



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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FEBRUARY 22, 2010

Regular meeting of the City Council held on Monday, February 22, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Elder, Juare, Seymour, and Clancy. Councilor Landers was absent. Meeting adjourned at 8:55 p.m.

ORDERED: That the minutes of the City Council Meeting February 8, 2010, **FILE**; adopted.

Suspension of the Rules requested - granted

ORDERED: It is moved, in conformance with the provisions of § 23B(3) of Chapter 39 of the General Laws of the Commonwealth, that the Marlborough City Council conduct an executive session for the purpose of discussing strategy with respect to litigation, as an open meeting may have a detrimental effect on the litigating position of the City of Marlborough. It is further moved and stated that the Marlborough City Council will re-convene in open session after the executive session, **APPROVED and returned to open meeting at 8:20 p.m.**

Yea: 10 -Nay: 0

Yea: Delano, Ferro, Elder, Juare, Seymour, Clancy, Ossing, Pope, Vigeant & Levy

Absent: Landers

ORDERED: That the intra-departmental transfer request with explanations as follows, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH									
--BUDGET TRANSFERS --									
DEPT: PUBLIC WORKS					FISCAL YEAR: 2010				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$30,707	\$4,000.00	61090001	50460	Water Meter Reader	\$4,000.00	61090003	51470	Interim Foreman	\$3,129
Reason: Funds available due to Workman's Comp Injury					Funds needed to cover GF resignation and lack of foremen				
\$257,017	\$390.00	61090001	50740	Equipment Operator	\$390	61090003	51940	Clothing Allowance	\$2,580
Reason: Funds available due to Workman's Comp Injury					Shortage was caused by new hires in Water & Sewer Division who are eligible for Clothing Allowance with 60 days of hire.				
\$58,882	\$31,000.00	60080001	50890	Sr. Chemist	\$31,000	61090006	52322	Water - Plant	\$11,215
Reason: Monies available due to retirement					Monies needed to produce excess water to reduce demand on MWRA water purchase at a substantially higher cost.				
\$257,017	\$22,000.00	61090001	50740	Equipment Operator	\$22,000	61090006	52322	Water - Plant	\$11,215
Reason: Funds available due to Workman's Comp Injury					Monies needed to produce excess water to reduce demand on MWRA water purchase at a substantially higher cost.				

ORDERED: That the transfer request in the amount of \$39,292.26 which will move funds for sick leave buy back and vacation expenses associated with an employee's retirement in the Fire Department as follows:

\$13,790.40 from Fringes to Fire Chief account

\$13,137.60 from Fringes to Sick Leave Buy Back account

\$12,364.26 from Interest Ban to Sick Leave Buy Back account,

refer to **BACK TO MAYOR FOR RECALCULATION**; adopted.

FROM:

Acct. # 11990006-51500 \$13,790.40

Fringes

TO:

Acct. # 12200001-50130 \$13,790.40

Fire Chief

FROM:

Acct. # 11990006-51500 \$13,137.60

Fringes

TO:

Acct. # 12200003-51920 \$13,137.60

Sick Leave Buy Back

FROM:

Acct. # 17520006-59254 \$12,364.26

Interest Ban

TO:

Acct. # 12200003-51920 \$12,364.26

Sick Leave Buy Back

ORDERED: That the temporary appointment of Deputy Chief Flynn to the position of Acting Fire Chief effective 5:00 PM on February 19, 2010, **FILE**; adopted.

ORDERED: That the appointment of Joyce Torelli to the Community Development Authority to a term which expires June 25, 2012 due to the resignation of Camille Duridas, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from the Mayor re: Easterly Wastewater Treatment Plant Upgrades **REFER TO THE WESTERLY TREATMENT PLANT COMMITTEE**; adopted.

ORDERED: T That the Communication from Councilor Juairé re: resignation as Ward 4 City Councilor effective midnight on Wednesday, June 30, 2010, **FILE**; adopted.

ORDERED: That the Communication from Sudbury Companies of Militia & Minute re: Permission to Place a Temporary Sign at Rt. 20 and Hagar Rd., **APPROVED BY CITY COUNCIL TO PLACE A SIGN ON CITY PROPERTY WITH THE CONDITION THAT THE PLANNING BOARD APPROVE A SIGN VARIANCE**; adopted.

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

- A. Ryan Hurley, 38 Schofield Dr., residential mailbox claim 2(a)
- B. Susan Pedro-Nunes, 388 Berlin Rd., residential mailbox claim 2(b)

Reports of Committees:

Councilor Delano reported the following out of the Personnel Committee:

Order No. 10-1002429 – Appointment of Ricky Plummer as Fire Chief. The Personnel Committee met on Monday, February 1st, at 5:30 pm to review Order No. 10-100-2429, the appointment of Mr. Ricky Plummer to the position of Fire Chief for a term of five years. This was our initial meeting on the matter at which Chief Plummer provided the Personnel Committee and assembled Councilors with an overview of his background, along with a question and answer session. The Personnel Committee next met on Tuesday, February 16th, at 5:30 pm to continue the evaluation of the Mayor's appointment for Fire Chief. Since the last meeting the Personnel Chairman forwarded a list of questions assembled from City Councilors to Chief Plummer and his written responses were added to the record. This information and other questions were discussed by the Committee, and Councilors in attendance. Among issues discussed was Mr. Plummer's idea to cut one Deputy Chief, and elevate one Deputy Chief to Assistant Chief. This would save over \$140K. It was also noted that there are no physical fitness policies in place in the MFD, nor mandatory drug and alcohol testing, both of which Chief Plummer endorsed. It was further noted that all of the above would require union impact bargaining, and could not be unilaterally imposed. Chief Plummer also expressed his strong desire to improve customer service to Marlborough businesses and residents alike. Councilor Juaire made a motion to approve the appointment of Ricky Plummer to the position of Fire Chief. The motion carried 3-0. **Recommendation of the Personnel Committee is to approve 3-0.**

ORDERED: That an evaluation of the schedules and compensation of election staff and poll workers take place and that the City Clerk provide information pertaining to the training and election functions of the clerks and elections division, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Mayor be requested to submit a transfer in the amount of \$10,000.00 for the purpose of an independent review of the events leading to the December 2008 fatality and subsequent report to the Mayor and City Council outlining preventative measures to avoid future serious injury and/or death of our workforce members as well as potential liability associated therewith, refer to **MAYOR AND TO ADD COUNCILORS FERRO AND DELANO AS CO-SPONSORS TO THE ORDER ORIGINALLY AUTHORED BY COUNCILORS VIGEANT, OSSING AND POPE**; adopted.

ORDERED: That the Code of the City of Marlborough be amended to grant transfer station stickers free of charge to Disabled American Veterans, refer to **PUBLIC SERVICES COMMITTEE AND THE CITY SOLICITOR TO PUT IN PROPER AND LEGAL FORM**; adopted.

ORDERED: That the transfer request in the amount of \$18,000.00 which moves funds from Undesignated Fund to Veteran’s Benefits to meet the increased demand for benefit services, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$18,000.00
Undesignated Fund

TO:

Acct. # 15430006-57710 \$18,000.00
Veteran’s Benefits

ORDERED: That the transfer request in the amount of \$1,230.00 which moves funds from Collector’s Sick Leave Buy Back to Library and Health department longevity accounts pertinent to deficits associated with longevity payments, **APPROVED**; adopted.

FROM:

Acct. # 1140003-51920 \$1,230.00
SLBB

TO:

Acct. # 16100003-51430 \$640.00
Longevity
Acct. # 15120003-51430 \$590.00
Longevity

ORDERED: That the following transfer requests from the Police Chief which are detailed in the transfer, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:	Police			DATE:	20-Jan-10			FY2010	
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$1,094,228	\$108,208.00	12100001	50420	Police Officers	\$108,208.00	12100003	51310	Regular OT	\$45,776
	Reason:	Will have surplus in this account due to workers comp payments to several officers and one officer on a leave				Overtime due to officer injuries			
\$285,201	\$11,480.00	12100001	50820	Sergeants	\$11,480	12100003	51310	Regular OT	\$45,776
	Reason:	Will have surplus in this account due to workers comp payment to one sergeant				Overtime due to sergeant on injured leave			
\$14,009	\$1,091.00	12100003	51120	Crossing Guards	\$1,091	12100003	51920	Sick Leave Buy Back	-\$11,091
	Reason:	Available due to partially unfilled position				Unanticipated requests for sick leave buy back			
\$6,758	\$3,000.00	12100003	51395	In Service Training	\$3,000.00	12100003	51920	Sick Leave Buy Back	-\$11,091
	Reason:	Will not conduct training as planned				Same as above			
\$2,000	\$1,000.00	12100005	54221	Parking Officer Supplies	\$1,000	12100003	51920	Sick Leave Buy Back	-\$11,091
	Reason:	Parking tickets not needed yet				Same as above			
\$12,812	\$6,000.00	12100006	57380	Conference and Training	\$6,000	12100003	51920	Sick Leave Buy back	-\$11,091
	Reason:	Will not conduct training as planned				Same as above			

ORDERED: That the transfer request in the amount of \$31,381.20 which moves funds from Fringes to Sick Leave Buy Back pertinent to budgeted expenses associated with an employee's retirement, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500

\$31,381.20

Fringes

TO:

Acct. # 12200003-51920

\$31,381.20

SLBB

ORDERED: That an Energy Efficiency and Conservation Block Grant in the amount of \$178,000.00 awarded to the City of Marlborough which will be used to replace inefficient oil fired heating system in the Department of Public Works building, as outlined in MGL, Chapter 44, Section 53A to be used for purposes outlined, **APPROVED**; adopted.

ORDERED: That the FY10 Mass Decontamination Unit Grant in the amount of \$2,000.00 awarded to the Fire Department which will facilitate the field deployment, training and operational readiness of a mobile Mass Decontamination Unit as outlined in MGL, Chapter 44, Section 53A to be used for purposes outlined, **APPROVED**; adopted.

ORDERED: That the FY2010 Student Awareness Fire Education Grant (S.A.F.E.) in the amount of \$5,900.00 awarded to the Fire Department which provides student awareness of fire education programs as outlined in MGL, Chapter 44, Section 53A to be used for purposes outlined, **APPROVED**; adopted.

ORDERED; That the designation of a City liaison to the Ethics Commission, refer to **BACK TO LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE FOR FURTHER REVIEW**; adopted.

ORDERED: **DECISION ON A SPECIAL PERMIT
CLEAR WIRELESS, LLC
CITY COUNCIL ORDER NO. 09-1002329E**

Re: 2 Mount Royal Avenue

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to CLEAR WIRELESS, LLC, having a usual place of business at 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is CLEAR WIRELESS, LLC, which has a business address of 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033 (hereinafter "Applicant").

2. Through its Application for a Special Permit, the Applicant seeks permission to allow the installation of three (3) panel antennas and three (3) "back-haul" dish antennas inside faux flues on the existing rooftop, as well as the placement of one (1) associated cabinet, one (1) GPS antenna and associated coax cables and cable trays (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "MA-BOS5412-A" by Bay State Design, Inc. and dated 1/19/10 provided as supplemental material to the Special Permit Application (hereinafter "Plans").
3. The location of the Proposed WCD Project is 2 Mount Royal Ave. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 79, Block 33 ("the Site"). The owner of record for the site is Mount Royal Associates II Limited Partnership, c/o Haynes Management, Inc.
4. The Applicant is a lessee of the owner for purposes of this Special Permit Application.
5. The Site is zoned Business. Wireless communication devices are allowed by grant of Special Permit in Business Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 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 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 WCD Project on October 26, 2009, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Pursuant to Mass. Gen. Laws c. 40A, § 9, the time limit for the City Council to take final action on the Application was extended, by written agreement with the Applicant, to March 31, 2010 at 5 p.m.
10. 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 200-25 and Article VIII, Section 200-59.
11. 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.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Device.

**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 200-25 and Article VIII, Section 200-59 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 its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 11:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other 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, 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 for Special Permit.

- 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 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 affixed to the roof in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code.
- 8) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) 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. 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 Commissioner 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 i) shall 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 200-25 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 i) shall 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.

Yea: 9- Nay: 1

Yea: Delano, Ferro, Elder, Juair, Seymour, Clancy, Ossing, Pope, Levy

Nay: Vigeant

Absent: Landers

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