



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
SEPTEMBER 8, 2008**

Regular meeting of the City Council held on Monday SEPTEMBER 8, at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juare, Seymour, Clancy and Landers. Meeting adjourned at 9:30 p.m.

ORDERED: Minutes, City Council Meeting, August 18, 2008, **FILE**; adopted.

ORDERED: That the following budget transfer request in the amount of \$2,550.60 which would move funds from Animal Inspector to Professional & Technical for the purpose of funding the Critter Control contract, **APPROVED**; adopted.

FROM:

Acct. # 15120003-50830 \$2,550.60
Animal Inspector

TO:

Acct. # 15120006-53180 \$2,550.60
Professional & Technical

ORDERED: That the reappointment of Paul Guinta to the Zoning Board of Appeals for five years whose two term expires on May 5, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the request to convert two existing Beer and Wine licenses to All Alcohol licenses, which will result in no change in the total number of active licenses, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: A. That, pursuant to an open space special permit granted by the Marlborough Planning Board on February 22, 2005, a deed dated May 16, 2008, from Henry H. Renaud, III, Marlo J. Renaud, Thomas A. Kehoe and Elizabeth J. Kehoe to the City of Marlborough, conveying a certain tract of open space land designated "Open Space (Passive Recreation) to City of Marlborough, Map 54, Parcel 29, Area: 102,650 s.f.+/-, (2.356 +/- acres)(18.3% wetlands)," as shown on a plan entitled, "Subdivision Plan of Land, Definitive Open Space, Lotting Plan Modification of Plan No. 277 of 2006 and Plan No. 868 of 2007, Berlin Farms, Marlborough, Mass.," Owner/Applicant: Berlin Farms 2007 Realty Trust, Charles V. Freeman, Trustee, P.O. Box 118, Hudson, MA 01749, Scale 1" = 40', Date: November 28, 2007, Prepared by: Inland Survey, Inc., dba Zanca Land Surveying, Civil Engineers and Land Surveyors, 16 Gleasondale Road, Stow, MA (978) 461-2355, (Sheet 2 of 6), said plan being last revised on January 17, 2008 and recorded at the Middlesex South District Registry of Deeds as Plan Number 140 of 2008, and to which plan reference is hereby made for a more particular description of said open space land, subject to the drainage easement

for the benefit of Lots 1, 2, 3 and 4 as shown on said plan, is accepted under the provisions of Mass. Gen. Laws c. 40, § 8C and is to be managed and controlled by the Marlborough Conservation Commission for the purposes of the promotion and development of natural resources, watershed protection, passive recreation, and conservation.

- B. That, since, pursuant to an open space special permit granted by the Marlborough Planning Board on February 22, 2005, the City of Marlborough is the accepting entity for the Berlin Farms open space parcel referenced in part A above, the amount of \$5,000.00 is accepted under the provisions of Mass. Gen. Laws c. 44, § 53A and is to be placed in the Conservation Maintenance Trust Fund, account #84500-48300, for the purposes of managing the Berlin Farms open space parcel and other conservation land, **refer to OPEN SPACE COMMITTEE**; adopted.

ORDERED: That the Tax Increment Financing Proposal from Sepracor Inc., a research-based pharmaceutical company dedicated to treating and preventing human disease, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the City Council hereby authorizes Mayor Nancy E. Stevens to sign a Disclaimer of Interests In The Life Insurance Policy On The Life Of Nicholas Xenos in order to allow the proceeds of the life insurance policy owned by Nicholas Xenos to pass, not to the City, but instead to his widow Eleanor Xenos, **APPROVED**; 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 Rd, Chelmsford, MA as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Rd., Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application for a Special Permit, the Applicant seeks permission to allow co-location of six (6) wireless communications antennas and one (1) GPS antenna on an existing telecommunications tower and supporting equipment on the ground within an existing compound (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "AT&T MARLBOROUGH" Chappell Engineering Associates, LLC, dated 1/30/08, revised 2/13/08 and 2/19/08, as submitted with the Special Permit Application, and as further revised 6/18/08 (hereinafter "Plans").
3. The location of the Proposed WCD Project is 75 Donald J. Lynch Boulevard. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Parcel No. 2 of Plate 13. The owner of record for the site is Albert D. Bombard.

4. The Applicant is a sub-lessee of New Cingular Wireless, which owns the existing telecommunications tower at the site and leases the underlying compound area.
5. The Site is zoned LI. Wireless communication devices are allowed by grant of Special Permit in LI 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 June 9th, 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. Pursuant to MGL c. 40A, § 9, the ninety-day time limit for the City Council to make a decision on the Applicant's Special Permit was extended, by written agreement, until 5:00 p.m. on September 30, 2008, and a copy of that agreement was timely filed in the office of the City Clerk for the City of Marlborough.
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 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.
- 11) Applicant shall securely attach cables to the outside of the tower in such a manner as to prevent noise and/or other disturbance that would be obtrusive to the neighborhood.

Councilor Delano submitted Condition #11 and a roll call vote of Special Permit included acceptance of Condition #11.

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 Boston Post 355 LLC to construct a carwash in a Business District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

- 1) Boston Post 355 LLC is a Delaware limited liability company having a business address of 154 Southfield Rd, Concord, Massachusetts, and is hereinafter referred to as "Applicant".
- 2) Applicant is the owner of certain real property located at 355 Boston Post Road West, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 88 Parcel 15. The land is entirely located in a Business District and is also entirely located in the Water Supply Protection District.
- 3) The property is currently used as a contractor's yard for a landscaping and snowplowing business.
- 4) The Applicant, on or about April 25, 2008, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Article V Sec. 200-17 and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance.
- 5) In connection with the 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 MGL C.40A, held a public hearing on June 9, 2008, concerning the said application. The hearing was opened and closed at that meeting. Pursuant to MGL c. 40A, § 9, the ninety-day time limit for the City Council to make a decision on the Applicant's Special Permit was extended, by written agreement, until 5:00 p.m. on September 30, 2008, and a copy of that agreement was timely filed in the office of the City Clerk for the City of Marlborough.
- 9) Applicant's attorney presented testimony at the public hearing detailing the application, described the improvements to the environment resulting from improved stormwater control at the site, and showed renderings of the proposed carwash to emphasize the improved aesthetic appearance of the site that would result from approval.

- 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. In particular, Applicant presented a traffic study describing the likely impact of the proposed carwash on traffic, and a noise impact study dealing with the impact of the proposed carwash on surrounding properties.
- 11) Applicant provided the Urban Affairs Committee with revised site plans entitled "Proposed Site Plan Set for 355 Boston Post Road West" dated 10/17/07, revised 7/10/08, by Cabco Consult, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08) (hereinafter, "The Revised Plans".)

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

- 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. The visual and noise impacts from the proposed use have been mitigated, and the limited hours of operation will minimize the noise and traffic impacts to neighbors.
- C) The City Council, pursuant to its authority under MGL C.40A §9 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicant a Special Permit to allow a carwash on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:
 - 1) Compliance With Building Regulations. Construction of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and Site Plan. The Site Plan referred to in this condition is the plan entitled "Proposed Site Plan Set for 355 Boston Post Road West" dated 10/17/07, by Cabco Consult, filed with the Special Permit Application, as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, all said revisions being reflected in a plan showing a revision date of 7/10/08, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08). All other terms, conditions, requirements, approvals, drawings and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

- 2) **Compliance With Site Plan Review.** 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 actual Building Permit; provided, however, that the Building Commissioner may issue a building permit prior to the completion of site plan review regarding work which, in his opinion, will not be affected by said site plan review. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Special Permit and no Occupancy Permit shall be issued until all conditions are complied with by the Applicant. 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 within the site, require the removal of landscaping, reduce the overall green space of the Project, or add any new element in Zone A other than the landscaping, will require subsequent approval by the City Council.
- 3) **Application and Documents.** All plans, drawings, site evaluations and 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.
- 4) **Compliance with Local, State and Federal Laws.** 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, except pursuant to the terms of this Special Permit.
- 5) **Incorporation of Plans and Drawings.** All terms, conditions, requirements, approvals, plans, and drawings provided by the 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 part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.
- 6) **Improvements Installed Prior to Certificate of Occupancy.** All site improvements, except those specified on the plans approved at Site Plan Review, that have been shown in renderings and/or are conditions of this Special Permit will be installed prior to the issuance of any temporary or permanent occupancy certificate. If all other work is completed between Oct. 1 and June 1, all landscaping plants will be required to be installed by June 1. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

- 7) Supplemental Permit Review Fee. Applicant shall, at the time of application for a Building Permit, pay the sum of \$2,000 to the City of Marlborough Inspectional Services Funds to offset the increase in cost associated with the project's construction such as materials, staff, equipment and supplies relative to permitting, monitoring and inspection of the project. Issuance of a final Occupancy Certificate by the Building Commissioner shall be deemed to have demonstrated compliance with the terms of this Condition.
- 8) Snow Storage. Snowmelt runoff will be directed toward catch basins. All snow will be stored in the designated paved area shown on the Revised Plans.
- 9) Catch Basins. 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 and the Conservation Commission Agent. The catch basins are to be cleaned annually, or at more frequent intervals as determined necessary by the City Engineer and the Conservation Commission Agent.
- 10) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of MGL C.90 §18, the Applicant 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 traffic and parking. Applicant 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 Manual of Uniform Traffic Control Devices.
- 11) Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the existing City of Marlborough Sign Ordinance without a variance. The proposed freestanding sign for the project will be made of wood or a material appearing to be wood, and will be lit by indirect lighting. The sign will not be lit from ½ hour after closing to ½ hour before the opening of the carwash each day.
- 12) Exterior Light Fixtures. Exterior parking lot lighting shall not spill on to abutting residential property. Parking lot light poles shall not exceed 20 feet in height. Reflectors shall be utilized and configured to mitigate light from entering abutting properties. Light fixtures shall consist of pressure sodium lights not exceeding 200 watts. During the Site Plan review process, the location of the light pole shown on Sheet 6 of the Revised Plans as being located at a location behind the parking lot in the rear of the building will be moved to a location to the north of the dumpster shown on said plan.
- 13) Landscaping Maintenance. Applicant 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.
- 14) Dumpster Screening. Applicant agrees to screen the Project's trash area by constructing a suitable 6-foot high wooden screen fence.

- 15) Trash Pickup. Trash pick up and commercial deliveries will only be made from 7:00 AM through 5:00 PM Monday through Friday.
- 16) Hours of Operation. Hours of Operation will be limited to 7 AM to 7 PM, Monday through Saturday, and 8:00 AM to 6 PM on Sunday.
- 17) Facade Appearance. An artist-colored rendering of the proposed building façade for Applicant will be provided prior to Site Plan Approval. The building façade will consist of a red brick veneer, and will be configured as shown in renderings filed with the Urban Affairs Committee.
- 18) Noise Mitigation Enforcement. This special permit is being approved based upon the representation of Applicant that the noise caused by operation of equipment inside Applicant's building will not cause so-called noise "spikes" in excess of 53dbA at the easterly, westerly or rear property lines. Prior to the issuance of a Certificate of Occupancy regarding this project, Applicant will notify the owners and tenants of all abutting property, in a manner satisfactory to the Building Commissioner, that any noise complaints regarding business operations should be reported to the Code Enforcement Officer. Thereafter, the Code Enforcement Officer may, in said Code Enforcement Officer's discretion, order that sound testing be conducted forthwith by an independent certified sound engineer to be selected by the Code Enforcement Officer, with the advice of Applicant, at Applicant's cost. The sound engineer shall immediately conduct such sound testing as the sound engineer deems appropriate to determine whether, in fact, the operation of equipment inside Applicant's building is causing noise "spikes" exceeding 53bdA at the said easterly, westerly or rear property line; and the sound engineer shall present the results of his/her sound testing in a written report to be provided to both the Code Enforcement Officer and the Applicant. If the sound engineer determines that, in fact, the operation of equipment inside Applicant's building is causing noise "spikes" exceeding 53dbA at the said easterly, westerly or rear property line, the Code Enforcement Officer shall order Applicant to devise and implement such building or operations modifications as will eliminate said noise "spikes" within sixty (60) calendar days. Immediately upon either the expiration of that time period or the Applicant's implementation of such building and operational modifications, whichever is sooner, the Code Enforcement Officer shall order that sound retesting be conducted forthwith by the sound engineer, at Applicant's cost, to determine whether the operations or building modifications have eliminated the noise "spikes", and the sound engineer shall present the results of his/her sound retesting in another written reports to be provided to both the Code Enforcement Officer and the Applicant. If the sound engineer determines that the Applicant has not eliminated, within said sixty (60) calendar day period, the noise "spikes" exceeding 53dbA at the said easterly, westerly or rear property line, then all of Applicant's equipment operations determined by the sound engineer to cause said noise "spikes" will thereafter be prohibited until, if ever, the sound engineer, at Applicant's cost, certifies that no noise spikes exceeding 53dbA at the easterly, westerly or rear property line will occur thereafter; and the sound engineer shall provide his/her written certification to both the Code Enforcement Officer and the Applicant.

- 19) [Omitted]
- 20) Compliance with Related Permit. Applicant has also applied for a special permit, pursuant to Chapter 200-24, to construct a carwash in the Water Supply Protection District. Any conditions attached to the approval of that special permit are also incorporated herein and made a part hereof.
- 21) No Queuing on Rte. 20. Applicant will assure that no motor vehicle that is queuing and waiting for carwash or other service on the premises will be located on the Rte. 20 right of way. If the Chief of Police determines that this condition is not being complied with, the Chief may, in the Police Chief's absolute discretion, require the closing of the carwash for a period to be determined by the Police Chief or, if the Police Chief is unavailable, by his designee.
- 22) Limited Vacuum Operation. All exterior motor vehicle cleaning vacuums will be turned off and disabled when the carwash is not in operation. All exterior vacuums shall be located as shown on the Revised Plans.
- 23) Limited Left-Hand Turns. Applicant will, as part of its curb cut application to MassHighway, request that appropriate signage be installed to prohibit left-turns from the site from 4:00 PM to 6:00 PM from Monday through Friday. Provided that said signage is approved, Applicant will erect said signage and prohibit left-hand turns from the site during said periods. If the Police Chief later determines, based upon accident reports and other data he finds to be relevant, that left-hand-turns should be prohibited at the site at all times, he shall so notify the owner of the property, who shall then promptly apply to MassHighway, to cause said prohibition to come into effect. If said prohibition comes into effect, the owner of the property shall cause appropriate signage to be installed and shall thereafter cause said prohibition to be enforced on the site.
- 24) Car Wash Safety Factor. The Chief of Police or his designee shall have authority to order the carwash temporarily closed when an "icing" or unsafe condition on the public way exists due to the carwash or weather conditions, as determined solely by the Chief of Police or his designee.
- 25) Storage of Flammables Prohibited. No flammable materials, except those, like diesel and oil, that will be used to heat the premises, will be stored at the site.
- 26) Recordation. In accordance with the provisions of MGL 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, and before a Building Permit is issued.

Councilor Juaire filed a disclosure statement with the City Clerk's Office.

Yea: 10 – Nay: 1

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

Nay: Pope

ORDERED: The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to Boston Post 355 LLC to construct a carwash in Zone B of the Water Supply Protection District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

- 1) Boston Post 355 LLC is a Delaware limited liability company having a business address of 154 Southfield Rd, Concord, Massachusetts, and is hereinafter referred to as "Applicant."
- 2) Applicant is the owner of certain real property located at 355 Boston Post Road West, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 88 Parcel 15. The land is entirely located in a Business District and is also entirely located in the Water Supply Protection District.
- 3) The property is currently used as a contractor's yard for a landscaping and snowplowing business.
- 4) The Applicant, on or about April 24, 2008, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Article V Sec. 200-24 and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance.
- 5) In connection with the 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 MGL C.40A, held a public hearing on June 9, 2008, concerning the said application. The hearing was opened and closed at that meeting. Pursuant to MGL c. 40A, § 9, the ninety-day time limit for the City Council to make a decision on the Applicant's Special Permit was extended, by written agreement, until 5:00 p.m. on September 30, 2008, and a copy of that agreement was timely filed in the office of the City Clerk for the City of Marlborough.
- 9) Applicant's attorney presented testimony at the public hearing detailing the application, described the improvements to the environment resulting from improved stormwater control at the site, and showed renderings of the proposed carwash to emphasize the improved aesthetic appearance of the site that would result from approval.

- 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) Applicant provided the Urban Affairs Committee with revised site plans entitled "Proposed Site Plan Set for 355 Boston Post Road West" dated 10/17/07, revised 7/10/08, by Cabco Consult, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08) (hereinafter, "The Revised Plans"). The revised plans show the snow storage area for the site, and also provide a table at Plan page 4 listing all development elements of this project that are in Zone A of the Water Supply Overlay District (hereinafter, "The Zone A Use Table").

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

- 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, improve the water quality of the surface water at 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. The City Council further finds that, subject to the permit conditions enumerated herein, the proposed use will not have an adverse impact on the Marlborough water supply.
- C) The City Council has reviewed the uses in this proposal that will be located in Zone A of the Water Supply Protection District, all as listed in The Zone A Use Table provided on Sheet 4 of the Revised Plans. The City Council finds that those uses located in Zone A are not unique to the use of the site as a carwash, but are uses that would be allowable in Zone A as accessory to uses that are otherwise allowable as of right in the underlying Business District. Therefore, the City Council finds that the proposed carwash is not located in Zone A, provided that the permit conditions imposed below are complied with.
- D) The City Council, pursuant to its authority under MGL C.40A §9 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicant a Special Permit to allow a carwash on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:
 - 1) Compliance With Building Regulations. Construction of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and Site Plan. The Site Plan referred to in this condition is the plan entitled "Proposed Site Plan Set for

355 Boston Post Road West” dated 10/17/07, revised 7/10/08 by Cabco Consult, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08) (hereinafter, “The Revised Plans”), filed with the Urban Affairs Committee during the application/hearing process. All other terms, conditions, requirements, approvals, drawings and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

- 2) Compliance With Site Plan Review. 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 actual Building Permit; provided, however, that the Building Commissioner may issue a building permit prior to the completion of site plan review regarding work which, in his opinion, will not be affected by said site plan review. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Special Permit and no Occupancy Permit shall be issued until all conditions are complied with by the Applicant. 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 within the site, require the removal of landscaping, reduce the overall green space of the Project, or add any new element in Zone A other than the landscaping, will require subsequent approval by the City Council.
- 3) Application and Documents. All plans, drawings, site evaluations and 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.
- 4) Compliance with Local, State and Federal Laws. The 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, except pursuant to the terms of this Special Permit.
- 5) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings provided by the 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 part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.
- 6) Improvements Installed Prior to Certificate of Occupancy. All site improvements, except those specified on the plans approved on site plan review, that have been shown in renderings and/or are conditions of this Special Permit will be installed prior to the issuance of any temporary or permanent occupancy certificate. If all other work is completed between Oct. 1 and June 1, all landscaping plants will be required to be installed by June 1. Applicant agrees

that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

- 7) Compliance with Conservation Commission Agent Recommendations. Applicant will demonstrate, to the satisfaction of the Site Plan Review Committee, that all "Criteria for Design" required in Section 200-24(F) will be complied with. Without limiting the foregoing, applicant will comply with the recommendations of the Conservation Commission Agent listed in her communication to the City Council dated July 5, 2008, a copy of which is on file with the City Council and attached hereto.
- 8) Snow Storage. Snowmelt runoff will be directed toward catch basins. All snow will be stored in the designated paved area shown on the Revised Plans.
- 9) Catch Basins. 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 and the Conservation Commission Agent. The catch basins are to be cleaned annually, or at more frequent intervals as determined necessary by the City Engineer and the Conservation Commission Agent.
- 10) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary.
- 11) Landscaping Maintenance. Applicant 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.
- 12) Carwash Equipment Monitoring. All carwash equipment shall be monitored on an annual basis with reports given to the Director of the Water and Sewer division of the Department of Public Works. The purpose of said report shall be to demonstrate that the nature of the effluent discharged to the Marlborough sewer system is acceptable and that the total discharge to the system continues to average less than 750 gallons per day on a monthly average basis.
- 13) Disposal of Chemicals Containers. No container that has been used for the storage of chemicals used in the carwash process will be disposed of in the dumpster located on the property.
- 14) Storage of Flammables Prohibited. No flammable materials, except those, like diesel and oil, that will be used to heat the premises, will be stored at the site.
- 15) Activity Prohibition in Zone A. No activity that is accessory to a carwash, including but not limited to the pre-washing of cars, will be allowed in Zone A.
- 16) Compliance With Related Permit. Applicant has also applied for a special permit, pursuant to Chapter 200-17, to construct a carwash in a Business District. Any conditions attached to the approval of that special permit are also incorporated herein and made a part hereof.

- 17) As offsite mitigation because of the impact of this permit on the Water Supply Protection District, Applicant will, prior to the issuance of any occupancy permit for the project, pay the sum of Twenty Thousand (\$20,000) Dollars to the Open Space Stabilization Account.
- 18) Recordation. In accordance with the provisions of MGL 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, before a Building Permit is issued.

Councilor Juaire filed a disclosure statement with the City Clerk's Office.

Motion made by Councilor Ferro to delete Condition #17 in its entirety – Does Not Carry

Motion made by Councilor Pope to amend Condition #17 which reads “pay sum of Twenty Thousand (\$20,000) Dollars to the Conservation Maintenance Trust Fund” to read “pay sum of Twenty Thousand (\$20,000) Dollars to the Open Space Stabilization Account”. A roll call vote of Special Permit included amendment of Condition #17 by Councilor Pope.

Yea: 9 – Nay: 2

Yea: Delano, Schafer, Juaire, Seymour, Clancy, Landers, Ossing, Vigeant, Levy

Nay: Ferro, Pope

ORDERED: That Application from 890 Boston Post Rd LLC Order No. 08-1001833 for proposed change to zoning ordinance to create New Car Dealership Overlay District, is withdrawn with out prejudice, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, SEPTEMBER 29, 2008** as date for a **PUBLIC HEARING** on the Application for modified version of proposed New Car Dealership Overlay District from Attorney Bergeron, on behalf of 890 Boston Post Rd LLC, refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD AND ADVERTISE**; adopted.

ORDERED: That the minutes, Community Development Authority, June 19, & 30 2008, **FILE**; adopted.

ORDERED: That the minutes, Planning Board, July 14, 2008, **FILE**; adopted.

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

- A. Gary Mayo, 53 Dartmouth St., property damage
- B. Anthony Mulherin, 136 Chestnut St., vehicle damage
- C. John McStay, 28 Evelina Dr., vehicle damage
- D. Ron Rolly/Ron Michaux, 27 Taylor Rd., vehicle damage
- E. Catherine Hughes, 61 Ridge Rd., vehicle damage

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 08-1001968 – Appointment of Larry Wenzell to the Arts Lottery Council whose two year term expires on May 1, 2010. Recommendation of the Personnel Services Committee is to approve 3-0.

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

Order No. 08-1949-1 – Appropriation 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. Recommendation of the Legislative and Legal Affairs Committee is to approve appropriation 3-0.

Order No. 08-1949-2 – Order of Taking by eminent domain of a strip of land on Belleview Ave. for a permanent municipal utility easement. Recommendation of the Legislative and Legal Affairs Committee is to approve Order of Taking 3-0.

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

Order No. 08-1001883 – Request for a Sewer Connection Compliance Certification from Brian Marchetti, Senior Project Engineer of Tetra Tech Rizzo, on behalf of First Student Inc., to construct a Bus Facility on Hayes Memorial Drive. Assistant DPW Commissioner recommended approval based on following conditions:

1. The permit will lapse if connection is not made within 180 days of obtaining all permits.
2. Any excess capacity available after the connection must be returned to the City.
3. The permitted sewer capacity will be 650 GPD.

Recommendation of the Public Services Committee is to approve 3-0 based upon above conditions.

Order No. 08-1001834 – Request for an extension of a Sewer Permit from David P. Gadbois, on behalf of Gutierrez Co., for Devonshire at 495 Center which is located between Forest St. and Hayes Memorial Dr. Assistant DPW Commissioner recommended approval based on following conditions:

1. The sewer connection is limited to 56,000 gpd.
2. The sewer connection shall lapse if the connection is not made within 18 months after the date of final approval.
3. If the total volume is not needed, the surplus shall be returned to the City of Marlborough.

Recommendation of the Public Services Committee is to approve 3-0 based upon above conditions.

Councilor Ossing reported the following out of the Finance Committee:

Order No. 08-1001962 – Transfer \$91,355.88 from Public Safety Stabilization to Police Officer salary account. The Mayor requested that the Finance Committee refer the letter dated July 28, 2008 recommending the transfer of \$91,355.88 from Public Safety Stabilization to Police Officer back to the Mayor. **Recommendation of the Finance Committee is to refer back to Mayor 5-0.**

Order No. 08-1001966 – Funding the Glenbrook Drainage Project. The Finance Committee reviewed the Mayor’s letter dated August 8, 2008 requesting funding in the amount of \$130,000.00 to fund the Glenbrook Neighborhood Drainage Project. The City Council has previously approved \$40,000.00 to fund this project. The statement from Councilor Pope supporting this project was discussed during the meeting. **Recommendation of the Finance Committee is approve the transfer of \$130,000.000 from the Stabilization to the Drainage account 5-0, to fund the Glenbrook Neighborhood Drainage Project.**

Order No. 08-1001950 – Request to Establish a Revolving Fund for Public Safety Training - The Finance Committee reviewed the Mayor’ letter dated July 1, 2008 requesting a revolving fund be created for public safety training. The funding for this revolving fund will be provided by Patriot Ambulance at \$45,000 per year for three years. **Recommendation of the Finance Committee is approve 5-0 the establishment of a Public Safety Training revolving fund as outlined in the order attached to the July 1, 2008 letter.**

Suspension of Rules requested - granted

ORDERED: That the reserve of funds through the Fairmont Hill Revolving Account and the Capital Outlay Accounts to provide for replacement of sidewalks along Liberty Street and the associated guardrail and retaining wall along Ward Park be dissected as follows according to a new total estimate of \$257,000.00:

Total Estimated project cost:	\$257,000.00
Existing funding from Capital Outlay Account:	\$60,000.00
Proposed funding from Fairmont Hill Revolving Account:	\$121,200.00
Additional funding required:	\$75,800.00

The deadline for contract execution would be September 18, 2008. Authorization for use of Fairmont Hill Revolving Account funds in excess of \$100,000.00, but not more than \$121,200.00, **APPROVED**; adopted.

Councilor Pope requested to be recorded in opposition.

Suspension of Rules requested - granted

ORDERED: That the reserve of funds through the Fairmont Hill Revolving Account and the Capital Outlay Accounts to provide for replacement of sidewalks along Liberty Street and the associated guardrail and retaining wall along Ward Park be dissected as follows according to a new total estimate of \$257,000.00:

Total Estimated project cost:	\$257,000.00
Existing funding from Capital Outlay Account:	\$60,000.00
Proposed funding from Fairmont Hill Revolving Account:	\$121,200.00
Additional funding required:	\$75,800.00

The deadline for contract execution would be September 18, 2008.

That the following budget transfer request in the amount of \$75,800.00 which would move funds from Stabilization to DPW projects to cover the cost of the remaining shortfall, **APPROVED**; adopted.

FROM:

Acct. # 836000-11515	\$75,800.00
Stabilization	

TO:

Acct. # 19300006-58514	\$75,800.00
DPW Projects	

ORDERED: That the Mayor be requested to submit a transfer to the Affordable Housing Stabilization Fund in the amount of \$190,000.00 received from the Design Pak housing conversion project, immediately upon the certification of the City's Free Cash, which should be certified by the State in October, refer to the **MAYOR**; adopted.

ORDERED: That the Mayor be requested to submit a transfer to a new stabilization account – Recycling Swap Shack – in the amount of \$5,000.00 received from Omnipoint/T-Mobile for the east plant site, immediately upon the certification of the City's Free Cash, which should be certified by the State in October, refer to the **MAYOR**; adopted.

ORDERED: That the application of Richard Roach d/b/a Hudmar Ltd. for renewal of Junk Dealer's license, **APPROVED**; adopted.

ORDERED: That the application of Marlboro Cozy Café for renewal of their Pool Table (2) licenses, **APPROVED**; adopted.

Suspension of Rules requested – granted to allow the Fire Chief to speak re: report of final inspection

ORDERED: That the application for a Fuel Storage License, Ayoub Engineering on behalf of ExxonMobile corp., 260 West Main St., **TABLED** pending written final report from the Fire Chief; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:30 p.m.