



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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JULY 21, 2014

Regular meeting of the City Council held on Monday, JULY 21, 2014 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Pope, Oram, Ossing, Robey, Delano, Page, Elder, Tunnera, Clancy, Irish, and Landers. Meeting adjourned at 9:02 PM.

ORDERED: That the minutes of the City Council meeting JULY 7, 2014, **FILE**; adopted.

ORDERED: That the **RESCHEDULED PUBLIC HEARING** On the Petition of NStar to install 105' of 4" plastic gas main as a system improvement to 31 Wellington St., Order No. 14-1005848A, all were heard who wish to be heard, hearing recessed at 8:05 PM; adopted.

Councilors Present: Pope, Ossing, Robey, Oram, Delano, Page, Elder, Tunnera, Clancy, Irish, & Landers.

ORDERED: That the **PUBLIC HEARING** On the Petition of NGrid and Verizon to relocate Pole 42 on Church Street and install a new guy Pole 42-84 on Plymouth Street, Order No. 14-1005884, all were heard who wish to be heard, hearing recessed at 8:07 PM; adopted

Councilors Present: Pope, Ossing, Robey, Oram, Delano, Page, Elder, Tunnera, Clancy, Irish, & Landers.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the MassWorks Infrastructure Grant Program awarded to the City of Marlborough in the amount of \$1,650,000.00 to be utilized for full depth reconstruction of Simarano Drive; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Assistance to Firefighters Grant awarded to the Fire Department in the amount of \$22,500.00 to replace the air compressor used to fill the Department's self-contained breathing apparatus; adopted.

ORDERED: That the Open Space and Recreation Plan approval by the Commonwealth of Massachusetts' Executive Office of Energy and Environmental Affairs, **FILE**; adopted.

ORDERED: That the Appointment of Robin Williams to the Board of Health for a term to expire January 5, 2015, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the IPG Photonics Tax Increment Finance Agreement, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City Council of the City of Marlborough, for purposes of the conflict of interest law set forth in MGL c. 268A, hereby designates Marlborough School Committee positions as special municipal employees, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City Council of the City of Marlborough, having designated for purposes of the conflict of interest law set forth in MGL c. 268A that Marlborough School Committee positions are special municipal employees, hereby declares, pursuant to MGL c. 268A, § 20(d), that the financial interests of School Committee members Heidi Matthews and Denise Ryan, as set forth in their attached disclosure forms, are exempt from MGL c. 268A, § 20, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Special Permit from Michael Almada of TRM, on behalf of TMobile to modify antennas at existing wireless communication facility at 860 Boston Post Rd., in proper legal form, Order No. 14-1005820A, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Special Permit from Michael Almada of TRM, on behalf of TMobile to modify antennas at existing wireless communication facility at 460 Boston Post Rd., in proper legal form, Order No. 14-1005821A, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from the Planning Board re: Non-favorable Recommendation to Accept Lacombe St. Ext. as a Public Way, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from the Planning Board re: Favorable Recommendation Pertinent to Proposed Zoning Amendment Section 650-5, New Section 650-32 Concerning Medical Marijuana Treatment Centers, Order No. 12/13/14-1005247F, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from Mark Donahue of Fletcher Tilton on behalf of Chick-Fil-A, Inc., re: to extend time limitations on application for Special Permit, to construct and operate an approximate 4,876 square foot single story building with drive-thru service restaurant at 230 Boston Post Road West, to September 30, 2014 until 5:00 PM, Order No. 14-1005761C, **APPROVED**; adopted.

ORDERED: That the Communication from Attorney Gadbois re: Site Plan Approval, Hilton Garden Inn, 170 Forest St., Order No. 14-1005727B, refer to **SITE PLAN REVIEW AND URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Minutes, Planning Board, June 16, 2014, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, June 3, 2014, **FILE**; adopted.

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

- A. William & Sandra DeOliveira, 60 Mosher Lane, other property damage and/or personal injury
- B. Anna Gleason, 6 Gleason St. Ext., other property damage and/or personal injury
- C. Meghan O'Brien, 15 White Terr., other property damage and/or personal injury
- D. Alyson McDonald, 15 Daley Cir., pothole or other road defect claim
- E. Elizabeth Correia, 96 Church St., other property damage and/or personal injury
- F. Leslie Meyers, 223 Vega Rd., residential mailbox claim 2(a)
- G. Bai Chen, 250 Campus Dr., pothole or other road defect claim

Reports of Committees:

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

Date: July 8, 2014

Time: 5:30 PM

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

Convened: 5:30 PM

Adjourned: 6:11 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Landers and Page; Councilors Pope, Robey

Absent: Councilors Clancy and Tunnera

Also Present: Assistant City Solicitor Panagore Griffin

Order No. 13/14-1005247E: Proposed Zoning Ordinance, Medical Marijuana Treatment Centers.

The Proposed Zoning Ordinance for Medical Marijuana Treatment Centers includes comments from councilors from the prior Urban Affairs Committee meeting as well as any suggestions made by the Planning Board as a result of their Public Hearing. A communication from the Planning Board regarding action taken at its regular meeting on July 7, 2014 was read into the record. By a vote of 5-0 the Planning Board voted to send a favorable recommendation to the City Council regarding the changes to the City of Marlborough Zoning Ordinance to include Medical Marijuana Treatment Centers. The Board noted a concern that the restrictions imposed by the proposed ordinance seem excessive seeing there are significant licensing constraints at the state level already in place. Chairman Delano read through the changes to the Zoning Ordinance and the recommendation of the Urban Affairs Committee is to approve as amended.

Motion made by Councilor Landers, seconded by Chair, to approve as amended the proposed Zoning Ordinance for Medical Marijuana Treatment Centers. Carries 3-0. (Clancy and Tunnera absent)

Recorded by: Sara Corbin

***Reported by: Chairman Delano
July 21, 2014***

Reports of Committee continued:

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

Date: July 15, 2014

Time: 5:30 PM

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

Agenda Item(s) addressed:

Convened: 5:42 PM

Recessed: 6:14 PM

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

Order No. 14-1005880: Communication from the Mayor re: Proposed Draft LED Sign Ordinance. The Urban Affairs Committee met to discuss the proposed draft LED Sign Ordinance as drafted by an LED sign committee. The proposed ordinance would define LED signs and place reasonable controls on their use within the City of Marlborough. They will be allowed through a Special Permit process where there will be limits on their allowed locations, brightness, and display colors. Motion made by Councilor Clancy, seconded by Chair, to approve as amended. **Carries 5-0.**

There was a two minute recess taken at 6:14 PM.

***Reported by: Chairman Delano
July 21, 2014***

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

Meeting Name: City Council Urban Affairs Committee

Date: July 15, 2014

Time: 5:30 PM

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

Re-convened: 6:16 PM

Adjourned: 6:32 PM

Present: President Pope, Acting Chair; Urban Affairs Committee Members Councilors Landers, Tunnera, and Page; Councilors Robey and Elder

Absent: Councilors Delano (abstained) and Clancy

Also Present: Robert Stauber, Gensler Architectural Firm

The Urban Affairs Committee re-convened at 6:16 PM to review Order No. 14-1005785A.

Reports of Committee continued:

Order No. 14-1005785A: Application for Special Permit from Robert Stauber of Gensler, on behalf of Bank of America, to modify existing bank drive-thru from the existing condition of 1 ATM lane 1 VAT drive-up teller lane and 1 by-pass lane to 2 ATM lanes and 1 by-pass lane, 223 East Main Street. Robert Stauber of Gensler Architectural Firm previously appeared before the Urban Affairs Committee on July 8, 2014 to present their request on behalf of Bank of America for a Special Permit to modify the existing drive-thru at 223 East Main Street. Mr. Stauber examined the possibility of modifying the site to prohibit left turns on exit at the request of the committee. He reported to the committee that making any such change would interfere with the current traffic circulation causing the site to become less safe. They propose the installation of 24 x24 no left turn signs on both sides of the driveway and a large right turn only arrow painted in the driveway to discourage left turns off the site. President Pope, Acting Chair, read through the Special Permit Conditions. **Motion made by Councilor Tunnera, seconded by Chair, to recommend approval of the Application for Special Permit from Bank of America, to modify existing bank drive-thru from the existing condition of 1 ATM lane 1 VAT drive-up teller lane and 1 by-pass lane to 2 ATM lanes and 1 by-pass lane, 223 East Main Street. Carries 4-0. Delano recused/Clancy absent; President Pope ex-officio, Acting Chairman**

Motion made by Councilor Tunnera, seconded by Chair, to adjourn. Carries 4-0.

Adjourned at 6:32 PM.

***Reported by: President Pope, Acting Chair
July 21, 2014***

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Monday July 14 2014
In Council Chambers**

Present: Chairman Ossing; Finance Committee members Councilors Robey, Oram, Elder, and Irish. Councilors Delano and Landers were also in attendance. The meeting convened at 7:00 PM.

1. Order #14-1005872 – Transfer \$956,208.00 from the Undesignated Stabilization Account to Various Capital Outlay Accounts: The Finance Committee reviewed the Mayor's letter dated July 2, 2014 requesting the transfer of \$956,208.00 from the Undesignated Stabilization Account to the following capital outlay accounts:

- \$500,000.00 – School Equipment (Approved 4-0-1 Councilor Oram abstained)
- \$378,243.00 – Emergency Management (Approved 5 – 0)
- \$27,985.00 – DPW Projects (Approved 5 – 0)
- \$49,980.00 – Police Department Equipment (Approved 5 – 0)

The Finance Committee voted to approve the transfers as indicated above. The Finance Committee recommended suspending the rules at the July 21, 2014 City Council meeting to report the transfers to the full Council for a vote.

Reports of Committee continued:

2. Order #14-1005873 – Transfer \$33,580.00 from Building Department Contract Services to Various Inspector Salary Accounts: The Finance Committee reviewed the Mayor's letter dated July 2, 2014 requesting a transfer of \$33,580.00 from the Building Department Contract Services account to various inspector salary accounts. The funds are necessary to support inspection activities at Avalon Bay and are offset by mitigation payments made to the city. **The Finance Committee voted 5 – 0 to approve the transfers.**

The Finance Committee adjourned at 8:08 PM.

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

Meeting Name: City Council Operations and Oversight Committee

Date: July 14, 2014

Time: 5:30 PM

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

Convened: 5:38 PM

Adjourned: 6:38 PM

Present: Chairman Elders; Operations and Oversight Committee Members Councilors Delano and Landers, Councilors Pope and Robey

Also Present: John Ghiloni, Commissioner of Public Works; Diane Smith, Auditor; Mayor Arthur Vigeant; Brian Doheny, Comptroller; Jean and Michael Morrisey

Order No. 14-1005875: Communication from the Mayor re: Senior Center Budget. Mayor Vigeant and Commissioner Ghiloni appeared before the Operations and Oversight Committee to provide a status update of the Senior Center project and explain any overruns. Commissioner Ghiloni explained the status of the two current change orders and a third change order that is pending as a result of recommendations from Site Plan Review. The committee would like to receive regular updates on the status of the project and will keep the Order in committee for that purpose. However the committee will recommend that the Partners Healthcare gift be made available for the expenses and budget of the Senior Center. **Motion made by Councilor Delano, seconded by the Chair that the Operations and Oversight Committee recommend against reducing the approved \$6.5 million bond by \$750,000.00; and, further, that the Partners Healthcare gift in the amount of \$750,000 be available to use toward the expenses of the Senior Center. Carries 3-0.**

Order No. 14-1005883: Communication from the Mayor re: Informational Letter Concerning City Towing Contracts. Mayor Vigeant indicates his letter was for informational purposes and requires no action by the City Council. He explains the new arrangement with the three towing companies under contract with the City. Under the new contract, the towing companies will pay an annual fee of \$1500.00 to the City for the privilege of serving on the Police Tow Rotation List, will alternate towing responsibilities by week; the City will no longer charged for the towing of its vehicles and all tow drivers will submit to a CORI check with the Police Chief. **Motion made by Councilor Delano, seconded by Chair to recommend that the City Council accept the communication from the Mayor and place on file. Carries 3-0.**

Reports of Committee continued:

Order No. 14-1005886: Communication from Jean & Michael Morrisey, 43 Sonia Drive re: Baby Safe Haven Signs. Mr. and Mrs. Morrisey appeared before the committee to request approval for the placement of Baby Safe Haven signs at designated facilities (Marlborough Hospital, Police Station, and Fire Station). The Morriseys will provide detailed information regarding the signs and their proposed placement on Marlborough's designated facilities as requested by the committee. **Motion made by Councilor Delano, seconded by Chair to recommend approval of the placement of Baby Safe Haven signs at designated facilities in the City of Marlborough. Carries 3-0.**

Motion made by Councilor Delano, seconded by Chair to adjourn. **Carries 3-0.** Adjourned at 6:38 PM.

Reported by: Chairman Elder
July 21, 2014

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

City Council Legislative and Legal Affairs Committee
Tuesday, July 15, 2014 - In Council Chambers
Minutes and Report

Present: Chairman Clancy, Councilor Robey and Councilor Delano. Also present were Mayor Vigeant for items 1 & 2 and Assistant City Solicitor Panagore Griffin for all 3 items. Vice-chair Robey called the meeting to order at 5:05 PM.

The committee met to discuss three items.

Item #1: Order #14-1005874, Communication from Mayor re: Intermunicipal Agreement with Town of Hudson to assist with the Board of Health.

The mayor discussed his July 2, 2014 letter containing the draft agreement. This proposed agreement is similar to one we have with Town of Sudbury for Veteran's Agent and will allow Hudson's Director of Public and Community Health Services to provide operational consulting, and if needed, emergency inspection services in the office of the Board of Health of the City of Marlborough while we operate without our Sanitarian/Health Director. Payment for work performed will be paid from contract services line item in FY15. The mayor did agree the term of the agreement should be July 1st to agree with the opening sentence specifying its effective date. He had planned to use a 60-day appointment but is choosing to wait for council approval; therefore he asked for a Suspension of Rules to have this acted on at the July 21st council meeting.

Motion made and seconded to approve the Intermunicipal Agreement with Town of Hudson to assist with Board of Health with amended date, carries 3-0.

Motion made and seconded to ask for Suspension of Rules to add as action item for July 21st meeting, carried 3-0.

Reports of Committee continued:

Item #2: Order #14-1005881, Communication from Mayor re: Order of Taking by Eminent Domain; Order of Acceptance of Deeds; Order Transferring Care, Management and Control to the conservation Commission; and Determination of Unique Acquisition in area known as Deer Foot Park.

Councilor Clancy recused himself due to conflict as member of Conservation Commission.

Mayor Vigeant began by stating he had turned what he thought was a simple project over to legal department only to have it turn into a major project. Assistant Solicitor Panagore-Griffin detailed the research required to be able to complete the work necessary to have these parcels, which are land-locked by conservation land, ready to be transferred to the Conservation Commission. The 3 orders were taken separately.

- *Eminent Domain Order of Taking for certain portion of land located off of Concord Road in area known as "Deer Foot Park."* **Motion made and seconded to approve the Order of Taking for 7 parcels of land specified in Order, motion carried 2-0-1 (Clancy abstain)**
- *Order of Acceptance of Deeds for purposes of augmenting the Desert Conservation Area with privately owned parcels of land.* **Motion was made and seconded to approve the Order of Acceptance of Deeds specifying 7 parcels of land and 2 accounts available for the appropriation of money for said purpose, motion carried 2-0-1 (Clancy abstain).**
- *Order transferring to the Conservation Commission of the City of Marlborough for conservation purposes the care, custody, management and control of lots in the area known as Deer Foot Park.* **Motion was made and seconded to approve the order specifying eleven lots in area known as Deer Foot Park to be transferred to Conservation Commission, motion carried 2-0-1 (Clancy abstain).**

The chair then discussed the letter from Beverly Sleeper, Procurement Officer for City of Marlborough, which clarifies that the city is able to waive the advertisement requirements of MGL c. 30B, S16 with respect to the Plan of Lots of Deer Foot Park. That determination, as well as the names of the parties having a beneficial interest in the property, the location and size of property and proposed purchase price will be published in the July 16, 2014 edition of the Commonwealth's Central Register. Publishing must be done not less than 30 days before the City accepts the deeds. Thirty days works out to be August 15, 2014, so this must lay on the table until the Council's August 25th meeting when final action can occur.

Reports of Committee continued:

Item #3- Order #14-1005882, Eminent Domain Order of Taking for Certain Strips of Land for the Purpose of Reconstructing and Maintaining Simarano Drive.

The mayor's July 2, 2014 letter requests this be done as a necessary step as part of the \$1.65 million MassWorks grant awarded to city last year with the taking to acquire permanent and temporary easements for guardrails, repaving and new sidewalks on Simarano Drive. The Assistant Solicitor informed the committee that an appraisal report for the properties is expected week of August 15, 2014. That report will be included in the packet for the August 25th meeting when final action can occur. Funds to pay the damages are available in construction funds from the grant so no further appropriation is needed. She also clarified that Puritan Way as listed in the order is now called Value Way. **Motion made and seconded to approve the Eminent Domain Order of Taking delineating the temporary and permanent easements for 12 addresses for purposes of reconstructing and maintaining Simarano Drive, motion carried 3-0.**

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

Meeting Adjourned: 5:37 PM.

Recorded by: Vice-chairman Robey

**Reported by Chair Robey
For Agenda: July 21, 2014**

Councilor Robey reported the following out of the Wireless Communications Committee:

City Council Wireless Communications Committee
Tuesday, July 15, 2014 – In Council Chambers
Minutes and Report

Present: Chair Robey and Councilor Oram. Also present were Donald Rider, City Solicitor; Michael Almada, Tower Resource Management (TRM) acting as agent for T-Mobile; Brian Grossman from Anderson & Kreiger LLP, outside legal counsel for T-Mobile and Julie Riley, court reporter hired by T-Mobile. Councilor Clancy absent. The meeting convened at 7:34 PM.

The Committee reviewed two orders as follows:

1.) Order No. 14-1005820, an Application for a Special Permit by TRM on behalf of T-Mobile Northeast, LLC to modify antennas at existing wireless communications facility at 860 Boston Post Road.

Reports of Committee continued:

This facility is located at the city's Easterly Wastewater Treatment Plant and the work will include replacement of six of the nine panel antennas with six newer models, add one fiber optic cable and fiber jumpers. The chair began by stating that the City Council has practice of using standard conditions for all wireless communication facilities and those were sent to the applicant. The applicant then returned those with modifications along with a letter from Karen Crist, Senior Corporate Counsel for T-Mobile explaining their concerns with the draft conditions. The chair continued by outlining two suggested changes to page 1, evidence where the Site name is incorrect and the date of the plans is wrong, pointing out this committee will recommend referral to legal to be put into proper legal form at which time an additional item will be added to evidence detailing the site, and that because we are up against the 90-day clock the chair will be asking for a suspension of rules to ask the full City Council to act on the matter at the July 21st meeting. Using a clean copy of the recently approved special permit for modifications to T-Mobile's site at 75 Donald Lynch Blvd., the chair read into the record the ten standard conditions that would be included in this decision.

Attorney Grossman was then given an opportunity to speak where he outlined T-Mobile's issues with the conditions. He began with the Condition #6, payment of fee to open space account and the late fee. In reviewing recently approved special permits, T-Mobile's internal counsel, citing several cases, suggested these fees are impermissible under both state and federal regulations. He then discussed the federal Middle Class Tax Relief and Job Creation Act of 2012, specifically Section 6409 of that Act and its impact on Condition #4. Section 6409 is designed to facilitate wireless companies to upgrade and quickly build out to 4G, avoid protracted permitting processes and imposition of additional conditions. All of this is borne out in guidance by FCC that the permit should be administratively approved and not require a special permit. He also cited a 2013 ruling by MA AG's office for town of Mt. Washington ordinance change. Condition #8 was discussed with comments that under current FCC rules this type of facility is exempt and therefore annual reporting is unnecessary. Modifications to the draft were made by T-Mobile to be more consistent while still reserving their rights that it may be inconsistent with FCC regulations.

Solicitor Rider then offered comments beginning with Section 6409 stating since FCC had asked for comment on this section because what was enacted by Congress is very confusing, it is difficult to understand exactly what it means and open to broad interpretation. In his opinion, if 6409 allows discretionary review then conditions would be allowed. Further discussion was held on the fee including the fact that the original special permit from 2005 includes this fee and T-Mobile has been paying the fee.

Motion made and seconded to approve conditions as read into the record by the Chair with exception of condition #6. City Solicitor Rider is to offer opinion for the full City Council on the legality of the annual payment required by said condition #6. Adopted 2-0 (Clancy absent)

Motion made and seconded to refer to the City Solicitor to be placed in proper legal form. Adopted 2-0 (Clancy absent)

Reports of Committee continued:

Motion made and seconded to ask for Suspension of the Rules to allow the Special Permit for modifications to T-Mobile wireless facilities at 860 Boston Post Road to be acted on at the July 21, 2014 regular meeting. Adopted 2-0 (Clancy absent)

2.) Order #14-1005821, Application for Special Permit from Michael Almada of TRM on behalf of T-Mobile to modify antennas at existing wireless communications facility at 450/460 Boston Post Road.

This facility is a roof mounted antenna located at Countryside Village apartments with proposed work to replace the existing three antenna with three new antenna, replace the mounting pole and ballast frame with a 12' X 12' base and enlarge the diameter of the canister from 24" to 36" in diameter and add one fiber optic cable and fiber jumpers.

The chair noted that the same ten conditions read into the record for the previous special permit decision will be applied to the site at 450/460 Boston Post Road and the reading of the conditions would be waived. T-Mobile has sent similar letter referencing their objection to some of the conditions and their proposed changes. Attorney Grossman stated T-Mobile's objections outlined in the prior special permit pertain to this special permit also.

Motion made and seconded to approve conditions as read into the record by the Chairman with exception of condition #6. City Solicitor Rider is to offer opinion for the full City Council on the legality of the annual payment required by said condition #6. Adopted 2-0 (Clancy absent)

Motion made and seconded to refer to the City Solicitor to be placed in proper legal form. Adopted 2-0 (Clancy absent)

Motion made and seconded to ask for Suspension of the Rules to allow the Special Permit for modifications to T-Mobile wireless facilities at 450/460 Boston Post Road to be acted on at the July 21, 2014 regular meeting. Adopted 2-0 (Clancy absent)

Motion to adjourn was made and seconded. 2-0 (Clancy absent)

Meeting adjourned at 8:38 PM.

Recorded by: Chair Robey

Reported by: Chair Robey

For Agenda: July 21, 2014

Suspension of the Rules requested – granted

ORDERED:

CITY COUNCIL RESOLUTION

Whereas, H.4181 and S.2241 have been referred to a Joint Conference Committee on the Economic Legislation, and

Whereas, H.4181, Sections 74 and 75 includes language which would allow telecom companies, third party tower developers and speculators to place wireless antennas and equipment on virtually any building or structure in any location in any community, and override all municipal zoning laws, ordinances, and local authority to protect neighborhoods and the public from unsightly and intrusive antenna and equipment,

Now Therefore Be It Resolved, that the Marlborough City Council expresses its concern to the Joint Conference Committee members (The Honorable Joseph F. Wagner, House Chair; The Honorable Stephen M. Brewer, Senate Chair; The Honorable Ann-Margaret Ferrante, House Vice-Chair; The Honorable Gale D. Candaras, Senate Vice-Chair; The Honorable Susan Gifford, Ranking House Member; and The Honorable Donald F. Humason, Jr., Ranking Senate Member) and to our legislative delegation (The Honorable James Eldridge, Senate; The Honorable Danielle W. Gregoire, House and The Honorable Thomas P. Conroy, House) regarding any effort to limit or strip municipalities of any ability to regulate the placement, construction or modification of wireless infrastructure; and further requests that the Joint Committee report out a bill which does not contain Section 74 and/or 75 of the House Economic Development Bill (H.4181) or any language which will negate or limit any local control over wireless infrastructure placement, construction or modification.

Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 526, ENTITLED "SIGNS," WHICH AMENDMENTS SHALL SUPERSEDE SECTION 526-7N AS PROMULGATED UNDER ORDER NO. 13-1005520A, AS FOLLOWS:

1. § 526-2, entitled "Definitions," is amended by inserting the following definitions:

DIGITAL DISPLAY SIGN: A sign or portion thereof that incorporates light-emitting diode (LED), fiber optic or similar technology to allow messages to change or stay static.

ELECTRONIC MESSAGE CENTER (EMC) SIGN: An on-premises electronically-activated changeable sign or portion thereof whose variable message and/or graphic presentation capability can be electronically programmed and have the capability of changing or staying static. EMCs typically use light-emitting diodes (LEDs) as a lighting source or similar technology.

2. Chapter 526 is further amended by inserting after § 526-12 a new section, entitled "Electronic Message Center and Digital Display Signs," as follows:

§ 526-13. Electronic Message Center Signs and Digital Display Signs.

A. Applicability.

Notwithstanding any general ordinance or special law to the contrary, the following regulations governing Electronic Message Center (“EMC”) Signs and Digital Display Signs shall be in effect.

The regulations in § 526-13 permit Digital Display signs and Electronic Message Center (“EMC”) signs in all zoning districts except for Rural Residence (“RR”) Districts, Residence (“A-1”) Districts, Residential (“A-2”) Districts, Residential (“A-3”) Districts, Residential B (“RB”) Districts, Residential C (“RC”) Districts, Retirement Community Residential (“RCR”) Districts, and the Downtown Business District outlined in § 526-9L., in which districts such signs are strictly prohibited. Digital Display signs and EMC signs shall be permitted with the approval of the Building Inspector, shall be subject to all other provisions governing signs in Chapter 526 of the City’s sign ordinance, and shall require a special permit. The special permit granting authority shall be the City Council. In the event of a conflict between these provisions and other provisions governing signs in Chapter 526, these provisions shall prevail.

This § 526-13 shall apply to all exterior Digital Display signs and all exterior EMC signs, and also to all such signs that are within 3 feet of the interior of a business window and that are visible from the outside of the business window. It shall not otherwise apply to signs or displays located within a commercial structure.

B. Standards.

EMC signs and Digital Display signs shall be allowed by special permit, but only pursuant to the following standards:

1. Sign Type: EMC signs shall only be permitted as part of a freestanding sign and shall comply with all of the requirements of § 526-9.
2. Number of Signs: There shall only be one (1) EMC sign permitted on each nonresidential-zoned parcel.
3. Display Area: No more than twenty-five percent (25%) of the allowable sign face shall be dedicated to the EMC portion of said sign. The EMC display portion of said sign is not to exceed a maximum of twenty-four (24) square feet.
4. Design: The EMC area must be integral to the design of the sign and shall not be the dominant element. The EMC portion of the sign face shall not be the uppermost element, but shall instead be located in the bottom one-half ($\frac{1}{2}$) of the sign face. Digital Display signs may be located on free standing signs and wall signs, but are prohibited on portable, temporary, awning, marquee or canopy, projecting banner, window sign, and suspended signs.

5. Automatic Dimming: No Digital Display sign or EMC sign shall be erected without an automatic light sensing device such as a light detector or photocell by which the sign's brightness can be dimmed when ambient light conditions darken.
6. Brightness and Color: The Digital Display sign or EMC sign must not display light of such intensity or brilliance so as to cause glare or otherwise impair the vision of any driver, result in a nuisance to any driver or interfere with traffic signals. From sunrise to sunset, the background or field shall be a single color and the message shall be a single contrasting color. From sunset to sunrise, the background or field shall be a single dark color and the message shall be a single contrasting color. The light intensity for all accessory and non-accessory EMC signs shall not exceed maximum luminance intensity levels of 350 (cd/m²) nits from sunset to sunrise and 6,000 (cd/m²) nits from sunrise to sunset. A photoelectric sensor shall be installed on the sign structure and set to register the ambient light produced at sunset on any given day. The ambient light level shall determine the cutoff between the two (2) maximum luminance intensity levels, measured in nits, set forth above. Upon installation of the sign, an employee or agent of the Building Department shall confirm compliance with the above nit levels. EMC and Digital Display signs are subject to inspection at the discretion of the Building Inspector. All lighting used to illuminate signs shall be installed so that neither direct nor reflected illumination from such lighting shall cause a public nuisance to adjacent lots or abutting streets. In addition to the maximum luminosity intensity levels set forth above, all displays should adjust brightness intensity according to ambient light conditions to ensure optimum legibility.
 - a. A 100 hour break-in period for new signs, if absolutely required, shall be allowed under a special permit.
7. Inspections: Luminosity levels shall be inspected as needed by the City's zoning enforcement officer, or an agent of the City's zoning enforcement officer, using standard industry best practices for such measurement.
8. Effects: The EMC message or the digital display shall not grow, melt, X-ray, scroll, write on, travel, inverse, roll, twinkle, snow, rotate, flash, blink, move, spin, wave, rumble or present pictorials or other animation and/or intermittent illumination. Subject to the foregoing restrictions, temperature and time may change as necessary. The message shall be limited to alphanumeric characters, one color per message.
9. Operational Limitations: Such displays shall contain static messages only, and shall not have movement of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement of any illumination or the slashing, scintillating or varying of light intensity.
 - a. Sequential messages are prohibited. Only complete messages shall be allowed.
10. Minimum Display Time: Except for time and temperature, each message on the EMC sign must be displayed for a minimum of 60 seconds.

11. Message Change Sequence: The change of messages on an EMC sign must be accomplished with a maximum interval of no more than 0.3 seconds of time between messages.
12. Setbacks from Residential Zoned Areas: The sign must be set back a minimum distance of two hundred feet (200') from the nearest point of any abutting residentially zoned district. If, because of the shape, size and/or proximity of a commercial lot to a residentially zoned district it is not possible to place the sign more than 200 feet from the nearest point of an abutting residentially-zoned district, then the Planning Board may grant a variance for closer placement, provided that when located within 200 feet of a residentially-zoned district, all digital display portions of the sign shall be oriented so that no portion of the sign is visible from an existing primary residential structure in that district.
13. Hours of Operation: EMC signs which have an undue negative impact on pre-existing residential areas may be required to be turned off after posted business hours.
14. Malfunctioning Signs: Signs that malfunction shall be turned off immediately.
15. Spacing: Digital Display signs and EMC signs shall be at least one hundred feet (100') apart. If, because of the shape and size of a commercial lot it is not possible to place a new sign more than 100 feet from an existing EMC sign or Digital Display sign, then the Planning Board may grant a variance for closer placement. Coordinated messages between or among EMC signs and/or Digital Display signs are strictly prohibited.
16. Special Permit Criteria: Criteria for approval by the City Council of a special permit shall include, but are not limited to, the following:
 - a. All other signage on-site is in compliance with zoning requirements.
 - b. In addition to other signs on-site, the proposed sign does not create unnecessary visual clutter or constitute signage overload for the lot or surrounding neighborhood or street.
 - c. The proposed sign does not substantially block visibility of signs on abutting lots.
 - d. The proposed sign does not substantially block solar access of, or the view from, windows of residential dwellings on abutting lots.
 - e. The proposed illumination is appropriate to the site and is appropriately located with respect to the character of the surrounding neighborhood.
 - f. Whether the scale and/or location of a proposed Digital Display sign or EMC sign is appropriate.
 - g. Whether the dimensions of the proposed sign exceed the area limitations of this Chapter.

- C. Legally Pre-Existing Non-Conforming EMC And Digital Display Signs.
 Legally pre-existing non-conforming EMC signs and Digital Display signs, to the extent they have the technical capability to do so, shall be operated in conformance with the operational standards set forth in this § 526-13. In the absence of a light sensing device, sign owners shall ensure either that the signs are dimmed to meet brightness standards set forth in § 526-13 B(6.) above or that the signs are turned off from sunset to sunrise. All legally pre-existing non-conforming signs shall be brought into compliance with this amendment upon being significantly updated or replaced, as determined by the Building Inspector or a designee of the Building Inspector, or at the end of 10 years from the date of approval of this amendment, whichever is sooner.
- D. Governmental Exemption.

Governmental entities are exempt from the above provisions and regulations.

ADVERTISED AND PLACE ON THE CITY COUNCIL AGENDA FOR AUGUST 25, 2014.

Suspension of the Rules requested – granted

ORDERED: That the Application for Special Permit from Robert Stauber of Gensler, on behalf of Bank of America, to modify existing bank drive-thru from the existing condition of 1 ATM lane 1 VAT drive-up teller lane and 1 by-pass lane to 2 ATM lanes and 1 by-pass lane, 223 East Main St., Order No. 14-1005785A, refer to **CITY SOLICITOR TO PLACE IN PROPER LEGAL FORM FOR AUGUST 25, 2014 CITY COUNCIL AGENDA.**

Suspension of the Rules requested – granted

ORDERED: That the following Intermunicipal Agreement with Town of Hudson to assist with the Board of Health, be and is herewith **APPROVED.**

INTERMUNICIPAL AGREEMENT

Between the City of Marlborough and the Town of Hudson

Pursuant to M.G.L. c. 40, § 4A, this Intermunicipal Agreement, approved by the Marlborough City Council and the Selectmen of the Town of Hudson (collectively, the “Parties”), is hereby entered into and is effective from 1st day of July, 2014 by and between the City of Marlborough (“Marlborough”) and the Town of Hudson (“Hudson”) in accordance with the following terms:

1. Purpose and Duties:

- (A) This Agreement contractually enables the Director of Public and Community Health Services (the “Director”) in the Town of Hudson to perform operational consulting in the office of the Board of Health of the City of Marlborough (“Board of Health”). The Director shall remain an employee of the Town of Hudson, and shall be subject to standard personnel practices thereof.

(B) The duties and responsibilities of the Director shall be as follows:

- i. Provide direction, advice, and professional guidance to the Board of Health and their employees regarding the execution of their daily responsibilities;
- ii. In conjunction with the Mayor's office, facilitating the delegation of duties in the Board of Health and offer recommendations to improve workflow;
- iii. In limited and/or emergency circumstances, assisting in the performance of health inspection services;
- iv. Maintaining separate and comprehensive records of all services performed for the City of Marlborough;
- v. Acting in the best interests of the health and well-being of the inhabitants of the City of Marlborough.

(C) In his consulting and advisory capacity, the Director shall NOT be responsible for the following:

- i. Approving expenditures, invoices or contracts pertaining to the Board of Health.
- ii. Authorizing time off for any employee or approving weekly time sheets.

2. Term: The term of this Agreement shall be from July 8, 2014 until November 1, 2014. The Town of Hudson and the City of Marlborough reserve the right to terminate this agreement at any time upon written notice of at least (15) business days. The Parties may extend this Agreement in one month increments.
3. Location and Time of Services: The Director shall work from the offices of the Board of Health for a period of six hours per week according to his availability and in consultation with the Mayor of Marlborough and the Executive Assistant of the Town of Hudson.
4. Compensation: The City of Marlborough agrees to pay the Town of Hudson the sum of \$1,250.00 per month for the services outlined in Section 1(B) of this Agreement. Payment shall be made monthly upon receipt of an invoice from the Town of Hudson. The City shall directly provide to the Director a stipend of \$50.00 per month for use of his personal vehicle for any and all travel expenses incurred in the performance of his duties under this Agreement.
5. Insurance: The Parties acknowledge that each maintains a minimum of \$1,000,000 of public liability and property damage insurance through the Massachusetts Interlocal Insurance Association (MIIA), and that each party is covered by insurance for this joint venture as stated in the General Liability Coverage Form MGP 001.
6. Amendments: This Agreement may be amended, extended, or modified only by a written instrument signed by both Parties.

7. Notice: Until changed by notice in the manner specified above in paragraph 6, the addresses and telephone numbers of the parties to this Agreement shall be:

FOR THE CITY OF MARLBOROUGH:

Arthur G. Vigeant, Mayor
 City of Marlborough
 140 Main Street
 Marlborough, MA 01752
 Telephone: (508) 460-3770

FOR TOWN OF HUDSON:

Thomas Moses, Executive Assistant
 Town Of Hudson
 78 Main Street
 Hudson, MA 01749
 Telephone: (978) 562-9963

Suspension of the Rules requested – granted

ORDERED: That the Capital Outlay transfer request in the amount of \$956,208.00 which moves funds from Undesignated Stabilization to School Equipment, Emergency Management, DPW Projects and Police Department as indicated on the attached spreadsheet, **APPROVED**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2015		
		FROM ACCOUNT:					TO ACCOUNT:			
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available	
Balance									Balance	
\$8,241,283.67	\$956,208.00	83600	32925	Undesignated Stabilization	\$500,000.00	19300006	58630	School Equipment	\$0.00	
	Reason:	To fund capital outlay requests								
					\$378,243.00	19300006	58596	Emergency Management	\$0.00	
	Reason:									
					\$27,985.00	19300006	58514	DPW Projects	\$0.00	
	Reason:									
					\$49,980.00	19300006	58593	Dept Equipment Police	\$0.00	
	\$956,208.00	Total			\$956,208.00	Total				

Suspension of the Rules requested – granted

ORDERED:

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT****T-MOBILE NORTHEAST LLC (OMNIPOINT HOLDINGS, INC.)**

Order No. 14-1005820B

860 Boston Post Road East

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 05-100873B submitted by T-Mobile Northeast LLC, having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766 as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is T-Mobile Northeast LLC (Omnipoint Holdings, Inc.), with its principal office located at 12920 SE 38th Street, Bellevue, WA 98006.
2. Previously, the City Council granted to Omnipoint Holdings, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., a special permit to locate and operate a wireless communications facility located at 860 BOSTON POST ROAD, Marlborough, MA (hereinafter, “the Original Special Permit”). In 2006, Omnipoint Holdings, Inc. converted into a limited liability company named T-Mobile Northeast LLC. The Original Special Permit is recorded at the Middlesex South District Registry of Deeds, Book 46368 Page 441.
3. The site is located at 860 Boston Post Road East, owned by the City of Marlborough, and is further described as shown on the Marlborough Assessors Maps as Map 61, Parcel 16 (hereinafter, “the Site”).
4. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter, “the Application”), the Applicant seeks permission to allow replacement of six (6) of the panel antennas currently located on the wireless communication facility with six (6) newer models, along with one (1) GMS/GRS antenna with ½” feed mounted to the existing cable bridge. Applicant also seeks to add one (1) fiber optic cable (1” O.D.), and fiber jumpers to the wireless communication facility (hereinafter, “the WCF Project”), all substantially as depicted on a set of plans entitled “Site Name: BS547/VZMarlboroWWTP-RFP, 860 Old Boston Post Road East, Marlboro, MA 01752, Site ID Number: 4BS0547D,” by AEG Advanced Engineering Group, P.C., 500 North Broadway, East Providence, RI 02914, dated 4/31/14 [sic], a copy of which was provided in Special Permit Application (hereinafter, “the Plans”).
5. The Applicant is the Wireless Communication Facility owner and the lessee of the Site’s owner for purposes of the Application.

6. The WCF Project is located in the Rural Residential zoning district. Wireless communication devices are allowed by grant of special permit in the Rural Residential zoning district.
7. The modification of the Original Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
8. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector, 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.
9. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
10. The City of Marlborough City Council held a public hearing on the WCF Project on June 16, 2014, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
11. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the WCF Project's compliance with the applicable Special Permit criteria.
13. 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 Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the WCF Project and the WCF Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval.
- 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 screening its WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.

D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the 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 9:**

- 1) The WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Modified Special Permit, as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Application, as amended, are herein incorporated and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Applicant agrees to all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Applicant’s existing WCF.
- 4) The issuance of this Modified Special Permit may be further subject to Site Plan Review in accordance with the City of Marlborough’s Ordinance, as determined by the Building Inspector prior to issuance of an actual building permit. Any additional changes, alterations, modifications or amendments, as may be required by any Site Plan Review, shall be further conditions attached to this Modified Special Permit and shall be further approved by using a building permit application so long as the changes, alterations, modifications or amendments fall within the scope of section 6409 of the 2012 Federal Tax Relief Act. No occupancy permit shall be issued until the Applicant complies with all such further conditions, if any.
- 5) Applicant shall minimize the visual impacts of the WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCF Project only in cases of power outages to the WCF Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City’s noise ordinance set forth in Chapter 431 of the City Code. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system.

- 7) As soon as practicable but in any event within one (1) month after the occupancy permit has been issued to the Applicant by the City of Marlborough's Building Inspector for the WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall: (i) provide measurements as to the actual output of radio frequency energy emitted by the WCF Project; (ii) include a professional opinion by a qualified third party certifying that the WCF Project fully complies with all applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the WCF Project that may increase the actual output of radio frequency energy emitted by the WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall: (i) state what the changes or upgrades are; (ii) provide measurements specifying how the actual output of radio frequency energy emitted by the WCF Project has been increased; (iii) provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and (iv) include a professional opinion by a qualified third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.
- 8) 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 Inspector for a building permit concerning the WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.
- 9) All conditions set forth in the Original Special Permit, except for conditions 2 (mitigation payments) and 3 (one-time site improvement contribution fee), shall apply to this Modified Special Permit.

Yea: 8 - Nay: 2 – Abstained: 1

Yea: Delano, Page, Elder, Tunnera, Irish, Landers, Ossing, & Robey

Nay: Oram & Pope

Abstained: Clancy

Suspension of the Rules requested – granted

ORDERED:

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT****T-MOBILE NORTHEAST LLC (OMNIPOINT HOLDINGS, INC.)**

Order No. 14-1005821B

460 Boston Post Road East

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-7201B submitted by T-Mobile Northeast LLC, having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766 as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is T-Mobile Northeast LLC (Omnipoint Communications, Inc.), with its principal office located at 12920 SE 38th Street, Bellevue, WA 98006.
2. Previously, the City Council granted to Omnipoint Holdings, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., a special permit to locate and operate a wireless communications facility located at 460 BOSTON POST ROAD, Marlborough, MA (hereinafter, “the Original Special Permit”). In 2006, Omnipoint Holdings, Inc. converted into a limited liability company named T-Mobile Northeast LLC. The Original Special Permit is recorded at the Middlesex South District Registry of Deeds, Book 27967 Page 258.
3. The site is located at 460 Boston Post Road East, owned by Trinity Countryside Limited Partnership, and is further described as shown on the Marlborough Assessors Maps as Map 73, Parcel 31 (hereinafter, “the Site”).
4. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter, “the Application”), the Applicant seeks permission to allow replacement of three (3) of the panel antennas currently located on the wireless communication facility with three (3) newer models. Applicant also seeks to replace the existing stealth canister with a new canister 36” in diameter and to enlarge the ballast footing of the mount to 12’ x 12’ to accommodate the new antenna, and to add one (1) fiber optic cable (1 5/8” O.D.), and fiber jumpers to the wireless communication facility (hereinafter, “the WCF Project”), all substantially as depicted on a set of plans entitled “Site Name: BO149/450 Boston Post Rd, Marlboro, MA 01752, Middlesex County, Site Number: 4DE5149A,” by AEG Advanced Engineering Group, P.C., 500 North Broadway, East Providence, RI 02914, dated 2/24/14, a copy of which was provided in the Special Permit Application (hereinafter, “the Plans”).
5. The Applicant is the Wireless Communication Facility owner and the lessee of the Site’s owner for purposes of the Application.

6. The WCF Project is located in the Business and A-1 Residence zoning districts. Wireless communication devices are allowed by grant of special permit in the Business and A-1 Residence zoning districts.
7. The modification of the Original Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
8. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector, 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.
9. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
10. The City of Marlborough City Council held a public hearing on the WCF Project on June 16, 2014, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
11. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the WCF Project's compliance with the applicable Special Permit criteria.
13. 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 Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the WCF Project and the WCF Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval.
- 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 screening its WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.

D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the 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 9:**

- 1) The WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Modified Special Permit, as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Application, as amended, are herein incorporated and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Applicant agrees to all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Applicant's existing WCF.
- 4) The issuance of this Modified Special Permit may be further subject to Site Plan Review in accordance with the City of Marlborough's Ordinance, as determined by the Building Inspector prior to the issuance of an actual building permit. Any additional changes, alterations, modifications or amendments, as may be required by any Site Plan Review, shall be further conditions attached to this Modified Special Permit and shall be further approved by using a building permit application so long as the changes, alterations, modifications or amendments fall within the scope of section 6409 of the 2012 Federal Tax Relief Act. No occupancy permit shall be issued until the Applicant complies with all such further conditions, if any.
- 5) Applicant shall minimize the visual impacts of the WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCF Project only in cases of power outages to the WCF Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system.

- 7) As soon as practicable but in any event within one (1) month after the occupancy permit has been issued to the Applicant by the City of Marlborough's Building Inspector for the WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall: (i) provide measurements as to the actual output of radio frequency energy emitted by the WCF Project; (ii) include a professional opinion by a qualified third party certifying that the WCF Project fully complies with all applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the WCF Project that may increase the actual output of radio frequency energy emitted by the WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall: (i) state what the changes or upgrades are; (ii) provide measurements specifying how the actual output of radio frequency energy emitted by the WCF Project has been increased; (iii) provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) include a professional opinion by a qualified third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.
- 8) 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 Inspector for a building permit concerning the WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.
- 9) All conditions set forth in the Original Special Permit shall apply to this Modified Special Permit.

Yea: 9 - Nay: 1 – Abstained: 1

Yea: Delano, Page, Elder, Tunnera, Irish, Landers, Ossing, Pope, & Robey

Nay: Oram

Abstained: Clancy

ORDERED: ACCEPTANCE OF LAYOUT OF FARRINGTON LANE AND EMINENT DOMAIN ORDER OF TAKING OF FARRINGTON LANE, THE 155 FARRINGTON LANE PUMP STATION, AND CERTAIN SEWER EASEMENTS LOCATED ON FARRINGTON LANE

WHEREAS, at a meeting of the City Council of the City of Marlborough held this ___ day of _____ 2014 it is ordered that the City Council, having determined and adjudicated that the common convenience and necessity requires that a certain existing private way known as Farrington Lane, from Sudbury Street to terminus, being laid out in the location hereinafter described and shown on Exhibit "A" hereto, and having complied with all the requirements of law relating thereto, become a public way, did on the ___ day of _____ 2014 lay out such way under provision of law and it was voted following the report of said layout, to accept such way as laid out, effective upon recording of the taking by eminent domain herein; and at the same time,

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience, public welfare, and necessity require that the fee interest in Farrington Lane, shown on Exhibit "A" hereto, including without limitation that portion known as Parcel 27A and those portions known as Parcels 28 and 29 and the land beneath thereof, the layout of said way having been accepted by the City Council, as described herein be taken for the purposes of a public way and for the purposes of the construction, maintenance, replacement, operation, alteration, repair, removal, and improvement of the sewerage, sewer system, water system, and appurtenant structures, and for the purposes of repair, maintenance, construction, and replacement of the street, curbs, sidewalks, fixtures, and the utilities beneath the land including water, sewer, sewerage, and drain lines, and appurtenant structures and equipment located in, on, under, and through said way;

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience, public welfare, and necessity require that permanent easement interests in the land shown as Sewer Easement 7 and Sewer Easement 9 on Exhibit "A" hereto and described herein, be taken for the purposes of the construction, maintenance, replacement, operation, alteration, repair, removal, and improvement of the municipal utilities, sewerage, sewer system, and appurtenant structures and equipment located in, on, under, and through said land; and

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience, public welfare, and necessity require that the fee interest in the parcel known and numbered as 155 Farrington Lane, shown as Parcel 6 on Exhibit "A" hereto be taken for the purposes of the construction, maintenance, replacement, operation, alteration, repair, removal, and improvement of the municipal utilities, sewerage, sewer system, fence, pump station equipment, and appurtenant structures and equipment located in, on, under, and through said land and within said sewer pump station; and

WHEREAS, the aforementioned fee interests and easement interests are necessary for the protection of the health, welfare and safety of the residents of Marlborough; and

WHEREAS, all preliminary requirements have been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough by virtue of the authority and the power conferred by the City Charter and by virtue of the applicable provisions of the Massachusetts General Laws, Chapters 82 and 79, as amended, and by virtue of every other power and authority thereto enabling, and in the exercise of power and authority conferred by said laws, and under any other authority enabling us hereto, do hereby adopt an Order of Taking of land on behalf of said City of Marlborough.

By such order, for the aforementioned purposes we accept the layout of Farrington Lane as a public way, and we take by Eminent Domain the fee interest in the entirety of Farrington Lane, including Parcel 27A and portions of the roadway numbered as Parcels 28 and 29 and the land beneath thereof, the roadway, land beneath the roadway, all sidewalks, curbs, utilities, fixtures, structures, castings and appurtenances thereto in, on, under and through, permanent easement interests in the land known as Sewer Easement 7 and Sewer Easement 9, and the fee interest in the parcel known and numbered as 155 Farrington Lane, also known as Parcel 6, including all parcels of land, equipment, structures (but not sheds, fences, and other personal property that may be located on Parcels 7 and 9) and appurtenances, trees, and other vegetation thereon, all of which interests are shown and described on Exhibit "A" attached herewith and further described on the plans accompanying this Order entitled:

- (1) "Road Acceptance & Easement Plan of Land: In Marlborough, Massachusetts, Prepared For City Of Marlborough, October 10, 2013, rev. June 27, 2014, By Bruce Saluk & Associates, Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752, Scale 1" = 40, Sheet 1 of 4";
- (2) "Road Acceptance & Easement Plan of Land: In Marlborough, Massachusetts, Prepared For City Of Marlborough, October 10, 2013, rev. June 27, 2014, By Bruce Saluk & Associates, Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752, Scale 1" = 40, Sheet 2 of 4";
- (3) "Road Acceptance & Easement Plan of Land: In Marlborough, Massachusetts, Prepared For City Of Marlborough, October 10, 2013, rev. June 27, 2014, By Bruce Saluk & Associates, Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752, Scale 1" = 40, Sheet 3 of 4"; and
- (4) "Road Acceptance & Easement Plan of Land: In Marlborough, Massachusetts, Prepared For City Of Marlborough, October 10, 2013, rev. June 27, 2014, By Bruce Saluk & Associates, Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752, Scale 1" = 40, Sheet 4 of 4".

For title, the assumed owners of the land and interests taken herein and references to the Middlesex County South Registry of Deeds are as follows:

<u>Land and Assumed Owner</u>	<u>Middlesex Registry</u>		<u>Area (S.F.)</u>
	<u>Book</u>	<u>Page</u>	
Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim) 1016 170	15905	49	+/- 92,309.5
	993	145	
	17230	36	
155 Farrington Lane (Parcel 6/pump station) Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	17230	36	+/- 2,000
Farrington Lane (Parcel 28) Eugene and Diane Balinski 51 Farrington Lane	41040	568	+/- 17,743
Farrington Lane (Parcel 29) Karen F. Rose 81 Farrington Lane	58043	326	+/- 24,947.5
Sewer Easement 7 at 155 Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	1217	50	+/- 3,600
Sewer Easement 9 at 167 Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	1298	53	+/- 5,283

The ownership of said parcels and each of them are supposed to be as stated herein, but said fee or easements and each of them are hereby taken whether the ownership is as stated above or otherwise. We determine that the following damages have been sustained by the owners of the land, structures, equipment and appurtenances, therein or thereon, so taken:

<u>OWNER</u>	<u>AWARD</u>
Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	\$1.00
Farrington Lane (Parcel 28) Eugene and Diane Balinski 51 Farrington Lane	\$1.00
Farrington Lane (Parcel 29) Karen F. Rose 81 Farrington Lane	\$1.00

155 Farrington Lane (Parcel 6/pump station) Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	\$5,000.00
Sewer Easement 7 at 155 Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	\$2,025.00
Sewer Easement 9 at 167 Farrington Lane Gristmill Construction, Inc. (Paul M. Zarella & Frederick K. Heim)	\$2,975.00

Yea: 11-Nay:0

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

ORDERED: That the Petition of Teleport Communications America, LLC to install one four inch PVC conduit at an approximate depth of forty-eight inches, from existing Verizon manhole #608 on Donald Lynch Blvd., to the property line of the Mall at Solomon Pond, LLC; a distance of approximately twenty feet, **APPROVED**; adopted.

ORDERED: That the Petition of Teleport Communications America, LLC to install two four inch PVC conduits at an approximate depth of forty-eight inches, from existing Verizon manhole at 200 Donald Lynch Blvd., to utility pole #69 on Bigelow St.; a distance of approximately seven hundred twenty seven feet, **APPROVED**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer's License by Best Buy Stores, LP #820, 769 Donald Lynch Blvd., **TABLED**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer's License by Best Buy Stores, LP #1966, 601 Donald Lynch Blvd., **TABLED**; adopted

ORDERED: That the Application for Renewal of Second Hand Article's License, Gerald Dumais d/b/a Dumais & Sons, 67 Mechanic Street, **APPROVED**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer's License by Outerwall, Inc. d/b/a ecoATM, Inc., 601 Donald Lynch Blvd., **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:02 PM.