

HEARING BEFORE THE CITY COUNCIL, DECEMBER 13, 2010

Hearing opened at 7:40 P.M. with Councillor Rowlands, Chair of the Legal Affairs Committee, presiding.

All members were present

Present at the hearing was Anthony Cleaves of Whitman & Bingham Associates, LLC and Bruce Williams, President of the Villa Del Rio Condominium Trust.

The following PETITION was the subject of the hearing:

25-11 Bruce Williams, President of Villa Del Rio Condominium Trust: Grant a Special Permit for work within a flood plain to replace an existing catch basin with an outlet to Rockwell Pond and install a sub-drain system to alleviate ongoing flooding issues of the existing site and building located at 144 West Street.

Introduced and made part of the record were the following:

- A. Petition 25-11 submitted by Bruce Williams, President of Villa Del Rio Condominium Trust
- B. Accompanied by a plan named "Proposed Drainage Plan and Details for the Villa Del Rio Condominium 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.
- C. Notice of public hearing published in the Sentinel & Enterprise on November 29, 2010 and December 6, 2010.
- D. Positive letters of recommendations from the Board of Health, Planning Board, Director of Inspections, and the Department of Public Works.
- E. The Conservation Commission said the Order of Conditions states the following criteria:
  1. There shall be no sedimentation into wetlands or water bodies from discharge pipes or surface runoff leaving the site.
  2. Catch basin Maintenance as follows:
    - a. At least four times a year, catch basins are to be inspected for overall performance. The catch basin grate should be cleaned of all organic debris that may have been deposited. Within the catch basin sump, which is the volume contained below the inlet/outlet inverts, is to be evaluated. Sand and accumulated organic matter should be removed if more than 50% of the total sump volume has been filed.
    - b. If oil and gasoline is found to be suspended within the collected water or sediment, further measures must be taken as far as collection and depositing at an approved hazardous waste facility. Upon the cleaning of the catch basin, structural integrity and proper operation of the hood/trap should be evaluated. Replacement of deteriorated bricks, repair of cracks in basin wall, or other required work shall be completed as necessary.

In addition, Rain Gardens now situated along the edge of the parking lot and in the area of the proposed outfall shall be maintained as defined in the Rain Garden Agreement between Villa Del Rio and the DPW. It is the opinion of the Conservation Commission that this work will not decrease flood storage.

Mr. Cleaves said this request is to work within the flood plain at an existing site that is experiencing flooding. He said they are proposing to replace the existing catch basin with an outlet to Rockwell Pond and install a subdrain system to alleviate ongoing flooding issues of the existing site and existing building.

Councillor Rowlands asked if there would be a problem if they added the Conservation comments on as conditions.

Mr. Cleaves said no.

Councillor Rowlands asked Mr. Williams how many times he has seen water reach the 100 year flood level.

Mr. Williams said he has been there a total of 12 years and last year was the worse. He said he wasn't sure if it was within the 100 year flood level.

Councillor Dombrowski asked that the construction process be described.

Mr. Cleaves said they will be digging a trench for the pipe and replacing the soil as they go. With the sub drain there will be some stabilizing to be done and backfill. He said they will start at the lower elevation and finish at the higher end. If they remove pavement they will replace payment. Hay bales and silt fence is proposed around Rockwell Pond. He said it would take approximately two weeks without any problems and would like to start as soon as possible before the spring rains.

Councillor Rowlands asked what size the pipe would be that would flow into Rockwell Pond.

Mr. Cleaves said the pipe was eighteen inches. He said the increase is minimal and we are not adding volume.

Councillor Chalifoux Zephir asked who was responsible for the annual maintenance and who is responsible if there is a large amount of gas.

Mr. Cleaves said the property owner's association is responsible. He said there is a hood or trap attached to the outlet that would catch oil or gas if there was any. If there was, it would get sucked out.

Councillor Chalifoux Zephir said so, the condo association is responsible.

Mr. Cleaves said yes.

Mr. Williams said he hired a new maintenance company for professional services and they will be coming in January.

HEARING BEFORE THE CITY COUNCIL, DECEMBER 13, 2010, continued

Councillor Rowlands asked if there were to be a change in the association is there a document for the clean out?

Mr. Williams said not yet, it's not ready but we are working on it.

Councillor Marchand said he is not comfortable dumping everything into the pond. It's a body of water that doesn't move well and there is a problem with the dam.

Mr. Cleaves said water goes to the dam now.

Councillor Marchand said yes, but it's not environmentally correct. He asked what the maintenance schedule was.

Mr. Cleaves said quarterly.

Councillor Marchand asked if any of the water came from the parking lot.

Mr. Cleaves said yes.

Councillor Marchand asked if they thought of moving the parking.

Mr. Cleaves said no, it probably would cause more harm.

Councillor Marchand asked what role does the City have to test? He said it is private property. Is there wording the City can use to do testing?

Mr. Williams said yes, it can be added.

Councillor Nickel agreed with Councillor Marchand and suggested the Conservation agent go on the property to check the maintenance and test if needed. He said maybe a letter on record giving the City the ability to do an inspection will suffice.

No one in the audience spoke in favor of this petition.

Olga Valera of 132 West Street said there is dirty water from West Street and on the other side of the pond. There is a big pipe behind her house and debris comes down through the pipe. She said it has not been right since they put the brook in.

Councillor Rowlands asked if they did calculations for a 100 year storm.

Mr. Cleaves said yes. The pipe was smaller when they first started to design. It was 12 inches and it wasn't large enough to carry the 100 year storms but was adequate. So we went to 18 inches.

Councillor Rowlands said it should read any hazardous material not just gas and oil.

Councillor Marchand said a condition should read clean or inspected as determined by DPW standards.

Councillor Salvatelli said he heard Rockwell Pond empties out every 24 hours, is that correct?

Mr. Cleaves said he did not know.

Councillor Freda asked Mr. Williams if he has permission to make an agreement without going back to his board for a vote.

Mr. Williams said they are here tonight.

HEARING ADJOURNED AT 8:17 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 7:30 P.M.

Attendance was taken by a roll call vote; all members were present.

A recess was called at 7:32 P.M. to continue the public hearing and to hold a public forum.

Meeting reconvened at 8:27 P.M.

## REGULAR MEETING OF THE CITY COUNCIL, DECEMBER 13, 2010, continued

The Committee on Records reported that the records through November 22, 2010 were examined and found to be in order. The records were accepted.

The following COMMUNICATION was received with an EMERGENCY PREAMBLE, referred to the FINANCE COMMITTEE. Vt. 9 "yeas" Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 7 "yeas", Councillors Nickel and Cormier abstained due to a possible conflict of interest.

C-30 Relative to the appropriation of \$150,000.00 to the Fire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) be appropriated to the Fire Department Overtime Account; same to be transferred from the Excess and Deficiency Account.

The following COMMUNICATION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Assessor.

C-31 Dean J. Mazzarella, Mayor: Accept the Certificate of Announcement and the 120 Day Waiver Form for the property located on Parmenter Road as shown on Assessor's Map 530, Lot 10.

The following COMMUNICATION was received with an EMERGENCY PREAMBLE, referred to the WAYS & MEANS COMMITTEE. Vt. 9 "yeas" Upon recommendation of the WAYS & MEANS COMMITTEE, the following COMMUNICATION was GRANTED and ORDERED. Vt. 9 "yeas"

C-32 Relative to the appropriation of \$8,500.00 to the C.D.B.G. Mayor's Office Energy Assistance Expense Account; same to be transferred from the C.D.B.G. Housing Construction Account.

ORDERED: - that the sum of Eight Thousand Five Hundred Dollars (\$8,500.00) be appropriated to the C.D.B.G. Mayor's Office Energy Assistance Expense Account; same to be transferred from the C.D.B.G. Housing Construction Account.

Councillor Rowlands read an opinion from Kopelman & Paige regarding C-32 as follows:

Re: CDBG Grant Funds – No New City Council Vote Needed to Reallocate Funds

Dear Mayor Mazzarella:

You have requested an opinion regarding the above referenced subject. According to the information provided, the City is an entitlement city for federal Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD), meaning that the funds are received through a direct grant rather than being administered through the state government. When the grant funds are received, your office prepares a proposed budget showing how the grant funds will be expended and it is submitted for approval to the City Council. Due to the timing of this process coming early in the year, however, it can be necessary to reallocate portions of the funds to meet the changing goals of the program (to increase the heating assistance program, for example). Your office submits any changes to HUD for approval, as certain criteria must be met to maintain eligibility to use the funds. It has been asked, however, whether the City Council's approval must also be sought to make any reallocations of these funds.

In my opinion, as long as HUD's approval is obtained for any reallocation, there is no requirement for the City Council to also approve it. When the grant funds are received (or at least confirmed by HUD), your office submits a proposed budget plan to use the grant funds for various projects consistent with the federal guidelines (home redevelopment, heating assistance, economic development, etc.), and this is approved by vote of the City Council. In my opinion, this process constitutes compliance with the terms of G.L. c.44, §53A. This statute provides that a City officer or department may accept a grant or gift of funds from any source and may expend such funds for the purposes of the grant or gift "with the approval of the mayor and the city council."

In my further opinion, however, §53A does not require that a new City Council vote be obtained in order to make reallocations amongst the various CDBG programs overseen by the Office of Planning and Development. The permissible use of CDBG funds are governed by HUD regulations and once the grant itself has been accepted by the Mayor and City Council, no new Council vote is required as long as the funds are still being used for the purposes laid out in the proposed budget. In my opinion, the CDBG grant funds are not an "appropriation" of the City Council as that term is used in G.L. c.44, §33B, which requires a City Council vote in order to make transfers of previously appropriated budget funds during the fiscal year. If a reallocation of the previously accepted grant funds is made during the year, and this use has been approved by HUD, it is my opinion that no new vote of the City Council is required.

If you have further questions in this regard, please feel free to contact me.

Very truly yours,



Brian W. Riley

## REGULAR MEETING OF THE CITY COUNCIL, DECEMBER 13, 2010, continued

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

- 27 -11 V.P. Holman Construction, Inc.: Accept Farm Hill Road as a City street from Prospect Street 1,228 feet ± to the currently accepted portion of Farm Hill Road.

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

- 28-11 Detective Scott Wolferseder, Leominster Police Department: Amend Chapter 11 of the Revised Ordinance entitled "Junk and Second Hand Dealers" by adding a new Section 11-12 "Buyers of Gold & Other Precious Metals".

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

Emergency Management – Auxiliary Police Unit – Oscar Myles, Edward Coffin

Councillor Salvatelli, Chairman of the Finance Committee, read the Financial Report for the City into the records. Account balances are as follows:

Stabilization Fund	\$11,671, 111.04
Interest Earned	\$ 13,604.27
Excess & Deficiency Account (Free Cash)	\$ 4,352,864.00
Emergency Reserve	\$ 2,568.00

Upon recommendation of the FINANCE COMMITTEE the following COMMUNICATIONS were GRANTED and ORDERED. Vt. 9 "yeas". A motion was made by Councillor Rowlands and seconded by Councillor Marchand to have Alan Benivedes of Woodard and Curran to attend a future meeting for follow-up on the oil spill.

- C-21 Relative to the appropriation of \$142,000.00 to the Municipal Property Maintenance Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of One Hundred Forty Two Thousand Dollars (\$142,000.00) be appropriated to the Municipal Property Maintenance Capital Outlay Expense Account; same to be transferred from the Excess and Deficiency Account.

- C-28 Relative to the appropriation of \$54,000.00 to the Sanitation and Drainage Expense Account; same to be transferred from the Excess and Deficiency Account.

ORDERED: - that the sum of Fifty Four Thousand Dollars (\$54,000.00) be appropriated to Sanitation and Drainage Expense Account; same to be transferred from the Excess and Deficiency Account.

Upon recommendation of the FINANCE COMMITTEE the following COMMUNICATIONS were GRANTED. Vt. 9 "yeas"

- C-29 Dean J. Mazarella, Mayor: Request the Snow and Ice Expense Account be authorized to incur liability and make expenditures in FY 2011 in excess of available appropriations in the amount of \$250,000.00 as authorized by Massachusetts General Law Chapter 44, Section 31D.

In regards to Petition 20-11 Councillor Chalifoux Zephir said she did not want to overstep the License Commission.

Councillor Cormier said he felt the same way but would support it. Councillor Freda asked for "further time".

Councillor Lanciani said he would prefer "further time" to get some questions answered. We need to find the proper way to submit this.

Councillor Salvatelli said it's a waste of time. Tucker Hazzard was the last case. He said he doesn't want to butt heads with the License Commission. He said he doesn't understand why there aren't licenses available. Sammie's is closed and the Chinese restaurant hasn't opened and has held a license for a while.

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following PETITION was GRANTED. Vt. 6/2; Councillors Chalifoux Zephir and Freda were opposed, Councillor Dombrowski abstained due to a possible conflict of interest.

- 20-11 James Xarras: Request the City of Leominster file a Home Rule Petition providing for "An act authorizing the City of Leominster to grant an additional license for the sale of all alcoholic beverages." Be it enacted by the Senate and House of Representatives in General Court assemble and by the authority of the same as follows: Notwithstanding Section 17 or Chapter 138 of the General Laws or any other general or special law of the contrary. The licensing authority of the City of Leominster may grant an additional license for the sale of all alcoholic beverages under Section 15 of said Chapter 138. The proposed location for this business is 497 Lancaster Street.

## REGULAR MEETING OF THE CITY COUNCIL, DECEMBER 13, 2010, continued

Upon recommendation of the LEGAL AFFAIRS COMMITTEE the following PETITION was GRANTED Vt. 9/0.

24-11 Susan Chalifoux Zephir: Amend Article 1, Section 16-2 of the Leominster Municipal Code to suspend any percentage increases in the City Council Salaries for calendar year 2012.

Upon request of the LEGAL AFFAIRS COMMITTEE the following PETITION was given FURTHER TIME. Vt. 9/0

25-11 Bruce Williams, President of Villa Del Rio Condominium Trust: Grant a Special Permit for work within a flood plain to replace an existing catch basin with an outlet to Rockwell Pond and install a sub-drain system to alleviate ongoing flooding issues of the existing site and building located at 144 West Street.

Upon recommendation of the WAYS & MEANS COMMITTEE the following PETITION was GRANTED. Vt. 9/0

26-11 Dean J. Mazzarella, Mayor: Request Edward Cataldo be exempt from the provisions in M.G.L. Chapter 268A (20B) Conflict of Interest as he is currently employed by the City of Leominster and will be taking on a position at the Recreation Department as well.

Upon recommendation of the WAYS & MEANS COMMITTEE the following APPOINTMENTS were CONFIRMED. 9 “yeas”

Office of Emergency Management – EMS Unit – Michael Rathier  
Rescue Unit – Charles Nelsen

Under Old Business, Councillor Dombrowski, Chairman of the President’s Drinking Water Oversight Committee, said there was an issued raised at the last meeting regarding an error in the last report received regarding the TTHM’s. He said the problem has been rectified.

The following ORDINANCE was read once, ADOPTED as presented and ordered published. A hearing was set for December 27, 2010 at 7:00 P.M. Vt. 9 “yeas”

1<sup>st</sup> Reading Ordinance – 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.

Under New Business, Councillor Marchand asked the member of Finance where the City does its banking.

In accordance with Section 3.6 of the Leominster City Charter a vote was taken to have Mr. LaPlante come to a meeting to explain the relationship or to explain it in writing. A suggestion by Councillor Salvatelli to ask for a written explanation in lieu of having Mr. LaPlante attend the next meeting was approved.

A Legal Affairs Committee meeting was scheduled for December 21, 2010 at 6:15 P.M.

Councillor Cormier said that the December 16, 2010 meeting with the School Committee has been cancelled upon request of the Mayor. He will work with Superintendent Bent to reschedule.

Councillor Dombrowski recognized the Leominster High School students on their production of the Music Man.

Councillor Freda recognized the Colonial Band for their Christmas Concert that was held on the weekend.

Councillor Lanciani thanked the City Council for the plaque given to him earlier in recognition of his 80<sup>th</sup> birthday. Councillor Lanciani was recognized for being the oldest sitting City Councillor ever.

MEETING ADJOURNED AT 10:08 P.M.

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