



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

**Lisa M. Thomas  
140 Main St.  
Marlborough, MA 01752  
(508) 460-3775 FAX (508) 460-3723**

**MAY 7, 2012**

Regular meeting of the City Council held on Monday, MAY 7, 2012 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Pope, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:03 PM.

ORDERED: That the Minutes of the City Council Meeting, APRIL 23, 2012, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MAY 21, 2012** as date for a **PUBLIC HEARING** for the proposed FY13 budget as submitted by Mayor Vigeant in the amount of \$127,009,055.00 for review and appropriation in which this spending plan reflects an increase of 2.84% over the approved Fiscal Year 2012 budget, refer to **FINANCE COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Legal Department transfer request in the amounts of \$150.00 and \$300.00 which moves funds from Registry of Deeds to Office Supplies/Expenses and from Registry of Deeds to Instate Travel to fund office supplies and instate travel, **APPROVED**; adopted.

FROM:

Acct. # 11510006-53880 \$150.00

Registry of Deeds

Acct. # 11510006-53880 \$300.00

Registry of Deeds

TO:

Acct. # 11510005-54220 \$150.00

Office Supplies/Expenses

Acct. # 11510006-57100 \$300.00

Instate Travel

ORDERED: That the two DPW transfer requests in the amounts of \$3,000.00 and \$3,000.00 which moves funds from Assistant Commissioner to Overtime-W/S Police, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 60080001-50630 \$3,000.00

Assistant Commissioner

Acct. # 60080001-50630 \$3,000.00

Assistant Commissioner

TO:

Acct. # 60080003-51380 \$3,000.00

Overtime-W/S Police

Acct. # 61090003-51380 \$3,000.00

Overtime-W/S Police

ORDERED: That the Fire Department transfer request in the amount of \$20,000.00 which moves funds from Undesignated to Call Fire Overtime to replenish funds that were substantially depleted due to the fire that occurred at Lake Williams Condominiums on April 23, 2012, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$20,000.00

Undesignated Fund

TO:

Acct. # 12200003-51328 \$20,000.00

Call Fire Overtime

ORDERED: That the Building Department/Inspections transfer request in the amount of \$325.00 which moves funds from Office Supplies to Board Secretary, **APPROVED**; adopted.

FROM:

Acct. # 12410005-54420 \$325.00

Office Supplies

TO:

Acct. # 12410002-51050 \$325.00

Board Secretary

ORDERED: That the Appointment of Robert Page to the Zoning Board of Appeals with term to expire May 5, 2017 and William King to remain as Alternate Member with term to expire May 5, 2014, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JUNE 4, 2012** as date for a **PUBLIC HEARING** on the application for a Massachusetts Cultural Council District Designation offered through the Massachusetts Cultural Council, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Application to modify Special Permit from Marlborough Savings Bank, 81 Granger Blvd., **MOVED TO ITEM 19**; adopted.

**Councilor Delano abstained**

ORDERED: That the Special Permit from Xcellerex Inc, 150-170 Locke Dr. in proper legal form, **MOVED TO REPORTS OF COMMITTEES**; adopted.

**Councilor Clancy abstained**

ORDERED: That the Communication from David Mohler, Chairman of the Boston Region Metropolitan Planning Organization regarding the Assabet River Rail Trail-FY2013-16 Transportation Improvement Program, refer to **SENATOR ELDRIDGE**; adopted.

ORDERED: That the Minutes, Board of Assessors, May 6 & 27, 2011, August 18, 2011, September 15, 2011, October 5, 2011, November 9, 2011, January 17, 2012 and March 8, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, April 10, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Marlborough High School, April 4, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, March 27, 2012, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, April 9, 2012, **FILE**; adopted.

ORDERED: That the Notice of Casualty Loss to Building, 47 McNeil Circle, refer to the **LEGAL DEPARTMENT**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.  
A. Geraldo daSilva, 22 Winter St., other property damage

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

Present: Chairman Ossing; Finance Committee members Councilors Seymour, Delano and Jenkins. Councilors Pope, Clancy, Landers, Elder, Tunnera and Robey were also in attendance. The meeting convened at 7:01 PM.

**Order No. 12-1005026 – Transfer \$10,501.05 from Undesignated Funds to Assistant Building Inspector.** The Finance Committee reviewed the Mayor’s letter dated April 5, 2012 requesting the approval of a \$10,501.05 transfer from the Undesignated Fund to the Assistant Building Inspector account. **Recommendation of the Finance Committee is to approve 4-0.**

**Order No. 12-1005025 – Transfer \$58,741.60 from Fringes to Cover Police Retirement.** The finance committee reviewed the Mayor’s letter dated April 5, 2012 requesting the approval of a \$58,741.60 transfer from the Fringes account to the Police Sergeant, Sick Leave and Clothing accounts to cover the retirement of an employee. **Recommendation of the Finance Committee is to approve 4-0.**

**Order No.12-1005023 – Transfer \$165,000.00 from Undesignated Funds to Workers Compensation.** The Finance Committee reviewed the Mayor’s letter dated April 5, 2012 requesting the approval of a \$165,000.00 transfer from the Undesignated Funds to the Workers Compensation account. **Recommendation of the Finance Committee is to approve 4-0.**

**Order No. 12-1005029 – Assabet Valley Repair and Renovations.** The Finance Committee reviewed the Mayor’s letter dated April 5, 2012 requesting the approval of an Order authorizing the City of Marlboro approve the \$62,434,488.00 borrowing for Assabet Valley Vocational School District for the purpose of paying costs of repairs and renovations at the Assabet Valley Regional Technical High School. **Recommendation of the Finance Committee is to approve the Order in the Mayor’s letter 4-0.**

**Order No. 12-1005008 – Transfer \$200,000.00 from Economic Development to MEDC Funding.** The Finance Committee reviewed the Mayor’s letter dated March 22, 2012 requesting the approval of a \$200,000.00 transfer from the Economic Development to the MEDC Funding. **Recommendation of the Finance Committee is to approve 4-0.**

Councilor Seymour reported the following out of the Legislative and Legal Affairs Committee:

Present: Chairman Seymour and Committee Members Delano and Robey. Councilors Pope and Landers were also in attendance. Meeting called to order at 6:18pm.

The Legislative and Legal Affairs Committee met and discussed the following order:

**Order No. 11/12-1004018** - That the City of Marlborough accept MGL Chapter 149, Section 33E, an Act relative to Live Organ Donation – said Act would permit an employee of the City to take a leave of absence of not more than 30 days in a calendar year to serve as an organ donor, without loss of or reduction in pay, without loss of leave to which he is otherwise entitled and without loss of credit for time or service. The Committee reviewed the language of the order proposed by former Councilor Paul Ferro. **Recommendation of the Legislative and Legal Affairs Committee is to approve 3-0.**

**Suspension of the Rules requested – granted**

ORDERED: That the DPW transfer request for funding of Marlborough Public Works Equipment Operators Association (MPWEOA) Contract as itemized on the attached spreadsheets, **APPROVED**; adopted.

CITY OF MARLBOROUGH								
--BUDGET TRANSFERS --								
DEPT:	PUBLIC WORKS				FISCAL YEAR: 2012			
FROM ACCOUNT:				TO ACCOUNT:				Available
Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$23,812	11990006	57820	Reserve for Salaries & Benefits	\$23,812	14001303	50740	Equipment Operators (Sts.)	\$184,174
Reason: Funding needed for DPW Laborers MOA								
\$6,117	11990006	57820	Reserve for Salaries & Benefits	\$6,117	14001303	50790	Dispatcher	\$8,756
Reason: Funding needed for DPW Laborers MOA								
\$1,642	11990006	57820	Reserve for Salaries & Benefits	\$1,642	14001303	51310	Overtime - Regular	\$11,365
Reason: Funding needed for DPW Laborers MOA								
\$1,018	11990006	57820	Reserve for Salaries & Benefits	\$1,018	14001303	51430	Longevity Pay	\$2,438
Reason: Funding needed for DPW Laborers MOA								
\$238	11990006	57820	Reserve for Salaries & Benefits	\$238	14001303	51470	Interim Foreman	\$0
Reason: Funding needed for DPW Laborers MOA								
\$6,663	11990006	57820	Reserve for Salaries & Benefits	\$6,663	14001303	51920	Sick Leave Buyback	\$6,662
Reason: Funding needed for DPW Laborers MOA								
\$9,592	11990006	57820	Reserve for Salaries & Benefits	\$9,592	14001403	50745	Motor Equipment Repairman	\$33,278
Reason: Funding needed for DPW Laborers MOA								
\$2,318	11990006	57820	Reserve for Salaries & Benefits	\$2,318	14001403	50760	Working Foreman	\$11,970
Reason: Funding needed for DPW Laborers MOA								
\$140	11990006	57820	Reserve for Salaries & Benefits	\$140	14001403	51310	Overtime - Regular	978
Reason: Funding needed for DPW Laborers MOA								

CITY OF MARLBOROUGH --BUDGET TRANSFERS --											
DEPT:		PUBLIC WORKS				FISCAL YEAR:		2012			
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance	
Amount	Org Code	Object	Account Description:			Amount	Org Code	Object	Account Description:		
\$416,172	\$139	11990006	57820	Reserve for Salaries & Benefits			\$139	14001403	51470	Interim Foreman	\$0
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$28,851	11990006	57820	Reserve for Salaries & Benefits			\$28,851	14001503	50740	Equipment Operators (FP&C)	\$172,452
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$1,050	11990006	57820	Reserve for Salaries & Benefits			\$1,050	14001503	51310	Overtime - Regular	\$8,570
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$406	11990006	57820	Reserve for Salaries & Benefits			\$406	14001503	51430	Longevity Pay	\$0
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$692	11990006	57820	Reserve for Salaries & Benefits			\$692	14001503	51470	Interim Foreman	\$0
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$406	11990006	57820	Reserve for Salaries & Benefits			\$406	14001503	51920	Sick Leave Buyback	\$2,875
Reason:		Funding needed for DPW Laborers MOA									
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance	
Amount	Org Code	Object	Account Description:			Amount	Org Code	Object	Account Description:		
\$416,172	\$1,466	11990006	57820	Reserve for Salaries & Benefits			\$1,466	60081001	50750	Equipment Operator (EP)	\$12,950
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$4	11990006	57820	Reserve for Salaries & Benefits			\$4	60081003	51310	Overtime	\$5,046
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$2,990	11990006	57820	Reserve for Salaries & Benefits			\$2,990	60085001	50750	Equipment Operator (WP)	\$11,426
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$21	11990006	57820	Reserve for Salaries & Benefits			\$21	60085003	51310	Overtime	\$3,065
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$149	11990006	57820	Reserve for Salaries & Benefits			\$149	60085003	51430	Longevity Pay	\$2,783
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$2,990	11990006	57820	Reserve for Salaries & Benefits			\$2,990	61090001	50460	Water Meter Readers	\$11,426
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$23,196	11990006	57820	Reserve for Salaries & Benefits			\$23,196	61090001	50740	Equipment Operator (W)	\$174,021
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$4,720	11990006	57820	Reserve for Salaries & Benefits			\$4,720	61090003	51310	Overtime - Regular	\$39,910
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$569	11990006	57820	Reserve for Salaries & Benefits			\$569	61090003	51430	Longevity Pay	\$3,395
Reason:		Funding needed for DPW Laborers MOA									
CITY OF MARLBOROUGH --BUDGET TRANSFERS --											
DEPT:		PUBLIC WORKS				FISCAL YEAR:		2012			
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance	
Amount	Org Code	Object	Account Description:			Amount	Org Code	Object	Account Description:		
\$416,172	\$17	11990006	57820	Reserve for Salaries & Benefits			\$17	61090003	51470	Interim Foreman	\$4,540
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$542	11990006	57820	Reserve for Salaries & Benefits			\$542	61090003	51920	Sick Leave Buyback	\$1,296
Reason:		Funding needed for DPW Laborers MOA									
\$416,172	\$8,720	11990006	57820	Reserve for Salaries & Benefits			\$8,720	14001203	51390	S&I Overtime	-\$6,078
Reason:		Funding needed for DPW Laborers MOA									

**Suspension of the Rules requested – granted**

ORDERED: That the City Council's opinion of FY 2013 Line Item Budget presentation, **NOT APPROVED**; adopted.

**Suspension of the Rules requested – granted**

ORDERED: That the Fire Department transfer request in the amount of \$99,468.14 which moves funds as itemized on the attached spreadsheet to fund the remaining balance of the recently signed contract with the International Association of Firefighters Local 1714, AFL-CIO for Fiscal years 2010, 2011, and 2012, **APPROVED**; adopted.

From Account					TO Account				
General Gov't					FIRE DEPARTMENT				
Available	Amount	ORG	OBJECT	Account Disc	Amount	Description	Org	Object	Available
\$ 177,849.36	\$ 49,381.00	11990006	57820	Reserve for Salaries					
\$ 245,553.00	\$ 50,105.14	11990006	51500	Fringe	\$ 5,184.53	Dpty Chiefs	12200001	50335	89498
					\$ 56,481.57	Firefighter	12200001	50450	751808
					\$ 3,386.11	Fire Capitan	12200001	50800	54570
					\$ 10,645.03	Fire Lieutenan	12200001	50810	118226
					\$ 793.18	First Respond	12200003	51226	12390
					\$ 4,854.59	Fire OT	12200003	51300	72684
					\$ 450.28	Fire OT Veh	12200003	51324	4836
					\$ 1,532.20	Fire Call OT	12200003	51328	20194
					\$ 1,542.47	Longevity	12200003	51430	21376
					\$ 1,276.48	Educ Inct	12200003	51440	67464
					\$ 1,260.59	Night Shift	12200003	51450	18045
					\$ 604.32	EMT	12200003	51480	30788
					\$ 3,130.99	Holiday	12200003	51490	116106
					\$ 8,325.80	Sick Leave	12200003	51920	6642
	\$ 99,486.14				\$ 99,468.14				
Reason: To fund Firefighters Labor Contract.									

**Suspension of the Rules requested – granted**

ORDERED: That the City Council of the City of Marlborough hereby authorizes the Chief Procurement Officer to issue a Notice of Award to MetroPCS Massachusetts LLC located at 285 Billerica Road – Third Floor, Chelmsford, MA 01824, in the amount of \$31,200.00 for the first year of the lease, increasing annually by three (3%) on each anniversary of the rent commencement date, subject to the approval of the Acting Fire Chief as to the proposal and location on the bell/hose tower at the Pleasant Street Fire Station site and the approval of a Special Permit by the City Council pursuant to the applicable Articles and Sections of the Marlborough Zoning Ordinance; and it is FURTHERED ORDERED: that the Mayor is hereby authorized to negotiate a lease with MetroPCS, subject to MetroPCS obtaining all necessary permits and licenses, for the placement of antennas attached to the bell/hose tower along with equipment cabinets and associated equipment to be installed within an approved area of the Pleasant Street Fire Station building, located at 98 Pleasant Street, Marlborough, MA 01752, shown on Assessors' Map 68, Parcel 174. Said municipal property has been declared available for disposition by City Council Order No. 11-1003070-2A, **APPROVED**; adopted.

**Suspension of the Rules requested – granted**

ORDERED: That the Operating Rules adopted at the organizational meeting on January 2, 2012 be changed to reflect Council Rule #1 and #2 to promote the effective operation of the City Council in the conduct of its business as follows:

**Rule #1**

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

**Rules #2**

Any message, ordinance, resolution, vote, or other measure submitted for consideration by the City Council shall be filed with the City Clerk electronically with one (1) hard copy delivered to the Office of the City Clerk on Thursday by 12 Noon preceding the City Council meeting. The City Clerk shall publish the agenda online no later than forty-eight (48) hours prior to the City Council meeting in compliance with the Open Meeting Law. All Communications, including Special Permits shall be in Times New Roman font, size 12 and justified.

**APPROVED;** adopted.

**XCELLEREX, INC.****SPECIAL PERMIT (WATER SUPPLY PROTECTION DISTRICT)  
FINDINGS OF FACT AND CONDITIONS****DECISION ON A SPECIAL PERMIT  
CITY COUNCIL ORDER NO. 12-1005011B**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Xcellerex, Inc., its successors and assigns, to continue the existing operation of a manufacturing, research and development facility in Zone B of the Water Supply Protection District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

**EVIDENCE**

- 1) Xcellerex, Inc. is a Delaware corporation having a business address of 170 Locke Drive, Marlborough, MA 01752, and is hereinafter referred to as “Applicant.”
- 2) Applicant is the lessee of three industrial buildings located at 150-170 Locke Drive, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 53, Parcel 86 (the “Site”). The Site is entirely located in the Limited Industrial District and is also entirely located in Zone B of the Water Supply Protection District, which is an overlay zoning district.
- 3) The Site is owned in fee simple by U.S. REIF 111 Locke Drive Massachusetts, LLC.

- 4) For more than eight years, the Site has been used by Applicant as a manufacturing, research and development facility. In conjunction with Applicant's use, toxic or hazardous materials, as that term is defined in § 650-24.C of the Marlborough Zoning Ordinance, are manufactured, used, stored and disposed of on the Site.
- 5) Applicant's use of the Site as a manufacturing, research and development facility is permitted by right in the Limited Industrial District, pursuant to § 650-17 and § 650-18 of the Marlborough Zoning Ordinance.
- 6) Applicant recently became aware that a Special Permit is required for Applicant's use of the Site under §§ 650-24.E(2)(c) and (d) of the Marlborough Zoning Ordinance.
- 7) Between January 30, 2012, and March 20, 2012, Applicant participated with the City in an informal preapplication review under § 650-24.G(1) and § 650-59.C(1)(a) of the Marlborough Zoning Ordinance. During the informal preapplication review, Applicant extensively communicated with the City's Conservation Officer, the Fire Department and the Department of Public Works. Further, Applicant has submitted for review a complete listing of the 365 chemicals used at the Site (the "Chemical List") and a draft of Applicant's Hazardous Materials Contingency Plan (the "Contingency Plan"). City officials provided comments to the documents which were incorporated therein by Applicant.
- 8) On March 20, 2012, Applicant was informed by City officials that no further edits needed to be made to the Chemical List or the Contingency Plan, and that the preapplication review process had been completed.
- 9) The Applicant, on or about March 22, 2012, filed with the City Clerk of the City of Marlborough an application for a special permit (the "Application") under the provisions of § 650-24 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance.
- 10) In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, and filing fee, and had previously filed twenty-one (21) copies of the Site Plan.
- 11) In connection with the Application, Applicant submitted the Chemical List and its Contingency Plan, both as amended through the preapplication review.
- 12) The Site Plan was certified by the Building Commissioner for the City of Marlborough, on behalf of the City Planner for the City of Marlborough, as having complied with Rule 5, items A through J of the Rules and Regulations promulgated by the City Council for the issuance of a special permit.
- 13) 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 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.

- 14) The Marlborough City Council, pursuant to MGL c. 40A, held a public hearing on April 23, 2012, concerning the said Application. The hearing was opened and closed at that meeting.
- 15) Applicant's attorney and representatives of the Applicant presented testimony at the public hearing detailing the Application and describing Applicant's operations on the Site.
- 16) At the public hearing four members of the public spoke in favor of the Application. One member of the public asked questions about the Application. No members of the public spoke against the Application.
- 17) Following the public hearing, the Urban Affairs Committee of the City Council met on May 1, 2012, to consider the Application. Applicant provided additional information and responded to questions regarding appropriate permit conditions, and reported on conversations with representatives of relevant City departments.

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 continued use of the Site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the Zoning Ordinance, in that it will have no significant negative impact upon abutters. The continued 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. The City Council further finds that, subject to the permit conditions enumerated herein, the continued use of the Site will not have an adverse impact on the Marlborough water supply.
- C. The City Council, pursuant to its authority under MGL c. 40A, § 9 and under Chapter 650 of the Marlborough City Code, GRANTS the Applicant a special permit to maintain and operate a manufacturing, research and development facility on the Site (the "Special Permit"), SUBJECT TO THE FOLLOWING CONDITIONS:
  - 1) Compliance with Local, State, Federal and International Laws. The Applicant, its successors and assigns shall comply with all rules, regulations and ordinances of the City of Marlborough; the Commonwealth of Massachusetts, including but not limited to the Department of Environmental Protection; the Federal Government, including but not limited to the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the National Institutes of Health; and the European Union, including but not limited to the European Medicines Agency, insofar as all such rules, regulations and ordinances apply to the maintenance and operation of Applicant's facility, including but not limited to any and all reporting requirements.

- 2) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, drawings and other documentation, including the Chemical List and the Contingency Plan, provided by the Applicant as part of the Application, and as amended during the application/hearing process before the City Council, 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.
- 3) Toxic or Hazardous Materials. Applicant, its successors and assigns shall comply with all regulations and other directives promulgated by the City of Marlborough; the Commonwealth of Massachusetts, including but not limited to the Department of Environmental Protection; the Federal Government, including but not limited to the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the National Institutes of Health; and the European Union, including but not limited to the European Medicines Agency, relative to the on-Site manufacture, use, storage and disposal of toxic or hazardous materials, including but not limited to such materials as defined in § 650-24.C of the Marlborough Zoning Ordinance.
- 4) Hazardous Materials Contingency Plan and Chemical List. Upon City Clerk certification that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, the Applicant shall immediately distribute to the Fire Chief, the Commissioner of Public Works and the Conservation Officer a copy of the Contingency Plan, which was submitted with the Application and amended through the preapplication process, and an updated copy of the Chemical List, which was submitted with the Application and amended through the preapplication process, said Chemical List being a list of each chemical stored at the Site, the typical quantity on hand, the typical order quantity, and the maximum quantity on hand at any one time. Thereafter, Applicant, its successors and assigns shall provide an updated copy of the Contingency Plan and of the Chemical List to said Fire Chief, Commissioner of Public Works and Conservation Officer on or before January 31 of every calendar year. If, at any time, there is a change in the names or contact information of the Xcellerex employees or agents listed in the Contingency Plan, or those of its successors or assigns, Applicant, its successor and assigns, shall notify in writing said Fire Chief, Commissioner of Public Works and Conservation Officer within thirty days of the date of said change.
- 5) Permits. Applicant shall continue to maintain all necessary permits from the Fire Department for the storage of combustible or flammable materials pursuant to 527 CMR 14.03.
- 6) Recordation. In accordance with the provisions of MGL c. 40A, § 11, Applicant, its successor and assigns shall at its expense record this Special Permit in the Middlesex South District 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. Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

**Yea: 10- Nay: 0**

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

**Abstained: Clancy**

**DECISION ON AN APPLICATION TO MODIFY A SPECIAL PERMIT****MARLBOROUGH SAVINGS BANK  
81 GRANGER BOULEVARD  
MARLBOROUGH, MA****CITY COUNCIL ORDER NO. 12-1004081C**

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 09-1002152C submitted by Marlborough Savings Bank, 81 Granger Boulevard, Marlborough, Massachusetts, as provided in this Decision and subject to the following Evidence, Findings of Fact, and Conditions.

**EVIDENCE**

1. Marlborough Savings Bank is hereinafter referred to as “Applicant.”
2. Applicant is the lessee of the premises known and numbered as 81 Granger Boulevard, Marlborough, Massachusetts, as further described on Marlborough Assessor’s Map 70, Parcel 152 (hereinafter the “Site”), and maintains a stand-alone bank facility with drive-through ATM and teller services. The Site’s owner is Stephen M. Fitzpatrick, Trustee of Fitzgerald Family Investment Trust, u/d/t December 4, 2007 and recorded with the Middlesex South District Registry of Deeds in Book 50587, Page 296.
3. The Applicant, by and through its attorney, Sem Aykanian, Esq., has filed with the City Clerk of the City of Marlborough an application for a modification of a special permit (hereinafter, the “Application”), to wit, A Notice of Decision Grant of Special Permit issued by the City Council for the City of Marlborough dated June 22, 2009 by Council Order No. 09-1002152C (hereinafter, the “Original Special Permit”). In the Application, the Applicant seeks to extend the hours of operation of both the drive-through teller as well as the drive-through ATM.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Application to modify the Original Special Permit, the Applicant has submitted a certified list of abutters, all appropriate filing fees, and provided copies of the Application to all appropriate parties in accordance with Rules and Regulations promulgated by the City Council for the issuance of a special permit.
6. The Application was certified by the Building Inspector for the City of Marlborough, acting for and on behalf of 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 for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the application to modify the Original Special Permit, and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.

8. The Marlborough City Council, pursuant to Mass. Gen. Laws c. 40A, held a public hearing on the Application on March 26, 2012.

9. The Applicant presented testimony at the public hearing detailing the Application, and describing the projected impact of the extended hours upon municipal services, the neighborhood, and traffic.

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

A. The City Council finds that the Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council, Chapter 650 (Zoning Code) of the City of Marlborough, and Mass. Gen. Laws c. 40A, §§ 9 and 11, as they pertain to modification of the Original Special Permit.

B. The City Council finds that the proposed modified use of the Site does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough or Mass. Gen. Laws c. 40A.

C. The City Council finds that the proposed modified 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 below.

D. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS the Applicant the modification of the Original Special Permit to extend the hours of operation of both the drive-through ATM as well as the drive-through teller (hereinafter, the "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 4**, which conditions shall be binding on Applicant, its successors and/or assigns:

1. The Original Special Permit (No. 09-1002152C) is hereby affirmed, is deemed to be in full force and effect, and applies to the Site without change or modification, except as provided for herein.
2. Condition 19 of the Original Special Permit shall be deleted in its entirety, and in place thereof the following shall be inserted:
  19. (a) The hours of operation of the drive-through teller at the Site shall not exceed the following times: Monday through Saturday, 8:00 AM to 8:00 PM; Sunday, 8:00 AM to 6:00 PM.

- (b) The hours of operation of the drive-through ATM at the Site shall be 24 hours per day, seven days per week.
3. In accordance with the provisions of Mass. Gen. Laws 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. Upon said recording, Applicant shall forthwith provide a copy of the recorded Modified Special Permit to the City Council's office and to the City Solicitor's office.
  4. As per the Permit Site Plan and the Project Narrative submitted in 2009 by Applicant as part of its application for the Original Special Permit, all of Applicant's employees shall use only the parking spaces provided at either of the City of Marlborough's municipal parking garages located on Granger Boulevard, and Applicant's employees shall refrain from using municipal ground-level parking spaces that are more suited to high turn-over patrons of other downtown businesses. Notwithstanding the foregoing, the Applicant may use the 3 parking spaces on the southerly side of the premises (at the southwest corner thereof) for its employees.

**Yea: 10- Nay: 0**

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

**Abstained: Delano**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:03 PM.