



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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FEBRUARY 11, 2013

Regular meeting of the City Council held on Monday, FEBRUARY 11, 2013 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 8:23 PM.

ORDERED: That the City Council President recognized Boy Scout Troop 227 from Shrewsbury for their Citizenship and Community Merit Badges, **FILE**; adopted.

ORDERED: That the minutes of the City Council Meeting FEBRUARY 11, 2013, **FILE**; adopted.

ORDERED: That the Department of Public Works mid-year transfer request, which moves funds from and to various accounts noted on the spreadsheet, to fund line items associated with employee promotions, interim/temporary promotions due to absences and vacancies, and police overtime associated with water and sewer maintenance and repair, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Executive Office of Public Safety and Security Grant awarded to the Fire Department in the amount of \$6,325.00 for the Student Awareness Fire Education (SAFE) program; adopted.

ORDERED: That the Communication from the Mayor re: Boston Scientific Phase II, **FILE**; adopted.

ORDERED: That the Communication from the Mayor re: Update on the Senior Citizen Property Tax-Workoff Program, **FILE**; adopted.

ORDERED: That the Appointment of James Griffin to the Board of Health for a term of three years, expiring on February 1, 2016, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That a quitclaim deed from George A. Parsons and Margaret W. Parsons, as husband and wife, to the City of Marlborough, executed on November 1, 1965 and recorded in the Middlesex South District Registry of Deeds on December 29, 1965 in Book 11017, Page 005, is accepted as a gift, **APPROVED**; adopted.

ORDERED: That the Communication from City Solicitor Rider re: Special Permit, T-Mobile, 342 Lincoln Street, in proper legal form, Order No. 12-1005191C, **MOVED TO ITEM 22**; adopted.

ORDERED: That the Updated Hazardous Materials Contingency Plan and Chemical List as required by Special Permit, Order No. 12-1005011B, **FILE**; adopted.

ORDERED: That the Application for Junk Dealer's License, Douglas Alexander, d/b/a Dougs Big Tool Box, 197 Boston Post Road West, Unit 266, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Conservation Commission, February 2, February 16, & March 15, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, January 8, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, December 17, 2012 & January 7, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, December 18, 2012, **FILE**; adopted.

ORDERED: That the Communication from Amica Insurance on behalf of Kevin W. Mcpherson, 42 Jackson Circle, refer to the **LEGAL DEPARTMENT**; adopted.

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

- A. Commercial Property Management, 277 Main Street, other property damage
- B. Ann Marie George, 155 Prospect Street, other property damage

Reports of Committees:

Councilor Ossing reported the following out of Finance Committee:

Order No. 13-1005297 – Transfer \$132,623.00 for Police Department. The Finance Committee reviewed the Mayor's letter dated January 24, 2013 requesting several internal transfers within the Police Department totaling \$132,623.00 to cover shortages in the overtime, detention attendant, initial equipment issues and telephone services account. **Recommendation of the Finance Committee is to approve the transfers 4-0.**

Order No. 13-1005299 – Transfer \$81,000.00 from Undesignated Funds to the Open Space Stabilization Account. The Finance Committee reviewed the Mayor's letter dated January 24, 2013 requesting the transfer of \$81,000.00 from Undesignated Funds to the Open Space Stabilization account for monies received in the general fund from wireless antennae receipts. **Recommendation of the Finance Committee is to approve the transfers 4-0.**

Councilor Tunnera reported the following out of the Personnel Committee:

Order No.13-1005302 - Communication from the Mayor re: Reappointment of David Brumby as Personnel Director for a term of three years upon approval.

The Chairman read a communication from Councilor Seymour in support of the reappointment of Mr. Brumby.

Motion made by Councilor Elder, seconded by Chair, to recommend the reappointment of David Brumby as Personnel Director for a term of three years to expire on the day following his confirmation by the City Council, 2-0.

Suspension of Rules requested – granted

ORDERED: That the Fire Department transfer request in the amount of \$102,605.48 which moves funds from and to various accounts as noted on the spreadsheet to pay for overtime costs associated with injuries of several firefighters early in the month of December and personal long term sick leave of others over the past several months, **APPROVED**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS									
DEPT: FIRE					FISCAL YEAR: 2013				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$143,145.61	\$8,229.88	12200001	50800	Fire Captain	\$8,229.88	12200003	51300	Overtime	\$69,504.95
	Reason:	Transfer is available due to 111F payments							
\$1,509,916.63	\$50,806.85	12200001	50450	Firefighter	\$50,806.85	12200003	51300	Overtime	\$69,504.95
	Reason:	Transfer is available due to 111F payments							
\$1,509,916.63	\$43,568.75	12200001	50450	Firefighter	\$43,568.75	12200003	51300	Overtime	\$69,504.95
	Reason:	Transfer is available due to unfilled positions							
	Reason:								
	Reason:								
	Reason:								

Suspension of Rules requested – granted

ORDERED: That the Building Department transfer request in the amount of \$506.00 and \$900.00 which moves funds from In-State Travel to Zoning Board Member and In-State Travel to Board Secretary respectively due to an unanticipated increase in the number of Zoning Board of Appeals hearings, **APPROVED**; adopted.

FROM:

Acct. # 12410006-57100 \$506.00
In-state Travel

TO:

Acct. # 1241003-51180 \$506.00
Zoning Board Member

FROM:

Acct. # 12410006-57100 \$900.00
In-state Travel

TO:

Acct. # 12410002-51050 \$900.00
Board Secretary

ORDERED: That the Appointment of Mr. Ronald Guest as the Parking Clerk, **APPROVED**; adopted.

ORDERED: That the Appointments of Kim Beauchemin, James David Elmore and Sandra Pirie-St. Amour to the Arts Lottery Council for terms expiring on August 23, 2015, **APPROVED**; adopted.

ORDERED: That the Reappointment of John Sahagian to the Zoning Board of Appeals for a period of five years expiring May 5, 2017 and Ralph Loftin as an alternate member for a term of two years expiring from date of City Council approval, **APPROVED**; adopted.

ORDERED: That the Application for a Fuel Storage License for TJX Companies, Inc., 300 Puritan Way – 4,000 gallon above ground; 10,000 gallon underground – No. 2 Diesel Fuel, **APPROVED**; adopted.

ORDERED: That the Application for a Fuel Storage License for TJX Companies, Inc., 400 Puritan Way – 30,000 gallon (3 x 10,000) underground – No. 2 Diesel Fuel, **APPROVED**; adopted.

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT**

T-MOBILE NORTHEAST LLC

CITY COUNCIL ORDER NO. 12/13-1005191C

Re: 342 Lincoln Street

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-7199B, submitted by T-Mobile Northeast LLC, having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766 as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is T-Mobile Northeast LLC with its principal office located at 12920 SE 38th Street, Bellevue, WA 98006 (hereinafter, “the Applicant”).
2. On November 10th, 1997, the City Council granted to Omnipoint Communications Inc. a special permit to locate and operate a wireless communications facility at the existing building located at 342 Lincoln Street, Marlborough, MA (hereinafter, “the Original Special Permit”). On June 30, 2009, Omnipoint Communications Inc. assigned its wireless markets in New England, and the assets relating thereto, including without limitation cell site and/or commercial and/or other leases under which it was a then-lessee, to Omnipoint Facilities Network 1, LLC.

Later on June 30, 2009, Omnipoint Facilities Network 1, LLC merged with and into T-Mobile Northeast LLC, Applicant herein. The Original Special Permit is recorded at the Middlesex South District Registry of Deeds in Book 27967, Page 267. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 69, Lot 263 (hereinafter, "the Site"). The owner of record for the Site is Lilien Realty, LLC.

3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (WCF) (hereinafter, "the Application"), the Applicant seeks permission to allow Applicant to replace the existing (6) antennas for (6) newer models, add a GPS antenna with ½" feed mounted to an existing support pipe, replace the existing 2106 equipment cabinet with a 6102 equipment cabinet, remove the existing GSM Tower Mounted Amplifiers and lastly consolidate the existing coax cables ("the Proposed WCF Project"). Thus, the modification will actually result in a slight reduction of equipment at the Site/WCF (Wireless Communication Facility). All substantially as depicted on a set of plans entitled "Site Name: BO012/342 LINCOLN, 342 Lincoln Street, Marlboro, MA 01752, Middlesex County, Site Number: 4DE5012A" by Advanced Engineering Group, P.C., 500 North Broadway, East Providence, RI 02914, dated 7/10/12 and last revised 7/31/12, a copy of which was provided in the Special Permit Application (hereinafter, "the Plans").
4. For purposes of the Application, the Applicant is a licensee of SBA Site Management, LLC, a Florida limited liability company, whose lease agreement to use the Site, pursuant to an Antenna Site Lease Agreement executed on August 21, 1997 and amended on September 24, 1997, has been assigned by the Site's owner to T1 Unison Site Management, LLC, a Delaware limited liability company, via a Rooftop Easement and Assignment Agreement recorded at the Middlesex South District Registry of Deeds in Book 57368, Page 261.
5. The Proposed WCF Project is located in the Business Zoning District. Wireless communication devices are allowed by grant of special permit in the Business Zoning District.
6. The modification of the Original Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 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 Building Inspector, on behalf of the City Planner, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.

8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on November 26th, 2012, 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 Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Proposed WCF Project.

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

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Proposed WCF Project and the Proposed WCF Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant a modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 9:**

- 1) The Proposed WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Modified Special Permit, as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Application, as amended, are herein incorporated and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Applicant's WCF.
- 4) The issuance of this Modified Special Permit may be further subject to Site Plan Review. Any additional changes, alterations, modifications or amendments as may be required by Site Plan Review shall be further conditions attached to this Modified Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Modified Special Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of the Modified Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCF referenced in this Modified Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Modified Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.

- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system.

- 8) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall i) state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a qualified third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.

- 9) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Oram & Robey

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:23 PM.