



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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MARCH 22, 2010

Regular meeting of the City Council held on Monday, MARCH 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, Clancy and Landers. Meeting adjourned at 9:15 p.m.

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

ORDERED: That the Capital Bond Request for FY2010, refer to **FINANCE COMMITTEE**; adopted.

MOTION made by Councilor Ferro to refer to Finance Committee with instructions to report its recommendations, if any, to the full City Council by the April 26, 2010 meeting of the City Council, APPROVED.

ORDERED: That the Bond request in the amount of \$4,000,000.00 for partial construction of the new sewer services in the Sudbury St. area, refer to **FINANCE COMMITTEE**; adopted.

MOTION made by Councilor Ferro to refer to Finance Committee with instructions to report its recommendations, if any, to the full City Council by the April 26, 2010 meeting of the City Council, APPROVED VIA ROLL CALL.

Yea: 8 -Nay: 3

Yea: Delano, Ferro, Elder, Juare, Seymour, Clancy, Landers, & Levy

Nay: Ossing, Pope, & Vigeant

ORDERED: That the reappointments of Edward Clancy and Dennis Demers to the Conservation Commission for three year terms expiring March 5, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

Councilor Clancy abstained

ORDERED: That reappointment of Linda Clark as Registrar of Voters for a term expiring April 1, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

Councilor Ferro abstained

ORDERED: Pursuant to City Council Order No. 08-1001774B authorizing a lease effective July 1, 2008 to the Assabet Valley Collaborative of the former Bigelow School located at 57 Orchard Street, for a one-year term with the option to renew for four additional one-year terms, and the terms and conditions of the original lease, said renewal being the second of four options was approved by the School Committee on March 9, 2010, a copy of which is attached hereto and incorporated herein, said lease is hereby renewed for the one-year term from July 1, 2010 to June 30, 2011 with a three (3%) percent increase in the amount of \$153,985.00 (\$10.30 per square foot), **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to relocate P.22 and P.23 on Forest St. due to a city road widening project, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to install new P.48 45' ± west of existing P.48 and install intermediate P.47-50 120' ± west of existing P.47 for the purpose of moving P.48 out of the proposed future road entrance on Forest St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to relocate P.35 and P.37 3' ± from present location to back of sidewalk due to a city road widening project on Forest St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from John Crowe Associates, Inc. re: Extension of Time for Sewer Connection Permit, Boston Scientific Way, to December 1, 2011, Order No. 09-1002136, X-06-1001093, X-04-100564, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the minutes, Planning Board, February 22, 2010, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, January 26, 2010, **FILE**; adopted.

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

- A. Avneet Sawhney, 61 Robert Rd., residential mailbox claim 2(a)
- B. Paula Oliveira, 10 Hardy Rd., residential mailbox claim 2(b)
- C. Donna Coffin, 44 Ahlgren Dr., pothole or other road defect
- D. Paul Bongiorno, 21 Susan Rd., pothole or other road defect
- E. Baha Javid, 1 Stone Hill Rd., other property damage and/or personal injury

Reports of Committees:

Councilor Juaire reported the following out of the Public Services Committee:

Order No. 10-1002450 – Application for Junk Dealer's License for Steven Weener, d/b/a Thriftboro for 344 Boston Post Rd. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.

Order No. 10-1002449 – Application for Junk Dealer's License for Igal Ismaili d/b/a I & P USA Corporation for the Solomon Pond Mall. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.

Order No. 10-1002467 – That the City Code of the City of Marlborough be amended to grant transfer station stickers **FREE OF CHARGE to Disabled American Veterans. Recommendation of the Public Services Committee is to approve the Proposed Ordinance and under Suspension of the Rules to advertise the Ordinance and place item of the April 5, 2010 agenda which will comply with the ten day period. Councilor Clancy was absent.**

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09/10-1002197-3 – Increase Snow and Ice Deficit by \$200,000.00. The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the increase of the snow and ice deficit by \$200,000.00. The City Council has previously approved \$1,000,000.00 in deficit spending for the snow and ice account. The revised authorization of deficit spending the snow and ice account is \$1,200,000.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002475 — Transfer \$92,907.39 from Insurance Proceeds to Public Facilities capital outlay. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$92,907.39 from insurance proceeds to the Public Facilities capital outlay for the replacement of the chiller unit at the high school. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002476 — Transfer \$51,003.96 from various accounts to cover the Fire Chiefs Retirement. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$51,003.96 from the accounts listed below to cover the retirement costs for the Fire Chief.

- \$13,790.40 from Fringes to Fire Chief Salary
- \$13,137.60 from Fringes to Fire Sick Leave Buy Back
- \$12,364.26 from Interest on Ban to Fire Sick Leave Buy Back
- \$11,711.70 from Undesignated Funds to Fire Sick Leave Buy Back

The first motion to deny the transfers did not pass — one in favor (Councilor Delano) and four opposed. Recommendation of the Finance Committee is to approve the transfers 4-1. Councilor Delano opposed.

Order No. 10-1002477 – Transfer \$37,500.00 from Undesignated Funds to Open Space Stabilization. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$37,500.00 from the Undesignated Funds to the Open Space Stabilization account that moves the fiscal year 2009 funds collected from wireless fees. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002478 – Transfer \$12,239.06 from Fire Fighter Salary to Fire Fighter Overtime. The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the transfer of \$12,239.06 from the fire fighters salary account to the fire fighter overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002479 – Transfer \$300.00 from Contract Services to Travel in the Weights and Measurement Department. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$300.00 from the contract services to the travel account in the Weights and Measurement department. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002480 – Transfer \$43,000.00 from Undesignated Funds to Various DPW Accounts. The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$43,000.00 from the Undesignated Funds to various DPW water accounts to cover emergency water repairs. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002481 – Intra-Department Transfer of \$44,500.00 in the DPW Department. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the DPW intra-department transfer of \$44,500.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002482 – Transfer \$14,000.00 from Undesignated Funds to Forestry Overtime. The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$14,000.00 from the Undesignated Funds to the Forestry Department overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

Order No. 10-1002483 – Water Conservation Grant for \$38,000.00. The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the approval of \$38,000.00 Water Conservation Grant to purchase a data logger to assist in pinpointing leaks in the water system. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Order No. 10-1002484 – State 911 Training for \$14,574.00. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$14,574.00 State 911 Training for the training of public safety dispatchers. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Order No. 10-1002485 – State 911 Department Support and Incentive Program Grant for \$84,195.00. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$84,195.00 State 911 Department Support and Incentive Program grant for the purchase of a new fire alarm receiving and alerting system. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Order No. 10-1002486 – Traffic and Enforcement Equipment Grant for \$13,000.00. The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$13,000.00 Traffic and Enforcement Equipment Grant for traffic enforcement overtime and traffic enforcement equipment. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Councilor Levy reported the following out the Urban Affairs Committee:

Order No. 09/10-1002361B - Application for Special Permit by Jam Enterprises, LLC for a drive-thru window at proposed Sonic Restaurant, Boston Post Rd. West, Map 89, Part of Parcel 77. Recommendation of the Urban Affairs Committee is to recommend approval of the proposed decision as amended and under Suspension of the Rules, to refer to City Solicitor to be put in proper form, and place item on the April 5, 2010 agenda 2-0. MOTION made by Councilor Pope to add the Job Fair Condition to the Special Permit language for the April 5, 2010 City Council meeting which carries. Councilor Ferro requested to be recorded in opposition.

Councilor Delano reported the following out of the Personnel Committee:

Order No. 09/10-1002386 - Appointment of Deborah Puleo as Collector effective February 1, 2010 (order carried over to 2010). Recommendation of the Personnel Committee is to approve 2-0. Councilor Juaire was absent.

Order No. 10-1002460 - Appointment of Joyce Torelli to CDA to a term which expires June 25, 2012 due to the resignation of Camille Duridas. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juaire was absent.

Order No. 10-1002433 - Appointments of Robyn Ripley, Nena Bloomquist, and Susan Laufer to Library Board of Trustees for terms of 3 years, expiring Feb.4, 2013. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juaire was absent.

Order No. 10-1002443 - Appointment of Dr. Jay Jahanmir to the Board of Health for a term to expire Feb.6, 2011. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juaire was absent.

Order No. 09/10-1002385 - Appointment of Tony Trodella as Chief Assessor for a term of five years effective Feb. 1, 2010 (order carried over to 2010) Recommendation of the Personnel Committee is to approve 3-0.

Order No. 10-1002432 - Appointment of Anthony Arruda to the Board of Assessors for a term of three years expiring Feb. 4, 2013. Recommendation of the Personnel Committee is to approve 3-0.

Suspension of the Rules requested - granted

ORDERED: That the transfer request in the amount of \$10,000.00 which moves funds from Undesignated to Other Celebration-Special Events, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900	\$10,000.00
Undesignated Fund	

TO:

Acct. # 16920006-53710	\$10,000.00
Celebration-Special Events	

Councilor Pope abstained

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 540, ENTITLED "SOLID WASTE," AS FOLLOWS:

Section 540-20, entitled "Issuance of stickers," is hereby amended by adding thereto a new subsection F:

- F. There shall be no annual fee for stickers issued to Marlborough residents who are disabled American veterans. Any Marlborough resident claiming status as a disabled American veteran, in addition to presenting a Massachusetts motor vehicle registration to prove Marlborough residence, shall also present proof of membership in the Disabled American Veterans or other suitable documentary proof of both veteran and disabled status,

ADVERTISED AND PLACE ON APRIL 5, 2010 AGENDA; adopted.

Suspension of the Rules requested - granted

ORDERED: That, in order to reduce interest costs, the Treasurer with the approval of the Mayor is authorized to issue refunding bonds pursuant to Chapter 44, Section 21A of the Massachusetts General Laws to refund all or a portion of the outstanding amounts of the City's Municipal Purpose Loan of 1999 Bonds and Municipal Purpose Loan of 2001 Bonds, dated June 15, 1999 and June 15, 2001, respectively; that the refunding bonds shall be issued in an amount not to exceed \$18,000,000, in order to pay principal of, redemption premium, if any, and interest on the bonds to be refunded, and costs of issuance of the refunding bonds; and that the Treasurer is authorized to execute such documents, including, without limitation, a refunding trust agreement or escrow agreement with a bank or trust company, and to take any action as may be necessary or desirable to carry out this transaction. Further, the amount authorized by this loan order shall be reduced by any lump sum grant payment from the Massachusetts School Building Authority, **APPROVED;** adopted.

Yea: 11 -Nay: 0

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

Suspension of Rules requested-granted

ORDERED: That the Application for Special Permit by Jam Enterprises, LLC for a drive-thru window at proposed Sonic Restaurant, Boston Post Rd. West, refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM AS AMENDED TO INCLUDE COUNCILOR POPE'S MOTION TO ADD THE JOB FAIR CONDITION IN THE SPECIAL PERMIT LANGUAGE FOR APRIL 5, 2010 CITY COUNCIL MEETING;** adopted.

Councilor Ferro requested to be recorded in opposition to the proposed amendment which adds the Job Fair Condition language in the Special Permit.

ARBOR DAY PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, the holiday, called Arbor Day, was first observed with the planting of more than one million trees in the state of Nebraska, and

WHEREAS, Arbor Day is now observed through the nation and the world, and

WHEREAS, the Commonwealth of Massachusetts celebrates Arbor Day on the last Friday of the month of April, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, and

WHEREAS, trees in the City of Marlborough increase property values, enhance the economic vitality of business areas, and beautify our community.

NOW, THEREFORE, BE IT RESOLVED that the Marlborough City Council does hereby proclaim the last Friday of the month of April as Arbor Day in the City of Marlborough, and *BE IT FURTHER RESOLVED* that the Marlborough City Council does hereby urge all citizens of Marlborough to celebrate Arbor Day by either planting a tree or maintaining existing trees to promote the well-being of this and future generations, **APPROVED**; adopted.

ORDERED: That the designation of the Personnel Director as the City's liaison to the Ethics Commission, **APPROVED**; adopted.

Councilors Ossing, Vigeant, Landers and Pope requested to be recorded in opposition.

ORDERED: That the City Council of the City of Marlborough, having received the attached determination made by the Commissioner of the Department of Public Works ("DPW") pursuant to MGL c. 40, §15A that a portion of municipal property located in the vicinity of the Westerly Wastewater Treatment Plant at 303 Boundary Street, currently under the DPW's care, custody, management and control for sewerage purposes, is no longer needed for such sewerage purposes, said portion of property being limited to a 50' by 50' compound area along with a 20' wide access and utility road connecting from Boundary Street and running thereto ("the Property"), all as depicted by Verizon Wireless on plans entitled, "Verizon Wireless, 400 Friberg Parkway, Westborough, MA 01581, Proposed 150' Monopole and Equipment Shelter with Cable Tray, Marlborough West, 303 Boundary Street, Marlborough, Massachusetts (Middlesex County)," most recently revised on February 23, 2010 and as may be further revised through the special permit process for the water supply protection district, **NOW THEREFORE**, said Property is hereby transferred, by a two-thirds vote of the City Council, to the DPW's care, custody, management and control for the municipal purposes of 1) a lease of the Property to Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns; and 2) the construction by Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns, of a telecommunications tower and associated equipment shelter, as well as the access and utility road from Boundary Street, **APPROVED**; adopted.

Yea: 11 -Nay: 0

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

ORDERED: That the City Council of the City of Marlborough, having voted to transfer the Property from sewerage purposes to the DPW's care, custody, management and control for telecommunications leasing and construction purposes, does hereby declare the Property to be available for disposition by lease pursuant to the provisions of M.G.L. c. 30B, §16(a), and further, does hereby authorize the Mayor, pursuant to MGL c. 40, § 3, to negotiate and enter into a lease with Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns, regarding the Property **APPROVED**; adopted.

ORDERED: That the transfer request in the amount of \$22,082.00 which moves funds from Fringes to Sick Leave Buy Back account for budgeted expenses associated with an employee's retirement in DPW, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500 \$22,082.00

Fringes

TO:

Acct. # 14001303-51920 \$22,082.00

Sick Leave Buy Back

ORDERED: That the intra-departmental transfer request with explanations as follows, **APPROVED**; 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.			

CITY OF MARLBOROUGH**DECISION ON A SPECIAL PERMIT PETITION****CITY COUNCIL ORDER NO. 09-1002161****FINDINGS OF FACTS AND RULINGS**

The City Council of the City of Marlborough hereby grants a Special Permit to Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581, for a Wireless Communications Facility (“WCF”) at the Marlborough Westerly Wastewater Treatment Plant (“WWTP”) located at 303 Boundary Street in Marlborough, based upon and subject to the following evidence, findings of facts and conditions.

EVIDENCE

The Applicant is Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581.

The Applicant is licensed by the Federal Communications Commission (FCC) to operate as a personal wireless services provider for the development and operation of personal wireless services facilities, as those terms are defined under the FCC Regulations and the 1996 Telecommunications Act, codified at 47 U.S.C.A., Section 332, and the Applicant’s facility falls under the definition of a Wireless Communication Facility (WCF) as defined in the City of Marlborough Zoning Ordinance.

The Applicant responded to a request for proposals (RFP) issued by the City of Marlborough’s Procurement Office for the lease of city-owned land at the WWTP for the installation of a WCF. The Applicant was later issued a notice of award by the City’s Procurement Office and a notice to proceed with the applicable permitting process, including this Special Permit process. Contingent upon issuance of this Special Permit as well as of other permits and approvals required by law, the Applicant will become a tenant of the City of Marlborough under a lease agreement with the City.

The Marlborough City Council is authorized to grant a Special Permit for a WCF at the WWTP, pursuant to the following Articles and Sections of the Marlborough Zoning Ordinance: Article VI, Section 650-25 on WCF; Article VIII, Section 650-59 on Special Permits generally; and Article III, Section 650-17, on allowable uses, which lists WCF as an allowable use under a special permit in the table of uses. The municipal use at the City’s WWTP is located in an RR Zone (Rural Residential), and the table of uses lists WCFs as allowed by special permit in the RR Zone.

The Applicant's Special Permit application was received by the City Clerk on March 19, 2009, and was accompanied by other supporting documentation and information, including the required Engineering Plans and Drawings prepared by SFC Engineering Partnership, Manchester, New Hampshire, entitled "Marlborough West" and dated May 7, 2008, with a most recent revision date of February 23, 2010, (the "Engineering Drawings"). The application and support documentation and engineering plans show that the Applicant's WCF is to consist of a 150-foot monopole-type tower, which may be designed to be extendable, as shown on Sheet S-4 of the SFC Engineering Drawings, which will support the antenna/cable equipment of the Applicant and up to four other wireless carriers. The WCF will also include an approximately 50 x 50 foot fenced compound area (approximately 2,500 square feet) enclosing the Applicant's 12 x 30 foot equipment/generator shelter, propane tank and accessory equipment, along with future equipment areas for the other wireless carriers. An area for parking vehicles and for electric and telephone utility equipment is shown on the outside of the fenced compound. The Applicant's WCF is to be located at the rear of the City's WWTP and the Applicant shall install and maintain a twenty-foot wide (20-foot) gravel-covered roadway leading from Boundary Street to the fenced compound, with electric and telephone utilities to be run underground from Boundary Street to the Applicant's WCF.

The City Planner reviewed the Applicant's Special Permit application prior to its filing with the City Clerk, determining that: the application was complete; the application met all information requirements; that no variances were required; and that the application conformed to the special permit rules and regulations.

The Applicant's Special Permit Application was received by the City Clerk on March 19, 2009, and the City Council formally received and acknowledged the application at a public hearing on March 23, 2009, delegating preliminary review of the application to the City Council's Wireless Communications Committee. The application was then formally posted and advertised by the City Clerk, with the required mailing of abutter notices based on a certified assessor list, as required by local and state law, with the first hearing scheduled for May 11, 2009. The hearing was closed with the City Council's decision on the application to be made following a final review by the City Council's Wireless Communications Committee. By written agreement of the Applicant, the time for the

City Council to take final action on the Special Permit application was timely extended several times, most recently to March 31, 2010.

The Applicant held the required balloon visibility study on Monday, May 4th, 2009, with the Applicant posting the required newspaper notice and providing additional notice by mail to surrounding residential properties and to the City Council and other City Officials. A second balloon visibility test was held in January 2010, with the Applicant posting the required newspaper notice.

The City Council's Wireless Communications Committee conducted further review of the Applicant's proposed WCF at a meeting held at City Hall on June 9, 2009, June 30, 2009, November 30, 2009, February 9, 2010, and February 23, 2010, prior to its rendering a final recommendation to the full City Council. At its final review meeting on February 23, 2010, the Wireless Communications Committee voted to recommend that the City Council grant the requested zoning relief under the Special Permit.

The City Council, in reviewing the Applicant's special permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25, and considered the general special permit requirements pursuant to Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, as applicable to the Applicant's proposed WCF.

BASED UPON THE ABOVE, THE MARLBOROUGH CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACTS AND TAKES THE FOLLOWING ACTIONS.

The Applicant has complied with all of the Rules and Regulations promulgated by the Marlborough City Council pertaining to the Application for a Special Permit for a WCF.

The WWTP Site is an appropriate location for the WCF and the project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate conditions of this Approval.

The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to WCFs, enumerated in Article VI, Section 650-25, and Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, by siting and designing the proposed WCF to minimize any adverse impact of the WCF on nearby properties.

The facility is located in a rear area of the WWTP and is approximately 1,000 from the nearest residential lot line.

There are no existing or previously approved tower structures in the vicinity of the WWTP to accommodate the Applicant's wireless equipment.

The development and use of a wireless communications facility at the WWTP by FCC-licensed wireless telephone carriers will provide a desirable communications service that benefits the safety, convenience and welfare of the residents, businesses, travelers and government users in the City of Marlborough.

There will be a minimal visual impact of the WCF from the neighborhood, streets and residential properties in the vicinity because: a) the facility is in the rear area of the WWTP property which is surrounded by wooded areas; b) the facility is approximately ¼ mile from the nearest residential lot line; c) the height of the WCF monopole shall not exceed 150-feet, but may be designed to be extendable to a higher height if desired by the Applicant upon further prior review and approval by the City Council; and d) the Applicant's balloon-visibility tests indicated that the Applicant's monopole-tower at the proposed location did not appear to be visible from the public roadways throughout the residential areas near the facility and was only partially visible along short segments of Boundary Street and Robin Hill Road.

It is therefore generally found that the Applicant's WCF and its characteristics will have a minimal impact and will not be in conflict with public health, safety, convenience and welfare, and shall not be detrimental or offensive, provided the conditions imposed herein are met.

The final location of the Applicant's WCF is approximately 192 feet due north from the original location presented at the first City Council hearing, and this final location was selected to ensure a safe distance from the WWTP facility. The Applicant has provided an updated viewshed report dated November 24, 2009, prepared by SFC Engineering, and the update indicates that, given the height of the tower is not increasing and given the ground elevation is not changing, the visual impact at the final tower location will be very similar to the impact from the original location. According to the SFC update, the final location is not expected to be visible at any new locations along the public ways accessible to the Applicant. The final location to the north is further away from the nearest residential properties along Boundary Street to the south, and minimizes the impact to the floodplain by maintaining the same ground elevation as the original location, while still maintaining a significant distance from the wetland and riverfront buffer areas to the east and Millham Reservoir to the west. The WWTP is a large tract of wooded land, consisting of 11 acres (Map 76, Lot 1) and 152 acres (Map 76, Lot 2), and bounded on the east by undeveloped land owned by the Commonwealth (Map 64, Lot 5, consisting of 30 acres) and the WCF shall be a significant distance from the nearest residential property (over 1,000 feet), based on the Engineering Drawings, and the final location meets the requirement that that view of the tower from other areas of the City shall be as minimal as possible and shall be screened from abutters and residential neighbors to the extent feasible.

THE CITY COUNCIL, PURSUANT TO ITS AUTHORITY UNDER MASS. GENERAL LAWS, CHAPTER 40A, AND THE CITY OF MARLBOROUGH ZONING ORDINANCE, GRANTS THE APPLICANT ITS SPECIAL PERMIT SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Applicants WCF monopole-type tower shall be constructed in substantial conformance with the Engineering Drawings prepared by SFC Engineering Partnership of Manchester, New Hampshire, with a most recent revision date of February 23, 2010, which drawings are made a part hereof.
2. The Applicant's monopole-type tower shall be built to a height of one-hundred-fifty feet (150 feet) and may be designed by the Applicant so that the tower may be made extendable in height for any future expansion and use by the Applicant or other wireless carriers. Any request to extend the height of the monopole-type tower above 150 feet (not including any required grounding or lightning rods or municipal antennas) by the Applicant or any other future users shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.

3. The Applicant's monopole-type tower shall provide for closely-mounted antenna array systems on the outside of the tower and shall be designed to accommodate the antenna/cable equipment and other related wireless equipment and accessories of the Applicant and at least four other wireless telecommunication service providers, as shown on Sheet S-4 of the Applicant's Engineering Drawings prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
4. Pursuant to Article VI, Section 650-25, Subsection E (12), the Applicant's monopole-type tower shall not utilize any flashing lights or strobe lighting.
5. The Applicant's WCF shall be located in the rear of the WWTP as shown on the Applicant's Engineering Plans prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
6. Any future expansion of the ground-based WCF fenced-compound by the Applicant or any other users shall require the prior review and approval of the City of Marlborough Department of Public Works and the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
7. Any future users of the monopole-type tower shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
8. The Applicant may maintain and modify the Applicant's wireless equipment on the monopole-type tower as shown on Sheet S-4 of the Engineering Drawings, provided that i) the height of the monopole-type tower is not increased, ii) the tower is structurally satisfactory to accommodate any modified equipment, iii) the modified equipment is similar in appearance to the equipment shown on said Sheet S-4, and iv) the Applicant obtains a building permit for any such modifications.
9. The Applicant's monopole-type tower shall be a grayish color. The walls of the applicant's equipment shelter shall be an earthy-tone, such as gray or tan.
10. All electric and telephone utilities connected to the Applicant's WCF shall be via underground conduits, and the routing and direction of the underground utility conduits shall be within the twenty-foot access road leading from Boundary Street and, further, shall be reviewed and approved by the Site Plan Review Committee which, however, shall retain the discretion, if the Committee deems it appropriate, to authorize the utilities to be connected to the Applicant's WCF via overhead utility pole lines. Any license or easement to be granted by the City to a utility company or companies in conjunction with the utilities referenced in this condition shall have a term not exceeding the term of the lease to be entered into between the City and the Applicant for its WCF authorized under this Special Permit.

11. The Applicant's WCF shall comply with all applicable Federal Communication Commission (FCC) regulations, Federal Aviation Administration (FAA) regulations, and any other applicable federal, state or local law, ordinance or regulation.
12. 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.
13. If the Applicant's monopole-type tower is no longer in use by the Applicant or any other wireless carrier or other user, then the Applicant shall be required to remove the tower within thirty (30) days of such non-use, along with any other WCF equipment, and shall restore the premises to its original condition, except for reasonable wear and tear and below-grade concrete foundations.
14. The Applicant shall post a performance bond from a surety authorized to do business in the Commonwealth of Massachusetts, to ensure removal of the WCF if its use is completely discontinued.
15. The Applicant's lease agreement with the City shall permit the City of Marlborough to have municipal and public safety communication equipment installed by the Applicant, at the Applicant's sole expense, at the top of the Applicant's monopole-type tower, so long as the municipal communication equipment is ready and available for installation at the time when the Applicant is installing the tower and/or other equipment thereon. Such municipal use of the tower i) shall not interfere with the Applicant's current or future use of the monopole-tower and the fenced-compound, ii) shall not be placed between the height levels of 80 and 145 feet without the Applicant's approval, and iii) shall require the municipal entity to notify the Applicant in advance of the manufacturer, dimensions and frequencies of any proposed radio equipment. The lease shall also permit the City of Marlborough to utilize ground space outside the fenced compound at no rental cost to the City.
16. 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 Building Permit and no Occupancy Permit shall be issued until all conditions are complied with by Applicant. Further, any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Special Permit, and any non-compliance with said changes, alterations, modifications or amendments shall constitute a violation of this Special Permit. Any other provision of this paragraph notwithstanding:

- a) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Wireless Communications Committee 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.
 - b) Notwithstanding condition (a) hereof, engineering changes may be made to said plans by the Site Plan Review Committee as long as said changes do not change the use of the Project as approved herein, increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the WCF shown on the plan.
17. 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 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) include a professional opinion by a third party certifying that the Proposed WCF Project fully complies with all applicable radio frequency emission standards promulgated by the Federal Communications Commission ("FCC") and any other applicable health and safety standards; and (iii) 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 radio frequency emission standards promulgated by the FCC and any other 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) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; (iii) 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) 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 radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards.

18. 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, and said recording shall be made before a Building Permit is issued. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

End of evidence, findings of facts and decision.

Yea: 11- Nay: 0

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

ORDERED: That the Special Election for the Ward 4 seat to fill the vacancy caused by the unexpected resignation of Councilor Peter Juairé, **APPROVED WITH A JUNE 15, 2010 PRELIMINARY SPECIAL MUNICIPAL ELECTION DATE AND JULY 13, 2010 AS THE SPECIAL MUNICIPAL ELECTION DATE**; adopted.

MOTION made by Councilor Ferro to remove the Preliminary Election – DOES NOT CARRY

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:15 p.m.; adopted.