



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

**Lisa M. Thomas**

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**Marlborough, MA 01752**

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**October 26, 2009**

Regular meeting of the City Council held on Monday, October 26, 2009 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Juaire, Seymour, Clancy and Landers. Absent was Schafer. Meeting adjourned at 9:03 p.m.

ORDERED: That the minutes of the City Council Meeting October 5, 2009, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Petition from Atty. Bergeron, on behalf of 400 South St. LLC, 424 South St. LLC, and 428 South St. LLC, to request rezoning of Map 93, Parcels 18A, 19, 20, 22, 23, 32, 101 and 103 from Industrial (I) to Commercial and Automotive (CA), all were heard who wish to be heard, hearing recessed at 8:24 p.m.; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communication facility located at 2 Mount Royal Ave., all were heard who wish to be heard, hearing recessed at 8:35 p.m.; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from Attorney Hoyt, on behalf of Clear Wireless LLC, for modification of a wireless communication facility located at 460 Boston Post Rd. East, all were heard who wish to be heard, hearing recessed at 8:42 p.m.; adopted.

ORDERED: At Councilor Pope's request to recess at 8:42 PM and returned to open meeting at 8:46 PM, **APPROVED**; adopted.

ORDERED: That the report submitted by Assistant Superintendent Jim Jolicoeur outlining the status of School Department ARRA funding as requested by City Council Order No. 09-1002340, **TABLED**; adopted.

ORDERED: That the completion and submittal of the FY2009 City Financial Schedule A report, **FILE**; adopted.

ORDERED: That the two budget transfer requests in the amount of \$15,000.00 from Water Meter Reader to Overtime-Water accounts and \$5,500.00 from Equipment Operator-Water to Overtime-Water accounts for the purpose of funding anticipated shortfalls and to meet additional demands placed on the account following an employee's retirement, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 61090001-50460

\$15,000.00

Water Meter Reader

TO:

Acct. # 61090003-51310

\$15,000.00

Overtime (Water)

## FROM:

Acct. # 61090001-50740 \$5,500.00  
Equipment Operator (Water)

## TO:

Acct. # 61090003-51310 \$5,500.00  
Overtime (Water)

ORDERED: That the budget transfer request in the amount of \$100,000.00 from Stabilization to Water Meters accounts which will fund approximately one year's worth of replacement meters and hand-held meter readers, refer to **FINANCE COMMITTEE**; adopted.

## FROM:

Acct. # 836000-11515 \$100,000.00  
Stabilization

## TO:

Acct. # 61090006-55740 \$100,000.00  
Water Meters

ORDERED: That the proposed Ordinances pertinent to Marlborough's Storm Drain System, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the acquisition from Stephen M. Fitzpatrick, Trustee of Fitzpatrick Family Investment Trust, of the Utility Easement recited in the said Trust's easement deed to the City of Marlborough executed on October 1, 2009 and recorded at the Middlesex South District Registry of Deeds at Book 53650, Page 534, as attached hereto, be and hereby is approved; and That the acquisition from Stephen M. Fitzpatrick, Trustee of Fitzpatrick Family Investment Trust, of the Sidewalk Easement (Area A and Area B) recited in the said Trust's easement deed to the City of Marlborough executed on October 1, 2009 and recorded at the Middlesex South District Registry of Deeds at Book 53650, Page 537, as attached hereto, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; 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 Parcel “A” on a plan entitled, “Taking Plan For City of Marlborough, Mass. (Middlesex County); Scale 1”=40’; Date: September 16, 2009; Prepared For: City of Marlborough, 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 Parcel “A” 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 Parcel “A” 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:

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

**APPROVED AS AMENDED;** adopted.

**ORDERED:** That the following notification from the City Clerk re: 2009 Biennial Municipal Election Call, be and is herewith accepted and placed on **FILE**.

CITY OF MARLBOROUGH  
 OFFICE OF CITY CLERK

That the City Clerk be and is herewith directed to have proper notices issued notifying the **VOTERS** of the City of Marlborough that the **BIENNIAL MUNICIPAL ELECTION** will be held in the polling locations as noted below on **NOVEMBER 3,**

**2009** as follows: Mayor, Four Councilors At-Large, Ward Councilors and Three School Committee members, **FILE**; adopted.

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

**POLLING LOCATIONS ARE AS FOLLOWS:**

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

ORDERED: That the communication from Attorney Valeriani, on behalf of Verizon Wireless, re: request to extend time limitations to permit, construct, operate and maintain a wireless communications facility at 303 Boundary St., to December 22, 2009 at 5:00 PM, Order No. 09-1002161C, **APPROVED**; adopted.

ORDERED: That the request for Road Acceptance – Blake Circle, refer to **PUBLIC SERVICES COMMITTEE AND PLANNING BOARD**; adopted.

ORDERED: That the application for Junk Dealer's License for Sylvia Jahn's, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

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

- A. Kathy Calderini, 150 Evelina Dr., residential mailbox claim
- B. Central Realty Trust, 53 Central St., other property damage

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

**Order No. 09-1002286 – Appointment of William Short and re-appointment of Joseph Moineau to the Board of Registrars with terms expiring April 1, 2011 and April 1, 2012 respectively.** William Short was appointed on September 28, 2009. **Recommendation of the Personnel Committee is to approve the re-appointment of Joseph Moineau 2-0 (Juaire was absent).**

**Order No. 09-1002307 – Appointment of Robert Page as an alternate member of the Zoning Board of Appeals which expires two years from the date of City Council approval. Recommendation of the Personnel Committee is to approve 2-0 (Juaire was absent).**

**Suspension of the Rules requested – granted**

ORDERED: That attorney Hoyt, on behalf of Clear Wireless LLC, request that the Special Permit for installation of a wireless communications facility located at 95 Donald Lynch Blvd., **WITHDRAWN WITHOUT PREJUDICE, APPROVED**; adopted.

**Suspension of the Rules requested – granted**

ORDERED: That the Operations and Oversight Committee review the effectiveness and cost savings in connection with the reorganization of the Legal Department, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

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 TO SECTION 7-13 OF CHAPTER 7 OF ARTICLE II THE FOLLOWING NEW PARAGRAPHS:

It shall be deemed to be within the proper discharge of the official duties of the employees in the Legal Department for said employees to contact private contractors and/or their insurers in an effort to assist, or attempt to assist, those claimants whose claims against the City of Marlborough have been denied based upon a determination by the Legal Department or the City's insurer that said private contractors are responsible for satisfying those claimants' claims; provided however, that nothing contained herein shall be construed to create an attorney-client relationship between any claimant so assisted, or attempted to be assisted, and either the Solicitor or the Assistant Solicitor, whose sole client is and shall remain the City of Marlborough; and provided, further, that nothing contained herein shall be construed so as to interfere, in the sole determination of the Solicitor or the Assistant Solicitor, with the proper discharge of any other official duties of the employees in the Legal Department. This paragraph shall be applicable to only those claims accruing on or after November 1, 2009.

Notwithstanding the immediately preceding paragraph, any written claim presented to the City of Marlborough alleging that a residential mailbox has been damaged by the operation of a snow plow shall be granted upon written confirmation provided by the Department of Public Works to the Legal Department that City of Marlborough snow plow operations were in effect during the date when, and on the street where, the claimed mailbox damage occurred; provided, however, that such claim must be accompanied both by an auto-dated photograph(s) of the damaged mailbox as well as by a paid receipt showing the actual cost of the mailbox's repair or replacement; and provided, further, the maximum amount of reimbursement shall be set at Seventy-Five and 00/100 (\$75.00) Dollars, except that in the absence of such photograph(s) and/or such paid receipt, the maximum amount of reimbursement shall be set at Thirty and 00/100 (\$30.00) Dollars. This paragraph shall be applicable to only those mailbox claims accruing on or after November 1, 2009, **APPROVED**; adopted.

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

ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING THERETO AS FOLLOWS:

1. Section 650-5, entitled “Definitions; Word Usage,” is hereby amended by adding to said Section the following definition:

**NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITY:** A non-residential drug treatment program that assists individual addicted to drugs by administration of a substitute drug. Any facility that dispenses, prescribes, administers, allocates, delivers, hands out, or uses in any way a substitute drug, with or without providing other treatment services, shall be deemed a “Narcotic Detoxification and/or Maintenance Facility” and subject to the regulations under Section 650-31 of this ordinance.

2. Section 650-17, entitled “Table of Uses,” is hereby amended by adding to said section a new business use entitled, “Narcotic Detoxification and/or Maintenance Facility,” which shall be regulated, as follows:

RR	A1	A2	A3	RB	RC	B	CA	LI	I
N	N	N	N	N	N	N	SP	SP	SP

3. A new Section 650-31, entitled “NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES,” is hereby added, as follows:

**650-31 NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITIES**

- A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning Ordinance will not prohibit the location of a facility for narcotic detoxification or narcotic maintenance within the City of Marlborough, but will instead regulate such facilities. A Narcotic Detoxification and/or Maintenance Facility should provide medical support, security, drug testing with oversight by a physician, and standards that meet or exceed state regulations under 105 CMR 164 for licensure of substance abuse treatment programs. Facilities should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these facilities are located in such a way as to not pose a direct threat to the health or safety of either the participants in the rehabilitation treatment or the public at large, the provisions of this section will apply to all such facilities.
- B. Where a Special Permit is required for a Narcotic Detoxification and/or Maintenance Facility, the Special Permit Granting Authority shall grant the Special Permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set

forth in this Ordinance, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment;
6. Potential fiscal impact, including impact on City services, tax base, and employment; and
7. The ability for the facility to:
  - a. meet a demonstrated need;
  - b. provide a secure indoor waiting area for clients;
  - c. provide an adequate pick-up/drop-off area;
  - d. provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and
  - e. adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses.

The Special Permit Granting Authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

C. A Narcotic Detoxification and/or Maintenance Facility shall not be located:

1. within five thousand (5,000) feet of another Narcotic Detoxification and/or Maintenance Facility; nor,
2. within two thousand (2,000) feet of:
  - a. a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;
  - b. a recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
  - c. a park (as defined in § 517-2 of the Code of the City of Marlborough, as amended).
  - d. an elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or
  - e. a retirement community (as defined in § 650-4 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough, **TABLED UNTIL NOVEMBER 9, 2009**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:03 p.m.