



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
AUGUST 1, 2011**

Regular meeting of the City Council held on Monday, AUGUST 1, 2011 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Clancy, and Landers. Absent: Seymour. Meeting adjourned at 8:55 PM.

ORDERED: That the minutes of the City Council Meeting JULY 18, 2011 **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 03-100112B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 445 Simarano Dr., Order No. 11-1002954, be and is herewith **OPEN AND CONTINUE HEARING WITHOUT ALL EVIDENCE BEING HEARD TO THE AUGUST 29, 2011 MEETING**; adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Clancy & Landers. Absent: Seymour

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 97-6754F) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 75 Donald Lynch Blvd., Order No. 11-1002955, be and is herewith **OPEN AND CONTINUE HEARING WITHOUT ALL EVIDENCE BEING HEARD TO THE AUGUST 29, 2011 MEETING**; adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Clancy & Landers. Absent: Seymour

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from AT & T Wireless PCS, LLC to modify an existing Special Permit (Order No. 08/09-1002083B) to accommodate three additional panel antennae for 4G wireless network, associated cabling and equipment at 860 Boston Post Rd., Order No. 11-1002956, be and is herewith **OPEN AND CONTINUE HEARING WITHOUT ALL EVIDENCE BEING HEARD TO THE AUGUST 29, 2011 MEETING**; adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Clancy & Landers. Absent: Seymour

ORDERED: That the Assessor's Department transfer request in the amount of 134,000.00 which moves funds from Overlay Reserve to the Real Property Valuation Services which will restore the line item as it was cut for FY2012, **APPROVED**; adopted.

FROM:

Acct. # 10000-32200 \$134,000.00
Overlay Reserve

TO:

Acct. # 11410004-53082 \$134,000.00
Real Property Valuation Services

ORDERED: That the Fire Transfer Department request in the amounts of \$7,547.42 which moves funds from Firefighter to OT and \$29,638.80 which moves funds from Firefighter to OT, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. #12200001-50450 \$7,547.42

Firefighter

Acct. #12200001-50450 \$29,638.80

Firefighter

TO:

Acct. # 12200003-51300 \$7,547.42

OT

Acct. # 12200003-51300 \$29,638.80

OT

ORDERED: That That a petition to the General Court, accompanied by a bill for further amendment to Section 1 of Chapter 55 of the Acts of 1989, as amended by Section 1 of Chapter 83 of the Acts of 1995 and Chapter 158 of the Acts of 2000, 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, said further amendment to Section 1 to be made by adding the following sentences:

“*Section 1.* If one or more of the previously named positions is vacant, or as need arises, the Mayor shall fill said vacancy with a member(s) qualified to act. This amendment shall take effect upon its passage.”

Refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Municipal Aggregation Program-Proposed Pre-Qualification of Additional Suppliers of Electricity, X Order No. 06-1001337A, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

Councilor Ossing abstained

ORDERED: That the Communication from City Solicitor Rider re: Special Permit of Marlborough Hospital in proper legal form, Order No. 11-1002924A **MOVED TO REPORTS OF COMMITTEES**; adopted.

ORDERED: That the Zoning Ordinance of the City of Marlborough be amended by deleting Section 650-26(A)(1)(a) of the City Code as presently written and inserting in place thereof the following:

(a) Affordable Housing and Affordable Housing Units. The term “affordable housing” shall refer to “affordable housing units”. The term “affordable housing units” shall mean those units of housing that are countable in the so-called Subsidized Housing Inventory (SHI) or any subsequent housing inventory used by the Department of Housing and Community Development of the Commonwealth of Massachusetts to determine the number of housing units in a community that are countable in meeting the City’s obligation to maintain at least 10% of the total number of housing units in the city as affordable pursuant to Massachusetts General Laws Chapter 40B sections 20-23. Any development subject to this section shall provide that at least 15% of the housing units to be constructed are countable as affordable housing units in the SHI, or a sum not less than the amount necessary, in the opinion of the city council pursuant to the special permit process, to cause the construction of said number of affordable housing units shall be paid to the Marlborough Community Development Authority at such time as the city council shall determine, refer to **URBAN AFFAIRS, PLANNING BOARD AND ADVERTISE PUBLIC HEARING FOR SEPTEMBER 12, 2011**; adopted.

ORDERED: That the Communication from Attorney Bergeron on behalf of Melanson Development **WITHDRAWS** its request the City transfer to it the city’s fee interest in the land behind the Walker house, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 26, 2011**, as date for a **PUBLIC HEARING** on Application for Special Permit from Marlborough/Northborough Land Realty Trust to construct a development consisting of 5 multi-family residential buildings, with clubhouse, containing a total of 290 units on Rt. 20, Map 78, Lots 12, 14, 38 and 39, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Minutes, Traffic Commission, May 6, 2011, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, June 6 & 20, 2011, **FILE**; adopted.

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

- A. Lawrence Goodman, 100 Houde St., residential mailbox claim, 2(a)
- B. Doreen Horne, 25 Butler Circle, other property damage

Reports of Committees:

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

Order No. 11-1002920 - Communication from Mayor Stevens with proposed ordinance to extend 2005 sunset legislation which allows homeowners to defer payment of entrance fees at the prior rate for a prescribed period of time. The prescribed period of time which is the same under the chapters concerning water and sewer will expire on September 5, 2011. The proposed ordinance eliminates the sunset provisions, thus permitting homeowners who received occupancy permits before December 31, 2003 to connect to the City’s water and sewer systems at the old rates irrespective of when they actually connect. The Committee reviewed the Mayor’s letter dated May 12, 2011. **Recommendation of the Legislative and Legal Affairs Committee is to approve the proposed changes to the City Code and advertise proposed Ordinance under Suspension of the Rules 3-0.**

Suspension of the Rules requested-granted

ORDERED: The Vestas Technology R & D Americas TIF proposal, consisting of the following five documents, **APPROVED**; adopted.

1. The TIF agreement as amended;
2. The TIF Plan;
3. The certified project application, as amended;
4. The economic opportunity area application;
5. The Council Resolution, as amended.

Councilor Ossing abstained**Suspension of the Rules requested - granted**

ORDERED: That the Water Department transfer request in the amount of \$23,602.10 which moves funds from Fringes to the following accounts which are necessary to pay budgeted expenses associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500	\$23,602.10
Fringes	

TO:

Acct. # 61090001-50740	\$4,761.14
SMEO Equipment Operator	
Acct. # 61090003-51920	\$17,140.11
Sick Leave	
Acct. # 61090003-51430	\$1,700.85
Longevity	

Suspension of the Rules requested - granted

ORDERED: That the City Clerk transfer request in the amount of \$13,986.13 which moves funds from Fringes to the following accounts which are necessary to pay budgeted expenses associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. #11990006-51500	\$13,986.13
Fringes	

TO:

Acct. # 11610002-50770	\$12,482.13
Senior Clerk	
Acct. # 11610003-51920	\$1,504.00
Sick Leave Buy Back	

Suspension of the Rules requested - granted

ORDERED: That the Brownfields 2011 Cleanup Grant awarded to the City in the amount of \$200,000.00 for removal of underground gasoline tanks and the cleanup of the contaminated soil at the former Jenney Gas Station located at 25 East Main St. to be used for purposes outlined in MGL, Chapter 44, Section 53A, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That \$56,720,000 (fifty six million seven hundred twenty thousand) dollars is appropriated for the purpose of financing the construction and upgrade to the Easterly Wastewater Treatment Plant including without limitation all cost thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by ST. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Mayor and the Auditor is authorized to borrow \$56,720,000 dollars and issue bonds or notes therefore under Chapter 44 Section 8 (15) and/or Chapter 29C of the General Laws, as most recently amended by ST. 1998,c.78; that such bonds or note shall be general obligations of the City unless the Treasurer with the approval of the Mayor and the Auditor determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by ST. 1998,c.78; that the Treasurer with the approval of the Mayor and the Auditor is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the Mayor is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any action necessary to carry out the project, **APPROVED**; adopted.

Yea: 10- Nay: 0

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

Absent: Seymour

Suspension of the Rules requested - granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 608, ENTITLED "WATER," AS FOLLOWS:

Chapter 608 is hereby amended by deleting from section 608-11A.(1)(a)[1] the following words from the first sentence thereof: "a period of one year from the first Monday of the month following the effective date of this section to sign a commitment"; and by deleting the second, third, and fourth sentences in their entirety.

BE IT FURTHER 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 510, ENTITLED "SEWER," AS FOLLOWS:

Chapter 510 is hereby amended by deleting from section 510-4A.(1)(a)[1] the following words from the first sentence thereof: "a period of one year from the first Monday of the month following the effective date of this section to sign a commitment"; and by deleting the second, third, and fourth sentences in their entirety.

ORDERED ADVERTISED UNDER SUSPENSION OF THE RULES; adopted.

**In City Council
Marlborough, Massachusetts
Decision on a Special Permit Application**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marlborough Hospital, a Massachusetts non-profit corporation having a mailing address of 157 Union St., Marlborough, MA 01752 as provided in this Decision and subject to the following Findings of Facts and Conditions.

1. Marlborough Hospital, a Massachusetts non-profit corporation, having a mailing address of 157 Union St., Marlborough, MA 01752, is herein referred to as "Applicant."
2. Applicant is the owner of certain real property located at 157 Union Street, Marlborough, MA, as shown on the Marlborough Assessors Maps as Map 43, Parcel 56 (the "Premises"). The land is entirely located in a Residence A-3 zoning district. The Premises have been used as a hospital since before the creation of the Marlborough zoning ordinance.
3. The Applicant, on or about May 18, 2011, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Mass. Gen. Laws c. 40A, §§ 6 and 9 and Marlborough Zoning Ordinance Article IV, § 650-12(B) (the "Application"). Applicant intends to alter the preexisting nonconforming use of the Premises by adding a Cancer Pavilion to provide radiation therapy, chemotherapy and various related medical services to patients. As part of this project, Applicant intends to reconfigure the parking on the site and to add thereto a small amount of additional impervious area for parking. As a result of this change, the lot coverage of Applicant's lot will increase from 47.8% to 48.2%.
4. In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty-three (23) copies of the site plan further described in Condition #1 below.
5. The site plan was certified by the Building Inspector for the City of Marlborough, acting on behalf of the City Planner, as having complied with Marlborough Zoning Ordinance Article VIII, § 650-59, Section C, Paragraph 7.
6. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.
7. The Marlborough City Council, pursuant to Mass. Gen. Laws c. 40A, held a public hearing on July 18, 2011, concerning the said application. The hearing was opened and closed at that meeting.

8. Applicant presented testimony at the public hearing detailing the Application, and describing the nature of the cancer treatment services to be performed and its impact in making these services more available and convenient to residents of the community, while substantially improving the environment in which those services are administered. A number of Marlborough residents spoke in favor of the proposed project. No resident spoke in opposition. In addition, Applicant presented additional detailed project information at the Urban Affairs Committee meeting which occurred on July 25, 2011. All comments by those attending the City Council public hearing have been duly considered in making this decision.
9. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building and related site modifications, in the course of the Urban Affairs Committee meeting referred to above.

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

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed expanded use of the site, consistent with its current use, and of the structure and site as altered, will not be substantially more detrimental to the neighborhood than the continued use of the existing site and structure. The visual and drainage impacts from the proposed use will be mitigated, and the traffic impacts will be no more detrimental than current impacts. In addition, the City Council finds that the additional cancer treatment provided will provide a significant benefit to the residents of the City.

C) The City Council, pursuant to its authority under Mass. Gen. Laws c. 40A, §§ 6 and 9 and under Article IV, § 650-12, Paragraph B of the Marlborough Zoning Ordinance, GRANTS the Applicant a Special Permit to alter the pre-existing non-conforming use of the premises as specified in the plans referred to below (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1. Compliance With Building Regulations. Construction and modification of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and site plan (the "Site Plan"), as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee. The Site Plan referred to in this condition is the 4-page set of plans filed with the Special Permit Application and is entitled "Plan to Accompany Special Permit Application for Marlborough Hospital Cancer Pavilion in Marlborough, Massachusetts" dated May 18, 2011, by Whitman & Bingham Associates LLC, as revised on July 22, 2011. All other terms, conditions, requirements, approvals, drawings, and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

2. Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough 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 the Special Permit and no Occupancy Permit shall be issued until the Applicant complies with all conditions. Any non-compliance with changes, alterations, modifications or amendments required by Site Plan Review shall constitute a violation of this Special Permit. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and the Site Plan submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the Site Plan which alter the traffic patterns within the site, require the removal of landscaping, or reduce the overall green space of the Project will require subsequent approval by the City Council.

3. Application and Documents. All plans, drawings, site evaluations, and documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same.

4. Compliance with Local, State and Federal Laws. The Applicant agrees to comply with all rules, regulations, and ordinances of the City of Marlborough, Commonwealth of Massachusetts, and the Federal Government as they may apply to the construction, maintenance, and operation of Applicant's facility, as supplemented by applicable conditions of this Special Permit.

5. Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings provided by the Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, including the Site Plan, are herein incorporated into and become part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.

6. Improvements Installed Prior to Certificate of Occupancy. All site improvements that have been shown in renderings and/or the Site Plan are conditions of this Special Permit and will be installed prior to the issuance of any temporary or permanent occupancy certificate; provided, however, that if all other work is completed between October 1, 2011 and June 1, 2012, all landscaping plants will be required to be installed by June 1, 2012. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

7. Drainage Improvements. Applicant shall, prior to the completion of the Project, and prior to obtaining a Certificate of Occupancy therefor, re-crown its driveway from Hudson Street and cause construction of stormwater detention facilities on Applicant's property that are sufficient, in the opinion of the City Engineer, to significantly reduce the likelihood that stormwater from the property will avoid being captured in the existing stormwater drainage structures in said driveway, or that said stormwater will surcharge from said structures. The improvements approved by the City Engineer will include an Operation and Maintenance plan for the maintenance of said detention facilities.

8. No Modifications to Driveway Entrances. If any modifications are made to the driveway entrances and exits as shown on the Site Plan that in any way alter the traffic flows as represented in the final revision of the Site Plan submitted to the City Council as part of the Special Permit Application, and as revised during the Special Permit approval process, the Applicant shall return to the City Council for approval of these modifications to the Special Permit. Applicant shall apply for and obtain all necessary permits from the necessary parties.

9. Catch Basins. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored by the Applicant on a semi-annual basis with reports given by the Applicant to the City Engineer. The catch basins are to be cleaned annually, or at more frequent intervals, by the Applicant as determined necessary by the City Engineer.

10. Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of Mass. Gen. Laws c. 90, § 18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site traffic and parking. Applicant shall be responsible for providing, installing, and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices. Signs demarcating compact spaces shall not detract from the "streetscape" established for the project as requested during Site Plan Review.

11. Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the City of Marlborough Sign Ordinance in effect at the issuance of the special permit without a variance.

12. Landscaping Maintenance. Applicant agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee subject to Site Plan Review.

13. Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee.

14. On-Site Screening. The parking lot, outdoor storage and loading areas, and refuse areas shall be appropriately screened as outlined in Chapter 650, section 47 of the Marlborough Zoning Ordinance, and shall be properly depicted on the landscaping sheet of the site plan to be approved by Site Plan Review.

15. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant, at its expense, shall record this Special Permit in the Middlesex South 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. After recording but prior to issuance of a Building Permit, Applicant shall provide the City Council and the City Solicitor's office with a copy of the recorded Special Permit.

16. Unless the context otherwise clearly requires, all references in the above conditions to "Applicant" shall also refer to Applicant's successors and assigns.

Yea: 10- Absent: 1

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

Absent: Seymour

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:55 p.m.