



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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June 22, 2009

Regular meeting of the City Council held on Monday June 22, 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 9:22 p.m.

ORDERED: That the unavailable minutes of the City Council Meeting June 15, 2009, **TABLED UNTIL JULY 20, 2009**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the by Petition from National Grid to install 60' of primary ug across Forest St. from P.47 to a hand hole, all were heard who wish to be heard, hearing recessed at 8:03 p.m.; adopted.

ORDERED: That the following transfers requests, **DENIED**; adopted.

In the amount of \$153,000 moving funds from Account No. 100-35900 (Undesignated Fund) to Account No. 83600-32725 (Stabilization DPW Water).

In the amount of \$64,000 moving funds from Account No. 100-35900 (Undesignated Fund) to Account No. 83600-32724 (Stabilization DPW Street Signs).

In the amount of \$542,200.00 from Account No. 100-35900 (Undesignated funds) to Account No. 83600-32722 (Stabilization DPW Equipment)

In the amount of \$76,096.00 from Account No. 100-35900 (Undesignated Fund) to Account No. 83600-32723 (Stabilization GPS)

Suspension of the Rules requested – granted to allow the Mayor to speak.

MOTION made to MOVE THE QUESTION - Carries

At President Vigeant's request to recess at 8:25 PM and returned to open meeting at 8:27 PM, **APPROVED**.

ORDERED: That the following transfer requests, **FILE**; adopted.

In the amount of \$153,000 moving funds from Account No. 83600-32725 (Stabilization DPW Water) to Account No. 19300006-58462 (DPW Water)

In the amount of \$64,000 moving funds from Account No. 83600-32724 (Stabilization DPW Street Signs) to Account No. 19300006-58311 (Street Sign Rpl.)

In the amount of \$542,200.00 from Account No. 83600-32722 (Stabilization DPW Equipment) to Account No. 19300006-58731 (DPW Equip.)

In the amount of \$76,096.00 from Account No. 83600-32723 (Stabilization GPS) to Account No. 19300006-58735 (GPS Equipment)

ORDERED: That item #5, which is a communication from the Mayor re: Council's request for additional information on expenditures and encumbrances of the Public Safety Training Revolving Account, be moved to item #16, which is a communication from the Mayor re: Public Safety Revolving fund, **APPROVED**; adopted.

ORDERED: That the re-appointment of Rustin Kyle to the Library Board of Trustees for a term expiring February 1, 2012, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the re-appointment of Leland Woodworth and appointment of Nena Bloomquist to the Arts Lottery Council for terms ending May 1, 2011, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the appointment of Mitchell Gorka as an alternate member of the Zoning Board of Appeals for a term ending three years from date of approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the communication from the Mayor re: appointment of Katherine Kimber as her new Executive Secretary and to publicly thank Diane Halper, her previous Executive Secretary for her dedication and hard work, **FILE**; adopted.

ORDERED: That the communication from the Comptroller re: Upgrade in Bond Rating, **FILE**; adopted.

ORDERED: That the communication from the Comptroller re: Competitive Bids from Note Underwriters, **FILE**; adopted.

ORDERED: That the communication from the City Solicitor re: First Student, Inc. Special Permit, Condition 12 payment, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JULY 20, 2009** as date for a **PUBLIC HEARING** on the Application for Special Permit from Cheraq Patel to construct a 104 room hotel at 257 Simarano Dr. as it is in an industrial zone, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, March 9, April 6, and May 11, 2009, 2009, **FILE**; adopted.

ORDERED: That the minutes of the City Council Meeting June 8, 2009, **FILE**; adopted.

ORDERED: That pursuant to the provisions of § 53E½ of Chapter 44 of the General Laws of the Commonwealth of Massachusetts, the City Council of the City of Marlborough, upon the recommendation of the Mayor, does, to be effective during fiscal year 2010, re-authorize a revolving fund to be utilized by the Mayor. It is further ordered that:

- (a) receipts credited to the fund shall be limited to an emergency dispatch fee due the City pursuant to its contract with Patriot Ambulance, unless otherwise directed by the General Laws; and
- (b) that expenditures from said fund shall be limited to public safety training; and
- (c) that the Mayor shall be the only officer authorized to approve expenditures from the same; and
- (d) no more than forty-five thousand dollars shall be expended during Fiscal Year 2010, unless otherwise authorized by the City Council and Mayor; and
- (e) the Mayor shall prepare a year-end report identifying funds received, funds expended, description of expenditures and year-end balance; and
- (f) no provisions of this order shall be changed unless approved by the Mayor and City Council, **APPROVED**, adopted.

ORDERED: That item #17, Communication from the City Solicitor regarding Special Permit from Toll MA Land Limited Partnership for Crowley Dr. in proper form, be moved to item #23, **APPROVED**; adopted.

ORDERED: That item #18, Communication from the City Solicitor regarding Special Permit from Hancock Associates for Marlborough Savings Bank, in proper form, be moved to item #24, **APPROVED**; adopted.

Councilor Delano abstained

ORDERED: That the following inter-departmental budget transfer requests from the Fringes account necessary to balance year-end FY09, **APPROVED** adopted.

FROM:

Acct. # 11990006-51500	\$19,649.00
Fringes	

TO:

Acct. # 11520001-50530	\$7,000.00
Director of Personnel	
Acct. # 11550001-50210	\$45.00
IT/Sr. System Analyst	
Acct. # 14001303-51920	\$12,109.00
DPW/Street/SLBB	
Acct. # 14001303-51430	\$495.00
DPW/Street/Longevity	

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

ORDERED: That the budget transfer request in the amount of \$350,000.00 which moves funds from Undesignated to fund the following request for Capital Outlay, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900	\$350,000.00
Undesignated	

TO:

Acct. # 19300006-58618	\$350,000.00
Hardware	

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.

APPROVED AND ADVERTISE AFTER PASSAGE; adopted.

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

Councilor Schafer abstained

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).

APPROVED AND ADVERTISE AFTER PASSAGE; adopted.

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

Councilor Schafer abstained

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.

APPROVED AND ADVERTISE AFTER PASSAGE; adopted.

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

Councilor Schafer abstained

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).

APPROVED AND ADVERTISE AFTER PASSAGE; adopted.

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

Councilor Schafer abstained

ORDERED:

The City Council of the City of Marlborough hereby GRANTS the application for a Revised Special Permit to Toll MA Land Limited Partnership, 250 Gibraltar Rd., Horsham, Pennsylvania to construct 69 townhouse residential retirement community units, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

PROCEDURAL FINDINGS

1. Toll MA Land Limited Partnership, a Massachusetts limited partnership, having a principal place business at 250 Gibraltar Rd., Horsham, Pennsylvania, is the "Applicant."
2. Applicant is the owner of certain property located at Crowley Drive, Marlborough, Massachusetts further shown the Marlborough Assessors Maps, Map 29 Parcel 1. The land is entirely located in a Limited Industrial District and is also located in a Retirement Community Overlay District.
3. By Special Permit approved by the Marlborough City Council dated September 8, 2003 (hereinafter, "the Original Special Permit") the construction of 210 retirement community units was approved, pursuant to conditions specified therein.
4. The Applicant, on or about March 4, 2009, filed with the City Clerk of the City of Marlborough an application to revise said Original Special Permit and issue a new Revised Special Permit (hereinafter, "the Revised Special Permit") under the provisions of Article VI Section 200-22 and Article VIII (1986 Code), and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance (1986 Code).

5. In connection with the Special Permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee, and had previously filed twenty (20) copies of the Site Plan.
6. The Site Plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.
8. The Marlborough City Council, pursuant to M.G.L. C. 40A, held a public hearing on April 6, 2009, concerning the said application. The hearing was opened and closed at that meeting.
9. Applicant's attorney presented testimony at the public hearing detailing the application, described the proposal to reduce the number of units to 69 units, and to reduce the area on which the development will occur. Applicant also reviewed the Original Special Permit conditions and suggested that certain conditions be changed in the Revised Special Permit to reflect the changes in said project but that all other conditions remains in effect.
10. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building, and related site modifications.
11. Following the public hearing, Applicant's representatives appeared before the Urban Affairs Committee to discuss the proposal. As a result of discussions with the Committee, Applicant proposed to further revise the Site Plan by reducing the number of proposed units in the project.
12. Applicant submitted to the Urban Affairs Committee a revised Site Plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc. (hereinafter, "The Site Plan").
13. The Urban Affairs Committee met to consider the Site Plan and Applicant's application for a Revised Special Permit on May 5, 2009 and May 12, 2009, voted a recommendation to the full City Council on May 12, 2009, and voted to affirm their recommendation to the full City Council on May 26, 2009.

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

- A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.
- B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the zoning ordinance, in that it will improve the appearance of the site and will have no significant negative impacts upon abutters. The proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience, and welfare and will not be detrimental or offensive.
- C) The City Council, pursuant to its authority under M.G.L. C. 40A, §9 and under Chapter 200 of the Marlborough City Code (1986 Code), GRANTS the Applicant a Revised Special Permit to allow the construction of 69 (sixty-nine) townhouse retirement community condominium units on the Site (the "Project"), subject to the Conditions which were a part of the Original Special Permit, except that certain conditions of the Original Special Permit, which are enumerated below, are superseded, amended or added to read as specified below:

GRANT OF REVISED SPECIAL PERMIT WITH CONDITIONS

- 1) All site work and construction at the Site shall be done in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and shall be built in accordance with the plans filed by Applicant, as most recently amended. Said plans are a plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.
- 2) The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough Ordinance (Chapter 63) (1986 Code) prior to the issuance of the actual Building Permits. Any additional changes, alterations, modifications or amendments as required by the Site Plan Review Committee shall be further conditions attached to the Building Permit and no Occupancy Permits shall be issued until Applicant complies with all conditions. Said Site Plan Review shall become, by reference, a part of this Special Permit.
- 3) Any signage installed or erected on the premises shall meet the requirements of the Sign Ordinance of the City of Marlborough without the request for a variance.
- 4) Applicant agrees to comply with all Rules, Regulations and Ordinances of the City of Marlborough, Commonwealth of Massachusetts, and the Federal Government as they may apply to the construction, maintenance, and operation of Applicant's facility.

- 5) Landscaping shown on the approved plans filed with the City Council, as amended at Site Plan Review, shall be maintained and replaced properly as needed. The landscaping plan is shown in Sheets L-1 and L-2 of the plans referred to in Condition #1 above.
- 6) The issuance of an Occupancy Permit for Applicant's use shall be conditioned upon the substantial (in the sole opinion of the Building Inspector) completion and compliance with the requirements contained herein. The terms and conditions shall apply to Applicant, its successors and assigns.
- 7) No dwelling shall contain less than 1,000 (one thousand) square feet of living area or more than 2,400 (two thousand four hundred) square feet of living area. At least 66% (sixty-six percent) of the living area in each unit shall be located on the first floor.
- 8) No more than sixty-nine (69) condominium units shall be constructed on the Site.
- 9) The Retirement Community shall be structured as a condominium. Prior to the issuance of any occupancy permits regarding the Retirement Community, the City Solicitor shall establish to his satisfaction that a condominium has been created and that provisions of the Master deed and bylaws:
 - a. Limit occupancy of condominium units to persons age 55 (fifty five) and over and their spouses
 - b. Prohibit the presence of boats, boat trailers and recreational vehicles, trailers and other non-automobile vehicles or attachments.
 - c. Specify that later modifications to the units which will improve the accessibility of the units to persons with disabilities will not be prohibited and will not require the prior approval of the unit owners or the trustees of the condominium association; provided, however, that there may be controls regarding the color and design of said modifications if they are on the exterior of a unit.
 - d. Specify that the Condominium Association will be responsible for the permanent maintenance of all infrastructure including but not limited to roadways, drainage systems, utilities, and their appurtenances located at the Site.
 - e. Prohibit rentals of the units for periods of longer than six (6) months.
 - f. Specify within the Master Deed and condominium documents that any modification of the Master Deed or by-laws which changes any of the above provision is prohibited without an amendment of this Revised Special Permit.
- 10) The plans referred to in Condition #1 show that the proposed retirement community will be located on a lot containing 13.922 acres, as shown on said plan. Applicant will cause the creation of this separate parcel. Following the creation of said parcel, no further subdivision of the parcel shall be allowed without the prior modification of this Revised Special Permit.

- 11) Through Site Plan Review, Applicant shall work with the Police Chief, Fire Chief, and City Engineer to assure that unit numbering, street naming and internal traffic controls will be satisfactory to all parties and that upon the recommendation of the Police Chief, the Traffic Commission will be requested to make internal traffic controls enforceable through local regulation.
- 12) All units in the Retirement Community shall be sprinkled to the NFPA-13R Standards. The Retirement Community shall contain a fire alarm system acceptable to the Fire Chief.
- 13) No foundation of a building structure will be closer than 50 ft. from the rear lot line of the site.
- 14) All units shall be pre-wired for future installation of burglar, fire, and EMS alarm systems by the unit owners.
- 15) Every agreement for the sale of a condominium unit to the initial individual unit buyer shall contain an arbitration provision specifying that, in the event that any dispute arises between Applicant and said initial individual unit buyer, said dispute shall be submitted to arbitration using the rules and procedures of the American Arbitration Association, and that the decision of the arbitrator in such a procedure shall be binding on the parties, unless the prospective Buyer has rejected this arbitration provision in writing.
- 16) Site Plan Approval will include approval of a work-sequencing phasing plan regarding the order in which work will be completed at the Site.
- 17) No communication towers will be allowed on any portion of Applicant's property, including both the portion of the property that is referred to herein as the Site and the remaining 17.518 acre parcel that was originally part of the site.
- 18) A chain link fence not less than four ft. (4') high, constructed in a way that, in the sole opinion of the Building Inspector, it will adequately deter children from entering, shall be erected around all detention facilities. Access gates for maintenance shall be located as determined by the Site Plan Review Committee. The condominium unit owners shall be responsible for the property maintenance and replacement of all fencing.
- 19) Applicant will provide a payment to the City of Marlborough Inspectional Services Fund in the amount of Fifteen Thousand Dollars (\$15,000) to offset 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 Building Commissioner to provide adequate, timely supervision to the project. A payment of Seven Thousand Five Hundred Dollars (\$7,500) has already been made. An additional payment of Seven Thousand Five Hundred Dollars (\$7,500) shall be made prior to the issuance of the 35th Occupancy Permit. Failure to provide said funds as requested shall result in the cessation of new occupancy permit. Applicant will be required by the Building Inspector to employ so-called controlled construction supervision in order to supplement the Building Inspector's review.

- 20) All Site work, except for modifications as approved through the Site Plan Review process, shall be consistent with the plans on file with the City Council, entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.
- 21) Applicant will provide and/or accommodate for disabled persons by providing those universal design features enumerated in a MEMORANDUM dated Aug. 27, 2003, and filed with the Urban Affairs Committee, which is, by reference, a part of this Revised Special Permit.
- 22) Applicant will pay the sum of Sixty Nine Thousand Dollars (\$69,000) into an Affordable Housing Fund as directed by the City Council. The sum of Fifty Two Thousand Five Hundred Dollars (\$52,500) has already been paid. The remaining sum of Sixteen Thousand Five Hundred Dollars (\$16,500) will be paid prior to the issuance of 35th Occupancy Permit.
- 23) The community center will be built during the first phase of construction.
- 24) The lot to be separated from the retirement community lot and referred to in Condition #10 above shall have a twenty-five foot (25') buffer from the border between said lot and the retirement community lot that will be secured with a conservation restriction and suitably landscaped as directed in a landscape plan approved by the Site Plan Review Committee.
- 25) As part of the Site Plan Review process, an irrigation plan will be prepared that will assure the plant material on the site is adequately watered during the first three years following planting.
- 26) Applicant will designate, through appropriate signage, lining, and construction, a connection from the sidewalk across Crowley Drive to the Assabet Valley Rail Trail bike path.
- 27) These conditions shall supersede and replace the permit conditions of the Original Special Permit, issued for the construction of 210 units and covering a parcel containing 31.44 acres, that was recorded in the South Middlesex Registry of Deeds Book 48876 Page 571.
- 28) In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their expense shall record this Revised Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Revised Special Permit has elapsed with no appeal having been filed.

Yea: 11 – Nay: 0

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

ORDERED:

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marlborough Savings Bank, 166 Main Street, Marlborough, MA for ATM and banking services drive-through facilities, in connection with a proposed stand alone bank facility, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT AND RULING

1. Marlborough Savings Bank is hereinafter referred to as “Applicant”.
2. Applicant is a party to contracts calling for the acquisition of the premises known and numbered as 81 Granger Boulevard and 51 Howe Street, Marlborough, Massachusetts described on Marlborough Assessor’s Map 70, Parcels 152, 157 and 209 (hereinafter the “Site”) and proposes to construct a stand alone bank facility with ATM and banking services drive-through.
3. Applicant, by and through its site engineer, Hancock Associates, has filed with City Clerk of the City of Marlborough an application for a Special Permit. Pursuant to Section 650-16 of the Zoning Ordinance of the City of Marlborough (2008 Code) Applicant is seeking permission for the drive-through facility.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a traffic impact and access study, certified list of abutters, filing fees, fire truck access, and a detailed site plan entitled “Permit Site Plan, Marlborough Savings Bank”, prepared for Marlborough Savings Bank, drawn by Hancock Associates, 315 Elm Street, Marlborough, MA, scale 1’=20’, dated March 5, 2009 and consisting of seven pages, with a final revision dated May 29, 2009 and consisting of eight pages.
6. The site plan was certified by the acting City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the application for a Special Permit and the City Clerk for the City of Marlborough caused notice of the same to advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
8. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on April 6, 2009.

9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

A. Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to the special permit application.

B. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS Applicant a Special Permit to construct and operate drive through banking services as shown on the plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on Applicant, its successors and/or assigns:

1. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built according the site plan entitled "Permit Site Plan, Marlborough Savings Bank", prepared for Marlborough Savings Bank, drawn by Hancock Associates, 315 Elm Street, Marlborough, MA, scale 1"=20', dated March 5, 2009 and consisting of seven pages, with a final revision dated May 29, 2009 and consisting of eight pages.
2. The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and Plans submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the plans which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.
3. Applicant agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.

4. The locations and design of signage shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid conflicts with existing City infrastructure.
5. The location and placement of pavement markings and traffic directional signage shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with applicable rules and regulations of the City of Marlborough.
6. All illuminations of individual parking lot light fixtures shall not exceed 200 watt fixtures and shall be screened from abutting residential property. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
7. Snow storage and removal is to be maintained and conducted on site by Applicant, its successors and/or assigns in accordance with the terms of snow removal plan as submitted with the Application for Special Permit. Applicant, its successors and/or assigns shall provide off-site snow removal as required and if deemed necessary by the City of Marlborough Commissioner of Public Works.
8. There shall be no overnight parking at the Site.
9. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored on a semi-annual basis with reports given to the City Engineer annually. The catch basins are to be cleaned by Applicant, its successors and/or assigns annually, or at more frequent intervals as determined necessary by the City Engineer.
10. Applicant, its successors and/or assigns agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee as may be amended during Site Plan Review.
11. The drive-through teller window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance of the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the property line greater than that which would be allowed at the property line in a Residential District in accordance with the noise ordinance of the City of Marlborough.

12. Applicant, its successors and/or assigns agrees to screen the Project's trash area by constructing a six foot (6') white vinyl fence screen. Applicant, its successors and/or assigns further agrees that the dumpsters located on Site will be covered. No trash pickup shall occur before 7:00 AM or after 6:00 PM or at any time during weekends.
13. Applicant, its successors and/or assigns agrees that the Site will be subject to a review of the traffic configuration after one-year from the issuance of the Occupancy Permit to determine whether any alterations need to be made to the entrances and egresses to the Site to accommodate traffic flow and ensure public safety and agrees to make changes in compliance with the Marlborough Department of Public Works and Traffic Commission's recommendations.
14. (a.) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

(b.) Notwithstanding condition (a.) hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.
15. In connection with the installation of improvements within public right-of-ways which requires a street opening permit, the City Engineer shall be provided with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant, its successors and/or assigns, and not the City of Marlborough, will bear the costs of any police detail for any work performed within the public way.
16. Parking areas will be swept and maintained by Applicant, its successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws, Chapter 90 Sec. 18, Applicant, its successors and/or assigns shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site and off-site traffic and parking. Applicant, its successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Uniform Manual On Traffic Control Devices.

17. The Police Chief or his designee, may, in the exercise of his professional discretion to protect public safety, order the temporary closure of the drive-through facilities.
18. In accordance with the recommendation of the Building Inspector, the three parcels which make up the site shall be shown as combined on a plan drafted and approved by the Planning Board of the City of Marlborough pursuant to Massachusetts General Laws, Chapter 41, Sec. 81X.
19.
 - a) The hours of operation for the drive-through teller operation shall not exceed the following times:
Monday through Friday, 8:00 AM to 6:00 PM; Saturday, 9:00 AM to 12:00 Noon.
 - b) The operation of the drive-through ATM at the site shall be suspended from 12: 00 Midnight to 5:00 AM; the City Council, after one (1) year from the date when the drive-through ATM commences operations, may review and amend the hours of operation for the drive-through ATM.
20. Applicant's Traffic Engineer will study and report to the Engineering Division of the City's Department of Public Works regarding recommendations for adjustment, if any, to the traffic signal timing on at the intersection of Granger Boulevard and South Bolton Street. Any such adjustments shall only be made with the approval of the said Engineering Division and, if needed, the Commonwealth of Massachusetts.
21. All work performed on Granger Boulevard and South Bolton Street shall be done during off peak hours and, prior to commencement of such work, Applicant, its successors and/or assigns shall provide a traffic management plan relating to the same for approval by the Engineering Division of the City's Department of Public Works.
22. Applicant, its successors and/or assigns will remove and cap existing water and sewer services to 51 Howe Street.
23. Prior to construction, utility easements shall be established and granted to the City for construction, maintenance or repair of existing City infrastructure including, but not limited to, water, sewer, drain, and traffic control. Landscaping in the area of such easements shall be coordinated by the Applicant, its successors and/or assigns with the Engineering Division of the City's Department of Public Works in the field so as to avoid conflicts with existing infrastructure.
24. All trenching shall be in compliance with Massachusetts Law and pursuant to permits issued by the Engineering Division of the City's Department of Public Works.

25. The hand hole which is currently within the proposed driveway layout of Granger Boulevard shall be relocated by Applicant, its successors and/or assigns as approved by the City of Marlborough's Department of Public Work's Engineering Division. If the reinforced concrete sidewalk panels are impacted because of said work, Applicant, its successors and/or assigns shall replace the concrete panels to the limits indicated by the City Engineer.
26. Applicant, its successors and/or assigns shall erect and maintain fencing in accordance with the plans and the fence ordinance for the City of Marlborough.
27. During construction, all workers shall park their personal vehicles either on the Site or on the upper levels of the City's parking garages. Any construction vehicles shall be parked on Site.
28. During construction, no vehicles shall be staged on public ways.
29. Applicant, its successors and/or assigns shall utilize HVAC equipment and an emergency generator on the roof of the structure with advanced acoustical technology by which excessive sound emanating from said equipment will be substantially abated in accordance with the noise ordinance for the City of Marlborough and therefore protect the public health, welfare, safety and quality of life for abutting residential properties. Testing of the emergency generator shall be limited to Applicant, its successors and/or assigns' hours of operation as set forth in Condition 19(a) herein.
30. Applicant, its 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 of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan, the approved erosion control plan, and, if applicable, 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.

31. If the drainage system (during construction and post-construction) constructed by Applicant, its successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair and or replacement of the damaged property. In the event Applicant, its successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
32. In accordance with the provisions of M.G.L. c.40A, Sec.11, Applicant, its successors and/or assigns at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before a Building Permit is issued. Applicant, its successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: 10 – Nay: 0

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

Abstain: - Delano

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, **APPROVED**; 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

Councilors Schafer and Pope requested to be recorded in opposition.

ORDERED: That the budget transfer request in the amount of \$15,000.00 which moves funds from Undesignated to Affordable Housing which represents payment by St. Mary's of French Hill Redevelopment LLC in satisfaction of condition #22 of Special Permit #07-1001500C, **APPROVED**; adopted.

FROM:

Acct. # 100-35900 \$15,000.00

Undesignated Fund

TO:

Acct. # 83600-32718 \$15,000.00

Affordable Housing

ORDERED: That a Water Conservation Grant in the amount of \$35,000.00 awarded to DPW from the Massachusetts Department of Environmental Protection (DEP) to provide funding for a third party vendor to conduct a city-wide leak detection service, **APPROVED**; adopted.

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, **APPROVED**; 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 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, **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:22 p.m.