



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

Lisa M. Thomas

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AUGUST 23, 2010

Regular meeting of the City Council held on Monday, AUGUST 23, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:55 p.m.

ORDERED: That the minutes of the City Council Meeting July 26, 2010, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING on the Petition from Massachusetts Electric Co. and Verizon New England Inc. to install new P.5 and relocate P.4 on Madison St., Order No. 10-1002649, **OPEN AND CONTINUE HEARING WITHOUT ANY EVIDENCE BEING HEARD TO THE SEPTEMBER 13, 2010 MEETING**; adopted.

ORDERED: Now being the time set for the CONTINUED PUBLIC HEARING on the Application for Wireless Special Permit from Attorney Valeriani, on behalf of Verizon Wireless, to permit, construct, operate and maintain a Wireless Communication Facility consisting of a 130' antenna-monopole-tower at 800 Bolton St., all were heard who wish to be heard, hearing recessed at 8:30 p.m.; adopted.

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

ORDERED: Now being the time set for the PUBLIC HEARING on the Application from MetroPCS Massachusetts LLC, to install a telecommunications facility onto an existing building at 157 Union St., all were heard who wish to be heard, hearing recessed at 8:45p.m.; adopted.

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

Councilor Seymour abstained

ORDERED: Now being the time set for the PUBLIC HEARING On the Application for Special Permit from Attorney Bergeron on behalf of Crosspoint Associates, seeking a 24 hour drive-thru window in connection with a banking institution at 133 East Main St., all were heard who wish to be heard, hearing recessed at 9:00 p.m.; adopted.

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

Councilor Delano abstained

ORDERED: That the along with the City Council's approval of the FY 11 operating budget, a recommendation of adopting of Section 4, Chapter 73 of the Acts of 1986 which allows for the doubling of all exemptions offered in the City to qualified residents (i.e. Elderly, Blind, Disabled Vets) as provided by Massachusetts law in which the City would absorb any associated costs through the overlay account, **APPROVED**; adopted.

ORDERED: That the City's participation in the Massachusetts Interlocal Insurance Association (MIIA) rewards program, **FILE**; adopted.

ORDERED: That the appointment of Jennifer Crawford-Claro to the position of Council on Aging Director for a three year term from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the appointment of Colleen Hughes to the Marlborough Planning Board for a term to expire the first Monday in February, 2015, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the reappointments of Lee Thompson and Joseph DelGenio to the Fort Meadow Commission for three year terms from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the following notification from the City Clerk re: 2010 State Primary Election Call, **FILE**; adopted.

CITY OF MARLBOROUGH
OFFICE OF CITY CLERK

That the City Clerk be and is herewith directed to have proper notices issued notifying the VOTERS of the City of Marlborough that the **STATE PRIMARY ELECTION** will be held in the polling locations as noted below on **SEPTEMBER 14, 2010**, as follows: Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Auditor, Representative in Congress, Councillor, Senator in General Court, Representative in General Court, District Attorney, and Sheriff.

THE POLLS WILL OPEN AT 7:00 A.M. AND WILL CLOSE AT 8:00 P.M.

POLLING LOCATIONS ARE AS FOLLOWS:

WARD ONE: Prec. 1 and 2	Francis J. Kane School, 520 Farm Rd.,
WARD TWO: Prec. 1 and 2	Francis J. Kane School, 520 Farm Rd.,
WARD THREE: Prec. 1	Masonic Hall, 8 Newton St. (corner of Main/Newton Sts.), rear
WARD THREE: Prec. 2	Raymond J. Richer School, 80 Foley Rd.,
WARD FOUR: Prec. 1 and 2	Boys & Girls Club, 169 Pleasant St.,
WARD FIVE: Prec. 1	Senior Center, 250 Main St.,
WARD FIVE: Prec. 2	Masonic Hall, 8 Newton St. (corner of Main/Newton Sts.), rear
WARD SIX: Prec. 1 and 2	1LT Charles W. Whitcomb School, 25 Union St., Library
WARD SEVEN: Prec. 1 and 2	Hildreth School Gymnasium, 85 Sawin St.

ORDERED: That the following proposed City Code Amendment Draft Orders pertinent to Junk Dealers License, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

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

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

377-1. License Required; **License Revocation.**

- A. No person shall be a **collector of**, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or secondhand articles unless licensed by the City Council, which may grant licenses as it may determine.
- B. **Said licenses may be revoked or suspended at pleasure by the City Council.**
- C. **Upon revocation of such license, the City Clerk shall note the revocation upon the face of the record thereof, and shall give written notice to the licensee as provided under M.G.L. c. 140, § 205.**

Further, Chapter 377 is also hereby amended by adding the following new sub-Section:

377-10: Enforcement; Penalties

Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals, rags or second hand articles without a license, or in any other place or manner than that designated in his license or after notice that his license has been revoked, or acts in violation of any rule, regulation, restriction or condition regarding such license shall be subject to a fine of \$100.00 per day for each and every day the violation continues after issuance of a Notice of Violation by the Building Inspector of his designee, who may enforce this section by non-criminal disposition pursuant to the provisions of M.G.L. c. 40, § 21D. All fines are payable to the City of Marlborough through the City Clerk's office.

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

Chapter 315 is hereby amended by adding the following new sub-section to part B of section 315-2, Noncriminal Disposition:

Ordinance/Violation (Chapter/Section)	Penalty	Enforcing Agent
30) Junk And Second Hand Dealers Licenses, Ch. 377	\$100	Building Inspector or his designee

ORDERED: That the grant of easement to Massachusetts Electric Company for the Westerly Wastewater Treatment Plant, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the City Council of the City of Marlborough hereby authorizes the Chief Procurement Officer to issue a Notice of Award to Clear Wireless LLC, a Nevada Limited Liability Company ("Clearwire") located at 4400 Carillon Point, Kirkland, WA 98033, in the amount of \$25,000.00 for the first year of the lease, increasing annually by three (3%) on each anniversary of the Rent Commencement Date, subject to the approval of the Commissioner of Public Works as to the proposal and the location on the tower at the site, and the approval of a Special Permit by the City Council pursuant to the applicable Articles and Sections of the Marlborough Zoning Ordinance; and it is FURTHERED ORDERED: that, if and when a Special Permit is approved, the Mayor is then authorized to negotiate a lease, subject to obtaining all necessary permits and licenses, with Clearwire for the placement of antennas on the water tank along with associated wires and ground equipment at the Fairmount Hill Water Tank site, located at 115 Onamog Street, Marlborough, MA 01752, shown on Assessors' Map 81, Parcel 238. Said municipal property has been declared available for disposition by City Council Order No. 01-9384, refer to **WIRELESS COMMUNICATIONS COMMITTEE**; adopted.

ORDERED: That the Application for Special Permit from Attorney Bergeron, on behalf of Global Montello Group Corp., to amend Special Permit Order No. 02-9612C pertinent to a new owner, Global Montello Group Corp., and modify Condition 5 to allow Global to have the convenience store located on premises operated by its subsidiary, Alliance Energy, LLC, refer to **BUILDING INSPECTOR**; adopted.

ORDERED: That the application of Best Buy Stores, LP for Junk Dealer's license at 769 Donald Lynch Blvd, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Petition from Massachusetts Electric Company and Verizon New England Inc. to install intermediate pole on Cook Lane P.19-50 for the purposes of feeding a new urd, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Planning Board, June 28, 2010, **FILE**; adopted.

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

- A. 1st Church of Marlboro, 37 High St., other property damage
- B. Charlene Milton, 15 Clearview Dr., pothole or other road defect

Reports of Committees:

Councilor Delano reported the following out of the Personnel Committee:

Order No. 10-1002639 - Reappointment of reappointment of Walter Bonin to the License Commission for a six-year term from date of approval. Recommendation of the Personnel Committee is to approve the reappointment of Walter Bonin to the License Commission for a six year term from date of approval 3-0.

Councilor Pope reported the following out of the Rules Committee:

Proposed Rule #1: Meetings of Standing Committees shall not be held on any Election Day. **Recommendation of the Rules Committee is to approve proposed Rule #1, 3-0.**

Proposed Rule #2: A majority of all the members of each Standing Committee shall constitute a quorum. The affirmative vote of at least 3 members of each Standing Committee consisting of 5 members, and of at least 2 members of each Standing Committee consisting of 3 members, shall be necessary to adopt any recommendation to the full City Council. **Recommendation of the Rules Committee is to approve proposed Rule #2, 3-0.**

Councilor Ossing reported the following out of the Finance Committee:

Order No. 10-1002637 – Transfer \$2,000.00 from Library Director to Professional and Technical Services. The Finance Committee reviewed the Mayor's letter dated July 20, 2010 requesting the transfer of \$2,000.00 from the Library Director's account to Professional and Technical Services account to fund part time help during the search for the new Library Director. The Mayor requested that this order be returned since it was not required. **Recommendation of the Finance Committee is to return the order to the Mayor 3-0.**

Order No. 10-1002636 – Transfer \$27,098.49 from Fringes to Head Clerk. The Finance Committee reviewed the Mayor's letter dated July 21, 2010 requesting a transfer of \$27,098.49 from the Fringes Account to the Head Clerk account to pay budgeted expenses associated with an employee's retirement. **Recommendation of the Finance Committee is to approve the transfer 3-0.**

Order No. 10-1002635 – Rescind Frye Land Bond. The Finance Committee reviewed the Mayor's letter dated July 21, 2010 requesting the Frye Land bond in the amount of \$495,000.00 (Order No. 04-100540) be rescinded as the bond is no longer necessary. **Recommendation of the Finance Committee is to approve rescinding the bond 3-0.**

Order No. 10-1002634 – FY11 Supplemental Budget Reduction of \$1,161,759.00. The Finance Committee reviewed the Mayor's letter dated July 22, 2010 requesting the FY11 Supplemental Budget Reduction of \$1,161,759.00 of debt service for the refunded 1999 and 2001 General Obligation Bonds associated with school construction. The Mayor and Comptroller stated that the final documentation from the State was received after the FY11 budget was approved. The Comptroller identified that the FY11 Cherry sheets will be reduced by a similar amount. Therefore, reducing the FY11 budget by \$1,161,759.00 will result in a net zero change to the taxpayer at the tax classification hearing. **Recommendation of the Finance Committee is to approve the reduction of \$1,161,759.00 from the FY11 budget 3-0.**

The Finance Committee continued the discussion on the following capital bond packages:

- Order No. 10-1002472A – FY10 Capital Bond Package - \$21,156,388
- Order No. 10-1002473A – Sudbury Street Bond for \$4,000,000
- Order No. 10-1002474 – DPW Equipment Bond for \$1,236,280

Attachment 1 identifies each bond, the amount, and the Finance Committee recommendations based on the July 12 and 19, 2010 Finance Committee meetings.

The Mayor and Comptroller provided several scenarios regarding the projected payments for the \$12,121,584 bonds that have received preliminary Finance Committee approval. Scenario 3 involved using the \$283,004 in previously approved bonds, plus the funds available from the WWTP debt service (\$1,301,962), school debt service (\$18,901) and short term interest savings for not funding all of the FY10 bonds in the FY11 budget (\$505,449). These funds could be used to reduce the Finance Committee approved FY10 bonds. These funds would be used to fully fund the Equipment Bond, Technology Bond and DPW Equipment Bond resulting in a bond request of \$10,014,841.

The Finance Committee agreed to meet again with the full Finance Committee to go over these results as well as the July 12 and July 19, 2010 meetings on the capital bond requests.

The Mayor provided the following status regarding the Finance Committee request for information from the July 19, 2010 Finance Committee meeting:

- Provide the impact on the FY11 BAN accounts if the bond total for FY11 is \$12,121,584. **STATUS: Potential to use \$505,449 to offset bonds**
- Provide the impact on the water and sewer bill that includes the Westerly Treatment Plant, the water and sewer bonds in Attachment 1 and estimate for the Easterly Treatment Plant. **STATUS: Projected at a 33.43% increase or an additional \$1.14 to the existing \$3.14 rate. This does not include the Easterly Treatment Plant upgrades.**
- Provide the projected debt service if the bonds in Attachment 1 are approved on the debt service for FY12 to FY32. **STATUS: The Comptroller provided three scenarios for Finance Committee review.**
- Provide the status of the existing bonds to determine if any of the funds can be used to offset the FY10 bond request. **STATUS: The Mayor identified \$283,004 in previously approved bonds that could be used to offset the FY11 capital bond request.**
- Provide the impact of refinancing the school bond of \$9,580,170. Identify the funds that will be available for potentially offsetting the FY10 bond request. **STATUS: See order number 10-1002634 above.**

The Finance Committee agreed to table the bond discussion in order for Councilors to review the information received at this meeting.

ATTACHMENT 1
FY10 Capital Bonds
Summary of Finance Committee Recommendation

Bond Number Description	Bond Amount (\$)	Finance Committee Recommendation (\$)	Reduction (\$)	Comments
1. Department Equipment	445,388	389,504 App 5 - 0	55,884	Mayor requested the vehicles for the Code Enforcement, Veterans and IT be removed from the bond.
2. Street Construction	9,886,000	3,240,000	6,646,000	Approve the items that can be completed in 2011 on the DPW spreadsheet
3. Sidewalk Construction	1,100,000	200,000	900,000	Approved various sidewalk repair only.
4. Sewer Construction	1,535,000	475,00	1,060,000	See list of projects in meeting minutes
5. Water Meters	200,000	200,000 App 5 - 0	0	Will purchase 1142 meters at \$175 per meter
6. Water	3,716,000	1,626,000	2,090,000	See list of projects in meeting minutes
7. Parks	864,000	Tabled 5 - 0		
8. Design	80,000	Tabled 5 - 0		
9. Computers	350,000	350,000 App 5 - 0		
10. Buildings	2,980,000	2,750,000 App 5 - 0	230,000	\$30,000 for DPW generator not required. \$200,000 for Walker Building tabled pending discussions with mayor
11. DPW Equipment	1,236,280	1,091,080	145,200	Excludes 4 pickup trucks and one van
12. Sudbury Street	9,943,000	1,800,000	8,143,000	First phase of project
Total	32,335,668	12,121,584	19,270,084	Does not include the Parks and Design bonds that were tabled

Suspension of the Rules requested - granted**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. 10-1002624B

Application of:
Verizon Wireless
400 Friberg Parkway
Westborough, MA 01581

Locus:
Marlborough Westerly Wastewater Treatment Plant (WWTP)
303 Boundary St.
Map 76, Parcel 1 & 2

DECISION

The City Council of the City of Marlborough voted to Grant a Special Permit to Verizon Wireless (Bell Atlantic Mobile of Massachusetts Corporation, Ltd. and Cellco Partnership) for the installation and operation of a Wireless Communications Facility (WCF) at 303 Boundary Street, located inside a Water Supply Protection District, pursuant to Article VI, Section 650-24, based on the Findings of Facts and Conditions attached hereto.

Decision filed: **September 1, 2010**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on **September 1, 2010**.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

**VERIZON WIRELESS
303 BOUNDARY STREET, MARLBOROUGH
SPECIAL PERMIT (WATER SUPPLY PROTECTION DISTRICT)
FINDINGS OF FACT AND CONDITIONS**

The City Council of the City of Marlborough hereby grants the application for a Special Permit to Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, to construct a Wireless Communications Facility ("WCF") in Zone A of the Water Supply Protection District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

- 1) Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, having a business address of 400 Friberg Parkway, Westborough, Massachusetts, 01581, and is hereinafter referred to as the "Applicant".
- 2) 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 Westerly Waste-Water Treatment Plant ("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. Applicant is a prospective lessee to the City of Marlborough.
- 3) The WWTP is a large tract of wooded land, consisting of 11 acres (Map 76, Lot 1) and 152 acres (Map 76, Lot 2), located at 303 Boundary Street, adjacent to Millham Reservoir. The existing 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 wireless special permit in the RR Zone.
- 4) The Applicant on or about June 24, 2010, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Article VI, Section 650-24 and pursuant to the procedures specified in Article VIII, Section 650-59, of the Marlborough Zoning Ordinance.
- 5) In connection with the special permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty (20) copies of the site plan.
- 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 and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.

8) The Marlborough City Council, pursuant to MGL C.40A, held a public hearing on July 26, 2010, concerning the said application. The hearing was opened and closed at that meeting.

9) Applicant's attorney presented testimony at the public hearing detailing the application, described the WCF development and its location and described the equipment to be stored inside the Applicant's locked and secured shelter and the long distance from Millham Reservoir (350 feet).

10) Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the location, installation and operation of the proposed project, including the proposed locked/secured equipment shelter building and related site modifications.

11) Applicant provided the Urban Affairs Committee with the final site plans previously approved by the City Council in connection with the special permit for the WCF pursuant to Section 650-25, entitled Engineering Plans and Drawings prepared by SFC Engineering Partnership, Manchester, New Hampshire, entitled "Marlborough West" and dated September 29, 2009, with a most recent revision date of February 23, 2010, (the "Plans"). The application and support documentation and engineering plans show that the Applicant's WCF is to consist of a 150-foot monopole-type tower, 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 Engineering Drawings show the elements of this project that are in Zone A of the Water Supply Overlay District.

12) Applicant stated that all equipment associated with the WCF, except for the tower structure and an above-ground 500 gallon propane tank and HVAC units attached to the equipment shelter, shall be operated and maintained and monitored inside the Applicant's locked 12 x 30 equipment shelter which shall be monitored by monthly inspections and by Applicant's 24-hour Network Operations Center for security and temperature conditions.

13) Applicant stated that there are no water or sewer connections to the WCF and the electric and telephone utilities shall be routed underground pursuant to the Applicant's WCF Special Permit. The WCF is unmanned with infrequent vehicle trips to the site during daytime hours. Access to the WCF shall be restricted by a locked gate off of Boundary Street.

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

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

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the zoning ordinance, in that it is a WCF on city-owned land on a large and remote tract of land a long distance from residential properties (1,000 feet) and long distance from Millham Reservoir (350 feet), and that there are no significant negative impacts upon abutters. The proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. The City Council further finds that, subject to the permit conditions enumerated herein, the proposed use will not have an adverse impact on the Marlborough water supply.

C) The City Council has reviewed the uses in this proposal that will be located in Zone A of the Water Supply Protection District and finds that the use, though located in Zone A, is not prohibited by the Water Supply District regulations and will not have an adverse impact on the water supply district, provided that the permit conditions imposed below are complied with.

D) The City Council, pursuant to its authority under MGL C.40A §9 and under Chapter 650 of the Marlborough City Code, GRANTS the Applicant a Special Permit to allow a WCF on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1) Compliance With Building Regulations. Construction of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and Engineering Plans and Drawings prepared by SFC Engineering Partnership, Manchester, New Hampshire, entitled "Marlborough West" and dated September 29, 2009, with a most recent revision date of February 23, 2010, (the "Plans") filed with the Urban Affairs Committee during the application/hearing process. All other terms, conditions, requirements, approvals, drawings and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

2) Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough Ordinance, prior to the issuance of the actual Building Permit; provided, however, that the Building Commissioner may issue a building permit prior to the completion of site plan review regarding work which, in his opinion, will not be affected by said site plan review. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Special Permit and no Occupancy Permit shall be issued until all conditions are complied with by the Applicant. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and Plans submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the plans which alter the traffic patterns within the site, require the removal of landscaping, reduce the overall green space of the

Project, or add any new element in Zone A other than the landscaping, will require subsequent approval by the City Council.

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

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

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

6) Improvements Installed Prior to Certificate of Occupancy. All site improvements, except those specified on the plans approved on site plan review, that have been shown in renderings and/or are conditions of this Special Permit will be installed prior to the issuance of any temporary or permanent occupancy certificate. If all other work is completed between Oct. 1 and June 1, any landscaping plants will be required to be installed by June 1. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

7) Equipment Shelter Secured and Monitored: All equipment associated with the WCF, except for the tower structure and an above-ground 500 gallon propane tank and HVAC units attached to the equipment shelter, shall be operated and maintained and monitored inside the Applicant's locked 12 x 30 equipment shelter which shall be monitored by monthly inspections and by Applicant's 24-hour Network Operations Center for security and temperature conditions.

8) Unmanned and Secured Facility: There shall be no water or sewer connections to the WCF and the electric and telephone utilities shall be routed underground pursuant to the Applicant's WCF Special Permit. The WCF shall be unmanned with infrequent vehicle trips to the site during daytime hours. Access to the WCF shall be restricted by a locked gate off of Boundary Street.

9) Operation and Maintenance of Battery Racks. The back-up batteries used by the Applicant for uninterrupted power supply shall be Northstar type NSB170FT batteries or similar battery, designed as non-spill, sealed, valve-regulated and fiberglass-mat. The batteries shall be stored in rack systems inside the locked shelter with regular maintenance checks. Any unused or malfunctioning batteries shall be immediately removed and properly disposed.

10) Auxiliary generator propane tank. The Applicant's propane tank shall be fastened to a concrete base with appropriate inspection permitting by the Fire Department.

11) Compliance With Related Permit. Applicant has also applied-for and obtained a special permit, pursuant to Section 650-25, to construct a WCF in a Rural Residence District. Any conditions attached to the approval of that special permit are also incorporated herein and made a part hereof. The Applicant's WCF shall be installed, operated and maintained in conformance with the City Council Special Permit for the WCF (09/10-1002161F) dated March 22, 2010, and recorded at Middlesex South Registry, Book 54647, page 262.

12) Recordation. In accordance with the provisions of MGL 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, before a Building Permit is issued.

Yea: 11- Nay: 0

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

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 Clear Wireless LLC, a Nevada Limited Liability Company ("Clearwire") located at 4400 Carillon Point, Kirkland, WA 98033, in the amount of \$25,000.00 for the first year of the lease, increasing annually by three (3%) on each anniversary of the Rent Commencement Date, subject to the approval of the Commissioner of Public Works as to the proposal and the location on the tower at the site, and the approval of a Special Permit by the City Council pursuant to the applicable Articles and Sections of the Marlborough Zoning Ordinance; and it is FURTHERED ORDERED: that, if and when a Special Permit is approved, the Mayor is then authorized to negotiate a lease, subject to obtaining all necessary permits and licenses, with Clearwire for the placement of antennas on the water tank along with associated wires and ground equipment at the Fairmount Hill Water Tank site, located at 115 Onamog Street, Marlborough, MA 01752, shown on Assessors' Map 81, Parcel 238. Said municipal property has been declared available for disposition by City Council Order No. 01-9384, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the reappointments of Diane Halper, Larry Wenzell, Cheryl Desautels, Jackie DiBuono and Ruth Crowell & appointment of Joan Toohey to the Arts Lottery Council with a three year term upon approval, **APPROVED**; adopted.

Suspension of the Rules requested - granted

ORDERED: That the following amended TIF agreement by and between the City of Marlborough and Boston Scientific Corporation, refer to **Finance Committee**; adopted.

WHEREAS, the City of Marlborough, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having a principal place of business at City Hall, 140 Main Street, Marlborough, MA 01752, (hereinafter called the "City"), acting through its City Council which designates and delegates to the City Council President the authority to execute this agreement with Boston Scientific Corporation, a Delaware corporation with a principal place of business at One Boston Scientific Place, Natick, MA 01760 (hereinafter called the "Company")(the "Amendment") which amends the Tax Increment Financing Agreement entered into by the City and the Company dated as of May 25, 2006 (the "Agreement");

WHEREAS, the Company has completed Phase 1 of the Project as described in the Agreement (the "Facility"), and the Project has been approved by the Massachusetts Economic Assistance Coordinating Council (the "EACC") as a Certified Project;

WHEREAS, the Company had reached an employment level of 669 jobs at the Facility as of the date the Facility was approved as a Certified Project;

WHEREAS, the Agreement sets forth employment targets for the Company at the Facility and an adjustable schedule of Exemption Percentages fluctuating with the Company's level of employment at the Facility;

WHEREAS, the Exemption Percentage has been adjusted from year to year according to the terms of the Agreement to the satisfaction of the City and the Company;

WHEREAS, the Massachusetts Office of Business Development, as the staff representative of the EACC, has expressed concerns that the Company's employment level at the Facility for Fiscal Year 2008 did not meet the requirements of the statutes and regulations applicable for the Massachusetts Economic Development Incentive Program (the "EDIP") pursuant to which the Agreement is authorized and governed; and

WHEREAS, the City and the Company have agreed to clarify any possible ambiguities in the Agreement relating to the employment level requirements and provisions of the Agreement.

NOW THEREFORE, the City and The Company, in consideration of the promises contained herein, hereby agree as follows:

1. The Agreement, this Amendment and the Certified Project have been, and shall continue to be governed by the General Laws and regulations of the EDIP that existed at the time the Project received certification by the EACC (the "Governing Law").

2. The minimum level of permanent, full-time jobs at the Facility shall remain at 669. The definition of "permanent, full-time jobs" for purposes of determining if the Company has met this requirement shall be determined pursuant to the Governing Law and shall not include Contract Employees, as defined hereafter, working at the Facility but not directly employed by the Company.
3. For purposes of measuring current employment at the Facility used to determine the correct Exemption Percentage, from year to year, Company employees and third party employees providing services to the Company ("Contract Employees") based at the Facility and performing services to the Company, and earning on an annual basis at least \$25,000 shall all be counted.
4. In addition to the 669 permanent full-time positions described in Section 2 above, the Company will make commercially reasonable efforts to create and maintain at least 331 new full-time positions by December 31, 2010, and to maintain a 50/50 ratio of Company full-time permanent Employees and Contract Employees for the new positions, however there will not be less than 35 new permanent full-time Company Employees.
5. The City and the Company, have been, and remain, as of the date of this Amendment, in compliance with the terms of the Agreement and the provisions of the Governing Law.
6. All other terms and conditions of the Agreement shall remain in full force and effect and any terms herein shall have the same meaning as in the Agreement.

ORDERED: That the City Council request the Procurement Officer to issue an RFP for the municipal property now or formerly known as "Site #21 Old Landfill Hudson Street" to be used for wireless purposes and further that the Wireless Communications Committee study all other municipal sites for possible locations for wireless purposes, refer to **WIRELESS COMMUNICATION COMMITTEE AND CHIEF PROCUREMENT OFFICER**; adopted.

ORDERED: That the reappointment of Diane Smith to the position of City Auditor which expires three years from date of confirmation, **APPROVED**; adopted.

Councilor Seymour abstained

ORDERED: That all municipal vehicles be marked with the official city seal and numbered on the back for identification purposes, **TABLED UNTIL SEPTEMBER 13, 2010**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 27, 2010** as date for a **PUBLIC HEARING** on the Application for Wireless Special Permit from Clear Wireless LLC, to modify wireless communication facility at 115/109 Onamog St., refer to **WIRELESS COMMUNICATION COMMITTEE AND ADVERTISE**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:55 p.m.; adopted.