



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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AUGUST 26, 2013

Regular meeting of the City Council held on Monday, AUGUST 26, 2013 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:10 PM.

ORDERED: That the minutes of the City Council Meeting JULY 22, 2013, **FILE**; adopted.

ORDERED: That the **PUBLIC HEARING** On the Proposed Amendment to the Code of the City of Marlborough, Zoning, Section 650-17, entitled "Table of Uses," by regulating the business uses entitled "Power laundries and dry cleaning" so as to separate into independent categories said uses and allow Dry Cleaning establishments as of right in the Business (B) district and in the Commercial Automotive (CA) district, in proper legal form from Assistant City Solicitor Panagore Griffin for advertising and referral, Order No. 13-1005481, all were heard who wish to be heard, hearing recessed at 8:06 p.m.

MOTION made by President Pope to table until the next City Council meeting as Council awaits the Planning Board's recommendation – **Carries**; adopted.

Councilors Present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers.

ORDERED: That the **PUBLIC HEARING** On the Application for Special Permit from Attorney Schaffer on behalf of Irene Kantor to operate a Martial Arts Studio located within an Industrial District where private indoor or outdoor recreation may only be allowed through Special Permit, 38 Brigham St., Order No. 13-1005483, all were heard who wish to be heard, hearing recessed at 8:20 p.m.; adopted.

Councilors Present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers

ORDERED: That the **PUBLIC HEARING** On the Application for Special Permit from Luiza DeMoura of Jump in with Us, Inc. to develop an inflatable playground and to accommodate birthday parties for kids and families from Tuesdays to Sundays, 10:00 AM to 7:00 PM., Order No. 13-1005482, **CONTINUED TO SEPTEMBER 23, 2013 AT THE REQUEST OF THE PETITIONER**; adopted.

Councilors Present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy & Landers.

ORDERED: SENIOR CENTER BOND

That the sum of \$6,500,000 (six million five hundred thousand) dollars be and is hereby appropriated for the construction of a Senior Center. That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$6,500,000. Pursuant to the provisions of Chapter 44, Section 7 (3) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than twenty (20) years from its date of issue. Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: WARD PARK BOND

That the sum of \$ 3,000,000 (three million) dollars be and is hereby appropriated for the reconstruction of municipal outdoor recreational facilities. That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$3,000,000. Pursuant to the provisions of Chapter 44, Section 7 (25) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than fifteen (15) years from its date of issue. Refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED:**A RESOLUTION TO PARTNER WITH THE EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT TO MAKE NECESSARY AND VITAL INFRASTRUCTURE UPGRADES ON SIMARANO DRIVE TO ENHANCE AND SUPPLEMENT THE SIGNIFICANT PRIVATE INVESTMENTS ALREADY BEING MADE**

WHEREAS, the City of Marlborough is committed to building a diverse local and regional economy that attracts and retains quality businesses and that provides employees; and

WHEREAS, the Southwest Quadrant in the City of Marlborough is a recognized priority development area in the Commonwealth of Massachusetts and is part of the 495/Metro West Compact Plan; and

WHEREAS, Simarano Drive is the primary point of access and entryway to the Southwest Quadrant and is located at Exit 23C on Interstate 495; and

WHEREAS, there are over 2,000 employees currently working at businesses on Simarano Drive; and

WHEREAS, Simarano Drive is now home to The TJX Companies, Inc. and Quest Diagnostics who will bring an additional 2,557 employees to the Southwest Quadrant by the end of 2014 and will generate 321 net new jobs in the Commonwealth of Massachusetts by 2019; and

WHEREAS, the Southwest Quadrant will contain 400+ affordable and market rate apartments which will provide ample workforce housing opportunities to existing employees and new employees working throughout the City of Marlborough and the Metro West region; and

WHEREAS, the City of Marlborough is submitting a grant application to the Mass Works Infrastructure Program to support the full reconstruction of Simarano Drive, including the addition of sidewalks and bike paths in keeping with the "Complete Streets" guidelines set by the Massachusetts Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Marlborough City Council strongly supports the Mass Works Grant Application; and

2. The Marlborough City Council is committed to partnering with the Executive Office of Housing and Economic Development to make necessary and vital infrastructure upgrades on Simarano Drive to enhance and supplement the significant private investments already being made; and

3. That this Resolution shall take effect upon its passage.

APPROVED; adopted.

ORDERED: That along with the City Council's approval of the FY 14 operating budget, a recommendation of adopting Section 4, Chapter 73 of the Acts of 1986 which allows for the doubling of all exemptions offered in the City to qualified residents (i.e. Elderly, Blind, Disabled Vets) as provided by Massachusetts law in which the City would absorb any associated costs through the overlay account, **APPROVED**; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Executive Office of Health and Human Services (EOHHS) Grant awarded to the Police Department in the amount of \$45,000.00 to be utilized for the City's Jail Diversion Program which is carried out in conjunction with Advocates, Inc.; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the following Bay Path Elder Services, Inc. grants to Council on Aging:

A. Grant amount of \$5,000.00 to provide for the continuation of educational and enrichment programs targeted towards our Portuguese and Latino populations.

B. Grant in the amount of \$5,000.00 to enhance our scheduled senior transportation services to area stores and area retail locations; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** Emergency Management Performance Grant awarded to the City in the amount of \$9,030.00 which reimburses for costs associated with local emergency preparedness training and emergency management equipment and upgrades, including new hardware for the ID systems utilized by the Personnel Office; adopted.

ORDERED: That the Reappointment of Deborah Fox as City Collector to serve a term of one year to take effect on the first Monday following her appointment, refer to **PERSONNEL COMMITTEE**; adopted.

- ORDERED: That the Reappointment of Diane Smith as City Auditor for a term of three years, refer to **PERSONNEL COMMITTEE**; adopted.
- ORDERED: That the Appointment of Nancy Stevens as a Regular member of the Zoning Board of Appeals to complete the term of Bob Page due to expire on May 5, 2017 and Robert Levine as an Alternate member of the Zoning Board of Appeals to serve a two year term beginning from his date of confirmation by City Council, refer to **PERSONNEL COMMITTEE**; adopted.
- ORDERED: That the Appointment of Brian DuPont to the Planning Board for a five year term to expire on February 5, 2018 to replace longtime member Clyde Johnson, refer to **PERSONNEL COMMITTEE**; adopted.
- ORDERED: That the Communication from the Mayor re: SCRPT (Senior Citizen Property Tax Work-Off Program), **APPROVED**; adopted.
- ORDERED: That the Proposed Order to Amend Chapter 526 of the City Code to Regulate Digital Electronic and LED Signs and Message Boards, **ADVERTISED AND PLACE ON THE NEXT AGENDA**; adopted.
- ORDERED: That the Communication from Attorney Bergeron of Mirick O'Connell re: Request for Modification of Special Permit, Condition 7, Capital Group Properties, Inc., 853 & 905 Donald Lynch Blvd., Order No. 03-10047B **FILE**; adopted.
Councilor Delano abstained
- ORDERED: That the Application for Junk Dealer's License, Bernard Novitch, Collector's Paradise, 771 Boston Post Rd. E. #7, refer to **LEGAL DEPARTMENT AND CODE ENFORCEMENT OFFICER**; adopted.
- ORDERED: That there being no objection thereto set **Monday, October 7, 2013** as date for a **PUBLIC HEARING** on the Petition of NGrid and Verizon to install 1-Joint owned Pole #47-25 approximately 56' from Pole #47 and 4-6" Conduits on Forest Dr., refer to **PUBLIC SERVICES COMMITTEE**; adopted.
- ORDERED: That there being no objection thereto set **Monday, October 7, 2013** as date for a **PUBLIC HEARING** on the Petition of NGrid and Verizon to install of approximately 1100' of 4-5" Conduits and two manholes on Forest St. and 1-Joint owned Pole #P2-50 on Bartlett Dr., refer to **PUBLIC SERVICES COMMITTEE**; adopted.
- ORDERED: That the Communication from NGrid re: Annual Return, **FILE**; adopted.
- ORDERED: That the Communication from Mosquito Control Project re: Investigating Resident's Complaints about Mosquitos on the following dates: July 31, August 7, 14, 21, & 28, 2013, **FILE**; adopted.
- ORDERED: That the Minutes, Council on Aging, June 11, 2013, **FILE**; adopted.
- ORDERED: That the Minutes, Planning Board, July 15, 2013, **FILE**; adopted.
- ORDERED: That the Minutes, Parks & Recreation Commission, May 8, 2013, **FILE**; adopted.
- ORDERED: That the Minutes, Marlborough Community Development Authority, July 25, 2013, **FILE**; adopted.
- ORDERED: That the Communication from Amica on behalf of Philip Lioio, 19 Preston St., refer to **LEGAL DEPARTMENT**; adopted.
- ORDERED: That the Communication from Amica on behalf of Joseph Bisol, 212 Hudson St., refer to **LEGAL DEPARTMENT**; adopted.
- ORDERED: That the Communication from Hanover Insurance Group on behalf of Kevin Lynch, 96 Warren Ave., refer to **LEGAL DEPARTMENT**; adopted.

ORDERED: That the following CLAIMS, be and is herewith refer to the **LEGAL DEPARTMENT**.

- A. Ann Marie Maichin, 63 Simpson Rd., residential mailbox claim
- B. Ariel Negron, 37 Emerald St., Gardner, MA pothole or other road defect
- C. Vincent Simarano, 186 Reservoir St., pothole or other road defect

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

Present: Councilor Delano, Councilor Elder, Councilor Landers; Also Present: Councilor Clancy, Councilor Robey, Councilor Tunnera, Council President Pope, and Councilor Ossing; DPW Commissioner LaFreniere; Assistant Commissioner Higgins; John Ghiloni

Communication from DPW Commissioner, Ronald LaFreniere re: Proposed Amendment to Chapter 510, Code of the City of Marlborough, which in part governs the City's Sewerage System.

The Chair began by reading the amendments to Chapter 510 of the City Code pertaining to water treatment plants and requested the Commissioner explain the changes.

Commissioner LaFreniere stated that there were five points that were required to be amended which would allow the City of Marlborough to take advantage of zero percent financing instead of two percent. He added that Marlborough has already completed four of the five points within the legislation, the incomplete requirement involved land-use controls, and the state is using the legislation to get communities to commit to the flow allocations the State planned for in their long term planning documents. He continued stating the DPW was seeking a new permit for the West plant, it was originally designed to treat 2.9 million gallons a day as according to the CWMP planning documents, and DPW was trying to increase the Water Treatment Facility's capacity to 4.15 million gallons per day. While explaining further, he stated, the 1.25 million gallons per day increase was a combination of additional flow the city needed to facilitate all of its growth in the West over the next twenty year planning period and the additional growth that the town of Northborough needed.

President Pope questioned whether this change was being required to force Marlborough into an agreement with Northborough regarding the Water Treatment Facility, and why Northborough was mentioned frequently if this was not the case.

Commissioner LaFreniere explained that it had been three years since the IMA agreement with Northborough, their sewage system is built with Marlborough's West treatment facility as an integral part, and it would take three to four years to plan and construct a water treatment facility. He continued stating currently the treatment facility is being allocated enough water for Marlborough the 2.9 million gallons per day and Northborough. Explaining further he stated that receiving this new permit allows Marlborough to have a West side treatment facility with a 4.15 million gallons per day capacity, which is more than Marlborough needs, to allow for future growth and a lower insurance rate. He then elaborates on the other possibility, not being granted the permit, stating that Marlborough would still have a permit allocating 2.9 million gallons per day meaning nothing changes for Marlborough, however Northborough would be forced start the planning process for the construction of their own facility so the facilities full capacity could be allocated to Marlborough's developing west side.

Councilor Ossing requested a ballpark estimation of the cost of the plan to which the Commissioner answered about \$40 million dollars. He then asked what this permit was restricting Marlborough to.

The Commissioner answered the flow allocations that are identified in the CWMP and subsequently the secretary's certificate which validated the findings and conclusions in the CWMP that stated the City of Marlborough was allocated 2.9 million gallons per day at the west plant in addition to that 1.25 million gallons per day that will be allocated to the town of Northborough. He clarifies that Marlborough is limited to 2.9 million gallons per day as identified in our own planning document that the city and its experts prepared for a twenty year outlook plan for the West side.

Councilor Delano clarified that the update to the facility is driven from State regulators requiring more nutrients and phosphorus removal in the facilities rather than incorrect estimates of capacity by the DPW during their last thirty year projection plan as some had suggested.

The Commissioner answered a question from Councilor Ossing about how the rate will go from 2% to 0% financing stating that it will essentially be an interest forgiveness situation.

Councilor Ossing expressed his concerns that the Council did not have any reports, number values on money saved from the project, and that the project was being rushed.

Commissioner LaFreniere explained that with thirty year bonds at 2% interest the East Facility would have a \$52 million dollar bond incurring \$17.8 million dollars in interest and the West Facility would have a \$24 million dollar bond incurring \$8.15 million dollars in interest; assuming the State grants Marlborough's request in full, there would be \$26 million dollars in savings associated with the shift from 2% to 0% financing. The Commissioner continued, even if request was not granted in full, in the East Facility 68% of the improvements could be allocated to the nutrient removal aspect of the changes reducing the interest savings from \$17 million dollars to \$12.2 million dollars and in the West Facility nutrient removal is 43% of the improvements resulting in \$3.5 million dollars of savings; for both facilities this results in a total of \$15.66 million dollars in interest savings. He then added that there was no risk to making these changes, because if the legislation did not go through nothing would change for Marlborough and it would not impact Marlborough's ability to apply for a permit modification to ask for an increased water flow in the future.

The Chair noted that he would like all the Councilors to receive a copy of the documents illustrating savings, figures, and anything else the Commissioner deemed important about the request.

Councilor Clancy asked how much water the City used in a day on average out of the West Facility which has a maximum capacity of 2.9 million gallons per day. The Commissioner answered it fluctuates from lows of 1.9 to highs of 3.5 million gallons per day and the average is roughly 2.5 million gallons per day; the East Facility, with a maximum capacity of 5.5 million gallons per day, used 3.1 million gallons per day on average.

The Chair requested a letter from CDM certifying that approval of the proposed ordinance will not restrict the City from increasing its water treatment capacity in the future.

Councilor Landers inquired of the deadline for approval of the ordinance. Commissioner LaFreniere replied that the City received a 30-day extension to implement the required land use controls; the new deadline to respond to Mass DEP is September 16, 2013.

Motion made by Councilor Elder, seconded by Councilor Landers to approve Proposed Amendment to Chapter 510, Code of the City of Marlborough, which in part governs the City's Sewerage System. Adopted 3-0.

Motion made by Councilor Elder, seconded by Councilor Landers to suspend the rules at the next City Council Meeting to advertise. Adopted 3-0.

Councilor Landers reported the following out of Public Services Committee:

Order No. 13-1005428A – Application of Best Buy Store #820, 769 Donald Lynch Blvd. for renewal of Junk Dealer's License. That Chief Leonard has received the CORI for Best Buy Store #820. MOTION made by the Chair to request removal from table and address at the August 29, 2013 City Council Meeting - Carries

Present: Councilor Landers, Councilor Clancy, and Councilor Jenkins; Also Present: Councilor Robey and Councilor Delano; Solicitor Rider for City Hall, Atty. Manoogian for Savers, Bob Connors for the building owner; Gary Vargas the Regional Manager for Savers

The Chair opened discussion re: Order #13-1005448 regarding the application of Savers for a second hand dealer's license tabled on July 16, 2013. The Chair then asked for a motion to remove the order from its tabled status and requested an update from the Savers representatives.

Motion made by Councilor Clancy, seconded by Councilor Jenkins to remove the order from its tabled status. Adopted 3-0.

Mr. Connors detailed many improvements, including pediment towers, castle towers, painting, awnings, lighting, and more, he would make to the outside of the entirety of the plaza to improve its architecture to a more modern style.

Councilor Delano stated that he was very pleased to see the plaza being upgraded, but personally did not think that Savers' instillation there would be good for economic development. The Councilor also expressed concerns for a lack of consistency with regards to Savers' request for certain waivers to sections of the City Code.

The Chair agreed with Councilor Delano that the waivers concerned him once, as well; however, the conditions they requested be waived pertain to limiting Pawn Shops, which Savers is not, and to prevent the fencing of stolen goods, which Savers cannot do because it only accepts donations.

The Chair proceeded to addressing the Sections of the City Ordinance that Savers requested be waived. The Committee found it necessary to waive Section 377-6, 377-7, and 377-9 as well as the last sentence of Section 377-5 with the legal advisement of the City Solicitor.

The Solicitor then suggested that the Council create a condition that stated Savers license would be subject to revocation if it were ever discovered that they were accepting money.

The Chair began reading the conditions proposed by the Committee.

Condition No. 1 stated that the license will not be transferred without prior review and approval from the City Council.

Condition No. 2 stated the license would only be granted to the Savers at the 222A East Main Street, Marlborough MA location.

Condition No. 3 stated there would be no outside storage or displays. Atty. Manoogian agreed to the condition as long as it is not interpreted so broadly as to include a shipment that may remain out behind the building for a few days.

Condition No. 4 stated donations would take place only during hours of operation.

The Chair inquired about Savers hours of operation. Mr. Vargas stated his hours were 9AM-9:30PM Monday through Saturday and 10AM- 7PM on Sundays, but for the month of October their hours are 9AM- 10PM Monday through Saturday and 10AM- 10PM on Sundays.

Condition No. 5 stated no Savers donation boxes will be permitted outside the building.

Condition No. 6 stated noncompliance with the above conditions will result in the revocation or suspension of the license.

Condition No. 7 stated the license shall be subject to revocation or suspension if Savers business model changes to include the exchange of money with the general public for goods or merchandise sold, without first obtaining City Council approval of the exchange of money with the general public for goods and merchandise sold.

Councilor Clancy expressed concerns about Savers sign being too bright or having a constantly changing message that would be distracting to drivers. Councilor Clancy asked that Savers agree to comply with the requirements of the sign ordinance without variance.

Atty. Manoogian agreed to a condition detailing the prohibition of scrolling or rotating message boards.

Councilor Robey suggested that this new condition be made condition number six so it is included under the offenses that are punishable by revocation or suspension of the license, and the current conditions number six and seven would change to conditions seven and eight.

Motion made by Councilor Jenkins, seconded by Councilor Clancy to approve the Council's outlined conditions and integrate them into the Junk Dealer license. Adopted 3-0.

Motion made by Councilor Clancy, seconded by Councilor Jenkins to approve the Junk Dealer license as subject to all conditions and waivers as amended. Adopted 3-0.

Motion made by Councilor Clancy, seconded by Councilor Jenkins to adjourn. Adopted 3-0.

Motion in order to seek a suspension of the rules to refer to the City Solicitor to place the waivers and conditions in proper legal form on the City Council September 9, 2013 agenda.

Councilor Tunnera reported the following out of Personnel Committee:

Order No. 13-1005490 – Appointment of Brian Doheny as Comptroller/Treasurer for term of two years effective on the first Monday following his appointment.

Motion by Councilor Elder to approve, seconded by the Chair.
Adopted 2-0 Seymour abstained Recommendation of the Personnel Chair is to suspend the rules at the August 26, 2013 City Council Meeting to approve the appointment.

Councilor Robey orally reported the following:

On May 21, 2012, Cumberland Farm's request for an application for Fuel Storage license for 412 & 418 Maple Street was referred to Urban Affairs along with their request for a special permit to construct a convenience store and gasoline service station and to operate a 24-hour facility. Public hearings were held on June 18, 2012. The request for 24-hour operation was subsequently withdrawn and the convenience/gasoline service station was approved via a constructive permit and has gone through site plan review. The fuel storage license remains in Urban Affairs Committee.

Under the council rules adopted on May 7, 2012, eight (8) weeks after a matter has been referred to a standing committee and no report has been given to the full council, the matter "shall be subject to action by the Council upon a motion by the sponsoring Councilor, or sponsoring person through a councilor at that meeting and the order shall be automatically returned to committee unless a motion is otherwise made and adopted at that meeting by a vote. The Chairman shall render an oral report upon the request of any member of the City Council during the time provided under Reports of Committees."

I am requesting that Chairman Elder provide the Council with an oral report on Order 12-1005083, a fuel storage license for 32,000 gallons of gasoline and 8,000 gallons of diesel to be stored in underground tanks. And as it has been well over 8 weeks since it was referred to Urban Affairs, I'm asking that we Suspend the Rules to add an agenda item to Return Order 12-1005083 back to the full council for action. **Suspension of the Rules requested – DOES NOT CARRY**

Councilor Elder gave an oral report regarding Order No. 12-1005083.

Suspension of the Rules requested – granted

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

Suspension of the Rules requested – granted

ORDERED: That the Application by Robert Hoglund, CFO TVI, Inc. d/b/a Savers, 222A East Main St. for Junk Dealer's License, be and is herewith refer to **CITY SOLICITOR TO PLACE IN PROPER LEGAL FORM FOR THE SEPTEMBER 9, 2013 CITY COUNCIL MEETING**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Appointment of Brian Doheny as Comptroller/Treasurer for term of two years effective on the first Monday following his appointment, **APPROVED**; adopted.

Councilor Seymour abstained

Suspension of the Rules requested – granted

ORDERED: That the Communication from DPW Commissioner, Ronald LaFreniere re: Proposed Amendment to Chapter 510, Code of the City of Marlborough, **ADVERTISED**; adopted.

**DECISION ON A SPECIAL PERMIT
CITY COUNCIL ORDER NO. 13-1005426C**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Sandra & Anthony Antico Real Estate LLC (the "Applicant Landlord ") and Emad Guirguis d/b/a Hop N Jump (hereinafter "Applicant Tenant"), as provided in this Decision and subject to the following Findings of Facts and Conditions:

FINDINGS OF FACTS AND CONDITIONS

1. The Applicant Landlord is a duly organized and existing Massachusetts Limited Liability Company with its principal place of business located at 72 Jefferson Street, Marlborough, MA 01752. Applicant Tenant has duly filed his dba certificate with the City Clerk of the City of Marlborough to operate his business at the subject location.

2. The Applicant Landlord is the title owner of the property located at 72 Jefferson Street (the "Site"). Applicant Landlord and Applicant Tenant have executed or will execute a lease regarding Suite 103 at the Site, and its use pursuant to the terms of this special permit regarding Unit 103 at the Site.

3. The Applicants seeks permission to utilize Unit 103 as a commercial indoor recreation establishment and place of amusement.

4. The Applicant Landlord, on May 2, 2013, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of §650-17 and pursuant to the procedures specified in §650-59 of the Marlborough Zoning Ordinance (the "Application"). Through a notice filed with the Urban Affairs Committee, Applicant Tenant was added as an Applicant.

5. The Site contains an existing commercial building as shown on the site plan submitted with the Application, said site plan entitled " 'Special Permit Plan,' Showing Existing Conditions at 72 Jefferson Street, Marlborough, Massachusetts, Date: April 25, 2013, Prepared by: Bibbo Brothers & Associates, 101 Hammer Street, Waltham, MA 02453, 1" = 20' " (the "Site Plan"), an 8½" x 11" version of which is attached hereto. No modifications are proposed to the exterior of the building, no structural modifications are proposed to the interior of the building, and no parking areas will be created or modified.

6. The Applicants seek a special permit allowing the establishment of an indoor recreation area that will include various children's entertainment features for birthday parties and other special occasions, and for children who, accompanied by an adult, can take advantage of these same play features.

7. The Site Plan was certified by the Building Inspector, acting as the City Planner, as having complied with Rule 5, items A through J, 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 and the provisions of M.G.L. c.40A, the City Council established a date for public hearing for the Application and the City Clerk caused to be advertised said date in the MetroWest Daily News and sent written notice of said hearing to those abutters entitled to notice under law.

9. The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on June 17, 2013, concerning the Application. The hearing was opened and closed at that meeting.

10. The Applicants' attorney presented evidence at the public hearing detailing the proposed use and its limited impact upon City services, the neighborhood and traffic.

11. At the public hearing, Gihan Touson, who will be managing the operation of the business, and whose husband, Emad Guirguis, is the Applicant Tenant, described the proposed business as being one that would provide an indoor venue for children's birthday parties and for children who, accompanied by an adult, can take advantage of the proposed indoor play facilities. She indicated that the business would not include a child care component, and that all children using the facility would need to be accompanied by an adult to provide supervision. In response to questions from city councilors, she indicated that:

- a) the parties would be scheduled for weekdays and weekends
- b) no food would be prepared on the premises
- c) the facility would be open to the general public to provide indoor play space for children on a daily basis.
- d) all recreation would occur indoors.

12. No member of the public spoke, either in favor or in opposition to the proposal.

13. Following the public hearing, the Urban Affairs Committee held meetings on June 24, 2013 and July 9, 2013 during which this Application was discussed. At those meetings, the parties discussed various issues and proposed permit conditions to deal with them.

REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT

A. The City Council finds that the Applicants have complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the Special Permit.

B. The use of Unit 103 for an indoor recreation establishment and place of amusement is an appropriate use of the Unit 103-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.

C. The City Council, pursuant to its authority under M.G.L. c.40A, §9 and Chapter 650 of the Marlborough City Code, **GRANTS** the Applicants, their successors and assigns, a Special Permit to operate an indoor recreation establishment and place of amusement as per plans filed with the City Council and the City Clerk, **SUBJECT TO THE FOLLOWING CONDITIONS**, which shall be applicable to Applicants' successors and assigns, and a violation of which shall be a violation of this Special Permit:

1. Signage: Any signage installed or erected on the Site shall meet the requirements of the Sign Ordinance of the City of Marlborough, without variance.

2. Compliance with Local, State and Federal Laws: The Applicants agree to comply with all rules, regulations and ordinances of the City of Marlborough, Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance, equipping and operation of the facility.

3. Public Peace and Good Order: In the event that the Chief of Police determines that either the business of the Applicant Tenant is, or the clientele of the Applicant Tenant are, creating a condition that is contrary to public peace and good order, the Chief shall, in writing, notify the Applicant Tenant and demand corrective measures be put into effect within seven (7) days. Upon the failure or inability of the Applicant Tenant to correct such condition, the Police Chief may require the Applicant Tenant to employ one or more Police Detail Officers, during such hours and days as the Police Chief, in the exercise of his sole discretion, determines to be necessary for the purpose of correcting the condition. Applicant Tenant shall obtain appropriate CORI information regarding all employees of Applicant Tenant, and shall keep said information available for inspection by local police upon request.

4. Hours of Operation: The hours of operation of the facility shall not be earlier than 8:00 AM or later than 9:00 PM on any day.

5. Limits of Use: The proposed use of the premises is to provide a place for birthday parties and other parties for children, and to otherwise provide an indoor play facility for children who are accompanied and supervised by an adult. No other kinds of public amusement shall be allowed on the premises except those ancillary to this use, including but not limited to object painting and clay art.

6. Food Preparation: No food will be prepared or handled on the premises unless and until the tenant at the premises has obtained any license or other approval deemed necessary by the Director of the Marlborough Health Department.

7. Certificate of Occupancy Required: No use of the premises will be made pursuant to this special permit unless and until a Certificate of Occupancy has been obtained from the Building Inspector regarding the change of use of the premises.

8. No Expansion of Use Area: Only the area of Unit 103, containing approximately 5,000 sq. ft, which has been specified in a sketch in the files of the Urban Affairs Committee, a copy of which is attached hereto, will be used for the proposed use. To the extent that a substantial increase in the area used for this use is desired, the Building Inspector shall determine whether such increase constitutes a substantial change of the permitted use, and if so, no such expansion shall be permitted unless and until this special permit has been modified by the City Council.

9. Limitations on Use During Kelleher Field Events: The Applicant Tenant shall obtain information from the Marlborough Recreation Department to determine when Kelleher Field is being used for an event that is, in the opinion of the Recreation Director, a major sporting event. The Applicant Tenant shall not allow a party including more than 25 children to occur during the period beginning ½ hour before and ending ½ hour after the estimated time of said sporting event.

10. Subsequent Users: Before any successor tenant other uses Unit 103 for the uses allowed in this special permit, the Director of the Marlborough Health Department shall determine in writing that any permit required of Applicant Tenant, and any other permit determined by the Director to be necessary, has been obtained.

11. Required Approval regarding Sanitary Conditions: Prior to the beginning of operation of the business, the Director of the Marlborough Health Department shall determine in writing what, if any, special sanitary requirements are necessary in order to assure that the facility does not cause unusual health risks to those using the facility or to the public. The Director may later, in writing, amend and/or add to said requirements as he deems necessary. Such determination, and any such amendments and/or additions, shall be provided by the Director to the City Council. Any failure to comply with said sanitary requirements shall be a violation of this permit.

12. Maintenance Duties. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall perform the following maintenance duties:

- a. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall, at least once per month, from April 1 to November 1 of each year, maintain in perpetuity the portion of the Assabet River Rail Trail ("Rail Trail") to the extent it abuts 72 Jefferson Street ("the Building") and outward from the Building to a distance of three (3) feet on the other side (i.e., on the non-Building side) of the paved Rail Trail. Such maintenance shall include removal of all trash, debris, branches, leaves, etc.; mowing and trimming of all turf areas; pruning of trees; and the like.
- b. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall, after each storm event, maintain in perpetuity the drainage swale and the drain pipe located in the Rail Trail as that swale and pipe approach the catch basin in Hudson Street. Such maintenance shall include the removal of all trash, debris, branches, leaves, etc. that may serve to impede or otherwise interfere with the drainage flow of water in the Rail Trail as it approaches Hudson Street.

In performing the above maintenance duties, the Applicant Landlord, its successors and assigns shall hold harmless the City, its agents, officials and employees from any suits, claims, injury, liability, and costs arising from personal injuries and/or property damage sustained by or on behalf of Applicant Landlord, its successors and assigns.

13. Recordation: In accordance with the provisions of M.G.L. c.40A, §11, the Applicant Landlord shall, at its expense, record this Special Permit with the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal hearing being filed. The Applicant Landlord shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Inspector.

Yea: 9 – Nay: 2

Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Landers, Ossing, Pope, & Oram

Nay: Clancy & Robey

ORDERED: That the Reappointment of Nena Bloomquist as a member of the Marlborough Public Library Board of Trustees expiring two years from date of City Council approval, **APPROVED**; adopted.

ORDERED: That the Reappointments of Eric Asman and Joyce Torelli to the Community Development Authority for terms of three years expiring from the date of confirmation by the City Council, **APPROVED**; adopted.

ORDERED: That the Appointment of Mitchell Gorka to Zoning Board of Appeals for term of three years expiring from date of confirmation by City Council, **TABLED**; adopted.

ORDERED: That the Appointment of Melissa Vera, Mark Bartlett and Mary Scott to the Marlborough Cultural Council for a term of three years commencing the day after their approval by the City Council, **APPROVED**; adopted.

ORDERED: That the Application for Fuel Storage Permit, Bunker Floor Supply, 289 Elm St., for storage of 2,844 gallons of flammable liquids and 23,500 gallons of combustible liquids, **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:10 PM.

Prior to Adjournment, City Council recognized Brian Doheny as the newly appointed Comptroller/Treasurer.