



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

NOVEMBER 14, 2016

Regular meeting of the City Council held on Monday, NOVEMBER 14, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juairé, Oram, Ossing, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 9:35 PM.

Council President Clancy recognized the City Clerk's Office for their diligence and professionalism in processing the Early Voting Ballots and in preparation of the State Election.

ORDERED: That the Minutes of the City Council meeting OCTOBER 17, 2016, **FILE;** adopted.

ORDERED: That the PUBLIC HEARING On the Proposed Amendment to City Code providing the Zoning Board of Appeals 100 days to file a decision on an appeal or a variance, Order No. 16-1006702, **CONTINUED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING.**

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey.

Suspension of the Rules requested to allow a new Communication from the Mayor amending the language of the Act to include the Assistant City Engineer – granted

ORDERED: That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

An Act exempting certain positions in the City of Marlborough from the Civil Service Law.

SECTION 1. Notwithstanding any general or special law to the contrary, the positions of police patrol officer in the Marlborough Police Department, and the positions of Assistant Chemist, Assistant City Engineer, Associate City Engineer, Chemist, Chief Treatment Plant Operator, General Foreman, GIS Administrator, Grade I Engineering Aide, Grade II Engineering Aide, Grade III Inspector, Junior Engineer, Superintendent of Automotive Maintenance, and Treatment Plant Operator in the City of Marlborough shall be exempt from the provisions of chapter 31 of the General Laws.

SECTION 2. This act shall not impair the civil service status of a person holding a position described in section 1 on the effective date of this act.

SECTION 3. This act shall take effect upon its passage, **APPROVE;** adopted.

ORDERED: That the Communication from the Mayor re: Other Post-Employment Benefits (OPEB) Trust Update, **FILE**; adopted.

ORDERED: That it be ordained by the City Council of the City of Marlborough, acting upon a recommendation of the Mayor, that the Code of the City of Marlborough (hereinafter, the “City Code”), as amended, be further amended by amending in Chapter 125, entitled “Personnel,” Section 6, entitled “Salary Schedule,” as follows:

- A. This salary schedule shall take effect January 1, 2017.
- B. The position of Senior Clerk (nonunion) shall now be titled Administrative Assistant,
- C. The position of Financial Assistant (nonunion) shall now be titled DPW Financial Analyst.
- D. All positions on the 7 Step schedule shall work a 40-hour work week.

Position	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7 / Max
	<i>Start</i>	<i>6 months of service</i>	<i>1 year of service</i>	<i>2 yrs. of service</i>	<i>3 yrs. of service</i>	<i>4 yrs. of service</i>	<i>5 yrs. of service</i>
Assistant City Solicitor	\$87,909.17	\$89,667.35	\$91,460.70	\$93,289.91	\$95,155.71	\$97,058.82	\$99,000.00
Recreation Director	\$71,037.71	\$72,458.46	\$73,907.63	\$75,385.79	\$76,893.50	\$78,431.37	\$80,000.00
Executive Director of the Council on Aging	\$69,261.77	\$70,647.00	\$72,059.94	\$73,501.14	\$74,971.16	\$76,470.59	\$78,000.00
DPW Financial Analyst	\$58,142.62	\$59,305.47	\$60,491.58	\$61,701.41	\$62,935.44	\$64,194.15	\$65,478.03

Refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the DPW transfer request in the amount of \$1,650,000.00 which moves funds from Undesignated to Department of Public Works Solid Waste Disposal account to fund ongoing legal fees and settlement with WeCare Environmental, **TABLED UNTIL THE NOVEMBER 28, 2016 CITY COUNCIL MEETING**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Sewer				FISCAL YEAR:	2017			
		FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$12,176,290.00	\$1,650,000.00	10000	35900	Undesignated Fund	\$1,650,000.00	60086006	52935	Solid Waste Disposal	\$124,439.40	
	Reason:					Wecare settlement agreement				
	\$1,650,000.00	Total			\$1,650,000.00	Total				

ORDERED: That the Stabilization transfer request in the amount of \$337,500.00 which moves funds from Undesignated to a new Stabilization account, Future Growth Stabilization Fund, to fund investment in projects which will increase property values and attract economic development, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	Mayor					FISCAL YEAR:	2017	
							FROM ACCOUNT:		TO ACCOUNT:
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$12,176,290.00	\$337,500.00	10000	35900	Undesignated Fund	\$337,500.00	83600	32727	Stabilization-Revenue Growth	\$0.00
	Reason:							First mitigation payment from the Preserves @ Ames Brookview Village for the City Revenue Growth Enhancement Fund	
	\$337,500.00	Total			\$337,500.00	Total			

ORDERED: That the Police transfer request in the amount of \$324,200.00 to fund the recently ratified collective bargaining agreement between the City and the Police Patrol Union for FY 2016, 2017 and 2018, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --											
DEPT:		Comptroller				FISCAL YEAR:		2017			
Available Balance	Amount	FROM ACCOUNT:	Org Code	Object	Account Description:	Amount	TO ACCOUNT:	Org Code	Object	Account Description:	Available Balance
\$671,172.25	\$324,200.00	11990006	57820	Reserve for Salaries	\$181,700.00	12100001	50420	Police Officers			\$1,915,371.52
	Reason:	Calculated amounts for contractual obligations				Reason:	Calculated amounts for contractual obligations				
					\$2,600.00	12100001	50435	Police Specialists			\$25,299.80
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$21,300.00	12100003	51310	Overtime - Regular			\$89,729.09
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$600.00	12100003	51319	Overtime-Cell Watch			\$541.57
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$13,300.00	12100003	51320	Overtime-Court Time			\$157,353.06
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$900.00	12100003	51329	On-Call Pay			\$9,087.86
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$11,600.00	12100003	51342	Longevity			\$124,986.12
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$3,400.00	12100003	51360	Overtime-Training			\$14,039.38
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$1,200.00	12100003	51370	Overtime-Celebrations			\$2,643.46
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$4,000.00	12100003	51410	First Responder			\$39,086.86
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$33,200.00	12100003	51440	Educational Incentive			\$392,580.23
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$8,700.00	12100003	51450	Night Shift Differential			\$92,847.15
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$19,700.00	12100003	51490	Holiday			\$218,609.63
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$1,100.00	12100003	51505	K-9 Unit			\$9,927.45
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$10,200.00	12100003	51920	Sick Leave Buy Back			\$155,785.25
	Reason:					Reason:	Calculated amounts for contractual obligations				
					\$10,700.00	88021001	51710	Workers Comp. Ins.			\$50,697.20
	Reason:					Reason:	Calculated amounts for contractual obligations				
	\$324,200.00	Total			\$324,200.00	Total					

ORDERED: That the Downtown Stabilization transfer request in the amount of \$150,000.00 which moves funds from Undesignated to Downtown Stabilization account by which the amount transferred is from mitigation payments related to the Crabtree Project and intended to be used for downtown economic development, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2017		
		FROM ACCOUNT:					TO ACCOUNT:			
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available	
Balance									Balance	
\$12,176,290.00	\$150,000.00	10000	35900	Undesignated Fund	\$150,000.00	83600	32700	Stabilization-Downtown	\$650,000.00	
	Reason:						Final mitigation payment from Crabtree Lake Williams to be used for downtown economic development.			
	\$150,000.00	Total			\$150,000.00	Total				

ORDERED: That the DPW transfer request in the amount of \$24,626.56 which moves funds from Reserve for Salaries to Sick Leave Buyback account to fund the sick leave buy back for a retiree in DPW, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Comptroller					FISCAL YEAR:	2017		
		FROM ACCOUNT:					TO ACCOUNT:			
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available	
Balance									Balance	
\$671,172.25	\$24,626.56	11990006	57820	Reserve for Salaries	\$24,626.56	14001303	51920	Sick Leave Buy Back	\$28,893.42	
	Reason:	Recalculate amounts for contract obligations				Reason:	Obligation for retirement from DPW			
	\$24,626.56	Total			\$24,626.56	Total				

ORDERED: That the transfer request in the amount of \$1,660.00 from Reserve for Salaries to various accounts to fund successful negotiation of contracts affecting City employees, **APPROVED**; adopted.

BUDGET TRANSFERS --										
DEPT:		Comptroller				FISCAL YEAR:		2017		
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance
	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		
\$671,172.25	\$1,660.00	11990006	57820	Reserve for Salaries	\$620.00	14001003	51920	Sick Leave Buy Back		\$7,480.00
	Reason:	Recalculate amounts for contract obligations			Reason:	Recalculate amounts for contract obligations				
					\$740.00	11920003	51430	Longevity		\$8,800.00
	Reason:				Reason:	Recalculate amounts for contract obligations				
					\$300.00	14920003	51430	Longevity		\$2,225.00
	Reason:				Reason:	Recalculate amounts for contract obligations				
					\$0.00					\$0.00
	Reason:				Reason:	Obligation for retirement from DPW				
	\$1,660.00	Total			\$1,660.00	Total				

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the MassWorks Grant acceptance in the amount of \$3,050,000.00 to supplement the significant investment that Ryan Development is making through the construction of the Apex Center; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the FY2016 State 911 Department Support and Incentive Grant in the amount of \$99,805.00 to offset costs in the dispatch center; adopted.

ORDERED: That the Cultural Council Appointments as follows: Stephan D’Alessandro and Jessica Bowen to the Cultural Council for a term of three years and Reappointments of Mark Bartlett and Melissa Vera for a term of three years which expired in August 2016, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Reappointment of Auditor, Diane Smith, for a term of three years to commence upon City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Reappointment of Chief Procurement Officer, Beverly Sleeper, for a term of three years to commence upon City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from the Mayor re: Notification of Free Cash certified by DOR in the amount of \$12,176,290.00, **FILE**; adopted.

ORDERED: That the Downtown Marlborough Parking Analysis, refer to **OPERATIONS & OVERSIGHT COMMITTEE**; adopted.

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that legal interests in certain portions of land located on East Main Street and located on land at the intersection of East Main Street and Brown Street, and at the intersection of East Main Street and Sawin Street (hereinafter, collectively, "East Main Street"), as more particularly described herein, be taken for the purpose of the reconstruction, construction, and maintenance of improvements to East Main Street, and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, in order to promote the public welfare, safety, common convenience, and necessity, it is necessary to take by Eminent Domain the easement interests in the land for the purposes and duration described herein; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the easement interests or fee simple interest in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN

1. Street address: East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and driveway reconstruction: Being an approximately 232 S.F portion of the property located on East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 323 on the Assessors' Map of the City of Marlborough and shown as Parcel TE-28 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: B.B. Realty Corp.

262 Main Street

P.O. Box 5

Marlborough, MA 01752

2. Street Address: 48 East Main Street, Marlborough, MA

Temporary easement for the purposes of grading, driveway reconstruction, pedestrian walk reconstruction: Being a 703 S.F. portion of the property located at 48 East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 322 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-29 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: U.S. Bank National Association, Trustee
425 Walnut Street
Cincinnati, OH 45202

3. Street Address: 56 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and driveway reconstruction: Being a 643 S.F. portion of the property located at 56 East Main Street, Marlborough, MA, known and numbered as Map 70, Parcel 324 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-27 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: William W. George, Trustee, Carlisle Realty Trust
P.O. Box 436
Marlborough, MA 01752

4. Street Address: 60 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading and sidewalk reconstruction: Being a 1,210 S.F. portion of the property located at 60 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 125 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-26 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: William W. George, Trustee, Carlisle Realty Trust
P.O. Box 436
Marlborough, MA 01752

5. Street Address: 59 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 568 S.F. portion of the property located at 59 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 133 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-6 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Michael Triaforos, Trustee
59 East Main Street Realty Trust
49 East Main Street
Marlborough, MA 01752

6. Street Address: 79 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 335 S.F., more or less, portion of the property located at 79 East Main Street, known and numbered as Map 57, Parcel 182 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-4 on Sheet 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Todd Uminsky, Trustee
79 East Main Street Realty Trust
Marlborough, MA 01752

7. Street Address: 83-A East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 209 S.F., more or less, portion of the property located at 83-A East Main Street, known and numbered as Map 57, Parcel 184 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-3 on Sheets 3 and 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Glayton DaCruz, Trustee
DaCruz Realty Trust
Marlborough, MA 01752

8. Street Address: 87 East Main Street, Marlborough, MA 01752

Permanent easement for aerial utility purposes: Being a 411 S.F., more or less, portion of the property located at 87 East Main Street, known and numbered as Map 57, Parcel 185 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-2 on Sheets 3 and 4 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Fred R. Angier, Jr.
87 East Main Street
Marlborough, MA 01752

9. Street Address: 95 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading, driveway reconstruction, and restoration and reconstruction of stonewall: Being a 593 S.F. portion of the property located at 95 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 186 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-5 on Sheet 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: David P. DeCenzo
95 Oakbridge Drive
Pueblo, CO 81001

10. Street Address: 99 East Main Street, Marlborough, MA 01752

Temporary easement for purposes of grading, driveway reconstruction, and restoration and reconstruction of stonewall: Being a 314 S.F. portion of the property located at 99 East Main Street, Marlborough, MA, known and numbered as Map 57, Parcel 187 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-2 on Sheet 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNER: Jeanne Bengiovanni
99 East Main Street
Marlborough, MA 01752

11. Street Address: 114 East Main Street, Marlborough, MA 01752

Permanent easement for purposes of new utility pole installation and aerial utility: Being a 298 S.F., more or less, portion of the property located at 114 East Main Street, known and numbered as Map 57, Parcel 194 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-1 on Sheets 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: Cumberland Farms, Inc.
777 Dedham Street
Canton, MA 02021

12. Street Address: 19 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, installment of fence, removal of trees: Being a 148 S.F. portion of the property located at 19 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 318 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-20 on Sheet 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: Thomas J. Parks & Cheryl Greska
19 Brown Street
Marlborough, MA 01752

13. Street Address: 21 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, installment of fence, removal of trees: Being a 795 S.F. portion of the property located at 21 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 319 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-18 on Sheet 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: David E. Grant & Tina L. Grant
21 Brown Street
Marlborough, MA 01752

14. Street Address: 38 Brown Street, Marlborough, MA 01752

Temporary easement for purposes of grading, construction of retaining wall, reconstruction of pedestrian walk: Being a 335 S.F. portion of the property located at 38 Brown Street, Marlborough, MA, known and numbered as Map 70, Parcel 321 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel TE-35 on Sheets 4 and 5 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to East Main Street.

OWNERS: James C. Thomas & Lauren B. Thomas
31 Ash Street
Hopkinton, MA 01748

15. Street Address: 15 Sawin Street, Marlborough, MA 01752

Permanent easement for purposes of new utility pole installation and aerial utility:
Being a 67 S.F., more or less, portion of the property located at 15 Sawin Street, known and numbered as Map 70, Parcel 373 on the Assessors' Map of the City of Marlborough, which portion is shown as Parcel PUE-5 on Sheets 3 of 6 of a set of plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County."

OWNER: 15 Sawin Street LLC
15 Sawin Street
Marlborough, MA 01752

Said plans, dated July 28, 2016, entitled "Right-Of-Way Plans, East Main Street, in the City of Marlborough, Middlesex County" to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Order.

AWARDS

The City Council hereby makes the following awards for damages for the owner or owners of record:

<u>OWNERS</u>	<u>MARLBOROUGH ASSESSORS' MAP/PARCEL</u>	<u>AREA (OF TAKING OF EASEMENT)</u>	<u>AWARD</u>
B.B. Realty Corp. 262 Main Street P.O. Box 5 Marlborough, MA	70/323	232 S.F.	\$40.00
U.S. Bank National Association, Trustee 425 Walnut Street Cincinnati, OH 45202	70/322	703. S.F.	\$366.00
William W. George, Trustee, Carlisle Realty Trust P.O. Box 436 Marlborough, MA 01752	70/324	643 S.F.	\$390.00
William W. George, Trustee, Carlisle Realty Trust P.O. Box 436 Marlborough, MA 01752	57/125	1,210 S.F.	\$2,130.00
Michael Triaforos, Trustee 59 East Main Street Realty Trust 49 East Main Street Marlborough, MA 01752	57/133	568 S.F.	\$630.00

<u>OWNERS</u>	<u>MARLBOROUGH ASSESSORS' MAP/PARCEL</u>	<u>AREA (OF TAKING OF EASEMENT)</u>	<u>AWARD</u>
Todd Uminsky, Trustee 79 East Main Street Realty Trust Marlborough, MA 01752	57/182	335 S.F.	\$630.00
Glayton DaCruz, Trustee DaCruz Realty Trust 26 Hilldale Road Ashland, MA 01721	57/184	209 S.F.	\$627.00
Fred R. Angier, Jr. 87 East Main Street Marlborough, MA 01752	57/185	411 S.F.	\$567.00
David P. DeCenzo 95 Oakbridge Drive Pueblo, CO 81001	57/186	593 S.F.	\$335.00
Jeanne Bengiovanni 99 East Main Street Marlborough, MA 01752	57/187	314 S.F.	\$545.00
Cumberland Farms, Inc. 777 Dedham Street Canton, MA 02021	57/194	298 S.F.	\$1,043.00
Thomas J. Parks & Cheryl Greska 19 Brown Street Marlborough, MA 01752	70/318	148 S.F.	\$161.00
David E. Grant & Tina L. Grant 21 Brown Street Marlborough, MA 01752	70/319	795 S.F.	\$863.00
James C. Thomas & Lauren B. Thomas 31 Ash Street Hopkinton, MA 01748	70/321	335 S.F.	\$335.00
15 Sawin Street LLC 15 Sawin Street Marlborough, MA 01752 (Land Court Book 1362, Page 007, Certificate No. 243066)	70/373	67 S.F.	\$117.00

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Reappointment of Lisa Thomas as City Clerk for a term of three years to expire on February 28, 2020, refer to **PERSONNEL COMMITTEE**; adopted.

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

1. Section 650-56, entitled "Enforcement," is hereby amended by striking out, in subsection F, the word "six" and inserting in place thereof the following word:-- twelve.
2. Section 650-59, entitled "Powers and procedures of special-permit-granting authorities," is hereby amended by striking out, in subsection A(1), entitled "Special permits," the number "two" and inserting in place thereof the following word:-- three.

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, DECEMBER 19, 2016**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Application to Modify Special Permit, New Cingular Wireless PCS, LLC, 175 Maple St., in proper legal form, Order No. 16-1006637B, **MOVE TO ITEM 37**; adopted.

Suspension of the Rules requested to allow a new Communication be submitted from the Assistant City Solicitor regarding amended Legal Order for Site Plan Permit for below referenced– granted

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin, re: Site Plan Permit for 163-175 Main St., Marlborough on Main, in proper legal form, Order No. 16-1006668, **MOVED TO REPORTS OF COMMITTEE**; adopted.

Suspension of the Rules requested to remove Order No. 16-1006517D, request for LED Sign Special Permit at 50 Main Street from the Table – granted

ORDERED:

**DECISION ON AN LED SIGN SPECIAL PERMIT
IN CITY COUNCIL**

LED Sign Special Permit
Discount Gas
50 Main Street
Order No. 16-1006517B

**DECISION ON AN LED SIGN SPECIAL PERMIT
CITY COUNCIL ORDER NO. 16-1006517B**

The City Council of the City of Marlborough hereby GRANTS the application for an LED Sign Special Permit to V&G Realty Trust, Vrej Askanian and Grace Kanoon, Trustees (the “Applicant”) for the property located at 50 Main Street in Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings, Findings of Facts and Conditions.

PROCEDURAL FINDINGS

1. The owner of the property located at 50 Main Street in Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 70, Parcel 226 (the “Site”) is V&G Realty Trust, Vrej Askanian and Grace Kanoon, Trustees, 231 Oxford Street North, Auburn, MA 01501.
2. On March 1, 2016, the City of Marlborough issued Building Permit No. BP-2016-000198 for a “Free Standing Sign ‘Discount Gas’ Length 3”, Width 8”, Height 14”.”
3. On March 1, 2016, the City of Marlborough Code Officer notified the Applicant in writing that, in order for the Applicant to use an LED (light emitting diode) sign showing current gas prices at the Site, the Applicant would need to obtain from the Marlborough Planning Board a variance from Section 526-9, entitled “Downtown Business District,” of the Sign Ordinance set forth as Chapter 526 of the City Code of the City of Marlborough, which otherwise prohibits all interior illuminated signs in the Downtown Business District as defined in Section 526-9; and would also need to obtain from the Marlborough City Council an LED sign special permit under Section 526-13, entitled “Electronic Message Center Signs and Digital Display Signs,” of the Sign Ordinance.
4. By application dated March 8, 2016, the Applicant submitted to the Planning Board a request for a variance from Section 526-9 of the Sign Ordinance.
5. At its meeting held on March 21, 2016, the Planning Board granted the Applicant a variance from Section 526-9, except for any LED usage, and with the conditions
a) that the sign be turned off when the service station is not open for business and
b) that all other extraneous signage be removed from the Site.

6. By application dated March 29, 2016, the Applicant submitted to the City Clerk for the City of Marlborough an LED Sign Permit Application (the "Application"). The Applicant seeks an LED sign special permit pursuant to Section 526-13, in order for the Applicant to use an LED sign showing current gas prices at the Site.
7. In connection with the Application, the Applicant submitted a picture of the Site and the sign as presently installed on the Site.
8. The Marlborough City Council held a public hearing on the Application on Monday, April 25, 2016. The public hearing was closed on April 25, 2016.
9. The Applicant presented testimony at the public hearing that the changeable portion of the Sign would be used to advertise gas prices which the Applicant stated is crucial to the success of its business. John Rowe, Rowe Funeral Home, 57 Main Street, testified that although he was not opposed to the Proposed LED Sign, it should not be operational until the Applicant had completed site work required by the Site Plan Review Committee. Applicant testified that he continues to work with the Site Plan Review Committee on all items.
10. The Applicant further presented its Application at the Urban Affairs Committee meeting held on July 19, 2016. The Committee agreed to recommend approval of the Application pending confirmation from the City Engineer that the Applicant completed site work required by the Site Plan Review Committee.

**BASED ON THE ABOVE, THE 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 as they pertain to an application for an LED sign special permit under Section 526-13 of the Sign Ordinance.
- B. The City Council finds that the Sign complies with the standards set forth in Section 526-13.B of the Sign Ordinance.
- C. The City Council finds, pursuant to Section 526-13.B(16) of the Sign Ordinance, that: all other signage on the Site is in compliance with zoning requirements; the Sign does not create unnecessary visual clutter or constitute signage overload for the lot or surrounding neighborhood or street; the Sign does not substantially block visibility of signs on abutting lots; the Sign does not substantially block solar access of, or view from, windows of residential dwellings on abutting lots; the proposed illumination is appropriate to the Site and is appropriately located with respect to the character of the surrounding neighborhood; the scale and/or location of the Sign is appropriate; and the dimensions of the Sign comply with the area limitations of the Sign Ordinance.
- D. The City Council, pursuant to its authority under Section 526-13 of the Sign Ordinance, hereby GRANTS the Applicant an LED Sign Special Permit for the Sign, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

CONDITIONS

1. The Sign shall be operated in accordance with the Sign Ordinance of the City of Marlborough, and in compliance with the variance issued by the Planning Board which includes the conditions a) that the Sign be turned off when the service station is not open for business and b) that all other extraneous signage be removed from the Site
2. All plans and/or other documentation provided by the Applicant as part of the Application, and as amended during the Application/hearing process before the City Council and/or the Urban Affairs Committee, are incorporated into and become part of this LED Sign Special Permit, and become conditions and requirements of the same, unless otherwise altered by the City Council.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

Nay: 0

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 5, 2016** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit, from Attorney Cipriano, on behalf of Tigercat Properties LLC, to construct a multifamily dwelling at 487 Lincoln St, refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE**; adopted.

ORDERED: That the Minutes, Library Board of Trustees, June 7 & September 6, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, October 3, & October 17, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Recreation Commission, January 21, February 17, & June 15, 2016, **FILE**; adopted.

ORDERED: That the Minutes, School Committee, September 27, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, October 6, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, September 27, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging Board of Directors, September 13 & October 11, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, September 13 and October 11, 2016, **FILE**; adopted.

ORDERED: That the Minutes, License Board, August 24, September 15, September 22, September 28, & October 18, 2016, **FILE**; adopted.

ORDERED: That the Minutes, OPEB Trust Board, March 31, 2015, **FILE**; adopted.

ORDERED: That the following **CLAIMS**, refer to the **LEGAL DEPARTMENT**; adopted.
a. Noa Romo, 78 Applebriar Ln., pothole or other road defect.

Reports of Committees:

Councilor Elder reported the following out of the Operations & Oversight Committee:

Meeting Name: City Council Operations & Oversight Committee

Date: October 25, 2016

Time: 6:30 PM

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 6:44 PM – Adjourned: 7:45 PM

Present: Chairman Elder; Operations & Oversight Committee Members Councilors Robey and Landers; Councilors Clancy, Delano, Doucette, Juaire and Ossing

Also Present: Donald Rider (City Solicitor, City of Marlborough); John Ghiloni (Commissioner of Public Works, City of Marlborough)

Order No. 16-1006679: That the City Solicitor contact the Department of Revenue and any other department at the state level for a legal opinion whether the City of Marlborough is legally allowed to overcharge residents on water and sewer bills as a result of old and faulty water meters that may have undercharged residents in previous readings. The Operations and Oversight Committee met with City Solicitor Donald Rider for a discussion of whether the City of Marlborough is allowed to collect on unpaid water and sewer usage by residents that was not accurately reflected in previous bills. City Solicitor Rider stated the City is allowed to back collect for prior water and sewer usage according to the City code water use ordinances, Chapter 608: Water and Chapter 510: Sewers. In each of those chapters, it states anyone who uses the water and sewer systems from the City enters into a contract relationship with the City. The City has the ability when a discrepancy occurs between the meter on the inside of the house and the register (or reader) on the outside of the house to collect for actual usage based upon the water meter reading located inside the house. Over time the reader on the outside of the house slows down and does not accurately reflect the usage from the meter located on the inside of the house. City Solicitor Donald Rider stated the statute of limitations on contracts is six years, so the City is allowed to go back six years to collect for use. **Motion made by Councilor Robey, seconded by Chair, to report Order No. 16-1006679 with no action. The motion carried 3-0.**

Motion made by Councilor Robey, seconded by Chair, to adjourn. The motion carried 3-0. The meeting adjourned at 7:45 PM.

Reports of Committees Cont'd:

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

Meeting Name: City Council Public Services Committee

Date: October 25, 2016

Time: 5:30 PM

Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 5:35 PM – Adjourned: 5:42 PM

Present: Chairman Landers; Public Services Committee Member Councilor Doucette; Councilor Clancy

Absent: Public Services Committee Member Councilor Irish

Also Present: Brian Dugdale (Goulston & Storrs); John Twohig (Goulston & Storrs)

Order No. 16-1006705: Communication from Attorney Twohig, on behalf of Hines Global REIT Marlborough Campus I LLC, to extend sewer connection permit for Campus at Marlborough, 100 Campus Drive. Brian Dugdale, attorney for Goulston & Storrs, appeared before the Public Services Committee to request an extension of a sewer connection permit for the Campus at Marlborough, 100 Campus Drive. Mr. Dugdale explained there are no changes to their existing plans and they are looking for an extension to the current permit which expires December 18, 2016. The extension applies to the second stage of development and it would be an additional two years before they have tenant commitments and move the project forward. Chairman Landers read a communication from Thomas DiPersio, City Engineer, for the record stating *“The extension of the sewer connection permit is acceptable to the Public Works Department, for a period which would coincide with their recent extension of the Site Plan Permit, to December 2, 2018.”* **Motion made by Councilor Doucette, seconded by Chair, to approve. The motion carried 2-0 (Councilor Irish absent.) Motion made by Councilor Doucette, seconded by Chair, to adjourn. The motion carried 2-0 (Councilor Irish absent.) The meeting adjourned at 5:42 PM.**

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

City Council Legislative and Legal Affairs Committee
Monday, November 7, 2016– In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Juare and Councilor Delano. Also attending were Cynthia Panagore Griffin, Assistant City Solicitor; Tom DiPersio, City Engineer; Councilors Clancy, Doucette, Tunnera, Irish, Landers, and Oram.

Reports of Committees Cont'd:

Order No. 16-1006700 – Acceptance of title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, for land known on City of Marlborough Assessors' Map as Map 55 Parcel 210B, being approximately 43,966 SF, located on Russell St.

The meeting was called to order at 5:15 PM. The mayor's letter of October 13, 2016 was read into the record. The property is comprised mostly of wetlands and is unbuildable but receiving the property in exchange of debt forgiveness of property taxes on the land of \$1,924.99 would give the city the deed and enable them to maintain a culvert on the property which is part of the street drainage system.

Councilor Delano moved to recommend acceptance of the order – That pursuant to Section 77C of Chapter 60 of the General Laws of Massachusetts, the City does hereby accept title, by deed in lieu of foreclosure, from Antoinette Dufault, also known as Sister Mary Francis, of the Sisters of the Benedictine Center, 254 Still River Road, Still River, MA, to a certain parcel of land described herein as follows: That certain parcel known and numbered on the Assessors' Map of the City of Marlborough as Map 55 Parcel 210B, being approximately 43,966 S.F., and located on Russell Street, the motion was seconded and carried 3-0.

It was moved and seconded to adjourn the Legislative & Legal Committee meeting; carried 3-0. Meeting adjourned at 5:25 PM.

City Council Legislative and Legal Affairs Committee
Tuesday, October 25, 2016– In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Juare and Councilor Delano. Also attending were Don Rider, City Solicitor; Pam Wilderman, Code Enforcement Officer; Councilors Clancy, Ossing, Landers and Doucette.

Order No. 16-1006458B-Reporting Obligations after a Devastating Event, Order 16-1005458A, with proposed new Article III of Chapter 485 of City Code to be entitled "Reporting Obligations After a Devastating Event."

The meeting was called to order 5:00 PM. Mr. Rider began reminding us that this started as an order to research how the city can ensure prompt remedial action after a devastating event takes place. In the past, the Code Enforcement office was notified but there was no time limit on the owner for action and the only recourse was fining them under the Anti-Blight Ordinance.

The recommendation is to add a new section to the Code, which defines a devastating event, owner, and structure; details a timeframe for reporting an event (72 hours); giving a status report (30 days); as well as sanctions for inaction. Councilor Ossing asked how an owner knows the 72 hours' clock is ticking and the response was that someone from Code Enforcement would inform them. Councilor Ossing suggested amending the language so there was formal notification before the 72 hours began.

Reports of Committees Cont'd:

It was moved and seconded to amend Section 485-17. Reporting Obligations, A to read, "Within 72 hours after receiving written notification from the City following a devastating event, the owner of the building..." The motion carried 3-0.

It was moved and seconded to ask for suspension of rules to put this in proper legal form and then to advertise. The motion carried 3-0.

It was moved and seconded to adjourn the Legislative & Legal Committee meeting; carried 3-0. Meeting adjourned at 5:25 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: October 25, 2016

Time: 5:45 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:50 PM – Adjourned: 6:40 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaire, Tunnera and Landers; and Councilors Clancy, Doucette, Ossing and Robey
Also Present: Kevin Eriksen (General Counsel, Ryan Development LLC); Robert Walker (Principal, Walker Realty); **Cynthia Panagore Griffin. (Assistant City Solicitor, City of Marlborough); Douglas Scott (Interim Building Commissioner, City of Marlborough)**

Order No. 16-1006443H: Communication from Attorney Erikson, Walker Realty LLC, multisided architectural elevations for proposed buildings to be located at 160, 142, 115, 105, 90, 58, 43, 36, 22, 21 & 11 Apex Drive. Kevin Eriksen and Robert Walker of Walker Realty LLC appeared before the Urban Affairs Committee for submission of proposed buildings for architectural review by the City Council as required by paragraph eight of the Development Agreement ("8. *Architectural Review*".) Mr. Walker presented renderings for buildings at 160, 142, 115, 105, 90, 58, 43, 36, 22, 21 & 11 Apex Drive where Councilors had the opportunity to ask questions about the individual buildings and their appearance. The Urban Affairs Committee recommended approval of the final elevations as presented to them. This approval allows the Building Commissioner the authority to issue building permits subject to building regulations in compliance with all applicable State laws. The committee also recommended the Building Commissioner be allowed to approve minor (*de minimis*) changes in the final designs. The committee agreed to request a suspension of the rules at the next regular City Council meeting on November 14, 2016 to request a vote on approval of the final elevations. **Motion made by Councilor Elder, seconded by Chair, to approve the final elevations as presented. The motion carried 5-0.**

Motion made by Councilor Juaire, seconded by Chair, to authorize the building inspector to approve de minimis changes in the final designs. The motion carried 5-0.

Reports of Committees Cont'd:

Motion made by Councilor Juaire, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 6:40 PM.

Meeting Name: City Council Urban Affairs Committee

Date: November 1, 2016

Time: 5:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:33 PM – Adjourned: 6:55 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaire, Tunnera and Landers; and Councilors Clancy, Doucette, Ossing and Robey
Also Present: Kevin Eriksen (General Counsel, Ryan Development LLC); Joe Trolla (Ryan Development LLC); **Cynthia Panagore Griffin. (Assistant City Solicitor, City of Marlborough)**

Order No. 16-1006632: Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant (Friendly's) with a Drive-thru, 157 Apex Drive. The Urban Affairs Committee met with Kevin Eriksen of Ryan Development LLC for a discussion of a Friendly's Restaurant located at 157 Apex Drive. The Apex Center was allowed two drive-thru restaurants by-right and any additional drive-thru restaurants would require a Special Permit approved by the City Council. Mr. Eriksen presented the location and proposed appearance of the Friendly's with the committee. They reviewed the proposed conditions of the draft decision for a special permit and had extended discussions for condition "6. Change of Operator." They decided since the site was internal to the Apex Center if there was a future change of operator with the similar use of a restaurant with a drive-thru, they could return to the Site Plan Review Committee for approval of changes to the site. If the site changed its primary use from a restaurant, the new operator would be required to appear before City Council for a special permit modification. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0.**

Motion made by Councilor Elder, seconded by Chair, to request a suspension of the rules at the next regular City Council Meeting on November 14, 2016 to send to the Legal Department to be placed in proper form. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 6:55 PM.

Reports of Committees Cont'd:

Meeting Name: City Council Urban Affairs Committee

Date: November 7, 2016

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:39 PM – Adjourned: 7:48 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaira, Tunnera and Landers; and Councilors Clancy, Doucette, Irish, Oram and Robey

Also Present:

Order No. 16-1006668: Arthur Bergeron (Attorney, Mirick O'Connell); Kevin Brett (Marlborough On Main Development LLC); Larry Reeves (Reeves Design Associates); Bruce Saluk (Bruce Saluk & Associates Inc.); Thomas DiPersio, Jr., P.E. (City Engineer, City of Marlborough); Cynthia Panagore Griffin (Assistant City Solicitor, City of Marlborough)

Order No. 16-1006631A: **David McCay** (Attorney, Mirick O'Connell); Eric Gardner (Director, Project Development, Benchmark Senior Living); Donald Rider, Jr. (City Solicitor, City of Marlborough)

Order No. 16-1006668: Site Plan Application from Attorney Bergeron, on behalf of Marlborough on Main Development LLC, for a mixed-use project at 163-175 Main Street in the Marlborough Village District. The Urban Affairs Committee met with Assistant City Solicitor Panagore Griffin, City Engineer DiPersio, Atty. Bergeron, Kevin Brett, Larry Reeves, and Bruce Saluk for a discussion of the Site Plan Application for a proposed mixed-use project to be built at 163-175 Main Street. The project is allowed by right under the downtown zoning ordinance, §650-34 Marlborough Village District (MV), where City Council acts as site plan review. They reviewed renderings of the building (front and back) and requested clarification from the applicant on their parking garage and the assignment of those spaces. They also discussed the two proposed businesses within the building. They went through the Draft Site Plan Approval Final Conditions revised on November 3, 2016 and made no changes to the conditions. The committee requested the Assistant City Solicitor place the Site Plan Approval Final Conditions in proper legal form for the next City Council meeting on November 14, 2016. **Motion made by Councilor Elder, seconded by Chair, to approve. The motion carried 5-0. Motion made by Councilor Elder, seconded by Chair, to request a suspension of the rules at the next regular City Council Meeting on November 14, 2016 to vote on the application. The motion carried 5-0.**

Reports of Committees Cont'd:

Order No. 16-1006631A: Communication from Mirick O'Connell on behalf of BSL Marlborough Development LLC regarding Proposed Zoning Amendment to the City of Marlborough Zoning Ordinance Allowing Assisted Living Facilities along Bolton Street. The Urban Affairs Committee met with City Solicitor Rider, **Atty. McCay,** and Eric Gardner for a discussion of the proposed zoning modification to Chapter 650, "Zoning", by inserting definitions for Assisted Living Facility, Convalescent Home/Nursing Home, Dementia Care Facility and Special Care Residence as well as adding a new subsection (44) Assisted Living Facilities to §650-18, "Conditions for uses." City Solicitor Rider explained the proposed changes to the zoning ordinance and that Assisted Living Facilities would be permitted in a certain A2 Zone by Special Permit only. They discussed the changes and how it related to the proposed project. The committee discussed requesting a suspension of the rules at the next regular City Council meeting to forward to the City Solicitor to be placed in proper form for the City Council agenda on November 28, 2016. **Motion made by Councilor Elder, seconded by Chair, to approve as amended. The motion carried 5-0.**

Motion made by Councilor Elder, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 7:48 PM.

Suspension of the Rules requested – granted to allow the Communication from City Solicitor Donald Rider pertinent to new Ordinance language into the record.

Suspension of the Rules requested – granted

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, November 14, 2016 at 8:00 PM in the City Council Chambers, City Hall, the following proposed amendment to the Code of the City of Marlborough, "PROPERTY MAINTENANCE", having been read was ORDERED ADVERTISED as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 485, ENTITLED "PROPERTY MAINTENANCE," AS FOLLOWS:

1. Chapter 485, entitled "Property Maintenance," is hereby amended by adding a new Article III, entitled "Reporting Obligations After a Devastating Event," as follows:

ARTICLE III: Reporting Obligations After a Devastating Event

Section 485-16. Definitions.

When used in this article, the following terms shall have the following meanings, unless a contrary intention clearly appears:

BUILDING

A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed of a combination of any materials, to form shelter for persons, animals, or property.

CITY

The City of Marlborough.

COMMISSIONER

The Building Commissioner of the City of Marlborough or his/her designee.

DEVASTATING EVENT

A fire, gas explosion, lightning strike, storm, flood, falling tree, earthquake, act of vandalism, plumbing burst or freeze, or other similar event that significantly damages, in the estimation of the Commissioner, a building or structure located, at least in part, within the City.

OWNER

Every person, entity, mortgage lender, service company, property manager or real estate broker, who alone or severally with others:

- A. Has legal or equitable title to any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise; or
- B. Has care, charge or control of any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- C. Is a mortgagee in possession of any such dwelling, dwelling unit, mobile home unit, building or parcel of land, vacant or otherwise; or
- D. Is an officer or trustee of the association of unit owners of a condominium;
- F. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- G. Is a person who operates a rooming house.

STRUCTURE

A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter or enclosure such as a building, framework, retaining wall, stand, platform, bin, fence (having a height at any point of six feet or greater above grade), parking area sign, flagpole, or mast for an antenna or the like.

Section 485-17. Reporting Obligations.

- A. Within 72 hours after the City has sent, by first class mail and by certified mail, written notification to the owner of a building or structure damaged by a devastating event, the owner of the building or structure damaged by the devastating event shall report in writing to the Building Commissioner the name, mailing address, and contact information including phone number of the insurance company providing insurance on the building or structure, as well as the name, mailing address, and contact information including phone number of any licensed public insurance adjuster retained by or on behalf of the owner.
 - B. No later than 30 calendar days after the date of the devastating event, and at no less than 30-calendar-day intervals thereafter, the owner shall report in writing to the Building Commissioner the status of settlement negotiations with the insurer of the damaged building or structure, together with a timetable for repairing, renovating or otherwise disposing of the building or structure. The building or structure will be subject to evaluation by the Building Commissioner or his/her designee every 30 calendar days after the date of the devastating event.
 - C. Failure of the owner to comply, within the pertinent 30-calendar-day period, with the reporting obligations of this Section 485-17 shall subject the owner to the antiblight provisions set forth in Article I of this Chapter.
 - D. Nothing contained in this Section 485-17 shall prohibit the City from seeking any relief the City deems appropriate to protect and advance the health, safety, welfare and aesthetic concerns of the public, including but not limited to a demolition order pursuant to M.G.L. c. 139, § 1; an inspection of the building or structure by the Building Commissioner or his/her designee pursuant to M.G.L. c. 143, § 6; or a referral of the matter to the City's Board of Health to enforce the provisions of the sanitary code including by means of judicial appointment of a receiver pursuant to M.G.L. c. 111, § 127I. All costs incurred by the City pursuant to this section shall constitute a debt due the City pursuant to the provisions of M.G.L. c. 139, § 3A, M.G.L. c. 143, § 9, or M.G.L. c. 111, § 125, as applicable.
2. Since the deferred operation of this ordinance would tend to defeat its purpose, which is to make effective its provisions as soon as possible in order to protect the health and safety of the people or their property, this ordinance shall become effective immediately upon passage.

Be and is herewith ordered **ADVERTISED AS INDICATED ABOVE AND TABLE UNTIL THE DECEMBER 19, 2016 MEETING AS THE TEN DAY PERIOD WILL NOT BE MET FOLLOWING THE ADVERTISEMENT DATE OF NOVEMBER 26, 2016;** adopted.

Suspension of the Rules requested – granted to allow the Communication from the Assistant City Solicitor into the record.

ORDERED: That the Communication from Assistant City Solicitor re: Architectural Review Under Paragraph 8 of the Development Agreement for the Apex Center, **FILE**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the City Council did perform an architectural review, pursuant to paragraph 8 of the Development Agreement for Apex Center, of the architectural elevations and perspective renderings submitted by Walker Realty LLC for certain proposed buildings which will be located on a private way to be known as Apex Drive, located at Apex Center on Boston Post Road West (Route 20), which were as follows:

Building 3: Sheet 1, entitled “160 Apex Drive, Marlborough, MA 01752; Building Elevations; prepared for: APEX WR 1031 LLC, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1’-0”; Revisions: October 12, 2016;”

Building 4: Sheet 1, entitled “142 Apex Drive, Marlborough, MA 01752; Building Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1’-0”; Revisions: October 12, 2016;”

Building 5: Sheet 1, entitled “115 Apex Drive, Marlborough, MA 01752; Schematic Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1’-0”; Revisions: October 12, 2016;”

Fairfield Inn & Suites (105 Apex Drive): Sheets 01 and 02, both of which sheets are entitled “Fairfield Inn & Suites, Marlborough, MA, by LK Architecture” and dated April 14, 2016;

Building 6: Sheet 1, entitled “90 Apex Drive, Boston Post Road West, Marlborough, MA 01752; Building Elevations; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1’-0”; Revisions: October 12, 2016;”

Building 7 (58 Apex Drive): Sheet 1, entitled “Schematic Elevations; Apex Center Bldg-7; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8” = 1’-0”; Revisions: October 12, 2016;”

43 Apex Drive: Sheet 1, entitled "Perspective Views; Apex Center Bldg-10; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8" = 1'-0"; Revisions: May 12, 2016; *and* Sheet 2, entitled "Schematic Elevations, Apex Center Bldg-10; Boston Post Road West, Marlborough, MA 01752; prepared for: Ryan Development, location: 4 Lan Drive, Westford, MA 01866; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/8" = 1'-0"; Revisions: May 12, 2016;"

36 Apex Drive (Building 8): Being a color perspective rendering illustrating the standard prototype of a Chick-Fil-A restaurant with a drive-through window and outdoor patio dining space (no title block);

Building 11 (21 Apex Drive): Sheet 1, entitled "Building Elevations; Apex Center, Bldg 11, Marlborough, MA; prepared for: Building 11, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" *and* Sheet R1, entitled "Exterior Views, Apex Center, Bldg 11, Marlborough, MA; prepared for: Building 11, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" and

Building 12 (11 Apex Drive): Sheet 1, entitled "Building Elevations; Bldg-12, Marlborough, MA; prepared for: Owner, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;" *and* Sheet 1, entitled "Perspective View" and "Option 2 1 Building – Split Entry; Apex Center, Bldg-12; prepared for: Owner, location: Approver; JD LaGrasse & Associates, Inc. Architects – Engineers, 1 Elm Sq., Andover, MA; scale 1/16" = 1'-0"; Revisions: October 12, 2016;"

and having determined that said architectural elevations and perspective renderings substantially conform in all material respects with the details provided within the Master Concept Plan and Development Agreement, hereby authorizes the Building Commissioner to do the following:

- i. To issue building permits for said above-referenced buildings, subject to pertinent laws and regulations, as amended, including but not limited to the Massachusetts State Building Code.
- ii. To review any and all proposed changes to, or variations from, said architectural elevations and perspective renderings to determine whether the proposed changes or variations are material modifications which will require further review by the City Council.
- iii. To approve any and all proposed changes to, or variations from, said architectural elevations and perspective renderings which in the determination of the Building Commissioner are non-material modifications which will not require further review by the City Council.

APPROVED; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant with a Drive-thru, 157 Apex Dr., Order No. 16-1006632B, refer to **LEGAL DEPARTMENT TO PLACE IN PROPER LEGAL FORM FOR THE NOVEMBER 28, 2016 CITY COUNCIL MEETING**

President Clancy called a recess at 9:34 PM and returned to open meeting at 9:35 PM.

MOTION made by Councilor Juaire to change Condition number 5 of section C to add “Outside activity to start after 8:00 AM on Saturdays” – Does Not Carry

Suspension of the Rules requested – granted

ORDERED:

Site Plan Permit # _____

Site Plan Approval with Conditions

Applicant: Marlborough on Main Development LLC

Property Owner: Marlborough on Main Development LLC

Location: 163-175 Main Street (the “Site”) being shown as Parcels 77, 78 and 79 on Assessors Map 70, consolidated as a single lot as shown on a plan recorded with the Middlesex South Registry of Deeds in Plan Book _____, Plan _____.

Zoning District: Marlborough Village District (MV)

Plans: The following Site Plan Approval Final Conditions are based on a set of plans entitled “Marlborough On Main, 165-175 Main Street, Marlborough, MA, Site Plan,” said plans being comprised of sheets EX, C1, C2, C3, C4, C5, C6, C7, and C8, with the last revision date of 11-3-16 (said set of plans hereinafter, collectively, the “Site Plans”); a set of seven (7) architectural drawings including “Front Elevation – Proposed Concept” (dated September 27, 2016), “Section Through Building Showing Stepped Condition” (dated September 7, 2016), “Main Floor Plan – Parking and Commercial Space” (dated September 7, 2016), “2nd Floor Plan - Prelim. Unit Concept” (dated September 7, 2016), “3rd and 4th Floor Plans - Prelim. Unit Concept” (dated September 2, 2016), “5th Floor Plan - Prelim. Unit Concept” (dated September 2, 2016), and “Prelim. 6th/Roof Plan” (dated September 2, 2016), all of which seven (7) architectural drawings are by Reeves Design Associates; and a set of two (2) conceptual architectural renderings entitled “175 Main Street - Reeves Design Associates – 2016,” and “175 Main Street - Marlborough, MA, Conceptual Sketch - Rear View from Devens/McEnelly, Reeves Design Associates - Architects - 2016.”

SITE PLAN APPROVAL FINAL CONDITIONS:**A. Site Conformance:**

1. Construction of the Site shall be in conformance with the approved Site Plans, the provisions of Chapter 270 of the Code of the City of Marlborough, and the conditions stated herein.
2. All construction on the Site shall conform to the appropriate National, State and City of Marlborough codes and regulations in force for each respective discipline and be in accordance with the approved plans and permits. Codes and regulations shall include but are not limited to State Building, Plumbing, Wiring, NFPA, Zoning, DPW utility and roads, Noise and Signs.

B. Prior to Issuance of a Building Permit:

1. Construction Staging and Safety Plan:
 - a. The Applicant shall complete the project in accordance with a Construction Staging and Safety Plan (the "Construction Plan") approved by the Building Commissioner, Fire Chief, Police Chief, and City Engineer, which shall be consistent with the document entitled "Construction Safety and Staging Plan for The Landmark Building on Main Street," dated October 1, 2016, or as modified at the direction of the City officials listed above.
 - b. The Construction Plan shall provide detailed information concerning:
 - (i.) areas of the Site and adjacent property that will be marked-off for the staging of construction vehicles, etc.;
 - (ii.) traffic management, detour routes if necessary, construction signage, pedestrian protection, blocked sidewalks, streets, etc.;
 - (iii.) construction fencing to enclose material and equipment;
 - (iv.) fencing and/or barricades to provide limits within the construction site for the separation of construction, pedestrian and vehicular traffic; and
 - (vi.) dedicated illuminated and covered pedestrian walkways adjacent to the structure at egress paths in accordance with 780 CMR Massachusetts State Building Code and related Mass. Amendments, including but not limited to Chapters 31, 32, 33, and 34, in effect at the time the building permit application is submitted.
2. Green Building: The building plans shall show compliance with Section 650-34.D.2.(m), concerning sustainable building design, of the Zoning Code of the City of Marlborough. Prior to the issuance of Building Permits, the Building Commissioner shall review the building plans to ensure that the design incorporates green building techniques.

3. Rooftop Mechanicals: On the building plans, the elevation drawings shall show areas reserved for rooftop mechanicals and the elevator penthouse. Detail drawings illustrating the type, location, and dimensions of fencing/screening must be provided. The Building Commissioner shall confirm that the building drawings conform to the requirements of Section 650-34.D.2.(b) regarding screening of rooftop mechanical equipment.
4. Footings: If the footings for the proposed building will be located within the City of Marlborough public way layout, an easement from City Council will need to be obtained prior to the issuance of any building permits.

C. Construction:

1. Preconstruction Meeting: Prior to the commencement of construction, a preconstruction meeting shall be held on-site with the Building Commissioner, City Engineer, Conservation Officer, Fire Chief, Police Chief, and the site contractor responsible for doing the work. At this meeting said City officials will review the plans and conditions, exchange contact information including emergency contact numbers, and inspect erosion controls.
2. Use of Ways During Construction: Consistent with the Construction Plan, all areas for construction staging and offloading of building materials shall be coordinated to maximize public safety and to minimize interference with the customary use of public ways. Police Chief shall have the discretion and authority to require additional protection and/or details as needed. The Applicant shall pay to the City the cost for every police detail which is provided by the Marlborough Police Department for the project.
3. OSHA: All Contractors shall abide by OSHA regulations as appropriate, including but not limited to OSHA – 29 CFR, Section 1926.
4. Safety Official: The Applicant / site contractor shall have on the Site at all times during construction, a qualified Construction Safety Official. Prior to the commencement of construction, Applicant shall provide to the Building Commissioner the name and contact information of said Construction Safety Official.
5. Hours of Operation: In accordance with Section 431-3B. of the Code of the City of Marlborough, excavation machinery may be operated only during the normal workweek, from Monday through Saturday, except holidays, between the hours of 7:00 a.m. to 7:00 p.m., except Sunday when all use is prohibited except with variance by the Board of Health or as emergency work.

D. Storm Water:

1. Siltation Control: The Applicant, Property Owner, and site contractor shall be responsible for notifying the Conservation Officer in an expeditious manner if there is any visible siltation to the existing drainage system. Immediate measures shall be taken to control the siltation source and to restore any impacted areas.

E. Landscaping:

1. Modifications: All modifications to the approved Landscape Plans related to changes to the kind, size and placement of plant material shall receive the prior written approval of the Conservation Officer and shall be considered a minor change. The final landscape plan should indicate what will happen with the existing trees which were recently planted on the site. They should be saved for re-planting in the City.
2. Site Visit: Prior to the final signoff, the Landscape Architect shall provide an as-built planting plan and a letter of confirmation that the plan conforms to the approved plans. The Conservation Officer shall confirm by a site visit that the planting has been installed according to the approved Landscape Plans, or a revision, previously approved by the Conservation Officer, of the Landscape Plans.
3. Replacement of Plantings: Following 18 months of the date of the final signoff of the site work, any plant material that has died or is dying shall be replaced by the Property Owner with a species of the same kind and size.
4. Mulch Placement: Installation of mulch at the time of planting and thereafter shall be placed so that the mulch is not in contact with the trunk of newly planted trees and shrubs as shown on the details on the Landscaping Plan.
5. Maintenance: Landscaping will be properly maintained, replaced if necessary, and kept in good condition and in compliance with the Landscape Plans at all times. This shall be an ongoing condition.

F. Parking Garage:

1. The design of the parking garage access shall be such that entering and exiting from the garage is controlled by the Site's residents and business operators. The building design shall provide for adequate sight distances for vehicles exiting the garage to provide for pedestrian safety.
2. The parking garage is to be for the sole use of the residents of the Site, with two (2) spaces designated for employee parking for two (2) businesses located on the Site. The parking garage is not intended for public use.

3. The final design of the garage has not been completed and is therefore not included in the Site Plans reviewed. Once complete, details such as the locations of columns, dumpster(s), drains, grease trap, lighting and ventilation, final parking layout, and other items shall be reviewed and approved by the Building Commissioner and other City officials as appropriate.

G. Main Street Parking Spaces:

1. The Site Plans indicate that two (2) existing parking spaces on the north side of Main Street will be eliminated (see Section H.2 below).

H. Prior to Issuance of a Certificate of Occupancy:

1. Payment in Lieu of Parking: The Project contains a residential component, and therefore must either (i.) comply with parking space requirements, or (ii.) make a “payment in lieu of parking” for each space not provided, per Section 650-34.E. of the Zoning Ordinance. Required parking for the Project is as follows:

1 bedroom units:	2 @	.75 spaces per unit =	1.5 spaces
2 bedroom units:	30 @	1.25 spaces per unit =	37.5 spaces
Total Spaces Required			= 39 spaces

Of the 27 parking spaces shown on the Site Plans, 25 spaces will be reserved for residential use (with 2 additional spaces for the use of the businesses located on site) providing a delta of 14 spaces. The Project will make a payment to the City in the amount of \$10,000 per space, for a total of \$140,000, in accordance with Section 650-34.E.(2)(b) of the Zoning Ordinance. With this payment, the Project complies with the parking requirements of the Marlborough Village District.

Of the 27 parking spaces shown on the Site Plans, the 25 spaces reserved for residential use count towards the total of 39 required parking spaces. The difference between the parking spaces provided and the parking spaces required, which is 14 spaces, will be addressed in strict accordance with Section 650-34.E.(2)(b) of the Zoning Ordinance of the City of Marlborough. Per the Ordinance, a payment-in-lieu-of-parking equal to \$140,000 (\$10,000 for each of the 14 spaces required but not provided on the Site) shall be paid to the City of Marlborough prior to the issuance of the first Certificate of Occupancy for the project. In addition, prior to the issuance of the first Certificate of Occupancy for the project, the Applicant shall pay to the City of Marlborough \$20,000 for the two (2) parking spaces (\$10,000 per space) eliminated on Main Street as part of the project (\$10,000 per space).

2. Work Within Public Way: All work within the public way layout, including but not limited to the street landscaped islands, planting, repaving, catch basin replacement, pavement milling and overlay, pavement markings, etc., as shown on the approved plans, shall be completed prior to the issuance of the first Certificate of Occupancy.

3. As-Built Plan: An as-built plan(s) must be submitted to the City Engineer for review prior to the issuance of the first Certificate of Occupancy or Temporary Certificate of Occupancy. The as-built plan(s) shall be prepared in accordance with the As-Built Plan Standards established by the City Engineer, which standards may be found on the website for the City of Marlborough.
4. Time for Completion: Work as provided for on the Site Plans shall be carried into effect and completed within three (3) years following the date of issuance of the Building Permit, unless the City Council has granted an extension of time for completion of the work in writing.
5. Signage. Pursuant to Section 650-34.I. of the Code of the City of Marlborough, the City Council hereby retains jurisdiction over all signage of the project to the extent such signage requires a sign permit under the Sign Ordinance. The final design, material, dimensions, content, and location of all such signage, including any freestanding entry signs and the project's internal signage, shall be subject to further review and sign permit approval from the City Council which must meet the requirements of Section 650-34.I. of the Code of the City of Marlborough.

I. General Provisions:

1. Minor Changes: The City Council delegates to the Building Commissioner the authority to approve minor changes to the approved Site Plans.
2. Enforcement: The City Council designates the Building Commissioner as the enforcing authority to bring enforcement actions for violations of this permit.
3. Deliveries: In order to mitigate the impact on traffic flow on Main Street and the impact of noise to the residents of and abutters to the Site, deliveries to the business on the Site by semi-trailers shall occur between 8:00 a.m. and 8:30 p.m. Daily deliveries to business on the Site by a small box truck, van or similar sized vehicle may occur between the hours of 7:00 a.m. and 9:00 p.m. On-site trash collection shall occur twice a week, or as required by management or the Board of Health to facilitate disposal demand, between the hours of 7:00 a.m. and 9:30 a.m. All possible measures shall be taken to avoid noise and disturbances to residents and neighboring businesses.

APPROVED; adopted.

Council President Clancy asked the Councilors to stand in affirmation of the vote. All eleven Councilors stood.

Suspension of the Rules requested – granted to allow a Communication from the City Solicitor re: Proposed Zoning Amendment to be entered a part of the record.

ORDERED: That the Proposed Zoning Amendment Allowing Assisted Living Facilities under Sections 650-5.B, 650-17, 650-18.A(44) and 650-48.A, refer to **LEGAL DEPARTMENT TO PUT IN PROPER LEGAL FORM & PLACE ON THE NOVEMBER 28, 2016 CITY COUNCIL AGENDA.**

ORDERED:

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT 11-1003004C (99-8311B)**

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

CITY COUNCIL ORDER NO. 16-100663B

Re: 175 Maple Street

The City Council of the City of Marlborough hereby **GRANTS** the application to modify Special Permit No. 11-1003004C (which modified Special Permit No. 99-8311B) to New Cingular Wireless PCS, LLC ("AT&T"), having a usual place of business at 550 Cochituate Road, Suites 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 which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On November 22, 2011, the City Council granted to Applicant, Special Permit No. 11-1003004C to modify Special Permit No. 99-8311B (collectively, the "Original Special Permit") which allowed an upgrade to the wireless communications facility ("WCF") attached to the existing water tank located at 175 Maple Street, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 82, Lot 132 (hereinafter "Site"). The owner of record for the Site is the PMC/Maple Landowner LLC.
3. By letter dated July 18, 2016, the Applicant submitted to the City Council an application to modify the Original Special Permit (hereinafter "Application"). The Applicant is a lessee of the Site's owner for purposes of the Application.
4. The WCF is located in the Business (B) Zoning District. Wireless communication devices are allowed by grant of a special permit in Business (B) Zoning District.
5. The modification of the Original Special Permit is sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.

6. Due to the continuing and ongoing modifications of the WCF, Applicant requests that the City Council delete Condition 7 of the Special Permit which requires that an American flag be flown at the WCF and that a more appropriate condition be imposed to honor the American flag. In particular, the Applicant proposes to remove the flag and associated mechanical lanyard device, as well as the gold ball finial at the top of the antenna canister.
7. Pursuant to the Rules and Regulations of Application for Special Permit (“Rules and Regulations”), the Building Commissioner, on behalf of the City Planner, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on Applicant's request to modify the Original Special Permit on August 29, 2016, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the modification to the Original Special Permit meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the WCF.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit to modify the Original Special Permit.
- B) The Site remains an appropriate location for the WCF and the modification to remove the flag from the WCF at the Site is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval. Flying the American flag is no longer appropriate due to the ongoing changes to the WCF located at the Site.

- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and continuing to screen its WCF to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant a modification of the Original Special Permit (hereinafter "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 4:**
- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.
 - 2) Any problems arising out of the operation of the WCF that interfere with reception at the Marlborough Fire Department's headquarters at 215 Maple Street or the City of Marlborough's public safety radio system shall be rectified by Applicant as soon as possible.
 - 3) Condition numbered 7 of the Original Special Permit is hereby deleted and replaced with the following: "Applicant shall make, within thirty (30) days after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, a one-time contribution of \$5,000 to the City of Marlborough's Flag Account (#29024001 55851) as an appropriate means to honor the American flag in lieu of flying the American flag at the WCF located at the Site."
 - 4) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant, at its expense, shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit, if necessary, concerning the removal of the American flag and associated mechanical lanyard device, as well as the gold ball finial at the top of the antenna canister. Prior to applying for any necessary building permit, the Applicant shall provide a copy of the recorded Modified Special Permit to the Building Department, the City Council's office and the City Solicitor's office; if no building permit is deemed necessary by the Building Commissioner, the Applicant shall provide such copy to those offices forthwith after recording.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:35 PM.