



CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
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OCTOBER 15, 2007

Regular meeting of the City Council held on Monday October 15, 2007 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Pope, Vigeant, Katz, Ferro, Juaire, Schafer, Webster, Clancy and Towle. Councilor Ossing was absent. Meeting adjourned at 9:55 p.m.

ORDERED: Minutes, City Council meeting, September 24, 2007, **FILE**; adopted.

ORDERED: That October is Breast Cancer Awareness Month whereby the City of Marlborough and the American Cancer Society are teaming up to join forces to fight cancer, **FILE**; adopted.

ORDERED: That the presentation from representatives of Verizon and Comcast with update regarding local access television for Verizon Fios in the City of Marlborough – requested by President Vigeant, **TABLED** until the December 17, 2007 City Council Meeting; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the petition of NSTAR to install 2000' of 8.00" plastic gas main as a system improvement to supply the Regency @ Assabet Ridge Development off Fitchburg St. and Crowley Dr., **TABLED** until the October 29, 2007 agenda; **IN PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the petition of Mass Electric to install stub pole #82-84 to support existing pole #82 on Farm Rd., all were heard who wish to be heard, hearing adjourned at 8:50 p.m.; **IN PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the communication from Attorney Arthur B. Bergeron, on behalf of 890 Post Rd., LLC, who owns the real property shown on Assessors Map 62 Parcels 1 and 24 requesting zone line changes, all were heard who wish to be heard, hearing adjourned at 8:55 p.m.; **IN URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the communication from Attorney Arthur B. Bergeron, on behalf of 890 Post Rd., LLC, who owns the real property shown on Assessors Map 62 Parcels 1 and 24. All of Parcel 24 and part of Parcel 1 are located in a Business zone, all were heard who wish to be heard, hearing adjourned at 9:25 p.m.; **IN URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the following budget transfer in the amount of \$115,000.00 for the Hemenway sidewalk project, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 83600-11515	\$115,000.00
Stabilization	

TO:

Acct. # 19300006-58514	\$115,000.00
DPW Projects	

ORDERED: That the following transfer of \$1230.00 to provide funding for overtime payroll relative to evening and weekend inspections of DPW roadway and parking lot construction work, **APPROVE** adopted..

FROM:

Acct. # 14001101-50710	\$1230.00
Jr. Civil Engineer	

TO:

Acct. # 14001103-51310	\$1230.00
OT Regular	

ORDERED: That the following transfer totaling \$15,200.00 from Reserve for Salaries to Clothing, and from Custodian to Overtime accounts, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-58720	\$3,200.00
Reserve for Salaries	

TO:

Acct. # 11920003-51940	\$3,200.00
Clothing	

FROM:

Acct # 11920001-50560	\$12,000.00
Custodian	

TO:

Acct # 11920001-51300	\$12,000.00
Overtime	

ORDERED: That a revision to the Council on Aging's recently received formula grant amount of \$34,430 has been increased to \$35,523, due to a per elder allotment increase as an addendum, to Item #9 on the July 23, 2007 agenda, **APPROVE** funding the difference of \$1093 for the Council on Aging; adopted. **Councilor Levy abstained.**

ORDERED: That Tricia Richard of the Marlborough Fire Department receive the maximum salary step commensurate with her experience and overall length of service, refer to **FINANCE COMMITTEE**; adopted. **Councilor Juairé filed a letter of disclosure with the City Clerk office.**

ORDERED: That Officer Richard R. Gaudette and Officer Ronald J. Ney have been promoted to the position of Police Sergeant, **FILE**; adopted.

ORDERED: That the communication from the Mayor re: the Marlborough Community Development Authority, **FILE**; adopted.

ORDERED: That the communication from the City Solicitor re: confirmatory vote on fire station, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the following notification from the City Clerk re: 2007 Biennial Municipal Election Call, **FILE**; adopted. That the City Clerk be and is herewith directed to have proper notices issued notifying the VOTERS of the City of Marlborough that the **BIENNIAL MUNICIPAL ELECTION** will be held in the polling locations as noted below on **NOVEMBER 6, 2007** as follows:

Mayor, four City Councilors-at-Large, Ward Councilors, three School Committee members and Assabet Valley Regional Vocational High School representative.

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

**POLLING LOCATIONS ARE AS FOLLOWS:**

WARD ONE: Prec. 1 and 2

Francis J. Kane School, 520 Farm Rd,

WARD TWO: Prec. 1 and 2

Francis J. Kane School, 520 Farm Rd,

WARD THREE: Prec. 1

Masonic Hall, 208 Main St (corner of Main/Newton Sts),

WARD THREE: Prec. 2

Raymond J. Richer School, 80 Foley Rd,

WARD FOUR: Prec. 1 and 2

Boys & Girls Club, 169 Pleasant St,

WARD FIVE: Prec. 1

Senior Center, 250 Main St,

WARD FIVE: Prec. 2

Masonic Hall, 208 Main St (corner of Main/Newton Sts),

WARD SIX: Prec. 1 and 2

Marl borough Middle (Intermediate) School, 25 Union St, Library

WARD SEVEN: Prec. 1 and 2

Hildreth School Gymnasium, 85 Sawin St

ORDERED: That the communication from the Massachusetts State Lottery Commission re: Keno license application for Marlborough Fish and Game Club, **FILE**; adopted.

ORDERED: That the minutes of the Traffic Commission meeting of August 28, 2007, **FILE**; adopted.

ORDERED; That the minutes of the Conservation Commission, April 6, May 4, May 18, June 1, June 15, July 6, July 20, 2006, & March 1, March 15, 2007, **FILE**, adopted.

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

#### **REPORTS OF COMMITTEES:**

Councilor Webster reported the following out of the Finance Committee:

**Order No. 07-1001664** – “Transfer \$1,000,000 from the Health Care Trust Fund to the Stabilization Fund.” The FINCOM met to discuss the Mayor’s letter dated September 5, 2007 to approve the transfer of \$1,000,000 from the Health Care Trust Fund to the Stabilization. This is the second in a series of transfers to replenish the funds used to cover the health care fund deficit in December 2003. To date, two transfers totaling \$1,600,000 have been transferred (including this one). There is a balance of \$2.2 million remaining to be transferred. The balance is expected to be transferred by the end of 2008.

**Recommendation of the Finance Committee is to approve 5-0.**

**Order No. 07-1001642A** – “Accept \$10,000 Gift from Mr. Valchius” - The FINCOM met to discuss the memo from Commissioner LaFreniere to the Mayor dated September 10, 2007 that addressed concerns raised by the FINCOM at the August 27, 2007 FINCOM meeting. **Recommendation of the Finance Committee is to approve 4-1 (Ferro opposed)** to accept the gift, thank Mr. Valchius for the generous donation, and allow the DPW Commissioner to approve the expenditure of these funds for tree replacement.

**Suspension of the Rules requested – granted; adopted.**

ORDERED: That the City Council **APPROVE** as recommended by the Finance Committee, the following transfer of \$84,157.17 from Fringes to various salary related accounts; adopted.

FROM:

Acct. # 11990006-51500	\$84,157.17
Fringes	

TO:

Acct. # 12100001-50420	\$62,974.57
Police Officers	

Acct. # 12100003-51226	\$1,242.36
First Respond	

Acct. # 12100003-51430	\$2,109.24
Long	

Acct. # 12100003-51440	\$8,164.71
Edu Inc	

Acct. # 12100003-51450	\$1,827.42
Night Dif	

Acct. # 12100003-51490	\$4,964.48
Holiday	

Acct. # 12100003-51920	\$2,193.99
SLBB	

Acct. # 12100003-50435	\$680.40
SLBB	

**Suspension of the Rules requested – granted; adopted.**

ORDERED: That the City Council **APPROVE** as recommended by the Finance Committee, Chapter 43D Technical Assistance Grant in the amount of \$150,000.00 from the Commonwealth's Executive Office of Housing and Economic Development Permit Regulatory Office – Interagency Permitting Board to be shared equally by the City and the Marlborough 2010 Corporation; adopted.

ORDERED: DECISION ON A SPECIAL PERMIT FINDINGS OF FACT AND RULINGS CITY COUNCIL ORDER NO. 07-100931C

AMENDED SPECIAL PERMIT  
FINDINGS OF FACT AND CONDITIONS

Procedural Findings

1) Fairbanks Development LLC, a Massachusetts limited liability company having its principal place of business at 8 College Ave., Arlington, MA, is hereinafter referred to as the Applicant.

- 2) The Applicant is the owner of certain parcels of real property located on Lincoln St. The parcels shown on the Marlborough Assessors Maps as Map 69 Parcels 106, 276, 88, 89, 90, 108 and 109.
- 3) The Applicant, on or about Dec. 19, 2005, was granted a Special Permit by the City Council of the City of Marlborough by Order No. 05-100931A. Said permit is recorded in the MSRDL in Book 48275, Page 122 and in Book 1321, Page 85, Certificate #236988.
- 4) The Applicant on or about July 19, 2007 filed with the City Clerk of the City of Marlborough an application for an amendment to the Special Permit. Applicant is requesting changes to the language of the Special Permit.
- 5) 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 News and sent notice of said hearing to abutters entitled to notice under law.
- 6) The Marlborough City Council, pursuant to MGL Ch 40A, held a public hearing on Sept. 10, 2007 concerning the said application. The hearing was opened and closed at that meeting.
- 7) The amended procedural findings specified in sections 2, 3, 4, 5, 6 and 7 of this Amended Special Permit supplement those made in the original Special Permit; the procedural findings made in the original Special Permit are incorporated by reference herein. Finding of fact E) of this Amended Special Permit supplements finding of fact E) made in the original special permit; the findings of fact made in the original Special Permit are incorporated in full herein. The amended conditions specified in sections 7, 11, 12, 13 and 23 and Attachment #1 of this Amended Special Permit replace those of the original Special Permit; all other conditions of the original Special Permit survive its amendment herein.

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 current use of the site for manufacturing purposes is a currently nonconforming use that was in effect at the time of the creation of the current zoning provisions regarding the site.
- C) The City Council finds that the proposed use would be substantially different from the existing nonconforming use of the site.
- D) The City Council finds that the proposed new use would not be substantially more detrimental to the neighborhood than the existing nonconforming use.
- E) The City Council, pursuant to its authority under MGL C40A, GRANTS the Applicant an Amended Special Permit to alter the existing structures on the site, and to use them and the related parking areas as not more than twenty-nine (29) artist live/work spaces, with additional work and storage areas and a commercial gallery space as shown on said plans, 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 and Zoning Regulations 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 prepared by Deborah Fairbanks dated Aug. 20, 2005 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 technical site plan review in accordance with the City of Marlborough ordinance prior to the issuance of the actual Building Permit. Any additional changes, alternations, 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 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 significant changes to the plans will require subsequent approval by the City Council.

3) Compliance With Noise Ordinance. The Applicant shall comply with all of the requirements of the Noise Ordinance of the City of Marlborough. The Police Department shall strictly enforce the regulations contained in the Noise Ordinance and promptly respond to complaints lodged by abutters.

4) Completion of Site Improvements Prior to Occupancy. Prior to the issuance of any Occupancy Permit for this Project, Applicant must complete all landscaping and planting installations together with all other site improvements, except that if the Project is completed after October 1 of any year and before May 1 of the following year, all landscaping and planting installation will be completed by May 1 of said following year.

5) Compliance with Local, State and Federal Laws. The Applicant agrees to comply with all rules, regulations and ordinances of the City of Marlborough (except pursuant to the terms of this special permit), Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of Applicant's facility.

6) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings required hereunder are made a part of and incorporated herein as a condition to the issuance of this Special Permit.

7) Preferential Ownership by Artists. Attached hereto as Attachment #1 is language which defines the terms "artist" and "a person engaged in an art-related business," and which provides that preference will be given to a person in purchasing a unit in Renaissance Lofts Condominium when said person is an artist and/or is engaged in an art-related business. Said language, or language that the City Solicitor determines in writing will have a comparable effect, will be made part of the by-laws of the condominium association for the Project. The Applicant shall place a provision within the Master Deed and in each first Unit Deed that said Unit is being conveyed subject to the terms and conditions contained within the Amended Special Permit issued by the Marlborough City Council as Order No. 05-100931B.

8) Certain Uses Prohibited. The condominium documents will provide that all artistic uses of the units will meet current building, health and safety codes, and condominium rules and regulations will allow unit owners to be fined for violations of any of these codes.

9) Units for Handicapped Owners. The Proposed Units shown on the plans filed with the City Council as Unit #26 and Unit # 27 will be marketed actively to artists with physical handicaps. In the event that a qualified handicapped buyer agrees to purchase either of the Units, Applicant will adapt the unit for use by the handicapped buyer in accordance with Universal Design criteria at no additional cost to said person.

10) Parking. The plans currently on file with the Urban Affairs Committee show a total of 65 parking spaces. While the precise configuration of parking spaces can be changed through the Site Plan Approval Process, the plan as finally approved will have no less than 58 parking spaces available to the residents of the 29 condominium units.

11) Limitation on Retail Sales. No unit, except the gallery space units, will be used regularly to conduct retail sales.

12) Conversion of Gallery or Work Space to Living Space Prohibited. All areas shown on the plans on file with the Urban Affairs Committee as “workshop”, “assigned storage” and “gallery space” will remain as areas that cannot be used as residential living space, and cannot be converted to residential space without an amendment of this special permit. While the areas of the residential units shown on the plans on file with the Urban Affairs Committee can be changed, no two units as finally configured can be combined to form one larger unit without an amendment to this special permit. Gallery Unit may be divided into two Units, both to be used as commercial space. The gallery space may be divided into two units, to be used as commercial space.

13) Rental of Units. No unit of the condominium will be rented through a lease with a term of greater than two years. All leases will require the prior approval of the Board of Trustees, or comparable governing entity, of the condominium association.

14) Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee.

15) Signage. All signage at the subject location shall comply with the existing City of Marlborough sign ordinance, without variance.

16) Exterior Lighting. Parking lot light fixtures shall not exceed 250 watts. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.

17) Snow Storage. Snow storage is to be provided on-site. The Applicant may elect to utilize off-site storage. Snowmelt is to be directed toward catch basins.

18) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary.

19) Parking Lot Enforcement. Pursuant to the provisions of General Laws Chapter 90 sec. 18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (hereinafter, “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 regulations of the Marlborough Sign Ordinance.

20) Water and Sewer Service. Water and sewer services provided to the Project shall be subject to the current citywide water and sewer charges subject to annual adjustment by the Commissioner of Public Works. Water and sewer connections shall be subject to a separate approval process and conditions.

21) Compliance with Permit Conditions. The Project proposed 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 before the City Council and/or the Urban Affairs Committee, and Site Plan Review, and in compliance with the conditions of the grant of the Special Permit.

22) Supplementary Inspectional Fees. The Applicant, at the time of application for a Building Permit shall pay the sum of \$2,500 to the City of Marlborough Inspectional Services Fund to offset the increase in costs associated with the Project construction, including but not limited to staff, materials, equipment and supplies, relative to the permitting, monitoring and inspection of the Project.

23) Recording. The Amended Special Permit shall be recorded 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 project. The Applicant shall be responsible for recording this Amended Special Permit, and shall present evidence to the City Solicitor's office regarding compliance.

24) Affordable Housing. Applicant shall pay to the Affordable Housing Trust, or to such other fund for the benefit of affordable housing as may be directed by the City Council, the sum of Fifteen Thousand (\$15,000) Dollars, of which Seven Thousand Five Hundred (\$7,500) Dollars shall be paid upon the sale of the 15<sup>th</sup> residential condominium unit, and Seven Thousand Five Hundred (\$7,500) Dollars shall be paid upon the sale of the 29<sup>th</sup> residential condominium unit.

Attachment #1

RENAISSANCE LOFTS CONDOMINIUM  
BY-LAW PROVISION

**PREFERENTIAL OWNERSHIP BY ARTISTS AND/OR TO PERSONS  
ENGAGED IN AN ART-RELATED BUSINESS**

Preference will be given to a person in purchasing a unit in Renaissance Lofts Condominium when said person is an artist and/or is engaged in an art-related business. For the purpose of this by-law provision, the term "artist" shall include choreographers, dancers, architects, landscape architects, urban designers and planners, interior designers, industrial designers, graphic designers, fashion designers, creative writers and literary translators, individual artists working in the film, radio, television, video, theater, conceptual performance, new genres, painting, print making, drawing, photography, sculpture, crafts, musical composers, musicians, mimes and playwrights; and the term "a person engaged in an art-related business" shall include a person engaged in a business related to any of the types of "artists" listed herein.

Yea: 10 – Nay: 0 – Abstained: 0 – Absent: 1

Yea: Katz, Ferro, Schafer, Juare, Webster, Clancy, Towle, Pope, Vigeant, Levy

Absent: Ossing

**ORDERED:** That the WI-FI and its impact on the City's wireless communications; be and is herewith **APPROVE** with the following **MOTION: that the WI-FI network continue to move forward subject to the following:**

- 1) Request for Proposal be issued for the construction of a communications pole at the Westerly Wastewater Treatment Plant;
- 2) That notification be given to the ward 3 councilor prior to a WCF installation taking place in the Forest Street area;
- 3) That the City Council be updated regarding any antennae location that will require rent prior to entering into any rental agreement for such locations;
- 4) That the City Council be updated regarding possible alternatives to the current Fairmount Hill water tank site;



- 5) That the WI-FI Team update the City Council within the next sixty (60) days regarding the progress of the above items; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned 9:55 p.m., **FILE**; adopted.