

REGULAR MEETING
NOVEMBER 23, 2009

IN CITY COUNCIL
ABSENT:

CONVENED:
ADJOURNED:

1. Minutes of the City Council Meeting, November 9, 2009.
2. Communication from the Mayor re: budget transfer request in the amount of \$24,340.00 from Undesignated Fund of which \$8,840.00 be transferred to Constables at Polls & \$15,500.00 to Pollworkers for the purpose of covering anticipated deficits relative to upcoming Special Elections.
3. Communication from the Mayor re: budget transfer requests in the amount of \$30,000.00 from Undesignated Fund to Gross Overtime, \$9,215.69 from Firefighter to Gross Overtime and \$699.60 from Fire Lieutenant to Gross Overtime for the purpose of funding OT for the Fire Department for the rest of this fiscal year.
4. Communication from the Mayor re: budget transfer request in the amount of \$38,000.00 from Undesignated Fund to Rep/Maint. Supplies for the purpose of repairing older fleet vehicles.
5. Communication from the Mayor re: budget transfer request in the amount of \$1,620.00 from Engr.-Jr. Civil Engr. to Sick Leave Buy Back due to an employee's resignation.
6. Communication from the Mayor re: budget transfer request in the amount of \$5,000.00 from Undesignated Fund to High School Library for monies received from condition 12B of Special Permit, Valvoline-214 Boston Post Rd. East, Order No. 05-100872C.
7. Communication from the Mayor re: budget transfer request in the amount of \$600.00 from Undesignated Fund to Advertising for the purpose of advertising delinquent taxes.
8. Communication from the Mayor re: Marlborough's Other Post Employment Benefits (OPEB).
9. Communication from the City Solicitor re: Disposition of a Portion of Municipal Land and Acquisition of a Portion of Private Land on Bolton St., Order No. 07/08/09-1001680A.
10. Notice from the City Clerk re: Special State Primary Election Call.
11. Communication from the Planning Board re: Proposed Narcotic Detoxification and/or Maintenance Facilities, Chapter 40A of the Zoning Ordinance, Order No. 09-1002277E.
12. Communication from Attorney Bergeron, on behalf of 400 South St. LLC, 424 South St., LLC and 428 South St., LLC request to withdraw without prejudice rezoning of Map 93, Parcels 18A, 19, 20, 22, 23, 32, 101 and 103 from Industrial (I) to Commercial and Automotive (CA), Order No. 09-1002316B.
13. Communication from Donald Conn, on behalf of Jam Enterprises, LLC, to continue Public Hearing scheduled for December 21, 2009 to a date convenient to City Council in January 2010, Order No. 09-1002361.
14. Communication from Attorney Flood, on behalf of Cherag Patel, re: request to extend time limitations to construct a 104 room hotel at 257 Simarano Dr. as it is in an industrial zone, to December 31, 2009 at 5:00 PM, Order No. 09-1002259C.
15. Minutes, Planning Board, October 26, 2009.
16. CLAIMS:
 - A. German Hovakimian, 7 Raymond Place, pothole or other road defect

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Legislative and Legal Affairs Committee

17. **Order No. 09-1002346C - Communication from Mayor Stevens with proposed Ordinances pertaining to Marlborough's Storm Drain System.** The Committee reviewed two Proposed Ordinances (Ch. 271 Stormwater Management and Ch.511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System) as well as the proposed amendment to Ch. 315 Enforcement to allow for non-criminal dispositions of violations of these Ordinances. These Ordinances will bring the City into compliance with requirements set forth in our Environmental Protection Agency (EPA) Phase II National Pollution Discharge Elimination System (NPDES) permit and will help protect the City's storm drain system and, in turn, the City's water quality. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinances, Ch. 271, Stormwater Management; Ch. 511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System; and amend Ch. 315 Enforcement and under Suspension of the Rules to advertise Ordinances and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**
18. **Order No. 09-1002311A - Communication from the Mayor re: Revision of Marlborough Code, Article IV, §7-33 Tree Warden.** The Committee reviewed this request to delete existing language and adopt a more comprehensive ordinance concerning the position of Tree Warden. The Committee requested that additional language be included to state that if the Tree Warden is also a City employee, any compensation ordinarily due to the Tree Warden for services performed during his or her regular working hours shall instead be paid to the City. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinance as amended and under Suspension of the Rules to advertise the Ordinance and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**
19. **Order No. 07/08/09-1001680A-3 - Communication from Attorney Cipriano re: Real Property transfer and exchange off Bolton Street.** Pursuant to Order 07/08/09-1001680A-2, wherein the City Council transferred to itself the care, custody, management, and control of a certain parcel of land on Bolton Street, the Committee received from the Assistant City Solicitor copies of a Peer Review Appraisal and the Definitive Plan with easements dated October 18, 2009. We also received a draft Order of Sale with Restrictions for the disposition of this property pursuant to M.G.L. C. 30B, § 16(a). The proposed Order of Sale sets the sale price at \$25,000 and details the terms of the sale to Lakeview/Bolton St. Realty LLC and the City's willingness to accept another parcel of land as full or partial consideration. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of the Order of Sale 3-0.**

From Personnel Committee

20. **Order No. 09-1002326 – Appointment of Beverly Sleeper to the position of Chief Procurement Officer for a three-year term expiring November 20, 2012. Recommendation of the Personnel Committee is to approve 2-1 (Councilor Delano opposed).**

From City Council

21. **Order No. 09-1002277E - Communication from City Council President Vigeant with Proposed Amendment to the Zoning Ordinance to regulate the location of, but not prohibit, narcotic detoxification and/or maintenance facilities in the City of Marlborough.** The Committee discussed the proposed ordinance as drafted by the Solicitor and reviewed maps displaying buffers of 500, 750 and 1000 feet around excluded locations specified in §C2 of the ordinance. The Committee agreed to further amend the ordinance to reflect a 1000' buffer but also requested additional maps reflecting 1500' and 2000' buffers be prepared for the full Council prior to a final vote. **Recommendation of the City Council is to table until November 23, 2009.**



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
Lisa M. Thomas
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
November 9, 2009**

Regular meeting of the City Council held on Monday, November 9, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Juare, Seymour, Clancy and Landers. Absent was Schafer. Meeting adjourned at 8:20 p.m.

ORDERED: That the minutes of the City Council Meeting October 26, 2009, **FILE**; adopted.

ORDERED: That the budget transfer request in the amount of \$3,000.00 from Wiring Electrical Inspector to Assistant Wiring Inspector accounts and \$1,500.00 from Professional & Technical to Assistant Wiring Inspector accounts due to an employee's unanticipated medical leave, **APPROVED**; adopted.

FROM:

Acct. # 12410001-50380 \$3,000.00
Wiring Inspector

TO:

Acct. # 12410001-50970 \$3,000.00
Assistant Wiring Inspector

FROM:

Acct. # 12410004-53180 \$1,500.00
Professional and Technical

TO:

Acct. #12410001-50970 \$1,500.00
Assistant Wiring Inspector

ORDERED: That the budget transfer request in the amount of \$1,500.00 from the Undesignated Fund to Advertising accounts as the City Clerk's advertising budget was depleted due to an increased demand for ordinance and traffic ads, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-359000 \$1,500.00
Undesignated Funds

TO:

Acct. # 11610004-53150 \$1,500.00
Advertising

ORDERED: That the budget transfer request in the amount of \$2,600.00 from Foreman to Interim Foreman accounts to meet anticipated costs for the remainder of FY10 and \$3,600.00 from Foreman to Interim Foreman accounts to provide coverage associated with an employee's unanticipated and extended medical leave, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 140001301-50690 \$2,600.00

Foreman

TO:

Acct. # 14001303-51470 \$2,600.00

Interim Foreman

FROM:

Acct. # 140001301-50690 \$3,600.00

Foreman

TO:

Acct. # 14001503-51470 \$3,600.00

Interim Foreman

ORDERED: That the Massachusetts Department of Revenue has certified Free Cash in the amount of \$4,906,090.00, **FILE**; adopted.

ORDERED: That the City Council accept and place on file the October 15, 2009 letter from Commissioner Ronald LaFreniere of the Department of Public Works declaring a portion of municipal property, identified as parcel 148 on Map 82 of the Assessors Maps (the "Parcel"), and more specifically described as a strip of land located on Maple Street beneath which is situated a municipal sewer line, and containing approximately 0.1118 acres, more or less, to be surplus, and further, pursuant to Section Fifteen A of Chapter Forty of the Massachusetts General Laws the City Council hereby transfers the care, custody, management, and control of the Parcel from the Department of Public Works to the City Council for the purpose of disposition with reservation of a permanent sewer easement, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City Council hereby determines that a certain portion of municipal property, pursuant to Section Fifteen A of Chapter Forty of the Massachusetts General Laws, as identified in Order No. 09-1002359 is declared available for disposition by sale to Dennis P. and Carolyn M. Kennedy, with reservation of a permanent sewer easement which is hereby transferred to the care, custody, management, and control of the Department of Public Works.

FURTHER ORDERED:

It is **FURTHER ORDERED:** that the Mayor is authorized to sell the parcel for the minimum price of \$_____ (\$_____) dollars in "as is" condition subject to reservation of a permanent sewer easement, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the requested copies of 2009 TIF reports, **FILE**; adopted.

ORDERED: That the announcement of the Veterans Day parade to be held on Wednesday, November 11, 2009 at 10:00 AM, **FILE**; adopted.

ORDERED: That the application for Junk Dealer's License for Gerald Dumais, d/b/a Dumais and Sons, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

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ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 21, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Donald Conn, on behalf of JAM Enterprises, LLC, for drive-thru window at drive-in sonic Restaurant on Boston Post Rd., Map 89, Lot 77, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the communication from Crystal Ridge Community Trust re: Street Acceptance for Danjou Dr, refer to **PUBLIC SERVICES COMMITTEE AND PLANNING BOARD**; adopted.

ORDERED: That the minutes, Planning Board, September 28 and October 5, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, September 29, 2009, **FILE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, September 21, 2009, **FILE**; adopted.

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

- A. Lorraine Berry, 72 Causeway St., Hudson, MA, other property damage
- B. Carrie Goldman & Joshua Schram, 97 Howe St., other property damage

Reports of Committees:

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

Order No. 09-1002346 - Communication from Mayor Stevens with proposed Ordinances pertaining to Marlborough's Storm Drain System. The Committee reviewed two Proposed Ordinances (Ch. 271 Stormwater Management and Ch.511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System) as well as the proposed amendment to Ch. 315 Enforcement to allow for non-criminal dispositions of violations of these Ordinances. These Ordinances will bring the City into compliance with requirements set forth in our Environmental Protection Agency (EPA) Phase II National Pollution Discharge Elimination System (NPDES) permit and will help protect the City's storm drain system and, in turn, the City's water quality. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinances, Ch. 271, Stormwater Management; Ch. 511 Detection and Elimination of Illicit Discharge to Municipal Storm Drain System; and amend Ch. 315 Enforcement and under Suspension of the Rules to advertise Ordinances and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**

Order No. 09-1002311 - Communication from the Mayor re: Revision of Marlborough Code, Article IV, §7-33 Tree Warden. The Committee reviewed this request to delete existing language and adopt a more comprehensive ordinance concerning the position of Tree Warden. The Committee requested that additional language be included to state that if the Tree Warden is also a City employee, any compensation ordinarily due to the Tree Warden for services performed during his or her regular working hours shall instead be paid to the City. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of Proposed Ordinance as amended and under Suspension of the Rules to advertise the Ordinance and place item on November 23, 2009 agenda which will comply with the ten day period prior to the November 23, 2009 agenda 3-0.**

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Order No. 07/08/09-1001680A-3 - Communication from Attorney Cipriano re: Real Property transfer and exchange off Bolton Street. Pursuant to Order 07/08/09-1001680A-2, wherein the City Council transferred to itself the care, custody, management, and control of a certain parcel of land on Bolton Street, the Committee received from the Assistant City Solicitor copies of a Peer Review Appraisal and the Definitive Plan with easements dated October 18, 2009. We also received a draft Order of Sale with Restrictions for the disposition of this property pursuant to M.G.L. C. 30B, § 16(a). The proposed Order of Sale sets the sale price at \$25,000 and details the terms of the sale to Lakeview/Bolton St. Realty LLC and the City's willingness to accept another parcel of land as full or partial consideration. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval of the Order of Sale 3-0;**

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 09-1002326 – Appointment of Beverly Sleeper to the position of Chief Procurement Officer for a three-year term expiring November 20, 2012. Recommendation of the Personnel Committee is to approve 2-1 (Councilor Delano opposed).

Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING A NEW CHAPTER 271, ENTITLED "STORMWATER MANAGEMENT," AS FOLLOWS:

CHAPTER 271. STORMWATER MANAGEMENT

A. Purpose

1. This ordinance complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999 (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the U.S. Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
2. Regulation of discharges to the municipal storm drain system is necessary for the protection of Marlborough's water bodies, drinking water and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater.

3. This ordinance establishes stormwater management standards for the temporary and final conditions that result from development and redevelopment projects. Those standards seek to minimize adverse impacts offsite and downstream which would be born by abutters, citizens and the general public. The harmful impacts of increased and contaminated stormwater runoff associated with developed land uses and the impacts of soil erosion and sedimentation include without limitation:
 - a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 - b. contamination of drinking water supplies;
 - c. alteration or destruction of aquatic and wildlife habitat;
 - d. flooding;
 - e. erosion of stream channels; and
 - f. overloading or clogging of municipal catch basins and storm drainage systems.

B. Objectives

1. Protect groundwater and surface water to prevent degradation of drinking water supply and waterways;
2. Require practices that minimize soil erosion and sedimentation and that control the volume and rate of stormwater runoff resulting from land-disturbing activities;
3. Maintain the natural hydrologic characteristics of the land to the maximum extent practicable as determined by the City Engineer, in order both to reduce flooding, stream bank erosion, siltation, non-point source pollution and property damage, as well as to maintain the integrity of stream channels and aquatic habitats;
4. Promote the infiltration and the recharge of groundwater;
5. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained;
6. Require practices to control waste at a construction site, such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste, that may cause adverse impacts to water quality;
7. Prevent pollutants from entering the Marlborough municipal storm drainage system and to minimize discharge of pollutants from that drainage system;
8. Ensure adequate long-term operation and maintenance of structural stormwater best management practices so that stormwater structures work as designed;

9. Comply with state and federal statutes and regulations relating to stormwater discharges;
10. Establish Marlborough's legal authority to ensure compliance with the provisions of this ordinance through inspection, monitoring, and enforcement; and
11. Encourage the use of environmentally sensitive design and low impact development techniques.

C. Definitions

The following definitions shall apply in the interpretation and enforcement of this ordinance:

CLEARING: Any activity that removes the vegetative surface cover.

DEVELOPMENT: The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, grading, filling and excavation.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Commonwealth of Massachusetts Department of Environmental Protection, as amended from time to time, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act MGL c. 131, § 40 and Massachusetts Clean Waters Act MGL c. 21, §§ 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and to control the quantity of runoff from a site.

MASSACHUSETTS STORMWATER HANDBOOKS: The Massachusetts Stormwater Handbooks ("Handbooks") that were produced by MassDEP and the Massachusetts Office of Coastal Zone Management are to be used as guidance for controlling stormwater. The Handbooks, all published in February 2008 and as amended from time to time, consist of three volumes: Volume 1: Overview of Massachusetts Stormwater Standards; Volume 2: Technical Guide for Compliance with the Massachusetts Stormwater Management Standards; and Volume 3: Documenting Compliance with the Massachusetts Stormwater Management Standards.

MUNICIPAL STORM DRAIN SYSTEM: The municipal storm drain system is a conveyance or a system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SOIL: Any earth, dirt, sand, rock, gravel, clay or similar material.

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PERMIT: A permit issued by the City Engineer, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment or the City from the deleterious effects of uncontrolled and untreated stormwater runoff.

Additional terms that apply to issuance of a Stormwater Management Permit established by this ordinance shall be defined and included as part of the rules and regulations promulgated and, from time to time, amended under Section H.2 of this ordinance, a copy of which is available at the Engineering Division of the Marlborough Department of Public Works and at the office of the City Clerk. Terms not defined in said rules and regulations or pertinent statutes shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning.

D. Authority

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

E. Applicability

This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the City Engineer, shall be a requirement for issuance of a Stormwater Management Permit.

1. All subdivisions as defined in the Massachusetts Subdivision Control Law (MGL c. 41, §§ 81K – 81GG) requiring approval of a definitive subdivision plan;

2. "Minor Residential Projects" and "Nonresidential and Major Residential Projects," as defined in the Building and Site Development Ordinance (Chapter 270, Article II § 270-2), when a construction activity results in a land disturbing activity that will disturb equal to or greater than 5,000 ft² of land that drains to the Marlborough municipal storm drain system, onto an adjacent property, into a municipal/private street, or into a wetland/stream;
3. Land-disturbing activity a) which is equal to or greater than 5,000 ft² occurring, at least in part, within the City of Marlborough, b) which in the sole opinion of the City Engineer has caused or will cause stormwater-related problems within the City, and c) which does not otherwise require a permit or approval from the City.

F. Exemptions

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL c. 40A, § 3;
2. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;
3. Repair or replacement of an existing roof of a single-family dwelling;
4. The construction of any fence that will not alter existing terrain or drainage patterns;
5. Construction and/or maintenance of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns;
6. Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the City Engineer; and
7. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this ordinance. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

G. Coordination with Other City Permits

1. This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, statute, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

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2. No order of conditions from the Marlborough Conservation Commission, building permit, special permit, variance or finding shall constitute compliance with this ordinance. For a project or activity to which this ordinance is applicable, no work may commence until the developer submits to the City Engineer the required documentation of compliance, the City Engineer issues a Stormwater Management Permit, and the developer certifies that all land clearing, construction, and development will be done pursuant to the approved plans and Stormwater Management Permit.
3. If a project or activity to which this ordinance is applicable falls within the specific jurisdiction of the Planning Board for definitive subdivision review and/or the specific jurisdiction of the Site Plan Review Committee, then the Stormwater Management Permit review and approval process may, but need not, occur in conjunction with the definitive subdivision plan review process and/or the Site Plan Review Committee approval process. The application submission requirements, public notices, and fee requirements of the above processes shall govern. Notwithstanding these requirements, such projects or activities are subject to the provisions of this ordinance. Documentation of compliance with this ordinance, as described in Section J herein, shall accompany each application for definitive subdivision approval by the Planning Board and for approval by the Site Plan Review Committee.

Applicants under this ordinance should refer to the Subdivision Regulations (Chapter 276, Article III, § A676-10) for definitive plan application and submission requirements, and to Site Plan Review and Approval (Chapter 270, Article II § 270-2) for site plan application and submission requirements.

No work may commence without prior written approval of the City Engineer, confirming that the project or activity is in compliance with the Stormwater Standards and Design Guidance in Section I herein.

- a. The City Engineer's sign-off on the Site Plan Review Permit shall constitute approval of the Stormwater Management Permit.
- b. Before a definitive subdivision plan is approved, the City Engineer will document, in his written statement to the Planning Board, actions taken regarding the Stormwater Management Permit.
- c. The City Engineer shall state in writing reasons for disapproval or recommended modifications to the plan and shall rescind such disapproval if and when the plan has been amended to conform to the rules, regulations, and recommendations of the City Engineer.

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H. Administration

1. Stormwater Authority. The City Engineer is hereby designated as the Stormwater Authority. The City Engineer, or his/her agent, shall administer, implement and enforce this ordinance. The City Engineer may delegate in writing another City department, commission or board to act as his/her authorized agent for site inspections and enforcement of this ordinance.
2. Stormwater Regulations. The City Engineer may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, procedures and administration of this ordinance after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) days prior to the hearing date. After public notice and public hearing, the City Engineer may promulgate rules and regulations to effectuate the purposes of this ordinance. Failure of the City Engineer to promulgate such rules and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this ordinance.
3. Stormwater Management Handbooks. The City Engineer will utilize the Massachusetts Stormwater Management Policy and Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, with specific design criteria for each. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Management Handbooks' design and sizing criteria shall be presumed by the City Engineer to be protective of Massachusetts water quality standards.
4. Actions by the Stormwater Authority. The City Engineer may take any of the following actions as a result of an application for a Stormwater Management Permit as more specifically defined as part of the rules and regulations promulgated as part of this ordinance: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.
5. Appeal of Action by the Stormwater Authority. An action by the City Engineer, acting in his or her capacity as the Stormwater Authority, shall be final. Further relief of an action by the City Engineer made under this ordinance shall be reviewable in the Superior Court in a complaint filed within 60 days thereof, in accordance with MGL c. 249, § 4.

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I. Stormwater Standards and Design Guidance

All projects shall meet the Massachusetts Stormwater Management Standards to the maximum extent practicable as determined by the City Engineer, as detailed in the Massachusetts Stormwater Handbook, as amended from time to time. Additional guidance on applying the Massachusetts Stormwater Management Standards to applicable projects is contained in the City of Marlborough rules and regulations for stormwater.

J. Permit Procedures and Documentation of Compliance

1. Permit procedures and requirements, including permit submittals, right-of-entry, and the public hearing process, shall be defined and included as part of the rules and regulations promulgated under Section H.2 of this ordinance.

2. All projects shall document compliance with the Stormwater Standards and Design Guidance criteria contained in this ordinance in accordance with the

Massachusetts Stormwater Handbook, as amended from time to time. Submittal requirements are further specified in the City of Marlborough rules and regulations for stormwater.

K. Enforcement

1. The City Engineer or his/her authorized agent shall enforce this ordinance and resulting regulations, orders, violation notices, and enforcement orders, and may pursue all criminal and civil remedies, including injunctive relief and monetary damages and costs of litigation and attorney fees, for such violations and for abatement and mitigation and compliance actions taken by the City Engineer.

2. As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D and Chapter 315-2 of the Marlborough City Code. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer's agents, officers, and designees may enter upon privately owned property for the purpose of performing their duties under this ordinance and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary to determine compliance with a permit issued under this ordinance. Enforcement shall be further defined and included as part of the rules and regulations promulgated under Section H.2 of this ordinance.

L. Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

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M. Effective Date

This ordinance shall become effective immediately upon passage, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING A NEW CHAPTER 511, ENTITLED “DETECTION AND ELIMINATION OF ILLICIT DISCHARGE TO MUNICIPAL STORM DRAIN SYSTEM,” AS FOLLOWS:

CHAPTER 511. DETECTION AND ELIMINATION OF ILLICIT DISCHARGE TO MUNICIPAL STORM DRAIN SYSTEM

A. Purpose

1. This ordinance complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999 (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the U.S. Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
2. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.
3. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the City of Marlborough’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

B. Objectives

The objectives of this ordinance are:

1. to prevent pollutants from entering the City of Marlborough’s municipal storm drain system;
2. to prohibit illicit connections and unauthorized discharges to the municipal storm drain system;

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3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this ordinance through inspection, monitoring, and enforcement.

C. Definitions

The following definitions shall apply in the interpretation and enforcement of this ordinance:

1. **ENFORCEMENT AUTHORITY:** The City Engineer shall be authorized to enforce this ordinance.
2. **CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), as amended.
3. **DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth.
4. **GROUNDWATER:** Water beneath the surface of the ground.
5. **ILLICIT CONNECTION:** A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this ordinance.
6. **ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section H herein.
7. **MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Marlborough.
8. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

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9. **NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of stormwater.
10. **PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
11. **POLLUTANT:** Any element or property of sewage, and any residential, municipal, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drainage system or waters of the Commonwealth. Pollutants shall include, without limitation:
 - a. paints, varnishes, and solvents;
 - b. oil and other automotive fluids;
 - c. non-hazardous liquid and solid wastes and yard wastes;
 - d. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
 - e. pesticides, herbicides, and fertilizers;
 - f. toxic or hazardous material or waste; sewage, fecal coliform, and pathogens;
 - g. dissolved and particulate metals;
 - h. animal wastes;
 - i. rock, sand, salt, soils;
 - j. construction wastes and residues; and
 - k. noxious or offensive matter of any kind.
12. **POLLUTION:** A stormwater condition caused by or involving a pollutant.
13. **PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
14. **STORMWATER:** Storm water runoff, snow melt runoff, and surface water runoff and drainage.

15. SURFACE WATER DISCHARGE PERMIT: A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.
16. TOXIC OR HAZARDOUS MATERIAL OR WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.
17. WATERCOURSE: A natural or man-made channel through which water flows, or a stream of water, including a river, brook or underground stream.
18. WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
19. WASTEWATER: A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present, which is contributed to or permitted to enter the publicly-owned treatment works.

D. Authority

This ordinance is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

E. Applicability

This ordinance shall apply to all discharges of pollutants entering the municipal storm drain system.

F. Responsibility for Administration

The City Engineer shall administer, implement and enforce this ordinance. Any powers granted to or duties imposed upon the City Engineer may be delegated in writing by the City Engineer to another City department, commission or board to act as his/her authorized agent.

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G. Prohibited Activities

1. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge or wastewater into the municipal storm drain system, into a watercourse, or into the waters of the Commonwealth.
2. Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
3. Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the flow of stormwater into or out of the municipal storm drain system without prior written approval from the City Engineer.

H. Exemptions

1. Discharge or flow resulting from fire fighting activities.
2. The following non-stormwater discharges are exempt from the prohibitions of this ordinance, provided that, in the opinion of the City Engineer, the source is not a significant contributor of a pollutant to the municipal storm drain system:
 - a. Waterline flushing;
 - b. Flow from potable water sources;
 - c. Springs;
 - d. Natural flow from riparian habitats and wetlands;
 - e. Diverted stream flow;
 - f. Rising groundwater;
 - g. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
 - h. Water from exterior foundation drains, footing drains, crawl space pumps, or air conditioning condensation;
 - i. Discharge from landscape irrigation or lawn watering;
 - j. Water from individual residential car washing;

- k. Discharge from de-chlorinated swimming pool water (less than 1.0 ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- l. Discharge from street sweeping;
- m. Dye testing, provided verbal notification is given to the City Engineer prior to the time of the test;
- n. Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- o. Discharge for which advanced written approval is received from the City Engineer as necessary to protect public health, safety, welfare or the environment.

I. Emergency Suspension of Storm Drainage System Access

The City Engineer may suspend municipal storm drain system access to any person or property without prior notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Enforcement Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

J. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, that person shall immediately take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and the City Engineer. In the event of a release of non-hazardous material, the reporting person shall notify the City Engineer no later than the next business day. The reporting person shall provide to the City Engineer written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years following the date of discharge.

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K. Enforcement

1. General. The City Engineer or his/her authorized agent shall enforce this ordinance, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
2. Civil Relief. If the City Engineer finds that a person is in violation of the provisions of this ordinance, or any permit, notice, or order issued thereunder, the City Engineer may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
3. Orders. In order to enforce the provisions of this ordinance, the City Engineer or his/her agent may issue a written order to the person found by the City Engineer to be in violation of this ordinance. Such order may include:
 - a. elimination of illicit connections or discharges to the municipal storm drain system;
 - b. performance of monitoring, analyses, and reporting;
 - c. cessation of unlawful discharges, practices, or operations; and
 - d. remediation of pollution in connection therewith.

If the City Engineer determines that abatement or remediation of pollution is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the City of Marlborough may, at its option, undertake such work, and that the expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the City of Marlborough, including administrative costs. Within thirty (30) days of receipt of the notification of the costs incurred by the City, the violator or property owner may file with the City Engineer a written protest objecting to the amount or basis of those costs. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the City Engineer affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57 after the thirty-first day on which the costs first become due.

4. Criminal Penalty. Any person who violates any provision of this ordinance or any order issued hereunder shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

5. *Non-Criminal Disposition.* As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D and Chapter 315 of the Code of the City of Marlborough. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
6. *Entry to Perform Duties under this Ordinance.* To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer and his/her agents may enter upon privately owned property for the purpose of performing their duties under this ordinance, and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary.
7. *Appeals.* The decisions or orders of the City Engineer shall be final. Further relief shall be to a court of competent jurisdiction.
8. *Remedies Not Exclusive.* The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law.

L. Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

M. Effective Date

This ordinance shall become effective immediately upon passage, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 315, ENTITLED "ENFORCEMENT," AS FOLLOWS:

Chapter 315 is hereby amended by adding to section B the following new sub-sections:

31. Stormwater Management (City Code, Chapter 271); and
32. Detection and Elimination of Illicit Discharge to Municipal Storm Drain System (City Code, Chapter 511), **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

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Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY DELETING §7-33 OF CHAPTER 7 IN ITS ENTIRETY, AND INSERTING IN ITS PLACE THE FOLLOWING:

§7-33. Tree Warden.

- A. Pursuant to the provisions of M.G.L. c. 41, §106, there shall be a “Tree Warden,” who shall be appointed for a term of three (3) years by the Mayor subject to confirmation by the City Council.
- B. The Tree Warden shall be the officer charged with the care of public shade trees with all of the powers and duties conferred and imposed on tree wardens under M.G.L. c. 41, §106 and M.G.L. c. 87, as provided under M.G.L. c. 87, §13, and with all of the powers and duties of the superintendent of shade tree management and pest control as provided under M.G.L. c. 132, §13. The Tree Warden shall report directly to the Commissioner of the Department of Public Works.
- C. The Tree Warden shall be qualified to carry out the powers and duties of the position by experience and training in arboriculture and licensed in the use of pesticides and herbicides in accordance with M.G.L. c. 41, §106 and M.G.L. c. 132, §13.
- D. Any person requiring the services of the Tree Warden shall pay for such services at an hourly rate equal to the hourly rate of the general foreman of the Forestry, Parks & Cemetery Division of the Department of Public Works. Such compensation shall be paid directly to the Tree Warden. If the Tree Warden is also a City employee, such employee shall receive his or her regular compensation from the City when he or she provides services as Tree Warden during his or her regular working hours, regardless of whether such services are provided for the City or for a person or entity other than the City, and any compensation ordinarily due to the Tree Warden for services under this paragraph shall instead be paid to the City.
- E. The Tree Warden must obtain prior written authorization to perform services on City-owned property from the City department with care, custody, and control of the particular City property, **ADVERTISED AND PLACE ON NOVEMBER 23, 2009 AGENDA.**

ORDERED: Whereas, the City Council of the City of Marlborough has a civic interest in the thoughtful preservation of historic buildings in the City of Marlborough; and,

Whereas, the former Armory building located on Lincoln Street in Marlborough, Massachusetts is a brick and mortar reminder of a past time and a place where young men gathered to train for the armed services and was the headquarters of Company K, our local national guard and later served as a meeting place for the Boys’ Scouts of America; and,

Whereas, the Armory has been the focal point of many social activities, serving as the City’s civic auditorium, for events including the Mayor’s Inaugural Ball; and,

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Whereas, the Armory has played a diverse role in the history of the City of Marlborough and is deserving of preservation for future generations to come; therefore,

The City Council of the City of Marlborough hereby goes on record in support of any and all reasonable efforts for the preservation of the building known as the "Marlborough Armory" located on Lincoln Street in Marlborough, Massachusetts, **APPROVED AND SUBMIT CERTIFIED RESOLUTIONS TO MASS HISTORICAL AND MARLBOROUGH HISTORICAL COMMISSIONS.**

Councilor Ossing requested to be recorded in opposition.

ORDERED: That the re-appointment of Joe Moineau to the Board of Registrars with a term expiring on April 1, 2012 **APPROVED**; adopted.

ORDERED: That the appointment of Robert Page to the as an alternate member of the Zoning Board of Appeals which expires two years from the date of City Council approval, **APPROVED**; adopted.

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

- 1. Section 650-5, entitled "Definitions; Word Usage," is hereby amended by adding to said Section the following definition:

NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITY: A non-residential drug treatment program that assists individual addicted to drugs by administration of a substitute drug. Any facility that dispenses, prescribes, administers, allocates, delivers, hands out, or uses in any way a substitute drug, with or without providing other treatment services, shall be deemed a "Narcotic Detoxification and/or Maintenance Facility" and subject to the regulations under Section 650-31 of this ordinance.

- 2. Section 650-17, entitled "Table of Uses," is hereby amended by adding to said section a new business use entitled, "Narcotic Detoxification and/or Maintenance Facility," which shall be regulated, as follows:

RR	A1	A2	A3	RB	RC	B	CA	LI	I
N	N	N	N	N	N	N	SP	SP	SP

- 3. A new Section 650-31, entitled "NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES," is hereby added, as follows:

650-31 NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES

- A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning Ordinance will not prohibit the location of a facility for narcotic detoxification or narcotic maintenance within the City of Marlborough, but will instead regulate such facilities. A Narcotic Detoxification and/or Maintenance Facility should provide medical support, security, drug

testing with oversight by a physician, and standards that meet or exceed state regulations under 105 CMR 164 for licensure of substance abuse treatment programs. Facilities should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these facilities are located in such a way as to not pose a direct threat to the health or safety of either the participants in the rehabilitation treatment or the public at large, the provisions of this section will apply to all such facilities.

- B. Where a Special Permit is required for a Narcotic Detoxification and/or Maintenance Facility, the Special Permit Granting Authority shall grant the Special Permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment;
6. Potential fiscal impact, including impact on City services, tax base, and employment; and
7. The ability for the facility to:
 - a. meet a demonstrated need;
 - b. provide a secure indoor waiting area for clients;
 - c. provide an adequate pick-up/drop-off area;
 - d. provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and
 - e. adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses.

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The Special Permit Granting Authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

C. A Narcotic Detoxification and/or Maintenance Facility shall not be located:

1. within five thousand (5,000) feet of another Narcotic Detoxification and/or Maintenance Facility; nor,
2. within two thousand (2,000) feet of:
 - a. a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;
 - b. a recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - c. a park (as defined in § 517-2 of the Code of the City of Marlborough, as amended).
 - d. an elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - e. a retirement community (as defined in § 650-4 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough, **TABLED UNTIL NOVEMBER 23, 2009.**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:20 p.m.



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

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 18, 2009

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

RE: Special Elections Transfer Requests

Honorable President Vigeant and Councilors:

The United States Senate special election in Massachusetts will take place on January 19, 2010, with a party primary election held on December 8, 2009. The elections will determine the Massachusetts Senator to fill the remaining term of the late Senator Edward Kennedy.

As detailed in the attached correspondence from City Clerk Lisa Thomas, the City's anticipated costs to administer these special state elections are approximately \$35,340.00. The upcoming elections will create an anticipated deficit of \$24,340.00.

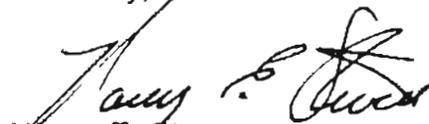
In order to cover the City's anticipated costs for the special elections, I respectfully request the following transfers:

Transfer in the amount of \$8,840.00 from account number 10000-35900 (Undesignated) to account number 11620003-51460 (Constable at Polls).

Transfer in the amount of \$15,500.00 from account number 10000-35900 (Undesignated) to account number 11620006-53871 (Poll Workers).

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

Sincerely,


Nancy E. Stevens
Mayor

Enclosures



City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT

Lisa M. Thomas
City Clerk

November 16, 2009

Mayor Nancy E. Stevens
President Arthur G. Vigeant
140 Main St.
Marlborough, MA 01752

Dear Mayor and Council President:

I respectfully request an additional \$24,340.00 to fund the costs of the Special State Primary and Special State elections. The Office of the Secretary of the Commonwealth will pay for ballot printing, election supplies (absentee ballot applications, envelopes and other forms), and programming of the AutoMark Voter Assistant Terminals only. The City will be responsible for programming the AccuVote machines, and all payroll expenses (e.g., Custodial, Constables, Wardens, Clerks and Inspectors). The city's cost of each election will be approximately \$17,670.00. I will have an approximate balance of 11,000.00 reserved for the upcoming elections after I receive and pay the Custodial bill from the November 3, 2009 Municipal election.

I am not requesting a transfer as there are no line items from which I can deduct. With that said, I would request \$8,840 be placed in the Constable at Polls account 11620003-51460 and \$15,500 be placed in the Pollworkers account 11620006-53871. Please keep in mind that I have exhausted all grant monies received. Thank you for your attention to this matter.

Sincerely,

Lisa M. Thomas
City Clerk

TRANSFER REQUEST

	FROM ACCOUNT		TO ACCOUNT					
AVAILABLE BALANCE	AMOUNT	ORG C/OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
		Undesignated Fund				Election		
\$ 4,906,090.00	\$ 24,340.00	10000	35900 Undesignated Fund	\$ 8,840.00	11620003	51460 Constable Polls		\$ -
				\$ 15,500.00	11620006	53871 Poll Workers		\$ 12,672.65

\$ 24,340.00

Reason See Attached request from Mayor



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Nancy E. Stevens
MAYOR

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: Transfer Request Firefighter Overtime

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request in the amount of \$30,000.00 moving funds from account number 1000-35900 (Undesignated Fund) to account number 12200003-51300 (Gross Overtime).

As detailed in the attached correspondence from Fire Chief Adams, YTD the Fire Department has expended 75.1% of the gross overtime account.

The second attached transfer includes the following additional inter-departmental transfers into the gross overtime account:

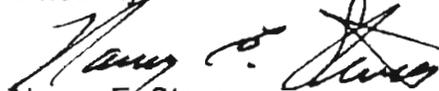
Transfer in the amount of \$9,215.69 moving funds from account number 12200001-50450 (Firefighter) to account number 12200003-51300 (Gross Overtime).

Transfer in the amount of \$699.60 moving funds from account number 12200001-50810 (Fire Lieutenant) to account number 12200003-51300 (Gross Overtime).

It is Chief Adams' policy to approve overtime only to meet minimum shift staffing levels.

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

Sincerely,


Nancy E. Stevens
Mayor

Enclosures



City of Marlborough

FIRE DEPARTMENT

215 Maple Street, Marlborough, Massachusetts 01752
Business (508) 485-2323 Facsimile (508) 460-3795

November 19, 2009

Nancy E. Stevens, Mayor
City Hall, Fourth Floor
140 Main Street
Marlborough, MA 01752

RE: Request for overtime transfer Acct#12200003 51300

The fire department has expended \$101,103.44 or 75.1% of the gross overtime to date. This is \$49,000.00 less than last year at this time but will be insufficient to maintain three fire stations for the remainder of the fiscal year. I therefore request a transfer of funds into the gross overtime account of \$30,000.00 to fund the department for the remainder of the year.

I am also requesting a transfer of \$9,915.29 of unused salary from various department salary accounts into gross overtime account to supplement the account that was depleted due to employees on IOD status.

Please understand that overtime is only approved to meet minimum shift staffing levels. There has not been any deviation from this practice. A reduction of "minimum shift staffing" would result in sporadic station closings and is not recommended due to the high call volume in the city.

Sincerely,

David Adams
Fire Chief

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TRANSFER REQUEST

FROM ACCOUNT				TO ACCOUNT			
AVAILABLE BALANCE	AMOUNT	ORG C OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
			Undesignated Fund			Fire	
\$ 4,906,090.00	\$ 30,000.00	10000	35900 Undesignated Fund	\$ 30,000.00	12200003	51300 Gross OT	\$ 33,531.56

\$ 30,000.00

Reason See Attached request from Fire Chief and Mayor

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT FIRE

FISCAL YEAR 2010

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description	Amount	Org Code	Object	Account Description	Available Balance
\$1,863,899	\$9,215.69	12200001	50450	FIREFIGHTER	\$9,215.69	12200003	51300	GROSS OVERTIME	\$33,532
	Reason:	Unused salaries due to employees out on I.O.D				Replenish overtime used for coverage of I.O.D			
\$292,381	\$699.60	12200001	50810	FIRE LIEUTENANT	\$699.60	12200003	51300	GROSS OVERTIME	\$33,532
	Reason:	Unused salaries due to employees out on I.O.D				Replenish overtime used for coverage of I.O.D			
	Reason:								
	Reason:								

Department Head signature:





City of Marlborough
Office of the Mayor

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Nancy E. Stevens
MAYOR

Krista J. Helmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: Transfer Request - Equipment Maintenance

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request from the Department of Public Works.

Transfer in the amount of \$38,000.00 moving funds from account number 10000-35900 (Undesignated Fund) to account number 14001406-54810 (Rep./Maint. Supplies Vehicles). The transferred funds are necessary to repair older fleet vehicles.

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

Sincerely,

Nancy E. Stevens
Mayor

Enclosure

TRANSFER REQUEST

AVAILABLE BALANCE	AMOUNT	FROM ACCOUNT	ORG CC OBJECT	ACCOUNT DESCRIP	AMOUNT	TO ACCOUNT	ORG CODE	OBJECT ACCOUNT DESCRIP	AMOUNT AVAIL
				Undesignated Fund				DPW Repair	
\$ 4,906,090.00	\$ 38,000.00	10000	35900	Undesignated Fund	\$ 38,000.00	14001406	54810	Rep/Maint supplies supplies Vehicles	\$ 2,787.67

\$ 38,000.00

Reason Additional funds required to repair older fleet of vehicles



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

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: SLBB Transfer

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request from the Department of Public Works.

Transfer in the amount of \$1,620.00 moving funds from account number 14001101-50710 (Engr. - Jr. Civil Engr.) to account number 14001103-51920 (Sick Leave Buy Back). Details are provided in the attached transfer.

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

Sincerely,


Nancy E. Stevens
Mayor

Enclosure

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: PUBLIC WORKS

FISCAL YEAR: 2010

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code Object

Account Description:

Amount

Org Code Object

Account Description:

Available
Balance

\$119,016.18

\$1,620.00

14001101 50710

Engin.-Junior Civil Engin.

\$1,620.00

14001103 51920

Sick Leave Buy Back

\$4,042.70

Reason:

Resignation

CBA obligation due to resignation

Reason:

Reason:

Department Head signature:

Date:


11/19/09



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

Krista J. Halmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: Valvoline Mitigation Transfer Request

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request in the amount of \$5,000.00 moving funds from account number 1000-35900 (Undesignated Fund) to account number 19300006-55975 (High School Library).

Pursuant to Special Permit #05100872-C (Valvoline - 214 Boston Post Road East), a check in the amount of \$5,000.00 (#1725) was received in satisfaction of condition #12B, second year contribution. These funds were deposited in the general fund. Following certification of free cash, these funds are now available for transfer.

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

Sincerely,

Nancy E. Stevens
Mayor

Enclosure

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CITY OF MARLBOROUGH
BUDGET TRANSFERS -

DEPT: PUBLIC FACILITIES

FISCAL YEAR: 2010

FROM ACCOUNT:			TO ACCOUNT:				
Available Balance	Amount	Org Code Object	Account Description:	Amount	Org Code Object	Account Description:	Available Balance
<u>\$4,904,590</u>	<u>\$5,000.00</u>	<u>10000 35900</u>	<u>Undesignated Fund Balance</u>	<u>\$5,000.00</u>	<u>19300006 55975</u>	<u>High School Library</u>	<u>\$0</u>

Reason See attached request from Mayor



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

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: Advertising Transfer – Collector's Office

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request in the amount of \$600.00 moving funds from account number 10000-35900 (Undesignated Fund) to account number 11440004-53130 (Advertising).

City Collector Debbie Puleo has informed me that the transfer is necessary to fund the advertisement of delinquent taxes.

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

Sincerely,

Nancy E. Stevens
Mayor

2

TRANSFER REQUEST

AVAILABLE BALANCE	AMOUNT	FROM ACCOUNT	ORG · OBJECT	ACCOUNT DESCRIP	AMOUNT	TO ACCOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
				Undesignated Fund				Collector		
\$ 4,906,090.00	\$ 600.00	100	35900	Undesignated Fund	\$ 600.00	11440004	53150	Advertising		\$ 2,000.00

\$ 600.00

Reason See Attached request from Mayor



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

Krista J. Holmi
EXECUTIVE AIDE

Katherine M. Kimber
EXECUTIVE SECRETARY

November 19, 2009

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

RE: OPEB

Honorable President Vigeant and Councilors:

On October 22, 2008, I submitted the results of an actuarial study done by Buck Associates that determined Marlborough's Other Post Employment Benefits (OPEB) liability. This matter is currently pending in the Finance Committee. The amount that was determined from this study was between \$52,300,000.00 and \$111,500,000.00. Listed below are a number of key factors from that submittal:

- 1) All government employers are required to implement Governmental Accounting Standards Board (GASB) 43 and 45, which is an accounting of obligations for post employment benefits not related to pensions (OPEB). The OPEBs must be disclosed on the city's financial statements and must contain an actuarially determined liability, assumptions used to determine liability, what benefits are offered, who is eligible, and the number of employees covered. The implementation date for GASB 43 and 45 varies according to the FY 1999 annual revenues of the governmental unit. Marlborough must begin reporting its OPEB with the publication of our FY 09 financial statements.
- 2) Marlborough hired Buck Consultants to complete an actuarial valuation, determine our OPEB liability as of July 2008, determine our Annual Required Contribution (ARC), and to provide us with a document that meets the reporting requirements of GASB 43 & 45.
- 3) The report states that our OPEB is between \$52.3 million and \$111.5 million depending on the method used to fund the liability. GASB 45 DOES NOT require a governmental unit to fund its OPEB liability; it establishes standards for accounting and financial reporting of the liability. How the city finances the liability is a decision that needs to be made by this body and the Mayor. The unfunded liability may be funded in three ways: 1) Pay as you go; 2) establish AND fund an irrevocable trust; 3) set aside a dedicated reserve. Each one of these funding methods has its own positive/negative points and needs to be understood and discussed in detail before a funding method is chosen.

If an OPEB Trust were to have been created in fiscal year 2009, our Annual Required Contribution (ARC) for fiscal year 2009 and beyond would have been \$4,450,978.00 per year. For FY 2009, we contributed \$2,391,581.00 for retiree benefits and received \$126,613.00 in Medicare D reimbursements for a net increase in funding requirements of \$1,932,784.00. In this example, we funded less than the ARC which resulted in a Net OPEB Obligation (NOO). This amount will be placed on our balance sheet as an obligation for FY 09.

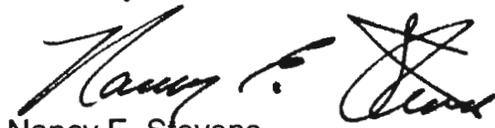
Due to the economic conditions of the country, state and city, I had recommended to wait until 2012 to start funding an OPEB Trust; however, the longer we wait, the higher our NOO will be and an increased burden will be placed on our tax payers. In an effort to reduce the tax burden in 2012 and beyond, I have opted to create an OPEB Stabilization Fund. This fund will allow the city to put aside funds to offset the first several years of payments to the OPEB Trust Fund that will be established in 2012. In addition, as long these funds are in the OPEB stabilization account, they will continue to be available to the city in the event that economic conditions change prior to the establishment of an OPEB Trust.

For your consideration, I have attached a transfer in the amount of \$1,000,000.00 moving funds from account number 10000-35900 (Undesignated) to account number 8360000-32726 (OPEB Stabilization). In late fiscal year 2011, the city will need to accept Chapter 479 which will establish an OPEB Trust Fund, budget an appropriation for the OPEB in the FY 2012 budget and transfer the funds previously deposited into the OPEB Stabilization to the OPEB Trust.

The above strategy allows the city to partially fund our ARC while maintaining some flexibility during these uncertain economic times.

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

Sincerely,


Nancy E. Stevens
Mayor

Enclosure

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TRANSFER REQUEST

FROM ACCOUNT				TO ACCOUNT				
AVAILABLE BALANCE	AMOUNT	ORG · OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
			Undesignated Fund				OPEB Stabilization	
\$ 4,906,090.00	\$ 1,000,000.00	100	35900 Undesignated Fund	\$ 1,000,000.00	836000	32726 Stab OPEB		\$ -

\$1,000,000.00

Reason See Attached request from Mayor

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City of Marlborough
Legal Department

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

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

November 19, 2009

Arthur G. Vigeant
President
Marlborough City Council

RE: Bolton Street
Disposition of a Portion of Municipal Land and Acquisition of a Portion of Private Land
Order No. 07/08/09-1001680A

Dear President Vigeant and Members of the City Council:

At its July 20, 2009 meeting, the City Council voted to authorize the disposition of a portion of the former landfill parcel off Bolton Street. As payment for that disposition, the City has been offered a parcel of privately owned land, likewise off Bolton Street. Please see the enclosed letter from Attorney Aldo Cipriano confirming that offer on behalf of the private owner, Lakeview-Bolton Street Realty LLC.

That privately owned parcel of land is unique, both in terms of its qualities and its location, as set forth in an enclosed letter from the Chief Procurement Officer. The land's uniqueness obviates the requirement under MGL c. 30B, §16(e)(2) for the City to advertise that the City is looking to acquire property, as long as the Council now determines that the privately owned land is, in fact, unique.

Accordingly, the last enclosure is a proposed order, reviewed and approved by the L&L Committee, listing the various terms and restrictions for this transaction, including the Council's determination of uniqueness concerning the privately owned land to be acquired by the City. The proposed order authorizes the Mayor, pursuant to MGL c. 40, § 3, to 1) execute a deed of the City parcel to the LLC, and 2) accept a deed back from the LLC of the LLC's parcel.

If you approve this proposed order, a purchase and sale agreement and the closing would follow. Since the City would be acquiring the LLC's parcel as general corporate property under the Council's care, custody, management and control, I might suggest that an item be submitted to the Council sometime after the closing in order to transfer the acquired property's purpose, perhaps to open space, to be held by another custodian, perhaps the Conservation Commission.

Very truly yours,

Donald V. Rider, Jr.
City Solicitor

Enclosures

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ALDO A. CIPRIANO
ATTORNEY AND COUNSELLOR AT LAW

277 MAIN STREET
VICTORIA BUILDING
SECOND LEVEL • ATRIUM SUITE
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 485-7245
FAX (508) 485-2904

November 19, 2009

Donald V. Rider, Esq.,
City Solicitor
City of Marlborough
City Hall, 4th Floor
140 Main Street
Marlborough, MA 01752

**Re: Real Property transfer and exchange off of Bolton Street. Lakeview/Bolton St.
Realty LLC and the City of Marlborough**

Dear Mr. City Solicitor,

In conferring with our clients please be advised that they remain interested in effectuating a real property exchange with the City, particularly relative to the Lakeview parcel designated on conceptual plans as parcel A and consisting of 2.48 acres.

This acknowledgement is consistent with the original petition as filed in October, 2008 with the City Council.

Further, please note that we will be in attendance Monday evening to observe as to this matter.

Thank you for your professional cooperation in this matter.

Very truly yours,



Aldo A. Cipriano, Esq.

Cc: Dr. Robert Rittenhouse
Mr. Gregory Mitrakas, Sr.
Attorney Gregory Mitrakas, Jr.



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

93
DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

DENISE M. LINDBERG
PARALEGAL

November 18, 2009

Legal Department
City Hall
140 Main Street
Marlborough, MA 01752

Attention: Donald V. Rider, Jr., City Solicitor/Cynthia Panagore Griffin, Asst. City Solicitor

RE: Unique Acquisition of Real Property – Land off Bolton Street

Dear Don and Cynthia:

Pursuant to the provisions of M.G.L. c. 30B, § 16, the City must solicit proposals prior to obtaining real property valued in excess of \$25,000 *unless* the City Council determines in writing that advertising for the submissions of proposals will not benefit the City's interests because of the unique qualities or location of the property needed (M.G.L. c. 30B, § 16(e)(2)). It is my understanding that the City is interested in acquiring 2.48 acres of land, located off of Bolton Street and Blaiswood Avenue and identified as a portion of Assessor's map 17, parcel 10, (the "Land") which has been appraised at \$36,000.

For the City Council's deliberation and approval, I have determined that the location and qualities of the Land satisfy the unique requirements of the City pursuant to M.G.L. c. 30B, § 16(e)(2). Specifically, the Land consists of wooded open space, uniquely situated because it abuts municipal land at the City's former landfill site on Addition Hill which has been designated as potential open space by the City's 2003-2008 Open Space and Recreation Plan and upon which the City proposes to build a park consisting of recreation fields, a playground, and walking trails. The Land would substantially replace a 3.09 acre portion of potential open space at the former landfill which is not designated for the proposed park. But for the upcoming sale of the 3.09 parcel by the City, it would otherwise have remained as potential open space. The Land is close by the Assabet Valley Rail Trail and a wildlife corridor to the south, and has scenic views northward to the Fort Meadow Reservoir. The City seeks to acquire this property in order to replace potential open space, to preserve vistas, to provide wildlife habitat, and to enable future passive recreational opportunities in conjunction with existing and proposed public recreational amenities.

9/4

In light of the foregoing, it is my opinion that it is proper to waive the advertisement requirements of M.G.L. c. 30B, § 16 with respect to the acquisition of the Land. Pursuant to M.G.L. c. 30B, § 16, I will publish this determination along with the names of parties having a beneficial interest in the property as required under M.G.L. c. 7, § 40J, the location and size of the property, and the proposed purchase price in the Massachusetts Central Register not less than thirty (30) days before the City executes a binding agreement to acquire the property.

If you have any questions or require further information, please let me know.

Sincerely,



Beverly J. Sleeper
Chief Procurement Officer

cc: Mayor

ORDERED:

95

That the City Council of the City of Marlborough, having transferred to itself the care, custody, management, and control of a certain parcel of land described in Order No. 07/08/09-1001680A-2, being a portion of municipal property previously taken by the City as described in an order of taking of land dated October 5, 1959, recorded with the South Middlesex County Registry of Deeds, Book 9481, Page 554, and an order of taking dated May 30, 1973, recorded with the South Middlesex County Registry of Deeds, Book 12450, Page 529 and as further identified and described on a plan of land dated October 18, 2009 (the "Property") to be recorded in the South Middlesex County Registry of Deeds, for the purpose of disposition by sale, hereby declares, pursuant to M.G.L. c. 30B, § 16(a), that the Property is available for disposition by sale, and that said sale is subject to the following restrictions and terms:

- 1) As the Property has no independent frontage, preference is given to the sole abutter, Lakeview-Bolton Street Realty LLC of 640 Bolton Street, Marlborough, MA (the "Buyer"), to enhance its own parcel's utility by a compatible use of the Property in conformance with the City's zoning requirements, to protect the interests of the residents of Blaiswood Avenue, and to augment tax revenue to the City.
- 2) Because the Property is located within a limited industrial zone adjacent to the Assabet Valley Rail Trail and a residential zone, and because the City has identified the Property as potential open space, the City will consider accepting a parcel as full or partial consideration from the Buyer for the purchase of the Property that would replace the Property as potential open space land, further the recreational value of existing and future public amenities, and provide a buffer to protect the interests of the residents of Blaiswood Avenue from development within the limited industrial zone.
- 3) Any acceptance and acquisition of land by the City as partial or full consideration for the Property shall be subject to the procedures set forth in M.G.L. c. 30B, § 16. The Buyer shall provide title insurance to the City for any parcel that the City accepts as full or partial consideration for the Property.

Further, pursuant to M.G.L. c. 30B, § 16, the City, by and through the City Council, has determined that an approximately 2.48 acre parcel of land which abuts the Property, being a portion of Assessors' map 17, parcel 10, has unique qualities and a unique location including that it would replace the Property as potential open space, it would further the recreational value of the nearby Assabet

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Valley Rail Trail and future public recreational amenities, it has scenic views of Fort Meadow Reservoir, it provides potential wildlife habitat, and it would provide a buffer to the residents of Blaiswood Avenue from development of the Property in conformance with zoning requirements for the limited industrial zone, such that advertising for the acquisition of land to fulfill the City's needs will not benefit the interests of the City.

- 4) All taxes or fees owed to the City by the Buyer shall be current. The Buyer will be required to submit a Certification of Tax Compliance pursuant to M.G.L. c. 62C, § 49A.
- 5) The Buyer will be required, pursuant to M.G.L. c. 44, § 63A, to make a pro forma payment of taxes from the date of the deed transferring title from the City to the Buyer to June 30, 2010 (the end of the current fiscal year). Such tax shall be computed by applying the tax rate for such fiscal year to the sale price.
- 6) In addition to the payment of land identified in paragraph 3 above as consideration for the Property, the Buyer shall also pay all costs of the conveyance, including but not limited to the cost the City's independent peer review of the Buyer's appraisal, the City's costs for preparing a plan of land, and the fees for recording at the South Middlesex County Registry of Deeds. No costs of the conveyance will be paid by the City.
- 7) The Property is sold by the City "AS IS" with no warranties or representations as to condition, the marketability of its title, or whether it is subject to any solid waste materials or environmental conditions which may or may not be in compliance with any applicable laws, policies or regulations, including without limitation the Massachusetts Oil and Hazardous Material Release Prevention Response Act (M.G.L. c. 21E), the Comprehensive Response Compensation and Liability Act (42 U.S.C. § 9601 et. seq.), other federal, state and local laws or regulations, and any judicial or administrative decree, permits, or decisions. The Buyer, its successors and assigns agrees to indemnify, protect, defend and hold harmless the City against any and all losses, costs, damages, liabilities, expenses, actions, and demands (including reasonable attorneys' and experts' fees and other expenses) whatsoever of every name and nature both in law and in equity, suffered or incurred by the Buyer, including consequential damages and suits by third parties, arising out of any and all costs associated with all clean-up, disposal, removal, replacement, soil, solid waste and environmental remediation work or other actions related in any manner to said solid waste or

9;
environmental conditions, whether past, present or future, relating to the Property, and/or relating to any other land assertedly affected by solid waste or contamination from the Property; and arising out of any and all diminution in value, whether past, present or future, pertaining to the Property, and/or any other land assertedly affected by solid waste or contamination from the Property, as a result of or in connection with solid waste and environmental matters at or relating to the Property. The conditions set forth in this paragraph shall be run with the Property.

- 8) The Property is sold subject to easements shown on a plan of land dated October 18, 2009 to be recorded in the South Middlesex County Registry of Deeds, including a permanent drainage easement which shall be reserved by the City and a grading easement which shall be granted by the City to the Buyer.

And, further, that the City Council sets the minimum price to be paid in the form of land described in paragraph 3 above as \$25,000, and the costs of conveyance as identified in paragraph 6 above to be paid in the form of cash, and thus authorizes the Mayor, by simple majority vote pursuant to M.G.L. c. 40, § 3,

- i) to execute a deed of the Property to the sole abutter, Lakeview-Bolton Street Realty LLC of 640 Bolton Street, Marlborough, MA, subject to the above restrictions and terms; and
- ii) to accept a deed back from Lakeview-Bolton Street Realty LLC of 640 Bolton Street, Marlborough, MA for the approximately 2.48 acre parcel of land which abuts the Property, being a portion of Assessors' map 17, parcel 10, such that the City shall thereupon hold the fee simple interest in said parcel.

ADOPTED
In City Council
Order No. 09-
Adopted

Approved By Mayor
Nancy E. Stevens
Date:

A TRUE COPY

ATTEST:



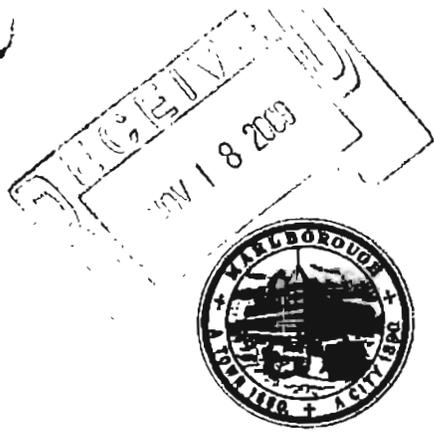
CITY OF MARLBOROUGH
OFFICE OF CITY CLERK

That the City Clerk be and is herewith directed to have proper notices issued notifying the VOTERS of the City of Marlborough that the **SPECIAL STATE PRIMARY ELECTION** will be held in the polling locations as noted below on **DECEMBER 8, 2009** as follows: Senator in Congress.

THE POLLS WILL OPEN AT 7:00 A.M. AND WILL CLOSE AT 8:00 P.M.

POLLING LOCATIONS ARE AS FOLLOWS:

- | | |
|---------------------------|--|
| WARD ONE: Prec. 1 and 2 | Francis J. Kane School, 520 Farm Rd. |
| WARD TWO: Prec. 1 and 2 | Francis J. Kane School, 520 Farm Rd. |
| WARD THREE: Prec. 1 | Masonic Hall, 8 Newton St., corner of Main/Newton Sts., rear |
| WARD THREE: Prec. 2 | Raymond J. Richer School, 80 Foley Rd. |
| WARD FOUR: Prec. 1 and 2 | Boys & Girls Club, 169 Pleasant St. |
| WARD FIVE: Prec. 1 | Senior Center, 250 Main St. |
| WARD FIVE: Prec. 2 | Masonic Hall, 8 Newton St., corner of Main/Newton Sts., rear |
| WARD SIX: Prec. 1 and 2 | Marlborough Middle (Intermediate) School, 25 Union St. Library |
| WARD SEVEN: Prec. 1 and 2 | Hildreth School Gymnasium, 85 Sawin St. |



City of Marlborough
Commonwealth of Massachusetts

11

November 16, 2009

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

PLANNING BOARD

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

Carrie Lizotte, Board Secretary
Phone: (508) 460-3769
Fax: (508) 460-3736
Email: CLizotte@marlborough-ma.gov

RE: Proposed Narcotic Detoxification and/or Maintenance Facilities
Chapter 40A of the Zoning Ordinance

Dear Mr. Vigeant:

At its regular meeting on Monday, November 9, 2009, the Planning Board took the following action:

On motion of Phil Hodge, seconded by Kerrigan, with Mr. Fay abstaining, it was voted to provide the City Council with a negative recommendation.

The Board members made the following recommendations:

1. That the City Council should consider permitting a narcotic detoxification center at the hospital.
2. That the City Council should consider permitting a narcotic detoxification center in zones that permit medical office buildings subject to applicable buffer zones.
3. That the City Council consider reducing the buffer zone from 2,000 feet, and compare the maps of buffer zones of 1,000, 750 and 500 feet.
4. That the City Council remove or clarify the competition language in the current draft of the ordinance.
5. The traffic study requirements should not be imposed in such a way that the study requirement becomes profitably expensive for applicants..
6. That the City Council modify the current language of the ordinance to make the ordinance neutral as to whether a narcotic detoxification center could be permitted in the City, instead of making the ordinance overly restrictive in an effort to reduce the possibility of future litigation. This recommendation is made in recognition that a for-profit narcotic detoxification center could only be opened within the City by special permit, providing the City Council with an additional opportunity to protect neighborhoods and sensitive areas/uses.

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Sincerely,

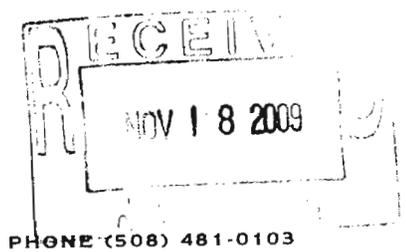
Barbara L. Fenby

Barbara L. Fenby
Chairperson

/cal

Cc: City Clerk
File

12



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

FAX (508) 485-8506

November 18, 2009

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

Re: request to withdraw requests for rezoning, Order # 09-1002316B

Dear Councilor Vigeant:

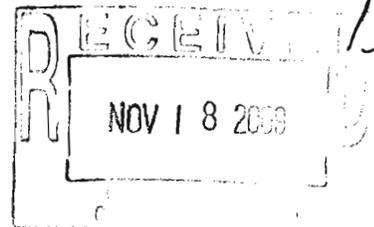
After meeting with the members of the Urban Affairs Committee, my clients, 400 South Street LLC, 424 South Street LLC and 428 South Street LLC, hereby request that the above-referenced request to rezone certain property from the Industrial Zone to the Commercial and Automotive zone be withdrawn without prejudice.

Very truly yours,


Arthur P. Bergeron

Smerczynski & Conn, P.C.

30 MAIN STREET
PEABODY, MASSACHUSETTS 01960
TEL: 978-531-1710 * FAX: 978-531-4895
WWW.SMERCZYNSKICONN.COM



DONALD L. CONN, JR.
DON@BCPCLAW.COM

MICHAEL T. SMERCZYNSKI
MIKE@BCPCLAW.COM

OF COUNSEL
EDWARD A. BETTENCOURT, JR.
TED@BCPCLAW.COM

OF COUNSEL
ARTHUR J. FRAWLEY, JR.
ARTHUR@BCPCLAW.COM

OLIVER T. COOK
OLIVER@BCPCLAW.COM

HON. SANTO J. RUMA (RET.)
SANTO@BCPCLAW.COM

November 17, 2009

Ms. Lisa Thomas
City Clerk
City Hall
140 Main Street
Marlborough, MA 01752

RE: JAM Enterprises, LLC
Case No.: 09-1002361

Dear Ms. Thomas:

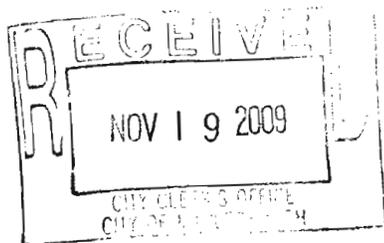
As you are aware I represent the applicant for special permit in the above-referenced matter. I hereby request that the public hearing currently scheduled for December 21, 2009 be continued to a date convenient to the Council in January of 2010. Do not hesitate to contact me should you require any additional information.

Thanking you in advance for your anticipated cooperation, I am

Very truly yours,

Donald L. Conn, Jr.

14,



LAW OFFICES OF
FLOOD & FAVATA
14 WINTHROP STREET
MARLBOROUGH, MASSACHUSETTS 01752

TEL: (508) 624-4700 FAX: (508) 624-7497
www.floodlaw.net

CHRISTOPHER M. FLOOD
LORI A. FAVATA

November 19, 2009

City Clerk's Office
City Hall
140 Main Street
Marlborough, MA 01752

Re: Agreement to Extend Ninety Day Time Limitation for Approval of Special Permit for Proposed Hotel on Simarano Drive, Marlborough, MA

Dear City Clerk,

Enclosed please find two signed Agreements to Extend Time Limitations for the above referenced matter.

Kindly add this matter to the City Council's meeting agenda for Monday, November 23, 2009 for a vote and approval.

If approved, please return one of the fully executed Agreements to this office at your earliest convenience.

If you have any questions, please feel free to contact this office. Thank you for your assistance.

Sincerely,

Christopher M. Flood

Enclosure

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AGREEMENT TO EXTEND TIME LIMITATIONS

COUNCIL ORDER NO. 09-100-2259

**Application for Special Permit from City Council for Cherag Patel
of 6539 Lake Crest Circle, South Bend, IN 46628**

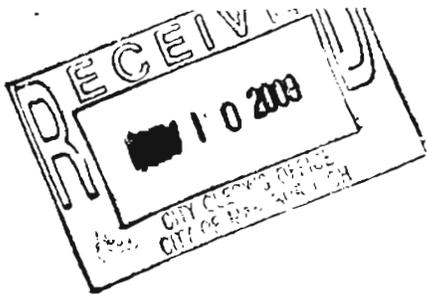
REFER TO PUBLIC HEARING: September 14, 2009

The decision of the special permit granting authority shall be made within ninety (90) 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 5:00 p.m. on December 31, 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:  _____
Christopher M. Flood, Attorney for Petitioner,
Acting on behalf of and at the direction of
Petitioner:
Cherag Patel



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
October 26, 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, October 26, 2009 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Steven Kerrigan, Phil Hodge, Edward Coveney, Robert Hanson and Sean Fay. Also present: City Engineer Thomas Cullen.

MINUTES

Meeting Minutes October 5, 2009

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

To accept and file the Meeting Minutes of October 5, 2009 with amendments.

CHAIRS BUSINESS

APPROVAL NOT REQUIRED PLAN

PUBLIC HEARING

The Planning Board of the City of Marlborough held a public hearing on Monday, October 26, 2009, at 7:10p.m. in Memorial Hall, 3rd Floor, City Hall, 140 Main Street, Marlborough on the proposed in to changes in the Zoning Ordinance by adding Narcotic Detoxification And/or Maintenance Facilities to Chapter 40A. Members present: Chairperson Barbara L. Fenby, Clerk Steven Kerrigan, Philip Hodge, Edward Coveney, Robert Hanson and Sean Fay. Also present: City Engineer Thomas Cullen.

Mr. Kerrigan read the advertisement into record.

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

- 1. Section 650-5, entitled "Definitions; Word Usage," is hereby amended by adding to said Section the following definition:

NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITY: A non-residential drug treatment program that assists individual addicted to drugs by administration of a substitute drug. Any facility that dispenses, prescribes, administers, allocates, delivers, hands out, or uses in any way a substitute drug, with or without providing other treatment services, shall be deemed a "Narcotic Detoxification and/or Maintenance Facility" and subject to the regulations under Section 650-31 of this ordinance.

- 2. Section 650-17, entitled "Table of Uses," is hereby amended by adding to said section a new business use entitled, "Narcotic Detoxification and/or Maintenance Facility," which shall be regulated, as follows:

RR	A1	A2	A3	RB	RC	B	CA	LI	I
N	N	N	N	N	N	N	SP	SP	SP

- 3. A new Section 650-31, entitled "NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES," is hereby added, as follows:

650-31 NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES

- A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning Ordinance will not prohibit the location of a facility for narcotic detoxification or narcotic maintenance within the City of Marlborough, but will instead regulate such facilities. A Narcotic Detoxification and/or Maintenance Facility should provide medical support, security, drug testing with oversight by a physician, and standards that meet or exceed state regulations under 105 CMR 164 for licensure of substance abuse treatment programs. Facilities should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these facilities are located in such a way as to not pose a direct threat to the health or safety of either the participants in the rehabilitation treatment or the public at large, the provisions of this section will apply to all such facilities.

- B. Where a Special Permit is required for a Narcotic Detoxification and/or Maintenance Facility, the Special Permit Granting Authority shall grant the Special Permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination shall include consideration of each of the following:
 - 1. Social, economic, or community needs which are served by the proposal;
 - 2. Traffic flow and safety, including parking and loading;
 - 3. Adequacy of utilities and other public services;
 - 4. Neighborhood character and social structures;
 - 5. Impacts on the natural environment;
 - 6. Potential fiscal impact, including impact on City services, tax base, and employment; and
 - 7. The ability for the facility to:
 - a. meet a demonstrated need;

- b. provide a secure indoor waiting area for clients;
- c. provide an adequate pick-up/drop-off area;
- d. provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and
- e. adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses.

The Special Permit Granting Authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

C. A Narcotic Detoxification and/or Maintenance Facility shall not be located:

- 1. within five thousand (5,000) feet of another Narcotic Detoxification and/or Maintenance Facility; nor,
- 2. within two thousand (2,000) feet of:
 - a. a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;
 - b. a recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - c. a park (as defined in § 517-2 of the Code of the City of Marlborough, as amended).
 - d. an elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
 - e. a retirement community (as defined in § 650-4 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough.

Council President Arthur Vigeant presented to the Planning Board the reasoning behind the proposed additional zoning change. He stated that there is no plan or proposal at this time if such a facility does come into the City; the proper zoning would be in place. They are asking that such facilities be no closer together than 5,000 feet and not within 2,000 feet of schools, a recreational facilities, parks, elderly housing facilities or retirement facilities. Mr. Vigeant said that the 2,000 restriction would be moved to 1,000 feet be enactment.

Councilor Levy spoke on why this was being proposed. He feels that the zoning should be in place now. He stated that most of the buffer zones will be less restrictive at 1,000 foot restriction would allow more facilities and all facilities will still need special permit approval with the City Council.

In Favor

No one spoke in favor.

In Opposition

No one spoke in opposition.

This portion of the public hearing was closed.

Mr. Hodge asked if there were maps showing where the facilities would be allowed. Councilor Ferro provided the maps. Councilor Levy stated the maps do show where the facilities could be if they were 5,000 feet apart which would only allow 2 sites.

Ms. Fenby questioned the language "Facilities should not complete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children". She stated that this was an awkward passage. Mr. Vigeant stated that the ordinance was written by the City Solicitor using guidance from other similar City Ordinances.

Mr. Fay asked if an elderly center, child care center, or an retirement community is currently located close to the allowed zones. Mr. Vigeant stated there is a child care facility that would prohibit a facility of a site along Cedar Hill Road despite the maps showing a possibly location. Mr. Fay also asked the possibility if detox or maintenance facility is already in place, what would happen if a day care center, elderly faculty, recreation faculty or retirement community was placed near the maintenance facility. Mr. Vigeant stated that it was possible, but the City Council could always amend the ordinance.

Mr. Hodge asked what would happen if the facility was located and operated at the hospital? Mr. Vigeant stated that most likely they would be using the Dover amendment.

((The Dover Amendment (M.G.L. Chapter 40A Section 3) is a state law that states that "No zoning ordinance or by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements."))

The public hearing was closed at 7:30 PM.

Proposed Zoning Change

400 South Street LLC, Map: 93 Parcels 18A, 19, 20, 22, 23, 32, 101 & 103

7:30

The Planning Board of the City of Marlborough held a public hearing on Monday, October 26, 2009, at 7:30p.m. in Memorial Hall, 3rd Floor, City Hall, 140 Main Street, Marlborough on the consideration to changing proposed change to the Zoning Map by petitioners 424 South Street and 428 South Street, LLC. Members present: Chairperson Barbara L. Fenby, Clerk Steven Kerrigan, Philip Hodge, Edward Coveney, Robert Hanson and Sean Fay. Also present: City Engineer Thomas Cullen.

Mr. Kerrigan read the advertisement into record.

Notice is hereby given that the Planning Board of the City of Marlborough will hold a public hearing on **Monday, October 26, 2009, at 7:15 P.M.** in the Memorial Hall, 3rd floor, City Hall, 140 Main Street, Marlborough, Massachusetts on the petition of 400 South Street LLC, 424 South Street LLC and 428 South Street LLC, all hereinafter referred to as "Petitioners", which said Petitioners each own land which is subject to this proposal, to amend the Zoning Map of the City of Marlborough, said map being referred to in the Marlborough Zoning Ordinance, Chapter 650 Section 650-8 of the Marlborough City Code, by rezoning certain parcels of land on South Street, shown on the Marlborough Assessors Maps as Map 93 Parcels 18A, 19, 20, 22, 23, 32, 101 and 103, removing said parcels from an Industrial (I) District and including them in a Commercial & Automotive (CA) District.

Attorney Bergeron represents the petitioners who are seeking to change their current zoning from Industrial (I) to Commercial Automotive (CA). They have been before the Site Plan Review Committee for several issues that concern their buildings. The Site Plan Review Committee suggested that they seek a change in their zoning status to Commercial Automotive. Mr. Bergeron did not have a map available (slide show was ready for the City Council public hearing at 8:00pm).

In Favor:

Kristen Cappello
29 Beverly Street
Marlborough, MA 01752

Ms. Cappello stated she was in favor of the zone change.

Richard Cappello
4 Killam Road
Southborough, MA 01772

Mr. Cappello stated he was in favor of the zone change.

Robert Valchious
180 Farm Road
Marlborough, MA 01752

Mr. Valchious stated that he was in favor of the zone change.

Mr. and Mrs. Neil Fossile
424 South Street
Marlborough, MA 01752

Mrs. Fossile asked for the current zoning setbacks for Commercial Automotive. Mrs. Lizotte read the zoning guidelines: 5,000 Square feet for minimum lot size, 50 feet minimum lot frontage, 50 feet side yard (only when it abuts a residential zone, otherwise 0), 50 feet front yard, and 0 for minimum for rear with a height restriction of 2 stories.

Mr. Fossile stated that there are current boundary issues between his property and the neighbor's property. Mr. Fossile's property is also being included in the zone change and he stated he had no knowledge of the proposed change.

Marilyn Gaudette
21 Mill Street Central
Marlborough, MA 01752

Ms. Gaudette stated that she was concerned about how the public hearing came to the Planning Board when it was being advertised for the City Council on the same night. Attorney Bergeron explained that the City Council must notify the Planning Board and Urban Affairs when there is any change to the Zoning Ordinance including maps.

Michael Kennedy
80 Cameron Drive
Marlborough, MA 01752

Mr. Kennedy questioned the lots. In the advertisement the lots show Map 93 Parcels 18A, 19, 20, 22, 23, 32, 101 & 103. No mention of lot 21. Mrs. Lizotte provided the Zoning Maps which showed a Parcel 21 not being part of the proposed change. Mr. Bergeron stated that he used the Assessor's maps to gauge the parcels. The Cappellos who own parcel 20 stated that their taxes are parcel 20.

The Board discussed tabling the hearing until the parcels are clarified.

In Opposition

Mrs. Celeste Wright
330 South Street
Marlborough, MA 01752

Mrs. Wright stated that she had a petition with 68 signatures in opposition that to the proposed to the zone change.

Mr. George Wright
330 South Street
Marlborough, MA 01752

Mr. Wright stated changing the current zoning to Commercial Automotive leaves a gap of the possibilities that can take place. He stated the zoning should be left as is and changing could lead to a bigger mess.

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

To table the public hearing until November 9, 2009.

SUBDIVISION PROGRESS REPORTS

Update from City Engineer

Mr. Cullen provided his status updates. His update shows the work of the completed work at Fiddlehead Subdivision, except for the as-built plans and acceptances. He has also reviewed the Crystal Ridge Estates and is providing correspondence for acceptance.

Blackhorse Farms (Slocumb Lane)
Cider Mill Estates (Goodwin Drive)
West Ridge Estates (Dufrense Drive)

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

To table this discussion.

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

To reopen the discussion.

Mr. Donald Rider, the City Solicitor, provided this proposed motion for the Planning Board:

MOTION:

It is moved that the Planning Board, pursuant to MGL c. 41, § 81W, does hereby require that the developer, West Hill LLC, submit to the Planning Board for its review at its next meeting on November 7, 2009 a change in the definitive subdivision plan for Cider Mill Estates, such change to reflect the developer's earthen berm work, and all deposits or stockpiling of soil and/or other materials, within or upon the subdivision; that such change is a condition of the plan's retaining the status of an approved subdivision plan; and that the developer's failure to timely submit the changed plan shall result in the plan's losing the status of an approved subdivision plan.

Mr. Rider stated that he offered the motion because of the changes in the stockpiles and berm is enough change to rescind the subdivision.

Mr. Fay also stated that this gives them a plan of action for the Cider Mill Estates, but what about West Ridge Estates and Blackhorse Farms? Mr. Fay questioned if there was enough in the performance bond if the subdivision lots were rescinded. Mr. Cullen was not prepared with the amount outstanding bond amounts and he also stated that all the streets have a binder coat with utilities underneath the binder.

Mr. Fay asked if there was a possibility of just rescinding the lots, not the subdivision in whole. Mr. Rider was not aware of any court cases where the lots were rescinded.

The Planning Board asked Mr. Cullen to review the status of the remaining bond amounts for Cider Mill Estates, West Ridge Estates and Blackhorse Farms. They asked for the City Solicitor to look into the possibility of rescinding just the lots for all three subdivisions.

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

To table the discussion.

**Crystal Ridge Estates (Danjou Drive)
Subdivision Acceptance**

At the Planning Boards request and the Developers request, the City of Marlborough's Engineering Division has reviewed the following:

- As-Built Plan and Profile of Crystal Ridge Estates, dated December 4, 2000 with the latest revision date of August 17, 2001. Note that the plans were prepared by Central Mass Engineering & Survey, Inc. 45 River Street, Marlborough, MA 01752.
- Plan of Acceptance of Danjou Drive and Easements, dated October 14, 2004 with the latest revision date of October 14, 2009. Note that the plan was prepared by Robert J. Parente P.L.S., 15 Hickory Road, Southborough, MA 01772.
- The latest Legal Descriptions.

Mr. Cullen is recommending the Planning Board accept the subdivision. He is also suggesting retaining the remaining bond of \$49,000.00 in place until such time of the Acceptance Plan and Municipal Easements has been approved by the City Council and recorded with the Middlesex Registry of Deeds South District, Cambridge, MA. He also recommend that the Developer take the necessary steps with the City of Marlborough City Council to have Danjou Drive and easements accepted by the City as shown on the plan prepared by Robert J. Parente P.L.S., 15 Hickory Road, Southborough, MA 01772 entitled "Plan of Acceptance of Danjou Drive and Easements, Marlborough, MA", dated October 14, 2004 with the latest revision date of October 19, 2009, scale 1"=40".

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

To accept and file the letter from City Engineer Thomas Cullen, and endorse his recommendation that the subdivision known as "Plan of Acceptance of Danjou Drive and Easements, Marlborough, MA", dated October 14, 2004 with the latest revision date of October 19, 2009, scale 1"=40" drawn by Robert J. Parente P.L.S. 15 Hickory Road, Southborough, MA" has remained in satisfactory condition for the year long maintenance period. The remaining bond will stay in place until certification of the recordings.

The Developers are responsible of contacting the City Council for their approval.

**Davis Estates (Bouvin Drive)
Request for Bond Reduction**

Attorney Also Cipriano provided to the Planning Board a request for a bond reduction and a subdivision completion schedule.

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

To accept and file the correspondence, to refer the request the bond reduction to the City Engineer for a full review.

Mr. Cullen stated there was a request for plowing of the street; the request needs to go to the City Council.

**Forest Trail (Mosher Lane)
Correspondence from Attorney Burger**

Mr. Burger and his client are still in discussion with Fire Chief Adams over the gate at the trail entrance with the Knox lock system. He is asking for a postponement of any action until the November 9, 2009.

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

To accept and file correspondence and to postponing action as requested.

PENDING SUBDIVISION PLANS: Updates and Discussion

PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS

DEFINITIVE SUBDIVISION SUBMISSIONS

SCENIC ROADS

SIGNS

INFORMAL DISCUSSION

COMMUNICATIONS/CORRESPONDENCE

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

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

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

To adjourn at 8:45 p.m.

A TRUE COPY

ATTEST:


Steven Kerrigan, Clerk