

HEARING BEFORE THE CITY COUNCIL, OCTOBER 12, 2010

Hearing opened at 7:13 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee, presiding.

All members were present except Councillors Marchand, Dombrowski and Cormier.

Present at the hearing was Chris MacKenzie of Whitman & Bingham Associates.

The following PETITION was the subject of the hearing:

14-11 Walton Whitney Investors V LLC: Grant a Special Permit to make emergency repairs to an eroded section of the Nashua River dike along Commercial Road as shown on Assessor's Map 567, Lots 2C, 5, 12, 13, 19 and located within a flood plain.

Introduced and made part of the record were the following:

- A. Petition 14-11 submitted by Joseph Couture, Walton Whitney Investors V LLC Accompanied by a plan named "Proposed Dike Repair Plan for the Mall at Whitney Field in Leominster, Massachusetts" prepared by Brian F. Milisci, registered civil engineer, Whitman & Bingham Associates, 510 Mechanic Street, Leominster, MA. Also included was an abutters list and map.
- B. Notice of public hearing published in the Sentinel & Enterprise on September 28, 2010 and October 5, 2010.
- C. Positive letters of recommendations from the Board of Health, Planning Board, Director of Inspections, Department of Public Works, and the Conservation Commission.

Mr. MacKenzie said the section in need of repair is about 300 feet along Commercial Road and stated there is no loss of flood plain storage.

Councillor Chalifoux Zephir asked if the repairs are temporary or permanent repair.

Mr. MacKenzie said they were permanent repairs

No one in the audience spoke in favor or in opposition.

HEARING ADJOURNED AT 7:20 P.M.

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Lynn A. Bouchard, City Clerk  
And Clerk of the City Council

HEARING BEFORE THE CITY COUNCIL, OCTOBER 12, 2010

Hearings opened at 7:13 P.M. with Councillor Chalifoux Zephir, Clerk of the Public Service Committee, presiding.

All members were present except Councillors Marchand, Dombrowski and Cormier.

Present at the hearing were Donald Doubleday of National Grid, Matt Raymond of M.S.R. Utility Maintenance and Michael Harman, Crew Supervisor.

The following PETITIONS were the subject of the hearing:

- 11-11 National Grid: Install one singly owned rectifier pole on Power Street beginning at a point approximately 65 feet from the centerline of the intersection of Whitney Street in a south westerly direction.
- 12-11 National Grid: Install one singly owned rectifier pole on Mascoma Street beginning at a point approximately 165 feet at the centerline of the intersection of Watson Avenue in a northeasterly direction.
- 13-11 National Grid: Install one singly owned rectifier pole on Litchfield Street beginning at a point approximately 65 feet from the centerline of the intersection at Elm Hill Avenue in a northerly direction.

Mr. Doubleday said they are before the Council for permission to install rectifier poles in three locations in Leominster. He said the location on Power Street has already been installed because they did not know they needed permission from the City Council. They are seeking the permit so the power can be turned on at that location. He said a rectifier pole is approximately six feet high and goes into the ground approximately six feet. The pole is situated near a telephone pole so they may receive power for the rectifier. The purpose of the rectifier is to help slow down the process of corrosion to the gas lines underground. Mr. Doubleday said it is a three day process and everything will be back to full restoration.

Francis Keating of 10 Mascoma Street asked how it would affect his property.

Mr. Raymond said it would not affect it due to the fact is it across the street.

Mr. Keating mentioned the smell of gas on Burrage Avenue.

HEARING BEFORE THE CITY COUNCIL, OCTOBER 12, 2010, continued

Mr. Doubleday took note of it and said he will investigate it.

HEARING ADJOURNED AT 7:34 P.M.

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Lynn A. Bouchard, City Clerk  
And Clerk of the City Council

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 12, 2010

Meeting was called to order at 7:35 P.M.

Attendance was taken by a roll call vote; all members were present except Councillors Marchand, Cormier and Dombrowski.

A Moment of Silence was taken for Joseph Love and Ted Amato, former employees of the City who recently passed away.

The following COMMUNICATION was received, referred to the FINANCE COMMITTEE and given REGULAR COURSE. A hearing was set for November 22, 2010 at 6:45 P.M. Vt. 6 “yeas”

C-11 Mayor Dean Mazarella: Request the City Council set a hearing for the Classification of the tax rate on November 22, 2010 for the purpose of setting the Fiscal Year 2011 tax rate.

The following COMMUNICATION was received, referred to the FINANCE COMMITTEE and given REGULAR COURSE.

C-12 Relative to the appropriation of \$900.00 to the Cemetery Expense Account; same to be transferred from the Emergency Reserve Account.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Conservation Commission and the Board of Health.

15-11 Kelley Freda: Amend Chapter 14-19 of the Leominster City Ordinance regarding the feeding of waterfowl to include gulls and to allow the Mayor to grant permission to the Department of Conservation and Recreation Natural Resources Director to feed gulls for the purpose of catching them for research.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Police Department.

16-11 Wayne Nickel: Place signs stating “No Parking Between Signs” on Mechanic Street outside the entrance to Ken’s Taxi located at 91 Mechanic Street.

The following PETITION was received, referred to the PUBLIC SAFETY COMMITTEE, given REGULAR COURSE and referred to the Mayor and the Department of Public Works.

17-11 Robert Salvatelli: Place a street light on pole #37-50 located on Exchange Street.

The following PETITIONS were received, referred to the CITY PROPERTY COMMITTEE and given REGULAR COURSE.

18-11 Richard Marchand: Close off West Street from Cottage Street to Main Street, Park Street from Main Street to the West Street intersection between the hours of 6:00 A.M. to 6:00 P.M. to accommodate the annually Johnny Appleseed Arts and Cultural Festival and request the use of the City Hall Parking Lot and the adjacent City parking lot as well as the City owned parking lot between the First Baptist Church and the First Church Unitarian on September 24, 2011.

19-11 New England Farm Workers’ Council: Request permission to use the City Council Chambers on September 30<sup>th</sup>, October 4<sup>th</sup>, 14<sup>th</sup>, 25<sup>th</sup>, November 1<sup>st</sup>, 10<sup>th</sup>, 15<sup>th</sup>, December 9<sup>th</sup>, 13<sup>th</sup>, 27<sup>th</sup> 2010, and January 3<sup>rd</sup>, 10<sup>th</sup>, 24<sup>th</sup>, 31<sup>st</sup> 2011 to take fuel assistance applications.

The following APPOINTMENTS were received, referred to the WAYS & MEANS COMMITTEE and given REGULAR COURSE.

Emergency Management Dive Unit – Sean Hillier, Chris Miskavitch, Stephen Ekstrom, Nilufer Usta, Carole Laverdiere, Holly Murray, John Dwinell, George Gilligan

## REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 12, 2010, continued

Upon recommendation of the FINANCE COMMITTEE the following COMMUNICATION was GRANTED and ORDERED. Vt. 6 "yeas"

C-10 Relative to the appropriation of \$832.00 to the Health Department Expense Account; same to be transferred from the Emergency Reserve Account.

ORDERED: - that the sum of Eight Hundred Thirty Two Dollars (\$832.00) be appropriated to Health Department Expense Account; same to be transferred from the Emergency Reserve Account.

Upon recommendations of the PUBLIC SERVICE COMMITTEE the following PETITIONS were GRANTED. Vt. 6/0.

11-11 National Grid: Install one singly owned rectifier pole on Power Street beginning at a point approximately 65 feet from the centerline of the intersection of Whitney Street in a south westerly direction.

12-11 National Grid: Install one singly owned rectifier pole on Mascoma Street beginning at a point approximately 165 feet at the centerline of the intersection of Watson Avenue in a northeasterly direction.

13-11 National Grid: Install one singly owned rectifier pole on Litchfield Street beginning at a point approximately 65 feet from the centerline of the intersection at Elm Hill Avenue in a northerly direction.

Upon recommendations of the LEGAL AFFAIRS COMMITTEE the following PETITION was GRANTED. Vt. 6 "yeas"

14-11 Walton Whitney Investors V LLC: Grant a Special Permit to make emergency repairs to an eroded section of the Nashua River dike along Commercial Road as shown on Assessor's Map 567, Lots 2C, 5, 12, 13, 19 and located within a flood plain.

Upon recommendations of the WAYS & MEANS COMMITTEE the following APPOINTMENTS were CONFIRMED. Vt. 6"yeas"

Board of Health – Dr. Norman Gould – term to expire April 15, 2013

Election Officers 2010- 2011 - R. Jeannette Chambers, Linda C. Kinsey, Karen J. McNall,  
Kathleen Lamb and Arthur Tunnessen

Under Old Business Councillor Rowlands asked for an update on the oil spill on Seventh Street.

In accordance with Section 3.6 of the Leominster City Charter a vote was taken to ask Mr. Knuth, Mrs. Dinardo and Mr. Richard to attend the next Council meeting regarding the oil spill. Vt. 6/0

Councillor Rowlands asked for an update of the written summary of questions regarding CDBG.

Upon recommendation of the WAYS & MEANS COMMITTEE the following ELECTION ORDER was ADOPTED. Vt. 6 yeas"

**CITY OF LEOMINSTER  
STATE ELECTION  
ELECTION ORDER  
NOVEMBER 2, 2010**

ORDERED:-that the City Clerk be and she hereby is authorized and directed to notify and warn the voters of the City of Leominster to assemble in their respective polling places in the several wards and precincts of the City, designated by the City Council as follows:

WARD 1A	SKY VIEW MIDDLE SCHOOL 500 KENNEDY WAY
WARD 1B	SKY VIEW MIDDLE SCHOOL 500 KENNEDY WAY
WARD 1C	SKY VIEW MIDDLE SCHOOL 500 KENNEDY WAY
WARD 2A	SOUTHEAST ELEMENTARY SCHOOL 95 VISCOLOID AVENUE
WARD 2B	SOUTHEAST ELEMENTARY SCHOOL 95 VISCOLOID AVENUE
WARD 2C	SOUTHEAST ELEMENTARY SCHOOL 95 VISCOLOID AVENUE

## REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 12, 2010, continued

WARD 3A	FRATERNAL ORDER OF EAGLES HALL 456 LITCHFIELD STREET
WARD 3B	FRATERNAL ORDER OF EAGLES HALL 456 LITCHFIELD STREET
WARD 3C	FRATERNAL ORDER OF EAGLES HALL 456 LITCHFIELD STREET
WARD 4A	SENIOR CITIZEN DROP-IN CENTER 5 POND STREET
WARD 4B	LEOMINSTER VETERANS' QUARTERS 100 WEST STREET
WARD 4C	LEOMINSTER VETERANS' QUARTERS 100 WEST STREET
WARD 5A	AUDITORIUM, CITY HALL 25 WEST STREET
WARD 5B	AUDITORIUM, CITY HALL 25 WEST STREET
WARD 5C	FIRST BAPTIST CHURCH OF LEOMINSTER 23 WEST STREET

On Tuesday, the 2<sup>nd</sup> day of November 2<sup>nd</sup>, then and there for the purpose of giving in their votes for the election of candidates for the following offices: Governor/Lt. Governor, Attorney General, Secretary of State, Treasurer, Auditor, Representative in Congress - 1<sup>st</sup> District, Councillor – 7<sup>th</sup> District, Senator in General Court – Worcester & Middlesex District, Representative in General Court – 4<sup>th</sup> Worcester District, District Attorney – Middle District, Sheriff – Worcester County.

**QUESTION 1: LAW PROPOSED BY INITIATIVE PETITION**

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

**SUMMARY**

This proposed law would remove the Massachusetts sales tax on alcoholic beverages and alcohol, where the sale of such beverages and alcohol or their importation into the state is already subject to a separate excise tax under state law. The proposed law would take effect on January 1, 2011.

**A YES VOTE** would remove the state sales tax on alcoholic beverages and alcohol where their sale or importation into the state is subject to an excise tax under state law.

**A NO VOTE** would make no change in the state sales tax on alcoholic beverages and alcohol.

**QUESTION 2: LAW PROPOSED BY INITIATIVE PETITION**

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

**SUMMARY**

This proposed law would repeal an existing state law that allows a qualified organization wishing to build government-subsidized housing that includes low- or moderate-income units to apply for a single comprehensive permit from a city or town's zoning board of appeals (ZBA), instead of separate permits from each local agency or official having jurisdiction over any aspect of the proposed housing. The repeal would take effect on January 1, 2011, but would not stop or otherwise affect any proposed housing that had already received both a comprehensive permit and a building permit for at least one unit.

Under the existing law, the ZBA holds a public hearing on the application and considers the recommendations of local agencies and officials. The ZBA may grant a comprehensive permit that may include conditions or requirements concerning the height, site plan, size, shape, or building materials of the housing. Persons aggrieved by the ZBA's decision to grant a permit may appeal it to a court. If the ZBA denies the permit or grants it with conditions or requirements that make the housing uneconomic to build or to operate, the applicant may appeal to the state Housing Appeals Committee (HAC).

After a hearing, if the HAC rules that the ZBA's denial of a comprehensive permit was unreasonable and not consistent with local needs, the HAC orders the ZBA to issue the permit. If the HAC rules that the ZBA's decision issuing a comprehensive permit with conditions or requirements made the housing uneconomic to build or operate and was not consistent with local needs, the HAC orders the ZBA to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic. The HAC cannot order the ZBA to issue any permit that would allow the housing to fall below minimum safety standards or site plan requirements. If the HAC rules that the ZBA's action was consistent with local needs, the HAC must uphold it even if it made the housing uneconomic. The HAC's decision is subject to review in the courts.

A condition or requirement makes housing "uneconomic" if it would prevent a public agency or non-profit organization from building or operating the housing except at a financial loss, or it would prevent a limited dividend organization from building or operating the housing without a reasonable return on its investment.

A ZBA's decision is "consistent with local needs" if it applies requirements that are reasonable in view of the regional need for low- and moderate-income housing and the number of low-income persons in the city or town, as well as the need to protect health and safety, promote better site and building design, and preserve open space, if those requirements are applied as equally as possible to both subsidized and unsubsidized housing. Requirements are considered "consistent with local needs" if more than 10% of the city or town's housing units are low- or moderate-income units or if such units are on sites making up at least 1.5% of the total private land zoned for residential, commercial, or industrial use in the city or town. Requirements are also considered "consistent with local needs" if the application would result, in any one calendar year, in beginning construction of low- or

REGULAR MEETING OF THE CITY COUNCIL, OCTOBER 12, 2010, continued

moderate-income housing on sites making up more than 0.3% of the total private land zoned for residential, commercial, or industrial use in the city or town, or on ten acres, whichever is larger.

The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect.

**A YES VOTE** would repeal the state law allowing the issuance of a single comprehensive permit to build housing that includes low- or moderate-income units.

**A NO VOTE** would make no change in the state law allowing issuance of such a comprehensive permit.

### QUESTION 3: LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives before May 4, 2010?

#### SUMMARY

This proposed law would reduce the state sales and use tax rates (which were 6.25% as of September 2009) to 3% as of January 1, 2011. It would make the same reduction in the rate used to determine the amount to be deposited with the state Commissioner of Revenue by non-resident building contractors as security for the payment of sales and use tax on tangible personal property used in carrying out their contracts.

The proposed law provides that if the 3% rates would not produce enough revenues to satisfy any lawful pledge of sales and use tax revenues in connection with any bond, note, or other contractual obligation, then the rates would instead be reduced to the lowest level allowed by law.

The proposed law would not affect the collection of moneys due the Commonwealth for sales, storage, use or other consumption of tangible personal property or services occurring before January 1, 2011.

The proposed law states that if any of its parts were declared invalid, the other parts would stay in effect.

**A YES VOTE** would reduce the state sales and use tax rates to 3%.

**A NO VOTE** would make no change in the state sales and use tax rates.

And it is further ordered: - that the polls shall be opened at 7:00 A.M. and closed at 8:00 P.M. and that notice shall be given by publication of this order in a conspicuous place in the office of the City Clerk.

Per Order Leominster City Council  
True Copy Attest:

/s/ Lynn A. Bouchard, City Clerk

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following RESOLUTION was AMENDED and ADOPTED AS AMENDED. Vt. 5 “yeas” and 1 “nay, Councillor Freda opposed. Amended to read Section 9.1.2 not 9.2.

### RESOLUTION REGARDING TEMPORARY APPOINTMENTS

WHEREAS, on or about July 23, 2010 the Mayor appointed an individual to the position of Assistant Planning Director pursuant to Section 2.5 of the Revised City Charter and

WHEREAS, the appointment was for a period of 60 days pursuant to said Charter, and

WHEREAS, the 60 day period has expired and the Mayor has failed to re-appoint this person for an additional 60 day period pursuant to Section 2.5 of said revised Charter, and

WHEREAS, Section 2.5 requires this re-appointment by the Mayor, and

WHEREAS, Section 9.1.2 of said revised Charter requires the City Council to direct the Mayor by a Resolution to be in compliance when it believes the Mayor has failed to comply with the Charter

THEREFORE, BE IT RESOLVED, that the Leominster City Council request that the Mayor comply with the procedures as outlined in Section 2.5 of the revised City Charter relative to temporary appointments.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. Vt. 6 “yeas”

1<sup>st</sup> Reading Ordinance – amending Chapter 22 of the Revised Ordinances entitled “Zoning” by moving and extending the existing Residence A zoning line to include the following parcels: and Map 244 Parcels 1A, 2A, Map 246 Parcels 7, 4, 3, 2, 1, 8, and Map 248 Parcel 15.

MEETING ADJOURNED AT 8:13 P.M.

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Lynn A. Bouchard, City Clerk  
and Clerk of the City Council