



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
JULY 14, 2008**

Regular meeting of the City Council held on Monday JULY 14, at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Juairé, Seymour, Clancy and Landers. Councilor Schafer was absent. Meeting adjourned at 8:47 p.m.

ORDERED: Minutes, City Council Meeting, June 23, 2008, **FILE**; adopted as amended.

Suspension of the Rules requested – granted to allow the Mayor to speak regarding the slideshow presentation that the Metropolitan Area Planning Council will be presenting.

ORDERED: That PowerPoint slideshow presentation by the Metropolitan Area Planning Council to remain eligible for FEMA Disaster Mitigation Grants by adopting a Pre-Disaster Mitigation Plan, **FILE**; adopted.

ORDERED: That the following budget transfer request in the amount of \$7,100.61 which would move funds from Fringes to Certification which will provide for the recently approved stipend for the City Assessor as a result of additional educational certifications related to his position, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500 \$7,100.61
Fringes

TO:

Acct. # 11410001-50177 \$7,100.61
Certification

ORDERED: That the reconsideration of a salary increase of firefighter Tricia Richard, is **NOT APPROVED**; adopted.

(Councilor Juairé abstained)

ORDERED: **ORDER FOR THE APPROPRIATION OF MONEY**

That the City Council of the City of Marlborough hereby appropriates the sum of \$3,100.00 from the Belleview Avenue Sewer Account, number 30542306-55951, for the purposes of awarding damages for the acquisition of a permanent municipal utility easement by Eminent Domain in a certain strip of land located at the end of Belleview Avenue consisting of approximately 818 ± square feet, now or formerly owned by Richard C. DiMatteo and Jacqueline T. Di Matteo, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: EMINENT DOMAIN ORDER OF TAKING

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience, public welfare, and necessity require that the land described herein be taken for a permanent municipal utility easement for the purposes of construction and maintenance of general municipal utilities, including water, sewer, and drain lines; and

WHEREAS, this land is necessary for the protection of the health, welfare and safety of the residents of Marlborough; and

WHEREAS, the City Council of the City of Marlborough has determined that the taking of a permanent municipal utility easement by Eminent Domain in, on, under, over, across and through the herein described land is necessary and reasonable to carry out the aforementioned purpose; and

WHEREAS, all preliminary requirements have been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough by virtue of the authority and the power conferred by the City Charter and by virtue of the applicable provisions of the Massachusetts General Laws, Chapter 79, and by virtue of every other power and authority thereto enabling, and in the exercise of power and authority conferred by said laws, does hereby take by Eminent Domain a permanent municipal utility easement, including all parcels of land, buildings, trees, and other vegetation thereon, in the following land:

DESCRIPTION OF LAND TAKEN

A strip of land now or formerly of Richard C. DiMatteo, Jr. and Jacqueline T. DiMatteo in Marlborough, Middlesex County, Massachusetts, situated at the end of Belleview Avenue, as shown on the plan entitled "Plan of Taking For Permanent Municipal Utility Easement In Marlborough, Massachusetts, Prepared by: City of Marlborough Department of Public Works, Engineering Division, Scale: 1" = 20', Date: January 18, 2008" and to be recorded at the Middlesex South District County Registry of Deeds together with an attested copy of this Order.

Meaning and intending to take and taking by Eminent Domain a permanent municipal utility easement in land shown as Parcel A as described in the aforementioned plan. For title, see Quitclaim Deed to current owners, Richard C. DiMatteo, Jr. & Jacqueline T. DiMatteo, dated July 7, 2003 and recorded at Middlesex South Registry of Deeds on October 1, 2003 in Book 41087, Page 439. The land consisting of Parcel A as referred to in the description above is also shown on the City of Marlborough Assessors Map as Parcel 93 on Map 43. The total land area being taken for a permanent municipal utility easement consists of approximately 818 ± SF, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; 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 2009, authorize the establishment of 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 2009, 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, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City has been awarded \$16,014.00 by its liability insurance carrier, MIA for attending loss control trainings and for implementing key risk management procedures during July 1, 2007 to June 30, 2008 policy period, **FILE**; adopted.

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

EVIDENCE

1. The Applicant is METROPCS MASSACHUSETTS, LLC, which has a business address of 285 Billerica Road, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application for a Special Permit, the Applicant seeks permission to allow co-location of six (6) panel antennas in three (3) flues onto an existing rooftop as well as the placement of the associated cabinets (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0484A Countryside Apartments Marlborough, 450 Boston Post Rd" by Chappell Engineering Associates, LLC and dated 2/13/08 as submitted, as submitted with the Special Permit Application (hereinafter "Plans").
3. The location of the Proposed WCD Project is 450 Boston Post Road East. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 73, Block 31. The owner of record for the site is Trinity Countryside Limited Partnership.
4. The Applicant is a lessee of the Owner for purposes of this Special Permit Application.
5. The Site is zoned B (Business). Wireless communication devices are allowed by grant of Special Permit in B (Business) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on May 12, 2008, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.

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

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this Approval.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCD Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 10:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
 - 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.

- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The temporary generator shall be affixed to the roof in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code.
- 8) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) In accordance with the provisions of Mass. Gen. Laws c.40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South 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: 0

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

(Councilor Seymour abstained)

Councilor Schafer absent

ORDERED: That the Agreement to Extend Time Limitations on the application for Special Permit from Ming Wang for conversion of former State Armory building into 12 residential condominium units in a Business B/Residence C zoned lot at 358-364 Lincoln St , until 5:00 PM on October 28, 2008, **APPROVED**; adopted.

(Councilor Seymour abstained)

Councilors Vigeant, Ferro and Levy requested to be recorded in opposition.

ORDERED: That the Agreement to Extend Time Limitations on the application for Special Permit from Attorney Bergeron on behalf of Gary White, Trustee of 566 and 574 Lincoln St. Realty Trust, to extend deadline for action on Special Permit to construct 19 new townhouse condominium units on Lincoln St., Map 80, parcels 47, 48 & 51, to October 28, 2008, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, AUGUST 18, 2008** as the date for a **PUBLIC HEARING** on the application for Special Permit from MetroPCS Massachusetts, LLC for proposed installation of a Telecommunication Facility onto the existing Telecommunications Tower located at 445 Simarano Dr., refer to **WIRELESS COMMUNICATIONS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the communication from the Office of the Governor re: 2009 version of Commonwealth Capital, **FILE**; adopted.

ORDERED: That the Minutes, Community Development Authority, January 31, 2008, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, June 9, 2008, **FILE**; adopted.

ORDERED: That the Minutes, MetroWest Regional Transit Authority, June 2, 2008, **FILE**; adopted.

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

- A. Michael Dolan, 14 Country Lane, property damage
- B. Stella Luberto, 215 Broad St., vehicle damage

Reports of Committees:

Councilor Ferro reported the following out of the Operations and Oversight Committee:

Order No. 08-1001787 – Claims for property damage filed with the City Clerk in connection with snowplowing operations. Councilor Pope requested report from the DPW commissioner as to whether the claims are pertinent to plow operators who are repeat offenders. Councilor Schafer requested a report from the DPW Commissioner as to whether the plow operators are outside contractors or DPW employees. The Committee reviewed the communication from the Solicitor with recommendations for changes to the City Ordinance in regards to payment of legal claims for property damage, specifically mailboxes. The Committee discussed the draft ordinance submitted by Solicitor Rider. The Solicitor showed the practicality of the proposed ordinance in regard to the ability to replace damaged mailboxes at the monetary levels suggested in the ordinance by presenting exhibits including a mailbox and post purchased for under \$30.00 at a local retail home center. **Recommendation of the Operations and Oversight Committee is to approve 3-0 the Ordinance as submitted by the City Solicitor.**

Motion to Suspend the Rules requested – granted to have the City Clerk advertise the Ordinance as submitted by the City Solicitor.

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

Order No. 08-1001835A – Amend Zoning Ordinance of the City of Marlborough, by further amending Chapter 200, Article VI, Section 200-30 entitled "Limited Development Subdivisions". Planning Board recommended approval on June 12, 2008. **Recommendation of the Urban Affairs Committee is to approve 5-0.**

Order No. 08-1001377D - Request to extend time in which to complete condition #21 of Special Permit granted for residential conversion of 175 Maple Street – City Council voted on June 9, 2008 to extend the deadline for 45 days. Motion made and seconded to recommend approval of a 120-day extension of the affordable housing condition that requires Petitioner to construct ten (10) affordable units off site with a condition that the Petitioner submit a written report to the City Council for its August 18, 2008 meeting (agenda deadline for submission to City Clerk is August 14, 2008) to include a progress report and the location of the affordable units. The new expiration date is October 6, 2008. **Recommendation of the Urban Affairs Committee is to approve 5-0.**

Councilor Pope did not submit a written report of the Armory Special Permit application due to Attorney Milgram's decision NOT TO WITHDRAW as requested at the June 24, 2008 Urban Affairs Committee meeting and his subsequent placement of the 90-day request for extension of time in which to act on the Monday, July 14, 2008 agenda.

ORDERED: That the City Council meeting recessed at 8:37 p.m. and reconvened at 8:40 p.m., **APPROVED**; adopted.

ORDERED: That a petition to the General Court, accompanied by a bill for a special act relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article II, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

SECTION 1. Chapter 275 of the acts of 1922 is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. Except as otherwise provided herein, and notwithstanding section 60 of chapter 43 of the General Laws pertaining to the appointment, removal and confirmation of the city solicitor, the city of Marlborough shall conduct its city government under the form provided in sections 56 to 63 inclusive of said chapter 43 of the General Laws, known as Plan B, and said sections 56 to 63 inclusive and sections 1 to 45 inclusive of said chapter 43, shall, except as otherwise provided herein and except to the extent that section 60 of said chapter 43 pertains to the appointment, removal and confirmation of the city solicitor, apply to the said city government to the same extent as if said plan was accepted by the said city in the manner provided in said chapter 43. The city solicitor of the city of Marlborough shall have the term of 5 years beginning on the effective date of this act. Upon the expiration of the first 5 year term, the mayor of the city of Marlborough may reappoint the individual then holding the office of city solicitor, and such reappointment shall be subject to confirmation by the city council of said city. In the event that, upon the expiration of the first 5 year term, the individual then holding the office of the city solicitor is not reappointed by the mayor, or if

reappointed, not confirmed by the city council, the mayor may appoint another individual subject to confirmation by the council.

SECTION 2. This act shall take effect upon its passage, **TABLED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:47 p.m.