



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

**Lisa M. Thomas
140 Main St.**

**Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723
FEBRUARY 8, 2010**

Regular meeting of the City Council held on Monday, February 8, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Elder, Juare, Seymour, Clancy and Landers. Meeting adjourned at 9:15 p.m.

ORDERED: That the minutes of the City Council Meeting January 25, 2010, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Special Permit from MetroPCS Massachusetts, LLC for proposed installation of a Telecommunications Facility onto the existing utility pole at Donald Lynch Blvd., adjacent to the existing power sub-station, all were heard who wish to be heard, hearing recessed at 8:15 p.m., adopted.

Councilors Present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Juare, Seymour, Clancy, & Landers.

ORDERED: That the transfer request transfer request in the amount of \$39,292.26 which will move funds for sick leave buy back and vacation expenses associated with an employee's retirement in the Fire Department as follows:

\$13,790.40 from Fringes to Fire Chief account

\$13,137.60 from Fringes to Sick Leave Buy Back account

\$12,364.26 from Interest Ban to Sick Leave Buy Back account,

refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500

\$13,790.40

Fringes

TO:

Acct. # 12200001-50130

\$13,790.40

Fire Chief

FROM:

Acct. # 11990006-51500

\$13,137.60

Fringes

TO:

Acct. # 12200003-51920

\$13,137.60

Sick Leave Buy Back

FROM:

Acct. # 17520006-59254

\$12,364.26

Interest Ban

TO:

Acct. # 12200003-51920

\$12,364.26

Sick Leave Buy Back

ORDERED: That the transfer request in the amount of \$22,082.00 which moves funds from Fringes to Sick Leave Buy Back account for budgeted expenses associated with an employee's retirement in DPW, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 11990006-51500 \$22,082.00

Fringes

TO:

Acct. # 14001303-51920 \$22,082.00

Sick Leave Buy Back

ORDERED: That the appointment of Dr. Jay Jahanmir to the Board of Health for a term to expire February 6, 2011, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That Agenda #6, Communication from the City Solicitor regarding Special Permit from Clear Wireless, LLC for 157 Union St. in proper form, be moved to Reports of Committees, **APPROVED**; adopted.

ORDERED: That Agenda #7, Communication from the City Solicitor regarding Special Permit from Clear Wireless, LLC for 2 Mount Royal Ave. in proper form, be moved to Reports of Committees, **APPROVED**; adopted.

ORDERED: That Agenda #8, Communication from the City Solicitor regarding Special Permit from Clear Wireless, LLC for 460 Boston Post Rd. East in proper form, be moved to Reports of Committees, **APPROVED**; adopted.

ORDERED: That the Proposal from Massachusetts Electric Company for a Lease on Sligo Hill Water Tank, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Transfer of a Portion of Municipal Property at the Westerly Wastewater Treatment Plant from Sewerage Purposes to Telecommunications Leasing and Construction Purposes, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Municipal Space Assessment Study, refer to **OPERATIONS AND OVERSIGHT COMMITTEE**; adopted.

ORDERED: That the Communication from the 1st Lt. Charles W. Whitcomb School students re: renaming to 1st Lt. Charles W. Whitcomb Junior High School, refer to **SCHOOL COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, MARCH 8, 2010** as date for a **PUBLIC HEARING** on the Application for Special Permit from New England Sports Management Corporation to amend Special Permit #94-5460B to add a sixth rink, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the application for Junk Dealer's License for Igal Ismaili, d/b/a I & P USA Corporation for the Solomon Pond Mall, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the application for Junk Dealer's License for Steven Weener, d/b/a Thriftboro for 344 Boston Post Rd., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the minutes, Planning Board, January 11, 2010, **FILE**; adopted.

ORDERED: That the minutes, MetroWest Regional Transit Authority, November 30, 2009, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, December 22, 2009, **FILE**; adopted.

ORDERED: That the following CLAIMS, be and is herewith refer to the **LEGAL DEPARTMENT**; adopted.

- A. Theresa Lawson, 12 Edgewood Dr., Milford, pothole or other road defect claim
- B. Nicholas Cardinale, 8 Perolman Dr., other property damage and/or personal injury
- C. Brian Guild, 107 Kosmas St., pothole or other road defect claim
- D. Renato Alpizard, 135 Stow Rd., residential mailbox claim 2(a)

Reports of Committees:

Councilor Ossing reported the following out of Finance Committee:

Order No. 10-1002421 – Transfers \$18,000.00 from Undesignated Funds to Veterans Benefits: The Finance Committee reviewed the Mayor’s letter dated January 20, 2010 requesting the transfer of \$18,000.00 from Undesignated Funds to Veterans benefits. **Recommendation of the Finance Committee is to approve 5-0.**

Order No. 10-1002422 – Transfer to Cover Longevity Accounts in the Library and Health Departments: The Finance Committee reviewed the Mayor’s letter dated January 20, 2010 requesting the transfer of \$1,230.00 from the City Collector’s Sick Leave Buy Back Account to the following:

- \$640.00 to Library Longevity
- \$590.00 to Health Department Longevity

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

Order No. 10-1002423 – Internal Police Department Transfers to Cover Overtime and Sick Leave Buy Back: The Finance Committee reviewed the mayor’s letter dated January 20, 2010 requesting the internal police department transfers to cover \$119,688.00 for police overtime and \$11,091.00 for police sick leave buy back. **Recommendation of the Finance Committee is to approve 5-0.**

Order No. 10-1002424 – Transfer \$31,381.20 from Fringes to Fire Department Sick Leave Buy Back: The Finance Committee reviewed the Mayor’s letter dated January 15, 2010 requesting the transfer of \$31,381.20 from the Fringes Account to the Fire Department Sick Leave Buy Back. **Recommendation of the Finance Committee is to approve 5-0.**

Order No. 10-1002425 – Energy Efficiency and Conservation Block Grant for \$178,000.00: The Finance Committee reviewed the Mayor’s letter dated January 21, 2010 requesting the approval of \$178,000.00 Energy Efficiency and Conservation Block Grant to install a gas fired HVAC system in the DPW building. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Order No. 10-1002426 – Renewable Energy Trust Grant for \$9,086.54: The Finance Committee reviewed the Mayor’s letter dated January 21, 2010 requesting the approval of \$9,086.54 Renewable Energy Trust Grant for the purchase of two Big Belly Solar Trash Compactors. **Recommendation of the Finance Committee is to table the grant 5-0.** Councilors were requested to contact Mr. Ghiloni to address their questions with the grant.

Order No. 10-1002427 – Commonwealth of Massachusetts Grant for \$2,000.00: The Finance Committee reviewed the Mayor’s letter dated January 17, 2010 requesting the approval of \$2,000.00 from the Commonwealth of Massachusetts for the operational readiness of the Mass Decontamination Unit. **Recommendation of the Finance Committee is to approve the grant 5-0.**

Order No. 10-1002428 – Commonwealth of Massachusetts Grant for \$5,900.00: The Finance Committee reviewed the Mayor’s letter dated January 17, 2010 requesting the approval of \$5,900.00 from the Commonwealth of Massachusetts for the funding of the student awareness of fire education programs. **Recommendation of the Finance Committee is to approve the grant 5-0.**

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

Order No. 09-1002396 – Designation of a City Liaison to the Ethics Commission as required under MGL Chapter 268A, Section 29. The Legislative and Legal Affairs Committee reviewed the Mayor’s letter dated February 8, 2010 recommending the change of the designee from the City Solicitor to the Personnel Director. There was considerable discussion regarding the implications of implementing this; specifically it being an unfunded mandate and the costs to municipalities. **Recommendation of the Legislative and Legal Affairs Committee is to authorize President Vigeant to send a letter to the Ethics Commission pertinent to ceasing the implementation of the requirements under the new Ethics Reform as it’s an unfundated mandate and the costs to the City would be immeasurable. Further, request that the City will not be designating a liaison to the Ethics Commission at this time, 3-0.**

ORDERED: The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to CLEAR WIRELESS, LLC, having a usual place of business at 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is CLEAR WIRELESS, LLC, which has a business address of 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033 (hereinafter “Applicant”).
2. Through its Application for a Special Permit, the Applicant seeks permission to allow co-location of three (3) panel antennas and two (2) “back-haul” dish antennas in three (3) flues onto an existing rooftop, as well as the placement of one (1) associated cabinet, one (1) GPS antenna, and associated coax cables and cable trays (hereinafter “Proposed WCD Project”), substantially as depicted on a set of plans entitled “Countryside Apartments MA-BOS7333c” by Morrison Hershfield and dated 11/30/09 provided as supplemental material to the Special Permit Application (hereinafter “Plans”).

3. The location of the Proposed WCD Project is 460 Boston Post Road East. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 73, Block 31 ("the Site"). The owner of record for the Site is Trinity Countryside Limited Partnership.
4. The Applicant is a lessee of the owner for purposes of this Special Permit Application.
5. The Site is zoned B (Business). Wireless communication devices are allowed by grant of Special Permit in B (Business) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on October 26, 2009, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Pursuant to Mass. Gen. Laws c. 40A, § 9, the time limit for the City Council to take final action on the Application was extended, by written agreement with the Applicant, to March 31, 2010 at 5 p.m.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Device.

**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 WCD Project and the Proposed WCD 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 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCD 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 its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
 - 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
 - 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.

- 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 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 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 WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the 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 WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The temporary generator shall be affixed to the roof in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code.
- 8) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.
- 11) If the use of a crane, or of a similar lifting device that would project above the existing roof line of the building at the Site, is or will be needed when installing or when repairing the antennas permitted by this Special Permit, Applicant shall provide to the operators of the Marlborough Airport written notification of said use two business days in advance thereof.

12) 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 Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD 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 WCD 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 i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD 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 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD 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 i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD 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 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.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Juair, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, Levy

ORDERED: The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to CLEAR WIRELESS, LLC, having a usual place of business at 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is CLEAR WIRELESS, LLC, which has a business address of 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033 (hereinafter "Applicant").

2. Through its Application for a Special Permit, the Applicant seeks permission to allow the one-for-one swap of three (3) panel antennas, and the addition of two (2) "back-haul" dish antennas which will be replacing two (2) panel antennas, inside the existing faux penthouse on the existing rooftop, as well as the placement of one (1) associated cabinet, one (1) GPS antenna on and within the existing equipment shelter, and associated coax cables and cable trays (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "Marlborough Hospital MA-BOS5752-A / MA0912-B" by Bay State Design, Inc. and dated 11/30/09 provided as supplemental material to the Special Permit Application (hereinafter "Plans").
3. The location of the Proposed WCD Project is 157 Union Street, known as the Marlborough Hospital. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 43, Block 56 ("the Site"). The owner of record for the Site is Marlborough Hospital.
4. The Applicant is a sub-lessee of the owner for purposes of this Special Permit Application.
5. The Site is zoned A-3 (Residence). Wireless communication devices are allowed by grant of Special Permit in A-3 (Residence) Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on September 28, 2009, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Pursuant to Mass. Gen. Laws c. 40A, § 9, the time limit for the City Council to take final action on the Application was extended, by written agreement with the Applicant, to March 31, 2010 at 5 p.m.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.

11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Device.

**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 WCD Project and the Proposed WCD 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 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCD 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 its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 11:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 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 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 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 WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the 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 WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The temporary generator shall be affixed to the roof in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code.
- 8) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.

- 10) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

- 11) 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 Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD 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 WCD 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 i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD 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 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD 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 i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD 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 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.

Yea: 10- Nay: 0

**Yea: Delano, Ferro, Elder, Juairé, Clancy, Landers, Ossing, Pope, Vigeant, Levy
Councilor Seymour abstained**

ORDERED: That the application for Special Permit from Attorney Hoyt by Clear Wireless, LLC for modification of a wireless communications facility located at 2 Mt. Royal Ave, **TABLED UNTIL FEBRUARY 22, 2010**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:15 p.m.; adopted.