



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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NOVEMBER 5, 2012

Regular meeting of the City Council held on Monday, NOVEMBER 5, 2012 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:24 PM.

ORDERED: That the Minutes of the City Council Meeting, OCTOBER 15, 2012, **FILE AS AMENDED**; adopted.

ORDERED: That the Recognition of the 2012 Cultural Exchange Members as Honorary Citizens of the City of Marlborough, **FILE**; adopted.

ORDERED: That the World Diabetes Day, **FILE**; adopted.

ORDERED: That the Certification of Free Cash in the amount of \$8,285,429.00, **FILE**; adopted.

ORDERED: That the School Department Supplemental Budget Request in the amount of \$2,581,967.00 for additional FY13 funding, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Other Post-Employment Liability (OBEP) transfer request in the amount of \$2,000,000.00 which moves funds from Undesignated to Stabilization-OPEB to partially fund OPEB, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$2,000,000.00
Undesignated Fund

TO:

Acct. # 83600-32726 \$2,000,000.00
Stabilization-OPEB

ORDERED: That the Marlborough Economic Development Corporation transfer request in the amount of \$277,099.00 which moves funds from Economic Development to MEDC Funding to fund their operations and special projects for the remainder of the fiscal year, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 27000099-42440 \$277,099.00
Economic Development

TO:

Acct. # 11740006-53950 \$277,099.00
MEDC Funding

ORDERED: That the Hurricane Sandy transfer request in the amount of \$100,000.00 which moves funds from Undesignated to Hurricane Sandy to fund overtime and increased manpower, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900	\$100,000.00
Undesignated Fund	

TO:

Acct. # 11990006-53023	\$100,000.00
Hurricane Sandy	

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the State 911 Department Support and Incentive Grant from the Executive Office of Public Safety and Security awarded to the City in the amount of \$99,805.00 to offset personnel costs associated with the dispatching center as well as technical enhancements to 911 services; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the State 911 Department Training and EMD Grant from the Executive Office of Public Safety and Security awarded to the City in the amount of \$41,818.00 to offset personnel costs associated with the dispatching center as well as overtime costs associated with meeting mandated Emergency Dispatching Protocols; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby refers to the **FINANCE COMMITTEE** the Emergency Management Grant from the Massachusetts Emergency Management Agency awarded to the City in the amount of \$9,000.00 to replace radios and equipment in the Emergency Operations Center; adopted.

ORDERED: That the Bigelow School Lease Agreement, Order No. 12-1005181, **MOVED TO ITEM #38B**; adopted.

ORDERED: That the proposed Tax Increment Financing (TIF) Agreement for Quest Diagnostics, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Inter-Municipal Agreement for Advancement of The Assabet River Rail Trail (“the ARRT IMA”), by and between the Town of Hudson, the City of Marlborough, the Town of Stow, the Town of Maynard, and the Town of Acton, as approved by the City Council in Order No. 00-8821A on November 13, 2000, and as timely extended on behalf of the City by the then-Mayor on August 23, 2007 with a term expiration date of December 31, 2012, is hereby confirmed; and Further that, pursuant to M.G.L. c. 40, § 4A, the Mayor is hereby authorized to execute a five (5)-year extension to the ARRT IMA with a term expiration date of December 31, 2017, as per the ARRT IMA extension agreement attached hereto, **APPROVED**; adopted.

ORDERED: That pursuant to M.G.L. c. 40, § 4A, this Intermunicipal Agreement approved by the City Council of Marlborough and the Selectmen of the Town of Sudbury, (the "Parties"), is hereby entered into and is effective from 5th day of November, 2012 by and between the City of Marlborough ("Marlborough") and the Town of Sudbury ("Sudbury") in accordance with the following terms:

1. Purpose And Duties: This agreement contractually enables Gary Brown, the Director of Marlborough's Veterans' Services Department (the "Director") to perform the duties of such office for Sudbury. The Director will maintain separate accurate and comprehensive records of all services performed for Sudbury.
2. Term: The term of this agreement shall be from November 7, 2012 and shall continue for a period thereafter not to exceed eight (8) weeks until December 26, 2012.
3. Location and Time of Services: The Director shall perform his duties in an office to be provided by Sudbury. The Director will provide such duties during regularly scheduled business hours on one (1) day per each week for the term of this agreement.
4. Salary and Benefits: The Director shall be an employee of Marlborough, and his salary and benefits will be paid by the City of Marlborough. Sudbury agrees to pay to Marlborough the amount of two-hundred dollars (\$200.00) per week, by check made payable to the City of Marlborough, c/o Comptroller, 140 Main Street, Marlborough, MA 01752, for the duration of this agreement.
5. Distribution of Benefits to Veterans: It is understood and agreed that the distribution of benefits payments to Veterans in Sudbury under M.G.L. c. 115 shall be paid by the Treasurer of Sudbury.
6. Amendments: The Parties may modify this Agreement only by a writing signed by both Parties.

APPROVED; adopted.

ORDERED: That the Suspension of the Municipal Aggregation Program, **FILE**; adopted.
Councilor Ossing abstained

ORDERED: That the downtown area in the City of Marlborough has officially earned designation by the Massachusetts Cultural Council as a cultural district, **FILE**; adopted.

ORDERED: That the Reappointment of John Sahagian to the Zoning Board of Appeals for a period of five years expiring May 5, 2017 and Ralph Loftin as an alternate member for a term of two years expiring from date of City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Special Permit from T-Mobile, 157 Union St., in proper legal form, **MOVED TO ITEM #40**; adopted.

Councilors Tunnera and Robey abstained

ORDERED: That the Special Permit from Sprint, 75 Donald Lynch Blvd., in proper legal form, **MOVED TO ITEM #41**; adopted.

ORDERED: That the Special Permit from Sprint, 860 Boston Post Rd. East, in proper legal form, **MOVED TO ITEM #42**; adopted.

ORDERED: That the record owner (“the Licensee”) of 61 Emmett Street, Marlborough, Massachusetts, identified as Map 81, Parcel 126 of the Marlborough Assessors Maps, is hereby granted by the City of Marlborough (“the Licensor”) a license (“the License”) to encroach on and occupy a portion of the right of way layout for Emmett Street located to the northwest of the driveway to said 61 Emmett Street (“the Affected Portion of the Emmett Street ROW”), as shown on a plan entitled, “As Built Site Plan, 61 Emmett Street, Marlborough, MA, Scale 1"=20', Date: August 15, 2012, Addit.: August 22, 2012” (“the Plan”), for the sole purpose of extending a concrete block retaining wall into the said right of way. No changes to the surface conditions and use of the Affected Portion of the Emmett Street ROW, other than those shown as existing on the Plan, shall be made by the Licensee unless previously approved through formal site plan approval and written authorization from the Commissioner of Public Works.

This License is subject to all other uses which the Licensor may from time to time make of the Affected Portion of the Emmett Street ROW, including but not limited to a temporary one-year license granted by the Marlborough City Council (Order No. 11-1004017, X-0309919A) on December 19, 2011, subject to further Council approval one year from said date, to the record owners of 56 Emmett Street for the sole purpose of parking at or near the Affected Portion of the Emmett Street ROW, as shown on a plan entitled, “Plan of Land in Marlborough, Massachusetts, to be Licensed to Richard F. and Jane A. Sullivan, for Parking, #56 Emmett Street, Prepared by: City of Marlborough Department of Public Works, Engineering Division (BWT), Scale: 1" = 20', January 2002.”

This License is further subject to Mass. Gen. Laws c. 86, § 3.

The Licensee, its successors and assigns hereby agree to indemnify and hold harmless the Licensor, including its officers, employees and agents, from any damage that may be caused by the Licensor, including its officers, employees and agents, to said retaining wall insofar as it encroaches on and occupies the Affected Portion of the Emmett Street ROW; as well as from any damage or injury to property or person that may arise in connection with the said retaining wall’s encroachment on and occupation of the Affected Portion of the Emmett Street ROW.

APPROVED; adopted.

ORDERED: That the following notification from the City Clerk re: 2012 State Election Call, **FILE**; adopted.

That the City Clerk be and is herewith directed to have proper notices issued notifying the VOTERS of the City of Marlborough that the **STATE ELECTION** will be held in the polling locations as noted below on **NOVEMBER 6, 2012** as follows: Electors of President and Vice President, Senator in Congress, Representative in Congress, Councillor, Senator in General Court, Representative in General Court (Thirteen and Fourth Middlesex District), Clerk of Courts, Register of Deeds and Sheriff.

THE POLLS WILL OPEN AT 7:00 A.M. AND WILL CLOSE AT 8:00 P.M.
POLLING LOCATIONS ARE AS FOLLOWS:

WARD ONE: Prec. 1 and 2	Francis J. Kane School, 520 Farm Rd.
WARD TWO: Prec. 1 and 2	Francis J. Kane School, 520 Farm Rd.
WARD THREE: Prec. 1	Masonic Hall, 8 Newton St. (corner of Main/Newton Sts.), rear
WARD THREE: Prec. 2	Raymond J. Richer School, 80 Foley Rd., Cafetorium
WARD FOUR: Prec. 1 and 2	Boys & Girls Club, 169 Pleasant St.
WARD FIVE: Prec. 1	Senior Center, 250 Main St.
WARD FIVE: Prec. 2	Masonic Hall, 8 Newton St. (corner of Main/Newton Sts.), rear
WARD SIX: Prec. 1 and 2	1LT Charles W. Whitcomb School, 25 Union St., Library
WARD SEVEN: Prec. 1 and 2	Hildreth School Gymnasium, 85 Sawin St.

ORDERED: That the Communication from Attorney Bergeron re: Notice of Representation (City Council Order No. 91-3822A), Breazzano Properties Corp., **FILE**; adopted.

ORDERED: That the Communication from Attorney Bergeron re: Notice of Representation (City Council Order No. 91-3822A), Heritage Hill Townhouses Condominium Association, **FILE**; adopted.

ORDERED: That the Communication from Attorney Bergeron re: Request for Transfer of Real Estate referred to as Old Lakeside Ave, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Lombardo on behalf of Cumberland Farms Inc., to **WITHDRAW WITHOUT PREJUDICE** Application for Special Permit to construct a convenience store with gasoline sales on subject parcels, Order No. 12-1005081D, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 17, 2012**, as date for a **PUBLIC HEARING** for the Application for Special Permit from Cumberland Farms Inc., 412 & 418 Maple St. and Walker St. to construct a convenience store with gasoline sales on the subject parcels and to operate new facility from 5:00 AM to midnight, refer to **URBAN AFFAIRS COMMITTEE, AND ADVERTISE**; adopted.

ORDERED: That the Minutes, Planning Board, September 10, 2012 **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, September 25, 2012, **FILE**; adopted.

ORDERED: That the Communication from Commerce Insurance Co, on behalf of Edward McManus, refer to **LEGAL DEPARTMENT**; adopted.

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

- A. Sisters of St. Catherine, 197 Pleasant St., other
- B. Joy Esper, 39 Parker Rd., Framingham, pothole or other road defect
- C. Joao B. Silveira, 31 Blake St. #5, pothole or other road defect
- D. Ana Carolina Pinto, 165 Broadmeadow Rd. #1, pothole or other road defect

Suspension of the rules requested – granted

ORDERED: That the att'd spreadsheets pertinent to the Police Department transfer request in the amount of \$75,985.00 which will move funds from Reserve for Salaries to various accounts to fund the Police Patrol Officers Association contract, **APPROVED**; adopted.

Suspension of the rules requested – granted

ORDERED: That the Appointment of Ronald Saloman and Elizabeth Evangelous to the Board of Registrars, with expiration dates of April 1, 2015 and April 1, 2014 respectively, **APPROVED**; adopted.

ORDERED: That the Police Department transfer request in the amount of \$42,576.00 which moves funds from Fringes to Sick Leave and Patrolman to fund benefits associated with the retirement of a Police Department employee, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500 \$42,576.00

Fringes

TO:

Acct. # 12100003-51920 \$23,949.00

Sick Leave Buy Back

Acct. # 12100001-50420 \$18,627.00

Patrolman

ORDERED: That the Appointment of Mr. Shawn McCarthy to the Planning Board for a term of five years concluding on February 6, 2017, **APPROVED**; adopted.

ORDERED: That the Reappointments of Jim Confrey and Brenda Costa to the Council on Aging for a period of four years expiring on May 2, 2016, **APPROVED**; adopted.

ORDERED: That the Appointment of Mr. Stephen Zepf to the Youth Commission whose term will expire three years from date of approval, **APPROVED**; adopted.

ORDERED: That the Reappointment of Sheila Brecken to the Council on Aging for a period of four years to expire on May 2, 2016, **APPROVED**; adopted.

ORDERED: That, based on a vote taken by the Marlborough School Committee to transfer the Bigelow School from the School Committee to the City, as set forth in item 4A of the attached minutes of the School Committee meeting held on July 26, 2012, the City Council of the City of Marlborough hereby transfers to itself, by two-thirds vote pursuant to Mass. Gen. Laws c. 40, §15A, the care, custody, management and control of the Bigelow School for the purpose of disposition by lease, **APPROVED**; adopted.

Councilor Elder read a disclosure statement noting that he owns a Youth Sports League in which he rents space from Bigelow School for the basketball leagues. He further noted that he has no financial gain regarding the long-term lease of Bigelow School.

Yea: 11 – Nay: 0

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

ORDERED: That the City Council of the City of Marlborough, having transferred to itself the care, custody, management and control of the Bigelow School for the purpose of disposition by lease, as set forth in Order No. 12-1005181A, hereby declares, pursuant to Mass. Gen. Laws c. 30B, § 16(a), that the Bigelow School is available for disposition by lease, and hereby authorizes the Mayor, by simple majority vote pursuant to Mass. Gen. Laws c. 40, § 3, as amended, to execute a lease of the Bigelow School to Assabet Valley Collaborative ("AVC"), subject to the terms and conditions recited in the letter attached hereto and dated September 20, 2012 from AVC Executive Director Cathy Cummins to the Mayor, **APPROVED**; adopted.

Yea: 11 – Nay: 0

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

ORDERED: That the review of the new curbside trash pick-up program, **FILE**; adopted.

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT**

T-MOBILE NORTHEAST LLC (OMNIPOINT HOLDINGS, INC.)

CITY COUNCIL ORDER NO. 12-1005150C

Re: 157 Union Street

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 01-9204C, 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 (hereinafter, "the Applicant").
2. On October 22, 2001, the City Council granted to Omnipoint Holdings, Inc., Division of VoiceStream Wireless, Inc., a special permit to locate and operate a wireless communications facility at the existing building located at 157 Union Street, 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 in Book 34097, Page 279. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 43, Lot 56 (hereinafter, "the Site"). The owner of record for the Site is Marlborough Hospital.

3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter, "the Application"), the Applicant seeks permission to allow the replacement of six (6) panel antennas currently located on the smokestack next to Marlborough Hospital. Applicant also seeks to remove six (6) existing GSM TMA's (Tower Mounted Amplifiers) and remove coax cables, and install hybrid cables and one (1) future site support cabinet within the Applicant's existing lease area (hereinafter, "the Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Site Name: BS489/Marlboro Hospital, 157 Union Street, Marlborough, MA 01752, Middlesex County, Site Number: 4BS0489B" by Advance Engineering Group, P.C. dated 6/29/12 and last revised 7/31/12, a copy of which was provided in the Special Permit Application (hereinafter, "the Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The Proposed WCF Project is located in the Residential (A-3) Zoning District. Wireless communication devices are allowed by grant of special permit in the Residential (A-3) Zoning District.
6. 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.
7. 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.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on September 24, 2012, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
12. 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 Proposed 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 Proposed WCF Project and the Proposed 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 Proposed 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 Proposed 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 shall comply with 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 WCF.
 - 4) The issuance of this Modified Special Permit may be further subject to Site Plan Review. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Modified Special Permit.

- 5) Applicant shall minimize the visual impacts of the Proposed 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) Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515, as conditioned in the Original Special Permit, shall constitute a violation of the Modified Special Permit. Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed 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.
- 8) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed 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 Proposed 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 Proposed WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF Project fully complies with all applicable health and safety standards; and iii) shall 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 Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed 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) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall 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) shall 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.
- 9) 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 Proposed 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.

Yea: 8 - Nay: 1 – Abstain: 2

Yea: Delano, Jenkins, Elder, Clancy, Landers, Ossing, Pope, & Oram

Nay: Tunnera

Abstained: Seymour & Robey

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT**

SPRINT

CITY COUNCIL ORDER NO. 12-1005092D

Re: 75 Donald Lynch Blvd.

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-7271B, submitted by Sprint, having a usual place of business at 1 International Blvd., Suite 800, Mahwah, NJ, as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is Sprint (hereinafter, "the Applicant").

2. On December 8, 1997, by Order No. 97-7271B, the City Council granted to Sprint Spectrum L.P. d/b/a Sprint PCS, a special permit to install nine (9) antenna and three (3) ancillary equipment cabinets at the base of the AT&T monopole of the property located at 75 Donald Lynch Boulevard, Marlborough, MA (hereinafter, "the Original Special Permit"). The Original Special Permit is recorded at the Middlesex South District Registry of Deeds in Book 28034, Page 518. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 13, Parcel 2 (hereinafter, "the Site"). The owner of record for the Site is the Albert D. Bombard, with ATT Tower being the owner of the monopole.
3. Through its Application for Modification of Special Permit for a Wireless Communication Facility (hereinafter, "the Application"), as amended by the Applicant at the Marlborough City Council's September 10, 2012 public hearing, the Applicant seeks permission to replace six (6) of the currently installed CDMA antenna with three (3) Sprint Vision antennas onto an existing wireless communication facility; add six (6) remote radio heads onto an existing wireless communication facility; replace one (1) GPS mounted to the tower; replace two (2) cabinets with two (2) BBU cabinets, and install one (1) MM-BTS equipment cabinet and install a fiber distribution box within the existing lease area; and remove all existing CDMA coax cables and replace with four (4) hybrid cables connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Sprint Vision, Site Number: BS03XC502, Site Name: AT&T Marlborough, Site Address: 75 Donald Lynch Blvd., Marlborough, MA 01752" by Atlantis Group, dated 5/16/2012, a copy of which was provided in the Special Permit Application (hereinafter, "the Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The proposed WCF is located in the Limited Industrial Zoning District. Wireless communication devices in the Limited Industrial Zoning District are allowed by grant of special permit.
6. 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.
7. 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.
8. The Applicant has complied with all of the applicable Rules of the Rules and Regulations.
9. The City of Marlborough City Council opened a public hearing on the Proposed WCF Project on September 10, 2012, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.

10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
12. 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 Proposed 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 Proposed WCF Project and the Proposed 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 Proposed 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 10:**

1. Applicant agrees to comply with 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 Applicant's Proposed WCF Project.
2. The Proposed 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. All plans and photo renderings which have been filed by Applicant are hereby incorporated and become part of this Modified Special Permit.

3. The issuance of this Modified Special Permit is further subject to Site Plan Review, in accordance with the City of Marlborough's ordinance, prior to the issuance of the actual building permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Modified Special Permit and no occupancy permit shall be issued until all conditions are complied with by Applicant.
4. All conditions set forth in the Original Special Permit are applicable to this Modified Special Permit.
5. Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515 shall constitute a violation of the Modified Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
6. Applicant shall provide landscaping around the equipment cabinets at the Site to adequately shield them from view.
7. Applicant shall maintain and keep the Site in good repair, neat, clean and free from all debris.
8. Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed 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.

9. As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed 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 Proposed 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 Proposed WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF Project fully complies with all applicable health and safety standards; and iii) shall 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 Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed 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) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall 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) shall 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.
10. 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 Proposed 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.

Yea: 11- Nay: 0

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

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT**

SPRINT

CITY COUNCIL ORDER NO. 12-1005093D

Re: 860 Boston Post Road

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 05-100942A, submitted by Sprint, having a usual place of business at 1 International Blvd., Suite 800, Mahwah, NJ, as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is Sprint (hereinafter, "Applicant").
2. On December 19, 2005, by Order No. 05-100942A, the City Council granted to Sprint Spectrum LP, A Delaware Limited Partnership, a special permit to construct and operate a 15' monopole extension to the then-previously approved 120' wireless tower, and to install on that extension up to twelve (12) panel antennas and associated equipment in a fenced compound area, on the property located at 860 Boston Post Road, Marlborough, MA (hereinafter, "the Original Special Permit"). The Original Special Permit is being recorded herewith at the Middlesex South District Registry of Deeds. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 61, Parcel 16 (hereinafter, "the Site"). The owner of record for the Site is the City of Marlborough.
3. Through its Application for Modification of Special Permit for a Wireless Communication Facility (hereinafter, "the Application"), as amended by the Applicant at the Marlborough City Council's September 10, 2012 public hearing, the Applicant seeks permission to replace six (6) of the currently installed CDMA antenna with three (3) Sprint Vision antennas onto an existing wireless communication facility; add six (6) remote radio heads onto an existing wireless communication facility; replace one (1) GPS mounted to the tower; replace one (1) CDMA cabinet with two (2) BBU cabinets, and install one (1) MM-BTS equipment cabinet and install a fiber distribution box within the existing lease area; and remove all existing CDMA coax cables and replace with four (4) hybrid cables connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Sprint Vision, Site Number: BS54XC929, Site Name: Verizon/Easterly Treatment Plant, Site Address: 860 Boston Post Road, Marlborough, MA 01752" by Salient Architects, LLC, dated 9/22/11, a copy of which was provided in the Special Permit Application (hereinafter, "the Plans").
4. The Applicant is a lessee of Verizon Wireless for purposes of the Application.

5. The Proposed WCF Project is located in part in the Rural Residential Zoning District, and in part in the Business Zoning District. Wireless communication devices are allowed by grant of special permit in both Zoning Districts.
6. 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.
7. 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.
8. The Applicant has complied with all of the applicable Rules of the Rules and Regulations.
9. The City of Marlborough City Council opened a public hearing on the Proposed WCF Project on September 10, 2012, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
12. 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 Proposed 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 Proposed WCF Project and the Proposed 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 Proposed 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 13:**

1. Applicant agrees to comply with 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 Applicant's Proposed WCF Project.
2. The Proposed 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. All plans and photo renderings which have been filed by Applicant are hereby incorporated and become part of this Modified Special Permit.
3. The issuance of this Modified Special Permit is further subject to Site Plan Review, in accordance with the City of Marlborough's ordinance, prior to the issuance of the actual building permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Modified Special Permit and no occupancy permit shall be issued until all conditions are complied with by Applicant.
4. All conditions set forth in the Original Special Permit are applicable to this Modified Special Permit.
5. Failure to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515 shall constitute a violation of the Modified Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
6. No installation work shall be performed by Applicant or its contractors without the supervision of an appropriate individual designated by the Commissioner of the City of Marlborough's Department of Public Works. Additionally, the MDPW will conduct a final inspection of the installation work within fifteen (15) days of completion of the installation.

7. Pursuant to Chapter 650-25F of the Marlborough Zoning Ordinance, Applicant shall indemnify the City of Marlborough regarding the installation, maintenance and operation of Applicant's equipment at the Site, and Applicant shall provide the City's Legal Department with a certificate of liability insurance naming the City as an additional insured.
8. Applicant shall provide landscaping around the equipment cabinets at the Site to adequately shield them from view.
9. Applicant shall not install any asphalt on the Site or the adjacent City-owned premises.
10. Applicant shall maintain and keep the Site in good repair, neat, clean and free from all debris.
11. Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed 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.
12. As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed 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 Proposed 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 Proposed WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF Project fully complies with all applicable health and safety standards; and iii) shall 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 Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed 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) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall 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) shall 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.

13. In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record both the Original Special Permit, as well as 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 Proposed WCF Project. Applicant shall provide a copy of both the recorded Original Special Permit as well as the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy of both special permits to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

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

ORDERED: At President Pope's request to recess at 9:20 PM and returned to open meeting at 9:22 PM, **APPROVED**; adopted.

ORDERED: That the Public Acceptance of Dufrense Drive, refer to **LEGAL DEPARTMENT AND PLANNING BOARD**.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:24 PM.