



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

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**OCTOBER 5, 2015**

Regular meeting of the City Council held on Monday, OCTOBER 5, 2015 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Oram, Ossing, Robey, Delano, Elder, Tunnera, Irish and Landers. Meeting adjourned at 8:35 PM.

Council President Clancy expressed his sorrow in the passing of Ward 2 City Councilor Robert D. Page and a moment of silence was observed in his memory.

Council President Clancy recognized Sgt. Stephen Lupien for graduating from the FBI National Academy.

**ORDERED:** That the Minutes of the City Council meeting SEPTEMBER 28, 2015, **FILE;** adopted.

**ORDERED:** That the OYO Sportstoy's EDIP Application (TIF) Constructing a State-of-the-Art Manufacturing Facility and Corporate Headquarters to be located at 111 Locke Dr., with following documents attached, refer to **FINANCE COMMITTEE;** adopted.

1. EDIP Preliminary application
2. Proposed TIF Agreement
3. the Proposed Council Resolution
4. the Local Incentive Valuation

**ORDERED:** That the Communication from City Solicitor Rider re: Summary of Comprehensive Permit for Brookview Village (aka Talia), Proposed Acceptances of Residency Restriction and Public Walking Trail Easements, Order No. 15-1006309, X14-1005759, **MOVE TO REPORTS OF COMMITTEE;** adopted.

## ORDERED:

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

from BOSTON POST ROAD EAST to BOSTON POST ROAD EAST

and that its appurtenant easements be accepted as municipal easements, all as shown on plans thereof and as hereinafter described:

DESCRIPTION

Plan entitled, "Acceptance Plan of Dicenzo Boulevard and Easements" (7 sheets), Stamped: January 6, 2015; Scale: 1" = 150'; Owner: Indian Development Corp., 290 Eliot Street, Ashland, MA 01721; To Be Deeded To: City of Marlborough, 140 Main Street, Marlborough, MA 01752; prepared by: Guerriere & Halnon, Inc., 333 West Street, Milford, MA 01757, which plan is to be recorded herewith.

Title to the roadway known as DICENZO BOULEVARD, and title to all the municipal easements, including 10-Foot Wide Pedestrian Easement, Walking Path Easement, Sewer Easement 1, 30-Foot Wide Utility Easement 1, Access Easement 1, 30 Foot Wide Utility & Access Easement 1, Flowage Easement 1, Flowage & Access Easement 2, Flowage Easement 3, and Drain Easements 1 through 5, have been granted to the City of Marlborough in a quitclaim deed from Indian Development Corp., Richard E. Terrill, Controller.

IT IS THEREFORE ORDERED THAT:

DICENZO BOULEVARD be accepted as a public way, and its appurtenant easements be accepted as municipal easements, in the City of Marlborough.

Refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Assistant City Solicitor Panagore Griffin re: Special Permit of Charter Foods North, LLC, to operate a Taco Bell restaurant with a drive-thru facility at 773 Boston Post Rd. East, in proper legal form, Order No. 15-1006282A, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from Assistant City Solicitor Panagore Griffin re: Complete Streets Policy Orders in proper legal form, Order No. 15-1006281, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from the Planning Board re: Endorsement of the Complete Streets Policy, Order No. 15-1006281, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the request to place fifteen signs, three of which will be placed on City property, as follows, to promote the **rescheduled** Marlborough Heritage Festival to be held in downtown Marlborough on October 23<sup>rd</sup>, 24<sup>th</sup> & 25<sup>th</sup>, **APPROVED**; adopted.

Corner of Maple and Mill Streets (City Owned Property)  
SE Corner of park Granger and West Main Street (City Owned Property)  
Corner of Boston Post Rd and Farm Road (City Owned Property)

ORDERED: That the Communication from Rick Roper, Crabtree Lake Williams LLC, re: Proposed Façade for Concrete Retaining Walls at Overlook, **FILE**; adopted.

**Councilor Landers requested to be recorded in opposition.**

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 19, 2015** as date for a **PUBLIC HEARING** On the Petition of NGrid to place new solely owned pole 59-80 to be set approximately 40' north of existing pole 59 to serve new UG services for traffic camera to be installed between 495 North & 495 South, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, School Committee, September 8 & September 15, 2015, **FILE**; adopted.

#### Reports of Committees:

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

Meeting Name: City Council Urban Affairs Committee

Date: September 29, 2015

Time: 5:00 PM

Location: City Council Chambers, 2<sup>nd</sup> Floor, City Hall, 140 Main Street

Convened: 5:02 PM

Adjourned: 6:05

PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Clancy, Elder, Landers, and Tunnera; Councilor Robey

Also Present: Sandra Austin, Attorney; Ken Fries, RK Centers; Cynthia Panagore Griffin, Assistant City Solicitor, City of Marlborough

**Order No. 15-1006282: Application for Special Permit from Attorney Gadbois on behalf of Charter Foods North, LLC, to operate a Taco Bell restaurant with a drive-thru facility at 773 Boston Post Road East.** The Urban Affairs Committee met with Attorney Sandra Austin and representatives of Charter Foods North, LLC and RK Centers for a discussion of a proposed Taco Bell restaurant with a drive-through window at 773 Boston Post Road East. This location previously operated as a drive-through restaurant for several years, the building itself is not being changed and the drive-through lane and window are already at the site. RK Centers agreed to upgrade the landscaping at the site. The committee reviewed the Decision on a Special Permit with minor changes to the conditions. **Motion made by Councilor Elder, seconded by Chair, to approve the Special Permit as amended. The motion carried 5-0.**

**Motion made by Councilor Clancy, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 6:05 PM.**

## Reports of Committees Cont'd:

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

City Council Legislative and Legal Affairs Committee  
Tuesday, September 29, 2015 – In Council Chambers  
Minutes and Report

Present: Chairman Katie Robey, Councilor Delano, and Councilor Clancy  
Also present were Assistant Solicitor Panagore Griffin & City Engineer Evan Pilachowski for the 1<sup>st</sup> item and Solicitor Rider for the 2<sup>nd</sup> item. The meeting was called to order at 6:22 PM.

The Committee met to discuss:

**Council Order 15-1006281, Complete Streets Policy Proposal.** The mayor's letter dated, July 23, 2015 was read. The mayor's letter referred to legislation that authorized money for grants programs for cities/towns who have completed the requirements of their certification program. A step in that certification is adoption of a "complete streets by-law, ordinance or administrative policy." The chair did remind committee members that in the Planning Board Minutes accepted at the Sept. 28<sup>th</sup> Council meeting, there was information that the Planning Board did vote to endorse the Complete Streets Plan and a letter from the Planning Board would be on our next agenda for acceptance. Assistant Solicitor Panagore-Griffin did advise the committee that along with acceptance of the policy, the council should accept the provision of Section 1 of Chapter 90I and gave the committee the appropriate language which would be included on the agenda of next meeting.

A motion was made and seconded to recommend adoption of the Complete Streets Policy and to recommend acceptance of the Provisions of Section 1 of MGL Chapter 90I. The Motion carried 3-0.

**Council Order 15-1006309, Communication from City Solicitor Rider re Comprehensive Permit for Brookview Village Public Walking Trail Easement cross-referenced with Order 14-1005759.** The chair asked that since the cross-referenced order is pertinent to this new order and was tabled in committee May 27, 2014, that this be removed from the table. A motion was made and seconded to remove Order 14-1005759 from the table; the motion carried 3-0. Solicitor Rider explained to the committee how the two orders are related. The order from 2014 was related to the Gutierrez Company and their development of a friendly 40B housing project on Ames Street. As part of the comprehensive permit, they were required to convey to the city a public walking trail easement for passive recreation and access to the traffic lights across from RK Plaza. This easement would convey an approximately 20,000 square foot strip of land encompassing Lots 4 and 5 and Lot 14. They were also required to place a restriction on the remaining land that Gutierrez Company owns after the 40B land is sold to prohibit the development of that land for residential purposes except as assisted living/congregate care facility for elderly.

## Reports of Committees Cont'd:

The second, more recent order, is for property not subject to the language in the ZBA Permit but which leads directly to the housing development now known as Brookfield Village. This easement would convey roughly 12,000 square feet of land in Lot 5 to the city and connect to the other easement.

A motion was made and seconded to recommend acceptance of Order 14-1005759 that includes the 20,000 square foot easement outlined in Condition 20 of the ZBA Comprehensive Permit and to accept the residency restriction described in Condition 41 of that Permit. The motion carried 3-0.

A motion was made and seconded to recommend approval of Order 15-1006309 that conveys to the city a 12,000 square foot easement connecting to the prior easement. The motion carried 3-0.

Motion made and seconded to adjourn, carried 3-0.

Meeting adjourned at 6:50 PM.

**Suspension of the Rules requested-granted**

ORDERED:

**DECISION ON A SPECIAL PERMIT  
IN CITY COUNCIL**

Special Permit  
Charter Foods North, LLC  
Order No. 15-1006282B

**DECISION ON A SPECIAL PERMIT  
CITY COUNCIL ORDER NO. 15-1006282B**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Charter Foods North, LLC (the "Applicant") for one (1) drive-through service window for a restaurant located at 773 Boston Post Road East, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

**FINDINGS OF FACT AND RULING**

1. The Applicant is a duly organized and existing foreign Limited Liability Company having a business address of 1111 Gateway Service Park Road, Morristown, TN 37813.
2. The Applicant is the prospective lessee of a portion of the property located at 773 Boston Post Road East, Marlborough, Massachusetts, as shown on the Assessors' Map of the City of Marlborough as a portion of Map 61, Parcel 30 (the "Site"). The Site is owned by Route 20 Marlboro Properties LLC, c/o R.K. Associates, Inc., 456 Providence Highway, P.O. Box 111, Dedham, MA 02027.
3. The Applicant proposes to utilize an existing structure, which contains two abandoned drive-through windows, on the Site to operate a Taco Bell restaurant with one (1) drive-through service window (the "Project").

4. The Site is located in the B Business Zoning District as determined by the Zoning Map of the City of Marlborough.
5. The Applicant's use of the Site as a restaurant with a drive-through service window is allowed by special permit pursuant to Sections 650-14.B(2) and 650-17 of the Zoning Ordinance.
6. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, a plan of the existing site entitled "Taco Bell Remodel Existing Locus Plan 07.16.15" and a detailed site plan of the proposed site entitled "Taco Bell Remodel Proposed Site Plan 07.08.15," both plans prepared by Kathleen Day, Architect, 8535 Ferry Road, Waynesville, OH 45068 (the "Plans").
7. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
8. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, August 24, 2015.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic. One resident who lives at 666 Brigham Street spoke in favor of the Project based on tax dollars and jobs for residents being generated out of what is presently a vacant building. Abutters to the far rear of the larger parcel containing the Site, who live at 17 Arcadia Circle and 47 Settlers Lane, spoke in opposition to the Project based on concerns of blight, noise, trash, and restaurant operating hours.

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

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

- C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to operate one (1) drive-through service window as shown on the Plan filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:
1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site shall be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.
  2. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, statutes, and ordinances as they may apply to the construction, maintenance, and operation of the Project.
  3. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough site plan review ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.
  4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow, increase the size, shape or position of the building, or alter the fencing bordering the property, all as shown on the Plans.
  5. Signs and Awnings. The locations and design of signage shall be reviewed and approved by the City of Marlborough in accordance with the Sign Ordinance of the City of Marlborough without variance therefrom except as herein provided. No posters, graphics, lettering or any other form of advertising shall be affixed to windows or hanging inside or in front of windows.
  6. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, including exhibits thereto, 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.

7. Hours of Operation. The hours of operation for the restaurant and the drive-through window shall not exceed Monday through Sunday, 7:00 a.m. to 2:00 a.m. There will be no 24-hour operation.
8. Traffic Signage. The location and placement of pavement markings and traffic directional signage currently located at the Site shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with applicable rules and regulations of the City of Marlborough.
9. Parking Area Rules. Parking areas will be swept and maintained by the Applicant, its successors and/or assigns as necessary. The Applicant, its successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings currently located on the Site as required by the Marlborough Traffic Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.
10. No Overnight Parking. There shall be no overnight parking at the Site.
11. Drive-Through Speakers. The drive-through window shall employ a pedestal speaker system that automatically adjusts to the ambient noise so as to minimize the noise emanating from the speaker system to levels comporting with the noise ordinance of the City of Marlborough. The drive-through audio speakers shall not produce noise at the rear property line of the plaza, shown as Map 61, Parcel 30 on the Assessors' Map of the City of Marlborough, greater than that which would be allowed in a residential zone pursuant to the Noise Ordinance of the City of Marlborough.
12. Deliveries. In order to mitigate noise concerns for residential abutters, no deliveries to the Site by semi-trailers shall occur prior to 7:00 a.m. or after 7:00 p.m.
13. Lighting. Applicant, its successors and/or assigns shall utilize illuminations as currently located at the Site.
14. Landscaping. The Applicant, its successors and/or assigns agrees to plant and maintain in good condition the Project's landscaping substantially in conformance with the final site plan as submitted to the City Council, which plan is entitled "Taco Bell Remodel, Final Site Plan, 09.28.2015."
15. Trash. Applicant, its successors and/or assigns agrees to keep dumpsters covered and to screen the Project's trash area by constructing a dumpster enclosure of a design compatible with the building. Applicant, its successors and/or assigns further agrees that the dumpsters located on the Site shall be covered. No trash pickup shall occur before 7:00 AM or after 7:00 PM.
16. Snow Removal. Applicant, its successors and/or assigns shall maintain and conduct snow storage and removal on the Site, and shall store or remove snow as necessary to provide for clear and safe traffic flow on the Site.
17. Non-Severability of Conditions. If any of the above conditions is deemed to be invalid by a court of competent jurisdiction, then this Decision shall be null and void.



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

**Yea: 9 – Nay: 0**

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

**ORDERED:** That the Building Department transfer request in the amount of \$8,000.00 which moves funds from Temporary Local Inspector to Assistant Wiring Inspector to fund assistant inspectors for electrical inspections, **APPROVED;** adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Building Department					FISCAL YEAR:	2016		
		FROM ACCOUNT:					TO ACCOUNT:			
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available	
Balance									Balance	
\$54,727.87	\$8,000.00	12410004	50265	Temporary Local Inspector	\$8,000.00	12410001	50970	Asst Wiring Inspector	\$2,450.00	
	Reason:	Position recently filled. Funds available.					High volume of inspections due to various projects			
	\$8,000.00	Total			\$8,000.00	Total				

**ORDERED:** There being no further business, the regular meeting of the City Council is herewith adjourned at 8:35 PM.