



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**

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NOVEMBER 8, 2010

Regular meeting of the City Council held on Monday, NOVEMBER 8, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Ossing, Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy and Landers. Meeting adjourned at 10:34 p.m.

ORDERED: That the minutes of the City Council Meeting October 18, 2010, **FILE**; adopted.

ORDERED: That the Council President welcomed Margaret Cardello as new the Library Director and recognized Boy's Scout Troop 2, **FILE**; adopted.

ORDERED: It is moved, in conformance with the provisions of Chapter 30A of the General Laws of the Commonwealth, that the Marlborough City Council conduct an executive session for two purposes, first, to conduct a strategy session in preparation for negotiations with non-union personnel under § 21(2) of Chapter 30A as an open meeting may have a detrimental effect on the negotiating position of the City of Marlborough, and second, to discuss strategy with respect to collective bargaining under § 21(3) of Chapter 30A as an open meeting may have a detrimental effect on the collective bargaining position of the City of Marlborough. It is further moved and stated that the Marlborough City Council will reconvene in open session after the executive session, **APPROVED and returned to open meeting at 8:50 p.m.**, adopted.

Yea: 11 -Nay: 0

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

MOTION made by Councilor Ossing to refer back to Mayor –withdrawn

Suspension of the Rules requested – granted to allow the DPW Commissioner to speak

ORDERED: That the DPW transfer request in the amount of \$6,000.00 from Undesignated Fund to Overtime Regular for Preston St. roadway reconstruction, move to **REPORTS OF COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$6,000.00
Undesignated Fund

TO:

Acct. # 14001103-51310 \$6,000.00
OT Regular

ORDERED: That the Fire Department transfer request in the amount of \$95,000.00 from Undesignated Fund to Additional Overtime to cover anticipated shortfalls in the FY11 overtime funding, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$95,000.00

Undesignated Fund

TO:

Acct. # 12200003-51300 \$95,000.00

Additional OT

ORDERED: That the Legal Services transfer request in the amount of \$50,000.00 from Undesignated Fund to Legal Services to fund outside labor services related to ongoing collective bargaining negotiations, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$50,000.00

Undesignated Fund

TO:

Acct. # 11510004-53110 \$50,000.00

Legal Services

ORDERED: That the Water Transfer request in the amount of \$20,000.00 from Undesignated Fund to Professional & Technical Services to meet the Department of Environmental Protection (DEP) compliance requirements, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 10000-35900 \$20,000.00

Undesignated Fund

TO:

Acct. # 61090004-53180 \$20,000.00

Professional & Technical Services

ORDERED: That the Communication from the Mayor re: Human Service Task Force recommendations, **FILE**; adopted.

ORDERED: That the Human Services transfer request in the amount of \$31,665.91 to move funds from Undesignated to Director and \$75.00 from Undesignated Funds to Office Supplies necessary to implement the department's reorganization plan, refer back to the **MAYOR TO PROVIDE A SALARY ORDINANCE, JOB DESCRIPTIONS, ORGANIZATIONAL CHART AND FUNDING REQUIREMENTS**.

FROM:

Acct. # 10000-35900 \$31,665.91

Undesignated Fund

Acct. # 10000-35900 \$75.00

Undesignated Fund

TO:

Acct. # 15270001-50595 \$31,665.91

Director

Acct. # 15270005-54220 \$75.00

Office Supplies

ORDERED: That the Certification of Free Cash in the amount of \$3,840,266.00, **FILE**; adopted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY DELETING IN THEIR ENTIRETY SECTIONS 557-1 (PERMIT REQUIRED), 557-2 (FENCES OR BARRIERS REQUIRED), 557-3 (INSPECTION REQUIRED), 557-4 (EXEMPTIONS), 557-5 (COMPLIANCE), AND 557-6 (VIOLATIONS AND PENALTIES) OF CHAPTER 557, AND ADDING THE FOLLOWING NEW PARAGRAPH TO THE SECTION OF CHAPTER 557 ENTITLED "GENERAL REFERENCES":

Commonwealth of Massachusetts State Building Code, as amended (See 780 CMR), refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**.

ORDERED: That the Communication from Superintendent Nawrocki re: request to meet with City Council or Finance Committee pertinent to the progress of the school building renovation project, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Bergeron re: conveyance of the land behind the Walker Estate in which a sewer trunk line is located to propose a so-called "open space" subdivision of the property, refer to **OPEN SPACE COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **NOVEMBER 22, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to install stub P. 17-34 and remove pole on Church St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Application from Daniel Deychman d/b/a D & P Limo for Livery license at 35 Hosmer St., Apt 11, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, Planning Board, October 4, 2010, **FILE**; adopted.

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

- A. Julie Purcell, 197 Stow Rd., other property damage
- B. Ana Batista, 676 Farm Rd., other property damage
- C. Diane Welch, 145 Pleasant St., pothole or other road defect

Reports of Committees:

Councilor Clancy reported the following out of the Public Services Committee:

Order No. 10-1002714 - Communication from Attorney Golden requesting Acceptance of Peebles Way as a Public Way together with:

Approval letter from the City of Marlborough Planning Board;

Approved Plan of Acceptance Easements and Open Space of Peebles Way;

Proposed Quitclaim Deed.

Asst. Solicitor Panagore-Griffin prepared the Order of Acceptance. She advised the committee that separate votes should be taken on the Order of Acceptance, the easements and the acceptance by the City of the open space as shown on the Plan of Acceptance prepared by Thomas Land Surveyors and Engineering Consultants, Inc., 265 Washington Street, Hudson, MA 01749. **Recommendation of the Public Services Committee is to approve Acceptance of Peebles Way as a Public Way , including the Order of Acceptance, the Plan of Acceptance, Easements and Open Space of Peebles Way and the Proposed Quitclaim Deed 3-0.**

Order No. 10-1002708 - Petition from Mass Electric and Verizon New England to install new intermediate P. 31-50 which is east of present pole 31 on Essex Street and relocate pole 19 on Cook Lane. The City Engineer forwarded an email to the City Council advising that the Engineering Division has reviewed the NGrid/Verizon Petitions and is without objection. The proponent should be required to: 1) Pull a road opening permit at the time of the work; 2) Assure that the sidewalk horizontal clearances (ADA purposes) are met or exceeded. **Recommendation of the Public Services Committee is to approve 3-0.**

Order No. 10-1002672 - Petition from Mass Electric and Verizon New England to install intermediate pole on Cook Lane P. 19-50 for the purposes of feeding a new urd. The City Engineer forwarded an email to the City Council advising that the Engineering Division has reviewed the NGrid/Verizon Petitions and is without objection. The proponent should be required to: 1) Pull a road opening permit at the time of the work; 2) Assure that the sidewalk horizontal clearances (ADA purposes) are met or exceeded. **Recommendation of the Public Services Committee is to approve 3-0.**

Order No. 10-1002668 - Communication from Commissioner LaFreniere requesting consideration and approval of a Grant of Utility Easement to Mass Electric from the City of Marlborough to provide for upgrades to the overhead system and an underground electric distribution system for the Westerly Wastewater Treatment Plant. The Plant upgrades are currently under construction and the Easement is necessary for MEC to install and maintain its equipment. Also enclosed for reference is the sketch entitled, "National Grid Work Location 303 Boundary Street, Work Order #814764" depicting the Easement at 303 Boundary Street. **Recommendation of the Public Services Committee is to approve 3-0.**

Councilor Clancy reported the following out of the Wireless Communications Committee:

Order No. 10-1002648 – Application of Clear Wireless, LLC to modify Wireless Communications Facility at 115/109 Onamog St. Discussion was continued from the 10/18/2010 Wireless subcommittee meeting on the application for a Special Permit from Clear Wireless to install a telecommunications facility on to an existing Water Tank on Fairmont Hill, 115 Onamog Street. A review of the Applicant's folder was conducted and all the inclusions were found to be proper. No new testimony was heard and review of the "Decision" was begun covering the Evidence, Findings of Fact and the twelve (12) Conditions that would be applied. Minor changes were made to the wording for clarification. **Recommendation of the Wireless Communication Committee is to approve the Special Permit 2-0 contingent upon submission of the "Coverage Maps" so they may be included in the file. Further, a motion made by Councilor Landers to request a "Suspension of the Rules to refer the matter to the City Solicitor to be placed in Proper Form" for the November 22, 2010 City Council meeting was approved 2-0.**

Councilor Ferro reported the following out of the Operations and Oversight Committee:

Order No. 10-1002627 – X-10-1002588B - That the Public Facilities Director be and is hereby authorized to Issue a Notice of Award of a contract to the lowest eligible bidder in the amount of \$818,000.00 for the completion of the Sligo Hill Rehabilitation Project and that the Mayor be authorized to negotiate and sign said contract. The Committee discussed options for the rehabilitation of the communications tower and the costs involved. Mr. Ghiloni stated that he was unsure of the breakdown between labor and materials. He also informed the Committee that the project will be going out to bid again which could possibly lower the cost. **Recommendation of the Operations and Oversight Committee is to approve 3-0.**

Councilor Ossing reported the following out of the Finance Committee:

Order No. 10-1002707 – Start Library Director at Step 1. The Finance Committee reviewed the Chair of the Library Board of Director's letter dated September 23, 2010 requesting the new Library Director start at step 1. **Recommendation of the Finance Committee is to approve the starting salary at step 1, 5-0.**

Order No.10-1002679 – Transfers to Cover Firefighter Overtime - \$3,089.71. The Finance Committee reviewed the Mayor's letter dated September 8, 2010 requesting the following two transfers to cover firefighter overtime:

- \$2,447.82 from Firefighter salary to Firefighter Overtime
- \$641.89 from Fire Captain salary to Firefighter Overtime

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

Order No. 10-1002712 – Transfers to Cover Firefighter Overtime - \$3,059.76. The Finance Committee reviewed the Mayor's letter dated October 14, 2010 requesting the transfer of \$3,059.76 from Firefighter salary to Firefighter Overtime. **Recommendation of the Finance Committee is to approve both transfers 5-0.**

Suspension of the Rules requested – granted

ORDERED: That the DPW transfer request in the amount of \$6,000.00 from Assistant Commissioner DPW to Overtime Regular for Preston St. roadway reconstruction, **APPROVED**; adopted.

FROM:

Acct. # 60080001-50630 \$6,000.00

Assistant Commissioner DPW

TO:

Acct. # 14001103-51310 \$6,000.00

OT Regular

Suspension of the Rules requested – granted

ORDERED: That the Retirement Benefits transfer request in the amount of \$22,082.00 which moves funds from Fringes to Sick Leave Buy Back and \$2,261.00 which moves funds from Fringes to Longevity to fund benefits associated with an employee's retirement, **APPROVED**; adopted.

FROM:	
Acct. # 11990006-51500	\$22,082.00
Fringes	
Acct. # 11990006-51500	\$2,261.00
Fringes	
TO:	
Acct. # 61090003-51920	\$22,082.00
Sick Leave Buy Back	
Acct. # 61090003-51430	\$2,261.00
Longevity	

Suspension of the Rules requested – granted

ORDERED: That the City of Marlborough hereby accepts the provisions of 780 CMR Appendix 120.AA, the Massachusetts Stretch Energy Code, with such acceptance to be effective on January 1, 2012, **APPROVED**; adopted.

Councilor Elder opposed

Suspension of the Rules requested – granted

ORDERED: That the Application of Clear Wireless, LLC to modify Wireless Communications Facility at 115/109 Onamog St., refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM FOR THE NOVEMBER 22, 2010 CITY COUNCIL MEETING**; adopted.

ORDERED: That the Application for amended Special Permit from Attorney Gadbois, on behalf of Fore kicks II, Inc., seeking to amend Special Permit #07-1001465D to allow the applicant to serve alcoholic beverages on Site, **MOVED TO END OF AGENDA, AFTER ITEM 19.**

ORDERED: That the Communication from Christopher White re: Disclosure of Financial Interest by Special Municipal Employee and Approval, **APPROVED**; adopted.

ORDERED: That all municipal vehicles be marked with the official city seal and numbered on the back for identification purposes, **FILE**; adopted.

ORDERED: At President Vigeant's request to recess at 10:01 PM and returned to open meeting at 10:03 PM, **APPROVED**; adopted.

ORDERED: At President Vigeant's request to recess at 10:20 PM and returned to open meeting at 10:30 PM, **APPROVED**; adopted.

Suspension of the Rules requested - granted

SPECIAL PERMIT # 07-1001465D

The City Council of the City of Marlborough hereby Grants the Application for Amendment to Special Permit # 07-1001465D to Fore Kicks II, Inc. (Operating Company) and Fore Kicks II Limited Partnership (Owner) both having a place of business at 190 Rolling Meadow Drive, Holliston, MA 01746 as provided in the Decision and subject to the following Procedural Findings, Findings of Facts and Conditions:

PROCEDURAL FINDINGS

1. Fore Kicks II, Inc. and Fore Kicks Limited Partnership each having a place of business at 190 Rolling Meadow Drive, Holliston, MA 01746 are hereinafter collectively referred to as the “Applicant.”
2. Fore Kicks II, Limited Partnership, is the owner of property located at 219 Forest Street, Marlborough, MA 01752 (hereinafter referred to as the “Site”). Said property is further described as Assessor’s Map 90 Parcel 2 in a deed recorded in the Middlesex South District Registry of Deeds in Book 50116 Page 059.
3. The Applicant, on or about July 23, 2010, filed with the City Clerk of the City of Marlborough an Application for Amendment to Special Permit # 07-1001465D, herein referred to as the “Application.”
4. On May 21, 2007 the City Council granted the Applicant a Special Permit to construct a multi-sport and recreation facility consisting of a building of approximately 125,000 square feet, two outdoor multi sport turf fields and adjacent parking lots. Notice of Grant of Special Permit # 07-1001465D is recorded in the Middlesex South District Registry of Deeds in Book 50116 Page 030.
5. The Application is authorized under the provisions of Chapter 650 (Zoning) of the Code of the City of Marlborough, Article V Section 650-17 Table of Uses and Section 650-18 Conditions for Uses A (23) Recreation Centers. The reason for the Application is to amend the Special Permit to allow the serving and consumption of alcoholic beer and wine beverages as provided hereby.
6. The Application filed with the City Clerk on July 23, 2010 consisted of the following: (a) Application Fee in the amount of \$500.00; (b) three (3) original copies of the Application for Amendment to Special Permit # 07-1001465D; (c) Certification of Delivery of copies of application to City of Marlborough Departments and Office of the City Council; (d) Certification of Payment of Municipal Taxes; (e) Application outlining the project; (f) Special Permit Application Certification by Planning Department; (g) Certified copies of Abutters’ Lists; (h) Special Permit-Summary Impact Statement; (collectively the “Documents”). Twelve sets of Documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner, the Building Inspector, the City Engineer and the Conservation Officer, all in accordance with Chapter 650, Article VII Section 200-59 of the Zoning Code of the City of Marlborough. The documents are incorporated herein and become part of this Decision.
7. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed on behalf of the City Planner for the City of Marlborough as having complied with the provisions of Chapter 650 (Zoning Code) Article VII Section 650-59, C. (7) (a), (b), and (c).

8. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A Sections 9 and 11, the City Council established September 13, 2010 at 8:00 PM as a date and time for a public hearing on the Application, caused a notice of said hearing and the date thereof to be advertised on August 23, 2010 and August 30, 2010 in the Metrowest Daily News and caused said notice to be mailed to those entitled thereto. Proof of advertisement and mailing were submitted to the City Clerk to be placed with the Application documents.
9. The Marlborough City Council held a public hearing on the Application on September 13, 2010 at 8:00 PM in accordance with the published notice, (the Public Hearing). The hearing was opened and closed on said date.
10. At the public hearing, the Applicant presented a slide presentation showing the area in the building known as the Kick Back Club. The slides showed the area where the service bar would be located and the area where the beer and wine would be consumed. Applicant gave testimony through its attorney that the ability to serve beer and wine would increase the applicant's competitiveness with other similar facilities in the area; that it would attract more men's leagues, company and corporate functions, private functions, such as adult birthday parties, bar Mitzvahs, and fundraising events to support youth and adult athletic leagues and other private fundraising functions; and that it would allow the Applicant to be more competitive in attracting local, regional and national events, resulting in the use by participants of the local hospitality facilities, such as hotels and restaurants. Members of the public had the opportunity to testify at the public hearing. Some members of the public spoke in favor of the granting of the Permit and others spoke against. There were letters and e-mails in support of the granting of the Permit and e-mails in opposition to Application.

**BASED UPON THE ABOVE THE CITY COUNCIL OF THE CITY OF
MARLBOROUGH MAKES THE FOLLOWING FINDINGS AND CONDITIONS:**

- A. The City Council finds that it may amend Special Permit # 07-1001465D (Special Permit) subject to terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough.
- B. The City Council finds the Application for Amendment to Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough or Massachusetts General Laws Chapter 40A, et. seq.
- C. The City Council finds that the proposed use of the Site for the limited sale of beer and wine is an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.
- D. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough, Chapter 650 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A Sections 9 and 11.

GRANT OF AMENDMENT TO SPECIAL PERMIT

- E. The City Council of the City of Marlborough pursuant to its authority under Chapter 650 (Zoning Code) of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant an Amendment to Special Permit # 07-1001465D to allow the serving and consumption of alcoholic beer and wine. as set forth in the Application and subject to the following conditions:
1. The Special Permit # 07-1001465D is hereby affirmed, is deemed to be in full force and effect and applies to the Project without change or modification, except as provided for herein.
 2. Unless modified by the provisions hereof, conditions 1 through 18 and conditions 20 through 54 outlined in the Special Permit shall apply to the Project. Where reference is made to the issuance of the Special Permit, it shall also refer to the issuance of the Amended Special Permit.
 3. Condition 19 of the Special Permit shall be deleted in its entirety and in place thereof the following shall be inserted:
 19. **Serving of Alcoholic Beverages.** A. (a) During the period of time from the granting of the Amendment to Special Permit # 07-1001465D to August 31, 2011, Applicant may serve beer and wine on no more than 25 days, all in accordance with the terms and conditions in B. (a) through (j) hereof. (b) Each day the Applicant intends to serve beer and wine during said period, Applicant shall notify the Zoning Code Enforcing Authority of the intent to serve on that particular day. Prior to September 1, 2011, the City Council reserves the right to review the amended special permit allowing the serving of alcoholic beverages. (c) So long as there is no violation of Massachusetts General Laws Chapter 138 ALCOHOLIC LIQUORS, the City of Marlborough Licensing Board Rules and Regulations or Section 19 of this Grant of Amendment to Special Permit, and the Chief of Police and the Zoning Code Enforcing Authority state in writing that there has been no violation prior to September 1, 2011, then, on and after September 1, 2011, Applicant may serve beer and wine on any day in the Kick Back Club in accordance with the terms and conditions of this Grant of Amendment to Special Permit. B. Alcoholic beverages consisting of beer and wine only may be served by the Applicant to be consumed on the Site and only in the area on the second floor of the building designated as Kick Back Club under the following terms and conditions: (a) Alcoholic beverages may only be served in the Kick Back Club; (b) There shall be no bar facilities for patron seating. All seating shall be at tables in the Kick Back Club area; (c) No alcoholic beverages are allowed to be taken out of the Kick Back Club; (d) No

alcoholic beverages are allowed to be served outside of the Kick Back Club; (e) The serving of alcoholic beverages shall be limited to the hours of 4:00 PM to 11:30 PM Monday through Sunday; (f) For special events and catered functions Applicant may serve beer and wine between the hours of 12:00 noon and 11:30 PM. Special Events are private events, such as a birthday party, a bar mitzvah, a fund raiser or other social functions which are held in the Kick Back Club; (g) Food such as snacks, hot dogs, sandwiches and pizza shall be available for purchase in the Kick Back Club during the time that beer and wine is served; (h) Alcoholic beverages shall not be served one half hour before, during and one half hour after public school or private school games. (i) No alcoholic beverages may be consumed at any time in any area outside of the permitted area, including but not limited to the parking lots; (j) The Applicant has provided the City Council with its Alcohol Policy Handbook; and the Applicant shall implement the policy and performance of the policy as a condition of the Amended Permit.

4. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Amendment to 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. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.
5. The issuance of the Amended Special Permit is further subject to the issuance of a Beer and Wine License by the City of Marlborough Licensing Board with the approval of the Commonwealth of Massachusetts Alcoholic Beverages Control Commission.

Yea: 9- Nay: 0

Yea: Delano, Ferro, Tunnera, Seymour, Landers, Ossing, Pope, Vigeant, Levy

Elder and Clancy abstained

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:34 p.m.; adopted.