

# CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Legislative and Legal Affairs Committee

Date: August 9, 2016

Time: 6:00 PM

Location: City Council Chamber, 2<sup>nd</sup> Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2016 AUG -4 A 9 25

07-25-2016 – **Order No. 16-1006622:** Order of Acceptance of Permanent Easement from Bell Fund V Marlborough LLC for an approximately 4,799 S.F. portion of land on Elm Street at Mowry Brook.  
-REFER TO LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

**The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.**

**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.**



## IN CITY COUNCIL

Marlborough, Mass., JULY 25, 2016

**ORDERED:**

That the Order of Acceptance of Permanent Easement from Bell Fund V Marlborough LLC, be and is herewith refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE.**

**ADOPTED**

ORDER NO. 16-1006622



RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH  
2016 JUL 21 A 11:39

*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610  
[www.marlborough-ma.gov](http://www.marlborough-ma.gov)

*Arthur G. Vigeant*  
MAYOR

*Nicholas J. Milano*  
EXECUTIVE AIDE

*Patricia Bernard*  
EXECUTIVE SECRETARY

5

July 21, 2016

City Council President Edward J. Clancy  
Marlborough City Council  
140 Main Street  
Marlborough, MA 01752

**Re: Order of Acceptance of Permanent Easement from Bell Fund V Marlborough LLC**

Honorable President Clancy and Councilors:

Enclosed herewith please find a proposed Order of Acceptance of Permanent Easement From Bell Fund V Marlborough LLC for an approximately 4,799 S.F. portion of land on Elm Street at Mowry Brook and copies of the cover letter from Commissioner John Ghiloni, the Grant of Permanent Easement, and the easement plan. Because an appropriation is already available, a separate vote for an appropriation will not be necessary.

The purpose of the permanent easement area is to provide access to the Department of Public Works for the reconstruction and maintenance of the Mowry Brook culvert, which passes beneath Elm Street near the Bell Marlborough Apartments.

The Commissioner and/or the Engineering Division will be available to answer any specific questions relative to the project.

Sincerely,

Arthur G. Vigeant  
Mayor

Enclosure

Cc: John Ghiloni, Commissioner  
Tom DiPersio, City Engineer  
Cynthia Panagore Griffin, Assistant City Solicitor

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the permanent drainage easement in an approximately 4,799 S.F. portion of land located on the easterly side of Elm Street at Mowry Brook, including the culvert, be accepted as a municipal easement as shown on plan thereof and as hereinafter described:

DESCRIPTION

Plan entitled "Plan of Land In Marlborough, Massachusetts, Prepared For: City of Marlborough, 140 Main Street, Marlborough, MA 01752; Prepared By Bruce Saluk & Associates, Inc., Civil Engineering & Land Surveying, 576 Boston Post Road East, Marlborough, MA 01752; Date: August 4, 2015; Scale: 1" = 20'; said Plan to be recorded at the Middlesex County South Registry of Deeds;

Title to the permanent drainage easement as shown on said plan has been granted to the City of Marlborough in a Grant of Permanent Easement from Bell Fund V Marlborough, LLC, said Grant of Permanent Easement to be recorded in the Middlesex County South Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

The permanent drainage easement in an approximately 4,799 S.F. portion of land located on the easterly side of Elm Street at Mowry Brook be accepted as a municipal easement in the City of Marlborough.

ADOPTED  
In City Council  
Order No. 16-  
Adopted

Approved by Mayor  
Arthur G.. Vigeant  
Date:

A TRUE COPY  
ATTEST:

## GRANT OF PERMANENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS that the BELL FUND V MARLBOROUGH, LLC, a Delaware limited liability company having an address at c/o Bell Partners, Inc., 300 Greene Street, Suite 1000, Greensboro, North Carolina 27401 (hereinafter referred to as the Grantor), for consideration of Two-Thousand (\$2,000.00) Dollars, grants to CITY OF MARLBOROUGH, a Massachusetts municipality having an address of 140 Main Street, Marlborough, Massachusetts 01752 (hereinafter referred to as the Grantee) with quitclaim covenants, the permanent right and easement to install, construct, reconstruct, repair, replace, add to, inspect, operate, and maintain the drainage culvert and structures therein and thereof (hereinafter referred to as the "DRAINAGE CULVERT") located on the easterly side of Elm Street in Marlborough, Middlesex County, Massachusetts for the purposes of protecting public health, safety and welfare by controlling and monitoring drainage into, from, and of the Millham Brook, located within the easement area of the hereinafter described property.

Said "DRAINAGE CULVERT" is located in, through, under, over, across, and upon land of the Grantor, being more particularly shown as "Drain Easement Area 4,799 S.F" on a Plan of Land to be recorded herewith at the Middlesex South District Registry of Deeds.

Also with the further permanent right from time to time to pass and repass over, across and upon said land of the Grantor as is reasonable and necessary in order to renew, replace, repair, remove, add to, maintain, operate, inspect, and otherwise change said "DRAINAGE CULVERT" and each and every part thereof, but not the general location thereof, and to make such other excavation or excavations as may be reasonably necessary in the opinion and judgment of the Grantee, its successors and assigns, and to clear and keep cleared the portions and areas of the premises wherein the "DRAINAGE CULVERT" is located as shown on the sketch herein referred to, of such trees, shrubs, bushes, structures, objects and surfaces, including present structures, objects, and surfaces within the area of the "DRAINAGE CULVERT," as may in the opinion and judgment of the Grantee interfere with the safe and efficient operation and maintenance of the "DRAINAGE CULVERT." However, said Grantee, its successors and assigns, will properly backfill excavation or excavations and restore the surface of the land to as reasonably good condition as said surface was in immediately prior to the excavation or excavations thereof.

The Grantor, for itself, its successors and assigns, covenants and agrees with the Grantee, its successors and assigns that this easement and the location of the "DRAINAGE CULVERT" may not be changed or modified by the Grantor unless and until the Grantor, through the Mayor and/or his or her designee, has first notified Grantee in writing regarding the proposed changes or modifications; provided, however, that no such change or modification shall significantly lessen the utility of the easement, or increase the burdens on Grantee in its use and enjoyment of the

easement, or frustrate the purpose for which the easement was created; and provided further that such change or modification shall be at the sole cost and expense of the Grantor.

If both the Grantor and the Grantee, their successor and assigns, at any time in the future determine in writing that their rights granted herein are no longer needed or required, then the Grantor may extinguish, and the Grantee may release, this Grant of Temporary Easement in writing, such extinguishment or release, as the case may be, to be recorded at the Middlesex South Registry of Deeds within 120 days of the date later of said written determinations.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to install, construct, reconstruct, repair, replace, add to, inspect, operate, and maintain within the Grantor's land a "DRAINAGE CULVERT " for the purposes of controlling and monitoring drainage into, from, and of the Millham Brook shown on the last herein referred to sketch.

It is agreed that said "DRAINAGE CULVERT," and all necessary appurtenances thereto, shall remain the property of the Grantee, its successors and assigns.

For Grantor's title, see deed dated September 16, 2016, recorded with the Middlesex South District Registry of Deeds in Book 66103, Page 285.

(signature attached)

Executed as a sealed instrument as of this 23<sup>rd</sup> day of June, 2016.

**Bell Fund V Marlborough, LLC**  
a Delaware limited liability company

By: Bell Apartment Fund V, LLC  
a Delaware limited liability company  
its Managing Member

By: Bell HNW Fund V, LLC  
a Delaware limited liability company  
a Managing Member

By: Bell Fund V Manager, LLC  
a Delaware limited liability company  
its Manager

By: Bell Partners Inc.  
a North Carolina corporation  
its Manager

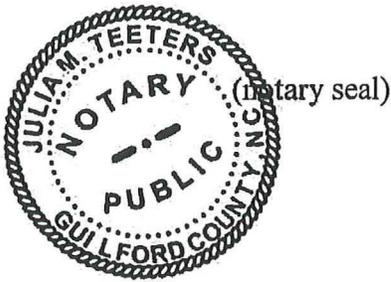
By:   
Name: John E. Tomlinson  
Title: CFO

By: Bell Institutional Subsidiary V, LLC  
a Delaware limited liability company  
a Managing Member

By:   
Name: John E. Tomlinson  
Title: Vice-President

State of North Carolina  
County of Guilford

This instrument was acknowledged before me on June 23, 2016 by John E. Tomlinson as CFO of Bell Partners, Inc., the manager of Bell Fund V Manager, LLC, the manager of Bell HNW Fund V, LLC, managing member of Bell Apartment Fund, LLC, the managing member of Bell Fund V Marlborough, LLC.



Signature of notarial officer

Julia M. Teeters

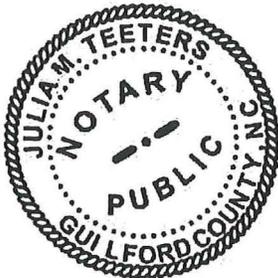
Title: Notary Public

My commission expires: July 1, 2018

State of North Carolina  
County of Guilford

This instrument was acknowledged before me on June 23, 2016 by John E. Tomlinson as Vice-President of Bell Institutional Subsidiary V, LLC, managing member of Bell Apartment Fund V, LLC, managing member of Bell Fund V Marlborough, LLC.

(notary seal)

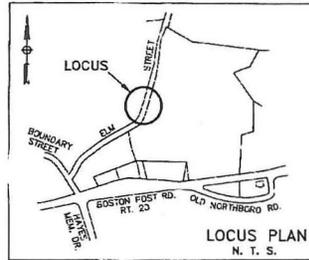
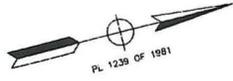


Signature of notarial officer

Julia M. Teeters

Title: Notary Public

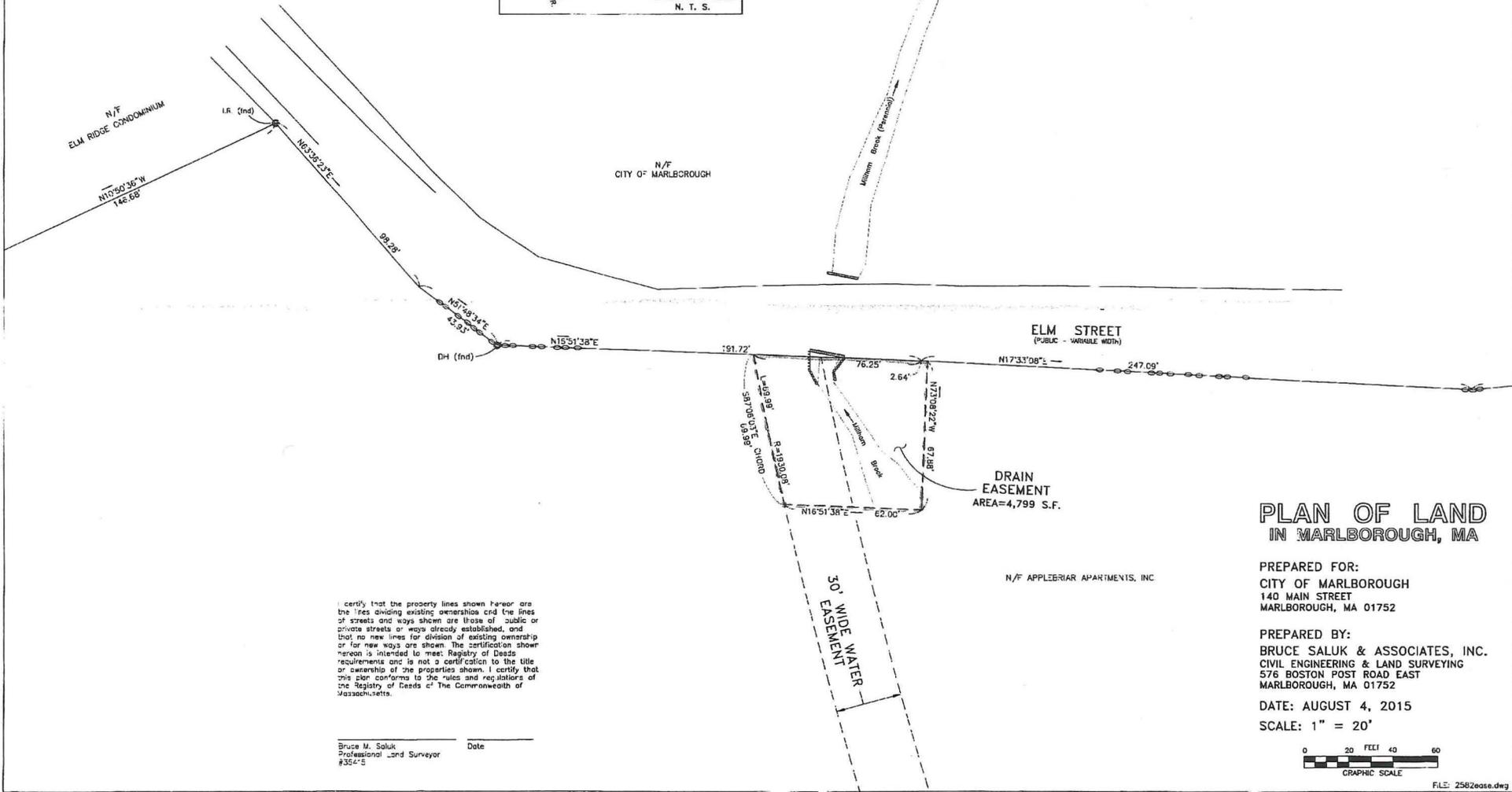
My commission expires: July 1, 2018



**NOTES:**

1. THE PURPOSE OF THIS PLAN IS FOR A DRAINAGE EASEMENT ON LAND OWNED (N/F) BY APPELBIAR APARTMENTS, INC., LISTED AS ASSESSOR PARCEL 13 ON MAP 68.
2. DEED REFERENCE: BOOK 48,824 PAGE 272
3. PLAN REFERENCE: PLAN 1239 OF 1981 PLAN 248 (OF 34) OF 1990

FOR REGISTRY USE



I certify that the property lines shown hereon are the lines dividing existing ownership and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The certification shown hereon is intended to meet Registry of Deeds requirements and is not a certification to the title or ownership of the properties shown. I certify that this plan conforms to the rules and regulations of the Registry of Deeds of the Commonwealth of Massachusetts.

Bruce M. Saluk  
Professional Land Surveyor  
#35475

Date

**PLAN OF LAND  
IN MARLBOROUGH, MA**

PREPARED FOR:  
CITY OF MARLBOROUGH  
140 MAIN STREET  
MARLBOROUGH, MA 01752

PREPARED BY:  
BRUCE SALUK & ASSOCIATES, INC.  
CIVIL ENGINEERING & LAND SURVEYING  
576 BOSTON POST ROAD EAST  
MARLBOROUGH, MA 01752

DATE: AUGUST 4, 2015  
SCALE: 1" = 20'



FILE: 2582eoss.dwg



CITY OF MARLBOROUGH  
Department of Public Works  
135 Neil Street  
Marlborough, Massachusetts 01752  
(508) 624-6910 Ext. 33200  
Facsimile (508) 624-7699 TDD (508) 460-3610

July 21, 2016

Mayor Arthur G. Vigeant  
City Hall  
140 Main Street  
Marlborough, MA

RE: Order Of Acceptance of Easement From Bell Fund V Marlborough LLC

Dear Mayor Vigeant:

I request that you send the attached Order of Acceptance of Permanent Easement from Bell Fund V Marlborough LLC, concerning an approximately 4,799 S.F. portion of land on Elm Street at Mowry Brook, to the City Council for their action. No appropriation is necessary for the consideration, which is in the negotiated amount of \$2,000.

The easement area will provide access to the Department of Public Works for the reconstruction and maintenance of the Mowry Brook culvert which passes beneath Elm Street near the Bell Marlborough Apartments.

City Engineer Tom DiPersio, is available to answer any specific questions relative to the project.

Sincerely,

John L. Ghiloni  
Commissioner

Enclosures

Cc: Thomas DiPersio, City Engineer  
Timothy Collins, Assistant City Engineer  
Cynthia Panagore Griffin, Assistant City Solicitor

