



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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JANUARY 3, 2011

Regular meeting of the City Council held on Monday, JANUARY 3, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy and Landers. Meeting adjourned at 8:30 p.m.

ORGANIZATION MEETING

The City Clerk called the meeting to order at 8:00 PM. The City Clerk called for the election of the City Council President Pro-Tem for the Year 2011. Councilor Delano nominated Councilor Clancy as President Pro-Tem. Motion was seconded for nomination of Councilor Clancy as President Pro-Tem. Councilor Clancy received eleven votes for President Pro-Tem. Yea – Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy.

Councilor Clancy called for the Election of the City Council President of the Marlborough City Council for the Year 2011. Councilor Seymour nominated Councilor Vigeant as President. Motion was seconded for nomination of Councilor Vigeant as President. Councilor Vigeant received eleven votes for President. Yea – Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy.

Councilor Vigeant called for the Election of the City Council Vice-President of the Marlborough City Council for the Year 2011. Councilor Clancy nominated Councilor Pope as Vice-President. Motion was seconded for nomination of Councilor Pope as Vice-President. Councilor Pope received eleven votes for Vice-President. Yea – Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy.

That the City Council accept the Rules from the Year 2010 and carry over to Year 2011, **APPROVED**; adopted.

City Council President Vigeant announced the next meeting of the City Council to be held on Monday, January 24, 2011 at 8:00 p.m.

ORDERED: That the minutes of the City Council Meeting December 20, 2010, **FILE**; adopted.

ORDERED: That the Communication from the City Solicitor re: Special Permit, MetroPCS Massachusetts LLC, 860 Boston Post Rd., in proper legal form, Order No. 10-1002715A, **MOVED TO ITEM 10**; adopted.

- ORDERED: That the Communication from the City Solicitor re: Home Rule Petition pertaining to the increased room occupancy excise from the rate of 4% to the rate of 6%, in proper legal form, Order No. 10-1002762, **MOVED TO ITEM 12**; adopted.
- ORDERED: That the Communication from the Assistant City Solicitor re: changes to the City Code relative to Junk Dealer's License, in proper legal form, Order No. 10-1002667, **MOVED TO ITEM 11**; adopted.
- ORDERED: That the Communication from the DPW Commissioner re: determination that a portion of the former landfill property off Hudson St. is surplus and available for lease, Order No. 10-1002764, **FILE AND REFER TO WIRELESS COMMUNICATIONS COMMITTEE FOR INFORMATIONAL PURPOSES**; adopted.
- ORDERED: That the Communication from Attorney Cipriano re: Street Acceptance-Boivin Dr., Davis Estates, refer to **PUBLIC SERVICES COMMITTEE, PLANNING BOARD AND CITY SOLICITOR TO PUT IN PROPER LEGAL FORM**; adopted.
- ORDERED: That there being no objection thereto set **MONDAY, JANUARY 24, 2011** as date for a **PUBLIC HEARING** on the Application of Donald Lynch Realty Trust for amendment to Special Permit 94-560B to increase the number of amusement devices from 26-42 at the New England Sports Center located at 121 Donald Lynch Blvd., **ADVERTISE AND TABLE UNTIL THE JANUARY 24, 2011 CITY COUNCIL MEETING**; adopted.
- ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
- A. Amica Insurance, on behalf of Rajesh Kumar, 22 Azalea Ln., other property damage

**DECISION ON A SPECIAL PERMIT
METROPCS MASSACHUSETTS, LLC
CITY COUNCIL ORDER NO. 10/11-1002715B**

Re: 860 Boston Post Road East, Marlborough, MA

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The applicant is METROPCS MASSACHUSETTS, LLC, which has a business address of 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application for a Special Permit (hereinafter "Application"), the Applicant seeks permission to install a wireless communication facility onto the existing wireless communications tower consisting of six (6) wireless communications antennas, along with the supporting equipment cabinets which will be located on the ground adjacent to the existing equipment compound (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0623A BOSTON POST ROAD" 860 Boston Post Road East, Marlborough, MA 01752, Middlesex County," prepared by Dewberry-

3. Goodkind, Inc., 280 Summer Street, 10th floor, Boston, MA 02210, dated 8/27/08, last revised 12/13/10 Revision #6 (hereinafter "Plans").
4. The location of the Proposed WCD Project is 860 Boston Post Road East, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 61, Lot 16 (hereinafter "Site"). The owner of record for the Site is the City of Marlborough.
5. The Applicant is a lessee of the Site's owner for purposes of the Application.
6. The Site is zoned Rural Residential (RR) and Business (B). The Proposed WCF is located in the Rural Residential (RR) portion of the Site. Wireless communication devices are allowed by grant of Special Permit in Rural Residential Zoning Districts.
7. The Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
8. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
9. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
10. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on November 22, 2010, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
11. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
13. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Proposed WCD 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 WCD Project and the Proposed WCD 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 WCD 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 Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
- 1) The Proposed WCD 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 Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of the Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The 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 Proposed WCD Project.
 - 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
 - 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.

- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of the Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the 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.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD 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.
- 8) No operation of the Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) Applicant's Proposed WCD Project shall be subject to site plan review, if applicable.
- 10) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Special Permit in 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 having been filed, and before the Applicant has applied to the Building Commissioner Inspector for a building permit concerning the Proposed WCD Project. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

- 11) 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 WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD 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 WCD 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 WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD 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 WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD 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 WCD 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 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.

- 12) Subject to final agreement between the City of Marlborough and the Applicant, the Applicant shall execute a lease agreement with the City of Marlborough to be drafted by the City Solicitor, approved by the Chief Procurement Officer and executed by the Mayor, and the Applicant shall provide the necessary insurance and indemnification provisions as required by said lease.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, Levy

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 377, ENTITLED "JUNK AND SECOND HAND DEALERS LICENSES," AS FOLLOWS:

Chapter 377 is hereby amended by deleting section 377-1 in its entirety and replacing it with the following:

377-1. License Required; License Revocation.

- A. No person shall be a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or secondhand articles unless licensed by the City Council, which may grant licenses as it may determine.
- B. Said licenses may be revoked, suspended or modified at pleasure by the City Council.
- C. Upon revocation, suspension or modification of such license, the City Clerk shall note the revocation upon the face of the record thereof, and shall give written notice to the licensee as provided under M.G.L. c. 140, § 205, as amended.
- D. A licensee may make a written request for a hearing before the City Council on any such revocation, suspension or modification, which shall be held by the City Council within thirty (30) days, or as soon as practicable thereafter, of the receipt of the request.

Chapter 377 is also hereby amended by changing the duration of time described in section 377-6 from one week to thirty (30) days as follows:

377-6. Retention period prior to resale.

No article purchased or received by a dealer in junk or secondhand articles shall be sold or removed from his or her possession until at least thirty (30) days from the date of purchase or receipt of the same has elapsed.

Chapter 377 is also hereby amended by adding terms concerning violations of section 377-7:

377-7. Required Records to be kept by dealer.

- D. Violations of this section by licensees purchasing or receiving gold, silver or platinum shall be subject to penalties described in M.G.L. 266, § 142A, as amended.

Further, Chapter 377 is also hereby amended by adding the following new section concerning enforcement and penalties:

377-10. Enforcement; Penalties.

- A. Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or second hand articles without a license or after notice that his license has been revoked or suspended shall be subject to a fine of \$100.00 per day for each and every day the violation continues after issuance of a Notice of Violation by the Building Inspector of his designee, who may enforce such violation pursuant to the provisions of M.G.L. c. 40, § 21D, as amended.
- B. Whoever violates the provisions of this chapter, other than by operation after revocation or suspension as provided in paragraph A. of this section or as provided in paragraph D. of section 377-7, shall be subject to a fine of \$100.00 per day for each and every day the violation continues after issuance of a Notice of Violation by the Chief of Police or his designee, who may enforce such violation pursuant to the provisions of M.G.L. c. 40, § 21D, as amended. Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or second hand articles without a license may also be subject to a fine under the provisions of this paragraph.
- C. All fines are payable to the City of Marlborough through the City Clerk’s office.

ADVERTISE AND TABLE UNTIL THE JANUARY 24, 2011 CITY COUNCIL MEETING; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 315, ENTITLED “ENFORCEMENT,” AS FOLLOWS:

Ordinance/Violation (Chapter/Section)	Penalty	Enforcing Agent
(30) Junk And Second Hand Dealer’s Licenses, Chapter 377, Section 377-10, Paragraph A	\$100.00	Building Inspector and his designee
(31) Junk And Second Hand Dealer’s Licenses, Chapter 377, Section 377-10, Paragraph B.	\$100.00	Chief of Police and his designee

ADVERTISE AND TABLE UNTIL THE JANUARY 24, 2011 CITY COUNCIL MEETING; adopted.

MOTION made by Councilor Ferro to amend Section 6 by changing the contents from "2/3 votes of the City Council" to a "majority vote" – **DOES NOT CARRY**

MOTION made by Councilor Delano to move the question – **CARRIES**

That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:-

**AN ACT ESTABLISHING
A BUSINESS AND ECONOMIC DEVELOPMENT SPECIAL REVENUE FUND
IN THE CITY OF MARLBOROUGH**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding section fifty-three of chapter forty-four of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Business and Economic Development Special Revenue Fund of the city of Marlborough, into which account shall be deposited certain receipts comprising a portion of the total local room occupancy tax received annually by the city under section three A of chapter sixty-four G of the General Laws, as set forth in section 2 herein. The purpose of this act, and of the Business and Economic Development Special Revenue Fund, shall be to promote and to sustain the development of business and the local economy in the city of Marlborough.

SECTION 2. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate in excess of 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough shall be credited to the Business and Economic Development Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.

SECTION 3. Notwithstanding the provisions of any general or special law to the contrary, the amount of the room occupancy excise based on a rate equal to 4% collected under section three A of chapter sixty-four G of the General Laws by the city of Marlborough for the fiscal year beginning July 1, 2011 and each fiscal year thereafter shall be credited to the General Fund of the city of Marlborough.

SECTION 4. Notwithstanding the provisions of any general or special law to the contrary, any interest accruing on any amount on deposit in the Business and Economic Development Special Revenue Fund shall be credited to the General Fund in the city of Marlborough.

SECTION 5. Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

SECTION 6. If the city of Marlborough revokes, by a majority vote of the city council of the city pursuant to section three A of chapter sixty-four G of the General Laws and sections (2)(h) and (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1, its acceptance of the room occupancy excise rate in excess of 4% under section three A of chapter sixty-four G of the General Laws, then the city of Marlborough shall thereupon decide, by a two-thirds vote of the city council of the city, the separate question whether the Business and Economic Development Special Revenue Fund shall cease to have effect in the city. If two-thirds of the city council of the city votes that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be credited to the General Fund of the city on the first day of the calendar quarter following 30 days after the date of the revocatory vote, pursuant to section (2)(i) of 830 Code of Massachusetts Regulations Part 64G.3A.1; however, if two-thirds of the city council of the city does not vote that the Business and Economic Development Special Revenue Fund shall cease to have effect in the city, the said Fund shall continue to have effect in the city, and all unexpended and uncommitted amounts on deposit in the said Fund, as of the date of the vote to revoke the rate in excess of 4%, shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.

SECTION 7. The city of Marlborough may amend this act by a two-thirds vote of the city council of the city of Marlborough. Such amendatory vote shall designate a) that the Business and Economic Development Special Revenue Fund shall thereupon cease to have effect in the city of Marlborough; b) that all unexpended and uncommitted amounts on deposit in the Business and Economic Development Special Revenue Fund, as of the date of said amendatory vote, shall forthwith be credited to the General Fund of the city of Marlborough; and c) that the portion of the total room occupancy excise in excess of 4% received annually by the city of Marlborough under section three A of chapter sixty-four G of the General Laws and theretofore credited to the Business and Economic Development Special Revenue Fund, as set forth in section 2 herein, shall thereafter be credited to the General Fund of the city.

SECTION 8. This act shall take effect upon its passage.

APPROVED; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:30 p.m.