

REGULAR MEETING
APRIL 27, 2009

IN CITY COUNCIL
ABSENT:

CONVENED:
ADJOURNED:

1. Minutes, City Council Meeting, April 6, 2009.
2. Communication from the Mayor re: budget transfer request in the amount of \$29,400.00 to move funds from Fuel and Lubricants to Rubbish Collection as a result of increased solid waste disposal costs.
3. Communication from the Mayor re: budget transfer request in the amount of \$175.00 to move funds from Principal Clerk to Full-time Library Clerk to meet a payroll deficit in the FY09 budget.
4. Communication from the Mayor re: refund to the City in the amount of \$381,696.08 from the Assabet Valley Regional High School District following a ruling by MA DOR.
5. Communication from the Mayor re: Art in Bloom 2009 exhibit at City Hall from 9:00 AM – 5:00 PM Tuesday, April 28th through 3:00 PM on Wednesday, April 29th.
6. Communication from the Mayor re: consideration of Mr. David Brumby for the position of Director of Personnel.
7. Communication from the Mayor re: appointment of William Dunbar to the position of Fort Meadow Commissioner for a term ending May 31, 2012 and Mr. Lee Thomson for reappointment to the Commission for term ending May 31, 2012.
8. Communication from the Mayor re: reappointments of Mr. Michael Hogan and Ms. Camille Duridas to the Community Development Authority for three year terms ending April 15, 2012 and June 25, 2012 respectively.
9. Communication from the City Solicitor re: question as to Acting Mayor's Jurisdiction over DPW, Order No. 08/09/-1002167A.
10. Communication from Hancock Associates re: supplemental materials for Special Permit for Drive-Thru Teller and ATM at 81 Granger Blvd., Order No. 09-1002152A.
11. Communication from Department of Public Utilities re: NSTAR Gas Co.'s Condensed Financial Return for Year End December 31, 2008.
12. Petition from National Grid to install 60' of primary ug across Forest St. from P.47 to a hand hole.
13. Minutes, Board of Assessors, April 17, 2009.
14. Minutes, Planning Board, March 9, 2009.
15. Minutes, Community Development Authority, February 27, 2009.
16. CLAIMS:
 - A. Linda B. Martin, 9 Sauta Farm Way, Sudbury, Pothole or Other Road Defect
 - B. John Jewett, 65 Hamilton Cir., Residential Mailbox Claim
 - C. Thomas Confort, 33 Austin Rd., Sudbury, Pothole or Other Road Defect
 - D. DeLuca & Weizenbaum, Ltd, on behalf of Sonja Cobb, 182 West Main St., Wrongful Death
 - E. Richard Leighs, 65 Woodland Dr., Pothole or Other Road Defect

REPORTS OF COMMITTEES:

17. ORDERED: That the DPW Commissioner take the following steps in connection with budgetary issues previously discussed by the City Council and in keeping with other municipal departments in the City:
- Prepare the DPW 2010 Operating Budget, to include a three percent reduction from the FY2009 budget, similar to the request made of the School Department;
 - Reduce the number of DPW employees by four (4) which is the number of vacant positions in the Commissioner's report, "DPW OPERATIONS REVIEW: FORESTRY, PARKS AND CEMETERIES," delivered to the City Council in October 2008 and discussed with the Operations & Oversight Committee in subsequent hearings;
 - Take steps to privatize minimal lawn maintenance functions as discussed with the Operations & Oversight Committee.

Submitted by Councilor Pope

RECONSIDERED TO PLACE ON APRIL 27, 2009 AGENDA IN ADDITION TO THE CITY SOLICITOR EXPLORE THE POSSIBILITY OF MAYOR STEVENS RELINQUISHING AUTHORITY OVER THE DPW DEPARTMENT TO COUNCIL PRESIDENT VIGEANT WHO WOULD SERVE AS ACTING MAYOR SPECIFIC TO THE DPW DEPARTMENT IN LIGHT OF THE MAYOR'S RECENT DISCLOSURES. FURTHER REQUEST THAT THE CITY SOLICITOR CLARIFY THE PROCEDURES BY WHICH THIS PROCESS WOULD TAKE PLACE.

18. ORDERED: That the City Council hold an executive session with the Mayor, Solicitor, Labor Counsel, and Comptroller at the regular meeting of April 27, 2009 to discuss potential deficiencies in the Mayor's anticipated FY2010 Municipal Operating Budget as a result of labor negotiations.Submitted by Councilor Vigeant
19. ORDERED: That the Public Safety Committee compile information for the review of the Mayor and City Council, utilizing the assistance of the City's Police and Fire Chiefs, to evaluate the necessity through the year 2020 of a public safety substation, to include police, fire, and civil defense services, in the west end of the City. Said report should consider build-out of the industrial park and residential and commercial development along Route 20 west and include cost figures on the construction and manning of a public safety sub-station to service the west end of the City. ...Submitted by Councilor Juairé

UNFINISHED BUSINESS:

From Public Services Committee

20. **Order No. 09-1002082 – Application of Post Road Used auto parts for renewal of Junk Dealer's License Recommendation of the Public Services Committee is to recommend approval 3-0.**
21. **Order No. 09-1002094 – Application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's License. Recommendation of the Public Services Committee is to recommend approval 3-0.**

22. **Order No. 09-1001917 – Application of Nobiano Coelo Rangel, d/b/a Silver Games, 259 Boston Post Rd. East #10. Recommendation of the Public Services Committee is to deny 3-0 per recommendation of the Police Chief.**



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

Lisa M. Thomas

140 Main St.

Marlborough, MA 01752

(508) 460-3775 FAX (508) 460-3723

APRIL 6, 2009

Regular meeting of the City Council held on Monday April 6, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juaira, Seymour, Clancy and Landers. Meeting adjourned at 10:40 p.m.

ORDERED: Minutes, City Council Meeting, March 23, 2009, **FILE AS AMENDED**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING On the Application for Revised Special Permit from Attorney Bergeron, on behalf of Toll MA Land Limited Partnership, to construct 69 retirement units on less than 14 acres and to revise current permit conditions accordingly, all were heard who wish to be heard, hearing adjourned at 8:25 p.m.; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING On the Application for Special Permit from Hancock Associates, on behalf of Marlborough Savings Bank, for drive-thru teller and ATM at proposed 16,500 sq. foot bank/office building at 81 Granger Blvd., all were heard who wish to be heard, hearing adjourned at 9:33 p.m.; adopted.

ORDERED: **Council President Vigeant requested that the City Clerk read 3 disclosure statements filed by Mayor Stevens.** That the budget transfer request in the amount of \$75,000.00 which moves funds from Undesignated to Water MR Plant for the purpose of maximizing water production at the Millham Water Treatment Facility and minimizing use of the MWRA water, therefore enabling DPW to immediately authorize the accelerated production at Millham, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900 \$75,000.00

Undesignated Fund

TO:

Acct. # 6190006-52322 \$75,000.00

Water MR Plant

FROM:

Acct. # 100-35900 \$10,000.00

Undesignated Fund

TO:

Acct. # 83600-32701 \$10,000.00

Public Safety

ORDERED: That Council Order No. 07-1001543 **noted below**, which provides for an abbreviated budget authorization format as recommended by the Massachusetts Department of Revenue Financial Review and adopted for FY09 which is due to expire on June 30, 2009 per its "Sunset Clause" provision, be extended for one-year to provide for the continuation of Order No. 07-1001543 through FY10, refer to **FINANCE COMMITTEE**; adopted.

/2

That the City Council **APPROVE** the Massachusetts Department of Revenue Financial Review Recommendation for adopting an abbreviated budget authorization format for all departments for the FY08 budget process.

Background: The Mass DOR report recommended that the city adopt the best financial practices by approving the FY08 budget as salary and expenditure line items for each department as opposed to the current practice of approving each line item. Department heads would be able to authorize transfers within their department for expenditure line items only. The Auditor will provide a summary of these transfers each month to the City Council. All salary transfers and transfers between departments would require City Council approval. This is for the FY08 budget only, with the provision of a “**Sunset Clause**” that the City Council will assess the results at the end of FY08 to determine if the practice will continue.

ORDERED: That the communication from the Mayor regarding an update pertinent to the search for a Director of Personnel, refer to **PERSONNEL COMMITTEE IN ADDITION TO PROVIDING ALL ADVERTISEMENTS FOR THIS POSITION TO SAID COMMITTEE**; adopted.

ORDERED: That Agenda #7, Communication from the City Solicitor regarding Special Permit from New Cingular Wireless PCS for 860 Boston Post Rd. East in proper form, be moved to Reports of Committees; **APPROVED**; adopted.

Councilor Juaire abstained

ORDERED: That the application of Tony Bitar, d/b/a Hannoush Jewelers, for Junk Dealer’s license, refer to **PUBLIC SERVICES COMMITTEE** adopted.

ORDERED: That the Communication from MetroWest Growth Management Committee re: advantages of a full time City Planner, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from Metropolitan Area Planning Council re: advantages of a full time City Planner, refer to **PERSONNEL COMMITTEE**; adopted.

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

- A. Valerie Harding, 389 Sudbury St., other property damage
- B. Walter Oranian, 99 Pleasant St., other property damage
- C. Manuel Rego, 193 Stevens St., residential mailbox
- D. Laura Wilner, 172 Stearns Rd., residential mailbox

Reports of Committees:

Councilor Clancy orally reported the following out of the Personnel Committee:

Order No. 09-1002079 – Communication from the Mayor regarding full-time City Planner. Recommendation of the Personnel Committee is to table so that they can continue discussions regarding this position.

Councilor Juaire reported the following out of the Public Services Committee:

Order No. 09-1002082 – Application of Post Road Used auto parts for renewal of Junk Dealer's License Recommendation of the Public Services Committee is to recommend approval 3-0.

Order No. 09-1002094 – Application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's License. Recommendation of the Public Services Committee is to recommend approval 3-0.

Order No. 09-1001917 – Application of Nobiano Coelo Rangel, d/b/a Silver Games, 259 Boston Post Rd. East #10. Recommendation of the Public Services Committee is to deny 3-0 per recommendation of the Police Chief.

Councilor Clancy orally reported the following out of Personnel Committee:

Order No. 09-1002137 - Application of Bernard Novitch, d/b/a Collectors Paradise, 771 Boston Post Rd. East. Councilor Juairé abstained. The committee discussed the condition of the property of the applicant's residence at 249 Pleasant St. The City Code officer submitted a letter dated April 1, 2009 describing the condition of the personal property. Ward Councilor Robert Seymour expressed his concerns regarding the blight condition at the residence as it stands out as an eyesore amongst the other properties on Pleasant St. Applicant was asked to clean up his property before any action is taken for the Junk Dealer's License. **Recommendation of the Public Services Committee is to table.**

ORDERED: That the City Council take a formal vote at the regular meeting of April 6, 2009 to adopt either a line item budget for FY 2010 or a category-based budget and forthwith notify the Mayor of the body's decision, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Operations and Oversight Committee obtain information concerning the asset control policies and procedures put in place last year with respect to monies received and/or collected by the City, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the DPW Commissioner take the following steps in connection with budgetary issues previously discussed by the City Council and in keeping with other municipal departments in the City:

- Prepare the DPW 2010 Operating Budget, to include a three percent reduction from the FY2009 budget, similar to the request made of the School Department;
- Reduce the number of DPW employees by four (4) which is the number of vacant positions in the Commissioner's report, "DPW OPERATIONS REVIEW: FORESTRY, PARKS AND CEMETERIES," delivered to the City Council in October 2008 and discussed with the Operations & Oversight Committee in subsequent hearings;
- Take steps to privatize minimal lawn maintenance functions as discussed with the Operations & Oversight Committee, be and is herewith **RECONSIDERED TO PLACE ON APRIL 27, 2009 AGENDA IN ADDITION TO THE CITY SOLICITOR EXPLORE THE POSSIBILITY OF MAYOR STEVENS RELINQUISHING AUTHORITY OVER THE DPW DEPARTMENT TO COUNCIL PRESIDENT VIGEANT WHO WOULD SERVE AS ACTING MAYOR SPECIFIC TO THE DPW DEPARTMENT IN LIGHT OF THE MAYOR'S RECENT DISCLOSURES. FURTHER REQUEST THAT THE CITY SOLICITOR CLARIFY THE PROCEDURES BY WHICH THIS PROCESS WOULD TAKE PLACE.**

ORDERED: That the appointment of James Confrey to the Board of the Council on Aging with a term to expire May 1, 2010, **APPROVED**; adopted.

ORDERED: That the City Council recommend to the Assabet Valley Regional Vocational High School District Committee that the agreement establishing the Assabet Valley Regional Vocational High School District, as amended, be further amended by adoption of option number 4 of Section 14E of Chapter 71 of the Massachusetts General Laws, namely, weighing the votes of elected members on the Assabet Valley Regional Vocational High School District Committee according to the population they represent, **APPROVED**; adopted.

Yea: 9 – Nay: 2

Yea: Delano, Ferro, Schafer, Juairé, Seymour, Landers, Ossing, Vigeant, Levy

Nay: Clancy, Pope

ORDERED: That the grant awarded to the Marlborough Police Department from the Commonwealth of Massachusetts Executive Office of Public Safety and Security in the amount of \$69,262.00 to be used for Emergency Telecommunications expenses (including dispatcher salaries) and furniture replacement for dispatch center in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to New Cingular Wireless PCS, LLC, at 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is New Cingular Wireless PCS, LLC (“AT&T”), having a usual place of business at 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter “Applicant”).
2. Through its Application to City Council for issuance of a Special Permit (hereinafter “Special Permit Application”), the Applicant seeks permission to allow co-location of six (6) wireless communications panel antennas on an existing 140’ high wireless communications monopole, and one (1) GPS antenna mounted on a proposed ice bridge, and a 12’ X 20’ equipment shelter on the ground within an existing compound and associated cables, utilities and equipment (hereinafter “Proposed Wireless Communications Facility Project” or “Proposed WCF Project”), substantially as depicted on a set of plans entitled “Marlborough Rte. 20 East,” by Aerial Spectrum, Incorporated, dated 12/11/08, as submitted with the Special Permit Application, and as revised 3/17/09 (hereinafter “Plans”).
3. The location of the Proposed WCF Project is 860 Boston Post Road East Marlborough, MA and is more particularly identified on the Assessor’s Map of the City of Marlborough as Map 61 of Lot 16 (hereinafter “the Site”). The owner of record for the Site is the CITY OF MARLBOROUGH.

15

4. The Applicant is a lessee of Bell Atlantic Mobile of Massachusetts Corporation, Ltd. d/b/a Verizon Wireless, which owns the existing 140' high wireless communications monopole (the "VZW Tower"). The City of Marlborough is the owner of the underlying compound area.
5. The Site is zoned Rural Residential (RR) and Business (B). The Proposed WCF is located in the Rural Residential (RR) portion of the Site. Wireless Communication Facilities are allowed by grant of Special Permit in the Rural Residential (RR) Zoning District.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Ordinance set forth in the City Code of the City of Marlborough (hereinafter "Marlborough Zoning Ordinance").
7. Pursuant to the Rules and Regulations of Application for Special Permit (hereinafter "Rules and Regulations"), the Building Commissioner, on behalf of the Planning Director, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on January 26, 2009, for which proper notice was published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance.
11. The Applicant requested waivers of certain Preliminary Site Plan requirements of Article VIII, § 200-59 (C) (5) and (6) of the Marlborough Zoning Ordinance governing special permits, on the grounds that (a) the VZW Tower exists; (b) the approved plans for the VZW Tower show the required information; (c) AT&T is making a minimal addition to the Site in the form of the co-located Proposed WCF Project on and next to the existing, approved VZW Tower; and (d) some of the requirements do not apply to a tower at all. The Applicant subsequently withdrew its request as to § 200-59 (C) (5), and the Applicant now agrees that § 200-59 (C)(6) is not applicable to the Proposed WCF Project.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.

13. The Council, in reviewing the Applicant's Special Permit Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance, applicable to the Proposed WCF Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Special Permit Application.
- B) The Site is an appropriate location for the Proposed WCF Project and the Proposed WCF Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this decision.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Facilities, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the Marlborough Zoning Ordinance, **GRANTS** the Applicant a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 13:**
- 1) The Proposed WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the applicable conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of its Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCF Project.

/7

- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Special Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCF referenced in this Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant intends to maintain back-up batteries in its proposed equipment shelter. Any disposal of such batteries shall be conducted in a safe manner and in compliance with all applicable environmental laws and regulations.
- 8) No operation of this Proposed WCF Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) The Proposed WCF Project shall be subject to site plan review, if applicable.
- 10) Applicant's co-axial cables shall run inside the monopole structure.
- 11) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed.
- 12) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Commissioner for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCF Project does become operational and, further, must submit said written report

18

within one (1) month after said operational date. The written report to the City Council shall: i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCF Project; ii) include a professional opinion by a third party certifying that the Proposed WCF Project fully complies with all applicable radio frequency emission standards promulgated by the Federal Communications Commission ("FCC") and any other applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall: i) state what the changes or upgrades are; (ii) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; (iii) provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) include a professional opinion by a third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards.

- 13) Applicant, solely at its own expense and in a manner acceptable to the City of Marlborough, shall remove all City of Marlborough equipment from the existing Fire Department (F.D.) equipment shelter shown on the Plans and shall relocate the City's equipment inside the Applicant's proposed equipment shelter shown on the Plans. Applicant shall grant the City of Marlborough access to the City's equipment inside the Applicant's proposed equipment shelter at all times, 24 hours per day, 7 days per week, it being expressly understood by the Applicant that the City's equipment is for emergency communications involving or relating to the health, safety and welfare of the public. In the event either that the Applicant's special permit is revoked by the City, or that the Applicant's lease with Verizon Wireless expires or is terminated, then the Applicant, solely at its own expense and in a manner acceptable to the City of Marlborough, shall remove all City of Marlborough equipment from inside the Applicant's proposed equipment shelter shown on the Plans and shall relocate the City's equipment to a Fire Department equipment shelter at the approximate location currently shown on the Plans.

19

Yea: 10 – Nay: 0

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

Abstain: Juairé

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:40 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

Karen H. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 15, 2009

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

Honorable President Vigeant and Councilors:

I am submitting herewith a transfer request in the amount of \$29,400.00 from Account No. 140014006-54830 (Fuel and Lubricants) to Account No. 60086006-52920 (Rubbish Collection). This transfer request is the result of increased solid waste disposal costs associated with the renegotiated contract.

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

Sincerely,

Nancy E. Stevens
Mayor

attachment



3,
City of Marlborough
Office of the Mayor

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

Nancy E. Stevens
MAYOR

Karen A. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 15, 2009

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

Honorable President Vigeant and Councilors:

I am submitting for your approval a transfer request in the amount of \$175.00 moving funds from account number 16100002-50520 (Principal Clerk) to account number 16100003-50860 (Full-time Library Clerk). This transfer is required to meet a payroll deficit in the FY09 budget.

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

Sincerely,

Nancy E. Stevens
Mayor

attachment

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Library

FISCAL YEAR: 2009

FROM ACCOUNT:

Available Balance				Available Balance
<u>\$18,110.49</u>				<u>\$5,252</u>

Amount

Amount

Account Description:

Org Code Object Account Description:

16100002 50520

\$175.00

16100003 50860

Full Time Library Clerk

\$5,252

Reason: Excess funding in this account because position was open for two months.

Insufficient funding to meet payroll until the end of the fiscal year.

Reason:

Reason:

Reason:

Department Head signature:

Mayor's signature:

[Handwritten Signature]

[Handwritten Signature]



City of Marlborough
Office of the Mayor

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

Nancy E. Stevens
MAYOR

Karen A. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

4/1

April 15, 2009

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

Honorable President Vigeant and Councilors:

This letter is to inform you that following a ruling by the Massachusetts Department of Revenue, Marlborough will be receiving a refund of \$381,696.08 from the Assabet Valley Regional Vocational School District.

Excess and Deficiency Fund balances above the set cap will be refunded to member communities based on their FY09 apportionment of assessment. The attached correspondence from Superintendent Mary Jo Nawrocki further details this one-time refund.

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

Sincerely,

Nancy E. Stevens
Mayor

attachment

Assabet Valley Regional Vocational School District

215 Fitchburg Street
Marlborough, Massachusetts 01752-1288

Mary Jo Nawrocki
Superintendent - Director

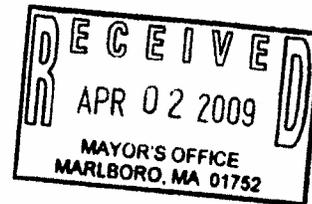
Mark R. Hollick
Principal

Patrick C. Collins
Director of Business Operations

42

March 31, 2009

Mayor Nancy Stevens
City Hall
140 Main Street
Marlborough, MA 01752



Dear Mayor Stevens:

On March 30, 2009, the Department of Revenue (DOR) completed its certification of Assabet's Excess and Deficiency Fund (E&D) for FY08. As you know, this is an annual process and if you did not receive a copy of that notification we have enclosed one for your files. The certification states an E&D balance of \$1,637,201 which is \$821,205 over our \$815,996 cap.

The amount over our cap (\$821,205) is being refunded to member communities to reduce your FY09 assessment per MGL Ch:71 Section 16B1/2. (Your fourth quarter assessment amounts will not change and will be issued soon.)

The amount being returned to your community is based upon the FY09 apportionment of assessment to member communities and is detailed below:

Member	Operating Ratio	Amount of Refund to Reduce Assessment
Berlin	4.25%	\$ 34,901.21
Hudson	20.38%	\$167,361.58
Marlboro	46.48%	\$381,696.08
Maynard	10.70%	\$ 87,868.94
Northboro	7.92%	\$ 65,039.44
Soutboro	2.35%	\$ 19,298.32
Westboro	7.92%	\$ 65,039.44
Totals	100%	\$821,205.00

Berlin, Hudson, Maynard, Marlborough,
Northborough, Southborough, Westborough
(508) 485-9430



Equal Opportunity Institution

Boylston, Clinton, Shrewsbury,
West Boylston
1-800-537-6663

Why the refund this year? In years past, the district accrued its regional transportation reimbursement funds for one year and applied them to the succeeding year's budget to reduce your assessment. This method had been accepted by DOR for the past decade vis a vis our prior year E&D Fund submittals. For FY08, the DOR will no longer allow school districts to account for and budget transportation reimbursements in this way. As a result, the district has now exceeded its E&D cap (5% of the succeeding year's budget). Please know that this is a one-time refund and we do not expect the district will exceed its cap to this magnitude in future years. The good news is that the district will be returning funds to your community in a time when most needed. We clearly hope this unexpected refund eases your FY09 & FY10 fiscal problems. This policy change, however, does place the Assabet district into a more unstable position with respect to its annual budget because regional transportation reimbursements have fluctuated widely in past years.

Please contact me or our business manager, Patrick Collins, if you have any questions.

Sincerely,



Mary Jo Nawrocki
Superintendent-Director

MJN/jr

cc: Patrick Collins, Director of Business Operations
Peter Zona, Treasurer



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

5
Nancy E. Stevens
MAYOR

Karen H. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 17, 2009

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

Honorable President Vigeant and Councilors:

I'd like to take this opportunity to acknowledge the fabulous community event taking place this week at City Hall. I would like to extend a warm invitation to the general public to visit "Art in Bloom 2009".

This wonderful spring celebration brings art to life through flowers and showcases both the talented artwork of Marlborough Public School students and the Colonial Garden Club. Floral creations by the Colonial Garden Club will be on display next to the works of student art that inspired them.

Please visit this free exhibit at City Hall during business hours 9:00 a.m. – 5:00 p.m. Tuesday, April 28 through 3:00 p.m. on Wednesday, April 29.

Sincerely,

Nancy E. Stevens
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

Karen M. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 23, 2009

City Council President Arthur G. Vigeant
Marlborough City Council
Marlborough City Hall - 2nd Floor
140 Main Street
Marlborough, MA 01752

RE: Director of Personnel

Honorable President Vigeant and Councilors:

I am submitting for your consideration Mr. David Brumby for the position of Director of Personnel. Mr. Brumby has extensive Human Resources experience in the private sector as well as municipal experience serving on the Personnel Committee in the Town of Northborough. Given his experience, knowledge and personality I believe that Mr. Brumby will be an excellent addition to the City of Marlborough.

Attached is Mr. Brumby's resume for your information.

I would like to take this opportunity to thank the members of the second search committee, Tony Trodella, Chief Assessor for the City of Marlborough, Jean Kitchen, Town Administrator for the Town of Southborough and John Petrin, Town Manager for the Town of Ashland. I sincerely appreciate their taking time to assist the City of Marlborough in filling this important position. Also I would like to publicly thank Police Chief Mark Leonard, Fire Chief Dave Adams and Comptroller/Treasurer Tom Abel for their assistance during the first search process.

While I ultimately agreed to conduct a second round of interviews for this position, I continue to believe the process followed during the first search was appropriate, comprehensive and without question, resulted in the selection of the most qualified candidate, Mrs. Karen Kisty. I want to take this time to personally recognize Mrs. Kisty for the fine work she accomplished as Acting Personnel Director as well as my Executive Aide. The class and professionalism she has exhibited during the debate on her appointment is a testament to her character and personality.

Please feel free to call with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy E. Stevens".

Nancy E. Stevens
Mayor

62

Nine Rice Avenue
Northborough, MA 01532
March 27, 2009

Personnel Department
City of Marlborough
140 Main Street
Marlborough, MA 01752

Please find enclosed a copy of my resume for the position of Director of Personnel for the City of Marlborough.

I am a Human Resources professional with a broad base of experience in the high technology, financial and municipal sectors. My background includes employee relations, compensation administration, recruitment, employee retention, benefits design and administration, HR systems, budgets, and operations. Additionally, my professional experience includes four years as a member of the Town of Northborough Personnel Committee. Northborough's Personnel Committee assists the Town Manager and Selectmen on issues such as collective bargaining strategies, grievance hearings, job classifications, training recommendations, personnel bylaw changes, and other issues pertaining to Northborough's employee population.

Although I currently live in Northborough, I was born and grew up in Marlborough. I am still active in the Marlborough community through my association with St. Mary's Credit Union. I have been a member of St. Mary's Board of Directors since 1996 and currently serve as Chairman of St. Mary's Compensation Committee.

Thank you for your consideration. I hope to have an opportunity to interview for the Director of Personnel in the near future.

Sincerely,

David Brumby

DAVID B. BRUMBY

Nine Rice Avenue
Northborough, MA 01532

DaveBrumby@gmail.com
508-393-6149 (H)

SUMMARY

Versatile, business-focused Human Resources leader with demonstrated success in providing broad-based leadership in environments experiencing rapid growth and organizational change. Viewed as a trusted advisor and skilled project manager who diagnoses and solves complex people based issues in diverse organizations. Proven ability to partner with senior leaders to influence business strategy and align HR activities to achieve business objectives. Ability to relate and communicate effectively with all levels of an organization. Strengths include:

- ◆ Employee Relations
- ◆ Talent Acquisition
- ◆ Retained Search
- ◆ HR Operations
- ◆ Benefits
- ◆ Compensation

- **Employee Relations:** Increased organizational productivity by implementing paper and electronic performance management systems that fostered timely and accurate performance reviews.
- **Talent Acquisition:** Led multiple staffing groups that defined, identified and recruited high quality, difficult to recruit candidates. Consistently filled requisitions below the cost per hire industry average.
- **Executive Coaching:** Coached Business Unit VP and General Manager to develop a formal detailed Human Resources Plan that proved critical to the division's success when business conditions changed.
- **Benefits:** Generated annual savings of \$240,000 in broker fees through re-negotiation and consolidation of multiple US benefit programs.
- **Compensation:** Worked with the executive leadership team and the board of directors to develop an executive philosophy and a tool to measure executive performance.

EXPERIENCE

Avid Technology, Inc., Tewksbury, MA

1995 -2008

Avid Technology, Inc., is a leading developer of video and audio solutions for capturing, creating, editing and distributing digital media.

Director, Human Resources Operations

(2005-2008)

Managed Avid's Corporate Benefits, HRIS and Staffing Groups. Led the development and acquisition of HR solutions that provided employees, managers and the HR community with tools and processes to resolve personal, benefits, employee relations and staffing issues. Built the systems and process groundwork for a planned shared services implementation.

- Selection and implementation of Avid's first electronic applicant tracking system.
- Managed the development of Avid's Global Staffing Branding Initiative.
- Consolidated the US EEO/AAPP program and Avid's US immigration and relocation processes into one centralized process.
- Reduced contractor expenses by 15% by designing and implementing a managed staffing model for all US Avid contract employees.
- Managed the implementation of the SAP/HCM module as the replacement for PeopleSoft.
- Improved employee satisfaction by implementing the first electronic benefits open enrollment for the company.

Human Resources Director, Video Development and Operations

(2000-2005)

Human Resources Director, Video Service and Manufacturing Operations

(1996-2000)

Delivered a full range of Human Resources Generalist services for two large groups of Avid employees; Video Manufacturing Operations and Video Development and Operations.

64

- Development of division wide performance distributions and ranking processes for salary planning.
- Rollout of performance management training programs for all managers.
- Assisted employees and managers with multiple reorganizations, acquisitions and restructurings.
- HR team leader for the largest acquisition in the history of the company.
- Managed the stock, bonus and equity adjustment programs across multiple divisions.
- Provided executive level consulting services to General Managers and staff in the areas of organizational development; coaching; strategic planning; oral and written communications.

Human Resources Manager, Manufacturing/Hardware Engineering (1995)

Provided Human Resources services to the Manufacturing and Hardware Engineering Groups.

- Defined and established the role of Human Resources within two groups with a history of no dedicated HR support.
- Designed and delivered a climate survey within Hardware Engineering that helped to identify and correct product and management issues.
- Co-developing and launched a Manufacturing quality training program for all Manufacturing employees.

Employment Consultant

(1995)

Provided contract recruiting services to Avid's engineering organizations.

Executive Alliance, Inc., Marlborough, MA

1993-1995

Executive Alliance is a Human Resources consulting firm that at that time specialized in retained search, compensation and reward systems and human resources information systems.

Senior Search Consultant

Managed retained search assignments in marketing, manufacturing, computer engineering (hardware and software) and biotechnology.

Motorola Information Systems Group, Mansfield, MA

1990-1993

Motorola Information Systems Group (formerly Codex) a subsidiary of Motorola Inc. designs and manufactures high performance data communications products and systems.

Human Resources Manager

Provided Human Resources services for the Product Development Division.

- Administered the Motorola Employee Attitude Survey and managed division wide follow-up feedback sessions.
- Member of the management team that re-engineered and piloted new performance and salary management program that leveraged pay for performance and improved employee satisfaction.
- Coordinated the Product Division random drug testing program and managed the associated employee relations issues.

Data General Corporation, Westborough, MA

1983-1990

Data General, a billion dollar computer systems and peripherals manufacturer.

- **Systems Development Division Employment Manager** (1988-1990)
- **Human Resources Representative** (1985-1988)
- **College Relations Representative** (1983-1985)

65

EDUCATION

Babson College, Wellesley, MA
Bachelor of Science in Management

AFFILIATIONS

Town Of Northborough Personnel Committee **1990-1994, Chairman 1992-1994**

Town of Northborough Personnel Committee consists of five Northborough residents chartered to assist town government with interpreting, implementing and amending Northborough's Consolidated Personnel Bylaw. Committee responsibilities/accomplishments include:

- Consult with Town Administrator and Selectmen on collective bargaining strategies.
- Present salary increase recommendations for approval at annual town meeting.
- Work with Town Management and Town Employees as part of the employee grievance process.
- Annually sponsor amendments to the Northborough Consolidated Personnel Bylaw at Town Meeting.
- Classify positions within municipal job families.
- Established the first performance appraisal system for town employees.

Town of Northborough Search Committees

- Peaslee School Principal
- Assistant Town Administrator
- Algonquin Regional Varsity Football Coach

St. Mary's Credit Union, Marlborough, MA.

1996-Present

Board Member, Chair Compensation Committee

St. Mary's Credit Union is a state chartered credit union with over 500 million dollars in assets headquartered in Marlborough, MA. Committee responsibilities/accomplishments include:

- Redesigned the Credit Union performance management process
- Annual approval of the Credit Union's salary increase budget
- Approval of benefits program renewals (STD, LTD, Workers Comp, Life, Health)
- Manage the executive review process

MEMBERSHIPS

Society for Human Resource Management (SHRM)
Northeast Human Resources Association (NEHRA)



City of Marlborough
Office of the Mayor

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

Nancy E. Stevens
MAYOR

Karen H. Kisty
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 15, 2009

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

Honorable President Vigeant and Councilors:

I am submitting for your approval the appointment of William Dunbar to the position of Fort Meadow Commissioner. Mr. Dunbar replaces Mr. Joseph DelGenio, whose term expires on May 31, 2009. Mr. Dunbar's appointment is a three year term ending May 31, 2012.

I am also submitting for your approval Mr. Lee Thomson for reappointment to the Fort Meadow Commission. Mr. Thomson's appointment is a three year term ending May 31, 2012.

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

Sincerely,

Nancy E. Stevens
Mayor

attachment



CITY OF MARLBOROUGH
Marlborough, Massachusetts 01752

Fort Meadow Commission



TOWN OF HUDSON
Hudson, Massachusetts 01749

72

April 13, 2009

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

Dear Mayor Stevens:

I am submitting the name of William Dunbar for the position of Fort Meadow Commissioner for a three year term ending May 31, 2012.

Bill has lived on Fort Meadow for many years and will be an asset to the commission.

Sincerely,

Lee Thomson
Chairman
Fort Meadow Commission



City of Marlborough
Office of the Mayor

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

Nancy E. Stevens
MAYOR

Karen J. Kistly
EXECUTIVE AIDE

Diane C. Halper
EXECUTIVE SECRETARY

April 16, 2009

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

Honorable President Vigeant and Councilors:

I am submitting for your approval the reappointment of the following individuals to the Community Development Authority:

Mr. Michael Hogan for a three year term ending April 15, 2012.

Ms. Camille Duridas for a three year term ending June 25, 2012.

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

Sincerely,

Nancy E. Stevens
Mayor

4/



City of Marlborough Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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

LEGAL@MARLBOROUGH-MA.GOV

DONALD V. RIDER, JR.
CITY SOLICITOR

CYNTHIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

BEVERLY J. SLEEPER
CHIEF PROCUREMENT OFFICER

KATHERINE M. KIMBER
PARALEGAL

APR 23 2009

April 23, 2009

Arthur Vigeant
President
Marlborough City Council

RE: Question as to Acting Mayor's Jurisdiction over DPW
Order No. 08/09-1002167A

Dear President Vigeant:

By vote taken on April 6, 2009 (enclosed herewith), the City Council referred to the Legal Department a question as to the legality of transferring jurisdiction over the City of Marlborough Department of Public Works ("DPW") from the Mayor to the City Council President in his capacity as Acting Mayor. This question is premised on a feeling, asserted by some in the City, that the Mayor cannot be impartial on any matter whatsoever involving the DPW. This would include but not be limited to the DPW's annual budget, all DPW budget transfers, all collective bargaining with the various DPW unions, all DPW supervising, all DPW training, and all DPW civil service matters including all hiring, disciplining, suspensions, terminations, and so on.

In turn, the feeling that the Mayor cannot be impartial on any matter whatsoever involving the DPW is premised on the Mayor's various disclosures filed with the City Clerk (enclosed herewith), including that she has a "personal relationship" with the Commissioner of the DPW and that she appointed the Commissioner's son to a position in the DPW.

The short answer is that the proposed transfer of DPW jurisdiction is not supported by the law.¹

I. Does the Mayor's have a conflict of interest relative to DPW?

The first question is whether the Mayor has a conflict of interest relative to DPW. This is a 2-part question, as follows.

¹ Given that the jurisdictional question posed by the Council is a serious one going to the heart of Marlborough's form of government, please note that a copy of this opinion has been forwarded to town counsel for Framingham, Petrini & Associates, P.C., for their review and comment.

A. Does the Mayor have an actual conflict of interest relative to DPW?

An actual conflict of interest can arise when a municipal employee has a financial interest in a particular matter. Under MGL c. 268A, § 19(a),

... a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished

MGL c. 268A, § 19(a). Here, there is no evidence of any particular DPW matter in which the Mayor, as a municipal employee, has a financial interest. Nor is the DPW Commissioner the Mayor's "partner," as the State Ethics Commission's opinions analyze that term to apply to business partnerships.

Accordingly, there is no evidence that the Mayor has an actual conflict of interest relative to DPW.²

B. Does the Mayor have an apparent conflict of interest relative to DPW?

Does the Mayor's continued participation in DPW matters convey the appearance that she is likely to act or fail to act in DPW matters as a result of undue influence of, or to unduly favor, the Commissioner – in short, does the Mayor have an apparent conflict of interest relative to DPW? The answer is that, yes, she would have, but only if she had failed to file disclosures pursuant to MGL c. 268A, § 23(b)(3).

Under § 23(b)(3),

[n]o current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know ... act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a

²The present situation, in which there is no § 19(a) financial conflict of interest, is to be distinguished from the situation set forth in State Ethic Commission opinion EC-COI-94-5. According to that opinion, a mayor of a city was married to a member of that city's firefighters union. That mayor, therefore, had a § 19(a) financial conflict of interest in the outcome of negotiations for the city's collective bargaining agreement with the firefighters union. The legal question was whether the mayor, as the city's sole collective bargaining authority, could participate in those negotiations. The Ethics Commission determined that the acting mayor procedure set forth in MGL c. 43, § 26 was not applicable for several reasons. Consequently, the Ethics Commission applied the rule of necessity to permit the mayor to participate in the negotiations, but only to the extent that the mayor could select someone else to be the mayor's designated representative under MGL c. 150E, § 1, pertaining to public employee labor relations. That mayoral selection, according to the Ethics Commission, would enable the city to carry out its collective bargaining obligation free of the mayor's financial conflict of interest.

manner which is public in nature, the facts which would otherwise lead to such a conclusion.

9
3

MGL c. 268A, § 23(b)(3).

According to the State Ethics Commission's Commission Advisory No. 05-01: The Standards of Conduct (Section 23), "[a] reasonable impression of favoritism or bias may arise when a public employee, knowingly or with reason to know, acts on matters affecting the interest, whether financial or non-financial, of a friend, a business associate or a relative other than an immediate family member or a non-financial interest of an immediate family member." Commission Advisory No. 05-01, at 1. However, § 23(b)(3) provides a legally sanctioned means for a public employee to dispel the otherwise "reasonable impression of favoritism or bias":

[I]f a reasonable person having knowledge of the relevant circumstances would conclude that a public employee might be improperly influenced, the public employee can dispel this impression of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a public employee to disclose a personal relationship with someone appearing before his or her board.

Commission Advisory No. 05-01, at 1 (emphasis supplied). Thus, § 23(b)(3) explicitly provides:

It shall be unreasonable to so conclude [that the public officer or employee's conduct is exhibiting favoritism or bias] if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

MGL c. 268A, § 23(b)(3)(emphasis supplied).³

Accordingly, given that the Mayor has filed the enclosed written disclosures with the City Clerk, § 23(b)(3) declares it per se unreasonable for anyone to conclude that the DPW Commissioner can improperly influence or unduly enjoy the Mayor's favor in the performance of her duties, or that she is likely to act or fail to act as a result of the position or undue influence of the DPW Commissioner. Having filed the disclosures, she may continue to participate in DPW matters.

Although some in the City have asserted that when a municipal official discloses an apparent conflict, he or she must abstain from participation, that assertion is incorrect. The correct rule as to an apparent conflict of interest is not to 'disclose and abstain,' but rather to 'disclose or abstain.' The Ethics Commission makes clear that, "[o]nce a public disclosure has been made, the public employee may participate in the matter notwithstanding the 'appearance' of a conflict," Commission Advisory No. 05-01, at 1 (emphasis supplied). At the same time, the Ethics Commission makes equally clear that, "[w]hen public employees do act on matters

³Compare Ethics Primer: The Code of Conduct, at 2 ("The Commission has advised that elected municipal officials should make such disclosures in writing and file them as public records with their municipal clerk. In some circumstances, it may also be prudent to reiterate the disclosure as part of the meeting minutes.")(emphasis supplied) with Commission Advisory No. 05-01, at 2 ("In addition [to the written disclosure], the Commission advises public employees to make an oral disclosure for inclusion in the meeting minutes.")

affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person.” Id.

Therefore, as a legal matter, the Mayor does not have an apparent conflict of interest relative to DPW. Because of the disclosures she filed, § 23(b)(3) declares any conclusion to the contrary to be “unreasonable” as a matter of law. However, she must “act objectively and be careful not to use her official position to secure any unwarranted privilege or benefit for” the Commissioner and/or DPW.

II. Notwithstanding that it is unreasonable as a matter of law to conclude that the Mayor has an apparent conflict of interest relative to DPW, may jurisdiction over the DPW be legally transferred from the Mayor to the City Council President in his capacity as Acting Mayor?

Suppose that it were reasonable as a matter of law – which it is not – to disregard the Mayor’s various disclosures filed with the City Clerk and to thus conclude that the DPW Commissioner can improperly influence or unduly enjoy the Mayor’s favor in the performance of her duties, and/or that she is likely to act or fail to act as a result of the position or undue influence of the DPW Commissioner. The question would then be whether jurisdiction over the DPW may legally be transferred from the Mayor to the City Council President in his capacity as Acting Mayor. The question involves an analysis of MGL c. 43, § 26, which is part of the City’s charter adopted in 1922.

Section 26 provides in pertinent part as follows:

If the mayor is absent or unable from any cause temporarily to perform his duties they shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called ‘acting mayor’, and he shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments.

MGL c. 43, § 26. Analysis of § 26 involves 3 issues, any 1 of which independently suffices to show that jurisdiction over the DPW may not legally be transferred from the Mayor to the City Council President in his capacity as Acting Mayor.

A. All or nothing.

According to the Massachusetts Supreme Judicial Court, “[t]o ‘act as mayor’ is to perform all of the duties of the office as defined by the charter, and the general and special laws applicable to the administration of the municipal affairs of the city.” Ryan v. City of Boston, 204 Mass. 456, 459 (1910)(emphasis supplied). The Ethics Commission has interpreted Ryan to mean that, under § 26,

the acting mayor shall have the power to perform all of the duties of the office, not merely those which the mayor is disqualified to perform by reason of conflict
... .

95
EC-COI-94-5, at 2 (emphasis in original). Thus, under § 26, an acting mayor either has all of an elected mayor's power, or none; § 26 does not empower the acting mayor to have power over just 1 municipal department (namely, the department as to which the elected mayor is disqualified by reason of conflict), while the elected mayor simultaneously has the remaining power over the remaining municipal departments. Under § 26, it is either all or nothing.

Here (assuming that it is reasonable as a matter of law, which it is not, to disregard the legal consequences of the Mayor's various disclosures filed with the City Clerk which permit her to continue to participate in DPW matters), transferring jurisdiction over the DPW from the Mayor to the City Council President in his capacity as Acting Mayor would not be either all or nothing. The Mayor would continue to be Mayor of all municipal departments, except for DPW, which would have its own mayor, i.e., the Acting Mayor. This splitting of the Mayor's office into 2 heads would not conform with § 26.

B. Inability "temporarily to perform his duties."

Section 26 speaks to an elected mayor's inability from any cause "temporarily to perform his duties." "Temporarily" means for a limited time only, i.e., not permanently. Here (assuming once again that it is reasonable as a matter of law, which it is not, to disregard the legal consequences of the Mayor's various disclosures filed with the City Clerk which permit her to continue to participate in DPW matters), the Mayor's inability to perform her duties relative to DPW would hypothetically be caused by an apparent conflict of interest relative to DPW. Such an apparent conflict would last for approximately the next 8 months until the end of her current term in January 2010 – and for another 2 years beyond that, in the event that the Mayor runs for re-election and wins in November 2009. Thus, the Mayor would not be unable "temporarily to perform ... [her] duties," but rather would be unable permanently to perform her DPW duties for so long as 1) the Mayor remains in her current elected position, 2) the DPW Commissioner remains in his current appointed position; and 3) the personal relationship continues between the 2 officials.

Section 26 "recognizes the temporary nature of the acting mayor by ending his powers when the inability of the mayor to act ceases." Grant v. Aldermen of Northampton, 316 Mass. 432, 434 (1944). Since the hypothetical inability of the Mayor to act would not cease, but instead would be permanent for approximately the next 8 months, if not for another 2 years beyond that, the powers of the Acting Mayor would be just as permanent. Such permanency would not conform with § 26.

C. Possessing "the powers of mayor only in matters not admitting of delay."

Further, since § 26 is expressly limited to only "matters not admitting of delay," the Massachusetts Supreme Judicial Court has construed § 26 to require "a necessity so importunate that it cannot be resisted with reason." Dimick v. Barry, 211 Mass. 165, 166-67 (1912). Examples include "[i]mpending disaster, threatened disorder, public pestilence, [and] devastation by flood or fire," id. at 167, or where time is of the essence, such as "[a]ppropriations necessary for immediate payment of fixed charges of various municipal departments." Id. "It is not a mere passing incident which enables another [the acting mayor] to supplant him [the elected mayor], but a pressing urgency of an unusual kind." Id. at 168.

9/6

Further, “the extremely limited power conferred by” § 26 indicates that the final determination of what constitutes “a pressing urgency of an unusual kind” is not to be left “to the conscience of persons clothed temporarily with a power, for the exercise of which they were not primarily selected.” Id. (emphasis supplied).

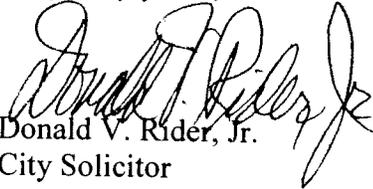
Here (assuming yet again that it is reasonable as a matter of law, which it is not, to disregard the legal consequences of the Mayor’s various disclosures filed with the City Clerk which permit her to continue to participate in DPW matters), an apparent conflict of interest simply does not involve a matter “not admitting of delay.” An apparent conflict of interest is not comparable to “[i]mpending disaster, threatened disorder, public pestilence, [and] devastation by flood or fire,” nor even with time-essential situations such as “[a]ppropriations necessary for immediate payment of fixed charges of various municipal departments.” Accordingly, transferring jurisdiction over the DPW from the Mayor to the City Council President in his capacity as Acting Mayor, based on an apparent conflict of interest already dispelled by the Mayor’s disclosures, would not comport with § 26.

III. Conclusion.

For all the aforementioned reasons, the proposed transfer of DPW jurisdiction is not supported by the law.

As always, each Councilor should feel free to contact me prior to the April 27 Council meeting in order to discuss this opinion with me. Thank you for your attention to this matter.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

Enclosures

97



IN CITY COUNCIL

APRIL 6, 2009

Marlborough, Mass., _____

ORDERED:

That the DPW Commissioner take the following steps in connection with budgetary issues previously discussed by the City Council and in keeping with other municipal departments in the City:

- Prepare the DPW 2010 Operating Budget, to include a three percent reduction from the FY2009 budget, similar to the request made of the School Department;
- Reduce the number of DPW employees by four (4) which is the number of vacant positions in the Commissioner's report, "DPW OPERATIONS REVIEW: FORESTRY, PARKS AND CEMETERIES," delivered to the City Council in October 2008 and discussed with the Operations & Oversight Committee in subsequent hearings;
- Take steps to privatize minimal lawn maintenance functions as discussed with the Operations & Oversight Committee, be and is herewith **RECONSIDERED TO PLACE ON APRIL 27, 2009 AGENDA IN ADDITION TO THE CITY SOLICITOR EXPLORE THE POSSIBILITY OF MAYOR STEVENS RELINQUISHING AUTHORITY OVER THE DPW DEPARTMENT TO COUNCIL PRESIDENT VIGEANT WHO WOULD SERVE AS ACTING MAYOR SPECIFIC TO THE DPW DEPARTMENT IN LIGHT OF THE MAYOR'S RECENT DISCLOSURES. FURTHER REQUEST THAT THE CITY SOLICITOR CLARIFY THE PROCEDURES BY WHICH THIS PROCESS WOULD TAKE PLACE.**

ADOPTED

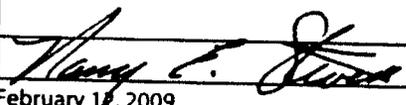
ORDER NO. 08-1002167A

98

RECEIVED
FEB 12 2009

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L.C.268A §23(b)(3)**

I make this disclosure pursuant to G.L.c.268 A, §23 (b)(3) in order to dispel any appearance of potential conflict of interest occasioned by the facts set out below, that I may be improperly or unduly influenced in the performance of my official duties, or that I would be likely to act or fail to act as a result of kinship, rank, position or the undue influence of any part or person.

Name:	Nancy Elizabeth Stevens
Title or Position:	Mayor
Agency/Department:	City of Marlborough
Agency address:	140 Main Street, Marlborough, MA 01752
Office Phone:	508-460-3770
I publicly disclose the following facts (Attach additional pages if necessary):	<p>I currently have a personal relationship with the Commissioner of Public Works for the City of Marlborough , Ron LaFreniere. This relationship will not affect my ability to remain impartial in matters relating to the Department of Public Works including but not limited to budgeting, personnel, discipline and contract negotiations.</p>
Signature:	
Date:	February 12, 2009

G.L.c.268 A, §23 (b)(3): No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know, act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

**Appointed state, county and municipal officials and employees should file with their appointing authority.
Elected state officials should file with the appropriate House or Senate Clerk or the Ethics Commission.
Elected county officials should file with the county clerk.
Elected municipal officials should file with the city or town clerk.**

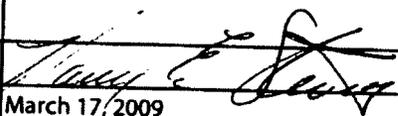
Attach additional pages if necessary.

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L.C.268A §23(b)(3)**

RECEIVED
MAR 17 2009
CITY CLERK

99

I make this disclosure pursuant to G.L.c.268 A, §23 (b)(3) in order to dispel any appearance of potential conflict of interest occasioned by the facts set out below, that I may be improperly or unduly influenced in the performance of my official duties, or that I would be likely to act or fail to act as a result of kinship, rank, position or the undue influence of any part or person.

Name:	Nancy Elizabeth Stevens
Title or Position:	Mayor
Agency/Department:	City of Marlborough
Agency address:	140 Main Street, Marlborough, MA 01752
Office Phone:	(508) 460-3770
I publicly disclose the following facts (Attach additional pages if necessary):	Two City of Marlborough department heads, Fire Chief David W. Adams and Commissioner of Public Works Ronald M. LaFreniere, have submitted to me, as their appointing authority, disclosures of financial interest, pursuant to MGL c. 268A, s. 19(b). Chief Adams' disclosure pertains to both his employment agreement with the City of Marlborough, as well as to his son's employment as a City firefighter. Commissioner LaFreniere's disclosure pertains to his son's hiring and employment with the Marlborough Department of Public Works. I have determined in both cases, after having reviewed them, that the financial interest of each department head is not so substantial as to be deemed likely to affect the integrity of the services which the City of Marlborough may expect from each department head.
Signature:	
Date:	March 17, 2009

G.L.c.268 A, §23 (b)(3): No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know, act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

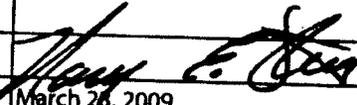
**Appointed state, county and municipal officials and employees should file with their appointing authority.
Elected state officials should file with the appropriate House or Senate Clerk or the Ethics Commission.
Elected county officials should file with the county clerk.
Elected municipal officials should file with the city or town clerk.**

Attach additional pages if necessary.

DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST AS REQUIRED BY G. L.C.268A §23(b)(3)

RECEIVED
MAR 24 2009

I make this disclosure pursuant to G.L.c.268 A, §23 (b)(3) in order to dispel any appearance of potential conflict of interest occasioned by the facts set out below, that I may be improperly or unduly influenced in the performance of my official duties, or that I would be likely to act or fail to act as a result of kinship, rank, position or the undue influence of any part or person.

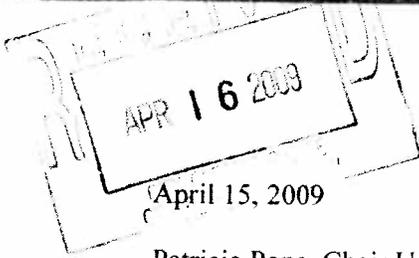
Name:	Nancy Elizabeth Stevens
Title or Position:	Mayor
Agency/Department:	City of Marlborough
Agency address:	140 Main Street, Marlborough, MA 01752
Office Phone:	(508) 460-3770
I publicly disclose the following facts (Attach additional pages if necessary):	As the appointing authority for the City of Marlborough, I have appointed Christopher LaFreniere to the position of Senior Engineering Aid, Grade II at the City of Marlborough Department of Public Works. Christopher LaFreniere is the son of Ronald LaFreniere, who is the Commissioner of Public Works.
Signature:	
Date:	March 24, 2009

RECEIVED
MAR 24 2009

G.L.c.268 A, §23 (b)(3): No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know, act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

**Appointed state, county and municipal officials and employees should file with their appointing authority.
Elected state officials should file with the appropriate House or Senate Clerk or the Ethics Commission.
Elected county officials should file with the county clerk.
Elected municipal officials should file with the city or town clerk.**

Attach additional pages if necessary.



HANCOCK
ASSOCIATES

101

Patricia Pope, Chair Urban Affairs Committee
Marlborough City Council
City Hall
140 Main Street
Marlborough, Massachusetts 01752

Subject: Supplemental Materials in Support of
Special Permit Application Drive-Thru Teller and ATM
Proposed Marlborough Savings Bank
81 Granger Boulevard

Dear Madam Chair:

Hancock Associates, acting on Behalf of Marlborough Savings Bank hereby submits the following additional materials in support of the pending application before the Council.

1. Revised Site Plan – the Drive-through section of the building has been reduced to increase the setback to property line of Ryan from 14.4 ft. to 17.6 ft. The proposed edge of pavement has been moved away from property line of Ryan from 1.3 ft. to 3.8 ft. The landscaping plan has been revised to indicate proposed fencing around the perimeter of the property and adding landscaping along the fence in the proximity of the Ryan's property to assist in noise attenuation. The lighting plan has been further refined and revised to reflect the revised building.
2. Revised Fire Truck (Pumper Truck) Access and Circulation Analysis Plan – As requested by Chief Adams, we have provided this analysis based on the Fire Departments need to access the back of the building with their pumper truck.
3. Letter from VAI providing supplemental traffic information.
4. E-mail regarding drive-up teller audio with copy of City Noise Ordinance Table. Note that the requirement for sound levels at the property line of a residential use is between 43 and 50 decibels for the octave band frequency for human speech (600Hz-4,000 KHz). As per the equipment supplier, the speaker can be set at 60 decibels. Sound dissipates with distance from its source at an inverse square relationship. We have calculated the loss in intensity of the sound emanating from the speaker at the closest point to the property line (20 feet) and found the level to be 34 decibels at the property line, therefore meeting the City Ordinance. This does not account for the further attenuation provided by the proposed fence and plantings. We would welcome a condition that the bank meets the requirements of City Noise Ordinance Chapter 431.
5. Revised rendering of drive-through area consistent with the proposed landscaping as shown on the current site plan.

DANVERS, MA
185 Centre Street
Danvers, MA 01923
Phone: (978) 777-3050
Fax: (978) 774-2816

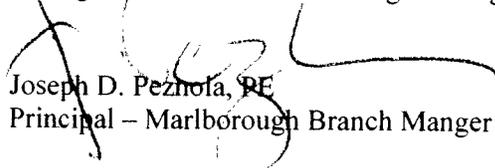
MARLBOROUGH, MA
315 Elm Street
Marlborough, MA 01752
Phone: (508) 460-1111
Fax: (508) 460-1121

LAKEVILLE, MA
4 Freetown Street
Lakeville, MA 02347
Phone: (508) 923-1002
Fax: (508) 923-0022

SALEM, NH
P.O. Box 205
Salem, NH 03079
Phone: (603) 898-4701
Fax: (603) 898-6263

We respectfully request the Council accept the additional materials for consideration at the next Urban Affairs Committee meeting. We feel the information addresses concerns raised by the Council, Committee, neighbors and Departments. Should you have any questions or comments, please do not hesitate to contact me at 508-460-1111 or Mr. Rick Bennett, Bank President at 508-460-4150.

Sincerely,
Hancock Associates,
Acting On Behalf of Marlborough Savings Bank



Joseph D. Peznola, PE
Principal – Marlborough Branch Manger

Cc: Attorney Sēm Aykanian
Rick Bennett, Marlborough Savings Bank

DEPARTMENT OF Public Utilities

This statement is filed in accordance with Chapter 164, Section 84A

CONDENSED FINANCIAL RETURN
FOR YEAR ENDED DECEMBER 31, 2008

NSTAR GAS COMPANY

FULL NAME OF COMPANY

800 BOYLSTON STREET

LOCATION OF PRINCIPAL BUSINESS OFFICE

BOSTON, MA 02199

STATEMENT OF INCOME FOR THE YEAR

Item	Current Year	Increase or (Decrease) from Preceding Year
OPERATING INCOME		
Operating Revenues	548,189,013	(\$8,888,323)
Operating Expenses		
Operation Expense	457,408,270	(4,080,830)
Maintenance Expense	9,134,954	(1,058,945)
Depreciation Expense	18,994,178	592,012
Amortization of Utility Plant	2,238,360	(174,513)
Amortization of Regulatory Debts	5,175,684	-
Amortization of Investment Tax Credit	(188,736)	(0)
Taxes other than Income Taxes	12,820,703	1,104,884
Income Taxes	3,454,540	(5,715,721)
Provisions for Deferred Federal Income Taxes	9,002,744	7,075,748
Federal Income Taxes Deferred In Prior Years..(Credit)	(200,000)	465,892
Total Operating Expenses	517,640,695	(1,789,506)
Net Operating Revenues	30,548,318	(6,918,818)
Income from Utility Plant Leased to Others	-	-
Other Utility Operating Income	-	-
Total Utility Operating Income	30,548,318	(6,918,818)
OTHER INCOME		
Income from Misc. Jobbing & Contract Work	-	120,604
Income from Nonutility Operations	102,124	10,649
Nonoperating Rental Income	259,408	(958,191)
Interest and Dividend Income	91,857	(101,917)
Miscellaneous Nonoperating Income	4,749,695	4,728,395
Total Other Income	5,203,082	3,797,539
Total Income	35,751,400	(3,121,279)
MISCELLANEOUS INCOME DEDUCTIONS		
Miscellaneous Amortization	-	-
Other Income Deductions	574,999	291,851
Total Income Deductions	574,999	291,851
Income Before Interest Charges	35,176,401	(3,413,129)
INTEREST CHARGES		
Interest on Long-Term Debt	6,736,000	(70,072)
Amortization of Debt Discount and Expense	34,480	(12,047)
Amortization of Premium on Debt-Credit	-	-
Interest on Debt to Associated Companies	2,832,897	1,420,373
Other Interest Expense	835,248	(6,518,259)
Interest Charged to Construction-Credit	(132,454)	124,741
Total Interest Charges	10,308,171	(5,055,263)
Net Income	\$24,870,230	1,642,134

BALANCE SHEET

Title of Account	Balance End of Year	Title of Account	Balance End of Year
UTILITY PLANT		PROPRIETARY CAPITAL	
Utility Plant.....	684,659,889	CAPITAL STOCK	
OTHER PROPERTY AND INVESTMENTS		Common Stock Issued.....	71,425,000
Nonutility Property.....	4,243,352	Preferred Stock Issued.....	-
Investment in Associated Companies.....	-	Capital Stock Subscribed.....	-
Other Investments.....	9,000	Premium on Capital Stock.....	118,569,287
Special Funds.....	-	Total.....	189,994,287
Total Other Property and Investments	4,252,352	SURPLUS	
CURRENT AND ACCRUED ASSETS		Other Paid-In Capital.....	-
Cash.....	2,047,169	Earned Surplus.....	142,935,089
Special Deposits.....	-	Surplus Invested in Plant.....	-
Working Funds.....	-	Total.....	142,935,089
Temporary Cash Investments.....	-	Total Propriety Capital.....	332,929,377
Notes and Accounts Receivable.....	58,873,707	LONG-TERM DEBT	
Receivables from Associated Companies.....	46,675,653	Bonds.....	85,000,000
Materials and Supplies.....	64,070,299	Advances from Associated Companies.....	-
Prepayments.....	6,928,512	Other Long-Term Debt.....	-
Interest and Dividends Receivable.....	-	Total Long-Term Debt.....	85,000,000
Rents Receivable.....	-	CURRENT AND ACCRUED LIABILITIES	
Accrued Utility Revenues.....	23,494,283	Notes Payable.....	146,300,000
Misc. Current and Accrued Assets.....	-	Accounts Payable.....	35,008,088
Total Current and Accrued Assets.....	202,089,623	Payables to Associated Companies.....	12,663,928
DEFERRED DEBITS		Customer Deposits.....	1,677,138
Unamortized Debt Discount and Expense.....	440,211	Taxes Accrued.....	-
Extraordinary Property Losses.....	-	Interest Accrued.....	883,044
Preliminary Survey and Investigation Charges.....	2,361	Dividends Declared.....	-
Clearing Accounts.....	-	Matured Long-Term Debt.....	-
Temporary Facilities.....	-	Matured Interest.....	-
Miscellaneous Deferred Debits.....	162,397,798	Tax Collections Payable.....	553,171
Total Deferred Debits.....	162,840,371	Misc. Current and Accrued Liabilities.....	5,186,711
CAPITAL STOCK DISCOUNT AND EXPENSE		Total Current and Accrued Liabilities.....	202,271,080
Discount on Capital Stock.....	-	DEFERRED CREDITS	
Capital Stock Expense.....	-	Unamortized Premium on Debt.....	-
Total Capital Stock Discount and Expense.....	-	Customer Advances for Construction.....	3,198,675
REACQUIRED SECURITIES		Other Deferred Credits.....	103,750,513
Reacquired Capital Stock.....	-	Total Deferred Credits.....	106,948,188
Reacquired Bonds.....	-	RESERVES	
Total Reacquired Securities.....	-	Reserves for Depreciation.....	232,906,329
Total Assets and Other Debits.....	\$ 1,053,842,234	Reserves for Amortization.....	11,190,058
		Reserves for Uncollectible Accounts.....	7,328,546
		Operating Reserves.....	10,458,375
		Reserve for Depreciation and Amortization of Nonutility Property.....	(3,197)
		Reserves for Deferred Income Taxes.....	64,812,479
		Total Reserves.....	326,692,589
		CONTRIBUTIONS IN AID OF CONSTRUCTION	
		Contributions in Aid of Construction.....	-
		Total Liabilities and Other Credits.....	\$ 1,053,842,234

STATEMENT OF EARNED SURPLUS

Account	Amount for Year	Inc/(Dec) from Preceding Year
Unappropriated Earned Surplus (at beginning of period)	134,064,860	11,228,096
Balance Transferred from Income	24,870,229	1,642,134
Miscellaneous Credits to Surplus	-	-
Miscellaneous Debits to Surplus	-	-
Appropriations of Surplus	-	-
Net Additions to Earned Surplus	24,870,229	1,642,134
Dividends Declared-Preferred Stock	-	-
Dividends Declared-Common Stock	16,000,000	4,000,000
Unappropriated Earned Surplus (at end of period)	142,935,089	8,870,229

ELECTRIC OPERATING REVENUES

Account	Operating Revenues	
	Amount for Year	Inc/(Dec) from Preceding Year
SALES OF ELECTRICITY		
Residential Sales	\$	
Commercial and Industrial Sales		
Small (or Commercial)		
Large (or Industrial)		
Public Street and Highway Lighting		
Other Sales to Public Authorities		
Sales to Railroad and Railways		
Interdepartmental Sales		
Miscellaneous Electric Sales		
Total Sales to Ultimate Consumers		
Sales for Resale		
Less: Provision for Rate Refunds		
Total Sales of Electricity		
OTHER OPERATING REVENUES		
Forfeited Discounts		
Miscellaneous Service Revenues		
Sales of Water and Water Power		
Rent from Electric Property		
Interdepartmental Rents		
Other Electric Revenues		
Total Other Operating Revenues		
Total Electric Operating Revenues	None	None

SUMMARY OF ELECTRIC OPERATION AND MAINTENANCE EXPENSES

Functional Classification	Operation	Maintenance	Total
Power Production Expenses		\$	\$
Electric Generation			
Steam Power			
Nuclear Power			
Hydraulic Power			
Other Power			
Other Power Supply Expenses			
Total Power Production Expenses			
Transmission Expenses			
Distribution Expenses			
Customer Accounts Expenses			
Sales Expenses			
Administrative and General Expenses			
Total Electric Operation and Maintenance Expenses	None	None	None

114

GAS OPERATING REVENUES

Account	Operating Revenues	
	Amount for Year	Increase or (Decrease) from Preceding Year
SALES OF GAS		
Residential Sales.....	\$ 312,451,112	\$ (25,546,688)
Commercial and Industrial Sales		
Small (or Commercial).....	135,848,710	(12,309,651)
Large (or Industrial).....	10,890,742	(838,897)
Other Sales to Public Authorities.....	11,332,744	(1,304,823)
Interdepartmental Sales.....	-	-
Miscellaneous Gas Sales.....	15,883,267	15,318,302
Total Sales to Ultimate Consumers.....	486,406,575	(24,681,737)
Sales for Resale.....	32,122,705	13,102,729
Total Sales of Gas.....	518,529,281	(11,579,008)
OTHER OPERATING REVENUES		
Forfeited Discounts-Late Payment Charges.....	472,011	(66,355)
Miscellaneous Service Revenues.....	464,085	(788,372)
Revenues from Transportation of Gas to Others.....	27,949,958	1,792,164
Sales of Products Extracted from Natural Gas.....	-	-
Revenues from Natural Gas Processed by Others.....	-	-
Rent from Gas Property.....	548,523	497,257
Interdepartmental Rents.....	-	-
Other Gas Revenues.....	225,155	1,455,991
Total Other Operating Revenues.....	29,659,732	2,890,685
Total Gas Operating Revenues.....	548,189,013	(8,688,322)

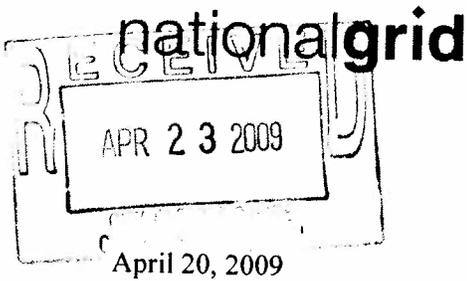
SUMMARY OF GAS OPERATION AND MAINTENANCE EXPENSES

Functional Classification	Operation	Maintenance	Total
Steam Production.....	-	-	-
Manufactured Gas Production.....	-	-	-
Other Gas Supply Expenses.....	389,237,396	-	389,237,396
Total Production Expenses.....	389,237,396	-	389,237,396
Local Storage Expenses.....	965,941	110,425	1,076,366
Transmission and Distribution Expense.....	17,335,373	9,024,529	26,359,903
Customer Accounts Expense.....	17,330,995	-	17,330,995
Sales Expenses.....	2,881,100	-	2,881,100
Administrative and General Expenses.....	29,657,485	-	29,657,485
Total Gas Operation and Maintenance Expenses....	457,408,270	9,134,954	466,543,224

March 31, 2008, I hereby certify that the foregoing statements are full, just and true to the best of my knowledge and belief. This statement is signed under the penalties of perjury.

Robert J. Weiser, Jr.
Vice President, Controller and Chief Accounting Officer

12



To the City Council
Marlboro, Massachusetts

Dear Councilors:

Enclosed you will find a petition for Forest St. (Plan # 5239548).

Description: National Grid to install 60' of primary ug across Forest St. from P.47 to a hand hole.

If you have any questions regarding this petition please contact Barbara Romasco 508-482-1252.

Thank you for your attention to this matter.

Respectfully yours,

A handwritten signature in black ink that reads "Kevin Hellmuth".

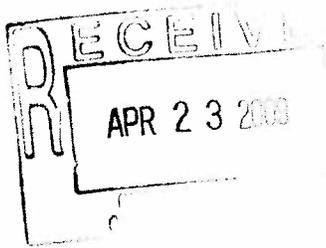
Kevin Hellmuth
Manager of Distribution Design
401-784-7173

KH/br

Enclosures

245 South Main Street
Hopedale, MA 01747-1499
508-482-1000

131



City of Marlborough
Office of the Assessors
140 Main Street
Marlborough, Massachusetts 01752
TDD (508) 460-3610
Phone: (508) 460-3779

BOARD OF ASSESSORS PUBLIC MEETING

April 17, 2009

10:00 AM SCHEDULED

MINUTES

1. **CALL TO ORDER** *Meeting called to order at 10:12 AM.*
2. **ROLL CALL** *-Present were Trodella, Brogie & Arruda.*
3. **ACCEPTANCE OF MINUTES FROM 3/16/09 MEETING** *Accepted unanimously*
4. **DISCUSSION OF CURRENT MEASURE AND LIST PROGRAM.** *Process was reviewed.*
5. **DISCUSSION OF 9 YEAR MEASURE AND LIST PROGRAM.** *Board agreed to proceed with a 9 year Measure and List program and include it in the RFP.*
6. **DISCUSSION OF STATUS OF PROPOSED RFP FOR NEXT 3 FISCAL YEARS REGARDING REAL PROPERTY INTERIMS, RE-VALUATION REVIEW AND MEASURE AND LIST.** *RFP will be out during the week of April 20 and include 3 fiscal years.*
7. **VOTE ON ABATEMENTS TO BE GRANTED RESIDENTIAL AS PER LIST ATTACHED** *Unanimous approval*
8. **VOTE ON ABATEMENTS TO BE DENIED RESIDENTIAL AS PER LIST ATTACHED** *Unanimous approval*
9. **VOTE ON ABATEMENTS TO BE GRANTED COMMERCIAL/IND AS PER LIST ATTACHED** *Unanimous approval*
10. **VOTE ON ABATEMENTS TO BE DENIED COMMERCIAL/IND AS PER LIST ATTACHED** *Unanimous approval with the exception of the 2 properties at Campus Drive. Will reconsider when a meeting is held with the property owner's representative on May 4th.*
11. **VOTE TO GRANT PERSONAL PROPERTY ABATEMENTS AS PER LIST ATTACHED** *Unanimous approval*

132

- 12. **VOTE TO DENY PERSONAL PROPERTY ABATEMENTS AS PER LIST ATTACHED** *Unanimous Approval*
- 13. **PUBLIC INPUT AND QUESTIONS** *No one from the public present*
- 14. **EXECUTIVE SESSION(IF NEEDED)** *None needed*
- 15. **OLD BUSINESS** *Voted on the acceptance of the abatement settlements with Bell Atlantic for FY 2004 & 2008 after discussion as to options and benefit to the city.*
- 16. **NEW BUSINESS** *None*
- 17. **ADJOURNMENT** *Adjourned at 10:55 AM*

Anthony R. Trodella
Chairman- Board of Assessors

141

City of Marlborough
Commonwealth of Massachusetts

RECEIVED
8 2009



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
March 9, 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, March 9, 2009 in Memorial Hall, 3rd floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Chairperson, Steve Kerrigan, Clerk, Philip Hodge, Robert Hanson, Edward Coveney and Sean Fay. Also present: City Engineer Thomas Cullen.

MINUTES

Meeting Minutes February 23, 2009

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

To accept and file the meeting minutes of February 23, 2009 with the minor changes.

CHAIRS BUSINESS

APPROVAL NOT REQUIRED PLAN

Pleasant Street/Fitchburg Streets
Correspondence from Engineering

The City Engineer sent correspondence to the Mr. Steve Roy, the proponent's Engineer, asking him to review the comments his department has made which includes:

- The "blocks" depicting the Lot Shape are not aligned with the Mean Direction Line as required in the Zoning Ordinance.
- Curve information for property lines should contain the angle and tangent length.
- Zoning information including table lot size, frontage and setback (required vs. provided) should be included on the plan.
- What is the status of "old Fitchburg Street"? How was the layout determined? What rights afford the proponent to use it as a driveway for Lot 1?
- Explain the essence of the note which states that "This plan and accompanying certifications do not constitute a certification of title to the property displayed on". If the proponent is subdividing the property, then the property lines being depicted should not be clouded with uncertainty.

- The deed on record for this property (Bk. 13554, Pg. 242-246) makes reference to a perpetual covenant set forth in deed fro Fitchburg Railroad to Napoleon Richard (Bk. 4979, Pg. 232).
- The correct spelling is "Marlborough".

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

To accept and file correspondence.

Mr. Steen, the developer for 251 Realty Corp., was not in attendance at the meeting when the ANR was being discussed.

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

To table the ANR until Mr. Steen is available at the meeting.

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

To remove the ANR off the table.

No representative appeared before the board to discuss the ANR. Due to the adopted state legislation, the Planning Board has 21 days to approve or deny an ANR. If denied without prejudice the proponent can reapply without a delay in the time period.

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

To deny without prejudice the ANR for Fitchburg Street/Pleasant Street.

PUBLIC HEARING

SUBDIVISION PROGRESS REPORTS

Update from City Engineer

Mr. Cullen stated that not much is happening in the City. Road construction should begin in the spring for the Fiddlehead Subdivision, he has met with the developers for Country Club Estates regarding the deeds for the easements and his department is squaring away issues with Elm Farm Valley easements.

Commonwealth Heights (Atkinson Drive)

Status of Work and Completion Schedule

The developer provided to the Board a status of the current state of the subdivision. At this time the completed work includes the off-site drainage improvements includes approx. 1100 feet of drainage work on Glen and Conrad Streets, clearing and grubbing of the majority of the site, erosion control measures have been met and the three on-site detention basins are currently working. They are predicting to road completion in the fall of 2010.

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

To accept and file correspondence; and to refer the correspondence to the City Engineer.

Extension Request & Amend Covenant

At the last meeting the Board reviewed the Commonwealth Heights covenant, there was no mention of the keeping the subdivision "blight free". The Board asked if Mr. Gadbois' client would have any issue to insert the blight language in the covenant. Mr. Gadbois, on behalf of his client, is asking for a 30 day extension to allow time for the City Solicitor and himself to prepare and review the amendment to the covenant.

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

To grant a 30 day extension to April 9, 2009, to send the amended covenant to the City Solicitor for his review.

Residences of Oak Crest*Resign Certificate of Performance*

Pat Alteri from the office of Philbin & O'Neil, LLC is asking for a newly executed Certificate of Performance or Guarantee since the original was never recorded with the Middlesex South Registry of Deeds. Mr. Fay suggested a few minor changes with the wording in the paragraph and it Certificate of Performance was reflected to those changes.

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

To allow Ms. Fenby to endorse the Certificate of performance, and to ask the proponent to confirm the recording.

PENDING SUBDIVISION PLANS: Updates and Discussion**PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS****DEFINITIVE SUBDIVISION SUBMISSIONS*****Marlborough Elms****Correspondence*

Stephen Campbell, Highland Engineering & development, sent correspondence to the Planning Board back in November of 2008. The correspondence was an unsigned e-mail, the new correspondence is a signed version of the email asking for the with-drawl without prejudice of the subdivision known as "Marlborough Elms".

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

To accept and file correspondence.

SCENIC ROADS**SIGNS***Price Chopper**Request for a variance*

Tom Wheeler, agent for Price Chopper, is seeking a variance for the signs for the new marketing campaign for the Price Chopper located at 240 East Main Street. Price Chopper already has an existing flat-wall sign of 198.5 square feet and they are seeking a variance for adding another 186 square feet of flat wall signs. Mr. Wheeler stated that he thought Price Chopper was going to apply for the signs, and he only found out after the signs have been placed that there was no permit for the additional signs. Mr. Wheeler is claiming his hardship is that the flat wall signs are

144

already placed. With no representation from Price Chopper, the Planning Board is not willing to make a decision. They suggested to Mr. Wheeler to return with all the information on all the signage that Price Chopper currently has, representation for Price Chopper and what they are willing to concede of their current signage to allow the new flat wall signs.

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

To table any decision until the March 23, 2009.

Proposed Amendment to Sign Ordinance

Mr. Fay spoke with Ms. Wilderman regarding the language as it stands. He stated that Ms. Wilderman is not going to have an issue with how the word "daily" would be used. Mr. Fay stated that he knows this will not be a popular ordinance once hit goes to the City Council level.

On a motion made by Mr. Fay, seconded by Mr. Hanson with Mr. Kerrigan opposing it was duly voted:

To send the proposed change in the sign ordinance to the City Council for their and their acceptance.

When Mr. Kerrigan was asked by Mr. Fay on why he was opposing, Mr. Kerrigan stated that he was not opposed to the amendment, just the sign ordinance in whole needs to be replaced.

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

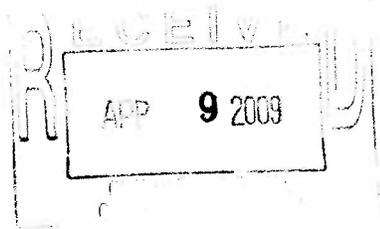
To adjourn at 7:58 p.m.

A TRUE COPY

ATTEST:


Steven Kerrigan, Clerk

151



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

COMMUNITY DEVELOPMENT AUTHORITY MEETING
Friday, February 27, 2009 8:00 AM
City Hall, 4th Floor Conference Room

MINUTES

CONVENED: Mayor Stevens called the meeting to order at 8:03 a.m.

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

MEMBERS ABSENT: David McCabe and Camille Duridas.

OTHERS PRESENT: Kevin Flynn, Michelle Ciccolo, Jackie Malloy, Betsy Roszko, Diane Smith, Tom Abel and Newspaper reporter Paul Crocetti.

APPROVAL OF MINUTES. Motion made by Faust, seconded by Dr. Muir, to accept and file the minutes of the Regular Meeting of January 29, 2009, as presented. Passed unanimously.

EXECUTIVE DIRECTOR'S REPORT: Kevin addressed the members on the NSP program. He has spoken with Mark Siegenthaler relative to the NSP and was told that it takes about 3 weeks to do the review.

Kevin addressed the members on the 2010 bankers group. He and Tom Wellen have been meeting daily on how funds can be spent. The NSP funds are limited to foreclosures only. Should have better information in a couple of weeks. Our goal is to pick key properties to get the banks involved.

INVOICES TO BE PAID. Kevin asks the Members if we can start paying the invoices and he will sign off on them. That way they are not sitting for a month before they get paid. The Board

152
would like to see the same process for a while in order to get a better understanding of the invoices being paid and the budget. Motion by Faust, seconded by Dr. Muir to pay invoices on warrant dated 2/27/09. Passed unanimously.

THE CICCULO GROUP, LLC. Presented a brief power point on the GMS updating process. They have made significant progress.

FY01 and FY02 CDBG Budget Amendment. Motion made by Faust, seconded by Vigeant, authorizing the Mayor to execute the Contract Budget Amendment for the FY01 and FY02 CDBG program. Passed unanimously.

HOUSING DIRECTOR'S REPORT

Bills payable. Review of payables, transfers, and Housing Assistance Payments (HAP). Motion by Vigeant, seconded by Faust to approve the March 1, 2009, Housing division bills payables, transfers, and February 1, 2009 HAP as presented. Passed unanimously.

Window Replacement Update. Roszko reported that all apartments have been completed. The project has continued to go very smoothly. Advantage Glass has submitted two payment requisitions; DHCD Construction Manager has signed off and funds have been requested. Common area window replacement has begun. Change orders for brick replacement, exterior structure crack repair, and a/c sleeve caulking have been submitted.

GASB 45: Betsy attended a workshop regarding this new accounting and financial reporting for post employment health benefits.

Mass NAHRO Annual Conference information was presented.

Motion by Faust, seconded by Mayor Stevens to accept the Housing Directors Report. Passed unanimously.

OTHER BUSINESS.

Kevin Flynn, Executive Director submitted a bill from Attorney Aldo Cipriano. Motion made by Hogan, seconded by Mayor Stevens, to approve and pay bill as submitted. Passed unanimously,

Motion by Mayor Stevens to adjourn at 9:02 A.M., by unanimous consent.