



# IN CITY COUNCIL

JUNE 22, 2009

Marlborough, Mass., \_\_\_\_\_

**ORDERED:**

## **NOTICE OF DECISION GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 09- 1002151C

Application of:  
Toll MA Land Limited Partnership  
250 Gibraltar Rd.  
Horsham, PA

Locus:  
Crowley Dr.  
Map 29, Parcel 1

### **DECISION**

The City Council of the City of Marlborough hereby **GRANTS** the Application of Toll MA Land Limited Partnership as provided in the **DECISION** and subject to the following **FINDINGS OF FACTS AND CONDITIONS**.

Decision filed: July 7, 2009.

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on July 7, 2009.

### **APPEALS**

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

ATTEST:

A handwritten signature in cursive script, appearing to read "Lisa M. Thomas".

City Clerk



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## ORDERED:

The City Council of the City of Marlborough hereby GRANTS the application for a Revised Special Permit to Toll MA Land Limited Partnership, 250 Gibraltar Rd., Horsham, Pennsylvania to construct 69 townhouse residential retirement community units, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

### PROCEDURAL FINDINGS

1. Toll MA Land Limited Partnership, a Massachusetts limited partnership, having a principal place business at 250 Gibraltar Rd., Horsham, Pennsylvania, is the "Applicant."
2. Applicant is the owner of certain property located at Crowley Drive, Marlborough, Massachusetts further shown the Marlborough Assessors Maps, Map 29 Parcel 1. The land is entirely located in a Limited Industrial District and is also located in a Retirement Community Overlay District.
3. By Special Permit approved by the Marlborough City Council dated September 8, 2003 (hereinafter, "the Original Special Permit") the construction of 210 retirement community units was approved, pursuant to conditions specified therein.
4. The Applicant, on or about March 4, 2009, filed with the City Clerk of the City of Marlborough an application to revise said Original Special Permit and issue a new Revised Special Permit (hereinafter, "the Revised Special Permit") under the provisions of Article VI Section 200-22 and Article VIII (1986 Code), and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance (1986 Code).
5. In connection with the Special Permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee, and had previously filed twenty (20) copies of the Site Plan.
6. The Site Plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.



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## ORDERED:

8. The Marlborough City Council, pursuant to M.G.L. C. 40A, held a public hearing on April 6, 2009, concerning the said application. The hearing was opened and closed at that meeting.

9. Applicant's attorney presented testimony at the public hearing detailing the application, described the proposal to reduce the number of units to 69 units, and to reduce the area on which the development will occur. Applicant also reviewed the Original Special Permit conditions and suggested that certain conditions be changed in the Revised Special Permit to reflect the changes in said project but that all other conditions remains in effect.

10. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building, and related site modifications.

11. Following the public hearing, Applicant's representatives appeared before the Urban Affairs Committee to discuss the proposal. As a result of discussions with the Committee, Applicant proposed to further revise the Site Plan by reducing the number of proposed units in the project.

12. Applicant submitted to the Urban Affairs Committee a revised Site Plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc. (hereinafter, "The Site Plan").

13. The Urban Affairs Committee met to consider the Site Plan and Applicant's application for a Revised Special Permit on May 5, 2009 and May 12, 2009, voted a recommendation to the full City Council on May 12, 2009, and voted to affirm their recommendation to the full City Council on May 26, 2009.

## **BASED UPON THE ABOVE, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS:**

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.



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## ORDERED:

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the zoning ordinance, in that it will improve the appearance of the site and will have no significant negative impacts upon abutters. The proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience, and welfare and will not be detrimental or offensive.

C) The City Council, pursuant to its authority under M.G.L. C. 40A, §9 and under Chapter 200 of the Marlborough City Code (1986 Code), GRANTS the Applicant a Revised Special Permit to allow the construction of 69 (sixty-nine) townhouse retirement community condominium units on the Site (the "Project"), subject to the Conditions which were a part of the Original Special Permit, except that certain conditions of the Original Special Permit, which are enumerated below, are superseded, amended or added to read as specified below:

### **GRANT OF REVISED SPECIAL PERMIT WITH CONDITIONS**

1) All site work and construction at the Site shall be done in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and shall be built in accordance with the plans filed by Applicant, as most recently amended. Said plans are a plan entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.

2) The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough Ordinance (Chapter 63) (1986 Code) prior to the issuance of the actual Building Permits. Any additional changes, alterations, modifications or amendments as required by the Site Plan Review Committee shall be further conditions attached to the Building Permit and no Occupancy Permits shall be issued until Applicant complies with all conditions. Said Site Plan Review shall become, by reference, a part of this Special Permit.

3) Any signage installed or erected on the premises shall meet the requirements of the Sign Ordinance of the City of Marlborough without the request for a variance.

4) Applicant agrees to comply with all Rules, Regulations and Ordinances of the City of Marlborough, Commonwealth of Massachusetts, and the Federal Government as they may apply to the construction, maintenance, and operation of Applicant's facility.



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## ORDERED:

- 5) Landscaping shown on the approved plans filed with the City Council, as amended at Site Plan Review, shall be maintained and replaced properly as needed. The landscaping plan is shown in Sheets L-1 and L-2 of the plans referred to in Condition #1 above.
- 6) The issuance of an Occupancy Permit for Applicant's use shall be conditioned upon the substantial (in the sole opinion of the Building Inspector) completion and compliance with the requirements contained herein. The terms and conditions shall apply to Applicant, its successors and assigns.
- 7) No dwelling shall contain less than 1,000 (one thousand) square feet of living area or more than 2,400 (two thousand four hundred) square feet of living area. At least 66% (sixty-six percent) of the living area in each unit shall be located on the first floor.
- 8) No more than sixty-nine (69) condominium units shall be constructed on the Site.
- 9) The Retirement Community shall be structured as a condominium. Prior to the issuance of any occupancy permits regarding the Retirement Community, the City Solicitor shall establish to his satisfaction that a condominium has been created and that provisions of the Master deed and bylaws:
  - a. Limit occupancy of condominium units to persons age 55 (fifty five) and over and their spouses
  - b. Prohibit the presence of boats, boat trailers and recreational vehicles, trailers and other non-automobile vehicles or attachments.
  - c. Specify that later modifications to the units which will improve the accessibility of the units to persons with disabilities will not be prohibited and will not require the prior approval of the unit owners or the trustees of the condominium association; provided, however, that there may be controls regarding the color and design of said modifications if they are on the exterior of a unit.
  - d. Specify that the Condominium Association will be responsible for the permanent maintenance of all infrastructure including but not limited to roadways, drainage systems, utilities, and their appurtenances located at the Site.
  - e. Prohibit rentals of the units for periods of longer than six (6) months.
  - f. Specify within the Master Deed and condominium documents that any modification of the Master Deed or by-laws which changes any of the above provision is prohibited without an amendment of this Revised Special Permit.



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## ORDERED:

10) The plans referred to in Condition #1 show that the proposed retirement community will be located on a lot containing 13.922 acres, as shown on said plan. Applicant will cause the creation of this separate parcel. Following the creation of said parcel, no further subdivision of the parcel shall be allowed without the prior modification of this Revised Special Permit.

11) Through Site Plan Review, Applicant shall work with the Police Chief, Fire Chief, and City Engineer to assure that unit numbering, street naming and internal traffic controls will be satisfactory to all parties and that upon the recommendation of the Police Chief, the Traffic Commission will be requested to make internal traffic controls enforceable through local regulation.

12) All units in the Retirement Community shall be sprinkled to the NFPA-13R Standards. The Retirement Community shall contain a fire alarm system acceptable to the Fire Chief.

13) No foundation of a building structure will be closer than 50 ft. from the rear lot line of the site.

14) All units shall be pre-wired for future installation of burglar, fire, and EMS alarm systems by the unit owners.

15) Every agreement for the sale of a condominium unit to the initial individual unit buyer shall contain an arbitration provision specifying that, in the event that any dispute arises between Applicant and said initial individual unit buyer, said dispute shall be submitted to arbitration using the rules and procedures of the American Arbitration Association, and that the decision of the arbitrator in such a procedure shall be binding on the parties, unless the prospective Buyer has rejected this arbitration provision in writing.

16) Site Plan Approval will include approval of a work-sequencing phasing plan regarding the order in which work will be completed at the Site.

17) No communication towers will be allowed on any portion of Applicant's property, including both the portion of the property that is referred to herein as the Site and the remaining 17.518 acre parcel that was originally part of the site.

18) A chain link fence not less than four ft. (4') high, constructed in a way that, in the sole opinion of the Building Inspector, it will adequately deter children from entering, shall be erected around all detention facilities. Access gates for maintenance shall be located as determined by the Site Plan Review Committee. The condominium unit owners shall be responsible for the property maintenance and replacement of all fencing.



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## ORDERED:

- 19) Applicant will provide a payment to the City of Marlborough Inspectional Services Fund in the amount of Fifteen Thousand Dollars (\$15,000) to offset increases in costs associated with the project. The City shall expend said funds as needed to contract for temporary staff, materials, supplies and equipment so as to enable the Building Commissioner to provide adequate, timely supervision to the project. A payment of Seven Thousand Five Hundred Dollars (\$7,500) has already been made. An additional payment of Seven Thousand Five Hundred Dollars (\$7,500) shall be made prior to the issuance of the 35<sup>th</sup> Occupancy Permit. Failure to provide said funds as requested shall result in the cessation of new occupancy permit. Applicant will be required by the Building Inspector to employ so-called controlled construction supervision in order to supplement the Building Inspector's review.
- 20) All Site work, except for modifications as approved through the Site Plan Review process, shall be consistent with the plans on file with the City Council, entitled "Preliminary Site Plan Modification Regency at Assabet Ridge Crowley Drive Marlborough, MA", dated December 10, 2008, and prepared by GCG Associates, Inc.
- 21) Applicant will provide and/or accommodate for disabled persons by providing those universal design features enumerated in a MEMORANDUM dated Aug. 27, 2003, and filed with the Urban Affairs Committee, which is, by reference, a part of this Revised Special Permit.
- 22) Applicant will pay the sum of Sixty Nine Thousand Dollars (\$69,000) into an Affordable Housing Fund as directed by the City Council. The sum of Fifty Two Thousand Five Hundred Dollars (\$52,500) has already been paid. The remaining sum of Sixteen Thousand Five Hundred Dollars (\$16,500) will be paid prior to the issuance of 35<sup>th</sup> Occupancy Permit.
- 23) The community center will be built during the first phase of construction.
- 24) The lot to be separated from the retirement community lot and referred to in Condition #10 above shall have a twenty-five foot (25') buffer from the border between said lot and the retirement community lot that will be secured with a conservation restriction and suitably landscaped as directed in a landscape plan approved by the Site Plan Review Committee.
- 25) As part of the Site Plan Review process, an irrigation plan will be prepared that will assure the plant material on the site is adequately watered during the first three years following planting.



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## ORDERED:

26) Applicant will designate, through appropriate signage, lining, and construction, a connection from the sidewalk across Crowley Drive to the Assabet Valley Rail Trail bike path.

27) These conditions shall supersede and replace the permit conditions of the Original Special Permit, issued for the construction of 210 units and covering a parcel containing 31.44 acres, that was recorded in the South Middlesex Registry of Deeds Book 48876 Page 571.

28) In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicants at their expense shall record this Revised Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Revised Special Permit has elapsed with no appeal having been filed.

**Yea: 11 – Nay: 0**

**Yea: Delano, Ferro, Schafer, Juairé, Seymour, Clancy, Landers, Ossing, Pope  
Vigant, Levy**

  
Signed by City Council President  
Arthur G. Vigant

ADOPTED  
In City Council  
Order No. 09-1002151C





## IN CITY COUNCIL

APRIL 25, 2011

Marlborough, Mass., \_\_\_\_\_

**ORDERED:**

That, as a result of the City Council's approval of Order No. 11-1002806-1A, the following special permits previously approved by the City Council, in its capacity as special permit granting authority, shall each be modified in the following respects:

- 1) Special Permit issued to Brigham Development Corp., 38 Brigham Street, Marlborough, MA for development and operation of land at 388 Boston Post Road East into a "Retirement Village" of condominiums, Order No. 97-7158B, adopted September 8, 1997. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806-1A;
- 2) Special Permit issued to Brigham Development Corp. and Williams Village, LLC, 38 Brigham Street, Marlborough, MA to construct a retirement community, Order No. 99-7967B, adopted April 5, 1999. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806-1A; and
- 3) Special Permit issued to Metro Park Corp., 929 Boston Post Road East, Marlborough, MA to construct a retirement community, Order No. 03-10022, adopted September 8, 2003, as amended by a Revised Special Permit issued to Toll MA Land Partnership, 250 Gibraltar Road, Horsham, PA to construct 69 townhouse residential retirement community units, Order No. 09-1002151C, approved June 22, 2009. The second sentence in condition number 7 thereof, which sentence had read "At least 66% (sixty-six percent) of the living area in each unit shall be located on the first floor," shall be stricken and shall have no legal effect as of the effective date of Order No. 11-1002806-1A

Be and is herewith **APPROVED**.

[END: Order No. 11-1002806-2A]

ADOPTED  
In City Council  
Order No. 11-1002806-2A

Approved by Mayor  
Nancy E. Stevens  
Date: May 4, 2011

A TRUE COPY  
ATTEST:

  
City Clerk