file correspondence; to allow Dr. Fenby to endorse certificate of performance and request a proof of recording.

**PENDING SUBDIVISION PLANS: Updates and Discussion**

**PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS/ LDS SUBMITTALS**

**DEFINITIVE SUBDIVISION SUBMISSIONS**

*Marlborough Elms*

On behalf of Marlborough, Elms, LLC, Highland Engineering & Development, is requesting to withdraw the Definitive Subdivision of "Marlborough Elms" of 289 & 401 Elm Street without prejudice. The Planning Board is awaiting a signed copy of the withdraw correspondence.

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

To accept the withdrawal of the definitive subdivision plans known as "Marlborough Elms" without prejudice.

**SCENIC ROADS**

**SIGNS**

**INFORMAL DISCUSSION**

Mr. Fay discussed with the rest of the members the possibility of asking the City Council to review a section of the sign ordinance. In the past the Planning Board has been presented with sign variance applications where the sign companies have already manufactured non-conforming signs, and the business owner is left to seek a variance for a sign that has already been erected and/or manufactured. Mr. Fay would like to change the ordinance to allow the Code Enforcement officer to fine both the owner and the sign company, and not to allow any sign permits to be approved for sign companies with outstanding fines.

Mr. Hodge stated that Mr. Fay should write the change to the sign ordinance. The Planning Board would also like to speak with Ms. Wilderman, the City of Marlborough Code Enforcement Officer, regarding this matter at their December 15 meeting.

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**COMMUNICATIONS/CORRESPONDENCE**

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

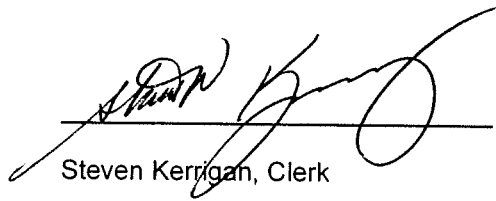
To accept all of the items listed under communications and/or correspondence.

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

To adjourn at 7:30 p.m.

**A TRUE COPY**

ATTEST:



Steven Kerrigan, Clerk