

REGULAR MEETING
JUNE 15, 2009

IN CITY COUNCIL
ABSENT:

CONVENED:
ADJOURNED:

1. Minutes, City Council Meeting, June 8, 2009, unavailable.
2. Communication from the Mayor re: Public Safety Revolving Fund for emergency dispatch fees from Patriot's Ambulance contract with the City.
3. Communication from the City Solicitor re: Revised Special Permit from Toll MA Land Limited Partnership to construct 69 Retirement Units on Less than 14 Acres and to revise current Special Permit conditions accordingly in proper form, Order No. 09-1002151B.
4. Communication from the City Solicitor re: Application for Special Permit on behalf of Marlborough Savings Bank for a Drive-Thru Teller and ATM at proposed 16,500 s.f. bank/office building at 83 Granger Blvd. in proper form, Order No. 09-1002152B.
5. Minutes, Planning Board, May 11, 2009.
6. CLAIMS:
 - A. Cresenio Jimenez, 16 Martin St., Other Property Damage
 - B. Christine Smith, 257 Lakeshore Dr., Other Property Damage

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From City Council

7. **Order No. 09-1002149C - Communication from the Mayor regarding the appointment of Nancy Savoie for the position of City Planner which expires two years from the date of confirmation. Recommendation of City Council is to table until the next City Council meeting.**

From Finance Committee

8. **Order No. 09-1002197-1A – FY10 Budget:** The Finance Committee continued the review of the FY10 budget presented in the Mayor's letter dated May 7, 2009. **Recommendation of the Finance Committee is to reduce the Mayor's FY10 budget by \$433,181.00, 5-0. The Finance Committee FY10 budget report is submitted in a separate document.**
9. **Order No. 09-1002199 – Transfer of \$1,506,917.81 from Undesignated Funds to DPW Snow Removal Account.** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting a transfer of \$1,506,917.81 from the undesignated funds account to the DPW snow removal account. **Recommendation of the Finance Committee is to approve 4-1 (Councilor Levy opposed).**
10. **Order No. 09-1002197-2 – Order to Approve Expenditures in Excess of Available Appropriation in the Snow and Ice Accounts.** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting the City Council approve an order to over spend the appropriations in the FY10 snow and ice accounts. The Finance Committee approved the expenditure of \$500,000.00 over the FY10 appropriations. The Mayor will be required to request prior to City Council approval to expend more than \$1,000,000.00 in the snow and ice accounts for FY10. **Recommendation of the Finance Committee is to approve 5-0 the revised order below (revision in bold text):**

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, upon the recommendation of the Mayor, approves the expenditures of **\$500,000.00** in excess of available appropriation for snow and ice removal for fiscal year 2010.

11. **Order No. 09-1002200 – Intra-Department Transfers:** The Finance Committee reviewed the Mayor's letter dated May 6, 2009 requesting the approval of year end intra-department transfers for Public Facilities, Inspectional Services, DPW, and Police departments. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the following intra-department transfers 5-0.

Transfer in the amount of \$8,000.00 from Account No. 11920003-50560 (Custodian) to Account No. 11920001-50385 (Electrician)

Transfer in the amount of \$700.00 from Account No. 12410004-53150 (Advertising) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$3,200.00 from Account No. 1241006-57100 (In-state Travel) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$7,200.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Stump Removal- FP & C)

Transfer in the amount of \$2,200.00 (FINCOM reduced from \$9,900.00) from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001403-51240 (Temp. Part-time- Repair)

Transfer in the amount of \$6,600.00 from Account No. 14001503-50740 (Equipment Operators- FP & C) to Account No. 14001306-52600 (Traffic & Fld light- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001306-55440 (Drainage Maintenance- Streets)

Transfer in the amount of \$1,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001306-55500 (Stream Maintenance- Streets)

Transfer in the amount of \$8,146.00 (FINCOM reduced from \$12,146.00) from Account No. 14001501-50690 (Foreman- FP & C) to Account No. 14001303-51310 (Overtime- Regular- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001305-55310 (Highway Constr. Materials- Streets)

Transfer in the amount of \$24,100.00 from Account No. 61090001-50740 (Equipment Operator) to Account No. 61090006-52322 (Water Marlboro Plant)

Transfer in the amount of \$7.86 moving funds from Account No. 14001003-51920 (Sick Leave Buy Back) to Account No. 14001003-51430 (Longevity)

Transfer in the amount of \$1,000.00 from Account No. 12100003-51920 (Sick Leave Buy Back) to Account No. 12100003-51195 (Detention Attendant)

Recommendation of the Finance Committee is to approve the intra-department transfers 4-1. (Councilor Ferro opposed).

Transfer in the amount of \$4,018.00 from Account No.12410004-53180 (Professional & Technical Services) to Account No. 12410002-50770 (Senior Clerk)

Transfer in the amount of \$2,150.00 from Account No. 14001503-50740 (Equipment Operator) to Account No. 14001002-50770 (Senior Clerk)

Transfer in the amount of \$240.00 from Account No. 14001301-50660 (Assistant City Engineer-Streets) to Account No. 14001303-51240 (Temp. Part-time- Streets)

Recommendation of the Finance Committee is to deny the following intra-department transfers 3-2. (Councilor's Landers and Ossing opposed):

Transfer in the amount of \$200.00 from Account No. 14001301-50660 (Assistant City Engineer-Streets) to Account No. 14001505-54220 (Office Supply/Expense- FP & C)

Transfer in the amount of \$900.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54610 (General Materials- FP & C)

Transfer in the amount of \$400.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Cemetery Supplies- FP & C)

Recommendation of the Finance Committee is to approve the following intra-department transfers 3-2. (Councilor's Ferro and Levy opposed):

Transfer in the amount of \$4,000.00 from Account No. 14001301-50660 (Assistant City Engineer-Streets) to Account No. 14001503-51241(Temp. Help- Downtown- FP &C)

Recommendation of the Finance Committee is to deny the following intra-department transfers 5-0:

Transfer in the amount of \$1,400.00 from Account No. 14001301-50660 (Assistant City Engineer-Streets) to Account No. 14001504-53810 (Insect & Pest Control- FP & C)

Transfer in the amount of \$16,000.00 from Account No. 61090001-50460 (Meter Reader) to Account No. 61090006-52322 (Water Marlboro Plant)

12. **Order No. 09-1002201-1 – Inter-department Transfers:** The Finance Committee reviewed the Mayor's letter dated May 6, 2009 requesting the approval of year end inter-department transfers from the Fringes account to the Personnel, Information Technologies and DPW departments. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the transfers 5-0:

\$7000.00 to Personnel Director salary account 11520001-50530

\$45.00 to IT Senior analyst account 11550001-50210

\$12,109.00 to DPW SLBB account 14001303-51920

Recommendation of the Finance Committee is to approve the transfers 3-2. (Councilor's Levy and Ferro opposed)

\$495.00 to DPW Street Longevity account 14001303-51430

The City Council approved the \$5,000.00 transfer to the Veterans benefit account at the May 11, 2009 City Council meeting.

13. **Order 09-1002198 – Transfer \$1,538,617.00 from Undesignated Funds to Department Capital Outlay Accounts:** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting transfers from the Undesignated Fund to various department capital outlay accounts. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the transfers from Undesignated Funds to the Capital Outlay accounts 5-0.

\$54,000.000 Police Department account 193000058508

\$36,500.00 Fire Department account 193000058513

\$200,000.00 Public Facilities account 193000058467

\$350,000.00 Information Technologies account 193000058618

\$138,917.00 Emergency Management account 193000058596

The Finance Committee voted 3 – 2 (Councilor's Landers and Ossing opposed) to refer the DPW \$759,200.00 back to the Mayor to address the funding of the implementation of the GPS system.

14. **Order No. 09-1002202 – GIS Revolving Fund:** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting the reauthorization of the GIS revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5–0 the reauthorization of the GIS revolving fund for FY10.**
15. **Order No. 09-1002203 – Fairmount Hill Revolving Fund:** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting the reauthorization of the Fairmount Hill revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5–0 the reauthorization of the Fairmount Hill revolving fund for FY10.**
16. **Order No. 09-1002204 – Sligo Hill Revolving Fund:** The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting the reauthorization of the Sligo Hill revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5-0 the reauthorization of the Sligo Hill revolving fund for FY10.**

17. **Order No. 08/09-1002034 – Municipal Parks and Playground Revolving Fund:** The Finance Committee removed from the table the Mayor’s letter dated October 22, 2008 requesting the establishment of the Municipal Parks and Playgrounds revolving fund for FY10. **Recommendation of the Finance Committee is to approve the establishment of the Municipal Parks and Playgrounds revolving fund for FY10, 4-1 (Councilor Ossing opposed)**

From Legislative and Legal Affairs Committee

18. **Order No. 09-1002125 - Communication from City Solicitor Donald Rider re: proposed ordinance entitled “Abandoned and/or Foreclosing Residential Properties.**
The committee met with the City Solicitor and the Code Enforcement Officer to discuss the proposed ordinance and how it will address safety and blight issues. It was recommended that upon approval, a notice should be distributed to all residential property owners as an attachment to water or tax bills or via electronic communication if possible. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval 3-0 and to Suspend the Rules to advertise the proposed Ordinance by adding Chapter 66 entitled "Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties" and Amendment to Chapter 147 "Non-Criminal Disposition" by amending Section B, by adding §29. This item will appear on the June 22, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the June 15, 2009 agenda. Note: Councilor Schafer abstained to the Suspension of Rules and the Advertising.**
19. **Order No. 09-1002215: Proposed ordinance entitled “Public Consumption of Marihuana or Tetrahydrocannabinol”.** Councilor Ferro explained this ordinance is tightly based on the language proposed by the office of the Attorney General for cities and towns to adopt. The Police Chief and Code Enforcement Officer met with the committee and explained how the ordinance would prohibit public consumption and add enforceability to their current efforts. Both spoke in favor of adopting the ordinance. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval 3-0 and to Suspend the Rules to advertise the proposed Ordinance by adding Chapter 51 entitled “Public Consumption Of Marihuana Or Tetrahydrocannabinol" and Amendment to Chapter 147 “Non-Criminal Disposition” by amending Section B, by adding §30. This item will appear on the June 22, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the June 15, 2009 agenda. Note: Councilor Schafer abstained to the Suspension of Rules and the Advertising.**

From Public Services Committee

20. **Order No. 09-1002206 - Application of Marlboro Cozy Café, 487A Lincoln Street for RENEWAL OF POOL TABLE (2) LICENSE.** Chief Leonard is without objection to the renewal. **Recommendation of the Public Services Committee is to approve 3-0.**
21. **Order No. 09-1002172 - Application of Tony Bitar, d/b/a Hannoush Jewelers for Junk Dealer’s License at 601 Donald Lynch Boulevard.** Chief Leonard is without objection to the issuance of the license. **Recommendation of the Public Services Committee is to approve 3-0.**

22. **Order No. 09-1002127A - Application of National Grid to install one new pole on Florence Street to release the load from another substation, #14 – 50; no objections, no questions.**
- **City Engineer's Comments: NGRID's application for a new pole on Florence Street –** Although the sketch provided to you by NGRID is not completely accurate, Engineering does not take exception to the proposed installation of a new utility pole. I would note that applications such as these should be coordinated with Engineering's Permits Section and should have included all subsurface utilities. Much of the information that we look for can be extracted from our GIS database.
- Recommendation of the Public Services Committee is to approve 3-0.**
23. **Order No. 09-1002188 - Application of National Grid to install 60' of primary underground service wire across Forest Street from Pole #47 to a hand hole to service Special Olympics at 512 Forest Street. Recommendation of the Public Services Committee is to approve 3-0. The hearing was continued to June 22, 2009.**
24. **Order No. 09-1002150 - Communication from Commissioner Ronald LaFreniere with request for City Council authorization, pursuant to Chapter 40, section 6-C Snow and Ice Removal of Private Ways, for the removal of snow and ice from LONG DRIVE – BERLIN FARMS SUBDIVISION, OFF BERLIN ROAD. Recommendation of the Public Services Committee is to table for more information 3-0.**

From Urban Affairs Committee

25. **Order No. 09-1002151A – Application for Revised Special Permit from Toll MA Land Limited Partnership to construct 69 Retirement Units on Less than 14 Acres and to revise current Special Permit conditions accordingly.** The Committee met with the Applicant and discussed the reason for the meeting was due to the late submission of information to the Urban Affairs Comm. by the City Engineer. The Committee agreed, along with other councilors present, that the late submission of the information by the City Engineer could best be handled at the Site Plan Review stage. Councilor Schafer motioned to "Reaffirm the vote previously taken by the Committee to approve the project, as submitted. **Recommendation of the Urban Affairs Committee is to recommend approval 4-0, Councilor Pope was absent and to Suspend the Rules to refer to the City Solicitor with any typographic errors which were noted at the meeting & to be put in proper form for the next City Council meeting. Councilor Schafer motioned that "A letter is to be sent by the Urban Affairs Comm. or by the Council President to all of the Dept. Heads, with a copy to the Mayor, reminding them that they are required, by ordinance, to submit comments to the Urban Affairs Commission when requests for Special Permits are before the City Council". Recommendation of the Urban Affairs Committee is to recommend approval 4-0, Councilor Pope was absent.**
26. **Order No. 09-1002152 – Application for Special Permit on behalf of Marlborough Savings Bank for a Drive-Thru Teller and ATM at proposed 16,500 s.f. bank/office building at 83 Granger Blvd. Recommendation of the Urban Affairs Committee is to recommend approval 5-0, and to Suspend the Rules to refer to the City Solicitor to be put in proper form for the next City Council meeting and provide the City Solicitor with supplemental materials submitted for June 8, 2009 agenda, item 16. Councilor Delano abstained.**

From Open Space Committee

27. **Order No. 09-1001984 - Communication from the Mayor re: Berlin Farms Subdivision, Open Space Land Acceptance regarding deed of a parcel of land consisting of 2.356 acres associated with the Berlin Farms Subdivision, together with letter from the Conservation Commission asking that the City Council accept the deed for the purposes of the promotion and development of natural resources, watershed protection, passive recreation and conservation. Additionally, that the City Council accept payment of \$5,000.00 to be placed in the Conservation Maintenance Trust, account #845-00-4830, for the purposes of managing the Berlin Farms parcel and other conservation land. Recommendation of the Open Space Committee is to recommend approval and acceptance of the deed for the purposes outlined; further to recommend acceptance of the payment of \$5,000.00 to be placed in the Conservation Maintenance Trust account #845-00-4830, 2-0. Councilor Ossing was absent.**



City of Marlborough
Office of the Mayor

140 MAIN STREET, 4TH FLOOR
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 460-3770 FACSIMILE (508) 460-3698 TDD (508) 460-3610

Nancy E. Stevens
MAYOR

Krista J. Holmi
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

June 11, 2009

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

RE: Renewal of the Public Safety Training Revolving Fund

Dear President and Members:

Last year your body authorized a revolving fund for emergency dispatch fees from Patriot Ambulance's contract with the City to be utilized by the City for public safety training.

Tonight I am asking you to renew that revolving fund. As you are aware, revolving funds contain more controls and safeguards than those imposed on regular accounts, including annual reauthorization, statutory caps, and limits on annual expenditures.

To be effective in fiscal year 2010, state law generally requires approval before the new fiscal year begins. The enclosed order, if approved, will accomplish that goal and is submitted to you for your consideration. As always, if you have any questions or concerns about this issue, please feel free to contact me anytime.

Sincerely yours,

Nancy E. Stevens
Mayor

Enclosure

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ORDERED:

That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does, to be effective during fiscal year 2010, re-authorize a revolving fund to be utilized by the Mayor. It is further ordered that:

(a) receipts credited to the fund shall be limited to an emergency dispatch fee due the City pursuant to its contract with Patriot Ambulance, unless otherwise directed by the General Laws; and

(b) that expenditures from said fund shall be limited to public safety training; and

(c) that the Mayor shall be the only officer authorized to approve expenditures from the same; and

(d) no more than forty-five thousand dollars shall be expended during Fiscal Year 2010, unless otherwise authorized by the City Council and Mayor; and

(e) the Mayor shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and

(f) no provisions of this order shall be changed unless approved by the Mayor and City Council.

ADOPTED
In City Council
Order No.
Adopted

Approved by Mayor
Nancy E. Stevens
Date:

A TRUE COPY
ATTEST:

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

June 11, 2009

MEMORANDUM

TO: Mayor Nancy E. Stevens
FROM: Diane Smith, City Auditor
RE: Public Safety Training Revolving Account

The income and expenditures of the Public Safety Training Revolving account are as follows:

| | |
|-----------------------------|---------------------|
| Funds received to date | \$37,500.00 |
| Expenditures to date | (2,315.03) |
| Encumbrances | (<u>5,580.07</u>) |
| Balance as of June 11, 2009 | <u>\$29,604.90</u> |



City of Marlborough Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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

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3,
DONALD F. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

KATHERINE M. KIMBER
PARALEGAL

June 11, 2009

Arthur Vigeant
President
Marlborough City Council

RE: Order No. 09-1002151B/Application Revised Special Permit
Toll MA Land Limited Partnership/Regency at Assabet Ridge

Dear President Vigeant and Members:

Pursuant to Chapter 200-59(C)(13) of the Marlborough Zoning Ordinance (1986 Code), I provide this letter as to the legal form of the City Council's proposed findings on the special permit application submitted by the Toll MA Land Limited Partnership regarding a parcel located on Crowley Drive as shown on Map 29, Parcel 1 on the City of Marlborough Assessors Map.

I recommend that the following revisions be made:

- Technical additions or changes discussed at the Urban Affairs Committee meeting on May 26, 2009 include:
 - Correct the address and spelling for the Toll MA Land Limited Partnership from "20 Gibraltar Rd., Horsesham, Pennsylvania" to "250 Gibraltar Rd., Horsham, Pennsylvania.";
 - In Condition No. 10, delete the words "with black wire mesh stapled to the rear of the rails and." These words referred to the originally proposed rail fence, but no longer made sense since the condition now requires a black chain link fence.
- Additional clerical changes or corrections include:
 - Words describing heights to coincide with numerical references;
 - Include words "1986 Code" after reference is made to the City Code.
- In paragraph 13 of the Procedural Findings, the addition of a reference to the May 26, 2009 vote of the Urban Affairs

Committee to affirm their May 12, 2009 vote to recommend
the Revised Special Permit to the full City Council.

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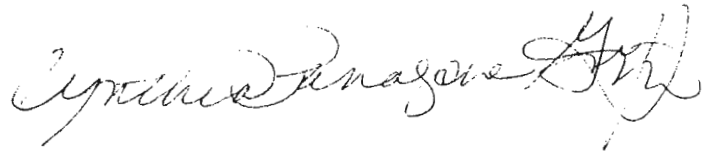
- Specific incorporation by reference of the MEMORANDUM concerning universal design features, dated August 27, 2003 and filed with the Urban Affairs Committee, into the Revised Special Permit.
- New Condition No. 28:

In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their expense shall record this Special Permit in the Middlesex South Registry of Deeds after the city clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed.

I have enclosed both a tracked and a clean version of the decision reflecting these additional recommendations.

With the additional recommendations specified above, I certify that the Council's proposed findings are in proper legal form.

Very truly yours,



Cynthia Panagore Griffin
Assistant City Solicitor

Enclosures

cc: Arthur P. Bergeron, Esquire

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IN CITY COUNCIL

Marlborough, MA, June , 2009

ORDERED:

DECISION FOR REVISED SPECIAL PERMIT

IN CITY COUNCIL

Revised Special Permit
Toll MA Land Limited Partnership
Regency at Assabet Ridge
Order No. 09-1002151B

DECISION ON AN APPLICATION FOR A REVISED SPECIAL PERMIT

The City Council of the City of Marlborough hereby GRANTS the application for a Revised Special Permit to Toll MA Land Limited Partnership, 250 Gibraltar Rd., Horsham, Pennsylvania to construct 69 townhouse residential retirement community units, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

PROCEDURAL FINDINGS

1. Toll MA Land Limited Partnership, a Massachusetts limited partnership, having a principal place business at 250 Gibraltar Rd., Horsham, Pennsylvania, is the "Applicant."
2. Applicant is the owner of certain property located at Crowley Drive, Marlborough, Massachusetts further shown the Marlborough Assessors Maps, Map 29 Parcel 1. The land is entirely located in a Limited Industrial District and is also located in a Retirement Community Overlay District.
3. By Special Permit approved by the Marlborough City Council dated September 8, 2003 (hereinafter, "the Original Special Permit") the construction of 210 retirement community units was approved, pursuant to conditions specified therein.
4. The Applicant, on or about March 4, 2009, filed with the City Clerk of the City of Marlborough an application to revise said Original Special Permit and issue a new Revised Special Permit (hereinafter, "the Revised Special Permit") under the provisions of Article VI Section 200-22 and Article VIII (1986 Code), and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance (1986 Code).
5. In connection with the Special Permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee, and had previously filed twenty (20) copies of the Site Plan.

6. The Site Plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. 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 for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.
8. The Marlborough City Council, pursuant to M.G.L. C. 40A, held a public hearing on April 6, 2009, concerning the said application. The hearing was opened and closed at that meeting.
9. Applicant's attorney presented testimony at the public hearing detailing the application, described the proposal to reduce the number of units to 69 units, and to reduce the area on which the development will occur. Applicant also reviewed the Original Special Permit conditions and suggested that certain conditions be changed in the Revised Special Permit to reflect the changes in said project but that all other conditions remains in effect.
10. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building, and related site modifications.
11. Following the public hearing, Applicant's representatives appeared before the Urban Affairs Committee to discuss the proposal. As a result of discussions with the Committee, Applicant proposed to further revise the Site Plan by reducing the number of proposed units in the project.
12. Applicant submitted to the Urban Affairs Committee a revised Site Plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc. (hereinafter, "The Site Plan").
13. The Urban Affairs Committee met to consider the Site Plan and Applicant's application for a Revised Special Permit on May 5, 2009 and May 12, 2009, voted a recommendation to the full City Council on May 12, 2009, and voted to affirm their recommendation to the full City Council on May 26, 2009.

**BASED UPON THE ABOVE, THE CITY COUNCIL OF THE CITY OF
MARLBOROUGH MAKES THE FOLLOWING FINDINGS:**

- 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 be in harmony with the general purposes and intent of the zoning ordinance, in that it will improve the appearance of the site and will have no significant negative impacts upon abutters. 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.

C) The City Council, pursuant to its authority under M.G.L. C. 40A, §9 and under Chapter 200 of the Marlborough City Code (1986 Code), GRANTS the Applicant a Revised Special Permit to allow the construction of 69 (sixty-nine) townhouse retirement community condominium units on the Site (the "Project"), subject to the Conditions which were a part of the Original Special Permit, except that certain conditions of the Original Special Permit, which are enumerated below, are superseded, amended or added to read as specified below:

GRANT OF REVISED SPECIAL PERMIT WITH CONDITIONS

- 1) All site work and construction at the Site shall be done in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and shall be built in accordance with the plans filed by Applicant, as most recently amended. Said plans are a plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.
- 2) The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough Ordinance (Chapter 63) (1986 Code) prior to the issuance of the actual Building Permits. Any additional changes, alterations, modifications or amendments as required by the Site Plan Review Committee shall be further conditions attached to the Building Permit and no Occupancy Permits shall be issued until Applicant complies with all conditions. Said Site Plan Review shall become, by reference, a part of this Special Permit.
- 3) Any signage installed or erected on the premises shall meet the requirements of the Sign Ordinance of the City of Marlborough without the request for a variance.
- 4) Applicant agrees to comply with all Rules, Regulations and Ordinances of the City of Marlborough, Commonwealth of Massachusetts, and the Federal Government as they may apply to the construction, maintenance, and operation of Applicant's facility.
- 5) Landscaping shown on the approved plans filed with the City Council, as amended at Site Plan Review, shall be maintained and replaced properly as needed. The landscaping plan is shown in Sheets L-1 and L-2 of the plans referred to in Condition #1 above.
- 6) The issuance of an Occupancy Permit for Applicant's use shall be conditioned upon the substantial (in the sole opinion of the Building Inspector) completion and compliance with the requirements contained herein. The terms and conditions shall apply to Applicant, its successors and assigns.

7) No dwelling shall contain less than 1,000 (one thousand) square feet of living area or more than 2,400 (two thousand four hundred) square feet of living area. At least 66% (sixty-six percent) of the living area in each unit shall be located on the first floor.

8) No more than sixty-nine (69) condominium units shall be constructed on the Site.

9) The Retirement Community shall be structured as a condominium. Prior to the issuance of any occupancy permits regarding the Retirement Community, the City Solicitor shall establish to his satisfaction that a condominium has been created and that provisions of the Master deed and bylaws:

- a. Limit occupancy of condominium units to persons age 55 (fifty five) and over and their spouses
- b. Prohibit the presence of boats, boat trailers and recreational vehicles, trailers and other non-automobile vehicles or attachments.
- c. Specify that later modifications to the units which will improve the accessibility of the units to persons with disabilities will not be prohibited and will not require the prior approval of the unit owners or the trustees of the condominium association; provided, however, that there may be controls regarding the color and design of said modifications if they are on the exterior of a unit.
- d. Specify that the Condominium Association will be responsible for the permanent maintenance of all infrastructure including but not limited to roadways, drainage systems, utilities, and their appurtenances located at the Site.
- e. Prohibit rentals of the units for periods of longer than six (6) months.
- f. Specify within the Master Deed and condominium documents that any modification of the Master Deed or by-laws which changes any of the above provision is prohibited without an amendment of this Revised Special Permit.

10) The plans referred to in Condition #1 show that the proposed retirement community will be located on a lot containing 13.922 acres, as shown on said plan. Applicant will cause the creation of this separate parcel. Following the creation of said parcel, no further subdivision of the parcel shall be allowed without the prior modification of this Revised Special Permit.

11) Through Site Plan Review, Applicant shall work with the Police Chief, Fire Chief, and City Engineer to assure that unit numbering, street naming and internal traffic controls will be satisfactory to all parties and that upon the recommendation of the Police Chief, the Traffic Commission will be requested to make internal traffic controls enforceable through local regulation.

12) All units in the Retirement Community shall be sprinkled to the NFPA-13R Standards. The Retirement Community shall contain a fire alarm system acceptable to the Fire Chief.

13) No foundation of a building structure will be closer than 50 ft. from the rear lot line of the site.

14) All units shall be pre-wired for future installation of burglar, fire, and EMS alarm systems by the unit owners.

- 15) Every agreement for the sale of a condominium unit to the initial individual unit buyer shall contain an arbitration provision specifying that, in the event that any dispute arises between Applicant and said initial individual unit buyer, said dispute shall be submitted to arbitration using the rules and procedures of the American Arbitration Association, and that the decision of the arbitrator in such a procedure shall be binding on the parties, unless the prospective Buyer has rejected this arbitration provision in writing.
- 16) Site Plan Approval will include approval of a work-sequencing phasing plan regarding the order in which work will be completed at the Site.
- 17) No communication towers will be allowed on any portion of Applicant's property, including both the portion of the property that is referred to herein as the Site and the remaining 17.518 acre parcel that was originally part of the site.
- 18) A chain link fence not less than four ft. (4') high, constructed in a way that, in the sole opinion of the Building Inspector, it will adequately deter children from entering, shall be erected around all detention facilities. Access gates for maintenance shall be located as determined by the Site Plan Review Committee. The condominium unit owners shall be responsible for the property maintenance and replacement of all fencing.
- 19) Applicant will provide a payment to the City of Marlborough Inspectional Services Fund in the amount of Fifteen Thousand Dollars (\$15,000) to offset increases in costs associated with the project. The City shall expend said funds as needed to contract for temporary staff, materials, supplies and equipment so as to enable the Building Commissioner to provide adequate, timely supervision to the project. A payment of Seven Thousand Five Hundred Dollars (\$7,500) has already been made. An additional payment of Seven Thousand Five Hundred Dollars (\$7,500) shall be made prior to the issuance of the 35th Occupancy Permit. Failure to provide said funds as requested shall result in the cessation of new occupancy permit. Applicant will be required by the Building Inspector to employ so-called controlled construction supervision in order to supplement the Building Inspector's review.
- 20) All Site work, except for modifications as approved through the Site Plan Review process, shall be consistent with the plans on file with the City Council, entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.
- 21) Applicant will provide and/or accommodate for disabled persons by providing those universal design features enumerated in a MEMORANDUM dated Aug. 27, 2003, and filed with the Urban Affairs Committee, which is, by reference, a part of this Revised Special Permit.
- 22) Applicant will pay the sum of Sixty Nine Thousand Dollars (\$69,000) into an Affordable Housing Fund as directed by the City Council. The sum of Fifty Two Thousand Five Hundred Dollars (\$52,500) has already been paid. The remaining sum of Sixteen Thousand Five Hundred Dollars (\$16,500) will be paid prior to the issuance of 35th Occupancy Permit.
- 23) The community center will be build during the first phase of construction.

24) The lot to be separated from the retirement community lot and referred to in Condition #10 above shall have a twenty-five foot (25') buffer from the border between said lot and the retirement community lot that will be secured with a conservation restriction and suitably landscaped as directed in a landscape plan approved by the Site Plan Review Committee.

25) As part of the Site Plan Review process, an irrigation plan will be prepared that will assure the plant material on the site is adequately watered during the first three years following planting.

26) Applicant will designate, through appropriate signage, lining, and construction, a connection from the sidewalk across Crowley Drive to the Assabet Valley Rail Trail bike path.

27) These conditions shall supersede and replace the permit conditions of the Original Special Permit, issued for the construction of 210 units and covering a parcel containing 31.44 acres, that was recorded in the South Middlesex Registry of Deeds Book 48876 Page 571.

28) In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their expense shall record this Revised Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Revised Special Permit has elapsed with no appeal having been filed.

Yea: - Nay: - Absent:

ADOPTED
In City Council
Order No. 09-1002151B
Adopted 2009

Approved by Mayor
Nancy E. Stevens
Date: 2009

A TRUE COPY

ATTEST:

City Clerk



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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LEGAL@MARLBOROUGH-MA.GOV

4,
DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

KATHERINE M. KIMBER
PARALEGAL

June 11, 2009

Arthur Vigeant
President
Marlborough City Council

RE: Special Permit/Marlborough Savings Bank
Order No. 09-1002152

Dear President Vigeant and Members:

Pursuant to Chapter 200-59(C)(13) of the Marlborough Zoning Ordinance (1986 Code), I provide this letter as to the legal form of the City Council's proposed findings on the special permit application submitted by the Marlborough Savings Bank for drive-through facilities which will be part of a proposed stand alone bank to be constructed at the intersection of Granger Boulevard and South Bolton Street as shown on the City of Marlborough Assessors Map 70, Parcels 152, 157, and 209.

I recommend that the following revisions be made:

- Additions or changes discussed at the Urban Affairs Committee meeting on June 2, 2009 include:
 - Making reference to paragraph 19(a) in paragraph 29 of the Conditions concerning hours of testing for the generator;
 - Adding hours of operation for the drive-through ATM and teller windows in paragraphs 19(a) and 19(b) and adding that the City Council, after one (1) year from the date when the drive-through ATM commences operations, may review and amend the hours of operation for the drive-through ATM.
- Adding new paragraph 32 to the Conditions:

In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their expense shall record this Special Permit in the Middlesex South Registry of Deeds after the city clerk has certified that the twenty-day period for

appealing this Special Permit has elapsed with no appeal having been filed. Applicant, its successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

4/2

I have enclosed both a tracked and a clean version of the decision reflecting these additional recommendations.

With the additional recommendations specified above, I certify that the Council's proposed findings are in proper legal form.

Very truly yours,



Cynthia Panagore Griffin
Assistant City Solicitor

Enclosures

cc: Sem Aykanian, Esquire

IN CITY COUNCIL

Marlborough, MA, June , 2009

ORDERED:

DECISION FOR SPECIAL PERMIT

IN CITY COUNCIL

Special Permit
Marlborough Savings Bank
Order No. 09-1002152

**DECISION ON A SPECIAL PERMIT
CITY COUNCIL ORDER NO. 09-1002152**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marlborough Savings Bank, 166 Main Street, Marlborough, MA for ATM and banking services drive-through facilities, in connection with a proposed stand alone bank facility, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT AND RULING

1. Marlborough Savings Bank is hereinafter referred to as "Applicant".
2. Applicant is a party to contracts calling for the acquisition of the premises known and numbered as 81 Granger Boulevard and 51 Howe Street, Marlborough, Massachusetts described on Marlborough Assessor's Map 70, Parcels 152, 157 and 209 (hereinafter the "Site") and proposes to construct a stand alone bank facility with ATM and banking services drive-through.
3. Applicant, by and through its site engineer, Hancock Associates, has filed with City Clerk of the City of Marlborough an application for a Special Permit. Pursuant to Section 650-16 of the Zoning Ordinance of the City of Marlborough (2008 Code) Applicant is seeking permission for the drive-through facility.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a traffic impact and access study, certified list of abutters, filing fees, fire truck access, and a detailed site plan entitled "Permit Site Plan, Marlborough Savings Bank", prepared for Marlborough Savings Bank, drawn by Hancock Associates, 315 Elm Street, Marlborough, MA, scale 1"=20', dated

March 5, 2009 and consisting of seven pages, with a final revision dated May 29, 2009 and consisting of eight pages.

6. The site plan was certified by the acting City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.

7. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the application for a Special Permit and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.

8. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on April 6, 2009.

9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

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

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

B. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS Applicant a Special Permit to construct and operate drive through banking services as shown on the plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on Applicant, its successors and/or assigns:

1. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built according to the site plan entitled "Permit Site Plan, Marlborough Savings Bank", prepared for Marlborough Savings Bank, drawn by Hancock Associates, 315 Elm Street, Marlborough, MA, scale 1"=20', dated March 5, 2009 and consisting of seven pages, with a final revision dated May 29, 2009 and consisting of eight pages.

2. The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and Plans submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the plans which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.
3. Applicant agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.
4. The locations and design of signage shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid conflicts with existing City infrastructure.
5. The location and placement of pavement markings and traffic directional signage shall be reviewed and approved by the City of Marlborough during the site plan review in accordance with applicable rules and regulations of the City of Marlborough.
6. All illuminations of individual parking lot light fixtures shall not exceed 200 watt fixtures and shall be screened from abutting residential property. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
7. Snow storage and removal is to be maintained and conducted on site by Applicant, its successors and/or assigns in accordance with the terms of snow removal plan as submitted with the Application for Special Permit. Applicant, its successors and/or assigns shall provide off-site snow removal as required and if deemed necessary by the City of Marlborough Commissioner of Public Works.
8. There shall be no overnight parking at the Site.
9. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored on a semi-annual basis with reports given to the City Engineer annually. The catch basins are to be cleaned by Applicant, its successors

and/or assigns annually, or at more frequent intervals as determined necessary by the City Engineer.

10. Applicant, its successors and/or assigns agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee as may be amended during Site Plan Review.
11. The drive-through teller window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance of the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the property line greater than that which would be allowed at the property line in a Residential District in accordance with the noise ordinance of the City of Marlborough.
12. Applicant, its successors and/or assigns agrees to screen the Project's trash area by constructing a six foot (6') white vinyl fence screen. Applicant, its successors and/or assigns further agrees that the dumpsters located on the Site will be covered. No trash pickup shall occur before 7:00 AM or after 6:00 PM or at any time during weekends.
13. Applicant, its successors and/or assigns agrees that the Site will be subject to a review of the traffic configuration after one-year from the issuance of the Occupancy Permit to determine whether any alterations need to be made to the entrances and egresses to the Site to accommodate traffic flow and ensure public safety and agrees to make changes in compliance with the Marlborough Department of Public Works and Traffic Commission's recommendations.
14. (a.) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

(b.) Notwithstanding condition (a.) hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.
15. In connection with the installation of improvements within public right-of-ways which requires a street opening permit, the City Engineer shall be provided with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, Applicant, its successors and/or assigns, and not the City of

Marlborough, will bear the costs of any police detail for any work performed within the public way.

- 16. Parking areas will be swept and maintained by Applicant, its successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws, Chapter 90 Sec. 18, Applicant, its successors and/or assigns shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site and off-site traffic and parking. Applicant, its successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Uniform Manual On Traffic Control Devices.
- 17. The Police Chief or his designee, may, in the exercise of his professional discretion to protect public safety, order the temporary closure of the drive-through facilities.
- 18. In accordance with the recommendation of the Building Inspector, the three parcels which make up the site shall be shown as combined on a plan drafted and approved by the Planning Board of the City of Marlborough pursuant to Massachusetts General Laws, Chapter 41, Sec. 81X.
- 19. a) The hours of operation for the drive-through teller operation shall not exceed the following times:
Monday through Friday, 8:00 AM to 6:00 PM; Saturday, 9:00 AM to 12:00 Noon.

b) The operation of the drive-through ATM at the site shall be suspended from 12:00 Midnight to 5:00 AM; the City Council, after one (1) year from the date when the drive-through ATM commences operations, may review and amend the hours of operation for the drive-through ATM.
- 20. Applicant's Traffic Engineer will study and report to the Engineering Division of the City's Department of Public Works regarding recommendations for adjustment, if any, to the traffic signal timing on at the intersection of Granger Boulevard and South Bolton Street. Any such adjustments shall only be made with the approval of the said Engineering Division and, if needed, the Commonwealth of Massachusetts.
- 21. All work performed on Granger Boulevard and South Bolton Street shall be done during off peak hours and, prior to commencement of such work, Applicant, its successors and/or assigns shall provide a traffic management plan relating to the same for approval by the Engineering Division of the City's Department of Public Works.
- 22. Applicant, its successors and/or assigns will remove and cap existing water and sewer services to 51 Howe Street.

23. Prior to construction, utility easements shall be established and granted to the City for construction, maintenance or repair of existing City infrastructure including, but not limited to, water, sewer, drain, and traffic control. Landscaping in the area of such easements shall be coordinated by the Applicant, its successors and/or assigns with the Engineering Division of the City's Department of Public Works in the field so as to avoid conflicts with existing infrastructure.
24. All trenching shall be in compliance with Massachusetts Law and pursuant to permits issued by the Engineering Division of the City's Department of Public Works.
25. The hand hole which is currently within the proposed driveway layout of Granger Boulevard shall be relocated by Applicant, its successors and/or assigns as approved by the City of Marlborough's Department of Public Work's Engineering Division. If the reinforced concrete sidewalk panels are impacted because of said work, Applicant, its successors and/or assigns shall replace the concrete panels to the limits indicated by the City Engineer.
26. Applicant, its successors and/or assigns shall erect and maintain fencing in accordance with the plans and the fence ordinance for the City of Marlborough.
27. During construction, all workers shall park their personal vehicles either on the Site or on the upper levels of the City's parking garages. Any construction vehicles shall be parked on Site.
28. During construction, no vehicles shall be staged on public ways.
29. Applicant, its successors and/or assigns shall utilize HVAC equipment and an emergency generator on the roof of the structure with advanced acoustical technology by which excessive sound emanating from said equipment will be substantially abated in accordance with the noise ordinance for the City of Marlborough and therefore protect the public health, welfare, safety and quality of life for abutting residential properties. Testing of the emergency generator shall be limited to Applicant's, its successors and/or assigns hours of operation as set forth in Condition 19(a) herein.
30. Applicant, its successors and/or assigns shall be required to hire a site engineer who shall be competent in stormwater and erosion control management. This individual(s) credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan, the approved erosion control plan, and, if applicable, the Conservation Commission's Order of

Conditions. The Applicant, its affiliates, successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

- 31. If the drainage system (during construction and post-construction) constructed by Applicant, its successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair and or replacement of the damaged property. In the event Applicant, its successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.

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

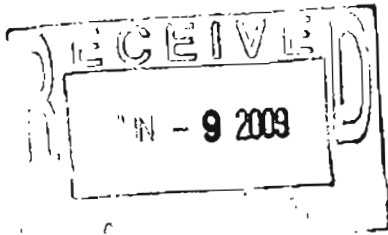
Yea: - Nay: - Absent:

ADOPTED
 In City Council
 Order No. 09-1002152
 Adopted 2009

Approved by Mayor
 Nancy E. Stevens
 Date: 2009

A TRUE COPY

ATTEST: City Clerk



City of Marlborough
Commonwealth of Massachusetts

51



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
May 11, 2009
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, May 11, 2009 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Chairperson, Steven Kerrigan, Philip Hodge, Clyde Johnson, Robert Hanson, Edward Coveney and Sean Fay. Also present: Assistant City Engineer Richard Baldelli.

MINUTES

Meeting Minutes April 27, 2009

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

To accept and file the Meeting Minutes of April 27, 2009 with the minor changes.

CHAIRS BUSINESS

Residences of Oak Crest

Correspondence from Pat Alteri of Philbon-O'neil

Ms. Alteri apologized for the delay in responding to the request of recording. She has contacted the attorney who was responsible for recording the certificate of performance and has asked that attorney to forward that recording certificate to the Planning Board.

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

To accept and file the correspondence.

APPROVAL NOT REQUIRED PLAN

107 Phelps Street

Correspondence from Engineering

With Mr. Fay having a disclosed conflict, he stepped out of the room.

52

Mr. Timothy Collins, Assistant City Engineer, has reviewed the plan. He essentially stated that this is the same plan that was signed by the Planning Board on September 29, 2008 with the minor modifications as requested by the Land Court.

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

To accept and endorse a plan of land believed to be Approval Not Required of James J. & Noel Cain of 11 Bridle Path Drive, North Grafton, MA 01536. Name of Engineer: Inland Survey, Inc DBA Zanca Land Surveying 16 Gleasondale Road, Suite 1-2, Stow, MA 01775. Deed of property recorded in South Middlesex Registry of Deeds books 34318, page 424; LC 1245 page 175; Book 50728 pages 368, 370 and LC 4143 pages 497 and 498.

Mr. Fay returned to the meeting.

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

Update from City Engineer

Mr. Baldelli stated at this time there were no new updates.

Crystal Ridge Estates (Danjou Drive) Bond Return Request

Mr. Michael Norris, attorney for the developer, is asking for the road to be accepted, the deed to be approved and the bond to be released since the work has all been completed.

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

To accept and file the correspondence, refer the correspondence to the City Engineer for a review of the subdivision and have him report back to the Planning Board at the next meeting.

Devonshire at 495 Amended Covenant

Assistant City Solicitor, Cynthia Panagore Griffin, sent an email stating that they have agreed on the language for the amended covenant; however the proponent will need to ask for an extension so his client can sign the agreement.

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

To accept and file the correspondence.

Extension

Attorney Gadbois is asking for an extension to June 9, 2009, to give enough time for his client to sign the amended covenant.

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

To grant an extension of the subdivision until June 9, 2009.

Elm Farm Valley Estates (Cleversy Drive)

53

Mr. Norris is requesting on behalf of his clients to release the bond for this subdivision as he states in his correspondence that all work is completed. He has previously submitted to the City Engineering department the proposed deed and acceptance to the City Council.

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

To accept and file the correspondence, refer the correspondence to the City Engineer for a review of the subdivision and have him report back to the Planning Board at the next meeting.

Orchard Estates III (Balcom Road & Miele Road)

Attorney Norris is requesting a release of bond monies to be returned to his clients. He stated his clients have already completed the necessary work which included the proposed deeds, final as-builts and road acceptances.

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

To accept and file the correspondence, refer the correspondence to the City Engineer for a review of the subdivision and have him report back to the Planning Board at the next meeting.

Trump Estates (Fish Lane & Littlefield Lane)

Attorney Norris is requesting a release of the bond monies from this "old subdivision". He stated that the acceptances have previously all been submitted to the City Engineers office and is awaiting acceptance.

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

To accept and file the correspondence, refer the correspondence to the City Engineer for a review of the subdivision and have him report back to the Planning Board at the next meeting.

PENDING SUBDIVISION PLANS: Updates and Discussion

***Marlborough Elms
Code Enforcement Correspondence***

Ms. Wilderman made the Planning Board aware that she has a pending code enforcement action at 401 Elm Street and that Mr. Schorer has not made efforts into reconciling the action. She stated in her letter that he on his property she found doors padlocked, large storage of furniture without proper fire suppression systems and the building is not being maintained to allow access of a fire apparatus vehicle.

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

To send correspondence to the proponent asking him to give a status update of the enforcement action.

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

54

28 South Bolton Street

At the meeting on February 9, 2009, the Planning Board approved a 9 foot message board variance with the conditions that the message board would be used for charitable events as well as their own private use, would be tasteful and there would be no more flatwall signs on the existing building.

Mr. Cohen came before the Board to discuss the variance conditions including the restriction of the flatwall signs. He stated when him and his landlord, Re/Max Signature Properties, was not aware at the time that there could ne more flatwall signage when agreeing to the variance request. At the current time there is no signage on the building except for an awning, which was pointed out had no permit by Mrs. Lizotte.

Mr. Fay stated that the proponents showed bad form in asking for a variance when there was a non permitted sign already existing on the premises without the proper permits.

Mr. Kerrigan stated he would have no issue with changing the variance.

Mr. Hanson agreed with Mr. Kerrigan.

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

To accept and file the correspondence.

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

To amend the original variance to allow the 9 square foot message board for business use and charitable uses; to allow flatwall signage with the appropriate permits.

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

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

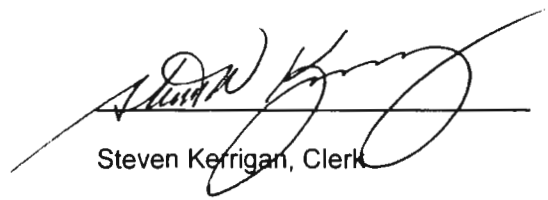
To accept all of the items listed under communications and/or correspondence.

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

To adjourn at 7:46 p.m.

A TRUE COPY

ATTEST:


Steven Kerrigan, Clerk