



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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OCTOBER 21, 2013

Regular meeting of the City Council held on Monday, OCTOBER 21, 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 10:02 PM.

ORDERED: That the minutes of the City Council Meeting OCTOBER 7, 2013, **FILE AS AMENDED**; adopted.

ORDERED: That the **PUBLIC HEARING** on the Petition of NGrid to install P#13-50 across the street from 11 Houde Street to solve the sag issue from P#13 to P#14. This puts a line angle on P#13 which needs to be supported by an anchor & guy on the property of 11 Houde Street. Branches and limbs near service wires to House 11 are to be cleared as well, Order No. 13-1005567, all were heard who wish to be heard, hearing recessed at 8:06 p.m.; adopted.

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

ORDERED: That the **PUBLIC HEARING** on the Petition of NStar to install 75' of 4" plastic gas main as a system improvement to a new duplex on Crescent Street from 34 Crescent Street southeasterly for 75', Order No. 13-1005568, all were heard who wish to be heard, hearing recessed at 8:18 p.m.; adopted.

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

Councilor Oram abstained

ORDERED: That the **PUBLIC HEARING** on the Petition of NStar to install 85' of 2" plastic main as a system improvement to supply 463 Stow Rd. as follows:

Simpson Road – From the end of Simpson Road (at the intersection with Stow Road) easterly to the eastern side of Stow Road (23')

Stow Road – From the intersection with Simpson Road southerly on the eastern side of Stow Road towards 463 Stow Road (62'), Order No. 13-1005569, all were heard who wish to be heard, hearing recessed at 8:20 p.m.; adopted.

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

MOTION made by Councilor Delano to move Item 6 before Item 5 – Carries.

ORDERED: That the **PUBLIC HEARING** on the Application for Fuel Storage License by Rinchem Company Inc., 111 Hayes Memorial Drive, to store flammable liquids, Order No. 13-1005557, all were heard who wish to be heard, hearing recessed at 8:26 p.m.; adopted.

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

ORDERED: That the **PUBLIC HEARING** on the Application for Special Permit from Attorney Bergeron on behalf of 54 Main St., LLC to install a drive-thru service window which would be part of a new structure on the property for Dunkin Donuts restaurant, replacing the existing Dunkin Donuts restaurant structure, which does not have a drive-thru service window, Order No. 13-1005542, all were heard who wish to be heard, hearing recessed at 9:20 p.m.; adopted.

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

ORDERED: That the **CONTINUED 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. 13-1005482A, all were heard who wish to be heard, hearing recessed at 9:27 p.m.; adopted.

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

ORDERED: That the Communication from the Mayor re: Update of Order submitted by Councilors Elder and Pope regarding Feasibility of Locating a Satellite Fire Station on Parcel 89-3C on Glen Street, refer **BACK TO THE MAYOR**; adopted.

ORDERED: That the City Council hereby authorizes Mayor Arthur G. Vigeant to sign a Disclaimer of Interests In The Life Insurance Policy On The Life Of James N. Metivier in order to allow the proceeds of the life insurance policy owned by James N. Metivier to pass, not to the City, but instead to beneficiary Tina R. Metivier, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 2, 2013**, as date for a **PUBLIC HEARING** on the Proposed Amendment to the Code of the City of Marlborough, Zoning, Section 650-17 as follows:

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

- I. Section 650-17, entitled “Table of Uses,” is hereby amended by regulating the business use entitled “Medical and dental clinic” so as to delete in its entirety “Medical and dental clinics” and to insert in its place the following two separate sections which will allow dental clinics as of right in the Business (B) district, as follows:

Medical clinics	RR A1 A2 A3 RB RC RCR B CA LI I
	SP SP SP SP SP Y Y N N N N
Dental clinics	RR A1 A2 A3 RB RC RCR B CA LI I
	SP SP SP SP SP Y Y Y N N N

- II. A. Section 650-5, entitled “Definitions; word usage,” is hereby amended by inserting after the definition for “CUSTOMARY HOME OCCUPATION” the following definition:

DENTAL CLINIC – Buildings or portions thereof used by licensed dentists to provide dental care services on less than a 24-hour basis to persons who are not rendered incapable of self-preservation by the services provided, and at which are employed not more than three (3) dentists with necessary support staff.

- B. Section 650-5, entitled “Definitions; word usage,” is hereby amended by deleting from the heading “MEDICAL AND DENTAL CLINIC” the words “AND DENTAL” and by deleting from the definition of “MEDICAL AND DENTAL CLINIC” the comma which precedes the word “dental” and by deleting the word “dental” as follows:

MEDICAL CLINIC – An institution licensed under MGL c. 111, § 51 for the purpose of providing medical, surgical or mental health services on an outpatient basis.

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD AND ADVERTISE**; adopted.

ORDERED:

**RESOLUTION DESIGNATING
MARLBOROUGH, MASSACHUSETTS
A PURPLE HEART CITY**

WHEREAS, the people of the City of Marlborough have great admiration and the utmost gratitude for all men and women who have selflessly served their country and this community in the Armed Forces; and

WHEREAS, veterans have paid a high price for freedom by leaving their families and communities and placing themselves in harm's way for the good of all; and

WHEREAS, the contributions and sacrifices of the men and women from Marlborough who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by our citizens; and

WHEREAS, many men and women in uniform have given their lives while serving in the Armed Forces; and

WHEREAS, our community has a proud tradition of military service and many of our citizens have earned the Purple Heart Medal as a result of being wounded while engaged in combat with an enemy force, construed as a singularly meritorious act of essential service; now therefore be it

RESOLVED, that the Mayor and City Council hereby proclaim, Marlborough, Massachusetts as a Purple Heart City, one of many communities in Massachusetts so designated, honoring the service and sacrifice of our nation's men and women in uniform that were wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans.

APPROVED; adopted.

ORDERED: That the Communication from City Clerk, Lisa Thomas, re: Municipal Election Call, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Acceptance of Dufrense Drive as a Public Way, **TABLED UNTIL NEXT CITY COUNCIL MEETING**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Proposed Taking of Permanent Easements, Country Club Estates Division, **TABLED UNTIL NEXT CITY COUNCIL MEETING**; adopted.

ORDERED: That the Application for Special Permit from Bohler Engineering on behalf of VNG Co. to propose construction of a new compressed natural gas (CNG) facility with one new dispenser including minor site modifications and product piping at 413 Lakeside Avenue, **TABLED UNTIL NEXT CITY COUNCIL MEETING**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 16, 2013** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Bergeron on behalf of Sandra & Anthony Antico Real Estate LLC and Sky Studios, Inc. to open commercial recreation establishment at the property, specifically an exercise and fitness facility at 289 Elm Street, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Communication from Michael Frias, President of F & C Construction Corporation re: Sewer Extension for proposed dwelling at 44/46 Crescent Street, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

Councilor Oram abstained

ORDERED: That the Minutes, Planning Board, September 23, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, March 29, 2013, **FILE**; adopted.

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

- A. Joshua Clement, 265 West Hill Road, other property damage

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Present: Chairman Ossing; Finance Committee members Councilors Seymour, Delano, Oram and Jenkins. Councilors Pope, Clancy, Landers and Robey were also in attendance. The meeting convened at 7:04 PM.

1. Order #13-1005538 – Transfer \$45,279.00 to Fund Firefighter Retirement: The FINCOM reviewed the Mayor's letter dated September 5, 2013 requesting two transfers totaling \$45,279.00 to fund the costs associated with the retirement of a member of the Fire Department. The FINCOM voted 4 – 0 (Councilor Seymour not present) to approve following two transfers:

- Transfer \$35,057.00 from the Fringe account to the Firefighter sick leave buy back account
- Transfer \$10,222.00 from the Fringe account to the Firefighter salary account

2. Order #13-1005489 – Capital Bond Request for FY14 for \$12,910,120.00: The FINCOM reviewed the Mayor's letter dated July 18, 2013 requesting the approval of 11 bonds totaling \$12,910,120.00. The bonds were all properly advertised in July 2013.

The FINCOM reviewed the impact of the bond request on the current debt service. If the full amount of the bonds were to be approved, the bonds would become part of the debt service in FY17. The impact to the debt service would be an increase of \$2.2 million dollars initially and gradually reduce as the bonds are paid down.

The Mayor and Council discussed the potential to use Undesignated funds (Free Cash) towards the reduction of the bonds. Undesignated Funds are scheduled to be certified in November. The Mayor recommended the following:

- Maintain \$3,000,000 to cover city purchases in FY14 including offsetting the tax levy and snow and ice
- Transfer \$1,000,000 to continue to fund the OPEB account
- The balance can be used to reduce the bond payments with the target to fund the 5 year bonds.

Reports of Committees cont'd:

The FINCOM took the following actions:

- Bond #1 – \$1,513,720.00 Department Equipment 5 Year Bond – The FINCOM voted 5 – 0 to approve the bond amount of \$1,484,720.00. This represents a reduction of \$29,000.00 for the Fire Department repeaters which are being covered by the FY14 Police Department grant. The FINCOM will evaluate using Undesignated funds to reduce the amount of the bond when the Undesignated Funds are certified in November.
- Bond #2 – \$1,510,000.00 Building Renovations 20 Year Bond – The FINCOM voted 5 – 0 to approve the bond. The Mayor was requested to evaluate adding roofs to the Newton Street and Granger Boulevard parking garages as well as any potential garage expansion.
- Bond #3 – \$7,470,000.00 Street Construction 10 Year Bond – The FINCOM voted 5 – 0 to approve the bond. Councilor Pope abstained from discussion on the bond. The Mayor indicated that the City should be receiving a \$1.6 million grant to offset the costs of the Simarano Street upgrade project. The Mayor will submit a bond for the reconstruction of the High School driveway (estimated at \$484,000) after the grant is received.
- Bond #4 - \$100,000.00 Sidewalk Construction 5 Year Bond – The FINCOM voted 5 – 0 to approve the bond. This bond would be a candidate to offset with Undesignated Funds.
- Bond #5 – \$200,000.00 Sewer Construction 30 Year Bond – The FINCOM voted 5 – 0 to approve the bond.
- Bond #6 – \$835,000.00 Water Project 40 Year Bond – The FINCOM recommended using the \$241,124.00 in the Capital Outlay Account for Robin Hill water project to offset the bond. The DPW Commissioner stated that the trench work road construction was performed extremely well and eliminated the need to resurface the road at this point in time. Councilor Pope expressed her extreme disappointment with not resurfacing the road. The FINCOM voted 5 – 0 to approve a bond for \$593,876.00.
- Bond #7 – \$200,000.00 Water Meter 10 Year Bond – The FINCOM expressed concerned that the \$1,835,000 bond approved in 2012 has not been implemented. This bond was to install commercial/industrial water meters in 2012 and save \$500,000 per year. The Mayor indicated that there was concern with the type of water meters being used for the commercial facilities. Issues have been addressed and the request for proposals is being prepared. Current plan is to complete the commercial/industrial water meter installation project in 2014. The Mayor committed to provide the Council with a plan for the remaining residential water meters and commercial water meters. The FINCOM voted 5 – 0 to deny the bond.
- Bond #8 – \$300,000.00 Land Cap and Drainage System 30 Year Bond – The Mayor indicated that there is a 75% reimbursement grant that is currently pending before MEMA. This grant can be used to reduce the amount of the bond. The DPW Commissioner indicated that the work on capping the landfill would be completed in the Spring of 2014. The FINCOM voted 5 – 0 to approve the bond.

Reports of Committees cont'd:

- Bond #9 – \$595,000.00 Recreational Facilities 15 Year Bond – The FINCOM approved using the \$50,000 in the Capital Outlay account for the Evergreen Cemetery design to reduce the bond amount. The FINCOM voted 5 – 0 to approve a bond of \$545,000.00 for Recreational Facilities.
- Bond #10 – Evergreen Cemetery Irrigation – 5 Year Bond – The FINCOM voted 5 – 0 to deny the bond and request the Mayor use Undesignated funds to complete this project.
- Bond #11 – \$165,800.00 Computer Hardware 10 Year Bond – The FINCOM voted 5 – 0 to approve.

The FINCOM adjourned at 10:20 PM.

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

September 24, 2013

Present: Chairman Seymour and Committee Members Delano and Robey. City Solicitor Rider, Planning Board Member Sean Fay, and Brian Falk representing Toll Brothers were also in attendance. Meeting called to order at 6:01pm.

ORDER #13-1005466 – Communication from Planning Board re: Country Club Estates Subdivision (Stow Road, Robert Road and Country Club Circle), Proposed Taking of Permanent Easement.

The Committee reviewed the letter dated June 12, 2013 from Barbara Fenby, Chair of the Planning Board explaining the circumstances surrounding the subdivision and the agreement that the Planning Board and Toll Brothers have developed. More specifically, as a condition of the approval by the Planning Board of the subdivision 25 years ago, the developer should have conveyed to the City the fee interest to certain properties on or abutting Stow Road for the purposes of widening the roadway at some future date. This never occurred yet the Planning Board is holding onto a bond for the subdivision totaling \$246,000.

The Planning Board and Toll Brothers have been working jointly to bring this issue to resolution. An agreement was drafted and approved between the two parties. If the City Council approves, Toll Brothers will pay for the costs associated with the proposed taking which impacts 15 lots. Upon execution, the Planning Board will release the bond.

Solicitor Rider explained that, in drafting the order, he identified some inconsistencies in the reported square footage of the taking for some of the respective lots. He asked that the Committee Table the matter until the figures could be confirmed.

Reports of Committees cont'd:

October 15, 2013

This was the second meeting to address this issue. Solicitor Rider corrected the previously identified inconsistencies regarding the square footage. The Committee asked the Solicitor to secure the total amount of funding from Toll Brothers that would be owed to property owners regarding the proposed takings.

The Committee voted 2-0 to approve the proposed takings conditional upon receipt of the lump sum payment from Toll Brothers.

ORDERED: That the Petition of NGrid and Verizon to install-Joint owned Pole #47-25 approximately 56' from Pole #47 and 4-6" Conduits on Forest Street, **APPROVED WITH CONDITIONS**; adopted.

- 1) Any necessary easements are to be obtained from affected property owners.
- 2) Street opening permit must be applied for by the proposed contractor performing the work.
- 3) The contractor performing the work must obtain a street opening bond with the City of Marlborough.
- 4) The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, wooden retaining wall, and roadway areas impacted by all construction activities.
- 5) The contractor shall coordinate with the affected residents to have irrigation systems flagged before trenching begins and provide them a timetable of the proposed work.
- 6) A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way.
- 7) The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
- 8) Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
- 9) Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
- 10) Trenches are to be paved or completely backfilled and compacted at the end of each work day. Trenches are never to be left unattended.
- 11) Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
- 12) Entire width of sidewalk (from back of curb to back of sidewalk) is to be included in final trench paving – any disturbed curbing is to be replaced.
- 13) All work shall be completed on or before November 30, 2013.

ORDERED: That the Petition of NGrid and Verizon to install approximately 1100' of 4-5" conduits and two manholes on Forest Street and 1-Joint owned Pole #P2-50 on Bartlett Drive, **APPROVED WITH CONDITIONS**; adopted.

- 1) Any necessary easements are to be obtained from affected property owners.
- 2) Street opening permit must be applied for by the proposed contractor performing the work.
- 3) The contractor performing the work must obtain a street opening bond with the City of Marlborough.
- 4) The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, wooden retaining wall, and roadway areas impacted by all construction activities.
- 5) The contractor shall coordinate with the affected residents to have irrigation systems flagged before trenching begins and provide them a timetable of the proposed work.
- 6) A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way.
- 7) The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
- 8) Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
- 9) Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
- 10) Trenches are to be paved or completely backfilled and compacted at the end of each work day. Trenches are never to be left unattended.
- 11) Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
- 12) Entire width of sidewalk (from back of curb to back of sidewalk) is to be included in final trench paving – any disturbed curbing is to be replaced.
- 13) All work shall be completed on or before November 30, 2013.

ORDERED: That the Communication from Historical Commission Chair, Gary Brown re: Historical Preservation Restriction – 197 Stow Road, **FILE**; adopted.

ORDERED: That the Communication from Attorney David Gadbois for his client 197 Stow Road Realty Trust, seeking a Historic Preservation Restriction pursuant to Massachusetts General Law Chapter 184 Section 31 for its property located at 197 Stow Road, Marlborough, as a condition of the a Special Permit that was approved for Limited Development Subdivision by the Marlborough Planning Board, **APPROVED**; adopted.

ORDERED: That the Communication from Mayor Vigeant with request for appropriation, Loan Order/Bond in the amount of Three Million (\$3,000,000) Dollars for the reconstruction of municipal outdoor recreational facilities, payable in not more than fifteen (15) years from its date of issue. (Note: Ward Park), **ORDERED ADVERTISED**; adopted.

ORDERED: That the Communication from the Mayor with request for appropriation, Loan Order/ Bond in the amount of Six Million Five Hundred Thousand (\$6,500,000) Dollars for the construction of a Senior Center, payable in not more than twenty (20) years from its date of issue, **ORDERED ADVERTISE**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:02 PM.