



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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JANUARY 5, 2009**

Regular meeting of the City Council held on Monday January 5, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juairé, Seymour, Clancy and Landers. Meeting adjourned at 9:45 p.m.

ORGANIZATIONAL MEETING

Councilor Vigeant called the meeting to order at 8:00 a.m. The City Clerk called for the Election of the City Council President of the Marlborough City Council for the Year 2009. Councilor Ossing nominated Councilor Vigeant as President. Councilor Pope seconded the motion for nomination of Councilor Vigeant as President. Councilor Vigeant received eleven votes for President. Yea – Delano, Ferro, Schafer, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy. Nay – 0.

Councilor Vigeant called for the Election of the City Council Vice-President of the Marlborough City Council for the Year 2009. Councilor Ossing nominated Councilor Pope as Vice-President. Councilor Clancy seconded the motion for nomination of Councilor Pope as Vice-President. Councilor Pope received eleven votes for Vice-President. Yea – Delano, Ferro, Schafer, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, & Levy. Nay – 0.

City Council President Vigeant announced the next meeting of the City Council to be held on Monday, January 26, 2009 at 8:00 p.m.

ORDERED: Minutes, City Council Meeting, December 15, 2008, **FILE**; adopted as amended.

ORDERED: Now being the time set for the **CONTINUED PUBLIC HEARING** On the Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws, all were heard who wish to be heard, hearing recessed at 8:40 p.m.; adopted.

ORDERED: Now being the time set for the **PUBLIC HEARING** At the request of the Mayor, on behalf of the Marlborough License Board, to convert Two Current Beer & Wine Package Store Licenses to All Alcoholic Package Store Licenses through the adoption of an Initiative Petition by the State Legislature, all were heard who wish to be heard, hearing adjourned at 9:30 p.m.; adopted.

ORDERED: That the Commonwealth of Massachusetts Executive Office of Public Safety and Security grants in the amounts of \$27,395.42 and \$15,000.00 awarded to the Police Department for community policing activities and a reimbursement grant respectively, as outlined in MGL, Chapter 44 Section 53A which stipulates that grant funding be strictly applied to purposes outlined, **APPROVED**; adopted.

- ORDERED: That the appointment of Karen Kisty as acting Personnel Director effective January 6, 2009, **FILE**; adopted.
- ORDERED: That the reappointments of Lawrence Roy and Michelle Higgins to the Conservation Commission for terms to expire on March 5, 2012, refer to **PERSONNEL COMMITTEE**; adopted.
- ORDERED: That Agenda #8, Communication from the City Solicitor regarding Special Permit from MetroPCS Massachusetts, LLC for 97 Arnold St, Ext., in proper form, be moved to Reports of Committees; **APPROVED**; adopted.
- ORDERED: That the minutes, MetroWest Regional Transit Authority , October 27, 2008 **FILE**; adopted.
- ORDERED: That the Communication from Stephen Zeitler, owner of Marlboro Wine and Spirit Co., re: All Liquor Licenses; **FILE**; adopted.
- ORDERED: That the application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's license; refer to **PUBLIC SERVICES COMMITTEE**; adopted.
- ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
- A. Mark Dascoli, 146 Beach St., vehicle damage
 - B. Thomas Naze, 31 Diana Dr., vehicle damage
 - C. James Holt, 7 Ash St., property damage
 - D. Diane Insani, 58 Concord Rd., property damage
 - E. Eileen Ahern, 474 Pleasant St., property damage
 - F. Curtis Williams, 15B Onamog St., property damage
 - G. Jonathon Chase, 431 Berlin Rd., property damage
 - H. Carolyn Mariani, 189 Gates Pond Rd., Berlin, vehicle damage

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 08/09-1002072A – Reappointment of Ronald LaFreniere as the City's Commissioner of Public Works for a term of five years expiring on January, 11, 2014. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 08/09-1002073A – Reappointment of Deborah Puleo as the City Collector effective February 1, 2009 to correspond with her bond renewal date. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 08/09-1002075A – Reappointment of John Rowe to the Board of Health for a term to expire the 1st Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 08/09-1002076A – Reappointment of Raymond Johnson to the Library Board of Trustees for a three year term to expire the 1st Monday in February 2012 and to submit the name of William Brewin to assume the position now held by Claude Tsai who will be unable to continue past his term which expires on February 2, 2009. William Brewin's term would expire the 1st Monday in February 2012. Recommendation of the Personnel Committee is to approve 3-0.

ORDERED: The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Chelmsford, MA 01824, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application to City Council for Issuance of Special Permit (hereinafter "Special Permit Application"), the Applicant seeks permission to allow co-location of six (6) wireless communications panel antennas on an existing water tank, and one (1) GPS antenna mounted on a proposed ice bridge, and supporting equipment on the ground within an existing compound (hereinafter "Proposed Wireless Communications Device Project" or "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0482A MARLBOROUGH WATER TANK," by Chappell Engineering Associates, LLC, dated 7/17/08, as submitted with the Special Permit Application, (hereinafter "Plans").
3. The location of the Proposed WCD Project is 97 Arnold Street Ext., Marlborough, MA and is more particularly identified on the Assessor's Map of the City of Marlborough as Map 68 of Lot 80 (hereinafter "the Site"). The owner of record for the Site is the CITY OF MARLBOROUGH.
4. The Applicant is a prospective lessee of the City of Marlborough, which owns the existing water tank at the Site as well as the underlying compound area.
5. The Site is zoned A-3 (Residence). Wireless Communication Devices are allowed by grant of Special Permit in A-3 (Residence) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Ordinance set forth in the City Code of the City of Marlborough (hereinafter "Marlborough Zoning Ordinance").
7. Pursuant to the Rules and Regulations of Application for Special Permit (hereinafter "Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on October 6, 2008, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. By written agreement by and between the Council and the Applicant, timely filed with the City Clerk for the City of Marlborough, the time period for a decision by the Council on the Applicant's application was extended until February 3, 2009.

10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the Marlborough Zoning Ordinance, applicable to the Proposed WCD Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Special Permit Application.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this decision.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Facilities, including Wireless Communication Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCD Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the Marlborough Zoning Ordinance, **GRANTS** the Applicant a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of its Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Special Permit Application.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Special Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code of the City of Marlborough.
- 8) No operation of this Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) Applicant shall securely attach cables to the outside of the tank in such a manner as to prevent noise and/or other disturbance that would be obtrusive to the neighborhood.
- 11) 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 District 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.

12) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall certify that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall certify that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.

Yea: 9 – Nay: 2

Yea: Delano, Ferro, Schafer, Seymour, Clancy, Ossing, Pope, Vigeant, Levy

Nay: Juair, Landers

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:45 p.m.