

REGULAR MEETING  
DECEMBER 1, 2008

IN CITY COUNCIL  
ABSENT:

CONVENED:  
ADJOURNED:

1. Minutes, City Council Meeting, November 24, 2008.
2. PUBLIC HEARING: On the Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws.
3. Communication from the City Solicitor re: Proposed amended Special Permit for Shalvis Realty, LLC, 204-206 West Main St., Order No. 99/08-1008106D in proper form.
4. Communication from the City Solicitor re: Sepracor Inc. TIF Proposal.
5. Communication from Attorney Gadbois re: request for minor modification of ForeKicks Special Permit Order No. 07/08-1001465E.
6. Minutes, Planning Board, November 10, 2008.

REPORTS OF COMMITTEES:

7. ORDERED: That the City Solicitor be requested to draft an amendment to the Wireless Ordinance that will add to "Development Requirements" therein, procedures to provide for a crane test where appropriate and where a balloon test is insufficient. Submitted by Councilor Joseph Delano

UNFINISHED BUSINESS:

**From Operations and Oversight Committee**

8. **Order No. 08-1002047 – Communication from the Mayor regarding the disposition of Corbin Plaza located at 110/118 Pleasant St.** Mayor's communication noted the auction is scheduled for the week of December 8, 2008 by the Zekos Group of Shrewsbury. **Recommendation of the Operations and Oversight Committee is to refer back to City Council with a recommendation to file.**

**From Public Services Committee**

9. **Order No. 08-1001973 – Communication from Nobel Construction Co. and Planning Board requesting to accept Joseph North Road as a public way. Recommendation of the Public Service Committee is to approve the acceptance 2-0.**

**From Urban Affairs Committee**

10. **Order No. 08-1001833F - Application from Attorney Arthur B. Bergeron, on behalf of 890 Post Rd LLC, relevant to modifying zoning amendment via modified version of adopting proposed New Car Dealership Overlay District. Recommendation of the Urban Affairs Committee is to deny as it results in Spot Zoning.**

**From Finance Committee**

11. **Order No. 08-1002031 – Transfer \$51,032.98 to cover Firefighter Overtime.** The Finance Committee reviewed the Mayor's letter dated October 21, 2008 requesting the transfer from various firefighter salary accounts in the amount of \$51,032.98 to the Gross Overtime Account. **Recommendation of the Finance Committee is to approve 5-0.**
12. **Order No. 08-1002033 – Grant for Firefighter Training for \$131,708.00.** The Finance Committee reviewed the Mayor's letter dated October 21, 2008 requesting the approval of a grant for the Firefighters in the amount of \$131,708.00 to provide rapid intervention training and driver safety training. The grant is funded by FEMA at 90% (\$118,537.00) and the City will match 10% (\$13,171.00). The City match will come from the Public Safety Training account. **Recommendation of the Finance Committee is to approve 4-1 (Councilor Ossing opposed).**
13. **Order No. 08-1001985 – Sepracor Tax Increment Financing (TIF) Proposal -** The Finance Committee continued the review of the Mayor's letter dated September 3, 2008 requesting the City Council review the Sepracor TIF proposal consisting of the following:
  - The TIF agreement
  - The TIF plan
  - The certified project application
  - The application for the 84/158 Waterford Drive Economic Opportunity Area
  - City Council resolution

A motion was made to revise the TIF structure that was prepared by Councilor Ferro. The motion did not carry – one in favor (Councilor Ferro) and four opposed (Councilors Delano, Landers, Levy and Ossing).

A motion was made to approve the TIF agreement, TIF plan, certified project application, 84/158 Waterford Drive Economic Opportunity Area, and Council resolution. **Recommendation of the Finance Committee is to approve the motion** — four in favor (Councilors Delano, Landers, Levy and Ossing) and one opposed (Councilor Ferro).

The Mayor was requested to have the City Solicitor provide the Council at the November 24, 2008 Council meeting with the revised copy of the TIF agreement, TIF plan, certified project application, 84/158 Waterford Drive Economic Opportunity Area, and Council resolution.



**CITY OF MARLBOROUGH**  
**OFFICE OF CITY CLERK**  
**Lisa M. Thomas**  
**140 Main St.**  
**Marlborough, MA 01752**  
**(508) 460-3775 FAX (508) 460-3723**  
**NOVEMBER 24, 2008**

Regular meeting of the City Council held on Monday November 24, at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Schafer, Juaire, Seymour, Clancy and Landers. Meeting adjourned at 8:47 p.m.

ORDERED: Minutes, City Council Meeting, November 10, 2008, **FILE**; adopted.

ORDERED: Now being the time set for the PUBLIC HEARING on the Application for Revised Special Permit from Shalvis Realty, LLC, to modify Order 99-8106, Special Permit from Eric Rennie, ERA Corporation, re: modifying condition #5 which currently obligates owner occupancy, thereby precluding rentals, all were heard who wish to be heard, hearing adjourned at 8:24 p.m.

ORDERED: That the communication from the Mayor pertaining to identifying potential FY09 budget cuts, **FILE**; adopted.

ORDERED: That the transfer request in the amount of \$1,000,000.00 which moves funds from Undesignated to Stabilization given the healthy state of the City's finances, **APPROVED**; adopted.

FROM:

Acct. # 100-35900 \$1,000,000.00  
Undesignated Fund

TO:

Acct. # 836000-11515 \$1,000,000.00  
Stabilization

ORDERED: That the transfer request in the amount of \$5,000.00 which moves funds from Omnipoint/T-Mobile for the easterly wastewater facility installation to a new Stabilization account, Recycling Swap Shack, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900 \$5,000.00  
Undesignated Fund

TO:

Acct. # 836000-32721 \$5,000.00  
Recycling Swap Shack

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ORDERED: That the transfer request in the amount of \$190,000.00 which moves mitigation funds received relative to the Design Pak redevelopment project to Affordable Stabilization Fund, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 100-35900 \$190,000.00  
Undesignated Fund

TO:

Acct. # 836000-32718 \$190,000.00  
Affordable Housing

ORDERED: That the transfer request in the amount of \$39,850.24 which moves funds from Undesignated Fund to Open Space per City's annual payment agreement with Ward Mountain LLC, refer to **FINANCE COMMITTEE**; adopted.

FROM:

Acct. # 83600-11520 \$39,850.24  
Undesignated Fund

TO:

Acct. # 19300006-58170 \$39,850.24  
Open Space Acquisition

**Suspension of the rules requested – granted to allow the Mayor to speak as to whether there were any requests for salary adjustments pertinent to the firefighter appointments. She stated that there were none.**

ORDERED: That the permanent firefighter appointments of Donald Bardsley, Christopher Bishop and Adam Buckley, **FILE**; adopted.

ORDERED: That the communication from the Mayor regarding the resignation of Sue Ellis as Personnel Director, refer to **FINANCE COMMITTEE TO FURTHER RESEARCH OTHER COMMUNITIES REGARDING SALARY RANGES FOR PERSONNEL/HUMAN RESOURCES ESPECIALLY IN NEIGHBORING COMMUNITIES**; adopted.

ORDERED: That the \$10,000,000.00 Massachusetts Opportunity Relocation and Expansion (MORE) grant to be used to address the federally-mandated upgrades to the wastewater treatment plants, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That the recommendation of the Planning Board to oppose the Modified New Car Dealership Overlay District, **FILE**; adopted.

ORDERED: That the communication from Attorney Gadbois regarding the draft of the Conservation Restriction from ForeKicks II Limited Partnership, pertinent to Special Permit for 219 Forest St., refer to **URBAN AFFAIRS COMMITTEE**; adopted.  
(Councilor Vigeant abstained)

ORDERED: That Application from Attorney Bergeron, on behalf of Gary White, Trustee of 566 and 574 Lincoln St. Realty Trust, to withdraw without prejudice an Application for Special Permit to construct 19 new townhouse condominium units on Lincoln St., Map 80, parcels 47, 48 & 51, Order No. 08-1001877, **APPROVED**; adopted.

ORDERED: That the Agreement to Extend Time Limitations on the Application for Special Permit from Attorney Bergeron, on behalf of Toll MA Land Limited Partnership to construct 80 units on less than 14 acres and to revise current permit conditions accordingly, until 5:00 PM on March 1, 2009, **APPROVED**; adopted.

ORDERED: That the minutes, Community Development Authority , September 25, 2008 **FILE**; adopted.

ORDERED: That the minutes, Planning Board, October 27, 2008, **FILE**; adopted.

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

A. Debra Baldelli, 27 Spoonhill Ave., vehicle damage

B. Plymouth Rock Insurance Co., on behalf of Kimberly O'Brien, vehicle accident

Reports of Committees:

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

**Order No. 08-1002047 – Communication from the Mayor regarding the disposition of Corbin Plaza located at 110/118 Pleasant St. Mayor's communication noted the auction is scheduled for the week of December 8, 2008 by the Zekos Group of Shrewsbury. Recommendation of the Operations and Oversight Committee is to refer back to City Council with a recommendation to file.**

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

**Order No. 08-1001983 – Communication from the Mayor requesting to convert two existing Beer and Wine licenses to ALL Alcohol licenses.** Councilor Ferro abstained from this discussion. The Committee heard from the License Board Chairman Walter Bonin regarding the request of that Board to upgrade two Beer and Wine licenses to ALL Alcohol license. Mr. Bonin explained that the Board's request was based on their determination that Route 20 East is presently under represented and the downtown area would be better served with an additional license. He stated that the Board requested these upgrades as a matter of public interest. This being a matter of public interest, the Committee determined it would be appropriate to receive input from the public through a public hearing. **Recommendation of the Legal and Legislative Affairs Committee is to Suspend the Rules to set a public hearing for Monday, January 5, 2009 and advertise 2-0. Order was tabled and remains in Committee.**

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

**Order No. 08-1001973 – Communication from Nobel Construction Co. and Planning Board requesting to accept Joseph North Road as a public way. Recommendation of the Public Service Committee is to approve the acceptance 2-0.**

Councilor Pope reported the following out of the Urban Affairs Committee:

**Order No. 08-1001833F - Application from Attorney Arthur B. Bergeron, on behalf of 890 Post Rd LLC, relevant to modifying zoning amendment via modified version of adopting proposed New Car Dealership Overlay District. Recommendation of the Urban Affairs Committee is to deny as it results in Spot Zoning.**

Councilor Ossing reported the following out of the Finance Committee:

**Order No. 08-1002031 – Transfer \$51,032.98 to cover Firefighter Overtime.** The Finance Committee reviewed the Mayor's letter dated October 21, 2008 requesting the transfer from various firefighter salary accounts in the amount of \$51,032.98 to the Gross Overtime Account. **Recommendation of the Finance Committee is to approve 5-0.**

**Order No. 08-1002033 – Grant for Firefighter Training for \$131,708.00.** The Finance Committee reviewed the Mayor's letter dated October 21, 2008 requesting the approval of a grant for the Firefighters in the amount of \$131,708.00 to provide rapid intervention training and driver safety training. The grant is funded by FEMA at 90% (\$118,537.00) and the City will match 10% (\$13,171.00). The City match will come from the Public Safety Training account. **Recommendation of the Finance Committee is to approve 4-1 (Councilor Ossing opposed).**

**Order No. 08-1002034 – Revolving Fund for Easterly Wastewater Treatment Plant.** The Finance Committee reviewed the Mayor's letter dated October 22, 2008 requesting the City Council establish a revolving fund for the income received from the telecommunications equipment located at the Easterly Wastewater Treatment Plant for improving municipal parks and playgrounds. **Recommendation of the Finance Committee is to table the order 5-0.**

**Order No. 08-1001985 – Sepracor Tax Increment Financing (TIE) Proposal -** The Finance Committee continued the review of the Mayor's letter dated September 3, 2008 requesting the City Council review the Sepracor TIF proposal consisting of the following:

- The TIF agreement
- The TIF plan
- The certified project application
- The application for the 84/158 Waterford Drive Economic Opportunity Area
- City Council resolution

A motion was made to revise the TIF structure that was prepared by Councilor Ferro. The motion did not carry – one in favor (Councilor Ferro) and four opposed (Councilors Delano, Landers, Levy and Ossing).

A motion was made to approve the TIF agreement, TIF plan, certified project application, 84/158 Waterford Drive Economic Opportunity Area, and Council resolution. **Recommendation of the Finance Committee is to approve the motion** — four in favor (Councilors Delano, Landers, Levy and Ossing) and one opposed (Councilor Ferro).

The Mayor was requested to have the City Solicitor provide the Council at the November 24, 2008 Council meeting with the revised copy of the TIF agreement, TIF plan, certified project application, 84/158 Waterford Drive Economic Opportunity Area, and Council resolution.

#### **Suspension of Rules requested - granted**

**ORDERED:** That there being no objection thereto set **MONDAY, JANUARY 5, 2009** as the date for a **PUBLIC HEARING** on the request from the Mayor, on behalf of the Marlborough License Board, to convert Two Current Beer & Wine Package Store Licenses to All Alcoholic Package Store Licenses through the adoption of an Initiative Petition by the State Legislature, **ADVERTISE**; adopted.

**ORDERED:** There being no further business, the regular meeting of the City Council is herewith adjourned at 8:38 p.m.

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# IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 10, 2008

ORDERED:

That there being no objection thereto set **MONDAY, DECEMBER 1, 2008** as the date for a **PUBLIC HEARING** on Application for Special Permit from The Gutierrez Co. to develop Map 67, Lot 45 & Map 68, Lot 30A, Lakeside Ave. and Elm St., located in the Business District for multi-family dwellings per Article 200, Section 13, Paragraph C, Sub-paragraph 4 of the City of Marlborough Zoning Bylaws, be and is herewith refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE.**

ADOPTED

ORDER NO. 08-1002051

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# City of Marlborough Legal Department

140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610  
LEGAL@MARLBOROUGH-MA.GOV

**DONALD V. RIDER, JR.**  
CITY SOLICITOR  
  
**CYNTHIA M. PANAGORE GRIFFIN**  
ASSISTANT CITY SOLICITOR  
  
**BEVERLY J. SLEEPER**  
CHIEF PROCUREMENT OFFICER  
  
**KATHERINE M. KIMBER**  
PARALEGAL

November 26, 2008

Arthur Vigeant  
President  
Marlborough City Council

RE: Order 99/08-1008106D  
Application for Amended Special Permit  
Shalvis Realty, LLC - Trinity Court Condominiums  
204-206 West Main Street

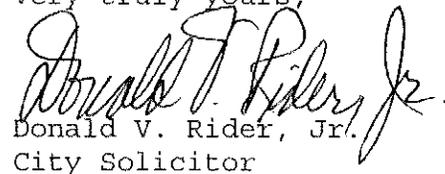
Dear President Vigeant and Members:

Pursuant to Chapter 200-59C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed decision on the application for an amended special permit submitted by Shalvis Realty, LLC for Trinity Court Condominiums at 204-206 West Main in Marlborough.

I am enclosing a clean version of the proposed amended special permit. I have incorporated the changes in the conditions reviewed and approved by the Urban Affairs Committee. Please note that, since I have so far found no indication that the original 1999 special permit was ever recorded, condition #9 requires Shalvis Realty, LLC to record both that permit and this modification, if approved.

With these revisions having been made, I certify that the Council's proposed decision is in proper legal form.

Very truly yours,

  
Donald V. Rider, Jr.  
City Solicitor

Enclosure  
cc: Henry L. Barr, Esquire

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AMENDMENT  
TO ORIGINAL SPECIAL PERMIT  
GRANTED ON JULY 12, 1999

Trinity Court Condominiums  
204-206 West Main Street  
Marlborough, MA

Amendment to Special Permit granted by the City Council on July 12, 1999, a) deleting the condition in paragraph 5 and substituting therefor the following new paragraph 5; and b) adding a new condition in new paragraph 9:

5. Owner-Occupancy. It shall be a condition of the condominium by-laws of the Site that all units in the project, consisting of a total of ten units, that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium by laws, and will provide that this section may not be amended. No occupancy permit regarding the Site shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium by laws, along with the condominium master deed, have been recorded. Applicant (Shalvis Realty, LLC, 1172 Beacon Street, Newton, MA 02461), including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said units to tenants; provided, however, that:

- a. No said unit shall be or continue to be rented after the fifth anniversary of the date of issuance of the occupancy permit of said unit;
- b. No unit shall be rented or continue to be rented after the seventh anniversary of the date of issuance of the first occupancy permit for the Site;
- c. The number of units being rented and occupied by tenants shall not exceed (9) units;
- d. An executed "rent to own" contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit;
- e. The affordable housing unit, if rented, shall be done in compliance with the rules and regulations applicable to said unit;
- f. Applicant, including its successors and assigns, shall continue to market the units as condominiums with the requirement that one unit be used as a model;
- g. No sign at the premises shall market any units as being for rent; however "rent to own" signs are permissible so long as they are in compliance with City's sign ordinance without variance; and
- h. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.

9. Recording. Both the original Special Permit granted by the Marlborough City Council on July 12, 1999, as well as this Amendment to the Special Permit, shall be recorded together at the Middlesex South Registry of Deeds in accordance with the provisions of MGL Chapter 40A sec. 11 prior to the issuance of any occupancy permit regarding the Site. The Applicant (Shalvis Realty, LLC, 1172 Beacon Street, Newton, MA 02461), including its successors and assigns, shall be responsible for recording, at its expense, both the original Special Permit, as well as this Amendment to the Special Permit; and shall present evidence of said recording to the City Solicitor's office, which thereupon shall duly forward said recording evidence to the Building Commissioner as a condition of his issuance of any occupancy permit regarding the Site.

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# City of Marlborough Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508)  
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BEVERLY J. SLEEPER  
CHIEF PROCUREMENT OFFICER

KATHERINE M. KIMBER  
PARALEGAL

November 25, 2008

Arthur Vigeant  
President  
Marlborough City Council

RE: Sepracor Inc. TIF Proposal

Dear President Vigeant and Members:

The Finance Committee has completed its review and has reported its recommendation concerning the Tax Increment Financing ("TIF") proposal from Sepracor Inc. In accordance with that review and recommendation, I have revised the relevant documents and enclose the following:

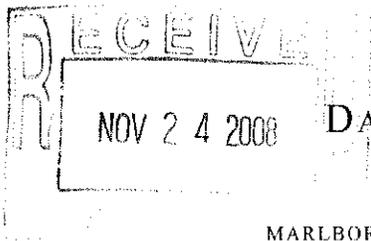
1. the proposed TIF agreement;
2. the proposed TIF plan;
3. the proposed Certified Project application, including Attachments 1 through 6;
4. the proposed application for the 84/158 Waterford Drive Economic Opportunity Area; and
5. the proposed Council resolution.

The enclosed documents are for the full Council's consideration on Monday evening, December 1, 2008.

Very truly yours,

Donald V. Rider, Jr.  
City Solicitor

Enclosures  
cc: Nancy E. Stevens, Mayor



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DAVID P. GADBOIS  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBOROUGH, MASSACHUSETTS 01752

PHONE (508) 481-0101

E-MAIL David@attygadbois.com

FAX (508) 485-8506

November 24, 2008

Ms. Lisa Thomas, City Clerk  
City Hall 140 Main Street  
Marlborough, MA 01752

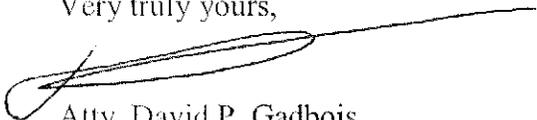
RE: Request for Minor Modification  
To Special Permit

Dear Ms. Thomas:

Enclosed please find Request for Minor Modification I am sending to the City Council in the hopes it will address this Request at tonight's meeting. I have provided the City Council Office with 12 copies of the request.

Thanking you for your cooperation in this matter, I am

Very truly yours,



Atty. David P. Gadbois

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DAVID P. GADBOIS  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBOROUGH, MASSACHUSETTS 01752

PHONE (508) 481-0101

E-MAIL David@attygadbois.com

FAX (508) 485-8506

November 24, 2008

Councilor Arthur Vigeant, President  
And City Council Members  
City Hall 140 Main Street  
Marlborough, MA 01752

RE: Request for Minor Modification  
City Council Order No. 07-1001465D  
Grant of Special Permit (Special Permit)  
To Fore Kicks, II, Inc. (Applicant)  
201-219 Forest Street

Dear President and Members:

I represent the above referenced Applicant in the matter of the construction of an indoor and outdoor recreation facility under the terms of the above Special Permit. Having started the process of deeding a Conservation Restriction to the City under the provisions of Condition 38 of the Special Permit, my client hereby requests a minor modification to the Special Permit.

The reason for the minor modification is to allow the Building Commissioner to issue a Temporary Occupancy Permit for use of the facility, while the procedural process of the granting of the Conservation Restriction takes place. This could takes several weeks, if not months because it must be submitted to and approved by the City Solicitor, the Conservation Commission, Massachusetts Secretary of Environmental Affairs and the City Council. Also, the Applicant has site construction matters that must be completed before the Building Commissioner can be in a position to issue a Temporary Occupancy Permit notwithstanding approval of this request.

The Applicant will not be seeking a Final Occupancy Permit until early in the spring of 2009. It will install the final coat of asphalt on the parking lots at that time.

I hereby suggest the following motions be adopted by the City Council:

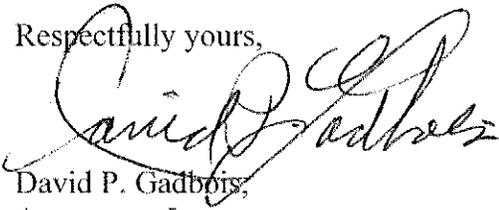
1. That the request for Modification submitted by Attorney Gadbois be considered as a minor modification, because it does not affect the general intent of the permit, the use allowed by the permit, and is merely a procedural matter to accomplish the intent of Condition 38.

2. That, Order No. 07-1001465D be amended by deleting the words in Condition 38 "of an" in the first clause of the first sentence and inserting in place thereof the words "the Final", so that the first clause of the first sentence reads "Prior to the issuance of the Final Occupancy Permit" and further by deleting the words "simultaneously with the deed of the property to the Applicant or his designee" in the first clause of last sentence of Condition 38 and inserting in place thereof the words "prior to the issuance of the Final Occupancy Permit", so that the last sentence reads "It shall be recorded prior to the issuance of the Final Occupancy Permit and shall not be subject or subordinate to any mortgage."

I have attached a copy of the proposed Condition 38. as amended.

Thanking you for your consideration and prompt attention to this matter, I am

Respectfully yours,



David P. Gadbois,  
Attorney at Law

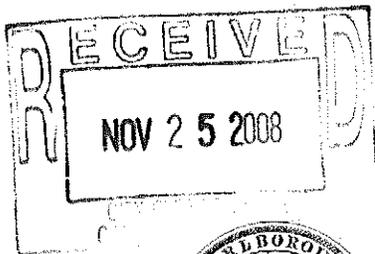
Encl: Condition 38.

Amended Condition 38.

38. **Conservation Restriction**: Prior to the issuance of the Final Occupancy Permit the applicant shall convey to the Conservation Commission in the name of the City of Marlborough under the provisions of Massachusetts General Laws Chapter 40 Section 8C, a Conservation Restriction on the Conservation Area shown on the Site Plan as amended. Said Conservation Restriction shall limit the use of the Conservation Area to walking (not skiing) trails to be used by the Applicant and its clients, guests and invitees. It shall prohibit the construction of buildings, parking lots, athletic fields or structures of any kind. It shall prohibit the cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation, except for the purpose of creating walking paths. Any cutting of trails must be approved by the Conservation Commission prior to any such cutting. The purpose of the Conservation Restriction shall also include the protection of the City of Marlborough's water supply, as this land falls within the watershed of Millham Reservoir. The Conservation Restriction will not grant to the Conservation Commission, to the general public or to any other person any right to enter upon the Premises, excepting the right granted to the Conservation Commission and its representatives to enter the property for the purpose of inspecting compliance with the terms of the Conservation Restriction. The Conservation Restriction shall be approved by the Conservation Commission and the City Solicitor and the Massachusetts Secretary of Environmental Affairs. It shall contain the provisions hereof. The Conservation Restriction shall be recorded in the Middlesex South District Registry of Deeds and shall be in perpetuity. It shall be recorded prior to the issuance of the Final Occupancy Permit and shall not be subject or subordinate to any mortgage.

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*City of Marlborough  
Commonwealth of Massachusetts*



**PLANNING BOARD**

Barbara L. Fenby, Chair  
Steve Kerrigan, Clerk  
Philip J. Hodge  
Edward F. Coveney  
Clyde L. Johnson  
Robert Hanson  
Sean N. Fay

**PLANNING BOARD MINUTES**  
November 10, 2008  
7:00 PM

Carrie Lizotte, Board Secretary  
Phone: (508) 460-3769  
Fax: (508) 460-3736  
Email: CLizotte@marlborough-ma.gov

The Planning Board for the City of Marlborough met on Monday, November 10, 2008 in Memorial Hall, 3<sup>rd</sup> floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Chairperson, Steve Kerrigan, Clerk, Philip Hodge, Clyde Johnson and Sean Fay. Also present: City Engineer Thomas Cullen.

**MINUTES**

*Meeting Minutes October 27, 2008*

On a motion by Mr. Kerrigan, seconded by Mr. Johnson it was duly voted:

To accept and file the meeting minutes with a minor change at the request of Mr. Fay.

**CHAIR'S BUSINESS**

*Marlborough Civic Class*

The Planning Board was visited by a local Civics Class and was in the audience for the meeting.

*Modified New Car Dealership Overlay District in Marlborough Zoning Ordinance  
Legal Correspondence*

The Planning Board received a memorandum from the City Solicitor to the City Council if the overlay would be considered as spot zoning. According to the Solicitor's opinion, the case has not yet been made by the "NCDOD" proponent as to how and why, if at all, new car dealerships serve the public health, safety, welfare of Marlborough by being located in the Business District via a new car dealership overlay district. There are three items that the Solicitor advised the City Council to consider: How is the public health/safety/welfare of Marlborough served by establishing an overlay district – the NCDOD – that does not purport to be more restrictive than, or to further regulate or restrict, the underlying Business District, but instead purports to expand the underlying Business District by allowing, via special permit, a brand new use not otherwise allowed in the underlying Business District: new car dealerships?

- What are the land use planning considerations for allowing a new car dealership as of right in Marlborough's Commercial and Automotive District? What are the land use planning considerations for allowing a new car dealership by special permit in

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Marlborough's Business District via the NCDOD? How do the 2 sets of considerations compare and contrast?

- More to the point, when the existing Table of Uses already says "No" to "auto sales and service" in the Business District, what are the land use planning considerations for now saying "Yes via Special Permit" to "new car auto sales and service" in the very same Business District?

The City Solicitor stated that for the City Council to properly vote on whether new car dealerships should be located in the Business District the decision should be based on "land use planning considerations". Mr. Ryder stated that it is the NCDOD proponent's burden to provide that the rationale by addressing, among others, the land use planning consideration bulleted above on page 1 to the Council's satisfaction and any vote to create the proposed NCDOD overlaying the Business District would be open to a finding of spot zoning.

The City Solicitor's correspondence was accepted and placed on file and reference thereto should be made for the Solicitor's complete opinion.

Before the vote was taken, Dr. Fenby asked if the Board had any questions or comments.

Mr. Kerrigan asked Mr. Ryder what should the Planning Boards' prevue of voting for the Overlay. Mr. Ryder stated that his memorandum was just of his opinion and was not persuading which way to vote.

Mr. Fay stated that he believes that the overlay is a well designed plan, however he stated that the City Council should consider a plan that would reduce the frontage requirement. This would result in a larger number of lots that could potentially be used for new car dealerships which would allow more "boutique" type dealerships.

Mr. Hodge stated that he found the legal correspondence helpful. He stated that the Overlay District is not a solution to the problem that new car dealerships should be placed back into the zoning ordinance. Mr. Hodge would like to hear what and if anything that Mr. Bergeron would say about the legal correspondence.

Mr. Johnson stated that he agrees with everything Mr. Hodge stated.

Dr. Fenby stated that the public hearing has closed on the matter, however when asked, no one had any objection to allow Mr. Bergeron to speak.

Mr. Bergeron stated that the City Solicitor was very articulate and well written; however he left out some very key facts. When the original plan was proposed it was clear that the current Commercial Automotive zone or parcels in that zone cannot possibly fit a new car dealership. In the mid 1990's the City Council abolished any new car dealerships in the zoning ordinance not having given and forethought of a possible new car dealership. Mr. Bergeron also stated that the overlay would be able to go where there would be no property lines would be next to a residential home. At the current location of the Nissan Dealership has a few residential residences that are located in the business zones.

On a motion by Mr. Hodge, seconded by Mr. Kerrigan, with Mr. Fay and Dr. Fenby opposing it was duly voted:

To oppose any approval of the Modified New Car Dealership Overlay District and to ask the City Council to take a further look into the zoning ordinance for a possibly allowing new car dealerships back in the business zone.

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## APPROVAL NOT REQUIRED PLAN

### PUBLIC HEARING

### SUBDIVISION PROGRESS REPORTS

#### *Update from City Engineer*

The City Engineer provided a new detailed subdivision report to the Planning Board. In his report he stated that several subdivisions were awaiting acceptance including Eager Court, Deerfield Village; and he still awaiting further documents from both Elm Farm Valley Estates and Crystal Ridge Estates. He also stated that the developer for Forest Trail is near completion of the subdivision and has a meeting with the developer of the Berlin Farms Estates to discuss completion.

#### *Eager Court*

At the last Planning Board meeting on October 27, the Board had asked for the City Engineer to review the subdivision for final subdivision acceptance. The City Engineer has reviewed all documents including the As-Builts Plan of Acceptance of Eager Court and Municipal Easement and revised legal descriptions. Mr. Cullen has determined the subdivision is completed with the Boards Rules and Regulations and has been in satisfactory conditions of the year maintenance period. Mr. Cullen would like to recommend to the Planning Board to reduce the bond from \$17,000 to \$11,000 and accept the subdivision known as "Eager Court, As-built plot plan dated October 10, 2006 with revised date of October 15, 2008 drawn by: Thomas Land Surveyors".

On a motion made by Mr. Kerrigan, seconded by Mr. Johnson it was duly voted:

To accept and file the letter from City Engineer Thomas Cullen, and endorse his recommendation that the subdivision known as "Eager Court, As-built plot plan dated October 10, 2006 with revised date of October 15, 2008 drawn by: Thomas Land Surveyors" has remained in satisfactory condition for the year long maintenance period and to reduce the current bond of \$17,000 to \$11,000. Mr. Dipersio should contact the City Council regarding taking the necessary steps to have the acceptance plan approved.

### PENDING SUBDIVISION PLANS: Updates and Discussion

### PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS/ LDS SUBMITTALS

### DEFINITIVE SUBDIVISION SUBMISSIONS

#### *Marlborough Elms*

The Conservation Officer and the Conservation Commission has responded to Marlborough Elms latest draft proposal for propose subdivision at 289 and 401 Elm Street. The Commission made the following comments:

- Two cul-de-sac proposal eliminates all direct impacts to the wetlands
- Project lies in the Water Supply Protection District for the Millham Reservoir water supply, the reduction will minimize the storm water runoff which will benefit the water supply.
- The Commission accepted the withdrawal without prejudice of the wetland application from Mr. Schorer.

On a motion made by Mr. Kerrigan, seconded Mr. Johnson it was duly voted:

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To accept and file all correspondence.

**SCENIC ROADS**

**SIGNS**

**INFORMAL DISCUSSION**

**COMMUNICATIONS/CORRESPONDENCE**

On a motion by Mr. Johnson, seconded by Mr. Kerrigan, it was duly voted:

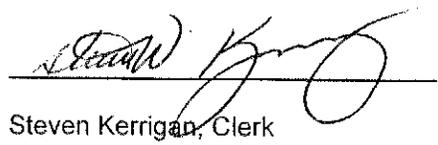
To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Johnson, seconded by Mr. Kerrigan, it was duly voted:

To adjourn at 8:00 p.m.

**A TRUE COPY**

ATTEST:

  
\_\_\_\_\_  
Steven Kerrigan, Clerk

