



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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APRIL 6, 2009

Regular meeting of the City Council held on Monday April 6, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juaire, Seymour, Clancy and Landers. Meeting adjourned at 10:40 p.m.

ORDERED: Minutes, City Council Meeting, March 23, 2009, **FILE AS AMENDED**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING On the Application for Revised Special Permit from Attorney Bergeron, on behalf of Toll MA Land Limited Partnership, to construct 69 retirement units on less than 14 acres and to revise current permit conditions accordingly, all were heard who wish to be heard, hearing adjourned at 8:25 p.m.; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING On the Application for Special Permit from Hancock Associates, on behalf of Marlborough Savings Bank, for drive-thru teller and ATM at proposed 16,500 sq. foot bank/office building at 81 Granger Blvd., all were heard who wish to be heard, hearing adjourned at 9:33 p.m.; adopted.

ORDERED: **Council President Vigeant requested that the City Clerk read 3 disclosure statements filed by Mayor Stevens.** That the budget transfer request in the amount of \$75,000.00 which moves funds from Undesignated to Water MR Plant for the purpose of maximizing water production at the Millham Water Treatment Facility and minimizing use of the MWRA water, therefore enabling DPW to immediately authorize the accelerated production at Millham, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900

\$75,000.00

Undesignated Fund

TO:

Acct. # 6190006-52322

\$75,000.00

Water MR Plant

ORDERED: That Council Order No. 07-1001543 **noted below**, which provides for an abbreviated budget authorization format as recommended by the Massachusetts Department of Revenue Financial Review and adopted for FY09 which is due to expire on June 30, 2009 per its "Sunset Clause" provision, be extended for one-year to provide for the continuation of Order No. 07-1001543 through FY10, refer to **FINANCE COMMITTEE**; adopted.

That the City Council **APPROVE** the Massachusetts Department of Revenue Financial Review Recommendation for adopting an abbreviated budget authorization format for all departments for the FY08 budget process.

Background: The Mass DOR report recommended that the city adopt the best financial practices by approving the FY08 budget as salary and expenditure line items for each department as opposed to the current practice of approving each line item. Department heads would be able to authorize transfers within their department for expenditure line items only. The Auditor will provide a summary of these transfers each month to the City Council. All salary transfers and transfers between departments would require City Council approval. This is for the FY08 budget only, with the provision of a “**Sunset Clause**” that the City Council will assess the results at the end of FY08 to determine if the practice will continue.

ORDERED: That the communication from the Mayor regarding an update pertinent to the search for a Director of Personnel, refer to **PERSONNEL COMMITTEE IN ADDITION TO PROVIDING ALL ADVERTISEMENTS FOR THIS POSITION TO SAID COMMITTEE**; adopted.

ORDERED: That Agenda #7, Communication from the City Solicitor regarding Special Permit from New Cingular Wireless PCS for 860 Boston Post Rd. East in proper form, be moved to Reports of Committees; **APPROVED**; adopted.

Councilor Juaire abstained

ORDERED: That the application of Tony Bitar, d/b/a Hannoush Jewelers, for Junk Dealer’s license, refer to **PUBLIC SERVICES COMMITTEE** adopted.

ORDERED: That the Communication from MetroWest Growth Management Committee re: advantages of a full time City Planner, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the Communication from Metropolitan Area Planning Council re: advantages of a full time City Planner, refer to **PERSONNEL COMMITTEE**; adopted.

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

- A. Valerie Harding, 389 Sudbury St., other property damage
- B. Walter Oranian, 99 Pleasant St., other property damage
- C. Manuel Rego, 193 Stevens St., residential mailbox
- D. Laura Wilner, 172 Stearns Rd., residential mailbox

Reports of Committees:

Councilor Clancy orally reported the following out of the Personnel Committee:

Order No. 09-1002079 – Communication from the Mayor regarding full-time City Planner. Recommendation of the Personnel Committee is to table so that they can continue discussions regarding this position.

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

Order No. 09-1002082 – Application of Post Road Used auto parts for renewal of Junk Dealer's License Recommendation of the Public Services Committee is to recommend approval 3-0.

Order No. 09-1002094 – Application of Arch Stanton LLC, d/b/a US Gold Network, for Junk Dealer's License. Recommendation of the Public Services Committee is to recommend approval 3-0.

Order No. 09-1001917 – Application of Nobiano Coelo Rangel, d/b/a Silver Games, 259 Boston Post Rd. East #10. Recommendation of the Public Services Committee is to deny 3-0 per recommendation of the Police Chief.

Councilor Clancy orally reported the following out of Personnel Committee:

Order No. 09-1002137 - Application of Bernard Novitch, d/b/a Collectors Paradise, 771 Boston Post Rd. East. Councilor Juaira abstained. The committee discussed the condition of the property of the applicant's residence at 249 Pleasant St. The City Code officer submitted a letter dated April 1, 2009 describing the condition of the personal property. Ward Councilor Robert Seymour expressed his concerns regarding the blight condition at the residence as it stands out as an eyesore amongst the other properties on Pleasant St. Applicant was asked to clean up his property before any action is taken for the Junk Dealer's License. **Recommendation of the Public Services Committee is to table.**

ORDERED: That the City Council take a formal vote at the regular meeting of April 6, 2009 to adopt either a line item budget for FY 2010 or a category-based budget and forthwith notify the Mayor of the body's decision, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Operations and Oversight Committee obtain information concerning the asset control policies and procedures put in place last year with respect to monies received and/or collected by the City, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the DPW Commissioner take the following steps in connection with budgetary issues previously discussed by the City Council and in keeping with other municipal departments in the City:

- Prepare the DPW 2010 Operating Budget, to include a three percent reduction from the FY2009 budget, similar to the request made of the School Department;
- Reduce the number of DPW employees by four (4) which is the number of vacant positions in the Commissioner's report, "DPW OPERATIONS REVIEW: FORESTRY, PARKS AND CEMETERIES," delivered to the City Council in October 2008 and discussed with the Operations & Oversight Committee in subsequent hearings;
- Take steps to privatize minimal lawn maintenance functions as discussed with the Operations & Oversight Committee, be and is herewith **RECONSIDERED TO PLACE ON APRIL 27, 2009 AGENDA IN ADDITION TO THE CITY SOLICITOR EXPLORE THE POSSIBILITY OF MAYOR STEVENS RELINQUISHING AUTHORITY OVER THE DPW DEPARTMENT TO COUNCIL PRESIDENT VIGEANT WHO WOULD SERVE AS ACTING MAYOR SPECIFIC TO THE DPW DEPARTMENT IN LIGHT OF THE MAYOR'S RECENT DISCLOSURES. FURTHER REQUEST THAT THE CITY SOLICITOR CLARIFY THE PROCEDURES BY WHICH THIS PROCESS WOULD TAKE PLACE.**

ORDERED: That the appointment of James Confrey to the Board of the Council on Aging with a term to expire May 1, 2010, **APPROVED**; adopted.

ORDERED: That the City Council recommend to the Assabet Valley Regional Vocational High School District Committee that the agreement establishing the Assabet Valley Regional Vocational High School District, as amended, be further amended by adoption of option number 4 of Section 14E of Chapter 71 of the Massachusetts General Laws, namely, weighing the votes of elected members on the Assabet Valley Regional Vocational High School District Committee according to the population they represent, **APPROVED**; adopted.

Yea: 9 – Nay: 2

Yea: Delano, Ferro, Schafer, Juairé, Seymour, Landers, Ossing, Vigeant, Levy

Nay: Clancy, Pope

ORDERED: That the grant awarded to the Marlborough Police Department from the Commonwealth of Massachusetts Executive Office of Public Safety and Security in the amount of \$69,262.00 to be used for Emergency Telecommunications expenses (including dispatcher salaries) and furniture replacement for dispatch center in accordance with MGL, Chapter 44, Section 53A for purposes outlined, **APPROVED**; adopted.

ORDERED: The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to New Cingular Wireless PCS, LLC, at 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is New Cingular Wireless PCS, LLC (“AT&T”), having a usual place of business at 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter “Applicant”).
2. Through its Application to City Council for issuance of a Special Permit (hereinafter “Special Permit Application”), the Applicant seeks permission to allow co-location of six (6) wireless communications panel antennas on an existing 140’ high wireless communications monopole, and one (1) GPS antenna mounted on a proposed ice bridge, and a 12’ X 20’ equipment shelter on the ground within an existing compound and associated cables, utilities and equipment (hereinafter “Proposed Wireless Communications Facility Project” or “Proposed WCF Project”), substantially as depicted on a set of plans entitled “Marlborough Rte. 20 East,” by Aerial Spectrum, Incorporated, dated 12/11/08, as submitted with the Special Permit Application, and as revised 3/17/09 (hereinafter “Plans”).
3. The location of the Proposed WCF Project is 860 Boston Post Road East Marlborough, MA and is more particularly identified on the Assessor’s Map of the City of Marlborough as Map 61 of Lot 16 (hereinafter “the Site”). The owner of record for the Site is the CITY OF MARLBOROUGH.

4. The Applicant is a lessee of Bell Atlantic Mobile of Massachusetts Corporation, Ltd. d/b/a Verizon Wireless, which owns the existing 140' high wireless communications monopole (the "VZW Tower"). The City of Marlborough is the owner of the underlying compound area.
5. The Site is zoned Rural Residential (RR) and Business (B). The Proposed WCF is located in the Rural Residential (RR) portion of the Site. Wireless Communication Facilities are allowed by grant of Special Permit in the Rural Residential (RR) Zoning District.
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 Building Commissioner, on behalf of the Planning Director, 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 WCF Project on January 26, 2009, for which proper notice was published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCF 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 requested waivers of certain Preliminary Site Plan requirements of Article VIII, § 200-59 (C) (5) and (6) of the Marlborough Zoning Ordinance governing special permits, on the grounds that (a) the VZW Tower exists; (b) the approved plans for the VZW Tower show the required information; (c) AT&T is making a minimal addition to the Site in the form of the co-located Proposed WCF Project on and next to the existing, approved VZW Tower; and (d) some of the requirements do not apply to a tower at all. The Applicant subsequently withdrew its request as to § 200-59 (C) (5), and the Applicant now agrees that § 200-59 (C)(6) is not applicable to the Proposed WCF Project.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.

13. 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 WCF 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 WCF Project and the Proposed WCF 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, 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 WCF 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 13:**
 - 1) The Proposed WCF 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 applicable 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 WCF 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 WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this 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 WCF 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 intends to maintain back-up batteries in its proposed equipment shelter. Any disposal of such batteries shall be conducted in a safe manner and in compliance with all applicable environmental laws and regulations.
- 8) No operation of this Proposed WCF Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) The Proposed WCF Project shall be subject to site plan review, if applicable.
- 10) Applicant's co-axial cables shall run inside the monopole structure.
- 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 WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCF Project does become operational and, further, must submit said written report

within one (1) month after said operational date. The written report to the City Council shall: i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCF Project; ii) include a professional opinion by a third party certifying that the Proposed WCF Project fully complies with all applicable radio frequency emission standards promulgated by the Federal Communications Commission (“FCC”) and any other applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall: i) state what the changes or upgrades are; (ii) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; (iii) provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) include a professional opinion by a third party certifying that the Applicant’s changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards.

- 13) Applicant, solely at its own expense and in a manner acceptable to the City of Marlborough, shall remove all City of Marlborough equipment from the existing Fire Department (F.D.) equipment shelter shown on the Plans and shall relocate the City’s equipment inside the Applicant’s proposed equipment shelter shown on the Plans. Applicant shall grant the City of Marlborough access to the City’s equipment inside the Applicant’s proposed equipment shelter at all times, 24 hours per day, 7 days per week, it being expressly understood by the Applicant that the City’s equipment is for emergency communications involving or relating to the health, safety and welfare of the public. In the event either that the Applicant’s special permit is revoked by the City, or that the Applicant’s lease with Verizon Wireless expires or is terminated, then the Applicant, solely at its own expense and in a manner acceptable to the City of Marlborough, shall remove all City of Marlborough equipment from inside the Applicant’s proposed equipment shelter shown on the Plans and shall relocate the City’s equipment to a Fire Department equipment shelter at the approximate location currently shown on the Plans.

Yea: 10 – Nay: 0

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

Abstain: Juairé

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:40 p.m.