

Councilors-at-Large

Mark A. Oram
Michael H. Ossing
Samantha Perlman
Kathleen D. Robey



Ward Councilors

Ward 1 – Laura J. Wagner
Ward 2 – David Doucette
Ward 3 – J. Christian Dumais
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – Sean A. Navin
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

CITY OF MARLBOROUGH CITY COUNCIL MEETING MINUTES MONDAY, NOVEMBER 27, 2023

The regular meeting of the City Council was held on Monday, November 27, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, & Perlman. City Councilors Absent: Robey. Meeting adjourned at 8:40 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, NOVEMBER 13, 2023, **FILE**; adopted.

That the PUBLIC HEARING on the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, Order No. 23-1009005, **CONTINUED UNTIL DECEMBER 4, 2023, AT 8:00 PM**; adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Councilors Absent: Robey.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Gift Acceptance in the amount of \$1,000.00 from the Marlborough Foundation, awarded to the Council on Aging to be used for assisting our seniors with food insecurity issues; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$175,734.00 from the Massachusetts Department of Energy Resources through the Green Communities Program, awarded to the City of Marlborough to be used to make energy improvements at the Recreation Building and Marlborough High School; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$3,020,536.00 from the Executive Office of Housing and Livable Communities, awarded to the City of Marlborough to be used to support the continued redevelopment of French Hill by funding the third and final phase of infrastructure improvements of Lincoln Street; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Request for Executive Session to discuss litigation strategy relative to JW Capital Partners, LLC and Marlborough TOTG LLC v. City of Marlborough (Land Court No. 23 MISC 000199), **MOVED TO THE END OF AGENDA & FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor, Jeremy McManus, re: on the Application for Special Permit from Attorney Brian Falk, on behalf of Somar Landscape, Inc., to construct and operate a Landscaper's Yard at the Airport Industrial Park, 59 Airport Boulevard, Unit 16, in proper legal form, Order No. 23-1008965C, **MOVED TO ITEM #16**; adopted.

That the PUBLIC HEARING on the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, Order No. 23-1009005, all were heard who wish to be heard, hearing closed at 8:10 PM; adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Councilors Absent: Robey.

Suspension of the Rules requested – Motion by Councilor Landers to remove from the Public Services Committee, Order No. 23-1009005 – granted.

Suspension of the Rules requested – granted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Petition from Massachusetts Electric, to install Underground electric conduits, including necessary sustaining and protecting fixtures on Donald Lynch Boulevard beginning at a point approximately 550' northeast of the centerline of the intersection of Donald Lynch Boulevard and Bigelow Street, and to install underground facilities near 200 Donald Lynch Boulevard, **APPROVED WITH THE FOLLOWING CONDITIONS**; adopted.

1. The location shall be marked out for approval by the Engineering Division prior to the work.
2. Any disturbance of the public sidewalk or other structures in the public way shall be repaired upon completion to the satisfaction of the Department of Public Works.

STANDARD CONDITIONS

1. Any necessary easements are to be obtained from affected property owners.

2. A street opening permit must be applied for by the proposed contractor performing the work.
3. The contractor performing the work must obtain a street opening bond with the City of Marlborough.
4. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
5. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.
6. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
7. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
8. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
9. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
10. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board, re: Neutral Recommendation on the Proposed Amendment to City Code, Chapter 650 “Zoning” by adding a new section to create the “Sasseville Way Residential Overlay District” (SWROD), Order No. 23-1008941, **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Amendment to City Code Chapter 650 “Zoning” to add a new section to create the “Red Spring Road Overlay District” (RSROD), Order No. 23-1008951, **FILE**; adopted.

Councilor Oram Recused.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole (25-25) on Hayes Memorial Drive beginning at a point approximately 350’ north/northwest of the centerline of the intersection of Nickerson Road for new commercial service at 1000 Nickerson Road, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY DECEMBER 4, 2023**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole on Simarano Drive beginning at a point approximately 50’ southeast of the centerline of the intersection of Simarano Drive and Bay Drive installing a midspan pole between pole 10 and pole 8-50 and install a 900 KVAR on it, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from property owner, re: Opposition to the Proposed Zoning Amendment to Chapter 650 “Zoning” to amend §22 “Retirement Community Overlay Districts”, **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a. School Committee, October 10, 2023, October 17, 2023 & October 24, 2023.
- b. Conservation Commission, November 2, 2023.
- c. Cultural Council, September 6, 2023.
- d. Historical Commission, September 21, 2023.

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
November 20, 2023
Minutes and Report**

This meeting convened at 7:00 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city’s home page, www.marlborough-ma.gov.

Voting Members Present: Chair Irish, Councilors Dumais, Oram and Brown.

Voting Members Absent: Councilor Perlman

Non-Voting Members Present: Councilors Ossing, Landers and Navin.

Mayor Vigeant, MEDC Director Meredith Harris, Maurice Phelan (Sartorius) and Bob Pace (Benchmark Strategies).

Order No. 23-1009003: Communication from Mayor Vigeant together with proposed City Council Resolution and Tax Increment Financing (TIF) Agreement with Sartorius, a global biopharmaceutical company at 200 Donald Lunch Boulevard (Map 26, Parcel 9).

Chair Irish read the Mayor’s letter addressing the tax-increment financing (TIF) agreement with Sartorius Stedim North America, Inc. with two locations in Marlboro at 150 Locke Drive and 450 Donald Lynch Boulevard. Sartorius plans to invest \$100 million to build out a portion of the building at 200 Donald Lynch Boulevard that will bring 120 new full-time jobs by 2025. Sartorius is seeking a local only TIF incentive that will help them unlock credits with the Mass Life Science Center. Sartorius stated that the two existing locations will remain along with a warehouse on Elm Street. The 120 new jobs are not being relocated from the existing locations in Marlboro.

On a motion by Councilor Oram, seconded by Chair, the committee voted to recommend approval of the Tax Increment Financing (TIF) Agreement and the proposed City Council Resolution as submitted by Mayor Vigeant, under Suspension of the Rules on November 27, 2023. Vote 4-0

Motion made and seconded to adjourn; meeting adjourned at 7:26 PM

Reports of Committee Continued:

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

**City Council Urban Affairs Committee
November 15, 2023
Minutes and Report**

This meeting convened at 7:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Urban Affairs & Housing Committee voting members present were Chairman Katie Robey, Councilor Doucette, Councilor Landers, and Councilor Navin. Councilor Wagner was absent.

Also present were Councilors Dumais, Irish and Ossing & Perlman. Absent were Councilors Brown and Oram.

The first item on the agenda was:

Order No. 23-1008941B: Communication from Attorney Gemma Cashman on behalf of Trammel Crow Company re: Proposed Amendment to City Code, Chapter 650 Zoning by adding a new section to create the "Sasseville Way Residential Zoning Overlay District."

This meeting is continued from November 30, 2023. Present for petitioner were Attorney William Pezzoni, Day Pitney; Attorney Michael Flannery, Goulston & Storrs; Mark Shraiberg, VP Development Management, Trammell Crow Co.; Patrick Sullivan, Senior Associate, Trammell Crow Co.; and Carolyn Hewitt, Senior VP Trammell Crow Co.

The chair explained there was no screen available in Council Chambers but Councilors were sent a document and copies were provided with some given to audience members. Attorney Flannery went through some of the changes proposed from initial submission to now. Proposed changes include:

- A special permit would be required when developing on the site
- Maximum square footage for business use would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a consumer service establishment complementary to other principal uses would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a restaurant serving food indoor/out, a café wit/without table service or a brew pub would be reduced from 10,000 SF to 8,000 SF
- Maximum SF of a consumer service establishment complementary to other principal uses would be reduced from 10,000 SF to 8,000 SF
- Affordable dwelling units would increase from 10% to 12%
- Building height on non-habitable structures would be measured to the average height between the
- Plate and ridge of a gable, hip or gambrel roof
- Minimum front and side yard set would change from 50 feet to exception of minimum front yard setback of 25 feet for business uses
- Combined lot coverage would be reduced from 50% to 45%
- Maximum residential density would change from 15 units per acre to 13 units per acre

Reports of Committee Continued:

The Chair then went through the items relevant to this meeting including a draft transcript of the Council's Public Hearing on September 18, 2023; a letter from the Conservation Commission with their comments, concerns, and recommendations; a letter from David Mark, President of the Assabet River Rail Trail; the minutes of Planning Board Public Hearing on October 23rd, continued to November were included in the November 13th meeting packet; a copy of the Planning Board's recommendation; a copy of a letter from Timothy Nelson on behalf of Boston Scientific supporting approval of the zoning and the proposed housing development; a Fiscal Analysis and Traffic Management Study; a memo from Day Pitney explaining why they believe this zoning amendment only requires 6 votes instead of the normal 8 (the Solicitor has been copied and will give a ruling) a second memo from Day Pitney in support of the proposed Sasseville Way Residential Overlay District describing design changes and rezoning language modifications; answers to questions asked at the Planning Board's October 23rd meeting; a color-coded document delineating their proposed changes to the zoning document; and a communication from City Engineer DiPersio with comments from himself, Priscilla Ryder, Conservation, and Building Commissioner Htway on behalf of the Site Plan Review Committee. The chair asked Solicitor Grossfield if he had a chance to review the question that came up with the Planning Board as to whether we had a proper petitioner initiate the zoning amendment. He is reviewing and will let us know as this goes through review.

The chair then began going through the document with the changes highlighted and incorporating questions/comments from Site Plan Review Committee (SPRC).

One comment from SPRC was to review whether the city would be better served with a residential-only overlay, another whether the proposed density of 13 units per acre was appropriate for the site; this will be a matter for later discussion.

There was a recommendation that Site Plan Review Committee be the approval granting authority for site plan with Council as special permit granting authority; this was agreed to by committee with the changes to be made by solicitor working with petitioner's attorneys.

Section D1 which lists uses permitted by right would be reviewed by solicitor for redundancy. Section D (1) (c) any business use less than 8,000 SF is limited to following lists in (iii) health, sports and fitness clubs and Section D2 lists health, sports and fitness clubs and related facilities as accessory to a multifamily dwelling use. It was clarified that the former is a public facility with the latter a private facility.

Councilor Navin moved to strike the public facility described in (D (1) (c) (iii); it was seconded and carried 4-0.

Section E Affordable housing was discussed with issue being that current code requires 15% with some buyout allowed.

Councilor Doucette moved to allow the petitioner's change from 10% to 12% to stand; it was seconded, and the vote failed 2-2. The language would be changed to 15%.

In F Dimensional requirements, SPRC recommendation was to change the minimum acreage to be developed as the overlay district from 20 to 23; consensus of the committee was to make the change.

Reports of Committee Continued:

In Section F (3) minimum side and rear yard, SPRC recommended adding new language at end, “, and except that the minimum yard measurement shall be no less than 200 feet from any existing improved single-family lot; and the 200-foot riverfront area, as defined by the Wetlands Protection Act and verified by the Marlborough Conservation Commission, shall remain unchanged.” The petitioner had issues with this but agreed to adding “unless approved in the special permit” at the end of the new proposed language. They then discussed the first part with the 200 feet from any improved single-family lot; this recommendation was held for final decision until next meeting when members of SPRC could attend and discuss.

As we went through the document, it was agreed that the solicitor would work with the petitioner to amend language that mentions City Council as Site Plan Review.

In Section K Application (3) language would be added that a balloon test would be done concurrent with a public hearing associated with a special permit.

In L Amendments, the number of votes to amend will be determined by the solicitor’s ruling on number of votes to approve the special permit.

The chair then reviewed the recommendation from the Planning Board which was a neutral recommendation approved 7-0. They included their reasons for the decision as well as items to be considered by the Council. There was consensus that the items would be more fit to discuss at Special Permit time.

It was agreed to keep this in committee for discussion at the November 30th meeting that is scheduled, the Solicitor and the petitioner will go through the language with changes we agreed to, so that we can have a draft final document to review at that meeting. That document would also be on the December 4th City Council meeting agenda, a suspension of rules would be required to vote that evening so that we can meet the deadline imposed under MGL Chapter 40A.

The second item on the agenda was:

Order No. 23-1008721H: Proposed Amendment to Chapter 650, Zoning, relative to Definitions, Affordable Housing, and Marlborough Village District (MV) Zoning.

The Chair read the Planning Board's letter with their favorable recommendation approved by a vote of 5-0 with 2 members absent. The letter also included some recommendations which were discussed but no motions were made to amend the draft zoning.

The Chair proposed an amendment to include language that is in the Wayside Zoning District, "Facade step back. A step back in the facade of a building shall occur at the upper floor(s) for all buildings above three stories in height. For example, the fourth story of a four-story building shall be recessed from the lower three stories of the primary facade with a step back. Five feet shall be the minimum step back." She suggested it go in 650-34 Marlboro Village District, Section D Design standards, 2A Building scale as a new #4. It would be added between Section VI and VII or where the solicitor feels it fits best. **Councilor Navin moved to add the language; it was seconded and carried 4-0.**

Councilor Doucette moved to recommend approval of the order as amended, it was seconded and carried 4-0 with 1 absent. The Chair will report this out on Nov. 27th, ask for a suspension to refer to Solicitor to put in proper form for the Dec. 4th meeting for a vote to meet the deadline.

Reports of Committee Continued:

Councilor Doucette moved to adjourn, it was seconded and carried 4-0. Meeting adjourned at 9:55 PM.

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Proposed Tax Increment Financing (TIF) Agreement with Sartorius Stedim North America, Inc., Inc., in proper legal form, **FILE**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED:

RESOLUTION

WHEREAS, the City Council of the City of Marlborough desires a beneficial economic use creating jobs for local residents, expanding business within the City, and developing a healthy robust economy and stronger tax base for Map 26, Parcel 9 on the Marlborough Assessor's Map; and

WHEREAS, the City Council of the City of Marlborough intends to use tax increment financing as an economic development tool created by the Massachusetts Economic Development Incentive Program based on the ability of the City of Marlborough, in accordance with needs and community benefits of a specific project, that are reasonably proportional to the economic development incentives from State and local government and the resulting economic development benefits;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Marlborough that the following activities which are necessary to pursue a Certified Project designation be authorized:

1. The City Council of the City of Marlborough hereby approves the submission of the EDIP Local Incentive-Only application, contingent on approval by the Mayor, and requests that the Massachusetts Economic Assistance Coordinating Council approve Sartorius Stedim North America, Inc.'s application for an EDIP Local Incentive-Only Certified Project; and further, that:
 - a. The project is consistent with the City of Marlborough's economic development objectives and is likely to increase employment opportunities for Marlborough residents;
 - b. The project will not overburden the City of Marlborough's infrastructure and utilities;
 - c. The project as described in the proposal has a strong likelihood that it will cause a significant influx or growth in business activity, will create a significant number of jobs, and will contribute significantly to the resiliency of the Marlborough economy; and
 - d. The City Council approves Sartorius Stedim North America, Inc.'s request that the project be designated by the Massachusetts Economic Assistance Coordinating Council as an EDIP Local Incentive-Only Certified Project for five (5) years.

2. The City Council of the City of Marlborough agrees to authorize the use of tax increment financing, authorizes the Mayor to enter into a tax increment financing agreement with Sartorius Stedim North America, Inc. and Minardi Metrowest Properties, LLC, and authorizes submission of the tax increment financing agreement (attached hereto) to the Massachusetts Economic Assistance Coordinating Council.

APPROVED; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Proposed Zoning Ordinance Amendment to Chapter 650 “Zoning” of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), referred to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE DECEMBER 4, 2023, COUNCIL MEETING**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board re: Howes Landing Subdivision, recommending acceptance of Gikas Lane as a Public Way, **FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

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

that GIKAS LANE be accepted as a public way

from Hudson Street at Station 0+00 to its terminus at Station 4+98.67

and that the appurtenant easements be accepted as municipal easements,

as shown on plans thereof and as hereinafter described:

DESCRIPTION

Plan entitled, “Acceptance Plan of Land in Marlborough, MA”, Owner: Howe’s Landing Developers, LLC, 1818 Worcester Road, Suite 200, Framingham, MA 01701, Dated March 12, 2019, Prepared by: Colonial Engineering, Inc., 11 Awl Street, Medway, MA, Scale: 1”=40’, which plan is to be recorded herewith.

Title to the roadways shown as Gikas Lane on said plan, and title to all the municipal easements shown on said plan as:

Drainage/Flowage Easements:

- Drainage/Flowage Easement, over Lot 7, containing 3,442 square feet
- Drainage/Flowage Easement, over Lot 7, containing 2,499 square feet
- Drainage/Flowage Easement, over Lot 8, containing 5,390 square feet
- Drainage/Flowage Easement, over Lot 9, containing 900 square feet
- Drainage/Flowage Easement, over Lot 10, containing 6,862 square feet

Landscape Easements:

- 20 ft. wide Landscape Easement, over Lot #1*,
- 20 ft. wide Landscape Easement, over Lot #2*,
- 20 ft. wide Landscape Easement, over Lot #3*,
- 20 ft. wide Landscape Easement, over Lot #4,
- 20 ft. wide Landscape Easement, over Lot #5,
- 20 ft. wide Landscape Easement, over Lot #6,
- 20 ft. wide Landscape Easement, over Lot #7*,
- 20 ft. wide Landscape Easement, over Lot #8*,
- 20 ft. wide Landscape Easement, over Lot #9*,
- 20 ft. wide Landscape Easement, over Lot #10*.

*A 20 ft. wide private utility (forced sewer) easement also exists within the Landscape Easement has been granted to the City of Marlborough in a quitclaim deed from Howe's Landing Developers, LLC, a Massachusetts limited liability company with a principal place of business at 1818 Worcester Road, Suite 200, Framingham, MA 01701, said deed to be recorded in substantially the same form herewith at the Middlesex County (South District) Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

GIKAS LANE be accepted as a public way, and its appurtenant easements be accepted as municipal easements, in the City of Marlborough.

APPROVED; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor, Jeremy McManus, re: on the Application for Special Permit from Attorney Brian Falk, on behalf of Somar Landscape, Inc., to construct and operate a Landscaper's Yard at the Airport Industrial Park, 59 Airport Boulevard, Unit 16, in proper legal form, Order No. 23-1008965C, **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED:

**DECISION ON A SPECIAL PERMIT
ORDER NO. 23-1008965D**

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Somar Landscape Inc. (the "Applicant") for a landscape contractor's yard at 59 Airport Boulevard, Unit 16, in the Limited Industrial Zoning District, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, Somar Landscape Inc., is a Massachusetts corporation with an address of Post Office Box 5602, Marlborough, MA 01752.
2. The Applicant is the prospective owner of the property located at 59 Airport Boulevard, Unit 16, being shown as Parcel 52-1-16 on Assessors Map 73 (the "Site").

3. In accordance with Article V, Section 650-17 and Section 650-18(A)(48), of the Zoning Ordinance of the City of Marlborough (the “Zoning Ordinance”), the Applicant proposes a landscape contractor’s yard at the Site (the “Use”). As shown on the Plans referenced in paragraph 5 below, the Use consists of a building, accessory parking, outdoor storage areas, and landscaped areas.
4. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an Application for a Special Permit (“Application”) for the Use.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a site plan entitled “Proposed Site Plan of Use Area #16 Airport Boulevard in Marlborough, MA” by Connorstone Engineering, with the last revision date of October 13, 2023, and a landscaping plan entitled “Proposed Landscape Plan of Use Area #16 Airport Boulevard” by Connorstone Engineering, dated October 17, 2023 (collectively the “Plans”) attached hereto as “ATTACHMENT A.”
6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. The Site is located in the Limited Industrial Zoning District.
8. The Site has an area of 30,000 square feet +/- as shown on the Plans.
9. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, October 23, 2023. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on October 23, 2023.
11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.
12. At the public hearing, one member of the public spoke in favor of the Use and no members of the public spoke in opposition to the Use.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

- C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby **GRANTS** the Applicant a Special Permit for a landscape contractor's yard at 59 Airport Boulevard, Unit 16, as shown on the Plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Plans as may be amended during Site Plan Review.
 2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no final occupancy permit shall be issued until the Applicant has complied with all conditions, provided, however, that subsequent to the issuance of this Special Permit and Site Plan Approval, the Site Plan Review Committee may authorize the phasing of site and building work depending upon weather conditions and other factors. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority.
 3. Modification of Plans. Notwithstanding conditions #1 and #2 above, the City Council or the Site Plan Review Committee may approve engineering changes to the Plans, so long as said changes do not change the Use as approved herein, or materially increase the impervious area of the Use, reduce the green area, alter traffic flow, or increase the size of the building, all as shown on the Plans.
 4. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 5. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns, shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan and the approved erosion control plan. The Applicant, its successors and/or assigns, shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

6. Fencing. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the Applicant shall install solid fencing to screen areas of the Site used for the storage of vehicles, equipment, and materials from the street and adjacent properties, and shall maintain the fencing in good repair. The fencing shall comply with the requirements of all applicable City Ordinances.
7. Outdoor Storage Areas. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the outdoor storage of vehicles, equipment, and materials shall be located on impervious and otherwise dust-free surfaces. Materials shall be stored with sufficient protections to avoid damage to landscaped areas and to avoid interference with the proper functioning of stormwater infrastructure. Lawn areas shall be separated from adjacent parking/storage areas with curbing and barriers to prevent the use of lawn areas for materials or vehicle storage. The bulk storage of bark mulch at the Site shall be subject to fire safety conditions approved through the Site Plan Review process. The Site shall not be used to store grass clippings or similar debris.
8. Indoor Storage Areas. Building areas used to store vehicles, equipment, and materials indoors shall be equipped with floor drainage systems designed to prevent fuel, oil, and other hazardous materials from entering the stormwater or sewer systems, approved through the Site Plan Review process.
9. Vehicle Repairs and Maintenance. The Site may not be used for major repairs of vehicles and equipment, but minor maintenance of vehicles and equipment which are exclusively operated as part of the Use may be performed indoors only, subject to Condition 10.
10. Noise and Air Quality. The Applicant, its successors and/or assigns, shall comply with the City's Noise Ordinance, and shall comply with all state and federal requirements governing air quality and emissions.
11. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties, with a lighting plan for the Site to be reviewed and further conditioned during the Site Plan Review process. Exterior lighting at the Site shall be shut off outside of operating hours, except for lighting necessary for security and emergency access.
12. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.
13. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: 10 – Nay: 0 – Absent – 1

Yea: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Absent: Robey.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED That the Marlborough City Council meet in executive session under Purpose 3 of the Open Meeting Law, MGL c. 30A, s. 21(a)(3), to “discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body” regarding the pending matter, *JW Capital Partners, LLC and Marlborough TOTG LLC v. Marlborough City Council* (Land Court No. 23 MISC 000199), as the chair hereby declares that discussion in an open session may have a detrimental effect on the City and the City Council’s litigating position.

The City Council will not re-convene in open session after the Executive Session.

APPROVED; adopted.

Yea: 9 – Abstain: 1 – Absent: 1

Yea: Wagner, Doucette, Brown, Irish, Navin, Landers, Oram, Ossing, & Perlman.

Abstain: Dumais.

Absent: Robey.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 8:40 PM; adopted.