



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
June 8, 2009, 2009**

Regular meeting of the City Council held on Monday June 8, 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 10:29 p.m.

ORDERED: That the Mayor and Council President presented City Scholarships certificates to the following students, **FILE**; adopted.

Grace Reid
229 Raymond Road
Hudson High School

Kristen Keymont
390 Sudbury Street
Marlborough High School

Ryan Herrick
103 Andrews Road
Marlborough High School

Julie Cain-Mailly
11 Ewald Avenue
Marlborough High School

Brittany Ferrecchia
82 Paquin Drive
Hudson Catholic High School

ORDERED: That the minutes of the Special City Council Meeting June 2, 2009, **FILE**; adopted. **Councilor Schafer abstained.**

ORDERED: That the minutes of the City Council Meeting May 11, 2009, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Petition from National Grid to install 60' of primary ug across Forest St. from P.47 to a hand hole, **CONTINUED UNTIL JUNE 22, 2009**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the proposed FY2010 budget hearing adjourned at 8:30 p.m.; adopted.

Suspension of Rules requested-granted

ORDERED:

That the request to move the Finance's Report of Committee after the Budget Hearing, be and is herewith **APPROVED**.

MOTION to Suspend the Rules to consider the Finance Committee's FY10 budget, be and is herewith **DOES NOT CARRY**.

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09-1002197-1 – FY10 Budget: The Finance Committee continued the review of the FY10 budget presented in the Mayor's letter dated May 7, 2009. **Recommendation of the Finance Committee is to reduce the Mayor's FY10 budget by \$433,181.00, 5-0. The Finance Committee FY10 budget report is submitted in a separate document.**

ORDERED: That the budget transfer request in the amount of \$300,000.00 to move funds from Electricity and Undesignated to Roof/Repair Replace accounts which allow for roof replacements at the City's Police Station and the Middle School gym and Kane School, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900	\$150,000.00
Undesignated	
Acct. # 11920006-52120	\$150,000.00
Electricity	

TO:

Acct. # 11920006-52444	\$300,000.00
Roof Repair/Replace	

ORDERED: That the budget transfer request in the amount of \$66,777.00 which moves funds from Insurance Proceeds Over 20K to City Hall Repair and Maintenance accounts to replace Rooftop Evaporative Cooler, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 2700099-48470	\$66,277.00
Insurance Proceeds Over 20K	

TO:

Acct. # 11920006-52440	\$66,277.00
City Hall Repair and Maintenance	

ORDERED: That the transfer request in the amount of \$21,000.00 to move funds from Undesignated to Stabilization-Affordable Housing as condition 22 of St. Mary's Special Permit was satisfied, **APPROVED AND REQUEST THAT THE COUNCIL PRESIDENT, ON BEHALF OF THE CITY COUNCIL, SUBMIT A LETTER TO THE COMMUNITY DEVELOPMENT AUTHORITY PERTINENT TO THE AFFORDABLE HOUSING PROPOSAL**; adopted.

ORDERED: That the budget transfer request in the amount of \$76,096.00 which moves funds from Undesignated to GPS Equipment allowing for the purchase of GPS devices for 74 DPW vehicles and well as an additional 74 devices for use by private vehicles during winter snow operations, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900

\$76,096.00

Undesignated

TO:

Acct. # 19300006-58735

\$76,096.00

ORDERED: That the Department of Emergency Management Performance Grant in the amount of \$2,500.00, to be used to upgrade the Comprehensive Emergency Management Plan for purposes outlined in MGL, Chapter 44, and Section 53A, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the FEMA Ice Storm Grant in the amount of \$146,570.90 which provides 75% reimbursement for allowable expenditures related to the 2008 ice storm for purposes outlined in MGL, Chapter 44, and Section 53A, **APPROVED**; adopted.

ORDERED: That the Workforce Investment Act Summer Jobs Grant in the amount of \$29,165.00 which provides funding to address growing unemployment concerns among youth aged 14-24 for purposes outlined in MGL, Chapter 44, and Section 53A, **APPROVED**; adopted.

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that a certain portion of land located on the northerly corner of Maple Street and Valley Street as more particularly described herein be taken for the purpose of maintaining public safety improvements, including the use and maintenance of this area for highway purposes, and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the fee simple interest and any other rights and interests in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN

A certain portion of land located on the northerly corner of Maple Street and Valley Street in Marlborough, Middlesex County, Massachusetts and being shown as LC Lot 9 on a plan entitled, "Taking Plan, Subdivision of Land Court Plan No. 8742C, Marlborough, Massachusetts

(Middlesex County); Scale 1"=40'; Date: November 10, 2008, Prepared For: L-A 175 Maple Street Land Owner LLC, 900 Chapel Street, New Haven, Connecticut, Prepared By: GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA." said Plan to be recorded with the Middlesex South District Registry of Deeds together with an attested copy of this Order. Meaning and intending to take and taking by Eminent Domain the fee simple interest, shown as LC Lot 9 as described in the aforementioned plan, which is a portion of the land as described in the deed recorded with the Middlesex South District Registry of Deeds in Book 48218, Page 138 and also recorded with the Middlesex South District Registry of Deeds in Certificate Number 237805 at Book 1327, Page 2.

OWNERS: L-A 175 Maple Street Land Owner LLC
 900 Chapel Street
 New Haven, Connecticut

The land consisting of LC Lot 9 as referred to in the description above is also shown on the City of Marlborough Assessors Map as a portion of Parcel 132 on Map 82. The total land area being taken consists of 459 ± square feet or 0.01 ± acres.

AWARDS

The City Council hereby makes the following awards for damages for the owner or owners of record:

<u>OWNER</u>	<u>MARLBOROUGH ASSESSORS MAP/PARCEL</u>	<u>AREA</u>	<u>AWARD</u>
L-A 175 Maple Street Land Owner, LLC	Portion of Map 82, Parcel 132	459 ±SF or 0.01 ± acres	\$0.00

refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the sum of Fourteen Thousand Six Hundred Seventy-Seven Dollars and Zero Cents (\$14,677.00), designated as City appropriations, is hereby appropriated in the City of Marlborough.

This sum is to be placed into the budgetary line item as defined below, and it is further specified, pursuant to § 53E of Chapter 44 of the General Laws, that said amount shall be offset by the estimated receipts from the fees charged to users of the Site Plan Review process pursuant to § 63-15.F. of Chapter 63 of the City Code of the City of Marlborough, **REFER TO PERSONNEL COMMITTEE**; adopted.

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
26117401-50032	A portion of the salary for the City Planner.	\$14,677.00

ORDERED: That Agenda #15, Communication from the City Solicitor regarding Special Permit from the Gutierrez Co to develop Map 67, Lot 45 & Map 68 Lot 30A, Lakeside Ave. and Elm St. in proper form, be moved to Item 31, **APPROVED**; adopted.

ORDERED: That the supplemental materials for Special Permit for Drive-Thru Teller and ATM at 81 Granger Blvd., Order No. 09-1002152A, be moved to Reports of Committee, **APPROVED**; adopted.

Councilor Delano abstained

ORDERED: That the Central Massachusetts Mosquito Control Project regarding investigating resident's complaints on June 3, 10, 17, 24 and July 1, **FILE**; adopted.

ORDERED: That the Communication from the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs re: review of the Water Management Act permit application for Marlborough DPW, **FILE**; adopted.

ORDERED: That the Communication from the Department of Energy, Washington DC, re: eligibility of a direct formula grant as part of the Energy Efficient and Conservation Block Grant (EECBG) Program, **FILE**; adopted.

ORDERED: That the Communication from the Massachusetts Electric and Nantucket Electric Co.'s re: General Increase in Electric Rates and approval of a Revenue Decoupling Mechanism, **FILE**; adopted.

ORDERED: That the Communication from Laura Elsheiner re: taxi cab businesses using private vehicles, refer to **THE POLICE CHIEF**; adopted.

ORDERED: That the minutes, Planning Board, April 27, 2009, **FILE**; adopted.

ORDERED: That the minutes, Community Development Authority, April 30, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, May 26, 2009, **FILE**; adopted.

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

- A. Dennis Walsh, 44 Harrison Pl., Other Property Damage
- B. Verizon, 247 Maple St., Damaged U.G. Cable
- C. Verizon, Vega Rd. and Juniper Rd., Damaged U.G. Cable

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Order No. 09-1002197-1 – FY10 Budget: The Finance Committee continued the review of the FY10 budget presented in the Mayor's letter dated May 7, 2009. **Recommendation of the Finance Committee is to reduce the Mayor's FY10 budget by \$433,181.00, 5-0. The Finance Committee FY10 budget report is submitted in a separate document.**

Order No. 09-1002199 – Transfer of \$1,506,917.81 from Undesignated Funds to DPW Snow Removal Account. The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting a transfer of \$1,506,917.81 from the undesignated funds account to the DPW snow removal account. **Recommendation of the Finance Committee is to approve 4-1 (Councilor Levy opposed).**

Order No. 09-1002197-2 – Order to Approve Expenditures in Excess of Available Appropriation in the Snow and Ice Accounts. The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting the City Council approve an order to over spend the appropriations in the FY10 snow and ice accounts. The Finance Committee approved the expenditure of \$500,000.00 over the FY10 appropriations. The Mayor will be required to request prior to City Council approval to expend more than \$1,000,000.00 in the snow and ice accounts for FY10. **Recommendation of the Finance Committee is to approve 5-0 the revised order below (revision in bold text):**

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 the expenditures of **\$500,000.00** in excess of available appropriation for snow and ice removal for fiscal year 2010.

Order No. 09-1002200 – Intra-Department Transfers: The Finance Committee reviewed the Mayor's letter dated May 6, 2009 requesting the approval of year end intra-department transfers for Public Facilities, Inspectional Services, DPW, and Police departments. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the following intra-department transfers 5-0.

Transfer in the amount of \$8,000.00 from Account No. 11920003-50560 (Custodian) to Account No. 11920001-50385 (Electrician)

Transfer in the amount of \$700.00 from Account No. 12410004-53150 (Advertising) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$3,200.00 from Account No. 1241006-57100 (In-state Travel) to Account No. 12410001-50380 (Electrical Inspector)

Transfer in the amount of \$7,200.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Stump Removal- FP & C)

Transfer in the amount of \$2,200.00 (FINCOM reduced from \$9,900.00) from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001403-51240 (Temp. Part-time- Repair)

Transfer in the amount of \$6,600.00 from Account No. 14001503-50740 (Equipment Operators- FP & C) to Account No. 14001306-52600 (Traffic & Fld light- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001306-55440 (Drainage Maintenance- Streets)

Transfer in the amount of \$1,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001306-55500 (Stream Maintenance- Streets)

Transfer in the amount of \$8,146.00 (FINCOM reduced from \$12,146.00) from Account No. 14001501-50690 (Foreman- FP & C) to Account No. 14001303-51310 (Overtime-Regular- Streets)

Transfer in the amount of \$10,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001305-55310 (Highway Constr. Materials- Streets)

Transfer in the amount of \$24,100.00 from Account No. 61090001-50740 (Equipment Operator) to Account No. 61090006-52322 (Water Marlboro Plant)

Transfer in the amount of \$7.86 moving funds from Account No. 14001003-51920 (Sick Leave Buy Back) to Account No. 14001003-51430 (Longevity)

Transfer in the amount of \$1,000.00 from Account No. 12100003-51920 (Sick Leave Buy Back) to Account No. 12100003-51195 (Detention Attendant)

Recommendation of the Finance Committee is to approve the intra-department transfers 4-1. (Councilor Ferro opposed).

Transfer in the amount of \$4,018.00 from Account No.12410004-53180 (Professional & Technical Services) to Account No. 12410002-50770 (Senior Clerk)

Transfer in the amount of \$2,150.00 from Account No. 14001503-50740 (Equipment Operator) to Account No. 14001002-50770 (Senior Clerk)

Transfer in the amount of \$240.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001303-51240 (Temp. Part-time- Streets)

Recommendation of the Finance Committee is to deny the following intra-department transfers 3-2. (Councilor's Landers and Ossing opposed):

Transfer in the amount of \$200.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001505-54220 (Office Supply/Expense- FP & C)

Transfer in the amount of \$900.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54610 (General Materials- FP & C)

Transfer in the amount of \$400.00 from Account No. 14001503-50740 (Equipment operators- FP & C) to Account No. 14001505-54680 (Cemetery Supplies- FP & C)

Recommendation of the Finance Committee is to approve the following intra-department transfers 3-2. (Councilor's Ferro and Levy opposed):

Transfer in the amount of \$4,000.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001503-51241(Temp. Help- Downtown- FP &C)

Recommendation of the Finance Committee is to deny the following intra-department transfers 5-0:

Transfer in the amount of \$1,400.00 from Account No. 14001301-50660 (Assistant City Engineer- Streets) to Account No. 14001504-53810 (Insect & Pest Control- FP & C)

Transfer in the amount of \$16,000.00 from Account No. 61090001-50460 (Meter Reader) to Account No. 61090006-52322 (Water Marlboro Plant)

Order No. 09-1002201-1 – Inter-department Transfers: The Finance Committee reviewed the Mayor's letter dated May 6, 2009 requesting the approval of year end inter-department transfers from the Fringes account to the Personnel, Information Technologies and DPW departments. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the transfers 5-0:

\$7000.00 to Personnel Director salary account 11520001-50530

\$45.00 to IT Senior analyst account 11550001-50210

\$12,109.00 to DPW SLBB account 14001303-51920

Recommendation of the Finance Committee is to approve the transfers 3-2. (Councilor's Levy and Ferro opposed)

\$495.00 to DPW Street Longevity account 14001303-51430

The City Council approved the \$5,000.00 transfer to the Veterans benefit account at the May 11, 2009 City Council meeting.

Order 09-1002198 – Transfer \$1,538,617.00 from Undesignated Funds to Department Capital Outlay Accounts: The Finance Committee reviewed the Mayor's letter dated May 7, 2009 requesting transfers from the Undesignated Fund to various department capital outlay accounts. The Finance Committee actions on the transfers are below:

Recommendation of the Finance Committee is to approve the transfers from Undesignated Funds to the Capital Outlay accounts 5-0.

\$54,000.000 Police Department account 193000058508

\$36,500.00 Fire Department account 193000058513

\$200,000.00 Public Facilities account 193000058467

\$350,000.00 Information Technologies account 193000058618

\$138,917.00 Emergency Management account 193000058596

The Finance Committee voted 3 – 2 (Councilor’s Landers and Ossing opposed) to refer the DPW \$759,200.00 back to the Mayor to address the funding of the implementation of the GPS system.

Order No. 09-1002202 – GIS Revolving Fund: The Finance Committee reviewed the Mayor’s letter dated May 7, 2009 requesting the reauthorization of the GIS revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5–0 the reauthorization of the GIS revolving fund for FY10.**

Order No. 09-1002203 – Fairmount Hill Revolving Fund: The Finance Committee reviewed the Mayor’s letter dated May 7, 2009 requesting the reauthorization of the Fairmount Hill revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5–0 the reauthorization of the Fairmont Hill revolving fund for FY10.**

Order No. 09-1002204 – Sligo Hill Revolving Fund: The Finance Committee reviewed the Mayor’s letter dated May 7, 2009 requesting the reauthorization of the Sligo Hill revolving fund for FY10. **Recommendation of the Finance Committee is to approve 5-0 the reauthorization of the Sligo Hill revolving fund for FY10.**

Order No. 08/09-1002034 – Municipal Parks and Playground Revolving Fund: The Finance Committee removed from the table the Mayor’s letter dated October 22, 2008 requesting the establishment of the Municipal Parks and Playgrounds revolving fund for FY10. **Recommendation of the Finance Committee is to approve the establishment of the Municipal Parks and Playgrounds revolving fund for FY10, 4-1 (Councilor Ossing opposed)**

Councilor Levy reported the following out of the Legislative and Legal Affairs Committee:

Order No. 09-1002125 - Communication from City Solicitor Donald Rider re: proposed ordinance entitled “Abandoned and/or Foreclosing Residential Properties.

The committee met with the City Solicitor and the Code Enforcement Officer to discuss the proposed ordinance and how it will address safety and blight issues. It was recommended that upon approval, a notice should be distributed to all residential property owners as an attachment to water or tax bills or via electronic communication if possible. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval 3-0 and to Suspend the Rules to advertise the proposed Ordinance by adding Chapter 66 entitled "Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties" and Amendment to Chapter 147 "Non-Criminal Disposition" by amending Section B, by adding §29. This item will appear on the June 22, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the June 15, 2009 agenda. Note: Councilor Schafer abstained to the Suspension of Rules and the Advertising.**

Order No. 09-1002215: Proposed ordinance entitled “Public Consumption of Marihuana or Tetrahydrocannabinol”. Councilor Ferro explained this ordinance is tightly based on the language proposed by the office of the Attorney General for cities and towns to adopt. The Police Chief and Code Enforcement Officer met with the committee and explained how the ordinance would prohibit public consumption and add enforceability to their current efforts. Both spoke in favor of adopting the ordinance. **Recommendation of the Legislative and Legal Affairs Committee is to recommend approval 3-0 and to Suspend the Rules to advertise the proposed Ordinance by adding Chapter 51 entitled “Public Consumption Of Marihuana Or Tetrahydrocannabinol" and Amendment to Chapter 147 “Non-Criminal Disposition” by amending Section B, by adding §30. This item will appear on the June 22, 2009 agenda as the advertisement cannot be published in time to comply with the ten day period prior to the June 15, 2009 agenda. Note: Councilor Schafer abstained to the Suspension of Rules and the Advertising.**

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

Order No. 09-1002206 - Application of Marlboro Cozy Café, 487A Lincoln Street for RENEWAL OF POOL TABLE (2) LICENSE. Chief Leonard is without objection to the renewal. **Recommendation of the Public Services Committee is to approve 3-0.**

Order No. 09-1002172 - Application of Tony Bitar, d/b/a Hannoush Jewelers for Junk Dealer’s License at 601 Donald Lynch Boulevard. Chief Leonard is without objection to the issuance of the license. **Recommendation of the Public Services Committee is to approve 3-0.**

Order No. 09-1002127A - Application of National Grid to install one new pole on Florence Street to release the load from another substation, #14 – 50; no objections, no questions.

- **City Engineer's Comments: NGRID's application for a new pole on Florence Street** – Although the sketch provided to you by NGRID is not completely accurate, Engineering does not take exception to the proposed installation of a new utility pole. I would note that applications such as these should be coordinated with Engineering's Permits Section and should have included all subsurface utilities. Much of the information that we look for can be extracted from our GIS database.

Recommendation of the Public Services Committee is to approve 3-0.

Order No. 09-1002188 - Application of National Grid to install 60' of primary underground service wire across Forest Street from Pole #47 to a hand hole to service Special Olympics at 512 Forest Street. Recommendation of the Public Services Committee is to approve 3-0. The hearing was continued to June 22, 2009.

Order No. 09-1002150 - Communication from Commissioner Ronald LaFreniere with request for City Council authorization, pursuant to Chapter 40, section 6-C Snow and Ice Removal of Private Ways, for the removal of snow and ice from LONG DRIVE – BERLIN FARMS SUBDIVISION, OFF BERLIN ROAD. Recommendation of the Public Services Committee is to table for more information 3-0.

Councilor Pope reported the following out of the Urban Affairs Committee:

Order No. 09-1002151A – Application for Revised Special Permit from Toll MA Land Limited Partnership to construct 69 Retirement Units on Less than 14 Acres and to revise current Special Permit conditions accordingly. The Committee met with the Applicant and discussed the reason for the meeting was due to the late submission of information to the Urban Affairs Comm. by the City Engineer. The Committee agreed, along with other councilors present, that the late submission of the information by the City Engineer could best be handled at the Site Plan Review stage. Councilor Schafer motioned to "Reaffirm the vote previously taken by the Committee to approve the project, as submitted. **Recommendation of the Urban Affairs Committee is to recommend approval 4-0, Councilor Pope was absent and to Suspend the Rules to refer to the City Solicitor with any typographic errors which were noted at the meeting & to be put in proper form for the next City Council meeting. Councilor Schafer motioned that "A letter is to be sent by the Urban Affairs Comm. or by the Council President to all of the Dept. Heads, with a copy to the Mayor, reminding them that they are required, by ordinance, to submit comments to the Urban Affairs Commission when requests for Special Permits are before the City Council". Recommendation of the Urban Affairs Committee is to recommend approval 4-0, Councilor Pope was absent.**

Order No. 09-1002152 – Application for Special Permit on behalf of Marlborough Savings Bank for a Drive-Thru Teller and ATM at proposed 16,500 s.f. bank/office building at 83 Granger Blvd. Recommendation of the Urban Affairs Committee is to recommend approval 5-0, and to Suspend the Rules to refer to the City Solicitor to be put in proper form for the next City Council meeting and provide the City Solicitor with supplemental materials submitted for June 8, 2009 agenda, item 16.

Councilor Pope reported the following out of the Open Space Committee:

Order No. 09-1001984 - Communication from the Mayor re: Berlin Farms Subdivision, Open Space Land Acceptance regarding deed of a parcel of land consisting of 2.356 acres associated with the Berlin Farms Subdivision, together with letter from the Conservation Commission asking that the City Council accept the deed for the purposes of the promotion and development of natural resources, watershed protection, passive recreation and conservation. Additionally, that the City Council accept payment of \$5,000.00 to be placed in the Conservation Maintenance Trust, account #845-00-4830, for the purposes of managing the Berlin Farms parcel and other conservation land. Recommendation of the Open Space Committee is to recommend approval and acceptance of the deed for the purposes outlined; further to recommend acceptance of the payment of \$5,000.00 to be placed in the Conservation Maintenance Trust account #845-00-4830, 2-0. Councilor Ossing was absent.

ORDERED: At President Vigeant's request to recess at 9:07 PM and returned to open meeting at 9:13 PM, **APPROVED**; adopted.

Suspension of the Rules requested – granted to advertise the Two City Code Ordinances regarding Abandoned and/or Foreclosing Residential Properties before final passage.

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THERETO A NEW CHAPTER 66, ENTITLED "REGISTRATION AND MAINTENANCE OF ABANDONED AND/OR FORECLOSING RESIDENTIAL PROPERTIES," AS FOLLOWS:

CHAPTER 66

REGISTRATION AND MAINTENANCE OF ABANDONED AND/OR FORECLOSING RESIDENTIAL PROPERTIES

Sec. 66-1. Purpose; Enforcement Authority.

- A. It is the purpose and intent of this Chapter to protect and preserve public safety and security, and the quiet enjoyment of occupants, abutters and neighborhoods, by: (i) requiring all residential property owners, including lenders, trustees and service companies, to register abandoned and/or foreclosing residential properties with the City of Marlborough; and (ii) regulating the maintenance and security of abandoned and/or foreclosing residential properties to help prevent blighted and unsecure residences.
- B. The Building Commissioner of the City of Marlborough has enforcement authority as to this Chapter, pursuant to MGL c. 143, § 3, the State Building Code, and the City's Zoning Ordinance.

Sec. 66-2. Definitions.

When used in this Chapter 66, the following terms shall have the following meanings, unless a contrary intention clearly appears:

“Abandoned” means vacant.

“City” means the City of Marlborough.

“Commissioner” means the Building Commissioner of the City of Marlborough or his/her designee.

“Days” means consecutive calendar days, including legal holidays as specified in MGL c. 4, § 7 and weekend days.

“Evidence of abandonment” means any condition that, by itself or in combination with other conditions, might lead a reasonable person to conclude that a property is vacant. Such conditions include but are not limited to overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents and/or governmental employees that the property is vacant; and such evidence as would constitute a violation of the City of Marlborough’s so-called Anti-Blight Ordinance, codified at Chapter 64 of the City Code.

“Foreclosing” means the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower of that loan defaults.

“Initiation of the foreclosure process” means the taking of any of the following actions: (i) taking possession of a residential property pursuant to MGL c. 244, § 1; (ii) publishing the first foreclosure notice of a residential property pursuant to MGL c. 244, § 14; (iii) delivering the mortgagee’s notice of intention to foreclose pursuant to MGL c. 244, § 17B; or (iv) commencing a foreclosure action on a residential property in either the Land Court or the Superior Court.

“Local” means within twenty (20) driving miles of the property in question.

“Mortgagee” means the creditor, including but not limited to service companies, lenders in a mortgage agreement, or any successor in interest of the mortgagee’s rights, interests or obligations under the mortgage agreement.

“Mortgagee in possession” means a mortgagee that, upon default of the borrower, has taken over control and/or occupancy of a property in order to collect income from the property and/or to prepare the property for foreclosure.

“Owner” means every person, entity, service company, property manager or real estate broker, who alone or severally with others:

- (i) has legal or equitable title to any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, including a manufactured housing community (mobile home park); or
- (ii) has care, charge or control of any dwelling, dwelling unit, manufactured home (mobile home unit), building or parcel of land, vacant or otherwise, including a manufactured housing community (mobile home park), in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (iii) is a mortgagee in possession of any such any dwelling, dwelling unit, mobile home unit, building or parcel of land, vacant or otherwise, including a mobile home park; or
- (iv) is an officer or trustee of the association of unit owners of a condominium;
- (v) is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities and has initiated the foreclosure process; or
- (vi) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (vii) is a person who operates a rooming house.

“Property” means any real, residential property, or portion thereof, located in the City of Marlborough, including but not limited to buildings and structures situated on the property.

“Residential Property” means any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

“Vacant” means any residential building or structure not currently legally occupied.

Sec. 66-3. Registration.

- A. All owners of abandoned and/or foreclosing residential properties shall register such properties with the Commissioner on forms provided by the Commissioner.
 - 1. Each registration must state the individual owner’s or agent’s name, phone number and mailing address located within the Commonwealth of Massachusetts as required by MGL c. 59, § 57D, MGL c. 156D, § 5.02, and 950 CMR 113.20; the mailing address may not be a post office box.

2. Each registration must also certify that the property has been inspected by the owner and must identify whether the property is abandoned. If the property shows evidence of abandonment, the property is abandoned for purposes of this Chapter 66. Each registration must designate a local individual or local property management company responsible for the maintenance and the security of the property. This designation must state the individual or company's name, direct phone number, and local mailing address; the mailing address may not be a post office box.
 - a. If the owner's inspection determines that the property is abandoned, the registration must be received by the Commissioner within seven (7) days of the owner's inspection.
 - b. If the owner's inspection determines that the property is not abandoned, but foreclosure proceedings have been initiated, the registration must be received by the Commissioner within seven (7) days of the initiation of the foreclosure process.
 - c. If the Commissioner's inspection pursuant to Section 66-5 determines that the property is abandoned, the registration must be received by the Commissioner within fourteen (14) days of the Commissioner's first citation for improper maintenance.
 - d. If, regardless of any determination as to abandonment, foreclosure proceedings have been initiated, the registration must be received by the Commissioner within seven (7) days of the initiation of the foreclosure process.
- B. All property registrations pursuant to this Section 66-3 are valid for one (1) calendar year from the date when the registration is received by the Commissioner. An annual registration fee of one hundred dollars (\$100.00) must accompany the registration form. Subsequent registrations and fees are due within thirty (30) days after the date of expiration of the previous registration. Subsequent registrations must certify whether the property remains abandoned and/or remains in foreclosure, as the case may be.

- C. Any owner that has registered a property under this Section 66-3 must report any change in information contained in the registration within ten (10) days of the change.
- D. Once the property is no longer abandoned or is sold, the owner shall provide the Commissioner with written notice of legal occupancy or proof of sale, as the case may be.

Sec. 66-4. Maintenance and Security Requirements.

- A. Properties subject to this Chapter must be maintained in accordance with the State Sanitary Code, the State Building Code, and local regulations concerning external and/or visible maintenance including but not limited to the City of Marlborough's so-called Anti-Blight Ordinance, codified at Chapter 64 of the City Code. The local owner or local property management company must inspect and maintain the property on a monthly basis for so long as the property is abandoned or shows evidence of abandonment. The name and the 24-hour contact phone number of the local owner or local property management company responsible for the maintenance must be posted on the front of the property so as to be clearly visible by the Commissioner or his/her designee from the street.
- B. In accordance with state law, including but not limited to MGL c. 143, §§ 6-10 and 780 CMR 121.0, abandoned property that is abandoned or that shows evidence of abandonment must be made safe and must be secured so as not to be accessible to unauthorized persons.
- C. Compliance with this Section 66-4 does not relieve the owner of any applicable obligations set forth in code regulations, covenant conditions and restrictions, and/or homeowners' association rules and regulations.

Sec. 66-5. Inspections.

Pursuant to the State Building Code, the Commissioner or his/her designee shall have the authority and the duty to inspect properties subject to this Chapter for compliance with this Chapter and to issue citations for any violations. The Commissioner or his/her designee shall have the discretion to determine when and how such inspections are to be made, provided that such determination is reasonably calculated to ensure that this Chapter is enforced.

Sec. 66-6. Violations and Penalties.

- A. A failure to initially register with the Commissioner pursuant to Section 66-3 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00.

- B. A failure to properly designate the name of the local individual or local property management company responsible for the maintenance and the security of the property pursuant to Section 66-3 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00 for each violation, and a like fine for each day's continuation of such violation.
- C. A failure to maintain and/or to secure the property pursuant to Section 66-4 shall be enforced by non-criminal disposition pursuant to MGL c. 40, § 21D, resulting in a fine of \$300.00 for each week during which the property is not maintained and/or not secured in compliance with Section 66-4.
- D. The penalties provided in this Section 66-6 shall not be construed to restrict the City from pursuing other legal remedies available to the City.

Sec. 66-7. Appeals.

Any person aggrieved by the requirements of this Chapter or by a decision issued hereunder may seek relief in any court of competent jurisdiction as provided by the laws of the Commonwealth.

Sec. 66-8. Applicability.

If any provision of this Chapter imposes greater restrictions or obligations than those imposed by any general law, special law, regulation, rule, ordinance, order or policy, then the provisions of this Chapter shall control.

Sec. 66-9. Regulatory Authority.

The Commissioner shall have the authority to promulgate rules and regulations necessary to implement and enforce this Chapter.

Sec. 66-10. Severability.

If any provision of this Chapter is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from this Chapter's remaining provisions, which shall remain in full force and effect.

Sec. 66-11. Notice.

A copy of this ordinance is to be advertised in one (1) newspaper of general circulation in the City of Marlborough, and is to be mailed to all loan institutions, banks, real estate offices, and management companies located in, and/or having legal or equitable interest in any residential property located in, the City of Marlborough.

Sec. 66-12. Effective Date.

The provisions of this Chapter shall take effect immediately upon passage and all provisions shall be enforced immediately, except that no monetary fine shall be imposed pursuant to this Chapter until thirty (30) days after the date when notices are mailed pursuant to Section 66-11.

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 147, ENTITLED "NON-CRIMINAL DISPOSITION," AS FOLLOWS:

Chapter 147 is hereby amended by adding to section B the following new sub-section:

29. Registration and Maintenance of Abandoned and/or Foreclosing Residential Properties (City Code, Chapter 66).

Suspension of the Rules requested – granted to advertise the Two City Code Ordinances regarding Public Consumption of Marihuana or Tetrahydrocannabinol before final passage.

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 ADDING A NEW CHAPTER 51, ENTITLED "PUBLIC CONSUMPTION OF MARIHUANA OR TETRAHYDROCANNABINOL," AS FOLLOWS:

- A. No person shall smoke, ingest, or otherwise use or consume marihuana or tetrahydrocannabinol (as defined in MGL c. 94C, § 1, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the City of Marlborough; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.
- B. This ordinance may be enforced by any police officer through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to MGL c. 40, § 21, or by noncriminal disposition pursuant to MGL c. 40, § 21D.

- C. The fine for violation of this ordinance shall be three hundred dollars (\$300) for each offense. Any penalty imposed under this ordinance shall be in addition to any civil penalty imposed under MGL c. 94C, § 32L.

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 147, ENTITLED "NON-CRIMINAL DISPOSITION," AS FOLLOWS:

Chapter 147 is hereby amended by adding to section B the following new sub-section:

30. Public Consumption of Marihuana or Tetrahydrocannabinol (City Code, Chapter 51).

Suspension of Rules requested - granted

ORDERED: That the application for Junk Dealer's license of Bernard Novich d/b/a Collector's Paradise, **APPROVED WITH THE STIPULATION THAT THE LICENSE IS SUBJECT TO REVIEW AND POSSIBLE REVOCATION IN THREE MONTHS FROM THE DATE OF ISSUANCE**; adopted.

NOTE: Motion is in order that Code Officer be requested to submit a report to the City council for its September 14, 2009 agenda.

Councilor Juairé abstained. Councilors Vigeant and Pope requested to be recorded in opposition.

Suspension of Rules requested - granted

ORDERED: That the Application for Revised Special Permit from Toll MA Land Limited Partnership to construct 69 Retirement Units on Less than 14 Acres and to revise current Special Permit conditions accordingly, **REFER TO THE CITY SOLICITOR WITH ANY TYPOGRAPHIC ERRORS WHICH WERE NOTED AT THE MEETING & TO BE PUT IN PROPER FORM FOR THE NEXT CITY COUNCIL MEETING**; adopted.

Suspension of the Rules requested - granted

ORDERED: The Application for Special Permit on behalf of Marlborough Savings Bank for a Drive-Thru Teller and ATM at proposed 16,500 s.f. bank/office building at 83 Granger Blvd., **REFER TO THE CITY SOLICITOR TO BE PUT IN PROPER FORM FOR THE NEXT CITY COUNCIL MEETING AND PROVIDE THE CITY SOLICITOR WITH SUPPLEMENTAL MATERIALS SUBMITTED FOR THE JUNE 8, 2009 AGENDA, ITEM 16**; adopted.

Councilor Delano abstained.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, AS FOLLOWS:

Pursuant to Article I, § 6 of the City Code, and the licensing power granted thereby to the Mayor and the City Council to grant licenses upon such terms and under such restrictions as they may prescribe and revoke at pleasure, the City Council, subject to the concurrence of the Mayor under Article I, § 6, hereby grants a license to each food service establishment in downtown Marlborough, starting at and including Papa John's Pizza (located at 8 Hildreth Street) and proceeding westward along Main Street up to and including Marlborough House of Pizza (located at 280 Main Street), to place tables and chairs upon the sidewalk fronting each such food service establishment, but subject to the following terms and restrictions, which may be modified without notice:

- a. Such tables and chairs shall not be located in parking or landscaped areas, per the City's Zoning Ordinance;
- b. Service of alcoholic beverages out-of-doors shall require a separate license from the License Commission and any appropriate State approval, per the City's Zoning Ordinance;
- c. Such tables and chairs shall not interfere with the accessible path of travel for handicapped individuals, per the Americans with Disabilities Act and all other applicable law;
- d. Signs shall not be permitted except in accordance with the City's Sign Ordinance;
- e. Such license shall commence on June 22, 2009 and shall terminate at close of business on September 7, 2009 (Labor Day); and
- f. All other applicable federal, State and City rules and regulations shall remain in full force and effect.

APPROVED WITH THE CAVEAT THAT ITEM E BE CHANGED TO REFLECT THE EXCLUSIVE DATE OF JUNE 22, 2009 UNTIL 10:00 PM AND REFER THE ABOVE ORIGINAL ORDER TO LEGISLTAVE AND LEGAL AFFAIRS COMMITTEE FOR REVIEW; adopted.

ORDERED: That the appointment of Nancy Savoie for the position of City Planner which expires two years from the date of confirmation, **TABLED UNTIL THE NEXT CITY COUNCIL MEETING;** adopted.

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE 2008 CODE OF THE CITY OF MARLBOROUGH BE ADOPTED, ORDAINED AND ENACTED AS FOLLOWS:

A R T I C L E I I I
ADOPTION OF 2008 CODE

1-25. Adoption of Code.

The ordinances and legislation of the City of Marlborough of a general and permanent nature, including the 1986 Code adopted by the City Council of the City of Marlborough on March 23, 1987, as supplemented and republished by General Code Publishers Corp. with chapter reassignments as set forth in the Derivation Table attached hereto and published in said Code, are hereby approved, adopted, ordained and enacted as the "Code of the City of Marlborough," hereinafter known and referred to as the "Code."

1-26. Nonsubstantive changes in previously adopted legislation.

In compiling and preparing the ordinances and 1986 Code for publication as the 2008 Code of the City of Marlborough, no changes in the meaning or intent of such ordinances have been made. Certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the City Council that all such changes be adopted as part of the Code as if the ordinances had been previously formally amended to read as such.

1-27. Code supersedes prior ordinances.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of this Code, except such ordinances as are hereinafter expressly saved from repeal or continued in force.

1-28. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made Article III of Chapter 1, General Provisions, of the Code of the City of Marlborough, such ordinance to be entitled "Article III, Adoption of 2008 Code," and the sections of this ordinance shall be numbered §§ 1-25 to 1-39, inclusive.

1-29. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

1-30. Copy of Code on file.

A copy of the Code in loose-leaf form has been filed in the Office of the City Clerk and shall remain there for use and examination by the public until final action is taken on this ordinance; and, if this ordinance shall be adopted, such copy shall be certified to by the Clerk of the City of Marlborough by impressing thereon the seal of the City as provided by law, and such certified copy shall remain on file in the office of the City Clerk to be made available to persons desiring to examine the same during all times while the said Code is in effect.

1-31. Publication; filing.

The Clerk of the City of Marlborough, pursuant to law, shall cause to be published in the manner required, a copy of this adopting ordinance in a newspaper of general circulation in the City. Sufficient copies of the Code shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours. The enactment and publication of this adopting ordinance, coupled with the availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

1-32. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the City Council to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the City of Marlborough shall be understood and intended to include such additions, amendments or supplements. Whenever such additions, amendments or supplements to the Code shall be adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing the said Code as additions, amendments and supplements thereto.

1-33. Inclusion of new legislation prior to adoption of Code.

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-39.A and prior to the effective date of this ordinance given in § 1-29 are hereby deemed to be part of the Code and shall, upon being printed, be included therein. Attested copies of all such legislation shall be temporarily placed in the Code until printed supplements are included.

1-34. Code book to be kept up-to-date.

It shall be the duty of the Clerk, or someone authorized and directed by the Clerk, to keep up-to-date the certified copy of the book containing the Code required to be filed in the Clerk's office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

1-35. Sale of Code book.

Copies of the Code book containing the Code may be purchased from the Clerk upon the payment of a fee to be set by City Council, which may also arrange for procedures for the periodic supplementation thereof.

1-36. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Marlborough to be misrepresented thereby. Anyone violating this section of this ordinance shall be subject, upon conviction, to a fine of not more than two hundred dollars (\$200.00).

1-37. Severability.

- A. **Severability of Code provisions.** Each section of the Code, and every part of each section, is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.
- B. **Severability of ordinance provisions.** Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

1-38. Repeal of ordinances.

All ordinances or parts of ordinances of a general and permanent nature adopted and in force on the date of the adoption of this ordinance and not contained in the Code are hereby repealed as of the effective date of this adopting ordinance, except as hereinafter provided.

1-39. Ordinances saved from repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-38 of this ordinance shall not affect the following ordinances, rights, and obligations, which are hereby expressly saved from repeal:

- A. Any ordinance adopted subsequent to December 17, 2007.
- B. Any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance, or any action or proceeding brought for the enforcement of such right or liability.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision, or any penalty, punishment, or forfeiture which may result therefrom.

- D. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered, prior to the effective date of this ordinance, brought pursuant to any legislative provision.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- F. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place, or any portion thereof.
- G. Any ordinance or resolution appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the City's indebtedness.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- I. The levy or imposition of taxes, assignments or charges.
- J. The dedication of property or approval of preliminary or final subdivision plans.
- K. Any ordinance providing for salaries or compliments.
- L. Any ordinance relative to parking or traffic,

APPROVED AND ADVERTISE AFTER PASSAGE; adopted.

Yea: 11 – Nay: 0

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

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

C E R T I F I C A T I O N
C I T Y O F M A R L B O R O U G H
Office of the City Clerk

I, LISA M. THOMAS, City Clerk of the City of Marlborough, hereby certify that the chapters contained in this volume are based upon the original local laws, ordinances, and resolutions of the City Council of the City of Marlborough and that said ordinances and resolutions, as revised and codified, renumbered as to sections and rearranged into chapters, constitute the 2008 Code of the City of Marlborough, County of Middlesex, Commonwealth of Massachusetts, as adopted by ordinance of the City Council on June 8, 2009.

Given under my hand and the Seal of the City of Marlborough, County of Middlesex, Commonwealth of Massachusetts, this day of 8th day of June 2009, at Marlborough, Massachusetts.

S/LISA M. THOMAS

City Clerk

ORDERED: That the reappointments of Mr. Michael Hogan and Ms. Camille Duridas to the Community Development Authority for three year terms ending April 15, 2012 and June 25, 2012 respectively, **APPROVED**; adopted.

ORDERED: That the budget transfer request in the amount of \$29,400.00 which moves funds from Fuel and Lubricants to Rubbish Collection as a result of increased solid waste disposal costs, **APPROVED**; adopted.

FROM:

Acct. # 140014006-54830	\$29,400.00
Fuel and Lubricants	

TO:

Acct. # 60086006-52920	\$29,400.00
Rubbish Collection	

ORDERED: The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to The Gutierrez Company, having a usual place of business at One Wall Street, Burlington, Massachusetts 01803 as provided in the Decision and subject to the following Procedural Findings, Findings of Facts and Conditions:

PROCEDURAL FINDINGS

1. The Gutierrez Company is a corporation organized and existing under laws of the State of Delaware registered to do business in the Commonwealth of Massachusetts and having a usual place of business at One Wall Street, Burlington, Massachusetts 01803 (the “Applicant”).
2. The Applicant, through a realty trust known as Marlborough/Northborough Land Realty Trust u/d/t dated October 12, 2000 recorded in the Middlesex South District Registry of Deeds in Book 31932 Page 433, is the owner of the property described in the Middlesex South District Registry of Deeds in Book 31932 Page 445 known as Lakeside Avenue and Bond Street, Marlborough, MA as shown on the City of Marlborough Assessors Maps Map 67, Parcel 45 and Map 68 Parcel 30A (the “Site”).
3. The Applicant, on or about November 6, 2008 filed with the City Clerk of the City of Marlborough an Application To City Council for Issuance of Special Permit (the “Application”) under Chapter 200 (Zoning) of the Code of the City of Marlborough, Article 200 Section 13, Paragraph C. Sub-paragraph 4 (1986 Code) Article V Section 200-17 Residential Use Multi-family dwelling (4) (2008 Code) to construct a 60 unit townhouse condominium community on approximately 31.2 acres of land located at Assessors Map 67 Parcel 45 Lakeside Avenue and Assessors Map 68 Parcel 30A Bond Street (the “Project”).
4. The Application, filed on November 6, 2008, consisted of an original and two copies of the following: (a) Application to the City Council for Issuance of Special Permit, (b) Special Permit-Summary Impact Statement, (c) Filing Fee check in the amount of \$1,725.00, (d) Drainage Report, (e) Traffic Study, (f) Plan Delivery Certification, (g) Tax Payment Certification, (h) Abutters List, (i) Preliminary Site Plan, and (j) Planning Department Certification (collectively the “Documents”) which Documents are incorporated herein and become a part of this Decision. Eleven sets of documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner (Building Commissioner), the City Engineer, and the Conservation Officer, all in accordance with Chapter 200 Section 200-59 of the Zoning Code (1986 Code) of the City of Marlborough.
5. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed by the Building Commissioner for the City Planner for the City of Marlborough as having complied with the provisions of Chapter 200 (Zoning Code) Section 200-59, C. (7) (a), (b) and (c) (1986 Code).
6. 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 a date for a public hearing on the Application, caused to be advertised notice of said hearing and the date thereof in the MetroWest Daily News, and mailed said notice to those entitled thereto.

7. The Marlborough City Council held a public hearing on the Application on December 1, 2008 in accordance with the published notice (the "Public Hearing"). The Public Hearing was opened and continued to December 15, 2008. The Public Hearing was further continued to January 5, 2009 and following the completion of testimony the Public Hearing was closed on said date. By timely agreement of the Applicant and the City Council, acting in its capacity as special permit granting authority, the time for the Council to take final action on the Application was extended to June 8, 2009 at 5 pm and further extended until June 22, 2009 at 11:59 pm.
8. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon municipal services, the neighborhood, traffic, 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. Subjects of concern were drainage, traffic, emergency access to and from Bond Street, sewer system flow, and retaining walls.
9. The Applicant provided written and oral documentation and testimony to the City Council and the City Council's Urban Affairs Committee regarding the Site, traffic impacts, open space, landscaping, drainage, lighting, water and sewer use, other utility improvements associated with the Project, and the production of affordable housing.
10. The Project is located on 31.2 acres of land on the north side of Lakeside Ave. (Route 20 West) between The Holiday Inn and Dunkin Donuts. It has approximately 341 feet of frontage along Lakeside Avenue (Route 20 West).
11. Except for the emergency access way to and from Bond Street which is located in the Residence A-3 District, the Site is currently divided between two zoning districts. The development portion of the Site totals approximately 8.1 acres, and is located within the Business B District. The balance of the Site is located within the Limited Industrial District. All of the proposed development is within the Business B District except for the emergency access way from Bond Street.
12. The Project meets or exceeds all dimensional requirements of the Zoning Ordinance of the City of Marlborough.
13. The Project consists of 15 buildings each with four condominium units. There are six (6) one bedroom units, forty-eight (48) two bedroom units and six (6) three bedroom units. Building height is limited to 2 stories or twenty-three and a half (23.5') feet high. Each unit will have an attached one car garage. A Tot Lot or play area will be constructed and located as shown on the Detailed Site Plan.
14. One hundred eighty (180) parking spaces are provided and are in accordance with the Zoning Ordinance requirements of the City of Marlborough.

15. The Traffic Evaluation prepared by Vanasse Hangen Brustlin, dated November 6, 2008, indicates the total average daily traffic trips to be generated by the Project is projected to be 415 per day on a weekday. The Traffic Evaluation projects peak hour traffic volumes to be generated by the Project are: in the morning 5 trips entering and 30 trips exiting the Site per hour, and in the evening 25 trips entering and 15 trips exiting per hour.
16. To provide safe access and egress to and from the Site, the Applicant, its affiliates, successors and/or assigns will design and construct a series of access improvement measures including a deceleration taper on Route 20 westbound, a left-turn pocket on Route 20 eastbound, and relocation of the existing retaining wall on the north side of Route 20 to improve sight distance.
17. The Applicant states there is sufficient potable water available in the City's water system to supply the Project. A looped water system will be constructed from Route 20 through the Project Site out to Bond Street.
18. The Project will generate approximately 13,200 gallons per day of sewer flow per design flows. The sewer will be directed through the City of Marlborough's waste water system through the Lake Williams Pumping Station to the easterly wastewater treatment plant. Said plant has the capacity to treat the wastewater generated by the Project.
19. Natural gas is available to the Project Site.
20. Telephone, Electricity and Cable TV services are all available to serve the Project.
21. The Applicant states that the Site Plan provides for proper management of stormwater runoff from the Project. The Applicant states that proposed runoff rates are less than existing runoff rates; that there will be no adverse impact to any surrounding areas; that the drain systems have been properly designed to handle the design flow rates; and that reduced Total Suspended Solids will result in improved quality of stormwater runoff to receiving areas. Stormwater drain system improvements will be made in Route 20, thereby improving existing problem conditions in Route 20. All drainage improvements in Route 20 must be approved by the Commonwealth of Massachusetts.
22. Site lighting will be provided according to the Electrical Site Lighting Plan submitted with the Application.
23. All buildings will be fully sprinkled and constructed in accordance with the latest life safety, building codes, and other applicable laws.
24. Applicant will designate 9 units or 15% of the units as affordable housing units.

**BASED UPON THE ABOVE, THE CITY COUNCIL OF THE CITY OF
MARLBOROUGH MAKES THE FOLLOWING FINDINGS:**

- A. The City Council finds that it may grant a Special Permit (Special Permit) subject to such terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough (also referenced herein as the “City”).
- 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 Massachusetts General Laws Chapter 40A, et seq.
- C. The City Council finds that the 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.
- D. The Site Plan, as submitted to the City Council and the City Council’s Urban Affairs Committee, provides improvements that will protect the environment, mitigate traffic impacts, and enhance the quality of life for the residential community abutting the Project. The City Council makes this determination subject to the completion and adherence by the Applicant to the conditions more fully set forth herein and to the site plan to be submitted to and approved by the Site Plan Review Committee, which site plan shall be drafted to reflect engineering consistent with this Permit.
- E. 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 (1986 Code) and Massachusetts General Laws Chapter 40A, Sections 9 and 11.

GRANT OF SPECIAL PERMIT WITH CONDITIONS

The City Council of the City of Marlborough pursuant to its authority under Chapter 200 (Zoning Code) of the Code of the City of Marlborough (1986 Code) and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant a Special Permit to construct the Project to be used as a 60 Unit Condominium Townhouse Community consisting of 15 buildings as set forth in the Application Documents and as per the Site Plan submitted to the City Council and the City Council’s Urban Affairs Committee, and subject to the following conditions:

1. Construction. Construction of all structures on the Site is to be in accordance with all building codes, zoning regulations, and other applicable laws in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built according to the Site Plan prepared by John G. Crowe Associates, Inc. 385 Concord Avenue, Suite 1, Belmont, MA 02478, dated November 6, 2008, filed with the Permit Application and as revised during the application process on April 10, 2009. The Applicant's Site Plan indicates a permitted building area in which the buildings are to be located.

2. Site Plan Review. The issuance of the Special Permit is further subject to detailed

Site Plan Review, in accordance the City of Marlborough Code, prior to issuance of the Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall become further conditions to this Special Permit. A Permanent Occupancy Permit shall not be issued until all conditions are complied with by the Applicant, provided, however, that a Temporary Occupancy Permit for individual condominium units may issue upon a determination by the Building Commissioner that the Site is substantially complete, providing for a phased development of the Site, and no Permanent Occupancy Permit shall be issued until all conditions are complied with by the Applicant. Site Plan Review shall be consistent with this Special Permit. Any violation of a condition of the Site Plan Approval shall be a violation of this Special Permit.

3. Hazardous Waste. The Applicant shall comply with all directives by the Department of Environmental Protection of the Commonwealth of Massachusetts relative to the existence of any hazardous waste which may be located on the Site, including compliance with the provisions of Massachusetts General Laws Chapter 21E and any other applicable government codes and regulations as they relate to the authority of the Fire Chief of the City of Marlborough.

4. Compliance with Local, State and Federal Laws. The Applicant shall comply with all applicable rules, regulations, and ordinances of the City of Marlborough, Commonwealth of Massachusetts, and Federal Agencies as they may apply to the construction, maintenance, and operation of the Project and Site, and all decisions and findings related thereto, including without limitation compliance with local Conservation Commission Orders, the Massachusetts Environmental Policy Act (MEPA), Massachusetts General Laws Chapter 30, Section 61, and the Massachusetts State Building Code. The terms and conditions of such decisions and findings shall become a part of this decision.

5. Inspectional Services Mitigation. The Applicant, its affiliates, successors and/or assigns 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 six thousand (\$6,000.00) 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 and timely inspections of the Project construction.

6. Route 20 Landscape and Traffic Mitigation. The Applicant, its affiliates, successors, and/or assigns shall install approximately 830 linear feet of granite curbing along Route 20, hydroseed barren areas, and place ornamental flowering shade trees (the "Route 20 Landscaping Work") all as shown on the Proposed Mitigation for Overlook at Lake Williams rendering filed with plans for the Project. The Applicant, it affiliates, successors and/or assigns shall file a more detailed plan consistent with said rendering with the Site Plan Review Committee. The plan for said work as approved by the Site Plan Review Committee shall be part of this Permit. The Applicant, its affiliates, successors and/or assigns shall perform such Route 20 Landscaping Work as described herein and as shown on the rendering filed with the plans for the Project, concurrently with the initial clearing and excavating activities of the Project Site. The Applicant, its affiliates, successors and/or assigns, shall complete all such Route 20 Landscaping Work prior to the issuance of any Building Permit for the Project.

7. Detention Basins. The Applicant, its affiliates, successors and/or assigns, shall inspect the on-site detention basins not less than annually with respect to sedimentation accumulation, and shall provide copies of annual reports to the City Engineer. To the extent such reports indicate the need for sediment removal, the same shall be removed by the Applicant, at no cost to the City, and within thirty (30) days following such direction from the City Engineer.

8. Catch Basins. The Applicant, its affiliates, successors and/or assigns shall equip all catch basins with sumps and inverted outlets as more fully shown on the Site Plan, shall monitor the catch basins on a semi-annual basis and furnish reports to the City Engineer, and shall clean the catch basins annually or at more frequent intervals as determined by the City Engineer. The maintenance of the detention basins and catch basins as described herein shall be included in the Operations & Maintenance (O & M) Plan that the Applicant, its affiliates, successors and/or assigns shall develop and implement for the Project, as more particularly described below.

9. Snow Storage. The Applicant, its affiliates, successors and/or assigns shall provide for snow storage on-site and stockpile snow only from the Project, may elect to utilize off-site snow storage, and shall direct snowmelt runoff toward catch basins.

10. Parking Areas. (i) The Applicant, its affiliates, successors and/or assigns shall sweep all parking areas as necessary. (ii) Pursuant to the provisions of Massachusetts General Laws Chapter 90, Section 18, the Applicant, its affiliates, successors and/or assigns shall submit a written request and grant of authority to the Marlborough Traffic Commission to promulgate legally enforceable rules and regulations for the control of on-site traffic and parking. The Applicant, its affiliates, successors and/or assigns shall be responsible for providing, installing, and maintaining all signage or markings required. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.

11. Construction Traffic. During construction of the Project, the Applicant, its affiliates, successors and/or assigns shall impose on each of its contractors a requirement that all heavy equipment accessing the Site shall use Route 20 and not to use residential streets abutting the Project.

12. Off-Site Improvements. In connection with the installation of improvements within public right-of-ways which requires a street opening permit, the City Engineer shall be provided by the Applicant, prior to the commencement of any work, with a schedule of such work and the construction procedures to be utilized prior to the commencement of such work. A Police detail shall be provided by the City at the Applicant's expense for any utility work performed within the public way.

13. Traffic Improvements. (a) All traffic improvements will be constructed by the Applicant, its affiliates, successors and/or assigns in accordance with the Site Plan submitted to the City Council and the City Council's Urban Affairs Committee and as approved by the Commonwealth of Massachusetts Highway Department. (b) Applicant, its affiliates, successors and/or assigns will construct a second means of ingress and egress to and from Bond Street to be used in emergency situations only. The Bond Street entrance will be gated and equipped with a locking system approved by the Fire Department and installed by the Applicant..

14. Landscaping. The Applicant, its affiliates, successors and/or assigns shall plant and maintain the Project's landscaping as shown on the Site Plan submitted with the Application as may be amended during Site Plan Review.

15. Utilities Review. The detailed review of on-site and off-site utilities will be performed as part of the Site Plan Review process, and such utilities as may be required by the City Engineer during this review shall be provided by the Applicant. The Applicant, its affiliates, successors and/or assigns shall deliver to the City Engineer, prior to the commencement of construction of the water and sewer improvements, copies of the final plans and schedule of work of such improvements for final review and approval by the City Engineer.

16. Water-Sewer. Water and Sewer services provided to the Project shall be subject to currently applicable citywide water and sewer policies and charges subject to annual adjustment by the Commissioner of Public Works. The Applicant, its affiliates, successors and/or assigns shall develop an on-site water supply for irrigation purposes. Use of the City's water supply for irrigation purposes may only be permitted, upon demonstration by the Applicant to the City Engineer, that on-site supplies are inadequate due to quantity or quality.

17. Conservation Commission. The Applicant, its affiliates, successors and/or assigns shall construct a dry bottom detention basin according to the Site Plan as amended and shall comply with the terms and conditions of any final, duly issued Order of Conditions issued pursuant to the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) so long as they are consistent with this provision.

18. Outside Storage. Outside storage of utility trailers, motor homes, boats, campers or other recreational vehicles shall not be permitted on the grounds of the Project, except that the same may be stored in a unit condominium garage. The condominium documents shall contain a restrictive provision covering and consistent with this condition.

19. School Bus Stop. An area next to Lakeside Ave. (Route 20) as shown on the Site Plan shall be provided for a school bus stop. The Applicant, its affiliates, successors and/or assigns shall construct and maintain a partially enclosed bus shelter for students and parents waiting for a school bus. The Applicant shall illuminate said bus shelter.

20. Snow Storage on Emergency Access Road. There will be no storage of snow on the emergency access road east of the gate and fencing as shown on the Site Plan, abutting the Bond Street neighbors. In addition, the Applicant, its affiliates, successors and/or assigns shall make reasonable efforts to ensure snow is removed from the emergency access road in such a way that does not disturb the abutting Bond Street neighbors. The Applicant, its affiliates, successors and/or assigns, shall clear snow from the emergency access road into the Project Site away from the abutting Bond Street neighbors, and store and stockpile in designated snow storage areas as delineated on the Site Plan page SP 7 "Snow Storage Plan". No snow may be brought onto the Site from off site.

21. Use of Parking Areas. The parking areas delineated on the Site Plan must be used only for parking automotive vehicles of unit owners and their invitees and guests.

22. Stockade Fence. The Applicant, its affiliates, successors and/or assigns shall erect a white vinyl stockade fence, eight feet (8') in height with a lattice feature, along the Bond Street side of the Project, all as shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee.

23. Chain Link Fence. The Applicant, its affiliates, successors and/or assigns shall erect a black vinyl chain link fence along the Bond Street side of the Project, transitioning from the stockade fence to an area at the front of the Site on Lakeside Avenue (Route 20), all as shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee.

24. Ornamental Fence. As shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee, the Applicant, its affiliates, successors and/or assigns shall install black aluminum ornamental fencing, six feet (6') in height, on the top of all walls so as to prevent access by pedestrians and children. As shown on said Site Plan, the Applicant, its affiliates, successors and/or assigns shall install black vinyl chain link fencing around the Tot Lot and detention basin located at the rear of the Site. As shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee, the black aluminum ornamental fencing to be installed on the walls surrounding the dry detention basin adjacent to Route 20 shall be no less than six feet (6') in height.

25. Exterior Siding of Buildings. The exterior siding of the buildings shall be constructed of vinyl equal to or per the outline specification submitted for the record.

26. Management of Project/Condominium. The Project, and condominium created (the "Condominium"), shall be managed by a third party professional condominium management company, and the condominium documents shall contain a restrictive provision covering and consistent with this condition.

27. Operation and Maintenance Plan. The Applicant, its affiliates, successors and/or assigns, shall develop an Operation and Maintenance (O & M) Plan for the Project's stormwater management system, including any components and/or structures to be located in Route 20 and City-owned property. The O & M Plan must be approved by the Conservation Commission and the City Engineer. The Applicant, its affiliates, successors and/or assigns, shall be responsible for the execution of the O & M Plan and the performance of the maintenance in accordance with the provisions thereof. Upon the transfer of the management of the Project and Condominium to the newly elected condominium association (the "Condominium Association"), the Condominium Association shall then be responsible for the compliance with this provision. The condominium documents shall contain a restrictive provision covering and consistent with this condition.

28. Stormwater Management Reserve Account. The condominium documents shall provide for the establishment of a stormwater management reserve account (the "Reserve Account"), which will insure that funds are available to maintain the said system. The Reserve Account balance shall be equal to at least two (2) years of the estimated cost to maintain the Project's stormwater management system, at all times, and shall be made available to the Conservation Commission upon request.

29. Management Responsibilities of Project/Condominium. The Applicant, its affiliates, successors and/or assigns, shall retain all property management responsibilities for the Project and Condominium until all units are initially sold, whereupon all maintenance responsibilities provided for hereunder in this provision and other provisions of this Permit shall be transferred to the Condominium Association. The condominium documents shall contain a restrictive provision covering and consistent with this condition.

30. Owner-Occupancy. All units shall be owner-occupied only, with the provision that there shall be no rentals. The condominium documents shall contain a provision covering and consistent with this condition.

31. Reimbursement of City Engineering Costs. The Applicant, its affiliates, successors and/or assigns shall reimburse the City of Marlborough for all reasonable costs incurred in its review of the Project's sewer system, specifically, all pertinent data relating to the Project's connection to the sewer pump station located on Route 20 at Lake Williams. The City will forward for reimbursement by Applicant, its affiliates, successors and/or assigns all third-party invoices to cover this scope of work.

32. Erosion and Sedimentation Control Plan/Construction Sequencing Plan. The Applicant, its affiliates, successors and/or assigns shall develop an erosion and sedimentation control plan, incorporating proposed erosion and sedimentation control measures, as well as a construction sequencing plan, for the Project. Both plans must be approved by the Conservation Commission and the City Engineer. The Applicant, its affiliates, successors and/or assigns shall be responsible for the execution of said plans and the performance of the maintenance in accordance with the provisions thereof.

33. Hiring of Site Engineer for Stormwater and Erosion Management Control. The Applicant, its affiliates, successors and/or assigns shall be required to hire a site engineer who shall be competent in stormwater and erosion control management. This individual(s) credentials shall be acceptable to the Engineering Division and the 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. This individual(s) shall ensure compliance with the approved sequence of construction plan, the approved erosion control plan, and the Conservation Commission's Order of Conditions. 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.

34. Left-Hand Turns. To provide for safe egress from the Project, left-turn movements exiting the Project Site shall be prohibited; left turns into the Project Site are permitted.

35. Sidewalks. The Applicant, its affiliates, successors and/or assigns shall provide sidewalks within the Project for pedestrian circulation. Such sidewalk system shall connect to the existing sidewalks in Route 20 along the Project's frontage. All sidewalks within the Project shall be constructed with sloped granite curbing and bituminous concrete. All disturbed areas to the sidewalk system along the Project's frontage on Route 20 shall be reconstructed and/or repaired to match the existing sidewalk specification and profile.

36. Paving of Emergency Access Road. As shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee, the emergency access road shall be paved by the Applicant and shall comply with the City's street design standards.

37. Maintenance of Roadways. All roadways within the Project, including the emergency access road, shall be maintained by the Applicant, its affiliates, successors and/or assigns and shall be kept free and clear of snow and ice at all times by the Applicant, its affiliates, successors and/or assigns, and shall not be used for overflow parking at any time. Parking shall only be allowed in the parking spaces as shown on the Site Plan and prohibited at all times within the roadways of the Project to provide for normal traffic and emergency vehicles.

38. Emergency Access Road Gate. The emergency access road gate shall be maintained so as to operate freely by one person, and shall be provided and maintained with an opening and locking system approved by the Fire Department. The emergency access road gate shall be an eight (8') foot high chain link fence with white vinyl slats consistent in design with the proposed stockade fence along the Bond Street side of the Project as noted herein. An approved fire annunciator panel shall be located on the main entrance roadway into the Project, with details of its exact location and installation requirements to be determined during the Site Plan Review and fire alarm permitting process.

39. Vegetation on Emergency Access Road. The emergency access road shall be kept clear of all vegetation by the Applicant, its affiliates, successors and/or assigns to include a vertical clearance of sixteen feet (16').

40. Retaining Walls at Main Driveway. As shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee and per the outline specification submitted for the record, the modular retaining wall system to be constructed along both sides of the Project's main driveway shall be by "Allan Block, AB Europa Collection, Abbey Blend Pattern", an equal or better, in texture, size, pattern and color, if this particular product line is discontinued or unavailable.

41. Retaining Walls at Dry Detention Basin. As shown on the Site Plan submitted to the City Council and City Council's Urban Affairs Committee and per the outline specification submitted for the record, the cast-in-place concrete retaining wall system to be constructed along the dry detention basin at the front of the Site, the face of which retaining wall shall have a fieldstone appearance (formed, veneer, or other).

42. Route 20 Access and Maintenance Agreement. The Applicant, its affiliates, successors and/or assigns, shall obtain an access permit and permanent maintenance agreement between the Applicant and the Commonwealth of Massachusetts Highway Department for the installation and maintenance of the drains and related structures in Route 20 as shown on the Site Plan.

43. City of Marlborough Access and Maintenance Agreement. The Applicant, its affiliates, successors and/or assigns, shall obtain an access permit and permanent maintenance agreement between the Applicant and the City of Marlborough for the installation and maintenance of the storm water outlet structure, which outlets from the Route 20 drains below Route 20 onto City of Marlborough property as shown on the Site Plan.

44. Sullivan Property – Bond Street. In the event the owner of the property located at 36 Bond Street, Marlborough, MA, incurs water seepage into the basement of said property, and proven such water seepage is a direct result of water run-off from the Project Site, the Applicant, its affiliates, successors, and/or assigns, shall make all necessary and reasonable repairs to remedy the situation. Applicant, its affiliates, successors and/or assigns, agrees to abandon any rights it may have to a seven (7') foot right of way on land of Sullivan abutting the emergency access leading from Bond Street to the Site.

45. Recording of Special Permit. In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their 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.

Yea: 9 – Nay: 2

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

Nay: Schafer, Pope

ORDERED: That there will be a REGULAR MEETING held on June 15, 2009, **FILE**;
adopted.

ORDERED: There being no further business, the regular meeting of the City Council is
herewith adjourned at 10:29 p.m.