



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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SEPTEMBER 26, 2016

Regular meeting of the City Council held on Monday, SEPTEMBER 26, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Delano, Juaire, Oram, Ossing, Doucette, Elder, Tunnera, Irish and Landers. Absent: Clancy & Robey Meeting adjourned at 8:30 PM.

ORDERED: That the Minutes of the City Council meeting SEPTEMBER 12, 2016, FILE; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from NGrid and Verizon New England, Inc. to install 2 Stub Poles P62-84 & P68-84 for reconducturing on Stevens St., Order No. 16-1006656, all were heard who wish to be heard, hearing recessed at 8:05 PM.

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Landers, Juaire, Oram, & Ossing.

Absent: Clancy & Robey

ORDERED: That the PUBLIC HEARING On the Application for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant with a Drive-thru, 157 Apex Dr., Order No. 16-1006632, all were heard who wish to be heard, hearing recessed at 8:15 PM.

The City Clerk read the following certification that pertains to both Council President Edward Clancy and Councilor-at-Large Kathleen Robey:

- A. Certification as required under Chapter 79 of the Acts of 2006, re: for Special Permit from Ryan Development LLC on behalf of Apex WR 1031 LLC and Walker Realty LLC for Proposed Restaurant with a Drive-thru, 157 Apex Dr.

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Landers, Juaire, Oram, & Ossing.

Absent: Clancy & Robey

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Project Prioritization Plan grant awarded to DPW in the amount of \$40,161.51 in which funds will be used to identify potential projects that may be eligible for up to \$400,000.00 in construction funding under the next phase of the Complete Streets program; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Amended Special Permit, Crabtree Lake Williams, LLC, Lakeside Ave. in proper legal form, Order No. 16-1006636A, X08/09-1002051E, **MOVE TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, OCTOBER 17, 2016** as **DATE FOR PUBLIC HEARING** on Application to further modify Special Permit from Crabtree Lake Williams LLC for Overlook at Lake Williams, Lakeside Ave., to accommodate changes to the design and configuration of the emergency access road and perimeter fencing in the vicinity of Bond St., likely affecting Conditions #20, #22, #23, #36, #38 and #39, X16-1006636B, X08/09/-1002051E, refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE**; adopted.

ORDERED: That Minutes, License Board, July 20, 2016, **FILE**; adopted.

ORDERED: That Minutes, Board of Health, June 7, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, June 2 & 16, July 21, & September 1, 2016, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, June 14, 2016, **FILE**; adopted.

Reports of Committees:

Councilor Tunnera reported the following out of the Personnel Committee:

Meeting Name: City Council Personnel Committee

Date: September 20, 2016

Time: 7:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 7:30 PM – Adjourned: 7:52 PM

Present: Chairman Tunnera; Personnel Committee Members Councilors Irish and Elder; Councilors Doucette and Juairé

Also Present: Mayor Arthur Vigeant, Dr. Joseph Tennyson, Nicholas Charbonneau, Jim Confrey, Richard Collins, and Brenda Costa

Order No. 16-1006627 - Appointment of Dr. Joseph Tennyson to the Board of Health for a term to expire three years from the first Monday in February 2017. Recommendation of the Personnel Committee is to approve the appointment of Dr. Joseph Tennyson to the Board of Health. The Personnel Committee agreed to request a suspension of the rules at the next regular City Council meeting on September 26, 2016 for action on the appointment. **Motion made by Councilor Elder, seconded by the Chair, to approve the appointment. The motion carried 3-0.**

Reports of Committees cont'd

Order No. 16-1006653 - Appointment of Nicholas Charbonneau as the Director of Veterans Services for a term to expire three years from the date of City Council approval. Recommendation of the Personnel Committee is to approve the appointment of Nicholas Charbonneau as the Director of Veterans Services. The Personnel Committee agreed to request a suspension of the rules at the next regular City Council meeting on September 26, 2016 for action on the appointment. **Motion made by Councilor Elder, seconded by the Chair, to approve the appointment. The motion carried 3-0.**

Order No. 16-1006654 - Reappointments of the following individuals to the Council on Aging with staggered terms: Jim Confrey and Richard Collins with 4 year terms expiring May 2020; Brenda Costa and Leslie Biggar to 3 year terms expiring May 2019, and Rose Marie Elwood and Jeanne McGeough and Pat Gallier to 2 year terms expiring May 2018. Recommendation of the Personnel Committee is to approve the reappointments of Jim Confrey, Richard Collins and Brenda Costa to the Council on Aging. Leslie Biggar, Rose Marie Elwood, Jeanne McGeough, and Pat Gallier were unable to attend the meeting and their reappointments remained in the Personnel Committee. **Motion made by Councilor Elder, seconded by the Chair, to approve the reappointments of Jim Confrey, Richard Collins and Brenda Costa. The motion carried 3-0.**

Motion made by Councilor Elder, seconded by the Chair, to adjourn. The motion carried 3-0. The meeting adjourned at 7:52 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: September 20, 2016

Time: 5:30 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:30 PM – Adjourned: 5:48 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juare, Tunnera and Landers; and Councilors Doucette, Ossing and Robey

Also Present: **Arthur Bergeron (Attorney, Mirick O'Connell); Donald V. Rider, Jr. (City Solicitor, City of Marlborough); Douglas Scott (Interim Building Commissioner, City of Marlborough)**

Reports of Committees cont'd

Order No. 16-1006636 - Application for Special Permit from Crabtree Lake Williams LLC to amend Condition 2 of Special Permit, Order No. 08/09-1002051E in order to vary the method of securing completion of the Special Permit conditions and issuance of occupancy permits for individual condominium units as shown on Exhibit A. The Urban Affairs Committee met with Attorney Arthur Berger, representing Crabtree Lake Williams LLC, and City Solicitor Donald Rider for a discussion of a special permit modification to allow the applicant to receive final occupancy permits for individual condominium units as they are completed instead of temporary occupancy permits as required by their Special Permit. This modification was agreed upon with the stipulation the last building of four units would not receive its final occupancy permits until all conditions of the Special Permit, as amended, were completed to the satisfaction of the Building Commissioner. The "Decision of an Amendment to Original Special Permit City Council Order No. 16-1006636B, 08/09-1002051E" was amended as appropriate. Motion made by Councilor Juaire, seconded by Chair, to remove the language "*In addition, the Applicant shall file an application for a further amendment to this Special Permit, as amended, with respect to fencing on the perimeter of the Site and modifications to the emergency access road on the Site*" from the last paragraph. The motion carried 5-0.

Motion made by Councilor Tunnera, seconded by Chair, to approve as amended subject to site address being verified. The motion carried 5-0. Motion made by Councilor Tunnera, seconded by Chair, to request a suspension of the rules to place in proper legal form for the next regular City Council meeting. The motion carried 5-0.

Motion made by Councilor Juaire, seconded by Chair, to adjourn. The motion carried 5-0. The meeting adjourned at 5:48 PM.

Suspension of the Rules requested – granted

ORDERED: That the Appointment of Dr. Joseph Tennyson to the Board of Health for a term to expire three years from the first Monday in February 2017 and to thank Dr. John Curran as his term expired, **APPROVED**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Appointment of Nicholas Charbonneau as the new Director of Veterans Services for a term to expire three years from date of City Council approval, **APPROVED**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Amended Special Permit, Crabtree Lake Williams, LLC, Lakeside Ave. in proper legal form, Order No. 16-1006636A, X08/09-1002051E, **FILE**; adopted.

Suspension of the Rules requested – granted

ORDERED:

**DECISION ON AN AMENDMENT
TO ORIGINAL SPECIAL PERMIT****CITY COUNCIL ORDER NO. 16-1006636B
X08/09-1002051E**

Application of:
Crabtree Lake Williams, LLC
Locus:
Lakeside Avenue, Marlborough, MA
MBLU 67-45, 68-30A

FINDINGS OF FACT AND CONDITIONS

The City Council of the City of Marlborough hereby GRANTS the application of Crabtree Lake Williams, LLC, a Massachusetts limited liability company having a mailing address of 50 Deer Run, Ayer, Massachusetts 01432 (the “Applicant”), to amend an existing special permit, as provided in this Decision and subject to the following Findings of Fact and Conditions.

PROCEDURAL FINDINGS OF FACT

1. Applicant is the owner of certain real estate located on Lakeside Avenue, Marlborough, MA, as shown on City of Marlborough Assessors Maps Map 67, Parcel 45 and Map 68, Parcel 30A (the “Site”).
2. On June 18, 2009, the City Council of the City of Marlborough voted to grant a special permit concerning the Site, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 53183, Page 1 (the “Original Special Permit”).
3. The Applicant, by and through its counsel, filed with the City Clerk of the City of Marlborough an application to modify Condition #2 of the Original Special Permit in order to vary the method of securing i) the completion of the remaining Special Permit conditions and ii) the issuance of occupancy permits for individual condominium units, under the provisions of M.G.L. c. 40A, § 9 and the Marlborough Zoning Ordinance, Article VI, § 650-59.C(20) (the “Application”).
4. In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and copies of the existing site plan for the Site.
5. The existing site plan was certified by the Planning Department of the City of Marlborough, acting by and through the Building Commissioner, as having complied with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit or an amendment thereof.

6. 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 on the Application, and the City Clerk caused to be advertised the public hearing's date in the MetroWest Daily News and sent notice of said hearing to abutters entitled to notice under law.
7. On Monday, August 29, 2016, the City Council held a public hearing concerning the Application. The hearing was opened and closed on that date.
8. The Applicant, through its representatives, presented testimony at the public hearing detailing the project, describing its impact upon municipal services, the neighborhood, and traffic.
9. The Procedural Findings of Fact specified above supplement those made in the Original Special Permit, which are expressly incorporated herein by reference.

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 is an appropriate use and 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 as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- C. The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough Zoning Ordinance, GRANTS the Applicant an amendment to modify Condition #2 of the Original Special Permit (the "Amended Special Permit") in order to vary the method of securing i) the completion of the Special Permit conditions and ii) the issuance of occupancy permits for individual condominium units, by deleting said Condition #2 in its entirety and inserting in place thereof the following:

2. Site Plan Review. The issuance of the Amended Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough Code, prior to issuance of the Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall become further conditions to the Amended Special Permit. A Permanent Occupancy Permit for any of the individual condominium units may issue upon a written determination by the Building Commissioner that the Site, or a phased portion thereof, is substantially complete, providing for a phased development of the Site; provided, however, that no Permanent Occupancy Permit shall be issued for any of the last four (4) individual condominium units until the Building Commissioner issues a written determination that (i) all conditions of the Amended Special Permit have been complied with by the Applicant, or (ii) any remaining items of work necessary to comply with all conditions of the Amended Special Permit have been secured by the Applicant through a bond, cash deposit, letter of credit, tri-party agreement or other form of security deemed satisfactory to the Building Commissioner. Site Plan Review shall be consistent with the Amended Special Permit. Any violation of a condition of the Site Plan Approval shall be a violation of the Amended Special Permit.

All other conditions of the Original Special Permit shall continue in full force and effect, and are expressly incorporated herein by reference.

In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its successors and/or assigns at its expense shall record this Amended Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Amended Special Permit has elapsed with no appeal having been filed, and further shall provide to the Building Commissioner's office and the City Solicitor's office a copy of the recorded Amended Special Permit before the issuance of any Occupancy Permit, permanent or otherwise, regarding the Site.

Yea: Delano, Doucette, Elder, Tunnera, Irish, Landers, Juair, Oram, & Ossing
Absent: Clancy & Robey

ORDERED: That the Communication from City Solicitor, Donald Rider re: Application for LED Sign Special Permit, V & G Realty Trust, Vrej Askanian and Grace Kanoon, Trustees, 50 Main St., in proper legal form, Order No. 16-1006517A, **TABLED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:30 PM.