



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

Lisa M. Thomas

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APRIL 5, 2010

Regular meeting of the City Council held on Monday, APRIL 5, 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 9:06 p.m.

ORDERED: That the minutes of the City Council Meeting March 22, 2010, **FILE**; adopted.

ORDERED: That the transfer request in the amount of \$10,000.00 from Fuel & Lubricants to Repair/Maintenance Supplies, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 14001406-54830

\$10,000.00

Fuel & Lubricants

TO:

Acct. # 14001406-54810

\$10,000.00

Repair/Maintenance Supplies

ORDERED: That the intradepartmental requests from the Department of Public Facilities totaling \$106,915.00 intended to supplement funding in certain accounts from other accounts with anticipated surpluses, refer to **FINANCE COMMITTEE**; adopted.

**CITY OF MARLBOROUGH
BUDGET TRANSFERS --**

DEPT:				DATE:		FY:				
				31-Mar-10		2010				
		FROM ACCOUNT:				TO ACCOUNT:				Available
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$53,980	\$1,245.00	11920006	52250	Heating Oil	\$1,245.00	11920003	51920	Sick Leave Buyback		\$1,755
	Reason:	surplus due to decrease in cost of oil				Funds needed due to retirement				
\$53,980	\$2,670.00	11920006	52250	Heating Oil	\$2,670.00	11920003	50560	Custodian		\$51,108
	Reason:	surplus due to decrease in cost of oil				Funds needed to cover salary deficit for custodian due to transfer for ot account				
\$53,980	\$8,000.00	11920006	52250	Heating oil	\$8,000.00	11920003	50292	Building Maint Craftsman		\$73,102
	Reason:	surplus due to decrease in cost of oil				Funds needed due to retirement				
\$98,475	\$25,000.00	11920006	53420	Telephone services	\$25,000.00	11920006	52466	Fire Station		\$8,511
	Reason:	surplus due to credit from Verizon				Funds needed due to renovations of Station 2				
\$856,100	\$25,000.00	11920006	52120	Electricity	\$25,000.00	11920006	52466	Fire Station		\$8,511
	Reason:	surplus due to decrease costs/usage of electricity				Funds needed due to renovations of Station 2				
\$856,100	\$45,000.00	11920006	52120	Electricity	\$45,000.00	11920006	53999	Other Services		\$57,999
	Reason:	surplus due to decrease costs/usage of electricity				Funds needed for Walker Building				

ORDERED: That the following transfer requests from the Department of Public Works as follows:

Transfer in the amount of \$10,100.00 from Sr. Tr. Chemist to Pumping Station Maintenance. This transfer will provide needed funds to cover unanticipated expenses resulting from the extreme rains of March 14 and March 15, 2010. As you are aware, the Governor recently declared a state of emergency in our region. The City anticipates applying for any eligible reimbursement funds.

Transfer in the amount of \$1,200.00 from Sr. Tr. Chemist to Interim Foreman. The transfer is necessary to cover DEP staffing requirements during an employee illness, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 60080001-50890 \$10,100.00

Sr. Tr. Chemist

Acct. # 60080001-50890 \$1,200.00

Sr. Tr. Chemist

TO:

Acct. # 60080006-55660 \$10,100.00

P.S. Maintenance

Acct. #60081003-51470 \$1,200.00

Interim Foreman

ORDERED: That the Communication from City Solicitor, Donald Rider re: Special Permit, JAM Enterprises, LLC, Sonic Restaurant, 230 Boston Post Rd. West in proper legal form, Order No. 09/10-1002361B, **MOVED TO AGENDA ITEM #31**; adopted.

ORDERED: That the Communication from the Assistant City Solicitor, Cynthia Panagore Griffin, re: Special Permit, New England Sports Center, 121 Donald Lynch Blvd., Order No. 10-1002448A, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MAY 10, 2010** as a date for a **PUBLIC HEARING** requested by Attorney David Gadbois, on behalf of The Gutierrez Co., to amend the Zoning Map of the City of Marlborough, established by Chapter 650, Zoning Article III, Establishments of Districts Section 650-8 "Boundaries Established; Zoning Map". Said map is amended by extending the Business District shown on the City of Marlborough Massachusetts Zoning Map by including in said Business District all of Map78, Parcels 12, 38, and 39 and Map 89, Parcel 77 of the City of Marlborough Massachusetts Assessor's Map, refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD AND ADVERTISE**; adopted.

(Attorney Gadbois provided Exhibit A- Proper Language for Ad)

ORDERED: That the request dated March 31, 2010 from David P. Gadbois, attorney for The Gutierrez Company as agent for Marlborough/Northborough Land Realty Trust, for a further extension of a sewer permit for property known as Devonshire at 495 Center, located between Forest Street and Hayes Memorial Drive, previously extended on October 2, 2008 for an additional 18 months therefrom, **APPROVED** for an additional 18 months, based upon the following conditions:

1. The sewer connection is limited to 56,000 gpd;
2. The sewer connection shall lapse if the connection is not made within 18 months after the date of final approval of this further extension; and
3. If the total volume is not needed by the permit holder, the surplus shall be returned to the City of Marlborough; adopted.

ORDERED: That the Communication from Attorney Bergeron re: Toll Brothers, Country Club Estates approval of the adjustment of the boundary of the right-of-way so as to include the new land being conveyed, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as a date for a **PUBLIC HEARING** requested by Attorney Arthur Bergeron, on behalf of Moss Development, to request that City Council amend Chapter 650 of the Code of the City of Marlborough, by adding, in the Table of Lot Area and Yard Requirements for Open Space Development that is part of section 650-28.E(3), after the words "Lot area (square feet)", a Note to read as follows:

"For Open Space Developments of more than 50 acres, the required Lot area may be reduced by as much as 50%, but not below 8,000 square feet per lot, provided that, in that case, the Common Open Space required pursuant to Sec. 650-28.F(6) shall be not less than 50% of the total site."

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD AND ADVERTISE**; adopted.

(Attorney Bergeron provided Attachment 1- Proper Language for Ad)

ORDERED: That there being no objection thereto set **MONDAY, MAY 10, 2010** as date for a **PUBLIC HEARING** on the Application for Proposed Comprehensive Special Permit to allow preservation and adaptive reuse of the Walker home on Framingham Rd. while also allowing construction of 17 new homes, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the minutes, Planning Board, March 8, 2010, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, February 23, 2010, **FILE**; adopted.

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

- A. Leanne Doherty, 28 Upland Rd., other
- B. Lauren Medeiros, 37 Mohican Path, pothole or other road defect
- C. Albert Tambolleo, 47 Emer Rd., residential mailbox claim 2(b)
- D. Amy Lombard, 18 Williamsburg Ct. #12 Shrewsbury, pothole or other road defect
- E. Bill Wing, 86 Graham Path., residential mailbox claim 2(b)
- F. Robert Nicholas, 24 Giasson St. #3, Hudson, pothole or other road defect
- G. Hector Simosa, 87 Stetson Dr., pothole or other road defect
- H. Hongjiang Li, 82 Barton Dr., Sudbury, pothole or other road defect
- I. Steve Smith, 155 Milk St. #14, Westborough, pothole or other road defect
- J. Harold Morse, 5 Red Spring Rd., pothole or other road defect

Reports of Committees:

Councilor Delano reported the following out of the Personnel Committee:

Order No. 10-1002431 – Reappointment of Barbara Fenby to the Planning Board for a term of five years expiring the first Monday in February 2015. Note: Edward Coveney remains in Committee. **Recommendation of the Personnel Committee is to approve 2-0. Councilor Pope was absent.**

Suspension of the Rules requested - granted

ORDERED: That the appointments of Christine Seymour and Penny Aber-Kahn to the City Scholarship Committee for a term of three years from date of confirmation, **APPROVED**; adopted.

Councilor Seymour abstained

Suspension of the Rules requested - granted

ORDERED: That the City Council of the City of Marlborough hereby authorizes the Chief Procurement Officer to issue a Notice of Award to Massachusetts Electric Company located at 40 Sylvan Road, Waltham, MA 02451, in the amount of \$42,500.00 annually with a lump sum payment equal to years 1-5 in the amount of \$212,500.00 due upon execution of a lease, increasing annually by three (3%) for years 6-15 on each anniversary of the Rent Commencement Date, subject to the approval of the Director of Public Facilities as to the proposal and the location on the tower at the site, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the Mayor is hereby authorized to negotiate a lease, subject to obtaining all necessary permits and licenses, with Massachusetts Electric Company for the placement of antennas on the Sligo Hill Water Tank along with associated wires and ground equipment at the site, located at 97 Arnold Street, Extension, Marlborough, MA 01752, shown on Assessors' Map 68, Parcel 80. Said municipal property has been declared available for disposition by City Council Order No. 96- 6861A, **APPROVED**; adopted.

Suspension of the Rules requested - granted**Councilor Juaire read a disclosure statement.**

DECISION ON AN APPLICATION TO AMEND
SPECIAL PERMIT # 94-5460B AS PREVIOUSLY AMENDED BY CITY COUNCIL
ORDER NO. 04-100359 ON MAY 10, 2004

The City Council of the City of Marlborough hereby Grants the Application for Amendment to Special Permit # 94-5460B as previously amended by City Council Order # 04-100359 to Quad Rink Limited Partnership/New England Sports Management Corporation, General Partner, 84 South Street, Carlisle, MA 01741 and H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust u/d/t dated December 23, 1994 recorded in the Middlesex South District Registry of Deeds in Book 25093 Page 467, both having a place of business at 84 South Street, Carlisle, MA 01741 as provided in the Decision and subject to the following Procedural Findings, Findings of Facts and Conditions:

PROCEDURAL FINDINGS

1. New England Sports Management Corporation, General Partner of Quad Rink Limited Partnership, and H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust u/d/t dated December 23, 1994 each having a place of business at 84 South Street, Carlisle, MA 01741 are hereinafter collectively referred to as the "Applicant."
2. H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust, is the owner of property located at 121 Donald Lynch Boulevard as well as certain contiguous land in the Town of Hudson (hereinafter referred to as the "Site"). Said property is further described in a deed recorded in the Middlesex South District Registry of Deeds in Book 24458 Page 324.
3. The Applicant, on or about February 4, 2010, filed with the City Clerk of the City of Marlborough an Application for Amendment to Special Permit # 94-5460B, herein referred to as the "Application."
4. On May 23, 1994 the City Council granted the Applicant a Special Permit to construct a multi-sport facility consisting of up to four major activity areas. The activity areas are known as "rinks." Notice of Grant of Special Permit # 94-5460B is recorded in the Middlesex South District Registry of Deeds in Book 25042 Page 572. Said Special Permit (hereinafter referred to as "Special Permit") was amended on May 10, 2004 by City Council Order No. 04-100359. The amended Special Permit herein after will be referred to as "Amended Special Permit." Notice of the Amended Special Permit was recorded in the Middlesex South District Registry of Deeds in Book 43009 Pages 25.

5. The Application is authorized under the provisions of Chapter 650 (Zoning) of the Code of the City of Marlborough, Article V Section 650-17 Table of Uses and 18 Conditions for Uses A (23) Recreation Centers. The reason for the Application is to amend the Amended Special Permit to allow the construction and use of an additional sixth rink at 121 Donald Lynch Boulevard (the Project) to be used under the provisions of the Amended Special Permit as further amended hereby.
6. The Application filed with the City Clerk on February 4, 2010 consisted of the following: (a) Application Fee in the amount of \$500.00; (b) 3 (three) original copies of the Application for Amendment to Special Permit # 94-5460B; (c) Certification of Delivery of copies of application to City of Marlborough Departments and Office of the City Council; (d) Certification of Payment of Municipal Taxes; (e) Preliminary Site Plans in accordance with Chapter 650 Article VIII Section 650-59 Paragraph C. (5); (f) Application outlining the project; (g) Special Permit Application Certification by Planning Department; (h) Certified copies of Abutters' Lists for the City of Marlborough and the Town of Hudson; (i) Special Permit-Summary Impact Statement; (collectively the "Documents"). Twelve sets of Documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner, the Building Inspector, the City Engineer and the Conservation Officer, all in accordance with Chapter 650, Article VII Section 200-59 of the Zoning Code of the City of Marlborough. The documents are incorporated herein and become part of this Decision.
7. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed by the City Planner for the City of Marlborough as having complied with the provisions of Chapter 650 (Zoning Code) Article VII Section 650-59, C. (7) (a), (b), and (c).
8. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A Sections 9 and 11, the City Council established March 8, 2010 at 8:00 PM as a date and time for a public hearing on the Application, caused a notice of said hearing and the date thereof to be advertised on February 16th and 23rd in the Metrowest Daily News and caused said notice to be mailed to those entitled thereto. Proof of advertisement and mailing has been submitted to the City Clerk to be placed with the Application documents.
9. The Marlborough City Council held a public hearing on the Application on March 8, 2010 at 8:00 PM in accordance with the published notice, (the Public Hearing). The hearing was opened and closed on said date.
10. The Applicant presented a parking and traffic analysis and testimony at the Public Hearing detailing the construction and use of a sixth major activities area (Project), its impact upon municipal services, the neighborhood traffic, parking, drainage and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the public hearing. Some members of the public spoke in favor of the project, some spoke against, some had questions, and some commented without stating a position for or against the project.

11. The Applicant provided written and oral documentation and testimony to the City Council and the City Council's Urban Affairs Committee regarding the development of the Site, the drainage, traffic, parking, safety considerations during and after construction, affect on nearby wetlands water and sewer use, the design and construction of the sixth rink to include operational considerations during and after construction, handicap accessible issues, the economic impact on the community, impacts on the abutter to the east of the project, and mitigation of impacts.

BASED UPON THE ABOVE THE CITY COUNCIL OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS AND CONDITIONS:

- A. The City Council finds that it may amend Special Permit # 94-5460B as previously amended (Amended Special Permit) subject to terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough.
- B. The City Council finds the Application for Amendment to Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough or Massachusetts General Laws Chapter 40A, et. seq.
- C. The City Council finds that the proposed use of the Site for the Project is an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough. The construction of the Project will compliment the existing business uses in the City of Marlborough and surrounding communities, and will enhance the development goals of the City and the region by providing additional services, increased employment opportunities, increased recreational opportunities, positive impact on the hospitality resources of the City, and a continuation and expansion of a positive asset to the City of Marlborough.
- D. The Site Plan, as submitted and as may be amended by the Site Plan Review Committee during the site plan review process, provides for improvements which will protect the environment, and not have adverse impacts to the community. Those improvements are drainage, lighting, and better control of trash and litter. The City Council makes this determination subject to the completion and adherence by the Applicant to the approved site plan by the Site Plan Review Committee, an order of conditions as may be issued by the City of Marlborough Conservation Commission, and the conditions more fully set forth herein.
- E. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough, Chapter 650 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A Sections 9 and 11.

GRANT OF AMENDMENT TO SPECIAL PERMIT

- F. The City Council of the City of Marlborough pursuant to its authority under Chapter 650 (Zoning Code) of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant an Amendment to Special Permit # 94-5460B to construct a sixth rink to be used as a multi-sport facility as set forth in the Amended Special Permit, in the Application, and as per the plans submitted to the City Council, and subject to the following conditions:
1. The Amended Special Permit # 94-5460B is hereby affirmed, is deemed to be in full force and effect and applies to the Project without change or modification, except as provided for in the Application, the Site Plans and other conditions herein stated.
 2. Unless modified by the provisions hereof, all conditions outlined in Paragraph 4. (a) through (z) of the Special Permit and conditions 3 through 11 of the Amended Special Permit shall apply to the Project. Where reference is made to the issuance of the Special Permit, it shall also refer to the issuance of the Amended Special Permit.
 3. **Construction of the Project:** (a) Construction of the project is subject to the same conditions and limitations as provided in Condition 4. (a) of the Special Permit, except that reference is made to the site plan dated January 21, 2010 and revised on February 4, 2010 and March 22, 2010 and prepared by GLM Engineering Consultants, Inc., which site plan was filed with the Application. (b) The construction site will be fenced as approved by Site Plan Review. (c) To ensure the safety of patrons, employees and the general public during all phases of the construction of the Project, the Applicant will develop a modified emergency exit plan during site plan review and implement the same as a condition hereof. (d) Applicant shall, prior to issuance of the building permit for the project, provide a payment to the City of Marlborough Inspectional Services Fund in the amount of five thousand (\$5,000.00) dollars to offset the increases in costs associated with the Project. The City shall expend said funds as needed to contract for temporary staff, materials, supplies and equipment so as to enable the Inspections Staff to provide adequate, timely supervision to the Project.
 4. **Parking Areas:** Four hundred ninety (490) parking spaces shall be provided as shown on the Site Plan.
 5. **Lighting for Parking Lots:** (a) Exterior parking lot lighting shall not spill onto abutting residential property. (b) Reflectors shall be utilized and configured to mitigate light from entering abutting residential property. (c) Exterior parking lot lighting shall be extinguished each day no later than 1:00 A.M. local time, except for any security lighting required by the Marlborough Police Department.

6. **Project Plans and Specifications:** (a) The 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 before the City Council and/or the Urban Affairs Committee, and in compliance with the Conditions of the Grant of Special Permit and Amended Special Permit. (b) All Plans, photo renderings, 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. (c) Notwithstanding condition (a) and (b) hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Site as approved herein, increase the impervious area of the Site, reduce the green area or increase the size of the building shown on the plan.
7. **Planting of Additional Vegetation:** In order to mitigate the amount of light going on to the abutting residential property from vehicles using the parking lot, Applicant shall plant a sufficient amount of coniferous trees and evergreen shrubs to block the light from hitting the nearby house and to catch any debris or litter that might blow from the parking lot towards the said residential property. Said plantings will be placed at the crest and on the slope of the hill. Applicant will replace existing damaged trees and shrubs. All plantings will be approved by the Site Plan Review Committee, including but not limited to species, location and quantity, during the site plan review process. Applicant will maintain said plantings for the life of the Special Permit.
8. **Granite Curbing:** In order to provide a stop for vehicles parking in the east parking lot, Applicant will install vertical granite curbing, with no less than a 6 inch reveal, along the east side of the site.
9. **Parking of Buses:** When there are more than three buses at one time utilizing Applicant's parking facilities, they shall park in the off-site parking facilities provided by the Applicant.
10. **Formal Parking and Pedestrian Movement Plan:** (a) Applicant will submit to the Site Plan Review Committee for its review and approval a formal Parking and Pedestrian Movement Plan to be used during major events when off-site parking is utilized. Said plan shall be updated as conditions warrant such an update. (b) Applicant will provide off-site parking sufficient to accommodate overflow parking.

11. **Review of Parking and Traffic:** Twelve months following the opening of Rink 6, Applicant will return to the Site Plan Review Committee to review the parking and traffic considerations. If the Site Plan Review Committee determines a need to adjust the parking and traffic considerations, Applicant will submit an amended site plan for approval of the Site Plan Review Committee.
12. **Scheduling of Tournament Games:** When games with high spectator interest are played, the schedule of games will be at least forty minutes apart to minimize parking and traffic congestion.
13. **Walkways:** Applicant will construct a sidewalk starting from the end of the current sidewalk at the front entrance to the Site at Donald Lynch Boulevard and extending to the driveway. Applicant will mark a cross walk across the driveway to the front lawn in front of the building. Applicant will also construct a walkway across the lawn to the current, marked cross walk which leads to the building.
14. **Handicap Accessibility:** In addition to fulfilling its obligations to provide handicapped accessibility as required under state and federal law, the Applicant will also provide handicapped accessibility to and within facilities and spaces associated with Rink 6 which will be accessed by the public, including its locker rooms.
15. **Exterior Camera and Signage:** Applicant will install a security camera with recording capabilities on the east side of Rink 6 for the purpose of observing and recording activities which take place in the east parking lot. Applicant will also install signage at the east parking lot which prohibits loitering.
16. **Exterior Property Maintenance:** In modification of the condition stated in Paragraph 4. (u)(ii) of the Special Permit, the Applicant will inspect the entire Site on a daily basis, pick up any litter thereon, and appropriately discard the same. At the end of the business day, Applicant will visually inspect the entire Site to ensure that all employees and patrons have left the parking areas.
17. **Detention Basin:** In modification of the condition stated in Paragraph 4. (e) of the Special Permit, Applicant will inspect the on-site detention basin not less than annually with respect to sedimentation accumulation, and will expeditiously give copies of the annual report(s) to the City Engineer and Conservation Officer. To the same extent, if such reports indicate the need for sediment removal, the Applicant shall remove the same.

18. **Catch Basin:** In modification of the condition stated in Paragraph 4. (f) of the Special Permit, the Applicant will install the catch basin with sump(s) and inverted outlet(s) as more fully shown on the Site Plan. The Applicant will monitor the catch basin on a semi-annual basis, and will expeditiously give copies of the semi-annual reports to the City Engineer. The Applicant will clean the catch basins annually, or at more frequent intervals as determined by the City Engineer.
19. **Signage:** The locations and design of any new signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
20. 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.
21. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review shall be further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be violations of this Special Permit leading to its possible revocation by the City Council. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.

Yea: 11- Nay: 0

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

ORDERED: That the application for Junk Dealer's License for Steven Weener, d/b/a Thriftboro for 344 Boston Post Rd., **APPROVED**; adopted.

ORDERED: That the application for Junk Dealer's License for Igal Ismaili, d/b/a I & P USA Corporation for the Solomon Pond Mall, **APPROVED**; 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 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 PLACED ON APRIL 5, 2010 AGENDA; TABLED UNTIL APRIL 26, 2010; adopted.

ORDERED: That pursuant to Chapter 44, section 31D of the General Laws of the Commonwealth of Massachusetts, which authorizes the City to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal, the City Council of the City of Marlborough, upon the recommendation of the Mayor, approves expenditures of \$1,200,000.00 in excess of available appropriation for snow and ice removal for fiscal year 2010, **APPROVED**; adopted.

ORDERED: That the transfer request in the amount of \$92,907.39 which moves funds from Insurance Proceeds Over 20K to Public Facilities Capital Outlay pertinent to damage to the Marlborough High School chillers, **APPROVED**; adopted.

FROM:

Acct. # 2700099-48470 \$92,907.39
Insurance Over 20K

TO:

Acct. # 19300006-58467 \$92,907.39
Public Facilities

ORDERED: That the Fire Department transfer request in the amount of \$51,003.96 which moves funds for sick leave buy back associated with an employee's retirement as follows:

\$13,790.40 from Fringes to Fire Chief
\$13,137.60 from Fringes to SLBB
\$12,364.26 from Interest Ban to SLBB
\$11,711.70 from Undesignated Fund to SLBB

APPROVED; adopted.

TRANSFER REQUEST									
FROM ACCOUNT					TO ACCOUNT				
AVAILABLE AMOUNT	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT	ORG CODE	OBJECT	ACCOUNT DESCRIP	AMOUNT AVAIL
			General Government				Fire		
\$ 154,750.95	\$ 13,790.40	11990006	51500	Fringes	\$ 13,790.40	12200001	50130	Fire Chief	\$ 36,983.72
	\$ 13,137.60	11990006	51500	Fringes	\$ 13,137.60	12200003	51920	Sick Leave BB	\$ 22,039.74
\$ 378,123.00	\$ 12,364.26	17520006	59254	Interest Ban	\$ 12,364.26	12200003	51920	Sick Leave BB	\$ -
\$ 2,569,650.00	\$ 11,711.70	10000	35900	Undesignated Fund	\$ 11,711.70	12200003	51920	Sick Leave BB	
					\$ 51,003.96				

Reason: To fund benefits associated with employees retirement.

Councilor Delano requested to be recorded in opposition

ORDERED: That the transfer request in the amount of \$37,500.00 which moves funds from Undesignated to Open Space Stabilization for the purpose of moving the City's wireless antennae receipts for FY2009, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900 \$37,500.00
Undesignated Funds

TO:

Acct. # 83600-32918 \$37,500.00
Stabilization – Open Space

ORDERED: That the transfer request in the amount of \$12,239.06 which moves funds from Firefighter to Gross OT to fund coverage for an injured employee, **APPROVED**; adopted.

FROM:

Acct. # 12200001-50450 \$12,239.06
Firefighter

TO:

Acct. # 12200003-51300 \$12,239.06
Gross Overtime

ORDERED: That the Weights and Measures transfer request in the amount of \$300.00 which moves funds from Contract Services to Instate Travel to fund the cost of projected travel, **APPROVED**; adopted.

FROM:

Acct. # 12440004-53140 \$300.00
Contract Services

TO:

Acct. # 12440006-57100 \$300.00
Instate Travel

ORDERED: That the DPW transfer request in the amount of \$43,000.00 which moves funds from Undesignated for multiple emergency repair incidents as detailed in the attached documentation, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		PUBLIC WORKS				FISCAL YEAR:		2010		
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance
	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		
\$2,569,650	\$18,000.00	10000	35900	Undesignated Fund	\$18,000	61090003	51310	Overtime - W & S	\$27,419	
	Reason:					Emergency incidents have stressed this account to the point where additional funds are needed. Note: This account was heavily impacted by the Bolton St. and Hosmer St. main breaks.				
\$2,569,650	\$3,500.00	10000	35900	Undesignated Fund	\$3,500	60080003	51380	OT W/S Police	\$0	
	Reason:					Heavy demand placed on account due to numerous main and service leaks. Note: account is used in conjunction with Water Police OT account.				
\$2,569,650	\$10,000.00	10000	35900	Undesignated Fund	\$10,000	61090006	54620	Maint. Trench	\$508	
	Reason:					Needed to resurface numerous W&S trenches. Extensive water main and service breaks over winter.				
\$2,569,650	\$5,000.00	10000	35900	Undesignated Fund	\$5,000	61090006	55710	Water Maint.	\$1,946	
	Reason:					Extensive number of service/main break repairs				
\$2,569,650	\$1,500.00	10000	35900	Undesignated Fund	\$1,500	61090006	52467	R & M Water	\$1,454	
	Reason:					Extensive number of service/main break repairs				
\$2,569,650	\$5,000.00	10000	35900	Undesignated Fund	\$5,000	61090006	55750	Water Service Const.	\$110	
	Reason:					Extensive number of service/main breaks repairs				
Totals	\$43,000.00				\$43,000					

ORDERED: That the DPW transfer request in the amount of \$44,450.00 to supplement funding in certain accounts out of other accounts that have anticipated surplus funding as detailed, **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
\$58,882	\$2,200.00	60080001	50890	Sr. Chemist	\$2,200	14001303	51470	Interim Foreman-Streets	\$1,159
	Reason:	Funds available due to retirement				Higher than expected use of this line item due to early retirement.			
\$232,368	\$2,000.00	61090001	50740	Equipment Operator	\$2,000	14001305	55310	Highway Constr. Mater.-Streets	\$1,752
	Reason:	Funds available due to Workman's Comp injuries				Estimated additional funding needed to address post-winter repairs to streets city wide.			
\$58,882	\$1,800.00	60080001	50890	Sr. Chemist	\$1,800	14001305	55310	Highway Constr. Mater.-Streets	\$1,752
	Reason:	Funds available due to retirement				Estimated additional funding needed to address post-winter repairs to streets city wide.			
\$232,368	\$10,000.00	61090001	50740	Equipment Operator	\$10,000	14001306	55440	Drain Maint.-Streets Streets	\$13,617
	Reason:	Funds available due to Workman's Comp injuries				Estimated additional funding needed to address a number of drainage system repairs.			
\$29,096	\$1,500.00	61090001	50680	General Foreman	\$1,500	14001503	51470	Interim Foreman - Forestry, Parks & Cemeteries	\$4,332
	Reason:	Funds available due to resignation				Higher than expected use of this line item due to extended recuperation from surgery.			
\$77,494	\$10,000.00	14001101	50710	Engin.-Junior Civil Engin.	\$10,000	14001303	51310	Overtime - Streets	\$5,685
	Reason:	Funds available due to resignation				Projected cost to complete FY-10			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$232,368	\$3,000.00	61090001	50740	Equipment Operator	\$3,000	14001503	51310	Overtime-Forestry, Parks & Cemeteries	\$2,104
	Reason:	Funds available due to Workman's Comp injuries				Projected cost to complete FY-10			
\$58,882	\$2,000.00	60080001	50890	Sr. Chemist	\$2,000	14001503	51310	Overtime-Forestry, Parks & Cemeteries	\$2,104
	Reason:	Funds available due to retirement				Projected cost to complete FY-10			
\$232,368	\$5,000.00	61090001	50740	Equipment Operator	\$5,000	14001305	55310	Highway Constr. Mater.-Streets	\$1,752
	Reason:	Funds available due to Workman's Comp injuries				Repair of roadway deficiencies in various wards			
\$29,096	\$1,200.00	61090001	50680	General Foreman	\$1,200	14001305	55310	Highway Constr. Mater.-Streets	\$1,752
	Reason:	Funds available due to resignation				Repair of roadway deficiencies in various wards			
\$29,096	\$4,000.00	61090001	50680	General Foreman	\$4,000	61090006	55720	Hydrant Maint.	\$2,124
	Reason:	Funds available due to resignation				Additional monies needed to maintain hydrants			

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	
\$77,494	\$1,500.00	14001101	50710	Engin.-Junior Civil Engin.	\$1,500	14001103	51310	Engin.-Overtime Regular	\$76	
Reason:		Funds available due to resignation				Multiple roadway and water replacement contracts will be active Spring 2010 - \$1,500 equates to 34 hours at the inspectors overtime rate				
\$77,494	\$250.00	14001101	50710	Engin.- Junior Civil Engin.	\$250	14001104	53150	Advertising	\$0	
Reason:		Funds available due to resignation				Additional funding equates to two (2) newspaper advertisements for roadway and water projects.				

ORDERED: That the DPW transfer in the amount of \$14,000.00 which moves funds from Undesignated to OT-Forestry, Parks and Cemeteries to meet the projected OT costs for the remainder of FY2010, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900

\$14,000.00

Undesignated Funds

TO:

Acct. # 14001503-51310

\$14,000.00

Overtime-Forestry, Parks, & Cemeteries

ORDERED: That the Water Conservation Grant awarded to DPW in the amount of \$38,000.00 from the Department of Environmental Protection which provides funding for the purchase of a data-logger as noted in MGL, Chapter 44, Section 53A, funds are to be used for the purposes outlined, **APPROVED**; adopted.

ORDERED: That the FY2010 State 911 Department Training Grant awarded to the Police Department in the amount of \$14,574.00 from the Executive Office of Public Safety and Security which provides funding for training expenses as noted in MGL, Chapter 44, Section 53A, funds are to be used for the purposes outlined, **APPROVED**; adopted.

ORDERED: That the FY2010 State 911 Department Support and Incentive Program Grant awarded to the Police Department in the amount of \$84,195.00 from the Commonwealth of Massachusetts which provides funding for the purchase of a new fire alarm receiving and alerting system, equipment integration costs and public safety dispatcher salaries as noted in MGL, Chapter 44, Section 53A, funds are to be used for the purposes outlined, **APPROVED**; adopted.

ORDERED: That the Traffic Enforcement and Equipment Grant awarded to the Police Department in the amount of \$13,000.00 from the Office of Public Safety and Security for the purpose of traffic enforcement OT as well as the purchase of traffic enforcement equipment as noted in MGL, Chapter 44, Section 53A, funds are to be used for the purposes outlined, **APPROVED**; adopted.

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to JAM Enterprises, LLC, 7 Ashley Court, Lynnfield, MA for a restaurant with drive-through facilities, in connection with a proposed stand-alone restaurant, as provided in this Decision and subject to the following Findings of Facts, Rulings and Conditions.

FINDINGS OF FACT

1. JAM Enterprises, LLC is hereinafter referred to as “Applicant.”
2. Applicant is a party to a contract calling for the acquisition of the premises to be known and numbered as 230 Boston Post Road West, Marlborough, Massachusetts containing 1.19 acres +/- and to be shown on the Marlborough Assessor’s Maps as Map 89, Parcel 77A, as further described by the metes and bounds shown on a conceptual site plan (“the Plan”) numbered “CPT4” and entitled “Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.,” drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1”=20’, dated October 19, 2009, last revised March 16, 2010, and consisting of one page (hereinafter the “Site”). Applicant proposes to construct a stand-alone restaurant facility with drive-through on the Site (“the Project”).
3. Applicant, by and through its attorney, Donald L. Conn, Jr., has filed with the City Clerk of the City of Marlborough an application for Special Permit (“Special Permit Application” or “Application”). Pursuant to Section 200, ¶ 14(B) of the Zoning Ordinance of the City of Marlborough (2008 Code), Applicant is seeking permission for the drive-through facility.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a document entitled, “Traffic Information, Proposed Sonic Drive-Through Restaurant, Boston Post Road (Route 20), Marlborough, Massachusetts” submitted by Hayes Engineering, a certified list of abutters, filing fees, and a conceptual site plan numbered “CPT4” and entitled “Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.,” drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1”=20’, dated October 19, 2009, last revised March 16, 2010, and consisting of one page.
6. The site plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the application for a Special Permit and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.

8. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, held a public hearing on the Application on January 11, 2010.
9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
RULINGS:**

- A. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 200 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A, Sections 9 and 11.
- B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or of Massachusetts General Laws c. 40A.
- C. The City Council finds that the proposed use of the Site is an appropriate use and 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 as provided hereinafter. The City Council makes these findings subject to the completion and adherence by Applicant, its affiliates, successors and/or assigns to the conditions more fully set forth hereinafter.
- D. The City Council, pursuant its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS Applicant a Special Permit to construct and operate drive-through restaurant services as shown on the Plan filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding upon Applicant, its affiliates, successors and/or assigns:
 1. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built consistent with the Plan.
 2. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be violations of this Special Permit leading to its possible revocation by the City Council. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which

alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.

3. Applicant agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.
 - a. Without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Massachusetts Environmental Policy Act ("MEPA") as determined by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EEA"). Any changes, alterations, modifications or amendments required in order to conform with MEPA as determined by EEA shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
 - b. Likewise without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Commonwealth of Massachusetts Department of Transportation ("MassDOT"). Any changes, alterations, modifications or amendments required in order to conform with MassDOT shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
4. The locations and design of signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
5. The location and placement of pavement markings and traffic directional signage, and all other traffic-related issues, shall be reviewed and approved during Site Plan Review in accordance with the applicable rules and regulations of the City of Marlborough.
6. All illuminations of individual parking lot light fixtures shall not exceed 200-watt fixtures. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
7. Snow storage and removal is to be maintained and conducted on-Site by Applicant, its affiliates, successors and/or assigns in accordance with the requirements of Site Plan Review. Applicant, its affiliates, successors and/or assigns shall provide off-Site snow removal as required and if deemed necessary by the City of Marlborough Commissioner of Public Works.

8. There shall be no overnight parking at the Site.
9. All catch basins shall be installed in accordance with plans to be reviewed and approved at Site Plan Review. The catch basins shall be monitored by Applicant, its affiliates, successors and/or assigns on a semi-annual basis with reports given to the City Engineer annually. The catch basins are to be cleaned by Applicant, its affiliates, successors and/or assigns annually, or at more frequent intervals as determined necessary by the City Engineer.
10. Applicant, its affiliates, successors and/or assigns agrees to plant and maintain the Project landscaping as shown on plans to be reviewed and approved at Site Plan Review.
11. The drive-through window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance with the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the Site's property line greater than that which would be allowed at the Site's property line in accordance with the noise ordinance of the City of Marlborough.
12. Applicant, its affiliates, successors and/or assigns agrees to screen the Project's trash area. Applicant, its affiliates, successors and/or assigns further agrees that the dumpsters located on Site will be covered. No trash pickup shall occur weekdays before 7:00 AM or after 6:00 PM or at any time during weekends.
13. Applicant, its affiliates, successors and/or assigns agrees that the Site will be subject to City Council review of the traffic configuration after one-year from the issuance of the Occupancy Permit to determine whether any alterations need to be made to the entrances and egresses to the Site to accommodate traffic flow and ensure public safety and agrees to make changes in compliance with the recommendations of the Marlborough Department of Public Works, the Marlborough Police Department and the Marlborough Traffic Commission.
14.
 - a. All plans, photo renderings, site evaluations, briefs and other documentation provided by 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 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 so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.

15. In connection with all improvement work within public right-of-ways which requires a street opening permit, the City Engineer shall be provided by Applicant, its affiliates, successors and/or assigns with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant, its affiliates, successors and/or assigns, and not the City of Marlborough, will bear the costs of any police detail for any work performed within or associated with the public way.
16. Parking areas will be swept and maintained by Applicant, its affiliates, successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws Chapter 90, § 18, Applicant, its affiliates, successors and/or assigns shall submit, sixty (60) days prior to occupancy of the Project, 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 and off-Site traffic parking. Applicant, its affiliates, successors and/or assigns 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.
17.
 - a. The hours of operation for the drive-through operation at the Site shall not exceed the following times: Monday through Sunday, 6 A.M. to 2 A.M.
 - b. The City Council, after one (1) year from the date when the drive-through commences operations, may review and amend the hours of operation for the drive-through.
18. Applicant, its affiliates, successors and/or assigns shall be required to hire a site engineer(s) who shall be competent in stormwater and erosion control management. This credentials of this individual(s) shall be acceptable to the Engineering Division of the City’s Department of Public Works and the City’s Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State’s stormwater regulations and the City’s stormwater ordinance. This individual(s) shall ensure compliance with the sequence-of-construction plan and the erosion control plan to be reviewed and approved by the Site Plan Review Committee, and, if applicable, with the Order of Conditions issued by the Conservation Commission. The Applicant, its affiliates, successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

19. If the drainage system (during construction and post-construction) constructed by Applicant, its affiliates, successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
20. As it is anticipated that Applicant, its affiliates, successors and/or assigns will need to conduct blasting operations during construction at the Site, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of any property damaged by said blasting the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
21. As it is anticipated that the initial opening of the restaurant will generate higher traffic volumes than during normal operations, Applicant, its affiliates, successors and/or assigns shall meet with the Chief of Police or his designee, the Building Inspector and the Planning Director ("the City traffic officials") at least one (1) month prior to said initial opening in order to review the opening plans for the restaurant, and said plans must be approved in advance by the City traffic officials in order for the restaurant to conduct its initial opening. During the period of its initial opening, Applicant, its affiliates, successors and/or assigns, at its sole expense, must obtain a police detail adequate to maintain safe traffic flow eastbound and westbound on Route 20 during peak periods. Until normal traffic has resumed as determined by the City traffic officials, Applicant, its affiliates, successors and/or assigns must continue to meet with them, at such times as the City traffic officials determine, in order to assess the traffic volumes and associated traffic safety at the Site.
22. This Special Permit is dependent upon the Applicant, its affiliates, successors and/or assigns, reaching agreement with Marlborough/Northborough Land Realty Trust and/or with The Gutierrez Company, its affiliates, successors and/or assigns, for all cross-easements or other permissions necessary for access and infrastructure associated with the Site. If such agreement(s) is/are not reached, this Special Permit shall lapse forthwith.
23. Applicant, its affiliates, successors and/or assigns shall pay to the City of Marlborough an administrative review fee in the amount of \$5000.00 as mitigation of the time devoted by the Building Inspector, the City Engineer and the City Solicitor in resolving issues associated with the Special Permit Application, including those involving zoning, traffic and the drafting of the decision itself which the Zoning Ordinance expressly dictates is placed upon the applicant for a special permit. Said payment shall be made before a Building Permit is issued.

24. Applicant, its affiliates, successors and/or assigns, agrees to conduct a so-called "Job Fair" prior to the grand opening of the Project. Applicant, its affiliates, successors and/or assigns shall coordinate such Job Fair, to the extent feasible, with Marlborough schools and local or regional governmental employment agencies so that Marlborough residents are provided with adequate notice of employment opportunities at the Project. In addition, Applicant, its affiliates, successors and/or assigns shall coordinate a like Job Fair for Marlborough contractors for site- and building-related improvements at the Project, and shall encourage its own contractors to hire Marlborough construction workers for the Project.
25. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its affiliates, successors and/or assigns 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 before a Building Permit is issued. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: 11- Nay: 0

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

ORDERED: That the reappointment of Debra Puleo as City Collector effective February 1, 2010, **APPROVED**; 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, **APPROVED**; adopted.

ORDERED: That the appointment of Robyn Ripley and reappointments of Nena Bloomquist and Susan Laufer to the Library Board of Trustees for terms of three years expiring February 4, 2013, **APPROVED**; adopted.

ORDERED: That the appointment of Dr. Jay Jahanmir to the Board of Health for a term to expire February 6, 2011, **APPROVED**; adopted.

ORDERED: That the reappointment of Tony Trodella as Chief Assessor for a term of five years effective February 1, 2010, **APPROVED**; adopted.

ORDERED: That the reappointment of Anthony Arruda to the Board of Assessors for a term of three years expiring February 4, 2013, **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:06 p.m.; adopted.