



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
CLAIRE Y. LUCIER  
140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
(508)460-3775 FAX (508)624-6504  
JUNE 11, 2007**

Regular meeting of the City Council held on Monday June 11, 2007 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Katz, Ferro, Schafer, Juairé, Webster, Clancy and Towle. Councilors absent: none. Meeting adjourned at 9:20 p.m.

ORDERED: Minutes, City Council meeting, June 11, 2007, FILE, APPROVE; adopted.

ORDERED: Mayor Stevens and City Council President Vigeant presented this year's City Scholarships in memory of Natalie Towle to the recipients, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the application of Massachusetts Electric and Verizon New England Inc. for joint or identical pole location on Clover Hill St. (Plan # 2007-55), all were heard who wished to be heard, hearing adjourned at 8:06 p.m., **IN PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the application of Massachusetts Electric and Verizon New England Inc. install one new pole #29 on Solomon Pond Road, all were heard who wished to be heard, hearing adjourned at 8:09 p.m., **IN PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the application of Massachusetts Electric and Verizon New England Inc. to install a new conduit on Valley Street, all were heard who wished to be heard, hearing adjourned at 8:11 p.m., **IN PUBLIC SERVICES**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the application of SPECIAL PERMIT by Atty. Cipriano for Robert J. Valchuis, Trustee of Lauren Elizabeth Realty Trust, the Petitioner wishes to construct a 10 unit Multi Family Condominium at 714 Farm Rd. Plate 73, Parcel 15 for over 55 year old residents with a preference for those current residents of the City of Marlborough, all were heard who wished to be heard, hearing adjourned at 8:25 p.m., **IN PUBLIC SERVICES**; adopted.

ORDERED: That the following transfer request in the amount of \$200,000 for water infrastructure improvements for Robin hill Road, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 83600-32925 \$ 200,000.00  
Stabilization Fund

TO:

Acct. # 836000-32716 \$ 200,000.00  
Stabilization WS Improvements

ORDERED: That the following transfer request in the amount of \$210,000.00 which will move funds from Stabilization to the newly established Stabilization-Affordable Housing Account, refer to the **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 83600-32925 \$210,000.00  
Stabilization Fund

TO:

Acct. # 836000 \$210,000.00  
Stabilization – Affordable Housing

ORDERED: That the following transfer request in the amount of \$10,000.00 into a newly-established Stabilization-Inspectional Services account, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 83600-32925 \$10,000.00  
Stabilization Fund

TO:

Acct. # 83600-32718 \$10,000.00  
Stabilization-Inspectional Services

ORDERED: That the following transfer request in the amount of \$8,120.09 to cover the three remaining pay periods for the cemetery foreman while \$299.30 is necessary to allow for a recent retirement-associated payroll charge, **APPROVE**; adopted;

FROM:

Acct. # 14001001-50630 \$8,120.09  
Asst. DPW Commissioner

TO:

Acct. #14001501-50690 \$7,820.79  
Foreman

TO:

Acct. #14001303-51430 \$ 299.30  
Longevity

ORDERED: That the following transfer request in the amount of \$10,500 to cover the costs associated with a Memorial Day holiday water main break on Donald Lynch Boulevard and additional coverage required because of the unusual rainstorm experienced on Patriot's Day, **APPROVE**; adopted.

FROM:

Acct. # 60086006-52935	\$10,500.00
Solid Waste	

TO:

Acct. # 61090003-51310	\$10,500.00
Overtime-Regular	

ORDERED: That the following transfer request in the amount of \$40,000.00 to provide funding for the preparation of two emergency action plans relative to the dams located within the City, one at Lake Williams and the other at Fort Meadow, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900	\$40,000.00
Undesignated Fund	

TO:

Acct. # 14001104-53180	\$40,000.00
Professional & Technical Services	

ORDERED: That the following transfer request in the amount of \$71,033.74 to fund the Department of Public Works Laborer contract, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-57820	\$71,033.74
RESERVE FOR SALARIE	

TO:

Acct/ # 14001301-50740	\$19,729.95
OPERATORS	

Acct/ # 14001301-51920	\$ 920.59
SLBB	

Acct/ # 14001301-51310	\$ 1,220.32
OT	

Acct/ # 14001301-51470	\$ 177.37
INTERM FOREM	

Acct. #1400143-50745	\$ 4,039.11
MOTOR OPS	

Acct. #1400143-51310	\$ 60.00
OT	

Acct. #1400143-51920	\$ 572.40
SLBB	

Acct. #1400143-51470	\$ 78.86
INTERM FOREM	

Acct. #1401503-50740 OPERATORS	\$18,321.18
Acct. #1401503-51920 SLBB	\$ 503.67
Acct. #1401503-51310 OT	\$ 809.98
Acct. #60081001-50750 OPERATORS	\$ 1,346.37
Acct. #60085001-50750 OPERATORS	\$ 1,346.37
Acct. #61090001-50460 WR READERS	\$ 1,346.37
Acct. #61090001-50740 OPERATORS	\$ 15,993.18
Acct. #61090003-51310 OT	\$ 4,042.09
Acct. #61090003-51920 SLBB	\$ 525.93

ORDERED: That the following transfer request in the amount of \$22,720.94 to provide for the funding of the recently ratified Department of Public Works Foreman contract, refer to **FINANCE COMMITTEE**; adopted.

## FROM:

Acct. #11990006-57820 Reserve for Salaries	\$22,720.94
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## TO:

Acct. #14001301-50690 Foreman	\$ 6,938.04
Acct. #14001301-51430 Longevity	\$ 1,301.43
Acct. #14001403-50760 Work Foreman	\$ 1,107.27
Acct. #14001403-51430 Longevity	\$ 137.85
Acct. # 14001501-50690 Foreman	\$ 6,938.04
Acct. #14001501-51430 Longevity	\$ 763.58
Acct. #61090001-50690 Foreman	\$ 4,918.53
Acct. #61090003-51430 Longevity	\$ 616.20

ORDERED: That the City Council of the City of Marlborough adopt Chapter 73, Section 4 of the Acts of 1986 which allows for the doubling of all exemptions offered in the City to qualified residents (i.e. Elderly, Blind, Disabled Vets) as provided by Massachusetts law, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: Communication from the Mayor re; the sole bid to the City's RFP for 91 Main Street (old fire/police station) with an offer of \$850,000. WRT Management's submittal is advantageous for a number of reasons. The development plan outlined reflects our collective vision for the property by including a food establishment on the lower level in the former vehicle bays with office space on the upper level. WRT Management remains interested in the single land parcel of 91 Main Street citing no requirements for additional parcels. In addition, the property would be owner-occupied thereby allowing for a vested interest in maintenance and upkeep for this very visible location, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 25, 2007** as date for a **PUBLIC HEARING** on the application John D. Loureiro for Juniper Farms/Bolton Oil Inc., 888 Pleasant St., map 15, parcel 1 for a FUEL STORAGE LICENSE to store aboveground 1 (one) 20,000 gal tank, 3(three) 15,000 gal tanks, 1 (one) 10,000 gal tank #2 fuel oil and 1 (one) 5,000 gal tank kerosene, refer to **PUBLIC SERVICES COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the application of Richard Roach d/b/a Hudmar Ltd., 270 Main Street for renewal of his Junk Dealer License, refer to the **PUBLIC SERVICES COMMITTEE**; adopted.

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

#### REPORTS OF COMMITTEES:

Councilor Ossing reported the following out of the Finance Committee:

**Order No. 07-100-1534** – re: **“Loan Order for the Westerly Treatment Plant Upgrades \$41,100,000.”** The FINCOM met to discuss the Mayor's letter dated April 18, 2007 to approve a bond in the amount of \$41,100,000 to upgrade the Westerly Treatment plant. The Mayor presented the timeline for the project as follows – final design complete by second quarter 2008 and construction to begin on June 30, 2008 and complete in 2 years. **Recommendation of the Finance Committee is to approve 5 - 0**

**Order No. 07-100-1555** – re: **“Sligo Water Tank Revolving Fund.”** – The FINCOM met to discuss the Mayor's letter dated May 2, 2007 to authorize the Sligo Water Tank Revolving fund account for FY08. The FINCOM reviewed the fund balance as of May 25, 2007 (\$445,708) and expenditures in FY07 (\$22,497.97). The Public Facilities Director indicated that the Water Tank would be repaired/painted before the end of 2007. **Recommendation of the Finance Committee is to approve 3 -2 (Councilor Ferro, Levy opposed)**

**Order No. 07-100-1554** – re: **“GIS Revolving Fund.”** – The FINCOM met to discuss the Mayor’s letter dated May 2, 2007 to authorize the GIS Revolving fund account for FY08. The FINCOM reviewed the fund balance as of May 25, 2007 (\$2,182.60) and expenditures in FY07 (\$681.55). **Recommendation of the Finance Committee is to approve 3 -2 (Councilor Ferro, Levy opposed)**

**Order No. 07-100-1556** – re: **“Fairmount Hill Revolving Fund.”** – The FINCOM met to discuss the Mayor’s letter dated May 2, 2007 to authorize the Fairmount Hill Revolving fund account for FY08. The FINCOM reviewed the fund balance as of May 25, 2007 (\$112,657.65) and expenditures in FY07 (\$0.00). **Recommendation of the Finance Committee is to approve 3 -2 (Councilor Ferro, Levy opposed)**

**Order No. 07-100-1557** – re: **“Appropriate \$12,716.08 for the City Planner.”** – The FINCOM met to discuss the Mayor’s letter dated May 2, 2007 to approve a budget line item to fund the salary of the City Planner for FY08 in the amount of \$12,716.08 with the estimated receipts from the site plan review process being used to offset the salary. **Recommendation of the Finance Committee is to approve 4 – 1 (Councilor Ferro, opposed)**

**Order NO. 07-100-1572** – re: **“Transfer \$80,720.59 to Fund Marlboro Municipal Employee Contract.”** The FINCOM met to discuss the Mayor’s letter dated May 16, 2007 to approve the transfer of \$80,720.59 from the Reserve for Salary account to a variety of salary related line items in numerous departmental budgets for the purpose of funding the Marlboro Municipal Employee Association contract. **Recommendation of the Finance Committee is to approve 4 – 0 (Councilor Juairé was absent)**

**Order No. 07-100-1571** – re: **“Transfer \$220,094 to Fund the International Association of Firefighters Local 1714 Contract.”** The FINCOM met to discuss the Mayor’s letter dated May 16, 2007 to approve the transfer of \$220,094 from the Reserve for Salary account to a variety of salary related line items for the purpose of funding the International Association of Firefighters Local 1714 contract. **Recommendation of the Finance Committee is to approve 4 - 0 (Councilor Juairé was absent)**

Councilor Pope reported the following out of Urban Affairs Committee:

**ORDER NO. 07-100-1525** – re: Communication from Atty. David Gadbois for Marlborough/Northborough Land Realty Trust with Petition for Amendment to the Zoning Map, by extending the Business District on a part of Assessor’s Map 67 Parcel 45 to include the following land which is part of Assessor’s Map 67 Parcel 45 and all of Assessor’s Map 68 Parcel 30A. Petitioner requests that the Business District as shown on the Zoning Map, which abuts Lakeside Avenue (Route 20) and is on part of Parcel 45 of Map 67 of the Assessors Map, be extended northerly approximately 880 feet to include a part of Petitioner’s land shown on Parcel 45 of Map 67 and all of Parcel 30A Map 68.

**Motion made by Councilor Schafer, seconded by Chairman Pope, to refer to City Council with a favorable recommendation as requested, pending Planning Board recommendation. 4-0 (Councilor Katz was absent)**

**ORDER NO. 07-100-1523B** – re: Petition by the Marlborough City Council, as requested by the Public Works Commissioner Ronald LaFreniere re: rezoning City of Marlborough Land off Cook Lane, owned by the City for sewerage purposes, presently zoned as “Business” to rezone as “Residence A-3” as it is contiguous to land previously rezoned (Mauro Farm Rezoning Order No.06100-1129A); **Motion made by Councilor Clancy, seconded by Chairman Pope, to refer to City Council with a favorable recommendation as requested, pending Planning Board recommendation. 4-0 (Councilor Katz was absent)**

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

**ORDER NO.07-100-1562** – re: Application for RENEWAL of Junk Dealer’s License, Carla Devine, 38 Flynn Avenue.(**Chief Leonard has no objection to the renewal of a Junk Dealer’s License for Carla Devine**). **Recommendation o the Public Services Committee is to approve 3-0, subject to applicant’s filing of certificate of good standing with the City Clerk’s Office.**

Councilor Clancy reported the following out of the Personnel Committee:

**ORDER NO. 07-100-1567** – re: the appointment of Brian Murphy to the Zoning Board of Appeals concurrent with providing notice of his resignation from the Youth Commission. **Recommendation of the Personnel Committee is to approve 3 - 0**

**ORDER NO. 07-100-1568** – re: the appointment of Camille Duridas to the Community Development Authority. Several years ago, the CDA was required to expand to include two additional members – one with experience in real estate and one with banking. With her 30 years as a realtor, Ms. Duridas would fulfill one of these requirements. **Recommendation of the Personnel Committee is to approve 3 - 0**

**ORDER NO. 07-100-1548** – re: the reappointment of reappointment of two department heads:

Amy Loveless, Council on Aging, for a period of 3 years expiring April 30, 2010.

E. Susan Ellis, Personnel Director, for a period of 3 years expiring June 30, 2010.

**Recommendation of the Personnel Committee is to approve 3 – 0**

**Suspension of the Rules requested – granted**

ORDERED: That the following budget transfer in the amount of \$500,000, be and is herewith **APPROVE**; adopted.

FROM:

Acct. # 10000-35900	\$500,000.00
Undesignated Fund	

TO:

Acct. # 83600-32925	\$500,000.00
Stabilization Fund-Undesig.	

**Suspension of the Rules requested – granted**

**Suspension of the Rules requested to allow the Mayor and the DPW Commissioner to speak – granted**

ORDERED: That the Public Works Engineering Division and Conservation Officer be requested to submit a report to the Operations and Oversight Committee within 30 days identifying the cause of continued breaches of detention basins of construction sites operated by the Gutierrez Company in and around the Glenbrook neighborhood and what further action can be taken to adequately protect residents’ property. Further ordered, that the Conservation Officer be requested to issue a Stop Work Order until the Gutierrez Company adequately explains the continued failures in its ability to contain runoff from its construction sites and remedies all damage caused to residents’ properties, refer to **OPERATIONS AND OVERSIGHT, CONSERVATION OFFICER, DPW COMMISSIONER**; adopted.

**Suspension of the Rules requested – granted**

ORDERED: That the following transfer request in the amount of \$78,955.00 which will transfer funds from both FY06 long-term and short-term interest accounts, against principal for the FY06 bond payment, be and is herewith **APPROVE**; adopted.

FROM:

Account No. 13860006-59254	\$22,358.00
Interset on BAN	
Account No. 17510006-59956	\$56,597.00
06 Bond Interest	

TO:

Account No. 17110006-59956	\$78,955.00
06 Bond	

**Suspension of the Rules requested – granted**

ORDERED: That the following budget transfer request in the amount of \$29,506.00, to cover unanticipated expenses due to an increase on claims requiring City Payment of associated deductibles, be and is herewith **APPROVE**; adopted.

FROM:

Account No. 13860006-59254	\$29,506.00
Interset on BAN	

TO:

Account No. 11930006-57410	\$29,506.00
Property Liability Insurance	



**Suspension of the Rules requested – granted**

ORDERED: That the year-end interdepartmental budget transfer requests, submitted by the following, be and is herewith **APPROVE**; adopted. **(Councilor Juire abstained)**

FROM:

Acct. # 11350002-50062 \$ 14,881.30

TO:

Acct. # 12410001-50380 9,896.00

Electrical Inspector- Underfunded

Acct. # 12200003-51328 4,985.30

Call Fire OT – Underfunded

TOTAL \$14,881.30

FROM:

Acct. # 11990006-51500 \$ 54,801.00

Fringe Benefits Acct.

TO:

Acct. # 1210003-51920 \$ 54,801.00

Sick Leave Buy Back to fund retiree fringe

Benefits relative to Police Department

FROM:

Acct. # 11990006-515500 \$ 22,444.00

Fringe Benefits

TO:

Acct. #1220003-51920 \$ 22,444.00

Sick Leave Buy Back to fund retiree fringe

Benefits relative to Fire Department

TOTAL TRANSFERS \$92,126.30

**Suspension of the Rules requested – granted**

ORDERED: That the attached year-end intradepartmental budget transfer requests submitted by the following, be and is herewith **APPROVE**; adopted. **(Councilor Juire abstained)**

\$209,312.88 – Department of Public Works

\$21,535.00 – Marlborough Public Library

(to cover shortfalls in Acct. No.16100006-55205:

Library Materials/Acct. No. 16100006-52110: Utilities)

\$915.00 – Building/Inspectional Services

(to cover shortfalls in Acct. No. 12410002-51050:

Board Secretary and Acct. No. 12410001-50380: Wiring Inspector)

\$1232.00 – Comptroller

\$116,970.00 – Police

\$2000.00 – Health Department (to Acct. No. 15120004-53061

Contract Services/Nursing)

\$41,973.98 – Public Facilities  
(to cover shortfalls in Acct. No.1192006-53999 for HVAC/other repairs and  
Acct. No. 11920006-53420 Telephone Services)

\$2,820.93 – Fire  
(primarily to cover shortfall in Acct. No. 12200003-51328 Call Fire Overtime)

Please note, the Fire Department accounts will require an additional \$6,000 not available within its existing accounts to fund Call Fire Overtime.

**Suspension of the Rules requested – granted**

ORDERED: That the Application of Atty. Arthur Bergeron for **St. Mary’s of French Hill Redevelopment LLC**, 69 Lowell Avenue, Newton, MA 02460 for a *Special Permit* per the Code of the City of Marlborough, Zoning, Article IV, Section 200, Paragraph 12, Sub-Paragraph B; Article V, Section 200, Paragraph 17; Section 200, Paragraph 18 (4) and MGL, c.40A, s.6. Applicant is requesting a *Special Permit* to produce a total of 36 residential units on the property located at 26 Broad Street, Marlborough, Massachusetts through the adaptive reuse of the former St. Mary’s Church (10 units), the adaptive reuse of the former St. Mary’s School (10 units), the adaptive reuse of the former St. Mary’s Parish Rectory (5 units), and the construction of 11 new townhouse units in the rear of the premises. The entire development will be converted to a residential condominium having 36 units.

The committee reviewed the draft decision submitted by Atty. Bergeron on May 29, 2007 and discussed condition #27 regarding unit ownership. Condition 27b) was amended to further regulate that no unit shall be rented after the 5<sup>th</sup> anniversary date of the issuance of the first occupancy permit. **MOTION:**

made by Councilor Clancy, seconded by Chairman Pope, to refer to City Council with a favorable recommendation together with the **attached documents** are the agreed upon Findings and Conditions voted on by the Urban Affairs Committee on May 29th for circulation and review in preparation for the City Council meeting of June 25, 2007. **Refer to City Solicitor to be put in proper form;** adopted.

**ST. MARY’S OF FRENCH HILL REDEVELOPMENT, LLC**

PROPOSED  
SPECIAL PERMIT  
FINDINGS OF FACT AND CONDITIONS  
(original, April 28, 2007)  
(revised May 8, 2007)  
(revised May 21, 2007)  
(revised May 29, 2007)  
(revised May 31, 2007)

May 22, 2007)

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to St. Mary's of French Hill Redevelopment LLC, having a principal place of business at 69 Lowell Ave., Newton, MA 02460 as provided in this Decision and subject to the following Findings of Facts and Conditions.

1) St. Mary's of French Hill Redevelopment, LLC, is a Massachusetts limited liability company having a business address of 69 Lowell Ave., Newton, MA 02460, and is hereinafter referred to as Applicant.

2) Applicant is the prospective owner of certain real property located at 26 Broad St., Marlborough, MA shown on the Marlborough Assessors Maps as Map 80 Parcels 61, 61A, 67 and 68. The land is entirely located in a Residence C zone. The property was originally developed and used as the site of the St. Mary's Church, Rectory and School, together with a related parking structure and parking lot.

3) Applicant received a variance from the Zoning Board of Appeals for the City of Marlborough, Case #1358-2006 to deviate from the required maximum lot coverage of 30% to 50.9% on February 9, 2007.

4) The Applicant, on or about March 8, 2007, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of General Laws C.40§6 and Marlborough Zoning Ordinance Article IV Sec. 200-12 Paragraph B, and Article V Section 200 Paragraph 17 and Section 200 Paragraph 18(4), of the Marlborough Zoning Ordinance and Massachusetts General Laws Chapter 40A §6. Applicant intends to alter the preexisting nonconforming structures that exist thereon, through the adaptive reuse of the existing structures to accommodate twenty-five (25) residential housing units. In addition, Applicant intends to construct on the premises eleven (11) new townhouse units. The Project will be developed in two phases. In Phase

I, Applicant will complete the adaptive reuse of the former school into ten (10) units, and adaptive reuse of the former rectory into five (5) units. In Phase II, Applicant will complete the adaptive reuse of the former church into ten (10) units, and will construct the eleven (11) new townhouse units.

5) In connection with the permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and 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 April 9, 2007, concerning the said application. The hearing was opened and closed at that meeting.

9) Applicant presented testimony at the public hearing detailing the application, and describing its impact upon municipal services and on the neighborhood, including visual, environmental and traffic impacts. No person in attendance spoke in opposition to the proposal. Several attendees spoke in favor of the proposal, including abutters who described the positive anticipated impact of the proposal.

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.

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 not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed new use of the non-conforming structures at the site will not be substantially more detrimental to the neighborhood than the original uses of those structures. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from alternative uses. In addition, the City Council finds that the proposed residential use may act as a catalyst in encouraging further growth and improvements to the surrounding area.

C) The City Council, pursuant to its authority under MGL C.40A §6 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicant a Special Permit to alter the non-conforming structures that exist on the premises in order to allow their use for twenty-five (25) residential units, and to allow the construction of eleven (11) new townhouse units on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1) Compliance With Building Regulations. Construction and modification of all structures on the site are 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 "St Mary's of French Hill Redevelopment, LLC Site Plan for a 36 Unit Condominium Development" dated March 21, 2006 last revised February 20, 2007 by Hancock Associates, 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 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, or reduce the overall green space of the Project 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. All said improvements will be completed prior to the issuance of the first occupancy permit for the new townhouses being constructed pursuant to this special permit. 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 \$4,500 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) Limit and Type of Residential Units. The project will contain thirty-six (36) units, consisting of thirty-five (35) two-bedroom units and one (1) three-bedroom unit.

9) No Modifications to Entrances. If any modifications are made to the driveway entrances and exits as shown on the Site Plan that in any way alter the traffic flows as represented in the final revision of the Site Plan submitted to the City Council as part of the Special Permit Application, and as revised during the Special Permit approval process, the Applicant shall return to the City Council for approval of these modifications to the Special Permit. Applicant shall apply for and obtain all necessary permits from the necessary parties.

10) Snow Storage. Snowmelt runoff will be directed toward catch basins.

11) 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. The catch basins are to be cleaned annually, or at more frequent intervals as determined necessary by the City Engineer.

12) 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.

13) Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the then existing City of Marlborough Sign Ordinance without a variance.

14) Exterior Light Fixtures. All illumination of individual parking lot light fixtures shall not exceed 200-watt fixtures and shall be screened from abutting residential property. Reflectors shall be utilized and configured to mitigate light from entering abutting properties. The total height of the pole and attached fixture shall not exceed fourteen (14) feet at its highest point.

15) 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.

16) Dumpster Screening. Applicant agrees to screen the Project's trash area by constructing a suitable 7-foot wooden screen fence. Applicant further agrees that the dumpster located on the site will be covered.

17) Trash Pickup. Trash pick up and commercial deliveries will only be made between the hours of 7:00 A.M. and 7:00 P.M. Monday through Friday.

18) Parking Spaces. Applicant will not reduce the number of parking spaces at from the Project below 83 spaces.

19) Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee. In particular, all buildings will be provided with sprinkler protection as specified by the Fire Chief. The sprinkler system will be sufficient, in the opinion of the Fire Chief, to provide sufficient pressure to put out a fire in the church steeple if necessary.

20) Water and Sewer Connections. Water and sewer services provided to the Project shall be subject to the current citywide water and sewer charges and subject to annual adjustment by the Commissioner of Public Works. Water and sewer connections, if such connections are required, to service the building, shall be subject to a separate approval process and conditions.

21) 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.

22) Affordable Housing. Applicant is proposing to build this Project in two phases. In the first phase, Applicant proposes to construct a total of fifteen (15) units through the adaptive reuse of the former school and rectory buildings. In the second phase, Applicant proposes to construct twenty-one (21) units through the adaptive reuse of the former

church and the construction of eleven (11) new townhouse units. Applicant will pay the sum of Thirty-six Thousand (\$36,000) Dollars to the Affordable Housing Trust or to such other account as may be designated by the City Council, in two payments, the first payment, for Fifteen Thousand (\$15,000) Dollars to be due before the issuance of a any Building Permit for the project, and the second payment, for Twenty-One Thousand (\$21,000) Dollars, to be due before the issuance of the Building Permit for the sixteenth unit for the project.

23) Street Opening. In connection with the installation of improvements within public right-of-ways which requires a street opening permit, the City Engineers shall be provided with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant and not the City of Marlborough will bear the costs of any police detail for any work performed within the public way.

24) Access Allowed. Access on the Site will be allowed for trash and snow removal deliveries that will be servicing Fay Court.

25) Fay Court Road and Drainage Improvements. Applicant has filed with the Urban Affairs Committee a revised plan entitled "GRADING, DRAINAGE AND UTILITIES PLAN" which was revised on May 17, 2007 to reflect the repair of certain sidewalk panels next to the Project on Broad Street, the installation of granite curbing at certain locations, and the installation, repair and/or replacement of drainage structures. All said improvements as shown on said plan will be installed prior to the issuance of the first occupancy permit for the first unit of the Project.

26) Fay Court Water Pressure Improvements. Applicant will cause its internal water system to create a loop into the City water system by connecting said water system into the existing Broad St. and Fay Court water mains as shown on the Plan referred to in Condition #27 above. In addition, in response to perceived individual water pressure problems at 14 Fay Court, 17 Fay Court and 19 Fay Court, Applicant will pay to the owners of said properties the sum of Fifteen Hundred (\$1,500) Dollars per property in order to allow the owners of said properties, in their discretion, to purchase and operate individual water pumps at their properties. All said water system improvements and all said mitigation payments shall be made prior to the issuance of the first occupancy permit for the first unit in the Project.

27) Owner-Occupancy. It shall be a condition of the condominium bylaws of the Project that all units in the project 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 bylaws, and will provide that this section may not be amended. No occupancy permit regarding the Project shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium bylaws for the Project conform to this provision and that the said



condominium bylaws, along with the condominium master deed, have been recorded. Applicant 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 unit to tenants; provided, however, that:

- a) no said unit shall be or continue to be rented after the third anniversary of the date of the occupancy permit of said unit;
- b) no unit shall be rented or continue to be rented after the fifth anniversary of the date of issuance of the first occupancy permit for the Project;
- c) the number of units being rented to and occupied by tenants shall not at any time exceed three (3) units in Phase I and four (4) units in Phase II; and
- d) no sign at the premises shall market any unit as being for rent.

28) Handicapped-Accessible Units. Two of the units in the former school will be marketed as handicapped-accessible, and will be appropriately modified to accommodate the needs of a handicapped buyer at no extra cost to the buyer.

29) No Further Subdivision of Condominiums. Applicant shall cause there to be included in the Master Deed creating the condominium for the Project a requirements that there shall be no further units created within the condominium other than the thirty-six (36) units allowed through this special permit. Prior to the issuance of the first occupancy permit for the first unit of the Project, the City Solicitor shall verify in writing to the Building Commissioner that the Master Deed creating the condominium for the Project has been recorded, that said requirement is contained in the Master Deed, and that the Master Deed contains a provision that said Master Deed requirement prohibiting the creation of further units may not be eliminated.

**Recommendation of the Urban Affairs Committee to approve 5 – 0**

**Refer to City Solicitor to be put in proper form – place on the June 25 agenda – adopted.**

**Suspension of the Rules requested – granted**

ORDERED: That the application of Omnipoint Communications Inc. /T-Mobile USA for installation, operation and maintenance of a wireless communications facility including without limitation; antennas, coaxial cables and radio communication equipment cabinets on an existing structure at 265-A Lakeside Avenue.

The petitioner submitted coverage maps and photo simulations of the proposed facility.

The petitioner submitted that the facility will be color coordinated to match the existing building. The utilities will run down the side of the building and will, again, be color coordinated to match the building.

The petitioner submitted that there will be 3 cabinets and one battery base unit on the rooftop set back and not visible from the street. The petitioner submitted that the facility will be a rooftop installation, camouflaged with minimal impact on view sheds. The height of the antennae will be 48 feet.

The committee questioned the height of the facility and asked the petitioner to perform a balloon test. The petitioner agreed and stated that the height of the building is the minimum height required to give them the coverage shown on the coverage map submitted this evening.

Chairman Katz read the proposed conditions submitted by petitioner.

Councilor Schafer asked the petitioner to participate in the annual open space donation.

Chairman Katz asked the petitioner to agree to the city's use of the facility as needed.

It was agreed that petitioner would amend the proposed decision to reflect the changes requested by the committee and to perform the balloon test either this Saturday or next Saturday and to send proof of same to the City Council Office. Petitioner agreed.

Language changes:

- \$1500. for open space;
- No portion of wcf shall exceed height of 48 feet;
- City to have access to site at no cost to the city.

**Vote /Action taken:** Motion made and seconded to refer to the City Council with a favorable recommendation subject to 1) satisfactory balloon test; 2) submission of revised decision by the petitioner reflecting tonight's meeting; and 3) approval as to form by the Solicitor. **Further ordered to request a suspension of the Rules to refer to the Solicitor this evening for approval as to form on the June 25, 2007 agenda. 2-0**

**Clancy absent**

May 22, 2007

Approved as to Form by Solicitor

**DECISION ON A SPECIAL PERMIT**

**Omnipoint Communications, Inc.,**

**a wholly owned subsidiary of T-Mobile USA, Inc. ("Omnipoint")**

**CITY COUNCIL ORDER NO. 07-100-1499A**

Re: 265-A Lakeside Avenue, Marlborough, Massachusetts.

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Omnipoint, having a usual place of business at 15 Commerce Way, Suite B Norton, MA 02766, as provided in the Decision and subject to the following Findings of Fact and Conditions.

**EVIDENCE**

1. The Applicant is Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc. which has a business address of 15 Commerce Way, Suite B, Norton, MA 02766

2. Through its Application for a Special Permit, the Application seeks permission to allow co-location of two non-penetrating antenna canisters or mounts (containing a total of three antennas) to the existing rooftop as well as placement of the associated equipment cabinets on an equipment platform also located on the roof (hereinafter "Project"), as depicted on a set of plans entitled "Holiday Inn Marlboro" by Dewberry-Goodkind, Inc., last revised 12/20/06 as submitted with the Special Permit Application (hereinafter "Plans").
3. The location of the proposed Project is 265-A Lakeside Avenue and the property owner at this site is Manfeld Hotel Enterprises. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Parcel No. 23 of Plate 79.
4. The Applicant is a lessee of the Owner, Manfeld Hotel Enterprises., for the purposes of this Special Permit Application.
5. The Site is zoned B-Business. Wireless Communication Facilities are allowed by grant of Special Permit in 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 Project on [REDACTED], 2007 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 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 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 Facilities.

**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 Project and the 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 Facilities, 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 WCF to minimize the adverse impact of the proposed WCF 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 12:**
  - 1) The WCF 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, photo renderings, 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 lawfully apply to the construction, maintenance and operation of the Applicant's WCF.

- 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 WCF by screening and/or color coordination as depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCF. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCF only in cases of power outages to the WCF beyond Applicant's control and not caused by the Applicant or any of its agents. In the event a temporary generator is used pursuant to this Condition, the noise produced by said temporary generator shall not be audible beyond the boundaries of the Site. Batteries used in the operation of the facility shall be disposed of off-site at the expense of Applicant.
- 7) The Applicant shall not permit any other party to utilize the screening or color coordination, in any fashion or manner, for any WCF or associated equipment other than the WCF and the associated equipment expressly allowed by the grant of Special Permit.
- 8) No operation of this WCF 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 as may be applicable and in accordance with this permit.
- 10) In accordance with the provisions of Mass. Gen. Laws c. 40A, s. 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.

Recommendation of the Wireless Communication Committee to approve 2 – 0  
(Councilor Clancy absent)

**Refer to City Solicitor to be put in proper form and place on the agenda for June 25, 2007; adopted.**

ORDERED: That the Mayor be requested to investigate the feasibility of housing and funding a United States (ICE) Office of Immigration and Customs Enforcement in the City of Marlborough and report back to the City Council within ninety days, refer to **MAYOR**; adopted. (Councilor Webster and Schafer opposed)

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:20 p.m., adopted.