



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
Lisa M. Thomas
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
DECEMBER 1, 2008**

Regular meeting of the City Council held on Monday December 1, at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juare, Clancy and Landers. Councilor Seymour was absent. Meeting adjourned at 9:25 p.m.

ORDERED: Minutes, City Council Meeting, November 24, 2008, **FILE**; adopted.

ORDERED: Now being the time set for the **PUBLIC HEARING** On the Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws, all were heard who wish to be heard, hearing recessed at 8:35 p.m., with a continuation to December 15, 2008.

Motion to suspend the rules requested – granted to allow the City Clerk to read a letter from Councilor Seymour as he was not present.

ORDERED: That Agenda #3, Communication from the City Solicitor regarding proposed amended Special Permit from Shalvis Realty, LLC for 204-206 West Main St., in proper form, be moved to Reports of Committees; Wireless Communication Committee, **APPROVED**; adopted.

ORDERED: That Agenda #4, Communication from the City Solicitor regarding Sepracor TIF be moved to item #13; from Finance Committee, **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JANUARY 5, 2009** as the date for a **PUBLIC HEARING** requesting minor modification of Condition #38 of the Fore Kicks Special Permit, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

(Councilor Vigeant abstained)

ORDERED: That the minutes, Planning Board, November 10, 2008, **FILE**; adopted.

Reports of Committees:

Councilor Clancy reported the following out of the Personnel Committee:

Order No. 08-1001998 – Appointment of Ronald Guest to a vacant position on the Cable Advisory Board with no term associated with said appointment. Recommendation of the Personnel Committee is to approve 3-0.

Order No. 08-1002049 – Appointment of Morgan Elwood from an alternate to a full board member of the Council on Aging for a term to expire on May 1, 2011. Recommendation of the Personnel Committee is to approve 3-0.

Suspension of Rules requested - granted

**SHALVIS REALTY LLC
(As Successor In Interest To ERA Corporation)**

**AMENDMENT
TO ORIGINAL SPECIAL PERMIT
GRANTED TO SHALVIS REALTY LLC
(AS SUCCESSOR IN INTEREST TO ERA CORPORATION)
ON JULY 12, 1999**

**DECISION ON A SPECIAL PERMIT
CITY COUNCIL ORDER NO. 99/08-10018106E**

Trinity Court Condominiums
204-206 West Main Street
Marlborough, MA

Amendment to Special Permit granted by the City Council on July 12, 1999, a) deleting the condition in paragraph 5 and substituting therefor the following new paragraph 5; and b) adding a new condition in new paragraph 9:

5. Owner-Occupancy. It shall be a condition of the condominium by-laws of the Site that all units in the project, consisting of a total of ten units, that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium by laws, and will provide that this section may not be amended. No occupancy permit regarding the Site shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium by-laws, along with the condominium master deed, have been recorded. Applicant (Shalvis Realty, LLC, 1172 Beacon Street, Newton, MA 02461), including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said units to tenants; provided, however, that:

- a. No said unit shall be or continue to be rented after the fifth anniversary of the date of issuance of the occupancy permit of said unit;
- b. No unit shall be rented or continue to be rented after the seventh anniversary of the date of issuance of the first occupancy permit for the Site;
- c. The number of units being rented and occupied by tenants shall not exceed (9) units;
- d. An executed "rent to own" contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit;
- e. The affordable housing unit, if rented, shall be done in compliance with the rules and regulations applicable to said unit;
- f. Applicant, including its successors and assigns, shall continue to market the units as condominiums with the requirement that one unit be used as a model;
- g. No sign at the premises shall market any units as being for rent; however "rent to own" signs are permissible so long as they are in compliance with City's sign ordinance without variance; and

- h. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.
9. Recording. Both the original Special Permit granted by the Marlborough City Council on July 12, 1999, as well as this Amendment to the Special Permit, shall be recorded together at the Middlesex South Registry of Deeds in accordance with the provisions of MGL Chapter 40A sec. 11 prior to the issuance of any occupancy permit regarding the Site. The Applicant (Shalvis Realty, LLC, 1172 Beacon Street, Newton, MA 02461), including its successors and assigns, shall be responsible for recording, at its expense, both the original Special Permit, as well as this Amendment to the Special Permit; and shall present evidence of said recording to the City Solicitor's office, which thereupon shall duly forward said recording evidence to the Building Commissioner as a condition of his issuance of any occupancy permit regarding the Site.

A roll call vote was taken as follows:

TO APPROVE THE AMENDMENT TO THE SPECIAL PERMIT

Yea: 10 – Nay: 0

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

Further amendment to Special Permit granted by the City Council on July 12, 1999, a) deleting as clerical oversight the language on page 3, Finding of Fact and Ruling 10.b, fourth line, referencing “four and six” and substituting therefor “five and five” prior to the words “two-bedroom garden style condominiums;” and b) deleting as clerical oversight the language on page 6, WHEREFOR clause, fifth line, referencing “four and six” and substituting therefore “five and five” prior to the word “units.”

A roll call vote was taken as follows:

TO AMEND LANGUAGE FROM A CLERICAL OVERSIGHT OF THE SPECIAL PERMIT ORIGINALLY GRANTED IN JULY 1999.

Yea: 10 – Nay: 0

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

ORDERED: That the City Solicitor be requested to draft an amendment to the Wireless Ordinance that will add to “Development Requirements” therein, procedures to provide for a crane test where appropriate and where a balloon test is insufficient, refer to the **CITY SOLICITOR**; adopted.

ORDERED: That the Disposition of Corbin Plaza located at 110/118 Pleasant St., **FILE**; adopted.

ORDERED: WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that JOSEPH NORTH ROAD be accepted as a public way, **APPROVED**; adopted.

From JOSEPH NORTH ROAD To Terminus

And the associated easements be accepted as municipal easements as shown on plans thereof, and as hereinafter described:

Plan Entitled “PLAN OF ACCEPTANCE OF JOSEPH NORTH ROAD AND MUNICIPAL EASEMENT IN MARLBOROUGH, MA”, DATED OCTOBER 13, 2006 AND LAST REVISED ON APRIL 8, 2008, SCALE 1”= 40’, PREPARED BY CONNORSTONE CONSULTING CIVIL ENGINEERS AND LAND SURVEYORS,

10 SOUTHWEST CUTOFF, SUITE 7, NORTHBOROUGH, MA 01532,” attached hereto as Exhibit A, and recorded with the Middlesex County South Registry of Deeds herewith;

IT IS THEREFORE ORDERED THAT:

JOSEPH NORTH ROAD be accepted as a public way and its associated easements be accepted as municipal easements in the City of Marlborough.

DESCRIPTION

Residential Street / Municipal Easements
EXHIBIT A

Joseph North Road

Beginning at a stone bound on the northerly sideline of Berlin Road,

Thence northerly by a curve to the left having a radius of 30.00 feet, a central angle of 70°02'27" and an arc length of 36.71 feet to a stone bound,

Thence N 05°47'02"W a distance of 154.75 feet to a stone bound,

Thence northerly, easterly and southerly by a curve to the right having a radius of 50.00 feet, a central angle of 247°58'33" and an arc length of 216.40 feet to a stone bound,

Thence southerly by a curve to the left having a radius of 30.00 feet, a central angle of 67°58'32" and an arc length of 35.59 feet to a stone bound,

Thence S 05°47'02"E a distance of 43.18 feet to a stone bound,

Thence southeasterly by a curve to the left having a radius of 30.00 feet, a central angle of 73°00'43" and an arc length of 38.23 feet to the end of a stone wall at the northerly sideline of Berlin Road,

Thence S 11°12'16"W a distance of 14.98 feet to a point,

Thence S 73°14'27"W a distance of 53.05 feet to a point,

Thence S 64°19'25"W a distance of 36.77 feet to the point of beginning.

The last three courses being by the northerly sideline of Berlin Road.

Said road contains 14,973 square feet and is shown on a plan prepared by Connorstone entitled "Plan of Acceptance of Joseph North Road and Municipal Easement in Marlborough, MA." dated October 13, 2006 and last revised on April 8, 2008.

There is appurtenant to said road the following easements:

Sewer Easement

Beginning at a stone bound on the westerly sideline of Joseph North Road; said point being N 05°47'02"W a distance of 18.94 feet from a stone bound at the point of tangency of a curve,

Thence N 77°18'49"W a distance of 155.87 feet crossing Lot 1 to a stone bound at property now or formerly of William M. and Linda F. Kirwin,

Thence N 16°05'03"E a distance of 30.06 feet by land of Kirwin and Lots 1 and 2 to a stone bound.

Thence S 77°18'49"E a distance of 144.07 feet crossing Lot 2 to a rail road spike on the westerly sideline of Joseph North Road,

Thence S 05°47'02"E a distance of 31.62 feet by the westerly sideline of Joseph North Road to the point of beginning.

Drainage and Water Easement

Beginning at a stone bound on the easterly sideline of Joseph North Road; said point being 129.37 feet distant along an arc from a stone bound at the point of curvature at the beginning of the cul-de-sac on the westerly sideline of said road,

Thence N 06°33'36"E a distance of 116.75 to a stone bound,

Thence N 71°03'36"W a distance of 125.06 to a stone bound,

Thence N 12°05'19"E a distance of 52.00 feet to a stone bound,
 Thence N 84°28'47"E a distance of 90.73 feet to a stone bound,
 Thence N 14°15'19"E a distance of 120.11 feet to a drill hole in a boulder,
 Thence S 75°44'41"E a distance of 60.36 feet to a stone bound,
 Thence S 09°04'17"W a distance of 242.22 feet to an iron rod,
 Thence S 11°12'16"W a distance of 143.62 feet to a stone bound,
 Thence N 75°58'59"W a distance of 16.84 feet to a stone bound on the easterly sideline
 of Joseph North Road,
 Thence northerly by a curve to the left having an radius of 50.00 feet, a central angle of
 71°21'12" and an arc length of 62.27 feet to the point of beginning.
 Said easements are shown on the previously referenced plan.

ORDERED: That the Application from Attorney Arthur B. Bergeron, on behalf of 890 Post Rd LLC, relevant to modifying zoning amendment via modified version of adopting proposed New Car Dealership Overlay District, **DENIED** as it results in Spot Zoning; adopted.

ORDERED: That the transfer request in the amount of \$51,032.98 on the behalf of the Marlborough Fire Department, to cover overtime costs as follows, **APPROVED**; adopted.

FROM:

Acct. # 12200001-50450	\$36,545.12
Firefighter	

TO:

Acct. # 12200003-51300	\$36,545.12
Additional Gross OT	

FROM:

Acct. # 12200001-50800	\$2,567.55
Captain	

TO:

Acct. # 12200003-51300	\$2,567.55
Additional Gross OT	

FROM:

Acct. # 12200001-50810	\$5,596.80
Lieutenant	

TO:

Acct. # 12200003-51300	\$5,596.80
Additional Gross OT	

FROM:

Acct. # 12200001-50450	\$6,323.51
Firefighter	

TO:

Acct. # 12200003-51300	\$6,323.51
Additional Gross OT	

ORDERED: That the Assistance to Firefighters Grant in the amount of \$131,708.00 from the Federal Emergency Management Agency and the Department of Homeland Security be awarded to the Marlborough Fire Department for use in Rapid Intervention Training used in the rescue of firefighters in jeopardy during emergency operations and Driver Safety During Emergency Response instruction to review/improve driving skills required for rapid response situations. The grant is funded by FEMA at 90% (\$118,537.00) and the City will match 10% (\$13,171.00). The City match will come from the Public Safety Training account. This grant is as outlined in MGL, Chapter 44

Section 53A which stipulates that grant funding be strictly applied to purposes outlined, **APPROVED**; adopted.

Councilor Pope requested to be recorded that she did not want this to become a contractual obligation by which the City would be paying a stipend to the firefighters for the future training.

ORDERED: The Sepracor TIF proposal, consisting of five documents, **APPROVED**; adopted.

Motion to suspend the rules requested – granted to allow the City Clerk to read a letter from Councilor Seymour expressing support as he was not present.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:25 p.m.