



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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JANUARY 28, 2019

Regular meeting of the City Council held on Monday, January 28, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juaire, Oram, Ossing, Robey, Doucette, Dumais, Tunnera, Irish and Landers. Absent: Delano. Meeting adjourned at 8:51 PM.

ORDERED: That the Minutes of the City Council meeting JANUARY 7, 2019, **FILE**; adopted.

ORDERED: That the City Council Regular Meeting Schedule & Committee Assignments, **FILE**; adopted.

ORDERED: That the Communication from the Mayor, re: Veto of Council Orders 17/18/19-1007034D, 18/19-1007321C & 18/19-1007322C, relative to Petitions of AT&T to place small cell sites on utility poles at various locations in the city, **TABLED UNTIL FEBRUARY 11, 2019**; adopted.

ORDERED: That the Police Department transfer request in the amount of \$62,800.00 which moves funds from Reserved for Salaries account to Sick Leave Buy Back account to fund the sick leave retirement benefit of a retired Police Officer, refer to **FINANCE COMMITTEE**; adopted.

BUDGET TRANSFERS --										
DEPT.	POLICE								FY:	2019
		FROM ACCOUNT:						TO ACCOUNT:		
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$816,832.65	\$62,800.00	11990006	57820	Reserve for Salaries	\$62,800.00	12100003	51920	Sick Leave Buy back		\$9,910.41
	Reason:	Budgeted retirement payment to officer				Contractual sick leave retirement payment				
	\$62,800.00	Total			\$62,800.00	Total				

ORDERED: That Police Department transfer request in the amount of \$11,000.00 which moves funds from Educational Incentive account to Initial Equipment account to pay for the initial equipment and clothing for new officers, refer to **FINANCE COMMITTEE**; adopted.

BUDGET TRANSFERS --										
DEPT.	POLICE								FY:	2019
		FROM ACCOUNT:						TO ACCOUNT:		
Available										Available
Balance	Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:	
\$310,434.44	\$11,000.00	12100003	51440	Educational Incentive		\$11,000.00	12100006	51975	Initial Equipment	
										\$225.72
	Reason:	Account surplus					Equipment for three new officers			
	\$11,000.00	Total				\$11,000.00	Total			

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Gift Acceptance in the amount of \$100.00 from John & Margaret Dowling to the Police Department to be used for service awards to Police Officers; adopted.

ORDERED: That the Reappointment of Patricia Pope as Executive Director of the Council on Aging for a three-year term to expire from date of City Council approval, refer to **PERSONNEL COMMITTEE**; adopted.

ORDERED: That the request to extend time limitations on Application for Special Permit from Avalon Marlborough II, to increase the number of units from 350 to 473 on a portion of 200 Forest Street within the Results Way Mixed Use Overlay District (RWMUOD), until 10:00 PM on April 9, 2019, **APPROVED**; adopted.

ORDERED: That the Communication from City Clerk, Lisa Thomas, re: Notice of her resignation/retirement effective March 18, 2019, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: request for Executive Session to discuss litigation strategy involving property off Williams Street, **MOVE TO END OF AGENDA**; adopted.

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require:

that GOODWIN STREET be accepted as a public way

from Dufresne Drive at Station 0+25 to Goodwin Street's terminus, and

that MCDERMOT WAY be accepted as a public way

from Dufresne Drive at Station 0+25 to and terminating at Goodwin Street,

and that their appurtenant easements be accepted as municipal easements,
as shown on a plan thereof and as hereinafter described:

DESCRIPTION

Plan entitled, “ ‘Cider Mill Estates’ - Acceptance Plan of Goodwin Street, McDermot Way, and Municipal Easements, Marlborough, Massachusetts,” Owner: West Hill, LLC, 120 Quarry Drive, Milford, MA 01757; To Be Deeded to: City of Marlborough, 140 Main Street, Marlborough, MA 01752; Prepared By: Guerriere & Halnon, Inc., Engineering & Land Surveying, 333 West Street, Milford, MA 01757; Dated: July 19, 2018; Scale: 1”=40’, which plan is to be recorded herewith.

Title to the roadways shown as GOODWIN STREET and MCDERMOT WAY on said plan, and title to all the municipal easements shown on said plan as:

- Goodwin Street - Flowage Easement, over Lot #1, Lot #2, Lot #5 and Lot #6, containing 19,386 square feet
- McDermot Way - Drainage Easement over Lot #1 and Lot #2, containing 4,895 square feet

has been granted to the City of Marlborough in a quitclaim deed from West Hill, LLC, a Massachusetts limited liability corporation with a principal place of business at 120 Quarry Drive, Milford, Massachusetts, said deed to be recorded herewith at the Middlesex County (South District) Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

GOODWIN STREET and MCDERMOT WAY be accepted as public ways, and their appurtenant easements be accepted as municipal easements, in the City of Marlborough.

Refer to **PUBLIC SERVICES COMMITTEE AND PLANNING BOARD**; adopted.

ORDERED: That the Communication from Community Development Director, Douglas Bushman, re: Notice to the Council of his resignation as Executive Director effective January 10, 2019 **FILE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation of Walker Brook Estates Subdivision, Acceptance of Allis Road and Bemis Road as Public Ways, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable recommendation of Proposed Zoning Amendment, Section 650 §12 & §58 relative to Lawful Pre-Existing Nonconforming Single and Two-Family Residential Structures, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the City of Marlborough does hereby approve, and accept the gift thereof, the Open Space Covenant and Restriction for the perpetual conservation and preservation of open space, passive recreation, and assurance that the subject land will be retained in perpetuity in its natural, scenic, wetlands and wooded conditions in accordance with the terms of said Open Space Covenant and Restriction, concerning that certain land designated and labeled as “Open Space” on a plan entitled “Open Space Exhibit, for Apex Center, 240 Boston Post Road West, Marlborough, MA, Marlborough, Massachusetts, Prepared for Walker Realty, LLC, 4 Lan Drive, Westford, MA, Scale 1”= 200”, dated March 21, 2018, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA 01752”, said Plan to be recorded as Exhibit A to the Open Space Covenant and Restriction, and this Order to be recorded as Exhibit B to the Open Space Covenant and Restriction, with the Middlesex County South Registry of Deeds, refer to **LEGISLATIVE & LEGAL AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Communication from Attorney Douglas Rowe, re: Clarification as to ownership of real estate located at 57 Main Street and permitting authorization granted to TOTG, LLC, **FILE**; adopted.

ORDERED: That the Communication from Attorney Mark Bourbeau on behalf of Marlborough HUB LLC, re: Rezoning land off Valley Street, refer **BACK TO THE APPLICANT FOR RESUBMISSION**; adopted.

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, JANUARY 28, 2019 at 8:00 PM in the City Council Chambers, City Hall, the following proposed amendment to the Code of the City of Marlborough, was **ORDERED ADVERTISED** as follows:

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 adding a new §650-36, Executive Residential Overlay District, as follows:

§650-36 – EXECUTIVE RESIDENTIAL OVERLAY DISTRICT

A. Purpose and Objectives

The Executive Residential Overlay District (“EROD”) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval, as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the EROD are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety, and welfare by promoting integrated, pedestrian-friendly, residential and mixed-use development with convenient access to employment options in Marlborough’s southwest quadrant and along Interstate 495.

B. Location of EROD; Development Phasing

1. For the purposes of this Section (§650-36 et. seq.), the EROD is located on the easterly side of Simarano Drive between the Interstate 495 Interchange and Cedar Hill Road containing approximately 43 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.

2. Within the EROD, there may be one or more phases of development (“ERO Phase”). Each ERO Phase may consist of one or more parcels of land and may include any eligible use set forth in Subsection D below, which may be commingled within a single structure or located in separate structures on one or more parcels. Parcels within the EROD may be combined or subdivided and held under separate ownership or leaseholds. Each ERO Phase shall be subject to Site Plan Approval.
3. Upon the issuance of Site Plan Approval for an ERO Phase on a parcel or parcels in the EROD, this Section (§650-36 et. seq.) shall govern said parcel as developed in accordance with the Site Plan Approval.
4. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-36 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-36 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-36 et. seq.) shall govern and control.

C. Authority of Permit Granting Authority

1. The City Council shall be the Permit Granting Authority for Special Permits and Site Plan Approvals in the EROD. Special Permits shall require a two-thirds vote of the City Council; Site Plan Approvals shall require a simple majority vote.
2. At the request of an applicant as part of an initial application or as part of a modification pursuant to Subsection H, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to an ERO Phase by Site Plan Approval upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-36 et. seq.).
3. An application for Site Plan Approval for an ERO Phase shall comply with the City Council’s Rules for Site Plan Approval. An application for a Special Permit for a use in the EROD shall comply with the requirements of §650-59 of the Zoning Ordinance.

D. Eligible Uses

1. The following uses are permitted BY-RIGHT in the EROD:
 - a. Multifamily Dwellings, up to 450 dwelling units.
 - b. Restaurant, café with or without table service (including outside seating and service) with or without drive-thru, provided that said facilities have no dedicated driveway with a curb cut on a public way.
 - c. Co-working or shared working spaces.
 - d. Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
 - e. Retail sales and services.
 - f. Offices, professional offices, banks, insurance, and financial institutions.
 - g. Consumer service establishments complementary to the other principal uses.

- h.
 - i. Brew pubs.
 - j. Distilleries with attached restaurants.
 - k. Accessory solar energy installations, including but not limited to roof-top systems and solar parking canopies.
 - l. Uses allowed by right in the underlying zoning district.
 - m. Accessory uses.
- 2. The following additional uses are permitted BY SPECIAL PERMIT in the EROD:
 - a. Multifamily Dwellings in excess of 450 dwelling units.
 - b. Uses allowed by special permit in the underlying zoning district.
 - 3. All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited in the EROD.
 - 4. Once an ERO Phase receives Site Plan Approval, individual uses within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.
 - 5. Multifamily dwellings in the EROD shall be subject to Section 650-26 of the Zoning Ordinance.

E. Dimensional Requirements

- 1. Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the EROD shall be subject to the following dimensional standards:
 - a. Minimum lot area: none.
 - b. Minimum Lot Frontage: none.
 - c. Minimum Front Yard or Setback from a Public Way: 20 feet.
 - d. Minimum Side and Rear Yard: 25 feet.
 - e. Maximum Building Height: 80 feet, no limitation on stories.
 - f. Maximum Lot Coverage: 60%, over the entire EROD.
- 2. Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements or planting strips required as to internal lot lines within the EROD.

F. Parking Requirements

- 1. Parking Locations – Parking may be provided at ground level, underground, or in parking garages. Parking garages may be free standing or part of buildings dedicated to other permitted uses. Parking garages may contain accessory solar energy installation.

2. Required Parking Spaces – An ERO Phase shall provide parking as follows: 1 parking space per bedroom; 1 parking space per 250 square feet of office or co-working / shared working space; 1 parking space for every 3 seats plus 1 parking space for every 3 employees for a restaurant or other food/beverage service use; and 1 parking space for each 100 square feet of public floor area of other commercial space; provided, however, that the City Council may, through Site Plan Approval, authorize a reduction in the required number of parking spaces upon finding that the parking provided for the ERO Phase is sufficient to meet demand.
3. Parking Space Dimensions – Each parking space shall be no less than 9' x 18' except that the use of compact spaces (no smaller than 8' x 16') may be utilized throughout provided that no more than 33% of the total parking spaces within an ERO Phase shall be compact spaces.
4. Except as otherwise provided in this Section (§650-36 et. seq.), parking and circulation requirements in the EROD shall conform with the provisions of §650-48 and §650-49 of the Zoning Ordinance.

G. Design Standards

1. Design Criteria – An application for Site Plan Approval under this Section (§650-36 et. seq.) shall adhere to the design criteria specified in §270-2 of the Marlborough City Code.
2. Roadways – To the extent feasible, internal roadways shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those roadways shall be adequate for the intended vehicular and pedestrian traffic. The design of ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.
3. Landscaping – Landscaping in the EROD shall conform with the provisions of §650-47 of the Zoning Ordinance, except that continuous landscaped strips shall be provided along all public ways with an average minimum width of 10 feet, with at least one tree per 50 linear feet of planting area length on average or with groups of trees spaced no further apart than 100 linear feet on average.
4. Storm Water Management System – An ERO Phase shall have a storm water management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, §271 of the Marlborough City Code.
5. Signage – Except as otherwise provided in this Section (§650-36 et. seq.), signage shall conform to the provisions of §526 of the Marlborough City Code.

H. Modifications

1. After approval, applicants may seek modifications to any approved Special Permits or Site Plan Approvals.
2. Special Permits – Major modifications to a Special Permit may be granted by a two-thirds vote of the City Council, and minor modifications to Special Permit may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Special Permit is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Special Permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Special Permit is not minor, per §650-59 of the Zoning Ordinance, an application for a revised Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application.
3. Site Plan Approvals – Major modifications to a Site Plan Approval may be granted by a majority vote of the City Council, and minor modifications to a Site Plan Approval may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Site Plan Approval is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Site Plan Approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Site Plan Approval is not minor, an application for a revised Site Plan Approval shall be filed in accordance with the City Council's Rules for Site Plan Approval.

EXHIBIT A

The Executive Residential Overlay District shall include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

- Assessors Map 116, Parcel 5
- Assessors Map 116, Parcel 11
- Assessors Map 116, Parcel 12

SET A PUBLIC HEARING FOR MARCH 11, 2019, ADVERTISE, REFER TO URBAN AFFAIRS COMMITTEE AND PLANNING BOARD; adopted.

ORDERED: That a communication be sent to the MA State Lottery Commission, re: Keno to Go, Marlboro Smoke Shop, 170 Pleasant Street, outlining the concerns of the City Council, **APPROVED**; adopted.

ORDERED: That the Minutes, School Committee, November 27, 2018, December 11, 2018 & January 8, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, December 11, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, November 1, 2018 & December 6, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, December 17, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, December 19, 2018, **FILE**; adopted.

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

- a) Judith Graff, 52 Dudley Road, Berlin, other property damage and/or personal injury.
- b) Robert Miller, 163 Kings Grant Road, pothole or other road defect.
- c) Philip Raymond, 43 Chase Road, residential mailbox claim (2a).

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Monday January 14, 2019
In Council Chambers**

Finance Committee Members Present: Chairman Ossing; Councilors Robey, Oram, Irish and Dumais.

Finance Committee Members Absent: None

Other Councilors in Attendance: Councilors Landers and Doucette.

The meeting convened at 7:00 PM.

Reports of Committee Continued:

1. **Order #18-1007497 – Candela Corporation Tax Increment Financing (TIF):** The Finance Committee reviewed the Mayor’s letter dated December 13, 2018 requesting the approval of the Candela Corporation Tax Increment Financing agreement with the City of Marlboro. The Finance Committee voted 5 – 0 to approve the following:

- The TIF agreement
- The City Council Resolution

The Finance Committee Chair will request a suspension of the rules at the January 28, 2019 City Council meeting to have the Solicitor place the Candela Corporation TIF in proper format for the February 11, 2019 City Council meeting.

The Finance Committee adjourned at 7:42 PM.

Suspension of the Rules requested – granted

ORDERED: That the Tax Increment Financing Agreement (“TIF”) with Candela Corporation, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE FEBRUARY 11, 2019 COUNCIL MEETING;** adopted.

ORDERED: It is moved, in conformance with MGL c. 30A, § 21(a)(3), that the Marlborough City Council conduct an executive session for the purpose of discussing strategy in litigation involving property off Williams Street, as an open meeting may have a detrimental effect on the litigating position of the City Council, and the chair hereby declares that an open meeting may have that effect.

It is further moved and stated that the City Council will re-convene in open session after the executive session for the purpose of adjournment only.

APPROVED; adopted.

Yea: 10 – Nay: 0 – Absent: 1

Yea: Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey.

Absent: Delano

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:51 PM; adopted.